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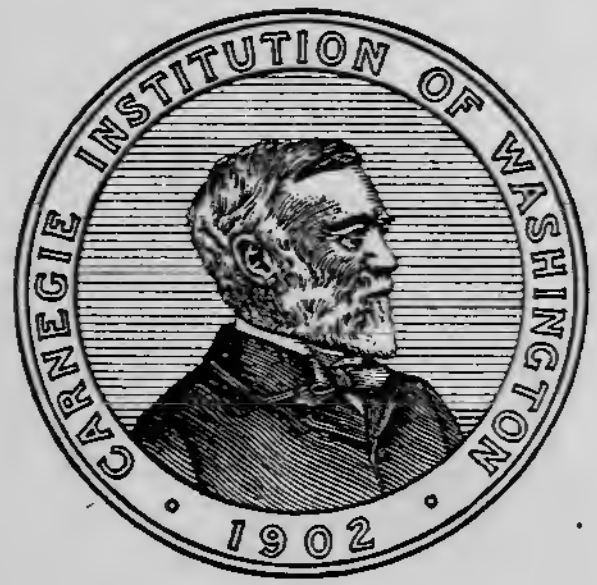
Judicial Cases
concerning
American Slavery and the Negro

EDITED BY
HELEN TUNNICLIFF CATTERALL
(MRS. RALPH C. H. CATTERALL)

VOLUME I

Cases from the Courts of
England, Virginia, West Virginia, and Kentucky



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PAPERS OF THE DEPARTMENT OF HISTORICAL RESEARCH
J. FRANKLIN JAMESON, EDITOR

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PREFACE.

That the history of American slavery and of the American negro forms a most important chapter in the history of the United States no one will deny. An institution that for two centuries formed a principal basis of economic and social life throughout large parts of the country, a portentous growth in the body politic, whose removal called for the sharp surgery of civil war, a residual mass of difficult problems in the relations of races, the historical development of a tenth of our present population—such elements as these invest the theme with an interest and importance that will not be questioned. Anyone however who is solicitous for the secure and orderly progress of American historical studies will readily perceive that this chapter of American history is very insufficiently documented. Of the hundreds of volumes of historical materials which the federal and state governments and our numerous historical societies have poured forth, almost none concerns the history of the American negro and of American slavery. Political and other reasons make it unlikely that in the immediate future—apart from the excellent work which is being done, with limited means, by the Association for the Study of Negro Life and History—such organizations, governmental or private, will do much toward illuminating by documentary publications this large and momentous chapter in our history.

It is true that a multitude of books were written in former times, and are still available, on those aspects of slavery, moral or Biblical or constitutional, which were involved in the question of its abolition. Students of the present day have little need of additional material for the understanding of that ancient debate. Now that the agitations of the 'fifties and 'sixties have receded a long way into the past, and the contest over slavery has taken its place in perspective as an episode, though a gigantic and fateful episode, in the history of the continent, students of history are more concerned to learn what they can of American slavery as an actual institution, of its character and implications in social and economic life. Here they find themselves very inadequately supplied with trustworthy materials. Often they must rely on the observations of travellers. How insecure is this reliance, we may judge from what we sometimes read in 1926 in the books of travellers who do us the honor to inspect us under the easy conditions of twentieth-century travel; and the travellers who visited the regions of slavery in the earlier part of the nineteenth century had a much more restricted range, and were apt to base their observations on plantations belonging to that special class of persons to whom European ladies and gentlemen were given introductions. Statistical material on the economics or the social character of American slavery is not on the whole copious, nor beyond a certain point illuminating. If there

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are other classes of sources which can be drawn upon for increase of our knowledge, there is a real need that they should be exploited.

Under such conditions of demand and of probable (or improbable) supply, the Department of Historical Research in the Carnegie Institution of Washington has felt itself to be distinctly called upon to turn some of its endeavors in this direction. More than one project of publication of sources for negro history has been framed, but the work which is farthest advanced at the present time is that of which the first volume is herewith presented, a series of volumes into which shall be drawn off the historical materials concerning American slavery and the negro that are to be found imbedded in the published volumes of judicial reports.

Constituted as American society is, all large aspects of American economic or social life are certain to find ample representation in these reports—save only that cases of the lowest grade of importance are not so likely to find their way up to those high tribunals whose decisions are preserved in printed volumes. Thousands of cases concerning slavery and the negro appear in them. The total mass of the decisions which they record exhibits fully and in detail the development of American law respecting slavery and the negro, in so far as that law was the product of judicial determination. A similar value attaches to the English decisions. Even more valuable to the historian is the mass of factual data which the reports offer, either in the narrative portions by which reporter or judge or counsel explains the origin or nature of the litigation or in the quotations from documents—wills, deeds, bills of sale, contracts, and what not—which are imbedded in the official explanations of the case.

First and last, these reports, in their thousands of negro cases, may be said to afford, in almost unlimited variety, instances of every sort of complication or situation that could arise from the institution of slavery in such a country as the United States. They show us the complications that might arise from the presence of negro, white, and Indian blood in varying proportions, those that in early days arose from christening or baptism, the incidents of the slave trade, of importations into this or that state, of the migration of free negroes from one state to another having different laws respecting their residence, of the relations of slave husbands to slave wives, of free negro husbands to wives whom they owned or to wives owned by others, and of white fathers to their slave children. They present a multitude of instances of manumission, with every variety of provision for the future of the manumitted, in America or in Liberia, and for that of their existing or future offspring. They give us many glimpses of sales and prices, and of the deceptions that might be practised in respect to the physical condition or usefulness of slaves sold. In the numerous cases turning on the distribution of the estates of persons dying intestate, on dowry, and on wills, they reveal the varying dispositions of masters and mistresses toward their human property, the opportunities for influence of favorite slaves, and the difficulties produced by ambigui-

ties in the law as to whether slaves were real or personal property. They show us in divers forms the practice of giving little negroes to children, of hiring out adults, and of letting them hire themselves out and lay up money. They show us runaways, cases of kidnapping, and the withdrawal of slaves by the retiring British forces in 1814. Escapes to Canada or Ohio, and the effects of permitted temporary residence of slaves in the Northwest Territory or the states formed from it, or in other free states, figure largely in them, especially in the later years. They exhibit many instances of crimes and punishments, of imprisonments and escapes and executions, negro church cases, railroad and steamboat cases, cases of accidents in mines and brawls in taverns. Most of all they lay before our eyes the incidents of plantation and farm life in the South. In the final years there are, in each state, cases showing the local effects of war, of the Proclamation of Emancipation, and of the Thirteenth Amendment. Other aspects of economic or social life which they illustrate are indicated in the introductions prefixed to the cases derived from the law reports of individual states.

The varieties of incident are, indeed, far too numerous to be described or indicated in a preface. And they are not varieties of incident that *might* have presented themselves or could be imagined; they are records of actual happenings, and can be relied upon to exhibit "the very form and pressure of the time"—the time when slavery prevailed in something like half of the United States.

A constant difficulty in documenting any portion of economic or social history lies in the fact that most commonly the mass of available material is so great and so various that a selection must be made, and selection may often be (or, what is almost equally injurious, may be suspected of being) a biassed selection, consciously or unconsciously influenced by the selector's desire that one or another view should be sustained by the evidence published. It is submitted that a compilation like the present may be held exempt from this suspicion, since it is not based on any process of selection, biassed or unbiassed, but except for repetitious matter, presents the apposite portions of *all* the cases relating to slavery and the negro which have been found.

This excepting of repetitious matter should perhaps be stated in more precise terms. Mrs. Catterall has, to wit, omitted repetition of cases (hundreds in number under each variety) where all that concerns slavery is that a slave is a gift from a father to a son or a daughter, that a slave is willed to a member of the owner's family, that a slave is levied on as a horse would be, or that an unsound slave has been sold without mention of his disease or disability. Narrations have also been omitted where there is repetition of the same happenings, as in the instance of a new trial or of a case carried to a higher court on appeal or writ of error.

The plan of the series, and of the present volume, is to draw off from each reported case all those narrations, statements of fact, or quoted docu-

ments which concern American slavery or the negro, and, as far as is possible, to present them in the words of the original printed report, but to effect the economies of space necessary in dealing with so many thousands of pages by omitting whatever is extraneous to the purpose of the volumes, whatever contributes nothing to the illustration of slavery as an institution and to the history of the American negro. Rigid compression has therefore been exercised, but only in verbiage and other non-essentials, not by the omission of anything relevant. Thus a case which in the reports occupies many pages may here be found reduced, without loss for our purposes, to the few lines of narrative or document which are all it contains that has to do with slavery or the negro.

This abbreviated quotation of the facts is followed by an abbreviated version of the judicial opinion, if the judge or judges rendered any that concerned the law of slavery or the legal position of the negro. Sometimes the editor has for this purpose made use of the reporter's summary which, commonly in smaller print, is prefixed to his full report of the decision. Most often, however, she has with great care and exactness made her own condensed summary of the law pronounced by the court, using when practicable its own words but studying brevity.

In addition to the cases embraced in the regular volumes of the reporters, those also have been included which appear in collected form in the historical publications of states or the volumes put forth by historical societies—for instance, in such works as the *Maryland Archives* (Provincial Court series) or Dr. McIlwaine's *Minutes of the Council and General Court of Colonial Virginia.* Such records, as a rule, pertain to the earliest colonial periods, while the law reports of most of the states begin at comparatively late dates, well subsequent to independence. For this reason, large gaps in the chronological sequence will be seen in the case of some states, since the series is dependent for its material on the reports which in various jurisdictions happen to have been put into print.

Under each state, the cases are set in chronological order, cases in the federal courts arising in that state being incorporated in the places where their dates would bring them. The compilation has been brought to a close, in each state, at the end of the year 1875, ten years after the ending of slavery in the United States. By that time the immediate consequences of abolition had been worked into the law. After it, some cases with retrospective interest occur, but neither their number nor their novelty is such as to repay the labor of searching for them in the increasingly voluminous reports of the last fifty years.

The present volume contains the English cases, naturally placed in the first volume of the series, and those heard and determined in the highest courts of Virginia, oldest of the colonies, of West Virginia, and of Kentucky, whose jurisprudence for obvious historical reasons followed somewhat closely that of Virginia. Other states, Southern, Northern, and Western, and the few Canadian and Jamaican cases, will occupy the sub-

sequent volumes, the Carolinas receiving, probably, the first place in the second volume. That the English cases are continued beyond 1783, to the same date of 1875 as the American cases, will be understood to be due in part to the close connection of some of them with the determinations in earlier cases like that of Somerset, and in part to their relation to the later slave trade to America.

As to matters of form, the citations to reports, in the headings of the cases, are expressed with the abbreviations which seem to be most used, except that when a given report or reporter is sufficiently indicated by a single surname, that name has been printed in full, without abbreviation. All the abbreviations or other designations of books laid under contribution, or cited, are explained in a list which follows the table of contents. Cases in United States courts are cited by reference to the volumes of *Federal Cases,* from which for convenience they have been taken, but references to the original volumes follow in parentheses.

Explanatory or supplementary words inserted by the editor in quoted passages, and page-numbers indicating change or turn of page in quoted passages, are set in square brackets. The punctuation of quotations has been preserved with a rigid exactness that will perhaps seem to some readers a Chinese fidelity; but the occasional ending of quotations with commas and semicolons, under the systematic compression adopted in the book, seemed a lesser evil than to mislead the reader by imposing a re-formed punctuation that in many cases might alter or obscure the meaning of the original text.

In quoted passages the spelling and capitalization of the books quoted has been followed, except that, in quotations from early records, the use of *u* and *v,* and of *i* and *j* has been modernized, *and* has been printed instead of the manuscript symbol &, the abbreviations for *which* and *with* and a few similar abbreviations have been expanded, and, as a matter of course, *th* in *the* and *that* and *then* has been printed *th,* and not *y*! Where quoted texts are accompanied in the original volumes by annotations which it is deemed expedient to preserve, they have for the most part been transferred as they stood, without attempt to regularize the forms in which they have cited statute-books and the like.

In the introductions, the editor has with much learning and perspicuity explained the development of the law and of judicial opinion in regard to various matters incident to slavery which come up in the cases presented from the English courts or those of the respective states. It is believed that these will be found to be valuable contributions to the history of that field of jurisprudence in which these volumes have their place.

The index has been prepared by Mr. David M. Matteson, of Cambridge, Massachusetts.

J. Franklin Jameson.

Washington, August 26, 1926.

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LIST OF ABBREVIATIONS.

Acton = Thomas H. Acton, *Reports of Cases argued and determined before the Lords Commissioners of Appeals in Prize Causes.*

A. K. Marsh. = Alexander K. Marshall, *Decisions of the Court of Appeals of Kentucky.*

Ambler = Charles Ambler, *Reports of Cases argued and determined in the High Court of Chancery.*

Amer. Law Reg. N. S. = *American Law Register,* new series (Philadelphia).

Bac. Ab. = Matthew Bacon, *A New Abridgment of the Law.*

B. and Ald. = Richard V. Barnewall and Sir Edward H. Alderson, *Reports of Cases argued and determined in the Court of King's Bench.*

B. and C. = Richard V. Barnewall and Sir Cresswell Cresswell, *Reports of Cases argued and determined in the Court of King's Bench.*

Barradall = *Virginia Colonial Decisions: the Reports by Sir John Randolph and by Edward Barradall of Decisions of the General Court of Virginia,* vol. II.

Barton = Robert T. Barton, *Virginia Colonial Decisions.*

Bos. and Pul. = Sir John B. Bosanquet and Sir Christopher Puller, *Reports of Cases argued and determined in the Courts of Common Pleas.*

Bibb = George M. Bibb, *Reports of Cases at Common Law and in Chancery, argued and decided in the Court of Appeals of the Commonwealth of Kentucky.*

B. Mon. = Ben Monroe, *Reports of Cases at Common Law and in Equity, decided in the Court of Appeals of Kentucky.*

Bott P. L. Const = Edmund Bott, *A Collection of Decisions of the Court of King's Bench upon the Poor Laws,* ed. Francis Const.

Bro. and Lush. = Ernst Browning and Vernon Lushington, *Reports of Cases decided in the High Court of Admiralty.*

Brockenbrough = John W. Brockenbrough, *Reports of Cases decided by the Honourable John Marshall, late Chief Justice of the United States, in the Circuit Court of the United States for the District of Virginia and North Carolina.*

Bush = W. P. D. Bush, *Reports of Selected Civil and Criminal Cases decided in the Court of Appeals of Kentucky.*

Call = Daniel Call, *Reports of Cases argued and adjudged in the Court of Appeals of Virginia.*

Campbell = John, lord Campbell, *Reports of Cases determined at Nisi Prius.*

Car. and Kir. = Frederick A. Carrington and Andrew V. Kirwan, *Reports of Cases argued and ruled at Nisi Prius.*

Carthew = Thomas Carthew, *Reports of Cases adjudged in the Court of King's Bench.*

Causes Célèbres = [François Gayot de Pitaval], *Causes Célèbres et Intéressantes.*

C. B. (N. S.) = John Scott, *Common Bench Reports, New Series.*

Chr. Rob. = Sir Christopher Robinson, *Reports of Cases argued and determined in the High Court of Admiralty.*

Cl. and Fin. = Charles Clark and William Finnelly, *House of Lords Cases.*

Co. Lit. = "Coke upon Littleton" = Sir Edward Coke, *The First Part of the Institutes of the Laws of England.*

Dallas = Alexander J. Dallas, *Reports of Cases ruled and adjudged in the Several Courts of the United States and of Pennsylvania held at the Seat of the Federal Government.*

Dallas Laws = Alexander J. Dallas, *Laws of the Commonwealth of Pennsylvania.*

Dana = James G. Dana, *Reports of Select Cases decided in the Court of Appeals of Kentucky.*

Dict. of Dec. = William M. Morison, *Decisions of the Court of Session.*

Dig. (in Kentucky Cases) or Dig. L. K. (See Litt. L. K., Myers Sup., and Stanton Dig.)

Dig. = Justinian's *Digest.*

Dodson = Sir John Dodson, *Reports of Cases argued and determined in the High Court of Admiralty.*

Douglas = Sylvester Douglas, baron Glenbervie, *Reports of Cases argued and determined in the Court of King's Bench.*
Duvall = Alvin Duvall, *Reports of Selected Civil and Criminal Cases decided in the Court of Appeals of Kentucky.*
Eden = Robert H. Eden, baron Henley, *Reports of Cases argued and determined in the High Court of Chancery.*
El. and Bl. = Thomas F. Ellis and Colin Blackburn, *Reports of Cases argued and determined in the Court of Queen's Bench and the Court of Exchequer Chamber.*
Espinasse = Isaac Espinasse, *Reports of Cases argued and ruled at Nisi Prius.*
Exch. = *Reports of Cases argued and determined in the Courts of Exchequer and Exchequer Chamber.*
Fed. Cas. = *The Federal Cases, comprising Cases argued and determined in the Circuit and District Courts of the United States.*
Gilmer = Francis W. Gilmer, *Reports of Cases decided in the Court of Appeals of Virginia.*
Grattan = Peachy R. Grattan, *Reports of Cases decided in the Supreme Court of Appeals, and in the General Court of Virginia.*
Hagg. Adm. = John Haggard, *Reports of Cases argued and determined in the High Court of Admiralty.*
Har. and McH. = Thomas Harris, jr., and John M'Henry, *Maryland Reports.*
Hardin = Martin D. Hardin, *Reports of Cases argued and adjudged in the Court of Appeals of Kentucky.*
Harr. Del. = Samuel M. Harrington, *Reports of Cases argued and adjudged in the Superior Court and Court of Errors and Appeals of the State of Delaware.*
H. Bl. = Henry Blackstone, *Reports of Cases argued and determined in the Courts of Common Pleas and Exchequer Chamber.*
Hen. and M. = William W. Hening and William Munford, *Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia.*
Hening = William W. Hening, *The Statutes at Large of Virginia.*
Howard = Benjamin C. Howard, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
Howell St. Tr. = Thomas B. and Thomas J. Howell, *State Trials.*
Hughes C. C. = Robert W. Hughes, *Reports of Cases decided in the Circuit Courts of the United States for the Fourth Circuit.*
Hughes Ky. = James Hughes, *A Report of the Causes determined by the Late Supreme Court for the District of Kentucky, and by the Court of Appeals, in which Titles to Land were in Dispute.*
Inst. = Sir Edward Coke, *Institutes of the Laws of England.*
Jefferson = Thomas Jefferson, *Reports of Cases determined in the General Court of Virginia.*
J. J. Marsh. = J. J. Marshall, *Reports of Cases at Law and in Equity, argued and decided in the Court of Appeals of the Commonwealth of Kentucky.*
John. N. Y. = William Johnson, *Reports of Cases argued and determined in the Supreme Court of Judicature . . . New York.*
Keble = Joseph Keble, *Reports in the Court of King's Bench.*
Knapp = Jerome W. Knapp, *Reports of Cases argued and determined before the Committees of the Privy Council.*
Ky. Dec. = *Decisions of the Court of Appeals of the State of Kentucky.*
Ky. Op. = *Kentucky Opinions, containing the Unreported Opinions of the Court of Appeals.*
Ld. Raym. = Robert, lord Raymond, *Reports of Cases argued and adjudged in the Courts of King's Bench and Common Pleas.*
Leigh = Benjamin W. Leigh, *Reports of Cases argued and determined in the Court of Appeals and in the General Court of Virginia.*
Levinz = *The Reports of Sir Creswell Levinz, Knt. (King's Bench).*
Littell = William Littell, *Reports of Cases at Common Law and in Chancery, decided by the Court of Appeals of the Commonwealth of Kentucky.*
Litt. L. = William Littell, *The Statute Law of Kentucky.*

Litt. L. K. = William Littell and Jacob Swigert, *A Digest of the Statute Law of Kentucky.*
Litt. Sel. Cases = William Littell, *Cases Selected from the Decisions of the Court of Appeals of Kentucky, not heretofore Reported.*
Lofft = Capell Lofft, *Reports of Cases adjudged in the Court of King's Bench.*
Marsden = Reginald G. Marsden, *Reports of Cases determined by the High Court of Admiralty.*
Mass. = *Reports of Cases argued and determined in the Supreme Judicial Court of the Commonwealth of Massachusetts.*
McIlw. = Henry R. McIlwaine, *Minutes of the Council and General Court of Colonial Virginia.*
Md. Arch. = *Archives of Maryland.*
Met. Ky. = James P. Metcalfe, *Reports of Selected Civil and Criminal Cases decided in the Court of Appeals of Kentucky.*
Mo. = *Reports of Cases argued and decided in the Supreme Court of the State of Missouri.*
Mod. = *Modern Reports; or, Select Cases adjudged in the Courts of King's Bench, Chancery, Common Pleas, and Exchequer.*
Mont. and Ayr. = Basil Montagu and Scrope Ayrton, *Reports of Cases in Bankruptcy decided by the Lord Chancellor Brougham.*
Moore P. C. = Edmund F. Moore, *Reports of Cases heard and determined by the Judicial Committee of the Privy Council.*
Munford = William Munford, *Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia.*
Myers Sup. = Harvey Myers, *A Digest of the General Laws of Kentucky.* [Supplementing Stanton.]
Patt. and H. = John M. Patton, jr., and Roscoe B. Heath, *Reports of Cases decided in the Special Court of Appeals of Virginia.*
Peters = Richard Peters, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
Q. B. = John L. Adolphus and Thomas F. Ellis, *Queen's Bench Reports, New Series.*
Quart. Law J. = *Quarterly Law Journal* (Richmond, Va., 1856-1859).
Randolph = Peyton Randolph, *Reports of Cases argued and determined in the Court of Appeals of Virginia.*
Rand. Sir J. = *Virginia Colonial Decisions: the Reports by Sir John Randolph and by Edward Barradall of Decisions of the General Court of Virginia,* vol. I.
R. C. or Rev. Code = *Revised Code of the Laws of Virginia,* eds. of 1785, 1794, 1803-1808, 1812, 1819, or 1849.
Rev. St. (Ky.) or R. S. = C. A. Wickliffe, S. Turner, and S. S. Nicholas, *The Revised Statutes of Kentucky.*
Rob. Va. = Conway Robinson, *Reports of Cases decided in the Supreme Court of Appeals, and in the General Court of Virginia.*
R. S. = Rev. St. (Ky.), *supra.*
Rushworth = John Rushworth, *Historical Collections.*
Salkeld = William Salkeld, *Reports of Cases adjudged in the Court of King's Bench.*
Shower = Sir Bartholomew Shower, *Reports of Cases adjudged in the Court of King's Bench.*
Simons = Nicholas Simons, *Reports of Cases decided in the High Court of Chancery.*
Stanton Dig. = Richard H. Stanton, *A New Digest of the Decisions of the Court of Appeals of Kentucky.*
Stanton R. S. = Richard H. Stanton, *The Revised Statutes of Kentucky.*
Stat. = *The Statutes at Large of the United States of America.*
St. L. (Ky.) = C. S. Morehead and Mason Brown, *A Digest of the Statute Laws of Kentucky.*
Swabey = M. C. Merttins Swabey, *Reports of Cases decided in the High Court of Admiralty.*
T. B. Mon. = Thomas B. Monroe, *Reports of Cases at Common Law and in Equity, argued and decided in the Court of Appeals of the Commonwealth of Kentucky.*
Term R. = Charles Durnford and Edward H. East, *Term Reports in the Court of King's Bench.*

Tucker = St. George Tucker, edition of Blackstone's *Commentaries.*
Va. Ca. = William Brockenbrough and Hugh Holmes, *A Collection of Cases decided by the General Court of Virginia.*
Va. Mag. Hist. = *Virginia Magazine of History and Biography.*
Vernon = Thomas Vernon, *Cases argued and adjudged in the High Court of Chancery.*
Wallace = John W. Wallace, *Cases argued and adjudged in the Supreme Court of the United States.*
Wash. Va. = Bushrod Washington, *Reports of Cases argued and determined in the Court of Appeals of Virginia.*
Wheaton = Henry Wheaton, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
W. Rob. = William Robinson, *Reports of Cases argued and determined in the High Court of Admiralty.*
W. Va. = *Reports of Cases decided in the Supreme Court of Appeals of West Virginia.*
Wythe = George Wythe, *Decisions of Cases in Virginia by the High Court of Chancery.*

JUDICIAL CASES CONCERNING SLAVERY.

ENGLAND.

INTRODUCTION.

Since the days of Solomon and before, short pithy sayings—proverbs or maxims—have crystallized popular sentiment or belief, or given an epitome of race experience. The law abounds in such succinct phrases; they emblazon the pages of equity jurisprudence. In the law of slavery three such maxims have become famous, and have influenced the history of that institution and the judicial decisions concerning it. The first occurs in a case reported by Rushworth:[1] "In the Eleventh of Elizabeth, one Cartwright brought a Slave from Russia, and would scourge him, for which he was questioned; and it was resolved, That England was too pure an Air for Slaves to breath in." The case is cited by Hargrave, counsel for the negro, in the Somerset Case.[2] Wallace, on the opposite side, maintained that "slaves could breathe in England: For villains were in this country, and were mere slaves, in Elizabeth."[3] Dunning, on the same side, is willing to admit the truth of the maxim as applied to Russian slaves: "Russian slavery . . is not here to be tolerated."[4] "'Tis not absurd in the idea, as quoted, nor improbable as matter of fact; the expression has a kind of absurdity." (Its poetical value does not appeal to him.) He does not admit that it has any bearing on African slavery: "neither the air of England is too pure for a slave to breathe in, nor the laws of England have rejected servitude." Serjeant Davy replies: "For the air of England; I think, however, it has been gradually purifying ever since the reign of Elizabeth. Mr. Dunning seems to have discovered so much, as he finds it changes a slave into a servant; tho' unhappily, he does not think it of efficacy enough to prevent that pestilent disease reviving, the instant the poor man is obliged to quit (voluntarily quits, and legally, it seems we ought to say,) this happy country. However, it has been asserted, and is now repeated by me, this air is too pure for a slave to breathe in; I trust, I shall not quit this court without certain conviction of the truth of that assertion."

Lord Stowell in his judgment in the case of the Slave Grace,[5] in 1827, thus comments: "The arguments of counsel in that decisive case of

[1] 2 Historical Collections 468.

[2] 20 How. St. Tr. 1 (51), called "The Case of James Sommersett, a Negro." An earlier report is found in Lofft 1, where the case is entitled Somerset *v.* Stewart. This report is used by the editor except for the statement of facts and for Hargrave's argument, which is obviously not reported altogether correctly by Lofft, but, in the Howell collection, is copied from Hargrave's manuscript.

[3] Lofft 1 (8).

[4] Lofft 1 (11).

[5] 2 Hagg. Adm. 94.

Sommersett, do not go further than to the extinction of slavery in England as unsuitable to the genius of the country and to the modes of enforcement: they look no further than to the peculiar nature, as it were, of our own soil; the air of our island is too pure for slavery to breathe in. How far this air was useful for the common purposes of respiration, during the many centuries in which the two systems of villenage maintained their sway in this country, history has not recorded."

Lord Stowell's rather scoffing reference [6] to "the peculiar nature, as it were, of our own soil" aims at another time-hallowed maxim, popularly supposed to be the kernel of the judgment in the Somerset case,[7] that, as soon as a slave sets foot on English soil, he is free. This maxim which has been the pride of generations of Englishmen did not originate in England. It was invoked by the Dutch from an early day: "adeo quidem ut servi, qui aliunde huc adducuntur, simul ac imperii nostri fines intrârunt, invitis ipsorum dominis ad libertatem proclamare possint: id quod et aliarum Christianârum gentium moribus receptum est." [8] France is one "aliarum Christianârum gentium," among which this custom prevailed: "Les maximes si précieuses du droit François accordent à la seule entrée dans ce royaume, au seul air qu'on y respire, le droit de la liberté." [9]

The maxim occurs in English judicial decisions first in the case of Smith *v.* Brown and Cooper.[10] The plaintiff had sold the defendant a negro "in parochia beatae Mariae de Arcubus in warda de Cheape," for twenty pounds, and brought suit for that sum. The verdict was for the plaintiff, but a motion was made in arrest of judgment, whereupon "Holt, C.J. held, that as soon as a negro comes into England, he becomes free. One may be a villein in England, but not a slave." He directed the plaintiff to amend his declaration, by averring "that the said negro at the time of sale was in Virginia, and that negroes, by the laws and statutes of Virginia,

[6] Attorney General Martin of Maryland likewise scoffed at the maxims in 1799: "The British air is supposed to electrify the flesh—putting a foot on the island, the nature is instantly changed, and if a slave before, becomes thereby free." Mahony *v.* Ashton, 4 Har. and McH. 295 (324).

[7] Lord Mansfield himself declared, in 1785, in Rex. *v.* Thames Ditton [4 Doug. 300]: [301] "The determinations go no further than that the master cannot by force compel him [the negro] to go out of the kingdom. . . In the case relating to villeins, it was held that the lord could not by force take them out of the country. . . The case of Somerset . . is the only one on this subject."

[8] S. van Groenewegen van der Made, *Tractatus de Legibus Abrogatis in Hollandia*, p. 5.

[9] 13 Causes Célèbres 492 (495 *et seq.*), ed. of 1747.

[10] 2 Salkeld 666. This case is undated, but is printed just before the case of Smith *v.* Gould, 2 Salkeld 666, Pasch. 1706, and on the same page. The plaintiff may have been the same in both cases, and the date probably the same. The latter is the "case in Salk. 666" cited by Lord Chancellor Hardwicke in 1749 in Pearne *v.* Lisle (*infra*), but Lord Chief Justice Holt's famous saying occurs only in the former. His name is not even mentioned in the latter, as reported by Salkeld. Both cases in Salkeld have the same subreference, "2 Ld. Raym. 1274," which is between the parties, Smith and Gould. Lord Raymond reports that "the writ of inquiry of damages was executed before the lord chief justice Holt at Guildhall in London" but quotes none of his words, giving only the decision "per totam curiam," wherein there is no mention of the soil of England.

are saleable as chattels. Then the attorney-general coming in, said, they were inheritances, and transferrable by deed, and not without: And nothing was done." "Lord Holt's opinion is a mere dictum,"[11] as Wallace truly says in the Somerset case,[12] "a decision unsupported by precedent."

In 1729 a petition was presented to "Sir Philip York[e], then Attorney-General, and Mr. Talbot, Solicitor-General,"[13] "in Lincoln's Inn Hall, after dinner; . . on the earnest solicitation of many merchants"[14] and "British planters,[15] . . [for] a notion had prevailed, if a negro came over, or became a christian, he was emancipated."[16] They "pledged themselves to the British planters, for all the legal consequences of slaves coming over to this Kingdom or being baptized." "We are of opinion, that a slave, by coming from the West Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's property or right in him is not thereby determined or varied; and baptism doth not bestow freedom on him, nor make any alteration in his temporal condition in these kingdoms. We are also of opinion, that the master may legally compel him to return to the plantations."[17] This opinion was affirmed by Sir Philip in 1749, when he had become Lord Chancellor Hardwicke, in the case of Pearne *v.* Lisle.[18] He comments on the "case in Salk. 666":[19] "The reason said at the bar to have been given by Lord Chief Justice Holt, in that case, as the cause of his doubt, *viz.* That the moment a slave sets foot in England he becomes free, has no weight with it, nor can any reason be found, why they should not be

[11] The tensity of public opinion concerning slavery is reflected in the tendency of great jurists to go out of their way to make pronouncements in that field, which are therefore only *dicta*. Lord Mansfield's assertion as to slavery, "It's so odious, that nothing can be suffered to support it but positive law," is called by Lord Stowell an "*obiter dictum* that fell from that great man." 2 Hagg. Adm. 94 (107). And the Dred Scott decision is generally held, in spite of Judge Taney's disclaimer (60 U. S. 393 [427]), to consist of nothing but *dicta*, aside from the question of the jurisdiction of the court.

[12] Lofft 1 (8).

[13] 33 Dict. of Dec. 14547.

[14] Lord Mansfield, in the Somerset case, Lofft 1 (8). "The personal traffic in slaves resident in England had been as public and as authorized in London as in any of our West India islands. They were sold on the exchange and other places of public resort by parties themselves resident in London, and with as little reserve as they would have been in any of our West India possessions. Such a state of things continued without impeachment from a very early period up to nearly the end of the last century." Lord Stowell in the Slave Grace, 2 Hagg. Adm. 94 [105], 1827. "'T is necessary the masters should bring them over; for they cannot trust the whites, either with the stores or the navigating the vessel." Wallace, in arguing the Somerset case, Lofft 1 (8). "Every family almost brings over a great number." Dunning, *ibid.*, 10.

[15] *Ibid.*, 19. Lord Mansfield's further references, in the Somerset case, to the opinion of Yorke and Talbot.

[16] The planters in Virginia had done all that in them lay to avoid such a consequence, for the general assembly, in the code of 1705, provided "That a slave's being in England, shall not be sufficient to discharge him of his slavery, without other proof of his being manumitted there." 3 Hening 448. And an act of 1667 provided "that the conferring of baptisme doth not alter the condition of the person as to his bondage or ffreedome." 2 Hening 260.

[17] 33 Dict. of Dec. 14547.

[18] Ambler 75.

[19] See note 10, p. 2, *supra*.

equally so when they set foot in Jamaica, or any other English plantation. All our colonies are subject to the laws of England, although as to some purposes they have laws of their own." But Lord Chancellor Henley, in 1762, in Shanley *v.* Harvey,[20] begins his brief opinion in favor of the negro Harvey: "As soon as a man sets foot on English ground he is free." [21] Then comes the famous Somerset case [22] in 1771-1772.[23] James Somerset was a negro of Africa who had been brought to Jamaica (according to Lord Mansfield) or to Virginia (according to the return to the writ of *habeas corpus*),[24] "to be there sold; and afterwards . . was sold in Virginia aforesaid to one Charles Steuart, esq. who was then an inhabitant of Virginia," and was brought by his master, in 1769, to London, "that is to say, in the parish of St. Mary-le-Bow, in the ward of Cheap." On October 1, 1771, before Stewart had finished transacting the business which brought him to London, Somerset quitted his service, and "absolutely refused" to return and serve his master. On November 26, 1771, Stewart delivered the negro to Captain Knowles to be securely kept on board his "vessel called the *Ann and Mary,* then and still lying in the river Thames, . . and . . bound upon a voyage for Jamaica," "to be kept till he should set sail, and then to be taken with him to Jamaica, and there sold as a slave."

While Somerset was "confined in irons on board" the ship, an application was made to Lord Mansfield for a writ of *habeas corpus,* supported by the affidavits of Thomas Walklin, Elizabeth Cade, and John Marlow. The writ was allowed, "directed to Mr. Knowles, and requiring him to return the body of Sommersett before his lordship, with the cause of detainer. Mr. Knowles on the 9th of December produced the body of Sommersett before lord Mansfield," and the return to the writ of *habeas corpus* was the ground of the determination of the court, pronounced by Lord Mansfield on June 22, 1772:

We pay all due attention to the opinion of Sir Philip Yorke, and Lord Chief Justice Talbot [25] . . recognized by Lord Hardwicke, sitting as Chancellor . . We are so well agreed, that we think there is no occasion of

[20] 2 Eden 126.

[21] "Lord Northington [Lord Henley in 1762], as I am informed by a friend who was present at the hearing of the cause, disallowed the master's claim with great warmth, and gave costs to the negro." Hargrave's argument in the Somerset case, 20 How. St. Tr. 1 (55).

[22] Lofft 1; 20 How. St. Tr. 1.

[23] "'Tis now about fifty years since the opinion given by two of the greatest men of their own or any other times, (since which no contract has been brought to trial between the masters and slaves;)" Lord Mansfield in the Somerset case, Lofft 1 (17).

[24] Quoted in full, in 20 How. St. Tr. 1 (17). Charles Stewart, who in 1762 resided in Virginia, was surveyor general of customs for the northern (Quebec) and eastern middle districts 1765-1767, cashier and paymaster of customs 1767-1779. He took Somerset to England from Boston. There is a full account of the Boston aspects of the case in 7 Mass. Hist. Soc. Proc. 322-326.

[25] Lord Mansfield observed earlier in the trial that this opinion was given "after dinner; probably, therefore, might not, as he believes the contrary is not [un]usual at that hour, be taken with much accuracy." Lofft 1 (8).

having it argued . . before all the judges, as is usual . . on a return to a *habeas corpus*. The only question before us is, whether the cause on the return is sufficient? . . the return states, that the slave departed and refused to serve; whereupon he was kept, to be sold abroad. So high an act of dominion must be recognized by the law of the country where it is used. . . The state of slavery . . is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.[26]

Thus fell, after only two-and- twenty years, in which decisions of great authority had been delivered by lawyers of the greatest ability in this country, a system, confirmed by a practice which had obtained without exception ever since the institution of slavery in the colonies, and had likewise been supported by the general practice of this nation and by the public establishment of its government, and it fell without any apparent opposition on the part of the public.[27]

This decision was followed in Scotland in 1778, in the case of Joseph Knight, a Negro *v.* Wedderburn,[28] It was held that "the defender had no right to the Negro's service for any space of time, nor to send him out of the country against his consent: That the Negro was likewise protected under the act 1701, c. 6. from being sent out of the country against his consent."

The case of Williams *v.* Brown [29] in 1802 is a landmark on the way to the restriction of the maxim by Lord Stowell, in the case of the Slave Grace. Williams, a runaway slave from the island of Grenada, in 1797 "entered at London on board the *Holderness* bound for Grenada, as an ordinary seaman out and home." On the ship's arrival at Grenada his master claimed him, and thereupon an agreement was entered into by Brown, the master of the ship, by the master of the slave, and by the slave himself, that the slave should be manumitted on the payment of "30 joes" to his master by Brown, "which was accordingly done by a regular instrument of manumission," and Williams on the same day covenanted to serve Brown as a sailor for three years at wages lower than the current rate. But when the ship got back to London, the negro commenced "the present action," upon a *quantum meruit,* for his wages on the voyage thither,

[26] *Ibid.*, 19.

[27] Lord Stowell, 2 Hagg. Adm. 94 (106). The attitude of the public, however, is indicated by the apologetic remarks of Mr. Dunning, counsel for Captain Knowles in the Somerset case, early in his argument: "'Tis my misfortune to address an audience, the greater part of which, I fear, are prejudiced the other way. . . For myself, I would not be understood to intimate a wish in favor of slavery, by any means;" and at the close: "I would say, before I conclude, not for the sake of the court, [but] of the audience; the matter now in question, interests the zeal for freedom of no person, if truly considered; . . I hope, therefore, I shall not suffer in the opinion of those whose honest passions are fired at the name of slavery. I hope I have not transgressed my duty to humanity; nor doubt I your lordships discharge of yours to justice." Lofft 1 (10, 14).

[28] 33 Dict. of Dec. 14545; also in 20 How. St. Tr. 1 (2 n.).

[29] 3 Bos. and Pul. 69.

claiming that there was no consideration for his agreement to serve for less, in that he was already free, having once set foot in England. The judges held a different opinion. To be sure, he was, as Lord Chief Justice Alvanley states, "as free as any of us while in England," but in Grenada he "was a runaway slave." [30]

Therefore Lord Stowell, in 1827, in his judgment in the case of the Slave Grace,[31] says of Williams *v.* Brown: "I do think it approaches so near as to possess the authority of a direct decision upon the immediate subject." Williams "had become a free man by landing in England, in the opinion of all the judges; and it is only by virtue of his pre-existing state of slavery, that he became subject to be returned into it again, until his manumission. The four judges all concur in this—that he was a slave in Grenada, though a free man in England; and he would have continued a freeman in all other parts of the world excepting Grenada."

The "immediate subject" was the case of the Slave Grace.[32] "In 1822, Mrs. Allan of Antigua came to England, bringing with her a female attendant, by birth and servitude a domestic slave, named Grace. She resided with her mistress in this country [England] until 1823, and accompanied her voluntarily on her return to Antigua. . . She continued with Mrs. Allan, in the capacity of a domestic slave, till August 8th, 1825, when she was seized by the waiter of the customs at Antigua 'as forfeited to the King, on suggestion of having been illegally imported in 1823'": "she being a free subject of his Majesty was unlawfully imported as a slave from Great Britain into Antigua, and there illegally held and detained in slavery." "On August 5, 1826, the judge of the Vice-Admiralty Court of Antigua decreed, after argument, 'that the woman Grace be restored to the claimant [Mr. Allan], with costs and damages for her detention.' From this sentence an appeal was prosecuted on the part of the crown, and the principal question made, was—whether, under the circumstances, slavery was so divested by landing in England that it would not revive on a return to the place of birth and servitude?"

Lord Stowell, in affirming the sentence of the vice-admiralty court, maintained that slavery was not so divested, and that it would revive on a return: "The temporary freedom thus acquired has ever been superseded upon the return of the slave; and slaves never have been deemed and considered as free persons on their return to Antigua, or the other colonies." Lord Stowell cites the judgment pronounced in 1749 by Lord Chancellor Hardwicke in Pearne *v.* Lisle,[33] affirming the opinion given by him and Solicitor General Talbot in 1729:[34]

[30] See pp. 23-24, *infra.*
[31] 2 Hagg. Adm. 94 (122).
[32] *Ibid.*
[33] *Supra,* p. 3, and *infra,* p. 12.
[34] *Supra,* p. 3, and *infra,* p. 12.

that a slave coming from the West Indies, either with or without his master, to Great Britain, doth not become free, and that his master's property or right in him is not thereby determined or varied; and they were also of opinion that the master might legally compel him to return to the plantations; . . This judgment, so pronounced in full confidence, and without a doubt upon a practice which had endured universally in the colonies, and (as it appears by those opinions) in Great Britain, was, in no more than twenty-two years afterwards, reversed by Lord Mansfield. . . The real and sole question which the case of Sommersett brought before Lord Mansfield, . . was, whether a slave could be taken from this country in irons and carried back to the West Indies, to be restored to the dominion of his master? . . Black seamen have navigated West India ships to this island, but we have not heard of other Sommersetts. . . The fact certainly is, that it never has happened that the slavery of an African, returned from England, has been interrupted in the colonies in consequence of this sort of limited liberation conferred upon him in England. . . he goes back to a place where slavery awaits him, and where experience has taught him that slavery is not to be avoided.

The third maxim, "Once free for an hour, free for ever!", is also disposed of by Lord Stowell:

It has been said that, in the decline of the ancient villenage, it became a maxim of very popular and legal use, 'Once free for an hour, free for ever!'[35] and this has been applied as a maxim that ought to govern in the case of negro slavery. Now, if this negro slavery was an exact transcript of the ancient villenage, it might not be improperly so contended; but . . this system of villenage was confined to this kingdom. . . and it [the maxim] has never once been applied, since the case of Sommersett, to overrule the authority of the transmarine law. . . This cry of 'Once free for an hour, free for ever!' it is to be observed, is mentioned as a peculiar cry of Englishmen as against those two species of slavery [villeins in gross and villeins regardant]. It could interest none but the people of this country: and of these only the masters, for no one else had any interest in the duties or services of their villeins. This cry has not, as far as we know, attended the state of slavery in any other country, though that has been a state so prevalent in every other part of the world, and has existed at all times.

In closing, Lord Stowell says:

These are the conclusions to which I have arrived, after a very full and mature consideration of the subject. I can truly say, that I have arrived at those conclusions with a mind free from any prepossession upon the subject, and with the determination to attend to nothing but the fair result of the evidence which applies to it. I am sensible that other opinions may be formed upon the question; but, in affirming the sentence of the Judge of the Court below, I am conscious only of following that result which the facts not only authorise but compel me to adopt.

[35] Note in Haggard: [114 n.] "Herein," says Lord Coke, "the common law differeth from the civil law; for Libertinum ingratum leges civiles in pristinam redigunt servitutem, sed leges Angliae semel manumissum semper liberum judicant, gratum et ingratum." 1 Inst. lib. II., sect. 204.

Suggestions for parliamentary action were made both by Lord Mansfield [36] and by Lord Stowell.[37] These bore fruit in 1833, in the act of 3 and 4 William IV., emancipating the slaves in the British colonies.[38] Lord Stowell's judgment was the Dred Scott decision [39] of England.

Of the nineteenth-century cases presented in the pages which follow, some arose from this legislation, but the greater number arose out of the efforts of Great Britain to suppress the African slave trade.

[36] "An application to parliament, if the merchants think the question of great commercial concern, is the best, and perhaps the only method of settling the point for the future." Lofft 1 (18).

[37] 2 Hagg. Adm. 94 (111, 133, 134).

[38] "An Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves. [28th August 1833.]" Section LXIV. provides, "That nothing in this Act contained doth or shall extend to any of the Territories in the Possession of the East India Company, or to the Island of Ceylon, or to the Island of Saint Helena." Act 3 and 4 William IV. c. 73.

[39] See correspondence between Lord Stowell and Judge Story, quoted, pp. 36-39, *infra*.

a *homine replegiando.* The sheriff returned, that he had replevied the body, but did not say, the body in which Sir Thomas claimed a property; whereupon he was ordered to amend his return."

Noel v. Robinson, 1 Vernon 453, April 1687. "Mr. Sergeant Maynard's case was cited, who recovered a debt contracted here against the executor of an owner of a plantation in Barbadoes, and by his advice an action of trover was brought, and judgment obtained for the fourth part of a negro."

Gelly v. Cleve, cited in 1 Ld. Raym. 147, ("Hill.[1] 5 Will. and Mar.") 1694. "adjudged that trover will lie for a Negro boy;[2] for they are heathens, and therefore a man may have property in them, and that the court, without averment made, will take notice that they are heathens."

Chamberline v. Harvey, 3 Ld. Raym. 129, 1696/7. "Robert [Harvey, esq.] on the first day of September . . 1695, . . took . . from" "Willoughby Chamberline, esq . . one negro . . of the price of 100 *l.* . . at London . . in the parish of the Blessed Mary of the Arches in the ward of Cheape, . . and kept possession of the negro aforesaid" [5 Mod. 186] "before the trespass committed, one Edward Chamberline was seized in fee of a plantation in Barbadoes, and of certain negro slaves thereunto belonging; that the negro now taken was born within the said island of negro parents, being slaves belonging to the said plantation; that an ordinance was made . . in said island, that the negro slaves there shall be real estates, . . that Edward Chamberline died . . after whose death one third of the plantation and negro slaves (whereof this negro was one) came to Mary his widow . . as her dowry, and the reversion . . to the plaintiff, as son and heir of Edward Chamberline; that the said Mary afterwards married Sir John Witham," who brought "this very negro into England, where he continued in the service of the said Sir John Witham several years; that he was baptized [3] here, but without the privity or consent of the plaintiff; that after the death of the said Mary, Sir John Witham turned this negro out of his service, who afterwards served several other masters here, and at the time when the trespass was supposed to be committed, was in the service of the defendant, and had for his wages six pounds by the year." "A case like this never happened before."

Judgment for the defendant. [191] "the Court were of opinion, that no action of Trespass would lie for the taking away a man generally, but that there might be a special action of trespass for taking his servant, *per quod servitium amisit.*" Also, in 1 Ld. Raym. 146: [147] "And *per*

[1] Hargrave says "Michaelmas term." 20 How. St. Tr. 53.

[2] Hargrave, *ibid.*: "On examination of the Roll, Trin. 5 W. and M. C. B. Roll, No. 407, I find that the action was brought for various articles of merchandize as well as the negro; and I suspect, that in this case, as well as the former one of Butts and Penny, the action was for a negro in America;"

[3] "If baptism should be accounted a manumission, it would very much endanger the trade of the plantations, which cannot be carried on without the help and labour of these slaves; for the parsons are bound to baptize them as soon as they can give a reasonable account of the christian faith; and if that would make them free, then few would be slaves." Argument against manumission by baptism, 5 Mod. 186 (188).

Holt chief justice, trover will not lie for a Negro, *contra* to 3 Keb. 785, 2 Lev. 201, Butts *v.* Penny." Also, in Carthew 397: "An action of trespass will not lie, because a negro cannot be demanded as a chattel, neither can his price be recovered in damages in an action of trespass, as in case of a chattel; for he is no other than a slavish servant, and the master can maintain no other action of trespass for taking his servant, but only such which concludes *per quod servitium amisit,* in which the master shall recover for the loss of his service, and not for the value, or for any damages done to the servant."

Smith v. Brown and Cooper, 2 Salkeld 666, (no date). "The plaintiff declared in an *indebitatus assumpsit* for 20 *l.* for a negro sold by the plaintiff to the defendant, *viz. in parochia beatae Mariae de Arcubus in warda de Cheape,* and verdict for the plaintiff; and, on motion in arrest of judgment, Holt, C. J. held, that as soon as a negro comes into England, he becomes free: One may be a villein in England, but not a slave. *Et per* Powell, J. . . the law took no notice of a negro. Holt, C. J. You should have averred in the declaration, that the sale was in Virginia, and, by the laws of that country, negroes are saleable; for the laws of England do not extend to Virginia, being a conquered country their law is what the King pleases; and we cannot take notice of it but as set forth; therefore he directed that the plaintiff should amend, and the declaration should be made, that the defendant was indebted to the plaintiff for a negro sold here at London, but that the said negro at the time of sale was in Virginia, and that negroes, by the laws and statutes of Virginia, are saleable as chattels. Then the attorney-general coming in, said, they were inheritances, and transferrable by deed, and not without: And nothing was done."

Smith v. Gould, 2 Salkeld 666, Pasch. 1706. "Trover for several things, and among the rest *de uno Aethiope vocat.* a negro; and, on not guilty pleaded, verdict was for the plaintiff, and several damages; and as to the negro 30 *l.* And it was moved in arrest of judgment, that trover lay not for a negro, for that the owner had not an absolute property in him; he could not kill him as he could an ox."

Held: "Men may be the owners, and therefore cannot be the subject of property. . . the Court seemed to think that in trespass *quare captivum suum cepit,* the plaintiff might give in evidence that the party was his negro, and he bought him."

Id., 2 Ld. Raym. 1274. "In an action of trover for a negro, and several goods, the defendant let judgment go by default and the writ of inquiry of damages was executed before the lord chief justice Holt at Guildhall in London. Upon which the jury gave several damages, as to the goods, and the negro; and a motion as to the negro was made in arrest of judgment, that trover could not lie for it, because one could not have such a property in another as to maintain this action. . . *per totam curiam* this action does not lie for a negro, no more than for any other man; for the common law takes no notice of negroes being different from other men. By the common law no man can have a property in another, but in special

cases, as in a villain, but even in him not to kill him: so in captives took in war, but the taker cannot kill them, but may sell them to ransom them: there is no such thing as a slave by the law of England. And if a man's servant is took from him, the master cannot maintain an action for taking him, unless it is laid *per quod servitium amisit*. . . And the court denied the opinion in the case of Butts and Penny, and therefore judgment was given for the plaintiff, for all but the negro, and as to the damages for him, *quod querens nil capiat per billam*."

"*Opinion of Sir Philip York*[*e*]*, then Attorney-General, and Mr. Talbot, Solicitor-General*," 33 Dict. of Dec. 14547, 1729. "We are of opinion, that a slave, by coming from the West Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's property or right in him is not thereby determined or varied; and baptism doth not bestow freedom on him, nor make any alteration in his temporal condition in these kingdoms. We are also of opinion, that the master may legally compel him to return to the plantations." [1]

Pearne v. Lisle, Ambler 75, October 1749. Order for *Ne exeat regno*. Affidavit: "plaintiff was entitled to fourteen Negroes at Antigua; that his agent let them to defendant for hire, at a yearly rent which amounted to 100 *l*. Antigua money; that the defendant refuses to pay for two years service, which is of the value of 100 *l*. sterling, and also refuses to deliver the Negroes to plaintiff's agent: that defendant has declared he intends to leave England soon and go to Antigua:"

Lord Hardwicke, Ch.: [76] "I will discharge the order. 1st, As to the nature of the demand. It is for the use of Negroes. A man may hire the servant of another, whether he be a slave or not, and will be bound to satisfy the master for the use of them. I have no doubt but trover will lie for a Negro slave; it is as much property as any other thing. The case in [2] Salk. 666 [Smith *v.* Gould][2] was determined on the want of proper description. It was trover *pro uno Æthiope vocat*. Negro, without saying slave; and the being Negro did not necessarily imply slave.[3] The reason said at the bar to have been given by Lord Chief Justice Holt, in that case, as to the cause of his doubt, *viz*. That the moment a slave sets foot in England he becomes free, has no weight with it, nor can any reason be found, why they should not be equally so when they set foot in Jamaica, or any other English plantation. All our colonies are subject to the laws of England, although as to some purposes they have laws of their own. There was once a doubt, whether, if they were christened, they would not become free by that act, and there were precautions taken in the Colonies,[4] to prevent their being baptised, till the opinion of Lord Talbot and myself,

[1] See Somerset *v.* Stewart, pp. 14-18, *infra*.

[2] Smith *v.* Brown and Cooper is on the same page. Lord Hardwicke seems to mix the two cases; for, according to Salkeld, Holt quotes the maxim, "as soon as a negro comes into England, he becomes free," only in Smith *v.* Brown and Cooper.

[3] Holt uses "negro" as synonymous with "slave" in Smith *v.* Brown and Cooper, p. 11, *supra*.

[4] See Lord Mansfield, in Somerset *v.* Stewart, pp. 14-15, *infra*.

then Attorney [77] and Solicitor-General, was taken on that point.[1] We were both of opinion, that it did not at all alter their state. There were formerly villains or slaves in England, . . and although tenures are taken away, there are no laws that have destroyed servitude absolutely. Trover might have been brought for a villain. . . As to the merits, a specific delivery of the Negroes is prayed; but that is not necessary, others are as good; indeed in the case of a cherry-stone, very finely engraved, and likewise of an extraordinary wrought piece of plate, for the delivery of which bills were brought in this Court, they could not be satisfied any other way; . . The Negroes cannot be delivered in the plight in which they were at the time of the demand, for they wear out with labour, as cattle or other things; nor could they be delivered on demand, for they are like stock on a farm, the occupier could not do without them, but would be obliged, in case of a sudden delivery to quit the plantation. The person of the defendant is amenable, for he is a native of Antigua; he is going to Antigua: his effects, and likewise the Negroes, are there, and have been used in that place. It is a colony subject to England, and the plaintiff may have justice done him in the Courts there."

Sheddan v. a Negro, 33 Dict. of Dec. 14545 (Scottish case), July 1757. "A Negro, who had been bought in Virginia, and brought to Britain to be taught a trade, and who had been baptized in Britain, having claimed his liberty, against his master Robert Sheddan, who had put him on board a ship, to carry him back to Virginia, the Lords appointed counsel for the Negro, and ordered memorials, and afterwards a hearing in presence, upon the respective claims of liberty and servitude by the master and the negro. But, during the hearing in presence, the Negro died; so the point was not determined."

Also in 20 How. St. Tr. 1 n.

Shanley v. Harvey [*Nalvey*], 2 Eden 126, March 1762. "This was a bill brought by Edward Shanley, Esquire, as administrator of Margaret Hamilton, deceased, against Joseph Harvey, a negro, and . . his trustees, . . The plaintiff had twelve years before brought over the defendant, Harvey, as his slave, then only eight or nine years old, and presented him to his niece, Margaret Hamilton, who had him baptized, and changed his name. On the 9th of July 1752, being then very ill, she, about an hour before her death, directed Harvey to take out a purse, which was in her dressing-case drawer, and delivered it to him, saying, 'Here, take this, there is £700 or £800 in bank notes, and some more in money, but I cannot directly tell what, but it is all for you, to make you happy: make haste, put it in your pocket, tell nobody, and pay the butcher's bill.' He then knelt down and thanked her. She said, 'God bless you, make a good use of it.' . . The Lord Chancellor [Henley]. As soon as a man sets foot on English ground he is free: a negro may maintain an action against his master for ill usage, and may have a *Habeas Corpus* if restrained of his liberty. Bill dismissed with costs."

[1] See Opinion of Sir Philip Yorke, *supra*.

The Africa, Marsden 228, July 1762. "A British ship sailed from New London in North America to Barbados, with a cargo of provisions and lumber, which she there unladed and took on board 10 negro slaves . . cleared for Guadaloupe, but sailed to Monte Christi, where she arrived in February, 1760, and in her return was taken by an English man-of-war."

The St. Croix, Marsden 228, March 1763. "The *St. Croix,* laden with sugar, was taken on her voyage from Monte Christi by an English privateer, and carried into New Providence. . . The witnesses examined said . . [229] that they brought about 180 negroes from St. Croix; about 10 were sold at Monte Christi, the rest were sent to Cape Francois . . that Bodkin [one of the owners] went with the slaves and cargo to Cape Francois and there employed a Frenchman to dispose of them, to whom he paid 7 per. cent. on the sale whilst the ship lay at Monte Christi."

Somerset v. Stewart, Lofft 1 [20 How. St. Tr. 1], June 1772. [20 How. 1] "On the 3d of December 1771, affidavits were made by Thomas Walklin, Elizabeth Cade, and John Marlow, that James Sommersett, a negro, was confined in irons on board a Ship called the *Ann and Mary,* John Knowles commander, lying in the Thames, and bound for Jamaica; and lord Mansfield, on an application supported by these affidavits, allowed a writ of *Habeas Corpus,* directed to Mr. Knowles, and requiring him to return the body of Sommersett before his lordship, with the cause of detainer. Mr. Knowles on the 9th of December produced the body of Sommersett before lord Mansfield, and returned for cause of detainer, that Sommersett was the negro slave . . [23] on account of the importance of the case, the Court postponed hearing the objections against the return, till the 7th of February, and the recognizance for the negro's appearance was continued accordingly. On that day Mr. Serj. Davy and Mr. Serj. Glynn argued against the return, and the farther argument was postponed till Easter term, when Mr. Mansfield, Mr. Alleyne, and Mr. Hargrave, were also heard on the same side. Afterwards Mr. Wallace and Mr. Dunning argued in support of the return, and Mr. Serjeant Davy was heard in reply to them. The determination of the Court was suspended till the following Trinity term; and then the Court was unanimously of opinion against the return, and ordered that Sommersett should be discharged."

[Lofft 18] "Trinity Term, June 22, 1772. Lord Mansfield—On the part of Somerset, . . the court now proceeds to give its opinion. I shall recite the return to the writ of *habeas corpus*, as the ground of our determination; omitting only words of form. The captain of the ship on board of which the negro was taken, makes his return to the writ in terms signifying that there have been, and still are, slaves to a great number in Africa; and that the trade in them is authorized by the laws and opinions of Virginia and Jamaica; that they are goods and chattels; and, as such, saleable and sold. That James Somerset, is a negro of Africa, and long before the return of the king's writ was brought to be sold, and was sold to Charles Stewart, Esq. then in Jamaica, and has not been manumitted since; that Mr. Stewart, having occasion to transact business, came over

hither [in 1769], with an intention to return; and brought Somerset, to attend and abide with him, and to carry him back as soon as the business should be transacted. That such intention has been, and still continues; and that the negro did remain till the time of his [Somerset's] departure [October 1, 1771], in the service of his master Mr. Stewart, and quitted it without his consent; and thereupon [November 26, 1771], before the return of the king's writ, the said Charles Stewart did commit the slave on board the *Ann and Mary,* to save [safe] custody, to be kept till he [Knowles] should set sail, and then to be taken with him to Jamaica, and there sold as a slave. And this is the cause why he, Captain Knowles, who was then and now is, commander of the above vessel, then and now lying in the river of [19] Thames, did the said negro, committed to his custody, detain; and on which he now renders him to the orders of the court. We pay all due attention to the opinion of Sir Philip Yorke,[1] and Lord Chief Justice Talbot, whereby they pledged themselves to the British planters, for all the legal consequences of slaves coming over to this kingdom or being baptized, recognized by Lord Hardwicke,[2] sitting as Chancellor on the 19th of October 1749, that trover would lie: That a notion had prevailed, if a negro came over, or became a christian, he was emancipated, but no ground in law; that he and Lord Talbot, when Attorney and Solicitor-General, were of opinion, that no such claim for freedom was valid; that tho' the Statute of Tenures had abolished villains regardant to a manor, yet he did not conceive but that a man might still become a villain in gross, by confessing himself such in open court. We are so well agreed, that we think there is no occasion of having it argued (as I intimated an intention at first), before all the judges, as is usual, for obvious reasons, on a return to a *habeas corpus*; the only question before us is, whether the cause on the return is sufficient? If it is, the negro must be remanded; if it is not, he must be discharged. Accordingly, the return states, that the slave departed and refused to serve; whereupon he was kept, to be sold abroad. So high an act of dominion must be recognized by the law of the country where it is used. The power of a master over his slave has been extremely different, in different countries. The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only [by] positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: It's so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged." [3]

Extracts from the arguments:

[20 How. St. Tr. 1] Hargrave, for the negro: [48] "The law of England only knows slavery by birth; it requires prescription in making

[1] See *supra,* Opinion of Sir Philip Yorke, p. 12.
[2] See Pearne *v.* Lisle, p. 12, *supra.*
[3] See comments by Lord Stowell in the case of the Slave Grace, pp. 36-37, *infra.*

title to a slave. . . Therefore the law of England is not applicable to the slavery of our American colonies, or of other countries.—If the law of England would permit the introduction of a slavery commencing out of England, the rules it prescribes for trying the title to a slave would be applicable to such a slavery; but they are not so; and from thence it is evident that the introduction of such a slavery is not permitted by the law of England.—The law of England then excludes every slavery not commencing in England, every slavery though commencing there not being antient and immemorial. Villenage is the only slavery which can possibly answer to such a description, and that has long expired by the deaths and emancipations of all those who were once the objects of it. . . [51] The first case on the subject is one mentioned in Mr. Rushworth's Historical Collections; [see p. 9, *supra*] . . In order to judge what degree of credit is due to the representation of this case, it will be proper to state from whom Mr. Rushworth reports it. In 1637, there was a proceeding by information in the Star-Chamber against the famous John Lilburne, for printing and publishing a libel; and for his contempt in refusing to answer interrogations, he was by order of the Court imprisoned till he should answer, and also whipped, pilloried, and fined. His imprisonment continued till 1640, when the Long Parliament began. He was then released, and the House of Commons impeached the judges of the Star-Chamber for their proceedings against Lilburne. In speaking to this impeachment, the managers of the Commons cited the case of the Russian slave. Therefore the truth of the case . . rests upon the credit due to the managers of the Commons. When this is considered, and that the year of the reign in which the case happened is mentioned, with the name of the person who brought the slave into England; that not above 72 or 73 years had intervened between the fact and the relation of it; . . I see no great objection to a belief of the case. If the account of it is true, the plain inference from it is, that the slave was become free by his arrival in England."

[Lofft 8] Mr. Wallace, in support of the return: "As to England, not permitting slavery, there is no law against it; . . Villenage itself has all but the name. Though the dissolution of monasteries, amongst other material alterations, did occasion the decay of that tenure, slaves could breathe in England: For villains were in this country, and were mere slaves, in Elizabeth. Sheppard's Abridgment, afterwards, says they were worn out in his time. [Lord Mansfield mentions an assertion, but does not recollect the author, that two only were in England in the time of Charles II. at the time of the abolition of tenures.] . . 'Tis necessary the masters should bring them over; for they cannot trust the whites, either with the stores or the navigating the vessel. . . The court must consider the great detriment to proprietors, there being so great a number in the ports of this kingdom, that many thousands of pounds would be lost to the owners, by setting them free. (A gentleman observed, no great danger; for in a whole fleet, usually, there would not be six slaves.)"

[9] Mr. Dunning, in support of the return: "'Tis my misfortune to address an audience, the greater part of which, I fear, are prejudiced the

other way. . . Many alarming apprehensions have been entertained of the consequence of the decision, either way. About 14,000 slaves, from the most exact intelligence I am able to procure, are at present here; and some little time past, 166,914 in Jamaica: there are a number of wild negroes in the woods. The computed value of a negro in those parts 50 *l.* a head. In the other islands I cannot state with the same accuracy, but on the whole they are about as many. The means of conveyance, I am told, are manifold; every family almost brings over a great number; and will, be the decision on which side it may. Most negroes who have money . . make interest with the common sailors to be carried hitherto."

Observations of Lord Mansfield in the course of the arguments: [8] "The case alluded to [1] was upon a petition in Lincoln's Inn Hall, after dinner; probably, therefore, might not, as he believes the contrary is not [un]usual [2] at that hour, be taken with much accuracy. The principal matter was then, on the earnest solicitation of many merchants, to know, whether a slave was freed by being made a Christian? And it was resolved, not. 'Tis remarkable, tho' the English took infinite pains before to prevent their slaves being made Christians, that they might not be freed, the French suggested they must bring their's into France, (when the edict of 1706 was petitioned for,) to make them Christians. He said, the distinction was difficult as to slavery, which could not be resumed after emancipation, and yet the condition of slavery, in its full extent, could not be tolerated here. Much consideration was necessary, to define how far the point should be carried."

[16] "the last confession of villenage extant, is in the 19th of Henry the 6th."

[17] "The question is, if the owner had a right to detain the slave, for the sending of him over to be sold in Jamaica. In five or six cases of this nature, I have known it to be accommodated by agreement between the parties: On its first coming before me, I strongly recommended it here. But if the parties will have it decided, we must give our opinion. . . Contract for sale of a slave is good here; the sale is a matter to which the law properly and readily attaches, and will maintain the price according to the agreement. But here the person of the slave himself is immediately the object of enquiry; which makes a very material difference. The now question is, whether any dominion, authority or coercion can be exercised in this country, on a slave according to the American laws? The difficulty of adopting the relation, without adopting it in all its consequences, is indeed extreme; and yet, many of those consequences are absolutely contrary to the municipal law of England. We have no authority to regulate the conditions in which law shall operate. On the other hand should we think the coercive power cannot be exercised: 'Tis now about fifty years since the opinion given by two of the greatest men of their own or any times,[3] (since which no contract has been brought to trial, between the masters and slaves;) the service performed by the slaves without wages,

[1] "Lord Hardwicke, and the afterwards Lord Chief Justice Talbot, then Attorney and Solicitor-General, pronounced a slave not free by coming into England." [Wallace's argument.] See *supra*, Opinion of Sir Philip Yorke, p. 12.

[2] 20 How. St. Tr. 1 (70).

[3] See Opinion of Sir Philip Yorke and Mr. Talbot, p. 12, *supra*.

is a clear indication they did not think themselves free by coming hither. The setting 14,000 or 15,000 men at once free loose by a solemn opinion, is much disagreeable in the effects it threatens. . . Mr. Stewart advances no claim on contract; he rests his whole demand on a right to the negro as a slave, and mentions the purpose of detainure to be the sending of him over to be sold in Jamaica. If the parties will have judgment, *fiat justitia, ruat coelum*, let justice be done whatever be the consequence. 50 *l.* a head may not be a high price; then a loss follows to the proprietors of above 700,000 *l.* sterling. . . [18] Mr. Stewart may end the question, by discharging or giving freedom to the negro. . . If the parties chuse to refer it to the Common Pleas, they can give them that satisfaction whenever they think fit. An application to parliament, if the merchants think the question of great commercial concern, is the best, and perhaps the only method of settling the point for the future. . . I think it right the matter should stand over; and if we are called on for a decision, proper notice shall be given."

Joseph Knight (a negro) v. Wedderburn, 33 Dict. of Dec. 14545 (Scottish case), January 1778. "The commander of a vessel, in the African trade, having imported a cargo of Negroes into Jamaica, sold Joseph Knight, one of them, as a slave, to Mr. Wedderburn. Knight was then a boy, seemingly about twelve or thirteen years of age. Some time after, Mr. Wedderburn came over to Scotland, and brought this Negro along with him, as a personal servant. The Negro continued to serve him for several years, without murmuring, and married in the country. But, afterwards, prompted to assert his freedom, he took the resolution of leaving Mr. Wedderburn's Service, who, being informed of it, got him apprehended, on a warrant of the justices of peace. Knight, on his examination, acknowledged his purpose. The justices found 'The petitioner entitled to Knight's services, and that he must continue as before.' Knight then applied to the sheriff of the county, (Perthshire), by petition, setting forth, 'That Mr. Wedderburn insisted on his continuing a personal servant with him,' and prayed the Sheriff to find, 'That he cannot be continued in a state of slavery, or compelled to perpetual service; and to discharge Mr. Wedderburn from sending the petitioner abroad.' After some procedure in this process, the sheriff found, 'That the state of slavery is not recognized by the laws of this kingdom, and is inconsistent with the principles thereof; that the regulations in Jamaica, concerning slaves, do not extend to this kingdom; and repelled the defender's claim to a perpetual service.' Mr. Wedderburn having reclaimed, the sheriff found, 'That perpetual service, without wages, is slavery; and therefore adhered.' The defender removed the cause into the Court by advocation. The Lord Ordinary took it to report, upon informations. Being a question of general importance, the Court ordered a hearing in presence, . . [14549] The Court were of opinion, that the dominion assumed over this Negro, under the law of Jamaica, being unjust, could not be supported in this country to any extent: That, therefore, the defender had no right to the Negro's service for any space of time, nor to send him out of the country against his consent: That the Negro was likewise protected under the act 1701,

C. 6, from being sent out of the country against his consent.—The judgments of the Sheriff were approved of, and the Court ' remitted the cause *simpliciter.*' "

Also in 20 How. St. Tr. 1 (2 n.).

Jones v. Schmoll, 1 Term R. 130 n., 1785. " an action on a policy of assurance, ' At and from Bristol to the coast of Africa, during her stay and trade there, and from thence to her port or ports of discharge in the West Indies.' There was a memorandum on the policy, that, ' The assurers are not to pay any loss that may happen in boats during the voyage (mortality of negroes by natural death excepted); and not to pay for mortality by mutiny, unless the same amount to 10 *l.* per cent. to be computed upon the first cost of the ship, outfit, and cargo, valuing negroes so lost as 35 *l.* per head.' The demand upon the policy was the loss of a great many slaves by mutiny. The evidence of the captain was, that he had shipped 225 prime slaves on board: That on the 3d of May, before he sailed from the coast of Africa, an insurrection was attempted. That the women seized him on the quarter deck, and attempted to throw him overboard. That he was rescued by the crew. That the women and some men threw themselves down the hatchway, and were much bruised. That he sent the ringleader on shore. That twelve men and a woman afterwards died of those bruises, and from abstinence. That on the 22d of May, there was a general insurrection, the crew were forced to fire upon the slaves and attack them with weapons. It was a case of imminent necessity. Several slaves took to the ship's sides, and hung down in the water by the chains and ropes, some for about a quarter of an hour: three were killed by firing, and three were drowned; the rest were taken in, but they were too far gone to be recovered; many of them were desperately bruised; many died in consequence of the wounds they had received from the firing during the mutiny; some from swallowing salt water; some from chagrin at their disappointment, and from abstinence; several of fluxes and fevers; in all to the amount of 55, who died during the course of the voyage. The underwriters had paid at the rate of 15 per cent. for 19, who were either killed during the mutiny, or had afterwards died of their wounds. Bearcroft, for the plaintiff, contended, that though the rest did not actually die in the mutiny, or from any wounds received at that time, yet they had all died *in consequence* of the mutiny; for if there had been no mutiny, nothing of the kind would have happened, and that on this ground the underwriter ought to be liable. He stated another consequential loss, which was, that the very circumstance of there having been a mutiny amongst the remaining slaves had so far lessened their value in the estimation of the planters, that they were sold at 17 *l.* a-head less than they would otherwise have done; that on this circumstance also he had no doubt but the plaintiff was entitled, in point of law, to recover against the underwriter. Lord Mansfield, Ch. J. I think not . . that is a *remote* consequence, and not within any peril insured against by the policy . . [131] Another class is, I think, as clearly not within the policy; Such as, being baffled in their attempts, in despair chose a mode of death, by fasting, or died through despondency. That is not a mortality by mutiny, but the reverse; for it is by failure of mutiny. . . The great class are such as received some hurt by the mutiny,

but not mortal, and died afterwards of other causes, as those who swallowed water, jumped overboard, etc. etc. This is the great point. Verdict. That all the slaves who were killed in the mutiny, or died of their wounds, were to be paid for. That all those who died of their bruises, which they received in the mutiny, though accompanied with other causes, were to be paid for. That all who had swallowed salt water, or leaped into the sea, and hung upon the sides of the ship without being otherwise bruised, or died of chagrin, were not to be paid for."

King v. Inhabitants of Thames Ditton, 4 Douglas 300, April 1785. "Charlotte Howe was removed under an order of two justices, from the parish of Thames Ditton, in Surry, to the parish of St. Luke's, Chelsea, in Middlesex. Upon an appeal to the Court of Quarter Sessions for Surry, the order was quashed, and the following facts stated: The pauper was bought in America by Captain Howe as a negro slave, and by him brought to England in 1781. In November 1781, Captain Howe went to live in the parish of Thames Ditton, and took the pauper with him, and she continued with him there in his service, till the 7th of June, 1783, when he died, soon after which the pauper was baptized at Thames Ditton, and she continued to live with his widow and executrix, who soon afterwards removed to the parish of St. Luke's, Chelsea. There the pauper continued to live with her as before for five or six months, when she left her." [2 Bott P. L. Const 186] "during the whole of this time she was childless and unmarried." [4 Doug. 300] "The ground of the order of removal was that the pauper had served the last forty days at the parish of St. Luke's, Chelsea." Counsel, contra: [301] "The court has never decided that a negro brought to England is there under an obligation to serve. [Lord Mansfield.—The determinations go no further than that the master cannot by force compel him to go out of the kingdom.] . . This kind of service imports a particular hiring much more strongly than a bare service for a year. [Lord Mansfield.—The case of Somerset is the only one on this subject. Where slaves have been brought here, and have commenced actions for their wages, I have always nonsuited the plaintiff.]" [2 Bott P. L. Const 187] "Lord Mansfield: The case of Somerset, the negro slave, goes no farther than to determine that the master of such a servant shall not have it in his power to take him out of the kingdom against his will; . . To give this pauper a settlement, she must come within the description of a positive law. Her being black or a slave is no objection, but the statute requires a hiring: there is none here, and therefore the case is not within the statute."

Robertson v. Ewer, 1 Term R. 127, February 1786. [128] "That the ship sailed [from London] . . to the coast of Africa, at which place she took in a cargo of slaves, and proceeded from thence to the island of Barbadoes, where she arrived . . December, 1781. . . That on the 22d [of January 1782] . . the small-pox broke out amongst the slaves, who were all obliged to be put on shore. In consequence of which, and for want of mariners . . she was detained . . above two months after the embargo was taken off [*i. e.,* after January 7, 1782]. . . then sailed to Jamaica, which was her last port of discharge."

Keane v. Boycott, 2 H. Bl. 511, May 1795. "This was an action on the case, for enticing the Plaintiff's servant to leave his service. . . The facts were, that a negro boy called Toney a slave in the island of St. Vincent about 16 or 17 years old, there executed an indenture [on the 21st of April, 1794], by which he bound himself to serve the Plaintiff, who was coming to Europe, as a servant for five years, and the Plaintiff covenanted to find him food, lodging and clothing, and medical assistance in case of sickness. The plaintiff soon after arrived in this country with the boy as his servant, and went to Cheltenham, where the Defendant, who was a captain in the army on a recruiting party, meeting the boy in the street with his livery on, asked him if he would enlist, to which he assented; the Defendant then asked him whether he was an indented servant, to which he answered that he was bound to the Plaintiff for five years. After this the boy went to the Defendant's lodgings, where the Defendant gave him two shillings, and told him to go to Gloucester to the regiment; to which place he accordingly went. Upon this, the Plaintiff procured a warrant from a magistrate, under which the boy was taken and brought back to his service; after which, the Defendant sent two serjeants to take the boy again, and bring him back to the regiment, which they did; but it did not appear that the boy went with them unwillingly or by compulsion. On this evidence, the jury found a general verdict for the Plaintiff."

Heath, J., suggested [512] "that as slavery was differently modified in different parts of the West Indies, perhaps the effect of the master entering into a contract with his slave might be to enfranchise him, by analogy to the old law respecting villeins in England, to whom, if the lord entered into an obligation, it operated as a manumission;[1] and if the effect were an emancipation from slavery, it was evidently a contract for the benefit of the infant, and if not binding on him, at least only voidable by him, . ." Lord Chief Justice Eyre: [515] "The Defendant in this case had no concern in the relation between the Plaintiff and his servant; he dissolved it officiously, and to speak of his conduct in the mildest terms, he was carried too far by his zeal for the recruiting service. If he had given himself time to reflect upon what his own feelings would have been, if he had been in the situation of the master, I am persuaded that he not only would not have solicited this negro boy to leave his master, but would not have accepted him if he had voluntarily offered to enlist at the drum head. Upon the whole, therefore, we are of opinion that the verdict is right, and that there ought not to be a new trial."

[1] "With the greatest deference to the high authority which started, as well as to that [Lord Chief Justice Eyre] which pursued this ingenious conjecture; it is to be observed that it is inconsistent both with the general policy, and local institutions of the British islands in the West Indies, to suppose that a slave can be *manumitted* by *implication.* The histories of those islands and their statute books shew that *manumission can only be effected* by some act of the master, done *expressly* for that purpose, and accompanied with the *settlement of an annual provision* on the slave so manumitted. On this subject the law of the island of St. Vincent is particularly strict. . . This being so, the foundation of the argument, namely that the effect of the master entering into a contract with the slave might be to enfranchise him in the island of St. Vincent where it was made, evidently fails. The question, whether such would be the effect of the contract *in this country,* could not arise, because as soon as a slave arrives here, the yoke of slavery is dissolved by operation of law, whether he has previously entered into any contract or not, and whatever may be his situation with respect to the service of his master." (Note of the reporter, Henry Blackstone.)

Webster v. De Tastet, 7 Term R. 157, February 1797. "The plaintiff, having been hired to go as a mate in a ship from the coast of Africa to the Havannah, for which he was to receive wages at the rate of 5 *l.* per month, and three privilege slaves free of expense on the ship's arriving at the port of sale, directed the defendant, who was his agent at Liverpool, to get an insurance of his privilege; and for the defendant's neglect the plaintiff brought this action on the case against him. It appeared at the trial . . that the ship was lost on her voyage, and that the plaintiff thereby sustained a loss of 150 *l.* reckoning 39 *l.* 5 *s.* for his chest and clothes, and the rest for the value of the slaves. It was objected . . that the plaintiff could not recover the value of the slaves, because they were not the legal subject of insurance, they being in the nature of seamen's wages. . . The Court were clearly of opinion that the slaves were not the subject of insurance,"

Farmer v. Legg, 7 Term. R. 186, May 1797. "an action on a policy of insurance on 'the *Cadiz Dispatch,*' an African ship engaged in the slave trade, 'at and from London to the coast of Africa, during her stay there, and from thence to her port of discharge in the West Indies.' The loss happened in consequence of an insurrection of the slaves. The principal question was whether the ship had been navigated in the manner prescribed by the 31 Geo. 3. c. 54.[1] . . [187] the captain had made oath that he had been two voyages as chief mate in the ship *Sally* engaged in the slave trade, and the present plaintiff (the owner in the voyage insured) had certified that that was true to the best of his knowledge and belief," Nonsuit: [191] "It was undoubtedly the intention of the Legislature to put a check to the mischievous and improvident manner of carrying the slaves to the West Indies: it was intended that the slaves should have as much indulgence as their situation would permit, and . . [192] it was . . enacted that the captain of every slave ship should have a certain qualification gained by his experience in the trade, of which the captain is to make oath, . . to be corroborated by the certificate of the owners. . . It is . . a more rational construction of this act of parliament that the owners of the respective ships in which the captain has gained this qualification, should certify . . than that the owners of the ship in which he is about to be engaged should certify a fact, the truth of which they cannot know." [Ashhurst, J.]

The Thomas, 1 Chr. Rob. 322, April 1799. "This was a British slave ship seized by the slaves on board, and afterwards retaken by an English frigate, . . She was carried to St. Domingo,"

Alfred v. Marquis of Fitzjames, 3 Espinasse 3, May 1799. "Assumpsit for servants wages. . . The Plaintiff . . relied on a *quantum meruit* for the time he had served. . . It appeared in evidence, that the Plaintiff came over from Martinique with the Duchess of Fitzjames, then Mademoiselle Le Brun. His father and mother had been slaves on an estate belonging to her in that island. He had entered into her service in Martinique, and continued to serve her after marriage; and the Duke found him

[1] *Ibid.*, n.: "This was one of the statutes passed on this subject; . . but the act cited in Court was the 32 Geo. 3. c. 52."

with necessaries of every description. There was no contract for any hiring for wages; but a witness said, that the Marquis had been heard to promise to pay him wages. . . Lord Kenyon said, he was prepared to give a decided opinion: That up to the time of the promise to pay wages, which the witness had said the Defendant had made, the Plaintiff had no title to recover, as there was no original contract of service for wages."

The Isabella, 2 Chr. Rob. 241, November 1799. Petition " to recover a sum of money due [the chief mate] for wages, on a voyage from the port of London to the coast ofAfrica, . . and from thence to the West Indies. The demand was for 26 *l.*, at the rate of 4 *l.* per month under agreement; and beyond that, for 70 *l.*, as the value of a privilege of one slave,[1] . . due under the ordinary practice of that trade, according to average price at the port of delivery."

The Phoenix, 3 Chr. Rob. 186, October 1800. Susini bought the vessel at St. Thomas, [189] " went to Cuba, sold his cargo, and bought another, with which he went . . to Baltimore, from thence to Angola, in Africa, where he took a cargo of slaves, and sold them at St. Thomas;"

Williams v. Brown, 3 Bos. and Pul. 69, February 1802. " The Plaintiff, who was a negro, in November 1797, entered at London on board the *Holderness* [of which the defendant was master], bound for Grenada, as an ordinary seaman out and home: on the arrival of the *Holderness* at Grenada the Plaintiff was claimed as a runaway slave by Mr. Hardman his former master, and delivered to him; and thereupon the Plaintiff, the Defendant, and Mr. Hardman, met and agreed, that on payment of 30 joes by the Defendant to Mr. Hardman, the latter should manumit the Plaintiff, which was accordingly done by a regular instrument of manumission; and the Plaintiff on the same day entered into an indenture, in which, describing himself as 'a free black man of the island of Grenada,' he covenanted with the Defendant, . . to . . go on board . . and during the term of three years faithfully serve in the capacity of a sailor . . [70] [receiving] for the first year 15 *l.*, for the second 20 *l.*, and for the third 25 *l.*, by quarterly payments." The negro " served as a sailor on the voyage home, and for his wages in that voyage the present action was commenced [upon a *quantum meruit*], the wages for the outward bound voyage having been paid, as well as the money stipulated for by the indenture."

Held: he is estopped by his covenant from claiming more than the sum stipulated. [70] " the contract could not be considered as valid in England if the stipulation had been that the Plaintiff should serve the Defendant for life.. The Plaintiff in [71] the present case being as free as any one of us while in England . . When the Plaintiff was claimed in Grenada as a runaway slave, he was not only liable to be remanded to slavery, but by the laws of the island he was amesnable to severe punishment for his desertion." [Lord Alvanley, C. J.] " When this Plaintiff was [72] claimed in Grenada " he was " liable to severe punishment for having run away from his master: and he was a slave for life. . . I

[1] *Ibid.*, n.: " with the benefit of a slave, when the cargo was taken completely on board, in Africa,"

consider the whole as one transaction. The Defendant [the master of the ship] was to advance the money for the Plaintiff's freedom, in consideration of which the master [of the slave] was to manumit the Plaintiff, and the Plaintiff thus manumitted was to enter into a new contract to serve the Defendant for three years, . . This was an agreement for the advantage of the Plaintiff: he was to be relieved from punishment; he was to become a free man; . . In all countries where slavery is tolerated, agreements between the master and the slave respecting the manumission of the latter are enforced by the law. . . He is competent to enter into a contract for the purpose of his manumission, and therefore such contract may be put in force against him. . . considering the contract as having been beneficial to the Plaintiff, I think that he ought to be bound by his own agreement." [Heath, J.]

"though he might enter into a contract to go to any other place but to Grenada, yet he could not engage to go there without danger of being detained. . . The consequence was, that on his arrival at Grenada" he was "taken as a runaway [73] slave, he became liable to punishment, and the forfeiture to his master in Grenada of all the wages which he had earned during the outward voyage.[1] . . I cannot but think the contract entered into in Grenada advantageous to the Plaintiff. If indeed the man had been free he might perhaps have made a more advantageous bargain for himself. But being a slave he could not enter into any contract without the leave of his master; and so being a slave, and liable to the terrible consequences of desertion, it is agreed that he shall be set free, he receives his wages for the outward bound voyage, and on the other hand he engages to serve the Defendant for three years at certain wages on board such ship, and at such places as the Defendant shall have occasion for his services." [Rooke, J.]

"Here indeed at the time of entering into the contract he was in the situation of a slave. But I do not know that a slave is precluded from entering into a contract. He may do so provided his contract does not affect the rights of his master. Though he cannot deprive his master of his services, yet with the consent of his master he may engage to do service for another. . . [74] It is supposed that he has been driven to an unreasonable and unconscientious bargain: but I cannot say that it so appears to me. What was his condition at Grenada? Being claimed as a runaway slave he was considered as a criminal, he was liable to very severe punishment, he was incapable of recovering for his own benefit the money which he had earned upon the outward bound voyage, and he was unable to fulfil his contract with the Defendant. . . It is true that by the articles he had contracted with the Defendant for a greater rate of wages; but from that contract he could derive no benefit, for his master was entitled to all the wages he might earn. . . By rescinding such a contract as this I think we should be guilty of great inhumanity; for unless such a contract can be enforced, no master of a slave would agree to his manumission, nor any person be willing to pay the price of his freedom; the consequence of which

[1] Was not the slave on English soil till he stepped off the ship at Grenada? If so, his wages were earned while he was a free man. Ed.

would be that the present Plaintiff and all others in similar situations must remain in perpetual slavery." [Chambre, J.]

This case is quoted at considerable length by Lord Stowell in his decision as to the Slave Grace [2 Hagg. Adm. 94 (119-122), 1827], *infra*: [122] "I do think it approaches so near as to possess the authority of a direct decision upon the immediate subject," "he had become a free man by landing in England, in the opinion of all the Judges; and it is only by virtue of his pre-existing state of slavery, that he became subject to be returned into it again, until his manumission. The four Judges all concur in this—that he was a slave in Grenada, though a freeman in England; and he would have continued a freeman in all other parts of the world excepting Grenada."

The Trelawney, 4 Chr. Rob. 223, March 1802. [225] "The affidavit of Mr. Kendal, the master of the *Lord Nelson* [slave-ship] states,—'That he arrived at Cabenda, on the coast of Angola, in May 1799; that during his stay there, the *Trelawney* arrived, and was employed in taking in her complement of slaves, when, on the 2d of August, about six o'clock in the morning, those already on board, in number about 85, rose upon the captain and crew, seized the arms, wounded two of the crew, and got complete possession of the ship in about five minutes; that the captain and all the crew, except the two men who were wounded, got through the cabin windows into two boats, belonging to the *Trelawney*, and rowed away to the *Lord Nelson*.'" Kendal "conceiving that not a moment was to be lost, commenced a heavy fire from his great guns and small arms, into the *Trelawney*, which was lying about half a cable's length from the *Lord Nelson*. That the captain and surgeon of the *Trelawney*, and a boy, got on board his ship, but he prevented the rest of the crew from quitting their boats. That about this time, thirty of this appearer's men, whom he had previously dispatched in two of his boats for that purpose, had boarded the *Trelawney*, and were engaged with the negroes about an hour and a half, and after a severe conflict, in which two of his crew were severely [226] wounded, succeeded in quelling the insurrection. That about a quarter of an hour before the slaves were completely subdued, this appearer went on board the *Trelawney* with the boat's crew, whom he compelled to return, by threatening to fire into their boat; that he remained on board the *Trelawney* till between nine and ten o'clock, when perfect order was restored, and this appearer returned to his ship, leaving his surgeon and surgeon's mate to take care of the ship, and give the necessary relief to the wounded." The ultimate value of the slaves [223] "in the West Indies, after the contingencies of a long voyage" was "stated to be about 10,000 *l.*"

The Anne, 5 Chr. Rob. 100, February 1804. "This was a case of salvage, brought by the owners and master of the *Elizabeth*, a slave ship, for salvage services . . on the coast of Africa. . . the *Anne* had been in considerable distress from an insurrection of her slaves, but that this insurrection had, in fact, been quelled by her own crew, . . [101] A second insurrection is also alledged of the Butlers and Linguisters, who are officers of the nations of the coast, with whom they were carrying on their traffic; but this is not in any manner proved."

The Abby, 5 Chr. Rob. 251, July 1804. " Mr. Dawson, a British subject," [252] " fitted out this vessel for a voyage to Africa, there to barter her cargo for slaves, and then to carry them to the island [*sic*] of Demarara, at that time a Dutch colony. The vessel sailed [from Liverpool] on the 11th of September 1795. . . [253] The vessel sailed from the coast of Africa, in May 1796, and was taken off the island of Demarara, after the surrender of that island to the British forces, and carried to Martinique." See 255 n. for acts regulating the slave trade.

The Richmond, 5 Chr. Rob. 325, December 1804. The *Richmond*, an American vessel, " sailed on a destination to St. Helena, from thence to Mozambique, on the coast of Africa, with a design of proceeding afterwards with a cargo of slaves to the Havannah,"

The Vanguard, 6 Chr. Rob. 207, November 1805. " This was a case on petition for the recovery of wages and the privilege of three slaves, alleged to be due to W. Taylor, for his services . . in the capacity of mate during a voyage from Liverpool to the West Indies, and back to Liverpool, under contract of the 2d September, 1802." Taylor agreed to act as ostensible master until the ship sailed, as the character of the real master [210] " for cruelty was so well known that he would not have been able to have procured men." Violation of the act of 30 Geo. III. c. 33, regulating the slave trade.

L'Éole, 6 Chr. Rob. 220, December 1805. " This was a French vessel, which had been captured by three privateers on the coast of Africa, with a cargo of European goods and a few [fourteen] slaves on board." [223] These " were taken out, and put on board another vessel; that the remainder of the cargo was bartered away on the coast [for 200 slaves] . . who were shipped on board this vessel, and sent to Barbadoes to be condemned as prize." Held: this was an importation " in total violation of the regulations which the legislature has imposed." [" Acts, 12th Ch. 2d, 7th and 8th W. 3d, and the 26th and 39th of his present Majesty."]

La Dame Cécile, 6 Chr. Rob. 257, February 1806. The garrison of Goree seized the ship and cargo of slaves [260], " the property of Sundry persons of Hamburgh," [257] " took the usual examinations, and forwarded them, with the ship papers, to the High Court of Admiralty . . where the ship and cargo were condemned. They were in the mean time sold to a British merchant, who sent them to the island of Barbadoes for sale. On their arrival . . a seizure was made . . as imported . . in violation of the 26th [c. 60] and 29th [c. 80] Geo. 3. and a sentence pronounced against them." Property restored to the claimants. [260 n.] " The ship and cargo of 33 slaves was claimed for Mr. Powel, of Liverpool, and six slaves for an officer of the garrison at Goree."

The Horatio, 6 Chr. Rob. 320, December 1806. " re-capture of a British slave ship, that had been taken on the coast of Africa, by three French privateers,"

Edmiston v. Wright, 1 Campbell 88, Mich. 1807. " The defendant had a gang of negroes let out in Jamaica. . . In 1803 the defendant wished

to transfer them to his estates in Georgia, and for that purpose his agent at the latter place dispatched the ship *Mary*, captain Beck, to Jamaica. The negroes were put on board by the plaintiff at Port Maria, and carried to Port Antonio; but as the captain had not got a permit to receiving them, they were there seized as forfeited, together with the ship and the rest of her cargo. To release them, the plaintiff paid as a composition 1200 *l.*"

Fisher v. Ogle, 1 Campbell 418, Trinity 1808. "it resulted evidently from the papers on board, that the expedition of the said ship *Juno,* her cargo, and the operations of her captain on the coast of Africa,[1] were for account of the Brothers Geddes, merchants of London, who had, to masque the English property of this outfit, borrowed the American flag and passport of the said ship *Juno,* and taken for their agent and partner in this expedition, Captain Fisher, furnished with a certificate of citizen of the United States." "The *Juno* was captured by a French privateer, carried into Martinique, and there condemned in the vice-admiralty court."

Held: "there is no proof that the property is not American,"

The Amedie, 1 Acton 240, March 1810. "The *Amedie* and another vessel, the *Semiramis,* belonging to the same owner (Mr. Groves of Charlestown) sailed in company together" in September 1807, for the coast of Africa. "The return cargo [from Bonny] consisted of 105 slaves, . . the former master . . had received from his owner instructions to make all possible expedition so as to reach Charlestown before the 1st day of January 1808, as the American Government had prohibited the African slave trade after the expiration of the year 1807; if he found it impossible to return 'within the time limited by the laws of his country,' he was directed 'to proceed by way of the old straits of Bahama to Matanzaz, where he would find further instructions.' . . on the 22d, he thinks, of December, [the present master] . . considering it impossible from his bearing to make the voyage within the limited time,[2] altered the ship's course and bore away for Cuba. . . [243] this vessel [was] taken the very day the master asserts he had altered his intention of going to Charlestown in the intricate and difficult navigation of the West India islands. This was not the natural and usual routine of such a voyage." [249] "Judgment.—Sir Wm. Grant.—In the case of the *Amedie* it must be considered. . . that she was employed in carrying slaves from the coast of Africa to a Spanish colony. . . [250] The slave trade has . . been totally abolished in this country, and . . [251] we are now entitled . . to hold that *prima facie* the trade is altogether illegal, and thus to throw on a claimant the whole burden of proof, in order to shew that by the particular law of his own country he is entitled to carry on this traffic. . . In the present case the claimant does not bring himself within the protection of the law of his own country; he appears to have been acting in direct violation of that law [act of 1794] which admits of no right of property such as he claims:" Sentence of the court below affirmed,

[1] "and from thence to her port or ports of discharge in the West Indies,"

[2] Before January 1, 1808. But the act of Congress, 1794, prohibited a trade in slaves by Americans to foreign settlements. The vessel "fell between two stools." Ed.

condemning the cargo of slaves to the sole use of his Majesty (which were afterwards set at liberty) and the ship as lawful prize to the captor.

The Africa, 2 Acton 1, November 1810. The *Africa*, an American vessel, sailed from the coast of Africa December 16, 1807, with a large cargo of slaves, and was captured January 30, 1808. "The instructions in the present case pointed out a direct return voyage to Charlestown, or 'if unable, from contrary winds, to reach Charlestown prior to the 1st of January 1808, [2] to make the first American port which the master could fetch before that day, and report the ship at the nearest custom-house as bound there, but put in by stress of weather, and by so doing the prohibitory act would not attach to the *Africa*.' . . The instructions were punctually observed; but from a great competition amongst the slave-ships on the coast, and the negroes having been attacked by the small-pox, the vessel was unable to make any American port in time, and therefore continued her course for Charlestown," The former master, "when overlooking the ship's papers in [3] company with the lieutenant of the capturing vessel, had said, 'This is the chart I have to carry me to New Providence,'" Ship and cargo condemned.

The Nancy, 2 Acton 4, November 1810. "the return voyage from Senegal commenced the 30th September 1807, . . through the sickness of her crew, . . and the apprehensions entertained from the tumultuous disposition of the slaves, who had thrice risen upon the crew, and had been with difficulty subdued, the master was induced to alter his intended destination to Charlestown, and bear away for the nearest port in the West Indies. On the 30th October he discovered the high lands of Spanish Town, and considering St. Thomas's most convenient, in the attempt to make that island was captured." King's Advocate: [5] "It was remarkable that the master, in making for St. Thomas, must have crossed the trade winds, and passed the latitude of St. Bartholomew and Barbadoes. This was evidently a voyage undertaken to procure the best market he could. In the preparatory examination the master fraudulently had stated the whole cargo to belong to his American owners, but the day after, apprehensive of detection, he corrected himself by admitting that ten slaves had been shipped on freight by a Frenchman. Further proof could not therefore be now admitted to distinguish these from the remainder, but the whole property should be considered liable to confiscation." Ship and cargo condemned.

The Anne, 2 Acton 6, November 1810. The *Anne*, an American ship, sailed in 1806 with a cargo of slaves "from the coast of Africa (where she had touched at several settlements of different European nations, for the purpose of obtaining slaves) to Monte Video in South America." She was captured [7] "in sight of port, on the 7th January 1807. By these dates it will appear that she had returned nearly a year prior to the operation of the general restrictive law of America, which did not take place until 1808, and nearly three months before the British law (passed 25th March 1807, prohibiting the African slave trade from the 1st of May 1807 [47 Geo. III., sess. 1, c. 36]) for abolishing the slave trade.

The question, therefore, for the decision of the Court will be, whether the principle recognized by the judgment delivered in the case of the *Amedie* (vol. I, p. 240) is to be construed as having a retrospective effect, or in other words, will a British Court of Prize, acting upon this principle, compel a neutral claimant, whose property has been captured previous to the abolition of the slave trade by the British legislature, to shew that he acted under the sanction or protection of the laws of his own country." [Dallas for the claimant.] Ship and cargo condemned.[1]

The Fortuna, 1 Dodson 81, March 1811. "This vessel [(88) with a cargo well assorted for the African market] sailed from New York, under American colours, in the month of July 1810, being then named the *William and Mary*, and arrived at Madeira in September. The ostensible owner . . was an American citizen . . Trenholm, who also acted as master. . . he landed a part of his cargo; and about a week before his departure . . he executed a bill of sale for the ship to a native of Madeira," a clerk of the consignees of the *William and Mary*. No consideration was in fact given for the vessel, which was renamed the *Fortuna*, sailed under Portuguese papers, and flew the Portuguese flag. A Portuguese was appointed master, and Trenholm [82] "was now converted into a supercargo; and the whole conduct and entire controul of the ship and adventure were committed to him," [90] "The construction and furniture of the ship had all the accommodations necessary for the conduct of [the slave] trade, and of that trade only. She had platforms ready constructed; she had timbers fit for the construction of more; she had iron shackles and bolts, and running chains and collars—all adapted for the purposes of conveying slaves—and the quantity and species of provision and medicine which such purposes require," This vessel sailed from Madeira October 6, and was captured by an English ship "seven or eight miles distant from the harbour of Funchall," Vessel and cargo condemned: [87] "no doubt can be entertained that she is an American vessel . . only colourably transferred to a Portuguese for purposes of deception." The recent decision in the case of the *Amedie* is followed: [85] "any trade contrary to the general law of nations, although not tending to or accompanied with any infraction of the belligerent rights of that country, whose tribunals are called upon to consider it, may subject the vessel employed in that trade to confiscation. . . this country, since its own abandonment of" the slave trade, "has deemed [it] repugnant to the law of nations, to justice and humanity, though without presuming so to consider and treat it, where it occurs in the practice of the subjects of a state which continues to tolerate and protect it by its own municipal regulations; but it puts upon the parties who are found in the occupations

[1] Sir William Grant forgets that he said in the case of the *Amedie* [1 Acton 240 (250)]: "So far as respected the transportation of slaves to the colonies of foreign nations, this trade had been prohibited by the laws of America [1794] only; . . our law sanctioned the trade . . this Court could not take any cognizance [of the prohibitory law of America], and of course could not be called upon to enforce [it] . . But by the alteration which has since taken place in our law, the question stands now upon very different grounds." ED.

of that trade the burthen of shewing that it was so tolerated and protected; and on failure of producing such proof, proceeds to condemnation," [Sir William Scott, J.]

The Donna Marianna, 1 Dodson 91, June 1812. "an appeal from the Vice-Admiralty Court at Sierra Leone; in which court the ship had been condemned, . . as being a British vessel engaged in the slave trade;" [93] "The ship [originally an American vessel] comes to England, and is there purchased by Macdowall and Co. of Liverpool, from whence she is [in 1809] dispatched on her outward voyage with fetters on board; which, as it appears to me, were put on board at Liverpool; the double stanchions were admitted to have been taken on board there; . . [94] the ship proceeded to Madeira; and it was not till her arrival at Pernambuco [where she was said to have been sold to a Portuguese merchant] that the Portuguese flag was assumed: from Pernambuco she sailed to Bahia," [92] "and having there taken on board a variety of goods assorted for the slave trade, she proceeded to Cape Coast, where she was proceeding to engage in the slave trade, and was seized at anchor." Sentence as to the ship affirmed. [94] "Judgment as to the cargo. . . I consider the whole interest of the adventure to reside in the British merchants, . . Therefore I see no reason why the cargo should not follow the fate of the ship, with which it is involved in one common fraud." [Sir William Scott, J.]

The Diana, 1 Dodson 95, May 1813. "This vessel, under Swedish colours, took on board at Gustavia, in the island of St. Bartholomew's, a cargo of rum, sugar, tobacco, iron, dry goods, and powder, which she carried to Cape Mount, on the coast of Africa, where the same were exchanged for 120 slaves; and the vessel having received a number of these slaves on board at Cape Mount, was, on the 11th of September 1810, seized by His Majesty's ship *Crocodile,* . . and carried to Sierra Leone," where the ship and cargo of slaves were condemned as prize. Sentence reversed: [96] "nothing arises to warrant a suspicion that the ship was going elsewhere than to the Swedish island of St. Bartholomew, and on Swedish account. . . [101] The question then is, whether the slave trade is permitted by the law of Sweden.[1] . . The endorsement upon the pass signed by the Swedish Governor, that this vessel was 'bound to the Coast of Guinea, for slaves,' raises a presumption of the legality of the trade, and shifts the burthen of proof from the claimant to the captor. . . [102] The only remaining point is, respecting these few Portuguese slaves, which were found on board this ship. It appears, that they belong to the master of a Portuguese schooner, which had been lying at Cape Mount, but was driven to sea by stress of weather, whilst he was on shore, and that himself and his slaves had been taken on board this ship out of charity. . . I shall not presume that he had been acting in opposition to the laws of his own country," [Sir W. Scott, J.]

Demarara, 1 Dodson 263, May 1813. Certain slaves "were taken at Demarara, on the 21st of September 1803, when that colony . . sur-

[1] [98 n.] By a treaty "signed at Stockholm on the 3d of March 1813," which "has been made public since the date of this judgement," the king of Sweden engages "not to permit Swedish subjects to engage in the slave trade."

rendered" [264] "The slaves are in number three hundred and ninety-nine, of whom, two hundred are no longer the subject of contest, but are now admitted to have belonged to the estate on which they were employed as *glebae ascriptitii*: they were attached to the soil as part and parcel of the realty, . . the one hundred and ninety-nine slaves, who were employed by the Dutch government upon the public works in the military arsenals of the settlement," are "good and lawful prize to the captors." [Sir W. Scott, J.]

Le Louis, 2 Dodson 210, December 1817. "This is the case of a French vessel which sailed from Martinique on the 30th of January 1816, destined on a voyage to the coast of Africa and back, and . . [236] was taken off Cape Mesurada, on the coast of Africa, on the 11th of March 1816, by an English colonial armed vessel, after a severe engagement [in which eight of the English crew were killed and twelve others wounded], which followed an attempt to escape. . . [238] The number of iron manacles on board, the construction of the platforms, the magnitude of the coppers, the quantity and quality of the provisions in store [(213) consisting principally of beans], the negociations with the natives at Mesurada [(210) the vessel had bargained for twelve slaves at Mesurada, and was prevented by the capture alone from taking them on board], the mysterious passages which occur in the correspondence between the owners, all tend one way, to shew a contingent, or rather a predominant intention" of trading in slaves. [211] "The ship was condemned to His Majesty in the Vice-admiralty Court at Sierra Leone,"

Judgment reversed: [246] "this vessel cannot be deemed a pirate. . . She is the property not of sea rovers, but of French acknowledged domiciled subjects." And there was no actual abolition of the slave trade by the French law when this seizure took place.

The Dolores, 2 Dodson 413, December 1819. "This ship, with a number of slaves on board, was captured on the 4th of April 1816, after a short action, by his Majesty's sloop of war *Ferret*, . . and carried to Sierra Leone; where the ship itself, and about 250 African slaves, men, women, and children, were condemned . . as English and American property, and as good and lawful forfeiture. The *Ferret* was one of the squadron which . . conducted Bonaparte to St. Helena" and was on her way back to Spithead. The abolition act, "instead of giving the slaves to the seizors, gives them to the Crown; the Crown giving the captors a certain stated value, commonly called . . a bounty."

Madrazo v. Willes, 3 B. and Ald. 353, January 1820. The plaintiff was a Spanish merchant engaged in the slave trade between the coast of Africa and Havana, Cuba. On January 16, 1818, the defendant, a captain in the Royal Navy, seized the plaintiff's ship "off Cape St. Paul's, on the coast of Africa . . together with . . 300 slaves, . . The jury found a verdict for the plaintiff, damages . . for the supposed profit of the cargo of slaves 18,180 *l.*"

Held: "ships, which belong to countries that have prohibited the slave-trade, are liable to capture and condemnation, if found employed in such

trade; but that the subjects of countries which permit the prosecution of this trade, cannot be interrupted while carrying it on. . . the slave-trade is not condemned by the general law of nations. The subjects of Spain have only to look to the municipal laws of their own country, and cannot be affected by any laws made by our Government." [Best, J.]

The Woodbridge, 1 Hagg. Adm. 63, July 1822. "The *Woodbridge* arrived at the Mauritius in the month of January 1819; and was seized by Captain Purvis, of H. M. S. *Magicienne,* upon information that eight blacks, who had been taken into the employment of the ship at Madagascar, were slaves." [65] "The men were taken on board from necessity; for there had been so much sickness among the crew . . that the number was reduced from 61 to 10 men," The captain [67] "thereupon consulted the masters of two other merchantmen then lying at Tamatavie, who were unable to afford him the assistance he required, but recommended him to apply to the Sultan of Tamatavie; and the result of this application was that eight men were sent on board the *Woodbridge.* How or in what manner they were [68] procured does not appear; but there certainly was no contract with them for wages, or otherwise, on the part of " the captain. [65] " these extra hands were taken on board as sailors, with an obligation upon the master to return them to their own port. These men were woolly-headed blacks; and they were employed and used in the same manner as Lascars." The Instance Court of Vice-Admiralty, at the Isle of France, restored the ship, leaving each party to pay his own costs.

Forbes v. Cochrane, 2 B. and C. 448, January 1824. Forbes, a British merchant, owned a cotton plantation on the St. John's River, in East Florida, a Spanish province. On the night of the twenty-third of February, 1815, sixty-two of his negroes, out of about one hundred, [451] "deserted from the plaintiff's plantation, (together with four others belonging to Lindsay Tod his manager,) of whom he had found thirty-four, namely, eighteen men, eight women, and twelve young children of both sexes, together with the aforesaid four negroes belonging to Mr. Tod on board of His Majesty's Ship *Terror,* . . the said slaves refused to return to their duty, under pretence that they were then free, in consequence of having come to this island in possession of His Britannic Majesty." [Cumberland Island, Georgia, was occupied and garrisoned by the British forces. [449] "The *Albion, Terror* Bomb, and others . . formed a squadron under Sir George Cockburn's immediate command off that island, where the head quarters of the expedition were."] The plaintiff prayed that Cockburn would order the slaves to be delivered to him [452] "together with the boat which they had piratically stolen from his plantation. . . Sir G. Cockburn told him he might see his slaves, and use any arguments and persuasions he chose to induce them to return. . . but they refused to go." On March 6 they were transferred to the *Albion,* and carried to Bermuda by order of Vice-Admiral Cochrane, [453] "to be forth coming, should it be decided that they are to be returned to East Florida." ["such slaves as belonged to American subjects, and were in the possession of the defendants, were not taken away in consequence of the wording of the treaty of peace."] On March 29 the slaves in question were transferred "into His

Majesty's ship the *Ruby*, at Bermuda, and after being on board that ship about twelve months, were landed in that island, and many of them employed in the King's dock-yard there. The slaves . . belonging to the plaintiff, were worth to him 3800 *l.*"

[473] Judgment for the defendants: [464] "the fugitives . . went on board an English ship (which for this purpose may be considered a floating island), and in that ship they became subject to the English laws alone." [Holroyd, J.] [467] "were these persons slaves at the time when Sir G. Cockburn refused to do the act which he was desired to do? . . The moment they put their feet on board of a British man of war, not lying within the waters of East Florida, . . those persons who before had been slaves, were free. . . [470] There is no statute recognizing slavery which operates in the part of the British empire in which we are now called upon to administer justice. It is a relation which has always in British Courts been held inconsistent with the constitution of the country. It is matter of pride to me to recollect that, whilst economists and politicians were recommending to the Legislature the protection of this traffic, and senators were framing statutes for its promotion, and declaring it a benefit to the country, the Judges of the land, above the age in which they lived, standing upon the high ground of natural right, and disdaining to bend to the lower doctrine of expediency, declared that slavery was inconsistent with the genius of the English constitution, and that human beings could not be the subject matter of property.[1] As a lawyer I speak of that early determination, when a different doctrine was prevailing in the senate, with a considerable degree of professional pride." [Best, J.]

San Juan Nepomuceno, 1 Hagg. Adm. 265, July 1824. "The above-named ship, having on board about 269 slaves [135 men, 53 women, and 81 children (p. 399)] and no other cargo, while sailing under the Spanish flag, documented with Spanish papers, and the property of a Spanish subject, was, on her return (ostensibly) to the island of Porto Rico, from the coast of Africa, seized, about thirty miles to the westward of Cape Mesurada, on 7th December 1817, by Lieutenant Hagan of the colonial vessel of war, *Prince Regent,* and detained; and on 12th February 1818, was finally condemned at Sierra Leone," Restitution decreed.

The Aviso, 2 Hagg. Adm. 31, June 1826. "This ship, under Brazilian colours, and laden with four hundred slaves, was captured on the 26th of September 1824, by H. M. S. *Maidstone*, Capt. Bullen, in company with H. M. S. *Bann,* Capt. Courtenay, and was condemned at Sierra Leone" [33] "H. M. S. the *Maidstone* . . was sent, under orders from the Admiralty, to cruise on the coast of Africa, . . for the express purpose of capturing all vessels carrying on the slave trade, in breach of the treaties subsisting between his Majesty and foreign powers, and thereby subjecting themselves to British capture and confiscation. . . [34] Capt. Courtenay had examined a Portuguese ship, which was suspected of carrying on that trade, but which, at the time of the inquiry, had no slaves on board; he is

[1] Referred to in Mr. Justice Holmes's edition of Kent's *Commentaries,* II. 248, note b. Ed.

afterwards sent off on a slave-capturing expedition by Capt. Bullen to examine the coast for that purpose, from Cape Coast Roads to the river Cameron, with orders to return and join, after examining the cruizing ground off St. Thomas. . . at day-break she discovered a strange ship . . to which she gave chase," The *Maidstone* " outstript her consort, and . . captured the . . slave ship, containing four hundred slaves; the *Bann* soon after came up, and recognized her as the very same vessel which she had examined a few days before, when she was empty of any cargo."

The Orestes, 2 Hagg. Adm. 38 n., March 1827. A Spanish brigantine was captured in March 1826, with 265 slaves on board, and " taken into the Havannah . . where the Court of mixed Commission condemned the brigantine, and decreed the slaves to be emancipated."

The Slave Grace, 2 Hagg. Adm. 94, November 1827. " In 1822, Mrs. Allan of Antigua came to England, bringing with her a female attendant, by birth and servitude a domestic slave, named Grace. She resided with her mistress in this country until 1823, and accompanied her voluntarily on her return to Antigua. . . She continued with Mrs. Allan . . till August 8th, 1825, when she was seized by the waiter of the customs at Antigua 'as forfeited to the King, on the suggestion of having been illegally imported in 1823.' . . [95] On August 5, 1826, the judge of the Vice-Admiralty Court of Antigua decreed . . 'that the woman Grace be restored to the claimant [Allan], with costs and damages for her detention.' From this sentence an appeal was prosecuted on the part of the crown, and the principal question made, was—whether, under the circumstances, slavery was so divested by landing in England that it would not revive on a return to the place of birth and servitude?"

Judgment affirmed: [100] " she was not a free person; . . If she depends upon such a freedom, conveyed by a mere residence in England, she complains of a violation of right which she possessed no longer [101] than whilst she resided in England, but which had totally expired when that residence ceased and she was imported into Antigua; . . [104] upon a question addressed to Lord Talbot and to Mr. Yorke, whilst Attorney and Solicitor General.[1] They gave it as their opinion, that a slave coming from the West Indies, either with or without his master, to Great Britain, doth not become free, and that his master's property or right in him is not thereby [105] determined or varied; and they were also of opinion that the master might legally compel him to return to the plantations; . . a similar judgment [was] pronounced in 1749 by Sir Philip Yorke, then become Lord Chancellor Hardwicke, . . This judgment . . was . . reversed by Lord Mansfield. The personal traffic in slaves resident in England had been as public and as authorised in London as in any of our West India islands. They were sold on the Exchange and other places of public resort by parties themselves resident in London, and with as little reserve as they would have been in any of our West India possessions. . . Lord Mansfield was extremely desirous of avoiding the necessity of determining the question: he struggled hard to induce the parties

[1] See Opinion of Sir Philip Yorke, p. 12, *supra*.

to a compromise, . . but . . [106] was at last compelled after a delay of three terms to pronounce a sentence, which . . discharged this negro; . . The real and sole question [1] which the case of Sommersett brought before Lord Mansfield, . . was, whether a slave could be taken from this country in irons and carried back to the West Indies, to be restored to the dominion of his master? . . [109] The arguments of counsel in that decisive case of Sommersett, do not go further than to the extinction of slavery in England as unsuitable to the genius of the country and to the modes of enforcement: they look no further than to the peculiar nature, as it were, of our own soil; the air of our island is too pure for slavery to breathe in. How far this air was useful for the common purposes of respiration, during the many centuries in which the two systems of villenage maintained their sway in this country, history has not recorded. . . [111] Persons, though possessed of independence and affluence acquired in the mother-country, have upon a return to the colony been held and treated as slaves; and the unfortunate descendants of those persons, if born within the colony, have come slaves into the world, and in some instances have suffered all the consequences of real slavery; . . [112] It appears to me to be a strong presumption in favour of the parties charged with violating the law, that neither the parties so charged, nor those who had an interest in preventing it, have within the space of fifty years that have elapsed, even in one instance, called the attention of English justice towards it. Black seamen have navigated West India ships to this island, but we have not heard of other Sommersetts, . . The fact certainly is, that it never has happened that the slavery of an African, returned from England, has [113] been interrupted in the colonies in consequence of this sort of limited liberation conferred upon him in England. . . he goes back to a place where slavery awaits him, and where experience has taught him that slavery is not to be avoided. . . [114] The domestic slave may, in that character, accompany his master or mistress to any part of the world, but that privilege exists no longer than his character of domestic slave attaches to him; for should the owner deprive him of the character of being a domestic slave by employing him as a field slave, he would be deprived of the right of accompanying his master out of the colony. . . And what excuse is to be offered for Lord Mansfield, who long survived the change of law he had made, and yet never interposed in the slightest manner to correct the total misapprehension, if it is so to be considered, of the law which he himself had introduced? It has been said that, in the decline of the ancient villenage, it became a maxim of very popular and legal use, 'Once free for an hour, free for ever!' [2] And this has been applied as a maxim [115] that ought to govern in the case of negro slavery. . . it has never been once applied, since the case of Sommersett, to overrule the authority of the transmarine law. . . This cry has not,

[1] So Lord Mansfield says in 1785, in King *v.* Thames Ditton, p. 20, *supra.*

[2] Note: "Herein," says Lord Coke, "the common law differeth from the civil law; for Libertinum ingratum leges civiles in pristinam redigunt servitutem, sed leges Angliae semel manumissum semper liberum judicant, gratum et ingratum." 1 Inst. lib. ii, sect. 204. (Note in Haggard.)

as far as we know, attended the state of slavery in any other country, though that has been a state so prevalent in every other part of the world,"

Review of the English decisions on the subject of slavery [116-123], relying especially on Williams *v.* Brown, pp. 23-25, *supra.* [124] " slaves never have been deemed and considered as free persons on their return to Antigua, or the other colonies. . . [125] it is the constant practice of persons, who intend giving freedom to slaves on their return to the colonies, to execute instruments of manumission previous to their quitting this country for the colonies. . . [127] slavery was a very favoured introduction into the colonies: it was deemed a great source of the mercantile interest of the country; and was, on that account, largely considered by the mother country as a great source of its wealth and strength. Treaties were made on that account and the colonies compelled to submit to those treaties by the [128] authority of this country. . . Instead of being condemned as *malus usus,* it was regarded as a most eminent source of its riches and power. . . [134] in affirming the sentence of the Judge of the Court below, I am conscious only of following that result which the facts not only authorise but compel me to adopt." [Lord Stowell.]

On January 9, 1828, Lord Stowell writes Judge Story: [Here we may quote from the correspondence between Lord Stowell and Justice Story, printed in W. W. Story's *Life* of his father, I. 552 *et seq.*] " I have been, at this late hour of my time, very much engaged in an undertaking perfectly novel to me, and which has occasioned me great trouble and anxiety, and that was the examination of a new question, namely—whether the emancipation of a slave, brought to England, insured a complete emancipation to him upon his return to his own country, or whether it only operated as a suspension of slavery in this country, and his original character devolved upon him again, upon his return to his native Island. This question had never been examined since an end was put to slavery in England, fifty years ago; but the practice has regularly been, that in his return to his country the slave resumed his original character of slave. . . A case of that kind was brought up by appeal from the Vice-Admiralty Court of Antigua, and has occasioned a good deal of attention and noise in England, and the adjudication of it was referred to me by the Secretary of State, Lord Bathurst. It has attracted much attention and observation in this country, and I have had to consider this new question (as it was to me) with very laborious research through the many Acts of Parliament respecting the Slave Trade—Acts not very carefully compiled and digested. There were, in fact, five cases to be determined, and they have cost me a great deal of trouble and anxiety."

Lord Stowell writes further on May 17: " I desire to be understood as not at all deciding the question upon the lawfulness of the slave-trade, upon which I am rather a stern Abolitionist, but merely this narrow question, whether the Court of King's Bench, in the case of Sommersett, meant to declare that our non-execution of the slave code in England was a new [mere?] suspension of it as respected England, but left it in full operation with respect to the colonies—which some of our Abolitionists here and some of our Judges there resolutely contend for. My clear opinion is for its limited effect. The execution of the Code laws is suspended in

England, as being thought inconsistent with the nature as well as the institutions of this country. So far as it goes, but no farther, it does not at all derogate from the law of the colonies upon the return of the person so far liberated in England, but left exposed to the severity of the law in the colonies, upon the return of the party so partially liberated here; this is the whole of the question which I had occasion to consider, and is a question which has nothing to do with the general legality of the slave trade in the colonies. How the laws in respect of that trade made in England and enforced by our courts of law, the King's Privy Council, and the Court of Chancery, to their utmost extent, can consist with any notion of its entire abolition here, is, in my view of it, an utter impossibility.

"I am a friend to abolition generally, but I wish it to be effected with justice to individuals. Our Parliaments have long recognized it and have not only invited, but actually compelled our colonists to adopt it, and how, under such circumstances, it is to be broken up at the sole expense of the colonist, I cannot see consistent with either common reason or common justice; it must be done at the common expense of both countries; and upon that part of the case very great difficulties exist. Our zealots are for leaping over them all, but in that disposition I cannot hold them to be within the wise or the just part of this nation."

Judge Story replies on September 22: "I have read with great attention your judgment in the Slave Case from the Vice-Admiralty Court of Antigua. Upon the fullest consideration, which I have been able to give the subject, I entirely concur in your views. If I had been called upon to pronounce a judgment in a like case, I should certainly have arrived at the same result, though I might not have been able to present the reasons which lead to it in such a striking and convincing manner. It appears to me that the decision is impregnable.

"In my native state, (Massachusetts,) the state of slavery is not recognized as legal; and yet, if a slave should come hither, and afterwards return to his own home, we should certainly think that the local law would reattach upon him, and that his servile character would be redintegrated. I have had occasion to know that your judgment has been extensively read in America, (where questions of this nature are not of unfrequent discussion,) and I never have heard any other opinion but that of approbation of it expressed among the profession of the law."

The Malta, 2 Hagg. Adm. 158, April 1828. The mate [159] "had entered into the service of the ship at Liverpool in March 1825, for a voyage to the coast of Africa and back to this country; . . she was seized and brought to adjudication at Sierra Leone for alleged trading in slaves. On those proceedings the vessel was condemned, and that sentence is now the subject of an appeal in this court.[1] The master [160] has also been

[1] Note: "The question, arising on the appeal . . related to the real character of the alleged trading. The evidence showed, that it was the common practice of the native merchants to pledge their wives and children for the delivery of goods contracted for in barter with the trading ships; and that such pawns or pledges were, in some instances, not redeemed, but carried into slavery, as the absolute condition of such contracts, agreeably to

indicted on the same charge . . but acquitted; . . [172] the master, in his defence, admitted the transfer of the women to the master of a Spanish slaving vessel, and there was evidence of money passing between them. He rested his defence only on his explanation of that act, that the Spanish master had agreed to put them on shore, in their own country, about a hundred miles further on the coast; and that he was empowered to receive the money for which they had been held in pledge. I will not say more of this transaction at present, than that it was highly imprudent and culpable; and that it was very fit to be made the subject of enquiry before the tribunals of the country." [Sir Christopher Robinson.]

Two Slaves, 2 Hagg. Adm. 273, December 1828. "This was an appeal from the Vice-Admiralty court of St. Christopher's. Two slaves, Betsey Johnston and Emma Dowdy, were alleged to have been seized in the port of Basseterre by the searcher of H. M. customs, and were proceeded against under the provisions of the 5 G. 4. c. 113. s. 2. as forfeited by reason of an unlawful importation into that island, in a schooner called the *Selina*. In an affidavit of William Baker, the master of the schooner, it was stated, 'that on the evening of the day following that on which he sailed from Roseau, in the island of Dominica, to which port the schooner belonged, bound for Wilmington in North Carolina, he was informed by one of his crew that there were two women concealed in the forecastle; that he immediately sent for them, and discovered that they were slaves belonging to Dominica; that he then endeavoured to reach the island of Montserrat, but without effect, as the wind was contrary; and he worked into St. Kitt's, being the nearest British port he could make, [274] where he brought the slaves before a magistrate who committed them to gaol.' This affidavit and two certificates of registration, transmitted from Dominica, for the purpose of identifying the slaves, were allowed to be filed, and received in lieu of a regular claim being interposed. The judge of the Vice-Admiralty Court having declined to pronounce the slaves forfeited, an appeal was prosecuted to this Court: and, after the usual proceedings, *in poenam*, for want of an appearance on the part of the owners, the King's Advocate prayed that the sentence should be reversed."

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the general practice of the natives in their dealings with each other, . . [160 n.] Adverting . . to the extreme jealousy with which the abolition laws have prohibited every approach to the offence of holding persons as slaves, in the intercourse of British subjects with the coast of Africa, the Court remarked—'such a practice could not be consistent with the provisions of the abolition acts, and it strongly behoves British subjects trading on the coast of Africa to discontinue the practice, as likely to involve them in a criminal violation of the law.' The offence alleged in this information was 'the transferring the individuals so held as pawns to a Spanish slave ship, for the purpose of being transported as slaves beyond the seas.' . . the transfer was not that of absolute and intentional sale of these persons to the Spanish captain; the number of the persons was small, being only two or three women—others having been redeemed and restored at different times. They were women belonging to the principal traders, and had come from that part of the coast to which the Spanish captain was going; and some of their relations were actually on board—who were not transferred—but went away in their own boats. The transfer to the Spanish captain arose incidentally out of a barter for other articles,—and the character of it is not perfectly clear. Some evidence has since been supplied to show that these persons were actually restored to their friends;" Condemnation reversed.

Held: " the case is not brought within the provisions of the act. The Court, therefore, declines to disturb the sentence, notwithstanding the appeal is undefended on the part of the owners." [Sir Christopher Robinson.]

The Adelaide, 2 Hagg. Adm. 230, February 1829. " on the 22d of January 1827, Capt. Jones of H. M. ship *Orestes*, seized the brig *Adelaide*, of 107 tons, as she was lying at anchor near to the dock-yard at Ireland Island in the Bermudas, . . having cleared out for Trinidad, and preparing to weigh anchor." [231] " The claim was given with reference to the Consolidated Slave Act, 5 G. 4. c. 113, and with an explanation of the means used by the claimants to comply with its provisions, and particularly those contained in the 17th section." Mr. M'Alister [234] " is a British subject resident at Trinidad: that he arrived at Bermuda on the 5th of December 1826, . . that he found it necessary, for the comfort of himself and family, that he should have at least two additional servants as domestics; . . that in a family of negroes consisting of a mother [(238) Hannah, a woman of forty years of age, described formerly as a laundress, and four children, of eleven, nine, seven, and three years of age] . . which were publicly advertised for sale, on or about the 29th of December, he found such domestics, as he thought would answer his purpose; that the distress manifested by the female slave Hannah, the mother, at the idea of being separated from any of her children, induced him to consult the collector of the customs as to the number of domestic slaves which he might legally take with him to Trinidad; the collector gave his opinion that he might take two for each member of his family, consisting of himself, his wife, and infant child, viz. six of such domestic slaves; . . [235] Hannah was willing to go to Trinidad," as " she had already a son in that island. That in consequence he did . . purchase the family, and on the same day by bill of sale caused Hannah and Sue to be conveyed to his wife; Daniel and Wellington to himself; and the female slave, Allen, to his infant daughter." [240] " The claim of Mr. Wainwright relates to two slaves, Bob and Belinda, of the ages of seven and twelve . . within the same objection as to their actual service and occupation." The slaves were forfeited.

The Slave Fanny Ford, 2 Hagg. Adm. 271, July 1829. " This was an appeal from the Vice-Admiralty court of St. Christopher's brought by Harriett Gardiner, a British subject resident in that island, claimant of the slave ' Fanny Ford,' the sole property of the infant daughter of Mrs. Gardiner. The slave had been seized in the town of Basseterre, by a waiter of H. M. customs for that port. The libel or information pleaded the illegal exportation of a female slave, called Fanny Ford, from St. Christopher's to the island of Saba; and it appeared from the evidence that the slave had belonged to Mrs. Ford, who had connections in business in Saba, and among them, with an old Creole woman, to whose care this ' unmanageable ' child was consigned; that between 1814 and 1818 the child passed from one island to the other several times; and in 1818, finally returned to St. Christopher's. She was sold on the death of Mrs. [272] Ford;

and transferred by the purchaser to the present possessor. In 1827 she was seized and condemned, with costs, under the 5 G. 4 c. 113. s. 47." Judgment reversed.

The Zepherina, 2 Hagg. Adm. 317, March 1830. "This was a slave trader captured on the 14th of September 1828, after a joint chase by H. M. S. *Primrose*, and H. M. armed brig *Black Joke*, attached to and acting as tender to H. M. S. *Sybille*."

Stewart v. Garnett, 3 Simons 398, March 1830. Will of James Stewart, "late of Jamaica:" "I give, devise and bequeath one moiety of the rents, issues and profits of my estate, named Islington and Cove's Pen, . . to be divided equally amongst. . ." At the time of his death, March 25, 1824, the testator was [399] "seised of a real estate called Islington . . in Jamaica, containing 700 acres of land, with buildings and machinery for carrying on the manufacture of sugar and rum, and also of a pen called Cove's Pen, being an appendage of the Islington estate, also in the same parish, containing 300 acres, and that the testator was also at his decease possessed of or entitled to 246 negroes on his estate called Islington, and 25 negroes on Cove's Pen"

Opinion of the attorney general of Jamaica: [401 n.] "By such a devise he must necessarily have contemplated, not merely the lands composing part of that estate, but the means attached to them, by which alone they could produce rents, issues and profits. These means are the negroes and live stock."

Held: [401] "the real estate of the testator, at the [402] time of his death, consisted of the estates called Islington and Cove's Pen, and also of the said several negroes, horned stock, mules, sheep and other cattle then being thereon respectively," The Vice-Chancellor [Sir L. Shadwell]: [404] "Now I understand the pen to be that part of a West India estate which is used for the purpose of supporting the cattle employed on the plantation. . . those words would pass everything that was necessary to the enjoyment of the estate;"

The Vecua, 2 Hagg. Adm. 346, March 1831. "The *Vecua*, with her cargo and 300 slaves, and the *Ycanam,* with 380 slaves, having been condemned at Sierra Leone, upon the joint capture of H. M. S. *Iphigenia,* . . and the *Myrmidon*, . . the usual warrants for the bounty money for the slaves were made out . . and in October 1825, were received . . The warrant for the slaves on board the *Vecua* was for 3000 *l.*; and the warrant on account of the *Iphigenia*, for 3800 *l.*"

The Donna Barbara, 2 Hagg. Adm. 366, July 1831. "His Majesty's ship *Sybille*, commanded by Sir F. A. Collyer, one of a squadron of which he was commodore, was stationed off the coast of Africa for the prevention of the slave-trade, and on the 10th of January 1829, being at the island of Fernando Po, the commodore dispatched one of the boats of the *Sybille*, under the first lieutenant (Harvey), with written instructions to seize and detain all vessels trafficking in slaves contrary to certain treaties. On the boat reaching Sierra Leone on the 21st, the crew, to protect

themselves from the climate, went on board the *Paul Pry*, a former slave-ship, which had been there condemned and purchased by the commodore. On the 15th of March the *Adorinta*, a Brazilian brig, captured by the *Sybille*, appeared off the entrance of the Sierra Leone river, in charge of Mr. Browne, a prize-master from the *Sybille*. She had in company the *Donna Barbara*, a Brazilian schooner, with a cargo of 367 slaves, shipped in violation of the treaty between this country and the Brazils. This vessel and cargo had been seized by Browne on his course to Sierra Leone. Lieut. Harvey [367] went off to these ships in the boat of the *Sybille*, and upon his informing Browne that he was not authorized to effect the seizure, and desiring him to release her, the latter returned the papers to the master of the schooner, whereupon she was seized by the boat under Lieut. H.'s command, carried into S. L., and there condemned by the mixed commission, 'as having been taken and seized by the *Paul Pry*, a tender of the *Sybille*.' It was alleged for the *Sybille*, that this description, as a tender, was owing to some error in the institution of the proceedings; for that at the time of the seizure the *Paul Pry* remained moored a considerable distance up the river; and that the seizure being effected by a boat of the *Sybille*, detached therefrom under the command of an officer of the rank required by the treaties, and the vessel having been afterwards condemned by the commissioners appointed in virtue thereof, the commander, officers, and crew of the *Sybille* were legally entitled to one moiety of the proceeds of the schooner, and also to the bounty-money for the slaves on board." [1]

Held: the seizure by an open boat (the crew of which was borne on the books of the *Sybille*), commanded by an officer of the rank required to make the search, but actually putting off from an unauthorized tender, and at a distance of 1500 miles from the *Sybille*, did not entitle the *Sybille* to the moiety of the proceeds or to the bounties. The instructions annexed to the convention with Portugal, embodied in 5 G. IV. c. 113, imply that the seizures of Portuguese slave ships are to be made under the personal direction of the commander of a ship of war. [3 Hagg. Adm. 446.] "From the rejection of the claim, . . Sir F. A. Collier . . appealed to the delegates, . . [449] and on the 9th of January, 1834, . . it being held that, independently of the merits, the sentence of the Mixed Commission Court was conclusive as to the legality of the capture, the decree, appealed from, was reversed."

Three Slaves, 2 Hagg. Adm. 412, July 1832. An information under the Slave Abolition Act (5 G. IV. c. 113) "for an illegal removal of two female slaves, and a male infant, from Watling's Island to New Providence, without licence from the governor, and without a certificate of registration. The seizure took place in June 1831;" Slaves condemned.

[1] "The said Commissary Judge and Commissioner of Arbitration . . [449] pronounced the said slaves, natives of Africa, to be emancipated from slavery, and to be employed as servants or free labourers; . . at the time of passing the said sentence, 86 men, 129 women, 76 boys, and 60 girls, children under fourteen years of age, did compose the whole of the slaves so decreed to be emancipated from slavery; . . 357 slaves were seized and found on board of the said schooner . . and that six of the said slaves had died between the time of the capture and of the condemnation of the said schooner." 3 Hagg. Adm., Appendix C, 448.

The Slave Duncan, 2 Hagg. Adm. 427, December 1832. "After the vessel had sailed [June 16, 1831], the searcher of the customs discovered that the slave Duncan had been put on board on the 15th, and had been relanded on the 16th; and on that ground a seizure was made of the slave at the public workhouse, which seems to be a place of deposit for slaves, and where this slave had been placed by Mr. Lightbourn. . . [432] It appears that the slave was a considerable part of the year in the workhouse as a runaway, and, therefore, might be known as Lightbourn's slave;" The slave had been sold to Taylor of Ragged Island, where he [428] "possessed an estate . . and plantation and a manufactory of salt;"[1] "Taylor had required Lightbourn to send the slave to Ragged Island; that Lightbourn, having on the 14th of June, executed a bill of sale, addressed an application to the governor for a licence to ship the slave to Ragged Island, to Taylor, . . that the slave was carried on board on the 15th, Lightbourn expecting to receive the licence, . . [429] that the master becoming impatient to proceed on his voyage, and the licence not being obtained [it was received later that day], the slave was relanded from the vessel and taken to the public workhouse, and it was only some time after the slave was lodged there, and the ship had sailed, that the seizure was made." The sentence restoring the slave affirmed.

Gumbes's Case, 2 Knapp 369, June 1834. Colonel Gumbes [378] "was the proprietor of two sugar plantations, Cripplegate and Grand Caze, and a small estate called Hoppe's, on which there was a large house, and which was partly used as a cotton, and partly as a stock plantation. The French government seized them on the 24th and 25th of April 1795, together with the slaves, stock, and personal property on them, and they remained in possession of them until the month of March 1801." He had 132 slaves.

Held: in estimating the compensation due for the loss of his estates, of the actual produce of which, during the time of sequestration, there is no evidence, the allowance of £10 per annum for each negro on the estate is not a right principle to proceed upon.

Case of the Compensation Commissioners under the Act for the Abolition of Slavery, 3 Knapp 155, February 1835. "One of these appeals from the rules of the Commissioners appointed under the Act for the abolition of slavery in the British dominions, 3 and 4 Will. IV. c. 73, was by the agent for Jamaica, in his public capacity, on behalf of all the planters in the island; the other was by the private proprietors of a plantation in Demerara. . . [217] On the 1st day of August 1834, there were 270 slaves, or thereabouts, belonging to the Bonne Intention Estate [in Demerara], the value of which, in the year 1829, was £43,200 at the least, and the value of the entirety of the said plantation and slaves

[1] [434 n.] "the raking and manufactory of salt is a laborious, but a lawful employment for slaves; and as section 13 [of 5 G. IV. c. 113] does not define in what work slaves shall be engaged when so bought and sold, I think the act will allow of the slave's removal to his new purchaser's plantation, although he may be occasionally employed in the manufactory of salt." (Letter of attorney general of the Bahama Islands to the governor.)

together was then £60,000. It was calculated that the compensation monies to be allotted in respect of the slaves on the plantation, under the Abolition of Slavery Act, would not, according to the highest estimate, exceed the sum of £13,500." A few alterations in the rules were made by the lords of the Privy Council. [246] "The following General Rules were issued by the Commissioners of Compensation, in consequence of this decision of the Privy Council, on the 10th of March 1835, applicable to all the colonies included in the Abolition of Slavery Act, except the Mauritius and Cape of Good Hope, and have been confirmed by His Majesty in Council, and enrolled in the Court of Chancery:"

The Marianna, 3 Hagg. Adm. 206, May 1835. The *Marianna*, a Brazilian schooner fitted out for the slave-trade, was recaptured from pirates on August 30, 1828.

Ex parte Borrodaile, 2 Mont. and Ayr. 398, July 1835. Held: slaves in Antigua could not be equitably mortgaged by a deposit of a registered title-deed, containing a schedule of slaves, if the memorandum accompanying the deposit, which is registered, do not contain a list of the slaves.

Gordon v. Bruce, 2 Moore P. C. 261, February 1838. "Sir Michael Bruce, of Stenhouse, in North Britain, was, in the year 1831, the proprietor of two Sugar Plantations, called Shirvan and Telescope, in the Island of Tobago, with the slaves upon and employed in the cultivation thereof." In August 1831 he leased them to Gordon [262] "for fourteen years, determinable at the option of the Appellant [Gordon] at the expiration of seven years, . . The Appellant covenanted . . to receive over, feed, clothe, and care for properly, in every respect, according to the laws and customs of the Island of Tobago, all the slaves then being on the said estates." It was also provided, that "if the power and authority of the master over the slave should be further abridged, by Act of Parliament, or any Regulation of the Colonial Legislature, so as to lessen the labour to be obtained from the slave, or otherwise to diminish the returns of the Lessees, then the loss thereby sustained should be referred to arbiters, mutually chosen." After the act 3 and 4 Wm. IV. c. 73 (passed August 28, 1833), the lessor [263] "preferred a claim as owner in fee simple to the whole of the compensation-money payable in respect of" the three hundred and one slaves then "domiciled on the above-mentioned estates."

Held: [267] "the second rule [of the General Rules issued by the Commissioners of Compensation, March 10, 1835] made in pursuance of [the 47th sect. of the act] . . declares that the compensation-money 'shall be deemed to be of the same nature, and impressed with the same characters, for all the purposes whatsoever, so far as the same can be so taken or applied, as the slave, or slaves, in respect of whom such monies shall be allotted.' . . [268] though the Lessor may have an ultimate interest in the corpus, so to speak of the fund, or so much as shall not fairly represent the labour of the slaves lost to the Lessee by their emancipation, yet the Lessee is, in the first instance, entitled, [269] and his claim ought first to be satisfied. It may be that the interest of the fund will sufficiently represent the labour:" The clause of the lease respecting a decision by arbiters

was not framed to meet a case of total emancipation; the case is one entirely for the commissioners appointed by the act.

Stewart v. Gibson, 7 Cl. and Fin. 707, August 1840. "in the year 1806, James Broadfoot, merchant in Charleston, South Carolina, . . made a purchase of the American ship *Washington* (which had shortly before arrived in that port with a cargo of slaves from the river Congo in Africa), in contemplation of fitting her out on another voyage to Africa, for the purpose of trafficking in slaves:" The vessel was sent to Liverpool and there fitted out. [712] "In order to facilitate the purchase of the *Washington's* cargo of slaves, the pursuer had shipped by a British vessel, named the *Croydon*, from London for the river Congo, a quantity of muskets and gunpowder, . . [713] for the sole purpose of bartering for slaves." [712] "The reason why the muskets and powder were shipped by the *Croydon* from London, was, that by the existing orders in Council, no foreign ship was allowed to carry these articles under certain penalties. After coming to anchor in the river Congo, the defender applied for, and received from the commander of the *Croydon*, delivery of the muskets and powder; but instead of carrying them ashore as he ought to have done, he very improperly carried them on board the *Washington*. This transaction was witnessed by a British letter of marque privateer, . . the commander of which immediately went on board the *Washington*, and took possession of her as a prize," [713] "information given by a mutinous American sailor."

The Eagle, 1 W. Rob. 236, June 1841. "The *Eagle*, equipped for the slave trade, and navigated under American colors, and with an American pass and master on board, whilst at anchor in Lagos Roads, on the 31st December, 1838, was boarded from her Majesty's Ship *Buzzard*, (Lieutenant Fitzgerald, commander,) but was not detained. In January, 1839, the commander of her Majesty's ship *Lily*, . . finding the *Eagle* still lying at anchor, took possession of her, and sent her . . to Sierra Leone for adjudication. The Court of Mixed Commission . . refused to adjudicate, upon the ground that the vessel was ostensibly American property, and that the right of searching American vessels had not been conceded to British cruisers by the American government." Later Lieutenant Fitzgerald, learning of these proceedings, "boarded the *Eagle*, and having threatened the master to send him with the vessel to New York to be dealt with by the law of the United States, the master confessed the property [237] in the vessel to belong to Spanish owners; and that he was only the ostensible master for colorable purposes, and that he surrendered to the *Buzzard*. . . Lieutenant Fitzgerald subsequently proceeded in the *Buzzard* with the *Eagle*, and another vessel detained under similar circumstances, to New York . .; but the American authorities being of opinion that the papers under which the *Eagle* had been sailing were fictitious, . . declined to interfere. Lieutenant Fitzgerald then resolved to send the *Eagle* to Sierra Leone for adjudication as Spanish property, engaged and fitted for the slave trade; . . In the progress of the voyage, the *Eagle*, having sprung a leak, foundered;"

The Sociedade Feliz, 1 W. Rob. 303, 2 *id.* 155, January 1842. Joint capture, off Cape Palmas, in November 1839, of a Brazilian vessel engaged in the slave trade. Held: in order to sustain the claim of the vessel asserting an interest in the joint capture, it must be pleaded, 1st. That there was an association and coöperation with the capturing vessel. 2d. That the vessel claiming was seen by the captured slaves at the time the capture was effected.

Guimaraens v. Preston, [*Thirteenth of June*], 4 Moore P. C. 167, July 1842. [174] "The *Treze de Junho* left the port of Rio de Janeiro on the 28th of March 1840, under Portuguese colours, . . bound to the port of Benguella, on the coast of Africa. . . [175] on the 30th of March . . the *Curaçoa* fell in with the said brigantine . . and Captain Preston sent a boat . . to examine her, . . there were on board of her a considerable quantity of farinha, stowed in bulk, not on the manifest, and in a much greater proportion than would be required for the use of her crew: that buried in the farinha were found several new water-suckers, two pumps, also a slave whip, and a rattle: that in her fore-hold were four leaguers and four hogs-heads: on deck, two pipes, seven half-pipes, and five quarter-pipes, all water-casks: the casks in the hold, one of which was nearly empty, were stowed underneath part of her cargo, and could not be required for the use of the crew on the voyage: that in the after-part of her hold, near the helm, were found four shackles, and in every part of the hold were considerable quantities of firewood, much more than requisite for her consumption on the voyage: that the main hatchway was of unusual dimensions for a vessel employed in fair mercantile traffic: that the long boat was needlessly large for a coast trader, besides a large canoe, and a jolly boat: the cook house, also, was of large dimensions, and the cabin had every appearance of having been used for slaves on a former occasion: whereupon the said Captain Preston seized the said brigantine as liable to forfeiture to Her Majesty."

Letters of instructions found among the ship's papers: [177] "St. John's Bar, 7th Dec. 1839. Sir,—By the brigantine *Umbellina*, . . I was favoured with yours of the 2nd November, ultimo, accompanied with 31 volumes (slaves), . . which I sold . . at six months' credit, the nett proceeds being reis 6365$\frac{1}{2}$ dollars 680, . . [178] Your people (slaves) arrived in very good order, and on account I obtained higher prices than have been obtained for any others, hoping that you will be satisfied and continue your favours; the cargo of the brigantine *Umbellina* brought various prices, yours being the highest, and the lowest 255 dollars,"

[179] "Rio Janeiro, 27th March 1840. I have given to your command the brigantine *Thirteenth of June*, . . you will sail direct for the port of Benguella with great caution, . . with this I accompany a public form of writing which proves . . the said vessel made four voyages from Benguella to this port, always laden with wax, honey, oil, and urzella, which is proved by the certificates of manifests . . which documents you must show in the event of your being boarded by any Portuguese or English cruizer. . . Your wages will be 700 dollars on your safe arrival; the mate 100 dollars; the boatswain 100 dollars; five seamen at 45 dollars;

and seven slaves belonging to the vessel, with whom you must be very cautious, in order that they may not escape." The crew consisted of fifteen persons, " among them the cook was entered as José, a native of Africa, and in lieu of wages, ' gratis ' was written: and under the title of ' Lads ' there were six additional names entered, and their condition described as ' slaves of Francisco Fernandez Guimaraens.' " The vessel was seized and despatched to Rio de Janeiro. There [174] " a strict and careful survey was made," and she was " navigated to the Island of Barbadoes, in charge of the mate and an English crew (her master and commander, José da Lomba, being on board), to be proceeded against in the Vice-Admiralty Court of that Island." Condemnation under 2 and 3 Vict., c. 73, affirmed.

Mittelholzer v. Fullarton, 6 Q. B. 989, Trin. vac. 1842. " by agreement made . . 1834 . . in consideration of 7800 *l.*, plaintiff did sell . . all his right . . to the services and labour of 153 apprenticed labourers formerly slaves,"

The Florida, 2 W. Rob. 97, April 1843. " the Portuguese schooner the *Florida* was seized and taken, with a cargo of 283 slaves on board, by her Majesty's brig of war *Harpy* and carried to the Island of Grenada, where, in consequence of the vessel being unseaworthy, the slaves were landed and delivered over to the collector and controller of Her Majesty's customs at that island."

Regina v. Zulueta, 1 Car. and Kir. 215, October 1843. [221] " In the month of June, 1839, a vessel called the *Golupchick* was seized off the coast of Africa, as a vessel engaged in the slave trade, at which time Bernardos, one of the persons named in the indictment, was the captain. The Court at Sierra Leone refused to interfere with her, as from her paper and colours she appeared to be a Russian vessel, and she was accordingly sent to England and given up to the Russian authorities. . . In June, 1840, the *Golupchick* was sold to a person named Emanuels, who afterwards agreed to sell it to Jennings, the other person named in the indictment, for £650. Jennings, who had been in the employ as a captain of Martinez and Co., of the Havannah, wrote to the house of Zulueta and Co., in London, who were the correspondents and agents of that house on the subject. . . [222] on the 29th August, 1840, Zulueta and Co. drew a check on their bankers for £650, which was cashed . . and . . paid to Emanuels, at Portsmouth, for the vessel, by Jennings and Bernardos in company together. The name of the vessel was changed . . to the *Augusta*;" she [223] " cleared out for Gallinas on the 9th of November, 1840, having in the meantime taken on board " as her cargo, [216] " 29 hogsheads of tobacco, 6 cases of arms, 1 case of looking-glasses, 10 casks of copper ware, 134 bales of merchandize, 1600 iron pots, and 2370 kegs of gunpowder," [224] " To shew the nature of the trade carried on at Gallinas," Captain Denman, of the Royal Navy, said, " that there was no trade carried on but the slave trade: he said also, ' At most places on the coast there is both a lawful trade carried on and the slave trade: the Gallinas is an exception, the only exception I know indeed; I know that

were detained [174] as slaves at the Gallinas by Prince Manna, the eldest son of King Siacca, the negro Sovereign of that country. This letter contained the following passage: ' But should it be found impossible to effect this object without resorting to force, you will employ force as far as may be necessary, and as your orders and the rules of your service may permit. Should circumstances require it, I shall be prepared to assist you, to the extent of my ability, with a military party from this garrison, or in such other manner as may appear to you advisable.' Accordingly, on the 19th of November, 1840, the defendant, having previously issued a ' general order ' respecting the expedition, entered the Gallinas river with the British vessels *Wanderer*, *Rolla*, and *Saracen*, and an armed force of about 120 men. Observing that the Spaniards were carrying off in their canoes a number of slaves, the defendant chased them, and succeeded in capturing about ninety, amongst whom were two British subjects, named John Fraser and John Parker. The defendant landed at Dombocorro, and, having taken possession of the plaintiff's barracoons, spiked the guns and placed sentinels at the doors. At this time the Government of the Gallinas consisted of King Siacca, his eldest son Prince Manna, and three chiefs of the name of Rogers. The defendant wrote to King Siacca, demanding the liberation of Fry Norman and her child, and complaining of the conduct of the Spaniards in carrying on the slave trade. Several letters having passed, the woman, Fry Norman, and her child were delivered up; and on the 21st of November, 1840, the following treaty was concluded and signed by the defendant, and Prince Manna on behalf of King Siacca (who was bedridden from old age), and the chiefs of the country:

" ' In consequence of the white slave-dealers settled in the river Gallinas having prevented the boats of her Britannic [175] Majesty's ships from receiving the common rights of humanity when in distress and seeking refuge in King Siacca's waters, in violation of his dignity and of his rights, thus exposing him to differences with the Queen of England; and also in consequence of a Sierra Leone boy having been made a slave of by these men at the river Gallinas, who was discovered and released by Commander Denman on the 19th inst. 1st. King Siacca engages totally to destroy the factories belonging to these white men without delay. 2nd. King Siacca engages to give up to Commander Denman all the slaves who were in the barracoons of the white slave-dealers when he entered the river, and have been carried off into the bush. 3rd. King Siacca engages to send these bad white men out of his country by the first opportunity, and within one month from this date. 4th. King Siacca binds himself in the most solemn manner that no white men shall ever for the future settle in his country for the purpose of slave trading. 5th. Commander Denman, upon the part of her Britannic Majesty, promises never to molest any of the legitimate commerce of the Gallinas; but that, on the contrary, her ships shall afford every assistance to King Siacca's subjects, and take every opportunity of promoting his commerce. 6th. The Governor of Sierra Leone will use his influence to get the Sierra Leone people to open the trade with King Siacca's country. 7th. No white men from Sierra Leone shall settle down in King Siacca's country without his full permission and consent. 8th. All complaints that King Siacca may have to

make hereafter concerning any of her Majesty's ships, he is requested to forward at once to Sierra Leone; and a full investigation, and such redress as the occasion may require, [176] is solemnly promised by Commander Denman on the part of her Britannic Majesty. Done at Dombocorro, in the river Gallinas, this 21st day of November, 1840. Prince Manna X (mark). Licomi Rogers X (mark). John Siliphi Rogers X (mark). Signed, Jos. Denman, Commander and Senior Officer on the Sierra Leone Station.'

"On the 23rd of November, the defendant, in the execution of this treaty, commenced burning the plaintiff's barracoons. On one occasion, at the request of Prince Manna, the defendant with his own hand fired two rockets, which burnt the barracoons at Kamasura. The defendant also set fire to the village of Chicore, by which the plaintiff's barracoons in that place were destroyed. Before the expedition landed, there were about 300 slaves in these barracoons, besides great quantities of cotton and woollen goods, gunpowder, spirits, and goods of various descriptions adapted for slave traffic. On the approach of the expedition, the slave-dealers deserted the factories, and let loose the slaves, who were driven up the country. Great numbers of these slaves were afterwards taken by the defendant and carried to Sierra Leone where they were emancipated. The goods were claimed by King Siacca, as forfeited in consequence of the owner having acted in defiance of his law, and were delivered up to him; the gunpowder was thrown into the river; and the casks of spirits were broken in, and the spirits allowed to flow away on the sand, it being suggested that they were poisoned. The defendant continued to fire the barracoons until the 26th, (that at Dombocorro being the last destroyed), when he re-embarked and proceeded to Sierra Leone, having succeeded in liberating 841 slaves."

These proceedings were communicated to the Lords of the Admiralty, and the Secretaries of State for the foreign and colonial departments, and they respectively, by letter, adopted and ratified the act of Denman. [182] "The correspondence relating to these proceedings was laid before Parliament, and by the 10 and 11 Vict. c. 107, a sum of £7500 was appropriated for the suppression of the slave trade on the coast of Africa, £4000 of which was voted to the defendant and his men for their services at the Gallinas. The present action was commenced in the year 1842."

Held: first, that the plaintiff had a property in his slaves, and might maintain trespass for their seizure, the slave trade not being piratical by the law of nations, and it not appearing that Spain had passed any law abolishing the slave trade pursuant to the treaty embodied in the 6 and 7 Will. IV. c. 6. Secondly, that the ratification of the defendant's act by the ministers of state was equivalent to a prior command, and rendered it an act of state, for which the Crown was alone responsible, (Parke, B., *dubitante*): and that such defense was open under the general issue.

The Felicidade, otherwise Virginia, 3 W. Rob. 45, April 1848. "On the 6th of March, 1845, her Majesty's sloop *Star*, whilst cruizing on the coast of Africa, descried a schooner in latitude 3° 10′ north, and longitude 3° 43′ east, whereupon sail was made in chase, and at 3.30 a. m.,

the *Star* having com[e] up with the schooner, Captain Dunlop, the commander, boarded her, and found her fitted and equipped for the slave trade. Captain D. observing that several of the crew of the said schooner wore bandages on their heads, directed the surgeon of the *Star* to examine them, and a report being made that the men appeared to be cut and wounded on their heads with cutlasses, Captain D. caused the crew to be put in irons, and shortly after such order was made, one of the said crew stated that the schooner had been captured by her Majesty's sloop *Wasp*; that the crew of the *Felicidade* had killed the prize crew belonging to the *Wasp*, and that the wounds which were observed were inflicted at the time when the crew of the schooner killed the prize crew, and retook possession of their vessel. Upon this confession Captain D. ordered the second lieutenant of the *Star* to take charge of the schooner, and proceed with her to Sierra Leone for adjudication. In the progress of the voyage the *Felicidade* capsized in a white squall, and was totally lost," The allegation in behalf of the officers and crew of the *Wasp* pleaded, [46] " 1st. That on or about the 27th day of February, 1845, her Majesty's said sloop *Wasp,* whilst cruizing on the coast of Africa for the prevention of the slave trade, etc., fell in with and seized the *Felicidade,* a Brazilian vessel, then equipped for the slave trade, but without any slaves actually on board, and manned with a crew of thirty persons, including the master. That the whole of the crew, except the master and one other person, were removed on board the *Wasp*, and Lieutenant Stupart and Mr. Palmer, a midshipman, with sixteen seamen belonging to the *Wasp,* were put on board, with orders to convey her to Sierra Leone for adjudication. 2nd. That the two vessels having parted company, the *Felicidade,* on the 2nd of March, 1845, fell in with and seized another Brazilian vessel called the *Echo*, with 431 slaves on board, whereupon Lieutenant Stupart, with seven of his men, went on board the *Echo*, leaving Mr. Palmer in charge of the *Felicidade* with the remaining nine men belonging to the *Wasp*, the two persons of her own crew, and twenty of the crew of the brigantine the *Echo*. That the two vessels remained in company during the [47] night, but on the following day the Brazilian people on board the *Felicidade* rose upon the said Mr. Palmer and his men, slew the whole of them, with the exception of two blacks, who jumped overboard, and swam ashore, and took possession of the vessel, and after making an ineffectual attempt to recapture the *Echo*, sailed away and stood out to sea, chased by the *Echo*, which being a bad sailor soon lost sight of her. 3rd. That the *Felicidade*, having outsailed the *Echo*, stood to the southward towards the Isle of Princes, and whilst so standing during the night of the 4th of March was fallen in with and captured by her Majesty's sloop *Star*."

Held: [48] " the original seizors never completed their possession."

Richards v. Attorney General of Jamaica, 6 Moore P. C. 381, July 1848. [383] " James Clayton White was owner in fee of two plantations, and the slaves thereon [172 in number], in the Island of Jamaica." His will, dated June 13, 1834, on which day he died: " I give, devise, and bequeath, share and share alike, unto Rosanna Richards, and her four daughters, together with each of my natural and reputed sons of colour,

the children of Rosanna Richards aforesaid, namely, George White, and Edward White, all my right, title, and claim for compensation, such as may be awarded to me as my portion of the compensation-fund for the emancipation of such slaves as may belong to me, and be living on the 1st day of August, in the present year of our Lord 1834." The will was attested by two witnesses only, and was, therefore, void as to the devise of real estate. By the law of Jamaica, slaves could only be directly devised as real estate. [387] "The compensation-money in respect of the slaves of White, amounting to the sum of £3242 7 *s.* 3 *d.*, was, by an order made in the cause, dated the 28th of July, 1837, paid to the Receiver-General of the Island. . . [388] In the course of the suit [in the Court of Chancery of Jamaica] . . payments [were] . . made out of the compensation fund, the aggregate of which amounted to £2582 10 *s.*; leaving out of the compensation money the sum of £890 only, in the hands of the Receiver-General, to the credit of the cause."

Held: (treating the slaves as real estate) the legislature became purchasers, under the 3 and 4 Will. IV. c. 73, from the date of the act (August 28, 1833), giving a limited interest in the slaves for a term of years to the vendor, and the money to be received under the compulsory sale of the slaves was converted into personal estate, and passed to Rosanna and her children, as specific legatees under the will.

Edward v. Trevellick, 4 El. and Bl. 59, June 1854. The plaintiff, [62] "an African and a negro . . was serving as . . seaman on board the *Candace* . . and before he deserted the said ship, the captain . . threatened to sell plaintiff as a slave . . on the arrival of the ship at San Francisco," Held, on demurrer, a bad replication, as not showing that California was a state in which the plaintiff could be sold as a slave. *Dubitante* Crompton, J.

The Newport, 11 Moore P. C. 155 and Swabey 317, February 1858. [179] "at a period antecedent to the date of the present transactions, both Flores and Garrido were largely engaged in the Slave trade, and that for several years before 1851 they were employed in the regular purchase and transmission of slaves from [180] the west coast of Africa to a company of merchants at Rio de Janiera. In 1851, however, strenuous efforts were made by the Brazilian Government to put down the traffic . . with great success. . . In the year 1853, there seems to have been some increase of the Slave Trade both north and south of Loanda, . . but in February, 1855," the Commissioners "reported that such increase had been only momentary, and had entirely ceased." After 1851 "Flores, and Garrido as his agent, were . . engaged in adventures of sending slaves to Cuba." The British authorities addressed urgent remonstrances "to the Portuguese Government against permitting Flores to remain in their territory in Africa, and . . an order for his removal . . was served upon him in June, 1854."

Santos v. Illidge, 8 C. B. (N. S.) 861, July 1860. Facts in the case:[1] "The plaintiff is a Brazilian: . . The defendants [British subjects resi-

[1] Same *v.* same, 6 C. B. (N. S.) 841 (844).

dent and domiciled in Great Britain] are the directors of a company called the Brazilian Mining Association, formed for the working of mines in the Brazils,—an English company. The company being in course of winding up in the court of Chancery, an order was made . . for the sale of their property . . including a number of slaves [employed in working their mines in Brazil] . . and one of the directors proceeded to the Brazils for the purpose of effecting a sale. On his arrival at Rio de Janiero, the director contracted for the sale of the slaves to the plaintiff [for the sum of 32,000 *l.*], but was prevented by the interposition of the British consul there from carrying it into effect. For this breach of contract the present action is brought:" Some of the slaves had been purchased by the defendants in Brazil after the passing of the 5 G. IV. c. 113, but before the passing of the 6 and 7 Vict. c. 98; the rest of the slaves were the offspring of those first mentioned, and were in the possession of the defendants before the passing of the last-mentioned act.

Held, by Bramwell, B., Hill, J., Channell, B., and Blackburn, J., reversing the judgment of the Court of Common Pleas: the contract [872] "was one which the defendants could lawfully enter into, and which must be enforced here. . . if the 5 G. 4, c. 113, did prohibit the purchase of these slaves, the contract for their sale is lawful.. The 6 and 7 Vict. c. 98, s. 5, permits the sale wherever the 'holding' is not prohibited. Now, the holding of slaves by a British subject in the Brazils . . is nowhere prohibited. But it is said that this holding was prohibited, because there can be no lawful holding where there was an unlawful acquisition. No doubt it is a strong thing to say a man could acquire a property by an act in itself a felony. But it is not a property which our laws deal with; it is a Brazilian right the defendants are selling. It cannot be said that in fact the defendants do not hold these slaves. They do: and it is not in terms made unlawful by any law of this country. I think the true construction of the 5th section is, to say it applies to cases where the holding is unlawful, whatever be its origin." [Bramwell, B.] Pollock, C. B., and Wightman, J., held that the contract was illegal and void—the 5 G. IV. c. 113, prohibiting the buying or selling of slaves by British subjects everywhere, and there being nothing in the subsequent statute to remove that prohibition.

Brig, name unknown, Bro. and Lush. 370, December 1864. [374] "Both vessels left Loando in company on the 10th July [1862], but with different objects in view. The *Dart* was on a cruise for the suppression of the slave trade. The *Falcon* was bound to the Isle of Ascension, on her way to England, but she was, as well as the *Dart*, duly authorized to capture vessels engaged in the slave trade." The *Dart* captured a vessel engaged in the slave trade, in sight of the *Falcon*.. The captain of the *Falcon*, deeming the *Dart* sufficient for the purpose, did not get up steam, but continued his course. The chase lasted a few hours only.

Held: the *Falcon* is entitled to share as joint captor. Proof that the alleged joint captor was seen by those on board the prize before capture is important, but is not absolutely required as in cases of prize of war.

VIRGINIA.

INTRODUCTION.

I.

The most interesting matter contained in the earlier part of the following body of extracts is found in those cases which have to do with the beginnings of negro slavery and the end of Indian slavery. Those cases are so scanty, are involved in such obscurity, and are connected with such a maze of statutes, that they require illumination before they can furnish it. The text needs a commentary; and since these cases come early in the chronological order of arrangement, the first part of this introduction is of that nature.

To write the history of slavery in Virginia in the seventeenth century is like putting together a picture puzzle when many of the pieces are missing, like reconstructing a Greek vase from a few shards. Others may fit the fragments in a different fashion.

The servant [1] problem, or rather, the problem of service, in the early colonial days defied solution, but necessity caused nine or ten varieties of servitor to be evolved in Virginia, most of them existing in the other colonies also. These varieties, arranged approximately in order [2] of social precedence, were: the white indentured servants; the white servants without indentures (of whom there were two classes, those who came voluntarily, and those who came involuntarily, of which latter class were the men, women, and children who were "spirited" away, those who left their country for their country's good, and probably the "*Duty* boyes"); [3] the Christian negro servants; [4] Indian servants; mulatto servants (whose servitude was the penalty for having a white mother and an Indian, negro

[1] The term "servant" was used to designate anyone who rendered service—the laborer as well as the household servant.

[2] See the case of Hannah Warwick, for a reversal of this order. *Minutes of the Council,* ed. McIlwaine, 513.

[3] "Whereas there remaine [in October 1627] certaine of the *Duty* boyes, whose first seaven yeares of service as apprentises expired in May last past, and were from that time to begin to serve other seaven yeares as Tenants too halves;" *ibid.,* 154. They belonged to that band of "50 boyes, which were by our late dread soveraigne Kinge James commanded to bee sent over hither, and arrived here in the *Dutye* 1619." *Ibid.,* 117. Such an importation was suggested ten years earlier by Hugh Lee, writing to Thomas Wilson from Lisbon: "Five caracks sailed . . for the East Indies, . . carrying in the place of soldiers, children and youths from the age of ten upwards, to the number of 1,500; in a few years they say these children will be able to do good service, their bodies being well acquainted with the climate of those countries; thinks it were no evil course to follow in England for planting inhabitants in Virginia; it is forced by necessity in Lisbon." Brown, *Genesis of the United States,* p. 249.

[4] Usually without indentures; but see p. 57, *infra.*

or mulatto father,[5] or, after 1723, for being descended in the maternal line from such a combination of ancestors); [6] Indian slaves; negro slaves.

Most of these varieties existed side by side in Virginia in the seventeenth century (let us hope, for the sake of the owners, that no one plantation held them all); but the last possessed the germinal potentiality of a certain mustard seed, outstripped the rest, and "waxed a great tree," while the others, like saplings, perished in its shade.[7]

In what order did these varieties emerge?

An ancient "blue law" of the colony of Virginia runs thus: "Every person to go to Church Sundays and Holy days or lye neck and heels on the Corps du Guard the night following and be a Slave the week following, Second Offence a Month, third a Year and a Day. 10th May 1618." [8] The penalty sounds certain, severe, and calculated to deter truancy in a community acquainted with slavery, but meaningless to one which knows it not. The word "slave" is not defined. It is taken for granted that its connotation is obvious to the colonists. Yet where could they have learned in 1618 what service it implied (for they were Englishmen), if slaves were a novelty to them on that August day in 1619 when, as "Master John Rolfe" [9] relates, "came in a dutch man of warre that sold us

[5] 3 Hening 87. Re-enacted in 1705.

[6] 4 Hening 133. "These servants bear greater resemblance to apprentices than to slaves." Jefferson's argument in Howell *v.* Netherland, Jefferson 90 (91), 1770.

[7] The reason for this was, that the African was transplanted far from home and along isothermic lines. Neither the Indian nor the English servant satisfied both these requirements for successful service in the climate and on the soil of Virginia. A third ground for the survival of negro slavery, the African's supposed innate docility, is not supported by the facts. See act of the Virginia assembly of October 20, 1669, 2 Hen. 270, "about the casuall killing of slaves. Whereas . . the obstinacy of many of them by other than violent means [cannot be] supprest," and the notable case of Overzee's slave Tony, 41 Md. Arch. 190 (1658).

The changing proportions of negroes and white servants in Virginia in the seventeenth century are indicated by the following extracts from the Northampton County records: "the first negro is mentioned [in 1636] who was brought by John Wilkins along with twenty five servants," 4 Va. Mag. Hist. 402; inventory of Burdett's estate, in 1644, "8 servants with various times to serve and 2 negros," *ibid.*, 406; inventory of Walker's estate, in 1655, "4 white servants with certain times to serve and 3 negros," 5 Va. Mag. Hist. 40.

In 1671 the answer to one of the "Enquiries to the Governor of Virginia" states that, at that time, "there are two thousand *black* slaves, six thousand christian servants, for a short time." "Yearly, we suppose there comes in, of servants, about fifteen hundred, of which, most are English, few Scotch, and fewer Irish, and not above two or three ships of negroes in seven years." 1 Hening 515.

In 1678 there is a "Proceeding [in the General Court] for bringing more negroes from Africa than ought to have been brought under contract." McIlwaine 519.

In 1698 Governor Nicholson writes from Maryland to the Board of Trade: "There hath been imported this summer about four hundred and seventy odd Negros, vizt 396 in one ship directly from Guiny, 50 from Virginy, which came thither in a ship from Guiny, 20 from Pensylvania, which came thither from Barbadoes: . . Number of Servants imported . . may be about 6 or 700, whereof most part are Irish. . . Both in Virginy and here . . the major part of the Negros speak English: and most people have some of them as their domestick servants: and the better sort may have 6 or 7 in those circumstances: and may be not above one English." 23 Md. Arch. 498.

[8] Randolph MS., 15 Va. Mag. Hist. 405.

[9] "A member of the council, and our first secretary, who was on the spot." Jefferson's *Reports,* 119n. Dr. Brown, *Genesis,* and Dr. Ballagh, *Slavery in Va.,* disagree as to the share the famous *Treasurer* had in bringing the first negroes.

twenty Negars." [10] Even then the Virginia colonists did not learn the ways of slavery from those twenty,[11] for, though they had been slaves among the Spaniards, their capture by the Dutch frigate, cruising piratically among the West Indies,[12] had changed their status to something indeterminate and transitory, which " faded out " or merged automatically (and, as it were, cinematically) into servitude analogous to that of the indentured white servants,[13] when they touched Virginia soil. The Dutch ship had been a Godsend to them.

But why this step upward? Why did not the status of slave persist? The most convincing answer, and one which the few known facts support, is that some or all of these negroes had been baptized by the Spaniards; and by the law of England, which governed Virginia, a slave who had been christened or baptized became " infranchised." [14] We have only the scant testimony of their names.[15]

Of the original twenty negroes brought in, in 1619, we know perhaps the names of eleven.[16] One of them, a negro woman, owned by John Rolfe's father-in-law (not Powhatan, but Captain William Pierce, father of his third wife),[17] was called "Angelo" [*sic*], a name uncommon in England and unknown in Africa. Others were Anthony and Isabella, whose master was Captain William Tucker of Elizabeth City. Their child William is not listed in the census of 1623, as he was probably not yet born, but he appears in Captain Tucker's Muster in 1625.[18] It is significant that his baptism is recorded, as is that of another William, an Indian owned by Captain Tucker, while no mention is made of the baptism of Anthony and Isabella. This is undoubtedly because they had

[10] Relation of J. Rolfe, incorporated in John Smith's *Generall Historie of Virginia,* Arber ed., p. 541.

[11] See p. 59, *infra.*

[12] For a description of a similar cruise in 1625, made by the *Black Bess,* a Dutch man-of-war, whose captain (Powell) commanded the "dutch man of warre" in 1619 (24 Va. Mag. Hist. 56, n. 1), see McIlwaine 66-68. The captain and crew were English, as was also the name of the Dutch ship.

[13] See Ballagh, *White Servitude in Virginia.*

[14] Butts *v.* Penny, 3 Keble 785, in 1677, is the first reported English case which enunciates this doctrine, but it was not new. In Maryland, in 1664, the lower house desired the upper house " to draw up an Act obligeing negros to serve *durante vita* . . for the prevencion of the dammage Masters of such Slaves may susteyne by such Slaves pretending to be Christned And soe pleade the lawe of England." 1 Md. Arch. 526. Such "lawe of England" must have been in force in 1612, for "John Phillip A negro," who was "sworn and exam" in the General Court of Virginia in 1624, was qualified as a free man and Christian to give testimony, because he had been " Christened in England 12 years since." McIlwaine 33.

[15] If the argument from the names seems weak because of the meagre evidence, we can explain the higher status which the Spanish negroes attained on reaching Virginia only on the ground of expediency. White servitude in Virginia had crystallized into a definite system by 1619, the year of the first negro importation, and it was easier to incorporate the negroes into that system than to put them in a class apart. See Ballagh, *Slavery in Virginia,* pp. 31, 32.

[16] See " Lists of the Livinge and Dead in Virginia, Feb. 16th, 1623," in *Colonial Records of Virginia, 1619-1680,* and in Hotten, *Original Lists of Emigrants, 1600-1700;* also "Musters of the Inhabitants of Virginia," in Hotten.

[17] Hotten, p. 224; Brown, *Genesis,* p. 987.

[18] Hotten, p. 244.

already been baptized under Spanish auspices, as their names indicate; for it was and is a rule of Christianity to administer the rite but once to each neophyte. There were also two other Anthonys, two Johns, and William, Frances, Edward, and Margarett,[19] whose names may or may not have been anglicizations of Antonio, Juan, Guillen, Francisca, Eduardo, and Margarita.

The names of the negroes who trickled in singly in the next few years after the first wholesale importation in 1619 indicate antecedent Spanish baptism also. Antonio [20] came in 1621, in the *James*; Mary,[21] in 1622, in the *Margrett and John*; John Pedro [22] in 1623, in the *Swan*. The name Mary, if not an anglicized form of Maria, might have been bestowed either in England [23] or in Virginia. No doubt attaches to the origin of Antonio and John Pedro.

By the same testimony of nomenclature, "Brase," who came to Virginia in 1625 (with Captain Jones, commander of the *Mayflower* in 1620),[24] had not been baptized, unless "Brase" was a corruption of "Blas" or "Blaise," [25] or a shortened form of Ambrosio. However that may be, the precedent of negro servitude, as distinguished from slavery, had, by that time, become established, and Brase was assigned first to Lady Yeardley till further order, at a monthly wage of "forty waight of good merchantable tobacco," [26] and finally to Sir Francis Wyatt, governor, as his servant.[27]

The difference in names between the second generation of negroes and their elders is shown, even more strikingly than in the case of William, the son of Anthony and Isabella, in an inventory of 1644: [28] "one negroe man called Anthonio . . One negroe woman called Mitchaell [Michaela] . . One negroe woman, Couchaxello . . One negroe woman, Palassa . . One negroe girle Mary 4 yeares old . . One negroe called Eliz: 3 yeares old." The only explanation seems to be that Anthonio, Mitchaell, Couchaxello, and Palassa received their names before leaving the Spanish dominions, while the children were born in Virginia and consequently received the English names of Mary and Elizabeth. But these negroes in

[19] This result is obtained by comparing the "Lists" of 1623 with the "Musters" of 1625. See Hotten.

[20] Hotten, p. 241.

[21] *Ibid.* They were both servants of Edward Bennett in 1625; and they may have been the "Anthony Johnson, negro, and Mary his wife" who were, in 1653, exempted by the Northampton County court from paying taxes, having "been Inhabitants of the county above thirty years, and having the great misfortune to lose by a fire after great service and etc." 5 Va. Mag. Hist. 36. To be sure there were other Anthonys in the colony in 1623, and no doubt other Marys.

[22] Hotten, p. 258.

[23] As in the case of John Philip, p. 55, *supra*.

[24] 24 Va. Mag. Hist. 56, n. 1.

[25] He was accompanied by "a Frenchman . . and a Portugall," all three having been received from a "Spanish frigott." McIlwaine 68.

[26] *Ibid.*, 72.

[27] *Ibid.*, 73.

[28] York County Records, 17 Va. Mag. Hist. 211.

the inventory of 1644, though they bore Christian names, seem to have been, not servants as the early negroes were, but slaves; for by 1644[29] times had changed.[30]

The early theory that the enslavement of infidels was justifiable in order to make Christians of them, had for a corollary that, when the purpose of enslavement had been achieved by their conversion, their slavery ceased and they became free. This corollary had become difficult of application. If freedom was a reward of baptism, could any slave resist it, no matter how rudimentary his theology, or could many masters welcome it? And even if slaves had not been baptized, they could easily pretend to have been—a danger recognized by the Maryland legislators in 1664.[31] It became expedient to require a more " visible " and more permanent " sign " than the water of baptism to differentiate the slave from the free, and a quietus was put on baptism as a method of emancipation, by statutes in the various colonies. The Virginia act was passed in 1667:

" Whereas some doubts have risen whether children that are slaves by birth, and by the charity and piety of their owners made pertakers of the blessed sacrament of baptisme, should by vertue of their baptisme be made free; It is enacted . . that the conferring of baptisme doth not alter the condition of the person as to his bondage or freedome; that diverse masters, freed from this doubt, may more carefully endeavour the propagation of christianity by permitting children, though slaves, or those of greater growth if capable, to be admitted to that sacrament." [32]

Thenceforth baptism ceased to be the test of freedom and color became the " sign " of slavery: black or graduated shades thereof. A negro was presumed to be a slave.[33]

There are two cases which illuminate the transition period in Virginia. In 1641 [34] " John Graweere being a negro servant unto William Evans " who permitted him " to keep hogs and make the best benefit thereof to himself provided that the said Evans might have half the increase, which was accordingly rendered unto him by the said negro and the other half reserved for his own benefit " and " having a young child of a negro

[29] In 1642 " John Skinner mariner, . . covenanted and bargained to deliver unto . . Leonard Calvert [of Maryland], fourteen negro men-slaves, and three women slaves, of between 16. and 26. yeare old able and sound in body and limbs, at some time before the first of march come twelve-month, at St Maries, if he bring so many within the Capes, . . within the said yeare." 4 Md. Arch. 189. " This seems to be the first reference to the importation of negroes into the Province. In this particular case it seems that the slaves were not furnished." Note by Dr. W. H. Browne, *ibid.*, vii.

[30] This may have been partly due to the policy adopted, 1637-1639, for Providence Island. Company of Providence Island to the governor and council, June 7, 1639: " if the number [of negroes] be too great to be managed, they may be sold and sent to New England or Virginia." *Calendar of State Papers, Colonial,* I. 296. Also pp. 249, 277, 278.

[31] See note 14.

[32] 2 Hening 260.

[33] Wheeler, *Law of Slavery,* p. 5.

[34] 11 Va. Mag. Hist. 281; McIlwaine 477.

woman [35] belonging to Lieut. Robert Sheppard which he desired should be made a christian and be brought up in the fear of God and in the knowledge of religion taught and exercised in the church of England," bought the child's freedom, and the court " ordered that the child shall be free from the said Evans or his assigns and to remain at the disposing and education of the said Graweere and the child's godfather, who undertaketh to see it brought up in the christian religion as aforesaid." It is significant that Graweere had to buy the child's freedom before christianizing it. Freedom preceded baptism in 1641, instead of resulting from it as in the earlier time. Moreover, if Graweere had been a white servant, no such proceedings in court would have been required to confirm his right to purchased property and to disaffirm any right of his master to it; but such precaution seemed necessary in the case of the negro servant, for his master Evans helped him to procure the order of the court by a deposition in his behalf. Evidently the status of the negro servant was beginning, in 1641, to sink to that of slave. It is also significant that the earliest will (we know of) emancipating negroes [36] is dated 1645. By it one Vaughan " freed his negroes at certain ages; some of them he taught to read and make their own clothes. He left them land." [37] They may have been slaves originally, or they may have fallen to that condition.

The other important transition case [38] is that of "A Mulata named Manuel " whom " Mr. Thomas Bushrod . . bought . . as a Slave for Ever but in September 1644 the said Servant was by the Assembly adjudged no Slave and but to serve as other Christian servants do and was freed in September 1665." But " other Christian servants " did not serve apprenticeships of twenty-one years.[39] Furthermore, though Manuel's status as a Christian servant was admitted in 1644 and continued till 1665, he would not have been classed as such in 1670. By an act of that year,[40] the term [41] is reserved for white servants, in

[35] Beside the ground of religion, there was a special and urgent moral reason for the purchase of the child, and its separation from its mother, if she was the same " negro woman servant belonging unto Lieutenant Shepard," whom " Robert Sweat hath begotten with child " and whom the court, in October, 1640, ordered to " be whipt at the whipping post and the said Sweat shall tomorrow in the forenoon do public penance for his offence at James city church in the time of devine service according to the laws of England in that case provided." *Ibid.*

[36] That is, in the printed records at present available.

[37] Northampton County Records, 5 Va. Mag. Hist. 40.

[38] Randolph MS., 17 Va. Mag. Hist. 232.

[39] The usual term was five years, but in 1671 the court ordered that the child of an English woman servant should serve " four and twenty yeares." McIlwaine 248.

[40] " Whereas it hath beene questioned whither Indians or negroes manumited, or otherwise free, could be capable of purchasing christian servants, It is enacted that noe negroe or Indian though baptised and enjoyned [enjoying] their owne ffreedom shall be capable of any such purchase of christians, but yet not debarred from buying any of their owne nation." 3 Hen. 280.

[41] The terminology in the middle of the seventeenth century was in a state of flux. Though negroes are listed indiscriminately with white servants in 1623 and in 1625 (see Hotten), they are classified apart in an inventory of 1644,* and " servant," standing alone,

* Inventory of the Burdett estate: " 8 servants with various times to serve and 2 negros." Northampton County Records, 4 Va. Mag. Hist. 406.

spite of the fact that colored servants of the Christian faith had not become extinct.[42]

During these transition years the negro servant of the old class which enjoyed approximate, though not complete,[43] equality with white servants, survived in some instances. In 1647 "Francis Potts has two negro children bound to him for a term of years, and he binds himself to furnish them sufficient meat and drink and apparel and lodging, and to use his best endeavours to bring them up in the fear of God . . The name of the negro from whom he bought them was Immanuel Driggus or Driggs—he was a servant to Francis Potts." [44] So late as 1669 Hannah Warwick's case before the General Court was "extenuated because she was overseen by a negro overseer." [45] His authority over a white servant was evidently felt, in 1669, to be somewhat *outré*.

In 1661 occurs the first reference,[46] in the statutes of Virginia, to negroes in their quality of slaves, though they are not so denominated till the following year, when a more comprehensive act on the same subject is passed. The latter act [47] provides that

> in case any English servant shall run away in company of any negroes who are incapable of making satisfaction by addition of a time: . . the English soe running away in the company with them shall at the time of service to their owne masters expired, serve the masters of the said negroes for their absence soe long as they should have done by this Act if they had not beene slaves, every christian in company serving his proportion; and if the negroes be lost or dye in such time of their being run away, the christian servants in company with them shall by proportion among them, either pay fower thousand five hundred pounds of tobacco and caske or fower yeares service for every negroe so lost or dead.

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had generally become synonymous with "white servant," and "negro" with "negro slave;" † but "servant" is used in its broadest sense in the act of 1670, for the "runaways," for whose apprehension it provides a reward "to the taker of them up," include "every servant of what quality soever;" though "the servant not being slave (who are also comprehended in this act)" must repay "the publique" for the amount expended for his capture, by an additional term of service to "any person he shalbe assigned to" "after the expiration of his full tyme due to his master." 2 Hen. 277. That the runaway servant was, in the eyes of the colonists, primarily a white servant is shown by another section of this act which provides "that every master having a servant that hath runaway twice shalbe . . commanded to keepe his haire close cutt," a requirement which had been more particularly defined in the act of March 7, 1659, entitled "How to know a Runnaway Servant." 1 Hen. 517.

[42] The status of mulatto servants for a term of years was created by act of April 1691. 3 Hen. 87.

[43] "It is declared," in the act of Sept. 23, 1667, "that negro women, though permitted to enjoy their freedom yet ought not in all respects to be admitted to a full fruition of the exemptions and impunities [immunities] of the English, and are still lyable to payment of taxes." 2 Hen. 267.

[44] Northampton County Records, 4 Va. Mag. Hist. 407. See also McIlwaine 316 (1672), 354 (1673), 372 (1674), *infra*.

[45] McIlwaine 513. According to Beverly, "An Overseer is a Man, that having served his time, has acquired the Skill and Character of an experienced Planter, and is therefore intrusted with the Direction of the Servants and Slaves." *History of Virginia* (ed. 1722), p. 236.

[46] Act of Mar. 32 [12], 1661, 2 Hen. 26.

[47] 2 Hen. 117. See McIlwaine 382 (1674), p. 80, *infra*.

† The usage in Maryland is shown by the title of the act of September 1664, "Concerning Negroes and other Slaves." 1 Md. Arch. 533. In the act of September, 1681, "other" precedes "Slaves" in the text, though not in the title. 7 Md. Arch. 203.

The clause, " who are incapable of making satisfaction by addition of a time," is not necessarily a description of all negroes,[48] but might simply distinguish negro slaves, as they are denominated further down, from negro servants, who, like the English servants, *were* capable " of making satisfaction by addition of a time," and it might be argued that the lawmakers, in substituting the word " christian " for " English," later in the text, felt that the latter was too narrow a term. That may be true, but it is likely that the broader term was chosen for the sake of including the Irish and other white servants, regardless of negro or Indian servants who were probably so few in comparison as to be negligible. The act of 1670,[49] in which the term " christian servants " is used as a synonym of " white servants," supports this view.[50] Another act of 1670,[51] in regulating the status of " all servants not being christians " who shall thenceforth be imported, divides them into two classes: those " imported into this colony by shipping," who " shall be slaves for their lives," and " what shall come by land," who " shall serve, if boys or girles, untill thirty yeares of age, if men or women twelve yeares and no longer." This act favored the Indian, who usually came by land,[52] and fixed the status of slave on the non-Christian African, who usually was " imported into this colony by shipping," but the African coming by sea might still keep his status of servant for years if he had become a Christian before landing. Such an one must have been the " Spanish Mullatto, by name Anthonio," [53] sold by John Indicott [Endicott] of Boston in 1678 to Richard Medlicott, to serve " But for Tenn yeares [54] from the day that he shall Disimbarke In Virginia, and at the expiration of the said Tenn yeares the s'd Mullato, Anthony, to be a free man to goe wherever he pleaseth." For Endicott's intention that he should not be a slave for life would have been defeated, if he had been imported " not being Christian."

Such also was the case of another Antonio, sold two months later by " John Saffin, of Boston . . Merch't, . . in consideration of the sume of Twenty pounds Sterling by me Rec'd of Ralph Wormeley, of the County of Midd'x, in Virg'r, Esqr., . . to serve . . during the terme of Tenn yeare . . and noe longer, But then the said serv't to be free and wholly at his own dispose (Mortalaty always excepted)." [55]

[48] The Maryland act of October 1663 is more definite: " Whereas divers English Serv'ts Runn away in Company with Negroes and other Slaves, who are incapeable of making Stis faccion by Addicion of Tyme." 1 Md. Arch. 489.

[49] 2 Hen. 280.

[50] As to terminology, see note 41, *supra*.

[51] Act of Oct. 3, 1670. 2 Hen. 283.

[52] See the exceptional case of the Carib Indians, in 1627. McIlwaine 155, *infra*, pp. 76-77.

[53] The name shows Spanish baptism, as in the case of the Antonio and Anthonys of the first importations. See pp. 55-57, *supra*.

[54] " I having full power to sell him for his life time, But at the request of William Taylor, I doe sell him But for Tenn yeares." Deed, Mar. 5, 1677/8, in Middlesex (Va.) Records, 8 Va. Mag. Hist. 187.

[55] Deed, May 18, 1678. *Ibid.*

Four years later, no such restriction of length of service could have been made in the case of imported "negroes, moors, mulattoes or Indians,[56] who and whose Parents and native country were not christians at the time of the first purchase of such servants by some christian, although afterwards and before such their importation, . . they shall be converted to the christian faith." All such are "adjudged" by the act of November 10, 1682 [57] (which repeals the act of 1670),[58] "to be slaves to all intents and purposes, any law, usage or custome to the contrary notwithstanding." Nothing could be more explicit.

This act of 1682 became notable in the late eighteenth and early nineteenth centuries, inasmuch as the courts of that time deemed it the earliest act which legalized Indian slavery.[59] One of Bacon's laws, however, dated June 5, 1676, provided "that all Indians taken in warr be held and accounted slaves dureing life," [60] and, though it was repealed in February 1677 (after his fall), the restored government ordered "that all such souldiers who either already have taken [61] or hereafter shall take prisoners any of our Indian enemies, . . and at the tyme of taking . . were or shall hereafter be under a lawfull comand . . reteyne and keep all such Indian slaves . . to their owne proper use." [62] The act of April 25, 1679,[63] substantially re-enacted Bacon's law by providing, "for the better encouragement . . of the souldiers, that what Indian prisoners . . shall be taken in warre, shalbe free purchase to the souldier taking the same."

However, the acts of 1676, 1679, and 1682, instead of forging new chains of slavery for the captured Indian, simply re-welded the old which had been struck off for a brief respite by the act of 1670.[64] No

[56] Only Indians of hostile tribes, for the preamble of the act of 1670 (which the act of 1682 repeals) shows that the Indians who are the subject of its enactment are those "taken in warr by any other nation, and by that nation . . sold to the English." Ch. 12, 2 Hen. 283.

[57] 2 Hening 490.

[58] *Ibid.*, 283.

[59] The existence of Indian slavery was recognized by an act of 1670 (ch. 5, 2 Hen. 280), which prohibits Indians, though manumitted, from purchasing Christian servants. St. George Tucker observes: "From this act it is evident that *Indians* had *before* that time been made slaves." *Dissertation on Slavery, with a Proposal for the Gradual Abolition of it, in the State of Virginia,* p. 34. An act of 1672 (2 Hen. 299) provides that "if any negroe, molatto, Indian slave, or servant for life, runaway . . it shall . . be lawfull . . upon the resistance of such . . to kill or wound him;" for the act of 1670, chapter 12 (2 Hen. 283) was not an act for Indian emancipation. It was not retroactive. Indians who were slaves before its passage, remained such.

[60] 1 Hen. 346.

[61] Hening notes that it "appears from the . . resolution of the assembly [in 1677], that the practice of making *slaves* of Indian prisoners . . had existed much earlier" than 1679. *Ibid.*, 404n.

[62] *Ibid.*, 404.

[63] *Ibid.*, 440.

[64] Which favored the Indian "taken in warr by any other nation, and by that nation . . sold to the English," by providing that "servants not being christians" who "shall come by land shall serve" only for a term of years, while those imported "by shipping shalbe slaves for their lives." 2 Hen. 283. Though Indians usually came by land, they were occasionally imported by shipping. Mary and Bess, who were brought in a ship before 1682, were legally slaves, but this status of theirs under the act of 1670 was lost sight of in 1792 and their descendants were adjudged free. Jenkins *v.* Tom, p. 99, *infra.*

written law was needed in the early colonial days to define his status. Throughout the ancient world, and in some parts of the modern world, the captive was a slave,[65] and this ancient axiom of international law was the law of nature to the Indian. His captive, whether white or red, was his to kill or to torture, to adopt or to sell. He did not hesitate to reduce to slavery the early settlers who fell into his hands,[66] and they reciprocated. Such a doubt as assailed the legislators of 1670, who disputed "whither Indians taken in warr by any other nation, and by that nation . . sold to the English, are servants for life or terme of yeares," [67] never troubled the minds of the early colonists. John Smith, who had himself been a slave among the Turks, had no such compunction, not limiting the traffic to those of Indian blood. Henry Spelman relates that, a few weeks after his arrival in Virginia in 1609, "I was caried by Capt Smith our President to the Fales, to the litell Powhatan [68] wher unknowne to me he sould me to him for a towne caled Powhatan." [69]

The early settlers not only bought Indians from other Indians, but from other Englishmen. A Maryland colonist deposes in June 1648, that "Mr. Sowth [70] [of Virginia] . . desyred him to sell him an Indian. This Dep't answered him, he had none to sell. And then he desyred this Dep't to goe with him up to Wicocomoco, and gett him an Indian [girle],[71] and hee would give him content. And upon these speeches they went with the Sloope." [72]

Conversely, "Coll Francis Yardley [73] and Nathaniel Batt both of Virginia for a good and valuable consideracion to them in hand payed . . became bownd [in 1653 [74] or 1654 [75]] unto . . Thomas Cornwaleys [of Maryland] . . in the penalty of five thousand weight of Tob, with cask, for the delivery of Two Indian yowths." [76]

[65] Even in England, so late as the reign of Anne, the court, in the case of Smith *v.* Gould, "seemed to think that in trespass *quare captivum suum cepit,* the plaintiff might give in evidence that the party was his negro, and he bought him." 2 Salk. 666.

[66] Letter of Argall to Hawes, June 1613: "an Indian was . . dispatched to Powhatan, to let him know that I had taken his Daughter [Pokohuntis]: and if he would send home the Englishmen (whom he deteined in slaverie, . . that then he should have his daughter restored, otherwise not: . . towards whose ransome within few days, this king sent home seven of our men, who seemed to be very joyfull for that they were freed from the slavery and fear of cruell murther, which they daily before lived in." Brown, *Genesis,* p. 643.

[67] Preamble to chapter 12 of the act of 1670, entitled "What tyme Indians to serve." 2 Hen. 283.

[68] "Litell Powhatan" was what the Maryland colonists called a "friend pagan." There was no traffic with "enemy pagans."

[69] Spelman's *Relation.* Smith (Arber ed.), p. cii.

[70] Evidently "Leif't Will'm Sowth of Kecoughtan in Virginia," who, the next month [July 1648], gave a bond, with Richard Torney of Virginia," that they "shall not within these five next ensuing yeares . . attempt to take, or carry away any Indian or Indians, out of the precincts of this province, without leave of the Gov'r thereof." 4 Md. Arch. 399.

[71] Lancelett's deposition. *Ibid.,* 392.

[72] Duke's deposition. *Ibid.*

[73] 41 Md. Arch. 82.

[74] *Ibid.,* 254.

[75] *Ibid.,* 186.

[76] "Two Indian Slaves." *Ibid.,* 186, 254.

However, the colonists did not depend on traffic or kidnapping for their supply of Indian slaves, but took the "enemy pagan" by their own prowess in war, and enslaved him long before the passage of the Virginia acts of 1676 and 1679. When forces were being raised in Maryland, in 1652, "for a march against . . the Easterne Shore Indians, . . Such Indian prisoners as Shall happen to be taken" are declared the spoil of those who financed the expedition.[77] Indians were also reduced to slavery in punishment for crime.[78]

Thus we have shown that the first slaves in the colony of Virginia were Indians, not negroes, and that the laws of the colony sanctioned Indian slavery except (as regards prospective importations by land) for a few years after the passage of the act of 1670. The practice of the colonists, in accordance with their laws, is illustrated by cases in the courts of Virginia and Maryland [79] from 1627 to 1831. In 1627 some "Indians of the Carib Ilands . . were . . brought into the country [Virginia] by Capt. Sampson," but the experiment was too disastrous to warrant repetition, at least on a wholesale scale.[80]

Besides the traffic in Indian slaves between Virginia and Maryland colonists, mentioned above,[81] the Maryland court records contain other instances of Indian slavery. "Paul Simpson Marriner," in 1648, complains that Captain Edward Hill had not delivered to him two Indian boys whom he had covenanted to deliver, "whereby the Compl't is damnifyed to the valew of 2000 *l.* Tob. and cask" (though he "sould the said Bill to George Manners" for only "500 *l.* of Tob in Caske"). In Maryland, in 1656, there belonged to the household of one Overzee a negro, a white woman servant, and an Indian slave. In 1661 one citizen of Maryland "demands an Indian . . promist him in Sattisfaccion of another Indian belonging to the plt. sould by order of the deft. unto the Queene of Portoback." [82] Sometime in the 1670's, the Indians Mary and Bess (the ancestresses [83] of Tom and others who brought action in 1792 to recover

[77] "Every Seventh man throughout the province is to be pressed for this Service . . that every the Sixe persons through out the Province are to furnish out the Seventh man Soe pressed . . [283] with . . Victualls . . Arms and Amunition . . likewise ordered that for all Such Indian prisoners as Shall happen to be taken, and brought in when this March is ended they Shall be divided according to their Valuation . . [284] throughout the Province amongst every the Six that are at the Charge of Setting forth the Seventh . . unless the Provinciall Court shall think fitt to dispose of any of them otherwise." 3 Md. Arch. 282.

[78] See case of Naughnongis, 41 Md. Arch. 186 (1658).

[79] 4 Md. Arch. 392, 399, 444, 512; 41 Md. Arch. 82, 186, 230, 254.

[80] See p. 76, *infra*.

[81] P. 62, *supra*.

[82] 4 Md. Arch. 444, 512; 41 Md. Arch. 190, 471.

[83] In the later history of Indian slavery in Virginia, it is the female Indian slave who is prominent—as the ancestress of slaves petitioning for freedom, for if she had been enslaved unlawfully, her descendants in the female line were free, in accordance with the axiom of the civil law, *partus sequitur ventrem*, which was accepted generally, except in Maryland for a few years (1664-1681).

their freedom)[84] must have been brought as slaves to Virginia, for a witness testified that "he heard a certain other person now dead, say in the year 1701, that when he was a lad about 12 years old, those women were brought to this colony in a ship." By the acts of 1676, 1679, and 1682, slavery closed in again, first on Indians captured in war by the soldiers, and finally on all Indians "sold by our neighbouring Indians, or any other trafiqueing with us as for slaves."[85]

That Indians were brought in and held in slavery for many years subsequent to 1682,[86] is indicated by the evidence of witnesses and the assertions of counsel in cases brought from ninety to one hundred and fifty years later, and by acts passed in the eighteenth century. Robin and others who brought actions in 1772[87] "to try their titles to freedom . . were descendants of Indian women brought into this country by traders, at several times, between the years 1682 and 1748, and by them sold as slaves under an act of Assembly made in 1682." Mason, counsel for the plaintiffs, asserts that "hundreds of the descendants of Indians" brought in between 1682 and 1684 "have obtained their freedom, on actions brought in this court." In the case of Henry,[88] in June 1772,[89] "the court . . gave judgment against many descendants of indians introduced and held as slaves between 1682 and 1705."[90] That many Indians were reduced to slavery between 1691 and 1705 is shown by Hening's assertion that "thousands of their descendants" were "deprived of their liberty[91] when they sued for it later on.

In the revisal of the laws in 1705, "An act[92] concerning Servants and Slaves" re-enacts chapter 1 of the act of 1682 in substance, but omits the word "Indian," and the special clauses respecting Indian slaves.[93]

[84] Jenkins *v.* Tom, pp. 99-100, *infra.* They were adjudged to have been free, for the court seems to have overlooked the fact that their importation between 1670 and 1682 rendered them subject to the provision of the act of 1670 that "all servants not being christians imported . . by shipping shalbe slaves." 2 Hen. 283.

[85] 1 Hen. 346, 440, 490.

[86] The council, however, in 1683, in its "report to the governor [Culpeper] of the state of the country for three years," propose that no Indian should be a slave. The ambiguity caused by the omission, from the acts of 1705, chapter 49, and of 1753, chapter 7 (6 Hen. 356), of the Indian clauses of the act of 1682, was cured only in 1778, by "An act for preventing the farther importation of Slaves . . by sea or land." 9 Hen. 471.

[87] Robin *v.* Hardaway, Jefferson 109; p. 91, *infra.*

[88] Cited in Gregory *v.* Baugh, 2 Leigh 665 (685).

[89] Judge Green, in 1831, refers to "the multitude of cases upon that subject [Indian slavery] decided in the general court in June 1772, in which parol evidence was given reaching back to the close of the century before the last." *Ibid.*, 683.

[90] "The sources for the supply of indian slaves, natives of the continent of America, between 1682 and 1705, must have been very scanty, adverting to the state of things with respect to our neighbouring indians during that period; and there never was any source of a supply from abroad, except such as might be kidnapped in the West Indies, for there slaves were more valuable than here." Judge Green, in Gregory *v.* Baugh, p. 165, *infra.*

[91] "Unjustly deprived;" 1 Hen. vii. Judge St. George Tucker, in Hudgins *v.* Wrights, 1 Hen. and M. 134, agrees with Hening; but all depends on whether the act of 1691 has any bearing on slavery. I agree with Colonel Bland and the court, in Robin *v.* Hardaway (Jefferson 109), that it has not. ED.

[92] Ch. 49. 3 Hen. 447.

[93] Colonel Bland, counsel for Hardaway, declares them "tautologous." Jefferson 109 (121).

Its last section repeals "all and every other act and acts, . . heretofore made, . . as relates to servants and slaves, . . as if the same had never been made." [94] Another act of the same session provides "That there be a free and open trade for all persons, at all times, and at all places, with all Indians whatsoever" [95]—a re-enactment of a law passed in 1691.[96]

In 1772 the court expressly held, in Robin *v.* Hardaway,[97] that the act of 1682,[98] authorizing the enslavement of Indians "sold by our neighbouring Indians, or any other trafiqueing with us as for slaves," was repealed by the act of 1705,[99] but that it was not repealed by the free trade enactment of 1691, being convinced by Colonel Bland's argument that the acts "relative to slavery, and those relative to trade" are "totally independent of, and unconnected with one another," that the act of 1691 "has no relation to those made on the subject of slavery,[100] it was not made with any eye to them, and should not, therefore, have any effect on them. If the legislature had meant by this to repeal the act of 1682, they would have done it in express terms, and not merely by a side wind, the effect of which would at least occasion dispute."

The "side wind," as predicted, occasioned dispute twenty-one years later, between two eminent members of the Virginia bar, John Marshall and John Wickham. They were not acquainted with the act of 1691 or with the decision of the court concerning it, in Robin *v.* Hardaway, or with Mason's and Bland's arguments, for Jefferson's *Reports of Cases determined in the General Court of Virginia* was not published till 1829; [101] but they perceived that the act of 1705 contained not only the chapter "concerning Servants and Slaves," but, in a subsequent chapter, an enactment for "a free . . trade . . with all Indians whatsoever." The arguments of Marshall and Wickham appear in quotations on later pages.[102] The court evidently thought that trading or treating with Indian nations, though it might be incompatible with enslaving individual members of those nations thereafter, was not incompatible with retaining

[94] 3 Hen. 462.
[95] Ch. 52, sect. 12. 3 Hen. 468.
[96] 3 Hen. 69.
[97] Jefferson 109 (122).
[98] 2 Hen. 490.
[99] By "act of 1705" they meant the chapter entitled "An act concerning Servants and Slaves" (ch. 49, 3 Hen. 447), overlooking the fact that the free trade law of 1691 reappears as section 12 of a succeeding chapter (52, *ibid.*, p. 468)—"the treaty law," as Wickham calls it (Coleman *v.* Dick and Pat, 1 Wash. Va. 237), dealing with Indians as nations, tributary and foreign.
[100] Jefferson notes that the act of 1680 (2 Hen. 480—among the acts relating to trade, cited by Colonel Bland) "says, there shall be a free trade with our 'friendly' Indians; that of 1691, with 'all' Indians. . . The acts of 1670 and 1679 . . related to hostile Indians alone. Therefore, in 1680, the legislature, that their act opening a trade might not repeal these laws, expressly give the license of coming to trade to 'friendly' Indians only. But in 1691, when a general peace was now established, they extend their license to 'all' Indians, because they meant that all should be now on a footing." The act of 1691 "should seem to favor the plaintiffs." Jefferson 121 n.
[101] In 1831, Judge Carr cites with approval the decision in Robin *v.* Hardaway, "that the act of 1691 did not repeal the indian slave laws." Gregory *v.* Baugh, p. 164, *infra*.
[102] Coleman *v.* Dick and Pat (1793), pp. 101-102, *infra*.

in slavery such as were already in that condition—that the free trade act was no act of emancipation; but held, that since its passage "no American Indian can be reduced into a state of slavery."

In 1806 [103] the descendants of "an old Indian called Butterwood Nan," who were about to be sent out of the state by their master, Hudgins, obtained "a writ of *ne exeat* . . on the ground that they were entitled to freedom." Unfortunately their ancestress had come in before 1705, for she "was 60 years, or upwards, in 1755." Chancellor Wythe cut the Gordian knot by decreeing that "the appellees . . were entitled to their freedom . . on the ground that freedom is the birth-right of every human being, which sentiment is strongly inculcated by the first article of our 'political catechism,' the bill of rights." Hudgins appealed, and the higher court affirmed Wythe's decree, but had to base its decision on another ground, "not approving of the Chancellor's principles and reasoning . . except so far as the same relates to white persons and native American Indians, but entirely disapproving thereof, so far as the same relates to native Africans and their descendants, who have been and are now held as slaves by the citizens of this state." The ground which secured freedom for the Wrights was that the section of the act of 1705 which granted "a free . . trade . . with all Indians whatsoever" [104] was discovered by Judge St. George Tucker to be no new law, but a mere repetition and re-enactment of the act of 1691, chapter 9. Therefore he carried the period after which Indians could not be enslaved further back than 1705, namely, to 1691. Thus that part of the decision of the court, in Robin *v.* Hardaway, which denied that the act of 1682 was repealed by the free trade act of 1691, was overruled by implication in 1793, and expressly in 1806. The decision in Hudgins *v.* Wrights was followed in Pallas *v.* Hill [105] two years later. "The Court took time . . in order to obtain from the library at Monticello, the copy of a similar act, which was understood to be in the collection of the President of the United States." Another copy was obtained from Northumberland County.[106] Therefore Judge Tucker declared that the "only question in these causes, is, whether the act of Assembly cited and relied on by me in Hudgins *v.* Wrights, as having passed in the year 1691, is to be regarded as the law of the land, or not." All the judges agreed that it was.

The case of Gregory *v.* Baugh, 1827 and 1831,[107] involves the status of "Indian Sybil." The date of her arrival is not precisely given. She died soon after October 1772, when the General Court made an order allowing her to sue her master *in forma pauperis* and assigned "Mr.

[103] Hudgins *v.* Wrights, 1 Hen. and M. 134; p. 112, *infra.*

[104] 3 Hen. 468.

[105] "Pallas, Bridget, James, Tabb, Hannah, Sam and others" were descended from "Indian Bess" who "was brought into Virginia in or about 1703." P. 116, *infra.*

[106] The last two manuscript copies were in the possession of W. W. Hening in 1809. 1 Hen. vii.

[107] Pp. 147, 163, *infra.*

Jefferson . . her counsel to prosecute the said suit: . . this order must have been founded on Mr. Jefferson's professional certificate, that he was of opinion she was justly entitled to her freedom, and stating the grounds of that opinion." Sybil's suit was abated on her death, and her grandson, James Baugh, son of her daughter Biddy, brought suit for his freedom fifty-five years later. By that time it was questioned whether such hearsay evidence as that of an aged man, that he had heard his mother say "that Sybill's mother was an indian,[108] and that Sybill herself was one, and was entitled to her freedom" ought to be admitted. Judge Carr, while "exceedingly reluctant to unsettle what is at rest," declares that "all who have examined the earlier cases in our books, must admit, that our judges (from the purest motives, I am sure) did, *in favorem libertatis,* sometimes relax, rather too much, the rules of law, and particularly the law of evidence. Of this, the court in later times has been so sensible, that it has felt the propriety of gradually returning to the legal standard,[109] and of treating these precisely like any other questions of property." The court was divided on this question, and also on the question whether, if a person claiming freedom on the ground of Indian descent in the maternal line, prove his descent from a native American Indian ancestress, the *onus probandi* lies on the defendant to prove that such ancestress was brought into the country at a time and under such circumstances that such Indian might lawfully be enslaved, or on the plaintiff, to prove that such his ancestress was brought in at a time and under such circumstances that she could not lawfully be enslaved. The facts disclosed in these cases show that Indians continued to be brought in as slaves during the early part of the eighteenth century, and an act of assembly, 1723,[110] indicates that the legislature of that time did not consider that Indian slavery was extinguished by the act of 1705. It was enacted "That no negro, mullato, or indian slaves, shall be set free . . except for some meritorious services." As the child of an Indian was deemed a mulatto,[111] there would have been no Indian slaves on which the act could operate, except those brought in before 1705, if that act forbade enslavement of Indians thereafter. The actual practice, as shown by the cases which came before the courts, proves that the act of 1705 was not regarded as the palladium of Indian liberty till some sixty-five or seventy-five years after its passage.

It must, of course, be kept in mind that the Indian ancestresses on whom the suits for freedom were based, in all these cases, had been, theoretically and perhaps actually, members of hostile tribes.[112] The friendly Indian

[108] If Sybil's mother was the Indian the date of whose importation was vital, she might easily have been brought in before 1691; and if also after 1682, she and her descendants were legally slaves.

[109] To receive hearsay testimony as to pedigree, but not as to race or status.

[110] 4 Hen. 132.

[111] 3 Hen. 252.

[112] In the early colonial days, hostile Indians were all who were not "friendly." By 1682, the "friendly Indians" are called "neighbouring Indians, confederates or tributaries." The distance of the hostile Indian from the settlement is an important element

was on an altogether different plane. The colonists made his temporal and spiritual welfare the subject of their paternalistic legislation and beneficence. The "friend pagans" [113] as they were called in Maryland (in distinction from "enemy pagans") might come to the colonists as hostages in exchange for English hostages,[114] might be employed as servants, the male Indians being particularly useful in eking out the food supply by hunting and fishing,[115] or might be brought in as children by their parents to be instructed in the Christian religion.[116] In 1618, an unknown person in England gave "£550 in gold for bringing up children of the Infidels." [117] Out of 1216 persons, white servants sent to Virginia in 1619, there were "fifty . . whose labours were to bring up thirty of the infidels children," [118] "in true religion and civility." [119] Smith tells us that also in 1619, "Master Nicholas Farrar deceased, hath by his Will given three hundred pounds to the College, to be paid when there shall be ten young Salvages placed in it, in the meane time foure and twenty pound yearly to bee distributed unto three discreet and godly young men in the Colony, to

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of his hostility. His "foreign" quality is emphasized, and he is definitely located outside the North American continent, by the court in Coleman *v.* Pat (1 Wash. Va. 233), in 1793, which held that though no American Indian could be reduced to slavery since the act of 1705, "Foreign Indians coming within the description of that act, might be made slaves" [down to 1778]. But the term is used in the act of 1705, chapter 52, sect. 11, to designate non-tributary American Indians who are approachable by land, for the tributary Indians are required to "march, with the English, in pursuit of foreign Indians" (3 Hen. 468) and the act of 1755 offers a reward "of ten pounds . . for every male Indian enemy, above the age of twelve years . . destroyed within the limits of this colony." 6 Hen. 564. See also Butt *v.* Rachel, 4 Munford 209 (210, 211), and Gregory *v.* Baugh, 4 Randolph 611 (633), pp. 125, 147, *infra.*

[113] "Infidel" was the general term for Indian in Virginia.

[114] Argall to Hawes, June 1613: "all the Indians that were my very great friends, . . having concluded a peace . . and likewise given and taken Hostages." Brown, *Genesis,* p. 641.

[115] "The Salvages hath beene . . imployed in hunting and fowling with our fowling peeces; and our men rooting in the ground about Tobacco like Swine." Smith, *History of Virginia* (Arber ed.), p. 563. "Orders permitting persons to keep indians to hunt," October 1657. McIlwaine 505. "David Mansell allowed to keep 2 indians to work and hunt for him." September 1668. *Ibid.,* 511.

[116] In October 1642, permission was given "to keep an indian boy, instructing him in Christian religion." *Ibid.,* 500.

[117] *Cal. St. Pap. Col.,* I, 23.

[118] Smith (Arber ed.), p. 453. A disproportionate number of nurses or tutors, it seems, especially at a time when all hands were needed to provide the necessaries of life. It shows that the domestication of friendly Indians even was no easy task. In 1626 the General Court allows William Claybourne to enjoy for "three years next ensuinge . . all the benefitt use and profitt" of his invention "for safe keepinge of any Indyans, which he shall undertake to keep for guides allways ready to be ymployed, and . . hopeth to make . . serviceable for many other services for the good of the whole Colony . . and further whereas there is one Indyan lately come in unto us, We doe give and sett over unto the saide Claybourne the saide Indyan, for his better experience and tryall of his inventione." McIlwaine 111.

In the case of Indian slaves, the "wages of superintendence" reduced their economic worth far below that of negro slaves. The act of 1672 "for the apprehension . . of runawayes" provides that if a "negroe, molatto, Indian slave, or servant for life doe dye of any wound in such their resistance received the master . . shall receive satisfaction from the publique . . negroes . . shalbe valued at foure thousand five hundred pounds of tobacco and caske a peece, and Indians at three thousand pounds of tobacco and caske a peice." 2 Hen. 299.

[119] Abstract from Eng. Pub. Rec. Office, by W. N. Sainsbury, 6 Va. Mag. Hist. 231.

bring up three wilde young infidels in some good course of life." [120] As the college failed to materialize, " Mr. George Menifye Esqr." was allowed an annual income of one-third of this sum on presenting to the General Court, in 1640, " an indian boy . . christened and for the time of ten years brought up amongst the english " by himself and " Captain William Perry deceased . . the indian was examined and found to have been well instructed in the principles of religion, taught to read, instructed to writing: . . the governor and council approving and commending the care that hath been used towards this youth, . . recommend . . his [Menifye's] suit for the allowance of 8 pounds per annum . . towards the maintenance of the said youth." [121]

The act of March 1655 [122] provides that " all Indian children by leave of their parents shall be taken as servants for such terme as shall be agreed on by the said parent and master," and the act of March 10, 1656, provides that " If the Indians shall bring in any children as gages . . then the parents . . shall choose the persons to whom the care of such children shall be intrusted and the countrey . . do engage that wee will not use them as slaves, but do their best to bring them up in Christianity, civility and the knowledge of necessary trades; And on the report of the commissioners of each respective county that those under whose tuition they are, do really intend the bettering of the children in these particulars then a salary shall be allowed to such man as shall deserve and require it." [123]

Two acts were passed in 1658 for the protection of friendly Indians. By one " It is enacted that in case any Indian do dispose of his childe to any person . . either for education or instruction in Christian religion, or for learning the English tongue or for what cause soever, those persons to whom such childe shall be disposed shall not assigne or transferre such Indian child to any other whatsoever, upon any pretence whatsoever of right to him or any time of service due from him, And . . such Indian childe shall be free and at his owne disposall at the age of twenty five yeares." [124] By another act of the same session,[125] after a preamble, " Whereas divers informations have been given . . of sundry persons who . . have corrupted some of the Indians to steale and conveigh away some of the children of other Indians, and of others who pretending to have bought . . Indians of their parents, or some of their great men, have violently and fraudently forced them awaie . . rendring religion contemptible, and the name of Englishmen odious," it is enacted " that noe person . . shall dare . . to buy any Indian . . from . . the English, and

[120] Smith (Arber ed.), p. 543.
[121] McIlwaine 477.
[122] 1 Hen. 410.
[123] *Ibid.*, 396.
[124] Act of Mar. 13, 1658, ch. 48, 1 Hen. 455.
[125] Act of Mar. 13, 1658, ch. 111, 1 Hen. 481. An act of Maryland of October 1654 provides that " Whatsoever person . . shall steale any friend Indian or Indians whatsoever or be accessary in Stealing them and shall sell him or them or transport them out of the County shall be punished with death." 1 Md. Arch. 346.

in case of complaint made, that any person hath transgressed this act the truth thereof being proved such person shall return such Indian . . within ten days to the place from whence he was taken."

In March 1662 [126] it is enacted "that what Englishman, trader, or other shall bring in any Indians as servants and shall assigne them over to any other, shall not sell them as slaves, nor for any longer time than English of the like ages should serve by act of assembly." This act of 1662 definitely fixes the status of Indians brought in as servants.[127] They are to be no worse off than the indentured English servants "of the like ages." The class of Indian servants received an accession to their ranks by the act of 1670 [128] which provided that Indian captives, "sold to the English by that nation that taketh them," should also be servants for a term, though a much longer term than the Indian servants from friendly tribes. Though the acts of 1676, 1679, and 1682 consigned such captives thereafter to slavery, the supply of servants of Indian blood was continued in a steady stream, by acts of 1691 and of 1723. By the former the bastard child of a white mother and an Indian father is to be "bound out as a servant . . untill he . . shall attaine the age of thirty yeares." [129] By the latter the bastard child of a white woman and an Indian (or a negro or mulatto) had not only to pay for the sins of its parents by serving thirty years, but the sins were visited on the next generation: "Where any female mullatto,[130] or indian, by law obliged to serve till the age of thirty or thirty-one years, shall during the time of her servitude, have any child born of her body, every such child shall serve the master . . of such mullatto or indian, until it shall attain the same age the mother of such child was obliged by law to serve unto." [131]

The act of 1705 [132] provided that "if any woman servant shall have a bastard child by a negro, or mulatto," [133] "she shall for every such offence, serve her . . master . . one whole year after her time . . shall be ex-

[126] Act of Mar. 23, 1662, 2 Hen. 143. In the same month the assembly orders that "the Indian boy deteined by . . Johnson either to be continued according to his desire among the English or to return to the Indians," and that "Matappin a Powhatan Indian being sold for life time to one Elizabeth Short by the king of Wainoake Indians who had no power to sell him being of another nation, it is ordered that the said Indian be free, he speaking perfectly the English tongue and desiring baptism." 2 Hen. 155.

[127] Jefferson notes "that the Indians brought in by our traders, and sold as servants under the act of 1662, are still out of that of 1682, whose basis is purely those of 1670 and 1679; . . The act of 1662, had never been touched." Robin *v.* Hardaway, Jefferson 109 (115 n.). The preamble of the act of 1670 shows that the chief object of the act of 1670 was to improve the lot of Indians ("taken in war by any other nation, and by that nation . . sold to the English") who would otherwise have been slaves. It has nothing to do with Indians who were not in that category.

[128] Act of Oct. 3, 1670, ch. 12, 2 Hen. 283.

[129] 3 Hen. 87. The act also applies to the bastard child of a white woman and a negro or mulatto.

[130] "The child of an Indian and the child, grand child, or great grand child, of a negro shall be deemed . . to be a mulatto." 3 Hen. 251.

[131] 4 Hen. 133.

[132] Ch. 49, sect. 18, 3 Hen. 453.

[133] 3 Hen. 251.

pired, or pay her said master . . one thousand pounds of tobacco." The observations made on this subject by Judge Green, in 1831, in Gregory *v.* Baugh, will be found in the record of that case on a later page.[134]

But not only was servitude for thirty years imposed by law (as a punishment for "abominable mixture" of blood), but it was voluntarily contracted for. In 1722 a complaint was made to the council, in Maryland, against one Andrews "for having sold or otherwise disposed of an Indian Boy a Son of one of our Friend Indians." [135] Andrews

> confesses that an Indian Boy named James did in Consideration of five Pounds in hand paid a Horse Bridle and Saddle and two Suits of Cloaths, indent to live with him the said Andrews as a Servant for the term of thirty years and that he sold the said James to a Gentleman in Philadelphia . . for the sum of fifteen pounds, the said Andrews further says that it is a Customary thing in Ackamack . . in Virginia for the Indians to work among the Inhabitants and to indent with them for a Time or Term of years, and that he had indented with the said James in Virginia not in Maryland.

The friendly or tributary Indian was always exempt from slavery within the confines of Virginia, but the act of May 9, 1722,[136] provided, in one contingency, for his enslavement elsewhere: "if any Indian . . tributary to this government, shall . . presume to pass to the northward of Potowmack river, or to the westward of the great ridge of mountains, . . every Indian . . so offending, and . . convicted, shall suffer death, or be transported to the West-Indies, there to be sold as slaves."

II.

To the student of the history and law of slavery those Virginia cases are doubtless of greatest interest which deal with the evolution of negro servitude and slavery, and with the rise and fall of Indian slavery; and to the student of philanthropy those same cases make a special appeal because they contain the opinions of judges [137] who, in a long line of decisions, often stretched the laws of evidence and the interpretation of statutes to relax the bonds of slavery. But there are other benefactors of the African race, to whose philanthropy the Virginia reports bear witness—the multitude of her citizens, high and low, from Chancellor Wythe [138] and John Randolph of Roanoke [139] to those who were too illiterate to sign their names,[140] who, by the provision of their wills, sought to

[134] P. 165, *infra.*
[135] 25 Md. Arch. 390.
[136] 4 Hen. 104.
[137] And the arguments of counsel on which those opinions were generally based, especially in the eighteenth century. "As the General Court delivered no written opinions, and generally gave no reasons at all for their conclusions, there was nothing of a case to be reported except the statement of it, and the arguments of counsel." R. T. Barton, in his introduction to *Virginia Colonial Decisions,* I. 236.
[138] Wythe xxxvii.
[139] Coalter *v.* Bryan, 1 Grattan 18; p. 204, *infra.*
[140] Walthall *v.* Robertson, 2 Leigh 189; p. 161, *infra.*

ensure the comfort or freedom of their servitors. Such wills, which form a large part of the following excerpts, need little comment.

An act of 1691 [141] had provided "That no negro . . be . . set free by any person . . unless such person . . pay for the transportation of such negro . . out of the countrey within six moneths after." In 1710 the assembly freed the slave Will for "his fidelity" "in discovering a conspiracy of diverse Negros . . for levying war in this colony," [142] and in 1723 an act was passed,[143] providing "That no negro, mullato, or indian slaves, shall be set free, upon any pretence whatsoever, except for some meritorious services, to be adjudged and allowed by the governor and council, for the time being, and a licence thereupon first had and obtained." [144] Emancipation by the assembly was reverted to in 1777, the first year of the Commonwealth, to free the slave of John Barr, as "the consent of the governour and council could not be procured, as required by the laws then and still in force, occasioned by lord Dunmore (the then governour) withdrawing from his government." [145] Other slaves were emancipated by the assembly in 1779 [146] and in 1780; [147] but a more liberal policy in regard to emancipation was called for, and in May 1782 "An act to authorize the manumission of slaves" was passed.[148] "The quakers had long been petitioning the legislature to pass" [149] such an act, and for

[141] Ch. 16, 3 Hen. 87.

[142] Act of October 1710, ch. 16, 3 Hen. 537.

[143] Ch. 4, sect. 17, 4 Hen. 132.

[144] In 1741, "Judith Butts Wid'w . . in her last Will . . enjoined her Execut'rs to apply . . for Leave to sett free a female Slave named Lilly, aged Nineteen Years, . . on account of several very acceptable Services done by her for Said Judith; . . Ordered, That Leave be granted to manumitt and Sett free the Said female Slave." Extract from Virginia Council Journal, 15 Va. Mag. Hist. 130. Other permits were given in 1761 (16 Va. Mag. Hist. 140), and in 1766 (*id.*, 153).

[145] 9 Hen. 320.

[146] Kitt, for meritorious service "in making the first information . . against several persons concerned in counterfeiting money," 10 Hen. 115. Three other slaves were emancipated by the legislature a few months later, without mention of any meritorious services rendered. *Id.* 211.

[147] *Id.* 372.

[148] Ch. 21, 11 Hen. 39. "That act was passed at the close of the revolutionary war, when our councils were guided by some of our best and wisest men, men who looked upon the existence of slavery among us not as a blessing but as a national misfortune, and whose benevolence taught them to consider the slave not as property only, but as man." [H. St. G. Tucker, president of the court.] Manns *v.* Givens, 7 Leigh 689 (709), 1836.

The legislature continued to emancipate, even after emancipation by the owners of slaves was authorized. In 1783 an act was passed which provided "That each . . slave, who by the . . direction of his owner, hath enlisted in any regiment or corps raised within this state, . . and hath been received as a substitute for any free person . . and hath served faithfully . . or hath been discharged . . shall . . be . . compleatly emancipated," "whereas it appears just and reasonable that all persons enlisted" in this manner "who . . have thereby of course contributed towards the establishment of American liberty and independence, should enjoy the blessings of freedom as a reward for their toils and labours." 11 Hen. 308. In 1786, "as full freedom as if he had been born free" was conferred on the slave James, who in 1781 "did with the permission of his master . . enter into the service of the Marquis la Fayette, and at the peril of his life found means to frequent the British camp, and thereby faithfully executed important commissions entrusted to him by the marquis." 12 Hen. 380. In 1787 the general assembly carried out "the benevolent intentions" of Charles Moorman, who made his will in 1778 (12 Hen. 613), and of Joseph Mayo, who made his will in 1780 (*id.*, 611).

[149] Charles *v.* Hunnicutt, 5 Call 311 (1804); p. 109, *infra*.

more than a decade before its enactment alternative provisions are made in the wills of testators desiring to free their slaves, looking to the possibility of such legislative action.[150]

In 1805 an act was passed which prohibited the emancipation of negroes unless they left the state,[151] for the presence of free negroes was plainly a menace to the peace of the community. Many wills thereafter, accordingly, offer negroes the choice of remaining slaves or of leaving the state;[152] and later when the project of colonizing free negroes in Liberia met with favor, the choice is offered between Liberia and slavery.[153]

Herbert Elder (who died in 1826) willed that his negroes be given "to Gabriel Dissosway, in trust to be sent to Africa to the colony at Liberia, provided the expense of sending them will be defrayed by the colonization society . . Those of them who prefer staying, shall be given . . to my brother John."[154] One of the slaves refused to accept his freedom on the terms proposed, but all the rest declared that they preferred to accept their freedom and go to Liberia, and the American Colonization Society accepted the slaves on the terms proposed in the will.

It was not till 1858 that the principle of the slave's incapacity to influence his own destiny by making a choice between freedom and slavery was enforced for the first time in Virginia. The will of John L. Poindexter,[155] who died in 1835, gave his negroes, after the death of his wife, "their choice of being emancipated or sold publicly." The circuit court held, in 1855, "that the negroes . . were absolutely free at the death of the life tenant, and that it was not proper or necessary to put said slaves to their election." But the Court of Appeals, by a majority of three to two, reversed the judgment: "the provisions of the will respecting the manumission of the slaves, are not such as are authorized by law and are void." Judge Moncure, in his dissenting opinion, exclaims: "A master may emancipate his slaves against their consent. Why may he not make such consent the condition of emancipation? . . It is as competent for a slave emancipated on condition that he elects to be free, to make such election, as it is for a slave absolutely emancipated to propound the deed or will for probate, appeal from the sentence, or sue for his freedom."

[150] See the wills (1771, 1776) in Pleasants *v.* Pleasants, p. 105, *infra,* that of Joseph Mayo (1780) in Mayo *v.* Carrington, p. 98, and that of Gloister Hunnicutt (1781) in Charles *v.* Hunnicutt, p. 109. See also Judge St. George Tucker's pamphlet, *Dissertation on Slavery, with a Proposal for its Gradual Abolition in Virginia* (Philadelphia, 1796), reprinted as Note H. in the appendix to vol. II. of his ed. of Blackstone.

[151] 1 Rev. Code, ch. 111, sects. 53, 61, 62. Even before the passage of this act, John Payton, by his will in 1801, emancipated his slaves, at various ages, and "devised 1000 acres of land in the western country" for their use. Of course he may have intended this land to produce income for them, not that they should migrate to it. Nicholas *v.* Burruss, p. 172, *infra.*

[152] Savage's will (1836) in Forward *v.* Thamer, p. 225, *infra,* Vass's will (1831) in Young *v.* Vass, p. 233.

[153] See Maund's will (1829) in Maund *v.* McPhail, p. 193, *infra,* Dawson's will (1833) in Dawson *v.* Dawson, p. 196, and Binford's will, in Binford *v.* Robin, p. 206.

[154] Elder *v.* Elder, p. 171, *infra.*

[155] Bailey *v.* Poindexter, p. 243, *infra.*

At the May term of the same year, Judge Moncure was again in the minority. Mrs. Hannah H. Coalter [156] had willed (1857) that her negroes "be manumitted on the 1st day of January, 1858 . . my executors to ascertain what fund will be sufficient to provide the usual outfit for, and to remove, said negroes to Liberia, . . and to use the said fund in removing and settling my said servants in Liberia, or any other free state or country in which they may elect to live, the adults selecting for themselves, and the parents for the infant children; and . . if any . . prefer to remain in Virginia, . . it is my desire that they shall be permitted . . to select among my relations their respective owners." Her estate "was ample to carry out the provisions of her will in regard to the removal and settlement of her [ninety-three] negroes in Liberia or a free state." The lower court held that the negroes "were emancipated by the will, unless they . . chose to remain slaves; And that this condition of freedom was independent altogether of the removal of said negroes from Virginia, said removal being a condition subsequent to said emancipation." The decree was reversed, in accordance with the decision in Bailey *v.* Poindexter. But Judge Moncure contended that "the negroes in this case are entitled to their freedom, even conceding that" the former case "was rightly decided. . . I still think it was not rightly decided; and I would now be willing to overrule it, if it were like this case."

These cases were overruled in 1896, by Jones *v.* Jones.[157] The will of Philip H. Jones, who died in 1856, provided that his negro man Bob "shall have the privilege of accepting his freedom at any period of his life, but to remain with my brother and to labor as a slave as long as he stays in the State." The Court of Appeals held "that the testator . . did emancipate his slave Bob, and that the subsequent provisions of his will, by which he sought to create for him a condition intermediate between freedom and slavery, if he refused to accept his freedom, were void, and in no wise affected the bequest of freedom."

A knotty question of vast importance in the law of slavery was settled in 1824 in the leading case of Maria *v.* Surbaugh,[158] which was henceforth followed in all the slaveholding states.[159] In 1790 William Holliday "bequeaths his slave Mary to his son William, with a declaration, that she shall be free as soon as she arrives at the age of thirty-one years." She passed by sale to various persons, finally coming with her infant child Maria under the ownership of Surbaugh. She had three other children before she reached the age of thirty-one, and after she reached that age, Mary brought an action for freedom, *in forma pauperis,* for herself and in behalf of her four children. The lower court gave judgment for Mary,

[156] Williamson *v.* Coalter, p. 246, *infra.*
[157] 92 Va. 590.
[158] P. 138, *infra.*
[159] Followed in Delaware in 1833, in Jones *v.* Wooten (1 Harr. Del. 77), but overruled in 1849, in Elliott *v.* Twilley (5 Harr. 192).

but held that the children were not entitled to their freedom. The Court of Appeals affirmed the judgment.[160]

One of the Virginia wills offers a maternity prize. John Guthrie provides in 1761: "if Jeany brings ten live children that she shall be at her one [*sic*] liberty." [161] Another Jenny received such a prize by the deed of B. Talbert in 1803, thus fulfilling his promise to her, when he bought her, "that when she should have a child for every one of his, (he then having five) he would set her free." [162]

III.

The Virginian courts before which the following cases were tried were the General Court, the Court of Chancery, and the Court of Appeals. During the colonial period the General Court consisted of the governor and council, meeting quarterly in judicial session. It was the highest distinctively judicial body in the province, but for some years in the earliest period the general assembly had jurisdiction concurrent with that of this quarterly court and criminal cases involving life or member were tried in whichever convened first. In 1641 the civil jurisdiction of the assembly was limited mainly to appellate cases; after 1682 appeals to the assembly were discontinued by royal order.

By the constitution of 1776 the two houses of the assembly were empowered to appoint judges for the Supreme Court of Appeals, the General Court, and judges in chancery and admiralty. Admiralty judges had already been appointed in 1775, but their jurisdiction of course ceased in 1789, vesting thenceforward in the federal courts. Acts of 1777 organized the General Court, of five judges, and the High Court of Chancery, of three, and an act of 1778 provided for the Court of Appeals, which was to consist of three judges peculiar to that court, together with, in different cases, the judges of the General Court or of the courts of chancery or admiralty. The General Court and the High Court of Chancery continued to exist till the adoption of the constitution of 1830.

That constitution vested the judicial power of the state in a Supreme Court of Appeals and such superior courts as the legislature might establish (circuit and district courts). The constitution of 1850 made similar provisions. The Supreme Court of Appeals was to consist of five judges, and to have appellate jurisdiction only, except in cases of *habeas corpus,* mandamus, and prohibition. By the constitution of 1864 the number of its judges was to be three, that of 1870 restored it to five. Though a few of the cases which follow were tried in federal courts, nearly all of those subsequent in date to 1830 were cases before the Court of Appeals.

[160] The Virginia Code of 1849, however, provides: "The increase of any female so emancipated by deed or will hereafter made, born between the death of the testator, or the record of the deed, and the time when her right to the enjoyment of her freedom arrives, shall also be free at that time, unless the will or deed otherwise provides." Ch. 103, sect. 10, p. 458.

[161] Fairclaim *v.* Guthrie, p. 103, *infra.*

[162] Talbert *v.* Jenny, 6 Randolph 159 (1828); p. 151, *infra.*

Re Tuchinge, Minutes of the Council, ed. McIlwaine, 33. November 1624. "John Phillip A negro Christened in England 12 yeers since, sworne and exam.[1] sayeth, that beinge in a ship with Sir Henry Maneringe, they tooke A spanish shipp aboute Cape Sct Mary, and Caryed her to mamora."

Re Negro Brase, McIlwaine 66, July 1625. "William Barnes . . sayth, that Capt. John Powell[2] shipped him at the Ile of Wight in the good Shipp called the *black Bess* of Flushinge . . A man of warr, . . they coasted to and againe about the west Inges to meete with some pryse. And . . they took A Friggett . . divers of the Compeny . . [67] resolved for to shipp themselves in the Frygett . . And they desired Capt. Jonnes[3] to goe with them to be theire Capt. and m'r . . at last mett with this Friggett uppon the coaste of Cooba . . And . . tooke that frigett alonnge with them." Andrew Poe[4] testified that they [68] "afterwards lighted uppon a Spanish frigott . . and they gave them their first frygott taking out of her [the Spanish frigate] some Raw hides and some Tobacco and a negro and a Frenchman who were desirous to goe alonge with them, and a Portugall to be theire Pilott . . came directly for Virginia, where they Arrived . . the Eleventh of July 1625."

[71] "A Courte held the XIXth daye of September 1625 . . ordered that Capt. Bass shall deliver some Cloaths to the Portugall owt of Capt. Jonnes his chest . . which is to be satisfied owt of the negroes labour. . . [72] that the negro that cam in with Capt. Jones shall remaine with the La: Yardley till further order be taken for him and that he shalbe allowed by the Lady Yardley monthly for his labor forty pownd waight of good marchantable tobacco for his labor and service so longe as he remayneth with her." "A Courte held the thirde daye of October 1625, . . [73] Yt is ordered the negro caled by the name of brase[5] shall belong to Sir Francis Wyatt Governor etc., As his servant, Notwithstandinge any sale by Capt. Jonnes to Capt Bass, or any other chaleng by the ships company."

Re Carib Indians, McIlwaine 155, October 1627. "The Court having taken into their consideration the danger which might ensew to the Colony by those Indians of the Carib Ilands which were lately brought into the Country by Capt. Sampson, and having admonished the said

[1] Testimony of a negro in the trial of a white man.

[2] "Capt. Powell had commanded one of the ships which brought the first negroes to Virginia . . 'a Dutch man-of-war.'" 24 Va. Mag. Hist. 56, n. 1.

[3] "Capt. Jones had commanded the *Mayflower* in its famous voyage to Plymouth." *Ibid.*

[4] "Of Holte in Northfolke . . shipt in Flushinge." McIlw. 68.

[5] "Brass was taken in at the West Indies, by one Captain Jones, to assist in working his vessel hither." Jefferson 119 n.

Capt. Sampson to consider with himselfe what profit he could make by the said Indians, and to devise with himselfe soe to dispose of them, as they may prove noe discommoditie to the Colonie, . . Sampson hath returned his answere—that he knoweth noe way . . to dispose of those Indians but deliverethe them wholy upp into our hands . . and being . . given to understand . . that the said Indians have runn away and hid themselves in the woods attempting to goe to the Indians of this Country as some of them have revealed and confessed, And for that they have stollen away divers goods, and attempted to kill some of our people . . And for that especially they may hereafter be a means to overthrow the whole Colony, have adjudged them to be presently taken and hanged till they be dead."

Re Indian, McIlwaine 116, October 1626. "At this Court there was a Weanoke Indian presented by Captaine William Epps which was taken the last springe at Sherley-Hundred and hath since been with him and the Court hath ordered that Capt. Epps doe enter into bonds of 500 *l.* of tobacco that the said Indian shall not runne away; . . that Capt. Epps upon his return to James Citty . . bring the Indian along with him to the Governor to be imployed uppon any service: And the Court . . graunt that Capt. Epps at his goeing for England the next spring, may carry the said Indian with him, otherwise to deliver him upp to the Governor."

Re Davis, McIlwaine 479, September 1630. "Hugh Davis to be soundly whipt before an assembly of negroes and others for abusing himself to the dishonor of God and shame of Christianity by defiling his body in lying with a negro, which fault he is to actk. next sabbath day."

Re Negro John Punch, McIlwaine 466, July 1640. "Whereas Hugh Gwyn hath . . Brought back from Maryland three servants formerly run away . . the court doth therefore order that the said three servants shall receive the punishment of whipping and to have thirty stripes apiece one called Victor, a dutchman, the other a Scotchman called James Gregory, shall first serve out their times with their master according to their Indentures, and one whole year apiece after the time of their service is Expired . . and after that service . . to serve the colony for three whole years apiece, and that the third being a negro named John Punch shall serve his said master or his assigns for the time of his natural Life here or elsewhere."

Re Negro Emanuel, McIlwaine 467, July 1640. "complaint . . by Capt. Wm. Pierce, Esqr. that six of his servants and a negro of Mr. Reginolds has plotted to run away unto the Dutch plantation . . and did assay to put the same in Execution." They "had . . taken the skiff of . . Pierce . . and corn, powder and shot and guns, . . which said persons sailed down . . to Elizabeth river where they were taken . . order that . . Emanuel the Negro to receive thirty stripes and to be burnt in the cheek with the letter R, and to work in shakle one year or more as his master shall see cause."[1]

[1] Such also was the penalty inflicted on "Miller a dutchman (a prime agent in the business)," plus seven years' service to the colony after the expiration of his service due his master. Somewhat lighter penalties were inflicted on the others.

Re Sweat, McIlwaine 477,[1] October 1640. "Whereas Robert Sweat hath begotten with child a negro woman servant belonging unto Lieutenant Sheppard, the court hath therefore ordered that the said negro woman shall be whipt at the whipping post and the said Sweat shall tomorrow in the forenoon do public penance for his offence at James city church in the time of devine service according to the laws of England in that case provided."

Re Graweere,[2] McIlwaine 477, March 1641. "Whereas it appeareth to the court that John Graweere [?] being a negro servant unto William Evans was permitted by his said master to keep hogs and make the best benefit thereof to himself provided that the said Evans might have half the increase which was accordingly rendered unto him by the said negro and the other half reserved for his own benefit: And whereas the said negro having a young child of a negro woman belonging to Lieut. Robert Sheppard which he desired should be made a christian and be [brought up in the fear of God and in the knowledge of religion][3] taught and exercised in the church of England, by reason whereof he the said negro did for his said child purchase its freedom of Lieut. [Robert] Sheppard with the good liking and consent of Tho: Gooman's [4] overseer, as by the deposition of the said Sheppard and Evans appeareth, the court hath therefore ordered that the child shall be free from the said Evans or his assigns and to be and remain at the disposing and education of the said Graweere and the child's godfather, who undertaketh to see it brought up in the christian religion as aforesaid."

Re Mulatto, McIlwaine 504, March 1656. "Mulatto held to be a slave and appeal taken."

Re Warwick, McIlwaine 513, April 1669. "Hannah Warwick's case extenuated because she was overseen by a negro overseer."

Re Gowin, McIlwaine 233, October 1670. "It is ordered that Gowin an Indian Servt. to Mr. Tho. Bushrod Serve his said master six years longer and then to be free."

Jordan v. Scarburgh, McIlwaine 239, October 1670. "Judgmt. . . agt. Mr. Edmond Scarburgh for paym't of two able men Servants to have each of them foure yeares at least to Serve or the custome of the Country . . and Scarburgh to Enjoy the Negro man this being the full consideration of Scarburgs obligation for foure Servants with costs *als* exec."

Hunt v. Monger, McIlwaine 240, October 1670. "orders obteyned by Mr. Thomas Hunt . . for five Thousand pounds of Tob'o and Caske paid . . to . . Adams for a Negroe called Malack who was afterwards Set free by the said Adams by will." Reversed, September 1671.[5]

Bacon v. Swan, McIlwaine 276, September 1671. "Coll. Nath Bacon Guardian . . Sueing . . for fourteene Cropps of Corne and Tob'o made

[1] See also *ibid.,* 483.
[2] "Geaween" in 11 Va. Mag. Hist. 281.
[3] *Ibid.*
[4] Jno: Graweere's?
[5] McIlw. 277.

by the said orphants [English [1]] Servants and a negroe weoman." The [277] "negro weoman was confest . . to be produced out of [2] part of the Said Cropps. It is ordered that the said Exec'rs forthwith deliver the said negroe weoman . . with her Cropps." Confirmed, November 1671.

Negro Mozingo v. Stone, McIlwaine 316, October 1672. "Whereas it Appeareth by Divers Witnesses . . that Edward Mozingo a Negro man had been and was an apprentice by Indenture to Coll. Jno. Walker and that by Computation his term of Servitude for Twenty Eight yeares is now Expired, The Court after a full heareing of the Matter In differrence Betweene the Said Edw: Mozingo and Doctor Stone who marryed Coll. Walkers Widdow, It is Adjudged . . that the said Edw: Mozingo be and Remayne free to all Intents and purposes."

Re Negro Will, McIlwaine 346, June 1673. "Whereas Will a Runaway Negroe Suspected to have Lett out of Prison a Negroe Condemned the last Court and Confesseth that he did See the Negroe breake Loose out of irons and did Attempt to breake out of the fore Doore of the Prison and that he see a Negroe Breake Open the back doore and Lett the said Negroe out of Prison and further that he hath beene Twice in the Condemned Negroes Company, . . ordered . . that the said Negroe be Comitted to the Common Prison of James Citty till further order and if the sherriffe thinke fitt to take the said Negroe Will along with him for the better Discovery for finding the said Condemned Negroe." Ordered, July 1673, [347] "that Will a Negroe Slave to Mr. Robt. Bryan of Gloster County . . Discharge his prison and have to morrow morning A Good and well laid on whipping, and putt into the Constables hands of James Citty who is to convey him to the Next Constable [3] and Soe from Constable to Constable till he be Delivered to his said master . . And it is further ordered that the said Bryan pay unto . . high Sherriff of this County One Thousand pound of tobacco and Caske for Charges and fees." [4]

Moore v. Light, McIlwaine 354, October 1673. "Whereas Andrew Moore A Servant Negro to Mr. Geo: Light Doth in Court make Appeare by Severall othes that he Come into this County [Country] but for five yeare, . . ordered that the Said Moore bee free from his said master, and that the Said Mr. Light pay him Corne and Clothes According to the custome of the Country and Four hundred Pounds tob'o and Caske for his service Done him Since he was free, and pay Costs."

Re Negro Will, McIlwaine 367,[5] April 1674. "ordered that the order . . Kirkman High Sherriffe of James Citty County had Against Mr. Robt. Brian for payment of one Thousand pound of tobo and Caske for Charges and fees about his Negroe be taken off, And it is the opinion of this Court, that he the Said Mr. Kirkman ought to be paid by the publique."

[1] McIlw. 289.
[2] "To have produced"?
[3] Act of October 1670. 2 Hening 277.
[4] See McIlw. 367 (1674), *infra.*
[5] See *ibid.*, 346 (1673), *supra.*

West v. Negro Mary, McIlwaine 372, April 1674. "Upon the Petition of Capt. John West . . Concerning A negro woman called black mary purchased by the Said Administrators from Coll. John Vassall, It is ordered that the Said negroe woman returne to her Service, And that the Administrators . . [373] with the first opportunity take Care to write to Coll. Vassall to know whether the Said negroe woman was A Slave or free, and if Appeare she was noe slave when bought, then they to pay her for her Service what this Court shall Adjudge."

West v. Wilson, McIlwaine 372, April 1674. "Lt. Coll. Jno West hath Judgment Against the personall Estate of . . Arnall In the hands of the [said] Wilson for payment of Two Thousand one hundred Sixty Six pound of tobacco and Caske Nine hundred pound of Muscavado Sugar and one able man Negro." In September 1674, [382] "Execution Issued and the Sherriff . . haveing Seized Three negroes Claimed by the Said Wilson to be his, this Court Doth Adjudge the Seizure to be Good, uppon the offer of the Said . . West . . that the Said Three negroes be Returned . . uppon payment of what they are Appraized at with Costs."

Re Negro John, McIlwaine 382, September 1674. "Whereas [six English] . . Servants . . and Jno. a negroe Servant . . hath Run away and Absented themselves from their . . masters Two months It is ordered that the Sherriffe . . take Care that all of them be whipped . . and Each of them have thirty nine lashes well layed on And the Englishmen Serve According to Act [1] for their Runing away, And that Amongst [them] they Serve the Honorable Governor Two yeares for Ja:—(who was his Honors Servt) which they Lost." [2]

Major v. Marsh, McIlwaine 401, March 1675. "Claime . . Against the Estate of Clement Marsh Deceased for Sixteene pounds Tenn shilling and Six pence, for which the said Marsh bound over Certaine Negroes."

Negro Phillip Gowen v. Lucas, McIlwaine 411, June 1675. "Phillip Gowen negro Suing Mr Jno Lucas . . for his freedome It is Ordered that the said Phill Gowen be free from the Said Mr Lucas his Service and that the Indenture Acknowledg'd in Warwick County be Invallid and that the said Mr Lucas pay unto the [said] Gowen three Barrels of Corne att the Cropp According to the Will of Mrs Amye Boazlye deceased with Costs."

Negro Angell v. Mathews, McIlwaine 413, June 1675. "Angell a negro Servant to Capt Mathews deced Petitioning to this Court that her Said master promised that when he died shee should be free which being Examined, It is ordered that she Returne to her Service."

[1] Act of March 1662. 2 Hening 116.

[2] The act provides that "in case any English servant shall run away in company of any negroes who are incapable of making satisfaction by addition of a time, . . if the negroes be lost . . the christian servants in company with them shall by proportion among them, either pay fower thousand five hundred pounds of tobacco and caske or fower yeares service for every negroe soe lost." As, in the foregoing case, the English servants are to serve only two years for "Ja: . . (who was his Honors Servt)" and as "Ja: . ." evidently had a surname, which "Jno a negroe Servant" lacked, "Ja: . ." was probably an English servant, for whose loss, though unprovided for by the act, the court ordered additional service by his fellow runaways.

Shapleigh v. Neale, McIlwaine 416, June 1675. "Ordered that . . Shapleigh Enjoy the Land till the Cropp be finished, as alsoe the negroes till the Cropp be finished, at which time . . Neale is to have Possession of the Said Land and negroes mentioned in that Deed and that County Court to Allow . . Neale Satisfaction for his Negroes Worke from the date of their Judgment."

Indian Benjamin v. Dunn, McIlwaine 425, October 1675. "Ordered that Benj: the Indian Returne to his Service and that Cha: Dunn his master Appeare at Next Gennll Court to Answer to Said Indians Complaint."

Negro Bowze v. Bennett, McIlwaine 437, March 1676. "Tony Bowze Negro late Servt to Major Gennll Bennett Deceased Petitioning to this Court for his freedom, and produceing a note under his said Masters hand wherein it Appeareing that he is to pay 800 *li.* of tobacco yearely and be at Liberty . . Ordered . . that the Said Negro Give Security for payment of 800 *lb.* per Annum dureing his life from his masters decease and that he yearely give Security and payment of the same."

Re Negroes, McIlwaine 519, September 1678. "Proceeding for bringing more negroes from Africa than ought to have been brought under contract." [1]

Re Negro, McIlwaine 520, November 1678. "Master having declared before his death that negro should be free, freedom declared."

Opinion of John Holloway, Barradall 29, March 1718. "1. A. makes a Will and gives a Mulatto Wench thus. I will that my Mulatto Girl Sue remain with my Wife B. during her natural Life and after her Decease I give her to my Son C. and appoints B. and C. Ex'rs and makes them Residuary Legatees. B. lives a long Time and Sue during her Life had 8 Children which B. by her Will has disposed of. Q'r 1st. Whether C. has any Right to the Mulatto Girl seeing no pres't Interest in him?"

Opinion [27] "I am of Opinion C. has good Right to the Mulatto Girl by this Devise."

"2d. Whether B. had a Right to the Issue of Sue or any Part of them?"

Opinion: "I am of Opinion (the Son not having the immediate Property in the Mulatto Girl tho' I think a future Interest vested in him by Way of Executory Devise) that the Property of the Children as they were severally born did vest in the Wife and Son jointly as Coex'rs and Residuary Legatees because it must immediately vest in somebody, It not being disposed of by the Testor. Then I think as joint'ts and no division made, the Survivor hath by Virg'a Law 1705 Right to 'em all. If they did not vest in them both as coex'rs and Residuary Legatees I think they must vest in the Son there being in my Opinion no Colour for the Testor's Intent or the Law by Implication or other Rule to vest them in the Wife except as Coex'r etc."

[1] [521] "Genl Court Bonds etc 1677 to 1682." [494] "Showing the importation of negroes under contract with the Royal african Company dated the 4th of Octo 1678." Also McIlw. 521.

Abbot v. Abbot, Rand. Sir J. 21, October 1729. "Trover for several negroes."

Churchill v. Blackburn, Rand. Sir J. 26, April 1730. "Thomas Machen a teller under this Act [of General Assembly . . begun and held on the 9th of May 1723 [1]] Exhibits an Information against Mr. Churchill for 500wt of Tobacco forfeited by the first Branch of the Act for Listing Doll as a Tithable when she was under 16. And upon that Information has obtained a Verd't and Judgm't in the County Court.[2] Blackburn the Plt. Exhibits another Information upon the last Clause for 24000wt of Tob'o being 500wt of Tob'o for every Person above 10 years upon the Defendt's Plantation in that year for Listing the same Negr. Doll as a Tithable when she was under 16, and upon that Information has obtained a Verd't and Judgment in the County Court for 6500wt Tobacco. This Judgment Mr. Churchill has appealed from and surely it shall be reversed. The only Question is Whether the Deft. shall be Subject to the Penalty of 500wts of Tobacco upon the Information of Machen and to this much greater Penalty of 500wts of Tobacco for 48 Persons above 10 years old Employed that year upon his Plantation upon the Information of the Plt. for the same offence viz. Listing Negro Doll as a Tithable. . . [27] The plain meaning of the two Clauses taken together is this, If a Master List any Person a Tithable that is under 16, or one above 10, that is not so, or a Labourer in the Crop who is not Employed in it he forfeits 500wt. of Tob'o. And if he gives an Account of Persons as employed upon his Plantation in making Tob'o that are not employed at all upon that Plantation or perhaps are not in being, then he is Subjected to the great Penalty of 500wt of Tobacco for every Person above 10 years old Employed in making Tob'o that year upon such Plantation. . . [29] This Judgment is absurd and against Common Sense, and can't possibly be affirmed in this Court, and I pray that it may be reversed.[3] And it was reversed by the whole Court except one."

Churchill v. Machen, Rand. Sir J. 30, April 1730. "The Deft. has likewise Appealed from Judgment given upon the Information of Machen upon the Act of Assembly ment'd in the Case above. The Information Charges That the Deft. being Master of a Family and a House-keeper, When he gave in his List of Tithables *Anno* 1725 did List with Roger Jones the Justice appointed to take the List of Tithables in that year one Female Negro called Doll, being under the age of 16 years as a Tithable ag't the Form of a certain Act of General Assembly . . of May 1723. . . But the Judgm't was affirmed."

Marston v. Parrish, Rand. Sir J. 35,[4] April 1730. "John Williams was possessed of two Negro Boys Arther and Bill and two Negro Women

[1] Rand. Sir J. 30.
[2] Affirmed. Churchill *v.* Machen, *infra.*
[3] "As the General Court delivered no written opinions, and generally gave no reasons at all for their conclusions, there was nothing of a case to be reported except the statement of it, and the arguments of counsel. . . In the cases reported by Randolph he gives his own arguments in full, and only occasionally a statement of the points made by his adversary." 1 Barton 236.
[4] Jefferson 1.

Dinah and Nanny and made his last Will 22d April 1713. Willed his Negroes and all other Goods and Chattels to be valued and Appraised and equally divided between his Wife and 3 Children, and that his Wife shou'd keep his Childrens Estates till they came of age and died soon after making his Will. After his death the Negro Woman Nanny had two Children, Obey and James, and the Negro Woman Dinah had a Child named Essex. Anthany the Widow married John Marston who supposing his Wife to be with Child, by his Will dated the first day of December 1719 Devised these Negroes viz, Arther, Will, Nancey, Essex, Obey and James to the Child his Wife was ensient of, and gave all the residue of his Estate Real and Personal to his Wife and her Heirs for ever, paying his Debts and the Orphans Estates in his Hands and died soon afterwards, but his Wife did not prove with Child and the Widow is married to her 3d Husband Parrish the Deft. and none of Williams Children are of age. And the Plt. as Heir at Law to Marston the 2d Husband hath brought an Action of Detinue for Arthur, Will, Essex, Obey and James which are properly Williams's Estate and for Nancey which was Marston's proper Estate."

Held: [36] "the Plt. had no Right to recover the five Negroes that were Williams's, And, that the Plt. shou'd recover the Negro that was Marstons as his Heir at Law."

Edmonds v. Hughs, Rand. Sir J. 36,[1] April 1730. "Richard Alderson was possessed of several Negroes in the Decl. mentioned and made his last Will and Testam't in these words (dated 16th Sep'r 1695) 'My Will that Margaret my Wife shall be Sole possessor and disposer of all and every part of what Estate it hath pleased Almighty God to endue me withal, during her Life, providing she keep herself unmarried, or in Case she do marry again, that she nor her Husband, or any Person or Persons in their behalf by any means or Instrum'ts to Imbezel or make waste of the s'd Estate to any Indemnity to my Children.' Then by another Clause he gives his whole Estate Chatel and Chatels to his Son Richard, please God he lives etc. Margaret after her Husbands death married the Plt. who left her and carried off several of the Slaves and as it is say'd marryed one of them and has several Children by her. Margaret died and Richard Alderson the Son took the Negro's in the Decl. mentioned and sold them to the Defend't. And the Question will be Whether the Rem'r of Negroes which are at the time of the Testors death Chattels (first given to Margaret for Life) be a good Rem'r to Richard . . [39] Adjudged for the Deft."

Tucker v. Sweney, Rand. Sir J. 39,[2] April 1730. "Mr. Dandridge recovered Judgm't against the Ex'rs of Nicholas Curle for 507 *l.* Curle died possessed of several Slaves and of these Slaves after his death there was a considerable Increase. Mr. Dandridge took out a *Fi. Fa.* which was served upon several of the Slaves which Curle died possessed of and likewise upon several of the Negroes born after his death And the Question

[1] Also Jefferson 2.
[2] Jefferson 5.

is Whether the Increase of the Negroes may be taken to satisfy this Judgment."

Held: "Negroes notwithstanding the Act making them Real Estate remain in the Hands of the Ex'ors by that Act as Chatels and as such do vest in them for payment of Debts So that in this Case they are considered no otherwise than Horses or Cattle, And there is no doubt but the Increase of any living Creature after the death of the Testor, are looked upon as part of his Estate, and are liable to be taken for his Debts."

Waddy v. Sturman, Rand. Sir J. 61,[1] October 1731. "John Jordan being possessed of a very Considerable personal Estate sufficient to pay all his Debts with an overplus by his last Will and Testament in writing bearing date the 6th Day of Februery in the Year 1693, gives several Legacies to his Sons in Law John Spence and Thomas Spence (who were Brothers) in this manner, 'I give to my Son John Spence 25£ Ste'g to be laid out in Negroes to be delivered to him upon the Day of his Marriage also 4 cows etc. Item I give to my Son Thomas Spence Two Negroes Mingo and Pegy to be delivered at the Day of Marriage and ten Head of Cattle etc. But my Will is, that if the s'd John or Thomas shou'd die without Issue, that then whatsoever is Bequeathed to them the Survivor shall have to him and his Heirs and Assigns.' The two Negroes were delivered to Thomas by Dorcas Jordan the Testors Wife and Exec'x, and he possessed them during his Life and died with't Issue in the Life time of John who had the Negroes in possession and died leaving only one Child (the Compl't Waddys Wife). After John Spences death Dorcas Jordan brought an Action of Trespass in the General Court ag't Laurence Pope and his Wife, who was the widow of John Spence, for recovering Mingo and Pegy and a Child that was born of her And obtained a Judgm't Accordingly the 23 October, 1700, ag't the Defts. The Compl't Jane being at that time ab't 2 Years old. After the Judgm't the Negroes were taken by Execution and Sold or disposed of by Dorcas Jordan and are now with their Increase in the Possession of a Person in Maryland. And the Compl'ts have exhibited their Bill ag't the Defts. Ex'ors of the last Will and Testam't of John Spence and the Surviving Ex'or of Dorcas Jordan, And the End of the Bill is to recover the value of these Negroes with Interest out of the Estate of Dorcas which came to the Hands of the Defts. Testor."

Held: [62] "The Rem'r was good and vested in John when he Survived Thomas."

Barret v. Gibson, Rand. Sir J. 70, October 1731. "the Deft. was keeper of a Rolling-house . . and did receive 4 Hhds Tob'o of the Plt. and that the Rolling-house was maliciously burnt by a Negro Woman of the Defts. whereof she was Convicted . . and Executed for it . . [72] the Court gave Judgm't for the Deft. because the Master is not Chargeable for the wilful wrong of his Servant."

Waughop v. Tate, Rand. Sir J. 76, October 1731. "John Contancean an Infant by Deed dated the 17th Dec'r 1718, Conveyed several Negroes to Richard Ball . . The Heir at Law of John possessed herself of the Negroes and under Waughop Claims"

[1] Jefferson 5.

Held: " the Deed of J. C." is not " a good Deed in Law . . [77] But it may be objected from the late Explanatory Law of the Negro Act *An'o* 1705. that because it is declared that Infants may at the age of 18 by Will dispose of their Negroes, Therefore by the Equity of that Act this Deed may be construed a good Deed to pass the property of the Negroes . . Answer, It is a Settled point that the Statutes of Explanation must be Construed strictly and not with any Equity or Intendment."

Goddin v. Morris, Rand. Sir J. 80, April 1732. The inventory of Goddin's estate in October, 1710, " consisted of Cattle and Household Goods Appraised to 38. 10. 9. and 3 Negroes, a Man Appraised at 25£. a Woman Appraised at 25£. and a Child at 5£. . . Goddin . . in his Lifetime was Indebted to Keiling £. 7. 1. 3. stg. . . Keiling June 14, 1711, obtains a Judgm't . . for his Debt and Costs. . . an Ex'on issued and by Virtue thereof that Negro Woman and her Child Appraised at 30£. were taken to Satisfy the Judgment; Stannup [who married Goddin's widow] then pays the Money and takes the two Negroes again thinking the Property by these methods was legally vested in him . . [81] this Scheme of Stannups . . is a very vain . . one . . [82] If this may be done, the Policy of the Law of this Country in preserving Slaves for the Benefit of Heirs will be in great measure frustrated, . . Mr. Stannup . . had Sufficient of the Personal Estate in his Hands to reimburse the Money, . .

[83] " the Court Decreed . . That Stannup had gained no property in the Negroes, but the same . . remained in the Plt. [the son of Goddin]."

Lightfoot v. Lightfoot, Rand. Sir J. 84, April 1732. " Francis Lightfoot . . was possessed [in 1727] of a great Estate, in Lands, Neg'rs, Goods and Chattels . . and made his Will Whereby . . he gives the Deft. a Negro, he giving another in lieu of him to his Heirs "

McCarty v. Fitzhugh, Rand. Sir J. 112,[1] October 1733. " to his Daughter Fitzhugh he gives 2 Negroes of 40£ value Sterling "

The King v. Moore, Barradall 38,[2] October 1733. "An Information was brought against the Deft. upon the Act of 5 and 6 Geo. 2. laying a duty upon Slaves for not transmitting to the Collector of the duty's a List of the Slaves by him sold imported in the ship A. . . the Master and Steward of the Ship " had " Slaves of their own aboard . . the Act was passed 1 July 1732 about four in the Afternoon and the Ship came to an Anchor off Back River the said 1 July about two leagues from the Shore Came into the Capes about twelve and came to Anchor between seven and eight and could have got up to York if they had had a Pilot. On the second of July the Ship got into the mouth of York on the third to York Town and enter'd the fifth. . . Hopkins for Deft. . . insisted the day of passing the Act was excluded . . which seemed to be in point. As to the 2d [whether this was an importation] Insisted for the King that the Place where the Ship Anchored 1 July was not within any port and so no

[1] Barradall 34. McCarty *v.* McCarty's Ex'tors.
[2] Jefferson 8.

Importation To which it was answered There are no ports laid out here as in England And that coming within the Capes with an Intent to come strait to Virginia is an Importation. Judgm't for Deft."

Ishbell v. Butler, Barradall 43,[1] April 1734. "In this case a Question was made whether a slave given by an Intestate in his Life time to a younger Child should be given at the Value he was when given or the Value at Testor's Death. *Et per tot. Cur.* at the Value when given *Et recte ut Opinor* tho' Rand. and Hopk. con."

Waddill v. Chamberlayne, Barradall 45,[2] April 1735. "The Plt. declares that the Deft. fraudulently and deceitfully Sold to him a Slave for a great Price 25£. knowing the said Slave at the Time and for a long Time before laboured under an incurable Disease not discovered by the Plt. and was of no value." Verdict for plaintiff. Barradall moved in arrest of judgment because "this action will not lie without a warranty . . [49] It frequently happens that there are Distempers among their Slaves but the Seller does not think himself obliged to publish this to the World Nor is it thought criminal even to use arts to conceal it. Numbers of these distempered slaves have been sold and the consequences sometimes very fatal." Judgment for the plaintiff.

Jones v. Langhorn, Rand. Sir J. 109,[3] October 1736. "Detinue for negroes Fr Deft. The Case. Mary Godwin being possessed of several Negroes by her Will disposed of them in this manner, 'My Will is that after my Debts and Legacies paid my Daughter Mary Rice shall have the use of my whole Estate . . during her natural Life,' . . She married Myres, and Myres and she by Deed Mortgaged the Negroes to the Plt. [for 99 years] and had Issue 4 Children, and she is now married to the Deft. Langhorn and has four Children by him."

Held: "the Deed made by Husband and Wife, is the Deed of the Wife only during Coverture and shall not bind her after the death of her Husband, and I think the Negroes here, of which the Wife had only the use, cou'd only be sold for the Life of the Husband and after his death the Wife shall be restored to the use of them."

Taylor v. Graves, Barradall 56,[4] October 1736. "R. P. poss'd of the Slaves in Question by his Will dated in 1712, devises to his daughter Mary the Use Labour and Service of them during her Life and after her Decease the said Slaves and their Increase to fall to her Heirs of her Body lawfully begotten forever. Mary had issue a Daughter living at the Time of the Devise and the Death of the Testator but died before the Mother who is also dead and the Plt. claims as Heir to the Testator. Mr. Atty. Gen. fr Plt. By the Act of 1705, Slaves are made a real estate tho' the Law is now altered by the Act of 1727 with respect to Gifts and Devises of Slaves that they can only be given and devised as Chattels personal. There is however a Proviso in this last Act that where Slaves have

[1] Jefferson 10.
[2] *Ibid.*
[3] Barradall 52; Jefferson 37.
[4] Jefferson 40.

been before given for Life and the Remainder thereupon limited to another that such Remainders shall be good in Law to transfer the absolute Property to the Remainder man. The testator here has given only an Estate for Life to his Daughter with a Contingent Remainder to the Heirs of her Body and there being [no] such when the Contingency happened viz. at her Death, the Remainder is void and the Plt. as Heir at Law to the Testator is entitled to these Slaves . . Judgment fr Deft."

Winston v. Henry, Barradall 213, October 1736. "John Geddes . . by his Will May 18, 1719, devises to his Wife 3 Slaves during her Life and the absolute Property of six more And gave her during Life a Plantation called Totero fort . . And gave his Wife the Use of most of his Plate . . during Life"

Spicer v. Pope, Barradall 232,[1] October 1736. "John Stone by his Will Apr. 27, 1695, devises his Plantation and the Profits of his Slaves and personal Estate to his Wife during Life And declares his Will to be 'that his Son R'd Metcalf and Daughter Ann his Wife live upon the said Plantation after her Death during their Lives and also keep and employ the Negroes upon the s'd Plantation making Use as they shall see Cause of all the Profits of his said Land and clear produce of his s'd Negros Stock and Plantation Except the Increase of his s'd Negros there-after given away.' Then devises to Mary and Eliz. two Daughters of R'd and Ann Metcalf a Negro a piece by Name and to John their Son a Negro Child the next that should be born. Then foll. this Clause 'I give unto my Daughter Ann's Children that she shall bear hereafter one Negro Child apiece as it shall please God the Negro Women shall bear them.'"

Barradall: [236] "I never yet read that a Thing not *in esse* could be bequeathed . . Cases in Point cannot be expected there being no Slaves in England." [239] "In this Case it was agreed that . . the Devise of the Negro Children not *in Esse* at the Testors Death was void."[2]

Robinson v. Armistead, Barradall 223, April 1737. "John Armistead and Robt. Beverley dece'd jointly purchased 100 A. of Land in Com. Glouc. which was conveied to them by Deed Jan. 17, 1680, for the Cons. of 50£. . . [224] Armistead the great Grandfather [of the defendant] gave the Plts. Mother a Slave which she declared she thought the full Value of any Right she might have to the said Land."

Slaughter v. Whitelock, Barradall 251, April 1737. "Martin Slaughter by his Will Aug. 23, 1732, devises four negroes to his Son George (the Plt.) and the lawful Issue of his body for ever and four negroes to his daughter Judith and the lawful Issue of her body for ever but if either my son or daughter shall die without such Issue the survivor to have and enjoy the said Slaves and their Increase. Judith was possessed of the Slaves devised to her, married the Deft. and died without Issue." George survived. [256] "Judgment for the Deft."

Haywood v. Chrisman, Barradall 67,[3] October 1737. "Henry Haywood possessed of divers Slaves and other Estate by his Will *inter al.*

[1] Jefferson 43.
[2] Dandridge *v.* Lyon, Wythe 123 (1791), *contra*; p. 97, *infra.*
[3] "Hayward," Jefferson 52.

devised the Guard'ns'p of his Children to his Wife and left five Slaves to work and maintain his Wife and Children besides the profits of the Estate he had left them and died without making any other Disposition of these five Slaves having Henry his eldest son who dying before his Mother devised the Slaves to the Defts. who after the Mother's Death recovered them in an Action at Law and now a Bill is brought by the younger Children of the first Testator for a share of the Value of the said Slaves."

Held: "these Slaves were intended by the Testator in Lieu of the Widow's Dower and therefore not to be divided" [among the younger children].

Giles v. Mallicote, Barradall 71,[1] April 1738. "The Plts. Father Thomas Mallicote by his Will devised 'to his son John Quashey a Negro Man to his son Thomas the Child his Negro Woman Betty then went with and Tomboy a negro Man' and gives Slaves to his other Children and declares his Will 'That his Wife should have the Work of his Sons Negroes till they came of age.' . . John and Thomas are dead and would not be 21 if now living." The case was compromised.

Nance v. Roy, Barradall 279, April 1739. John Nance "by his Will dat. Feb. 2, 1731, gives to his Wife Mary 'All his Estate . . during her natural life' And makes her sole Ex'trix."

Held: "the absolute Property of the Testors Slaves vested in her."

Coleman v. Dickenson, Barradall 119,[2] October 1740. "Ja's Alderson and Ann his wife by Deed dated 10 July 1712 reciting that Ann at her Marr. was pos'sed of 3 Slaves And that by the Law they were real Estate barg. and sold the Slaves to one Hunter for 60 years if the said Ja's and the Negro's sho'd so long live In trust And to the use of the said Ja's and Ann for their lives and to the use of the Surv'r if the Negro's sho'd so long live With this proviso that if Ann sho'd die before Ja's it sho'd be lawful for her by Will to dispose of the Negro's after his death And with this further proviso that if the Negro's had any Increase during the term that they sho'd be taken care of till they were fit to be removed from their parents."

Held: [123] "the wife surviving was well intitled to the Slaves mentioned in the Deed And that the property of the Increase must follow that of the Parents."

Buckner v. Chew, Barradall 123, October 1740. [126] "Johnston says upon a treaty of Marr. with the Grantors Dau'ter in 1723 he promised him as a portion 1000 a's of Land and a Negro boy worth £150."

Opinion of Edward Barradall, Barradall 31, March 1741. Allaman "died Intestate leaving Issue by his first Wife Judith . . and by his second Wife . . William. . . William lived to be of age . . and being also possessed of some slaves and personal Estate died Intestate in 1732 leaving a wife . . and a Daughter Sara. . . Sara died lately being abt. 12 years old. Her mother is now living. . . there are Heirs on the Part of the Mother The Question is who is intitled to the . . Slaves . . of Sara."

[1] Jefferson 52.
[2] Jefferson 67

Opinion: "I am of Opinion that the Heir on the Part of the mother cannot take these Slaves by Descent any more than he can the Lands which came from the Father . . [32] Slaves . . cannot escheat but by a Proviso in the af'd Act [declaring Slaves a real Estate] are in such Case to be taken as Chattels And consequently they must go to the Administratrix. This seems mighty clear to me. . . I am of Opinion that the Aunt of the half Blood is not intitled to distribution as to these Slaves tho' they be personal Estate . . the Mother alone is intitled to the Administration and in that Right to all the Slaves"

Custis v. Fitzhugh, Jefferson 72, (no date). "In this case it was adjudged, that slaves as well as lands might be conveyed to uses, and were within the statute of uses. 27. H. 8. 2. . . Reported by Mr. Hopkins."

Brent v. Porter, Jefferson 72, October 1768. "Detinue for slaves. A right to slaves descended to two sisters, coparceners, and femes sole; but they were in the possession of another who claimed a right to them. One coparcener marries and dies, the slaves having never been reduced to possession. The surviving coparcener brings this action for her moiety. . . The court adjudged for the plaintiff."

Blackwell v. Wilkinson, Jefferson 73, October 1768. "Slaves had been entailed between the years 1705 and 1727, without being annexed to lands," [78] "by will dated 1718. The donee in tail devised them, in 1755, to the defendant; against whom we bring this action as issue in tail:" [73] "the question was, whether the entail was good?"

[85] "Blair, W. Nelson, T. Nelson, Corbin, Lee, Tayloe, Fairfax and Page, were of opinion for the defendant, that slaves could never be entailed unless annexed to lands. Byrd, Carter and Burwell were of a different opinion."

Allen v. Allen, Jefferson 86, April 1769. "whether, where a father entitled to a reversion in slaves dies, and afterwards the particular estate (which here was for life) falls in, the heir at law shall be obliged to account to his brothers and sisters for a proportion of their value? And the court determined he should. It was also insisted that some children by a second wife, (whose mother had by a marriage contract reserved a right of appointing her own slaves at her death as she pleased), should bring into hotchpot whatever they should get under such appointment, or not be entitled to take with the children of the first marriage, a proportional part of the value of the father's proper slaves. But the court determined that the right of hotchpot, does not take place in dividing the value of slaves."

Gwinn v. Bugg, Jefferson 87, October 1769. "A Christian white woman between the years 1723 and 1765, had a daughter, Betty Bugg, by a negro man. This daughter was by deed indented, bound by the churchwardens to serve till thirty-one. Before the expiration of her servitude, she was delivered of the defendant Bugg, who never was bound by the churchwardens, and was sold by his master to the plaintiff. Being now twenty-six years of age, and having cause of complaint against the plaintiff, as being illy provided with clothes and diet, he brought an action in the court below to recover his liberty, founding his claim on three

points. 1st, That himself having never been bound by the churchwardens, the master of his mother had no right to his service. 2nd, That if he had, yet he had forfeited it by selling him to the plaintiff. 3rd, That if both the points were against him, yet the plaintiff had forfeited his right by his failure to provide him with necessaries. The fact of ill treatment was, I suppose, proved in the court below, for this as well as the defendant not having been bound, was set forth in the record as the grounds of the judgment; from this judgment Gwinn appealed, . . Pendleton, for the plaintiff. . . [88] The defendant's mother then was properly reduced to servitude by an actual binding under the act of 1705; himself is put into that condition without a binding by the act of 1723. Nor is he relieved by the act of 1764, because he is not the child of a white woman, and because he is not the son of a mulatto born after the passing of that act. . . [89] it might be questioned . . whether this act [of 1705, re-enacted in 1753, c. 2, s. 5, 6, 'ordaining that servants, by act of Parliament, indenture or custom, shall be comfortably provided with necessaries and humanely treated'] was intended to extend to the children of mulattoes, who are bound . . by act of Assembly. The humanity of courts, however, has extended this act to their relief, and I shall not draw it now into question. . . emancipation is not the remedy provided by the act of Assembly in case of ill treatment." Here the servant is taken from the master, "and no equivalent returned. This judgment then . . is substantially different from that prescribed by the act of Assembly, and is therefore erroneous. Mason, for the defendant, relied principally on the second point; that the former master of the defendant could not transfer it; and so the plaintiff had no right. He insisted that there was a trust in the master coupled with his interest, that, though he was entitled to service, he was also bound to maintain comfortably. That where ever there was a trust it could not be transferred, and instanced the case of an apprentice, . .

"Yet judgment reversed, and *quaere*, if the great clearness of the first and third points, which alone were assigned in the record as the grounds of the judgment, might not prevent the court from attending minutely to the second, which seems to be in favor of the pauper."

Howell v. Netherland, Jefferson 90, April 1770. "the plaintiff's grandmother was a mulatto, begotten on a white woman by a negro man, after the year 1705, and bound by the churchwardens, under the law of that date, to serve to the age of thirty-one. That after the year 1723, but during her servitude, she was delivered of the plaintiff's mother, who, during her servitude, to wit, in 1742, was delivered of the plaintiff, and he again was sold by the person to whom his grandmother was bound, to the defendant, who now claims his service till he shall be thirty-one years of age. On behalf of the plaintiff [1] it was insisted, 1st, that if he could be detained in servitude by his first master, he yet could not be aliened. But, 2nd, that he could not be detained in servitude . . the purpose of the act

[1] Jefferson was counsel for the plaintiff. "This and [one other] . . are the only legal arguments of his, while still a practicing lawyer, that are extant." Jefferson's *Writings* (ed. Ford), I. 373 n.

was to punish and deter women from that confusion of species, which the legislature seems to have considered an evil, and not to oppress their innocent offspring. . . [91] These servants bear greater resemblance to apprentices than to slaves. . . [96] the act of 1705 makes servants of the first mulatto, that of 1723 extends it to her children, but that it remains for some future legislature, if any shall be found wicked enough, to extend it to the grand-children and other issue more remote, to the '*nati natorum et qui nascentur ab illis*!' Wythe, for the defendant, was about to answer, but the court interrupted him and gave judgment in favor of his client."

Godwin v. Lunan, Jefferson 96, October 1771. Lunan was a minister "regularly ordained, according to the rites of the church of England;" It was charged among other things that he "solicited negro and other women to fornication and adultery with him;"

Robin v. Hardaway, Jefferson 109, April, 1772. "These, were several actions of trespass, assault and battery, brought by the plaintiffs against persons who held them in slavery, to try their titles to freedom. They were descendants of Indian women brought into this country by traders, at several times, between the years 1682 and 1748, and by them sold as slaves under an act of Assembly made in 1682."[1] Mason, for the plaintiffs: [116] "it is notorious that it was the universal opinion in this country, that the law of 1682, was repealed in 1684.[2] . . and under that persuasion hundreds of the descendants of Indians have obtained their freedom, on actions brought in this court. Nor was ever the propriety of these decisions called into question till within these four years. The gentleman (Colonel Bland) . . started the doubt at the bar, on no other foundation, as I conceive, than the want of an express repeal. But it is hoped the virtual repeal will answer the same end, and that we shall again be permitted to return into our wonted channel of adjudication. But if it was not repealed by the act of 1684, then it was by the act of 1691,[3] which repealed 'all former clauses of former acts of Assembly, limiting, *restraining,*[4] and prohibiting trade with Indians.' By this it was made lawful for the Indians to come into this country, at any time, for the purpose of trade. But can we suppose, that as soon as they came, they should be picked up and sold as slaves? If so, this fair faced act was but a trap to catch them, an imputation which would do indignity to any legislature." If the act "of 1682 . . *restrained* their trade . . it was repealed by this of 1691, . . it was repealed in 1705,[5] if it was then subsisting." Colonel Bland, for the defendants, contended that the act of 1684, in repealing the act of 1679,[6] withdrew from the operation of the act of 1682 (chapter 1) only "what Indian prisoners . . shall be taken in warre," by our soldiers; that "the law of 1691 was no repeal

[1] "Chapter 1. Purvis 282." 2 Hening 490.
[2] "Chapter 7. Rolls of House of Burgesses." 3 Hening 17. The act of 1684, ch. 7, repealed chapter 7 of the acts of 1682, not chapter 1. Ed.
[3] "Chapter 9. Rolls of the House of Burgesses." 3 Hening 69.
[4] Italics are presumably Mason's.
[5] "Chapter 49." 3 Hening 447.
[6] "Chapter 1. Purvis 229." 1 Hening 440.

of that of 1682" for the acts "relative to slavery and those relative to trade" are "totally independent of, and unconnected with one another."

[122] "The court adjudged that neither of the acts of 1684 or 1691 [1] repealed that of 1682, but that it was repealed by the act of 1705." [2]

Carter v. Webb, Jefferson 123, May 1772. "The late Secretary Carter . . devised to his wife the use of certain lands, slaves and stocks, during her life, with remainder to his son Charles Carter, the plaintiff. Mrs. Carter intermarried with Mr. Cocke, and many years after, died in the month of June 1771. Mr. Cocke died also in the month of August of the same year. Though he had freely used of the stock, both by consuming and selling, yet he left it improved and increased to a very great degree. His executor, Mr. Webb, permitted Mr. Carter, the remainder man, to enter on such parts of the land as were not then under culture, and to employ the slaves (whenever they were not engaged in finishing the crop then growing) in making preparations for a succeeding crop; under this agreement, however, that Mr. Carter should pay a stipulated hire for such services of the slaves, if the General court should decree the defendant entitled thereto." Randolph, attorney general, [131] "said that the use of the stocks and of the slaves were given to her by the same clause and words of the will; and that she might as well demand the issue of the slaves as of the stocks.

"The court determined that the slaves should be continued on the plantation till the 25th of December, but that this was solely for the purpose of finishing the crop, and therefore, that Mr. Carter should not pay hire for the services of the slaves at leisure times. And they decreed Mr. Carter entitled to the increased value of the stock."

Henry v. Attorney (cited in *Gregory v. Baugh,* 2 Leigh 665 (685)), June 1772. "the . . court . . decided upon a special verdict, that the act of 1682 continued in force until 1705, and gave judgement against many descendants of indians introduced and held as slaves between 1682 and 1705." [Green, J.] Green, J. also refers [683] to "the multitude of cases upon that subject [Indian slaves], decided in the general court in June 1772, in which parol evidence was given reaching back to the close of the century before the last, part of which now exist in the form of depositions filed in those cases. These were the depositions of persons at that time very old. I have examined them." (1831.)

Smith v. Griffin, Jefferson 132, October 1772. The testator had bequeathed to his wife "'one fourth part of his personal estate.' The persons to whom the other three fourths were given, of whom the heir at law was one, had divided with the widow the slaves as well as personal estate, and had signed the deed of partition. Afterwards, the widow dying, the heir at law brought his bill for the slaves allotted her, insisting that by the devise of personal estate, slaves did not pass. But the court dismissed the bill; two of the judges, the Secretary T. Nelson and Page,

[1] Overruled in Hudgins *v.* Wrights, p. 112, *infra,* and in Pallas *v.* Hill, p. 116, *infra.*
[2] They overlooked the fact that the free-trade enactment of 1691 reappears in the act of 1705, chapter 52, section 12. Ed.

declaring their opinions in favor of the defendant, were founded on the partition made between the heir and widow, and that, had the question been simply, whether slaves would pass by a devise of personal estate, they would have determined it in the negative: in which they were not contradicted by the other judges."

Henndon [*Herndon*] *v. Carr,* Jefferson 132, October 1772. "William Carr . . by will, dated August 2, 1760, . . bequeathed the residuum of his estate . . both real and personal, to be equally divided between" his wife and children. A few days later his uncle died intestate, and Carr became entitled to a moiety of his slaves. [133] "William Carr, the testator, had notice of this accession to his estate, and died soon after without having altered or republished his will. And the question was, whether the slaves which descended to him, after making the will, should pass by the will or not?" Pendleton, for the defendants: slaves [135] "are not the subject of perpetual transfer from hand to hand, but live in families with us, are born and die on our lands, and, by their representatives, may continue with us as long as the lands themselves. Again in their value they are distinguished as lands, the slave being worth as much as the ground he cultivates. For this reason our laws have put them on a footing with lands. . .

[136] "It was decreed the new acquired slaves did not pass under the will, by the opinions of Lee, Burwell, Fairfax, Page and Wormley, against the Secretary T. Nelson, and Byrd. The Governor gave no opinion."

Moorman's Will (cited in *Pleasants v. Pleasants,* 2 Call 353), September 1778. Charles Moorman "devised certain slaves by name; to each of the different legatees to enjoy their labor; the males to twenty-one, the females to eighteen, and then all to be free; except some devised to his wife, which she was to have for life, and then they were to be free; and except another parcel, who were to be immediately free." The full text of the will is given in Hening.[1] The testator provides, [614] "In case the laws of the land will not admit of such freedom,[2] that then the last mentioned slaves and their increase be equally divided among my other legatees, . . it is . . [615] my particular instruction to my executors . . to make application of the general assembly . . for an act to confirm the freedom hereby intended . . and in case such an act cannot be obtained, that then my legatees keep possession . . Reserving . . a right for all the above-mentioned slaves to claim the benefit of this my last will . . if ever hereafter it should be lawful for them so to do." The general assembly, in 1787,[3] carried out "the benevolent intentions of the said Charles Moorman." An act was passed, providing that those slaves who were between twenty-one and forty-five, and those devised to the wife, then dead, "were to be immediately free, as if born so; and their increase were also to be free. All under twenty-one and eighteen were to be free when they at-

[1] 12 Hening 613.
[2] They did not "admit of such freedom" in 1778. See introduction, p. 67.
[3] 12 Hening 613.

tained those ages, and the increase of those to be free at a future period, were to be free with the parents.[1] Those above forty-five to be free when Johnson, the executor, or any other, should enter into bonds, with approved security, to the County Court, with condition that they should not become chargeable to the public. This was, in spirit, pursued by a majority of the Court" (in Pleasants *v.* Pleasants).[2]

Thomas Sorrell's Case, 1 Va. Ca. 253, April 1786. "The prisoner was examined before the County Court of Westmoreland, for the murder of a slave [whom he had hired], the property of one Ebenezer Moore. The court adjudged him guilty of manslaughter, and sent him on for further trial. . . The grand jury found the bill against him for murder."

Held: Where the examining court [257] "are of opinion, that a homicide has actually been committed, they must remand the prisoner for further trial except in the case of the owner of a slave. . . The prisoner was immediately put on his trial, and acquitted, as I thought (says Mr. Tucker)[3] directly contrary to evidence."

Noel v. Garnett, 4 Call 92, October 1786. Held: if a widow does not relinquish the will within the prescribed period, she is barred from dower in the undevised slaves.

Drummond v. Sneed, 2 Call 491, November 1786. William Burton devised to his daughter Agness, married to John West, several slaves for life, with a remainder to all her children in equal divisions. One of these children, [492] "Catharine, intermarried with one Edmund Chambers, and died in the life-time of her mother and husband." Chambers administered on her estate. On the division of the said slaves, "a slave named Lazer was assigned as the share of the said Catharine, . . Chambers possessed himself of the said slave, and sold and delivered him" to Sneed. The eldest son of Catharine later sold the slave to Drummond.

Held: the sale by Chambers was good, and Sneed is entitled to the slave.

Taylor v. Wallace, 4 Call 92, November 1786. "Whether a verbal gift of slaves to an unmarried woman, to whose husband the slaves, upon his marriage, were delivered, and in whose possession the same remained until his death, four years after the marriage, be within the statutes for preventing fraudulent gifts of slaves?"

Held: the gift was void.

Hannah and other Indians v. Davis, 2 Tucker,[4] App. 47, April 1787. "On the authority of the act of 1705, authorizing a free and open trade for all persons, at all times, and at all places, with all Indians whatsoever] . . the general court . . decided that no Indians brought into

[1] "The increase of such . . as are . . to be emancipated at any future period, shall have . . all the benefits of freedom from the time that the emancipation of their parents shall take place." 12 Hening 616.

[2] See p. 105, *infra.*

[3] St. George Tucker, reporting the case.

[4] Tucker's Blackstone (1803), II., note H, "On the Law of Slavery in Virginia," reprinting his *Dissertation on Slavery, with a Proposal for the Gradual Abolition of it, in the State of Virginia* (1796).

Virginia since the passing thereof, nor their descendants, can be slaves in this commonwealth." [1] As cited by Judge Tucker, in 1806, in Hudgins *v.* Wrights,[2] there is a difference in the date probably due to a misprint,[3] and the decision is confined to American Indians: "By an adjudication of the General Court, in the case of Hannah . . against Davis, April term, 1777, all American Indians brought into this country since the year 1705, and their descendants in the maternal line, are free. . . [139] The General Court held . . that the passing of the act authorising a free and open trade . . with *all Indians* whatsoever, did repeal the acts of 1679 and 1682."

Farrar v. Jackson, Wythe 1, May 1788. "Thomas Farrar, tenant in taille of lands, to which slaves were annexed, sold, for his life, two of them, a woman and a boy her child, to James Waddill, who sold them to John Pruett, from whom the defendent, supposing them to be the property of John Pruett, purchased them for 75 pounds . . [2] the defendent, after having notice of the plaintiff's title, which notice probably was in the life time of Thomas Farrar, proposed to sell the slaves to one who might carry them to some remote parts, perhaps with design to prevent a recovery of them by the plaintiff."

Ross v. Pynes, Wythe 69, October 1789. Letter dated December 7, 1767: [70] "I expect mr. Temple, the sheriff of King and queen, will be over with 11 negroes belonging to Benjamin Pynes . . [71] i saw them when down the country, and offered him 330 pounds for the whole. there were four fellows, two wenches, and five boys and girls. . . i imagine Pynes will send the same negroes that i saw, viz. Tom, and his wife and daughter; Adam, his wife, and four children, and two other fellows, Sauny and . however one of them has a sore on his chin, and the other is a little old and a cooper. if you think the negroes look well, you neet not stand on five or ten pounds more:"

Hearne v. Roane, Wythe 90, October 1790. "The plaintiff Anne was the widow of William Roane, the testator of the defendents. before their intermarriage, . . 1782, they had executed an agreement, . . she shall, immediately after his death, possess twenty good negroes, including a full proportion of house servants, such as she may choose, and, if the

[1] Note by St. George Tucker: "Since this adjudication, I have met with a manuscript act of assembly made in 1691, c. 9, entituled, 'An Act for a free trade with Indians,' the enacting clause of which is in the very words of the act of 1705, c. 52. . . If this manuscript be authentic* (which there is some reason to presume, it being copied in some blank leaves at the end of Purvis's edition,† and apparently written about the time of the passage of the act), it would seem that no Indians brought into Virginia for more than a century, nor any of their descendants, can be retained in slavery in this commonwealth."

[2] 1 Hen. and M. 134 (137).

[3] "1777," the date given in Hudgins *v.* Wrights, is shown by internal evidence to be a misprint, for Judge Tucker speaks of the General Court which decided Hannah *v.* Davis, as "consisting nearly of the same judges" as "this Court"—the Court of Appeals of 1806. No such identity of persons existed as to the court of 1777.

* See Hudgins *v.* Wrights, 1 Hen. and M. 134 (138), and Pallas *v.* Hill, 2 Hen. and M. 149 *et seq.*

† The act of 1691 is so copied in the "Purvis" which is in the New York Public Library. Ed.

twenty negroes should not amount in value to a full third part of the negroes whereof he shall die possessed, then she shall have as many more as will amount to a full third part of all the negroes, which are to be in lieu of dower of his slaves, . . thirdly, if she survive him, and have no child living at the time of his or her death, that the negroes, which should come into his estate by the intermarriage, with their increase, shall be vested in her in such absolute manner that she may dispose of them, or otherwise they shall descend to her heirs . . [91] Roane died . . 1785, without a child by the plaintiff Anne, . . In obedience to an order of Essex county court, . . 1786," [49][1] " the commissioners at first allotted to the widow ten of the negroes originally belonging to William Roane, which, with those that came into the estate by his intermarriage with her, made the number twenty. But afterwards, finding that one of the negroes, which had belonged to the widow before marriage, had died since the death of William Roane, they allotted the widow only nine of the negroes properly belonging to his estate, but equal in value to the ten first mentioned;"

Held: [92][2] " in the slaves, to the possession of which the plaintiff Anne, by the marriage contract . . was intitled, in lieu of dower, those which were her property, at the time of her intermarriage, ought not to have been included."

Decree: [93] " That of the surviving slaves . . of Roane, . . exclusive of the unprofitable from old age and infirmity, and also exclusive as well of the plaintiffs . . proper slaves, and the nine formerly received by the plaintiff Anne, . . eleven, or so many more as, with those nine, will be equal to one third part, be assigned to the plaintiffs." " This decree . . was affirmed in november, 1791." [3]

Hinde v. Pendleton, Wythe 354, March 1791. " A negro woman slave and her four children had been in possession of the plaintiff and his wife, the parent many years, and the others from their respective births, . . After the woman slave was discovered to have been, by the father of the plaintiffs wife, . . conveyed long before to John Robinson, the testator of the defendents, the five slaves . . were sold at auction. The plaintiff, at the time and place appointed for the sale, attended with his wife, who manifested a tender affection for the slaves, and such anxiety to retain them, which was increased by a reciprocal abhorrence in them from a separation, that she seemed resolved to buy them at any price. The defendents were not at the sale. one of them, suspecting that some people, disposed to favour the plaintiffs wife, might decline bidding against her, instructed the agent who managed the sale not to let them be sold under a reasonable value. The agent employeth a by-bidder, not being particularly instructed so to do by the defendents; the slaves are exposed to sale, in four lots, for tobacco; the plaintiff is the highest bidder for all; the sum of the prices bidden is somewhat more than 52000 pounds of tobacco, confessed to be enormous" By the court: [357] " The sale ought not

[1] Roane *v.* Hern, 1 Wash. Va. 47 (1791).
[2] Hearne *v.* Roane, Wythe 90.
[3] Roane *v.* Hern, 1 Wash. Va. 47.

to be set aside intirely, . . but the sale ought to be effectual upon payment of so much tobacco as is equal to the value of the slaves at the time of the sale."

Ross v. Norvell, 1 Wash. Va. 14, Spring 1791. "The appellee on the 5th of April 1779, filed his bill . . praying to redeem certain negroes which he states he had mortgaged to the appellant in the year 1765, to secure the payment of a debt due to him. The slaves were conveyed by an absolute bill of sale, bearing date the 18th of June 1765, with a warranty, and a receipt for the consideration stated in the deed, was endorsed thereon. The bill states, that the conveyance, though absolute in form, was intended as a security," [17] "Norvell was suffered to remain in possession of the slaves, two years . . "

[15] "the Chancellor decreed the defendant [Ross], to deliver the slaves, and their increase to the plaintiff, and to pay the profits of them," Decree [19] "affirmed, and remitted to the Court of Chancery to have the account of the profits taken, wherein a liberal allowance will no doubt be made, for the expences incurred in improving the slaves, which certainly ought to be done."

Dade v. Alexander, 1 Wash. Va. 30, Spring 1791. "In this case, the following points were resolved by the court, 1st, That money, directed by will to be laid out in the purchase of slaves, and to be annexed to lands devised in tail by the same will, are to be considered as slaves, and will pass with the land in tail. 2d, A feme sole, being entitled to slaves in remainder or reversion, and afterwards marrying, and dying before the determination of the particular estate, the right vests in the husband.—The president [Pendleton] stated, that this was the constant decision of the old General Court from the year 1753 to the revolution, and has since been confirmed in this Court in the cases of Sneed *vs.* Drummond, and Hord *vs.* Upshaw, that it had become a fixed and settled rule of property."

Commonwealth v. Williams, 1 Va. Ca. 14, October 1791. Indictment for the larceny of a slave.

Dandridge v. Lyon,[1] Wythe 123, October 1791. "Thomas Lyon, owner of . . Hannah, whose progeny are the subject of the present controversy, . . after bequeathing to his wife . . his whole estate, during her life, bequeathed the three first children which Hannah should bring forth to three of his children severally,"

[125] "this court . . hath formerly sustained such a bequest, for these reasons; 1. The power to appoint an owner not in existence, at the time of appointment, . . is tolerated by law; but this cannot be less exceptionable than the power to bequeath a thing not in existence at the testators death. . . [126] 4. No danger of a negro childs perishing by the cruelty of the mothers owner, in not allowing her time to nurse and cherish it, for the benefit of another, is to be apprehended in the cases where such bequests occur. the most frequent case is, where the testator, owning one woman slave only, and wishing to provide in the best manner he can for a needy family of children, would distribute among them the offspring which she,

[1] See note by William Green, Wythe 438.

with kind treatment, may rear, left in the hands of his childrens mother, as in this instance, or of some friend, in whose goodness to supply the place of a parent he confides. if negro children do perish, by cruelty of those with whom their mothers live, as is supposed, it is believed to be in cases where they are hired out, or are under the direction of overseers at places far distant from the habitations of their owners."

Woodson v. Woodson, Wythe 129, October 1791. "By writing, which the parties signed, the 17th day of april 1782, the plaintiff agreed to let the defendent have a negro man slave named Jacob, for the consideration of 13000 pounds of nett tobacco, to continue in the service of the defendent, as his own, until that quantity of tobacco should be paid; and the plaintiff also agreed, if Jacob should die, or by any other accident be rendered unfit for service, to sustain the loss, and either put a negro of like value in his stead, or pay the 13000 pounds of tobacco, when demanded, and not to force the defendent, in the begining or middle of his crop, to receive the tobacco, so as that the plaintiff might recover his negro again."

Mayo v. Carrington, 4 Call 472, November 1791. Will of Joseph Mayo, dated May 27, 1780: "It is my most earnest request, that the gentlemen who shall be named and appointed executors of this my last will, petition the general assembly for leave to set free all and every one of the slaves of which I may die possessed, on account of their services to me whilst alive, and I entreat my said executors to leave nothing undone which may be requisite for obtaining the manumission of the said slaves . . But provided it shall not be in the power of my said executors to get this act of humanity effected, (*i. e.* to get the slaves of which I may die possessed set at liberty,) on that condition and no other, I give and bequeath to John Tabb . . my two mulattoe women called Maria and Suckey, and my mulattoe waiting boy Bob." The testator died in 1785 and the administrators *cum testamento annexo* [474] "hired the slaves, and applied the profits to pay the unsatisfied creditors, and to maintain such of them as were helpless and infirm, leaving a surplus. That, in October 1787, the administrators procured an act of assembly [1] for emancipating the slaves; which was carried into effect by a decree of the high court of chancery in November 1789."

Seekright v. Carrington, 1 Wash. Va. 45, Fall 1791. See Mayo *v.* Carrington, *supra.*

Roane v. Hern, 1 Wash. Va. 47, Fall 1791. See Hearne v. Roane, p. 95, *supra.*

Shelton v. Shelton, 1 Wash. Va. 53, Fall 1791. Joseph Shelton, "a rich old batchelor," by his will executed in 1770, devised five plantations by name; and "all my negroes, young and old, at all my plantations above named, to be equally divided between my three brothers" The testator [54] "lived till September 1784, and in the mean time purchased another tract of land, called Williamsons, and 8 or 9 slaves, three only of whom were at Williamsons at his death. The others were at the plantations devised, from whence others were removed to Williamsons, and two were out at nurse for their maintenance."

[1] 12 Hening 611.

Decreed: [60] " The after-purchased slaves are not to be distinguished from the others. 1st, The testator, as to lands, speaks from the date of the will; as to personals, at his death. And slaves from their nature, (from their being purchased without a conveyance recorded, and from the act of assembly where they are devised,) are to be ranked in the personal class. 2d, restriction and devise, is not of negroes by name but by the plantations: they were upon them, and those found there at his death will pass, whenever acquired. Upon this point therefore the court decide the devise to be confined to the slaves in the devised plantations at the time of the testator's death, in exclusion of those at Williamsons; but are of opinion that their settled habitations as fixed by the testator ought to give the rule, and not any casual absence therefrom at his death, . . [61] All the working slaves from Williamson's were at work at the home-house, Horse-Shoe, the instant of the testator's death. . . The young negroes sent from the devised plantations to assist poor people, to remain there at will, or exchanged as Sampson was for Tom, furnish no proof of an intention to change their residence or to affect the devise. Such too is the case of the girl Rachel [the spinner], and the boy Cudjo sent to Williamsons to work for a short time (not to reside there,) just before his death; so the negro Mark, sent from Williamsons in like manner to assist a poor family, is to be excluded from the above devise."

Wood v. Davis, 1 Wash. Va. 69, Spring 1792. " Rodes deputy sheriff . . hath this day levied an execution on Fanny etc. negroes, . . taken at a suit of J. Davis by a judgment . . for the sum of 16,164 lb of Tobacco."

Hoomes v. Kuhn, 4 Call 274, April 1792. " Kuhn suspecting that a slave belonging to Hoomes had robbed his store [of a guinea and certificate], at the Bowling Green, whipt him very severely. Hoomes, . . upon hearing of the whipping, went to the Bowling Green; and, after a short altercation with Kuhn, struck him: the latter returned the blow, and a fight ensued, in which Kuhn was much worsted. Kuhn brought an action of assault and battery against Hoomes . . and prosecuted the slave for the supposed theft, but he was acquitted. Hoomes brought an action against Kuhn for whipping the slave, and recovered £17."

Jenkins v. Tom, 1 Wash. Va. 123, Fall 1792. " This was an action of trespass, assault and battery, and false imprisonment, brought by the appellees to recover their freedom. . . the plaintiffs had offered in evidence sundry depositions of antient people to prove, that certain women named Mary and Bess, when they came first into this country, were called Indians; and had a tawny complexion, with long straight black hair; to strengthen this testimony, the plaintiffs produced a witness to prove, that he heard a certain other person now dead, say in the year 1701, that when he was a lad about 12 years old, these women [1] were brought to this colony in a ship, and were called Indians; that they had the appearance of Indians, and that the former of them was called the grandmother of the latter. To the admission of this testimony, the defendant objected, but was

[1] They were apparently imported before 1682, and since they came by sea, they were slaves, by the act of 1670. 2 Hening 283.

over-ruled by the court. The jury found a verdict for the plaintiffs. In the record there is a certificate of the judges, stating: That the defendant's counsel, in his argument, insisted much upon a clause of an act of Assembly, . . ' for the better government of servants and slaves,' passed in the year 1753,[1] . . and argued from thence, that all Indians . . not particularly excepted in that clause, might be sold as slaves: that the court informed the counsel, that he mistated [*sic*] the law; that there was a time at some period in the last century, when a law was in existence, which declared Indians at war with the people of this country, slaves, when taken prisoners:[2] that under that law, many Indians were made slaves, and their descendants continue slaves to this day:—but that this law was some time after repealed;[3] from which period, no American Indian could be sold as a slave, and that all such as had been brought into this country since that time, and had sued for their freedom, had uniformly recovered it. That the same counsel still insisted upon his former argument, and considering the court's address to the bar, as a misdirection to the jury, had prayed this certificate to be entered at the foot of the judgment. From this judgment the defendant appealed. After argument the Court affirmed the judgment."

Turner v. Turner, 1 Wash. Va. 139, Fall 1792. Action of detinue, brought in 1783 for the recovery of two slaves. Held: " the judgment of the County Court is erroneous, in admitting . . evidence of a parol gift of the slaves in dispute, . . it being subsequent to the year 1758, no estate in the slaves passed . . for want of a deed, or will in writing, according to the act of Assembly, passed in the year 1758, intituled, ' an act to prevent the fraudulent gifts of slaves.' "

Nance v. Woodward, Wythe 180, March 1793. Will of Timothy Vaughan, 1759: " to my wife . . all my . . negros . . during her natural life." Held: [182] " the wife could make no disposition of the . . negros which would be effectual after her death," but they, " with the increase of the females, descended to the heir at law, of the testator."

Cary v. Buxton, Wythe 183, March, 1793. [184] " of the slaves bequeathed [in 1751] . . the remainder who had eloped to the british enemy, never returned."

Aylett v. Minnis, Wythe 219, May 1793. William Aylett [220] " devised 1200 acres . . to four daughters severaly, . . annexing slaves to every parcel, and, in two of those devises, declaring that the slaves so annexed should *descend* pass and go, as part of the *freehold.*"

[1] 6 Hening 355. The basis of this act is the act of 1682, ch. 1 (2 Hening 490). The act of 1682 applies to future importations of servants, and specifically mentions " Indians that are taken in warre or otherwise by our neighbouring Indians, confederates or tributaries . . and . . sold . . here as slaves." The act of 1705 (3 Hening 447) is less definite: " all servants imported and brought" may, perhaps, include past importations. Indians cease to be mentioned specifically. The act of 1753 definitely includes past as well as future importations, and uses the word " persons " instead of " servants."

[2] Acts of 1676, 1679, 1682. 1 Hening 346, 404, 440; 2 Hening 490.

[3] Held, in 1772 (in Robin *v.* Hardaway, Jefferson 109), to have been repealed in 1705; held in 1806 (in Hudgins *v.* Wrights, 1 Hen. and M. 134) to have been repealed in 1691. See introduction, p. 65.

Kennon v. M'Roberts, 1 Wash. Va. 96, Fall 1793. Will of Robert Mumford, dated September 8, 1743: "Item: I will and bequeath to my son Robert Mumford (his heir at law) all my lands at the Ochaneachy island, also all my lands of Finny wood, with six negroes (by name) and ten horses and mares. Item: I will and bequeath to my son Theodorick all my lands at Cargills on Roanoke River, containing 690 acres, with two negroes; Sam at Roanoke, and Jack at Rowanty, also ten horses and mares. Item: to my well beloved wife and only daughter Elizabeth, I will and bequeath all the rest of my estate real and personal saving one negro girl to my son Theodorick."

Hooe v. Pierce, 1 Wash. Va. 212, Fall 1793. "action of detinue for a negro, called Jack Robinson, alias Taliver, . . [213] the slave . . was once the property of [Pierce] the testator of the defendant, known by the name of Taliver, and so continued, until the year 1777, when he ran off from his master, and got on board a British vessel." In July, 1779, [212] "the *Bishop*, an enemie's vessel, was taken on the high seas by the *General Washington*, an American vessel, . . the slave . . was on board the *Bishop* at the time of her capture, and was then known . . by the name of Jack Robinson. That the vessel and cargo, together with the slave, was brought into Virginia, and condemned as lawful prize, and purchased . . [213] by the plaintiff. . . the slave . . was taken from the possession of the plaintiff in September 1783, by the defendant, in pursuance of a warrant, granted under an act of . . Assembly passed in 1782,[1] entitled, 'An act for the recovery of slaves, horses and other property, lost during the war,' and that he still detains him."

Judgment for the defendant, affirmed: [216] "The condemnation in the court of admiralty, could not bind the intestate [Pierce], who was no party to the suit. . . [217] The sale therefore . . could not divest the right of the original proprietor."

Beckwith v. Butler, 1 Wash. Va. 224, Fall 1793. Held: "where a child is advanced with money, or negroes, he need not bring into hotchpot the increase of the one, or account for the interest upon the other."

Coleman v. Dick and Pat, 1 Wash. Va. 233, Fall 1793. Action of assault and battery, and false imprisonment, brought by the appellees.[2] The jury found [234] "that the plaintiffs are lineally descended by the maternal line from Judith; that Judith was an Indian, or the descendant

[1] Rev. Laws, 157.

[2] [235] "in personal torts, two or more cannot join as plaintiffs in the action, because the injury done to one is not an injury to the other." But [239] "actions like the present, are merely fictitious, and were very properly . . likened to actions of ejectment. For if many persons may unite as plaintiffs, to try a joint right to land, . . no good reason can be given why they may not unite, to try a joint right to freedom . . Although suits for freedom may be instituted without the leave of the court, yet it is usual to petition for such leave. The court, generally require the opinion of the counsel * upon the plaintiff's right; and if it appear, that the plaintiff has probable cause for suing, the court will make special orders for the purpose of protecting the plaintiff from the master's resentment, or ill treatment on that account, and for allowing him reasonable time to prepare for his trial."

* See Gregory *v.* Baugh, p. 163, *infra,* with reference to Thomas Jefferson as such counsel for a slave.

of an Indian. That she was brought into this state by a certain Francis Coleman, sometime after the year 1705, and was held as a slave, to the day of her death." Marshall, for the appellees: [236] "the act of 1705 . . not only repeals in express terms,[1] all former laws upon the subject, but establishes an intercourse with the Indian nations, as with freemen—it authorizes a free commerce with them.[2] Is it usual for freemen to treat, or to trade with nations as free, the individuals of which, if caught, become slaves?" [237] "Wickham in reply. The Act of 1705,[3] (which I call the treaty law,) could only relate to Indians within our territory. . . This law is intended to regulate trade with Indians, considered in a national point of view, which is by no means incompatible, with the right, or the policy of purchasing the individuals of those nations for slaves."

Judgment for the plaintiffs (Dick and Pat), affirmed: [239] "the court are of opinion that the act of 1705, is a compleat repeal of all former laws on the subject, and that since that period, no *American* Indian, can be reduced into a state of slavery. *Foreign Indians* coming within the description of that act, might be made slaves.[4] . . Two judges think, that finding Judith to be an Indian, *brought in* by Coleman, without saying from whence, whether by sea,[5] or by land, is insufficient to warrant the judgment [for the plaintiffs, Dick and Pat]. . . On the other hand, two judges, presuming in favor of liberty, think that the verdict is sufficient. The judgment therefore must be affirmed."

Keene v. Lee, 1 Wash. Va. 239, Fall 1793. Newton Keene, "by his will made in 1770, devised to his executors" his lands and slaves "to sell for payment of debts; and if there remained more slaves than were necessary for this purpose, he devised them equally among his children."

Hubbard v. Taylor, 1 Wash. Va. 259, Spring 1794. Bond for the delivery, on the day of sale appointed by the sheriff, of three negroes "taken under execution . . to satisfy . . the sum of £151:6:11¼."

Cole v. Clayborn, 1 Wash. Va. 262, Spring 1794. Action of detinue to recover a number of slaves. Will of William Cole, 1729: "I give to my wife, for ever, two negroes named Will and Sarah, above and besides her dower in my lands and negroes; . . all the rest and residue of my negroes . . to my children for ever, . . My will also is, that my executors shall work all my negroes, (except those particularly bequeathed) on my lands, until my son William shall come of age, and the profits of the said lands and slaves, to be equally divided amongst my children." The

[1] 3 Hening 462.
[2] *Ibid.*, 468.
[3] Chapter 52. *Ibid.*, 464.
[4] Down to 1778. 9 Hening 471.
[5] "Foreign Indians" are, in the opinion of the judges, those who come "by sea," for they accept Wickham's assertion that the act of 1705, ch. 52 (though granting "a free . . trade . . with all Indians whatsoever") [237] "could only relate to Indians within our territory;" but in section 11 of that chapter the term is used to designate non-tributary American Indians who are approachable by land, for the tributary Indians are required to "march, with the English, in pursuit of foreign Indians." 3 Hening 468. Ed.

slaves mentioned in the declaration are " the descendants of a female slave allotted to Mary Cole, the widow, as part of her dower."

Held: the dower slaves, after the death of the widow, passed under the residuary clause of the will.

Applebury v. Anthony, 1 Wash. Va. 287, Fall 1794. A marriage contract whereby Anthony agreed to give a slave, Lucy, to his daughter on her marriage with Applebury. After the marriage Anthony refused to deliver the slave, and Applebury brought a suit to recover her. Finding that the suit, which " was refered to arbitration," would be decided against him, Anthony, in May, 1769, executed a deed for the slave, who was delivered to Applebury. [289] " The next day an agreement was made between the same parties to substitute " for Lucy and her children [287] " a slave called Dinah, and two notes of hand for £60 which were delivered," and Lucy was redelivered, [289] " this, not with any fraudulent view, but upon the laudable motive of gratifying the wishes of the slave."

Lee v. Cooke, 1 Wash. Va. 306, Fall 1794. " This is a covenant to warrant the title of a slave, and in all conveyances of such property, whether by deed, or by will, they are considered as personal, and not real estate." They are [308] " only considered as real estate in the case of descents."

Walden v. Payne, 2 Wash. Va. 1, Fall 1794. Held: [7] " Slaves from their nature are chattels. They were originally so, and the law made them real estate only in particular cases, such as in descents etc. But in most other instances, and especially in the payment of debts, they were declared to be personal estate. It is true, the law has protected slaves from distress, or sale, where there is a sufficiency of other personal estate to pay debts or levies, and in this respect they differ from other chattels; but this qualified exemption does not change their nature, or give to them the qualities of real property." [Lyons, J.]

Shelton v. Barbour, 2 Wash. Va. 64, Spring 1795. Action of " trespass, assault and battery and false imprisonment, brought by the appellee, who had been held by the appellant as a slave, in order to try his right to freedom. . . the master, offered in evidence a transcript of a verdict and judgment in the former General Court, between the mother of the appellee and Robert Harris, under whom the appellant claims, by which verdict it was found, ' that the plaintiff was the slave of the defendant.' The appellant's counsel offered this as conclusive evidence of his title, but the court being divided in opinion sent the verdict to the jury as circumstantial evidence only.". The jury found a verdict for the slave.

Held: [67] " The judgment must be reversed for error in the court's not admitting the record as conclusive evidence, to prove the plaintiff a slave. The cause is to be sent back for a new trial with a direction to this effect, unless the plaintiff can shew that he or his mother were manumitted subsequent to the first verdict."

Fairclaim v. Guthrie, 1 Call 7, April 1797. Will of John Guthrie, dated October 17, 1761: " my will is that my son Richard should have his

choyes of my 2 whences [wenches] Geany or Dice and if he chuses upon Jeany and she should bring ever so many children she shall nurce them till they are fourteen months old an then shall return them to James Guthrie or his ears [heirs], but if he chuses upon Dice he shall have her and her ears . . [8] my will is that all Jeaneys children that is now living (viz.) I give unto James Guthrie and his ears forever, Harry, Daffenny, Frank and Samson, my will is if Richard Guthrie makes choyes of Jeany he shall have no other part of estate, my will is that Richard Guthrie should have Dice and London and her increase and to his ears forever, my will is that Jeany and all her increase shall be James Guthries and his ears forever moreover my will is that if Jeany brings ten live children that she shall be at her one [own] liberty from him or his eares only living with James Guthrie or his ears her lifetime."

Fowler v. Saunders, Wythe 322, March 1798. "a delivery of slaves, in consideration or for cause of marriage, . . [323] by the father of a wife to her husband," without a deed. [327] "the husband, during all his life time retained possession of the slaves, employing them in his service, and enjoying the fruits of their labour. . . the statutes [of 1758 and 1787] apply to the case of a *donor remaining* in possession,—" Decreed: "that the plaintiffs [Fowler and Susanna his wife] do discover the names of the slaves which were delivered by the defendent's grandfather to her father [Saunders] on his marriage [to Susanna], and of their increase, and render an account of the profits of the said slaves since the death of her father, and deliver such of the slaves as survive, and pay the said profits, to the defendent's guardian, for her use, . . [328] saving to the plaintiff Susanna [defendant's mother] her rights, if any she have, derived from her former husband [Saunders]." Plaintiffs appealed. "decreed . . that the appellants' bill be dismissed," 4 Call 363.

Chapman v. Turner, 1 Call 280, May 1798. [281] "I this day received of Mr. John Turner, the sum of thirty pounds, and put a negro woman named Hannah, in his hands as security, and if the 30 *l.* is not paid at or before next July Hanover Court, the said Turner is to have the said negro for the said 30 *l.* Witness my hand this 20th May, 1786. Richard Chapman. *Teste*, James Parsons." [280] "The answer of John Turner states, . . That the slave had had four children prior to the purchase, three of which she had overlain, and that upon discovering these facts he had offered to annul the contract, but Chapman refused." None of the witnesses [282] "made her value to exceed the sum actually paid more than 10 or 15 pounds; and several represented her to have been under a bad character."

Held: it was a conditional sale, which became absolute on the failure of Chapman to pay the 30 *l.* on the day specified in the instrument.

Dunn v. Bray, 1 Call 338, October 1798. Held: in order to annex slaves to lands,[1] it is necessary that co-extensive estates should be given in both.

Fowler v. Saunders, 4 Call 361, October 1798. See same *v.* same, *supra*.

[1] Under the act of February 1727. 4 Hen. 225.

Commonwealth v. Hays, 1 Va. Ca. 122, November 1798. The prisoner was found guilty of stealing " a negro slave named Tom, of the value of 100 *l.* . . . while the said slave was a runaway;" Held: " not an offence at common law."

Pleasants v. Pleasants, 2 Call 319, May 1799. Will of John Pleasants, dated August 11, 1771: [334] " My further desire is respecting my poor slaves, all of them as I shall die possessed with, shall be free if they chuse it, when they arrive to 30 years of age, and the laws of the land will admit them to be free, without their being transported out of the country, I say all my slaves now born, or hereafter to be born, whilst their mothers are in the service of me or my heirs, to be free at the age of 30 years as above mentioned, to be adjudged of by my trustees their age." He then gives his son Robert, the plaintiff, eight negroes, " On condition he allows them to be free at the age of 30 years, if the laws of the land will admit of it." He then " devises the residue of the slaves to various persons," under similar conditions. Will of Jonathan Pleasants " (who was a legatee under the will of John Pleasants of one third of his negroes on the same condition) dated May 5, 1776:" [321] " And first believing that all mankind have an undoubted right to freedom and commisserating the situation of the negroes which by law I am invested with the property of, and being willing and desirous that they may in a good degree partake of and enjoy that inestimable blessing, do order and direct, as the most likely means to fit them for freedom, that they be instructed to read, at least the young ones as they come of suitable age, and that each individual of them that now are or may hereafter arrive to the age of thirty years may enjoy the full benefit of their labor in a manner the most likely to answer the intention of relieving from bondage. And whenever the laws of the country will admit absolute freedom to them, it is my will and desire that all the slaves I am now possessed of, together with their increase, shall immediately on their coming to the age of thirty years as aforesaid become free, or at least such as will accept thereof, or that my trustees . . may think so fitted for freedom, as that the enjoyment thereof will conduce to their happiness, which I desire they may enjoy in as full and ample a manner as if they had never been in bondage, and on these express conditions and no other do I make the following bequests of them." [353] " In the present case, the devisees, the legal proprietors, oppose the manumission,"

Held: [354] " That to apply the rule respecting the limitation of the remainder of a chattel upon too remote a contingency, with all its consequences, to the present case, would be too rigid, but, that a reasonable principle ought to be adopted to suit its peculiar circumstances; which is this, that if the event happens whilst the slaves remain in the possession of the family, without change by the intervention of creditors or purchasers, since the contending parties would be those whose interest had been contemplated by the testators, the bequest ought to take place; . . [355] that the limited manumission, according to the modifications in the wills of the testators, can alone take place and be decreed, and that the

terms for securing the public against the maintenance of the aged or infirm, cannot be equitably imposed upon the devisees. It is, therefore, further decreed and ordered, that all the slaves of which the testators were possessed, as their property, at the time of their respective deaths, not subjected to the claims of the creditors or purchasers before stated, and who are now above the age of forty-five years, and their increase born after their respective mothers had attained the age of thirty years, (so soon as Robert Pleasants, the executor . . shall . . enter into bonds . . with condition that the said slaves shall not become chargeable to the public, . .) and all such as are now above thirty, and under the age of forty-five years, immediately shall be emancipated and set free, to all intents and purposes, in like manner as if they had been born free, and that all who are now under the age of thirty, and whose mothers had not attained that age at their birth; and all their future descendants, born whilst their mothers are in such service, do serve their several owners until they shall respectively attain the age of thirty years,[1] and then be in like manner free;[2] and when their freedom shall severally take effect according to this decree, there shall be delivered to each of them, by their respective masters and mistresses, a certificate, written or printed, attesting their freedom, in such form as shall be directed by the said High Court of Chancery. That no account ought to be taken of profits, it being unusual in such cases, and less reasonable in this very difficult one." [Pendleton, P.]

Selden v. King, 2 Call 72, October 1799. Will of Joseph Achilly, dated March 11, 1699/1700: [74] " it is my further will and desire that none of my negroes be removed or carried away from the plantation whereon I now live but that they shall live and be together,"

Eppes v. Randolph, 2 Call 125, November 1799. Letter of Richard Randolph, the father, to his son, David Meade Randolph, August 8, 1780: [131] " I am very willing, in consequence of your marriage . . to give you a fee simple estate . . together with all the slaves and stocks thereon . . with two negro carpenters, mulatto Peter and Mingo;" Letter of Richard Randolph, the father, to Robert Beverley, July 20, 1785: [138] " Sir, the connection my son Richard is about to form, with your amiable daughter Maria, is perfectly agreeable to all his friends upon James river; . . The place where I now live, known by the name of Curles, . . is what I

[1] Judge Roane differs from President Pendleton and Judge Carrington on this point: [338] "As to all the slaves, then [1782*] *in esse,* but under thirty years of age, their right to freedom was complete, but they were postponed as to the time of enjoyment. . . [339] What then, after the passing of the act, is the condition of the children born of mothers, so postponed in the enjoyment of their freedom? Are they, at their birth, entitled to freedom? Or, are they too, to be postponed, until the age of thirty? The condition of the mothers of such children, is that of free persons, held to service, for a term of years: such children are not the children of slaves. . . The conditions of the will then, as applicable to such children, . . is void, as being contrary to law: it being an attempt to detain in slavery, persons that are born free."

[2] An act passed in 1787 (12 Hen. 613) in regard to Moorman's will (1778) was, [354] " in spirit, pursued by a majority of the Court." But the act of 1787 provided that " the increase of those to be free at a future period, were to be free with the parents."

* The act of May 1782, ch. 21, authorized manumission of slaves. 11 Hen. 39.

intend for him, at the death of his mother and myself, with forty slaves; that is to say, eight men, six women, six plough-boys and twenty children;"

Nanny v. Mayes (cited in *Pegram v. Isabell*, 2 Hen. and M. 193),[1] 1799. [194] "it was deposed by a witness . . a very old man . . that the said Nanny was descended according to general reputation, in the maternal line, from an Indian ancestor, who was imported into this state, since the year, 1705;" Nanny "recovered her freedom."

Robertson v. Campbell, 2 Call 421, October 1800. "the plaintiffs delivered the defendants two slaves (shoemakers by trade) as a security; and the defendants were to have the profits of them, for the use of the tobacco lent. That their profits were 20 *s.* per week . . [423] or 52 *l. per annum*." The plaintiff sold [431] "a valuable blacksmith."

Wallace v. Taliaferro, 2 Call 447, November 1800. Held: [490] "the interest of the slaves, devised by the will of William Rowley [who died before September 25, 1774] to Lettice Wishart, vested in her husband John Wishart, in the same manner as if they had been chattels, . . That the said John Wishart, during his lifetime, had none other possession of the said slaves, than as co-executor . . , they being, with the other slaves of the testator, continued on his plantations, under the direction of the executors, for finishing the crops, according to the directions of the act of Assembly, until after the death of the said Wishart [before December 25, 1774]; and no act appears to have been done by him, testifying his election to hold the said slaves, in right of his wife, and not as executor; and, therefore, that the right survived to the said Lettice;" [Pendleton, P.]

Morris v. Owen, 2 Call 520, April 1801. Will of Henry Simmons devised to his wife, during her widowhood, his plantation and slaves with their future increase, "to dispose of among my children as she thinks proper:" that she "shall enjoy the labor of the slaves given during widowhood, may be during her life, with their future increase, and then to be divided, at her discretion, amongst my children." A witness [522] "says, that, in 1774, she was called by Mrs. Susanna Simmons to take notice, that she gave Joan (who was then present,) and her increase, to her daughter Susanna Edwards; reserving her own life therein. That, some time afterwards, Susanna Edwards wished to carry the slave home, but Mrs. Simmons refused, saying that she would never give them, out of her own possession, during her life."

Held to be a good execution of the power as to Joan and her increase.

Fitzhugh v. Foote, 3 Call 13, April 1801. Held: [17] "That an equal division of slaves, in number or value, is not always possible, and sometimes improper, when it cannot be exactly done without separating infant children from their mothers, which humanity forbids, and will not be countenanced in a Court of Equity: so, that a compensation for excess must, in such cases, be made and received in money:"

[1] Also in 1 Hen. and M. 387 (1807).

Chisholm v. Starke, 3 Call 25, April 1801. Will of James Underwood who died in 1773: "I tend to my loving wife Ann, the use, labour and profits of one third of my slaves, during her natural life;" The wife, Ann, "took possession of a third part of the slaves, which have greatly increased; but, through the severity of her, and her second husband, William Richardson . . they are reduced to three: . . and that . . he empowered Burnett to sell one, . . That Burnett sold her to Chisholm, who lives at a great distance up the country, for 50 *l.* the estimated value of the full property of such a slave."

Bradley v. Mosby, 3 Call 50, October 1801. By deed in 1758 Thomas Walton conveyed to his daughter Patty, wife of Edward Mosby, "the use of two negro slaves, during her natural life, . . and after her death, . . to the heirs of her body," The plaintiff is the eldest son of Edward Mosby; the defendant married one of the daughters of Edward Mosby, and together with the rest of the children divided the female slave and her eight children among all the children of the said Patty.

Judgment for the plaintiff, affirmed: "the appellee [Mosby] had at the time of his birth, a vested remainder in these slaves: . . he is entitled to recover." [Roane, J.] [62] "I am . . of opinion, that the daughter took the absolute property; and that the judgment of the District Court ought to be affirmed." [Lyons, J.] Pendleton, P., dissented: [67] "the remainder was a good one; . . being of personals" the children "were all entitled to equal shares."

Jordan v. Murray, 3 Call 85, November 1801. Held: although under the act of 1758, evidence of a parole gift of slaves cannot be given, yet such testimony may be received in order to prove five years' possession so as to bar the plaintiff's demand.

Hairston v. Hall, 3 Call 218, May 1802. "the slaves had been devised by Sarah Hall to her son Nathan Hall, father of the plaintiffs, for life, and at his death to her grand-children as her said son should see cause to divide the said slaves among them, but if her said son should trade, sell or dispose, hire or lend any part thereof any where, or to any person during his life, or the same should be taken in consequence of any debt of his, that the slaves should be divided among the plaintiffs as soon as they were known to be out of the possession of the said Nathan,"

Wythe's Will, Wythe xxxvii, April 1803. Will of Chancellor Wythe, dated April 20, 1803:[1] "i devise to him [William Duval executor] the houses and ground in Richmond, . . and my stock in the funds, in trust, with the rents of one and interest of the other, to support my freed woman Lydia Brodnax, and freed man Benjamin, and freed boy Michael Brown, during the lives of the two former, and, after their deaths, in trust to the use of the said Michael Brown: and all the other estate . . to George Wythe Sweney the grandson of my sister." First codicil, dated January 19, 1806: "To the said Thomas Jefferson's patronage i recommend the

[1] Letter of Henry Clay to B. B. Minor, May 3, 1851: "his last will . . written by me, upon his dictation, before my departure from Richmond." Wythe xxxv. Clay acted as Wythe's amanuensis "for several years."

freed boy Michael Brown . . [xxxvii] for whose maintenance, education or other benefit, as the said Thomas Jefferson shall direct, i will the said bank stock, or the value thereof . . to be disponed." Second codicil, dated February 24, 1806: "I will that Michael Brown have no more than one half my bank stock, and George Wythe Sweney have the other immediatelie. . . If Michael die before his full age, i give what is devised to him to George Wythe Sweney. I give to Lydia Brodnax my fuel." Third codicil, dated June 1, 1806: "revoking the said wills and codicils in all the devises and legacies . . relating to . . George Wythe Sweney, the grandson of my sister; but I confirm the said will and codicils in all other parts, except as to the devise and bequest to Michael Brown, . . who, I am told, died this morning, and therefore they are void." Chancellor Wythe died a few days later, on June 8, from poison. Note to p. xxviii: "At the time of the poisoning, the Chancellor had been confined at home by indisposition. Swinney, indignant at the kindness and munificence of his uncle to the colored boy, intended to poison the boy, and put the poison in the coffee for breakfast, not expecting that the Chancellor would think of coming from his chamber, or would be in any danger of partaking of it. But during his absence, the Chancellor did make his appearance and drank of the coffee. The woman also died."

Cowles v. Brown, 4 Call 477, October 1803. Will of John Cooper, dated 1791: [479] "I should have made a more equal and general division among the negroes which I have right to dispose, which came by my wife Susanna, but to some it would be but burthening their conscience to hold them as slaves or they must liberate them, which in my opinion would be a very great disadvantage to the slaves."

Cary v. Macon, 4 Call 605, October 1803. [617] "October 1770, seventy pair of shoes charged to John, and none to Edward Cary, when it is presumable that they were for the whole slaves. The commissioner states that Edward had forty-two, and John ninety. One third part, therefore, should be charged to the former, and two thirds to the latter. The same occurs in May 1771, in November 1772, in November 1773, in November 1774, and in January 1776, and to be corrected in like manner." Mrs. Ambler was [618] "to pay the expense of feeding and clothing the slaves, their levies and taxes, and the doctor for attending them,"

Charles v. Hunnicutt, 5 Call 311, October 1804. "Gloister Hunnicutt, a quaker . . by his will, made on the 13th of April, 1781 . . : 'My will and desire is, that the following negroes should be manumitted on or before the first month next 1782, viz. Tom, Joe, Charles, Ben, Jenny and her child Charlotte. I give the above named negroes to the monthly meeting, of which I am a member, to be manumitted by such members of the said meeting, as the meeting shall appoint." In December 1781, "the said monthly meeting appointed two of their members, to wit, Edward Stabler and Wyke Hunnicutt, the executor, to draw and execute an instrument of manumission of the said slaves in the said will mentioned. In May 1782, the act of Assembly,[1] entitled, 'an act to authorize the manu-

[1] Ch. 21, 11 Hen. 39.

mission of slaves,' passed; and, in pursuance of the said appointment, the said Edward Stabler and Wyke Hunnicutt, on the 6th of July, 1782, executed a deed of emancipation of the said slaves; which was admitted to record . . [312] in November 1782. In consequence of the foregoing proceedings, the appellants claiming a right to freedom under the will, order of the monthly meeting, and deed of emancipation aforesaid, brought suit at the common law to recover their liberties against . . Pleasant Hunnicutt [son of the testator], who held them in bondage, as part of the testator's estate." The district court gave judgment in favor of the defendant.

Judgment reversed by the court of appeals: [318] " It is not impossible that the prevailing sentiment of the country, and the general expectation that a law, authorizing the manumission of slaves, could pass, was known to the testator; and that he looked forward to an event which actually happened in thirteen months afterwards." [St. George Tucker, J.] [322] " in this case, the unhappy plaintiff has run out his race of existence, and the tedious forms of the courts bring liberty to him too late! . . [324] [the testator] Being proved to be a quaker, I believe that this court might . . take official notice of the principles of that society, holding slavery in abhorrence." [Roane, J.] [328] " the quakers had long been petitioning the legislature to pass such a law; and there was every appearance, that their request would be complied with, at no very distant period." [Fleming, J.] [330] " Devises in favour of charities, and particularly those in favour of liberty, ought to be liberally expounded: . . it is fair to infer, that the testator meant that the deed of manumission should not take place, until an act of assembly, to authorize it, should pass; for he knew, that the existing law [1] forbid it, and that his society had been anxiously endeavouring to procure an enabling statute, for that purpose, from the legislature; which it was generally believed would shortly be obtained. This . . puts an end to the objection founded upon the distinction between a present devise, and one with a future aspect." [Lyons, P.]

Lambert v. Paine, 3 Cranch 97, February 1805. Will of George Harmer, dated 1786: [98] " It is my desire that all my negroes, horses, and other property, be sold,"

Wilson v. Isbell, 5 Call 425, April 1805. Isbell was the slave of Whitney, a citizen of Virginia, and was born in this state before October 5, 1778, when the act [2] for preventing the further importation of slaves passed, [427] " and so continued till the year 1781 or 1782; when Whitney removed his family and part of his property to Maryland; among which property was the appellee. That she was hired out, in Maryland, for about two years and a half." Whiting removed back to Virginia, but during his residence in Maryland, in 1784, " he sold the appellee, then being in Maryland, to the appellant, as a slave, who brought her, from thence, into this state, at that time; " he being a resident of Virginia.

Held, unanimously by the court, that Isbell is entitled to her freedom.

[1] Act of 1748, ch. 38, sect. 26 (6 Hen. 112), re-enacting the act of 1723 (4 Hen. 132).
[2] 9 Hen. 471.

Woodley v. Abby and other paupers, 5 Call 336, May 1805. John Harrison died in 1790. "His wife Eliza administered on his estate in due form of law, sold it on a credit of twelve months, and in the year 1791, married David Bradley, . . In September 1792, David Bradley, by deed, (which was duly recorded in the same month,) emancipated the plaintiffs, who were slaves in his possession before his marriage." The representatives of Harrison in 1798 brought suit "[337] against Bradley and wife, suggesting a *devastavit*; and obtained judgment against them, by confession, *de bonis propriis.* On this judgment, an execution issued, which was levied on the plaintiffs, after they had enjoyed their freedom, under the deed of emancipation, about twelve years. The plaintiffs applied for and obtained an injunction, which on a hearing, the judge of the . . district court perpetuated;"

Decree reversed: Bradley [348] "became liable of the *devastavit*; whether it was committed before or after his intermarriage, as both of them are living. The claims of the appellants were therefore due from him; and he could not disappoint them by a voluntary manumission of his slaves." [Fleming, J.] Lyons, P., and Roane, J., concurred. Tucker, J., dissented: [342] "The existence of this very suit corroborates the opinion I have conceived, that a person *de facto* free, either by birth, as in the case of the children, or by actual emancipation in due form of law, as in the case of the parents, cannot be taken in execution to satisfy any judgment, or decree in any suit to which he is not a party. And this opinion, I conceive, accords with the act of 1794, ch. 15." Carrington, J., also dissented.

Parish v. Gray, 6 Call 18, April 1806. "The appellee [Jenny Gray] brought an action of assault and battery and false imprisonment on behalf of herself and several of her children, against the appellant in the county court. Plea not guilty, and issue. Five successive juries were sworn, and neither of them rendered a verdict. In consequence of which, the parties, by consent, transferred the cause to the district court, where it was docketed and tried. The jury found that the plaintiff was free, and assessed her damages to $30: which she released. The judgment of the court was, that she should recover her freedom with costs of suit:" Affirmed.

Winslow v. Beal, 6 Call 44, April 1806. The deputy sheriff "distrained the slave [which had been conveyed to Beal in 1793] on the land of Hamilton in the year 1795, and sold him for the taxes" due from Hamilton. Held: [46] "the act of assembly gave him power to distrain the slave, if no other property could be found;"

Moore v. Aylett, 1 Hen. and M. 29, October 1806. In 1791 Moore agreed to lend Aylett the money to discharge an execution, to satisfy which certain negroes were about to be sold, "upon condition that Mary, one of the slaves, who was then with child, and had also a child in her arms, should be set up and purchased by him; that he should hold the slaves as a security" Moore "permitted them to return home after the sale, where they stayed eight or ten weeks, at the end of which time, seeing no prospect of the money being paid, he sent for them to his own house, where they remained twelve months, and then were sold."

Austin v. Winston, 1 Hen. and M. 33, October 1806. Austin [34] "proposed that his negroes should be sold under an execution for his debt, in lots, so that they might sell for little or nothing, and get some friend to buy them in for him: and that he . . would become the purchaser, . . Seventeen negroes were thus sold in lots, to satisfy a debt . . actually reduced at the time to about 160 *l.* only. The sale amounted to 207 *l.* 15 *s.* and was publicly made September 20th, 1789:"

Hudgins v. Wrights, 1 Hen. and M. 134, November 1806. Hudgins, being about to send the appellees out of the state, "a writ of *ne exeat* was obtained from the Chancellor, on the ground that they were entitled to freedom. . . The time of the birth of the youngest was established by the testimony; and the characteristic features, the complexion, the hair and eyes, were proven to have been the same with those of whites. Their genealogy was traced back by the evidence taken in the cause . . through female ancestors, to an old Indian called Butterwood Nan [who was 60 years, or upwards, in 1755] . . her daughter Hannah had long black hair, was of the right Indian copper colour, and was generally called an Indian by the neighbours, who said she might recover her freedom, if she would sue for it; . . [142] John, (a brother of Hannah,) brought a suit to recover his freedom; and that Hannah herself made an almost continual claim as to her right of freedom, insomuch that she was threatened to be whipped by her master for mentioning the subject." On the hearing, [134] "the late Chancellor [1] perceiving from his own view, that the youngest of the appellees was perfectly white, and that there were gradual shades of difference in colour between the grand-mother, mother, and grand-daughter, (all of whom were before the Court,) and considering the evidence in the cause, determined that the appellees were entitled to their freedom; and, moreover, on the ground that freedom is the birth-right of every human being, which sentiment is strongly inculcated by the first article of our 'political catechism,' the bill of rights—he laid it down as a general position, that whenever one person claims to hold another in slavery, the *onus probandi* lies on the claimant."

Decree that the Wrights are entitled to their freedom, affirmed: [141] "I do not concur with the Chancellor in his reasoning on the operation of the first clause of the Bill of Rights, which was notoriously framed with a cautious eye to this subject, and was meant to embrace the case of free citizens, or aliens only; and not by a side wind to overturn the rights of property, and give freedom to those very people whom we have been compelled from imperious circumstances to retain, generally, in the same state of bondage that they were in at the revolution, in which they had no concern, agency or interest. . . I heartily concur with him in pronouncing the appellees absolutely free;" [137] "By the adjudication of the General Court, in the case of Hannah and others against Davis, April term, 1777,[2] all American Indians brought into this country since the year 1705, and their descendants in the maternal line, are free. Similar judgments have been rendered in this court. But I carry the period

[1] George Wythe, who died June 8, 1806.
[2] Misprint for 1787. See Hannah *v.* Davis, p. 94, *supra.*

further back, viz. to the 16th day of April, 1691, the commencement of a session of the General Assembly, at which an act passed, entituled 'An Act for a free trade with Indians,' . . [138] the enacting clause of which, I have reason to believe, is in the very words of the act of 1705, upon which this Court have pronounced judgment in the cases referred to. . . On the trial of a similar question on the Eastern shore, two copies of Purvis's edition of the laws of Virginia, were produced. At the end of both [1] was added a manuscript transcript of all the acts . . subsequently passed for a series of years; . . In one [2] of these copies . . evidently of ancient date, . . I found the enacting clause in the same precise words, as they stand in the act of 1705.[3] . . the acts of 1705, were . . a digest of the former laws of the colony, rather than a new code." [St. George Tucker, J.]

Decree: [144] "This Court, not approving of the Chancellor's principles and reasoning in his decree . . except so far as the same relates to white persons and native American Indians, but entirely disapproving thereof, so far as the same relates to native Africans and their descendants, who have been and are now held as slaves by the citizens of this state, and discovering no other error in the said decree, affirms the same."

George v. Elliott, 2 Hen. and M. 5, December 1806. "On the 9th of January, 1802, he [George] hired of Elliott a negro man for twelve months, . . in a few days the negro was taken sick, and continued so, until about the 9th day of June, and then died."

Held: [6] "where one hires a slave for a year, that if the slave be sick, or run away, the tenant must pay the hire; but if the slave die without any fault in the tenant, the owner, and not the tenant, should lose the hire from the death of the slave, unless otherwise agreed upon. By pursuing this rule, the act of God falls on the owner, on whom it must have fallen if the slave had not been hired; from which time it would be unreasonable to allow the owner hire—Hire!—for what?—for a dead negro!"

Henderson v. Allens, 1 Hen. and M. 235, June 1807. "The plaintiffs Polly and Mima, were brought into this state in January, 1794, as slaves from Maryland," and sold to Henderson, a resident of Virginia. "In June following, the plaintiff Jenny was born. In October following, an application was made to this Court" and [237] "Henderson was prohibited from removing them." A suit which was instituted and prosecuted for the freedom of the plaintiffs, was dismissed in May 1800, and on the same day an order was made in these words: [236] "On the motion of James Breckenridge, gent. he is assigned counsel for Polly Allen, Mima Allen, and Jenny Allen, to commence and prosecute a suit against Alexander Henderson, who holds them in slavery, to recover their freedom, and it is ordered, the said Alexander Henderson, do not remove or abuse them, and it is further ordered, that the said Polly Allen, Mima Allen, and Jenny Allen, be taken into, and remain in the custody of the sheriff of Botetourt

[1] So it is in the copy of Purvis in the New York Public Library. Ed.

[2] "In the other copy, the leaf on which the act must have been transcribed, was . . torn out: probably with a view to hide the act from the scrutinizing eye of a Court."

[3] See Pallas *v.* Hill, p. 116, *infra.*

County, till the said Alexander Henderson enters into bond with sufficient security, to the said James Breckenridge, in the penalty of one thousand dollars, to have them forthcoming, to answer the judgment of the Court: " By virtue of this order, " the present suit was instituted and prosecuted, the *capias* of which bears date the same day. . . the District Court decided, that the paupers should recover their freedom and the costs of suit."

[239] " Judgment reversed; verdict set aside and new trial awarded." Held: it was not proved " that the defendants in error were detained in this State twelve months, by the compulsion of the plaintiff, contrary to law." [1] " Henderson (being a party) was necessarily bound to take notice of the order of Court," [237] " That order continued in full operation till May, 1800. . . he was bound by it, and was not at liberty to remove the slaves out of the State."

Garland v. Bugg, 1 Hen. and M. 374, June 1807. Garland sold a negro woman with her two children to Bugg who, " by his deed in writing, . . did agree that the sale . . should be void . . if the said plaintiff [Bugg] should sell, hire, convey away, or otherwise divide the said slave from her two children, until they should respectively attain the age of ten years,"

Pegram v. Isabell, 1 Hen. and M. 387, July 1807. " Isabell, styling herself an Indian and a pauper, presented her petition to the Court . . praying to be permitted to prosecute her suit, *in forma pauperis*, for the recovery of her freedom, against Elizabeth Pegram who detained her in slavery. . . At the trial of the cause, the counsel for the plaintiff offered ' as conclusive evidence that Nanny (whom he proved to be the mother of the plaintiff) was entitled to her freedom, a record . . of a suit . . in which Nanny and others had recovered their freedom from a certain Stephen Mays: " The District Court gave judgment for the plaintiff, Isabell.

[390] " Verdict set aside and a new trial granted." [2] " the case stated and referred to in the verdict of the Jury, in this cause, was too imperfect for this Court to determine the question of law arising upon it."

Whiting v. Daniel, 1 Hen. and M. 390, July 1807. " Daniel and twenty-three others filed their bill . . stating that they were the only slaves of a certain Miss Mary Robinson, who on the 10th of March, 1803, made and published her will . . ' as I cannot satisfy my conscience to have my negro slaves separated from each other, and from their husbands and wives, . . I desire and will that the whole of them . . as far the law enables me to do it, be emancipated; ' " She had previously deeded them to her nephew, Whiting. Whiting determined to remove the slaves to Georgia [393] " to prevent the machinations of those who inspired them with a belief that they were free " and [397] " embarked with them, (together with the overseer . .) on board of a vessel for that purpose; but, having touched at the port of Norfolk, he was arrested by warrant from a magistrate on suspicion of having stolen the negroes."

[1] Act of 1792, sect. 2.
[2] See same *v.* same, p. 117, *infra.*

Decreed: [403] " that the appellees be delivered to the appellant as his proper slaves, and that the bill of the appellees be dismissed."

Cooper v. Saunders, 1 Hen. and M. 413, October 1807. On April 20, 1801, the county court " directed the overseers of the poor . . to send to the City of Richmond for Billy and Jesse Cooper, two free boys of colour, who had been by them bound to Samuel Couch, . . deceased, . . On the 15th of June, 1801, it was ordered that the said boys be bound " to Hopkins and Saunders. " At August Term, the Court directed the said order to be rescinded, . . because the said Billy and Jesse had been removed out of the said County more than twelve months before the time of making the order binding them to the said Saunders and Hopkins;"

Patty and others (paupers) v. Colin, 1 Hen. and M. 519, November 1807. Frances Timberlake emancipated her slaves by her will, dated 1794, and charged her land with the payment of her debts. The land was sold by her administrator at less than half its value, after inadequate advertisement, and purchased by himself, before any judgment was obtained against her estate. The slaves were afterwards sold under an execution. On a bill brought by certain of them claiming the benefit of her will, and suggesting fraud in the management of her estate, it was unanimously decreed: that the land be resold, [528] " and, if . . it shall appear . . that there is sufficient of the estate . . to satisfy and pay *all* the just debts . . without recourse to the value of the complainants, . . that then the said complainants be considered and declared free, reserving, nevertheless, leave to the other slaves who were objects of the benevolence of the said Frances, in her will, to become parties plaintiffs to this suit, and to assert an equal claim to their . . emancipation, and to have the equal benefit of the estates . . in accomplishing this purpose: If it cannot be wholly accomplished, that then the whole of the said slaves so claiming their freedom, and applying to be parties plaintiffs within a reasonable time . . be sold for such term of years as may be sufficient to raise the adequate fund; and, if the whole value of them all be necessary, that then the bill be dismissed. And that, in the event of an adequate fund being found . . and of the complainants being declared free, there be paid to the administratrix of Didier Colin fifty pounds, (the price by him paid for the said complainants,) . . and that similar recompense . . be made to the purchasers . . of the other slaves who were objects of the said Frances' benevolence in her will, if there be sufficient of her estate " [Tucker, J.]

Sale v. Roy, 2 Hen. and M. 69, March 1808. [73] " James Micou, by his will, . . 1781, bequeathed certain slaves to the children of Mungo Roy, whom he constituted his executor. In November, 1795, Mungo Roy advertised a sale of between twenty and thirty negroes at his plantation " Sale bought three of the negroes,[1] one of the legatees being present, and several months later, [79] " finding he had made an improvident purchase, . . offered to give up the negroes to Roy the executor . . under pretence of a defective title in the negroes: " [74] " Roy in his answer insisted

[1] [69] " Nanny, a woman, and Caroline and Aggy, her children, for the sum of ninety-two pounds,"

that he had a right to sell, and did sell the negroes to assist in the payment of his testator's debts; but does not allege any deficiency of other personal assets."

Held: [76] "the sale can never be impeached by them [the legatees], whether justified by a deficiency of the personal estate, or not." [Tucker, J.] If the executor [78] "sells a specific legacy, when there are other assets sufficient to pay all the debts of his testator, . . he and his securities are alone responsible to the legatee; and the fair purchaser, for a valuable consideration, at a public sale, without notice, shall be quieted in his purchase." [Fleming, J.]

Dawson v. Thruston, 2 Hen. and M. 132, March 1808. "Dawson produced to the Court of Frederick County a deed of emancipation executed by himself as trustee of Robert Carter, deceased, to certain negroes therein named and prayed the Court to admit the same to record, and to certify on their record, that as many of the negroes (all of whom were then in presence of the Court) as appeared to their judgment to be so, were of sound mind and body; the males above the age of 21, and the females above the age of 18, and all under 45 years. . . Carter's executor . . moved the Court . . to restrain Dawson, by injunction, from disposing of, or in any manner interfering with, such of the slaves referred to in Carter's deed of trust to him as were undisposed of at that time. The Court . . awarded the injunction. Dawson again renewed his motion, as before, which was refused." Dawson obtained a conditional mandamus from the District Court, directed to the Justices of Frederick Court. [133] "The return recites the deed of trust from Carter to Dawson; which bears date the 8th of November, 1797, and is intended to provide for the gradual emancipation of the slaves therein conveyed. It vests in Dawson the right to sell a larger number of negroes for a term of years to raise a sum of money for the benefit of Carter, part of which was to be retained by Dawson for the use of the infirm negroes among those intended to be emancipated."

Held: the justices are [137] "merely ministerial to the proof and recording the deed: still, if any of the persons therein named are not entitled to their emancipation under the deed . . , the acknowledgment and recording of Dawson's deed will not release them from slavery." [Tucker, J.] A peremptory writ of mandamus was awarded.

Pallas, Bridget, James, Tabb, Hannah, Sam, and others (Indians and paupers) v. Hill and others, 2 Hen. and M. 149, March 1808. "the plaintiffs exhibited the testimony of witnesses to prove them to be descendants in the maternal line of a native American Indian named Bess; . . said Indian Bess was brought into Virginia in or about the year 1703. Whereupon the counsel for the plaintiffs moved the Court to instruct the Jury, that no native American Indian brought into Virginia since the year 1691, could, under any circumstances, be lawfully made a slave;" but "the Court refused so to instruct." Verdicts and judgments for the defendants. [150] "appeals were taken . . as the question depended upon manuscript acts of assembly,[1] and property to a very considerable amount

[1] See foot-note, for Hening's account.

was involved in the decision, the Court took time . . in order to obtain from the library at Monticello, the copy of a similar act, which was understood to be in the collection of the President of the United States." [157] "March 15, 1808. One of the reporters having, at the request of the Judges . . procured from the library at Monticello, a copy of the MS act 'for a free trade with Indians,' this day submitted it to the Court. Judge Tucker observed that he required no further argument. Three copies of the same act agreeing in every essential point, had been produced: One from the eastern shore; one from Northumberland; and another from Monticello. Nothing but a miracle, or their being genuine, could have produced such a coincidence."

"March 22. . . Judge Tucker. The only question in these causes, is, whether the act of Assembly cited and relied on by me in Hudgins *v.* Wrights,[1] as having passed in the year 1691, is to be regarded as the law of the land, or not." All the judges concurred in holding that it was. [161] "Judgment [of the District Court] reversed, a new trial granted, with instructions conformably to the above opinion."

Pegram v. Isabell,[2] 2 Hen. and M. 193, March 1808. "The ground on which the appellee claimed her freedom, was, that she was descended in the maternal line from an Indian who had been imported into this" state since 1705, "on which ground, her mother Nanny had recovered her freedom of a certain Stephen Mayes, in the . . District Court in the year 1799." Taylor [194] "proved that . . in said suit, between Nanny and others, and Stephen Mayes, it was deposed by a witness . . a very old man, who he believes . . is since dead, that the said Nanny was descended according to general reputation, in the maternal line, from an Indian ancestor, who was imported into this state, since the year 1705;"

Ordered [211] "that a new trial be had . . on which trial the record in the suit between Nanny and others and Stephen Mayes shall be admitted to go to the Jury as evidence that the said Nanny . . was a free woman, or entitled to her freedom on the day of the emanation of the writ in that suit; leaving it open to both parties to shew, if they can, upon what ground the judgment in that suit was rendered; and also leaving it to them to shew, if they can, whether the plaintiff Isabell was born before or after the emanation of the writ in that suit."

[201] "In this country it [hearsay evidence] has always been admitted in pauper suits for freedom. . . [202] if she could be let in to prove the fact that her mother was a free woman by hearsay testimony, ought she not to be let in to prove it by a judgment? Since every judgment in favour of any person furnishes a conclusion in law, that the person obtaining it is free, and not a slave?" [Tucker, J.]

Anderson v. Fox, 2 Hen. and M. 245, April 1808. [247] "five, including Milley, and her children . . had been sold for the payment of her debts; . . one by the name of Phil, been a runaway for a considerable time, but . . had been retaken, and would be sold for the benefit of the estate;" [249] "Milley, and her three children, Daniel, Aaron and Aggy,

[1] P. 112, *supra.*
[2] See same *v.* same, p. 114, *supra.*

were hired to Caty Anderson . . who afterwards refused to return them; that the executor employed persons to retake them privately [(256) by stealth in the night-time], and so gained possession of Milley, Daniel and Aggy; that he advertised and sold Milley and Daniel, at public auction; became the purchaser himself at the price of sixty-one pounds; . . that Milley ran away to Richard Anderson [husband of Caty]; as did also the other slaves who had been delivered and appraised . . except Daniel, and Aggy who was afterwards sold by the executor to satisfy (as he alleged) further demands against the estate; . . that Milley remained in the possession of [Richard Anderson] . . until she had two children, which appeared to be twins, and was then, together with those children, taken and sold under the execution as before mentioned."

Held: [268] "if the said account should ascertain . . that neither the said slave Milley, nor . . was necessarily sold, or liable to be sold, for payment of the debts of the said testatrix, that then . . the purchase of her by the said John Fox [the executor] should be held to be void;"

Fitzhugh v. Anderson, 2 Hen. and M. 289, April 1808. "William Fitzhugh, . . about the year 1772, . . put into the possession of his eldest son John, a number of slaves, amounting in the whole to about eighteen or twenty." A witness [293] "declares, that he was charged with a letter . . to the said W. Fitzhugh, requesting his consent to the sale of a negro then in the possession of his son John; that W. F. throwing the letter in the fire, declared that he never had nor ever would consent to the sale of any of the negroes he had lent to his son John; that, during the time the witness lived with W. F. he was frequently importuned by different persons to solicit his consent to his son John's selling some of the negroes in his possession; but, from the agitation of mind always discovered by W. F. when the subject was mentioned, the witness was deterred therefrom."

Upshaw v. Upshaw, 2 Hen. and M. 381, April 1808. [393] "a just and reasonable allowance ought to be made her, for the support and maintenance of the aged, the children, and others that were unprofitable, . . and for other incidental expenses which she may have incurred on their account; as I have been taught by experience, that the maintenance of a parcel of negroes, where a considerable proportion of them are breeding women, is rather expensive than profitable." [Fleming, J.]

Kennedy v. Waller, 2 Hen. and M. 413, May 1808. "An action of trespass *vi et armis* was brought . . against Kennedy, for killing a slave, by shooting him." The jury found "for the plaintiffs four hundred and fifty dollars by way of damages,"

Faulcon v. Harriss, 2 Hen. and M. 550, May 1808. Harris purchased, in 1782, a tract of land, for which he agreed to pay "1,000 *l.* specie, or such further sum as shall be equal to the said 1,000 *l.* in the year 1774, that is to say, to purchase as much land and negroes, as it might have done in ready money, at the aforesaid time," The plaintiff proved by one witness, [552] "that the sum of 1,000 *l.* specie in the year 1782, 1783, 1784, 1785, 1786, and 1787, (within which years the several bonds became due,) . . would

only be sufficient to purchase half as much land, or half as many slaves, as that sum would have purchased in 1774."

Murdock v. Hunter, 17 Fed. Cas. 1013 (1 Brockenbrough 135), May 1808. [137] " many of the negroes of the estate [of William Hunter] were carried away by the British troops, during the Revolutionary War, and have never since been heard of,"

Sarah (a woman of colour) v. Henry, 2 Hen. and M. 19, June 1808. " The plaintiff obtained an injunction to restrain the defendant from carrying her out of the commonwealth, asserting her right to freedom, . . She was ordered to be kept by the serjeant of the city of Richmond, unless the defendant would give bond and security for her forthcoming. This he failed to do,"

Held: [20] " the plaintiff has mistaken her case. It has already been decided at law, . . the defendant was bound for her expenses [while in the custody of the serjeant], as he might have retained her in his possession, upon complying with the conditions of the order, and avoided any expense."

Corbin v. Southgate, 3 Hen. and M. 319, March 1809. " Harwood sold a negro slave . . for 130 barrels of corn,"

Bates v. Holman, 3 Hen. and M. 502, April 1809. " Charles Fleming Bates, attorney at law, at that time an unmarried man, on the 16th of November, 1799, made the following will: . . [503] 'that Isaac, my slave, shall be free, at all events, at twenty-one years of age; and my slave Charlotte shall also be free at eighteen years of age.' . . On the 23d of September, 1801, he annexed a codicil . . 'as to Isaac and Charlotte, I revoke the preceding part of my will,' . . On the 2d of September, 1803, he made another will, . . [504] 'I have a daughter called Clemensa,[1] at Walter Keeble's, in Cumberland, I declare her to be free to every right and privilege which she can enjoy by the laws of Virginia. I most particularly direct, that she be educated in the best manner that ladies are educated in Virginia. I give her my lot in the town of Cartersville, and three hundred dollars, to be laid out at interest, renewed yearly, and paid when she marry or come of age.'" The testator's father died in 1805 and a year later he married the appellant. [541] " he therefore carefully cancelled the latter [will], by cutting out the signature of his name at the bottom of it, and let remain a little to the left of the signature cut out, the following words, to wit, 'I revoke all other wills heretofore made by me,' signed 'C. F. Bates,' all in his own hand-writing;" Clarkson, [546] " a respectable farmer," proved that Bates put the child Clemensa to board with him in 1805, " and it was then living at the house of the witness; that the testator furnished it with clothes, and regularly paid its board; that when he brought the child to the witness's house, he told him that her father's name was George Alexander Stevens Trueheart; that she was then about four years old, and when she was eight he intended to send her

[1] [546] "his natural daughter, who, together with her future offspring, the law has doomed to perpetual slavery, to her nearest blood relations, unless emancipated by their clemency;" [Fleming, J.]

to Bethlehem College, in Pennsylvania,[1] till her education should be as complete as any lady's in the country, and that afterwards he would make her fortune at least five hundred pounds."

Spotswood v. Dandridge, 4 Hen. and M. 139, October 1809. "Major General Alexander Spotswood . . [140] devised to his son and heir, John Spotswood, all his lands and working slaves in tail male, with several remainders over, and also all the tradesmen and servants who should be employed, or, in any way, used in and upon his mine tract of land at the time of his death; . . the said John Spotswood gave to his sister Dorothea [Dandridge], a negro woman named Molly, who, proving pregnant some time after, was received by him and replaced by another, called Mary Ann, who was one of the entailed slaves; . . Mary Ann and her children, at the request of Dandridge, were permitted . . to remain in his possession, she being the wife of a negro man belonging to him; the said Dandridge agreeing to pay hire for her;"

Atwill v. Milton, 4 Hen. and M. 253, October 1809. "1783, in consideration of 85 *l.* sold and delivered . . a certain negro boy;"

Alexandria v. Chapman, 4 Hen. and M. 270, November 1809. [273] "Chapman had four slaves in Alexandria, three of whom were hired by the year, . . and the fourth was permitted to hire himself,"

Reno v. Davis, 4 Hen. and M. 283, November 1809. Will of Francis Reno: "I give and bequeath to my daughter Jane Reno a negro woman and her increase, named Sib, . . [284] also a negro wench named Delph, . . and her increase . . It is my will that Bob and James and Kate shall be sold or hired to them that they like," [285] "Bailis Reno . . was certain it was his father's intention that . . Jane should not only have Sib and Delph, but also all the children that they might have from the time of making his will afterwards, because, whenever the said slave Sib was delivered of a child, and application was made by the midwife for pay, he sent her to Jane, saying that Sib was her property."

Held: "in this case it was the intention of the testator to pass all the infant children. . . in a case of doubt, the law of humanity ought to turn the scale, and prevent the separation of the children from their mother." [Roane, J.]

Brown v. May, 1 Munford 288, May 1810. "the plaintiff [May] had given a general permission to Brown . . to visit his negro quarters, and to chastise any of his slaves who might be found acting improperly; . . the act of beating the plaintiff's slaves . . had been committed in the presence of Brown by the defendant Boisseau, to whom . . no such permission had been given."

Mooberry v. Marye, 2 Munford 453, May 1811. Will of James Marye, dated 1774: the eleventh clause directed a negro woman to be sold in payment of his debts. [455] "The 15th . . in case any of my land should be sold, I desire that it may be the part of the tract whereon I live, . . which I rather should be sold than any of my negroes."

[1] [546] "where there is, perhaps, the best seminary for female education, in the United States." [Fleming, J.]

Hughes v. Hughes, 2 Munford 209, June 1811. The will of Ann Hughes, dated 1804, [210] "emancipated all her slaves, (by name,) and devised to Fanny, Henderson and Tinsley, (three of them,) twenty-eight acres of land; . . to Polly and Henderson (two of the negroes) a bed and furniture; to the negroes, for their support, all the provisions on hand at the time of her death, and the growing crop. . . By the codicil, she emancipated three negro children, . . bequeathed to Henry and Polly (two of the negroes) each a cow;"

Hook v. Nanny Pagee and her children, 2 Munford 379, June 1811. "In a suit for freedom, the jury returned a verdict in the following words: 'We of the jury find that the plaintiff Nanny Pagee was brought into . . Virginia from . . North Carolina, by Thomas Jones, subsequent to the fifth of October, 1778; that if the said plaintiff was a slave, it doth not appear to the jury that the said Thomas Jones did comply with the provisions of the act, entitled 'An act for preventing the further importation of slaves.'"[1] We of the jury also find, from inspection, that the said plaintiff Nanny Pagee is a white woman. We of the jury, therefore, find that the plaintiffs are free persons and not slaves; and we find for them one penny damages.' Judgment for the plaintiffs, and appeal."

Judgment affirmed: [383] "Nanny was imported about the year 1780, or 1781; that the defendant purchased her at a sheriff's sale, to satisfy his own debt, at which time it was rumoured that she was free, and others thereby were deterred from bidding, so as to put him on his guard; that this suit had been depending about five years from its institution, until the verdict aforesaid was found; . . notwithstanding, too, the *prima facie* evidence, from complexion, that this woman was free, (a circumstance well calculated to produce early inquiry and scrutiny,) there is not a particle of testimony going to prove . . that Jones ever went to a magistrate to take the oath;" [Coalter, J.] [386] "In the case of Hudgins *v.* Wrights,[2] it is laid down, that where *white* persons are claimed as slaves, the *onus probandi* lies upon the claimant. . . [387] the finding of the jury that, from inspection, the said plaintiff, Nanny Pagee, is a *white* woman . . was quite sufficient; it being incumbent on the defendant to have proved, if he could, that the plaintiff was descended in the maternal line from a slave. Having not proved it, she and her children must be considered free." [Brooke, J.]

Murray (*a pauper*) *v. M'Carty*, 2 Munford 393, June 1811. Daniel M'Carty, a citizen of Virginia, married in 1800, before he was of age, and went to Maryland, [394] "where he continued between three and four years, living in the family of his wife's father; . . in . . 1803, the plaintiff, who had been purchased by the defendant in Maryland, was, at her own request, sent over by the defendant to Virginia, to the family of the defendant's mother, there to remain during her lying-in;" in March 1804 [395] "he and his family again returned to Virginia, and went to housekeeping; that, on the 24th day of April, 1804, the defendant took the following oath before a justice of the peace . . : 'I Daniel M'Carty do

[1] Act of October 1778. 9 Hen. 471.
[2] P. 112, *supra*.

swear that my removal into the state of Virginia was with no intent of evading the laws for preventing the further importation of slaves; nor have I brought with me any slaves with an intention of selling them, nor have any of the slaves which I have brought with me been imported from Africa, or any of the West India islands, since the first day of November, 1778.' That the plaintiff had continued and remained in the state of Virginia, for one whole year, since her removal into it in the month of June, or July, 1803, and previous to the commencement of this suit." The defendant voted in 1803 and 1804 at the elections for delegates to the general assembly of Virginia.

Judgments of both courts (county and district) reversed, and judgment rendered in favor of the appellant, for her freedom. The proviso in the 4th section of the act of 1792, concerning importation of slaves from other states of the union, did not authorize such importation by citizens of this commonwealth, returning thereto, after a temporary residence elsewhere, without having made a permanent settlement in, or become citizens of, the state from which the slaves were imported.

Commonwealth v. Dolly Chapple, 1 Va. Ca. 184, June 1811. The prisoner was indicted for the malicious stabbing of a slave and was found guilty.

Held: [186] " an indictment for the malicious stabbing of a slave can be supported under the third section of the act passed the 28th of January, 1803," [185] " a slave in this country has been frequently decided to be legally and technically a person, on whom a wrong can be inflicted; that the giving a portion of the fine to the party grieved was intended to benefit him, and that his incapacity to take, ought not to skreen the prisoner from punishment: "

Holladay v. Littlepage, 2 Munford 539, November 1811. The verdict was, " that . . the said Amy is of the price of 100. *l.* . . the said Maria [child of Amy] of the price of 50 *l.*"

Chaney v. Saunders, 3 Munford 51, November 1811. [52] " objection to the reading of the deposition was then taken, on the ground that Nicholas Smith, the maternal grandfather of the said John Rose was a negro. . . the court refused to permit the reading of the deposition."

McCargo v. Callicott, 2 Munford 501, February 1812. Held: when a widow marries again, the slaves which she held for the term of her life, as part of the estate of her first husband, belong to her second husband and his representatives until her death.

Patton v. Williams, 3 Munford 59, February 1812. Will of Mann Page, dated 1780: " I give . . a negro man Jack, value one hundred and thirty pounds; "

Gay v. Moseley, 2 Munford 543, March 1812. Held: [545] " that the female ancestor of the slave in the declaration mentioned having been loaned by David Mead to Rolfe Eldridge, and the said Rolfe Eldridge having remained in possession of the said slave more than five years since the commencement of the act to prevent frauds and perjuries,[1] without

[1] 1 Rev. Code, c. 10, sect. 2.

any demand made on the part of the lender; and the deed, under which the appellant claims the said slave, in trust for the benefit of Susannah Eldridge, not having been duly recorded in any court contemplated by that act, the same is not competent to do away the effect of such possession enuring in favour of the creditors of, or purchasers under, the said Rolfe Eldridge;"

Randolph v. Randolph, 3 Munford 99, March 1812. "William Randolph . . in December, 1806, . . made a conditional sale of a negro boy, by the name of Horatio, to Isham Randolph, for 110 *l.* to be paid, 200 dollars part thereof out of the said Isham's then crop of tobacco, and the balance out of his ensuing crop;"

Mortimer v. Brumfield, 3 Munford 122, April 1812. "action of detinue . . for a negro man slave, by the name of Tom, . . [123] at the trial, . . 1809, the plaintiff [Charles Brumfield] offered in evidence the affidavit of Mary Sullivan; . . proving, that 'about 23 years since, Charles Mortimer, the father of the defendant, Adam Hunter, and the affiant, stood sponsors for the plaintiff at his christening; (he being then not more than two months old;) and the said Charles Mortimer named him after himself; that the day after the christening, the said Charles Mortimer brought a little negro boy named Tom, to Mrs. Brumfield's (the mother of said plaintiff,) and, in the presence of the affiant, Mrs. Willis, Mrs. Carter, and Nancy Mortimer, observed, that he had brought said negro boy as a present to his god-son, and he left said boy with Mrs. Brumfield, for her son, the plaintiff; the negro boy was then very small, not more than two years old, and appeared to be weakly: Mrs. Brumfield raised the said boy until she removed to Charleston, which was about six or seven years after: upon Mrs. Brumfield's removal to Charleston, the boy was left in the possession of the said Charles Mortimer," after whose death, "about eight years since," his son (the defendant) took possession of the slave and sold him after the institution of this suit. [124] "The plaintiff also offered evidence to prove the value of the slave to be 105 *l.* and that his hires, since he came to the possession of the defendant, were of the value of 108 *l.*"

Judgment for the plaintiff, affirmed.

M'Call v. Peachy, 3 Munford 288, December 1812. Will of Dr. Nicholas Flood, dated 1774: [291 n.] "I desire, that all the wool which may be yearly produced from my sheep, may be delivered to her [my wife], and that she will have the same spun up by her house servants, or with the occasional assistance of one of the negro women who may work out; and that it be wove and appropriated to the clothing of the slaves which are set apart for her use, as well as for clothing my other slaves; . . I likewise give unto her . . a proportionable part of the clothing that is laid in for the slaves; and that she divide them according to the good behaviour of all my said slaves; . . [292 n.] all such moneys as may arise by the sale of any of my slaves, that may turn out too roguish, runaways, obstinate, or irreclaimable, to be made to do their duty, (which sort of slaves I hereby empower my said executors, in their discretion, to make sale of,) . . shall be placed out at interest"

[295] "an article ought to be allowed . . if it be of such a nature . . that a voucher for it, perhaps, could not have been procured: for example, . . services performed by William Peachy's carpenter," [Wythe, Ch.] [296] "on the 21st of May, 1798, the Court of Appeals pronounced the following opinion: 'It appears by the will of Dr. Nicholas Flood, . . that it was his desire his widow should live . . "as happy as possible;" and that his executors should have as little trouble as possible in the management of his estate; and that his knowing (as it may be reasonably supposed) the turbulent and vicious dispositions of his slaves, was the reason of his empowering his executors to dispose of such of them as were, or should prove, roguish, runaways, obstinate, or irreclaimable, lest, contrary to his intent and meaning, they should disturb the peace and happiness of his widow, or give trouble to his executors; . . [297] and it appearing, from the testimony of witnesses, as well as from the answer of the widow, . . that *all* the slaves sold by the appellee, . . as administrator, were of that description, except two young children, who could not, with humanity, (and ought not, on that account, to) have been separated from their mothers; and that the said slaves were sold . . at the express desire . . of the said widow; . . this Court is of opinion, that the said appellee should not account for . . more than the real amount of the sales,"

Williams v. Moore, 3 Munford 310, December 1812. Moore agreed to buy of Williams "a negro woman slave, named Peg, at the price of 300 dollars, on condition that, if the defendant did not like the said slave, he was to return her . . in the space of two or three weeks; . . upon the 6th day of February, 1807, by being exposed to the severity of the weather, her hands were so frozen that she lost several of her fingers, . . and thereupon the defendant refused to keep the said negro,"

Held: [313] "if the injury of the slave . . was not imputable to the neglect of the appellee, he would not be responsible therefor, unless he expressly agreed to be so liable; . . he is only bound . . for ordinary care"

Broadfoot v. Dyer, 3 Munford 350, January 1813. "an agreement under seal, dated the 2d of June, 1797, . . setting forth that the said John Finney [much involved in debt] did bind the following negroes to the said William Dyer, to wit, Ned, aged eight years, Rebecca, aged five years, and Pleasant, aged three years; until they should each, and severally, arrive to the age of twenty-one years; upon condition, that the said William Dyer should treat them in a lawful and humane manner; and if the said William Dyer should die, or remove from the county, the aforesaid negroes should be treated equally well, or it should remain optional with the said Finney, whether the aforesaid negroes should continue any longer in the said service."

Held: [351] "the deed . . having been made by a person indebted at the time, being grounded on no valuable consideration, . . [352] and having imposed no conditions even in favour of the slaves themselves, other than such as are imposed by the principles of law and humanity,

upon every just and humane master, . . ought to be considered, in relation to the appellant, one of the creditors of the grantor, as a *voluntary* deed;" [Roane, J.]

Wilson v. Butler, 3 Munford 559, February 1813. [560] "a *fieri facias* was levied on several of the slaves conveyed in trust . . The object of the bill was . . to prevent a sale of those slaves; the plaintiffs suggesting, that although they might, as trustees, perhaps, recover their *value* at law, yet that would defeat the very objects of the trust, as the *hire* of slaves greatly exceeds the interest of the *purchase money*, which was one of the strongest motives of the donors for investing the money in the said slaves; . . [563] The Court of chancery granted the injunction, and [a few days later] . . dissolved it;" [565] "injunction reinstated,"

Laughlin v. Flood, 3 Munford 255, March 1814. The plaintiff "engaged [in 1795] to attend carefully, as an overseer, on the plantation of [Thacher Washington] . . for a year, and was to have the management of twenty-six working hands: for these services [Washington] . . was to pay him at the close of the year, one twelfth part of all grain made on the plantation; (after deducting the seed;) oats excepted. . . [256] the second jury found for the plaintiff 385 dollars 50 cents damages;" Among other things, Washington also agreed [260] "to give him a certain specified allowance of provisions for the support of his family,"

Butt v. Rachel and others, 4 Munford 209, March 1814. "the plaintiffs claimed their freedom upon the ground of their being the descendants of Paupouse, a native American female Indian, who was brought into Virginia about the year 1747; . . the defendant, (who claimed . . [210] the said Indian . . to be a slave, and held as such in the island of Jamaica, . . and brought . . into Virginia as a slave, about the year 1747,) moved the court to instruct the jury that a native American Indian, held in Jamaica as a slave, under the laws of that Island, and imported into Virginia . . in . . 1747, might be lawfully held as a slave in Virginia, notwithstanding such person was a native American indian; which instruction the court refused to give; . . verdict and judgment for the plaintiffs; from which the defendant appealed. Wickham for the appellant. . . The scope . . of the act of 1691,[1] although in words it established free trade with all Indians '*whatsoever*,' was plainly to do away the preceding restraining acts, without contemplating foreign Indians, with whom the people of this country had no trade or connection. . . [211] The word 'American,' [in Jenkins *v.* Tom][2] . . is ambiguous, and used, in its limited sense, to mean Indians in that part of America having intercourse with, or neighbouring to Virginia. No such word is found in any of the laws." Wirt for the appellees: [212] "Admit Mr. Wickham's construction of the word 'American;' the Indian woman Paupouse is declared by the bill of exceptions to have been a 'native American Indian,' carried from this country to Jamaica, and brought hither from that island." Wickham in reply: [213] "it is not so stated in the bill of exceptions.

[1] 3 Hen. 69.
[2] See p. 99, *supra*.

. . ' native American Indian ' may signify a native of Jamaica, . . What I contend for is, that all persons, to whom the general provisions of our slave laws apply, may be slaves here, provided they were slaves by the laws of the country from which they are brought hither. I admit that an Indian native of Virginia, carried thence to Jamaica, and brought back, would be free, by the very terms of the law."

Judgment affirmed.

Ross v. Woodville, 4 Munford 324, January 1815. The Rev. James Stevenson appointed " his . . attornies, to make sale of the whole of his lands, negroes and other estate, . . in order that a division . . might take place between his children,"

Fowler v. Lee, 4 Munford 373, March 1815. [374] " sold [in 1809] . . one negro girl, named Patience, for and in consideration of 83½ acres of land, at four dollars per acre; "

Bond v. Ross, 3 Fed. Cas. 842 (Brockenbrough 316), November 1815. In 1807 [843] " Ross executed a deed of mortgage to . . Mewburn . . covering a very large number of slaves, . . which slaves were usually employed on an estate, called the ' Oxford Iron Works,' belonging to said Ross, in the county of Campbell, and state of Virginia. This deed was executed in the city of Richmond, where David Ross then lived, and was recorded in the county court of Campbell. . . several years after . . Bond [to whom Ross owed a large sum of money in 1804], sued out a writ of *fieri facias*, against the goods and chattels of David Ross, . . which was executed upon the slaves covered by the mortgage deed to Mewburn . . The slaves were exposed for sale, and the sale was forbidden by Mewburn."

Held: the deed of mortgage to Mewburn was void as to creditors, not having been recorded in the county where the grantor lived: [844] " The slave, shifted, according to the caprice of the master, from plantation to plantation, or hired, sometimes in one county, and sometimes in another, has no place of residence, sufficiently certain and fixed, to furnish a safe guide for the court, in which a lien upon him should be recorded." [Marshall, C. J.]

Lightfoot v. Colgin, 5 Munford 42, February 1816. William Lightfoot, in 1809, conveyed to Allen, in trust, all his slaves except seventy-five. [45] " 140 of his slaves were brought to his house, valued by Wm. Allen, and divided between the two sons . . but not removed."

Isaac v. Johnson, 5 Munford 95, February 1816. " a suit at law, *in forma pauperis*, was instituted November 13th, 1797, in behalf of Isaac, a negro man, claiming freedom, against Peter Corbell, . ." The jury could not agree, and at a subsequent term, May 1799, another jury found that Isaac was a slave. On the first trial, [96] " Johnson himself was a material witness in favour of the plaintiff, but failed to attend at the last trial when (the plaintiff's counsel having moved for a continuance, which the court refused), the verdict was found against him; after which, Johnson bought him of Corbell, with full knowledge of all the circumstances; that, in fact, he had been unlawfully imported from South-Carolina, and

kept in this state more than twelve months." Isaac [95] "preferred another petition . . for permission to bring a suit against Johnson, to try his right to freedom a second time; . . [96] he also filed a bill in the superior court of chancery" The cause was heard in 1811 and the bill dismissed. "A non-suit was soon after suffered in the suit at law; and, on the 9th of June, 1812, another suit in chancery was brought, on Isaac's behalf in the county court . . [97] and the court [in 1814] awarded a new trial at law, . . In March, 1815, a jury . . found a verdict, 'that the pauper, Isaac, is not a slave, but a freeman,' which was ordered to be certified to the chancery side of the court. The 6th of May following, it was decreed . . 'that the pauper Isaac recover his freedom;' . . Upon an appeal to the superior court of chancery, . . this decree was reversed, . . whereupon Isaac appealed to this court. Wickham for the appellant. No counsel appeared for the appellee. February 22d, 1816, the president pronounced the court's opinion that the decree of the superior court of chancery be reversed, and that of the county court [in favor of Isaac's freedom] affirmed."

Scott v. Halliday, 5 Munford 103, March 1816. Edward Davis, who died in 1806, bequeathed certain slaves to Martha E. Davis. A judgment was obtained against the administrator *de bonis non* of Davis, and [105] "a writ of *fieri facias* . . was levied on three slaves of Martha E. Davis," who [107] "had been duly allotted to her . . by . . the executor . . and had been hired out by [him] . . as her guardian . . order, dissolving the injunction [to stop the sale] . . reversed."

Sampson v. Bryce, 5 Munford 175, October 1816. "The object of the Bill . . was to prevent the sale by the Sheriff, under an Execution . . of certain slaves, which had been [specifically] bequeathed . . and delivered . . by the executors . . an Injunction was awarded. . . perpetuated"

Hudson v. Hudson, 5 Munford 180, October 1816. [181] "the five negro men [in 1809] . . were worth 670 *l.* and would have sold, to the highest bidder, for much more, . . [182] certain plains (for negro clothing) purchased in 1802 . . were damaged, and of *no value*,"[1]

Kendall v. Kendall, 5 Munford 272, November 1816. "John Kendall, by his Will, after bequeathing his slaves to his wife, during her life, directed such of them as, at the time of her death, should have attained the age of twenty-five years, to be considered as free. . . [273] On the day of his death he caused a Codicil to be annexed . . 'I hereby annul and revoke those parts of the within Will, which relate to the liberation of my Negroes.'"

Travis v. Claiborne, 5 Munford 435, February 1817. Drummond conveyed a slave to the plaintiff to secure payment of a debt. Afterwards [436] "the defendant carried the said slave, as agent for the said Drummond, to some part of the western country, and sold him under a contract to that effect, for a commission of twelve and a half per cent. on the amount of the sale,"

[1] "Note. . . the overseer . . considered them of no value; and objected to receiving them; but the negroes were clothed with them, and possibly they might have been worth what was given for them by the administrator."

Harris v. Nicholas, 5 Munford 483, March 1817. Covenant under seal: "For the hire of four Negro fellows the present year, who are to be returned well cloathed on or before the 25th of December, I promise to pay Frederick Harris at that time the sum of two hundred and eighty dollars;" dated January 6, 1812. Nicholas [484] "delivered the negro fellow Joe . . into the possession of a certain John Patterson, to labour on his plantation;" whose overseer, Thilman, "so unlawfully, cruelly, and excessively beat and whipped the said slave Joe . . that the said slave afterwards died"

Held: [490] "the Appellee would not be held liable under the facts . . as the act of the said Thilman, which caused the death of the said Negro, was neither authorized by the Appellee, nor committed in the usual and proper course of his duty, as such; but was a wilful and unauthorized trespass."

Garnett v. Sam and Phillis, 5 Munford 542, April 1817. "On the trial . . in an action for freedom instituted in July, 1811, . . the plaintiffs offered in evidence two affidavits, shewing that they were brought into this State, by water, in the month of June 1787, according to one, and between 1787 and 1790, according to the other; that a Mr. Peck, who moved from the State of New Jersey to Virginia, said that he had brought them with him; that he treated Sam more like a white man than a slave; that he said, that Sam was as free as he was, and acted as his Overseer; that he had lived with him in New-Jersey; and that he and his family (Phillis being his wife) had agreed to come to Virginia in consequence of their mutual attachment."

Held: [545] "the right of freedom, *prima facie* acquired by the Appellees by such alleged importation, could only be obviated by evidence" that "the Oath, prescribed by the 4th section of the Act of 1792, (1 R. C. ch. 103,) has been duly taken" by the appellant. [546] "upon the new trial, the declarations of Peck . . are to be withheld from the Jury, as it does not appear . . that those declarations were made during the time, in which the said Peck claimed the Appellees, nor that the Appellant claims under him;"

Lemon v. Reynolds, 5 Munford 552, April 1817. Will of Joseph Holmes, dated 1811: [553] "it is my will and desire that my negro man Lemon shall have and enjoy his freedom after my death; and, for his attention and friendship during my illness, that he shall have my sorrel horse, with a saddle and bridle, and ten dollars in cash;" The "said paper writing was destroyed . . by inadvertency" and "a Writing, purporting to be a Copy" was admitted to record. The administrator "forcibly took possession of the plaintiff, . . and detained him in slavery . . the County Court gave Judgment for the plaintiff; but . . the same was reversed" by the superior court of law.

The [554] "Copy containing a clause . . which entitles the Appellant to recover his freedom," the judgment of the superior court was reversed, and that of the county court affirmed.

South v. Solomon, 6 Munford 12, October 1817. "the appellees, who were slaves unlawfully brought from North Carolina into this Common-

wealth, and kept therein more than a year, by the appellant, who had in them a life estate only,"

Held: they are not entitled to freedom: [13] "the 2d. section of the Act of 1792, ch. 103, only extends to cases of slaves brought in by the absolute owner of them, and not to such as are brought in by wrong doers, or by those having only a limited interest in them."

Blakey v. Newby, 6 Munford 64, January 1818. [66] "one of the slaves, a negro boy, was sent to John Chowning's . . as a nurse, and stayed there twelve months, and then was carried back to see the said boy's mother at Newby's plantation; shortly after which, the said Newby died; and then all the said slaves absconded, and went to Churchill Blakey, administrator of his wife, Anne Chowning."

Abraham v. Matthews, 6 Munford 159, February 1818. Held: "in the case of slaves brought into this State, from any of the United States, before the Act of 1792, the fact of the master's having taken the oath required by law within ten days after removal, would be presumed from a lapse of twenty years possession without claim of freedom on the part of the slave; so as to throw the *onus probandi* on the plaintiff suing for freedom; but this presumption might be met or avoided by circumstances." Infancy is "a circumstance, the weight and effect of which should be left" to the jury. Judgment for the defendant affirmed.

William and Mary College v. Hodgson, 6 Munford 163, March 1818. "William Ludwell Lee of Green-Spring in James City County, by his last Will, devised and bequeathed to the President, Masters and Professors of William and Mary College, and their successors . . five hundred Winchester Bushels of Indian Corn . . annually . . for the use . . of a free school to be established in the centre of James City County . . one thousand acres of the Hot Water Tract of Land . . to stand pledged forever, for the full . . execution of this devise;" will of William L. Lee: [164] "my will and desire is, that all my negro slaves may, on the first day of January next, be emancipated; that those who have arrived at the age of puberty, and who chuse it, may be allowed to settle on such part of my Hot Water lands as my executors may designate, where I wish comfortable houses to be built for them at the expence of my estate, with a sufficiency of Indian corn to be allowed from the same for their support for one year, and that they be allowed to retain such tenements and settlements, for ten years, free from any rent or charge whatever. I give to Joe a Blacksmith all the tools in my blacksmith's shop, with the use of the shop, free from rent, during his natural life. All those under age of eighteen years, I request my executors to remove to some one of the United States North of the Potowmac, where they may receive such an education as may be suited to their several capacities, at the expence of my estate; by which I trust they may be enabled to acquire an honest and comfortable support." "The President and Professors of William and Mary College filed their Bill . . [165] contending that the estate generally was liable for the annual delivery of the Corn" Bill dismissed: "the 500 bushels of Indian corn devised . . for the use and benefit of a free school . . should

be charged . . not on the whole estate . . lest it might deprive some or all of the manumitted slaves of the testator of that liberty secured to them by his benevolence and humanity, which is supposed to have been an act no less meritorious than the establishment of a free school;" [Taylor, Ch.]

Peggy and Mary v. Legg, 6 Munford 229, November 1818. Suit for freedom. "Peggy was the daughter of Lucy, a slave who belonged to William Carr," who died in 1790. "After bequeathing Lucy to his son John Carr, he added; 'My will and desire is, that the negroes bequeathed to my dear children should remain with my dear wife during her life, unless she should marry: in that case, my will and desire is, that my slaves should go immediately to those to whom they are devised, and that none of them be sold out of the families to whom devised; if offered for sale, by any of them, out of the family of my wife, my daughter and sons, that they be immediately liberated, and I do hereby desire they may be free to all intents and purposes.' John Carr, under the devise, had possession of Lucy, of whom, while in his possession, Peggy was born. He died intestate, and Margaret Tebbs, daughter of Betsy Tebbs who was the testator's daughter, came into possession of Peggy. Margaret Tebbs married Thomas Triplett who sold Peggy to Nathaniel Legg, (a stranger not connected with the Carr family,) on condition that he would take her out of Virginia."

Judgment for the defendant. [230] "The plaintiffs appealed. Gilmer for the appellants . . [231] the condition annexed to the bequest of these slaves does not create a perpetuity; for . . alienation is permitted, to persons of the same family," But "the Court affirmed the Judgment."

Ervine v. Dotton, 6 Munford 231, November 1818. In 1803, a negro woman was sold for two hundred and seventy dollars.

Mercer v. Commonwealth, 2 Va. Ca. 144, November 1818. [145] "The free man sold by the prisoner was of full age, and was sold by his own consent, to the purchaser, under a collusive contract between the prisoner and the person sold, that they should divide the proceeds of the sale between them: the free man sold, was not proved to be either a negro or mulatto, but by one witness, who said he had heard that he was the offspring of a white woman by an Indian. The purchase money paid for him was afterwards returned by the prisoner to the purchaser."

Held: this is not such a sale of a free negro for a slave, as is made felony by the statute of 1787.

Selden v. Coalter, 2 Va. Ca. 553, November 1818. Will bequeathing many slaves in families. Valuation of some of the slaves [555] "appropriated to the paiment of debts:" three men, $350 each; "Toney, Hannah, and three children, . . 900; Will and Jenny, . . 500; Nelly and two children, 500; Sally and two children, . . 400; Mary, . . 350; Old Charles, . . 200; Old Quay, . . 200; Dick and his Mule team, . . 1,000." [559] "About a week or ten days before the death of Col. Selden, he sent for the deponent, and requested him to purchase for him a small piece of

land adjoining the Mill-Farm belonging to a coloured man, assigning as a reason, that he did not wish the family of that person to be so near his son Joseph."

Ellison v. Woody, 6 Munford 368, April 1819. Micajah Woody, by his will, dated 1771, lent to his wife all his estate during her widowhood. He gave [369] "to his daughter Agatha Woody, the first negro child his negro woman, named Beck, raised, . . to his son William Woody, the said negro woman Beck;" all the rest of his estate, "not herein particularly before given," to be equally divided among his children. [371] "shewing . . that he considered the progeny of Beck, whom he knew to be a young breeding woman, as one of the means of providing for his other children,"

Held: Agatha Woody is entitled to the first child of Beck that is raised, whether born before or after the testator's death. The rest of Beck's increase born before the testator's death pass by the residuary clause: such increase, born after the death of the testator, and during the life of the widow, belong to the remainder-man, William Woody.

Commonwealth v. Cohen, 2 Va. Ca. 158, June 1819. "The prisoner was indicted, tried, and convicted . . of murder in the second degree, of a slave:"

The Caroline, 5 Fed. Cas. 90 (1 Brockenbrough 384), November, 1819. [91] "The *Caroline* was seized, as being forfeited to the United States, for being concerned in the slave trade, in violation of the acts of 1794,[1] and 1807,[2] or of one of them. The peculiar odium attached to the traffic, in which this vessel is alleged to have engaged, ought not to affect the legal questions which belong to the case. The information charges, that the *Caroline*, . . 'was built, fitted, . . or otherwise prepared, . . for the purpose of carrying on . . traffic in slaves, to a foreign country,' . . [92] As this information charges that one of several offences has been committed, and they are not, in law, each of them cause of forfeiture, I should, so far as I can trust my own judgment, be of opinion, that a sentence of forfeiture ought not to have been pronounced. Sentence of the district court reversed." [Marshall, C. J.]

Ellis v. Baird and Baker, 6 Munford 456, December 1819. "Edward Ellis, a man of colour, exhibited a bill . . for an Injunction (which was granted) to prevent" Baker from carrying him out of the commonwealth, "and for a decree against both defendants for his freedom." In January 1819, the suit was dismissed, "the plaintiff who was solemnly called, failing to appear and farther prosecute." At June term 1819, "a motion was made to re-instate the suit, upon a certificate from the Sheriff . . shewing that the said Edward Ellis was then confined in the Jail, on account of an execution levied upon him as the property of John Baker, and wished to be discharged from confinement, for the purpose of obtaining testimony in support of his claim to freedom. Chancellor Taylor rejected the motion,

[1] 1 Stat. 347.
[2] 2 Stat. 426.

on the ground that he did not 'perceive that the defendant Baird had been paid a balance with interest due to him for the plaintiff.' And thereupon the plaintiff appealed."

Decree affirmed, but "without prejudice to any suit . . which the appellant may be advised to bring for his freedom, pursuing the preliminary measures, to prevent vexatious suits, prescribed by the Act . . passed the 25th of Dec. 1795,"[1]

Wooddy v. Flournoy, 6 Munford 506, February 1820. Wooddy hired for the year 1810 [507] "of Dr. William Flournoy five hands at the price of three hundred and fifty dollars, their time insured by their master; and the said hands to work in Martin Railey's coal works the present year; to be cloathed as usual;" In 1811 Flournoy told a witness [508] "that they had been returned naked; . . that, during the year 1810, . . they once ran away from the said pits, and went home to the plaintiff, who brought them back to the said coal-pits without delay, and delivered them to Wooddy, who being about to correct them for running away, the plaintiff objected to his doing so, saying that Wooddy should have nothing to do with the said slaves;"

Smith v. Smith, 6 Munford 581, March 1820. [582] "the fee simple value of the said slaves was, $350 for Lucy and $250 for Mary [her child]; and that their value for the life of the defendant was $120 for Lucy, and $80 for Mary;"

The Wilson v. United States, 30 Fed. Cas. 239 (1 Brockenbrough 423), May 1820. [240] "the *Wilson* was a private vessel of war, duly commissioned by the United Provinces of Venezuela and New Grenada, . . [241] while at St. Thomas, the crew of the vessel was reinforced, by the addition of some eighteen seamen, principally people of colour, and all free." The *Wilson* arrived at Norfolk, on the 27th of October, 1819, having put in to refit, with intent to depart and resume her cruize in a short time." [243] "While in port, some of them were discharged, and came on shore. The libel charges that three persons of colour were landed from the vessel, whose admission or importation was prohibited by the laws of Virginia,[2] contrary to the act of Congress,[3] by which the vessel was forfeited." The district court decreed the forfeiture of the brig. [245] "so much of the sentence as condemns the brig *Wilson*, ought to be reversed," [242] "The first question . . in this part of the case, will be the constitutionality of the act of Congress, under which this condemnation has been made. . . [243] There is not, in the constitution, one syllable on the subject of navigation. . . a control over navigation is necessarily incidental to the power to regulate commerce. . . the power of Congress over vessels, which might bring in persons of any description whatever, was complete before the year 1808, except that it could not be so exercised, as to prohibit the importation . . of any persons, whom any state, in existence at the formation of the constitution, might think proper to admit. . . [245] The language . . of the act of Congress,

[1] "See Edit. of 1794, 1803 and '14, c. 189, p. 346."
[2] 1 Rev. Code 1819, pp. 437, 438 (c. 91, sects. 64-66).
[3] Act of Feb. 28, 1803, c. 63. 2 Stat. 205.

shows, that the forfeiture was not intended to be inflicted in any case but where the state law was violated." The act of Virginia "imposes a penalty on any master of a vessel, who shall bring any free negro or mulatto. The third section provides that 'the act shall not extend to any masters of vessels, who shall bring into this state any free negro or mulatto, employed on board, . . and who shall therewith depart.' . . No probability, however strong, that the vessel will depart without the seaman, can extend the act to such a case, until the vessel has actually departed. . . But this is not all. The act of assembly prohibits the admission of free negroes and mulattos only, not of other persons of colour, . . Mr. Bush . . says, that those discharged were 'of different colours and nations.' Andrew Johnson says 'that on the 29th of October, the people of colour received their prize tickets, went on shore, and, of course, took their own discharge.' There is, then, no evidence, that these people were negroes or mulattos." [Marshall, C. J.]

Commonwealth v. Jerry Mann, 2 Va. Ca. 210, June 1820. "The prisoner was a black man, held as a slave, but he had instituted a suit to recover his freedom, and, therefore, according to Law, was entitled to be tried as a free man, for any offence with which he was charged. He was indicted, tried, and convicted, in the Superior Court, of feloniously making an assault upon a woman, with intent to ravish her. The Law declares, that if a slave shall attempt to ravish a *white* woman, he shall be adjudged a felon." Judgment arrested "because it is no where in the Indictment stated, that Mary M'Causland was a *white* woman."

Early v. Early, Gilmer 124, November 1820. Will of Joshua Early: "I lend him one negro girl, by name Venus, now on his plantation, to him until he arrives to the age of 50 years, for the express purpose of supporting his family, and to his heirs for ever."

Cole v. Fenwick, Gilmer 134, November 1820. "The slaves were delivered . . except one, who had run away, and could not therefore be had."

Griffith v. Fanny, Gilmer 143, December 1820. "Fanny sued Griffith, *in forma pauperis*, for her freedom. . . the Jury found by a special verdict, that Fanny was the slave of one Kincheloe, until a short time before the 23d August 1816. Sometime in that month, he sold her to William Skinner, a citizen, resident in the state of Ohio. In conformity with the sale, Kincheloe delivered possession to Skinner at Marietta in Ohio, and received the purchase money. Griffith was present at this sale; and on the 23d August 1816, Kincheloe executed a bill of sale for Fanny, to Griffith, which bill was delivered to Skinner. This bill was an absolute sale of Fanny from Kincheloe to Griffith, who was at the time, and continued to be, a citizen of Virginia. The agreement to have a bill of sale executed to Griffith, was between him and Skinner, for Kincheloe was no party to their contract, though he executed the deed. At the time of its execution, Skinner stated to Kincheloe, that he wished the bill of sale to be to Griffith, because by the laws of Ohio, he could not hold a slave in his own right. Fanny was at different times seen at Skinner's residence in Ohio. She was last seen there, in the spring of 1818. About the 1st October 1818, she

returned to Virginia, where she was taken into the possession of Griffith, who claimed her under the bill of sale. The section of the Constitution of Ohio, prohibiting involuntary servitude was inserted into the verdict. And upon these facts, the law of the case was submitted to the court: which gave judgment for the pauper, and Griffith appealed." Judgment affirmed.

Barnett v. Sam, Gilmer 232, April 1821. " Sam was born in the county of Augusta, about the year 1788, the slave of Mary Teas, a native of that county, then residing there. Mary Teas removed to North-Carolina about 1790, where she resided and Sam with her, three years. In 1793 she returned to Virginia, bringing Sam with her; and not complying with the requisitions of the statute of Virginia of 1792. She continued in Virginia until the year 1811; when she sold Sam to Barnett." The county court gave judgment for Sam; affirmed by the superior court; reversed by the Court of Appeals.

Backhouse v. Jett, 2 Fed. Cas. 316 (1 Brockenbrough 500), May 1821. In 1783 Thomas Jett made a deed of gift of twenty-one slaves to his only son, William Storke Jett. In 1817 a bill was filed [317] " assailing the deed . . as fraudulent, . . as to creditors," Marshall, C. J.: [321] " I think . . William Storke Jett, is responsible for the slaves now alive, at their present value, or for the slaves themselves; and for profits from the filing of the . . bill which claims them; and for money actually received for those which have been sold, with interest thereon, from the same time."

Dempsey v. Lawrence, Gilmer 533, June 1821. Dempsey " hired himself of his master William Wallace, and having accumulated the sum of $100, agreed to pay it, and $200 more at a future day to his master, provided he would emancipate him.[1] The proposal was accepted. . . Lawrence . . agreed to pay the $200, and Dempsey was to be bound to him for it. . . Dempsey paid the money to Lawrence by instalments. Lawrence then went to North-Carolina, and promised Dempsey if he would go with him he would emancipate him. Dempsey went and remained two years; returned and lived on a piece of land adjoining Lawrence, always acting as a free man. Lawrence died, and his widow claimed Dempsey as a slave. The bill prayed, that all persons be injoined from molesting or selling the plaintiff as a slave; and that the widow of Lawrence, be decreed to execute a deed of emancipation. . . Chancellor Nelson was willing to continue the injunction, until Dempsey could assert his freedom in a regular manner, in a court of law; but it being insisted that he should make a final decree, he dissolved the injunction and dismissed the bill:" Decree reversed, and the cause sent back [336] " with directions to the court, to appoint counsel for the appellant, and to proceed to a final decree on the merits."

Commonwealth v. Tyree, 2 Va Ca. 262, November 1821. The prisoner, [263] " as a free man of colour, was . . brought before an Examining Court for the county of Caroline, charged with a Rape" [264] " it

[1] [334] " great and unusual merit, and money besides were the consideration."

appeared [by the record of the examining court] that he was examined as a free man of colour, by the name of John Tyree, and remanded for trial as a free man." He was [263] "indicted before the . . Superior Court, as a free man of colour . . and . . pleaded not guilty" [262] "On the next morning, one William Tompkins . . came into Court, and exhibited a petition, stating that on the 17th November, 1810, he owned a slave named Armistead, then about 18 years of age; that the said slave on that day absconded from him, . . that on Sunday last he found the said slave in the jail of Caroline, charged with a felony, under the name of John Tyree: . . that the jailor refuses to deliver him his said slave, . . he therefore prayed that the Writ of *Habeas Corpus* might be issued to bring up the body of the said slave before the Court, that the legality of his detention might be enquired into. . . [264] the prisoner had passed himself as the son of one Aggy Tyree, a free woman, in that county; that he had recently denied that he was her son; that, in point of fact, he was not of that family; that he was not registered as a free man;"

Held: [267] "as the prisoner, John Tyree, did not plead in abatement to the jurisdiction of the said Superior Court of Law [that he is a slave], no evidence whatever was admissible in support of the said William Tompkins's application, for the purpose of proving that the said prisoner is not a free man, but the slave of the said petitioner; and that the record of the Examining Court, remanding the said prisoner for trial as a free man of colour, (there being no such plea in abatement, as aforesaid,) is to be taken as conclusive proof, *quoad* the trial of the prisoner in the Superior Court, that he is free." [262] "In a capital case, a collateral issue to which the accused is not a party, may be made up, when it operates *in favorem vitae*, as whether the accused be *non compos*, mute by the visitation of God, etc. but not where it is against life." [266] "The consequence of sustaining the objection to the jurisdiction here, would be, that instead of punishing him in the Penitentiary, he might be condemned to lose his life. The Court cannot, therefore, convert a principle dictated by humanity into an instrument of cruelty." [Brockenbrough, J.]

Lewis v. Fullerton, 1 Randolph 15, December 1821. "Lewis an infant, by Milly his mother, brought suit *in forma pauperis* . . to establish his freedom . . In March 1808, Milly the mother of the plaintiff, together with Naise her husband, applied for a writ of *habeas corpus* in Gallia county, Ohio, to be delivered from the illegal custody of John Rodgers, who claimed them as slaves. The writ was granted; and upon a hearing . . [16] the judgment of the court was, that Milly and Naise 'go hence, be discharged, and set at liberty.' Edward Tupper a witness proves, that the day after this discharge, Rodgers came to him, and requested him to prevail on Milly to live with him as an indented servant for two years; that, if she would agree to do so, he would execute to her a complete deed of manumission, which should put the question of her liberty at rest; for now, he might possibly reverse the judgment on the *habeas corpus*. Agreeably to this request, the witness obtained the consent of Milly and Naise to indent themselves for two years, on R's first making the deed of manumission, which is spread on the record. The witness examined the deed, before Naise and Milly executed the indenture for two years

service. Bithia Tupper, a witness, heard R. say, he would execute the deed of absolute manumission, if Milly and N. would agree to serve him two years; that, he always intended to emancipate Milly at his death, and had so provided by his will. The deed of absolute manumission was executed in Gallia county, Ohio, on the 2d April, 1808, John Rodgers styling himself in it, a citizen of Virginia. It is attested by two witnesses. . . [17] One of the witnesses also proved, that Milly was seen working at a sugar camp in Ohio on a Sunday, while her residence was in Virginia. . . The proof of Lewis's birth subsequent to the right of freedom in Milly, in whatever of all these manners she was entitled to it (if entitled at all,) was clear; . . judgment for the defendant on the verdict, and the plaintiff appealed."

Affirmed: [21] "The appellant claims his right to freedom, on three grounds: 1st, on the right to freedom alleged to have been acquired by his mother, prior to his birth, by having sojourned within the state of Ohio, and . . been there employed by her master: 2dly, on the ground that her right to freedom was, prior to his birth, established by the judgment on the writ of *habeas corpus* . . and 3dly, . . under the deed of emancipation . . [22] There is no evidence . . of the mother's residence within the state of Ohio, prior to the appellant's birth, but that she was once seen, on a Sunday, working at a sugar camp therein, in the absence of her master, and without any evidence that it was with his permission. . . Such an occupation for a short time, and even for the benefit of the master, and probably in his presence, could never operate an emancipation of his slave. It could not so operate, when the *animus revertendi* strongly existed in him, both in relation to himself, and to his slave. There is indeed but a shade of difference between such a residence as this, (if indeed it can be called a residence,) and the mere right of passage through the state: and such a construction . . would whittle down to nothing the right of the citizens of each state, within every other state, guaranteed to them by the constitution. Such an occupation cannot be said to carry with it evidence of the assent of the master, that she should cease to remain his property, and become a member of the state of Ohio, without which the regulations of that state on the subject of emancipation cannot attach. As for the 2d ground of claim, under the judgment upon the *habeas corpus* . . that judgment has not *affirmed* the mother's right to freedom. Even if it had, and this mode of proceeding was legalized by the laws of that state, (as it *seems* not to be by the laws of this,) in favour of a slave against his master, those laws are not found in the case before us: and even if they were, it might well be questioned whether the judgment aforesaid could have concluded the right of the master in the present instance. The right of our citizens under the constitution to reclaim their fugitive slaves from other states, would be nearly a nullity, if that claim was permitted to be intercepted by a proceeding like the one in question; a proceeding of so extremely summary a character, that it affords no fair opportunity to a master deliberately to support his right of property in his slave. Such a proceeding ought not, therefore, to be conclusive on the subject. As to the deed of emancipation contained in the record, that deed . . [23] shews, that it had a reference to the state of Virginia. It is stated to have been

made by John Rodgers a resident . . of Virginia; . . it formed a part of a contract whereby the slave Milly was to be brought back, (as she was brought back,) into . . Virginia. . . If then this contract had an eye to the state of Virginia for its operation and effect, the *lex loci* ceases to operate. . . it must . . conform to the laws of Virginia. It is insufficient under those laws, to effectuate an emancipation, for want of a due recording in the county court, . . It is also ineffectual, within the commonwealth of Virginia, for another reason. The *lex loci* is also to be taken subject to the exception, that it is not to be enforced in another country, when it violates some moral duty, or the policy of that country, or is inconsistent with a positive right secured to a third person or party by the laws of that country, in which it is sought to be enforced. In such a case we are told '*magis jus nostrum, quam jus alienum servemus.*' That third party, in this case, is the commonwealth of Virginia: and her policy and interests are also to be attended to. These turn the scale against the *lex loci* in the present instance. For want of being emancipated agreeably to the provisions of our act on that subject, the duty of supporting the old and infirm slaves would devolve upon the commonwealth. That burthen is only to be borne by the master, in relation to slaves '*so* emancipated;' that is, emancipated agreeably to the provisions of the act. 1 Rev. Code, p. 434. . . [24] For these reasons, we are unanimously of opinion to affirm the judgment." [Roane, J.]

Ellis v. Baker, 1 Randolph 47, January 1822. A marriage contract in 1811 provided that Catherine Baker should "enjoy . . the interest and occupation of the real and personal estate, which belonged to . . Catherine before her marriage . . and that . . Catherine should, at her death, or at any time before, dispose of it as she shall think proper, notwithstanding her coverture." She died in the lifetime of her husband, and "by her last will appointed and directed as follows: 'After all my just debts are paid, I desire that my negro man Tom and Polly, and her children, be sold, but give them the liberty of choosing their master, and receive all the money that they are sold for, except a support for Rose and Arion, which is to come out of the sale of the above mentioned negroes to be sold:' . . the debts of the said Catherine are few, and that there are assets sufficient . . without making sale of the said slaves:"

Held: [49] "The marriage articles . . only re-invested the absolute property of the slaves, in her, in the event of her surviving her husband. That event did not happen. If it had, she might thereafter have emancipated the said slaves, at her will and pleasure. During the coverture . . she was . . only to have the use of the property, with a power to appoint it" [Roane, J.]

Peter (a slave) v. the Commonwealth, 2 Va. Ca. 330, June 1823. "At a Court of Oyer and Terminer, held by the Justices of Hampshire county . . for the trial of Peter, a slave, for the murder of William Poling, he, the said Peter, was convicted of the murder, and sentenced to be hung, but the execution has been respited by the Executive until a day yet to come." Application for a writ of error "was over-ruled, and the Writ refused. . . [331] the Legislature, in framing the Law under which this conviction took place" did not "intend that the judgment of these Courts

of Oyer and Terminer should be submitted to the revision and correction of any other *legal* Tribunal. . . the only relief which that Law leaves to the convict, is to be sought from the Executive,"

Attoo v. the Commonwealth, 2 Va. Ca. 382, November, 1823. "The prisoner was indicted [at the session of the grand jury commencing on the 15th September, 1823,] as a free man of colour, of the forgery . . The time alledged in the Indictment when the offence was committed, was the tenth of May, 1823. . . [383] By the 5th section [of the act of the 21st February, 1823][1] . . all Laws coming within the purview of this Law, are repealed, . . By the last section, the Law is to commence on the 1st August, 1823; on that day the former law ceased,[2] and the offence committed before, was made the subject of Indictment after the expiration of the Law."

Held: "That there was no Law in force for the punishment of the offence, whereof the said Attoo was convicted at the time of the said conviction; that the judgment of the Superior Court was therefore erroneous, and must be reversed; and the prisoner acquitted and discharged, and go thereof without day." [White, J.]

Maria v. Surbaugh, 2 Randolph 228, February 1824. "An action for freedom was brought, *in forma pauperis*, by Mary, who sued for herself and on behalf of her four children, Maria, Nancy, Solomon and Samuel," William Holliday, by his last will, dated 1790, "bequeaths his slave Mary to his son William, with a declaration, that she shall be free as soon as she arrives at the age of thirty-one years." In 1804 the legatee sold her to White, who sold her to Gilkeson, who sold her to Carman, who sold her and her infant child, Maria, to Surbaugh. Later Mary had the three other children. All four children were born before Mary became thirty-one years of age (September 1, 1818). "The Court gave judgment, that the law was for the plaintiff Mary; that the children . . were not entitled to their freedom; and that as to them, the law was for the defendant."

Judgment affirmed unanimously. Judge Green reviews the history of slavery in Virginia [236-238], and discusses at length the case of Pleasants *v.* Pleasants:[3] [236] "the Chancellor and Judge Roane were of opinion, that so soon as the right of the mother to future freedom became certain, she was free, and her children born free; and that the testator had no power over, and could not impose any servitude on, them. . . [239] The opinions of Chancellor Wythe and Judge Roane, that a present right to future freedom, is present freedom, with an obligation to serve as a servant, would directly counteract the policy of the law of 1782, in regard to emancipation, unless the former owner was bound to support the children born during the period of service of the mother, . . [240] The former owner could not, upon such a construction, be bound to support them; for, he did not emancipate them, . . the public . . would inevitably be burthened with the support of the children, . .

[1] Acts of 1822, ch. 32.
[2] 1 Rev. Code of 1819, ch. 154, sect. 4, p. 580.
[3] See p. 105, *supra*.

while in his possession, and under his control as a hired slave, for the space of one month, no permanent injury having resulted to the said slave from such infliction?—Can the Defendant be punished under the Indictment found in this Case?" [1]

Held: [395] "The last clause . . ought to be answered in the negative. . . where the original assault is justified by the relation of master and slave, and the *gravamen* of the charge is the want of moderation in the subsequent chastisement, we think the Indictment . . ought to state distinctly, the connection of the parties, and to shew that it is the *excess* of the punishment which is complained of, and not, that the right to punish at all, is questioned. . . The offence of making an unlawful assault upon the slave of another person . . is, certainly, not the same offence with making an assault upon one's own slave, which, in general, becomes unlawful by subsequent excess and inhumanity, . . the Defendant sufficiently answered the general charge . . of cruelly beating Robert Fenn's slave, by proving that he had himself for the time the ownership of him, which so changed the nature of the offence, as to entitle him to a judgment under this Indictment, . . [396] however, we mean to express no opinion as to the first point submitted by the verdict. That involves a grave and serious, as well as delicate enquiry into the rights and duties of slave-holders, and the condition of their slaves, which we shall be prepared to enter upon with a due sense of its importance, whenever a proper occasion arises. The present Case is decided without reference to this more interesting question," [Parker, J.]

Mabry v. the Commonwealth, 2 Va. Ca. 396, June 1824. "a free man of color, charged . . with stealing three sack bags of picked cotton, of the value of eight dollars . . [397] the jury found the prisoner guilty of the grand larceny . . and directed him to receive fifteen stripes. The judgment of the Court, was in conformity with the verdict as to the stripes, and moreover, that he should be transported and sold as a slave, according to Law."

Aldridge v. the Commonwealth, 2 Va. Ca. 447, June 1824. The petitioner was "indicted as 'a free man of color,' for the larceny of Bank-notes of the value of one hundred and fifty dollars. . . He was convicted of the crime charged, and the jury ascertained the number of stripes to be inflicted on him, to be thirty-nine." The Supreme Court pronounced judgment that "he receive thirty-nine stripes on his bare back on the 26th of June next, and that after that day, he be sold as a slave, and transported and banished beyond the limits of the United States, in the manner prescribed by Law,[2] etc."

Held: the act of February 21, 1823, is not contrary to the constitution of the state. [449] "the Bill of Rights . . never was contemplated . . to extend to the whole population of the State. Can it be doubted, that it not only was not intended to apply to our slave population, but that the free blacks and mulattoes were also not comprehended in it? The

[1] The indictment did not mention that Bob was in defendant's possession as a hired slave.

[2] Act of February 21, 1823, ch. 32, sect. 3.

leading and most prominent feature in that paper, is the equality of civil rights and liberty. And yet, nobody has ever questioned the power of the Legislature, to deny to free blacks and mulattoes, one of the first privileges of a citizen; that of voting at elections, although they might in every particular, except color, be in precisely the same condition as those qualified to vote. The numerous restrictions imposed on this class of people in our Statute Book, many of which are inconsistent with the letter and spirit of the Constitution, both of this State and of the United States, as respects the free whites, demonstrate, that, here, those instruments have not been considered to extend equally to both classes of our population. We will only instance the restriction upon the migration of free blacks into this State, and upon their right to bear arms.

"As to the ninth section of the Bill of Rights, denouncing cruel and unusual punishments, we have no notion that it has any bearing on this case. . . [450] the best heads and hearts of the land of our ancestors, had long and loudly declaimed against the wanton cruelty of many of the punishments practised in other countries; and this section in the Bill of Rights, was framed effectually to exclude these, so that no future Legislature, in a moment perhaps of great and general excitement, should be tempted to disgrace our Code by the introduction of any of those odious modes of punishment. In the decision of these points, the Court is unanimous. . . [454] It is notorious that the Legislature regarded as a great evil the confinement of free negroes and mulattoes in the Penitentiary; and that, when engaged upon the Law under our consideration, their total exclusion from thence, was one of their objects." [Dade, J.]

Byrd v. Byrd, 4 Fed. Cas. 943 (2 Brockenbrough 169), November 1824. "William Byrd, . . by his last will, created . . a fund consisting of a tract of land, one hundred negroes, and other personal property, for the payment of his debts. He then gives to his wife, for life, the plantations of Westover and Buckland, with all the remaining negroes . . and adds: 'It is my will . . that, at the death of my dearest wife, all my estates whatever, consisting of land, negroes, . . be sold as soon as convenient, and the money . . be equally divided among all my children . . I give to my son John . . his choice of ten negroes, after my wife has chose such as she pleases.' . . to his daughters . . certain slaves by name. . . [944] to his son Charles . . 'I likewise give him his man Tom, and little Jack White, and his choice of two negro girls,'"

See same *v.* same, p. 143, *infra.*

Puller v. Puller, 3 Randolph 83, December 1824. Will of John Puller, dated 1818: "I give to my beloved wife Ann Puller . . a negro woman named Jenny and her increase," Jenny "had two children, Garrett and Icy, the youngest of whom was, at the date of the will, aged about 14 years: that the said Jenny had borne no child for at least 14 years next previous thereto, and, in all probability, never would have another, which was known to the testator: . . [84] he advised Mrs. Puller, if she and Jenny could not agree, to sell her, etc."

Held: that the widow should recover of the executors the slaves Garrett and Icy, together with their hires and profits. [92] "From the parol

evidence . . it is to be inferred, that the testator used the word increase in its broadest sense."

Allen v. Freeland, 3 Randolph 170, February 1825. [172] " the negroes were sold at a tavern in Henrico county, in . . 1822, where there were 8 or 10 persons, or more, present; and they were all knocked off to Allen, as the highest bidder: . . an advertisement was stuck up at the tavern . . which stated that the negroes belonged to Wright; ... Wright declared his intention, while Freeland's suit was depending against him, to make over his property, so that he should never get anything out of him." Since the sale [170] " Freeland had obtained a judgment against . . Wright, for about $1000, and sued out an execution thereon; and had levied the same on two of the said slaves, who were about to be sold by the sheriff, on the day that the bill [for an injunction] was filed. . . The injunction was awarded. Freeland . . [171] charges that Allen's claim to the said slaves is fraudulent, . . injunction . . dissolved."

Order affirmed. Carr, J.: [173] " No sacrifice of feeling, no considerations of humanity, are involved. These were not family slaves, but strangers to the plaintiff . . casually purchased at a public sale; no statement that they were peculiarly valuable for their character, qualities, or skill in any trade or handicraft;" Green, J.: [175] " the Court will . . interfere by injunction, to preserve specific property in possession of the owner. But the property must have a peculiar value, . . [176] I should incline to think that slaves ought, *prima facie*, to be considered as of peculiar value to their owners, and not properly a subject for adequate compensation in damages, . . but that this presumption may be repelled, as in the case of a person purchasing slaves for the avowed purpose of selling them again. In this case, the appellant does not appear ever to have seen the slaves before he purchased them. . . It is not necessary, however, to decide the case upon this ground, since I am perfectly satisfied, that Wright . . [was] . . guilty of a gross fraud . . multiplied proofs . . [177] The negroes were sold at a country tavern not very far from Richmond, where they certainly would not have been . . sold, if Wright had really intended to sell them in earnest, for the best price he could get." Brooke, P.: [178] " The principle on which the Court of Chancery exercises its restraining power in this country, in a case in which the peculiar value of the property cannot be compensated for at law, is the same on which the English Courts proceed. But, as regards slave property, there is a wider range for its application. Slaves are not only property, but they are rational beings, and entitled to the humanity of the Court, when it can be exercised without invading the rights of property; and as regards the owner, their value is much enhanced by the mutual attachment of master and slave; a value which cannot enter into the calculation of damages by a jury. In all such cases, therefore, this Court has exercised a restraining power, except a case in which, whatever may be the decision of it, the property is to be sold,"

Minor v. Dabney, 3 Randolph 191, February 1825. " His ' estate called Bellevue, . . with one half of the slaves,' . . he devised . . in trust for his relation, James Fife, near Edinburgh, . . His next devise is, of his

'estate called Whitings, with one half of the slaves, . . on the Bellevue estate,' in trust, . . for his relation, William Fife, in Scotland," The testator's guardian had cultivated [197] "the whole as one, . . though the negroes theretofore settled on the Whitings plantation . . continued to occupy their former cabins thereon, but labouring indiscriminately the whole estate."

Held: [212] "as to the lands, the testator meant to distinguish Bellevue from Whitings; but in regard to the slaves, treated them as belonging to the Bellevue estate, including the part called Whitings;"

Byrd v. Byrd, 4 Fed. Cas. 947 (2 Brockenbrough 179), May 1825.[1] "Of one hundred and twenty-five slaves left by the testator, William Byrd, (beside the jointure slaves of the widow, in which she had a life estate,) ninety were sold under the will immediately after the death of William Byrd, viz.: in April, 1777, and the fund arising therefrom being wholly inadequate to the payment of his debts, the residue were sold in November of the same year." Marshall, C. J.: "There were many circumstances to reduce the price of slaves and other property, at the time this sale was made. Our ports were blocked up, the produce of labour was unsaleable, and the nation was engaged in a war which would probably render this gloomy state of things of incalculable continuance."

Vaiden v. Bell, 3 Randolph 448, October 1825. [455] "The slaves . . belonged to Thomas Cowles, who died intestate, in 1786, . . the slaves . . were assigned to the widow of T. Cowles, and upon her death, Nathaniel Cowles [the eldest son and heir at law] took possession of them, . . as the law was at the time of Thomas Cowles' death, the heir at law was entitled to all the slaves of an intestate, including those assigned to the widow for dower, and was accountable to the younger children only for their respective proportions of the value of the slaves, other than those assigned as dower; to the reversion of which, he was entitled without account. This was the effect of the act of 1705, then in force."

Jordan v. Williams, 3 Randolph 501, October 1825. "In the year 1783, Charles Cross, conveyed ten slaves in trust, for the benefit of his wife, . . for life, and after her death, to his daughter, Elizabeth Cross. . . In 1814, the same C. Cross, conveyed to . . Jordan, two slaves, named Burwell and Young Jenny, who are alledged to be descendants of the slaves mentioned in the first deed, for 160 *l.*" Jordan's widow, [502] "as administratrix, brought an action of detinue against Charles Cross, . . for the two slaves, . . and obtained a judgment, and 100 *l.* damages and costs. A *distringas fi. fa.* issued on the said judgment, and the sheriff returned, 'Executed on one negro man, named Phill, one negro boy, named George, and one negro girl, named Milley. Satisfied by the sale of Phill and Milley.' . . Williams [husband of Elizabeth Cross] filed his bill . . charging that the deed to Jordan was fraudulently obtained from C. Cross, . . and praying . . that the effect of the execution may be suspended,"

Bill dismissed: [503] "even admitting that he had a present right to the two negroes recovered by the judgment . . he had no right to injoin

[1] See same *v.* same, p. 141, *supra.*

this particular execution, which was a *distringas fi. fa.*; for on such an execution, the sheriff cannot *distrain* the very property for which the *distringas* issued; nor can he seize and *sell* it to pay the damages mentioned in the execution; for that would be to sell the plaintiff's own property to pay a debt due to himself."

Bowyer v. Creigh, 3 Randolph 25, December 1825. [31] "various causes may exist, to give slaves a value in the eye of the master, which no estimated damages could reach. The slave may have been raised by him, and may possess moral qualities, which, to his master, render him invaluable. He may have saved the life of the master, or some one of the family, and thus have gained with them a value above money and above price. When any case of this kind is addressed to a Court of Equity, it will interfere . . [32] upon the ground, that there is no complete remedy at law; . . [but] in no case, where the plaintiff claims as an *incumbrancer* merely;" [Carr, J.]

Wilson v. Shackleford, 4 Randolph 5, January 1826. In 1821 Wilson, a negro trader, bought a negro woman and three children for $700, and carried them to South Carolina. The woman was found to be "labouring under an inveterate dropsy" and pronounced incurable. Wilson "sold her and her children to a purchaser with a full knowledge of her situation, for $475,"

Sallust v. Ruth, 4 Randolph 67, February 1826. "Ruth and her six children, brought an action of assault and battery against Sallust, to recover their freedom." [68] "Some years prior to 1780, John May, residing in . . North Carolina, owned a negro slave called Esther." His widow "married Lewis Lowry; who, about the time of Gates's defeat (16th of August, 1780,) carried Esther and [her daughter] Ruth, (then about 5 years old) to South Carolina; . . whether to avoid the enemy, or to sell the slaves, we are not informed. There, they were taken from his possession, and carried to Virginia." In 1794 Robert Lowry brought an action of detinue for Ruth, obtained a verdict, and sold her the next day for 80 *l.*, [72] "a full [price] . . for a woman, at that day." The superior court decided in favor of the plaintiffs.

Judgment reversed: the act of 1778 prohibiting the importation of slaves into Virginia, applies only to those slaves who are brought in with the consent of the owner, and not to those imported by wrongdoers.

M'Michen v. Amos, 4 Randolph 134, March 1826. Verdict of the jury: [136] "We find for the plaintiffs their freedom and one cent damages; subject to the opinion of the Court, whether the removal of Richard Wetherhead . . from . . Maryland to . . this State, in . . [137] 1800, and bringing with him the plaintiffs, and the taking the oath [1] prescribed by law,[2] within 60 days . . by Elizabeth, the wife of the said Richard, was a compliance with the law regulating the importation of slaves. If . . the law be for the defendant, then we find for the defendant."

[1] "the substance of which was, that the slaves . . were not brought in with intention to sell them, nor were they imported from Africa or the West Indies, etc."

[2] Act of 1792, Rev. Code, ch. 103.

Fulton v. Shaw, 4 Randolph 597, January 1827. "Fanny Shaw, a woman of colour, brought an action to recover her freedom," Deed of John Fitzgerald, executed in 1788: I "liberate, . . a certain woman slave named Mary Shaw . . reserving to myself, my heirs, etc., nevertheless, an absolute right and claim to all such child or children, which the said Mary Shaw . . may have born of her body, etc."

Held: [599] "the grantor could not reserve to himself a right to hold her future progeny in slavery. A free mother cannot have children who are slaves." The plaintiff "is free, because that was the condition of her mother at her birth." [Carr, J.]

Kitty v. Fitzhugh, 4 Randolph 600, January 1827. Suit for freedom. [602] "a mortgage from Patrick Sim to . . Contee, by which Kitty was conveyed, with other negroes, to secure a debt due to the said Contee. This deed was dated . . 1794. The property . . was . . sold; and . . Henderson became the purchaser of Kitty, . . The conveyance expresses, that . . Henderson desires the said Kitty with her increase to go to the present use . . of his daughter Ariana, (Mrs. Sim.) By a codicil [in 1801] to the will of . . Henderson, he gives Kitty and her increase to his daughter (Mrs. Sim) when she shall be capable in law to hold such property in her own right," [601] "Sim went from Maryland to . . Virginia, in 1801, carrying with him the woman Kitty; that he moved . . to . . Washington about the year 1803; and in 1808 or 1809, to . . Maryland, . . that Kitty . . returned with him to Washington, and was in his possession in . . Maryland: . . that P. Sim never acquired a settlement in Virginia, and never kept house there: . . [602] Sim and his wife . . were divorced in the year 1805 or 1806, by an Act of the Legislature of Maryland;" In 1814 Catharine Norris (Kitty) brought suit against Patrick Sim in Maryland, claiming her freedom [601] "in consequence of having been imported into . . Maryland contrary to the laws of that State, . . Sim, (as appears by that record,) disclaimed any right or title to the said Catharine; and judgment was rendered . . that the petitioner should be free. . . Sim's will, made in 1817, in which he declared that the children of Katy Norris were free, in consequence of their mother having been imported into Maryland, in the year 1804, without performing the acts required to be done by the law of that State; on which ground she had recovered her freedom by a judicial proceeding. . . [602] Kitty and her children removed to . . Washington soon after the death of . . Sim, . . [603] and from that time, until she was seized on by the defendant in October, 1825, resided and acted publicly and openly as a free woman," [602] "Fitzhugh employed constables and others to take up Katy and her children, who were . . carried to Fairfax court-house, and there lodged in jail for safe-keeping."

Judgment for the defendant, affirmed: [609] "As to the Maryland judgment, it could have no effect in favor of the appellant, except against Sim and those claiming under him, posterior to the judgment. The object of that judgment, and of the will of Sim, seems to have been, to admit and establish certain fictitious facts, and thereby prove a right to freedom in the appellant, on the return of Sim and wife from Virginia in 1801 or

1802, and prior to the time when he took possession of her; so as to shew in fact, that at that time she was a free person. The intention of this collusive judgment was, doubtless, to defeat the rights of Mrs. Sim, under the will of her father. . . [610] if the possession originated in fraud, no title could vest in Sim, by reason of lapse of time; and . . lapse of time would not give property under such possession, unless he did really and *bona fide* claim property in the said slave, when he so forcibly possessed himself of her." [Coalter, J.]

Gregory v. Baugh,[1] 4 Randolph 611, February 1827. "James Baugh, a man of color, brought an action against Thomas Gregory, to recover his freedom. . . [612] the plaintiff proved by two witnesses that he is the son of Biddy, who was the daughter of Sybil; that Sybil was a copper-coloured woman, with long, straight, black hair, with the general appearance of an Indian, except that she was too dark to be of the whole blood; that she was called Indian Sibyl, but her color, and that only, shewed she had negro blood; that he also introduced the deposition of Benjamin Smith, aged 70, who proved that when he was a boy, between 7 and 10 years old, he knew a yellow woman in the family of Peter Ashbrooke, who was called Ashbrooke's old Sybil and Indian Sybil; that she had every appearance of an Indian, . . and he was always under the impression that she was of Indian descent. . . that in the life-time of Sibyl, about the year 1770, it was currently said and believed in the neighbourhood, that she was entitled to her freedom." The superior court was of opinion that "it was legal and proper evidence . . to aid the jury in deciding whether the African mixture in Sybil came from the father or mother, . . [613] the Court would not instruct the jury, that further evidence to prove [that Sybil was descended, in the maternal line, from an Indian woman] . . was of legal necessity, . . and if, at the time spoken of, it was much more common for female Indians to be captured and domesticated among us, than males, that circumstance must be regarded by them as of some weight,"

Judgment for the plaintiff, reversed, [624] "and the case sent back for a new trial, on which such instructions are not to be given." Judge Carr: [619] "Suppose we . . admit that in the case of persons claiming freedom by descent, through the female line, from Indian ancestors, general report of the neighbourhood should be admitted; still, it must be general report as to *pedigree*. . . But, there was no such evidence here. . . [623] Again, What was the evidence, on which the jury was to decide, that it was more common to capture females than males at this period, so vaguely alluded to? None is stated;" Judge Green reviews the acts of the assembly concerning Indian slavery and servitude. [632] "The provisions of the act of 1682, were virtually re-enacted in 1705,[2] and in 1753; . . and prove that the Legislature had no idea up to 1753, that the permission to trade with all Indians, allowed by the acts of 1691, and 1705, prohibited the enslaving of all American Indians, as was decided by the

[1] See same *v.* same, p. 163, *infra*.
[2] Ch. 49, 3 Hen. 447.

General Court in 1777,[1] and repeatedly by this Court since; and so I should have thought, but for those decisions. Even if such a construction of the acts of 1691, and 1705,[2] was otherwise proper, I should have thought that the acts of 1705,[3] and 1753, directly contradicting it, would have prohibited that construction. We have no intimation that the idea that the acts of 1691, and 1705, allowing a free trade with Indians, could have the effect of prohibiting the enslaving of American Indians ever existed until the case decided in 1777 [1787],[4] occurred. . . [642] the proof that she was in 1770 reputed to be entitled to her freedom . . might be founded on the knowledge that she was born of an Indian woman servant, and therefore entitled to be free at her age of thirty-one. This reputation in 1770, probably could not be founded upon any idea that she was free, merely because she was descended from an Indian woman. For the construction of the act of 1705, authorising a free trade with all Indians, . . that all brought in after 1705, or rather after 1691, could not be held as slaves, was not probably known or thought of . . until after 1770. . . I think that this evidence of the reputation that Sibyl was entitled to her freedom, should be left to the jury to be weighed by them, with all the other circumstances of the case, in order to determine whether Sibyl's mother was an Indian, and if an Indian, whether she was a slave, or free woman bound to service, until her age of thirty years, or otherwise. . . [643] There was . . no probability of any Indians being captured and domesticated by us after 1691." Judge Coalter also reviews the acts on Indian slavery and servitude [645-651]. [653] "I think it would behove us well to consider whether *hear-say* of a title to freedom, resting on mere conjecture, . . would be at all admissible for any purpose? I think it would not."

Green v. Judith, 5 Randolph, March 1827. "Judith and her children and grand-children, brought an action to recover their freedom." [26] "They . . gave in evidence . . a statement in the hand-writing of Barrow, . . that in the year 1767, or 1768, Ball [his brother-in-law] gave to him and his wife a negro girl by the name of Jude, then about 6 or 7 years old, to go under the denomination of his wife's servant, in order to prevent her from being sold to pay his debts, he being much involved: that he raised her and her children, and had peaceable possession of them, . . [27] to the time of making the statement, viz: in 1808, . . Strode proved that Ball told him he had sold Judith to Barrow; and that Barrow told him he had sold her and her descendants to Hackley [his nephew], on consideration of Hackley's paying his debts. . . Hackley died before Barrow and Ball." By his will "he emancipates the plaintiffs at the death of Barrow." Barrow, by his will, "confirms to them their freedom. . . [28] the whole [of the testimony relied on by the defendant] . . is in conflict with the evidence of the plaintiffs. . . goes to prove only a loan from Ball to Barrow," The defendant demurred to the evidence. [2] "The Court gave judgment on the demurrer for the plaintiffs,"

[1] Misprint for 1787.
[2] Ch. 52, sect. 12, 3 Hen. 468.
[3] Ch. 49, *ibid.*, 447.
[4] Jefferson's *Reports*, containing Robin *v.* Hardaway (decided in 1772), were not published till 1829. Ed.

Judgment affirmed: [29] " the demurrant would not be permitted . . to rely on testimony directly disproving the case proved by the other party, and admitted by the demurrer. . . the demurrer is to be . . decided, as if he had ' waived ' it."

Hunter v. Fulcher, 5 Randolph 126, March 1827. " Hunter, a man of colour, brought an action of assault and battery . . to recover his freedom. . . the jury found a verdict for the plaintiff. At the trial, the plaintiff offered in evidence, a paper purporting to be the first section of an Act of Assembly of Maryland," [131] " It enacts that it shall not be lawful to bring a slave into the State, either for sale or residence there; and that any slave brought in, contrary to the Act, shall immediately be free," The depositions were [130] " taken wholly without notice, . . [132] judgments . . reversed, and the cause sent back."

Land v. Jeffries, 5 Randolph 211, June 1827. " Mrs. Birdsong, a widow, being entitled to sundry slaves, as her dower, . . and intending to marry Jeffries, executed . . a deed, conveying to Land, . . her brother, the said slaves, . . The marriage took place immediately after. . . Land, the grantee, was absent in the public service. The slaves continued in the possession of Jeffries after the marriage, and were hired to him by Land. . . [212] Stewart having obtained a judgment against Jeffries, caused an execution to be levied on some of the slaves . . Mrs. Jeffries . . filed a bill to injoin the sale of the slaves " [273] " injunction perpetuated."

Commonwealth v. Carver, 5 Randolph 660, June 1827. " The prisoner was indicted for . . shooting . . a negro man slave . . the property of Andrew Houston." Held: [666] " a negro slave is a . . person, on whom a free person may commit the offence " of " malicious and unlawful shooting, stabbing," etc. under the act of 1819.

Jones v. Mason, 5 Randolph 577, August 1827. " In the year 1816, Benjamin Jones made his last will, . . To Robert [the plaintiff] . . [578] his plantation in Brunswick county, . . and 13 slaves by name, . . among the negroes given, are Moses, Harry and Sam." [585] " the plantation devised to the plaintiff was settled as a quarter; and when the plaintiff attained full age, the testator invested him with the possession of the estate as it stood, except in relation to some of the negroes attached to it: that at the time . . all the negroes contained in the said legacy, with the exception of Harry, (who was on the Manor plantation of the testator) were on the quarter aforesaid, together with several other negroes: that instead of the testator . . [586] sending Harry up there, he, amongst others, brought Moses and Sam to his own house, and left, from among the negroes already on that estate, three other negroes, Ellick, Aggy and their child, . . [591] and other articles not bequeathed to him . . which, with the value of the three negroes not bequeathed, exceeded in value the three negroes bequeathed and not advanced . . to Robert; . . [592] no case has been decided, in which a gift of a specific thing has been adjudged to adeem a legacy of another specific thing; . . the rule . . is, that the thing given, and the thing bequeathed, should be *ejusdem generis*. . . [593] With us, the advancement of children is most frequently in ne-

groes;[1] and a bequest or gift of negroes is generally made as an advancement for the better establishing the child in life; and here, a gift of negroes, in lieu of other negroes, may be considered as an ademption of the legacy, if other circumstances shew that such was the intention of the testator. . . [595] I think the . . circumstances of the gift shew, that the intent of the testator was to give at once to the plaintiff all he intended to give him," [Green, J.]

Shirley v. Long, 6 Randolph 764, August 1827. Held: if a father gives a slave to a child, and the donor retains possession of the slave, and exercises control over it, the gift is not the less fraudulent because the child always lived with the father, and the slave was always called the child's in the family and neighborhood.

Commonwealth v. Turner, 5 Randolph 678, November 1827. Turner was indicted in 1826 " for cruelly beating his own slave." Demurrer to the indictment sustained: [684] " it is not pretended that there is, or ever was, an act of the Legislature, either of the Colony or State of Virginia, made for the punishment of this offence. . . [685] Since 1788, the life of the slave is protected by the laws equally with that of the freeman. And the statutes for punishing maiming extend as well to the protection of the bond as the free, . . But, without any proofs that the common law did ever protect the slave against minor injuries from the hand of the master, with the positive assurance that, if ever the common law extended so far, it was, for more than a century, and up to a comparatively late period, nullified by the existence of statutes entirely inconsistent with it, where are we to look for the source of the power which is now claimed for us? . . [686] It is greatly to be deplored that an offence so odious and revolting as this, should exist to the reproach of humanity. Whether it may be wiser to correct it by legislative enactments, or leave it to the tribunal of public opinion, which will not fail to award to the offender its deep and solemn reprobation, is a question of great delicacy and doubt. This Court . . declares, that it has not jurisdiction over this offence," [Dade, J.]

Brockenbrough, J. dissented: [687] " on one occasion within a few years past, . . I sustained an Indictment of this character, and pronounced judgment against the defendant. . . from the first introduction of slaves into this Colony . . to the year 1669, the homicide, of a slave by his master, . . was by law punishable as felony. This is apparent from the language of the statute passed in 1669,[2] . . If the master had possessed entire control over the slave, . . that statute would have been unnecessary. . . [689] In the long period between 1669 and 1788, I admit that this question could not have arisen. . . But, this ferocious and sanguinary system of legislation was abolished by the act of November, 1788.[3] By

[1] [582] " With us, nothing is so usual as to advance children by gifts of slaves. They stand with us, instead of money." [Carr, J.]

[2] " An act about the casuall killing of slaves." 2 Hen. 270: " if any slave resist his master (or other by his masters order correcting him) and by the extremity of the correction should chance to die, that his death shall not be accompted Felony, . . since it can not be presumed that prepensed malice . . should induce any man to destroy his owne estate."

[3] 12 Hen. 681.

free. This promise, though no way binding, the old people, (and especially Mrs. Talbert,) seem to have been anxious to comply with. In 1792, B. Talbert made a Deed to his youngest son, Charles, then, and always after, living with him, conveying to him Jenny and her son Moses. The deed was confessedly voluntary, . . No change of possession followed the Deed." In 1803 it was agreed that [160] "a new division take place. For this purpose, the children were called to their father's house, and all attended but one (Thomas). Jenny had now six children; and it was agreed, that the five children should have one each; and it was distinctly understood, that the former division was to be done away, and the Deeds (as the witness expresses it) to be forgotten and laid aside; and Jenny and her youngest son were to be set free. That the Appellant Charles assented to this arrangement is fully proved; for, several witnesses state, that while the division was pending, one of the sons-in-law finding Jenny not included in the scheme, asked 'what is to be done with big Jenny?' To which the Appellant answered, 'Never mind big Jenny. Our mother' (who was then dead) 'wished her to be free, and she shall be free.' Accordingly, B. Talbert, by Deed, emancipated Jenny, the day after the division; and some time after, he, by Deed, emancipated her son Lorenzo. Both these Deeds were recorded. Jenny had two other children afterwards. From the time of her emancipation in 1803, till 1813, Jenny acted in all respects as a free person, and kept her three youngest children with her. B. Talbert died in 1809. The Appellant never objected to the Deeds of emancipation; nor, that we hear of, ever made any claim to Jenny or her children, during the life of his father; nor after his death, till the year 1813, when he took possession of the three children, leaving Jenny at large. She sued at Law for the freedom of her children, and a verdict was found for the Defendant." Jenny and her children [159] "obtained leave [from the Chancery Court] to sue in *forma pauperum* for their freedom. The Chancellor decreed in favor of the Plaintiffs, and the Defendants appealed." Decree affirmed.

Sawney v. Carter, 6 Randolph 173, March 1828. "The pauper . . claims his freedom on an alleged contract between his master and him, at the time he was purchased at an executor's sale, that on paying his purchase money, he should be free. He alleges that he has paid accordingly; but, that his master would not emancipate him. The proof of the contract is by no means clear; although, if that was proved, and such a contract could be enforced in Equity, there is perhaps proof enough in the record, of his master having some property, to wit, a waggon and three horses, which the pauper claimed as his own, and the proceeds of his earnings by waggoning, to send the case to an account." The chancery court decreed for the master and Sawney appealed.

Decree affirmed: [173] "There is no case in this court, that I find, justifying the idea that a Court of Equity can enforce such a contract; . . [174] The case of John Rose, a pauper, *v.* Haxall, adm'r. of Duncan Rose, junr. was decided in this court against the pauper. . . this man belonged to the estate of the late Col. Banister, near Petersburg: that he was the son of Duncan Rose the elder, who, on his death bed, recommended him to the care of his nephew, the intestate of the Appellee. On

the sale of Banister's estate, he was purchased by Dr. Wilson for 90 *l.* who sold him to the intestate for the same sum. The intestate then put him apprentice to a carpenter. After his apprenticeship, he worked as a journeyman, and down to the death of the intestate, worked for himself, and was treated as a free man by his employer, who paid him his earnings. The intestate frequently admitted that he was free, and said that he had paid him his purchase money, and more; and never interfered with him as a slave. His administrator always considered him as free; but finding that he had not been emancipated by Deed, and not knowing but that he would be necessary to pay debts, considered it his duty to take him as a slave. He says he is not hostile to his claim to freedom; but suggests, for the consideration of the Court, whether a contract for freedom can be set up in a Court of Equity, and whether any other mode of emancipation than that prescribed by Law, can be sustained."

Randolph v. Randolph, 6 Randolph 194, March 1828. Brett Randolph "levied his execution on four slaves; when Catharine and Georgianna Randolph . . filed a Bill of Injunction to stay the sale; stating, that some years before, a division of their father's estate had taken place . . on which the slaves taken in execution had been allotted to them, . . The Chancellor refused the Injunction. This Court granted it."

Held: [508] "in every case in which the owner of slave property [which has been taken by virtue of an execution issued against the goods and chattels of another] . . applies to a Court of Equity, he will be entitled to an Injunction, and if he makes out his case, he will be entitled to relief, though he neither alleges, nor proves peculiar value of the property." [1] [Brooke, P.] Carr, J.: [197] "there are many cases, in which a slave has no peculiar value with his owner; some, among the large slave-holders, when he is not even personally known; or he may be vicious or worthless. To these, and other such cases, the principle of equitable interference surely would not apply. . . [198] My opinion then is, that to authorize a Court of Chancery to grant an Injunction stopping the sale of a slave under execution, the Plaintiff must claim as owner, and state some fact or circumstance, whether the *pretium affectionis* or any other, tending to show, that the verdict of a Jury in damages would not compensate him; and that the mere claim of him as his slave, without more, does not authorize the staying such sale under execution." Green, J.: [199] "I cannot help thinking, that slaves ought, *prima facie,*" to be considered property [198] "of such a nature, that it may fairly be supposed to have a peculiar and additional value in the estimation of the owner, the *pretium affectionis.* . . [199] They have moral qualities, which make them, in some instances, peculiarly valuable to their owners; but which could not be the subject of enquiry in each particular case, without great inconvenience and uncertainty. And whatever may be their qualities, we know that attachments naturally and generally grow up between master and slave, which cannot be the subject of pecuniary estimate by a Jury. This *prima facie* presumption may, however, be repelled by circumstances."

[1] Quoted from President Brooke's citation of Randolph *v.* Randolph, in Harrison *v.* Sims, p. 155, *infra.*

Coalter, J.: [201] "The master has not only his own pecuniary interest to consult, and his own affections and predilections to gratify, . . but, he owes a duty to the slave, as well as the slave does to the master, and which he ought to perform; the duty of protection from a violent seizure and sale, which may terminate in the destruction of his happiness, and in breaking asunder all his family ties and connexions. I have known slaves who could not be sold for $20, and whose masters ought to consider themselves bound by ties of real gratitude to avert such a calamity from them, if able to do so, at the expense of hundreds. Surely, such considerations ought to receive the attention and countenance of the Courts." Cabell, J.: [202] "slaves are human beings; and therefore, I do not think that even their attachments and feelings are to be disregarded. The inhumanity of wantonly invading these attachments and feelings, forms with me an additional argument in favor of the interference of a Court of Chancery. . . it should be regarded as a general rule, that the Courts of Chancery are bound to interpose, wherever the slaves of one man are about to be sold to pay the debts of another."

Claytor v. Anthony, 6 Randolph 285, March 1828. Patrick was sold, in 1812, for $253.50.

Redford v. Peggy, 6 Randolph 316, March 1828. George Redford [340] "was a very old and infirm man, without any family, or any one living with him but his slaves." After his death the following documents were found in his own handwriting: I. Deed of 1803: [323] "I do hereby immancypate, and set free my negro boy Will, son of Tener, who was born 16 August 1791, and my desire is that the said Will be by the Court set free: . . The above is done at the request of them that is no more." Will remained in slavery till the testator's death.

II. Will of 1811. [323] "I lend to my beloved wife Jane the following slaves that is Lewis, Peg, and all her children, and grand children, Beck and their increase during her life, and at her death my will and desire is that they, and their increase be freed, and immancypated, and if the Law of this State will not suffer them to stay here, or the Generall Assembly will not permit them to stay here that my brother Richard Redford or his heirs do contrive to get them to the State of Kentuckky, and county of Shelby; do git them carried there, for which trouble they are to serve him five years, and then to be free, and their increase. Item, my will further is, that the rest of the slaves, Tener and all her children be freed, or immancypated with all their increase, and if cannot be permitted to stay as above that may stay in this Commonwealth, they may be sent to my brother Richard to stay with him five years, except Will to stay four years, and that each of them be furnished with five dollars to bear their expenses there, and to have my small cart, and horse called Chancellor, or one as good; and that my still be sold to raise the money, and bal's afterwards to be applied to carrying Lewis, Peg, and children, and to be made up five dollars for each of them out of my estate; then Lewis, Peg, and children to be free. . . hoping they [my executors] will use their best endeavours to fulfill my desire with trying the Assembly to git them suffered to stay in this Commonwealth as many of them have husbands

and wives to leave behind, and they are as industrious and honest [as] any other slaves:" His wife died before 1818.

III. Will of 1818: [317] "My Will is that all my slaves may at my death be immancypated and sit free, to wit, Lewis, Peg, and all her children and grand-children, Tener and all her children and grand-children them and and their heirs forever: but Lewis, Essix, Tim, and Charles, Will, Daniel and Tarlton are to pay to some person appointed by the Overseers of the Poor for the support of Milly a lunatick ten dollars per year, and her mother Tener, and if they, or either of [them] do not [pay] the sum of ten dollars each the said Overseers are to hire them to some person to reese the sum of said ten dollars each: If the Assembly will not permit them to stay within this State my desire is that my Ex'rs. or either of them do imploy some person to carry them to some free State, and pay it out of my estate: . . I have not had this witnessed as I think my [signature?] is well enough known and no person present." In 1819 Redford sold Fanny, a daughter of Peggy, to Tuggle [321] "on account of her having a free husband. That free man had behaved badly. He insisted on visiting" Tuggle's "house against his will, and finally attempted to carry her off."

IV. Will of 1820, dated only a few days before the testator's death, [340] "written in three successive paragraphs, each signed G. Redford:" (a) [324] "if should dy, I want Joseph Davis set them all at liberty: I have toiled if the behave themself that the never serve nobody after my death: I have been vary much enterrested about what Thomas Tuggle said to me my negroes that tha shod suffer after my death, but set them all at liberty at my death: Joseph Davis and Lucy Davis I depend on to see my negroes sot free." (b) "all my negroes to sot free: Mary and Daniel must 5 dollars; vary sick when roat this, weak withall, I roat this is my negroes might not be imposed by no one. I hope Joseph Davis will see them righted. I depend on Joseph Davis to see them righted; her I say Mary and Daniel must have 5 dollars between them equally divided at my death." (c) "but set set them free at any rate: I depend on your see them righted allways"

Judgment of the superior court admitting the will of 1818 to record affirmed.

Harrison v. Sims, 6 Randolph 506, June 1828. In 1827 Harrison and Jones bought three negro girls belonging to Irvine, but left them "on the plantation of the said Irvine, for the convenience of his family, the said girls being favorite house-servants, but at all times completely under the control of the Plaintiffs;" A short time after, Sims caused an execution "to be levied on the three negro girls [as property of Irvine] . . and they will be sold, if not prevented by the interposition of the Chancellor, . . The Injunction was refused by the Chancellor,"

Injunction re-instated: [508] "The Chancellor was mistaken . . Though there is some little diversity of opinion, whether peculiar value of slave property ought to be stated in the Bill, praying relief in such cases, yet . . when that matter is alleged in the bill, as in the case now before us, an Injunction ought to be awarded," [1]

[1] See Randolph *v.* Randolph, p. 153, *supra,* and Sims *v.* Harrison, p. 173, *infra.*

Moses v. Denigree, 6 Randolph 561, November 1828. "I, Samuel Pretlow, . . after deliberate consideration, and from the conviction of my own mind, being fully persuaded that freedom is the natural right of all mankind, and that no Law, moral or divine, has given me a right to, or property in, the persons of my fellow-creatures; and being desirous to fulfil the injunction of our Lord and Saviour Jesus Christ, by doing to others as I would be done by, do therefore declare, that having under my care a negro boy, named Moses, aged about six years, do therefore . . [562] release unto him . . all my right . . to his person, . . after he shall attain to the age of twenty-one years, which will be on the 31st day of the twelfth month in the year 1796," This deed of emancipation was signed November 13, 1781. "On the 14th day of November, 1781, Samuel Pretlow made his Will, which was recorded on 23d of April following . . devised a tract of land to his son, . . and also the labour of his negro, Robin, and three others, until they 'become free, agreeable to the manumissions, I have given under my hand and seal,' and . . 'to his daughter . . the labour of four negroes, viz: Moses, Joe, Tom and Tabb, until they become free.'" The deed "was found among the papers of the acting Executor about fourteen years before the institution of this suit, and was never given to the Appellant, but had been offered by the Executor to the Court many years before, to be recorded, when the Court refused to receive it." It was recorded April 26, 1819. Judgment [561] "for the Plaintiff in the Court below, . . The Superior Court reversed the decision . . and the Defendant, Moses, appealed"

[565] "the judgment of the Superior Court must be affirmed." [563] "In 1723, it was enacted that no person should emancipate a slave but for meritorious services, and by permission of the Governor and Council. This Act continued in force till May, 1782, when a Law passed, saying, 'That it shall *hereafter* be lawful . . to emancipate' . . [565] Here, neither the Will nor the Deed looked to the passage of a Law as a condition,[1] but gave freedom upon the sole condition of the negro's living till twenty-one; and this was against Law, and void." [Carr, J.]

Spotts v. Gillaspie, 6 Randolph 566, November 1828. Suit for freedom. James Gilcrist of Pennsylvania, by his will dated 1782, bequeathed his "negro wench Hanna," after the death of his wife, to his son-in-law Robertson. The widow of Gilcrist died in the spring of 1786, and Susanna, the daughter of Hanna, was born a few months later. When Susanna was six weeks old, Robertson, a citizen of Virginia, took Hanna and Susanna from Pennsylvania to his residence in Virginia.

Judgment for the plaintiff, affirmed: after the passage of the act of Pennsylvania of 1780, for the gradual abolition of slavery, Gilcrist's property in Hanna was, as to her services, the same, but [572] "her condition was so changed that she could not be the mother of a slave in Pennsylvania, . . Susanna . . though born of a slave, . . was free: and . . the Law of Virginia . . does not . . permit a person free in Pennsylvania, to be held in slavery here." [Brooke, P.]

[1] As in Pleasants *v.* Pleasants, p. 105, *supra.*

Commonwealth v. Booth, 6 Randolph 669, November 1828. Booth was found guilty of permitting more than five negro slaves to assemble on his premises, in violation of the act,[1] and was fined ten dollars.

Bledsoe v. Commonwealth, 6 Randolph 673, November 1828. "the prisoner was indicted for feloniously stealing . . a negro man slave . . of the value of four hundred dollars." He was [674] "convicted and sentenced to five years imprisonment in the Penitentiary."

Montgomery (a pauper) v. Fletcher; *Whiteford v. Smith (a pauper)*; *Cordell v. Smith (a pauper)*, 6 Randolph 612, December 1828. Hugh Whiteford, acting for his father, removed with his father's slaves from Maryland to Virginia in 1797; bought a farm for his father, and settled the slaves on it. He took the oath, within sixty days, prescribed by the act of 1792. The father removed shortly after and became a citizen of Virginia, but did not take the oath. [614] "In the third case, the action was brought by Fanny Smith, and her daughter Eleanor and Harriet, . . these plaintiffs were sold . . to . . Johnson, who agreed to take $300 for them from the Plaintiff, Fanny Smith, who, on the payment thereof, was to be free, as well as her children; but he made a Bill of Sale of them to . . Chapple, who had assisted her with a part of the money: that Chapple permitted them to act as free persons for ten years, but that a part of the money being still due to him, he at length, in 1825, sold them to the Defendant as slaves. They were never legally emancipated either by Johnson or Chapple."

Held: [616] "The son, (who was the agent of the father,) and the father, were the importers of the slaves. . . Either the son or the father might take the oath."

Isaac v. West, 6 Randolph 652, December 1828. Suit for freedom. [655] "In April, 1806, Abel West emancipated many of his slaves, by a Deed, which in the same month was duly recorded, . . Amongst these was Jenny, the mother of the Appellant, who was born in 1813. West died in 1816. The operative words of the Deed were: 'I, Abel West have, and by these presents do manumit, and set free the following negroes at my death; they shall serve me as long as I live, and at my death shall go free from all persons; and I do hereby for myself, and my heirs, executors, and administrators relinquish all my right, and title of, in and unto the aforesaid negroes Josiah,' etc. In the month of January preceding the date of the Deed, many of the negroes were settled by West, upon two hundred acres of land, which he afterwards devised to the negroes, which had belonged to him." [654] "I give all the negroes which belonged to me the land lying above the Neck road, supposed to be two hundred acres more or less, it being part of the land where I now live, to them and their heirs forever on the female side in common amongst them all as a place of refuge. I also authorise my Executor to give them thirty barrels of corn, and one thousand weight of pork. I also give them all the flax, wool, and leather, that may be in the house at my death. Item, I give to my men Joshua, Will, Sam Parker, Edmund, and Adam, forty dollars each should

[1] 1 Rev. C., ch. 111, p. 424.

they finish the crop." [653] "all the negroes who were placed on the said tract, were considered in the neighbourhood as free, and were dealt with, and dealt with others as such, from the time they were placed there till West's death:" [656] "rendering no service to West, and appropriating all their earnings to their own use, some of the women hiring out their children, and receiving their hires. Some of the slaves named in the Deed, continued to serve West until his death."

Judgment for plaintiff: the deed may be [657] "construed to give immediate freedom, to all intents and purposes, except to hold them bound to serve West himself, personally, during his life. . . If this condition was against Law, as inconsistent with the right granted, it would not frustrate the grant. . . If this construction is doubtful, some weight is due to the maxim, that every Deed is to be taken most strongly against the grantor, and to the spirit of the Laws of all civilized nations which favours liberty. '*In obscura voluntate manumittentis, favendum est libertati.*'[1] And for the Common Law, see *Coke Litt.* 124, b." [Green, J.]

Stevenson v. Singleton, 1 Leigh 72, February 1829. "Robert Gibbon, on the 11th December 1818, agreed with his slave Richard Singleton, the appellee, that he would sell him to himself, or in other words, that he would emancipate him, in consideration of the sum of a thousand dollars to be paid to him by the slave. . . 400 dollars were paid accordingly, in cash, by the appellee; and William Foushee and Andrew Stevenson, as his friends, executed their joint notes or bonds to Gibbon, for the two sums of 300 dollars each, . . But no deed of emancipation was executed by Gibbon. On the contrary, Foushee and Stevenson required, as a security for their indemnification, that Gibbon should convey the slave to them, by bill of sale in due form; which was done accordingly. The intention of the parties, however, was that the slave should be emancipated whenever he should pay to his former master, or to his sureties, the amount of the notes. He was thereupon permitted . . to go at large and act as a freeman, for the purpose of raising the funds necessary for the completion of his right to freedom. . . he paid to Gibbon at different times . . the sum of 166 dollars, . . In January 1821, after both notes had become due, Gibbon insisted on immediate payment; and as the appellee was unable to pay the money," he was re-conveyed to Gibbon. [73] "Gibbon appears to have been still very willing to give freedom to the appellee, provided he could have got the balance of the money. The appellee commenced this suit, in *forma pauperis*, in the superiour court of chancery . . and that court decreed, that the appellee was free, and entitled to all the immunities of a free man of colour;"

Decree reversed: "It is not competent to a court of chancery to enforce a contract between master and slave, even although the contract should be fully complied with on the part of the slave."

Newsum v. Newsum, 1 Leigh 86, February 1829. In 1808 a slave was conveyed by Keeling, in trust for his wife, and after her death, in trust to the use of their children. Mrs. Keeling sold the slave to Pendred who died in possession of him. His widow and administratrix married New-

[1] *Dig.*, lib. 50, tit. 17, sect. 179, Ulpian.

sum who [87] " sold him in his representative character . . to one Bonney for 450 dollars, who afterwards sold him to one Adams."

Rankin v. Bradford, 1 Leigh 163, March 1829. Will of Edward Carter, proved in June 1792: " I give and bequeath to my son Charles Carter and Mr. Francis Thornton, four slaves, one male and three females, not under the age of ten nor over the age of thirty years, in trust for the purpose of applying the profits of the said slaves to the maintenance of my daughter Jane Bradford and her husband Major Samuel K. Bradford and their children " and after the death of the daughter and son-in-law, [164] " to be equally divided among the children " The four slaves were selected from the testator's estate and delivered to the daughter. Major Bradford died and her second husband, " in November 1798, sold to Richard Rankin, for £190, all the trust slaves (then six in number) for the life of his wife; and she joined him in the bill of sale. . . Rankin gave some of the slaves to his sons-in-law . . and he and they sold the absolute property of some of them " [168] " the case is decidedly against the appellant."

Hunter (pauper) v. Fulcher, 1 Leigh 172, March 1829. Suit for freedom. " Hunter . . was born . . in Virginia, the slave of . . Offutt, . . by whom he was given to his daughter, who . . removed with her husband . . to . . [173] Maryland. . . they carried Hunter with them, . . and he resided, with his master and mistress, in Maryland, about twelve years. . . he was brought back to Virginia, and was sold . . to one Hill; who afterwards . . sold him to . . Fulcher, for 450 dollars . . after the year 1819."

Judgment for the defendant, reversed: [182] " The law of Maryland [1] . . that slaves carried into that state . . to reside, shall be free; and the owner . . having carried him to Maryland, and resided there with him for twelve years, thus becoming himself a citizen of Maryland, and voluntarily subjecting himself and the slave to the operation of her laws; I think the right to freedom vested, and could not be divested, by the bringing him back afterwards to Virginia." [Carr, J.]

Dunn v. Amey, 1 Leigh 465, November 1829. Will of John Campbell, dated July 5, 1818: " I desire him [the executor] to dispose of all my real estate, except as much as he may think to reserve for a house and a proportionable small garden for my slave Amy. I wish Mr. Shipherd [the executor] to emancipate the above named Amy, and her child James, as also her sister Polly, and her brother Ned, and all their offsprings, should they have any; and, if possible, to have leave granted them to remain in the state; if that cannot be granted, I wish them (I mean Amy, the principal) to have the sum of 1000 dollars as soon as it can be made after my just debts are paid. My other slaves I wish [*sc.* to be emancipated] as soon as they may earn the amount of their first purchase, and paying Mr. Shipherd ten per cent. commission for his trouble: . . [466] The residue of the money to be converted into United States' bank stock, the dividend to the use of Amy and her child James, until James arrives

[1] Act of November 1796.

at the age of twenty-one years; at which time I wish them equal in the stock until her death; at which period, I wish James to have all the stock, and Polly the house that is to be left to Amy her life." The will was wholly in the handwriting of the testator and was signed, but not sealed by him. The executor gave the slaves deeds of emancipation, but did not record them as required by the statute.

Held: [471] " It was, unquestionably, the intention of . . Campbell to emancipate the appellees; and his will is sufficient for that purpose, although it is not sealed.[1] . . [472] still the appellees remained liable to the payment of Campbell's debts; . . an account ought to be taken of the assets, . . and if it shall appear that the debts . . can be satisfied without resort to the value of the appellees, then the appellees should be . . declared free; but if that cannot be wholly accomplished, then the appellees should be sold for such term of years as may be sufficient to raise the adequate fund;" [Cabell, J.]

Clarke v. Buck, 1 Leigh 487, November 1829. Will of James U. Blair: " I wish that Miss Collins to provide for Diana and make her comfortable."

Davenport v. Commonwealth, 1 Leigh 588, November 1829. Davenport was indicted for stealing a mulatto boy, David Caesar, " who was a free boy and not a slave, the said Davenport at the time knowing him to be free." The boy was not more than eight years old at the time. The jury found Davenport guilty, " and ascertained the term of his imprisonment in the penitentiary, to be two years; and sentence was pronounced accordingly."

Held: I. the offence is complete by the kidnapping, without the actual sale of the negro by the kidnapper, under the statute;[2] II. the stealing a free negro, with felonious intent to appropriate him, is criminal, whether the person so stealing him knows him to be free or not; III. but if one comes lawfully into possession of a free negro, not knowing him to be free, and sells him, [594] " he is guilty of no offence against the freedom of the negro, unless he knows at the time of the sale that he is free;" IV. though the knowledge of the freedom is averred in the indictment, it need not be proved, but may be regarded as surplusage; V. when one takes and carries away a free negro boy of eight years of age, with criminal intent to appropriate him, the consent of such a boy does not excuse or lessen the offence.

Robin and others (paupers) v. King, 2 Leigh 140, March 1830. " The appellants brought suit in *forma pauperis*, against the appellee by whom they were held in slavery, to recover their freedom, . . they introduced as a witness, Katherine King widow of William King deceased, to prove that she had heard him say, that Esther the mother of the plaintiffs was an indian woman, she the witness being then the wife of King; that these declarations were made in the presence of the family, and they were not requested to keep them secret; and that they were repeatedly made by him."

[1] 1 Rev. C., ch. 111, pp. 433, 434.
[2] *Ibid.*, sect. 28.

Judgment for the defendant: " the declarations of . . the husband, were not legal evidence, when disclosed by the wife as a witness." Affirmed.

McKinney v. Pinckard, 2 Leigh 149, March 1830. " Pinckard, being entitled to a share of the reversion or remainder of sundry slaves, . . conveyed the same . . 1809, to . . McKinney, for . . 156 dollars cash. This expectant interest . . was worth . . [150] at least 1300 dollars. . . [151] The chancellor decreed, that upon the payment or tender, by Pinckard's executor to McKinney, of the sum of 156 dollars, with interest . . [152] McKinney should release . . all his . . claim under the bill of sale of . . 1809. . . McKinney appealed." Leigh, for the appellant: [153] " it is every day's experience, that expectant interests in slaves, even when fairly sold at public auction, are always sold at an immense sacrifice."

Decree affirmed: [155] " McKinney . . could not but have known, that there was a . . most unconscionable inequality between the value of the property he bought and the consideration he paid for it."

Walthall v. Robertson, 2 Leigh 189, June 1830. Will of Francis Walthall, who died in 1819: " *Item*, if it be agreeable to the laws of this state, Virginia, in which I live, that after the death of my said wife Mary, it is my will and desire, that the following slaves owned by me, viz. Joan senior, Gary, Jack, Tom and Peter, shall as soon as they attain the age of thirty-one years, shall be freed; and I appoint . . trustees for the liberation of said slaves, and for them to make the necessary application to court on their the said slaves ' behalf, both as to their freedom and their remaining in the state. If the laws of the state be against such procedure, then my will and desire is, that the said slaves shall be equally divided among my children " The testator made his mark instead of signing his name to the will. [192] " It is fair to conclude . . that they were favorites as they were selected from among his slaves." [190] " The county court was of opinion, that the slaves were not entitled to their freedom; and decreed a division of them among the plaintiffs."

Affirmed: [194] " The laws in force when the will was made, permitted emancipation, but imposed . . the condition of leaving the state within a twelve month . . unless they were permitted to remain by an order of a . . court, in cases in which the emancipation was founded upon the extraordinary merit of the slave, . . the courts had considerable latitude of discretion, which was restrained by the act of 1819, . . by the requisition that the act of extraordinary merit . . [195] should be stated in the record. . . the testator . . could hardly have doubted, but that, at his wife's death, the laws would allow emancipation upon some terms; but he might very reasonably have doubted, whether they would allow the courts to give leave . . to remain in the state, or not. If they should, he desired to emancipate them; if not, to distribute them amongst his children. . . they are not suggested to have done any act of extraordinary merit." [Green, J.] Carr, J. dissented.

Thrift v. Hannah, 2 Leigh 300, June 1830. Suit *in forma pauperis*, brought by Hannah and Kate in the county court to recover their freedom. Rachel Magruder, being a feme sole, executed the following instrument

on November 25, 1798: [305] "Know all men by these presents, that I, Rachel Magruder . . do set free, manumit and release from slavery, the following negroes at the periods hereafter mentioned, *viz.* negro Toney, one year from the date hereof; negro Pharo, one year from the date hereof; negro Hannah, eight years from the date hereof, and her future increase, males at the age of twenty-five, and females at the age of twenty-one years; negro Kate, nine years from the date hereof, and her increase, males and females, at the age of twenty-five years;" This instrument "was partly proved, by one of the subscribing witnesses, in the county court of Fluvanna, at April term 1799; and at June term 1819, it was further proved by the other; and was, thereupon, admitted to record." On November 7, 1799, Rachel Magruder had married Thrift who had no knowledge of the instrument of emancipation. They removed to Albemarle County, and the grantor, Rachel Magruder Thrift, [320] "was dead, before the deed in question, was attempted to be consummated by proof in the court of the county in which the grantor had formerly resided."

The judgments of the county and circuit courts upholding the deed of emancipation, were reversed: [320] "the grantor had, by her marriage, lost her power to emancipate the slaves before the requirements of the statute had been complied with; that she was dead before the deed was proved and recorded; and that, in either view, the requirements of the law could not be complied with." [Brooke, P.] Two judges concurred; two [Carr and Green] dissented.

Madden v. Madden, 2 Leigh 377, November 1830. Will of Mabra Madden: "I desire the moveable property of every description, after the death of my wife, shall be sold, and the proceeds thereof equally divided among my five daughters, Nancy, . . after all my just debts are paid, my desire is, that all my moveable property shall be at the intire disposal of my wife, Jane Madden: on her decease, the same to be disposed of as above mentioned." The moveable property included one male and one female slave. "The female slave died in childbed, soon after the testator's death, leaving an infant child, a girl, afterwards called Lucinda, then only two or three weeks old, feeble, sickly and unlikely to live; and the testator's widow Mrs. Madden, promised her daughter Nancy, that if she would give her care to this child, and should succeed in rearing it, she would give it to her. Nancy Madden, accordingly, took charge of the child, and by the most humane and constant care, succeeded in rearing it." Some years afterwards Mrs. Madden and the husbands of two of her daughters deeded to Nancy all their interest in Lucinda, [378] "in consideration of her care, trouble and expense in rearing the girl."

Held: "the testator's widow . . took under his will, only a life interest in the moveable property, and could transfer no more to Nancy Madden, . . Nancy Madden had no title to . . Lucinda, except as a legatee in remainder, and as assignee of the right of two others of the legatees;"

Taylor v. Browne, 2 Leigh 419, November 1830. The will of William Browne, who died in 1816, provided that if his widow should marry [420] "the residue of the slaves . . should be sold, and that three female slaves,

from six to twelve years old, should be purchased out of the proceeds, one for Eliz. Marston, one for Eliz. Durfey, and one for Eliz. Nettles,"

Pleasants v. Clements, 2 Leigh 474, February 1831. Mrs. Clements [475] " represented that the slave was sound and healthy, and that though he had been afflicted with the malady called the king's evil, he was intirely restored to health;" Pleasants paid $375 for him, " but soon found he was incurably diseased with scrofula, and unable to endure the lightest labour, . . [477] Verdict for the plaintiff, for 300 dollars damages, and judgement . . [484] judgement . . reinstated and affirmed."

Bishop v. Bishop, 2 Leigh 484, February 1831. James Bishop bequeathed three slaves, Edy, Jenney, and Peter, to his son George, " for life, and the remainder after his death to his children, and ' that they should not be sold, or go out of the family;' . . [485] George Bishop had sold the woman Edy to the defendants Avery and Comer who were dealers in slaves, and purposed to send them out of Virginia; . . Injunctions were awarded . . to restrain the defendants, respectively, from making any disposition of the slaves till farther order, unless they would give bond with surety to have them forthcoming to abide the final decree; . . The slave Edy could not be found."

Heffernan v. Grymes, 2 Leigh 512, February 1831. In 1808 Sayre, administrator of Grymes, sold to Cardineaux, " agent in making the purchase for James Mather and Abner L. Duncan of New Orleans, forty-three slaves of Grymes's estate, for 10,033 dollars, . . [513] Heffernan, who was to accompany Cardineaux and the slaves " to New Orleans, was empowered " to make sale there of the other slaves of Grymes's estate, without limitation as to the number to be sold, or the terms of sale;" and soon after his arrival he " covenanted for Sayre, to sell and deliver to . . [514] a hundred slaves of Grymes's estate, for 40,000 dollars; of which the sum of 5,242 dollars was to be paid to Heffernan in cash;" he retained this with Sayre's consent on account of his commissions and expenses. Soon after [515] " Sayre's letters of administration of Grymes's estate were regularly revoked, on account of his mal-conduct therein; . . and thus the delivery of the hundred slaves which Heffernan had sold in New Orleans as the agent of Sayre, was anticipated and prevented, and the execution of that contract intirely defeated."

Gregory v. Baugh, 2 Leigh 665, March 1831. [668] " transcript of an order made by the general court on the 13th October 1772, in these words: ' On the motion of Sybill, who is detained in slavery by Joseph Ashbrooke . . , she is allowed to sue her master *in formâ pauperis,* and Mr. Jefferson is assigned her counsel to prosecute the said suit: and it is ordered, that her master do not presume to misuse her on this account, and that he allow her to come etc. and attend etc.' . . [671] this order must have been founded on Mr. Jefferson's professional certificate, that he was of opinion she was justly entitled to her freedom, and stating the grounds of that opinion:" Sybill dying soon after, that proceeding was abated. The plaintiff in the present suit, James Baugh, [666] " was the son of Biddy, who was the daughter of Sybill." He brought an action against Gregory, to recover his freedom; and the verdict in favor of the plaintiff was set aside and

the judgment of the lower court reversed by the court of appeals in 1827,[1] and the cause remanded for a new trial. [666] "After several continuances in the circuit court, the new trial was had at June term 1829," William Clarke deposed "he was between five and seven years old at the time of Sybill's death: . . he always understood they were descended from indians, . . but whether it was from the mother's side or father's he was unable to say; and that Biddy had some appearance, in her looks and complexion, of an indian." Littleberry West, over eighty-three years old, deposed that when he was fifty or sixty years old, he heard his mother say [668] "that Sybill's mother was an indian, and that Sybill herself was one, and was entitled to her freedom. . . I have never heard that there was any male indian kin to Sybill." [666] "the jury again found for the appellee, that he was free, and the court gave him judgement accordingly."

Judgment reversed and [698] "it is ordered, that the verdict of the jury be set aside, and the cause be remanded . . for a new trial:" "the circuit court erred, in intimating to the jury, that Clarke had stated . . 'that he had always understood that Sybill was an indian,' and that West had stated . . that his mother had said, 'that Sybill had the appearance of an indian;' those witnesses having used no such expressions: . . no instruction giving any such intimation is to be given." The majority of the court held that [678] "after such a lapse of time, the doctrine of *lis mota* cannot exclude" the declarations of Clarke and West. The court (four judges sitting) were divided on the point whether, in the case of a person claiming freedom on the ground of descent from an Indian ancestress, hearsay be admissible, not only to prove the plaintiff's pedigree, but also to prove that the ancestress, from whom he derives his descent, was an Indian. Carr, J.: [680] "the decisions of this court, in several cases, have gone to let in hearsay to prove descent from an indian woman; and this is the consideration which I have found it most difficult to get over; for I am exceedingly reluctant to unsettle what is at rest. But all who have examined the earlier cases in our books, must admit, that our judges (from the purest motives, I am sure) did, *in favorem libertatis*, sometimes relax, rather too much, the rules of law, and particularly the law of evidence. Of this, the court in later times, has been so sensible, that it has felt the propriety of gradually returning to the legal standard, and of treating these precisely like any other questions of property." Green, J.: [690] "In respect to the descendants of a female indian servant, in the female line, it might happen, that, in a succession of generations, none of them would live until their term of service expired; for not only such who were the children of a negro or mulatto man, but all their descendants born during their service, were bound to serve till their ages of thirty-one, and an additional year for every bastard child (as all their children were) born during their obligation to service; and they were moreover liable to an additional service of six months from a very early period of our legislation, for every instance of fornication. In such a case, if in every generation, witnesses had gone to court and testified to their knowl-

[1] Gregory *v.* Baugh, p. 147, *supra*.

edge of their state of service, and the testimony had been committed to record, even that precaution would have been unavailing, if, when the first of the race entitled to be exempt from service, sued for freedom, all who knew the remote ancestor and her condition were dead, and hearsay were inadmissible to prove that she was a free indian servant. . . It is important to the descendants of all female [691] indian servants, many of whom are still legally bound to a temporary service, and to a large stock of emancipated slaves, who are bound to service in all generations to the age of thirty years, under Pleasants's will.[1] All of the former class now, and all of the latter in a few years, must be reduced to unconditional slavery, if it shall become the settled law, that the identity and condition of their remote ancestors cannot be proved by hearsay evidence or traditionary reputation."

The court were also divided on the point whether, if a person claiming freedom on the ground of Indian descent in the maternal line, prove his descent from a native American Indian ancestress, the *onus probandi* lies on the defendant, to prove, that such ancestress was brought into the country, at a time and under such circumstances that such Indians might lawfully be enslaved, or on the plaintiff, to prove that such his ancestress was brought into the country, at a time and under such circumstances that she could not lawfully be enslaved.

Green, J.: [685] " The sources for the supply of indian slaves, natives of the continent of America, between 1682 and 1705, must have been very scanty, adverting to the state of things with respect to our neighbouring indians during that period; and there was never any source of a supply from abroad, except such as might be kidnapped in the West Indies, for there slaves were more valuable than here. In respect to the sources for the supply of indian servants, in addition to what I said on that subject on the former occasion,[2] I find, that all such female servants who had bastard children of any sort, were bound to add to their previous term of service (which was generally thirty-one years) one year on account of each child: and considering their condition, and their habitual and early connexions with negroes, they could hardly, in any case, be entitled to be discharged from service until they were past child bearing. Their children, in turn, were bound to serve until thirty-one, and as long after, as the addition of a year for each child they had during their time of service would amount to. I find further, that the act of 1765, carefully discriminated between the children of mulatto servants (the bastard children of white women by negroes, and their descendants) and those of such indian servants; discharging the former thereafter born from any obligation to service, and requiring them to be bound out as apprentices; while the former acts requiring a service to the age of thirty-one, from the children of indian women servants, in all generations, with the addition [686] of one year's service for every child born during their service, were left in full force as to them, and so continued until the general repealing clause of the act of 1819. So that as our laws were framed, the females of this class of servants were almost always bound to service until they

[1] Pleasants *v.* Pleasants, p. 105, *supra.*
[2] Gregory *v.* Baugh, p. 147, *supra.*

were past the prime of their lives. No possible contrivance, short of reducing the whole race to absolute slavery, could be better calculated to obscure and confound their right to freedom, and to destroy the evidence of it. Considering these facts, in respect to the condition of indians introduced into Virginia, as slaves or servants, respectively, and of their descendants; facts derived from infallible sources of information; I cannot for a moment doubt the propriety of the former decisions of this court, and of the instruction under consideration, that proof that a party is descended in the female line from an indian woman, and, especially, a native american, without any thing more, is *prima facie* proof of his right to freedom;" [683] "This *prima facie* presumption could only be justified by the historical fact, that a greater number of indians had been incorporated into our community, as servants than as slaves, and that the descendants of the females of those introduced as servants, born during their service, continued in servitude to an advanced age in successive generations; facts, probably, well known to the elder judges who decided the case of Hudgins *v.* Wright, as well from their acquaintance with the history of the condition of the indians found amongst us, . . as from the proceedings and evidence in the multitude of cases upon that subject, decided in the general court in June 1772, in which parol evidence was given reaching back to the close of the century before the last,"

Rucker v. Gilbert, 3 Leigh 8, May 1831. Suit by Gilbert *in forma pauperis* against the "administrator with the will annexed of Rucker, to recover his freedom." Will of Rucker: [9] "My said executors and trustees are hereby authorized to act in hiring out the balance of my negroes, except my mulatto man James Gilbert, . . it is my will and desire that my mulatto man James Gilbert should be free; but finding there would be some difficulty for it to be so, and for him to remain here, I therefore request my executors to lay off three acres of land for said James Gilbert, at any corner of my land, and let him settle on it, that they may think proper; and he is to have it during his natural life on good behaviour, and then to return to my estate. I wish the said James Gilbert to enjoy the benefit of his labour, but always to be under the control and direction of my executors and trustees." In a subsequent part of the will, "the testator directed all his personal estate and lands to be divided among his children, excepting said James Gilbert, and all his slaves to be valued, excepting said James Gilbert, of whom he made no other or further disposition than as above mentioned." The county court gave judgment that Gilbert was entitled to his freedom; the circuit court confirmed the judgment. The Court of Appeals reversed both judgments: [11] "However much the testator desired that Gilbert should be free, it was very clear, that he was deterred by the difficulties which the law presented with respect to residence here;"

Boyd v. Cook, 3 Leigh 32, May 1831. Will of Philip Vass, 1816: [33] "I give unto my daughter Mary Boyd, negro girl Lydia and her increase, to dispose of as she pleaseth: also I lend unto A. [and] M. B. Rachel and her increase; which negro and her increase shall not be sold for no debt or debts of Alexander Boyd or his wife Mary Boyd, in no case whatever; the aforesaid negro Rachel and her increase is not to be

removed out of the county of Halifax, without the consent of a majority of the legatees concerned; in either of these two cases [if] a breach be made, a sale or removal, negro Rachel and her increase is forfeited, and return immediately into my estate,"

Tankersley v. Lipscomb, 3 Leigh 813, July 1831. "Upon the information and complaint of Moses Lipscomb, that Matilda Tankersley had harboured and employed his slave, knowing her to be a runaway, contrary to the statute[1] . . judgement against the defendant, for a fine of ten dollars, one half to Lipscomb the informer, and the other half to the commonwealth for the literary fund."

Winn v. Bob and others (*paupers*), 3 Leigh 140, November 1831. [141] "About three hours before the decedent's death . . his attending physician, suggested to him the propriety of making his will; . . Dr. W. handed Morgan pen, ink and paper, telling him that Mr. Schwartz wished his will written: Morgan seated himself at a table . . some twelve feet from the sick man's bed." Schwartz [142] "asked his servant Bob, whether he wished to be freed; Bob said he was very willing to serve *him*, but he had rather be freed than have another master: Schwartz said 'he should be freed.' Schwartz then asked Frank, whether *he* wished to be freed; a conversation ensued similar to that with Bob, which ended in Schwartz's saying 'he should be freed.' Polly then said to her master 'what are you going to do for poor me?' Schwartz said, 'Polly and her children should be freed.' Bob then asked, 'as he had freed him, would he not also free his wife,' Letty? Schwartz said, 'Letty and her children should be freed.' These dispositions being thus declared by Schwartz, Dr. W. went to Morgan, and reported them to him, and he reduced them to writing." [140] "Bob and ten others . . preferred their petition to the county court . . setting forth, that they had been emancipated by their late owner, by will . . and that they were still held in slavery by the testator's next of kin and distributees, or some of them; and praying permission to sue *in formâ pauperis*, to have the will proved and recorded, and thus to recover their freedom, according to the statute,[2] . . The county court gave them the permission, and assigned them counsel. And then their counsel offered for probat, a paper containing, as they alleged, the written or the nuncupative will of the decedent, . . The county court, upon a full hearing, was of opinion that the paper did not contain the will of the decedent, and refused to record it. . . [143] The circuit court reversed the sentence of the county court, and admitted the contents of the paper to probat and record, as a nuncupative will. Winn appealed to the Court of Appeals."

Carr, J.: [146] "Here we have . . no expression, indeed, or act of the sick man, to shew that he thought himself making his will or whether he intended it to be by parol, or in writing; or that he wished any person to bear testimony to what was doing. To establish such a will as this, would, I think, be of the most dangerous tendency." Brooke, J. and H. St. Geo. Tucker, P. "said, they concurred in the opinion of Carr, J. that this was not a good nuncupative will. And they intimated, that *they*

[1] Act of 1823-1824, ch. 35, sect. 1. Supp. to Rev. Code, ch. 179, p. 236.
[2] 1 Rev. Code, ch. 124, sects. 4, 5, p. 481.

thought, slaves could not be emancipated by a nuncupative will, and had intended to give that opinion on that point; but they yielded to the suggestion of Carr, J. that the point should be left open for consideration when it should be necessary to decide it. Sentence reversed."

Hansbrough v. Thom, 3 Leigh 147, November 1831. [150] "Hansbrough observed he had some women and children that rendered him but little service; that, on his way down he should call at Thom's house, and expected to let him have some of his negroes. That, some time previous to this conversation . . Hansbrough told the witness, he intended selling a parcel of his negroes to Thom [the husband of his granddaughter]; that Thom might pass them off to Armistead, for a debt he owed him;" Order to Hansbrough's overseer: "Mr. John Henderson will shew and deliver to Col. George Thom, the following negroes, viz: Pompey (he has seen), Moses, Harry, Sarah and her three children with her, Patt, (about the house,) Caroline and her two boys, Sally and her three children, Linda and her child. And oblige P. Hansbrough. 16th September 1822."

Jackson v. Ligon, 3 Leigh 161, November 1831. Will of Owen Haskins who died in 1808: [165] "that the following slaves (naming three men) shall be sold on twelve months credit, and the money arising from the sale thereof shall be laid out in young female slaves, for the benefit of my wife and children."

Newell v. Mayberry, 3 Leigh 250, November 1831. "Mayberry had purchased the slave Lewis of Shepherd, for 621 dollars, and the slave . . had absconded from Mayberry's service: . . [251] 'Memorandum of agreement made this 2nd day of July A. D. 1816, between T. Newell and T. Mayberry. Said Newell is to give out that he has purchased negro Lewis, or exchanged with him for negro Reuben, and to try all means in his power to take said Lewis, and when taken said Newell is either to keep him and settle with Shepherd for the price of him, or to deliver him up to said Mayberry at his option, that is, Newell's; if he keeps him, no deduction for taking him, and if he delivers him up to Mayberry, then he is to receive 20 dollars for his trouble. And the said parties bind themselves on their honour, that neither of them will ever divulge or communicate this agreement to any person whatever, either directly or indirectly, except Job Moore—(signed) T. Newell. This agreement to be in force until 12th July.' . . [252] Newell regained possession of the slave on the 20th July," and kept him as his own property, refusing [251] "to take 20 dollars tendered to him for his trouble, and to restore the property to Mayberry;" or to "pay Shepherd the above mentioned price of the slave,"

Wallace v. Dold, 3 Leigh 258, November 1831. Devise and bequest of land, slaves and money (in 1819) "for the support and maintenance of my son William, and for the education of his children; . . and at the death of my said son . . to sell my said lands and negroes, and divide the proceeds thereof"

Burwell v. Anderson, 3 Leigh 348, December 1831. Will of Dr. William Pasteur, who died in 1791, empowered his executors [349] "to sell his lands in Goochland, and all the personal property at and upon the same, excepting slaves,"

Garrett v. Carr, 3 Leigh 407, February 1832. Will of Richard Allen who died in 1805 directed, "That all his land and other property, except slaves, should be sold at auction,"

Dudleys v. Dudleys, 3 Leigh 436, February 1832. [437] "after the will was written, the testator was apprehensive he had not secured a slave in the will mentioned, to one of his daughters and her children, . . and altered the will, by erasing a part and inserting the alteration;"

Gallego v. Attorney General, 3 Leigh 450, February 1832. Will of Joseph Gallego, who died in 1818, [451] "devising and bequeathing to P. J. Chevallie a merchant [a] manufacturing mill . . , all his slaves not otherwise disposed of, . . and after emancipating his slaves Rachel, Elsey and her daughter Cora, Nancy and her three children, and David, James, Aaron and Joe, and bequeathing to Rachel 2000 dollars, to Elsey, Nancy, Cora, and Mary, 500 dollars, each, and to David, James, Aaron and Joe, 150 dollars each, . . [454] By the fifth codicil, he bequeathed to his freedwoman Rachel, in addition to what he had given her by his will, 50 dollars per annum. By the eighth, he emancipated his slave Jack, and bequeathed to him an annuity of 150 dollars for life."

Lynch v. Thomas, 3 Leigh 682, May 1832. Will of John Thomas, who died in 1796, [683] "bequeathed to the plaintiff [his son], the woman Tabb and her increase, and other slaves to other sons;"

Commonwealth v. Fields, 4 Leigh 648, December 1832. "Fields, a free negro, was indicted . . upon the statute of 1822-3, ch. 34, §3, for violently and feloniously making an assault upon, and attempting to ravish, a white woman. The jury found the following special verdict: . . the prisoner did not intend to have carnal knowledge of the within named S. L. as alleged in the indictment, by force, but that he intended to have such carnal knowledge of her while she was asleep; that he made the attempt . . [649] when she was asleep, but used no force except such as was incident to getting to bed with her, and stripping up her night garment in which she was sleeping, and which caused her to awake."

Held: "judgement of acquittal ought to be rendered in favor of the prisoner."

Paup v. Mingo, 4 Leigh 163, January 1833. Will of William Walker, who died in 1789: "I also desire, when my affairs are settled and all my debts paid, that my negroes be emancipated according to law, excepting one known by the name of Lud, whose services of two years I reserve longer than the rest; then he also shall be liberated; and those under age or over forty, to be equally in the care of my beloved wife, daughter and son." [164] "In 1805, the slaves of Walker's estate (suing *in forma pauperis*, ...) exhibited their bill . . wherein . . they alleged, that a fund had already been raised out of the profits of their labor, more than sufficient to pay all the debts of that testator, and that therefore they were then entitled to demand deeds of emancipation, but that they were still held in bondage, . ." The first executor Jones, [165] "from the death of the testator Walker till 1795, left the young and old slaves in the care of the testator's widow on the plantation devised to her, with as many able

bodied slaves as sufficed to maintain those who were chargeable, and hired out the other able bodied slaves: that, in 1795, the widow being dead, he divided the young and old slaves under twenty-one and over forty years of age, equally between Leonard the son, and Paup the husband of Sarah the daughter, of the testator" who had ever since held them, insisting that the testator "intended to *give* them the young as well as the old, in order that by the labor of such as were profitable they might maintain those who were chargeable." Jones had in 1795 retained the slaves between twenty-one and forty, hiring them out from year to year, [166] "and for some two or three years before his death [in 1801], it seemed, he suffered" them "to take and enjoy the profits they earned, and only withheld deeds of emancipation from them, because he had reason to apprehend, that there might be other debts, particularly british debts, for which the slaves, as well as their profits, might be liable as assets in his hands:" In 1809 Chancellor Taylor, "finding that a fund amply sufficient to meet all claims . . had been raised out of the profits" of the slaves, decreed, that they should all (except Lud) be free . . [167] on the 1st January 1810, and that Lud should be free on the 1st of January 1812; and that Robinson [the new executor] should execute proper deeds of emancipation to each and all of the plaintiffs, and should execute bonds to the justices of the county courts of the counties wherein the plaintiffs resided, respectively, for the maintenance of the young and the aged and such as were unsound in mind and body, out of the estate of Walker in his hands—liberty being reserved to the plaintiffs, or any of them, to resort to the court for a distribution of any surplus of the fund raised from their profits, which might remain after the debts due from Walker's estate should be liquidated and fully discharged, or for any other arrangement in respect to such surplus." The debts were not finally liquidated and paid till 1827, when there appeared a surplus of profits. The freemen claimed this surplus.

Held: I. the decree of 1809 is a final decree as to the manumission, but makes no disposition of the surplus of profits; II. the freedmen are not entitled to the surplus of profits accruing while they were actually held in bondage; negroes recovering freedom by suit *in forma pauperis*, cannot, in any case, recover profits or damages. Carr, J.: [176] "It was strongly contended for the freedmen, that this fund having been raised from their labours, after they were entitled to their freedom, ought of right to go to them. There is much in this argument, which addresses itself to our sense of justice, and to our feelings; but unfortunately for them, the point has been irrevocably settled against them. Suits of this kind have been very frequent in Virginia, for more than a century past. There have been numerous cases of recovery of freedom by persons illegally held in bondage; and in many of them, the violation of freedom has been gross and palpable, and the public feeling strongly on their side; yet, in not one single case, have damages for the detention been given. In Pleasants *v.* Pleasants, the chancellor had allowed profits, contrary to the established rule; but this court reversed his decree in that particular; and the rule which denies profits in such cases, has been invariably followed ever since. Hard as the case may seem upon the freedmen, I for one, can never think,

at this day, of breaking through this settled course and policy of the country." Cabell, J.: [180] "I consider it the settled law of this country, that a person held in slavery, no matter how long and how unjustly, cannot recover damages in the form of profits, or otherwise, for his illegal detention in slavery. This being the settled law, I deem it unnecessary to inquire into its policy or abstract justice." H. St. Geo. Tucker, P.: [184] "No instance has ever occurred, I believe, in the history of our adjudications in these anomalous cases, in which profits or damages have been allowed to the claimants, as a compensation for detaining them in slavery." The profits [187] "cannot be paid over to the freedmen, since they were not free, when the profits accrued. They derived their freedom, indeed, from the will; but it was not perfected until the execution of the power under the will by the executor."

Gore v. Buzzard, 4 Leigh 231, February 1833. [232] "Gore was in the habit of sending raw hides to Buzzard's tannery, and getting tanned leather from him; but he never transacted . . these dealings in person," but "by his slaves, without any written order from him," Held: [235] "though his slaves were . . his instruments, for carrying raw hides to the tanner, and bringing back tanned leather, yet it was he who sent the raw material and received the manufactured article;" Gore is responsible to Buzzard for "the difference, if any, between the values of what he thus bought and sold."

Elder v. Elder, 4 Leigh 252, February 1833. Will of Herbert Elder, who died in 1826: "It is my will that my negro woman Clara, and her child Ann Eliza, and Clara's increase, be given to Gabriel Dissosway, in trust to be sent to Africa to the colony at Liberia, provided the expense of sending them will be defrayed by the colonization society—And it is my further will, that the remaining part of my negroes who may be willing to go, shall be left in trust to the said Gabriel Dissosway, to be sent to the colony at Liberia, in the same manner as Clara and her increase—Those of them who prefer staying, shall be given, within the space of twelve months after my decease, to my brother John" The testator's estate being involved in debts, which the other personal assets did not suffice to pay, the executor hired out the slaves for several years, to raise a fund out of the profits to pay debts. [254] "The chancellor [in 1828] . . appointed five gentlemen of Petersburg, or any three of them, commissioners, to examine, privily and impartially, all the slaves of the testator's estate, and to ascertain from each individual, and report to the court, whether he or she was willing to go to Liberia. . . The commissioners returned a list of the slaves (other than Clara and her children) specifying their names, sexes and ages; that there were fourteen of them; of whom eight were under age of twenty-one years, six between fourteen and twenty, one six, and one two years of age: and that they had examined them according to the directions contained in the order of the court; that upon that examination, the terms of the testator Herbert Elder's will being fully explained to them, one of them named Mingo refused to accept his freedom on the terms proposed, but all the rest declared, that they preferred to accept their freedom and go to Liberia; that, however, in respect to the

two infants of six and two years of age, who were incapable of determining for themselves, they had considered it their duty to take the election of their mother for them, as their election. And the defendant filed a document in the cause, in these words: 'Office of the colonization society, Washington, December 23, 1829. At a meeting of the board of managers of the american colonization society, June 11th 1826, the following resolution was adopted—Resolved, that the resident agent state, in reply to the letter of Mr. Dissosway, that the society with pleasure accept the late Herbert Elder's slaves on the terms proposed in his will, and will transport the persons left by him as soon as they can prepare an expedition—*Teste* R. R. Gurley, secretary.'"

Held: I. such of the slaves as prefer to go to Liberia are effectually emancipated; and it is not necessary to perfect their title to freedom, that they should have elected to go within the year, provided they made such election when it was offered to them, or that the colonization society should agree to defray the expense of sending them, provided any person would agree to do so; II. the slaves born after the testator's death and while the executor held their mothers in slavery, are also emancipated; III. as to the infant slaves incapable of making election for themselves, it was right to take the election of their mothers for them; IV. the executor did right in hiring the slaves out, in order to raise a fund out of their profits to pay the testator's debts, and consequently in forbearing to offer the slaves their election to go to Liberia within the year; for, V. when slaves emancipated by will, are set free by the executor, he is not entitled to a refunding bond to indemnify him against the claims of the testator's creditors, though the manumitted slaves are, notwithstanding manumission, subject to debts; and, VI. the burden of debts ought to be distributed among such freedmen as equally as practicable, Cabell, J.: [260] "I approve of the principle declared by this court, in the case of Isaac *v.* West,[1] that every instrument conferring freedom, should be construed liberally, in favor of liberty."

Bird v. Wilkinson, 4 Leigh 266, February 1833. "John Lunsford, by bill of sale, executed on the 6th August 1822, conveyed the slave Phil, with two others to Bird. . . The slave Phil was not delivered to Bird, at the time the bill of sale was executed; he was then a runaway, . . nor did Bird ever after acquire actual possession of him. But Lunsford got possession of him, and had him secured in the jail."

Nicholas v. Burruss, 4 Leigh 289, February 1833. "suit *in forma pauperis*, brought . . by Nicholas, a negro pauper . . for the recovery of the plaintiff's freedom." Will of John Peyton, 1801: "It is my will and desire, that all my slaves who at the day of my death shall be forty years of age and upwards, shall serve for one year, and no longer, and then be emancipated; all those who shall be thirty years of age and under forty, to serve until they be forty years of age, and no longer, and then be emancipated; all those who shall be twenty years of age and under thirty, to serve until they shall be thirty-five years of age, and then be emancipated;

[1] P. 158, *supra*.

and all who shall be under twenty years of age, to serve until they shall be thirty-one years of age, and no longer; and if during the servitude of any of the female slaves, they shall have any child or children, such child or children in like manner shall serve, the males until they are twenty-one, and the females until they be eighteen years of age, and no longer, and then be emancipated." The testator then [290] "devised 1000 acres of land in the western country for the use of his slaves," The executor stated in the county court that he considered the testator's estate sufficient for the payment of his debts, [291] "and at the same time, in open court, assented to the liberation of four of the testator's slaves (other than the plaintiff) who by his will were then entitled to be emancipated:" The defendant proved that an [292] "execution was levied [in 1810] on the plaintiff Nicholas, then in the executor's hands as part of his testator's estate, and that the plaintiff was sold by the sheriff at auction for 135 dollars, out of which the execution was satisfied; and that Quarles [the executor] attended this sale, and invited a person present to bid for the property, stating that the title was good except as to a claim of R. B. Peyton's children. Under this sale, the defendant claimed." The county court gave judgment that Nicholas was a free man. Judgment reversed by the circuit court.

The court of appeals reversed the judgment of the circuit court and affirmed that of the county court: When Nicholas was taken by execution, [302] "he had still some time to serve; that he was a negro man in the prime of life; and that having sold for the insignificant sum of 135 dollars, it was fair to presume he was not sold for life, but only for his remaining term of service. . . If so, those facts would amount to an assent on the part of the executor, and establish his right to freedom, which could not be divested by the levy of the creditor's execution;" [H. St. Geo. Tucker, P.]

Sims v. Harrison, 4 Leigh 346, March 1833.[1] "sundry executions having been sued out on judgements against Charles Irving, and levied by the sheriff . . [347] on three negro girls the slaves of Irving, the plaintiffs purchased these slaves at their full value at the sheriff's sale, and paid the money for them, and then left them on Irving's plantation, for the convenience of his family (the slaves being favorite house servants) but they were at all times completely under the plaintiffs' control. And that, afterwards, Sims, having sued out a *fieri facias* on a judgement against Irving, and delivered it to the sheriff, caused it to be levied on the same three slaves; and the sheriff had advertised them for sale to satisfy this execution. Therefore, the bill prayed an injunction to inhibit the sheriff from making such sale."

Held: [348] "the court ought to award an injunction, and . . to give relief, though it be neither alleged in the bill, nor proved, that the slaves have any peculiar value."

Godwin v. Godwin, 4 Leigh 410, April 1833. An administrator sold slaves of his intestate "under an apprehension that the sale was necessary to raise funds to pay debts" of the estate, "though it turned out that the

[1] See Harrison *v.* Sims, p. 155, *supra.*

sale was not necessary, or that more slaves were sold than necessary, to meet the debts." Held: [412] "The use [by the widow] of the purchase money for life, is . . the most proper measure; . . bond with security should be required of her, for paying it over at her death, to the persons entitled in remainder."

Commonwealth v. Weldon; Same v. Marks; Same v. Sunket; Thompson v. Commonwealth, 4 Leigh 652, July 1833. "These four cases depended upon the construction of the 11th section of the statute of the 15th March 1832," [1] I. Weldon, a free negro, had been indicted in "the circuit superiour court" for horse stealing. Held: [657] "the circuit superiour court . . had no jurisdiction to try the prisoner" [by the 11th section of the statute of the 15th March 1832]. That court was directed to "set aside the verdict which has been rendered, and to order the prisoner to be carried before a justice of the peace . . who may proceed with his case *de novo*,"

II. Marks "was a free negro, indicted and tried, in the circuit superiour court," and found guilty of burglary. Held: "the said court had no jurisdiction."

III. Sunket, a free negro, was "indicted of grand larceny" in [661] "the circuit superiour court . . The indictment charged, that he had been, once before, in 1829, indicted for the like crime of grand larceny, in the then circuit court . . , tried, convicted and sentenced to be punished with stripes and six months imprisonment in the common jail of the county." He was found guilty of the second crime of grand larceny. Held: "the circuit superiour court . . had no jurisdiction . . for such offence he could only be tried by the justices of oyer and terminer for the county:"

IV. "Thompson, a free negro, was indicted in the circuit superiour court of Frederick, for violently and feloniously making an assault upon, and attempting to ravish, a white woman; a crime, which when committed by a slave, free negro or mulatto, is made punishable by death, by the statute of 1822-3, ch. 34, §3. He was found guilty by the jury, and the court passed sentence of death upon him." Held: "the circuit superiour court . . had jurisdiction . . and that there is no error in the judgement."

Brooks v. Commonwealth, 4 Leigh 669, July 1833. "Brooks was indicted for the murder of a slave," The prisoner was put on his trial at the September term, 1831, [670] "but the jury not agreeing in a verdict, were discharged; and there was another trial at April term 1832, which ended in the same way. At April term 1833, the prisoner was tried by a third jury, which found him guilty of manslaughter, and ascertained the term of his imprisonment in the penitentiary to be two years. . . The court . . sentenced the prisoner to imprisonment in the penitentiary for two years, and to be kept in a solitary cell there, on low and coarse diet, for one sixth of the term of imprisonment."

Held: [671] "the judgement is . . to be reversed, and judgement to be entered, that the prisoner be confined in the penitentiary for the term of two years, and kept in a solitary cell etc. for one twelfth part of the term." [2]

[1] Sess. Acts of 1831-2, ch. 22, sect. 11. Supp. to Rev. Code, ch. 187, p. 248.
[2] Sess. Acts of 1832-3, ch. 19, sect. 2, p. 18.

Betty v. Horton, 5 Leigh 615, July 1833. " suit *in forma pauperis,* for the recovery of freedom, brought in 1828, by Betty, Pleasant, and their children against Horton, . . The jury found a special verdict, stating, that one Blake, who was born in the state of Massachusetts, when a young man, removed to the county of Southampton, Virginia, married there, and received with his wife two slaves, the plaintiffs Betty and Pleasant. That some time after his marriage, and in the year 1797, he left Virginia with his wife and child, carrying with him those two slaves, then small girls, and arrived at Boston in July 1797. That having spent about three months in visiting his friends and relations, he rented a house in Boston in which he and his family resided, opened a store . . [616] and declared that he intended to spend the rest of his days there. That he continued to reside and carry on business at Boston, till July or August 1798, when, his business not being prosperous, and his wife being in bad health, he disclosed his intention of returning to Virginia; and, closing his business, he left Boston for Virginia, in September 1798, bringing with him his family, and the two plaintiffs Betty and Pleasant. And that Betty since her return has had two children. The constitution of Massachusetts was also found as part of the verdict. And the question referred to the court was, whether upon this state of facts the plaintiffs were entitled to their freedom or not? The circuit superiour court . . held, that they were not free,"

[626] " Judgment reversed, and judgment entered for the paupers." Blake had become [624] " reinvested . . with his original character of a man of Massachusetts. . . [625] when he came to Virginia with his slaves, their destiny having been linked to that of their master, and they having acquired like him a Boston home, he was bringing into Virginia, slaves which had ceased to belong to this commonwealth. . . since her return, Betty has had two children; and she is here, moreover, when she exhibits her petition thirty years afterwards. We must take it, then, that she was brought back to Virginia, and has been kept here more than one whole year; and if so, she is free, unless her master complied with the law.[1] . . after twenty years a jury may presume, that the requisitions of this statute have been complied with, if, in the meantime, there has been no suit for freedom, and if there be no circumstances to repel the presumption. . . But the jury alone can presume this fact. . . In this case, the verdict is silent, and the fact must therefore be taken to be against the defendant. The consequence is, that the plaintiffs are entitled to their freedom, and to a judgment in their favor upon the verdict of the jury." [H. St. Geo. Tucker, P.] Carr, J.: [622] " my impression is, that from [the constitution of Massachusetts and their judicial construction of it] . . the paupers derive a good claim to their freedom." Tucker, P.: [623] " the construction of the constitution of Massachusetts by its courts, . . we would of course respect and follow, if we were sufficiently advised of them."

Commonwealth v. Watts, 4 Leigh 672, December 1833. " Watts, a free negro, was indicted (upon the statute of 1822-3, ch. 34, §3) and tried,

[1] Act of 1792, 1 Old Rev. Code, ch. 103, sects. 2, 3, 4.

for violently and feloniously making an assault upon, and attempting to ravish, one J. B. described in one count of the indictment, 'a white woman unmarried,' and in another, 'a white maid.' The jury found him guilty. . . he made a motion in arrest of judgment, because J. P. . . was, at the time of the offence, under the age of twelve and above the age of ten years,"

Held: there is no distinction [673] "between a violence of this kind, practised upon a female between the age of ten and twelve years, and a similar violence practised upon one above the age of twelve. . . The court is of opinion, that sentence of death ought to be passed upon the prisoner."

Commonwealth v. Stephen, 4 Leigh 679, December 1833. "Stephen, a free negro, was indicted for murder," and found "guilty of murder in the first degree."

Commonwealth v. Peas, 4 Leigh 692, July 1834. Indictment [1] for feloniously and fraudulently taking and removing a slave from one county to another, with intent to defraud the owner and deprive him of the property.

Held: [693] "the omission of an averment in the indictment, that it was without the consent of the owner that the slave was removed or carried away, is a fatal defect, not cured by the verdict;"

Anderson v. Commonwealth, 4 Leigh 693, July 1834. See same *v.* same, p. 177, *infra*.

Commonwealth v. Connor, 5 Leigh 718, December 1834. "The defendant was presented, under the thirteenth section of the statute concerning slaves, free negroes and mulattoes," [2] It was "proved, that, at various times, almost every day between the first day of January preceding, and the date of the presentment, the defendant knowingly permitted large numbers of slaves, frequently upwards of twenty, other than his own, to be and remain at one time in the defendant's shop at Norfolk; but the witness could not prove any particular number on any particular day, and did not know, whether the owner or overseers of the slaves permitted them to be there."

Held: the *onus probandi* lies on the defendant [719] "to shew that the slaves were on his lot or tenement with the consent of the owners or overseers."

Winn v. Jones, 6 Leigh 74, February 1835. Action "to recover damages for a trespass committed by the defendant's testator in his lifetime upon slaves of the plaintiff. . . the plaintiff was a white man, and the defendant a free negro, as was also her testator. And the plaintiff having introduced two free negroes as witnesses for him, the defendant's counsel objected . . on the ground, that free negroes could not be examined as witnesses in a cause to which a white man was a party; but the court admitted them, . . [75] verdict . . for the plaintiff;" Verdict set aside, and a new trial directed.[3]

[1] "on the statute 1 Rev. Code, ch. 111, sect. 30, p. 428."
[2] 1 Rev. Code, ch. 111, sect. 13, p. 424.
[3] *Ibid.*, sect. 5, p. 422.

Whitton v. Terry, 6 Leigh 189, March 1835. [193] "the slaves sold . . very well; seven for 4420 dollars; averaging 631 dollars, though three of the seven were women."

Erskine v. Henry, 6 Leigh 378, April 1835. See same *v.* same, p. 189, *infra.*

Brown v. Shields, 6 Leigh 440, May 1835. Shields bought a negro boy slave from Brown who represented the negro boy to be his absolute slave, and was paid three hundred dollars for him. Letter of Brown to Shields, August 6, 1823: [441] "I wrote to the clerk of Rockingham county court, and obtained a copy of the deed of emancipation, by virtue of which Edmond claims his freedom, . . [442] I find by the copy which I have received, that a boy by the name of Edmond was emancipated by James Smith, to take effect in March 1823; which I suppose to be the boy sold to you. As to any defect in the title, at the time I sold to you, or until I was informed by your son, I had no knowledge. However, I wish to do what is just and right in the business, and upon amicable terms." The negro boy absconded from Shields's service and [443] "went to Rockingham, the place of his birth, where the deed of emancipation containing the evidence of his title to freedom was recorded, and where the witnesses who could prove his identity resided; that being at large in Rockingham, he asked and obtained leave of the county court of that county, to bring suit there for his freedom;" The result was "that Edmond was found by the jury, and adjudged by the court, to be free."

Anderson v. Commonwealth, 5 Leigh 740, July 1835. "Anderson, a free negro, was tried for grand larceny, in the corporation court of Petersburg, sitting as a court of oyer and terminer, convicted and sentenced to imprisonment in the penitentiary for five years. He was prosecuted and tried, under the provisions of the statute of 1831-2, ch. 22, §11,[1] in the same manner in which slaves are prosecuted and tried. There was no indictment or information filed; nor did it appear that the prisoner was otherwise informed of the offence for which he was tried, than by the *mittimus* of the magistrate who committed him, and by an entry on the record, that he had been committed to the custody of the sergeant, and 'charged with larceny committed in stealing . . one bale of cotton . . whereupon the prisoner being arraigned of the premises, pleaded not guilty.' The court, after hearing the evidence, declared its unanimous opinion, that he was guilty: but before sentence was pronounced, the prisoner's counsel made a motion in arrest of judgment, 'because there was no indictment filed.' The court overruled the motion, . . The prisoner first applied to this court [the General Court] for a writ of error to the judgment of the corporation court; which was denied;[2] . . And then he applied to the circuit superiour court of Petersburg for the writ of error; . . [741] The circuit superiour court allowed the writ of error; and then adjourned to this court, with the prisoner's consent, the following questions: 1. Does a writ of error lie to the judgment of a

[1] Supp. to Rev. Code, ch. 187, p. 248.
[2] Anderson *v.* Commonwealth, 4 Leigh 693.

county or corporation court, sitting as a court of oyer and terminer for the trial of a free negro?"

Held: [742] "a writ of error does not lie to the judgment of a county or corporation court sitting as a court of oyer and terminer for the trial of a free negro or mulatto." As in "the case of a slave, the court has the power to pass final sentence; and one of the incidents to the judgment of such a court, is, that it is not subject to revision."

Poindexter v. Green, 6 Leigh 504, December 1835. "By deed dated the 12th June 1767, and duly recorded . . Abram Maury mortgaged [to British subjects, resident in Great Britain] [1] . . three slaves, two of whom were females, . . [505] Afterwards, by deed . . dated the 18th February 1783, one of the female slaves mortgaged . . and three other female slaves, her children, were sold and conveyed to William Green; . . [506] The court decreed, that the slaves held by Green and his executors, which were the increase of the mortgaged slaves, should be sold by the marshal, and the proceeds applied to the satisfaction of the mortgage debt. The slaves, now seven in number, were accordingly sold in December 1814, for 1940 dollars,"

Commonwealth v. Ned of Campbell; Commonwealth v. Isaac of Cowling, 6 Leigh 608, December 1835. [608] "Ned of Campbell was emancipated by the will of Thomas Campbell deceased, which was duly proved and recorded in 1798. That testator, after emancipating one slave presently, directed 'that the rest of his black people should serve till his youngest child should be of the age of twenty-one years, for the use of raising his children and young negroes; and after his youngest child should be of age, his will was, that all his negroes should have their freedom and liberty.' The defendant Ned was born after the testator's death and before his youngest child attained to full age, which happened sometime before the 1st January 1826; ever since which time, Ned had resided in the commonwealth and in the county of Nansemond, without obtaining permission of court to remain in the county and state. He was registered as a free negro and received a copy of his register, in November 1831. . . Isaac of Cowling was emancipated by the will of Josiah Cowling, deceased, which was duly proved and recorded in 1800; whereby the testator lent his son Thomas the use of certain slaves till [609] certain specified periods, and among others, he lent him the use of a woman slave named Dolly, till the 1st January 1813; 'at which periods,' the will directed, 'that the said slaves should go and be free, in the same manner as though they were born so;' and after similar bequests lending other slaves, male and female, to his other children, he bequeathed, 'that all the children that should thereafter descend from the aforesaid female slaves, and their increase after increase forever, should be held by the persons entitled to their mothers, until the time that they should severally arrive at the age of twenty-seven years, and then be free.' The defendant Isaac was a descendant of the woman Dolly, and attained to the age of twenty-seven years on the 1st January 1827, ever since which time he had

[1] Anderson *v.* Commonwealth, 4 Leigh 505.

resided in Nansemond, without obtaining permission of court to remain in the county and state. He was registered as a free negro, and received a copy of his register in January 1829."

Held: considering [610] "that Ned was emancipated by the will of Campbell in 1798, and Isaac, by the will of Cowling in 1800, before the passing of the statute of 1805-6, although their right to freedom accrued subsequently, we are all of opinion, that the defendants may lawfully remain in the state;"

Henry v. Bollar, 7 Leigh 19, January 1836. "Barbara Wilson . . by several deeds of emancipation, dated the 5th January 1822, and duly recorded in the county court . . in the same month, emancipated Henry and thirteen other slaves . . In the month of February following, proceedings were instituted by one of the relatives of Barbara Wilson, under the statute concerning idiots and lunatics," and in April 1822, "her estate was committed to Bollar, . . who, thereupon, took possession of the fourteen freedmen emancipated by the deeds of January 1822, as part of her estate. Upon this Henry and the other persons so emancipated, exhibited a bill . . in which they alleged, that they were in fact white persons, and therefore could never have been lawfully held in slavery, and that Barbara Wilson had, for the purpose of restoring them to the enjoyment of their rights, executed the deeds of emancipation of January 1822," and then [20] "prayed, that the court would give the plaintiffs leave to sue *in formâ pauperis* for the recovery of their freedom, and would decree that they should be liberated; . . The chancellor immediately made an order giving the plaintiffs leave to sue for their freedom *in formâ pauperis*, and requiring bond with surety from the defendants, to permit them to attend to the prosecution of the suit, and to have them forthcoming to abide the future decree of the court. Pending the suit, Barbara Wilson died, leaving a will, which she had made in August 1819, and by which the plaintiffs were emancipated, by name; and this will was duly recorded . . Upon which the plaintiffs filed a supplemental bill, setting forth this will, and claiming their freedom under it, as well as under the deeds of emancipation of January 1822. The defendants in their answers, said, that the plaintiffs were not white persons but mulattoes; and as to the deeds of emancipation, they alleged, that Barbara Wilson having been tomahawked by indians in her youth, her mind had always afterwards been extremely imbecile," that she was "in a state of dotage; in short, that she was not of sound mind; that her slaves had acquired great influence over her, and that the deeds of emancipation were procured by their influence and the fraudulent cooperation of one Eagle," There was [21] "upon the whole, no evidence that she was *non compos*. . . the court declared that all the plaintiffs and their children were entitled to their freedom, except one woman and her children, as to whom he required further proof; but the defendants consenting that these also should be liberated with the rest, the court decreed, that they should all be set free. And the court doubting whether the plaintiffs were entitled to the profits of their labour, or compensation for their services, while the defendants had held them in their possession, refused to decree them the profits,"

"*Per curiam*, Decree affirmed."

Brown v. Handley, 7 Leigh 119, January 1836. Detinue for a slave. "the plaintiff Handley married Betsey Brown, a daughter of the defendant. Soon after this marriage, a person who wished to purchase slaves, came to the defendant's house, and asked the defendant, whether he would sell the slave in question (a young female) who was then in the defendant's possession; and the defendant answered, that he would not, for he had given her to his daughter Betsey: and [120] the defendant said, on another occasion, that he would not sell the slave, for he had given her to Joseph and Betsey (the plaintiff and his then wife). Shortly afterwards, the defendant being at the plaintiff's house, said to his daughter, Mrs. Handley, 'Go and fetch your negro girl home, when you please;' and soon after this was said to her, Mrs. Handley went to her father the defendant's house (he being then absent from home) and got possession of the negro girl, and carried her home with her; but at the time of her so taking possession, Mrs. Brown, the defendant's wife, told her daughter, Mrs. Handley, 'that she did not give her the negro girl, but lent her to her.' Some six months after this, Mrs. Handley asked her father, the defendant, to give her a bill of sale or deed for the slave, but he refused to do so, . . The slave remained in the possession of Handley and his wife until his wife's death, which happened about a year after they acquired the possession in the manner above mentioned, and about fourteen months after their marriage. And not long after Mrs. Handley's death, the defendant got possession of the slave, and refused to deliver her to the plaintiff, and still retained the possession. . . the jury found a verdict for the plaintiff, and the court refused to set it aside."

Held: [126] "a parol gift of slaves, followed by possession subsequently delivered to the donee, passes the title. . . the donee getting the possession, strictly in pursuance of the direction [of her father, though he was not at home at the time] . . consummated the gift, and put it out of his power to retract it."

Emory v. Erskine, 7 Leigh 267, February 1836. "Emory and seven other negroes brought a suit *in forma pauperis*," for the recovery of their freedom, against Erskine, the executor of Rebecca Crouch, to whom Absolom M'Coy, who died in 1803, had bequeathed all his estate for life, and at her death "all my personal estate (except my negroes, which are then to be free and at full liberty) to Thomas and Gustavus [George?] Fakes," The plaintiffs "were children of slaves held by the testator at his death, born during the life of Rebecca Crouch, who died in 1828. . . [268] the circuit court held that the plaintiffs were not entitled to their freedom, and gave judgment against them, upon the authority, no doubt, of Maria *v.* Surbaugh, 2 Rand. 228."

Application for a *supersedeas* denied: as Mrs. Crouch's [270] "title expired with her last breath, he [Erskine] had no title to hold them as her executor. The suit, therefore, is not against the persons entitled. It cannot therefore bind them if the slaves succeed. Nor can they take advantage of the judgment if against the slaves; for the effect of a judgment must be mutual, and as they would not be bound by it, so neither can they

have advantage of it.[1] The slaves may sue them *in forma pauperis*, and this judgment will be no bar if they can show title to their freedom. It is, therefore, evidently of no importance to the slaves to allow this appeal; and I am therefore of opinion that the motion to reconsider be rejected, as the reconsideration would be nugatory." [H. St. Geo. Tucker, P.]

In Erskine *v.* Henry,[2] Judge Tucker mentions this refusal of the Court of Appeals "to allow a *supersedeas* to that judgment [Emory *v.* Erskine, 7 Leigh 267]. Let me here express my deep regret at that refusal. . . I am now satisfied of the error, and if it were within our power, I should heartily concur in the reversal of that judgment. . . It can have no influence here, . . it is not [authority] . . [199] for us, when we see our error. Nor does it bind in this case, as *res adjudicata*. As Erskine could not use it against the plaintiffs, because they were not parties, so neither can they use it against him; for mutuality is the governing principle in such questions. The pauper suit is out of the question. . . Erskine having no pretence of ownership, the former action could not determine their rights; and if they could have had no benefit from its successful issue, they ought not to be affected by its unfavorable termination."

Mahon v. Johnston, 7 Leigh 317, March 1836. Detinue for a female slave. "One Grattan married a daughter of the plaintiff Johnston, in the state of Tennessee, where Johnston resided; and he contracted debts . . while there. Very shortly after Grattan and his wife left her father's house, for Greenbrier in Virginia, which was the place of Grattan's residence, Johnston got another son in law to draw a deed of loan of the slave in question (then about six years old) to Grattan and his wife, specifying that the girl was lent to them, and that they were to take good care of her, and deliver her to Johnston when he should demand her; and this deed was signed by Grattan and his wife. . . [318] A few minutes after the deed was executed, Johnston . . told the witness, that Grattan was largely indebted in Tennessee, and that he had taken this deed of loan, in order to shew that the girl was his property, should she be taken by Grattan's creditors while she remained in Tennessee, but that 'he intended to give the girl to Grattan any how.' A few hours after the deed was executed, Grattan and his wife, to whom the girl was delivered, set out to Virginia with the girl in their possession, and arrived in Greenbrier in June 1827." In that month Grattan mortgaged the slave to Mahon, the defendant, and delivered the slave to him. The jury found a verdict for the plaintiff, Johnston.

Randolph v. Hill, 7 Leigh 383, March 1836. [384] "It was proved by the testimony of two of Randolph's overseers at his coal pits, witnesses on the part of Hill—That the slave was hired by Hill to Randolph, to work in the pits, for one year. That it was discovered one evening, that there was foul air in the pit where this slave of Hill worked, and that he and all

[1] The "persons entitled," Joseph Henry and his wife Charity, "who was one of the next of kin and distributees both of the testator M'Coy, and of his residuary legatees," did, however, try to take advantage of this judgment. See Erskine *v.* Henry, 6 Leigh 378, and same *v.* same, p. 189, *infra*.

[2] 9 Leigh 188 (198).

the other labourers were therefore drawn out; and that they were all, and particularly Hill's slave, told by one of the overseers present (who was one of the witnesses), not to stay in the pits, when they discovered foul air, long enough to be made sick by it. That, the next morning, the overseer superintending that pit (who was one of the witnesses), supposing that the foul air in the pit on the preceding evening, had been caused by a rain which then fell, and that, the weather being now clear, the foul air had probably left the pit, sent down one of the negro labourers at the pit (who, it seems, was a slave belonging to Randolph) with a lamp, to examine the condition thereof, and to ascertain whether the foul air was gone, so that the labourers could be safely sent down; which was the usual course in such cases, though the overseers themselves sometimes went down. That the person sent down was the foreman, and one of the most experienced labourers at the pits, perfectly competent to make such examination, and worthy of full confidence. That the foreman reported to the overseer, that the foul air was gone, and that the labourers might go [385] down with safety. That the overseer, placing as much confidence in that report as he would have had in a personal inspection, and apprehending no danger, sent the labourers down, ten in number, including Hill's slave and two of Randolph's own, none of whom were unwilling to go down; but after working there about half an hour, they found that there was foul air in the pit, and became sick, some more and some less, and were drawn out as fast as it could be done, one or at most two at a time: no preference was given to Randolph's own slaves, one of whom was the last drawn up, sending before him the body of Hill's slave, who had fallen into some water in the pit, about eighteen inches deep: he appeared to have been drowned, and could not be revived: and all the other labourers were made sick by the foul air, but one dangerously. . . That the shaft at this particular pit was about seventy feet deep, and a single shaft, which would admit of but one bucket to ascend at a time. . . that much greater hire was paid for slaves to work in coal pits, than for ordinary service, the difference being about twenty-five or thirty per cent." [384] "Verdict for Hill for 400 dollars."

[392] "The judges of this court being equally divided in opinion,—judgment of the circuit court [for Hill upon the verdict] affirmed."

Thompsons v. Meek, 7 Leigh 419, April 1836. Will of J. P. Thompson, dated June 9, 1813: [420] "I order, if necessary for the payment of my debts, that Peter, a negro boy I purchased from Day, be sold for that purpose."

De Lacy v. Antoine, 7 Leigh 438, April 1836. "Peter Antoine, Francis Colops, Romanda de Cost and Lychander Modina presented a petition, on the 26th of December 1835, to the judge of the circuit superiour court . . alleging that they were free born citizens of the island of Bravo; that against their will and consent they were brought into this commonwealth . . and were charged with piracy in the federal court . . that they had each been discharged from custody upon that charge; that since their discharge they had been taken into custody . . [439] and kept in close confinement; and therefore praying the benefit of the writ of *habeas*

corpus" which was granted. It was proved by [441] "two witnesses, white men from the island of Santiago, one of the Cape de Verde islands, that the petitioners were foreigners born without the limits of the United States; that the witnesses had known the petitioners for many years, in the island of Santiago; that they were free men in that island; that three of them had been soldiers in the portuguese army; and that the witnesses and the petitioners had come together to this country. Upon this evidence, the court was of the opinion that the petitioners were free persons."

Affirmed: [H. St. Geo. Tucker, P.] [443] "I concede at once that under our law the *habeas corpus* is not the proper method of trying the right to freedom. . . [444] A free negro, as well as a free white man, must be entitled to the benefit of the *habeas corpus* act, . . If it were otherwise, that wretched class would be altogether without protection from the grossest outrages, and their personal liberty would be an unsubstantial shadow. In such cases therefore, the court must exercise a sound discretion, discharging the party where there seems to be no real litigation as to the right to freedom, and remitting him to his suit *in forma pauperis* where there is. . . [447] The proof of the existence of a known master is wanted here to establish the fact that these men are property; . . [449] I do not consider [the affidavit on which the writ of *habeas corpus* was awarded] as embraced by the inhibition against the introduction of the testimony of a negro against a white man. It is to be considered merely as laying a foundation upon which the court might proceed to award the writ, and is analogous to various other cases in the courts." Brooke, J. dissented.

Hayes v. Goode, 7 Leigh 452, April 1836. Will of William Black, dated 1782: [455] "all my negroes, or any part . . not already disposed of, . . I give and bequeath unto . . in trust to divide the same and their increase equally among the children of my son William taking my land, in proportion to the quantity held by each."

Manns v. Givens, 7 Leigh 689, July 1836. "At a district court held at the Sweet Springs the 19th of October 1797, the following instrument of writing was acknowledged by Thomas Reynolds the maker thereof, and ordered to be recorded: 'Be it known to all whom it may concern, that for certain good causes, but more especially that it is contrary to the command of Christ to keep my fellow creatures in bondage, I do hereby liberate all my slaves, and relinquish all my right, title and interest in them, to wit, Milly Mann, Isaac Mann, Jacob Mann, Mimey Mann, Esther Mann, Sally Mann, Frances Mann, reserving to myself the guardian care of Isaac aged ten, Jacob aged eight, Mimey aged six, Esther aged four, Sally aged two, Frances aged one month, until they arrive at the age of twenty-one. In witness whereof I have hereunto set my hand and seal the 18th day of October 1797. Thomas Reynolds (seal). *Teste* Samuel Mitchell, Mitchell Porter.'" The Rev. Samuel Mitchell, the first subscribing witness, [691] "at that time riding Botetourt circuit," wrote the deed. "I do not now recollect what arguments were used either by Mitchell Porter or myself, or whether it was necessary to use any; but believing as I did that slavery was a moral evil, I know I was in the constant habit of advising all such as attached themselves to the methodist church to eman-

cipate their slaves, if they had any. . . [692] I am well assured I never told him he could not become a member unless he would emancipate his slaves, as it has never been a term of communion in the methodist church in the United States." H. St. Geo. Tucker, P.: [707] " the benevolent intentions of Thomas Reynolds the former master of these paupers, have been frustrated for forty years by some technicality in the law. . . In 1815 they instituted a suit for their freedom, in which a judgment was rendered against them, upon the ground that the instrument had not been proved and recorded in the proper court. They then proceeded to have the deed proved and recorded in Monroe in February 1821, and subsequently offered it for probat in 1830 to the county court of Botetourt, on the ground that at the time of the execution of the deed Reynolds resided in that county. The county court refused to admit the deed to record, because they deemed the evidence in support of it inadmissible and insufficient. From this sentence the paupers appealed. The [708] superiour court dismissed the appeal, but awarded a rule for a mandamus, to which a return being made, the rule was discharged by the superiour court; and from this judgment an appeal has been taken to this court. . .

" I am decidedly of opinion that the death of Reynolds the grantor did not revoke the deed of emancipation, and that it was competent to the paupers to proceed to have it recorded, for the purpose of perfecting their title to freedom." Emancipation was " expressly prohibited in 1691 and 1723, by acts, the last of which continued in force till the passing of the act of 1782, . . [709] That act was passed at the close of the revolutionary war, when our councils were guided by some of our best and wisest men; men who looked upon the existence of slavery among us not as a blessing but as a national misfortune, and whose benevolence taught them to consider the slave not as property only, but as a man. Declaring the expediency of permitting emancipation under certain restrictions, they proceed to the enactment of provisions, which distinctly evince that the caution and foresight of the lawgivers were not lost in the spirit of their philanthropy. . . [710] the act of emancipation is, by this act, the joint act of the master through his deed, and of the government through its court. The state was deeply interested that the community should not be flooded with a population of paupers, sinking under the weight of years and a life of hardships and labour. . . it is the practice, in the case of emancipation by deed, to produce the slave in court for its inspection and examination. It is not, then, until the instrument has been proved in the county court, that the emancipation is complete. But so far as the master is concerned, from the moment it is executed and acknowledged before two witnesses, and delivered, it is final and complete. . . [714] One would suppose that a slave, who is capable of nothing else, is at least capable to take his freedom, and that the grant of it is just as susceptible of gradations in its progress to perfection, as a bargain and sale of land, or a feoffment by the custom. . . [717] it is clear, that not only will an inchoate and imperfect right to freedom in a slave be recognized, but even a modified *quasi* state of freedom is sanction by this court; a state in which an emancipated female is held in unqualified slavery, yet is deemed capable

of having freeborn issue; a state, therefore, in which the party is half free, half slave, with the mingled rights of each state, I presume, cast upon her. . . [718] it would be monstrous to say that where a testator retained, till his last breath, the anxious purpose to give effect to a previous deed of emancipation, that purpose should be defeated by his casual death before the session of the probat court. . . what power can the executor have to defeat his wishes by a revocation, or by seizing the slaves and treating them as distributable estate? Such a proposition appears to me too extravagant to be maintained. I am therefore of opinion that the instrument of emancipation ought to be admitted to record, if duly proved before the county court of Botetourt. . . [719] now we are called upon to tell them, they have no right to ask that the instrument of their liberation shall be proved as the law requires. I cannot unite in doing so. . . In giving them an interest in having the deed proved, the act of assembly gave them a right also to have it done: otherwise it would indeed. 'keep the promise to the ear, and break it to the hope.' . . I think the evidence was admissible and satisfactory; that the mandamus was the proper remedy in this case; and that it was improperly dismissed by the superiour court of law. I am therefore of opinion to reverse the judgment, and to award a peremptory mandamus, as the judgment which ought to have been given by that court." All the judges concurred.

Kinnaird v. Williams, 8 Leigh 400, July 1836. Will of Isaac Williams, 1820, " directed that his slaves should be emancipated at the death of his wife; "

Burley v. Griffith, 8 Leigh 442, July 1836. Warrant obtained from a justice of the peace, under the act of assembly concerning servants and slaves, passed February 25, 1824:[1] [444] " Virga. Ohio county, sct. To P. W. Kennedy, const. and to the keeper of the jail of said county. Whereas Luke Griffith of said county has complained before me, that his negro man slave William Lee is now going about frequently from place to place, without his leave, and that he the said Griffith now entertains fears that he the said Wm. will leave him and depart the commonwealth, without he is confined; and the said Griffith having applied to me to commit him the said slave to the jail of said county for safekeeping: These are to authorize you the said jailor to receive the body of the said negro Slave William into your jail and safe custody, and him there safely keep, until said Griffith may demand him, or he be otherwise discharged by due course of law, Jan'y 5, 1834." [446] " The slave was committed, and shortly after escaped from the jail. Griffith then instituted his action on the case against Burley, sheriff of the county, for the escape. The declaration charges both a voluntary and negligent escape . . and also charges the defendant with the failure to make immediate pursuit with the purpose of retaking the slave. . . there was a trial by a jury, who assessed the plaintiff's damages to 300 dollars, and a judgment was rendered."

Patterson v. Franklin, 7 Leigh 590, December 1836. Deed of Edmund Franklin, 1801: " I . . at mine and my wife's death do give . . unto

[1] Supp. to Rev. Code, ch. 179, sect. 4, p. 237.

the said William Franklin, . . one negro girl named Sarah;" Sarah remained in the possession of Edmund Franklin, and several of her children were born in his lifetime.

Held: the deed [593] "had not the effect of passing the title of Edmund Franklin to the issue of Sarah born before the period at which William Franklin was by the deed to have title to the mother, and that they did not pass to him with the mother by accession."

Pate v. Baker, 8 Leigh 80, February 1837. [85] "Be it known to all whom it may concern, that I, Philip Hodnett of the county of Buckingham, did on the 3d day of March 1805 lend unto Absalom Baker . . a negro girl named Amy, about seven years old, which said negro girl I do by these presents again lend unto the said Absalom Baker, which he is to keep until I shall demand her . . In witness whereof I have hereunto set my hand and seal, this 19th day of November 1808." In 1822 a jury found [81] "that Amy [of the value of 300 dollars] has issue, now living . . three children, viz: a boy by the name of Wilson, aged about four years, of the value of 200 dollars, . . another boy by the name of Washington, aged about two years, of the value of 150 dollars, . . and of a girl of the name of Charlotte aged — months, of the value of 75 dollars," In 1825 "a second trial was had, and the jury found a verdict for Polly [Amy?] of the value of 200 dollars, Wilson of the value of 200 dollars, Washington of the value of 125 dollars, Delphia [Charlotte?] of the value of 90 dollars, and Amy of the value of 50 dollars,"

Spencer v. Pilcher, 8 Leigh 565, July 1837. Monroe, the slave of Pilcher, was hired to Spencer for the year 1828, at fifteen dollars per annum. [570] "near the close of the year . . [571] a conversation took place respecting the hiring of the slave Monroe for another year, in which the defendant [Spencer] remarked that Monroe was very awkward in farming business when he hired him, but that he had improved him in ploughing and other farming work, . . but as he considered the wages high for the first year, he was unwilling to give more for the ensuing year." It was agreed that Spencer "should keep the slave Monroe for another year on hire at 15 dollars per annum; but no particular stipulations were entered into, . . as to where the slave was to be employed, or the nature of his employment, . . defendant [Spencer] was a permanent inhabitant and extensive cultivator of the soil in Wood county; that he had been accustomed, for many years before, to carry the produce of his own farm, and sometimes of those of his neighbours, to New Orleans and the other markets on the Mississippi; but that he had not been so engaged for the two years immediately preceding the voyage hereafter mentioned, . . the said slave continued in the service of the defendant on his plantation, until the 15th of December in the last year of his hiring (1829) which [572] was within 10 or 15 days of the expiration of the time for which he was hired, when defendant set out from his farm in Wood county, with two large flat bottomed boats, pretty well loaded . . with flour made from the wheat produced on his farm, and other of his agricultural products." A few days before, Spencer had asked Dils, Pilcher's brother-in-law, [573] "whether he had any interest in the boy Monroe,

by which the defendant could be authorized to carry him down the river with him;" stating that he did not expect to be able to see Pilcher, "but that he would take Monroe with him at all events, and if lost, he would pay for him; that he would serve as a cook, and save him 50 dollars expense." Spencer [572] "commenced his voyage with the said boats, with but two hands on board besides himself and the slave Monroe. . . on the evening of the first day of the voyage" Monroe "either went over or fell over into the Ohio river, and was drowned. . . he was about 13 years of age." The plaintiff, Pilcher, offered [574] "evidence tending to prove that slaves taken from the county of Wood to the neighbouring county of Kanawha, and there hired for the purpose of being engaged in the manufacture of salt and the digging of coal, annually bring from 25 to 30 per cent. higher wages than slaves hired in the county of Wood for agricultural and household purposes: that this is partly owing to the great risque and danger which are considered to attend the employment in saltmaking and coaldigging, and partly to there being a greater demand for slave labour in the county of Kanawha than in the county of Wood: . . that slaves employed in voyages down the Ohio and Mississippi rivers brought much higher rates of wages to their owners, than slaves hired to be employed in the county of Wood, on the farm and for domestic purposes:" The court [578] "rendered judgment for the plaintiff for the damages assessed [317 dollars] and costs. To that judgment a *supersedeas* was allowed, on the petition of Spencer."

Judgment affirmed: [583] "It cannot be maintained that the bailee of a slave for hire has all the rights of a master during the period of bailment. . . Our law in many instances recognizes a distinction between property in things and persons.[1] . . The master or owner of a slave is bound to treat him as an intelligent, sentient being, and will not be presumed, without proof, to place him under the dominion of a temporary bailee, to be used how and where he pleases. If he hires him with a reasonable expectation that he will be employed in a business comparatively healthy and free from danger to life, it ought not to be permitted to the bailee to immure him in an unhealthy mine, or to subject him to the hazards of distant voyages, and the perils of business he has never followed. Humanity to the slave requires this, and the security of the rights of property imposes other restrictions on the bailee, for the sake of the owner. A slave hired in a state recognizing the rights of the owner, cannot be taken to England, where the moment he touches the soil he is disenthralled, or to one of the non-slaveholding states, where the dangers of seduction and loss are probable and imminent." [Parker, J.] [587] "I am of opinion that a farmer, resident even on the Ohio river, having hired a slave generally, without restriction upon his use, has no right to send him beyond the limits of the state, upon a hazardous voyage to another and distant state; and that if he does so, and the slave is accidentally drowned in the course of the voyage, though within the limits of this state, he is responsible for the value to the owner, even though no negligence or want of care should appear on his part." [H. St. Geo. Tucker, P.] Judgment affirmed.

[1] Boyce *v.* Anderson, 2 Peters 154; Allen *v.* Freeland, p. 142, *supra*.

Ball v. Commonwealth, 8 Leigh 726, July 1837. "Alice Ball, a free woman of colour, was indicted and tried . . for the murder of a white man, . . The jury found her guilty of murder in the second degree, and ascertained the term of her imprisonment in the penitentiary to be five years. The evidence . . was entirely circumstantial: and the Circuit Court was of opinion, that it was utterly insufficient to satisfy the minds of a reasonable jury that the deceased came to his death by violence of any kind; that if the death was in fact occasioned by external violence, yet the evidence was insufficient to prove such violence to have been inflicted by human hands; and that even if the proofs furnished ground for believing that the death of the deceased was a case of homicide, they were wholly insufficient to establish that the prisoner was the perpetrator thereof. Under this impression, the Court, before the verdict rendered by the jury was received, sent them back to their room to reconsider it, and charged them upon the law and evidence in the case. Nevertheless they persisted in finding the verdict, which was finally received and recorded. The prisoner thereupon moved the Court for a new trial: but the Court, being of opinion that the power of granting a new trial, in such a case as the present, was clearly denied by the principles and practice of the English law, and was not warranted by any statute of Virginia, or by the authority of any adjudicated case within the knowledge of the Court; and believing that such a case was exclusively [727] fit for the interposition of the executive clemency—overruled the motion, and pronounced judgment according to the verdict."

[731] "Judgment reversed, verdict set aside, and cause remanded for a new trial."

Bennett v. Commonwealth, 8 Leigh 745, December 1837. "The prisoner then said [to the deceased], 'I suppose you have been killing Billy Graves's negroes.' (The deceased had been attending the negroes of the said Graves, as a Physician.) Deceased said, 'I suppose so;' and turned from the prisoner, . . neither, in the opinion of the witness, was angry with the other."

House v. Commonwealth, 8 Leigh 755, December 1837. "the indictment charged that Samuel House, on the first day of September 1836 . . did unlawfully and wilfully aid, abet and assist a certain negro man slave, *viz.* the slave of a certain George E. Deneale, to escape from the possession of said Deneale, . . and that the said slave . . did escape." "The prosecution was founded on the statute passed January 27, 1829;[1] . . [756] The jury found him guilty . . , ascertained the term of his imprisonment to be six months, and assessed his fine to 200 dollars;"

Held: the indictment was sufficient, without specifying in what manner the slave was aided to escape, and without naming the slave.

Boyle v. Townes, 9 Leigh 158, January 1838. Townes, "as curator and receiver appointed [by order of the hustings court] . . , was lawfully possessed of the slave in question, as one of the slaves belonging to the trust fund in the said chancery suit . . and . . casually lost the same out

[1] Supp. to Rev. Code, ch. 184, sect. 1, p. 243.

of his possession," and " the slave afterwards into the hands and possession of Boyle by finding came : "

Commonwealth v. Fells, 9 Leigh 613, January 1838. " Sidney Fells, a free man of colour, was indicted in the circuit superiour court . . for an assault upon . . a free white person, with intent to kill him ; an offence which, by the statute passed March 15, 1832 [1] is made punishable with death." The jury could not agree and was adjourned from day to day for nine days. It was then discharged because of illness in the family of one of the jury and of the consequences of the confinement on the health of another juryman. The prisoner opposed the impanelling of a new jury, [614] " and moved for his discharge, on the ground that the discharge of the jury . . entitled him thereto."

Held : [620] " it is in the power of the court for good cause, to discharge the jury, and to put the prisoner upon his trial before a new jury. . . in the case before us, it would not have been right or proper in the court below to discharge the prisoner,"

Erskine v. Henry, 9 Leigh 188, February 1838. " Absolom M'Coy . . died in the year 1803, and by his last will " bequeathed to Rebecca Crouch all his estate during her life, " and at the death of her . . , all my negroes to be free and at full liberty—I give and bequeath, at the death of her the aforesaid Rebecca Crouch, to Thomas Fakes and George Fakes all my personal estate (except my negroes which are then to be free and at full liberty) to be equally divided between them." Will of Rebecca Crouch who died in 1828 : [189] " Absolom M'Coy, by his last will and testament, left me sundry negro slaves during my natural life ; such of them as are not of age at my death, I leave to . . James Erskine [my executor], to be hired out to good masters and mistresses, who will treat them with humanity and kindness, until they severally arrive at age according to law, and to apply the proceeds of such hire to his own proper use and behoof." Erskine took possession of eight negroes who were under age and " born during the continuance of the life estate held by mrs. Crouch under M'Coy's will. These eight negroes brought a suit against Erskine . . to recover their freedom, . . claiming that upon the just construction of the will of M'Coy, they were thereby emancipated as well as their parents ; and in that suit the circuit court adjudged that they were slaves,[2] . . [190] Whereupon Henry and wife and others, distributees and next of kin of the testator M'Coy, as well as of Thomas and George Fakes, the residuary legatees of that testator, both of whom were now dead, exhibited their bill against Erskine . . insisting, that the eight negroes born of the parent stock of M'Coy's slaves, after his death and during mrs. Crouch's life estate, having been adjudged to be slaves, were slaves belonging to the estate of M'Coy ; . . and praying, therefore, that Erskine should be compelled to deliver them to the plaintiffs," The circuit superior court, " considering that the eight negroes in question had been ascertained to be slaves by the judgment of the court in their suit for freedom, was of

[1] Sess. Acts of 1831-2, ch. 22, sect. 6. Supp. to Rev. Code, p. 247.
[2] See Emory *v.* Erskine, p. 180, *supra.*

opinion, that they were slaves belonging [191] to the estate of the testator M'Coy," and decreed that Erskine should deliver them up to the administrator of the residuary legatees of M'Coy " that division of the slaves and of their profits might be made among the next of kin.[1] . . From this interlocutory decree, Erskine . . prayed an appeal; which was allowed."

Decree reversed: I. the increase of the negroes, born during the life of the legatee for life, were emancipated by M'Coy's will. Brockenbrough, J.: [193] " It seems to me, that the right of the child to freedom is identical and cotemporaneous with that of the mother; and that when mrs. Crouch died, *eo instanti* the will of M'Coy operated to confer freedom on both." H. St. Geo. Tucker, P.: [197] " It is obvious that he [M'Coy] designed to exonerate from slavery every one bound to him by that tie: . . [198] The increase of M'Coy's female slaves were emancipated by his will; and if so, they did not pass to the plaintiffs as their property."

II. [199] " But it was said, if on this ground the legatees fail and their bill is dismissed, the decree will operate to give the negroes to Erskine, who may continue to hold them as slaves, because the verdict and judgment [2] are conclusive that they are slaves. I think not—and, certainly, hope not.[3] . . It will leave them, indeed, in his possession, if he still has them; . . But if he has the possession, I do not think the former judgment would be a bar to a new action: 1. because a new case may be made at law, by proof of assent of M'Coy's executor, without proof of which they could not have succeeded in the former case; and 2. because Erskine having no pretence of ownership, the former action could not determine their rights; "

Cross v. Cross, 9 Leigh 245, February 1838. Will of John Tinsley, dated 1795: " I lend to my daughter Lucy Cross ten negroes, namely, . . [246] the negroes and the increase I give to the surviving children of my said daughter " Shortly after Lucy's marriage to Samuel Cross in 1784, the testator [248] " gave and delivered . . to Samuel Cross, eight of the ten slaves which he afterwards by his will bequeathed to his daughter Lucy, and the other two of the ten were the increase of the eight so given; . . and he held the undisputed possession of the slaves for more than ten years before the death of the testator John Tinsley " in 1795. Held: [251] " the gift, if made at all, was made in 1784 or 1785, and was therefore void, the statute of 1758 being at that time in force, not modified by the proviso now in the statute book, which was first introduced on the 31st December 1787.[4] . . This is decisive of the question of title; and it is gratifying to place the case upon this ground, instead of resting the proof of a gift alleged to have been made fifty-four years ago, upon the testimony of two witnesses, one of whom was only three years old at the time the gift is alleged to have been made, and the other only ten, and

[1] Erskine *v.* Henry, 6 Leigh 378.

[2] See Emory *v.* Erskine, p. 180, *supra.*

[3] [198] " Let me here express my deep regret at that refusal [to allow a *supersedeas* to that judgment]. . . I am now satisfied of the error, and if it were within our power, I should heartily concur in the reversal of that judgment." [Tucker, P.]

[4] 1 Rev. Code, ch. 111, sect. 51.

whose memory seems to have been singularly unretentive, except as to the particular fact of this gift. With respect to the length of possession, it could not give title against Tinsley in his lifetime. The possession was not adverse, for it was with Tinsley's assent; and under the circumstances, the transaction not being a gift, must be taken to be a loan, which, after five [252] years, would bar the lender as against creditors or purchasers, but could never ripen into a good title against himself in favour of the loanee. . . the just inference is, that mrs. Cross held under her father's will, and did not claim under her husband. I am moreover inclined to think, that as between father and child, possession of a slave is very equivocal evidence of a gift; as temporary loans, particularly of young females, are very usual from a father to a young married daughter; and from mere possession unaccompanied by evidence of gift, there is nothing from which a gift can be more fairly inferred than a loan. In such case, it is the duty of the court to infer the less rather than the greater,—the loan rather than the gift:" [H. St. G. Tucker, P.]

Deane v. Hansford, 9 Leigh 253, February 1838. Will of Thomas Cooke, who died in 1806: "After my wife's decease, I lend to my daughter Mary Deane one negro Hannah, Vennah, Amey (in possession) and one boy Nelson, . . with all the increase of the said negroes, during her life; and after her death, lend the said negroes . . to my grandson Thomas Deane and his heirs of his body; if he should die without a lawful heir, I give and bequeath the said negroes with all their increase . . to the children of my daughter Elizabeth Lee." Thomas Deane had come into possession of the slaves and their increase, on the death of the testator's widow and of Mary Deane, and had sold some of them. [254] "Deane was now childless, and his age and infirm health rendered it wholly improbable that he should have issue;"

Held: [255] "the limitation over to the children of Elizabeth Lee . . is too remote, being after a quasi estate tail to Thomas Deane;"

Smith v. Browne, 9 Leigh 293, March 1838. The slave Henry [295] "was in Smith's possession for one or two days, and Smith desired and intended to purchase him; but it appeared he did not; for the slave was taken sick, declared he would not live with Smith, ran off, and returned to the farm of Fox;"

Miars v. Bedgood, 9 Leigh 361, April 1838. Will of Elizabeth Fulgham, dated 1833: "1. After my funeral expenses and just debts are paid, my desire is that my negro man Kit have his freedom, and that he receive from my estate the sum of 50 dollars, to defray his expenses to any free state or country that he may prefer. 2. I give to Daniel Aswell my negro [362] Harry, and that the said Daniel Aswell receive from my estate 100 dollars, for the purpose of supporting the above named Harry during his life. . . 5. I give to my negro Kit . . a blue cotton bed cover, and to . . negro Harry one yarn bed cover."

Weaver v. Tapscott, 9 Leigh 424, July 1838. [425] "Trimble was deputed to the county of Buckingham, to hire slaves to aid in the navi-

gation of the boats [upon James River, between Rockbridge and Richmond]; that he hired slaves from three several persons . . for the year 1826,"

Lightfoot v. Strother, 9 Leigh 451, July 1838. Will of Sarah Chalmers, who died in 1813: "I give and bequeath to Jane Ewell during her natural life, the following negroes, . . Sucky and her increase" In 1828 Eliza, a daughter of the slave Sucky, was lent to Plummer, a son-in-law of Jane Ewell, who [452] " kept her until the 5th of August 1833, on which day he sold her and two children of her," born since 1828, " to a negro trader " who " immediately removed Eliza and her children out of the state of Virginia, to Alexandria in the district of Columbia, a distance from Plummer's residence of 12 or 15 miles, and placed them in the hands of his agent . . who took them to Richmond . . and there sold them and another slave to . . Lightfoot on the 7th of September 1833, for the sum of 625 dollars." On November 15, 1833, the trustee under the will " took possession of them in the county of Smyth, while Lightfoot was in the act of removing them out of the state through that county."

Handly v. Snodgrass, 9 Leigh 484, July 1838. Will of Robert Snodgrass, dated September 3, 1806: [485] " I desire and do hereby authorize my executors to . . hire out my negroes, except the old woman Magg, who I wish to be hired by my executors, and in case she should be rendered incapable of work, as much of the money arising from her hire to be applied to her support;"

Parks v. Hewlett, 9 Leigh 511, July 1838. " Suit for freedom . . by William Hewlett and Taylor Hewlett, suing *in forma pauperis* by Lavinia their mother and next friend, . . Edmund Edrington had executed [in 1817] an instrument in writing, purporting to emancipate and set free his slave Lavinia, . . The instrument . . was . . proved by the two witnesses in the Corporation Court . . [512] The plaintiff William was born about one year, and the plaintiff Taylor about three years, after the execution and recording of the instrument. Both plaintiffs were registered as free persons, in the hustings court . . on the 8th of July 1823. On the 25th of June 1825, Andrew Parks obtained a decree for a sum of money against Edmund Edrington . . and soon afterwards he sued out an execution on the decree, and levied it upon the plaintiffs, on the ground that the debt due him was contracted by Edrington before the emancipation was made; that the woman Lavinia, being emancipated after the debt was contracted, was liable to be taken by execution to satisfy it; and that her children, born after the emancipation, could not be more exempt than herself."

Held: [523] " Lavinia became absolutely free upon the execution of the deed, subject only to a charge for payment of debts. She never has had an execution levied on her, and if living, she is now free, and has been so ever since 1817. Her status then has always, since 1817, been that of a freewoman, and so still continues. If then her children follow the condition of the mother, according to the maxim ' *partus sequitur ventrem*,' her children must be free, as she was free when they were born, . . [524] But it is said that the qualification attached to the emancipation of Lavinia,

of liability to execution, extended to those who were born afterwards in her state of freedom. I think not. We should not extend the proviso of the statute to those whom it does not expressly embrace, nor should we adopt a principle in direct conflict with what is now the well established law of the land. In Maria etc. *v.* Surbaugh,[1] . . [525] Judge Brooke observes that 'the rule that children shall be bond or free according to the condition of the mother, imports the condition at the time of the birth, in exclusion of any future right to liberty;' and by consequence (I will add) in exclusion of any future obligation to servitude." [521] "Emancipation is not strictly a gift of property. It is the exoneration of a human being from the bonds which our institutions have fastened upon him, and which the beneficence of our times has authorized the master to remove. Still less can I look upon it as a gift without consideration. The considerations moving [522] to the act are of the gravest character, and but for the proviso in the statute, I should consider the emancipated slave as forever discharged from the creditor's demand, at least where it has not assumed the character of a direct lien." [H. St. Geo. Tucker, P.]

Catlett v. Marshall, 10 Leigh 79, February 1839. "Thomas lord Fairfax . . by his last will and testament, dated the 8th of November 1777, . . bequeathed all the negro slaves that he should die possessed of, to be equally divided among" his three nephews.

Pownal v. Taylor, 10 Leigh 172, April 1839. Deed of March 7, 1817: [175] "the said John Pownal senior and Elizabeth Pownal are to have the negro boy Dave to wait upon and make fires for them, and otherwise attend them as they may wish."

Maund v. M'Phail, 10 Leigh 199, April 1839. Will of Noah Maund, dated 1829: [200] "I give all my negroes to the agent of the new colonization society in Africa, to do as he pleases with them, Primus, Harry, Eady, Sam, Elcey, Kider, Charles, Wilcher and Ben. These he can take charge of after my death." Wilkins, administrator *de bonis non* with the will annexed, took possession of the slaves, "has hired them out, and received large sums on [201] account of the hires; that neither the slaves nor their hires are wanted for the payment of debts, but nevertheless the administrator has refused to deliver up the slaves and pay over the hires. The complainant [M'Phail], . . insisted on having them surrendered to him, that he might, as soon as practicable, send them to Liberia, . . Kain deposed, that . . he had conversations with the testator respecting the manner in which he intended to dispose of his slaves; that the testator stated to him that he wished them to be freed and sent away to the new colonization society by John M'Phail taking charge of them, as he was acting in the line of that business; . . [202] Broughton, editor of the Norfolk *Herald*, deposed that M'Phail advertised in the *Herald*, from November 1827 to September 1833, as agent of the american colonization society; that the object of the society was to remove free people of colour to Africa; that in 1829, the society was a new undertaking in that section of the country, and might with propriety have been described by a resident of that section . . as a new colonization society in Africa;"

[1] P. 138, *supra*.

Held: M'Phail is "entitled to the slaves before mentioned, and the increase of the females since the testator's death; and decreed that an account be taken of their hires since they came to the possession of the defendant,"

Moss v. Green, 10 Leigh 251, April 1839. [253] "Moss agreed to lend the money [to redeem a negro girl of Green's, taken under an execution] on the following terms, *viz.* that for the loan of the money, the complainant [Green] should give him [Moss] a conditional bill of sale for a negro woman named Creasy, [which woman a negro man of his had for a wife] and her two children . . redeemable by the payment of the money, with interest, at christmas following." Green retained possession of the slaves until December 25, when [254] "the said woman with her two children ran away from the complainant to Moss, and he has detained them ever since." On December 27 Green stated to Moss "his indisposition on the 25th, but that he had then, and still, the borrowed money ready to pay to him, as he wished to redeem the woman and her two children. Moss . . would not permit him to redeem them;"

Held: the transaction is a conditional sale, and not a mortgage; *dissentientibus* Tucker, P. and Brooke, J.

Crawford v. Moses, 10 Leigh 277, May 1839. Will of James Johnson, dated 1785: "It is my will and desire that after the death or marriage of my wife, all my negroes shall have their right to freedom when they arrive to lawful age or twenty-one years old; and if any should be born hereafter, it is my will that they shall have a right to freedom when they shall arrive to the aforesaid term of years." Among his slaves was a woman, Winney, who [278] "after his death, and during the life and widowhood of his wife," had a daughter Jane, who, after the death of Mrs. Johnson, had a son, Moses, before she reached the age of twenty-one years. In July 1816, Jane "was registered in the county court . . and obtained her free papers, . . the plaintiff [Moses] is detained in slavery by the defendant, and has been so detained from his birth. The circuit court . . entered judgment that he recover his freedom."

Judgment reversed. Stanard, J.: [283] "Though my judgment has never been convinced of the correctness of the decision in the case of Maria etc. *v.* Surbaugh [1] I feel judicially bound by its authority; and under that obligation I must decide that Moses, being born before his mother's right to freedom was consummated by the attainment of the age of 21, is a slave."

Findlay v. Hickman, 10 Leigh 354, July 1839. [359] "Allen was a free man. John Apperson emancipated his mother on the 19th of February 1806, and Allen was born afterwards. Polly, the daughter of John Apperson, married Joseph Vance in 1813, and Allen seems to have been in the family until after that marriage. He was then bound to Joseph Vance by the overseers of the poor . . [About 1833] Vance sold Allen to Jones as a slave, at the price of 450 dollars." [355] "March 1835, sale was made of the negro man Allen to . . Hickman for 900 dollars. . . Jones . .

[1] P. 138, *supra*.

warranted . . the title to him against the claims of all persons whatsoever; . . It afterwards appeared that Allen was entitled to his freedom." [359] "After it was ascertained that the boy Allen was free," Vance "executed his note . . to . . Hickman for the sum of 450 dollars. . . [360] the circuit court decreed . . that the contract for the sale of the negro be rescinded;"

Ruddle v. Ben, 10 Leigh 467, July 1839. "Adam Dirting owning a man of colour named Ben, . . sometimes called Ben Ware, as his slave, died intestate," leaving two sons, John and Adam. In 1830 Adam sold to John his moiety of the slave for two hundred dollars. He permitted Ben [469] "to work out, Ben paying him 1 dollar per week or 50 dollars per year; and all he earned over that sum was to be his own. Ben regularly paid Dirting the hire, and previously to the 31st of December 1833, deposited with him a little upwards of 75 dollars of his own money, which was taken and considered as part of the 200 dollars, the consideration for which" a bill of sale was executed for Ben to Michael Barr. "Dirting relied [470] on the promise of Ben to pay him the balance in a short time; and the same was so paid by Ben. There was paid, on the 25th of January 1834, 50 dollars, and on the 11th of October 1834, 25 dollars." All the money had been earned by Ben before December 1833, though not then collected. "When the bill of sale was executed, on the 31st of December 1833, Michael Barr signed a paper writing in which he stipulated that Ben should be free at his death." Barr gave Ben "orders permitting him to work for certain individuals and to receive the pay, and at one time a general order permitting him to work for any person he might choose. The earnings of Ben were in part received by him, and in part collected by Barr and paid over to him. Ben performed work for Barr, for some of which he was paid; for some he was not paid, as he did not claim anything. Ben's wife was a slave belonging to Barr. . . [471] The deed of emancipation from Barr to Ben was executed by Barr in consequence of the advice of an attorney whom he consulted, that he was liable to be presented by the grand jury for permitting Ben to work and trade as he did. This deed of emancipation, though dated the 31st of December 1833, was not executed until July 1836. It was antedated at Barr's request, with a view to shield him from prosecution for the time past," In 1838 an execution was levied on Ben to satisfy a debt of Dirting, contracted before he executed the bill of sale of Ben to Barr. [468] "Ben, being detained in custody under this execution, applied to the judge of the circuit court . . for a writ of *habeas corpus ad subjiciendum*" which was granted. [472] "The judge of the circuit court, being of opinion that the law and the evidence required that he should discharge Ben, ordered that he be discharged accordingly;" Affirmed.

Commonwealth v. Barrett, 9 Leigh 665, December 1839. "At September term 1839, the attorney prosecuting for the commonwealth . . moved for rules against Lysander Barrett and ten other persons, to shew cause why criminal informations should not be filed against them respectively, for violations of the 'act to suppress the circulation of incendiary publi-

cations, and for other purposes,' passed March 23, 1836.[1] In support of the motion, the attorney for the commonwealth produced affidavits of several witnesses, proving that the said Lysander Barrett had caused to be circulated . . for the purpose of procuring signatures, and that the ten other persons aforesaid had signed, a memorial to congress, which prayed the abolition of slavery in the district of Columbia, and contained the following expressions: 'In the opinion of your petitioners, slavery and the slave trade, as at present existing in the district of Columbia, where congress has sole jurisdiction, ought not so to be,—as a sin against God, a foul stain upon our national character, and contrary to the spirit of our republican institutions.' Lysander Barrett appeared, and contested the motion for the said rule against him;"

Held: [666] "This court is unanimously of opinion . . that to sustain a prosecution . . the person accused must be a member or agent of an abolition or antislavery society. This court is also of opinion that the offence created by the 2d section of the aforesaid statute, being a felony, cannot be prosecuted by information;"

Watkins v. Carlton, 10 Leigh 560, January 1840. John Carlton in his last will made no provision whatever for his wife, Sarah Carlton, "nor did he make any provision for, or any mention of, a child of which his wife was then *enseint*, born about six months after the making of his will, and while the husband and wife were cohabiting, who was called William; . . [562] the complexion of . . William was such as to cast a cloud of suspicion on his legitimacy."

Held: upon the trial of an issue, whether this child is the legitimate child of the husband, evidence that the child [577] "is a mulatto, and evidence also of professional men that, according to the course of nature, a mulatto child cannot be the offspring of two white persons, shall be admitted, if offered." Note by H. St. Geo. Tucker, P.: [576] "Among the hundred millions of whites in Europe, there is no authenticated instance of the produce of the white race being other than white, where there was no possibility of access between a black and a white."

Dawson v. Dawson, 10 Leigh 602, March 1840. Will of Martin Dawson, dated 1833: "It is my will and desire, that what slaves I may depart this life the owner of, be emancipated by my executors, and removed to some part of the world where slavery is not tolerated, and from my present view, the settlement in Africa of the African Colonization Society, is most desirable; and for the object of so removing them, and finding them with the necessaries of life, my executors are to use out of my estate, for each slave so emancipated, 200 dollars. Should it be contrary to the laws of the country to emancipate slaves at my death, and such leave cannot be obtained, or should any of the slaves I may depart this life owner of, choose to remain slaves at or before the expiration of twelve months from my death, such as choose to remain slaves to be sold in families, and to be allowed to choose their masters so far as practicable; for this object, my estate to remain together twelve months after my death" Codicil, dated 1835: [604] "my Belle Air estate I give to my nephew Benjamin Dawson for the equitable support and maintenance of the slave population thereon."

[1] Sess. Acts of 1835-6, ch. 66, p. 44.

Held: [607] "It was a trust for their support, until the time when their emancipation, or sale, was to take place, which was to be within twelve months."

Overton v. Maben, 10 Leigh 609, March 1840. Will of Matthew Maben: "I give Edmund Williams his freedom in consideration of his faithful services to me since he was a child."

Dunbar v. Woodcock, 10 Leigh 628, March 1840. Will of Robert Woodcock, who died in 1808, [629] "emancipated four slaves by name;"

Randolph v. Tucker, 10 Leigh 655, March 1840. Will of John Randolph of Roanoke. See Coalter *v.* Bryan, pp. 204-205, *infra.*

Fisher v. Commonwealth, 10 Leigh 673, June 1840. "In the circuit superior court . . 1838, the grand jury found an indictment against Henry Fisher" for employing and harbouring [674] "John, a free negro man, who has been emancipated within the commonwealth of Virginia since the first day of May 1806, and has unlawfully remained" contrary to the statute.[1] The court rendered "judgment against the defendant for a fine of five dollars and the costs of prosecution."

Charlton v. Gardner, 11 Leigh 281, August 1840. In 1821 John L. Charlton conveyed to his children, infants under the age of twenty-one: [282] "a certain female slave named Esther, aged 27 years, and two female slaves the children of Esther, one named Clarissa, aged seven years, the other named Kitty, aged 2 years, and the issue of their bodies which might be born thereafter; also a certain male slave named Nelson, aged 9 years; . . the above mentioned slaves to remain in the possession of . . Charlton during his natural life," In 1823 a sale was made under an execution, [283] "of the slaves Esther and Clarissa conveyed by the deed, and children of theirs born after its execution. . . Esther and two children, who afterwards died, were sold for 281 dollars 50 cents, and Clarissa was sold for 166 dollars. Robert Gardner purchased Esther and the two children. Robert Kent purchased Clarissa, and sold her to Joseph Kent."

Anderson v. Thompson, 11 Leigh 439, November 1840. Witnesses [447] "deposed that in the year 1805 . . they were at the house of Berryman Johnson, and he called on them, as well as other persons present, to take notice that he was about to give away two negro girls to his two sons. He then called the girl Polly, took her hand, and put it into the hand of Pulaski A. Johnson; he also called the girl Jenny, took her hand, and put it into the hand of David B. Johnson: and then he requested these deponents and the other persons present to take notice, that he gave those two negro girls to his two sons aforesaid. He further stated that he claimed a life estate in them. This occurred about three or four weeks before his death." [445] "1819. . . Pulaski A. Johnson took forcible possession of Polly and all her children this year; and David B. Johnson took forcible possession of Jenny and all her children this year: . . [446] Polly and her children (seven in number) . . were valued at 1675 dollars, and Mary Ann, . . also taken . . was valued at 250 dollars . . Jenny

[1] 1 Rev. Code, ch. 111, sect. 61, p. 436.

and her children (five in number) . . were valued at 1175 dollars, and Jem . . also taken . . at 350 dollars; . . [447] it appeared that Anderson [surety of the administratrix *cum testamento annexo*] did retake from David B. Johnson the slave Jenny and several of her children; though it seemed that all of these were afterwards sold to pay David B. Johnson's debts. . . 'Many of the slaves were taken from his [Anderson's] possession by the legatees, . . One of the legatees went so far, as to be taken up and tried . . for stealing one of the negroes.'"

Held: [459] "As to the pretended gift of the slaves by Berryman Johnson to his sons, I am clearly of opinion it gave them no title. He did not intend they should have them till after his death, and such a gift in remainder cannot be made by parol." [H. St. Geo. Tuckker, P.]

Smith v. Commonwealth, 10 Leigh 695, December 1840. [696] "the record of the conviction of the [ill disposed] negro slave Nelson, before justices of oyer and terminer . . for the offence of burglariously breaking and entering the dwelling . . and stealing" a gold coin and a promissory note. Smith was indicted for receiving the same, knowing them to have been stolen.

Commonwealth v. Pleasant, 10 Leigh 697, December 1840. Pleasant is the same negro woman "who united with Betty and others in a suit for freedom against Horton" [1] in 1828. [699] "The judgment of the court of appeals was rendered on the 11th of July 1833. That court . . gave judgment that the plaintiffs are free, . . the decision . . proceeded on the ground that the plaintiffs, Betty and Pleasant, had been imported into this commonwealth in 1798 in violation of the statute of 1792," [2] [697] "On the 19th of May 1840, the grand jury . . made a presentment" against Pleasant, as a person emancipated since May 1, 1806, and "unlawfully remaining in the . . commonwealth . . [698] more than twelve months after her title to freedom had accrued, and after she had attained the age of twenty-one years, without having obtained leave so to do."

Held: [700] "no information ought to be ordered to be filed in this case."

Anderson v. Anderson, 11 Leigh 616, March 1841. "Jordan Anderson . . died in 1805, and by his last will . . bequeathed as follows— 'I also give my son Nathan the raising of my young negroes, namely Anaca's increase, and Tom and Patt and Peter, Phillis's children, and her future increase, not to be moved out of the state, or so far as to deprive them of their freedom. It is further my will, that my son Thomas shall have all the labour and the raising of my young negroes, namely Amy's and Milly's increase [617] and Sall, till they come to the age of twenty-one years, but not to move them out of this state, or so far as to prevent their freedom; but Matt is excepted, now with Charles. It is further my will, that my son Jordan shall have the labour and the raising of all Rachel's increase, but not to move them out of the state, or so far as to prevent their freedom. As there are two young negroes now with Charles, and two with James,

[1] P. 175, *supra*.
[2] 1 Old Rev. Code, ch. 103, sect. 2, Pleasants's edit., p. 186.

they and all the others to be free at twenty-one years of age.'— ' It is my will and desire, that all my negroes that shall be twenty-one years old, now living with me and my sons Thomas, Jordan and Nathan, shall be free on the first day of January after my and my wife's death, and they shall be well clothed, both male and female, and shall have their working tools, and bread corn for one year, and liberty to settle on thirty-three acres of land, where my son Thomas shall choose for them; and I earnestly request that no advantage may be taken of them, or suffer any to be taken of them, that can be conveniently prevented, but let them have wood land as well as cleared.' . . The testator's wife died shortly after him, in 1805. The negroes Tom, Patt, and Peter were the children of Phillis, born before the testator's death. The woman Patt was then very young, and the testator's son Nathan held her till she was twenty-one years of age, and afterwards, in October 1821, she was registered, in the clerk's office of the county court . . by the name of Patty Anderson, as a free negro emancipated by the will of Jordan Anderson deceased. [618] Patty Anderson, after the testator's death, but before she attained the age of twenty-one, and while therefore she was still held by Nathan Anderson, had two children, Green and Henry, who were one sixteen and the other seventeen years old at the time this suit was commenced. Nathan Anderson continued to hold these two children of Patty till his death, which happened in 1834; and his executors . . took possession of them, claiming them as slaves for their lives of their testator's estate. In November 1834, Patty Anderson, the mother of these two boys Green and Henry, exhibited a bill in chancery in the circuit court . . against Nathan Anderson's executors, setting forth the facts above stated; insisting, that her children, Green and Henry, were presently entitled to their freedom, or if not presently, would be at their age of twenty-one respectively; representing, that the defendants claimed them as absolute slaves for their whole lives of their testator's estate, that they designed to sell and dispose of them as such, and that the children might probably be purchased by negro traders, who would remove them out of Virginia; and praying an injunction to restrain . . The injunction was awarded. . . [619] Upon the hearing at October term 1836, the circuit superior court, declaring that the boys Green and Henry, though born before their mother attained the age of twenty-one years, were free from their birth, perpetuated the injunction, and decreed, that the defendants should forthwith enlarge and discharge them from their custody, and pay the plaintiff her costs expended in this suit."

Held: [622] " the intention [of the testator was] not to dispose of any of the slaves as slaves, but to emancipate all, . . The slaves here were infants, bound to service until they attained the age of twenty-one; the legatee [623] and his representatives had a right to the custody of them. The bill avers an intention to sell; . . If redress could not be afforded by a court of Chancery, the slaves would be without remedy. . . The decree [1] is to be affirmed."

[1] Note: [623] " which held that they were free from their birth, and ordered that they should be forthwith discharged from custody, though neither was then twenty-one years of age. The reason of the general affirmance probably was, that, at the time of the decree of this court, they had both attained to that age." [Reporter.]

Pigg v. Corder, 12 Leigh 69, March 1841. [75] "the defendant had sold Charity, but still held one of her children."

Newton v. Poole, 12 Leigh 112, March 1841. Will of Robert Poole, dated 1803: [113] "I give to Venie, a free mulatto woman, the half of my house in the fields where she now lives, during her natural life, and after her death to go to her son George. I give to her daughter Mary, the other half of the house, with the enclosed piece of ground thereto. And I give to my negro man Andrew, in consequence of his faithful services, his freedom after my decease." He left thirteen other slaves "of all ages and sexes."

Slaughter v. Tutt, 12 Leigh 147, March 1841. "in 1816 or 1817, the plaintiff [Tutt], then a very young man, . . removed to a place . . [148] about fifteen miles from his father's residence, and there set up a blacksmith's shop (not being, however, a blacksmith himself); in which a negro man slave, named Moses, worked as a smith, and his wife Mimy, and one little negro girl, then their only child, lived there with him. . . The blacksmith's shop was continued about a year, and then broken up; upon which the slaves . . were returned to the residence of the plaintiff's father, who had a large farm, and many slaves upon it: there, Moses worked in a blacksmith's shop, and his family lived on the farm with the rest of the father's slaves . . [149] in 1830, which was the first year the plaintiff was charged with taxable property, he was charged with two black tithables (two slaves above the age of sixteen) and three slaves between the ages of twelve and sixteen. . . [150] A witness (a dealer in slaves) proved, that he had frequently . . told [the father of the plaintiff] . . that a negro blacksmith might be sold very well, and . . applied to the plaintiff to purchase these slaves, who declined to sell them. . . Mimy . . died in the lifetime of Tutt, the father; and Moses and six children of Mimy, being found on the father's farm at his death, were inventoried . . and then sold by his administrator Slaughter, . . The slave Moses had been recovered by the plaintiff in an action of detinue against Slaughter . . and the present action was brought to recover the value of Mimy's six children, which had been sold by Slaughter, . . in October 1832, for 1200 dollars," The jury [147] "found a verdict for the plaintiff for 1500 dollars damages," A new trial was awarded: [157] "The circumstances . . would rather lead to the inference of a loan than a gift." [Allen, J.] See Tutt *v.* Slaughter, p. 218, *infra.*

Wheatley v. Calhoun, 12 Leigh 264, April 1841. [266] "in the event of the purchase being made, J. Calhoun and his man Daniel are to keep the mill for the sum of 300 dollars per annum,"

Commonwealth v. Howard, 11 Leigh 632, June 1841. "Howard was indicted upon the statute of 1822-3, ch. 34.[1] . . for knowingly and wilfully and without lawful authority injuring a female negro slave the property of John Hill, by violently and inhumanly assaulting and beating her to the great injury of the slave," Held: "the indictment can be sustained, and ought not to be quashed."

[1] Supp. to Rev. Code, ch. 226, p. 280.

Commonwealth v. Nix, 11 Leigh 636, June 1841. "Nix was indicted upon the statute [1] . . [637] the prisoner made a contract in writing with Jones, . . 'that said Nix do sell to said Jones a certain negro called Live; witness, that said Jones gives said Nix a roan stud horse, a certain brown horse called Jack, and one saddle, and 20 dollars in store goods, and 200 dollars in lawful money of Virginia, and a carryall wagon, for said boy; which said Jones takes the said boy on trial for one month,' . . the negro remained with Jones about twenty days, and then ran away; which, with other circumstances which Jones learned, led him to suspect that the negro was either free, or had been stolen by the prisoner previous to the sale to him; and under this belief, Jones pursued the prisoner, who was then passing through the county of Lee, and apprehended him before the expiration of the month. And that the prisoner voluntarily and frequently made the fullest confessions, saying . . that at the time of the sale to Jones, he knew the negro to be free."

Held: the sale of a free negro, to constitute the felony within the statute, must be an absolute sale. [639] "That contract is not a sale, but an agreement to sell, which the vendee had a right to affirm, or annul . . at any time within the month allowed by its terms; . . whether it was so affirmed or not, is a question for the jury"

Kent v. Matthews, 12 Leigh 573, August 1841. In 1835 English [575] "conveyed thirteen valuable slaves to Andrew Fulton, upon trust, that he . . should make sale of the slaves, at such times or places as he . . should think best for the interest of the creditors . . In the autumn of 1835, Fulton sent the trust slaves to the southwestern states, under the care of" Jackson, "and English accompanied Jackson, carrying with him three other slaves . . which he sold," Both parcels of slaves sold for the gross sum of $12,325.

Abrahams v. Commonwealth, 11 Leigh 675, December 1841. "The hustings court of the city of Richmond imposed a fine of 20 dollars on Abrahams, for permitting a slave to go at large and hire himself out contrary to the statute" [2]

Slaughter v. Commonwealth, 11 Leigh 681, December 1841. John Slaughter was indicted for the murder of Joseph Pledge, tried and convicted. [684] "an anonymous letter had been, some nights before, thrown into his [Slaughter's] yard; . . it was in these words: 'A. B. C. and fifty others give you notice, that you are to quit Blandford in twenty days, or you will be taken out and well dressed.' That Slaughter had been, some years before, taken out and lynched. That he was of infamous character, and, on that account, great and almost universal prejudice existed against him. . . [685] That on the sunday night before, Pledge said, that he and others would lynch Slaughter that night; and that he said, three days before, that he had a negro man, who, if he told him, would go into Slaughter's house and bring him out; but he did not say he would make the negro man do it;" On July 9, 1840, Pledge, the deceased, had ridden to Slaughter's house to endeavor [682] "to satisfy him that he was not the

[1] 1 Rev. Code, ch. 111, sect. 28.
[2] *Ibid.*, sect. 81, p. 442.

author of the offensive letter." As Pledge rode off, [683] "Slaughter called him 'a damned free negro mulatto looking son of a bitch.' That Pledge immediately dismounted, and asked a black boy to hold his horse, who refusing to do so,"

Martin v. Martin, 12 Leigh 495, January 1842. [496] "the negro woman Lucy . . of the value of 600 dollars, the negro boy William . . of the value of 325 dollars, the negro boy Caesar . . of the value of 275 dollars, a negro girl (name not known) a child of the said Lucy born since the institution of this suit of the value of 200 dollars, and an infant negro girl, a child of the said Lucy, also born since this suit was brought, of the value of 100 dollars;"

Henry v. Bradford, 1 Rob. Va. 57, May 1842. Will of Brown Bradford, admitted to record 1795: "my will is that my negro girl Adah shall only serve ten years, and then have her freedom; and likewise my negro boy Abraham shall serve twelve years, and then have his freedom." Bradford died in 1794, and in 1798 Adah had a child named Ebby. Ebby was the mother of the plaintiff.

Held: Henry is a slave. [58] "The court is unanimously of opinion that this case is ruled by that of Maria and others *v.* Surbaugh," [1]

Abrahams v. Commonwealth, 1 Rob. Va. 711, June 1842. In 1841 six slaves belonging to Simon Abrahams of Richmond were [718] "apprehended . . and brought before the . . mayor of said city and a justice of the peace . . by James M. Taylor informer, for having been permitted by the said Simon Abrahams to go at large and hire himself (or herself) out, contrary to the act of the general assembly" [2] The court of hustings [716] "gave judgment against Abrahams, for permitting the slave Tom Bow to go at large and hire himself out in the city contrary to law, for a fine of 20 dollars and the costs of the proceeding, including jail fees; directing that one third of the fine should be paid to the commonwealth for the benefit of the literary fund, and two thirds to Taylor the informer, . . the court dismissed the proceeding as to the slave Delphy Anderson, and gave judgment against Taylor, the informer, for the costs, including jail fees."

Young v. Commonwealth, 1 Rob. Va. 805, December 1842. "Young was indicted . . for felony in stealing a negro woman slave named Eliza," She [807] "disappeared on the thursday before she was taken up . . She carried away a trunk with clothing belonging to her . . John Moscow deposed that Young the prisoner came to his house . . about two o'clock, and asked permission for a lady to remain all night." They left the house together the next morning, [808] "the girl about fifteen steps behind Young." Near the water station Young asked the conductor of a freight train "to give him passage for himself and a lady to the Junction," but was refused. Afterwards Pae [807] "saw Young lower down the rail road lying in a bush. The witness asked him if he was going to Richmond? He replied, no. Near Sinton's turnout the witness saw the girl, who said that she was free, but that she had no pass or free papers. The witness and some others then returned in pursuit of Young: they found him, and

[1] P. 138, *supra*.
[2] 1 Rev. Code, ch. 111, sect. 81.

charged him with kidnapping; when Young said he had got into a pretty fix, and that he was a ruined man. . . [808] saying he had a wife and child, and that he saw the girl only the day before, who represented herself to be a free indian girl."

Foushee v. Blackwell, 1 Rob. Va. 516, February 1843. "During the late war between the United States and Great Britain, certain slaves, the property of Kenner W. Cralle, . . eloped to and were carried away by the enemy, and never returned or were restored to the owner."

Williams v. Manuel, 1 Rob. Va. 674, March 1843. Will of Elizabeth Magruder of Washington County, D. C., 1827: [675] "I will and bequeath to my niece Elizabeth Hamilton my negro boy Manuel Dodson, to serve for 27 years, and my negro woman Mary Dodson, to serve for 15 years, and at the expiration of the term of service of each, the said negroes shall be free. It is my understanding that the term of service of all the slaves above named shall commence at the period of my death." In 1839 Manuel "was placed in the jail of Washington city [by Dr. Hamilton] for the purpose of selling him. That Hamilton admitted at the time, that he had the right to retain him in servitude only for about 14 years, . . and had previously assured him, at his request, that he should be sold to some person residing in the city of Washington." Four weeks later Manuel "was removed from the said jail to the jail of one Thomas Williams, a trader in slaves; and Williams stated, in reply to the complainant's enquiries as to his destination, that he (Williams) intended to remove him to his farm in Virginia, a short distance down the Potomac. That after Williams had handcuffed him and taken him on board the steamboat, he asked Williams whether he was not free, and Williams answered that the will had been done away by act of congress, and that he had bought him for life." Williams took him to Fredericksburg, and thence to Richmond and confined him in a private jail. While Williams was in Richmond, he told a witness that he was on his way to New Orleans. An injunction was awarded by a judge in Virginia to prevent his being carried out of the commonwealth. The defendant Williams exhibited [677] "a bill of sale . . from C. B. Hamilton, purporting that Hamilton, in consideration of . . 262 dollars 50 cents, sold to Williams 'a negro man . . Manuel Dodson, to serve as a slave until . . 1854, and then to be set free' . . also . . a bond executed on the same day . . in the penalty of 500 dollars, with a condition that if Williams shall not sell or keep the said negro man for a longer period . . . then the obligation is to be void." Williams denied that he had attempted to sell the slave for a longer period.

Held: [682] "it does not appear from the evidence . . [683] that the contemplated removal by the appellant of the appellee beyond the limits of the commonwealth, was with intent to defeat the appellee's right to freedom when the same shall accrue, or upon any claim to hold or sell him as a slave beyond that period:" injunction dissolved, and the negro restored to the possession of Williams.

M'Key v. Garth, 2 Rob. Va. 33, April 1843. In 1823 the constable levied an execution on the boy Randolph, the slave of Norvel; [34] "he

took the boy home, intending to keep him until the day of sale, but he ran away, and could not be found until after the August court, which was the time appointed for the sale; that after that time, . . he found the boy at work on Norvel's plantation, and retook him for the same debt,"

Browning v. Headley, 2 Rob. Va. 340, August 1843. Will of William Headley, dated 1836: [342] "that all his estate except slaves should be sold,"

Cropper v. Commonwealth, 2 Rob. Va. 842, December 1843. "Elkaney Cropper, a free woman of colour, was tried," in 1843 "by a court of oyer and terminer . . upon a charge of having . . stolen . . one cotton shirt and one pair of socks." She was found guilty and sentenced to the penitentiary for five years, "it appearing that she has heretofore been . . convicted . . . for the crime of petit larceny," Ordered that she be discharged: the court of oyer and terminer had no jurisdiction.[1]

Ellis v. Jenny, 2 Rob. Va. 597, January 1844. Will of William Clarke, admitted to record in 1792: "My desire is that the abovementioned negroes [Lucy, Charley, Jenny, and Rhoda], as they arrive at lawful age (after my wife's death), shall have their freedom; . . My desire is that my negro woman Rachael be sold for the payment of my debts." At the death of the widow in 1833, [598] "there were living various descendants of Lucy, Jenny, and Rhoda, born after the testator died. . . The circuit court . . by a decree . . 1843, declared [them] . . entitled to their freedom." Decree reversed: [599] "this case is not distinguishable from that of Maria . . *v.* Surbaugh."[2]

Hickerson v. Helm, 2 Rob. Va. 628, February 1844. In 1832 [631] "there was allotted to mrs. Hickerson, King valued at 300 dollars, Lucinda at 260 dollars, Hannah at 50 dollars, John at 80 dollars, and Dick at 25 cents." In 1833 an execution [632] "was levied on the slave King" and he "was sold for 325 dollars," [654] "his actual value . . was [probably] 500 dollars,"

Johns v. Davis, 2 Rob. Va. 729, March 1844. Esther, Davis's reversionary slave, was carried out of Virginia and sold. Held: [736] "the measure of relief . . should have been not for the value of the slave Esther, but for the value of said Davis's reversionary estate in her, which ought to have been ascertained by reference to a commissioner."

Coalter v. Bryan, 1 Grattan 18, May 1844. [19] "In May 1833, John Randolph of Roanoke died, unmarried and childless; leaving a very large estate, both real and personal. His slaves numbered nearly or quite four hundred. . . After the death of John Randolph, it was ascertained that he had left several wills . . [20] The will of 1821, and the codicil of the 5th December of that year. 'In the name of God. Amen! I John Randolph of Roanoke, do ordain this my last will and testament, hereby revoking all other wills whatsoever. 1. I give and bequeathe all my slaves their freedom, heartily regretting that I have ever been the owner of one. 2. I give to my ex'or a sum not exceeding eight thousand dollars, or so much

[1] Acts of 1831-2, ch. 22, p. 22. Suppl. to Rev. Code, ch. 187, p. 247.
[2] P. 138, *supra*.

thereof as may be necessary to transport and settle said slaves to and in some other state or territory of the U. S. giving to all above the age of forty, not less than ten acres of land each. To my old and faithful servants Essex and his wife Hetty who I trust may be suffered to remain in the [21] state, I give and bequeath three and a half barrels of corn, two hundred weight of pork, a pair of strong shoes, a suit of clothes and a blanket each, to be paid them annually, also an annual hat to Essex, and ten pounds of coffee and twenty of brown sugar. To my woman servant Nancy the like allowance as to her mother. To Juba (alias Jupiter) the same; to Queen the same; to Johnny my body servant the same, during their respective lives. . . The land above the Owen's ferry road and the lower quarter, and the land I bought of the Reads to be sold at my said executors discretion, and whatever m (cut out in the original) y debts I give and bequeath to Francis Scott Key and the rev. Wm. Meade to be disposed of towards bettering the condition of my manumitted slaves. I have not included my mother's descendants in my will because her husband besides the whole profits of my late father's estate during the minority of my brother and myself has contrived to get himself the slaves given by my grandfather Bland as her marriage portion when my father married her, which slaves were [32] inventoried at my father's death as part of his estate and were as much his as any that he had. One half of them now scattered from Maryland to Mississippi were entitled to freedom at my brother Richard's death, as the other would have been at mine.'" Signature cut out.

The codicil of 1826: "I do hereby confirm . . bequests to or for the benefit of all . . my slaves, . . I make the same provision for my body servant John that I made in my said will for his father Essex, and the same provision for the said John's wife Betsy, that I made for Hetty, the wife of Essex aforesaid, and similar provision for my man servant Juba, and his wife Celia, and the same for mulatto Nancy at the Lower Quarter, Archer's wife. And I humbly request the General Assembly (the only request that I ever preferred to them) to let the above named and such other of my old and faithful slaves as desire it, to remain in Virginia, recommending them each and all to the care of my said ex'or, who I know is too wise, just and humane, to send them to Liberia, or any other place in Africa or the West Indies. I revoke all and every bequest made in my said will, . . except as aforesaid to my executor William Lea and my slaves, . . These reversions or remainders, or executors devisees, or whatsoever the law chooses to call them, I bequeath to my said executor as a fund to be used at his discretion, for the benefit of my slaves aforesaid the surplus if any to be his own."

Codicil of 1831. [27] "I have upwards of two thousand pounds sterling in the hands of Baring Brothers and Co. of London, and upwards of one thousand pounds like money in the hands of Gowan and Marx; this money I leave to my ex'or Wm. Leigh as a fund for carrying into execution my will respecting my slaves. And in addition to the provision which I have made for my faithful servant John, sometimes called John White, I charge my whole estate with an annuity to him during his life of fifty dollars; and as the only favor that I ever asked of any government, I do entreat the

assembly of Virginia to permit the said John and his family to remain in Virginia, and I do earnestly recommend him and them to my ex'or aforesaid, and to my dear brother and niece aforesaid."

The will of 1832 revokes all other wills and codicils: [30] "My will and desire is that my said execu— may select from among my slaves, a number not exceeding one hundred, for the use of the heir; the remainder to be sold. . . having cancelled a former will this night in presence of Wm. Leigh" In 1834 Coalter presented to the general [31] "court for probat, the will of January 1st, 1832, which was opposed by William Meade as the trustee for the slaves under the will of 1821, and by Frederick Hobson as the committee of John St. George Randolph, on the ground of the insanity of the testator at the time of making the will. . . [32] The general court admitted the will to probat; but on appeal to the court of appeals, that judgment was reversed, and the will of 1832 was declared to be invalid and null. After this decision of the court of appeals, William Meade presented for probat to the general court at its July term 1836, the will of 1821, and the four codicils . . The general court was satisfied that the testator was sane when he executed the testamentary papers then offered for probat, and that he was insane when he cancelled the will of 1821; that act of cancellation having been done on the same night, and within a very few hours of the time, when he wrote the will of January 1st, 1832. That court accordingly gave a judgment admitting the will of 1821, and the four codicils thereto, to probat, which judgment upon appeal to the court of appeals was affirmed:"

Commonwealth v. Smith, 1 Grattan 553, June 1844. Held: in an indictment for selling ardent spirits to slaves, it is not necessary to state the names of the owners of the slaves to whom the liquor was sold.

Phoebe v. Boggess, 1 Grattan 129, September 1844. [133] "Richard Boggess, who was an unmarried man, owned the negro woman Phoebe, who had been his housekeeper for many years, and her children, six in number. On the day of his death, he requested Mr. Thomas S. Reeder . . to write his will." He "requested Reeder to sign it for him. Reeder had taken the pen, and was in the act of writing the name of Boggess, when Boggess swooned. The persons present were afterwards requested by Reeder to sign their names with him, as witnesses to the paper, which they did." Boggess died two or three hours later. Phoebe and her children offered this writing for probate [129] "as containing his nuncupative will. By this paper, Boggess emancipated these slaves; . . [130] The county court admitted the paper to probat," Affirmed.

Bourne v. Mechan, 1 Grattan 292, December 1844. The will of John Bourne who died in 1813 provides "that the land on which he lived and some personal property, particularly specified, should be appropriated to the support of his old negro woman Letty, during her life;"

Binford v. Robin, 1 Grattan 327, January 1845. Will of Frances T. A. Binford: [328] "I will that all my negroes be hired out, until all my just debts are paid, as well as legacies hereinafter devised shall be satisfied. . . I will and devise that all my negroes be liberated, after the above items

after the decease of my wife, not as a bond slave, but to be under her care and tuition; to receive wages for her labour. And if she should have children, for them to come under the same regulation, after they pay for their raising; but their labour to be equally amongst all my children, if they choose to employ them."

Held: the testator [229] "attempted to place the said Eliza and her increase in an intermediate condition between free persons of colour and slaves; a condition unknown to the laws, and contrary to their policy. . . this provision of the will is inoperative and void. . . further . . the will cannot be construed as a bequest of said Eliza or her increase. . . he did not contemplate disposing of her as property; . . [230] the will contains no disposition of the slave Eliza, or her increase, as slaves or property:"

Day v. Commonwealth, 2 Grattan 562, December 1845. "Everett Day, a free man of colour, was indicted . . for an attempt to commit a rape . . he filed a plea in abatement, that . . one of the grand jurors . . was a surveyor of a highway . . at the time the said true bill was found against him. The attorney for the commonwealth took issue upon this plea; and the Court, without empaneling a jury to try the issue, overruled the plea, . . [563] verdict of guilty, and the judgment of the court that the prisoner should be hanged."

Judgment reversed, and new trial awarded. "This issue . . ought to have been submitted to a jury for trial;" See same *v.* same, p. 210, *infra.*

Logan v. Commonwealth, 2 Grattan 571, December 1845. Logan was convicted for enticing Felix Smith, a slave, the property of John D. Miles, to abscond, and furnishing him with money, clothes, and provisions. The prisoner offered in evidence a deed of emancipation from John D. Miles, dated 1844: [572] "I . . for the sum of four hundred dollars, . . paid and contracted to be paid to me by my negro man named Felix Smith, have, and by these presents do manumit and set free my said negro man Felix, he serving me faithfully for the space of six years; and at the expiration of that period he is to be and go absolutely free . . if . . Felix shall, before the expiration of said six years, have well and fully paid . . the sum of four hundred dollars, with interest . . his period of service shall expire, and he is manumitted and set free by these presents, at the time of such full payment."

Held: this is [574] "an immediate, and not a future manumission. . . Unless the opinion pronouncing the construction to be future, and not immediate emancipation, be clear and disembarrassed of all reasonable doubt, the law entitles the prisoner to the benefit of that doubt, and the most favourable construction upon the deed."

Johnson v. Commonwealth, 2 Grattan 581, December 1845. "Moses Johnson, a free man of colour, and a convict in the penitentiary of the state, was tried . . for the murder of . . an assistant keeper of the penitentiary." [582] "He was found guilty . . and sentence of death passed upon him."

Ex parte Ball, 2 Grattan 588, December 1845. In August 1845 [589] "the slave Dennis, by the name of William Mayo, . . was . . charged

with having carried or caused to be carried from the town of Fredericksburg, beyond the commonwealth, three slaves . . for which offence he was regularly tried as a free man, found guilty, and sentenced to ten years imprisonment in the penitentiary." The [588] " trustees for Mrs. Nancy Horner, . . representing that Dennis, a slave of Mrs. Horner, had runaway from their possession; had possessed himself fraudulently of free papers; and whilst going at large, was apprehended, tried as a free man, and convicted " obtained a writ of *habeas corpus*.

[594] " The writ of *habeas corpus* discharged, and the prisoner remanded." [593] " the purposes of the writ cannot be perverted to such uses as this. That it cannot, under colour of an application on behalf of the slave, be used by the master to enable him to take possession of the subject of the writ, as property."

Pollock v. Glassell, 2 Grattan 439, January 1846. Will of Margaret C. Glassell, 1843: [444] " To her son John E. Glassell, she gives her servant Ben, and wishes him bound out to a trade for the benefit of John E. Glassell; and her wish is, that her cousin Henry W. Ashton should see that he is well treated, and any money that can be made from Ben to be taken care of for John E. Glassell."

Brent v. Richards, 2 Grattan 539, January 1846. " on the 5th day of January 1835, the plaintiff, by parol, sold to the defendant the negro . . for . . 475 dollars, on the following . . conditions, that the defendant should keep the slave for his own use, and should not thereafter sell the slave to any person without first giving the plaintiff the refusal at the said sum of 475 dollars. That the said slave was then worth in open market 700 dollars," In May 1836 the defendant [543] " sold and delivered the said slave to a trader, for the sum of 1000 dollars; who removed said slave to remote parts."

[544] " judgment entered for the appellant for 525 dollars, with interest from the 31st of May 1836, till paid, and costs."

Anglin v. Bottom, 3 Grattan 1, April 1846. [2] " Rives, in the presence of the plaintiff, made an absolute gift to the wife of the plaintiff, of the negroes Kate and Nelson. . . the plaintiff lived with his family, in the house of . . Rives, . . in the character of overseer . . the said negroes remained at the same place, . . the negro Kate . . acting as a cook for the family."

Held: [4] " actual possession in the donee . . is an essential element of title to slaves claimed in virtue of a gift not made by deed or will . . and cannot be inferred from the proof of an absolute gift originally, and nothing more."

Jameson v. Deshields, 3 Grattan 4, April 1846. In 1835 the agent of Burrage of Alabama [5] " sold a slave of Burrage's for 700 dollars; "

Boyd v. Boyd, 3 Grattan 113, July 1846. Will of James Boyd, 1816: [115] " I direct that all my just debts be paid, and in order to enable my executors . . to make such payments, I direct that my negro man Anthony be sold, and all my personal property . . except the remainder of my slaves; and they are not to be sold."

M'Candlish v. Edloe, 3 Grattan 330, October 1846. [331] " William Yates, a free man of colour, died in 1829, having first made his will, by which he gave his whole estate . . to . . , in trust for his wife Maria, who was his slave, to be paid over to her as soon as she could obtain her freedom, and get permission to remain in the State." All the personal assets were insufficient to pay the testator's debts and Maria was sold.

Held: [332] " where persons in the condition of slaves claim the right to freedom, they must assert such a right in a suit to be brought by them for that purpose; . . they are not necessary or proper parties in controversies between third persons involving the question of such right to freedom;" [Baldwin, J.]

Harris v. Barnett, 3 Grattan 339, October 1846. In 1811 " two negroes, who were advanced in years," were sold " at 200 dollars."

Carr v. Glasscock, 3 Grattan 343, October 1846. [344] " the sheriff advertised the property for sale on the 15th May [1821] following; when . . several persons, (among whom there were some negro traders,) attended," A few months later the fifteen slaves were sold for [346] " 2000 dollars; which was their full value."

Clere v. Commonwealth, 3 Grattan 615, December 1846. [616] " The indictment found against him contained four counts: 1st, For larceny of the slave. 2d, For carrying the slave from one county to another, without the consent of the owner. 3d, For enticing a slave to run away from his owner. And 4th, For delivering a slave money, provisions and clothes, with intent to aid him to abscond from his owner. . . he had not been tried before an Examining Court, for the charges contained " in the last three counts. " the jury found him ' guilty . . in manner and form as in the indictment . . alleged;' and they fixed his term of imprisonment in the penitentiary at three years." [622] " the three last counts quashed, and the cause remanded for a new trial on the first count."

Day v. Commonwealth, 3 Grattan 629, December 1846. " The prisoner, a free mulatto man, was tried . . for an attempt to commit a rape on a white woman; was found guilty and sentenced to be hung." Judgment reversed and new trial awarded, because one of the jurors [630] " was not a freeholder within the county . . where the trial and prosecution were had." [Lomax, J.]

Commonwealth v. Garner, 3 Grattan 655, December 1846. The jury found that [658] " Peter M. Garner, Mordecai Thomas and Crayton J. Loraine, are citizens of the State of Ohio, and on the 9th day of July 1845, resided in that State about four miles back from the river Ohio, in the county of Washington, Ohio, and opposite said county of Wood in Virginia. That on the night of said 9th of July, early in the evening, a party of men residing in said county of Wood, who had received information that the negro slaves of said John H. Harwood of said county of Wood . . intended to escape from their owner on that night and abscond from Virginia into the State of Ohio, crossed the Ohio river to the Ohio shore nearly opposite the residence of said Harwood, and concealed themselves on the bank of the river. That after remaining some

one or two hours, a party of men, six in number, passed by where they were lying, of whom the said Garner, Thomas and Loraine were part. That this last party went under the bank of the river, and remained there, at some distance on the beach above the water, till about 1 or 2 o'clock at night, when a canoe with six negro slaves the property of said Harwood came across the river to the Ohio shore. As it came near the shore, the party under the bank gave it a sort of hail, to which an answer not distinctly heard was returned from the canoe. That said negroes landed said canoe obliquely against the bank opposite to where the party under the bank were standing, running the bow of the canoe on the beach at the water edge. That certain bags of clothing and articles of property were in the bow of the canoe, occupying a space of six or eight feet in the bow. That as soon as said canoe struck the beach, the said party under the bank, among whom were said defendants Garner, Thomas and Loraine, came down the beach to the bow of the canoe at the water edge, and without entering said canoe, stepped into the water at the bow, and assisted said negroes to take said bags and articles of property out of the canoe. Said Garner, taking from the bow of the canoe a bag, started off with it up the beach towards the bank of the river. That at the same time the rest of the party, with the negroes, followed said Garner; when the first named party from Virginia, who lay in ambush, rushed down upon them, retook all of said slaves except one, and forcibly seized the said defendants Garner, Thomas and Loraine, and forcibly carried them across the Ohio river into said county of Wood, where they have been since detained in prison, and where the indictment on which they are now on trial was found against them."

Held: [786] " 1st. That from the facts found, the offences charged were not committed within the jurisdiction of the Court of Wood county, or of the State of Virginia. 2d. That judgment ought to be rendered in favour of the prisoners."

Sheppard v. Turpin, 3 Grattan 373, January 1847. In 1821 [378] " the negroes . . were levied on by the sergeant, at Benjamin Haley's brickyard . . They were locked up in a room at the brickyard. . . When the sale was about to take place, four posts were driven down in a square of about ten feet, just before the door of the room in which the negroes were placed, and the posts were planked up so as to make a breastwork before the door; two of the posts resting against the house. Benjamin Haley stood at the door during the sale, with the key in his hands, and let out one negro at a time; the sergeant cried him off. As soon as he was sold " he " was immediately returned to the room from whence he was taken. . . [379] another was brought out and sold until the whole were sold. . . one who was a cripple . . was bought . . for a shilling."

Purcell v. Wilson, 4 Grattan 16, April 1847. Slaves are bequeathed to a wife for life, [17] " to be disposed of at her own discretion, either by deed or will among my children "

Dean v. Commonwealth, 4 Grattan 541, June 1847. Dean " was indicted . . for larceny in stealing the goods of William and John Ross. On the trial the Commonwealth introduced these persons as witnesses, who were

objected to by the prisoner as incompetent, on the ground that they were mulattoes. . . they had less than one fourth of negro blood. Their grandfather, David Ross, who was spoken of as a respectable man, though probably a mulatto, was a soldier in the revolution and died in the service. The evidence as to the grandmother was contradictory; though she was probably white: The mother was so certainly."

Held: " the witnesses were not incompetent under the Act of Assembly, in consequence of the impurity of blood," and evidence on the question of their competency cannot be introduced to impeach their credit as witnesses.

Charlton v. Unis, 4 Grattan 58, July 1847. " This was an action brought by Unis against Charlton, for the purpose of recovering her freedom. The plaintiff claimed to be the daughter of a negro woman called Flora, and that Flora was a free woman at the time of the plaintiff's birth, in Connecticut or Massachusetts, and had been abducted from thence and sold in Virginia as a slave. . . [59] a short time previous to the institution of this suit, in 1826," Meacham " stated that he knew the woman Flora in the State of Connecticut in 1775, when she belonged to one Benjamin Scott; . . the witnesses spoke of the common report that Flora had been considered a free woman in Massachusetts, and had been abducted by Hanchett, or Bronson and Hanchett." Verdict and judgment for the plaintiff.

Judgment reversed by the Court of Appeals, verdict and judgment set aside, and cause remanded for a new trial. Held: it was not competent to the plaintiff to introduce evidence which [62] " was hearsay, or gave the common report that Flora had been considered a free woman, . . and had been carried off."

See Unis *v.* Charlton, p. 238, *infra.*

Taylor v. Beale, 4 Grattan 93, July 1847. " In 1828, . . Crutchfield of Botetourt, married . . the daughter of . . Taylor of Smyth county. Soon after the marriage, Taylor sent to Mr. Crutchfield a family of negroes, among whom was a boy, Isaac. These slaves remained with Crutchfield . . until the death of his wife . . when all but Isaac were sent back . . Isaac remained . . until Crutchfield's death in 1834, having once accompanied Crutchfield to Mr. Taylor's, . . and on another occasion, having been sent by Crutchfield with some horses of his own, to Mr. Taylor's, where he remained for a part of the winter, and returned with the horses in the spring. On the death of Crutchfield his executors took Isaac into their possession, and hired him out until 1837, when he ran away and went to Mr. Taylor's, who retained him, and claimed him as his own property; insisting that he had only lent him to Crutchfield "

[95] " the Court held that . . as the negro had remained in possession of Crutchfield for more than five years, and no writing evidencing a loan had been recorded, he was liable to Crutchfield's creditors. . . the Court appointed a commissioner to collect the hires of the slave, who had been hired out under an order of the Court, and to make sale of him at public auction,"

Ben Mercer v. Kelso, 4 Grattan 106, July 1847. Will of Hugh Kelso, dated 1843: [107] " I direct my executors to hire out annually all the

slaves that may belong to my estate, giving said slaves liberty to choose as far as practicable, with whom they shall live, except one man and one girl suitable to cultivate the farm, and to attend to house business, to remain in the service of my wife Ann during her natural life; on the condition that said slaves be under forty years of age. If they, or either of them, be above forty years of age, such one, or if both above said age, they shall be emancipated; and also all the other slaves before named, or any others that may belong to my estate, on their arriving to the age of forty years of age shall be emancipated; and if there be any legal obstruction to their remaining within the limits of the United States such as renders their continuance therein impracticable, then I direct that they shall be sent to the Continent of Africa. And if they be unable to bear their expenses thither, then I direct that as much money as is necessary for that purpose be reserved from their share of the hires, (to be hereafter mentioned,) shall be applied to defray the expense of their voyage, and to furnish them with such outfit as is indispensable.

" 8th. I direct that one third of the hires, that is of all the slaves, belonging to my estate now or at any future period, shall be paid to each of said slaves annually, in proportion to the sum each one shall earn.

" 9th. I direct that on the arrival of the year one thousand eight hundred and fifty-five, (except my wife Ann be then living,) all the slaves belonging to my estate at that time be liberated, that is the residue of those who have not arrived at the age of forty years down to the youngest infant; those of forty years of age being previously entitled to freedom. Those slaves under forty years of age, shall remain in servitude until the decease of my wife Ann; at which time they shall be liberated, including the elder Ben and his wife Charlotte not before named."

[109] " In September 1844, Ben Mercer and Mary Wright, two of the slaves emancipated by the said paper writing, applied to the Superior Court . . to be permitted to propound for probat the said paper . . the jury found that Hugh Kelso was not of sound and disposing mind and memory on the 15th of November 1843, the date of the supposed will; . . The Court . . refused to admit the paper to probat. The counsel for the propounders . . filed a bill of exceptions . . [112] [Kelso] would make them [his daughters] do menial acts when his servants were idle in the kitchen. . . [113] sent a message by witness to a negro man of his at a furnace to send him some iron. . . [115] rung his hands, said he must cut out some shoes for his negroes at once, . . That on one occasion he sent his daughters to the field with two negro men and a woman to work, . . [116] That on several occasions for several years before his death, . . Kelso has expressed . . his conviction of the evil of holding men in slavery; and said he thought every one ought to liberate them as soon as he could. . . [117] About thirteen years before Kelso's death, he called on . . his cousin, to write a will for him. . . the emancipation of his negroes was talked of by him, but the witness told him if his object was to disinherit his wife and children he must get some one else to act as his scrivener. . . he spoke of belling all his cattle, black and white, meaning his wife and children and slaves, and turning them out in the

world. . . [118] In conversation . . on slavery, he at one time would condemn it, and again would endeavour to shew from the Bible that it was right."

The Court of Appeals ordered that the [120] " verdict of the jury be set aside, and a new trial had:" " at the time of his executing . . his last will . . he was of sound disposing mind "

Isbell v. Norvell, 4 Grattan 176, October 1847. [177] " they were hired [for the year 1833] as sick negroes . . for the full price [$165.12½] of healthy and sound negroes. That Henry was attended by a physician from the 15th of June until October, whose bill amounting to 44 dollars 25 cents, was paid by the defendant [the hirer]." Henry's arm was subsequently amputated. [178] " in the year 1833, Edwin was attending the plaintiff's stud horse, as a groom,"

Cross v. Cross, 4 Grattan 257, October 1847. [260] " Celia who was very infirm and idiotic," was valued [261] " at 70 dollars;"

Hocker v. Hocker, 4 Grattan 277, January 1848. [278] " Directions how I want my will wrote: The two girls that I left my daughter . . have value at 600 dollars; . . the woman 3 children that I left my son . . have I value at 1000 dollars; . . the negroes that I have in possession it—my wish that they shall be valued, and make their choice which of the legatees they will go to live with;"

Davis v. Turner, 4 Grattan 422, January 1848. In May 1833, " Davis, who was a dealer in slaves, purchased the slaves of Wyche for 4700 dollars, and paid him the money. The slaves were brought from the factory of Wyche, where they had been employed, and whilst Davis and Wyche were passing with the slaves to Davis' office, . . Davis, at the urgent request of Wyche, consented that Wyche should hire the slaves, the four men at eight dollars per month and a woman at five dollars per month, until the August or October following, when Davis intended to take them to the south."

Miller v. Jeffress, 4 Grattan 472, January 1848. " On the morning of the day on which he died [in 1828], . . Paschal Fowlkes . . in answer to questions asked him " made [473] " a charitable donation . . of 100 dollars to a Bible society . . and emancipated two favourite slaves."

Peter v. Hargrave, 5 Grattan 12, April 1848. " the Court made a decree establishing their right to freedom. They then asked for a decree for the profits of their labour since the death of their testator. . . on the ground that the defendants had detained them in slavery with a full knowledge of their right to be free; and had defended and protracted the suit upon pretexts that were entirely frivolous and groundless . . The Court below refused "

Decree affirmed: [17] " persons in the status of slavery have no civil rights, save that of suing for freedom when entitled to it: . . if it be true, as it unquestionably is, that persons in the status of slavery are, in contemplation of law, slaves, whatever may be their right to freedom, there can be no relation . . in behalf of those who have never occupied

any other status, . . [19] A rule giving mesne profits to slaves, after a recovery of freedom, would operate harshly and often ruinously in regard to the master. The arrangements . . and expenditures of slave owners are, in a great measure, essentially different from those of persons who employ free labour . . The owner of slaves . . is usually condemned to a constant . . burthen of care and expenditure. It seldom happens that more than a small proportion of them are capable of productive labour; . . the scantiness of net profit from slave labour has become proverbial, and that nothing is more common than an actual loss, or a benefit merely in the slow increase of capital from propagation. . . [22] Freedom to them is a benefit rather in name than in fact; . . While they remain in what is here their original status, provided for . . in infancy, old age, and infirmity, they are exempt from the . . anxieties of a precarious existence, . . and those who are most familiar with the usually mild despotism to which they are subject, can best appreciate their sources of enjoyment from the commonly humane indulgence . . of their masters. Compare this with the new condition . . as free negroes . . and there is no difficulty in believing that, in most instances, no practical injustice will be done them, by striking an even balance of profit and loss between them and their former masters." [Baldwin, J.]

Billups v. Sears, 5 Grattan 31, April 1848. Dillard, being indebted, " conveyed to Booker [in 1840] a tract of land . . two negro men, two women and five children, horses," Subsequently Cooke [33] " recovered two judgments against . . Dillard, on which executions . . were levied on the two women and four of the children . . a sale was made, the proceeds of which amounted to 679 dollars."

Robinson v. Day, 5 Grattan 55, April 1848. [58] " The will of . . Day [who died in 1813] . . gives the slave Maria and her increase to the plaintiffs, upon the death of Catharine Day without children living at her death; . . Catharine died [in 1837] without children. . . [59] in 1834 [her mother, at whose house Robinson stayed when in Richmond] executed a paper . . ' that Maria and her children are the said Robinson's legal property, he having loaned me 100 dollars to redeem her when under a deed of trust, then only seven or eight years old, and has been at all the expense of raising her and her children.' "

Held: " the plaintiffs . . were entitled to the slaves under the will of . . Day,"

Brewer v. Harris, 5 Grattan 285, October 1848. " In October 1848 Retha Harris, a free woman of colour, and whose husband was a slave, on behalf of herself and her three children, Sally, Joannah and Milly Harris, applied . . for a writ of *habeas corpus*, . . charging that they were illegally detained in custody by Brewer. The writ was awarded; and Brewer certified . . they had been bound to him as apprentices [in 1844] by one of the overseers of the poor . . by virtue of an order of the County Court;" at [286] " an annual hire to the said Retha, the mother, for said apprentices, of one dollar each, from the age of fourteen to seventeen; and that he pay to each of them 12 dollars for the last year of their servitude." Brewer agreed " that he will instruct and cause the

said Milly to learn and be taught all the art, trade and mystery of washing and spinning; and that he will at all times treat the said apprentice Milly with humanity, and furnish her with good and wholesome food and raiment during the time of her apprenticeship:"

Held: [303] "the apprentices in question are bastards, their father being a slave, and therefore incapable of contracting matrimony in the mode prescribed by our law. And the County Court exercised its legitimate jurisdiction, by ordering them to be bound out by the overseers of the poor" [Baldwin, J.]

Logan's Case, 5 Grattan 692, December 1848. "The prisoner, who was a free negro, was prosecuted for burning a stable; and the Court found him guilty, and adjudged him to be confined in the penitentiary for two years." Five years was "the shortest period for which the offence of which the prisoner was found guilty, was punishable in a free negro. . . the Court held, that there was error, and adjudged the prisoner to be confined in the penitentiary three years in addition"

Commonwealth v. Foster, 5 Grattan 695, December 1848. Held: an indictment [1] for allowing more than five slaves, other than his own, to be and remain at one time on the defendant's premises, need not charge that it was without the consent of the owners of the slaves.

Cole v. Commonwealth, 5 Grattan 696, December 1848. "James Cole was indicted . . for advising slaves to escape from their master. . . [697] The jury found the prisoner guilty, and fixed the term of his imprisonment in the penitentiary at two years,"

Ewing's Case, 5 Grattan 701, December 1848. Ewing was indicted for stealing a negro man and carrying "the said slave from the City of Richmond to the county of Hanover"

Blevins's Case, 5 Grattan 703, December 1848. [704] "on Saturday, the 24th of June last, the four slaves named in the indictment, late in the evening of that day, left the service of their employers in the City of Richmond, and have not since returned to the same, nor been seen in Richmond. That one of the slaves was named Charles Rawlings, and was the property of J. H. Grant and John Enders; that he was about twenty-eight years of age, about six feet high, a black man, but not very black. That another of these slaves was named Isaac Page, was the property of Samuel Patteson; was about twenty-five or thirty years of age, a stout man, but not very stout, about six feet high, colour between a black man and a mulatto. That another of these slaves was named Jesse Ambler, was the property of Alexander G. Thompson; was aged about thirty-five years, and a dark mulatto, and about five feet ten inches high. That this slave usually obtained a pass to go and see his wife, who resided near Negrofoot in the county of Hanover, on a Friday, and to return on the Tuesday thereafter; that on this occasion, however, the slave deviated from this habit, and obtained a pass on Saturday evening to return on Monday. That another of these slaves was named Henry Cox, was the

[1] 1 Rev. Code, ch. 111, sect. 13, p. 424.

property of John and Daniel K. Stewart; was aged about thirty-five years, a bright mulatto, and about five feet six or seven inches high. That the prisoner was seen between the hours of twelve and two o'clock on Saturday, the 24th of June last, in the City of Richmond, [705] driving a wagon with three horses in it, one a bay, another a grey, and the third a sorrel. The wagon was of peculiar structure, with a high top, covering the body, deep and straight, and the covering drawn close over it. That he was then in the lower part of the town, not far from the corporation line, driving down the street, and had nothing in the wagon; that he enquired the way to Darby-town, a place below the City of Richmond, . . That the prisoner proceeded as if he was going out of the City of Richmond, driving the wagon, on the 24th of June 1848, between the hours of twelve and two o'clock; that on the night of the same 24th of June, he was seen driving the same wagon, between the hours of eleven and twelve o'clock at night, about one and a half miles below the City of Richmond, on the road leading to New Kent courthouse, an entirely different road from the one leading to Darby-town, although the New Kent and Darby-town roads fork about half a mile nearer Richmond than the place where the prisoner was seen; that he refused to permit a man who applied to him to ride in his wagon, saying he had some troublesome men in it, and that he was taking them to Williamsburg; and afterwards said he was taking them to Old Point Comfort; and the heads of three persons were seen in the wagon, but whether they were white or black persons, could not be ascertained; that he was left proceeding in his travel on the same road, going in the direction of the New Kent courthouse. That he was next seen at a house some seven or eight miles below New Kent courthouse, on Sunday, the 25th of June, late in the evening, where he called and got some water, and was not accompanied by any one, and no wagon was seen at that time. That the next morning, soon after breakfast, and not far from the house where the prisoner had [706] procured the water the evening before, he was seen to come from the woods along a bye-road to the shore of York river, in the county of New Kent, with four negroes, one of whom appeared taller than the others. A small schooner, which some days before had been partly loaded with wood in the Pamunkey river, was riding at anchor in York river, and as soon as the prisoner and the negroes got to the shore, a boat put off, came to where they were, took the negroes in as quick as it could, and returned to the schooner, which immediately got under way, and proceeded down the river about ten miles, where she came to anchor again; . . the prisoner having, on the negroes getting on board, left the shore and gone back the way he and the negroes had come. It was further proved that the prisoner resided in the City of Richmond; and he was absent about two weeks from the 24th of June 1848. That at one time, about the date of the offence charged, he represented himself as being engaged in trading in poultry, and in bringing down butter and feathers from the mountains, where he stated he resided. At another time, about the same date, he represented himself as peddling in fish and oysters between Richmond and York river; and when asked why he never brought any thing to Richmond, said he sold every thing along the road. That he had at one time been a

shoemaker in the City of Richmond but for some time past he had not pursued this or any other known business. That he had a conversation in Richmond with one of the Richmond police officers who had gone to the county of New Kent in pursuit of the prisoner, immediately after the escape of the negroes . . [707] that he had heard he was suspected of being engaged in carrying slaves from the City of Richmond, but declared that he was innocent. He also said that he knew all about the business; that there were men engaged in it who stood high; that he could break them up if he chose, and he pointed out the direction in which they lived. When asked how he came to know so much, he said that he had given a negroe boy twenty-five cents to steal a letter for him, which had told him all about it." The jury [703] "found the prisoner guilty, and fixed the term of his imprisonment in the penitentiary at five years."

Tutt v. Slaughter, 5 Grattan 364, January 1849.[1] "When the cause went back, there was . . a verdict for the plaintiff [Tutt], which was set aside . . There was then a second trial, when the jury could not agree. On the third trial, the defendant demurred to the evidence, and the jury found a verdict for the plaintiff for 2012 dollars 13 cents, subject to the opinion of the Court upon the demurrer; and . . the Court gave judgment for the defendant."

Judgment reversed: [373] "as by the demurrer to the evidence the demurrant has admitted all that could be reasonably inferred by a jury from the evidence given by the other party, and waived all the evidence on his part which contradicts[2] that offered by the other party, . . the evidence of the plaintiff in error . . taken by itself, . . would have justified a jury in reasonably inferring a gift of the slaves in question," [Allen, J.]

M'Kenzie v. Macon, 5 Grattan 380, January 1849. [381] "a boy Jacob, who attended the mill, . . During the period from 1829 to 1842, the slave Jacob continued to live at the mill, . . but William H. Macon annually took from Miles Macon bonds for the hire . . For the hire of Jacob and two other negro men, Miles Macon executed his bond for 150 dollars. . . They were blacksmiths, and were occasionally sent for by William H. Macon to do the smith's work on his farm" Miles Macon sold [382] "one of the children of Dilsy . . That being obliged to sell slaves to raise money, he preferred to sell her because she behaved herself badly;"

Healy v. Rowan, 5 Grattan 414, January 1849. In 1782 Elizabeth Robinson [415] "was possessed of seventeen hundred acres of land, and one hundred and fourteen slaves;"

[1] See Slaughter *v.* Tutt, p. 200, *supra.*

[2] [368] "The defendant . . introduced the record of an action brought by the plaintiff against . . Slaughter, as administrator of the plaintiff's father . . to recover . . for the hire of blacksmith Moses, . . at 75 dollars a year, . . And the account contained no charge on account of any other of the slaves in controversy in this suit. . . [370] That . . all the said slaves were in the visible possession of the plaintiff's father, in like manner as the other slaves on the said plantation, of which there were many. That Mimy, the wife of Moses, and Eliza their daughter, were house servants, and waited, as such, in the house,"

Kelly v. Scott, 5 Grattan 479, January 1849. [480] "bill filed in . . 1838, by the four children of Mary Jane Scott, . . to enjoin the sale of certain slaves which had been taken in execution to satisfy a judgment which had been recovered against" their guardian. "The bill charged that the slaves had been bequeathed to them by their mother; . . and without stating any special grounds for the interference of a Court of Equity, prayed for an injunction, . . granted" Affirmed.

Pryor v. Duncan, 6 Grattan 27, April 1849. Will of Charles Burrus, dated 1795: "I lend [to my daughter] . . my negro woman Sidney, and her child Sarah, and negro boy named John, to her during her natural life, . . But should my said daughter or her husband dispose of, convey out of the way, conceal or attempt to alienate the negroes aforesaid, I do hereby declare her title to cease,"

Forkner v. Stuart, 6 Grattan 197, July 1849. Two slaves [201] "sold for 1012 dollars, which was about or nearly their value."

Williams v. Given, 6 Grattan 268, July 1849. A negro girl sold [270] "for 350 dollars."

Crump v. Redd, 6 Grattan 372, October 1849. "The slave Abby and her son Watt had been . . sold by Henry Macon to his mother in June 1803; and Mrs. Macon living . . some twenty-five miles from Henry Macon who owned the husband of Abby, she had permitted Henry Macon to take Abby and her child to his house, for his convenience. After the death of Henry Macon [in 1809], Abby and her children had been returned to Mrs. Macon, . . [373] Palmore had employed some of the slaves as boatmen on the Appomattox river, in which employment two of them had died of the cholera."

Morrissett v. Commonwealth, 6 Grattan 673, December 1849. Morrissett "was indicted in March 1849 . . for feloniously stealing two slaves, . . and also for carrying the said slaves out of the county . . [674] the jury found the prisoner guilty, and fixed the term of imprisonment in the penitentiary at two years;"

Smith v. Commonwealth, 6 Grattan 696, December 1849.[1] "Smith, was indicted at the October term 1849, . . for . . advising a slave, named Alfred . . to abscond from his master, . . The second count charged that the prisoner, in the City of Richmond, did . . . aid the said slave to abscond . . by putting him in a certain box, . . and by carrying the said box, with the said slave therein concealed, to the depot of the Richmond and Fredericksburg railroad company, in said city, . . [698] The jury found the prisoner guilty, and fixed the term of his imprisonment, in the penitentiary, at four years and six months."

Grayson v. Commonwealth, 6 Grattan 712, December 1849. "William Grayson, a free negro [a ditcher by trade], was indicted . . for the murder of David W. Miller. . . Grayson became indebted to . . Settle and Miller, . . 1848, to the amount of some two or three dollars; . .

[1] See same *v.* same, p. 221, *infra*.

[714] Settle took [Grayson's spade and shovel] . . and told the prisoner that he could not have them until he had paid all that he owed . . on the evening [of the murder] . . he went to the store, and again applied for his spade and shovel, . . but being peremptorily refused, he went off." Later he [717] " returned to the store and paid off his account, and got his spade and shovel; . . [721] about an hour and a half after night " he went to Huffman's cabin, [718] " where he stayed all night; . . he lost his spade and shovel between Wood's and Huffman's." [714] " some young men . . happening to come to the store, . . played marbles until it was too dark to play any longer; . . All went off except the deceased, . . [722] a negro man . . about midnight . . heard a noise at the store; . . and a cry of murder." [715] " the deceased was killed by several blows on the head, inflicted by a dull edged instrument, such as a spade or shovel, . . [719] The shovel [when found] had on it many marks of blood, and one human hair . . [722] the prisoner had on the same clothes late in the evening of [the murder] . . that he wore the next morning, when he appeared at the store [before the coroner arrived]; that there was no appearance of blood on his clothes or person, . . [which] were carefully examined " [713] " Upon the trial, the jury found him guilty of murder in the first degree; and the Court sentenced him to be hung."

[724] " Judgment reversed, verdict set aside, and cause remanded for a new trial." " there is no evidence which connects the accused with the homicide . . at most, it amounts only to a suspicion that he had some hand in it;" [Scott, J.]

See same *v.* same, p. 222, *infra.*

Poindexter v. Davis, 6 Grattan 481, January 1850. Davis [482] " in 1830, sold his life estate in the slave . . for 400 dollars. . . [483] the slave was about seventeen years old, was worth about 500 dollars, and his annual hire was estimated at 60 dollars." The purchasers [482] " had taken the slave to South Carolina, and had sold him there." [505] " supposing at the time . . that they had a complete title."

Held: " If [the grantee] . . was ignorant of the extent of his vendor's interest that was the result of his own negligence; . . To confine the operation of the statute [1] to the original life tenant, or such alienee as can be proved to have notice of the reversion or remainder, would . . in effect repeal the act."

Moseley v. Moss, 6 Grattan 534, January 1850. Action of slander. Moseley said, in 1844, [535] " that Turpin's negroes were trafficking or trading with Moss, . . and they were carrying the bacon to the coal pits to sell, meaning thereby, that the said Moss, his overseer, and living on his premises, had . . sold his the said . . Moseley's bacon, without his knowledge or consent, to . . Turpin's negro slaves, (without the authority or consent of their master,) who were carrying the same to the coal pits to sell, . . [536] that a negro of Turpin's had been seen coming from Moss's at a late hour of the night, and that a negro had been seen to go in his Moss's . . house, in the night time, when the candle was burning, but as soon as the negro went in, the candle was put out,"

[1] 1 Rev. Code, ch. 111, sect. 48, p. 431.

Parker v. Brown, 6 Grattan 554, January 1850. Will of Mrs. Sally Parker, dated 1821: "I give to Richard E. Parker . . [555] the following slaves, to wit: Big Janey, her children and grandchildren, . . It is my express will and desire, the negroes hereby willed shall not be sold . . but that they shall be kept together"

Beale v. Digges, 6 Grattan 582, January 1850. In 1834 Beale [585] "put the slaves . . into the possession of . . Digges [his son-in-law]; and that all of them, except Jane,[1] remained [in his possession] . . until . . 1840. . . if they were intended as a loan, no record of it was made," His creditors "say that their execution was placed in the hands of the sheriff, who meeting with . . Digges, he gave him a levy upon said slaves, except Jane, the sheriff not having seen them. That . . the sheriff . . permitted [Digges] . . to retain the possession of the slaves until the day of sale, upon which day, the 1st of January 1840, they were brought to Warrenton for the purpose of being sold, when they were by the plaintiff, or his agent . . secretly . . carried off,[2] and concealed, so that the sheriff could not reach them, until one of them, Charles, was taken;"

Held: [590] "the slaves . . with the exception of . . Jane, . . became liable,[3] to the demands of the creditors of . . Digges, though the possession thereof was resumed by . . Beale after the expiration . . of five years."

Smith v. Commonwealth, 7 Grattan 593, June 1850. "Smith was indicted at the October term for 1849, . . [594] for advising and aiding a certain slave named Sawney . . to abscond from his mistress. . . The prisoner filed a plea of *autrefois convict*,[4] . . That the offence was the same; not two offences of the same kind, but one offence of advising . . and aiding both slaves at the same time, by the same means to escape. . . [596] The Court . . informed the jury . . that the record . . of the . . conviction . . of the prisoner for . . advising and aiding the slave Alfred . . to abscond, could not be received . . as sustaining a plea in bar . . of a former conviction . . for aiding and advising the slave Sawney . . to abscond. . . [597] The jury found the prisoner guilty, and fixed the term of his imprisonment . . at two years; and the Court sentenced him accordingly: The term of two years to commence upon the expiration of his imprisonment under another sentence pronounced against him at the same term . . for another felony."

Bacon v. Commonwealth, 7 Grattan 602, June 1850. "At the April term for 1849, . . Jarvis C. Bacon, a free person, was indicted for that on the 26th of March 1849, he did by speaking, maintain that owners have not right of property in their slaves. On the trial the jury found him guilty, and assessed his fine at 49 dollars 62½ cents. Whereupon he moved the Court for a new trial. Upon this motion the Court below certified the

[1] "Jane was returned to the plaintiff soon after the death of the wife of . . Digges . . 1838."

[2] [587] "they were . . persuaded to leave Warrenton, by . . agent for the plaintiff, and go into the plaintiff's possession,"

[3] 1 Rev. Code, ch. 101, sect. 2, p. 373.

[4] See same *v.* same, p. 219, *supra*.

facts proved upon the trial as follows: That the defendant, who is a minister of the gospel, on Sunday before Christmas 1848, . . preached a sermon from the text in the New Testament: 'Ye are the salt of the earth,' or 'Ye are the light of the world.' That he proceeded to point out the duty of Christians, and in the conclusion of his discourse, after citing a passage of scripture which related to the overthrow of the tables of the money changers in the temple, said that those persons, (alluding to the money changers,) were pronounced by our Saviour, thieves and robbers; and then observed that there were thieves and robbers in the church at this day. In illustration of this view, the defendant said: 'If I was to go to my neighbour's crib and steal his corn, you would call me a thief, but that it was worse to take a human being and keep him all his life, and give him nothing for his labour, except once in a while a whipping or a few stripes.' Defendant did not mention the name of slave owners or masters of slaves at any time during his discourse; but witness stated that he understood these remarks to refer to slaveholders. These were all the facts proved; and thereupon the Court adjourned to this Court the question: Ought this Court to grant a new trial in this cause?"

Held: [612] "the motion for a new trial should be allowed." [608] "It is incumbent upon the Commonwealth to shew, in the alleged speaking, that the defendant denied the right of owners to property in their slaves;[1] . . The defendant's language must plainly express that denial, or, in its plain meaning, necessarily imply it." "To dissuade a member of a Christian flock from merchandizing in slaves, or . . keeping human beings in slavery, may be done by a pastor, without any denial of the right of owners to property in their slaves." [Lomax, J.]

Grayson v. Commonwealth, 7 Grattan 613, June 1850. For facts, see same *v.* same, pp. 219-220, *supra.* "The prisoner was again tried . . 1850, . . the time when the young men left the store on the evening previous to the murder . . was the darkest time of the night, . . the spade and shovel were not, at 12 o'clock, on the day after the murder, in the spot where they were found at 9 o'clock that night" [618] "during the whole period the accused was in close custody." [614] "After the inquest had been taken and signed, the prisoner was directed to be committed to jail, when it was proposed—the certificate of facts says—by a gentleman present, as a means of finding out where the spade and shovel were to be found, that the prisoner should have his hands put into a vice, and by torture compelled to confess. His hands were put into a vice and the force of the screw applied; but he persisted in the statement that he had before made, that he was drunk, had lost his spade and shovel, and did not know where they were." [613] "he was again found guilty of murder in the first degree, and sentenced to be hung."

Judgment reversed and a new trial awarded: [615] "we are again unanimously of opinion, that it [the evidence] is wholly insufficient to sustain the verdict and judgment. . . [618] Declarations of persons accused are not much to be relied on; but in this case the truth of the declarations was persisted in under peculiar circumstances;—under severe

[1] Sess. Acts of 1847-8, ch. 10, sect. 24.

torture, which we are sorry to say the bystanders, under the great excitement of the moment, forgetful of the mild spirit of our law, thought themselves at liberty to inflict. . . [619] the testimony . . is hardly sufficient to raise a suspicion against him." [Leigh, J.]

" Note by the Reporter.—After the decision of the Court granting to the prisoner another trial, an armed mob in the day time, took him from the jail and hung him: And thus to punish a man whom they suspected of murder, they committed murder themselves."

Williamson v. Crawford, 7 Grattan 202, December 1850. In 1837 two slaves were " valued at 700 dollars " each.

Fleming v. Toler, 7 Grattan 310, April 1851. In 1838 Toler, the plaintiff, sold Fleming [311] "a negro man slave, . . for the sum of 1100 dollars;" Fleming alleged that the slave " was constitutionally liable to periodical returns of bilious colick once every week, . . plaintiff . . concealed his knowledge of said defect, and the fact of said defect . . [312] the defect lessened the value of the slave 900 dollars," The jury found [313] " for the plaintiff the debt in the declaration mentioned,"

Morris v. Peregoy, 7 Grattan 373, May 1851. " action of detinue . . for the recovery of four slaves, one of whom was named Fanny. . . The jury found a verdict for the four slaves mentioned . . and also for a fifth, the child of Fanny, born since the institution of the suit; . . judgment accordingly;"

Tabb v. Archer, 7 Grattan 408, May 1851. [412] " John Tabb died intestate about . . 1797, leaving a very large number of slaves to be divided among his widow Frances Tabb and his eight children, . . [413] 1806, . . [his daughter] Harriet Tabb died . . In 1818 . . the Court made a decree appointing commissioners . . to receive the [dower] slaves from Mrs. Tabb, and . . to allot one sixty-fourth part to Frances Tabb, to be held by her in absolute property, as her distributable share of her daughter Harriet's proportion of said slaves; . . then . . to divide the residue . . into seven equal portions . . having reference to value, and . . deliver one portion to each of the husbands of the female plaintiffs, . . [414] the slaves allotted to Mrs. Tabb . . were valued at 1580 dollars. The shares of the seven children were each 14,039 dollars;" [422] " the surrender of the whole of said dower slaves " and the release of Mrs. Tabb " was made on the consideration that she should retain slaves to the value of the sum of 2000 dollars agreed to be paid to her by each of the distributees," [410] " the slave Sye or Syphax . . had been purchased . . 1819, at the price of 800 dollars. . . [416] his hire . . 100 dollars per annum," [411] " one called Miller Lee, valued at 900 dollars . . was sold . . 1818 . . for 700 dollars, . . [412] shoemaker George . . was worth probably about 900 dollars:"

Souther v. Commonwealth, 7 Grattan 673, June 1851. [678] " The prisoner was indicted and convicted of murder in the second degree, . . April term last past, and was sentenced to the penitentiary for five years, the period of time ascertained by the jury. The murder consisted in the

killing of a negro man slave by the name of Sam, the property of the prisoner, by cruel and excessive whipping and torture, inflicted by Souther, aided by two of his other slaves, on the 1st day of September 1849. . . [679] The indictment . . sets forth a case of the most cruel and excessive whipping and torture. The negro was tied to a tree and whipped with switches. When Souther became fatigued with the labour of whipping, he called upon a negro man of his, and made him cob Sam with a shingle. He also made a negro woman of his help to cob him. And after cobbing and whipping, he applied fire to the body of the slave; about his back, belly and private parts. He then caused him to be washed down with hot water, in which pods of red pepper had been steeped. The negro was also tied to a log and to the bed post with ropes, which choked him, and he was kicked and stamped by Souther. This sort of punishment was continued and repeated until the negro died under its infliction. It is believed that the records of criminal jurisprudence do not contain a case of more atrocious and wicked cruelty than was presented upon the trial of Souther; and yet it has been gravely and earnestly contended here by his counsel, that his offence amounts to manslaughter only." [678] " The motion for a new trial was overruled, and a bill of exceptions taken to the opinion of the Court, . . The bill of exceptions states: 'That the slave Sam in the indictment mentioned, was the slave and property of the prisoner. That for the purpose of chastising the slave for the offence of getting drunk, and dealing as the slave confessed and alleged, with Henry and Stone, two of the witnesses for the Commonwealth, he caused him to be tried and punished in the presence of the said witnesses, with the exception of slight whipping with peach or apple tree switches, before the said witnesses' arrival at the scene after they were sent for by the prisoner, (who were present by request from the defendant,) and of several slaves of the prisoner, in the manner and by the means charged in the indictment; and the said slave died under and from the infliction of the said punishment, in the presence of the prisoner, one of his slaves, and one of the witnesses for the Commonwealth. But it did not appear that it was the design of the prisoner to kill the said slave, unless such design be properly inferrible from the manner, means and duration of the punishment. And on the contrary, it did appear that the prisoner frequently declared while the said slave was undergoing the punishment, that he believed the said slave was feigning and pretending to be suffering and injured, when he was not.' The judge certifies that the slave was punished in the manner and by the means charged in the indictment."

Held: [680] " It is the policy of the law in respect to the relation of master and slave, and for the sake of securing proper subordination and obedience on the part of the slave, to protect the master from prosecution in all such cases, even if the whipping and punishment be malicious, cruel and excessive. But in so inflicting punishment for the sake of punishment, the owner of the slave acts at his peril; and if death ensues in consequence of such punishment, the relation of master and slave affords no ground of excuse or palliation. The principles of the common law in relation to homicide, apply to his case, without qualification or exception; and accord-

ing to those principles, the act of the prisoner, in the case under consideration, amounted to murder. Upon this point we are unanimous." [Field, J.]

Fleming v. Bolling, 8 Grattan 292, December 1851. Will of Thomas M. Fleming, 1801, "emancipated his slaves, except those he had received by his wife; and these he gave to her." The executor [293] "sold all the slaves emancipated by the will, and applied the proceeds of sale to the payment of debts."

Trice v. Cockran, 8 Grattan 442, February 1852. Trice, the defendant, placed a slave [443] "in the hands of an auctioneer in Richmond to be sold, and . . told him that . . he was believed to be unsound, and that he, the auctioneer, must not sell him to any one without making that fact known to him; that the slave remained for some time at the auction house in Richmond, where he was seen by all the dealers, and among them the plaintiff, and finally he was exposed to public sale, proclamation being made by the auctioneer that a doubt was entertained of his soundness, but he would warrant him sound, and if the purchaser did not like him he might return him; . . the plaintiff became the purchaser . . at 470 dollars. This was in July. The plaintiff, after . . a full statement by the auctioneer of all that the defendant had told him . . declined to keep him, . . and the slave remained at the auction house, where the plaintiff frequently saw him, until . . September, when the plaintiff proposed to the auctioneer to sell him again, saying, that if he would do so, and warrant him sound, he, the plaintiff would bid 400 dollars for him; that accordingly . . [444] the plaintiff purchased him at a single bid . . and shipped the slave to the south. . . if sound he would have commanded at least 550 dollars," The slave died.

Forward v. Thamer, 9 Grattan 537, January 1853. Will of Arthur R. Savage, dated 1836: "I emancipate and set free all my negroes at the following dates, . . [538] provided they shall remove and leave the state of Virginia within six months after they shall go free; but if they do not remove and leave the state aforesaid within the six months, then and in that case to become slaves to my estate forever; and provided also that the laws of the state shall so require them to leave it: . . Thamer and Charlotte to go free the 1st day of January 1844." The clause "proceeds to emancipate different slaves at different periods, down to the 1st of January 1871. The jury further find that on the 1st day of January 1844, Thamer had attained her full age of 21 years; . . that she was duly registered as a free person with the assent of the executor, and free papers granted to her on the 14th of July 1845, and that a copy of the instrument of emancipation was delivered to her by the executor." Thamer remained in Virginia. On October 29, 1847, Savage's executor "took possession of Thamer and sold her to John W. Forward, . . the sale of Thamer was not made for the payment of Savage's debts. On this verdict the court gave judgment for the plaintiff below [Thamer],"

Held: [539] "The conditions having for their object the defeasance of the grant of freedom, are in their nature, conditions subsequent. . . he

could annex no condition subsequent, repugnant to the freedom conferred." Judgment for Thamer affirmed.

Elliott v. Carter, 9 Grattan 541, January 1853. In 1818 [544] " the land sold for 5961 dollars 9 cents . . The slaves . . in 1819 . . were . . valued at 13,900 dollars;"

Mosby v. Mosby, 9 Grattan 584, February 1853. Will of Littleberry Mosby, 1809: [585] " that his executors . . should sell his land . . together with all the personal estate thereto belonging, except the slaves;"

Jincey v. Winfield, 9 Grattan 708, March 1853. [709] " the slaves of Mary Winfield . . were emancipated by her will . . admitted to probat . . 1847, . . the administrator confessed judgments to creditors of his testatrix, amounting to near 2000 dollars. . . Jincey and her six children . . were sold by the sheriff [to defendant Field] . . at the price of 1060 dollars," and " Scilla and her five children [to defendant Ragland] . . at 1150 dollars. Scilla died during the progress of the suit. . . It appears that the testatrix was an unmarried lady owning an unproductive farm with some thirty slaves, one of which was a shoemaker and two or more were blacksmiths; and that she carried on a shoemaker and two blacksmith shops. Her slaves were permitted to work very much as they pleased, and she would not permit them to be controlled by any one." She [723] " was in the habit of hiring out one, and sometimes two slaves; . . She was the only white member of her family, and was extremely frugal; but was an indulgent mistress, and a bad manager of slaves;"

Moncure, J.: [714] " the right conferred by emancipation . . requires the application of different rules . . from those which govern the case of a specific legacy." Subject to [715] " claims of creditors . . upon condition that there is no other estate liable and sufficient for their payment . . they are free from the . . recordation of the will. . . They should not be sold absolutely, if a sale for a term would produce satisfaction; nor should some be sold while others are left free, but the burden of servitude should be equally distributed. . . The rule of *caveat emptor* applies to a purchaser of emancipated slaves, . . [717] In this case there is no ground whatever for [imputing laches] . . [717] They were sold just ten months after the will emancipating them was admitted to record, . . The slaves were probably ignorant of the sale until about the time it was made." A witness testified that he [718] " heard a good many people say it was not right to sell a portion of them to free the others. Of the thirteen negroes that were sold, eleven were infants, and most of them of tender years. They were sold for 845 dollars less than they were then worth; though they produced 239 dollars 61 cents more than the amount of all the executions. The bill was filed just a week, and the affidavit annexed thereto bears date but two days, after the sale. All the diligence that could be expected . . has been used by the plaintiffs . . and the purchasers . . do not pretend that they did not in fact know that the negroes purchased by them had been emancipated; though they no doubt supposed that the sale was valid."

Decree of the court: [725]. " the appellants . . are entitled to freedom; subject only to a charge for the balance which may remain unpaid of

the debts of the testatrix . . after applying to their payment all her other estate, . . if . . insufficient . . the appellants should be sold for such term of years as may be sufficient to raise an adequate fund to pay the deficiency, so as to distribute the burden of servitude as equally as possible among them: "

Roberts v. King, 10 Grattan 184, July 1853. [185] " 1817 King executed . . a bill of sale for . . Celia and her child, in consideration of . . three hundred dollars; . . she left seven children,"

Philips v. Martiney, 10 Grattan 333, September 1853. " Richard Kittle died in 1830, having first made his will by which he gave to his wife for her life . . a slave named Peg; . . The slave Elijah was the child of Peg born whilst she was in the possession of Mrs. Kittle. In August 1836 Mrs. Kittle sold Elijah, then about two years old, to William Martiney. In the same year Martiney sold the slave to Joseph Johnson, who gave him to his daughter: And she in the same year removed him to the state of Arkansas. Mrs. Kittle died in 1846." In 1850 an action of trover was brought against the executors of Martiney. Judgment for the defendant.

Smith v. Commonwealth, 10 Grattan 734, July 1853. Indictment " against Benjamin Smith, a free negro, for a rape upon . . a white girl. Upon the first trial the jury was hung. On the second trial the prisoner was convicted and sentenced to be hung. On both trials the prisoner excepted to an opinion of the court admitting evidence of his confessions. It appears that the prisoner was raised by Andrew Edmonson, a magistrate of the county . . and at the time of the confession he was an indented apprentice to Edmonson, and living with him. That when the constable came to the house of Edmonson to arrest the prisoner . . the officer went to bed; and early the next morning before the prisoner had got up, the witness Edmonson went to the kitchen where the prisoner was asleep and called him up. When the prisoner got up, the witness sat down beside him and said to him solemnly, ' The die is cast. The dog is dead. She (meaning the prosecutrix) has sworn it, and you must suffer. Now will you suffer and let Campbell escape. Now I want you to tell me the truth, the whole truth, and nothing but the truth; and I will save your neck if I can.' And thereupon the prisoner made a full confession to the witness of his guilt. . . the prisoner seemed convulsed with fear. The Campbell spoken of . . was a negro man who before this trial, had been tried, convicted and executed for a similar offence committed upon the same prosecutrix, and at the same time."

Held: [748] " the Circuit court did not err in admitting the confession . . the sentence of death passed on the prisoner should be affirmed." [Lee, J.] " Allen and Samuels, Js. concurred . . Daniel and Moncure, Js. dissented."

Foster v. Fosters, 10 Grattan 485, November 1853. " William Foster, Martha Ann Johnson, Ellen Johnson, Richard Johnson, Betsey Johnson, Thomas Johnson, Eliza Johnson, and Francis Johnson, persons of color, brought suit *in forma pauperis* in the Circuit court of Henrico, for the recovery of their freedom, against Richard Adams, administrator of

Francis Foster deceased, who had them in custody, holding them as slaves belonging to the estate of his intestate. On the trial . . evidence was offered tending to prove that on and before the 3d of November 1831, Francis Foster was the owner of a number of slaves, including William Foster, Betsey Johnson, Francis Johnson and Thomas Johnson, four of the plaintiffs below; That Martha Ann Johnson, Ellen Johnson, Eliza Johnson and William Johnson, the other plaintiffs, are the children of Betsey Johnson, born since the date above named. That Francis Foster acknowledged that he was the father of said William and Betsey, and of others of his slaves not parties to this suit. That about the 3d of November 1831, Francis Foster, having previously determined to emancipate his natural children, their mother also his slave, and the issue of his children, took with him to the city of New York these objects of his favor, including William, Betsey, Francis and Thomas, the only parties to this suit then in existence. That whilst in New York, November 3d, 1831, he executed a paper in the form of a deed of emancipation, which was attested by one witness and acknowledged before the mayor of the city, and ordered to be recorded. By this deed he professed to emancipate, amongst others, William Foster, Betsey Johnson, Francis Johnson and Thomas Johnson. That the sojourn of Francis Foster and of the colored persons taken with him, at New York, was for a few days only. That Francis Foster, before going to New York, and whilst there, and after his return, spoke of the trip to that place as intended for the sole purpose of giving freedom to the objects of his favor. That he returned to Virginia bringing back with him the party he had carried to New York. That Foster's reason for carrying his slaves to New York to be there emancipated, rather than to emancipate them in Virginia, was this, that they might remain in the state of Virginia; he supposing that the law requiring emancipated slaves to leave the state in twelve months would not extend to the case which he had devised. That after returning from New York, Foster and the party he had carried with him, lived together as a family upon terms of equality, and not as a master with his slaves. That Foster on the 27th of July 1835, executed a will which was admitted to probat the 9th of May 1836. By this will he emancipated by name, in express terms, his slaves other than his own children, their mother, and their descendants: To some of these last mentioned he bequeathed a portion of his personal property. That the persons claiming freedom under the alleged manumission in New York had not at any time thereafter been treated or regarded as slaves, although not registered as free negroes; that they had always after the death of Foster up to the year 1850, acted as free people, and were not included in the inventory or appraisement of Foster's estate: That in July 1850 they were taken into custody by the defendant below, claiming to hold them as slaves." Verdict and judgment for the plaintiffs.

Judgment affirmed: [490] "the law permitted Foster to emancipate his slaves, . . There was nothing in the law to prevent Foster from taking his slaves whithersoever he chose . . [491] it is impossible to perceive a reason why an emancipation without the state, according to the law of the place where made, should not be fully recognized here. . . the evi-

dence did not tend to prove such fraud upon the law as would justify the jury in avoiding the transaction, . . [492] A safe . . test . . will be found by ascertaining whether the owner intended to surrender his right of property under the operation of the laws of a nonslaveholding state; if he so intended, no wrong is done by giving effect to the intention. If he did not so intend, his right of property should be held unimpaired, whatever may have been done to divest him thereof under color of law in any nonslaveholding state." [Samuels, J.]

Commonwealth v. Scott, 10 Grattan 749, November 1853. The grand jury presented [750] "William Scott sen'r, a free negro," for [749] "retailing ardent spirits to be drunk at the place where sold" without a license. The defendant [750] "moved the court to permit him to withdraw his plea of 'Not guilty,' and to plead that he was not a free negro, . . but an Indian;"

Held: the description is [756] "immaterial and mere surplusage," [755] "In a prosecution for the offence charged in this presentment a white person, Indian or free negro, is tried and punished in the same manner"

Nichols v. Campbell, 10 Grattan 560, January 1854. [561] "Patterson had sold [in 1828?] . . [562] a family of negroes, viz: Mary, Caleb and Nelson, at the price of nine hundred and fifty dollars," [566] "the price of these slaves was applied to the payment of the bond . . [570] The net proceeds of Lucy and her child, sold by the sheriff under the decree of . . 1841, and purchased . . at the price of five hundred and ten dollars,"

Claycomb v. Claycomb, 10 Grattan 589, February 1854. [591] "It was not necessary to sell any of the slaves for the payment of debts, legacies or expenses of administration. The executor . . did not sell, any of them."

Parker v. McCoy, 10 Grattan 594, February 1854. [595] "In May 1834 Mrs. Burton filed her bill . . for an assignment of her dower; . . there were three slaves of which they allotted one to the widow." The administrator "was directed to sell the [other] slaves."

Frazer v. Bevill, 11 Grattan 9, April 1854. Frederick Reese, who died in 1829, gave, by his will, to his son Herbert Reese "one-half of the balance of his estate: But if he should die without heirs, then at his death . . [10] to his grand son Frederick A. Frazer . . the administrators sold the personal estate except the slaves which proved more than sufficient to pay the debts; . . [11] the slave Eliza fell to the share of Herbert Reese;" [10] "In 1830 a judgment was recovered against the personal representatives of Frederick Reese, . . execution . . was levied on . . Eliza . . [11] then a small girl; . . [12] the deputy sheriff . . offered the slave for sale at the June court, but that some of the legatees of Frederick Reese contended that Herbert Reese was bound for the debt himself; and that the negro[es] ought not to be sold, as they would be scattered about at the death of Herbert Reese. That in consequence of these remarks no persons would bid, and he therefore kept her until July

court when she was again put up, and sold. . . Bevill purchased the slave at one hundred and seventy dollars. . . it was publicly announced that she was sold to satisfy an execution against Herbert Reese, administrator of Frederick Reese" [10] "At the time of this sale, . . Herbert Reese was a debtor to the estate . . in the sum of two hundred and twenty-eight dollars and forty-two cents, . . In 1845 Frederick A. Frazer filed his bill . . and stated . . [11] That Bevill claimed a fee simple in said slave and her increase [three children]; . . That plaintiff was apprehensive . . that Bevill would send the slaves out of the state, . . Herbert Reese . . had ever been, childless. . . he prayed that Bevill . . might be required to give bond . . to have the slaves forthcoming at the death of Herbert Reese;"

Held: [21] "the Circuit court . . erred in dismissing the bill." [18] "under the circumstances the purchaser could acquire nothing but the interest of Herbert Reese in the slave:"

Colvin v. Menefee, 11 Grattan 87, May 1854. The slave Milley was sold in 1844 [88] "for the price of four hundred and eighty-one dollars;"

Staton v. Pittman, 11 Grattan 99, May 1854. A [101] "woman and child" were [100] "bid off . . at two hundred and twenty-two dollars" in 1842. "After the slaves went to the house of . . Staton, the sheriff went there to levy upon them, but after he arrived in sight of the house, the doors of the out-houses were closed, and the entry of the officer prevented."

Boyles v. Overby, 11 Grattan 202, May 1854. "a negro girl slave . . [203] at the time of the sale labored under an incurable disease called consumption, . . verdict for the plaintiff for two hundred and eighty-six dollars and fifty cents,"

Fitzhugh v. Fitzhugh, 11 Grattan 210, May 1854. [211] "eight slaves . . sold, and the prices amounting to three thousand two hundred and ten dollars. . . there only remained an old man, an old woman and a small girl, whose aggregate value does not exceed four hundred and fifty dollars."

Morris ex parte, 11 Grattan 292, May 1854. "William W. Morris a free negro . . [293] was charged before the mayor of the city of Richmond with remaining in the commonwealth contrary to law, after having forfeited his right to return to the state or remain therein, by going to a nonslaveholding state.[1] Upon this charge he was tried, and being adjudged to have violated the law in this respect, he was required to give bond in the penalty of five hundred dollars, with condition that he would leave the state within ten days. From this sentence he prayed an appeal . . but the mayor . . refused to grant it."

Held: [296] "a negro convicted of a misdemeanor by a justice is entitled to appeal[2] . . [In] the case of a refusal . . mandamus is the rightful remedy,"

[1] Code, ch. 198, sects. 28, 29, p. 747.
[2] Code, ch. 212, sect. 15, p. 788.

Fitzhugh v. Fitzhugh, 11 Grattan 300, May 1854. [301] "The second count, was for attendance upon the slaves . . and work . . done . . by plaintiff for and about the said slaves,"

Nelson v. Cornwell, 11 Grattan 724, November 1854. About 1811 [725] "Constance Cornwell [widow of Jesse Cornwell] purchased of her father a negro girl named Prucy, then about ten or twelve years old, for two hundred dollars." Will of Constance Cornwell, 1825: "to her grand son John Cornwell, the oldest son of her daughter Kitty Cornwell, the following slaves, viz: Letty, Prucy and her two children [726] Elizabeth and Albert, and the increase of the females forever, and also a horse: And she directed that he should not sell any of the slaves or their future increase; and if he attempted to sell them, they were to be free. And she directed that the proceeds of the sale of her stock, after paying her debts, should be retained by her executor [Nelson], and applied to the use of the slaves until John Cornwell came to the age of twenty-one years; at which time the slaves were to be delivered to him by the executor. . . Prucy and her children, of whom there were then three, were appraised at four hundred and fifty dollars, and Letty was appraised at ten dollars." In 1835 the estimate of the value of the slave Frank [732] "varied from three hundred and fifty dollars to eleven hundred dollars. Prucy and her six children were valued at that time by two witnesses at one thousand seven hundred and twenty dollars. A witness . . speaks of them as being of very light complexion; some of the children would be taken to be white, and they were generally delicate. They were valued at small prices, on account of their complexion and health." Prucy and her children were in the possession of Nelson at his death in 1845. His executor took possession of them and [733] "sold two of the children to a trader, who took them to Washington city; and in June 1847 John Cornwell . . instituted proceedings to recover them, as belonging to him under the will of Constance Cornwell. . . [735] It appeared that the plaintiff was the son of Kitty Cornwell, and was a mulatto. He attained the age of twenty-one years in 1830; and in 1828, when a minor, he received from Nelson the value of the horse left him by Constance Cornwell, and left the state; . . It appeared too that Prucy herself was a light mulatto, and her children very light mulattoes, some of them showing scarce a trace of negro blood; and it seemed that the children were the children of Nelson." [750] "They were chargeable slaves, incapable, it seems, of producing any hire; and they were in the care of one whose relation to them gave assurance that they would not be neglected." [Moncure, J.] [735] "decree in favor of the plaintiff for the slaves in controversy, and for an account of profits." Affirmed.

Smith v. Betty, 11 Grattan 752, November 1854. Betty and others sued in 1835 *in forma pauperis* to recover their freedom. [753] "William Gooch, . . the father of several of the plaintiffs, the children of Betty, being an unmarried man, and being anxious to secure to the plaintiffs, to whom he stood in the relation of a master, but particularly to Betty and her children, the full enjoyment of that liberty which he had always permitted, . . but being an extremely illiterate and uninformed man, applied to . .

Smith to . . advise him as to the best mode of effecting this wish, and . . of devoting the whole of his property to the plaintiffs." A deed was executed in April 1831 vesting the whole legal title to the said persons and property in Smith. [758] " Gooch was so drunk the witness could not understand anything that he said." In November [753] " Gooch being informed that Smith would claim the subject of conveyance as his own, he executed another paper, . . [754] In it he says, . . [755] if he should attempt to hire out, sell or convey any of said negroes, or sell my land that I have for my said negroes, I wish it to be taken from him, and put in the hands of Jesse Barker immediately; that it never was my intention for any of my negroes to be sold or hired. . . [758] on the night before Gooch died he told the witness that everything was given to . . Smith, but he was not to carry the negroes off the place. . . he did not intend to make his negroes slaves, and that he intended to get some man to stand master for them. Some of these slaves, . . he stated were his own children; . . when . . [759] taking an inventory . . after Gooch's death, Charles [Smith] told the plaintiff Betty to bring all the things; they were hers." Barker [766] " states that . . Smith employed him to act as master for the slaves, stating that the law required some person to do so; that he (Smith) . . did not wish to be pestered with them; and that the slaves were to support themselves by their own labor." In October 1848, the jury found: [759] " First. That the deed from Gooch . . April 1835, was executed without a knowledge of its contents and legal effect, and that he did not intend to convey to said Smith an absolute title to the slaves mentioned therein. Secondly. That the said deed was procured for said Smith . . by fraud. Thirdly. That the said Gooch intended to emancipate the said slaves by the said deed. . . [760] in June 1852, the court made a decree emancipating the plaintiffs in the first suit, and their descendants born since the institution of the suit; and that the deed of April 21st, 1831, be set aside and canceled, as having been obtained fraudulently "

Decree reversed, and both bills dismissed: [767] " It must be conceded . . that Gooch intended to leave to his negroes his land after his death; and to allow them to live on it and enjoy the fruits of their own labor, under the supervision of Smith, who should stand as master for them, so as to prevent their being subjected to the operation of the laws with respect to residence in the state, of free negroes; . . But . . the deed was regularly acknowledged . . [768] the grantor had declared that the slaves would prefer being servants to any good man, to being sent off to a free country;" [W. Daniel, J.]

Cheshire v. Purcell, 11 Grattan 771, November 1854. The will of Francis Cannon emancipated two slaves. [772] " As in leaving a portion of my estate to my niece . . for her life, I had in view her ease and comfort, I think proper to stipulate, that in the event of any of the negroes left her becoming refractory and disobedient, . . as to make it either necessary or desirable to her to sell or exchange them . . I hereby authorize her to do so, with the consent . . of my trustees,"

Mayo v. James, 12 Grattan 17, January 1855. "In September 1853 Clinton James, a free negro, presented a petition to the judge of the Circuit court for the city of Richmond, stating that he had been unlawfully prosecuted before the mayor . . for a violation of an ordinance . . providing that 'no negro shall keep a cook-shop [18] within said city,' under the penalty of stripes, at the discretion of the mayor; and that he had been duly licensed to keep a cook-shop under the provisions of the act of assembly of April 17th, 1853,[1] . . insisting that the said ordinance is in conflict with the said act of assembly, and therefore void; . . and praying for a writ of prohibition to restrain the said mayor from holding cognizance of any such prosecution. The writ was accordingly awarded . . executed on the mayor, and returned. . . judgment for costs against the city." The mayor appealed.

Judgment reversed. [22] "Cook-shops kept by free negroes, 'being in effect taverns, negro taverns of the lowest description, and' liable to become 'sources of infinite disorder and corruption among the black population, slave as well as free,' the propriety . . of regulating, . . or wholly interdicting them in the city of Richmond, must be apparent to all. . . Stripes being the ordinary punishment inflicted by law upon a free negro for a misdemeanor, may properly be inflicted upon him for the violation of an ordinance of city police."

Adams v. Gilliam, 1 Patt. and H. 161, January 1855. Will of Absalom Flowers: "I direct that my negro man James have his choice to live with either of my children or grandchildren, whichever way he may select; but he may have the privilege to change his home, if he think proper, if not well treated, and may live where he prefers." "The negro James elected to live with the testator's daughter, Lucy, the wife to Littleton Adams, and he was delivered by the executor of Flowers, to Adams, who held possession of him as his slave for three years, when Gilliam and wife, who were distributees of Flowers' estate, filed their bill . . in which they claimed, that the testator was intestate as to the said negro James, and prayed . . a sale of the slave, for distribution of the proceeds among those entitled."

Held: the clause [166] "is inoperative and void, as a bequest of freedom to the negro man James." [164] "The sole object of the testator seems to have been . . to leave him in a condition between slavery and freedom—a condition unknown to our laws and against its policy."

Young v. Vass, 1 Patt. and H. 167, January 1855. Will of Philip E. Vass, dated August 8, 1831, and admitted to probate April 22, 1833: [168] "My wish and desire is, that my two servants Mary and Jacob, and all my interest in the undivided servants belonging to my father's estate, to be emancipated, and that the sum of two thousand dollars be appropriated out of any moneys belonging to my estate, to purchase in the State of North Carolina a tract of land not less than 250 acres nor more then 300; the said land is to be of good quality and such as will command four or five dollars per acre, and higher then five I do not wish to be paid. If

[1] Sess. Acts, p. 20, sect. 4.

there is no houses on the land sufficient for my servants to occupy, my wish and desire is for them to be builded of good oak logs, three logs above joist, with cabbin rough well covered with good slabs, and if there should be more than one house necessary, my desire is for it not to be put up nearer then two hundred yards to any other, nor further aparte then three hundred yards. My wish and desire is that my negroes be furnished with two good work horses and the necessary plantation tools to make a crop with, and two good milk cows, meat and corn for the first year, say four barrels corn each, and one hundred and fifty pounds pork, . . if either one of the servants which is emancipated by me dose become rogueish and entire neusance to this country, he, she or them shall escheat to this commonwealth and be sent from this country to the colony of Liberia; and it is moreover my wish and desire that none of the servants emancipated by me shall ever have it in their power to dispose of the said land which may be bought for them, or any other property given them by me, either by gift or any other way whatsoever, but go to them and to their familys in succession; and it is my wish, that when the servants which is liberated by me, and the increase of their bodies on the female side be extinct, that the said land and all the property which may be in their possession previous to the death of the said servants, be sold . . [169] It is my wish and desire that James Young . . do take my servants in possession so soon as it may be legal for him to do so, hire a white man workman and put my male servants with him to aid in building houses, and compleating the same for them to move into." [174] " A controversy arose whether the slaves were emancipated, which was settled by the final decree of the Circuit Superior Court . . 1841, which ascertained and decreed that the plaintiffs in that suit, to wit, Jacob, Mary, Sam, Meriwether, Patty and Matilda were emancipated. In May, 1843, James Young and five of the emancipated negroes (one of them, Sam, having died in the meantime,) exhibited their bill . . against the executor, claiming the benefit of the $2,000 appropriated to their use by the will, . . the executor filed his answer, in which he submits the question, whether, as the laws of North Carolina did not permit the settlement of the colored plaintiffs in that State, in that event they were entitled to the money aforesaid at all under the will; . . In June, 1850, the Circuit Court ' being of opinion that, as by the laws of North Carolina, emancipated negroes are not permitted to migrate into that State, the plaintiffs had no right to the said sum of $2,000,' dismissed the bill."

Decree of the circuit court reversed and the cause remanded: [I.] the provision [175] " for their removal and settlement in that State . . must be regarded as only secondary and ancillary to the other, . . although the legacy cannot be appropriated precisely in the manner directed by the will, the legatees are entitled to have it applied in the manner most beneficial to them, . . [II.] [176] the legacy should be regarded as made to a class. . . the survivors take the whole, . . [III.] the whole, with the interest accrued should be paid to . . Young . . to retain as compensation for his trouble, according to the will, the sum of $300, with its interest; that out of the residue, he pay the expenses of transporting the emancipated

negroes to such free State as they may be permitted to go to, or to the port of embarkation for the colony of Liberia, as they may elect to go to the one or the other, and divide the remainder among them." [Clopton, J.]

Doswell v. Anderson, 1 Patt. and H. 185, January 1855. [192] " there was a balance . . of $289, arising from the price of a slave embraced in the said deed of trust, who had been condemned for felony and executed. . . and Dr. George Fleming raised an account against the trust fund, for medical services rendered the trust slaves and the beneficiaries."

Graham v. Bardin, 1 Patt. and H. 206, January 1855. [208] " Winston, valued at $900, was exchanged . . for Frank, valued at $600, the defendant paying . . $300, the difference in value," [207] " shortly after . . [208] the plaintiff alleging that . . Frank was unsound, tendered him to the defendant . . with the . . $300, and demanded . . Winston, which was refused; and subsequently the plaintiff sold . . Frank "

Turner v. Campbell, 1 Patt. and H. 256, January 1855. [257] " Ragland . . 1811, executed a paper . . 'I do hereby relinquish my right to a negro girl, . . in consideration of forty-five pounds,"

Smith v. Elliott, 1 Patt. and H. 307, January 1855. [310] " Elliott had executed a bill of sale . . 1831, conveying an old negro man and a negro woman and three children, [for] . . three hundred and sixty dollars, . . [313] In . . 1848, Commissioner . . reported, that the slaves . . were worth . . 1831, the sum of $725."

Osborne v. Taylor, 12 Grattan 117, February 1855. [118] " Previous to the 2d day of February 1835, Thomas O. Taylor . . made his will, . . he directs certain of his slaves to be liberated, or at their option to remain in the state and choose masters. . . [120] I devise two slaves . . in trust, . . [121] Eighthly. The whole of my negroes not before . . devised, I now devise . . in trust, for the benefit . . of Mrs. . . Johnson, during her life, . . [At her death] it is my further will and direction that the slaves embraced in this item be emancipated, . . But should a part or the whole of my negroes prefer remaining in the state, they can do so by choosing masters to serve during the life of the person or persons chosen, at the death of whom they shall have the option of freedom or slavery, by making a second choice. . . I have been obliged to mention my negroes in families or collectively, because being unacquainted with the names of some of them, I am unable to particularize." After the death of Mrs. Johnson, her administrator [122] " stated that the slaves directly emancipated by the will of Taylor had been set free before his qualification: That those emancipated at the death of Mrs. Johnson were under his care, hired out for that year; " The court ordered him to collect their hires and to hire them out until further order. In 1851 [124] " the court held that the slaves bequeathed to Mrs. Johnson for life became entitled to their freedom at her death; and that the provision authorizing them to choose masters was void; . . a commissioner made reports as to the hires of the slaves since they had been under the control of the court." They amounted to $700 in 1851, and $792.74 in 1852. In 1853 the court decreed that the administrator should [125] " cause them to be registered as free in the

court of Powhatan county, and to be furnished with certificates thereof:" He was "authorized to divide the money [for their hire] deposited in the bank equally among the said negroes; and that the amount in the hands of the plaintiff, after defraying some charges mentioned in the decree, should be paid to those of the negroes who had earned it: such payments to be made when they respectively received their certificates of registry." The next of kin appealed.

Decree affirmed. [129] "all the slaves in being at Mrs. Johnson's death, belonging to Taylor's estate, are emancipated by his will. . . [131] no cause had existed which should have prevented the administrator from setting the slaves at liberty upon the death of Mrs. Johnson. . . To give the freedmen their hires accrued after they should have enjoyed their freedom will be clearly within the testator's meaning. By giving them freedom he gave the right to enjoy the fruits of their own labor. The court, by giving them the hires under its control will, to that extent, give effect to the will." [Samuels, J.]

Harvey v. Epes, 12 Grattan 153, February 1855. In 1849 the contractors on the Richmond and Danville railroad hired of Mrs. Epes [156] "three negro slaves . . to work on the . . railroad, for the present year. Said slaves to be returned at Christmas next, well clothed with the customary clothing, and furnished with a hat and blanket, subject however to the deduction of any extra clothing charged by the contractors, and also the doctor's bill, at three dollars each." A witness testified [155] "that they were to be worked only in the county of Amelia, and were to be attended by Dr. Cheatham, a physician residing in said county. . . [158] two of said slaves died during the year, while at work in Chesterfield . . one a very likely man, about thirty-five years old, and the other a likely boy, about eighteen." The slaves were attended by Dr. Ball. [160] "they died of pneumonia, a disease which was very prevalent at the time throughout the county; and that all necessary and proper comforts were provided for the said slaves. . . [165] verdict and judgment for the plaintiff [Mrs. Epes] for twelve hundred dollars:"

Judgment reversed. New trial.

Wood v. Humphreys, 12 Grattan 333, May 1855. "Joseph Pierce . . died in 1798, leaving a will, . . By one clause of his will he gave a negro woman and her four children to one of his daughters. In another clause he says he has set at liberty five negroes whom he names, and he wishes that they shall continue so. He then names five other negroes, who he says he cannot think of leaving slaves for life; and therefore they are to be at liberty at the end of five years. The testator then names separately eighteen other slaves, and directs that each of them shall be freed after a certain number of years. One of these is a woman named Nancy who is to be freed at the end of twenty years. The next clause of the will says: 'It is my further desire, that if any of the above named female negroes mentioned in this my last will, shall have children while they continue in servitude, it is my will that the children shall serve until they shall become of the age of thirty-one years, and no longer; and so on until they shall all become free.' The woman Nancy before the twenty years had expired,

became the mother of a female child named Julianna; and Julianna before she reached the age of thirty-one years, became the mother of Frances Wood, who after she had attained the age of thirty-one instituted proceedings in the Circuit court . . [334] for the recovery of her freedom, against John Humphreys who held her claiming her as his slave for her life. Upon the trial the foregoing facts were found by the jury in a special verdict; upon which the court gave judgment for the defendant: And upon the application of the plaintiff this court allowed her a *supersedeas.*"

Judgment reversed: [338] "He wished 'all' to become free; thus using that comprehensive word which has been so often held to embrace future increase, and to take a case out of the operation of the principle of Maria *v.* Surbaugh.[1] . . [339] the only question is, whether the authority [to emancipate slaves *in futuro*] was subject to any limitation as to the period when the gift was to take effect; . . if there was a limitation, it resulted from the rule of law in regard to perpetuities. . . In Pleasants *v.* Pleasants,[2] . . it was held [3] that the rule does not apply to a case of emancipation, . . There is a manifest difference between a gift of freedom and a gift of property. . . [340] the rule . . [341] may not be applicable to a gift of freedom, which is a renunciation of property. . . The case has never been overruled . . the doctrine of that case remains untouched by legislation; . . [342] I am therefore of opinion that Pleasants *v.* Pleasants ought to govern this case." [Moncure, J.] [362] "Lee and Samuels, Js. concurred in the opinion of Moncure, J."

Taylor v. Cullins, 12 Grattan 394, May 1855. Will of John Cullins, 1833: "it is my desire, that at the death of my daughters Henley and Polly, that the following slaves shall be set free: Nancy, Jane, Sally, Judith and America. And whatever property there may be left at the death of my daughters Henley and Polly, it is my wish and desire that it may be equally divided between the above named slaves." The testator [295] "provides that if one of his said daughters marries, the other shall have the property; and if both marry, that the said slaves shall be set free: And he gives them the property upon this event as upon the death of the daughters. Neither . . married, and Henley survived Polly." In 1846 she conveyed all her property to Taylor. In her lifetime the slave Nancy died, leaving a child named Martha. "In 1850 the surviving slaves mentioned in the will of Cullins, filed a bill . . setting out the will, the death of Henley Cullins, and of Nancy, and that Martha was in the possession of Taylor who was about to sell her; and claiming that she was a part of John Cullins' estate which was bequeathed to them; and asking for an injunction to restrain the sale, and that she . . might be delivered to them."

Bill dismissed: [398] "Martha having been born during the servitude of her mother Nancy, was consequently born a slave." [4] According to

[1] P. 138, *supra.*

[2] P. 105, *supra.*

[3] "Two only of the three [judges] concurred in the decision; and it is therefore not, in itself, a binding authority."

[4] Maria *v.* Surbaugh, p. 138, *supra.*

the act of assembly, March 15, 1832, sect. 3, [399] " Nancy, the mother of Martha, was the only one of the legatees in remainder who . . could, under the exception in the statute, have acquired any title to Martha . . As she died in the lifetime of Henley Cullins, it is obvious that the other freedwomen have no legal . . interest in the title to Martha." [W. Daniel, J.]

Nixon v. Rose, 12 Grattan 425, May 1855. [426] " previous to 1848 Lewis had been in possession of the slave . . for five years, under an agreement . . to pay . . fifty dollars a year hire for him; . . about February 1848, . . [427] he . . took him to Richmond and sold him . . for . . about five hundred and sixty dollars."

Johnson v. Commonwealth; *Gary v. same*; *Pankey v. same*, 12 Grattan 714, May 1855. " presentments found against the several plaintiffs in error for selling ardent spirits to different slaves of . . Johnson, without the written consent of the master. . . [715] the plaintiffs in error . . produced a writing, proved to have been executed and delivered to them by the owner of the slaves, authorizing them to sell to his slaves, . . merchandise or liquor, upon the responsibility of the slaves purchasing." [714] " the court . . rendered judgment in each case for twenty dollars, the fine imposed by law," [1]

Judgment reversed: [716] " no offense was committed;" [715] " There is nothing in the terms of the act which requires a special written consent for each act of selling."

Unis v. Charlton, 12 Grattan 484, August 1855. [485] " These cases were before the court in 1847,[2] . . They are four actions for freedom brought in 1826, in the Circuit court . . All the paupers were descendants of a woman named Flora, who, they alleged, was a freewoman in Connecticut, and abducted from thence with her two infant children; and that they had been brought into Virginia, without the oath being taken by the claimant of them which was then required by the statute. . . There were many trials of the cases;" Henry Carty [486] " said that old Flora . . had told him at different times that if she had her just rights she would be a freewoman; and she at the same time wanted him to write her a letter to send back where she came from, to obtain information from the people concerning her freedom. That Squire Howard, who is dead, told the witness that Flora had applied to him as a magistrate concerning her freedom. And that James Charlton was a man of severe temper, and likely to keep his slaves in subjection. . . [487] it did appear that her application to the justice Howard was not made within twenty years after she was brought to Virginia. . . Flora and her two children were brought from New York to Virginia by . . Simpkins; and that they had been sold by Simpkins to James Charlton," [492] " It appears from Carter's statement that Charlton had purchased Flora . . at least forty-five years before the date of his deposition; and he no where fixes the date of the loose declarations of Flora, that ' if she had her just rights, she would be a freewoman.' "

[1] Code, ch. 104, sect. 1, p. 459.
[2] See Charlton *v.* Unis, p. 212, *supra*.

Judgments for the defendants affirmed: "it has been settled that twenty years' possession, by the master, of slaves thus brought into the state, without any claim of freedom on the part of the slaves, justifies the presumption that the master had duly taken the oath required by law. . . These declarations . . may have been made long after the presumption had attached; and were therefore plainly inadmissible as testimony for any purpose. The opinion of the witness in respect to the temper and character of Charlton as a master, was, I think, equally inadmissible." [W. Daniel, J.]

Ratcliff v. Polly, 12 Grattan 528, September 1855. "By a petition bearing date the 10th of March 1851, Harrison Polly, and three others, his brother and two sisters, applied to . . a justice of the peace for Cabell county, stating that they were free persons of color, and were then in the possession of William Ratcliff, who held them as slaves: And they prayed that a summons might issue authorizing the sheriff of Cabell to take them into his possession for safe keeping, . . [529] with leave for the petitioners to sue for their freedom. This petition was sworn to on the 12th of March by L. D. Walton; and on the same day the justice issued his warrant to the Sheriff of Cabell county, directing him to take possession of the petitioners, . . and he was required to give to William Ratcliff notice of the detention and the cause thereof." The petitioners had obtained a writ of *habeas corpus* (dated March 8, 1851) [530] "directed to William Ratcliff, requiring him to have the plaintiffs before the judge of the Circuit court of Cabell county, . . on the 12th day of" March. On that day "Ratcliff produced the plaintiffs before the judge as directed," having brought them from his residence in Wayne county. [529] "On the same day the sheriff took possession of the petitioners, but surrendered them to William Ratcliff, upon his executing a bond with sureties . . to have them forthcoming on the first day of the next term of the said Circuit court. . . [530] The cause came on for trial in September 1854, . . verdict and judgment for the plaintiffs establishing their freedom;"

Judgment reversed and suit dismissed: [534] "the courts of Cabell county had no right to take jurisdiction of the case. . . [536] in presenting the petition for a *habeas corpus* the complainants did not, *bona fide*, seek to resort to it as a proper method of trying the right to freedom, (an office which, in such a case, it could not properly perform,) but that they took this course as a device by which they might be enabled to shift the scene of the trial of the regular suit they designed bringing, from the county of Wayne to the county of Cabell." [W. Daniel, J.]

Armstrong v. Walkup, 12 Grattan 608, September 1855. [609] "Armstrong's white family, besides his [three] wards, consisted only of himself and wife; and that he had a negro woman with three or four children, some of them females about the age of the wards, and able to work;"

Held: [613] "no charge should be allowed to the several wards for services . . the condition of the guardian's family did not require the services of these hired girls in its domestic affairs,"

Chapman v. Campbell, 13 Grattan 105, February 1856. [106] "That at a County court . . 1851, a slave, owned by a Mr. Barbee, was tried

for larceny, and found guilty, and the judgment of the court was that he should have ten stripes, lightly laid on. That thereafter, a slave named Gilbert, the property of the plaintiff, was tried as accessory, and found guilty; and before the court pronounced any judgment, the counsel for the slave applied to the court not to inflict a heavier punishment on the accessory than had been inflicted on the principal. To which the court replied, that the slave (the principal) had been sold and was to be taken from the commonwealth, and that fact was the inducement to the infliction of so light a punishment. The plaintiff, an old lady, the owner of the slave Gilbert, who was in court, was then applied to, to know if she would sell her slave, to which she assented, and authorized J. Y. Menefee to sell him. The defendant . . enquired what price she would take for the slave. To which her agent replied, that she would take eight hundred dollars. The defendant then replied, I will give it. The agent replied, the negro then is yours. To which the defendant replied, well, I will take him. The court then remanded the slave to jail, without passing sentence on him; . . [107] the defendant applied to the court to have the slave Gilbert confined in an apartment separate from the slave who was the principal in the larceny, and who was still confined in jail for safe keeping by his purchaser. And it was also proved that Barbee, the former owner of the slave, who was the principal, made a similar request, for the reason that the slaves were hostile, and might injure each other. Which order was given by the court to the jailor, and the slaves were accordingly confined in separate apartments. It was also proved that the defendant applied to the jailor, after the negro Gilbert was remanded to jail, to know whether there was any thing in the jail with which the negro could inflict an injury on himself; the witness proving that the defendant seemed to be apprehensive that the man might do some violence to himself. . . [108] the slave broke jail that night, and made his escape,"

Held: the purchaser is bound for the price.

Raines v. Barker, 13 Grattan 128, February 1856. John Barker, who died in 1852, made his will in 1842: [129] "My will is . . that my executor sell the land whereon I now reside, . . also a tract . . containing, I think, one hundred and sixty-three acres; also ten shares . . and two shares . . with all my household and kitchen furniture, all my stocks of all kind, plantation tools and implements, with every article of property belonging to me, except the wearing apparel that may be in the house at the time of my death; that I wish divided among the servants belonging to the estate." He directs "that the people may be continued on the plantation until the money from the sale can be collected. And when there is money enough collected to purchase what may be necessary to fit them out for the trip, and to pay their passage there, he directs his executor to send them to Africa, after furnishing them plentifully with everything which is necessary for their comfort and convenience. He then gives to his nephew . . five hundred dollars; and 'the balance of' his 'estate, after paying all expenses,' he wished 'to go to furnish them in a situation to live.' . . [130] the land in controversy, about two hundred acres, was, purchased in March 1849;"

Held: [135] "the words 'the balance of my estate,' if held as intended to embrace lands at all, must . . be referred to the balance of the testator's lands which he owned at the date of the will."

Taylor v. Yarbrough, 13 Grattan 183, March 1856. "By deed . . 1823, . . Taylor . . conveyed to his daughter Patty Deshazor four certain young negroes . . children of Nelly, and Rachel and Jenny, together with all the future increase of the said three women . . And the deed recites that he had lent the three women . . to Mrs. Deshazor for her life. . . [184] John Deshazor, the husband . . was alive, and the slaves went into his possession," After his death, in 1825, commissioners distributed his personal estate, "giving to the widow one-third of the four young negroes during her life, and the remaining two-thirds thereof" to John Deshazor's only child by a former marriage, [185] "leaving undivided and in the possession of the widow, the three women aforesaid, where they and their numerous increase born since the date of the deed, had ever since remained, except Nelly who was dead."

Held: [189] "the deed from Taylor . . was effectual to pass such increase . . being the absolute owner of the reversion of these slaves after the . . life estate granted to his daughter, their capabilities of increase also belonged to him, and he might grant such increase . . as the children were born they would vest in the donee . . [190] the property in the slaves born during the lifetime of John Deshazor vested in him. But as to those born after his death . . [194] [they] were the property of Mrs. Deshazor,"

Daniel v. Leitch, 13 Grattan 195, March 1856. The widow of John Daniel [197] "stated, that among the slaves belonging to the estate, there were some family servants who were very valuable, and from their good qualities and long association and early attachments, were of peculiar value to herself and her children: And that if the property left to them after the payment of the debts should be in slaves instead of land, it would be more agreeable to their feelings and more conducive to their pecuniary interests. . . [199] the court . . decreed [1851] that the [land] . . should be sold . . [205] The report of the commissioner . . 1853, . . The personal assets . . consisting, except as to five hundred dollars, wholly of slaves, were valued at thirteen thousand five hundred dollars;"

The court decreed that two tracts of land should be sold [206] "investing the proceeds of sale, so far as the same might not be required in aid of the personalty, for the payment of debts, in the slaves left by . . John Daniel,"

Hepburn v. Dundas, 13 Grattan 219, March 1856. Action of "ejectment . . 1848, by the lessee of Moses Hepburn and Arthur Waring and Julianna his wife, persons of color, against . . Dundas and others claiming as heirs at law of William Hepburn deceased, to recover a tenement in the city of Alexandria. . . Moses and Julianna claimed as the brother and sister of Letty,[1] . . [220] to whom the property was devised by William Hepburn." Letty had possession of the property from Hepburn's

[1] "sometimes called Letitia Hepburn, a woman of color, and a bastard."

death in 1817 "until her own death in 1823 or 1824, after having had living issue, which died in her lifetime. That Letty's mother being dead, Moses and Julianna . . [221] are the bastard brother and sister of Letty, and the only surviving issue of Letty's mother." The husband of Letty died in 1834. "Letty, Moses and Julianna . . were the children of Esther,[1] a slave . . of William Hepburn," who, on February 1, 1816, conveyed them to Hannah Jackson, a woman of color, the sister of Esther. "That Hannah Jackson executed a deed of emancipation, dated February 12, 1816, in due form of law, whereby she set free Esther and her children, if she had capacity in law to acquire and manumit slaves. In regard to this question of capacity, it appears that Hannah Jackson had been the slave of one John Harper. That Harper, on the 23d of October 1810, in consideration of one hundred and ninety-six dollars, sold and by deed conveyed Hannah to one William Goddard for the term of ten years, and no more; and at the end of that time, set her free; and also set free any child or children of Hannah, born during her servitude. This deed was executed in form to operate as a deed of prospective emancipation. On the 24th of October 1810, Goddard executed a deed of emancipation, setting Hannah free whenever payment of the said sum of one hundred and ninety-six dollars, and the interest thereon, should be made; and providing that the receipt in full for the payment should be taken and admitted as complete testimony of such discharge. These deeds were duly recorded December 2d, 1811. It is shown by the evidence that Hannah Jackson acted as a free woman in buying and holding property."

Held: [222] "There is no force . . in the objection that the payment of the hundred and ninety-six dollars and its interest could be proved only by Goddard's receipt. The deeds of emancipation and registry thereof, and the *fact of payment*, completed the manumission; and the payment is sufficiently shown by the circumstances above stated, which occurred soon after the date of Goddard's deed. The provision in regard to the receipt was intended for the benefit of the freed woman; to give it a weight and force beyond that usually given to a mere receipt; to make it complete testimony. I am of opinion that Hannah Jackson was a free woman on the 1st of February 1816; that Hepburn's conveyance of that date passed to her his title to Esther and her children; and that her deed of the 12th February 1816 was effectual to emancipate them. . . [226] Moses and Julianna succeeded to the estate of Letty." [Samuels, J.]

Hooe v. Hooe, 13 Grattan 245, March 1856. [249] "the testator owned slaves, thirty-one in number and valued at the aggregate sum of ten thousand two hundred and ninety-five dollars,"

Summers v. Bean, 13 Grattan 404, August 1856. In 1851 [405] "Mrs. Summers and Mordecai Summers . . bound themselves to secure to Bean the services of Caroline, a negro girl about twelve years of age, and McKendry, a black boy . . [406] the services of which two slaves . . Bean was to have during the life of Mrs. Summers." The slaves were "afterwards taken possession of by Mordecai Summers; . . Bean filed his

[1] See Cooper *v.* Hepburn, p. 251, *infra.*

bill . . prayed that the defendants might be compelled to execute specifically their covenant, by delivering to him the said two slaves. . . [407] the court held that the plaintiff was entitled to a specific execution of the contract"

Decree affirmed: [412] "Slaves are not only property but rational beings; and are usually acquired with reference to their moral and intellectual qualities. . . [413] if it appear that the slaves were purchased as merchandise, without reference to their peculiar value to the purchaser, or that the plaintiff is a mere mortgagee or other incumbrancer: in which case, as the slaves are to be sold at all events, damages at law . . would be adequate compensation. . . [418] A purchaser of slaves for his own use . . generally buys such only as will suit him. . . peculiar value . . will . . be presumed. . . it may be laid down as a general rule, that a court of equity has jurisdiction to enforce the specific execution of a contract for the sale or delivery of slaves, though it be neither alleged in the bill nor proved that they have any peculiar value." [Moncure, J.]

Roberts v. Kelly, 2 Patt. and H. 396, January 1857. The plaintiff charged that Kelly, in 1843, caused the slaves [398] "to be taken away from Roberts . . fraudulently and clandestinely in the night time," The defendant averred that [401] "they left Roberts and came to his residence, in obedience to orders that he had given them, in consequence of rumors that he had heard that Roberts and his sons intended to run them off to Richmond and sell them;"

Bailey v. Poindexter, 14 Grattan 132, February 1858. Will of John L. Poindexter, who died in 1835: [133] "He . . charged her [his wife] with hiring out his servant Aaron to whomsoever he might choose to live with, and to pay him at the end of every year all the money arising from his hire." "The negroes loaned my wife, at her death I wish to have their choice of being emancipated or sold publicly. If they prefer being emancipated, it is my wish that they be hired out until a sufficient sum is raised to defray their expenses to a land where they can enjoy their freedom; . . If they prefer being sold and remaining here in slavery, it is my wish they be sold publicly, . . If any of the servants loaned my wife should be refractory or hard to manage, I wish my executor to dispose of such at public sale," Codicil added the same day: "I wish it understood that in the event of my negroes loaned to my wife being emancipated at her death, . . [134] that my nephew . . shall pay the sum of one thousand dollars, to be equally divided between them; and that I give him my plantation of Cedar Lane on that condition." The executor delivered to the widow "twenty slaves, of whom several had died, and, between the death of the testator and that of the widow, thirteen slaves had been born." In 1855 the lower court held "that the negroes whereof the testator died possessed, were by the terms of the emancipating clause in his will contained, absolutely free at the death of the life tenant, and that it was not proper or necessary to put said slaves to their election. And also that the issue of the females born after his death and in the lifetime of his widow, were also free at the death of the life tenant, said issue being embraced by the general terms of the emancipating clause of said will." The defendants, the heirs and devisees of Poindexter, appealed.

Judgment reversed: [200] "the provisions of the will respecting the manumission of the slaves, are not such as are authorized by law and are void," [197] "nothing short of the exhibition of a positive enactment, or of legal decisions having equal force, can demonstrate the capacity of a slave to exercise an election in respect to his manumission. . . [198] the master . . cannot impart to his slaves, as such, for any period, the rights of freedmen." [W. Daniel, J.]

Moncure, J. dissented:[1] [201] "A master may emancipate his slaves against their consent. Why may he not make such consent the condition of emancipation? . . [205] It is as competent for a slave emancipated on condition that he elects to be free, to make such election, as it is for a slave absolutely emancipated to propound the deed or will for probate, appeal from the sentence, or sue for his freedom. Such right of election is incident, as such remedies are incident, to the legal capacity of the slave to receive his freedom." [213] "Allen, P. and Lee, J. concurred in the opinion of Daniel, J. Samuel, J. concurred in the opinion of Moncure, J."

Andrews v. Avory, 14 Grattan 229, February 1858. The administrator [230] "paid all the debts . . which was effected without the sale of his slaves. . . from the number of distributees and number of slaves, it was impossible to divide the latter, . . [231] the court made a decree . . commissioner . . was directed to sell the slaves to the highest bidder, . . and after defraying the expenses . . divide the balance"

Dunlop v. Harrison, 14 Grattan 251, February 1858. Bill filed by the heirs and next of kin of Nathaniel Harrison, seeking to set aside certain provisions of his will. Harrison died unmarried in 1852. By his will [252] "he gives to Frankey Miles, to Ann Maria Jackson and Laurena Anderson, each, a tract of land by metes and bounds; and . . a tract of land to Edwin Harrison's four youngest children, then in being, and any others that might be born after the date of his will. By the sixth clause of his will he gives to his executors in trust for the support and maintenance of Edwin Harrison's four youngest children, or any other after-born child of his, the sum of one hundred dollars for each child; and if the legislature should pass a law requiring said children to leave the state, he directs his executors to pay each of said children one hundred dollars. By the seventh clause he directs his executors to pay Frankey Miles six hundred dollars a year as an annuity during her life; and by the eighth and ninth clauses he directs his executors to pay to Laurena Anderson and Ann Maria Jackson each the sum of two hundred and fifty dollars a year during their lives: and if they should be required to leave the state, the executors were to pay each of them two hundred and fifty dollars in lieu of said annuity. By the tenth clause he gives to these three women all his household and kitchen furniture, to be equally divided among them. The eleventh clause of the will, which was the great subject of controversy, is in these words: 'Item 11th. It is my will and desire that my executors hold all the residue of my estate, as trustees, for the support and maintenance of Frankey Miles, Laurena Anderson and Ann Maria Jackson, and the children of

[1] See Williamson *v.* Coalter, p. 247, *infra*.

Ann Maria and Laurena, free from all debts and liabilities of the husbands of said Ann Maria and Laurena; and in the event of their being required to leave the state, I desire the said residue of my estate to be equally divided amongst Frankey Miles, Laurena Anderson and Ann Maria Jackson. And should it be necessary in carrying out this clause of my will, to sell my slaves, I desire my executors to sell them privately or publicly, as may seem to them best, selecting them good homes and good masters.' The estate of the testator consisted of about twenty-five hundred acres of land, eighty-four slaves, the usual amount of stock, crops and perishable property found on estates of that size, and about eighteen thousand dollars in money and bonds. He owed about from three to five thousand dollars; and as executor of his brother he was indebted to his testator's estate from eight to ten thousand dollars. Of the devisees and legatees Frankey Miles was a free woman of color, Laurena Anderson and Ann Maria Jackson were her daughters, and the others were her grand children by one of her sons. Laurena Anderson and Ann Maria Jackson were the reputed children of the testator; and the slaves disposed of in the eleventh clause of the will were neither husbands, wives or parents of the said legatees. The cause came on to be heard on the 5th of April 1855, when the court dismissed the bill with costs. Whereupon the plaintiffs applied to this court for an appeal, which was allowed."

Decree affirmed. [259] "although the legatees because of their status could not take the slaves [1] either directly or by means of a trust, there is nothing in the law or its policy to forbid their taking their value in money." [256] "no right of election to take it in any other [form] can be cast upon them. . . [264] It is the duty of the executors . . to sell the slaves at once . . [266] the residuary devise in the will was good to pass to the legatees the proceeds of the sale of the slaves after providing . . for the debts due and the annuities previously given. . . [267] the whole is intended to be given to the legatees." [Lee, J.]

Southall v. Taylor, 14 Grattan 269, March 1858. Will of Taylor, 1848, "directed that all his property real and personal, except his slaves, should be sold,"

Hunter v. Humphreys, 14 Grattan 287, April 1858. Will of Mary Green Hardy, dated 1829, [288] "emancipated certain slaves by name and the children of one of them, at her death." "I give and bequeath unto my brother Basil Hatton, during his life, all the rest of my slaves; and at his death, those above the age of fifteen years to be immediately free and fully emancipated, and those under the age of fifteen years to be bound out in . . Maryland, or in the district of Columbia, until they shall arrive at the age of eighteen years, when they and their increase shall be free and fully emancipated." Among the slaves "embraced in the residuary bequest . . was a woman named Marietta, of whom the petitioner Harriet was born about the year 1836, . . Hatton died in August 1840, . . Hunter [Hatton's administrator] took the petitioner into his possession" Her petition for leave to sue for her freedom was filed in 1857.

[1] Code, ch. 103, sect. 4, p. 458.

Judgment for the petitioner, affirmed: [297] "The law of Maryland,[1] and the principle established in Virginia in Maria *v.* Surbaugh,[2] equally recognize the right of the testator to . . determine the . . condition of such issue born during the existence of the particular estate . . [301] the testatrix intended to embrace all living at the termination of the particular estate, the increase as well as the mothers," [Allen, P.]

Barksdale v. Finney, 14 Grattan 338, April 1858. In 1837 [339] "John Heath purchased slaves amounting to eleven thousand three hundred and forty-five dollars. These slaves . . were purchased for the Black Heath company of colliers,"

Reid v. Blackstone, 14 Grattan 363, May 1858. "An action at law for freedom." Will of P. J. Reid, dated 1851: [364] "I will and bequeath to my nephew John Reid of Pittsburg all that I die possessed of, land, negroes, . . N.B. I wish you to take the negroes to Penn'a, where they will be free." Reid died in 1852. Joseph Blackstone and two others brought a suit for freedom against his administrator *de bonis non* with the will annexed.

Judgment for the plaintiffs reversed: [365] "They cannot recover their freedom of the personal representative in an action at law, without proving his assent to their emancipation. . . If he improperly withhold his assent, . . they . . may obtain relief by a suit in equity."

Williamson v. Coalter, 14 Grattan 394, May 1858. Will of Mrs. Hannah H. Coalter, dated 1857: "Fourth. I hereby manumit my faithful servant Charles, and direct my executors to provide him with a fund sufficient to take him to such state or country as he may elect to live in, and pay to him an annuity of one hundred dollars during his life. Fifth. I direct in regard to the balance of my negroes, that they shall be manumitted on the 1st day of January 1858. And I authorize and request my said executors to ascertain what fund will be sufficient to provide the usual outfit for, and to remove, said negroes to Liberia. And I hereby direct my executors to raise said fund, or such an amount as in their judgment may be sufficient for that purpose from my said estate, and to use the said fund in removing and settling my said servants in Liberia, or any other free state or country in which they may elect to live, the adults selecting for themselves, and the parents for the infant children; and I further direct that if any of my said servants shall prefer to remain in Virginia, instead of accepting the foregoing provisions, it is my desire that they shall be permitted by my executors to select among my relations their respective owners; said election to be made by the adults and parents as aforesaid."

The slaves [395] "embraced in the fifth clause of the will were ninety-three in number. Some of these negroes were old; and many of them, consisting of families composed of a mother and six, seven or eight infant children, and one an orphan, were chargeable. Mrs. Coalter's estate, exclusive of her slaves, was estimated to be worth from fifteen to twenty

[1] Act of 1809, ch. 171, sect. 2.
[2] P. 138, *supra*.

thousand dollars; and was ample to carry out the provisions of her will in regard to the removal and settlement of her negroes in Liberia or a free state." The lower court held that the negroes "were emancipated by the will, unless they declined to accept its provisions, and chose to remain slaves: And that this condition of freedom was independent altogether of the removal of said negroes from Virginia, said removal being a condition subsequent to said emancipation."

Decree reversed. Allen, P.: [398] "Manumission . . is the exercise of a power conferred on the owner by the law, with which the slave has nothing to do. . . The intention of the owner to sever all connection between the slave and himself or his estate, must be apparent on the face of the will. . . [407] I think that the operation of this will as an instrument of emancipation, as in the case of Bailey *v.* Poindexter,[1] is made to depend on the choice of the slaves, and therefore that the provisions of the will giving such option are void:" [421] "Daniel and Lee, Js. concurred." Moncure, J. dissented: "the negroes in this case are entitled to their freedom, even conceding that the case of Bailey *v.* Poindexter was rightly decided. I must say, however, that for reasons assigned in my dissenting opinion in that case, I still think it was not rightly decided; and I would now be willing to overrule it, if it were like this case. *Stare decisis,* I know, is a rule of the first importance. But the case itself, in my judgment, does so much violence to the rule, that it would be more vindicated by overruling than by adhering to the case." Samuels, J. concurred with Moncure, J.

Sherman v. Commonwealth, 14 Grattan 677, May 1858. "Sherman was indicted, tried and convicted . . for a felony in advising a slave to abscond from his master; and he was sentenced to six years' imprisonment in the penitentiary."

Craig v. Walthall, 14 Grattan 518, August 1858. [520] "The slaves were only six in number, and three of them were so old as to be an expense."

Monteith v. Commonwealth, 15 Grattan 172, May 1859. "a motion . . against . . sheriff . . for the recovery of a balance of the . . [173] free negro taxes of 1857,"

U. S. v. Amy, 24 Fed. Cas. 792 (4 Quart. Law J. 163), May 1859. [793] "The slave Amy, the property of . . Hairston, of . . Virginia, was indicted for stealing a letter from the mail at Union Furnace post-office . . under section 22 of the act of congress passed March 3, 1825,[2] which provides that, 'if any person shall steal a letter from the mail, the offender shall, upon conviction, be imprisoned not less than two nor more than ten years.' . . the point being suggested by the defendant's counsel that a slave is not a 'person' amenable to the act, his honor [Halyburton, J.] said the point was one of great novelty and importance, and that, as the chief justice [Taney] was shortly expected, it must be adjourned for argument . . until his arrival. . . The slave was convicted upon the evi-

[1] See p. 243, *supra.*
[2] 4 Stat. 108.

dence, and . . on the arrival of the chief justice, the motion for a new trial on the reserved point was argued before the two judges." John Howard, counsel for the owner of Amy, argued [pp. 793-809]: I. that a slave is not a [793] " legal 'person,' and is not within the meaning of the act," citing the case of Dred Scott *v.* Sandford;[1] II. " If, however, they were intended to be so included, then the act was unconstitutional . . as to them. The principles recognized and established by the supreme court of the United States in Dred Scott *v.* Sandford clearly apply to this case." [805] " 1. Congress has no constitutional authority to treat a slave as a freeman or civil person; . . 2. The federal government has no constitutional authority to punish slaves at all. . . [806] 3. This act is unconstitutional, if it includes slaves, because it makes no compensation to the owner for property taken for the public use." [795] " John M. Gregory, Dist. Atty., . . resisted the motion for a new trial. . . The constitution of the United States recognizes slaves as persons, . . They are recognized as persons in every state in the Union, . . I cannot prove more plainly that the prisoner is a person, a natural person, at least, than to ask your honors to look at her. There she is."

Motion for a new trial overruled: [809] " It is true that a slave is the property of the master, and his right of property is . . secured by the constitution and laws of the United States; and it is equally true that he is not a citizen, . . Yet, he is a person, and is always . . described as such in the . . public acts of the United States. . . [810] It is true that no compensation is provided for the master for the loss of service during the period of imprisonment. But the clause in the 5th amendment of the constitution which declares that private property shall not be taken for public use without just compensation cannot, upon any fair interpretation, apply to the case of a slave who is punished in his own person for an offence committed by him, although the punishment may incidentally affect the property of another to whom he belongs. . . A person, whether free or slave, is not taken for public use when he is punished for an offense against the law. . . and the loss which the master sustains in his property is incidental, and necessarily arises from its two fold character, since the slave, as a person, may commit offences which society has a right to punish for its own safety, although the punishment may render the property of the master of little or no value. But this hazard is invariably and inseparably associated with this description of property, and it can furnish no reason why a slave, like any other person, should not be punished by the United States for offences against its laws, passed within the scope of its delegated authority." [Taney, C. J.]

Shue v. Turk, 15 Grattan 256, August 1859. " In July 1859 John Shue, a man of color, applied . . for a writ of *habeas corpus*, alleging that he was a freeman, and had been levied on as the property of Abraham Hanna, . . [257] Hanna . . stated—That Shue the petitioner, was formerly owned by a gentleman named Dismuth, living in Eastern Virginia, but had been hired out for twenty years in Augusta. That about three years since he had received several letters from Dismuth proposing to sell Shue

[1] 19 Howard 407 *et seq.*

to the witness, and proposing to take three hundred dollars for him, provided witness would agree to allow Shue to pay off the amount of the purchase money by his earnings and hire, and that when so repaid, witness would emancipate him. That witness did purchase him on these terms, at the price of three hundred and fifty dollars, Shue being then worth double the money, and that witness had paid the price. That Dismuth by his agent Hoard gave witness a bill of sale for Shue; and at the same time witness, according to his impression, executed and delivered a contract in writing, wherein was set forth the fact and terms of the contract, viz: that witness had received the bill of sale for Shue, with the understanding and agreement that when Shue's wages and earnings should amount to a sum equal to three hundred and fifty dollars, paid by him to Dismuth, the witness bound himself to emancipate said slave. Where that contract then was, he did not know. Witness regarded himself as the fee simple holder of the legal title of the petitioner, only for the purpose of securing the amount paid by him, and in conscience and morality bound to emancipate him upon being repaid his advances; but did not consider himself as bound to account to the petitioner or his former master. That the object of the arrangement on the part both of himself and Dismuth, was to afford the petitioner an opportunity to refund to witness the amount he advanced; and thus to procure his emancipation. That witness gave public notice of this arrangement soon after it was made, and that all contracts for the services of petitioner were to be made with witness; which was invariably done. That witness's son kept a regular account of the expenses of witness for the maintenance of the petitioner, and of the proceeds of his work; and in the month of March last it appeared from said account the witness had been repaid the amount advanced by him, with the exception of about twenty-one to twenty-five dollars. That with a view and for the purpose of fulfilling his contract with Dismuth, he made a bill of sale for the petitioner to William A. Marshall, then on a visit to his son in law in the county of Rockingham, but a resident of the state of Ohio, and Marshall paid to him the amount still due, and undertook, when that amount was repaid to him, to emancipate the petitioner. The bill of sale from Hanna to Marshall bears date on the 26th of March 1859, and purports to be in consideration of three hundred and fifty dollars. By a deed bearing date the 19th of May 1859, Marshall emancipated Shue, stating the consideration to be motives of benevolence and three hundred and fifty dollars. This deed was admitted to record on the same day in the clerk's office of the County court of Rockingham. And in pursuance of an order of the County court of Rockingham, made on the 20th day of June 1859, the petitioner was on the 22d of the same month registered as a free negro in the clerk's office of that court. . . [259] The execution under which the petitioner Shue was levied on, was issued on a judgment recovered on a note . . dated the 26th of March 1857, and payable two years after date, on which Hanna was the third accommodation endorser. The levy was made at the instance of Joseph F. Hottle, a subsequent endorser on the same note, who Hanna stated was informed of the arrange-

ment between Dismuth and himself very soon after it was made. The judge dismissed the writ, and remanded Shue to the custody of the sheriff."

Decree reversed: [267] "this contract is not void as being against public policy;" [268] "the emancipation was effectual to exempt the petitioner from all liability for the debt, the execution for which has been levied upon him; and that he ought to have been discharged from custody." [Robertson, J.]

Fulton v. Gracey, 15 Grattan 314, September 1859. [315] "This was a suit for freedom, brought under the Code, ch. 106, p. 464, by Gracey and her nine children, against John A. Dice and Thomas Fulton, executors of James Fulton deceased. Verdict and judgment were rendered for the plaintiffs." In 1805 Thomas Richards of Alexandria, D. C., "sold and conveyed to George Bolling and Elizabeth his wife a female negro named Nan for the term of twelve years from the date of the deed, and any children she might have before the expiration of the said term, to serve, each and every of them, till they should arrive at the age of twenty-eight years; and after expiration of the said term of twelve years the said Nan to be discharged from all further service; and each of her said children, upon arriving at the age of twenty-eight years, in like manner to be discharged from all further service. By successive assignments endorsed on the said deed, the interest thereby conveyed was assigned by said Bolling and wife to Thomas Hord, jr. on the 25th of January 1806; by Hord to James Sarkins on the 2d of August 1806; by Sarkins' administrator to Price Skinner on the 23d of February 1808; by Skinner to Christian Hottle on the 23d of October 1808; and by C. Hottle to Henry Hottle on the 9th of March 1813. Neither the deed nor any of the assignments was ever recorded. But the deed and assignments, as they were successively made, appear to have been delivered, with Nan, to the assignees successively. The last assignee, Henry Hottle, by his will, gave Nan to his wife Christena, to stay with her until the time she was bound to him should be expired. The said Christena by affidavit before a justice of the peace, bearing date the 11th of April 1817, made oath that Nan had served out the time for which she was sold to her deceased husband Henry Hottle, and was then free, and, as affiant believed, about the age of twenty-eight years. On the 5th of May 1817 Nan was registered as No. 32 in the office of Rockingham County court; it being stated in the register that she was born free, but bound to serve a certain number of years, which she had duly served, as appeared by her papers filed in the office. And at the succeeding term of said court, the said register was by the court compared with said Nan, and found duly made, and a copy thereof ordered to be furnished her in the manner prescribed by law. . . [317] Gracey was the daughter of Nancy; . . that her [Nancy's] children born before she arrived at twenty-eight years of age, were to be free at twenty-eight years of age; that she had four such children, viz: Gracey, Milly, Jerry and Jeff; that Milly died before attaining twenty-eight years of age, and that Jerry and Jeff were permitted to go free at that age; that these four children were divided by Henry Hottle among his children, Gracey having

been given to Mrs. Fulton, wife of James Fulton, who was a daughter of Henry Hottle;" Elizabeth Long testified that fifteen or sixteen years before the trial, while at the residence of Fulton, [316] "some little negroes, children of Gracey, were playing about the yard. She remarked to Fulton that those little negroes seemed to have a better time of it than the children of many white people; to which he replied, that now that Gracey was free, he had told her she could leave him if she chose, but that if she chose to remain with him, he would take care of her and her children, and treat them as well as he had always done." Snell [317] "proved that about twenty years before the trial he . . remarked to Fulton that Gracey's children would make him rich; and Fulton replied, that the mischief of it was, Gracey and her children would be free at a certain age, . . [318] about ten years before the trial, [a witness] heard James Fulton say that his brother in law Christian Hottle has been 'narrating' it about that Gracey was free, but he had been paying taxes on her, and meant to hold her." In the will of James Fulton, dated 1855, "the plaintiffs were disposed of as his slaves:" "Gracey . . was born about the year 1814; . . four [of her children] were born before and the other five after Gracey attained the age of twenty-eight years," [325] "the defendants . . offered to give in evidence to the jury an old book entitled *Select Sermons by Mr. Andrew Gray*, in which book, and on 31st, 32d and 33d pages thereof, the date of the birth of Gracey's children, and also of other children of other negro women of said James Fulton, were written."

Judgment for the plaintiffs affirmed. [326] "There is nothing in the case to show that Nan was ever a slave, except the fact of her color and African descent; and the presumption arising from the fact, seems to be repelled by the other facts proved in the case."

Poindexter v. Jeffries, 15 Grattan 363, September 1859. [364] "two slaves, valued at one thousand three hundred and fifty dollars; . . [367] one of the slaves, a man twenty or twenty-one years of age, hired for one hundred and twenty or one hundred and thirty dollars per annum, and the other, a woman eighteen or nineteen years of age, hired for about fifty dollars; . . three women slaves, with ten or twelve children, . . were believed to be then unprofitable by reason of the number of children;"

Seaburn v. Seaburn, 15 Grattan 423, November 1859. Will of Nathaniel Seaburn, 1859: "I desire that said church [to be built on the land attached to Mulberry Island church] shall have a comfortable gallery for colored persons, to be for the old side Baptist denomination." There is a similar provision in a bequest of money to build a church in Upper Grafton, York County.

Evans v. Pearce, 15 Grattan 513, January 1860. Evans [514] "seems generally to have hired out the slaves. . . he owned twelve or thirteen slaves. . . was a plasterer,"

Cooper v. Hepburn, 15 Grattan 551, May 1860. Will of William Hepburn who died in 1817:[1] [552] "On the first day of February one

[1] For further facts, see Hepburn *v.* Dundas, p. 241, *supra.*

thousand eight hundred and sixteen, I sold Esther (whom I bought some years ago of Benjamin Dulany, Esquire) and her three children, Moses, Letty and Julianna Eliza, to Hannah Jackson, and the said Hannah Jackson has since manumitted and set free the said three children, who have been maintained and supported by me since the death of their mother Esther, and are to be supported by me during my life. . . I give unto Moses the son of Esther aforesaid, the houses and lots where I now live . . together with my fishing shore during his natural life, and to his children, if he should have lawful issue; if not then I give the said lots and fishing shore, at his decease, to my grandchildren equally and their heirs forever." In 1827 Moses married Amelia R. Braddock, and had by her four children, [553] "Prudence Crandall Hepburn and three others . . 1848 . . he had qualified as guardian of said children. . . [555] At the November term 1854 . . [556] the grandchildren and heirs of William Hepburn, presented their petition, . . they say that the plaintiff Moses Hepburn is a slave; . . and they ask that the sale [of the houses and lots] may be set aside" In 1856 the petition was rejected.

Decree affirmed: [562] "no question having ever been raised, so far as the record discloses, as to his title to freedom, from 1817 to 1854, a period of nearly forty years."

Baker v. Wise, 16 Grattan 139, April 1861. Action to recover [190] "the sum of five hundred dollars, the penalty imposed by the first section of the act passed the 17th of March 1856,[1] entitled 'an act providing additional protection for the slave property of the citizens of this commonwealth.'" The jury found that Baker, "a citizen of Massachusetts, did on the 4th of August, 1856, then being the captain and owner of the schooner *Nymphus C. Hall*, . . leave the waters of Virginia with said schooner, for a port north of and beyond the capes of Virginia, without having first obtained a certificate of inspection as required by the provisions of the statute;" [141] "And they find for the plaintiff the penalty of five hundred dollars, with interest, damages and costs, if the aforesaid act is not in violation of the constitution of the United States, or the constitution and bill of rights of Virginia; . . judgment for the plaintiff; . . writ of error . . awarded." Johnson, of Massachusetts, for the appellant: [151] "the act is further unconstitutional because the proceeds, or a part of them, are to be paid into the State treasury to constitute a fund to be called the fugitive slave fund."

Judgment affirmed, unanimously: [195] "the act was framed with no view to the regulation of commerce, and with no design to interfere with its regulation by Congress; . . it forms a part of a system of police measures adopted . . in the honest effort to suppress and prevent the escape and abduction of our slaves. . . [229] The search is required of a vessel bound north not merely because of its being so bound, but because by reason of such destination the danger of attempted escapes through the instrumentality of the vessel is enhanced. The discrimination proceeds . . upon motives of State necessity," [W. Daniel, J.]

[1] Sess. Acts 1855-6, p. 38.

Layne v. Norris, 16 Grattan 236, April 1861. [237] "By his will [1824] Daniel Norris left a woman named Franky to his widow for her life; and directed that she should then be free; . . the executor . . placed in the possession of Mrs. Norris, Franky and another slave Judith who had been left to Mrs. Norris until she attained the age of twenty-one years, and the four small children of Franky, for whose support the executor was to pay her. . . She held the slave Franky . . until 1833 or 1834, when she sold her life estate in her to . . Layne, . . After the purchase and before the death of Mrs. Norris, viz: in 1835, Franky became the mother of the slave Vina; . . and Layne has held uninterrupted possession of Vina . . until the institution of this suit [1855]. . . [238] Mrs. Norris died in . . 1839;"

Held: the adverse possession by Layne for more than five years bars recovery by the remainderman.

White v. White, 16 Grattan 264, April 1861. [266] "claiming her dower in the land and her one-third of the slaves, in kind; and objected to a decree for the sale of either."

Bayly v. Chubb, 16 Grattan 284, March 1862. [285] "Congress adjourned on the 7th day of August, 1854; immediately after which, the testator [Bayly] left Washington, with the whole of his white family and some of his servants, and went to the White Sulphur Springs, sending his other servants to Accomack."

Jones v. Bradshaw, 16 Grattan 355, February 1863. [357] "in the year 1849, . . he purchased . . three negro slaves—an old woman named Lucy and her two sons named John and Reuben, one about fourteen or fifteen years of age and the other about nine, at the price of $1,000." The commissioner reported "that Lucy was of no value in March, 1857, . . and that the value of John and Reuben was at that time $2,100. The hires since 1849 were reported at $770."

Harvey v. Skipwith and others,[1] 16 Grattan 393, May 1863. [399] "Jefferson was one of the dower slaves held by Mrs. Mary Skipwith; . . [400] her son Thomas . . about the commencement of the year 1853, . . on his way to Richmond to hire out the slaves, met with the defendant [Harvey], who proposed to hire the slaves again. This was declined at the time; but they met again in Richmond when the defendant remarked to Skipwith that he seemed to have an objection to hiring him the hands. Skipwith told him he had; the negroes had complained to him of being engaged in blasting the year before. Defendant said it was a mistake, that his overseer did the blasting. Skipwith then said that he had orders from his mother not to hire them for blasting, and that he would not hire them to blast or use powder in any way; that white men became careless in using powder and negroes more so. Defendant then said that his overseer did the blasting and that there would be no danger. The bargain was then closed." The obligors [395] "bound themselves to pay to Mrs. Skipwith on the 1st of next January, $140 for the hire of the said slave for the year 1853; and moreover covenanted to return said slave to her at the ensuing

[1] Owners of the reversion of the slave Jefferson.

christmas well clothed with the customary clothing and furnished with a hat." Harvey [400] "was a contractor on the Roanoke Valley railroad, and that the [seven] slaves hired from Mrs. Skipwith were hired to be employed on that work. In May 1853, whilst so employed, the slave Jefferson was injured by the unexpected explosion of powder, so that his eyesight was entirely destroyed." Harvey's overseer stated, [401] "Sometimes some of the negroes were sent to bring the keg of powder from its place of safe deposit near, but after they had brought it and put it down they were sent away to their regular work, . . in digging, excavating, or carrying away the earth on the road near where the drilling the holes and the blasting had to be done, but when the blasting was to be done they were always sent away. . . [402] an explosion took place, greatly to surprise of witness; . . Jefferson, it seems, had come up behind witness, and was from behind an embankment of excavated earth overlooking witness at the time." Jefferson "was at the time of the injury about twenty-two years old, . . very likely and of very good character; and that he was worth about $1000." [399] "verdict for the plaintiffs for $520— with interest from . . 1854, . . judgment on the verdict:"

Affirmed: [405] "if a hired slave is put by the hirer to a dangerous employment in violation of the contract of hiring, and is seriously injured while thus employed, the hirer is liable for the damage, notwithstanding the slave may have been negligent or imprudent or have acted in disobedience of the orders of the hirer in respect to such employment, and notwithstanding such negligence or imprudence or disobedience may have been the proximate cause of the injury." [W. Daniel, J.]

Harvey v. Skipwith, 16 Grattan 410, May 1863. "an action on the case [1] . . brought by Mary Skipwith [who held a life estate in the slave Jefferson] . . it was averred that the hiring was 'upon the terms . . that the said slave should not be employed in blasting rocks or using powder whilst in the service of the said defendant, or exposed to hazard to life or serious injury from being thus dangerously employed.' . . a jury . . [411] returned a verdict assessing [damages] . . at $400; and the court entered up a judgment thereon. . . [412] On the [second new] trial in . . 1859, . . [413] There was a verdict in favor of the plaintiff for $501.60"

Judgment on the verdict affirmed: [416] "I cannot undertake to say that the parties, . . [417] with a knowledge of the notorious improvidence and carelessness of our negro slaves, did not mean to guard, not only against the employment of the slave in blasting, but also against his being allowed to use or handle powder in any manner." [W. Daniel, J.]

Elvira, a slave, 16 Grattan 561, February 1865. "In April 1864, Elvira, a slave, the property of C. Ford, was tried before a court of five justices of the city of Petersburg, for attempting to poison the family of her master; and the court by a majority of the justices present found her guilty, and sentenced her to be sold and transported beyond the Confederate States. The judgment of the court recited that one of the justices com-

[1] For facts, see the preceding case.

posing the court, dissented from the opinion and judgment. . . C. Ford, the master of the prisoner, applied . . for a writ of *habeas corpus* to have her discharged, on the ground, that the judgment of conviction having been rendered by less than the whole number of justices composing the court, was illegal, and in effect an acquittal of the prisoner."

Held: [570] "The offence for which the slave Elvira was tried being punishable with death, and all the parties who sat on her trial not having agreed in her conviction, she was therefore, in effect, acquitted. . . [571] a judgment to discharge her from imprisonment and restore her to the possession of her owner." Moncure, J., reviews the statutes in respect to the trial of slaves for felonies.

Penn v. Spencer, 17 Grattan 85, October 1866. [87] "four slaves, one old man and a woman and two children, the annual value of which he put at forty-five dollars."

Tabb v. Cabell, 17 Grattan 160, January 1867. Landon Cabell, by his will, 1834, gave to his wife for life [162] "the following slaves, to wit: Burgess, a man; Jordan, a man; Cyrus, a man; Margaret, a woman; Lucinda, a girl; and Charity, a girl. At the sale of said testator's estate, the girl Lucinda was sold, and in her stead . . [Mrs. Cabell] purchased two small negroes, Edward and Matilda, the children of the above named woman Margaret. This was done by consent of parties, to prevent a separation of families."

Smith v. Smith, 17 Grattan 268, February 1867. Will of Hugh C. Smith, 1854: [269] "To my servant Addison Webster, when he attains his freedom, the sum of one hundred dollars, recommending him to place it in the savings bank until he can use it profitably. I would recommend him also to seek Liberia as his home."

Harvey v. Steptoe, 17 Grattan 289, February 1867. Will of Thomas Steptoe, 1826: [293] "I give and devise to my son . . Winnie and her five children"

Richmond v. Long, 17 Grattan 375, April 1867. "in April, 1855, a slave named Ben . . was duly admitted into the hospital of the city [of Richmond], to be cared for and treated for the disease of small-pox or varioloid, . . [376] received there late in the night, being then in a state of delirium, and was placed in a room in the second story of the building, and a male nurse of the hospital was appointed to attend on him. In the morning the door of the room was found locked on the outside, but . . the slave was gone, and the window was raised: . . He was soon afterwards found dead some miles from the hospital; . . by exposure to cold; being insane. By the ordinance of the city the expenses of patients . . were to be paid by them or their masters. The jury . . found a verdict for the plaintiff for $516.50 damages, . . judgement in his favor," Reversed.

Clarkson v. Booth, 17 Grattan 490, April 1867. Will of John Clarkson, 1817: [491] "I give and bequeath to my . . daughter Betsey Taylor and . . her husband, Mealy and her children, . . but is not to remove the said negroes out of this state, and at their death to be equally divided

among the rest of my children." Mrs. Taylor [492] " sold some of them to persons who carried them to North Carolina." In 1859 Edmund, a descendant of Mealy, was valued by a jury at $1400.

Scott v. Scott, 18 Grattan 150, January 1868. Before 1849 [151] " Richard M. Scott, of Bush Hill, Stafford county, Va., by a will . . devised . . his St. Marysville estate, . . twenty-five or more negroes, . . [and] in August, 1850, [the trustee under the will and Mrs. Eliza D. Scott, the executrix and tenant for life,] . . executed a lease to Richard M. Scott, jr. 2d " [the reversioner]. In 1852 he wrote to the executrix: [153] " In reply to your interrogatory, as to whether Lizzie is well and living, and what I will take for her, I have only to say that none of my servants are for sale." In 1865 Eliza D. Scott filed her bill charging [152] " that no rent had been paid since the 1st of January, 1861, and . . asked for a decree . . for the amount then due, with interest, . . Virginia Scott [executrix of Richard M. Scott, jr., 2d] . . alleges that in the years 1861 and 1862 the slaves, which constituted the most remunerative portion of the estate, left her, and on the 1st of January, 1863, they became free under the proclamation of the President of the United States. She insists, therefore, that there should be an apportionment of the rent. . . [153] the court held . . that there should be no abatement or apportionment of the annual amount "

Decree affirmed: [160] " The effect of the arrangement . . was to extinguish the life estate of Mrs. Scott, . . [163] he took the risk of her title," [Joynes, J.] [181] " It was doubtless not contemplated by either party that property in slaves was in any immediate danger of the complete annihilation which afterwards happened to it; but still that was one of the risks which the vendee encountered." [176] " The parties knew that the slaves were perishable, . . That some of them might run away, and thus become free, was not at all improbable. They lived on the Potomac river, near the border of the free States, where the facilities of escape were very great and often made available for that purpose." [Moncure, P.]

Hill v. Bowyer, 18 Grattan 364, April 1868. [373] " Of the five slaves belonging to the infants, . . one was sold by the order of the county court . . for the payment of debts of the wards. . . One seems to have been sold . . in 1846; one was sold . . in 1848; one . . in . . 1849, . . the other woman died, and her child, of about a year old, was sold in . . 1845,"

Williamson v. Paxton, 18 Grattan 475, April 1868. In 1862 [479] " he tendered . . hire bonds for negroes " [485] " a written contract was made . . 12th of December, 1862, for the sale . . of six of the trust slaves . . for $6,800, subject to the confirmation of the court. . . suit . . brought . . June, 1863, . . to have the said sale . . confirmed, . . Among the reasons assigned therefor . . ' In the present distracted condition of the country, negro property is, perhaps, of all other, the most insecure, the means of escape abundant, the temptations strong to abandon masters, and the enemy in our land, wicked, malicious, and bent by all means, good or bad (if possible) on destroying this species of property.

It is specially the interest of persons like your oratrix, owning none other but negro property . . [486] to sell at least a portion of their negroes and invest in something more stable and permanent.' . . depositions were taken and filed . . but nothing further appears to have been done in the suit."

Rhett v. Mason, 18 Grattan 541, May 1868. The estate of Mason, of Alexandria, who died in 1838, [543] "consisted of a large real estate, some ninety slaves, . . The executrix . . purchased real estate and slaves to the amount of $21,600. To one of her daughters she advanced, on her marriage, fifteen slaves; to the female plaintiff . . [544] eight slaves on her marriage . . 1847; and thirteen of the slaves having escaped to the North, she in 1849 advanced to her two sons a number of them, and they took them to Arkansas."

Moon v. Stone, 19 Grattan 130, March 1869. Will of Caleb Stone, probated 1810. "I lend to my daughter [Slave Phoebe] during her natural life,"

Railroad Co. v. Snead, 19 Grattan 354, March 1869. [355] "an action . . to recover for certain work . . performed by the slaves of the plaintiffs. . . [356] 'Richmond, . . 1856. $484. Due . . Snead and . . Smith . . in full, of labor performed' . . Robinson . . applied to . . Snead to hire the hands of the plaintiffs, and agreed to give him $1.25 a day for each of them; that during . . November and December, the hands worked under the direction of . . a section master . . in January 1855, the hands . . were turned over to the control . . of . . Smith, who made all the contracts for work done by them"

Corbin v. Mills, 19 Grattan 438, March 1869. By the will of Nicholas Mills, dated October 17, 1861, [445] "The slaves not specifically bequeathed were directed to be hired out by the executors. The estate was appraised on the 14th of October 1862, the valuation being in Confederate money. . . the slaves were valued at $12,100;" Mills's son [453] "retained the same overseer who had been there for ten years,"

Raper v. Sanders, 21 Grattan 60, June 1871. In 1853 the guardians filed a bill against the executor [61] "to restrain him from selling the slaves of his testator's estate, on the ground that the sale was not necessary for the payment of the debts; and this case continued in court until 1866. . . [64] Sanders was [in 1856] . . regarded as a wealthy man, . . He owned forty-odd negroes, mostly young, . . and his credit remained good until after the war. He then became insolvent."

Michie v. Jeffries, 21 Grattan 334, September 1871. In February 1865, he [337] "was preparing to send negroes to Richmond to sell and make up the balance, when he was prevented by the raid of General Sheridan, which cut off Communication with Richmond," Moncure, P.: [347] "When slavery existed, . . slaves were a common subject for conveyance by deed of trust; and slaves were generally sold for cash. And, except when sold in families, were sold separately, and it was proper to sell only so many of them as were required to satisfy the purposes of the trust."

Booten v. Scheffer, 21 Grattan 474, November 1871. In November 1863 [475] " Booten sold to Sheffer . . one moiety of the Virginia hotel, . . [477] he had paid in slaves $34,500," Letter, February 1864: [480] " Maj. Briscoe wants to buy my Sheperdstown negroes, and if I succeed I will be able to take the other half of you at once."

The Homestedd Cases, 22 Grattan 266, June 1872. [274] " the farmers and planters of the State, who, though they owed debts before the war, had generally ample means to pay them, . . But the war having swept off their slaves and nearly all their personal property, leaving them little less [*sic*] than their lands, these lands are insufficient to pay their debts; "

Jennings v. Jennings, 22 Grattan 313, June 1872. In 1858 the guardian [317] " received from the administrator . . $791.18. Instead of investing this fund for the benefit of his wards, he used the money in the purchase of a slave for himself,"

Smith v. Penn, 22 Grattan 402, July 1872. In 1866 Smith " obtained a judgment . . for $4,210, with interest . . on a bond executed for the purchase of slaves on the 5th day of January 1863."

Fugate v. Honaker, 22 Grattan 409, July 1872. The will of Henry Honaker, who died in January 1863, [410] " directs his executors to dispose of all his personal property . . other than the slaves, . . and his slaves he authorizes to be sold to masters of their own choosing, and at prices below their appraised value, if necessary to carry out his humane purpose "

Henderlite v. Thurman, 22 Grattan 466, July 1872. The will of Thurman, of Smyth county, probated 1863, " gave his estate, which consisted of houses and lots . . and slaves, to his three sons, and the two children of [another son]. . . a decree was made . . September 1863, appointing a commissioner to sell " The commissioner " sold the property in October 1863, . . $5,950 was the proceeds of the real property and $13,110 of the slaves; that all the property was purchased by the three [sons] plaintiffs; that the purchasers had executed their bonds, which had been so arranged that bonds to the amount of the share of the infant defendants might be transferred to them, and . . [467] Henderlite was the security. . . April 1864 . . the court confirmed the report, . . 1868, Henderlite and Thomas Thurman, in his own right and as administrator . . applied to the court to be permitted to file a bill to . . set aside the decrees entered . . September 1863, and . . April 1864. . . that by the emancipation proclamation . . and acts of Congress the slaves . . had been emancipated, and therefore, the bonds given for the price of them were . . void. That the Alexandria constitution, adopted in April 1864, abolished slavery, . . that they were also . . void by virtue of the act of Congress of July 17th, 1862, to punish treason and rebellion: and they insist that the sales were made for Confederate money, . . [468] 1869, . . the court . . refused to allow the bill to be filed."

Decree affirmed unanimously: [468] " It has never been maintained by any respectable authority, that the Federal government was authorized

under the constitution, in any manner to interfere with the institution of slavery in the several States. . . [472] As a war measure . . the proclamation of President Lincoln could only have the effect of emancipating such slaves as came within the control of the Federal armies. . . [474] as the negroes sold . . were . . occupying a territory exclusively . . within the lines of the Confederate government, . . They were slaves . . at the time of their purchase by the appellant's intestate . . the loss resulting [from their subsequent emancipation] . . must fall on him. . . Another ground taken by appellants is, that contracts for the sale of slaves made since 1st of January 1863, are void on reasons of public policy, . . opposed to the national policy . . [476] At the time of the purchase . . slavery was still an established institution of Virginia, recognized . . both by the Richmond and Wheeling government. Nor was its existence contrary to the public policy of the United States government. It still prevailed in the States claiming to be loyal to that government. . . [477] It would not be extravagant to say, that during the four years' war alone the investments in slaves amounted to millions. . . If slavery was lawful . . it is idle to say that the destruction of the institution can impair . . contracts made during the period of its legal and constitutional existence. . . [478] They were emancipated by force of arms by the conquest and subjugation of the South. . . [481] after the date of President Lincoln's proclamation . . it was well understood in the South, that the success of the Federal arms would be the doom of slavery. . . Parties bought . . in view of this contingency. With many confident in the expectation of ultimate success, this species of property was considered the best investment which could be made. By others who held to the idea, that when the cause was lost all else was lost worth having, slave property was regarded as safe . . as any other in the States south. . . [482] The appellants purchased with full knowledge of all the facts, and they assumed all the risks attending the acquisition of this species of property in the then existing condition of the country." [Staples, J.]

Talley v. Robinson, 22 Grattan 888, December 1872. In 1864 Robinson, "a freeman of color, of the county of Amelia," sold a tract of land to Talley, who paid down the price, [889] "but the land was not then conveyed to him; . . Robinson having refused after the war, to make a deed . . Talley . . brought this suit . . [890] Robinson, in his deposition, stated that he had been whipped by R. B. Trent and a good many others (some twenty-five or thirty men), driven from the county, and forbidden to be seen in it; that he would not have contracted to sell the land had he not been forced to do it by the treatment he received . . [891] Talley had made no threats against him, and was not with Trent's party when they whipped him." Talley deposed: "I was opposed to the whole proceedings, which John Robinson very well knew. . . I told him if they drove him off on account of his being a rogue, there would be a plenty more left behind. I was opposed to the whipping of him by Trent and his party. I was solicited to join them and refused. They were not the right sort of men for me."

Held: [896] "There is certainly no ground for the defence of *duress* . . [897] this is a proper case for the specific execution of the contract." [895] "Undoubtedly a great outrage was perpetrated . . upon Robinson (whatever his offence may have been), . . and the perpetrators . . were liable to a prosecution and condign punishment therefor." [Moncure, P.]

Virginia v. Levy, 23 Grattan 21, January 1873. Commodore Uriah P. Levy, who died in New York in 1862, [22] "owned Monticello and . . Washington farm, . . the latter of which, with the slaves upon it, he devised [by his will, dated 1858] to [his nephew] Ashel S. Levy."

Hale v. Clarkson, 23 Grattan 42, January 1873. Will of John Clarkson, who died in 1817: "I . . bequeath unto my daughter, Betsy Taylor, and . . her husband, Mealey and her children, . . and if . . Betsey . . die, having no bodily heir, that she and Major Abram Taylor is to enjoy them during their life; but is not to remove the said negroes out of this State;" [44] "Under executions against Mrs. Taylor [after her husband's death] a number of Mealey's children were sold by John Wade, a sheriff . . who became, himself, the purchaser. Mrs. Taylor afterwards . . transferred her right in the negroes that said Wade . . held under his purchase, to . . Hale . . Mrs. Taylor died in 1849, without issue; and . . Hale . . brought an action of detinue against Wade, for the negroes; . . a judgment was recovered, in 1853, for some eighteen or twenty slaves, the descendants of Mealey," In 1854 the descendants of Clarkson brought suit, [45] "and insist that . . the descendants of the woman Mealy passed to the children and grand-children of the testator."

Christian, J.: [43] "The whole subject matter of the controversy having . . been extinguished by the result of the late civil war, . . it is not necessary that this court should pass upon *the merits of the cause.* The question now presented, only involves the costs of the proceedings,"

Crouch v. Davis, 23 Grattan 62, January 1873. Hector Davis, who died in 1863, gave by his will, dated 1859, [63] "to his servant woman Ann, her freedom, to be removed out of the State with her four children; and after their removal, the sum of twenty thousand dollars; Ann to have the interest on one-fifth of the amount, and the interest of the balance to be expended in raising the children until they come of age; then the principal to be given them." [82] "Davis (like the executor, his partner,) was a buyer and seller and auctioneer of slaves, and had many dealings in the south and south-west" [64] "The testator left a large estate. . . [65] $14,550 in slaves, all of whom, but those that he [the executor] had sold, had become free by the results of the war. . . [70] Statement G. is an account of money paid to Ann, the freed woman, for the support of herself and children since the war, $1,474.50 . . an agent sent to Arkansas . . to see after . . land . . there being . . no person on the land but slaves. . . The 6th and 9th exceptions[1] are to the investments made by the executor in Confederate States bonds. . . to the extent of $20,000, if allowed at all it should be charged as the bequest to Ann and her children." Exceptions overruled.

[1] Filed by counsel for the residuary legatees.

Moore v. Luckess, 23 Grattan 160, February 1873. Luckess [162] "lived for fourteen years in the house of . . Moore, who kept a house of private entertainment . . charges . . for extra services rendered to Luckess and his slaves, from 1845 to 1859, . . with interest to 1859, . . $10,818.60" Staples, J.: [170] "A more extraordinary claim was never exhibited in a court of justice. . . 'Services rendered boy John, who was sick of fever from July 15th to Aug. 20th, $360.'"

Harrison v. Gibson, 23 Grattan 212, March 1873. [215] "Gibson, the trustee . . in . . 1816 . . enjoined the removal of the slaves out of the State . . he charged that . . Harrison had sold one of the slaves to a person who had removed her out of the State; . . in 1830 Gibson sold eight of the slaves,[1] one of them an old man purchased by Mrs. Wagoner for forty dollars. The slaves sold for $1,189 $\frac{60}{100}$,"

Penn v. Reynolds, 23 Grattan 518, June 1873. "In December, 1862, . . Penn . . purchased . . a slave named Mary, at the price of $2,168; . . executed a bond . . payable twelve months after date, in current money. . . January 1864, . . a tender of the amount . . in Confederate money, was . . refused" In 1868 a jury [522] "valued the slave at $1,000" [521] "scaling the debt 'as of the date of the contract.'"

Johns v. Scott, 23 Grattan 704, September 1873. Will of Joseph Glasgow, 1856: [705] "from and after the decease of my wife and daughter Elizabeth, I hereby emancipate and set free from slavery, all of my slaves, together with all of their future increase, . . It being my intention, and I so expressly declare it to be my will, that all of my slaves, together with all their future increase, shall be emancipated and forever discharged from slavery, whenever my wife and daughter Elizabeth have ceased to live. And I hereby direct my executrix . . to set aside and invest the sum of three thousand dollars, . . and receive and reinvest the interest and dividends thereon annually; so that the same may accumulate in the way of compound interest, until such time as my slaves may be entitled to their freedom under this will; it being my intention by this clause, to provide an accumulating fund to aid in the removal of my slaves from the Commonwealth of Virginia to their future homes, when they acquire a right to freedom under this will. And I hereby direct that the said sum of three thousand dollars, with all its accumulated interest, shall be applied to the purpose of removing my slaves as aforesaid; and that any residue of the fund which may remain, shall be distributed among them as near equally as possible." At Joseph Glasgow's death—[706] "his slaves amounted to thirty-eight in number. They remained in the possession of Mrs. Glasgow until the end of the late war; when they left her. She died in 1868, when Mrs. Johns [her daughter Elizabeth] qualified as her administratrix, . . In 1869 Jack Scott and nineteen others, some of them the slaves of Joseph Glasgow at the time of his death, and others born after that time, filed their bill," saying "that they served Mrs. Glasgow faithfully until they were discharged from slavery . . by the operation of the

[1] [221] "to satisfy a decree against the estate of . . Wagoner."

late civil war, by the amendment to the constitution of the United States, and by the law of Virginia; . . and ask that the defendant [Elizabeth Johns] may be required to pay to themselves and the other former slaves of said Glasgow the legacy of $3,000, with its accumulated compound interest;" In 1870 the court decreed that Mrs. Johns should pay $5,716.84 with interest from December 1, 1870, to the general receiver of the court "to be compounded annually until paid,"

Decree reversed: the appellees [716] "not only do not answer the description and character required by the will, but present themselves in a character utterly variant therefrom, and in irreconcilable conflict therewith." [713] "They do not claim as his freedmen emancipated by his will. . . They claim their right to freedom under another and higher power, and directly against the testator's will;" [Bouldin, J.]

Moss v. Moorman, 24 Grattan 97, November 1873. "a will . . made . . 1852, by which . . he gave to his widow, for her life . . six negroes which she should select, . . The rest of his estate, except his slaves, he directed to be converted into money; . . the negroes remaining after his wife's selection, he directed to be divided equally among his children;"

Rives v. Farish, 24 Grattan 125, November 1873. [126] "December 1863 . . Rives contracted to sell and deliver . . in Albemarle county, on the first of next January, . . thirty-three negroes, . . Peyton agreed to pay . . $25,000 in bankable Confederate currency; and in addition, to give his note . . for the further sum of $20,000, . . [128] Rives, in 1865, to get through the federal lines, to ascertain the fate of his son, just at the close of the war, took the amnesty oath . . and that in the same year, he . . obtained a special pardon from President Johnson, . . and took the oath prescribed . . 'This pardon . . to be void . . if . . Rives shall, hereafter, . . acquire any property whatever in slaves,'" In 1866 Rives made a demand for the payment of the rest of the purchase money. The money was not paid and he brought an action of covenant. The defendant demurred. The court "sustained the demurrer, and rendered a judgment for the defendant."

Reversed: [130] "those slaves only were emancipated [by the proclamation of January 1st, 1863,] which came within the federal lines of occupation [1] . . The contract was, therefore, valid. . . [The] [132] condition in the pardon clearly was not intended to exact from the applicant an admission that his slaves had become free in any particular way, . . but that the sole object was to preclude any question in the future as to the right of these slaves to freedom; . . [135] The whole extent of the plaintiff's oath is, to support the proclamation, as interpreted by the courts." [Staples, J.]

Puryear v. Cabell, 24 Grattan 260, January 1874. In 1858 "the lots of the slaves were valued at from $3,750 to $3,900; . . [Mrs. Wilson] retained in her possession the . . slaves allotted to Mrs. Cabell, until January 1865, when . . she delivered . . the . . slaves . . to . . guardian of Mrs. Cabell's children. . . [263] The slaves . . were valued [by a

[1] Henderlite *v.* Thurman, p. 258, *supra.*

commissioner in 1868] in Confederate money as at the time they were received, at $18,000, which was reduced to current funds . . making $327.27 . . [264] the court held that in January 1865 by the constitution and laws of the State the slaves were free, or if not . . of no value . . but rather an expense."

Decree reversed: [269] "the negroes delivered to the guardian of the appellees, the children of Martha C. Cabell, dec'd, in January 1865, were slaves at the time . . recognized as such by the Constitution and laws then in operation, and so treated . . by the said guardian until the close of hostilities. The Circuit court, therefore, erred in holding they were not the subject of advancement. And although the said appellees were not liable for the market price of said slaves, estimated in Confederate currency reduced to gold, . . [270] they are chargeable for the fair value of said slaves, or for their services during the period they were under the control of said guardian."

Allen v. Paul, 24 Grattan 332, February 1874. [335] "there being a large number of coloured members of that church,[1] by a resolution of the conference, in February 1844, the house on Union street was appropriated to the use of the coloured congregation; and they worshipped there from 1842 to 1865, and were represented at the quarterly conference held at Washington street church by the stationed preacher sent to said congregation by the Virginia Conference of the Methodist church, and the trustees who held the property. . . in 1865 all the coloured members worshipping at Union-Street church connected themselves with the African Methodist Episcopal Zion church; . . And since that time they have received their preachers from the conference of said Zion church."

Burwell v. Lumsden, 24 Grattan 443, March 1874. [448] "The property settled on her [in 1844] . . consisted of three slaves: one of them, an old man, with a fractured skull, proved to be an incumbrance; a small girl of very little value; and a woman not estimated by any one as worth more than four or five hundred dollars. . . [450] the distributive interest of Mrs. Burwell in her father's estate . . consisted of two very infirm slaves, proved to be worth about five hundred dollars."

In re Caldwell, 4 Fed. Cas. 1035 (2 Hughes C. C. 291), April 1874. In 1861 "suits were begun . . to partition her dower estate, which consisted of . . land and negroes. . . decree for sale . . was pronounced April 10th, 1861. War interfering, prevented the sale and emancipated the negroes."

Shannon v. McMullin, 25 Grattan 211, June 1874. Endorsements on execution, dated June 1860: [214] "Levied [August 1860] on . . one negro man George, Fred, Campbell, Stephen and David; one woman Ellen and Polly; one boy James, Hiram and King; one girl Mary, Deemy and Ann;" [215] "This execution held up and property not sold,"

Persinger v. Simmons, 25 Grattan 238, July 1874. [239] "By a decree . . 1845, it was ordered that . . the slaves, after assigning to the widow her third thereof, be divided among the heirs"

[1] [334] "Methodist Episcopal church in the Town of Petersburg,"

Cocke v. Minor, 25 Grattan 246, July 1874. [250] "He had . . lost over $3000 of the trust fund by the emancipation of slaves,"

Kenny v. Kenny, 25 Grattan 293, July 1874. [294] "By his will [admitted to probate in 1851] . . he provides that his wife shall have his slaves for life; 'and at my death are to be valued, and Robert Kenny and William Kenny to hold them, and pay their brother . . and their three sisters, an equal part with themselves, . . My object for doing this is to keep them all together, where they will be well treated.' The slaves were four, and the widow . . held them till her death in . . 1860, when they went into the possession of Robert and William Kenny, who divided them between them, and they remained in their possession until two of them died, and the other two were freed by the results of the war. . . Robert and William Kenny refused to let them be valued," In 1861 a suit in equity was instituted against them. [295] "The court made a decree appointing commissioners to value the slaves, . . Robert and William Kenny took an appeal, and in . . 1867 the decree was reversed. . . They deny that they ever took . . possession of the said slaves in their own right, . . [296] it was finally agreed by the parties, that the four should be valued each at $1,250. . . the court held [in 1870] that Robert and William Kenny . . made their election to take . . the said slaves, and that they were concluded by such election. And decreed . . in favor of the other parties, each for one-sixth of the agreed value of the slaves." Affirmed.

Lee v. Chase, 15 Fed. Cas. 147 (1 Hughes C. C. 402), July 1874. Will of George Washington Parke Custis, executed 1855, and admitted to probate 1857: [148] "upon the legacies to my four granddaughters being paid, and my estates that are required to pay the legacies being clear of debt, then I give freedom to my slaves; the said slaves to be emancipated by my executors in such manner as . . may seem most expedient . . the said emancipation to be accomplished in not exceeding five years from the time of my decease."

Crosby v. Buchanan, 23 Wallace 420, October 1874. [435] "the actual consideration for the deed [executed in 1811] was $6000, payable in ten equal instalments, for each of which a note was given. . . All of them were payable in negroes,"

McChesney v. Brown, 25 Grattan 393, November 1874. [395] "In April 1863, . . Brown and . . Lara, purchased . . a large tract of land in . . Georgia . . and sixty negroes, . . the negroes [estimated] at $60,000; . . [396] on the 3d of March 1865, they paid . . [the second] bond [due October 15, 1865] off in full; and . . received a receipt for $60,000, in full for the sixty negroes,"

Burnett v. Hawpe, 25 Grattan 481, November 1874. Henry Hawpe, who died in 1859 [483] "directs [in his will] that his executors shall sell his servants, letting them choose their masters or mistresses, . . [484] At the time of the death of . . Hawpe, Mr. and Mrs. Steele [his daughter] had in their possession a negro girl belonging to Hawpe; and . . the executor, insisted that the girl should be given up to him to be

sold, or that Steele should buy her." [490] "they were anxious to retain the slave [a family servant], and it was finally agreed that Steele should purchase her." [484] "he executed to the executor for the price of the girl two bonds, one for $230, and the other for $166.75"

Moses v. Hart, 25 Grattan 795, February 1875. "Michael Hart, a citizen of New York, died in September 1861, . . left a large estate, . . that in this state consisting of . . slaves, . . [798] Henry Hart, . . a son . . came to Richmond soon after the commencement of the late war, . . when McClellan was near Richmond, . . Henry Hart fearing that Richmond would be taken, . . left the city and went to North Carolina, taking with him most of the slaves belonging to the estate,"

Wood v. Sampson, 25 Grattan 845, February 1875. [846] "at his death [in 1864], he owned . . upwards of sixty slaves,"

Booker v. Kirkpatrick, 26 Grattan 145, April 1875. [146] "an action of debt brought by . . Kirkpatrick [of Missouri] . . against . . Booker [of Virginia] and . . Halsey [of Missouri], partners, to recover the balance due on three notes . . note for $145, was given for the hire of a negro slave . . and . . note for $730, was given for the hire of six negro slaves . . and . . note of $435, was given for the hire of three negro slaves . . [147] property of the plaintiff; that the said hiring was from the 15th day of March 1861 . . for the balance of the year 1861; and that the said slaves were so hired to be employed in . . manufacturing tobacco at . . Brunswick, . . Missouri, and were there so employed for the balance of the year."

Held: [150] "the dissolution of this partnership [by the breaking out of the war] did not relieve either of the partners from their antecedent obligations, . . another point . . These persons, who by the federal and state laws *were slaves,* had none of the rights . . [151] of citizens, and owed no allegiance to the government either of the United States or the state of Missouri. If allegiance could be predicted of . . *slaves*, that allegiance was due *to their masters,*" [Christian, J.]

Mason v. Jones, 26 Grattan 271, May 1875. [274] "The widow took possession of the . . slaves, . . hired an overseer, hired out one or more of the negroes, . . 1855. . . [275] 1856, . . the executor . . offered all the slaves . . for sale; at which sale she purchased all the slaves but two, . . [276] As a result of the war the slave property, which probably chiefly constituted the estate, perished,"

WEST VIRGINIA.

INTRODUCTION.

" In many counties [of Virginia], the local authorities and majorities of the people adhered to the national government; and representatives from these counties soon after [the secession of Virginia] assembled in convention at Wheeling, and organized a government for the state. This government was recognized as the lawful government of Virginia by the executive and legislative departments of the national government; . . It was the legislature of the reorganized state which gave the consent of Virginia to the formation of the state of West Virginia. . . the government which consented to the formation of the state of West Virginia, remained in all national relations the government of Virginia, although that event reduced to very narrow limits the territory acknowledging its jurisdiction, and not controlled by insurgent force." Chief Justice Chase, in *Ex parte Caesar Griffin*, 8 Amer. Law Reg. N. S. 358 (360).

Under the constitution of 1862 the highest court of West Virginia (from which all of our cases come) was the Supreme Court of Appeals (three judges), having original jurisdiction in cases of *habeas corpus*, mandamus, and prohibition, appellate jurisdiction in other cases of any importance. The constitution of 1872 made the number of judges four.

Mathews v. Wade, 2 W. Va. 464, January 1868. Sidney, the slave of Mathews, died leaving "her child, the said Anne Sidney, . . about two months old. . . Polly Wade was also then a slave belonging to . . Mathews, and was the mother of the said Sidney . . [466] That the mother of the infant Anne Sidney on her deathbed requested the said Mathews and wife to take charge of the child, and gave them a ring for her with the request to put it on her finger when she became old enough to wear it." Mathews "and his wife have always treated the infant with the utmost kindness . . that the said infant has slept in their chamber all the time, and been treated by them always as if she were their own child, . . Polly Wade is also of as good moral character as any colored person in Lewisburg; that she is an industrious, hard-working woman, a member of good standing in the Methodist Episcopal church . . and that her husband is also a man of good moral character, and owns a wagon and two horses and some other property. . . [They] are competent to the support and education of the infant, although in the opinion of several witnesses not as capable of providing for her physical wants or moral or intellectual education as the defendant and his wife. . . order made by the recorder of Greenbrier county on the 12th day of November, 1866: 'The recorder doth assign Thomas Mathews guardian to Anne Sidney Jackson, mulatto child about five years of age,'" In 1867 Polly Wade, the grandmother, was awarded a writ of *habeas corpus*, and the court ordered that she have the custody of the infant Anne.

Order reversed.

Sanaker v. Cushwa, 3 W. Va. 29, July 1868. [31] "Sanaker . . had sold the slave, Sam, . . for the sum of 1,000 dollars . . in October, 1860. . . His daughter was opposed to the sale of the slave; was anti-slavery in her sentiments, . . witness sold the slave because he himself had raised him. He was a very bad boy, and had made an attempt upon his life with an axe. . . John B. Sanaker left at his death three slaves—a negro man who died shortly afterwards, the negro boy, Sam, . . and a girl. This girl was injured by a fall from a cart. . . by careful nursing and attention, she recovered in a great measure from the accident, and would have brought 800 dollars in the market, in 1861 or 1862. She is now living and is a useful and valuable woman. She lived with witness until after President Lincoln's proclamation of emancipation." [30] "Dr. . . Burkhart . . testified . . She seemed to have some disease of the spine, and was deformed . . She might be worth from 150 to 300 or 500 dollars, or she might not be worth anything."

Matthews v. Dunbar, 3 W. Va. 138, January 1869. "This cause arose in Kanawha county." "Prior to 1861, Dunbar sold to Wilson certain slaves, who gave his bond for a balance of the price, . . In 1865, Dunbar

recovered judgment . . on the bond and . . [139] filed his bill in 1866 to subject the lands of the debtors to the judgment lien. . . [140] the material fact in the original answer . . that slaves were the consideration of the debt, and had subsequently become free, . . was not denied"

Held: "The results of the war and the action of the government which liberated the slaves without the default of the complainant Dunbar could only affect the owner of the slaves at the time the fact of emancipation happened, and not the former owner, who had long before lawfully parted with all his property in them. . . [141] It is nowhere shown whether the emancipation of the slaves in question was the result of any of the acts of Congress or proclamations of the President against disloyalty, or the constitutional amendment, or of the act of the State legislature abolishing slavery; but one thing is certain that whereas once they were slaves now they are free. And as it has been the boast of the mother country that there were no slaves in England, so it was but recently the boast of the American minister at the court of St. James as the crowning glory of the country he had the honor to represent, that all were freemen in the land of Washington and Lincoln. If the emancipation was effected by the acts of Congress or the President's proclamations as a forfeiture for the owner's disloyalty, he should not shift the penalty of his own error from his own shoulders upon that of the vendor. Or, if it was the result of the acts of the State legislature, he should look to the State, whose constitution authorizes no act of legislation which impairs the obligation of contracts nor the taking of private property for public use without just compensation. . . the purchaser, and not the vendor, took upon himself the hazard of the future action of the government in respect to the slaves in whose services property existed only by virtue of its authority." [Brown, P.]

Graham v. Graham, 4 W. Va. 320, January 1870. "James Graham made his will in 1812, . . 'I give unto my daughter Rebeckah and her children . . my negro girl named Dinah, the land and the negro never to be disposed of out of the family, nor the increase of the negro, if any she has.' . . [Rebeckah sold] [321] two slaves, the increase of Dinah,"

Parker v. Clarkson, 4 W. Va. 407, January 1870. [409] "1857, Clarkson conveyed . . the farm of 120 acres lying near Charleston, . . also certain slaves, . . to secure the payment of . . bills . . [410] the slaves mentioned . . were carried by . . Clarkson out of the State of Virginia, with the consent . . of . . the trustee,"

Boner v. Boner, 6 W. Va. 377, June 1873. [378] "In April 1860, the Plaintiffs filed their bill . . for the partition of slaves of which they were the joint owners; the Court finding from the report of a commissioner that partition of the slaves in kind could not be made among the claimants, directed a sale, . . a commissioner . . sold the slaves, eleven in number, on the 7th day of January 1861, to different purchasers,"

KENTUCKY.

INTRODUCTION.

The first constitution of the state of Kentucky (1792) provided "that all laws then in force, in the State of Virginia, not inconsistent with the Constitution, and of a general nature, and not local to the eastern part of Virginia, should be in force here, until altered or repealed by the Legislature." Accordingly, many of the Virginia laws respecting slaves were in force in Kentucky also, and among them the Virginia acts of 1705 [1] and 1727,[2] declaring slaves to be real estate, and explaining the variations necessitated by the difference between the physical properties of human beings and of land. In 1748 the general assembly of Virginia "thought best to reduce them [the slaves] to their natural condition, so that they might not at the same time be real estate in some respects, personal in others, and both in others;" for the "last act being in the first part explanatory, was productive of many suits; . . destroyed old titles, and created new, and was attended with such doubts, variety of opinions, and confusion, that new points are even yet started, and undetermined." [3] The acts of 1705 and 1727 were repealed, and it was enacted "that for the future, all slaves whatsoever shall be held, deemed, and taken, to be chattels personal." [4] But George II. and his advisers thought otherwise, and this act of 1748 "was repealed by the king's proclamation of the 31st of October, 1751." [5] Though Virginia might have had her will after the Revolution, she left the matter *in statu quo*; and Kentucky, to avoid any possible ambiguity arising from the proceedings of 1748 and 1751, passed a law in 1798 [6] in almost the identical words of the Virginia act of 1705, but altered as to the manner of descent by the Virginia act of 1785.[7]

The Kentucky reports contain many cases which prove the wisdom of the Virginia assembly of 1748, by showing the complications involved in the attempt to adjust the law of real property to persons. This is especially evident in the matter of dower slaves.[8]

[1] Ch. xxiii., sect. 2. "That . . all negro, mulatto, and Indian slaves, . . within this dominion, shall be held . . to be real estate (and not chattels;)" 3 Hening 333.

[2] Ch. xi. "An Act to explain and amend the Act, For declaring the Negro, Mulatto and Indian Slaves, within this Dominion, to be Real Estate;" 4 Hen. 222.

[3] "The humble address and representation of the council, and burgesses," Apr. 15, 1752. 5 Hen. 432 n. (441 n.)

[4] *Ibid.*, 439.

[5] *Ibid.*, 432 n.

[6] Act of Feb. 8, 1798. 2 Litt. L. 113 (120); 1 St. L. (Ky.) 566.

[7] Ch. lx., 12 Hen. 138; 1 St. L. (Ky.) 560. Slaves were made personal estate in Kentucky in 1852. Rev. St. 627.

[8] Gale *v.* Miller, p. 307, *infra*; Hawkins *v.* Craig, p. 310; Hykes *v.* White, p. 321; Tibbs *v.* Tibbs, p. 376.

The Virginia act of 1705[9] "That the widow of any person dying intestate, shall be endowed of one full and equal third part of all her deceased husband's lands, tenements, and other real estate, in manner as is . . prescribed by the laws . . of England," was in force in Kentucky; and Kentucky, in 1797,[10] passed a replica of the Virginia act of 1785, which provides that "When any person shall die intestate . . after . . debts . . paid, if there be no child, one moiety, or if there be a child . . one-third of the surplus shall go to the wife, but she shall have no more than the use for her life of such slaves as shall be in her share," [11] and that a widow, who declares that she will not accept the provision made for her by her husband's will and renounces all benefit which she might claim by his will, "shall be entitled to one-third part of the slaves whereof her husband died possessed,[12] which she shall hold during her life, and at her death they and their increase shall go to such person . . to whom they would have passed . . if such declaration had not been made." [13]

In those pioneer days, when life was often cut short by Indians or by absence of proper medical care, widows were numerous, but they seem not to have remained long in that condition. The frequent remarriages made the dower question a problem, not only mathematically, but tortiously. B who married A's widow was prone, if Mrs. A had received slaves as dower from A, to transport them to another state, in order to defeat the rights of the reversioners, A's legal representatives. Accordingly the act of Virginia of 1785,[14] and that of Kentucky of 1797,[15] contained provisions depriving such an offender of "all the estate which such husband holdeth in right of his wife's dower for and during the life of the said husband." This was hard on Mrs. A if she was no party to her then husband's tortious act.

Of the complications that might arise in the case of dower slaves, one variety may be seen, set forth in the ensuing pages of text, in the case of the slave Peter (1861),[16] another in that of the dower slaves Austin and Henry.[17] That of Tom Davis *v.* Tingle[18] presents additional complications, some of them from the purchase of the dower slave Harriet and her son by a free negro, husband of the one and father of the other,[19] some

[9] Ch. xxxiii., sect. 8. 3 Hen. 374.
[10] 1 Litt. L. 611 (618); 1 St. L. 660.
[11] Act of October 1785, ch. lxi., sect. 25. 12 Hen. 146.
[12] On the other hand, "the absolute right, property, and interest of such slave or slaves" as had been "conveyed or bequeathed, or have or shall descend to any feme covert" vested in her husband (2 St. L. Ky. 1477), she having no power to make a will (*ibid.*, 1538), "and where any feme sole is . . possessed of any slave or slaves, . . the same shall . . be absolutely vested in the husband of such feme, when she shall marry." *Ibid.*, 1477.
[13] Act of October 1785, ch. lxi., sect. 21. 12 Hen. 145.
[14] *Ibid.*, sect. 23.
[15] 2 St. L. 1545.
[16] Williams *v.* McClanahan, p. 442, *infra.*
[17] Evans *v.* Gregory, p. 414, *infra.*
[18] P. 385, *infra.*
[19] The cases of free negroes buying relatives are numerous. Ferguson *v.* Sarah, p. 315, *infra*; Craig *v.* McMullin, p. 348; Jones *v.* Bennet, p. 349; Saunders *v.* Kastenbine, p. 371; Darcus *v.* Crump, p. 374; Kyler *v.* Dunlap, p. 430; Finnell *v.* Meaux, p. 460.

from the doctrine of the court that the emancipation of a slave by any majority-in-interest of the joint owners would of itself make him a free man,[20] some from his period of residence in Ohio. "The residence of a slave, with the consent of his owner, in any of the States formed out of what was known as the North Western Territory, results in his freedom, by virtue of the ordinance of 1787. . . And this effect is given to such residence, not only by the Courts of this State, but by those of Virginia, Louisiana, Mississippi, and other slave States." [21] "There is no confliction between these views," declares Judge Simpson, who delivered the opinion of the court, "and the doctrine and principles asserted in the case of Graham *v.* Strader [decided four years previously].[22] . . There the reasoning all applies to a case where a slave is taken, for a mere temporary purpose, to a State where slavery is prohibited, with an intention not of residence, but to bring him back again as a slave to this State."

The distinction between the status of "resident blacks" and that of "transient slaves" in the Northwest Territory and in the states carved out therefrom is forcibly expounded by Judge Mills in the leading case of Rankin *v.* Lydia, a pauper,[23] which was decided by the court of appeals of Kentucky in 1820. It is still further defined in the case of Graham *v.* Strader (1844), just mentioned, the three slaves who were the subject of controversy having been "transient slaves" in Ohio, who had returned to their master in Kentucky, but later escaped across the Ohio River to Cincinnati and thence to Canada.

It will be observed that Judge T. A. Marshall, in delivering the opinion of the court, says: "What effect should be given here to the sentence of a foreign tribunal which, disregarding our laws upon this subject, should, on the ground that slavery is inconsistent with its own laws, wrest the slave from his master while on a temporary visit in another State,[24] and whether if the slave should afterwards return as a free man, he would, by our laws, be held subject to his former condition,

[20] The words "would of itself make him a free man" are a direct quotation from Oatfield *v.* Waring, 14 John. (N. Y.) 188 (192), decided in 1817, and cited by Judge Simpson. He seems to have included them in his opinion inadvertently, for his succeeding words, "Still, . . the plaintiff, notwithstanding his partial manumission, continues a slave," are a contradiction, and show that he did not accept all the conclusions reached in the New York case. The opinion of the court in Oatfield *v.* Waring is that "the manumission of the plaintiff, by two of three joint owners, would, of itself, make him a free man. No person can be partly a slave and partly free, or a slave for one-third of the time and free for two-thirds; he must be one or the other entirely. The manumission by the two may be considered a destruction of the tenancy in common, and a conversion of the slave; as it regards the proprietor of one-third." Followed in Nunnally *v.* White, p. 443, *infra,* the court holding that the will of White (who owned three fifths of the negroes in question), "declaring said negroes free, destroyed the tenancy in common between him" and the owners of the other two fifths, "and was a conversion, which deprived his former co-tenants of any right to the negroes, and turned their claim thereto into a money demand against . . White's estate." In Berry *v.* Hamilton, p. 455, *infra,* the court held that Miss Hamilton who "owned but an undivided interest of one fourth in the slaves, . . could not convert the slaves by any disposition of her one fourth [one hundred or more negroes] into a state of freedom. The greater interest must be held as controlling, . . and as all cannot go free, none can."

[21] 8 B. Mon. 545.

[22] 5 B. Mon. 173; p. 365, *infra.*

[23] P. 294, *infra.*

[24] As was done in the Somerset case, p. 14, *supra.*

need not be considered." There are, however, instances where the sentence of the foreign tribunal was disregarded when it adjudged a fugitive slave free. See, *e. g.*, Davis *v.* Sandford.[25] A female slave had fled to Ohio, was declared free there "by a judgment of a competent court," was seized by her owner "with others" and "brought . . from the state of Ohio to this state, by force;" her owner maintaining that she was a slave and his property, "that she was a fugitive from this state;" and insisting "that the judgment . . was not binding upon him or those under whom he claims, as they were not parties thereto." Davis, to whom he afterwards sold her, sought to evade payment because of the Ohio judgment for her freedom, though he "was fully apprised of the said judgment, and of the negro's claim to freedom under it, and . . purchased expressly upon the terms that he would run the risk of that claim," and had, "since his purchase . . sold the negro for more than he gave," but the court dismissed his bill. The "judgment or award on the writ of *habeas corpus* in Pennsylvania" discharging Maria from the custody of her mistress, Mrs. Kirby, was disregarded in the case of Maria *v.* Kirby, decided by the court of appeals of Kentucky in 1851, inasmuch as Maria and her mistress were merely sojourning for a short time in Pennsylvania.[26] But when the sojourn exceeded six months, as in the case of the slave Clarissa,[27] the Pennsylvania statute alone, which expressly conferred freedom on slaves who were "retained in this state longer than six months," [28] was enforced by the Court of Appeals of Kentucky, though no proceedings to free Clarissa had been brought in a Pennsylvania court.

In another passage in his judgment in Graham *v.* Strader, Judge Marshall says: "Some stress seems to be laid on the fact that Henry and Reuben performed services while in Ohio and Indiana, for which wages were paid, and that they went there for that purpose, with the consent of their owner. . . we do not see how it can affect the question. Williams was, at the time, their master. . . And it is to be presumed that wages were paid . . But this we deem immaterial. They were still sojourners for a transient purpose, not inhabitants or residents, and voluntarily returned with Williams." That wages were paid, was, however, material in the case of Julia *v.* McKinney,[29] for Julia had been hired two days in Illinois by her mistress in passing through the state, thus violating the Illinois Constitution of 1818, Art. VI., Sect. 2: "No person bound to labor in any other state, shall be held to labor in this state, except within the tract reserved for the salt works near Shawneetown; nor even at that place for a longer period than one year at any one time; nor shall it be allowed there after the year one thousand eight hundred and twenty-five; any violation of this article shall effect the emancipation of such person

[25] P. 289, *infra*.
[26] P. 402, *infra*.
[27] Ferry *v.* Street, p. 411, *infra*.
[28] Pennsylvania act of 1780, sect. 10.
[29] 3 Mo. 270 (1833).

from his obligation to service." The Supreme Court of Missouri held that she was entitled to her freedom. The constitutions of Ohio and of Indiana contained no such provisions.

Other significant cases in the same category were those of Collins *v.* America [30] and Ferry *v.* Street.[31]

Though the question of the status of slaves who had returned to Kentucky after a sojourn in Ohio was involved secondarily in the case of Graham *v.* Strader, the subject primarily before the court was that of their unlawful transportation across the Ohio River. The rights of Kentucky over the bed of the river and over the water flowing above it, are the peculiar rights which she derived from Virginia, which ceded to the United States in 1784 her territory northwest of the Ohio River only, including neither the river nor even half [32] the river; so that whatever some school geographies may say, Kentucky is not bounded on the north by the Ohio River, but only by the states of Illinois, Indiana, and Ohio. The Ohio River itself, to low-water mark on the northern shore, is a part of the state of Kentucky,[33] from its mouth up to the big Sandy river.[34]

In 1824 the general assembly of Kentucky passed an act,[35] providing

> That any master . . of a steam-boat or other vessel, who shall hereafter hire, or employ, or take as passenger, or otherwise, out of the limits of this state, or shall suffer to be hired [etc.] . . on board of such . . vessel . . or otherwise take out of the limits of this state any person . . of colour; unless such coloured person . . shall have . . the record of some court . . proving his . . right to freedom; or unless such master shall have the permission of the master of such person . . of colour for such removal, every such master . . of a . . vessel, shall be liable to indictment, fine and imprisonment, . . and . . in damages to the party aggrieved . . and the steam-boat or other vessel . . shall be liable to the party aggrieved . . and may be proceeded against . . and condemned and sold to pay . . such damage and the costs of suit.

"Edwards,[36] under the provisions of this statute, filed his bill in chancery against Vail, and the steamship *Virginia*, charging that [his] . . negro . . was taken on board said boat, at Louisville, and transported out of the limits of the state of Kentucky." It was proved, however, that

[30] P. 391, *infra.*
[31] P. 411, *infra.*
[32] "All grants of land bounded by fresh-water rivers, where the expressions designating the water-line are general, confer the proprietorship of the grantee to the middle thread of the stream." Jones *v.* Soulard, 24 Howard 65.
[33] See Chief Justice Marshall's opinion in Handley's Lessee *v.* Anthony, 5 Wheaton 374 (1820); and Commonwealth *v.* Garner, 3 Grattan 655 (1846), in which one hundred and thirty pages are devoted to discussing to what limit on the Ohio side Virginia's jurisdiction extended.
[34] The Revised Statutes of 1852 declare the boundary of Kentucky, on the west and north, to be from the middle of the Mississippi River, where it intersects the parallel of latitude, 36 degrees 30 minutes, below New Madrid, Missouri, "up said river to the mouth of the Ohio river; thence crossing the Ohio river to the north-west bank, at low water mark; thence up the north-western bank of said river at low water mark, to a point opposite the mouth of the Big Sandy river;" p. 159.
[35] Act of Jan. 7, 1824. 1 St. L. 259.
[36] Edwards *v.* Vail, p. 315, *infra.*

the negro "came on board from Jeffersonville, Indiana, . . and left the boat on its arrival at Cincinnati, or shortly afterward." The counsel for Edwards "contended that as our territory extends to low-water mark on the north bank of the Ohio river, the negro was taken on board in Kentucky, and his coming from Indiana can make no difference." But Judge Underwood did not accept this view: "A literal application of the same argument would prove, that the negro was not taken 'out of the limits of the state' in the boat, unless it had been shewn, that on its arrival at Cincinnati, it had been hauled out on dry land, on the north bank, with the negro in it. . . The negro came voluntarily on board, from another state, and left the boat voluntarily, and went into another state, the boat remaining all the time in Kentucky." Consequently the act of 1824 was not violated by the master of the steamboat.

To remedy this defect, an amendatory act was passed in 1828,[37] which extended the application of the act of 1824 "to the owner, mate, clerk, pilot and engineer" of the offending vessel, and provided

> That the liabilities under said act shall accrue whenever the person of colour shall be taken on board any steam vessel from the shores of the Ohio river, opposite to this State, to the same extent as if they were taken on board from the shores or rivers within this State; and the like liability shall occur for landing or suffering them to go on shore within, as without the State: Provided, Nothing in this act, or the act to which this is an amendment, shall be so construed, as to apply to any person of colour who is not a slave.

The constitutionality of these acts was sustained in 1835, in the case of Church *v.* Chambers,[38] and in 1846, in McFarland *v.* McKnight,[39] and their provisions were embodied in the Revised Statutes of 1852,[40] the latter, however, being more general than the amendatory act of 1828 (which extended the liability under the act of 1824 to a taking on board of a person of color "from the shores of the Ohio river opposite to this State"); for the act of 1852 declares that its provisions "shall also apply when the slave is taken on board of the boat . . at any place out of this state." [41]

Among the suits for freedom brought in Kentucky were a number based on the Pennsylvania acts of 1780 and 1788 [42] for the gradual abolition of slavery. Thus in 1834 the three children of Dinah Barrington, a negress born in Pennsylvania in 1800, but afterwards brought to Kentucky, where, before she was twenty-eight years old, she gave birth to the appellants, were adjudged free by the Court of Appeals,[43] on the ground

[37] Act of Feb. 12, 1828. 1 St. L. 260.
[38] P. 329, *infra.*
[39] P. 375, *infra.*
[40] Ch. vii., sect. 3, p. 143.
[41] See also the case of the slave Ambrose, Bracken *v.* Steamboat *Gulnare*, p. 424, *infra.*
[42] Pennsylvania acts of Mar. 1, 1780, and Mar. 29, 1788. 1 Dallas Laws 838 and 2 Dallas Laws 586.
[43] Barringtons *v.* Logan, p. 328, *infra.*

that Dinah, although under the Pennsylvania act of 1780 she was to be retained in a state of pupillage until she should attain twenty-eight years of age, was born free, and never was a slave; and that, as she was never a slave, her children must be free. A similar decision (1835) was given in Gentry *v.* Polly McMinnis.[44]

But in the statute of Pennsylvania passed in 1780, abolishing slavery in respect to those born in that state after its passage, section 10 excepted "domestic slaves attending upon . . persons . . sojourning in this state, and not becoming resident therein, . . Provided, Such domestic slaves be not . . retained in this state longer than six months." An act of 1847[45] repealed so much of the act of 1780 "as authorizes masters or owners of slaves to bring or retain such slaves within this commonwealth, for the period of six months, in involuntary servitude, or for any period of time whatsoever." It will be seen on later pages, that in Maria *v.* Kirby (1851),[46] Judge T. A. Marshall, who delivered the opinion of the court affirming the decree dismissing Maria's bill claiming freedom, declared:

> If any State were to enact that any slave brought within its limits by the authority of the owner, and permitted by him to remain there six months, or three, or even one, should be free, there might be some reason for saying that such law should operate permanently, even upon the rights of strangers, because they would have an opportunity of knowing its provisions and avoiding its consequences. But a statute declaring that any slave so brought into the State should be instantly and absolutely free, would . . be unreasonable and unjust as to strangers who, though ignorant of its terms would, while within the State, be subjected to the consequences of its infraction, without the possibility of avoiding them. We do not admit that these consequences, though expressly declared, should be recognized and enforced by any other State against its own citizens who may ignorantly have incurred them.

Judge Marshall's novel corollary to the maxim "*Ignorantia juris neminem excusat*" was invoked two years later by Judge Crenshaw, who, in delivering the opinion of the court of appeals in Ferry *v.* Street,[47] made use of Judge Marshall's argument which condemned Maria to slavery, to free the slave Clarissa. Her owner "was apprised of what the law of Pennsylvania was when [1838] she sent her slave there, . . That law was that the slave might be brought there, and her condition be unchanged for the period of six months, but that if she remained there longer . . she should be deemed a free woman. . . and we think, that in such a state of case, the condition of Clarissa in that state, after remaining in that state longer than six months, should follow her to Kentucky, and be her condition here. . . She was free there, and should be free here."

The Kentucky Reports contain numerous cases involving wills, which grant freedom to slaves on condition that they go to Liberia. In case a slave prefers to remain a slave, he is devised usually to a relative of the

[44] P. 330, *infra.*
[45] Laws of 1847, p. 208.
[46] P. 403, *infra.*
[47] P. 411, *infra.*

testator. If children "were too young to exercise the privilege of election, . . the parents" were permitted "to do it for them." [48] Children born between the date of the will and the death of the testator, whose mother had been emancipated by the will [49] on condition she went to Liberia, were decreed to be free also: "It would be exceedingly difficult to suggest a satisfactory reason why he should free all that were in being, and in the same instrument, which so clearly developes his benevolent feelings towards his slaves, should intend that after born children of the manumitted mother, should be separated forever from that mother's care." And children born since the death of a testator [50] who emancipated all his slaves who should "become willing and give themselves up to embark for Liberia," allowing them "dispensation of ten years," in which to be hired out, "not to the highest bidder," to earn a fund for their "outfit" ("a decent suit of clothing and one hundred dollars cash"), were also declared free.[51] Other varieties of testamentary disposition may be seen in the wills of John Stith [52] and of Nelson Graves.[53]

The Kentucky constitution of 1850 [54] provided that the general assembly should "pass laws . . to prevent [slaves] . . from remaining in this state after they are emancipated." Such laws were passed in 1851 [55] and in 1852,[56] one hundred and sixty years after Virginia's first enactment on the subject.[57] Their working may be seen in the cases of "Elisha, of color, *ex parte*" (1858),[58] of Winn *v.* Sam Martin (1863),[59] of Neely *v.* Merritt (1873)[60] and of Walters *v.* Ratliff (1869).[61]

The next best thing to freedom was the privilege sometimes given to the slave of choosing his master. Illustrations of its operation may be found in connection with the wills of Constance Blakey and of Joseph Morgan.[62]

The legislature of Kentucky followed the example of the Virginia assembly in enacting laws compensating the "taker up" of a runaway slave, the reward being "increased by the distance which he might have to travel." [63] In 1835, as "Escapes of slaves continued to increase and

[48] Graham *v.* Sam, p. 377, *infra.*
[49] Adams *v.* Adams, p. 392, *infra.*
[50] John Graham, who made his will about 1840.
[51] Graham *v.* Sam, *ubi supra.*
[52] John *v.* Moreman, p. 381, *infra.*
[53] Isaac and others *v.* Graves, p. 422, *infra.*
[54] Article X., sect. 1.
[55] Act of Mar. 24, 1851.
[56] Rev. St. of 1852, pp. 645 (and note), 647. Judge Stites says in Smith *v.* Adam, 18 B. Mon. 685 (689): "It is a part of the history of the state, and thus judicially known, that the chief causes which led to the enactment of those stringent constitutional and legislative provisions was the rapid increase of that class of population [free negroes] within the state, and the evils to be apprehended therefrom."
[57] Act of April 1691. 3 Hen. 87.
[58] P. 431, *infra.*
[59] P. 444, *infra.*
[60] P. 467, *infra.*
[61] P. 465, *infra.*
[62] Blakey *v.* Blakey, and Hopkins *v.* Morgan, pp. 315, 328, *infra.*
[63] Elliott *v.* Gibson, p. 394, *infra.*

but few recaptures were made, because, as was supposed, of the inadequacy of the reward allowed by law for such services,[64] the Legislature . . increased the compensation . . to thirty dollars if [the fugitive was] taken up out of this State.[65] It was soon ascertained that, because of the odium which in the non-slaveholding States was visited upon those of their citizens who engaged in the apprehending of fugitives from other States, it was necessary to offer a greater reward, and such as would probably be sufficient to induce men to consult their own interests, regardless of the public sentiment around them." Accordingly an act was passed in 1838,[66] providing " That the compensation for apprehending fugitive slaves taken without this Commonwealth, and in a State where slavery is not tolerated by law, shall be one hundred dollars, on the delivery to the owner at his residence within the Commonwealth, and seventy-five dollars if lodged in the jail of any county in this Commonwealth, and the owner be notified so as to be able to reclaim the slave." The constitutionality of this act was brought in question in the case of Elliott *v.* Gibson,[67] which came up to the Kentucky Court of Appeals in 1850. The act was upheld. See also the case of Tunstall *v.* Sutton.[68]

The rule against perpetuities was deemed, by the Virginia court of appeals, in 1798, " too rigid " to be applied " with all its consequences " to the case of the slaves of John Pleasants,[69] who had declared in his will, made in 1771: " all my slaves now born or hereafter to be born, whilst their mothers are in the service of me or my heirs, to be free at the age of thirty years." The rule was otherwise disposed of in 1856, by the Kentucky Court of Appeals.[70] The will of Thomas Davis, made in 1801, and admitted to record in that year, provided that " negro Beck, and all her offspring, shall be set free from all bondage at forty years of age." Beck was then fourteen years old and died before reaching forty. She " gave birth to a female child named Sicily, about the year 1803 or 1804," and half a century later, the " descendants of Sicily . . some children and others grand-children " " some twenty . . persons of color " filed a petition " to . . establish their freedom against Wood and others, holding them in bondage." The court held that " the attainment of [the age of forty] . . by Beck herself was not a condition precedent to the freedom of her offspring, . . the testator intended that his devise should take effect at a particular time, fixed by reference to the age of Beck, instead

[64] " Ten shillings, and one shilling for every mile " " between the place where the runaway was apprehended, and that from whence he fled; " act of Jan. 16, 1798. 2 St. L. 1411. Nevertheless, even after the offer of a larger reward, " the escape of a slave to Ohio, was equivalent to a total loss to the owner." If a slave should " escape across the Ohio, . . his recapture would be hopeless." McClain *v.* Esham, 17 B. Mon. 146 (154) [1856].
[65] Act of Feb. 28, 1835. Acts of 1835, p. 282.
[66] Act of Feb. 8, 1838. Acts of 1837-8, p. 158.
[67] P. 394, *infra.*
[68] P. 426, *infra.*
[69] Pleasants *v.* Pleasants, p. 105, *supra.*
[70] Davis *v.* Wood, 17 B. Mon. 86 (1856); p. 424, *infra.*

of by naming the year itself. . . If the intention was that Beck and her offspring in successive generations remaining in slavery until they respectively attained the age of forty years, should then be free, this would . . be an illegal and ineffectual devise, because it attempts to create a perpetuity."

The "fellow-servant rule," the injustice of which has contributed to the passage of workmen's compensation acts in many jurisdictions, was held by the Kentucky Court of Appeals, in 1856, in a railroad case,[71] not to apply when the injured "co-employee" was a slave.

White complexion was considered to lessen the value of a slave. The color of the slave Albert[72] who escaped to Ohio or Canada, "could not be distinguished from a white man," and several witnesses "say that owing to his being almost white, and to the consequent facilities of escape, they did not consider him to be worth more than half as much as other slaves of the ordinary color and capacities." In Graham *v.* Strader,[73] the court held, that in assessing damages for the loss of "the three yellow men," the jury "had a right . . to take into consideration their qualities as musicians, . . to consider the appearance, and manners, and address of these slaves, their acquirements in literature, as well as in music, their habits of subordination or of independence, the liberties which had been allowed to them, and the effect of all these circumstances, not only upon the value of their services, but also in generating a restlessness under restraint, and a desire of freedom, and in affording facilities and opportunities of escape;" the jury "had the right to determine how far any of these considerations should operate to enhance or diminish the fair value of the slaves as such."

The Kentucky courts accepted the doctrine of Maria *v.* Surbaugh[74] (that a female slave whose freedom was, by will or deed, to take effect *in futuro*, remained a slave till the date set for her liberation, and that her children born before that date, were, therefore, slaves, though born after the date of the emancipating document); but made an exception in two cases where the strong language used by the emancipators in opposition to slavery convinced the court that immediate emancipation was intended, in spite of the fact that emancipation was coupled with a provision for future service. Both emancipators were Virginians. The earlier instrument of emancipation (construed by the Kentucky Court of Appeals in 1836)[75] was a deed, acknowledged in Virginia, in 1790: "Know all men by these presents, that I, John Baker of Chesterfield county, do believe that all men by nature are equally free; and, from a clear conviction of the injustice and criminality of depriving my fellow-creatures of their natural

[71] Railroad Company *v.* Yandell, p. 427, *infra*.
[72] Ewing *v.* Gist, p. 360, *infra*.
[73] P. 365, *infra*.
[74] P. 138, *supra*; Esther *v.* Akins, p. 361, *infra*; Johnson *v.* Johnson, p. 384, *infra*.
[75] Hudgens *v.* Spencer, p. 335, *infra*.

right, do hereby emancipate or set free" various slaves at various future dates. The claimant was the son of one of the female slaves, born between the date of the acknowledgment of the deed and the date when she was to be free. The Court of Appeals affirmed the decree establishing her son's right to freedom.

The other document whose construction involved a deviation from the rule of Maria *v.* Surbaugh was a deed of emancipation which, among other provisions, provided for "a negro girl named Susannah, now ten years old, to go free at the expiration of eight years from this date." [76] The son of Susannah, who was born about seven years after the date of the deed, brought suit for his freedom, and the Kentucky Court of Appeals held, in 1831, that "Susannah was a free woman when she bore the plaintiff. . . Her freedom immediately . . resulted from the acknowledgment and registration of the deed of emancipation; . . The . . emphatic language of [the grantor's] . . deed evinced a fixed determination on his part, never again to exercise . . dominion, as proprietor, over any human being as a slave."

With the exception of a few federal cases originating in Kentucky, nearly all the cases which follow are cases tried in the highest court of the state, called, under all the successive constitutions, the Court of Appeals. The constitution of 1792 gave that court original and final jurisdiction in certain land cases, appellate jurisdiction in all other cases. That of 1799 confined it, practically, to appellate jurisdiction. Original jurisdiction in some land cases and some others was restored to it in 1809. Under the constitution of 1850 it had appellate jurisdiction only. From 1810 to 1850 the Court of Appeals consisted of three judges, after that date of four.

[76] Charles *v.* French, p. 319, *infra.*

Jackson v. Wilson, Hughes Ky. 162, May 1795. [161] "some time in the year 1783 . . Wilson proceeded to survey his land . . [162] Aaron Collett and negro Tom carried the chain, when they first set out."

Ward v. Fox, Hughes Ky. 406, March 1801. About 1790 [428] "Wm. Wood forewarned the said Ward from using or taking possession of the land where he had settled, as the said Wood claimed it; upon which the said Ward informed the said Wood that he should continue where he was; and told the said Wood if he would wait, he should see his negroes in the act of deadening some trees."

Enderman v. Ashby, Ky. Dec. 65, July 1801. "bill of exceptions . . brought for money supposed to have been illegally recovered, on the act of 1792, which prohibits dealing with slaves without the consent of their owners."

Stapp v. Howdershell, Ky. Dec. 198, June 1802. "Stapp . . delivered to Howdershell a bond executed by John Hunt, junr., . . for two negroes, which Howdershell was to keep if Stapp should not deliver to him one negro boy or man over fifteen years of age, and not to exceed thirty, to be sensible and sound;"

Lyne v. Lyne, Ky. Dec. 354, December 1803. Will of Edmund Lyne, 1791: "first after my death each slave that is in bondage under me, shall be liberated. . . I do hereby constitute Harry Innes, my trusty friend, to take charge of all my cash . . This, together with the whole of my property personal and real, to support the freedom of my slaves, after which the balance to be disposed of as the law directs."

Held: the executor has the right to the custody of the negro children during their minority and to retain a sufficient amount of the estate for their support during minority. [355] "It only remains to inquire whether" the executor was "by this will . . authorized to pay for the schooling of these young negroes. . . [356] 'to support the freedom of my slaves'—is very comprehensive. . . it must mean . . every thing which is necessary to make their freedom a real advantage to them. . . It will no doubt be his duty . . to have these young negroes bound out to learn some beneficial trade; . . if the executor has sent, or shall send these children to school at the expence of his testator's estate, the more certainly to secure them those branches of learning which the law specifies such apprentices shall receive, he ought to be justified for so doing."

Will (a negro) v. Thompson, Hardin 52 n., May 1805. See Thompson *v.* Wilmot, 1 Bibb 422 (1809), *infra.*

Campbell v. Sullivan, Hardin 17, June 1805. Will of Campbell: "the slaves and personal estate to be sold at twelve months credit; and out of the money arising by the sales thereof, to pay and satisfy my just debts,"

Beall v. Joseph (*a negro*), Hardin 51, May 1806. "The negro, Joseph, had been the slave of Woods. Woods, in 1799, sold a tract of land . . to Edwards, and agreed to let Edwards have Joe for four years; after which Joe was to be free. . . Edwards sold him to the defendant as a slave. After the expiration of this four years, Joe brought his action of false imprisonment against Beall, to try his right to freedom."

Held: [32] "it not appearing that he ever was out of the limits of this state, and the one from which it was separated, there is no law of either of them, by which slaves in that situation, can obtain freedom, or enjoy the rights of free persons, only by deed in writing, or the last will and testament of the owner, duly authenticated and recorded: but no such deed, nor will, nor certificate, of freedom in favor of Joseph, was produced at the trial. It is therefore clear, that no declaration nor promise made to a slave in this state, or for his benefit, . . can be enforced by a court, either of law or equity,"

Tardeveau v. Smith, Hardin 175, February 1808. Bond, 1788: "Whereas the above bound Tardeveau, brothers, are indebted to the said James Smith, two likely negroes between the age of fifteen years and twenty-five, to be sound and healthy; which said negroes ought to have been delivered in the month of January last past; but from some circumstances, it hath been inconvenient for said Tardeveau, brothers, to pay the said negroes."

Spiers v. Willison, 4 Cranch 398, February 1808. Rebecca Willison offered parole proof that her grandmother, "while Kentucky was a part of Virginia, had given them [the slaves] to her by a deed, which was lost."

Kennedy v. Terrill, Hardin 490, June 1808. "a warrant to search Kennedy's house . . for certain slaves, by name; and, if necessary, to break doors, to raise the *posse comitatus*, to deliver over the negroes, when found, to the administratrix of Benjamin Harrison, deceased, who had proven them to be her property, . . that they had been carried off during the American war"

Caldwell v. Myers, Hardin 551, June 1808. "in the year———Peter Young had a negro woman who was pregnant, and not having the means of supporting her, during the illness inseparable from her condition, applied to the said Rebecca's mother, and agreed if she would take care of the said negro woman, and support her during her illness, that the said Rebecca (then sole, and under age) should have the child with which the said negro woman was then pregnant, at the death of the said Peter Young. . . the negro woman was received into the family, and taken care by the said Rebecca, until she recovered of her illness; that she was delivered of a girl child; and that the said Rebecca furnished the child with clothes, until the child was seven years old; and, when called on by the defendant, Peter, furnished money to pay the taxes due for it." Peter has taken offence and has sold the girl who is now about thirteen years old to Caldwell for $180, "one half less . . than her real value; and they [Myers and Rebecca, his wife] charge . . that the two Lovelesses are about to take the girl down

the Mississippi, into the Spanish dominion. . . the circuit court were of opinion . . that the complainants had a right to the girl, at the death of Peter Young; and decreed that Peter Young and George Caldwell should give bond . . to be void upon the delivery of the said girl, and her increase, if any, to the complainants, within 30 days after the death of Peter Young. . . [554] decree . . reversed . . directions to dismiss the bill . . but without prejudice to any suit at law," [553] "it is believed, there is no instance where a parol executory contract, concerning a personal chattel has been specifically decreed: . . [554] By our law, slaves . . partake, in all their qualities, except that of descent, of the nature of personal estate." [Trimble, J.]

Burton v. Wellers, Litt. Sel. Cas. 32, June 1808. "Weller asked, if they knew where he could purchase a likely negro boy? Mr. Powell said, no. In a few minutes, Burton said that he knew of one. Mr. Powell said to Mr. Burton, 'not that sickly one?' Burton winked, or nodded to Mr. Powell. . . Weller observed, he would not buy, nor have one, unless he was a sound, healthy, and active boy. Mr. Burton said to Weller, the negro boy I mean, is as sound, well, healthy a boy as you will find one in a thousand." Weller bought him of Burton in 1802, for $300. The negro "labored under an old and inveterate complaint in his legs," and "afterwards died of the same complaint."

Pringle v. Samuel, 1 Bibb 167, October 1808. "the defendant did hire of Thomas Samuel, in his lifetime, a negro woman for the space of one year, for which the defendant was to pay the deceased the sum of forty dollars:"

Rumsey v. Matthews, 1 Bibb 242, November 1808. "whereas the above named Rumsey and Wallace, have hired two negro men of the aforesaid Matthews, for one year, to commence from the day of the date hereof, for the sum or price of one hundred dollars each, . . and to find the said negroes in clothing suitable to the seasons, and to pay their taxes, and to return the said negroes to the said Matthews, at Barren court house, at the expiration of the year."

Scott v. Clarkson, 1 Bibb 277, November 1808. "testator had purchased of William Scott a negro woman, at the price of £89, . . that said William . . represented the said slave as twenty five years of age, and as sound and healthy, . . that the slave was, at the sale, . . unsound and nearly forty years of age or upwards;"

Thompson v. Wilmot, 1 Bibb 422, June 1809. "In May 1805, Miss Ruth Wilmot exhibited her bill against Thomas A. Thompson, setting forth that in October 1790, she exchanged a slave named Will, of whom she was possessed in the state of Maryland, for a slave called Harry, the property of said defendant, who was about to remove to Kentucky; that one of the moving considerations in said exchange was the express stipulation on the part of said defendant, that he would manumit and emancipate said Will in seven years; that the defendant on the day of the exchange made a memorandum of the said agreement, and delivered it to her as his act and deed; that said slave was persuaded by Thompson, to

leave her and go with him to Kentucky, by the prospect of freedom thus held out to him; that in said instrument it was inserted that if the said Will did not choose to live with said defendant in Kentucky, he should be at liberty to return to Maryland after one year of the term had expired; that said defendant in a few months after said agreement arrived in Kentucky with said Will, who faithfully served the said term of seven years, and has ever since been held in slavery by the defendant: she states that the slave had instituted a suit at law in the said court to recover his freedom, but had failed because the said instrument was held not to amount to an actual and formal emancipation, and the slave therefore not entitled to sue.[1] She therefore prays a specific execution of the said agreement, which she exhibits; and for an account and payment for the value of the service of the slave beyond the said term of seven years, during the illegal detention of the said slave, by the said defendant so wrongfully committed; and for general relief. . . [424] the circuit court decreed a specific execution of the agreement, and a manumission of Will; caused a jury to be empannelled to assess the damages by the said detention of Will, beyond the said period of seven years in the bill complained of; which being assessed at 691 dollars 25 cents, were decreed to be paid by the defendant to the complainant in trust for said negro Will"

Decree affirmed.

Hazlerigs v. Amos and Jane, 1 Bibb 425, June 1809. "the appellant being a resident of the state of Virginia, and holding the appellees as slaves under the laws of that state, in October or November of the year 1780, left his residence with the view and intention of removing to and settling his family in Kentucky; that when he arrived at Cross creek, six miles from the Ohio, he found the difficulty of passing down the river so great, and the danger from the savage foe so imminent, that self preservation induced him to halt until he could descend the river with more safety; that in the spring of the year 1781, the inhabitants in the vicinity of Cross creek were much alarmed from the Indians, and some of them, who stayed, forted for their mutual safety and protection; that the appellant, with his family and servants moved eastward to a place called Shirtee, about two and a half miles from Catfish, (now Washington), where he rented land and lived until the fall of the year 1783, when he descended the Ohio, and came to this country with his family and servants, where he has ever since resided; that during his stay at Shirtee, he always manifested his intention of proceeding to Kentucky as soon as possible, without hazarding the lives of his family and servants; that the place where he lived was in the territory claimed both by Virginia and Pennsylvania; that the officers of both states exercised jurisdiction therein, and that great public commotion was produced and existed amongst the people; that the conflicting claims to jurisdiction were not adjusted, and the boundary line settled, until the year 1784; and that, according to the line as settled between the two states, the place where the appellant had resided is several miles

[1] Will (a negro) *v.* Thompson, p. 280, *supra.*

within the state of Pennsylvania." [425] "a verdict was found for the appellees. The appellant . . moved . . a new trial, but the court overruled his motion,

[428] "Judgment reversed." "the evidence in this case does not warrant the finding of the jury." [427] "Under these circumstances . . [the appellant] was bound to obey the laws of Virginia, and, in his turn, was entitled to the benefit of their protection."

Mitchell v. Gregory, 1 Bibb 449, June 1809. "In covenant for the delivery of a negro girl thirteen years of age, of good size, . . 'it was expressly agreed' . . that the plaintiff would deliver to the defendant . . the sum of 29 dollars in pork, or pay it in cash, being the balance and residue unpaid of 200 dollars, the consideration stipulated for the negro girl"

Redding v. Hall, 1 Bibb 536, October 1809. Redding "hired of Margaret Hall . . a negro woman for one year, for which he executed his note for the sum of £7 1 *s.* Shortly after the negro was taken sick and he employed a physician," and paid his bill to the amount of £4 4 *s.* 9 *d.*

Held: the hirer of a slave is not entitled to abatement for sickness or physician's bills, unless so stipulated. He is bound to pay proper attention to the health of the slave, and to employ a physician if necessary; a palpable neglect in this respect would render the hirer responsible to the owner. Otherwise [541] "he can have no incentive to treat the slave humanely, except the mere feelings of humanity, which we have too much reason to believe in many instances of this sort are too weak to stimulate to active virtue," [Boyle, J.]

Cox v. Robertson, 1 Bibb 604, December 1809. [605] "slaves shall be deemed real estate, but under many modifications. . . slaves are liable to the payment of debts, but not to be sold or disposed of by executors or administrators, unless in case of a deficiency of the personal estate." Held: slaves pass to executors and administrators, and they may maintain detinue for slaves.

Children of Sibley ads. Shannon, 1 Bibb 615, December 1809. "The paupers suing for their freedom in the court below had judgments . . in their favor. Their mother, Sibley, was a slave in the state of Pennsylvania, previous to the passage of the act for the gradual abolition of slavery, and was afterwards duly registered according to the requisitions and provisions of that act, whereby she would have remained a slave for life, even in the state of Pennsylvania, any thing in that act notwithstanding. She was afterwards removed into the state of Virginia, and was in the district of Kentucky registered according to the laws then in force, whereby she remained a slave for life. The appellees, her children, were all born after her being removed from the state of Pennsylvania; and according to the rule '*partus sequitur ventrem,*' they must be deemed slaves, unless they can show some right to freedom, acquired since their birth, or can show that the rule before mentioned did not apply to their birth. To do this, the act of Pennsylvania, amendatory to the former, has been relied on; . . enacted previous to the removal of the mother. . .

[616] By the provisions of the original act, the children of slaves 'born within the state' after the passage thereof, were declared free after the age of twenty eight years; and if Sibley's children had been born within that state, the right of freedom would have been incipient, to be consummated by the attainment of the age specified; and having once attached, a subsequent removal of them from Pennsylvania, would not have defeated that incipient right, according to any existing laws of Virginia or of this state. But . . The children of Sibley never were in the state of Pennsylvania, . . The legislature of Pennsylvania have not even attempted to extend the operation of their statutes to slaves born *extra terratorium* [*sic*], and never carried within her jurisdiction; although the mother may have been registered as within the operation of their laws. . . Judgment reversed." [Bibb, C. J.]

Mahan v. Jane, 2 Bibb 32, Spring 1810. "Action of assault and battery and false imprisonment brought by appellee to obtain her freedom:" Will of Clarke, dated 1796: Jane "was devised to Sarah Mahan . . until the age of twenty five, and then to be free." But [33] "Clarke, eight or nine years before his death, and about five before the execution of his will, gave the plaintiff Jane to his daughter Sarah Mahan . . in whose possession and under whose control she remained until the commencement of this suit. . . The declarations of Clarke, both before and after the gift, (which probably had an undue weight on the minds of the jury,) that he intended to liberate his young slaves at his death, does not change the nature of Mahan's right;" "though in doubtful cases we may presume in favor of liberty, we cannot indulge it in a cause where the testimony is as clear and decidedly opposed to the verdict as in this." [Clark, J.]

Donaldson v. Jude, 2 Bibb 57, Spring 1810. Deed of Walter Clark, 1781, manumitting Jude, was "re-acknowledged by him in the fall of the year 1783," In 1787 "this deed poll of emancipation" was proved by one of the two subscribing witnesses.

Held: not sufficient evidence to admit the writing to record under the statute of Virginia.

Belmore v. Caldwell, 2 Bibb 76, Spring 1810. "Belmore declared against Caldwell in trespass for beating his slave." Held: "Slaves, by act of our legislature,[1] are declared to be real estate. . . there must be a possession in fact to enable the plaintiff to bring his action."

Meredith v. Sanders, 2 Bibb 101, Spring 1810. [103 n.] "William Meredith, sen. and his wife, swore, that the slave in question (now about nine years old) was given by said Meredith, sen. to his son, William Meredith, jr. when about twelve years of age; that the donor had refused to exercise any act of ownership over the said slave, considering him as the property and under the exclusive control of the son, and that he, the donor, had so declared to several who wanted to purchase the boy. It appeared in evidence that when the slave in question was born the mother was hired out by Meredith, sen.; that generally since that time she has been hired out, and the boy in question always went with and remained

[1] Litt. L. K., vol. 2, p. 120.

with the mother. Meredith, the father, swore the boy went with the mother by the permission of his infant son. Three several persons who had hired the mother, and supported the boy along with the mother, swore they had never heard of the son's claim until shortly before the sheriff's sale."

Gray v. Prather, 2 Bibb 223, Fall 1810. A negro boy was sold " for the sum of eighty pounds,"

Davis (a man of color) v. Curry, 2 Bibb 238, Fall 1810. In 1789 Davis " was brought as a slave into the then district, now state of Kentucky, from the state of Delaware, where he had before his removal . . been held as a slave; "

Held: color and long possession are such presumptive evidences of slavery as to throw the burden of proof on a negro claiming freedom. A man of color brought from Delaware presumed a slave unless it is proved that the laws of that state since the Revolution have abolished slavery.

Meaux v. Caldwell, 2 Bibb 244, Fall 1810. Held: a loan of slaves is within the statute of frauds and perjuries, and must be evinced by will or deed recorded to be good against creditors and purchasers.

Ned v. Beal, 2 Bibb 298, Spring 1811. Isaac Cox devised his slaves to his wife, " to serve in the following manner, and to be free at the following periods, to wit: Easter, on the 1st day of May, in the year of our Lord, 1793; Jude, to be free in the year 1804; and Dinah, to be free in the year 1806; and in the mean time, the above named Jude and Dinah, shall be schooled in such manner as to be able to read a chapter in the Bible." [299] " After the death of Isaac Cox, and before the year 1804, several children were born of Jude, who brought suit for their freedom,"

Held: the children are slaves.

Speaks v. Adam, 2 Bibb 305, Spring 1811. Suit " by persons of color for their freedom. . . Speaks . . removed from the state of Maryland to Kentucky, 1785, and claims the appellees as slaves by marriage: but having failed to take the oath required by law,[1] the appellees instituted this suit in 1808,"

Held: the act of Virginia, passed in 1778 against the importation of slaves, did not require the oath prescribed, of persons claiming slaves in another state by marriage or descent.

Yoder v. Allen, 2 Bibb 338, Spring 1811. " Yoder . . covenanted to furnish Allen by a given day, with two healthy, sensible, likely and sizeable negro boys, between fourteen and eighteen years of age, in consideration . . of 450 dollars then paid, and 210 dollars to be paid on the delivery of the boys."

Caldwell v. Sacra, Litt. Sel. Cas. 118, May 1811. Caldwell's negro boy had tied large sticks of wood " to the horse's tail, the horse having frequently broken into his wheat-field." He " had so beat and caused the said horse to run as thereby to occasion his death."

Held: the master of a slave is liable for the trespass of a slave.

[1] Va. act of 1778, sect. 3.

Frazier v. Spear, 2 Bibb 385, Fall 1811. "The fact agreed is that 'Daniel is the grandson of Phoebe, in the will of John Spear mentioned.' If marriage between slaves was recognized by law, some doubt might exist whether he was to be understood as the grandson through the male or female line; but as the father of a slave is unknown to our law, we are irresistibly led to conclude that he is descended in the female line."

Lawrence v. Speed, 2 Bibb 401, Fall 1811. By virtue of an execution the deputy sheriff "seized four negroes, to wit, Joseph, Milly, Ruth and David, . . [402] and sold the same at public auction in the town of Danville. Joseph and Milly were first severally sold, the former at the price of $115 50 cents, and the latter for $293. There still remaining between $250 and $300 of the execution unsatisfied, the sheriff sold Ruth, and David her son, between two and three years old, in one lot at the price of $400. . . the defendants in the execution moved the court to quash the sale . . at least so far as respects Ruth and David, because they were sold together, whereas they ought to have been sold separately, and because the sale of both was not necessary to make the money then due on the execution."

Held: [404] "The mother and child were indeed physically divisible, but morally they were not so; and the Sheriff in selling them together certainly acted in conformity to the dictates of humanity," [Boyle, C. J.]

McDaniel v. Will, 2 Bibb 550, Spring 1812. "The appellees, as paupers, brought suit [in 1801] . . asserting their right to freedom, under the [Virginia] act of assembly of 1778, for preventing the further importation of slaves. . . [551] verdict and judgment in favor of the appellants; after which, . . 1806, the appellees exhibited their bill . . to obtain a new trial. They charge that they were imported from the state of Maryland into this state, by Edmund Tucker, in the month of May 1785; that by the then laws every person importing slaves, with intention of becoming a citizen, should, within ten days, take the oath prescribed by the act of 1778; that said Edmund Tucker did not comply with the law and take the oath prescribed thereby; . . the [circuit] court decreed that the . . judgment . . be set aside . . and that the defendants be severally free."

Held: [554] "the decree of the circuit court . . must be reversed;" [554] "Edward [*sic*] Tucker, within a very few days after his arrival in this country, was informed of the necessity of taking the oath; . . Garrard was then a justice of the peace; . . he did actually take the oath before Garrard, . . Garrard did not act as a justice until 1786, . . the probability is great, that the witnesses are mistaken as to the year in which Tucker removed."

Grimes v. Grimes's devisees, 2 Bibb 594, Spring 1812. Held: by the act of November 26, 1800, "the legal title of a slave which is devised, is immediately transferred to the devisee, and the assent of the executor is not necessary to entitle him to the enjoyment of it."

Violet and William v. Stephens, Litt. Sel. Cas. 147, July 1812. "The plaintiffs brought this action, as paupers . . to recover their freedom. On the trial they asserted their right to freedom, under an act of Pennsyl-

vania, passed 1780, entitled 'an act for the gradual abolition of slavery' in that state: Also, under the . . act of Virginia, passed in 1778." Gilbert Simpson brought "the mother of the plaintiffs into Virginia when he removed from Pennsylvania." Judgment for defendant reversed.

[148] "the penalties and forfeitures, contained in the act of Pennsylvania, cannot preclude the plaintiffs from asserting their right to freedom in this state. The coercive act of the master in bringing them to this state, cannot alter their rights; cannot make them slaves, if they were free." But "They cannot maintain a joint action for their freedom.[1] . . the error . . is not of that description, for which the judgment should be affirmed. . . to affirm the judgment produced by the misdirection of the court . . for the irregularity on their part, cannot be correct." For it "would bar an action properly brought for the same cause. . . their action should have been dismissed . . before trial. . . judgment . . reversed . . suit . . remanded . . and the action of the plaintiffs dismissed." [Owsley, J.]

Cotton v. Haskins, Litt. Sel. Cas. 151, July 1812. "he purchased the slave from Cotton and carried him down the river,"

Ewing v. Beauchamp, 3 Bibb 41, May 1813. [43] "there was a bond given by . . Beauchamp to . . Ewing, for 100 *l.* or a likely negro fellow between the age of 17 and 24 years; . . dated the 25th of February 1795; . . that on the 26th day of February 1795," Beauchamp [41] "executed to Ewing the following writing obligatory, to wit: 'Whereas I have bargained and sold to Charles Ewing a negro fellow, to be paid to him next fall, this shall oblige me to pay to him or his order forty shillings per month . . for every month said negro, or a good hand in his room, shall be absent from this date:'"

Richardson v. Brown, 3 Bibb 207, October 1813. October 24, 1808, Riddle borrowed $200 from Brown, "and agreed to deliver to him a negro boy, to be kept for the use of said money and as a security for its repayment. . . as the boy . . was worth $80 per annum, the agreement was usurious and void."

Johnson v. Carneal, Litt. Sel. Cas. 172, October 1813. [174] "1788 . . July 24—To a negro paid Gen. Wilkinson, at, etc., £100"

Coleman v. Hutchenson, 3 Bibb 209, November 1813. Hutchenson [210] "obtained a decree for one third of the value of two slaves" which had been devised to the three nephews of John Hutchenson.

Held: [214] "Whatever may be the consequence resulting from an alternate holding between tenants in common of such slaves as cannot be divided, it is the effect of the law, the legislature not having vested the courts with the power to decree a sale of the slaves. The court below should, therefore, have decreed to each party the possession of the two slaves from time to time, according to their respective proportions." "See Co. Litt. 164-5, Bac. Abr." [Logan, J.]

Buckner v. Cotrell, 3 Bibb 257, April 1814. Action to recover the amount of an obligation executed "by Jacob Jones, a negro slave, and

[1] See (*contra*) Coleman *v.* Dick and Pat, p. 102, *supra.*

Thomas Cotrell his security. The suit was discontinued as to Jones; Cotrell pleaded ' that Jones, the principal, was a negro slave . . and that the whole consideration of the obligation was the hire of said Jones, his wife and children, . . and averred that in consideration of the hire or stipulated wages aforesaid to be paid, the plaintiff [guardian of Jones's owner] licensed said Jones, his wife and children, to go at large, and trade as free persons and hire out themselves, contrary to the statute ' "

Mason v. Mason, 3 Bibb 448, October 1814. Will of Charles Mason, 1804, " ordered that all his slaves, fifteen in number, should be hired out until the sum given to his wife [1500 pounds] should be raised, . . and then he willed the said slaves, describing them specifically by name, and their offspring, to be free. After making this will the testator purchased two slaves, Charles and Harry; "

Held: [449] " They must be considered as part of the testator's estate undisposed of by his will, and consequently must descend as if no will had been made."

Davis v. Sandford, Litt. Sel. Cas. 206, June 1815. A bill to restrain appellee " from proceeding upon a judgment he had obtained . . for a part of the price of a negro woman sold by him to . . Davis. The bill alledges that the appellee sold her as a slave, . . that, prior to the sale, the said negro, by a judgment of a competent court in . . Ohio, had been declared free . . that the appellee was fully apprised of said judgment, and had, in violation of it, seized and brought the said negro to this state by force, and that since the sale . . she has asserted her freedom, and is going at large, unmolested. The appellee . . alledges that she was a slave, . . and that she was a fugitive from this state; and insists that the judgment declaring her free was not binding upon him or those under whom he claims, as they were not parties thereto. He further charges, that . . [207] Davis was fully apprised of the said judgment, and of the negro's claim to freedom under it, and that he purchased expressly upon the terms that he would run the risk of that claim, . . that since his purchase the appellant has sold the negro for more than he gave, and denies that she is going at large and unmolested."

Bill dismissed: " The deed states the negro to be a *born* slave, and contains a warranty against all persons who ' shall claim her as such.' . . it is neither alledged nor proved that the negro was not a *born slave*, nor is it pretended that any person has set up claim to her *as such* " [Boyle, C. J.]

Clarke v. Bartlett, 4 Bibb 201, October 1815. Suit " by a man of colour to recover his freedom. He asserts his right to freedom upon the following instrument of writing, viz: ' Being sensible of the unspeakable advantage of liberty, and desirous that my slaves, Bartlett, Harry, and Dick, should be free after my decease; and I do now by this instrument secure their liberty to them, and allow and authorize them at my death to go out free from me, my heirs, etc. and to exercise all the privileges to which they shall be entitled by the laws of their country, to the end of their lives, and recover my interest in the negro woman named Dolly. I resign to herself at my decease, and the eighth part of her time to which I am entitled I

allow her to use to her own advantage during her life. In testimony of these things I have hereunto set my hand and annexed my seal this third day of March, in the year of our Lord one thousand eight hundred and eleven. Agness Clarke (seal.) Signed, sealed and delivered in presence of us—John Andrews, Eliza Andrews.'" This instrument was acknowledged and recorded two months later. In 1813 "it was produced in court, and proved by the oaths of . . Slayton, . . Walker and . . Slayton, to have been acknowledged by Agness Clarke . . One of these witnesses . . [202] saw John and Eliza Andrews sign it as witnesses: the other deposed to the acknowledgments only, and one of them to the handwriting of John Andrews, . . the subscribing witnesses were both residing in . . Ohio;" [203] "the judgment of the court below ought to be affirmed." [Logan, J.]

Smith v. Hancock, 4 Bibb 222, November 1815. Action "against Smith and Harris, for beating and wounding a negro slave, the property of the plaintiff, whereby he afterwards died." Harris alleged "that the slave . . was on the night of the day on which the trespass is supposed to have been committed, at an unlawful assembly of negroes at the house of John Smith, and . . [Harris] went with Smith to disperse said negroes, who were combining to rise and rebel against the free white citizens of this commonwealth, when the said negro . . refused to surrender; and the defendant being at the window of the kitchen of Smith, with a pitchfork in his hand, said negro struck at him with a club, and would have beat and wounded him if he had not defended himself; when he in his own defence struck the negro with the pitchfork,"

Cockran v. Bowles, 4 Bibb 233, November 1815. "Cockran sold to Bowles a negro man at the price of $550, and by the contract of sale promised that . . he would make a bill of sale warranting the negro should sustain no injury from a disease in the mouth in appearance like a cancer." Later Cockran refused to give a bill of sale with warranty.

Allen v. Cockerill, 4 Bibb 264, December 1815. "Allen, whilst he held an indenture given by a certain woman of color, containing covenants on her part to serve in the capacity of a servant a certain number of years, and whilst the woman was actually in his service, sold his right, and by an endorsement upon the writing, sealed and subscribed by him, actually assigned his right and title to the said negro to the plaintiff in error;" After the sale "the negro was discharged from the service of the plaintiff under a writ of *habeas corpus*,"

Scott v. Perrin, 4 Bibb 360, June 1816. "Scott purchased of Perrin a negro man, for whom he paid $50 in hand, and executed his obligation for $300, payable at some future day. Before the time of payment the negro ran off; and Scott . . refused payment," Perrin had represented [361] "the negro to be a faithful servant of good character, and not subject to run away. . . The evidence . . incontestably proves that he knew the negro to be a faithless servant, of infamous character, and a notorious and worthless runaway." Decree of the court below reversed.

Hopkins v. Tarlton, 4 Bibb 500, April 1817. "The slaves of Hopkins were under execution; Tarlton as his friend became the purchaser . . took upon himself the payment of those debts, and obtained from the officer who had the slaves in custody their surrender to him. The purchase, we apprehend, was made for the benefit of Hopkins, partly with his own money . . under assurances that the slaves should be returned upon the payment of the balance. . . This was the stipulation that seems to have allayed the distress of both himself and wife. . . We are aware of the peculiar hardships which may result to the defendant in raising up a family of young negroes, that are thus to be swept from him. . . [501] ample provision . . ought to be allowed for raising and maintaining the negro children, during a minority that rendered them incapable of real utility to the defendant. . . and he be made to pay reasonable hireage [1] for the negroes." [Logan, J.]

Davenport v. Tarlton, 1 A. K. Marsh. 243, June 1818. See Hopkins *v.* Tarlton, 4 Bibb 500 (1817), *supra*. Held: on the redemption of mortgaged slaves, the mortgagee is answerable for the usual hireage only, and not for what was actually made by the slaves.

Knox v. Black, 1 A. K. Marsh. 298, October 1818. "On the 11th of October, 1813, Knox applied to Black for a loan of $300, and obtained the money upon executing a bill of sale for a negro girl, taking from Black, at the same time, a writing, obliging him to deliver the said girl to Knox upon his paying the sum of $306, on or before the 25th day of November. This Knox failed to do; but within a few days thereafter, made a tender of the money to Black, having been absent from the state on the 25th. The weight of the evidence very abundantly shews, that the negro was worth from four to five hundred dollars, and was a family servant, with which the owner was very unwilling to part; and, for her redemption, had offered not only the $306, but also a horse. . . [299] the use of the negro [was] proved to have been worth $40 to $50 a year"

Held: "the appellant ought to be permitted to redeem the girl and her increase, . . paying the principal and interest. And that the appellee ought to account for the reasonable hireage of the negro, allowing him for maintaining . . [300] her child or children, as well as for the . . loss of her time during such time." [Logan, J.]

Embry v. Millar, 1 A. K. Marsh. 300, October 1818. "Sims died intestate in the Spanish dominions, . . the slaves . . were brought to this country since his death,"

Boothe v. Boothe, 1 A. K. Marsh. 355, November 1818. "his right to a negro woman Ama, and one half of her children." The appellant had sold part of the slaves.

Foster v. Smoot, 1 A. K. Marsh. 394, December 1818. In 1809 the plaintiff "commenced an action of detinue [in Virginia] . . for a negro woman, named Cate, a boy, . . and a girl, named Rachel, . . and a judgment was rendered in favor of the plaintiff's right to said negroes: . .

[1] See Davenport *v.* Tarlton, *infra*.

1812, two of these negroes,—to wit, Cate and Rachel,—the defendant run off to this state, and the negro woman Cate has had two children, to wit, Malinda and Vincent, which negroes . . are worth . . Cate, $400; Rachel, $400; Malinda, $300; and Vincent $300."

Murphy v. Riggs, 1 A. K. Marsh. 532, May 1819. Will, 1769: "I lend to my daughter, Keziah Murphy, two negroes, . . Henry and Phillis, during her natural life, and after her decease, to be equally divided between her children" [533] "Phillis, after the date of the will, and during the life of the testator, had a child, named Absalom: . . Not long [after the testator's death] . . she had a daughter, called Celia, who, during the life of . . Keziah, had three children, Lewis, Jinny, and Simon. Keziah departed this life, as did . . Henry and Phillis. Richard Murphy [husband of Keziah] . . retained the possession of the five surviving negroes, and claimed them . . in right of his wife. The court below decreed the slaves to the [eight] children of . . Keziah; and as they were not susceptible of a division into eight parts, decreed them to be sold, and the money . . divided"

Decree reversed and the cause remanded: "It is . . a long . . settled rule, that the children of a female slave, born during the tenancy for life, shall go with their mother, to the claimant in remainder. This rule has, also, its sanction in some of the . . tenderest feelings of our nature. The mother is not, by its operation, torn from her infant child, nor is the sucking child torn from the breast of the mother. . . [534] The slaves . . *born after* the death of the testator, belong to the children of . . Keziah, . . Absalom, . . having been born before the death of the testator—did not pass by the *will* to Keziah, or to her children. . . [The decree] is, moreover, erroneous in directing a sale of the slaves. Slaves claimed by descent may, if a division *in numero* cannot be made, be decreed to be sold. . . Slaves, claimed by purchase, may be divided by direction of the chancellor, but not so as to divest any one of the purchasers, or legatees, of his . . interest therein. . . The possession of the slaves should have been decreed to the claimants respectively, in such portions, for such periods, and in such order of succession, as their number and character, and the number of the claimants, rendered most practicable and equitable." [1] [Rowan, J.]

Breckenridge v. Duncan, 2 A. K. Marsh. 50, October 1819. "Jack he hired to one of his sons, for several years before [1818] . . at the price of $80 per year."

Flowers v. Sproule, 2 A. K. Marsh. 54, October 1819. "An execution for about the sum of £86 10 *s*. . . against Alexander Sproule, was levied upon a negro woman, Jane, and Maria, her child, . . The negroes were sold by the sheriff in June, 1806, . . They were purchased at the sale by Edward Flowers, at his bid of £122. . . [He,] [55] on the day of the sale, promised Jane, the wife of said Alexander, that if she would, within three months thereafter, pay to him the amount given by him for the said slaves, with interest thereon, she should have them. But they [the appel-

[1] Coleman *v.* Hutchenson, p. 288, *supra*.

lants] deny that the money was paid or tendered to him within the three months. . . there are now seven slaves, in all; the negro woman having borne five children since the purchase of her . . The court below decreed that the appellants should surrender to the appellees the . . seven negroes, upon being paid . . £112 [*sic*], with interest thereon from . . 1806, or, upon failure to deliver the negroes, . . $3,000, the ascertained value of the said slaves, . . subject to a deduction of the aforesaid £112,"

Decree reversed and the cause remanded: Flowers's agreement is [57] "a conditional promise, gratuitously made, and could not be enforced, first, because the condition had not been complied with; . . As a contract, in the nature of a mortgage, there is still less reason to consider it. . . it could, at most, amount to a conditional sale . . which, by the failure of the condition, became absolute. . . [58] we feel a strong disinclination to convert, by *construction*, conditional sales of slaves into mortgages. When a contract of this sort is construed to be a mortgage, it follows that a redemption, and that, perhaps, after a great lapse of time, must be permitted, which, from the nature of the property, must often be attended with injurious and afflicting consequences. . . Afflicting, as slaves, though property, are intelligent and sympathetic beings; they interchange sentiments, mingle sympathies, and reciprocate, with their possessor and the members of his family, all the social regards and kind attentions which endear the members of the human family to each other, and bind them in the social state. The agonies of feeling, as well on the part of the slaves as of their possessors, inseparable from a sudden disruption of those social relations, ought not to be lightly regarded by the judge" [Rowan, J.]

Hannah et al. (paupers) v. Peake, 2 A. K. Marsh. 133, December 1819. Johnson "deposed that Mr. [Spencer] Peake, the testator, in the year 1813, when they were together on the Canada expedition, recited to him, in a friendly conversation, the disposition which he had made, or intended to make, of his estate—and that the provisions of the will corresponded substantially with the recital aforesaid, particularly so far as related to the emancipation of the slaves, and the provision made for them. Peake died on the 15th of December, 1817. His nephew, Mr. Anderson, deposed that two or three days before his uncle's death, the will was shewn to him by Hannah, one of the negroes therein mentioned, who said her master, the testator, had given it to her, with directions that if he died, she was to give it to Presley Peake, the defendant, and if he lived she was to say nothing about it . . Hannah was the confidential house servant of the testator." It was presented for probate by Suggett [133] "in behalf of Hannah and other slaves therein named," and established as the will of Peake.

Payne v. Long, 2 A. K. Marsh. 158, December 1819. Held: free persons of color should not be bound out by the county court unless the person in whose custody they have been, has been served with summons to show cause.

Calloway v. Middleton, 2 A. K. Marsh. 372, June 1820. Action of slander. "there was an old report . . that Mrs. Middleton had had a

mulatto child before she was married, and that she was the mother of Harry Butcher's wife, who is alleged to be a free man of color," Calloway, before the trial, " said Middleton . . was a damned rascal, and had sold his wife's children,"

Thomas v. Thomas, 2 A. K. Marsh. 430, October 1820. " Harry, aged twenty-three years," was sold for $1050. Bond: [431] " Under the penalty of forty dollars, I bind myself, . . to pay Jacob S. Gardner, . . the sum of twenty dollars for the hire of a negro, Mary, which said negro is to be returned at Huntsville, and the money to be paid on or before the first day of January, 1813; I moreover bind myself to furnish said negro, with good suits of summer and winter clothes, and blanket and hat."

Rankin v. Lydia (*a pauper*), 2 A. K. Marsh. 467, October 1820. Action of " trespass, assault, battery, and false imprisonment; . . Lydia was born a slave in Kentucky, in . . 1805, and belonged to . . [468] Warrick . . who removed hence . . shortly after the 17th September [1807] . . together with Lydia and her mother," " to the territory of Indiana, where he settled," In accordance with the Indiana act of September 17, 1807, he [470] " before the clerk of the county where he resided, made the agreement with Flora, the mother of Lydia, to serve him 20 years, which was duly recorded; and in November, 1807, registered Lydia as a slave under 15 years of age . . which was likewise recorded there," In 1814 Warrick sold his right to Lydia to Miller, likewise a resident of Indiana," [468] " who sold her to Robert Todd, . . of Kentucky, who brought her to Kentucky [(474) without her consent] and sold her to . . Rankin, . . The parties . . made part of the record two acts of the legislature of the territory of Indiana;[1] . . [470] the court below . . gave judgment for Lydia, for one cent damages, agreed by the parties, and costs:"

Affirmed: " Slavery is sanctioned by the laws of this state, . . But we view this as a right existing by positive law . . without foundation in the law of nature, or the . . common law. . . The law on which the counsel for Lydia relies, is the ordinance of Congress for the government of the territory northwest of the river Ohio. . . [471] Warrick . . had adopted that country as his own, . . his right to her was extinct; or, in other words, that she was her own. . . [472] and we are not aware of any law of this state which can . . bring into operation the right of slavery when once destroyed. . . She was not the slave of the purchaser while he remained in Indiana after his purchase; and is it to be seriously contended that so soon as he transported her to the Kentucky shore, the noxious atmosphere of this state, without any express law for the purpose, clamped upon her newly forged chains of slavery, after the old ones were destroyed! For the honor of our country, we cannot for a moment admit, that the bare treading of its soil is thus dangerous, even to the degraded African. . . [476] Although none of the states may allow [free people of color] . . the privileges of office and suffrage, yet, all other civil . . rights are secured to them; at least, . . by the ordinance [of 1787] . .

[1] Acts of Sept. 17, 1807, and of Dec. 14, 1810.

for the government of Indiana. If these rights are once vested, in that or any other portion of the United States, can it be compatible with the spirit of our confederated government to deny their existence in any other part? . . The argument which has been relied on as most formidable, is that arising *ab inconvenienti*. . . that if the ordinance could give freedom at all, it could . . [477] do it in a moment when the slave touched the enchanted shore, and that the consequence would be, that the slave of the traveller . . the slave of the officer who marched in the late armies of the United States; those sent of errands to the opposite shores; or attending their masters while removing beyond the Mississippi through the territory, would all have an equal right to freedom with Lydia; . . [478] There is a difference in fact, and a corresponding difference in law. . . [479] the ordinance . . was designed to operate on the *inhabitants* and settlers . . exclusively; . . If the comity between this state and . . Indiana, is to have any bearing . . it will be most promoted by this construction. . . the territory adopted laws prohibiting the removal of their domiciled negroes. If, then, such are removed, and . . their vested rights are denied by the functionaries of this government, it is calculated to produce retaliatory measures, and to cause them to detain . . our transient slaves, . . we consider Lydia as free. . . She acquired that freedom . . during her absence from the state, by the voluntary . . acts of her master; and . . it ought to be held equally sacred here, whither she is brought against her will, as it would be, had it been her birthright." [Mills, J.]

Talbot v. David (*a pauper*), 2 A. K. Marsh. 603, October 1820. Order book of the county clerk: "February court, 1810: 'On motion of Jesse Griffith, ordered, that Jack, aged 29 years, Jane, aged 25 years, and George, aged 21 years, his slaves, be manumitted and set free, agreeable to a deed which said Griffith has filed;'" No deed could be found emancipating either David or his mother Jane. A witness proved [603] "that Talbot had traded with the father and mother of David as free persons; and was informed by Talbot, the manner he obtained the custody of David in 1818, and brought him from the state of Ohio, to which place he had fled for refuge; and that Talbot claimed him in right of his wife, who was" a daughter of Houston who owned David's grandmother in the state of Delaware. Houston's widow married Jesse Griffith, removing with him to Kentucky in 1800. The court instructed the jury [605] "that they were bound from the records to presume a deed of emancipation from Jesse Griffith to the mother of David, duly executed; . . the jury found a verdict for David,"

Judgment reversed and the cause remanded: [609] "the order . . cannot have the operation supposed by the court below . . the order was made not only without the authority of law, but it contains no suggestion from which the execution of a deed of manumission can . . be presumed." [Owsley, J.]

Ely v. Thompson, 3 A. K. Marsh. 70, December 1820. "This is an action of trespass, assault, battery, and imprisonment, brought by a free person of color, against a justice of the peace and constable in their individual characters. The justice pleaded his office, and the fact, that the

plaintiff had lifted his hand in opposition to a white man, who had proved the fact before him, and that he had issued his warrant to apprehend the plaintiff, who was accordingly brought before him, and that he gave sentence, that for the offence the plaintiff should receive thirty lashes on his bare back, according to an act of assembly . . and avers this to be the same trespass in the declaration mentioned. The constable likewise justifies by alleging his office, and the execution of the warrant, and the infliction of the stripes, pursuant to the sentence of the justice."

Judgment for the defendants reversed, and the cause remanded: I. [73] " the statute relied on by the defendants,[1] was repealed [2] as to all . . assaults . . committed by free persons of color," II. [71] " it is contrary to the constitution of this state, and therefore void; . . [74] If a justice . . should . . inflict the stripes against a free person of color, who lifted his hand to save himself . . from death or severe bodily harm, all men must pronounce the punishment *cruel* indeed. . . The act . . subjects the free person of color to punishment, on the oath of the party, without trial, . . is against both the letter and the spirit of the constitution. . . [III.] [75] They are certainly, in some measure, parties [to the political compact]. Although they may not have every benefit . . which the constitution secures, . . yet they are entitled to repose under its shadow, and thus secure themselves from the heated vengeance of the organs of government." [Mills, J.]

Humble v. Humble, 3 A. K. Marsh. 123, December 1820. Will of Conrad Humble, 1791: " I give and bequeath . . all my household goods, money and moveable effects." His negroes are not mentioned, " nor is there any clause in the will importing a residuary bequest of the balance or residue of his estate."

Held: [125] " by the expressions ' moveable effects,' the testator intended to dispose of his slaves."

Hume v. Scott, 3 A. K. Marsh. 260, April 1821. Action against Hume " to subject him to damages on account of the death of a negro hired or pledged [to him,] . . through harsh treatment and neglect."

Moseby v. Corbin, 3 A. K. Marsh. 289, April 1821. Will of Corbin, 1789: " my will and desire is, that my daughter Ann Grant, shall have a negro wench, to be purchased and raised out of that part of my estate not already bequeathed,"

Magowen v. Hay, 3 A. K. Marsh. 452, June 1821. Constable's return: " Executed on a negro child named Rachel, the property of John Hardwick, given up to satisfy this debt; I exposed her to sale, agreeable to law, and Maple Hardwick became the purchaser."

Samuel v. Minter, 3 A. K. Marsh. 480, June 1821. Minter bought of Samuel a negro woman and child for eight hundred dollars. She " was diseased by the venereal . . [and] shortly after the sale the negro took worse, with the disease, and lingered with it till she died, after medical

[1] 2 Littell's Laws 116.
[2] The act to suppress riots, etc. 3 Littell's Laws 55.

aid had been applied in vain. . . [482] about five or six years before the sale, the woman was affected with the disease and that some of her offspring appeared to expire with some similar complaint—and from the advanced stage of the disease, when she became confined, and the opinion of the physicians, it is strongly inferrable [*sic*] that she had the complaint. . . [the appellant] strongly represented her to be sound, and never to have been sick except during the stages of pregnancy." [481] "The circuit court . . decreed that the complainant should restore the child, and that the defendant should refund the money received, with a physician's fee,"

Affirmed.

Winney v. Cartright, 3 A. K. Marsh. 493, June 1821. "Mrs. Reed . . had procured an instrument of writing to be written, emancipating the appellant after her death, which writing she executed and acknowledged . . before at least two persons, . . the instrument of writing had been lost, and the witnesses proved its contents, . . Neither . . could remember certainly whether the instrument was sealed, . . The court . . [494] rejected this evidence"

Judgment reversed, verdict set aside, and new proceedings directed: [498] "the act of 1800[1] allows emancipation by instrument of writing without seal, and without proof or acknowledgment in the county court, and that the court erred in rejecting the proof of the execution of such writing and its contents after its loss was proved," Such an instrument [495] "may be recorded on proper evidence, to make it evidence against certain persons, and *in perpetuam rei memoriam*; but the act of recording does not vest the title, nor is the title suspended until that is done." [Mills, J.]

Smith v. Rowzee, 3 A. K. Marsh. 527, June 1821. Rowzee sold Lucy to Smith for $285. [528] "The bargain was made in the counting room of Smith, the girl Lucy not being present. A third person, then present, fixed the price of the slave, at the request of the parties, not by an inspection of the negro, but from a description of her given by Rowzee, and Rowzee was to deliver the negro by sending her from his own house to the house of Smith shortly afterwards, on the same evening. An hour or two after Rowzee had departed, Smith sold the negro to a certain Mr. Bishop, whom he had previously agreed to furnish with a negro of that description. The negro was sent to the house of Smith that evening, veiled with a shawl or handkerchief, and directly after her arrival and before she was seen by Smith, Bishop, who deposed that he never inspected her farther than to compel her to rise from her seat, to her feet, to examine her size, placed her behind him on his horse and started home with her, about eight miles distant. She soon complained of sickness and inability to ride, and grew so bad, that after frequent restings, she was left at a house, on the road, from which she was afterwards, shortly, taken to the house of Bishop, where she, on examination, was found to be very ill.—The hair was gone from one side of her head and she exhibited appearances

[1] 2 Litt. 387.

of severe previous sickness. . . The slave remained at Bishop's and was attended by physicians, employed by Smith, for some days. . . [Smith] then took her to his house, where she remained still sick, and under the care of physicians for some days longer, when she died." Rowzee's family physician [531] " stated that he had been called to attend her about ten or twelve days after she had taken the measles, and by some considerable effort he abated a high fever, under which she labored, and she appeared better and he supposed out of danger. That some days afterwards he was called again to attend her, and she was still diseased,—that he administered more medicine, and shortly after she was sold—that if she had not been moved, and had been well nursed, she might and probably would have recovered." [529] " The jury found a verdict for Rowzee. Smith asked a new trial, which the court refused;"

Judgment reversed and new trial granted.

Watts v. Griffin, Litt. Sel. Cas. 244, October 1821. " On the first of July 1816, Griffin purchased, at the price of $600, a negro man from John Watts, . . During the same year, Watts removed to the Missouri territory; but, owing to the circumstance of a negro woman he then owned, the wife of the man he had sold to Griffin, being unwilling to go with him, and having run away, Watts was compelled to hire her to Griffin until Christmas following. This negro woman afterwards came to the possession of Francis Watts, the son of John; . . [248] It is proved that John Watts gave to his son Francis a bill of sale for the woman; but it . . was not intended by either, to pass the property to Francis, but to enable them, by deluding the woman, to transfer her from this country, to the Missouri territory with more facility."

Pinkard v. Smith, Litt. Sel. Cas. 331, October 1821. Held: the act of 1798 has placed slaves, as respects the interests of husbands, on the same footing with chattels at common law.

Scotts v. Hume, Litt. Sel. Cas. 378, October 1821. " to secure the loan, a negro was pledged by the plaintiffs in error, who had been inhumanly treated by the defendant, by exposing him in inclement weather, so that he sickened; and after his sickness commenced, was neglected, and no physician was procured to attend him, and he died;"

Hughes v. Waring, Litt. Sel. Cas. 402, October 1821. " For the hire of five negro men . . not exceeding the sum of eighty dollars in each month, . . I am to return the said negroes to the said Waring, well shod, with new, strong, double-soaled shoes, and in the mean time I am to keep them well shod, and have them well treated in every respect, and not to suffer them to be abused in any manner whatever; and if any of them be taken sick, I am to have them particularly attended to, and advise the said Waring of such ill health immediately; and should the said boys, or any of them, be ill for any considerable length of time, the said Waring is to make a proportionate deduction for the time so lost, and is also to furnish the said negroes with all their clothing, except shoes, which the said Hughes is to furnish." The negroes hired " were sick and unable to labor for seventy-two days, . . [403] the defendant in error did not furnish the negroes with clothing, as agreed on his part."

Barnett v. Powell, Litt. Sel. Cas. 409, October 1821. Powell, in 1818, bought from the slave of Barnett, "without the leave or consent of the plaintiff, in writing or otherwise, one mare of the value of one hundred dollars;" violating the act against dealing with slaves.

Trigg v. Northcut, Litt. Sel. Cas. 414, November 1821. "Trigg on his part covenanted to place with Northcut a yellow boy named Nelson, and continue him with him for three years, as an apprentice: and Northcut on his part, among other things, covenanted to teach the boy, Nelson, the art of house-plastering. . . Trigg took the boy . . out of Northcut's possession, . . a plasterer, stated . . that he would not give $7 a month for said boy, nor for any other who understood the business no better,"

Cook v. Wilson, Litt. Sel. Cas. 437, December 1821. Wilson was, [438] "during the revolutionary war . . an officer in the ten months' service, in South-Carolina; that an officer in that service was entitled to two confiscated slaves; that the mother of Juda was allotted to him, . . Juda about the close of the revolutionary war, was given to the wife of the plaintiff, as a compensation for her trouble in taking care of the other confiscated slaves,"

Cabiness v. Herndon, Litt. Sel. Cas. 469, December 1821. [474] "The negro . . was not delivered to Herndon [who had bought her for $325] until two or three days after the time when she was to have been delivered, when she was sent to his house, where he had her inspected by a physician, and then, on the same day or next morning, dismissed her. This was about the tenth of January," [470] "She wandered about. . . [474] and some time in the month of February following, she died in the kitchen of John Moss, into which she crept for shelter, half naked and starved, and where she remained four or five days."

Overall v. Overall, Litt. Sel. Cas. 501, December 1821. Will of John Overall, dated 1821: [502] "From this day, I declare old Nell to be free, and fairly emancipated from any future bondage to me or my children."

Grundy v. Jackson, 1 Littell 11, April 1822. [14] "one of the slaves was sick for a considerable time, and was put under the hands of a physician, and boarded by another individual, to be near the physician;"

Held: the hirer of slaves is chargeable with physicians' fees and the expenses of their sickness, unless there is an express agreement to the contrary.

Morris v. Barkley, 1 Littell 64, April 1822. Action of slander. The words were that the plaintiff "kept his negro woman, and had a child by her;" Plaintiff obtained a verdict.

Barbour v. Robertson, 1 Littell 93, April 1822. James Robertson left "considerable personal estate, and one slave, named Caesar; that Philip Barbour, in the year 1782, administered on his estate, and received into his hands about three hundred pounds, for the services of the said James Robertson as a lieutenant in the revolutionary war, as well as for the service of negro Caesar;"

Overstreet v. Philips, 1 Littell 120, April 1822. "immediately after the purchase of the negroes, Philips took them to Natchez, for market, where he sold them to one Job Ruth, who discovered the woman to be afflicted with the disease commonly called the King's Evil, and returned her and her child to Philips;"

Findly v. Tyler, 1 Littell 161, June 1822. Action "brought by Nancy Tyler, a woman of colour . . to recover her freedom. . . [witness] proved that about twenty-eight years previous to the trial, he resided in Jonesborough in Tennessee, and that a free woman, by the name of Polly Tyler, was delivered of a mulatto child, as he was informed, and that he afterwards saw the child at the breast of the woman; and that, whilst young, the child was taken from its mother, and . . put into the possession of a certain Thomas Scott, . . that, some time thereafter, he saw a mulatto girl, who was reputed to be the same girl, going to school in the neighborhood of Scott's and near to his house; and, when interrogated, observed that it was not usual for people of that country to educate their slaves, and that he knew of no instance in which it was done. He further proved, that whilst the mulatto girl was going to school, she, in play with an Indian, fell and received a cut in her eyebrow, . . [162] Whereupon the girl was brought into court, her eyebrow examined, and a scar found to accord with the description of the wound given by the witness." Verdict found against Findly. Motion for a new trial denied.

Judgment affirmed. See Finley *v.* Nancy, p. 306, *infra.*

Brownston v. Cropper, 1 Littell 173, June 1822. Brownston "purchased a negro of Cropper, on the 19th of November 1819, and that she died on the 5th of the ensuing month, . . [175] Two witnesses prove the representations of Cropper, that the slave was hearty and sound, and fit for business;" Cropper's daughter [176] "deposes that the slave herself told Brownston of her sickness, before the sale; and after the sale, when informed by him that he had bought her, she stated she could not be of any use to him, as she was near death. When it is recollected, that frequently, on such occasions, there is a strong indisposition in such creatures to be sold, and that by stratagem, to avoid a sale, they may frequently feign sickness, or magnify any particular complaint with which they are affected, Brownston might well disbelieve her story; especially, when the words of the master assured him to the contrary."

Held: "For his own statements, the master is responsible, and ought not to be permitted to release himself of responsibility for his own falsehoods, by showing that the slave, at the time, so far corrected him, as to tell the truth."

Watts v. Bullock, 1 Littell 252, June 1822. Mildred Gregory "was a widow and childless, and had long determined against intestacy. The primary motive of that determination, was the emancipation of her slaves; to effect which . . was, of all earthly objects, the dearest to her heart." Will established.

Hughes v. Graves, 1 Littell 317, June 1822. "The court . . pronounced a decree foreclosing the mortgage and directing a sale of the

slave Fanny. She was accordingly sold for . . $325. . . [318] Fanny, subsequent to the execution of the mortgage, had two children, . . Walker [who bought Fanny from the mortgagor] . . admits . . that he sent them off by an agent, who sold them for $150; but states that he is ignorant to whom they were sold, or where they are, and contends that they are not liable to the mortgage;"

Held: [319] "the children born of Fanny, after the execution of the mortgage, are as much liable as Fanny herself is;"

Amy (a woman of colour) v. Smith, 1 Littell 326, June 1822. [327] "an action of trespass, assault and battery, and false imprisonment, . . the plaintiff proved by a witness, that in the year Cornwallis surrendered, he went to Pennsylvania, and resided in the house of . . Gingery, . . the plaintiff . . waited upon Mrs. Gingery, . . was from fourteen to seventeen years of age; that he heard the Gingerys, in repeated conversations, say that she was to be free at a particular age, not exceeding thirty or thirty-five; . . that the Gingerys, in 1783, moved to Maryland, taking the plaintiff with them; . . The plaintiff also proved by sundry witnesses, that between 1780 and 1790, they knew her in Virginia, . . and that for several years she acted and passed as a free person, without any one exercising any ownership over her. . . read in evidence the will of Christian Gingery, . . in which, among other devises to his wife, he directs 'that she is to have the mulatto girl during her natural life, or until the girl comes to the age of thirty-one years;' . . The plaintiff also read the abolition act of Pennsylvania." [346] "Amy set up a claim, that she belonged to that class of servants in Pennsylvania who were servants until thirty-one years of age." [327] "On the part of the defendant, it was proved, that the plaintiff's mother was of unmixed African blood, and a slave for life, and that the plaintiff was born in Pennsylvania, prior to the passage of the abolition act of that state, and was sold, when very small, to old Mr. Gingery . . [328] that she was always held in slavery, except for a short time, when she ran away from the Gingerys, in Virginia; and that they sold her to the defendant in 1790, in Virginia, who shortly after removed to Kentucky, . . The defendant read the statute of Kentucky, approved February 20th, 1808, entitled 'an act limiting actions in certain cases.' . . [329] a verdict and judgment having been rendered against her, she has appealed"

Judgment affirmed, without cost: I. The will did not emancipate her; II. the act of 1808, [331] "in limiting the right to maintain the action to two years, . . [335] cannot be an infraction of" the constitution of the United States, as she was not [334] a "citizen, either of Pennsylvania or of Virginia, unless she belonged to a class of society upon which, by the institutions of the states, was conferred a right to enjoy all the privileges and immunities appertaining to the state. That this was the case, there is no evidence in the record to show, and the presumption is against it. Free negroes and mulattoes are, almost everywhere, considered and treated as a degraded race of people; insomuch so, that, under the constitution and laws of the United States, they cannot become citizens of the United States. . . III. [335] Nor can we think it a violation of the constitution of this state." Mills, J. dissented, pp. 337-347.

Johnson v. Moore, 1 Littell 371, June 1822. [372] " He owned some slaves, all of whom were dead or sold before his death, except one female, who lived with him, as was supposed, in a state of concubinage, and possessed considerable influence over him. Her he had emancipated by a written instrument, recorded, to take effect at his death. . . [373] in 1820 . . he executed a will giving to his female slave $1500,"

Wright v. Wright, 2 Littell 8, October 1822. Joseph Wright had bought a negro slave in Maryland and " brought him to this country, and many years since, placed him under Benjamin Wright, to learn the trade of a Blacksmith; . . [9] the slave is worth at least fifteen hundred dollars, and his annual hire, three hundred and sixty dollars,"

Hanks v. McKee, 2 Littell 227, December 1822. McKee sold Hanks " a negro woman slave at the price of four hundred dollars, . . represented to be sound and healthy, except the phthisic, which he represented that she had but slightly," The messenger sent by Hanks for the slave went home with McKee. His wife [228] " remonstrated against sending the slave on account of her sickness. She was, however, taken home [ten or twelve miles away]; but was found, unable to travel there upon foot, and unable to work, and lingered and died with the complaint in two or three weeks."

Quinn v. Stockton, 2 Littell 343, December 1822. [348] " When distributees come into hotch pot, the personal estate must make a separate parcel, to be divided in kind. Nor do we conceive that personal estate advanced ought to be blended with slaves."

Thomas v. White, 3 Littell 177, April 1823. Will of Daniel White of Virginia: [181] " my will and desire is, for my well beloved wife to have the use of negro woman Bett, while she raises three children fit to be raised without the breast; then the said negro Bett to return to my son, Daniel White, and his heirs, . . I give . . to my son, William White, one of the children before mentioned is now born, named Dina; and if he lives to have an heir, if not, to be sold and equally divided between his sister, Mary White, and brother, George White, . . I give . . to my daughter, Mary White, . . the next child my negro Bett raises; to be divided in the same manner as the before mentioned, if she dies without heir, . . I give . . to my son, George White, the third child the said negro woman raises, to be divided among the survivor or survivors."

Peter Cooke (a person of colour) v. Cooke, 3 Littell 238, April 1823. " William Cooke entered into an agreement with his slave, Peter, to emancipate him, on the payment of two hundred and fifty dollars; or rather, the contract was made with Seth Cooke and Abraham Bohannon, as agents for the slave, and was reduced to writing and signed by them in these words: ' A statement of a contract made by William Cooke and us, Seth Cooke and Abraham Bohannon, as agents for Peter, a slave, on the terms following; Said Cooke agrees to emancipate Peter, for $250, with interest on $125 from the 4th day of June, 1815, until paid, the balance of the above $250." . . In his last illness, he made his nuncupative will,

reduced to writing at the time it was spoken, but not signed by him, in which he directs that 'Peter should be free, on the payment of $50, a balance of $250, which Seth Cooke and Abraham Bohannon, as agents for Peter, had undertaken to pay; which is all paid, but the aforesaid $50.' After his death, Peter paid the remaining $50 to his widow and executrix, and brought this action of trespass, assault, battery and false imprisonment, against the appellee, to assert his right to freedom. On the trial, it was proved that after the date of the aforesaid contract, Peter went at large as a free person, by the indulgence of his master, who until his death always recognized the right of Peter to freedom, on the payment of $250."

Held: Peter cannot support his claim to freedom, under the writing aforesaid, [239] "because it was an executory contract; . . slaves, when they pass by last will and testament, being considered as real property," cannot pass by a nuncupative will.

Bell v. North, 4 Littell 133, October 1823. The sheriff "had, in virtue of an execution . . seized the slaves in question, and taken them bound to the jail, where they were kept and treated humanely, until the 20th day after the seizure, when they were released by a *supersedeas*;"

Williams v. Dorsey, 4 Littell 265, November 1823. "he purchased . . a negro man at the price of $500, . . the slave . . was subject to fits, and laboring under a consumption, . . having discovered the slave to be unsound, . . he offered to return to them the slave, . . they refused . . he has since died with the diseases"

Watts v. Hunn, 4 Littell 267, November 1823. "the slaves had lately before the purchase run away, and had laid out exposed in a cold cave, which had brought on new complaints or had increased the existing ones, . . the two parents of the family were far older . . than represented."

Yancey v. Downer, 5 Littell 8, April 1824. "Yancey, in an action of trespass for breaking his close and house, and beating and wounding his slave, so that she was confined and useless for many months, recovered against Downer a verdict and judgment for five hundred and fifty dollars," Downer answered [10] "that he had not injured the slave of Yancey to the value of one dollar, as he had only moderately chastised her, and the injury which she received, was by a fall, which happened by her running out of the kitchen, in a passion."

Harris v. Paynes, 5 Littell 105, April 1824. [117] "The slaves had been placed by Alfred Payne to work at a salt well . . about five miles from Scottsville."

Williams v. Blincoe, 5 Littell 171, May 1824. Williams, "a justice of the peace, permitted a bright mulatto single woman, to make oath before him, that the appellee was the father of her bastard child, and thereupon issued his warrant of arrest in the usual form,"

Held: the acts of Kentucky [173] "impose no such disqualification to take any oath, or make any affidavit which may be necessary, as in this case, to commence the controversy, or to forward an accusation or support a defence incidental and preparatory to the trial in chief." Though a

warrant may be granted on the application of a free woman of color, she is an incompetent witness on the trial before the county court.

Chasteen v. Ford, 5 Littell 268, June 1824. Action of " trespass, assault and battery and false imprisonment, brought . . by Daniel Ford, a man of colour, to recover his freedom. . . [269] Whilst a widower and having two children, Lewis Chasteen in 1800, made his will, directing that all the slaves of which he died possessed, should be emancipated; the males at their arrival to the age of 25 years, and the females at the age of twenty-one. . . He afterward married a second wife, and died, leaving several children by his second marriage. At the time of his death, Daniel Ford . . was a slave and belonged to the testator, and was under the age of twenty-five; but he arrived at that age before the commencement of this suit. . . The children of the testator by the second marriage . . exhibited their bill in equity against the children by the first marriage and the executors, alleging the invalidity of the will," and it was pronounced invalid.

Held: [270] " as respects the slaves mentioned in the will, the executors were the only necessary parties to the suit brought in equity to set aside the will, and consequently the decree pronounced in that suit, to which they were parties, must be conclusive against the right asserted by Ford under the will." Mills, J. dissented: " the revocation of a will . . by the birth of after-born children, under the third section of the statute of wills, does not exist in cases of emancipation, and that such revocation is totally taken away and repealed in this respect, by the twenty-seventh section of the act concerning slaves, 2 Dig. 1155; and that no after-born children can claim an interest in slaves emancipated by the will, but are barred from so doing by the latter act."

Stanley v. Earl, 5 Littell 281, June 1824. Boyle, C. J.: [285] " No man can, by the laws of nature, have dominion over his fellow-man; . . if the master voluntarily removes the slave to such non-slaveholding state, or if the slave escapes into a foreign country, which does not tolerate slavery, the master's right, so long as the slave remains there, is gone; because he has no remedy to enforce or protect it."

Young v. Bruces, 5 Littell 324, June 1824. " On or before the 25th of December, 1819, we promise to pay Aaron H. Young, the sum of one hundred and twenty dollars, for the hire of a negro man, named Dick, from this time until the said 25th of December, 1819, to be returned well clothed at that time." Dated December 29, 1818. In " July, 1819, without any fault of theirs, and by inevitable accident, the slave, Dick, was drowned in the Ohio river,"

Held: not " a covenant to ensure such return, in the event of his death in the mean time."

Free Frank and Lucy v. Denham, 5 Littell 330, June 1824. " an action of debt . . brought upon a sealed writing executed by free Frank and Lucy, stipulating for the payment of two hundred and twelve dollars to the intestate. . . ' Free Lucy . . says, that at the time of the supposed execution . . she was . . married to Frank, a person of color,' . . the administrator replied, that . . the said defendants are free persons of color, and therefore not authorized to unite in the bonds of wedlock; "

Held: "Whilst in a state of slavery, we admit that persons of colour are incapable of contracting marriage, for any legal purpose. . . [331] but immediately upon being emancipated, the restraint which was imposed upon their will and actions, by their bondage, is removed, and with that, their competency to contract matrimony is restored. . . the *feme* becomes subject to the disabilities of coverture," [Owsley, J.] See same *v.* same, p. 307, *infra.*

Chinn v. Respass, 1 T. B. Mon. 25, October 1824. "in the year 1777, Isaac Hickman died [in Virginia], possessed . . of a slave, the mother of those in controversy . . having previously made a nuncupative will . . 'That if his wife should be with child, and that a son, he gave him all his land, and one negro boy, near his own age, . . to be paid to him at the age of nineteen years; . . in case his daughter Elizabeth should come to age, or marry, then his wife to have half his personal estate. . . further . . fifty pounds currency, more than her part, . . [26] and that a negro boy, Daniel, should be sold to pay the above sum,' . . a male child . . was afterwards born, . . the wife of the testator, after his death, intermarried with Peter Rust, and had died" Rust gave the slaves to the defendant. Hickman's daughter, Elizabeth Chinn, and her husband brought an action of detinue.

Held: I. [27] "the interest of . . Mrs. Chinn, in the slaves in controversy . . must be derived from the will . . and can not have been cast upon her by descent; for the posthumous son was, as the law . . stood in Virginia, the only heir of his real estate, and slaves were then . . real estate, . . [II.] the testator intended the residue of his estate, after the devise to his son, should be divided between his wife and . . Mrs. Chinn. . . [III.] [28] Slaves were . . real estate, . . But, it does not follow that the testator, by the devise of his personal estate, did not intend that his slaves should pass; for, although slaves were, by law, made real estate, for the purposes of descent and dower, and, perhaps, some others, yet they had, in law, many of the attributes of personal estate. They would pass by a nuncupative will, and lands would not; . . When, therefore, a man devised his personal estate, he must be understood to intend, that his slaves should pass thereby, unless he used some expressions indicating a different intention," [Boyle, C. J.]

Ward v. Deering, 2 T. B. Mon. 9, April 1825. "$60, as the hire of the boy [negro man] for that year;"

Bailey v. Duncan, 2 T. B. Mon. 20, April 1825. Held: [22] "Technically, the word *goods* does not include land or slaves;" but, in a devise, may embrace them.

Marshall v. Moore, 2 T. B. Mon. 69, June 1825. Will, admitted to probate in 1800: "$160, . . to be put to the use of buying her a negro girl,"

Hocker v. Davis, 2 T. B. Mon. 118, October 1825. [120] "by the will of Philip Hocker, senior, [1821], she could only be held in slavery until she was twenty-five years of age;"

Jenkins v. Morton, 3 T. B. Mon. 28, November 1825. A negro man slave was sold at the price of six hundred dollars and fifty cents.

Kenningham v. McLaughlin, 3 T. B. Mon. 30, November 1825. "when she was three or four years of age, she was taken on a visit to her paternal grandfather's dwelling, in 1808. While there, the grandfather presented to her the negro boy slave in question, about the same age with herself; that her father took the slave into custody for his child,"

Bush v. White, 3 T. B. Mon. 100, November 1825. In 1793 [104] "when Stites got the slave, he moved to, and remained in the then territory northwest of the river Ohio, now the State of Ohio, where the slave Betty, since the mother of the other slaves,[1] remained with him until the time he abandoned his wife." She then returned to her father's house in Kentucky with Betty.

Held: "This residence in the now State of Ohio, being before it was a State, and while it was under the ordinance of Congress which forbade slavery there, certainly destroyed all title to Betty,"

Carney (a coloured man) v. Hampton, 3 T. B. Mon. 228, May 1826. Carney "was the son of a female slave, sold in the year 1792, in the State of New York, by Philip Lott, a resident of that State, to Gen. Matthews, then a resident of the State of Georgia, and a member of Congress from the latter State. Matthews removed the said female to Georgia, and there gave her to his daughter, whose husband afterwards came to Kentucky and sold her; and the plaintiff was born long since the sale to Matthews and the gift to his daughter." The claim of Carney rests upon the act of New York, February 22, 1788.

Held: the act of New York prohibited only the purchase and exportation of slaves for the purpose of being sold without the state, not their exportation for other purposes.

Trumbo v. Sorrency, 3 T. B. Mon. 284, October 1826. Sorrency "devised to his wife during life, . . his slaves by name—the slaves to be disposed of at her death, as she may think proper, except Ails, whom he directs to be set free at the death of his wife." He died in 1817.

James v. Neal, 3 T. B. Mon. 369, October 1826. "Neal hired of James, for the term of one year, a negro man, at the price of two hundred and fifty dollars,"

Finley v. Nancy,[2] 3 T. B. Mon. 400, December 1826. "Afterward, Finley filed this bill, praying the chancellor to interfere, and grant a new trial at law." Bill dismissed. Decree affirmed: [402] "It may be a matter of some consideration . . whether the chancellor ought, in any case, to grant a new trial at law, for the purpose of taking away a right to freedom gained at law. For, as the chancellor will only interfere to take from a party a legal advantage, which, in conscience, he cannot retain, it may be

[1] One of the slaves has [105] "commenced an action to assert and establish his freedom."

[2] For other facts, see Findly *v.* Tyler, p. 300, *supra*.

doubted whether a right to freedom can ever be a claim of that character. . . the case which would warrant such interference ought to be strong and clear." [Mills, J.]

Gale v. Miller, 3 T. B. Mon. 416, December 1826. Held: if the husband of the doweress [419] " remove, or voluntarily permit to be removed out of this commonwealth, any of the slaves which he may hold in right of his wife's dower, without the consent of him. . . in reversion, the act declares, it shall be lawful for him . . in reversion to enter into, possess and enjoy, not the slave removed only, but all the estate which such husband holdeth in right of his wife's dower, for and during the life of the said husband." [Owsley, J.]

Davis v. Hall, 4 T. B. Mon. 23, January 1827. In 1811 Davis sold Hall about two hundred acres of land. " Hall agreed to pay Davis a negro man slave in hand, at the price of $500; . . And the residue of the whole price, to-wit, $1,750, might be discharged in good young negroes by the 1st day of March, 1816."

Free Lucy and Frank v. Denham,[1] 4 T. B. Mon. 167, January 1827. Held: [169] " the court below should have allowed the plea offered by Frank, in which he alleges that he was a slave when the writing sued on was delivered by him, to be filed."

Moore v. Howe, 4 T. B. Mon. 199, April 1827. Will of John Dunlap, 1791: " I will to my daughter Jane, one negro girl, named Nan, and issue, also one mulatto boy named Jack, until he is of the age of twenty-six years; and in that time, to be learned the art and mystery of shoe-maker, and to be taught to read, and when he comes to the age mentioned, then to be free; or at liberty to work or labor for himself;"

Wood v. Lee, 5 T. B. Mon. 50, June 1827. Will, 1794: [51] " To his daughter Matilda . . one slave, by name, and another, to be the first child that a certain slave bequeathed to his wife should have."

Mitchell v. Warden, 5 T. B. Mon. 261, June 1827. Witness " had a runaway negro in his custody as jailor; the negro gave an order to his former master for a horse which the negro claimed, and then in possession of Mitchell, requesting the witness to get the horse, and deliver him to the negro's wife. Mitchell said he should not have the horse, for Warden and himself had got the horse for catching the negro; . . [262] Mr. M'Donald had bought the negro of Mr. Smith; the negro ran away; M'Donald employed Mitchell to search for the negro, and agreed to give a dollar per day for his services; M'Donald had also employed Warden to search for the negro. Mitchell proposed to M'Donald, that if he would let him have the horse which the negroe had, he would not charge the dollar per day for his services; M'Donald declared the horse was not his, he had not bought the horse, and had no claim to him; but if he caught the negro, he, Mitchell, might have his, M'Donald's, interest in the horse; and Mitchell had caught the negro. Mr. Smith, the former proprietor of the negro, deposed that the negro had been in the habit of riding his horses

[1] See same *v.* same, p. 304, *supra.*

at night, to prevent which he had given the negro a poney; the negro had swapt several times until he had got a very good horse, by giving boot, which the negro had paid with Smith's property, taken out of his mill; . . [263] Mitchell applied to him to know what claim he had to the horse; Smith replied, that if his claim of $12 was paid, he would give the horse to the negro; Mitchell paid him the $12, and from that time, Smith had set up no claim to the horse."

Roberts v. Smiley, 5 T. B. Mon. 270, June 1827. "Smiley sold to Roberts and Co. a negro boy named John, and on the 28th day of February, 1816, executed to them a bill of sale, in which he covenanted to warrant and defend the boy against the claims of all and every person whatsoever. The boy was afterwards carried by Roberts and Co. to the State of Louisiana, and there sold; and in a suit brought by him in that State, to recover his freedom, the boy was adjudged by the court to be free. Whilst that suit was pending, the purchasers from Roberts and Co. informed them thereof, and they thereupon gave notice to Smiley, and requested him to attend to the procuring evidence to prove the boy a slave. After the boy had succeeded in recovering his freedom, Roberts and Co. brought an action of covenant against Smiley, upon the bill of sale."

Dougherty v. Holloway, 5 T. B. Mon. 314, June 1827. "that the oxen were delivered, . . and that a negro was employed one day in driving the oxen, twenty-seven miles, to the defendant, and one day in returning."

Harrison v. Murrell, 5 T. B. Mon. 359, July 1827. "Harrison hired of Murrell two negroes, for the term of one year, at the price of $160, and covenanted to pay the same . . 25th day of December, 1820. The negroes had not been in the possession of Harrison but little more than one month, before one of them died,"

Held: Harrison is not entitled to an abatement in the sum agreed to be paid for the hire, [360] "however hard it may seem to be upon him to have to pay hire for a negro after he is dead,"

Jarrett v. Higbee, 5 T. B. Mon. 546, October 1827. "Jarrett declared against Higbee in a plea of trespass *vi et armis*, for . . imprisoning . . [his] slave, . . and for loss of service, and for expense of regaining the possession. Higbee . . justified, because he apprehended the negro man [Allen] in the highway, in Fayette county, suspected to be a runaway, . . [548] Gatewood . . saw [Higbee] . . when examining the passes, and advised him to take up the slave as a runaway. The negro got in a rage at being called a runaway, and drew out of his boot another pass;" Higbee [546] "brought the slave to the jail to be committed as a runaway, . . [547] the jailor refused to receive him without a mittimus; the defendant went away with the slave and returned with a mittimus" signed by a justice of the peace, who suspected that the pass carried by the slave was a forgery. It was as follows: "Know all men by these presents, I, J. Jarrett, of Livingston, and State of Kentucky, do agree that this black man Allen, do bargain and trade for himself until the first day of May next; and also, for to pass and repass from Livingston county, Kentucky, to the Monongalia county, State of Virginia, Morgantown, and then to return home

to the same Livingston county, Kentucky, again, near the mouth of Cumberland river, Smithland. Given under my hand this 26th day of September, 1822. . . John Jarrett." [Witness, Thomas Jarrett.] He ordered "that said Allen be committed to the jail of Fayette, there to remain until answer can be had from said John Jarrett, which the jailor will procure as speedily as possible. Upon this mittimus the jailor confined the slave in jail sixty-eight days, until he wrote to the plaintiff, who came up to Lexington, proved his property and paid fees, amounting to upwards of $32, and took the slave away;" It turned out that the slave was not a runaway, [548] "as Jarrett acknowledged he had given the passes; that $40 was a fair compensation to come from Livingston and carry the slave home. It was agreed that the distance from Livingston to Fayette, is between 230 and 250 miles."

Judgment affirmed: [551] "To bargain and trade for himself, contains an authority to hire himself, as well as to buy and sell and deal in articles and commodities, without specification or limitation. These permissions, and such acts of the slave, are violations by master and slave, of the policy, spirit and letter of the statute of 16th of December, 1802, against permitting slaves to go at large and hire themselves, 2 Dig. 1159; and of the 12th sect. of the act of 1789, 2 Dig. 1152, against buying, selling or receiving to, or from, or by a slave, without a note in writing from the master, expressive of the article. . . It was not a lawful pass or permit, it was a species of temporary and unlawful manumission, unlawful in its purpose and duration, wanting the solemn form, sanction, authentication and safeguard, as a deed of emancipation, and by its terms and purposes, shewing that the slave was not proceeding upon the lawful business of the master, but at the will and for the purposes of the slave himself. . . [556] reasonable grounds to suspect the slave as a runaway, justifies the taker-up who acts in good faith. . . [557] Experience teaches, that there is no danger to be apprehended from too great an alacrity, or passionate ardour, in apprehending slaves as runaways, without probable cause. The reward fixed by law for the service of apprehending or conveying a runaway to his owner, is no temptation to abuse." [Bibb, C. J.]. Mills, J. dissents: [559] "leave to bargain and trade for himself, inserted in the permit, although illegal, does not vitiate the authority to pass, which the master had a right to give; and that whosoever apprehends a slave to the prejudice of his master, acts at his peril, if he be not a runaway, and has a pass which is genuine; just as he would act in apprehending a supposed felon."

Commonwealth v. Kimberlain, 6 T. B. Mon. 43, October 1827. "to answer a charge of felony in killing a slave, which the justices have adjudged to be manslaughter."

Hart v. Fanny Ann, 6 T. B. Mon. 49, October 1827. Will of William Hart, 1803: "directing his slave Peter, to be free after five years service . . 'and all the rest of my slaves, by name Alsey, Lucy, Anna, Selina and Turner, shall be emancipated, with their children if they should have any, as soon as they severally arrive at thirty years of age, except the last mentioned and by name Turner, who shall serve Jer'h. Davis until he is twenty one years of age and then be free.'"

Held: the children of the females are manumitted as soon as their mothers respectively reach the age of thirty years.

M'Dowell v. Lawless, 6 T. B. Mon. 139, October 1827. Held: slaves devised pass as real estate immediately to the devisee; if not specifically devised they pass to the personal representatives.

Roberts v. Sayre, 6 T. B. Mon. 188, December 1827. Wilkerson " agreed with him that if he should send down the Mississippi and regain the slave which Walter B. Wilkerson had carried away with him, and cause that slave to be sold and the money brought back, or should cause the said slave to be brought up the river and restored to him,"

Hawkins v. Craig, 6 T. B. Mon. 254, December 1827. The second husband's administrator claims the slaves assigned the wife for dower in the first husband's estate, against the third husband. Held: slaves are for most purposes chattels. Slaves assigned the *feme* for dower in her first husband's estate, and reduced to possession by her second husband, do not survive to her on his death (as would dower land assigned to her), but pass to his personal representatives.

M'Cracken v. M'Cracken, 6 T. B. Mon. 342, December 1827. Will of Virgil M'Cracken, 1812: [343] " the negroes devised to my children, to be kept together for the purpose of supporting and schooling them; but it is my wish that my executors should dispose of every foot of land for the purpose of paying my debts before the negroes should be sold."

Horsburg v. Baker, 1 Peters 232, January 1828. In 1813 a bill was filed stating that, in 1787, Horsburg [233] " did, by deed, confirm to Martin Baker, and Hannah his wife, for their lives and the life of the survivor, then residing . . in Virginia, a negro girl named Charlotte, previously loaned to them; . . reserving to himself and his heirs, the reversion of the said slave, and her increase; and prohibiting any alienation of them, under the penalty of forfeiting the loan. . . that Baker and wife have removed to Kentucky with the slave Charlotte, and her increase; . . [234] In May 1814 . . [a] supplemental bill . . states, that Baker and wife had sold Charlotte and her increase to . . Clarke and . . Boyce; who intend removing them out of the state, and concealing them. . . In answer . . Baker and wife say, that, in . . 1773, . . Simmons, and others . . contributed forty-three pounds, for the purpose of purchasing a negro girl, for the said Hannah, which sum was placed in the hands of . . Horsburg, as their agent, with instructions to convey the said negro to the defendants for their lives, and to their children, after the death of the survivor. . . [235] Under these instructions, Charlotte was purchased, and delivered to them. In the year 1787, after the defendants had been in peaceable possession of Charlotte, about fourteen years, . . Horsburg . . sent to them . . the deed; . . on the same day, . . Horsburg executed another writing, obliging him to convey Charlotte and her increase, after the death of the defendants, to their children, . . In May 1824, . . [an] amended bill charges, that Clarke and Boyce purchased, not only pending the suit, but with knowledge in fact thereof;—that they purchased

the said slaves for a trifle, less than half their value, in consequence of an agreement to take upon themselves the risk of the title."

Groves v. Kennon, 6 T. B. Mon. 632, April 1828. Will of Thomas Berry, dated 1806: [633] " Whereas I put into the hands of my daughter Sally, wife of William Kennon, a negro girl named Lucy, which negro girl it is my will and desire shall be set free at the age of twenty-five years, but I reserve to myself all the children she may have previous to her arriving at the age of twenty-five years, all of which is to be considered part of my undivided estate until the death of my wife, . . [634] except the first she has, which I hereby give and bequeath to my grand daughter, Fanny Kennon."

Tumey v. Knox, 7 T. B. Mon. 88, April 1828. " Mr. Durham, who occasionally bled in the neighborhood, . . was permitted, to detail . . what the slave himself had stated . . to Mr. Durham, who had been sent for to bleed the negro then in bed; "

Held: declaration of the slave to Durham excluded. Mills, J. [92] " thinks the declaration of a slave may, in some cases, constitute a part of the *res gestæ*, and be proper to be given in evidence, and, as the opinion of a physician . . is often based on his examination of his patient, combined with other circumstances, it might be competent for the physician to detail the reasons for his opinion combined with his examination."

Forsyth v. Kreakbaum, 7 T. B. Mon. 97, April 1828. " In the latter part of 1804, Forsyth and his wife, made a visit to her father, having with them the plaintiff, Evelina Forsyth, a child of the marriage, then a few months old. The father who was in easy circumstances, and in the habit of advancing his children in slaves, and of presenting a slave to each of his grand children, during the visit, . . presented to Evelina . . an infant slave, then between four and six years of age, and delivered her to the father of Evelina, to be kept and raised by him, along with his child, as her natural guardian."

Miller v. McClelland, 7 T. B. Mon. 231, May 1828. Held: children of a female slave, born in the time of an estate for life, go with her, at the termination of the particular estate, to the remainder man, and not to the tenant for life.

Jarman v. Patterson, 7 T. B. Mon. 644, December 1828. Held: slaves in Kentucky have no rights secured to them by the constitution, except of trial by jury in cases of felony. [645] " However deeply it may be regretted, and whether it be politic or impolitic, a slave by our code, is not treated as a person, but (*negotium*), a thing, as he stood in the civil code of the Roman Empire." [Mills, J.]

Conclude v. Williamson, 1 J. J. Marsh. 16, January 1829. " In 1825, the Legislature of Kentucky passed an act, (see Sessions acts of 1824, p. 195,) declaring that the plaintiff in error, Zachariah Conclude, should be a freeman, and should inherit the estate of Isaac Conclude, his father, who being a free man of color, had died without heirs. . . [17] Isaac Conclude, in his life time, purchased the complainant; and had expressed

a determination to purchase and emancipate his daughter, . . he had deposited $200 with a friend to aid in the purchase, and directed him to make the purchase of his daughter, and set her free, if he himself should die before the desired object could be accomplished." The administrator [16] " received of the estate of the intestate, $440 75 cts.; . . before the date of the act of the Legislature, he had expended $400 of that fund in the purchase " of intestate's daughter, " whom he purchased to emancipate, according to the intention, and in fulfilment of the repeatedly expressed wishes of the decedant in his life time; and whom he did liberate by Deed, immediately after the purchase."

Held: [19] " Zachariah had no right to this money when it was applied to the manumission of his sister. He then was a slave, and under the control of the administrator."

Boyce v. Anderson, 2 Peters 150, January 1829. Action against the " owners of the steam boat *Washington*, to recover from them the value of [Boyce's] four slaves . . the steam boat *Teche*, in descending the Mississippi, with the plaintiff's agent, and the negroes . . and others . . was blown up, and set on fire, and the passengers escaped . . to the shore, . . the steam boat *Washington* was ascending the Mississippi, and passed the burning *Teche*, and when she came opposite to them, . . the agent of the plaintiff, with the negroes . . was received into the yawl belonging to the defendants . . for the purpose of conveying the negroes from the shore . . to the steam boat, . . and that the yawl was upset, the negroes . . were drowned; and evidence conducing to show that the yawl was upset by ill . . management, in putting the steam boat in motion as the yawl approached, and before the passengers were on board the steam boat. . . there was no contract . . about reward;"

Judgment of the lower court in favor of the defendants, affirmed: [156] " the carrier would certainly be responsible only in a case of gross neglect;" [154] " A slave has volition, and has feelings which cannot be entirely disregarded. . . He cannot be stowed away as a common package. . . this rigorous mode of proceeding cannot safely be adopted, unless stipulated for by special contract. Being left at liberty, he may escape. The carrier has not, and cannot have, the same absolute control over him, that he has over inanimate matter. . . he resembles a passenger, . . It would seem reasonable, therefore, that the responsibility of the carrier should be measured by the law which is applicable to passengers, rather than by that which is applicable to the carriage of common goods." [Marshall, C. J.]

Bucklin v. Thompson, 1 J. J. Marsh. 223, April 1829. " 1821, James Johnson executed a mortgage to Thomas D. Carneal, on . . thirty-eight slaves, . . [224] James Johnson remained in the possession and use of all the property mortgaged, sold some of the slaves and sent others to the lead mines, on the Mississippi,"

Ellis v. Gosney, 1 J. J. Marsh. 346, April 1829. " Tom, having afterwards fled from the state, and taken refuge among the Indians, she employed William Ellis, to pursue and reclaim him if possible, and agreed,

that if he should succeed, in restoring to her Tom, she would sell him to him, for £100. Having found Tom, on the northwestern frontier and brought him back to Kentucky,"

Emily v. Smith, 1 J. J. Marsh. 593, June 1829. "The deed under which the plaintiff in error claims her freedom, completely emancipated her, from the time of its execution, with the reservation to retain the guardianship of Emily, then an infant, until she should arrive at age. This reservation was personal to Enoch Smith. The defendant had no right to retain the plaintiff, against her will, after the death of said Enoch." [Underwood, J.]

Leah v. Young, 2 J. J. Marsh. 18, June 1829. Bill "to enjoin the sale and abduction of Leah and her children, until a suit at law, then pending, for their freedom, should be tried. The court, on demurrer, dismissed the bill." Reversed by the Court of Appeals. "There seems to be a peculiar fitness in an appeal to the conscience of the law, for liberty. . . The chancellor delights in his guardianship over personal liberty; . . he will secure to every individual, who claims to be free, the humble privilege of asserting the claim fairly, freely and fully." [Robertson, J.]

Reed v. Rice, 2 J. J. Marsh. 44, June 1829. "Reed, as constable, summoned the defendants . . to assist him, . . they . . went to the residence of Rice, there found the slaves mentioned in the warrant, took them and carried them before a justice of the peace. The wife and sister of Rice seized some of the negroes, who were taken from them; they screamed, and the scene was one of some confusion. It lasted not more than an hour." Berry had sworn "that the slaves, consisting of a woman and four children, had been stolen and carried away from the residence of his intestate,"

Fanny v. Dejarnet, 2 J. J. Marsh. 230, October 1829. "On the 10th day of May, 1822, Thomas Dejarnet signed and acknowledged, in the presence of three attesting witnesses, a deed for emancipating Fanny his slave. . . [231] it was the 'dying request' of Mrs. Dejarnet, (the wife of Thomas,) that Fanny should be manumitted, whenever she should bear five children, one for each of her (Mrs. D's) children; and that Fanny had become the mother of more than five children, when the deed was executed;"

Held: [232] "The deed should be recorded, not because its registration will be necessary, to the freedom of Fanny, but because she desires it for security,"

M'Daniel's Will, 2 J. J. Marsh. 331, October 1829. Will of Francis M'Daniel, dated 1826, emancipated three slaves. [335] "his wife had requested, on her death bed, that, at his death, the female slave, (the mother of the other two) should be liberated."

Joe v. Hart, 2 J. J. Marsh. 349, October 1829. Will of Thomas Hart, 1809, "emancipated his slave Joe, and devised to him $200, 'to assist him in buying his wife.' . . the representatives say, that one of them, (Hunt) owns Joe's wife, and is unwilling, at least at this time, to sell her, and that, therefore, as the devise was for a specific object, which cannot now be effected, Joe is not entitled to a decree" for the legacy. Joe "was

a gardner . . attended market for Mrs. Hart, waited in the house and performed other services; that he would occasionally go away on Friday or Saturday, and not return until Monday; that sometimes Mrs. Hart gave him fifty cents, and sometimes a dollar, and at one time $20 . . [350] that he was settled on the land near Lexington, for the purpose of raising poultry for Mrs. Hart, but that it was not recollected that he furnished any; that the use of the ground which he occupied, was worth at least $100, but that there was no contract for paying any rent, and Joe frequently said, whilst he occupied the ground, that he was to pay no rent." He lived on it only a few years.

Held: the legacy was given absolutely to Joe and vested immediately. The executors cannot withhold it until he shall be able to purchase his wife.

Scroggin v. Allin, 2 J. J. Marsh. 466, October 1829. Held: [469] " the land [of an infant who dies without issue] descends according to the act of 1797. The slaves and personalty vest according to the act of 1785." [1]

Mims v. Mims, 3 J. J. Marsh. 103, December 1829. He [104] " redeemed Jesse from Davis, by paying the debt with a negro named Sampson, his own property, and thereby got possession of Jesse; that, thereafter, the testator again mortgaged Jesse . . he satisfied Bradshaw, and again possessed himself of Jesse, who had been delivered over each time, to the mortgagee, to work for the interest of the money: . . [109] In estimating the reasonable hire of the slaves, it must be done, deducting all reasonable charges and expenses, such as taxes, medical attendance, raising, etc."

Pate v. Joe, 3 J. J. Marsh. 113, December 1829. [117] " Joe, whose freedom is secured by the will," of Thomas Pate, dated 1803.

Tyson v. Ewing, 3 J. J. Marsh. 185, January 1830. " Ewing being the owner of a slave, occasionally hired him to work on board steam boats. Tyson, as captain of a steam boat, made a contract with the slave, or permitted some one engaged on board the boat, to make the contract, by which the slave was received on board as a hand, and performed one trip out from Louisville. To all this, Ewing gave no consent. He was not consulted on the subject. Upon the return of the boat, Tyson paid the slave the wages due for his services, and discharged him. The slave did not go home to his master. Ewing notified Tyson of the fact, who thereupon found the slave and restored him, after he had been absent and out of his master's service about two months. For the first month the services of the slave were proved to be worth $15, and $20 for the second."

Logan v. Withers, 3 J. J. Marsh. 384, April 1830. [386] " about the first of January, 1827, the testator having been displeased with the slave Solomon, whom he had owned for a considerable time previously, determined that he should be hired, and should not again return to his plantation. He requested a friend to take him off for that purpose,"

[1] 1 Dig. 435.

Johnson v. Davenport, 3 J. J. Marsh. 390, April 1830. "a slave which he had sold . . 1824, . . [was] laboring . . under an incurable malady, denominated the *Cachexia Africana*, of which he died in the November next thereafter."

Brown v. Miller, 3 J. J. Marsh. 435, April 1830. At a sheriff's sale, "Miller purchased a slave named John, at the price of $608,"

Edwards v. Vail, 3 J. J. Marsh. 595, April 1830. [596] "The negro on the boat, and who ascended in it to Cincinnati, came on board from Jeffersonville, Indiana, with a white woman, and left the boat upon its arrival at Cincinnati, or shortly afterwards."

Held: the act of 1824 does not apply to [597] "cases where coloured persons are taken on board in other states, and pass '*out of the limits of this state*' in their transit over our territory. But in this case, it is contended, that as our territory extends to low water mark on the north bank of the Ohio river, the negro was taken on board in Kentucky, and his coming from Indiana can make no difference. A literal application of the same argument would prove, that the negro was not taken '*out of the limits of the state*,' in the boat, unless it had been shewn, that, on its arrival at Cincinnati, it had been hauled out on dry land, on the north bank, with the negro in it. . . The negro came voluntarily on board from another state, and left the boat voluntarily, and went into another state, the boat remaining all the time in Kentucky." [Underwood, J.]

Blakey v. Blakey, 3 J. J. Marsh. 674, April 1830. Will of Constance Blakey, 1824, directs the executor to sell all her slaves, "giving the said negroes the full right of choosing their masters; the mother and father of the younger negroes choosing the masters they would wish their children to belong to." The sale [679] "was a most barefaced fraud, . . [680] Clark [who acted as crier] read to the company present, that part of the will, which related to the sale of the slaves, and enquired of the oldest of said slaves, whom they would choose for their master, to which they replied, Thomas Blakey. Some of the persons, who had gone there with the intention of bidding, had the slaves been sold separately, understood that no one had a right to become a purchaser, unless with the consent of the slaves. . . the slaves were stricken off *en masse*, to [Blakey] . . at a sum, by several hundred dollars below their value, at a credit of two years."

Prewitt v. Singleton, 3 J. J. Marsh. 707, April 1830. "It was his duty to have made known the true condition of the slave, at the hiring. His diseases, asthma and rheumatism . . were not so manifest, that they could have been ascertained by observation at a public hiring. . . [708] The slave died some months after he was hired." Relief granted against the note given for the hire.

Ferguson v. Sarah, 4 J. J. Marsh. 103, June 1830. "Enoch Smith, in principle an emancipator, and who liberated all his own slaves, having bought Sarah, the wife of Ben, a free man of color, for the purpose of securing her eventual emancipation, sold her to her husband in 1809, and took his promissory notes, for the price, payable in instalments, and on

long credits. It was understood, at the time of the sale, that Sarah and her children should be liberated; and Enoch Smith, after the sale, manifested a solicitude, that the emancipation should be effected without delay, lest Ben, who seems to have been insolvent, might, by incurring debts, incapacitate himself for the effectuation of the contemplated object. Under the influence of this benevolent forecast, he prepared a deed for the emancipation of Sarah, in 1813, and presented it to a lawyer for his advice as to its sufficiency, who inserted the names of Milton and Fanny, children of Sarah, and in the possession of Ben; and then, at the instance, and in the presence of E. Smith, had the deed acknowledged by Ben, in the county court. The price, promised to Smith for Sarah, was not paid, and the greater part of it yet remains due. E. Smith lived several years after the emancipation, during all which time, he recognized Sarah, Milton and Fanny, as free persons. . . In 1825, E. Smith died; Ben died intestate in 1818. After the death of E. Smith, Ferguson, who is one of his executors, was appointed administrator of Ben, and thereupon took Sarah, Milton and Fanny, into his possession, evincing a determination to sell them, for the purpose of raising a fund for the payment of the debt due his testator."

Injunction granted restraining Ferguson from selling or otherwise molesting Sarah, Milton or Fanny: [105] " after manumission, the person, so liberated, is free, as against the emancipator, and the world besides, excepting only *bona fide* creditors, or some other person, who had a better right to the slave, than the person had, who attempted the liberation; and, as to such a creditor, his right does not nullify the act of emancipation, nor otherwise affect it, farther than as a lien for the *ultimate* security of the debt. The person emancipated is no part of the assets in the hands of the personal representative of the emancipator." The act of 1798 saves rights of creditors of the emancipator, only as the statute of frauds protects rights of creditors. Therefore, if a creditor assent to and urge emancipation of a slave, he waives his right to subject him after emancipation to the satisfaction of his debt. " *Volenti non fit injuria.*"

Johnson v. Sevier, 4 J. J. Marsh. 140, June 1830. Will of Edwards, 1790, " devised to his son, William Edwards, for life, a slave named Stephen; remainder to the children of said William, . . The slave Stephen was repeatedly sold and transferred until he came to Sevier . . by purchase from [Johnson] . . who executed a bill of sale, warranting the title in fee."

Held: [141] " When Johnson sold to Sevier, the life estate of William Edwards, passed, and no more, although Johnson warranted the title in fee. . . [142] the value of the slave, at the time he is demanded by the remainder claimants, after the termination of the life estate with interest on that value, is the proper criterion by which to measure the warrantor's responsibility." [Underwood, J.]

Crawford v. Beard, 4 J. J. Marsh. 187, June 1830. " the only consideration for the note, was the sale by the obligee to Crawford of a man of color, as a slave, who was a free man."

Held: total failure of consideration. [189] " It was not the duty of Crawford, to restore to his vendor, possession of the person, whom he

sold to him as a slave. . . The disposition, which Crawford has made of him, might become an important inquiry." [Robertson, J.]

Allcorn v. Rafferty, 4 J. J. Marsh. 220, June 1830. [221] "Rafferty, before the day of sale, clandestinely and fraudulently carried said slaves, out of this State, to some place, at that time unknown to him [Allcorn]; concealed them, and refused to give him any information on the subject, unless he would execute the note above described, which he did, as the only means of regaining the slaves,"

Fanny v. Bryant, 4 J. J. Marsh. 368, October 1830. "Whereas, I, George Smith, of Powhatan county, being fully convinced that slavery in all its forms, is contrary to good policy, that it is inconsistent with republican principles; that it is a violation of our bill of rights, which declares, *that all men are by nature equally free*; and above all, that it is repugnant to the spirit of the gospel, which enjoins universal love and benevolence. In order, therefore, to do justice to my own feelings, and to do justice to my fellow-creatures, I do hereby emancipate, set free, and for myself and my heirs, relinquish all right, title and claim, to the following persons, after they arrive to the date herein mentioned, (*viz*:) Edward, Mathew, John and Jenny to be free immediately; James, the 2d. day of March, 1800; Jacob, the 21st of June, 1810; Anna and her increase 1st of August, 1810; Fanny and her increase, June 9th, 1812; Rachael and her increase, February 15th, 1815; Julia and her increase, January 1st, 1816; Isaac, December 9th, 1817. In witness whereof I have hereunto set my hand and seal, this 21st day of February, 1798. George Smith, (Seal.)" Fanny [369] "is a child of Julia, and was born since 1798, and before 1816."

Held: a deed of emancipation liberating a female and "her increase" on a given day *in futuro*, emancipates all her issue born after the date of the deed.

Duncan v. Mizner, 4 J. J. Marsh. 443, October 1830. Joseph Duncan, who died in 1822, directs by his will, "that after his death, his slaves consisting of a man named Garrard, and two families with their children, should be manumitted; but his executors were first to receive the sum of $1200 from their services or hire, in the following proportions: From the hire or services of Garrard $200, from those of Nancy and her children $400, and from those of Lavina and her children $600; which sum of $1200, was to be divided into six equal parts, between" his children and grandchildren.

Turner's Will, 4 J. J. Marsh. 536, October 1830. Testator [527] "said he would not separate his little negroes. . . He caused his servants to be collected around his bed side, and admonished them on the subject of their duties, and the necessity of preparing for another state of existence." He died the next day.

Bostick v. Keizer, 4 J. J. Marsh. 597, October 1830. [601] "Slaves will perhaps more readily, than any other property command at sale under execution, their value;"

McDowell v. Gray, 5 J. J. Marsh. 1, October 1830. " The maximum value of the [female] slave, as proved, was $400. The jury assessed the value at $800! "

Long v. White, 5 J. J. Marsh. 226, December 1830. " in 1804, Reuben Daniel, of Spotsylvania county, Virginia, by deed, . . sold and delivered, for £50, Hannah, then six years old," to his sister.

Patton v. Patton, 5 J. J. Marsh. 389, April 1831. Bill against the executors of Patton's will " and sundry negroes liberated by it, for the purpose of setting aside the instrument,"

" The fact that the deceased evinced an inclination to marry the slave, Grace, whom he liberated, is not a stronger evidence of insanity than the practice of rearing children by slaves without marriage; a practice but too common, as we all know, from the numbers of our mullatto population. However degrading, such things are, and however repugnant to the institutions of society, and the moral law, they prove more against the taste than the intellect. *De gustibus non disputandum.* White men, who may wish to marry negro women, or who carry on illicit intercourse with them, may, notwithstanding, possess such soundness of mind as to be capable in law, of making a valid will and testament." [Underwood, J.]

Sneed v. Ewing, 5 J. J. Marsh. 460, April 1831. " by a paper, purporting to be the will of Robert K. Moore, dated in April, 1806, and proved in Indiana, in 1807, the slave Agnes, and the tract of land in Shelby, were devised to Sneed," Agnes was kept in Louisville, Kentucky.

Held: [485] " as slaves are moveable, and essentially personal estate, and therefore, pass according to the law of the owner's domicil, Indiana would have a right to declare, by law, how the slaves of her intestate citizens should descend or be distributed . . although slaves cannot be carried to, and domiciled in Indiana,"

Sodusky v. McGee, 5 J. J. Marsh. 621, April 1831. Chowning was asked " if he was not engaged at the time, or shortly before the commencement of that fight, some distance off playing cards with a negro fellow? " The circuit court " refused to permit the witness to answer it . . [because] [622] an affirmative answer involved the degradation and perhaps the punishment of the witness."

Held: " for simply playing cards, or even playing cards with a negro, no punishment or penalty has been denounced by law. . . it is . . very questionable . . whether a witness should, as a matter of course, be excused from answering . . merely because an answer might, *in some degree,* tend to subject him to reproach, not infamy; or might tend to reflect on his character some degree of disparagement." [Robertson, C. J.]

Munsell v. Bartlett, 6 J. J. Marsh. 20, April 1831. Held: slaves are assets in the hands of the administrator and he may sell them for the payment of the debts of his intestate, if it be necessary to do so.

Hubbard's Will, 6 J. J. Marsh. 58, April 1831. " he devised to Narcissa, a slave, and his reputed daughter, all his estate ' provided . . that her master or mistress . . will let her go at a moderate price, if not, I will and

bequeath all the property aforesaid, to Austin F. Hubbard,' . . the reputed illegitimate son [(60) 'not tainted by African blood'] of the testator. . . [59] After the will was finished, Hubbard called Narcissa and gave it to her for safe keeping, . . Narcissa and her mother had been hired by him for some years before Hubbard's death, and there were no white persons living with him when the will was made. . . He could not reasonably have anticipated that Narcissa would be detained in slavery, when the will secured to her owner a fair price. To counteract the cunning and avarice which he may have anticipated might spring up among his heirs, to detain Narcissa in slavery, he devised the estate to a discarded illegitimate son, in the event of more being asked by her owner than was reasonable. We think the solicitude of Hubbard, to provide for a mulatto child, no more evidence of insanity, nor as much, as incurring the shame of being her father," [Underwood, J.]

Poague v. Boyce, 6 J. J. Marsh. 70, April 1831. [77] "on the day of the sale [of the six slaves] the old lady was crying about the situation she was placed in, when Boyce told her not to be uneasy, that he would let her have Saul and Hanna for her use during life, and a place to live in;"

Commonwealth v. Hart, 6 J. J. Marsh. 119, June 1831. Hart's letter, 1827, "proceeds to upbraid Twiman, with relying on information derived from a negro, in support of some charge . . against Hart, and pronounces such conduct proof that the negro, instead of a gentleman, was the companion of Twiman." After heaping up insults, he closes, [120] "I have thought proper to send this [challenge to fight] by my man Granville, knowing that he will be in company at least not better than himself."

Commonwealth v. Gilbert, 6 J. J. Marsh. 184, June 1831. "Elizabeth Gilbert was indicted for permitting her female slave 'to go at large, and hire herself out contrary to the statute' of 1802, in the county of Madison, from the 1st day of June, 1822, to the 8th day of September, 1829."

Held: [187] "both the act of 1802, and that of 1825 were violated; . . The two acts are therefore, in no respect repugnant or inconsistent, but are perfectly harmonious."

Sublet v. Walker, 6 J. J. Marsh. 212, June 1831. Held: "Even if the slave had injured or offended the defendant; (and there is no sufficient reason for inferring that she had injured him or given him just cause of offence) he had no legal right to beat her, with force and arms, as he did, without the plaintiff's consent. The battery was not justified by any right of self-defence; nor was it necessary for the prevention of any injury to the defendant." [Robertson, C. J.]

Charles (a man of color) v. French, 6 J. J. Marsh. 331, June 1831. Deed of emancipation: [332] "Upon the principle of love, justice, mercy and truth, and in obedience to the command of the creator of all things, who commanded us to do unto all men as we would they should do unto us, and to break every yoke and let the oppressed go free, and agreeable to the bill of rights, by which opposed the power of Britain; I do, by these presents, renounce all claim to any power over man, be him white or black; and I do, upon the house top confess my sins, and hope that God,

for Christ's sake, will pardon me for what is past; and yet I now freely, and immediately, liberate and quit claim to a negro man named John; and a negro woman named Lucy, his wife, and a negro man named Bromley, as also a negro girl named Susannah now ten years old, to go free at the expiration of eight years from this date, as also a negro girl named Rachel, now eight years old, to go free at the expiration of ten years from this date. In witness whereof, I have hereunto affixed my hand and seal this 29th day of September, 1794. John Watson," (Seal). On the same day "the deed was acknowledged and ordered to be recorded in the court of the county in Virginia, in which the grantor resided, and was so recorded. The plaintiff is the son of Susannah, and was born about seven years after the date of the deed. It is necessary, therefore, only to decide whether Susannah was a free woman when she bore the plaintiff."

Held: Susannah's freedom "immediately succeeded and resulted from the acknowledgment and registration of the deed of emancipation; *eo instanti*, John and his wife and Bromley were certainly free; 'I freely and *immediately* emancipate' applies as effectually and as certainly to Susannah as to John, . . [333] Susannah and Rachel . . were actually free persons, but were not to '*go free*;' that is, *go forth* into the world, until they should acquire sufficient experience and discretion to enable them to enjoy the blessings of freedom." "They remained in *servitude*, but not in slavery." [Robertson, C. J.]

Curlin v. Battoe, 6 J. J. Marsh. 336, June 1831. "The second count charges a battery and imprisonment of the slave for the space of twelve hours. There is nothing in the plea which can justify the imprisonment."

Jones v. Tutt, 6 J. J. Marsh. 379, June 1831. Richard Tutt's will: "My two negro men, John and James, I direct to be disposed of as follows: James to be set free according to the existing laws of the state, when he attains the age of 31, which will be in September, 1820. In the interim, his services for hire, etc. to be applied to the use of schooling and benefit of Abel Stewart's children. The same in every principle respecting John, only that his age of 31, will not expire until the 4th of September, 1822, except, that he is to serve Thomas Tutt's family until the time of his emancipation; but I do desire, he may not be hired out of Bourbon or Nicholas counties; my intention being, that their services during their servitude, be applied for the benefit of Stewart's children."

Mitcherson v. Mercer, 6 J. J. Marsh. 381, June 1831. The sheriff went to Mercer's house [384] "and found the slave at the spring, and . . [Mitcherson] [385] directed him to levy on her, which he did, and took her to the house, and the plaintiff [Mercer] gave a delivery bond for her, to produce her at the day of sale; and she was delivered accordingly, and sold for $98."

Singleton v. Carroll, 6 J. J. Marsh. 527, October 1831. "a writing . . bearing date 4th January 1828; by which they bound themselves to pay to him for the hire of a negro man, from that time until Christmas, one hundred dollars, to furnish for said slave the usual summer clothing, and to deliver him with as good clothing as he then wore, to the order of Single-

ton, in Lexington, at the expiration of the time for which he had hired him. . . previous to the day on which they were bound to deliver the slave; he had run away from them, without any negligence or fault on their part:"

Held: the hirers did not bind themselves to return the slave at the time named [531] "in all events." They "were not prevented . . by the act of God, . . but by the act of the slave himself; . . by an event over which it was as impossible for them to have any control, as it would be for a single individual to control the movements of an hostile army, unless they had caused the slave to be watched day and night, or had exercised a rigor and cruelty by keeping him constantly in chains;" [Buckner, J.]

McCampbell v. Gilbert, 6 J. J. Marsh. 592, October 1831. Held: [599] "the devise of a slave since the statute of 1800, operates as an absolute conveyance of the title to the devisee, altogether independent of the will of the executor; and he has no more right to assume the control of a slave so devised, in virtue of his office as an executor, than he would have if he were not executor;"

Walton v. Walton, 7 J. J. Marsh. 58, November 1831. Held: a general devise of slaves will be considered as speaking at the death of the testator, notwithstanding the act of 1800 makes slaves real estate.

Commonwealth v. Thruston, 7 J. J. Marsh. 62, November 1831. Dr. Thruston was indicted for importing slaves from Virginia into Kentucky, in violation of the statute of 1815.[1]

Held: [63] "The indictment is good. Importation alone may be an indictable offence; a subsequent sale is not a necessary ingredient"

Moore v. Howe, 7 J. J. Marsh. 64, November 1831. The heirs prayed for [65] "a decree for the value of a slave, the daughter of one of those devised to Jane . . and who was sold in 1818, and taken by the purchaser to the state of Mississippi, and also for the value of three other slaves sold in 1817, and taken by the purchaser to Missouri; and also for the value of some slaves who had gone, or had been sent to the state of Ohio, and there settled;"

Ellis v. Gosney, 7 J. J. Marsh. 109, April 1832. "the circuit court ascertained . . [110] that the use of the slave Tom, from the date of the judgment in detinue, (13th March, 1818,) was worth $60 per annum,"

Hykes v. White, 7 J. J. Marsh. 134, April 1832. Held: slaves held in dower vest absolutely in the husband by second marriage, during coverture; [136] "and, consequently, after his death, and during her life, the whole estate in the slaves for her life vested in his representatives, subject to her right to dower in them, as his wife."[2]

Clarke v. Baker, 7 J. J. Marsh. 194, April 1832. "action for the trover and conversion of slaves." "in 1813 the slaves were sold to [Clarke] . . by . . Baker; . . 1825, . . they secretly left him, or were carried off in

[1] 2 Dig. 1162.
[2] Act of 1797, 2 Dig. 1247, sect. 26; act of 1798, *ibid.*, 1156, sect. 34.

the night, and a few days afterwards were found in the possession of the defendant, who refused to deliver them up. . . because of alleged fraud and imposition on the part of Clarke, in their obtention;"

Held: five years' adverse uninterrupted possession invested Clarke with so perfect a title that he can recover them from the former owner who may have obtained possession of them wrongfully.

Pyle v. Maulding, 7 J. J. Marsh. 202, April 1832. Held: a deed of gift of a slave, when possession does not accompany the deed, will not pass the title even from donor to donee, unless the deed be actually recorded within eight months from its date.[1]

Bishop v. Rutledge, 7 J. J. Marsh. 217, April 1832. "On the 7th of January, 1828, Bishop executed an absolute bill of sale to Rutledge, for a slave, in consideration of $200, paid him. On the same day Rutledge bound himself to Bishop in the penalty of $400 to reconvey the slave whenever the $200 were paid, provided the slave was living at that time; but if the slave died before the payment of the money, then Bishop was still bound for the money."

Held: the contract was "only a pledge or mortgage of the slave for the purpose of securing the payment of $200 advanced, and that it was intended to balance the interest of the money with the services of the slave; and so far usurious, . . All that Rutledge could equitably demand was a return of his $200 with interest from the time he advanced it, subject to a credit for the value of the services of the slave."

Adkinson v. Stevens, 7 J. J. Marsh. 237, April 1832. The slave had been warranted sound. "The breach assigned is a defect in the eyes of the slave which produced total blindness."

Hart v. Burton, 7 J. J. Marsh. 322, May 1832. "Borrowed from Charles Hart Senr. $275, for which I have placed in his hands as security, a negro girl: should I not pay said sum of money by the 20th inst. the said girl is to be the absolute property of said Hart, and I bind myself to give a bill of sale when demanded. Feb. 9th, 1827 (Signed) C. F. Burton." The slave died in April, 1827, without Hart's fault. Hart brought action against Burton because the $275 had not been paid.

Held: the contract [325] "contains a covenant to refund the money." Underwood, J. dissented: [327] "The doctrine of redemption shall not be a sword in your [Hart's] hands." "it shall not be perverted to enable you to throw a dead negro, contrary to your contract, upon the hands of the borrower of your money; when if the negro had lived, you would have used the contract to prevent a redemption,"

Gray v. Combs, 7 J. J. Marsh. 478, October 1832. Gray brought an action on the case against Combs for killing a negro man slave. A variety of goods of great value had been stolen repeatedly from a warehouse of which Combs had the custody. Combs "not being able to apprehend said thief, for the protection of said property and prevention of such stealing, set up a loaded gun on the inside of the house, with a string tied to

[1] Act of 1798, sect. 41. [2 Dig. 1158.]

the trigger; that said slave, in the dead hour of the night, with the intent of stealing said goods, broke and entered said house, pushed against said string, and thereby caused the gun to go off and himself to be shot and killed,"

Held: the defence used by Combs was [485] "lawful, and the calamity which ensued, ascribable to the slave's own act." [483] "though the robbery attempted in this case would only have been a misdemeanor in a slave, yet, in a white person, it would have been a felony; and, therefore, though according to strict law, it may not have been a justifiable means of prevention as against a slave, such being known to be the character of the thief, yet, in the absence of such knowledge, we would suppose a resort to such means justifiable, as is permitted against the general, more numerous and worthier class of the community, and the circumstance of the calamity lighting upon one of the other class, is to be taken as misadventure." [Nicholas, J.]

Commonwealth v. Griffin, 7 J. J. Marsh. 588, October 1832. Held: "the bringing of a slave to Kentucky, by a person not protected by any of the exceptions in the statute of 1815,[1] . . intending to export, and afterwards actually exporting the slave to another state for sale, is an importation into this state," in violation of that statute. "the importation of a slave into this state, for any purpose, or by any person not authorized by the statute of 1815, is an indictable offence."

Commonwealth v. Greathouse, 7 J. J. Marsh. 590, October 1832. Held: "Importation is one specific offence, and subsequent sale is another and different infraction of the law." [2]

Taylor v. Lusk, 7 J. J. Marsh. 636, November 1832. Held: in assignment of dower in slaves, an allowance of a sum of money to the widow, to make her share of the slaves equal a full third, is not error. [640] "there are inconveniences resulting from the alternate use of a slave, which render it more beneficial to have the inequalities in lots made up in money. We do not look upon the assignment of dower as precisely analogous to the case of joint tenants, by purchase, owning a single slave, and who will not make partition by sale, and division of the money."

Lee v. Lee, 1 Dana 48, April 1833. Held: the act of 1800 [3] "gives the right of emancipating by will, untrammelled by any reservation whatever in favor of the widow's right of dower, and, as we understand it, excludes all pretence of such claim."

Beaty v. Judy and her children (*persons of color*), 1 Dana 101, April 1833. Daniel Beaty and his wife, by deed, emancipated Judy and her children and other slaves on January 2, 1832. Judy and her three children brought "a joint action of trespass, for assault and battery and false imprisonment, . . [102] and the jury having . . found a verdict [in their favor] . . the court overruled a motion for a new trial, and rendered judgment on the verdict."

[1] 2 Dig. 1162.
[2] Act of 1815, 2 Dig. 1162.
[3] 2 Dig. 1247.

[103] " reversed, and the cause remanded with instructions to set aside the verdict, and dismiss the suit without prejudice." " because the defendants in error could not maintain a joint action, for personal and individual injuries, or for the assertion of personal and individual rights." [Robertson, C. J.]

Pool v. Adkisson, 1 Dana 110, April 1833. Pool [125] " was employed as an agent, by Edward Carlton, who had brought the slaves from Virginia, . . to carry the slaves to Missouri, and sell them;" The slaves were claimed by Adkisson [110] " under a deed of trust, whereby Edward Carlton, sen. transferred . . the right to the said slaves . . for the payment of certain debts due by Carlton "

Stone v. Halley, 1 Dana 197, April 1833. Held: [199] " since the decisions which have exempted slaves and personalty from going into hotchpot with each other, every dictate of policy, as well as justice, requires, that slaves and land should be brought and kept together with regard to this subject."

Betty v. Moore, 1 Dana 235, May 1833. Betty claimed her freedom " under the will of Jeremiah Morton, emancipating her after the death of his wife Judith, who was dead previous to the institution of the suit, . . Mrs. Morton obtained Betty from her brother, Frank Moore, by purchase . . 'on condition that Betty and her increase were to return to Frank Moore, provided Judith had no child to heir them.' . . [236] Judith died without issue."

Held: [237] " wherever by any of the ordinary modes of conveyance, an estate in fee conditional . . is granted in or out of personalty, . . it passes the whole estate to the grantee or first taker, and consequently, all further limitations or reserversions [*sic*] are null and void."

Fenwick v. Macey, 1 Dana 276, May 1833. [287] " In 1807, Fenwick made a bill of sale to Macey, for two negro men and a woman, redeemable in two years, on the payment of a thousand and odd dollars. This . . is treated by the courts only as a mortgage. Fenwick agreed to pay two hundred and fifty dollars a year, as hire for the negroes; and if they died before the end of the two years, the loss was to be his. In 1809, Macey took the woman into possession; Fenwick retaining the men, and agreeing to pay two hundred dollars a year as their hire." [277] " Ann has had five children. In June, 1822, Fenwick filed his bill, asserting his right to redeem the slaves,"

Held: [286] " Fenwick is entitled to redeem Ann and her children. And as . . Macey received his principal and legal interest thereon, more than five years before the institution of this suit, the redemption must be effected by taking an account of the hire of Ann and her children, for five years before the commencement of the suit, . . and after deducting . . a proper allowance for the expense of raising etc. the balance, if any, must be decreed to Fenwick, with the slaves."

Doram and Ryan v. Commonwealth, 1 Dana 331, May 1833. " Doram and Ryan, free men of color, were arrested . . upon a warrant, charging that they had migrated to this state, in violation of an act of assembly of

1808, . . Upon a hearing . . an order was made, requiring them to give a recognizance, binding them to depart from the state, and directing that, if they should fail to do so, they should be sold for the term of one year."

Held: [332] "the act of 1808 is highly penal. . . The penalty is a temporary disfranchisement of a free man, as a punishment for violating a public and economical law of the state. . . the act of 1808 should be interpreted as dispensing with a jury; and therefore it, so far, conflicts with the supreme law of the land. The act cannot be constitutionally enforced without the intervention of a jury. A free man cannot be sold, even for an instant, unless a jury of his peers shall have passed condemnation upon him. . . the order, for selling or hiring Doram and Ryan, is set aside, and annulled." [Robertson, C. J.]

McCans v. Board, 1 Dana 340, October 1833. "In 1821, . . Board, in his last sickness, made a nuncupative will . . by which he devised his whole estate to his wife during widowhood. She . . in 1825, married McCans. . . dower [was] allotted to Mrs. McCans in [Board's] . . slaves." The circuit court considered her "as not entitled to any portion of the slaves,"

[343] "The decree must be reversed . . and cause remanded," I. The slaves did not pass to her by the nuncupative will, [340] "As real estate cannot be devised by nuncupative will, and as our statutes have converted slaves into real estate, . . [II.] [341] a nuncupative will is not now such an one as the statute requires to be renounced; . . the act concerning wills, of 1797, and the act of 1800, directing slaves to pass by wills as land . . [should] be construed together as one act, . . making the latter a repeal of so much of the former as falls within this subject; . . [342] the abstraction of slaves from the operation of a nuncupative will, should be deemed a *pro tanto* . . repeal, of the prior law. . . so far as regards slaves, the twenty fourth section of the act concerning wills, no longer applies to nuncupative wills." [Nicholas, J.]

Bosworth v. Brand, 1 Dana 377, October 1833. Brand had "obtained a verdict and judgment against Bosworth, for the value of a slave killed on Bosworth's farm, at a negro frolic, or dance. The case, when stated most favorably for the verdict, is, that Bosworth permitted some fifty negroes to assemble and dance at an out-house; that a patrolling party surrounded the house about midnight, for the purpose of apprehending the negroes and breaking up the frolic; that the negroes refused to surrender when called upon so to do, and endeavored to make their escape; that one of the patrol, without any necessity for so doing, wantonly fired a pistol, loaded with balls and buck shot, into a dark room, crowded with negroes, and thereby killed the slave of Brand."

Held: though permitting the negroes thus to resort to and remain on his plantation, was unlawful and exposed Bosworth to a penalty of two dollars for each one,[1] it did not render him liable for the value of the slave so destroyed, as the death and damage were the direct and immediate consequence of the shooting, and not the probable or natural consequence of the unlawful act of Bosworth.

[1] 2 Dig. 1151.

Engleman v. Engleman, 1 Dana 437, October 1833. "he was not twenty one years old until 1829; that he managed the farm of his father (whose estate was large) during the years 1828-9, and that both himself and two slaves, whom he got by his wife, worked on the farm."

Commonwealth v. Oldham, 1 Dana 466, November 1833. Held: though a free man of color cannot be a witness in any case, except where none but negroes, mulattoes, or Indians are parties, he may by his own oath require a white man to give security to keep the peace. "He is not a 'witness,' but a party swearing to what any other party may, for the like purpose, make an affidavit."

Commonwealth v. Rodes, 1 Dana 595, November 1833. [601] "some of the fee bills . . *apparently* exhibit a signal exemplification of that 'splitting up' of orders which it was the object of the act of 1830 to prevent. Fee bills for services of the clerk in the emancipation of slaves, belong to that classification. The following is an example:

'John Skinker (colored man)
To the clerk of Fayette county court, Dr.

1828, April,	order on producing deed of emancipation to Jacob, 25; order acknowledging same, 25—order to record, 25; recording, 75; order that certificate be granted, 25—order that he is not likely to become a county charge, 25; order taking description, 25,	$2.25
May—order on producing deed of emancipation to Dorcia, Sr. 25; order acknowledging the same, 25; order to record, 25; recording, 75; order that certificate be granted, 25; order that she is not likely to become a county charge, 25; order taking description, 25,		2.25
Same for emancipating	Dorcia, Jr. except for recording,	1.50
Do.	Susan,	1.50
Do.	Marshall,	1.50
Do.	Nelly,	1.50
Do.	John,	1.50
Do.	Elizabeth,	1.50
Do.	Ben,	1.50
		$15.00

J. C. Rodes, Clerk.'"

"Thus the round sum of fifteen dollars seems to have been charged for two deeds emancipating the family of a colored man."

Keith v. Johnson, 1 Dana 604, November 1833. Held: "a sheriff, having an execution under the statute of 1828,[1] has a right to make a forcible entry into the defendant's house, to levy it on a slave, for which it had issued, on a judgment in detinue," if he finds the house closed and has good reason to believe the slave is secreted there.

[1] Session Acts, p. 159.

Wells v. Bowling, 2 Dana 41, April 1834. Held: [43] "though our statute declares that slaves shall descend to heirs, yet, at the same time, it makes them assets in the hands of the personal representative, and it has uniformly been determined, that the heir acquires an *inchoate* property only, such as gives him no absolute legal ownership, without the assent of the personal representative. The legal title to slaves must, therefore, rest in abeyance, until the appointment of a personal representative, in the same way as does the title to those chattels that are strictly and exclusively personal."

Merrill v. Tevis, 2 Dana 162, May 1834. "action of detinue for a female slave, born in 1822 or 1823, . . of a slave named Rose, and sold, in 1826, to the defendant, by Samuel Merrill; but claimed by . . the son of said Samuel, under the will of Levin Payne, . . who died in 1821, and who had, . . in 1819, delivered Rose to the said Samuel, (his son in law), and . . 'made him a bill of sale of her, for five years.'"

Coleman v. Simpson, 2 Dana 166, May 1834. "the defendant and his wife ordered and directed the plaintiff in the performance of her work, as they would a slave, with some difference of manner,"

Keas v. Yewell, 2 Dana 248, October 1834. [249] "notwithstanding the utmost care and diligence of Keas, the slave had run away from him, between the execution of the bond [conditioned to have the slave forthcoming] and the rendition of the decree, and . . he was unable to reclaim her,"

Held: [250] "The casualty by which the slave was lost, is a peril incident to the very nature of such property; and therefore in contracts or covenants concerning such property, that peril should never be presumed to have been intended to be guarded against, unless so expressly stipulated. . . the loss is not to be considered as provided against by a general covenant, and its happening, therefore, presents the same excuse for nonperformance, that the death of the slave would have done."

Young v. Slaughter, 2 Dana 384, November 1834. "The late Colonel Gabriel Slaughter, by his will, emancipated his slave John Young, and declared it to be his further will and desire, that his son John H. Slaughter should furnish John Young with food and raiment during life." Young alleged that John H. Slaughter had refused to furnish him with food and raiment. "Slaughter admits his refusal and failure, as charged, because Young is able-bodied, and competent, with proper industry, to feed and clothe himself, and insists . . [385] 'that his father could not have intended complainant should set down and do nothing, and be clothed and fed like a gentleman.'"

Held: "We concur with the defendant, that the testator did not intend Young should be clothed and fed like a gentleman, . . but we can find nothing in the testator's language, to warrant the idea that he was not to be clothed and fed at all, except in the event of his not being able to clothe and feed himself." The proof is [384] "that it would be worth fifty dollars a year to furnish him with food and raiment. . . [386] a decree to be rendered in favor of the complainant, against the defendant,

for a sum to be ascertained by computing at the rate of fifty dollars per annum, from October, 1830, till the time of rendering the decree."

Campbell v. Threlkeld, 2 Dana 425, November 1834. Campbell "obtained an order requiring the sheriff to take the slave into custody, to abide the event of the action of detinue, unless Threlkeld would give bond and security to have the slave forthcoming. Threlkeld failing to give the bond, the sheriff took the slave into custody, and kept him until the termination of the suit, about two years thereafter."

Pate v. Barrett, 2 Dana 426, November 1834. Will of James Mason of Virginia: "To my sister, Janet Crawford, I leave my mulatto girl Nelly, during her life, and at her death, to leave Nelly to any of her children she may think proper, or free her by emancipation, as she pleaseth."

Barringtons (coloured persons) v. Logan, 2 Dana 432, November 1834. "Dinah Barrington, a woman of colour, . . was born in the State of Pennsylvania, in March, 1800, but was afterwards brought to Kentucky, where, before she was twenty eight years old, she gave birth to the appellants," Winney, Julian, and Henry Barrington.

Held: Dinah was free by the act of Pennsylvania, March 1, 1780, though she would have been subject to apprenticeship till twenty-eight years old, if she had remained in Pennsylvania. [434] "as *she* was never a slave, her children must be free."

Hopkins v. Morgan, 3 Dana 17, April 1835. Will of Joseph Morgan: "It is my will and desire that my two negroes, Rebecca and Mary, be sold privately by my executor, and that they select their own master, without much regard to price." The two negroes "applied to Moses Hopkins, requesting him to buy them, and he, professing that he had no need for them, and was willing to buy them only because they wished it, offered to give two hundred dollars for them; which he admits is much less than their value to one who needs them, and wishes to buy. The executor refused to sell them at that price, which he alleges to be less than half their value, . . [18] that he is willing to sell to Hopkins, and had offered to take three hundred and ten dollars from him."

Held: [20] "it would certainly be his [the executor's] duty to sell to any humane person whom they might select, and who would give a fair price for them. He has the discretion to take less than their fair value; it may be his duty, under certain circumstances, to take less. . . This court cannot decide that it was the duty of the executor, paying due regard to this provision of the will, to sell the negroes, worth four hundred dollars, for two hundred dollars, the sum offered by Hopkins." [T. A. Marshall, J.]

Pickens v. Walker, 3 Dana 167, June 1835. "whereas the said Walker is about to remove, and to make the said Pickens safe in his debt, he, the said Walker, leaves in the said Pickens' custody, a negro woman and child, the woman named Hannah, until the last of June, and the said Pickens is to use them humanely, and take care of them, and deliver them if alive, to the said Walker, . . But should they die, or either of them, a natural death, the said Pickens is not accountable. And if the money is

not paid by the last day of June next,[1] the negroes are to be said Pickens', for the debt;" The parties were residents of Virginia. "Shortly after its execution, Walker removed to Tennessee, and in . . 1808, Pickens followed him, . . [168] but afterwards removed to Indiana, leaving the negroes in Tennessee; and, at a still later period, . . settled with them, in . . Kentucky; where, in 1821, he departed this life—directing, by his will, that his negroes should be sold." They were all sold. "the Circuit Court had an account taken . . of the cost of raising the young negroes till the age of seven, . . at the date of the agreement, or at the last of June following. No person says they [the woman and child] were worth more than four hundred dollars."

Perkins v. Drye, 3 Dana 170, June 1835. [172] "the negroes Esther [about sixteen] and Amy [about fourteen] were worth about seven hundred dollars" in 1827, and Samuel [about sixteen years old] "was worth near three hundred dollars."

Stover v. Boswell, 3 Dana 232, June 1835. [233] "said Mingo [Stover] was, many years ago, a slave, that he was emancipated by his master, and claimed the appellant and cohabited with her as his wife; that the appellant and her first child was [*sic*] emancipated by her master; that after their emancipation, said Mingo and the appellant lived and cohabited together as man and wife, for many years, and was generally recognized as such, until, in 1828, they quarrelled, and said Mingo took up with another woman, and left the state for New Orleans, where he died; that prior to his separation from the appellant, he had three children by her, to whom he made a deed of gift of said house and lot, after which, they died."

Held: marriage may be presumed from circumstances, as from cohabitation, and this general rule must apply to free persons of color as well as to whites. But if [235] "said Mingo was not the husband of said appellant, . . upon the death of said children, the descent in fee simple was cast upon the appellant," by the 19th section of the act of 1796.[2]

Bright v. Wagle, 3 Dana 252, October 1835. [254] "the boy was worth three hundred and fifty dollars at least, . . [257] a young boy slave . . , it is well known, will readily command in cash, at all times, his intrinsic value."

Church v. Chambers, 3 Dana 274, October 1835. The slaves of Chambers "having crossed the Ohio river, from the Indiana to the Kentucky shore at Louisville, agreed with McManaway, who was acting as master, *ad interim*, and with Neydenbousch, the clerk of the boat, for their passage to Cincinnati; . . they were afterwards taken on board from the Indiana shore, some miles above Louisville, and carried to Cincinnati; and that they had been, shortly afterwards, pursued and sought after by the agent of the defendant, who believed from what he learned in the pursuit, that they had fled to Canada."

[1] 1808.
[2] 1 Dig. L. K. 180.

Held: the acts of 1824 and 1828 to prevent slaves being carried away as passengers in steamboats or other vessels, prohibit the taking them [278] " from the shores of the Ohio river *opposite to this* state—and the like liability shall occur for landing, or suffering them to go on shore, within as without the state;" and these acts are not invalid. " The Ohio river, as far as it is a boundary of this State, is within its jurisdiction." The measure of damages is not the full value of the slaves, but the actual damage to the slave-holder or party injured, which cannot, in general, be presumed equal to the entire value of the slaves. Upon the proof in this case the owners of the boat are not personally liable for damages under the acts of 1824 and 1828; [277] " their only responsibility was the eventual hazard of a judgment or decree, against the actual delinquents for damages, being enforced by a sale of the boat, on which the statute of 1824 gave a lien."

Gentry v. McMinnis, 3 Dana 382, October 1835. Polly McMinnis was born in Pennsylvania since 1780, and " had been brought to Kentucky in 1797 or 8, and had, about the year 1804, been sold as a slave to one John Courtney, and had ever since been held and treated as a slave; . . [385] Courtney declared, in effect, not four years prior to the commencement of this suit, that the defendant was entitled to be free."

Held: [384] " Prescription alone cannot be proof of slavery, . . [385] being a mulatto, or having at least one fourth of African blood, has been held, in Virginia and in Kentucky, to be presumptive evidence of being a slave. And, *e converso*, it has been as well settled, that being a white person, or having less than a fourth of African blood, is *prima facie* evidence of freedom. . . [388] when a jury, on their view, decide that the color is white, testimony will be admissible to prove that, notwithstanding the visible complexion, there is African blood in the veins sufficient to doom to slavery. . . [390] from the whole record, it might be presumed that the jury did not believe from inspection that the defendant was white, and that consequently their verdict was founded on other and amply sufficient evidence." [389] " Her long ostensible submission has already been considered, . . the natural answer to the question—why did she acquiesce so long in her servile condition? is, *that she was treated and governed as a slave*; forced, when an infant from the country of her birth, and from her kindred and friends, and subjected to the dominion of a master, who made her in fact a slave, she was either kept in ignorance of her rights, or was afraid or unable to assert them. Her admission that she was a slave, can be entitled to but very little if any effect. . . [390] the general statute of limitations could not apply, because, if the defendant be a free woman, her detention as a slave was a continued trespass to the moment when her suit was instituted; . . She claims to be free because she never was a slave; and there is no statutory limitation to a suit for freedom *a nativitate*." All born of mothers in slavery in the state of Pennsylvania, since the year 1780, were born free, though subject to apprenticeship till twenty-eight years old; and their right to entire freedom at twenty-eight, is not impaired by their being brought to this state before they attain that age. [Robertson, C. J.]

Stroud v. Barnett, 3 Dana 391, October 1835. "On the 25th of December, 1824, . . Barnett had advanced to said Stroud one hundred and fifty dollars, . . and said Stroud had placed in the possession of said Barnett, a negro woman by the name of Amy, to remain with him, and work for the use of said money, until the 25th of December thereafter, or so long thereafter as said Stroud should delay to repay said money; and it was further stipulated that if said girl should die before the said money was refunded, the loss should be Stroud's. Said girl became pregnant before the year was out, and was taken home by Stroud, to be afterwards returned, and was never after returned."

Williams v. Greenwade, 3 Dana 432, October 1835. Action of slander against Williams, "for falsely and maliciously uttering and publishing the following words:—'negro Jude said that Mrs. Greenwade was a drunken whore, and it is rumored every where.' . . verdict and judgment were rendered for one hundred dollars in damages;" Williams's third objection to the judgment is, that the Court "erred in refusing to permit him to prove, that '*negro Jude*' had '*said*'" the words.

Held: [435] "If a white person venture to publish, in a manner implying malice, the slander of a negro, the slandered party should not be driven to the humiliating alternative of submitting in silence, or of suing the negro for character. Such a social organization as ours will not, in our judgment, permit a white person to justify the injurious repetition of a negro's slander." [Robertson, C. J.]

Meredith v. Wood, 3 Dana 456, October 1835. "a negro girl, by the name of Charlotte, was sent to Wood's, . . bearing the following note:—'Mr. Wood—Since you left, I have determined to send you the girl: if you have any work fit for her to do, I wish you would employ her till I can sell or hire her. If you know of any person who wishes to hire or buy such a girl, or who has one to sell, please let me know, as I want to dispose of this girl, and get another. E. B. Coleman.' That the girl was, shortly after she arrived at Wood's, taken sick, grew worse, and died in about twelve days. That Mr. and Mrs. Wood were attentive to the girl; kept up fires etc. That an old negro man, her father, . . [457] attended upon the girl; so did Mr. and Mrs. Coleman frequently visit and attend to the girl, during her sickness. And she was attended by a physician [their family physician] employed by them."

Brown v. Lowens, 3 Dana 473, October 1835. Contract to hire a negro man from January 1, 1833, to December 25, 1833, for "the sum of ninety dollars, and furnish said negro man with two summer suits of good clothes, one fall suit of jeans, and one pair of shoes."

Pennington v. Pyle, 3 Dana 529, November 1835. In September 1822 a negro woman and child were sold for three hundred dollars.

Russell v. Russell, 4 Dana 40, April 1836. [43] "the grandfather was in a state of almost servile subjection to his second wife and one of the slaves mentioned in the deed;"

Black v. Meaux, 4 Dana 188, June 1836. Humphrey Black, one of about sixty slaves emancipated by the will of John Meaux, remained with

John Woodson Meaux and labored for him during the period of a controversy as to the validity of the will. After the will was established he sued Meaux for compensation for his services, and, on the trial, " proved that the defendant had, on different occasions, . . said, though not to *him,* that he would pay him for his labor in the event of the establishment of the will "

Held: it should have been left to the jury [189] " to determine, from the facts, whether the defendant ever agreed with the plaintiff to pay him for his labor, on the contingency of the will being established; . . the plaintiff was a free man from the time of the testator's death. . . [190] Nor does an emancipated slave pass, at all, to the personal representative, as assets; "

Reeder v. Anderson, 4 Dana 193, June 1836. Will the law " imply a promise by the owner of a runaway slave, to pay a reasonable compensation to a stranger, for a voluntary apprehension and restitution of the fugitive? "

Held: " though such friendly offices are frequently only those of good neighborship, which should not be influenced by mercenary . . expectations—nevertheless, it seems to us that there is an implied request from the owner, to all other persons to endeavor to secure to him lost property . . and that, therefore, there should be an implied undertaking to (at least) indemnify any person who shall, by the expenditure of time or money, contribute to a reclamation of the lost property." [Robertson, C. J.]

Blackwell v. Oldham, 4 Dana 195, June 1836. In 1831 Oldham and Company purchased nine slaves at New Orleans for $4200. They were warranted to " ' be sound and healthy in body and mind (except Jerry who has the dysentery,' and another, whose defect is mentioned.) In a short time . . Jerry . . died of a complication of diseases, . . a decayed liver," Oldham and Company " refused to pay the whole amount . . but . . retained in their hands $550 to cover their estimate of Jerry's price, and the expenses incurred on account of his sickness and death."

Bakewell v. Talbot, 4 Dana 216, June 1836. [217] " the parties lived in the same town; that the appellant had the mother of Washington on hire from the appellee; that Washington, being only about nine years old, frequently stayed with his mother and made the appellant's house his principal home; that there was a mutual attachment between him and the appellant; that he had been, on more occasions than one, confined by sickness at the appellant's house, and once with the cholera, and that the appellant nursed him and had him attended by his own family physician—and that, whilst he was thus at his house, the appellant, on one occasion, took him with him, in his gig, to an island in the river not far from his residence, and, having fastened the horse and gig on the island, wrapped him in his cloak and left him in his gig, whilst he himself was shooting ducks in full view; that when he returned to the gig, though Washington's hat, and the cloak, and the horse and gig remained—Washington himself was not there, and never afterwards was seen or heard of."

against Samuel Tevis (who holds him as a slave) praying for a decree establishing his freedom and liberating him from servitude."

Held: Aleck is free. [247] " the testatrix intended that the plaintiff in error should be free from the moment of her death, although he was required to serve his mother until he attained twenty-one years of age; . . though a deed of manumission by the executor was directed by the will, such a document was not essential to the plaintiff's freedom, but was prescribed only from prudential and precautionary motives." Tevis is liable for the value of Aleck's services, [250] " as long as he has enjoyed the benefit of them—counting from the time of the decree back, not longer than five years prior to the institution of this suit. A Court of Equity will give no more than the profits . . the actual value which, all things being considered, Tevis derived from the services of Aleck. . . The value of hire . . is not necessarily the true test;" [Robertson, C. J.] [1]

Boggess v. Boggess, 4 Dana 307, October 1836. Rosanna Boggess abandoned her husband " on the alleged ground of barbarous and inhuman treatment endangering her life, . . [308] the chief, if not the only, reason alleged for her declared apprehension of danger, is that he permitted to remain on his farm a female slave whom she suspected for an attempt to take her life by enchantment or poison."

Steele v. Curle, 4 Dana, 381, October 1836. Steele sold a slave to Curle in Virginia, both of them being citizens of Kentucky. Steele pleaded " that Curle bought the slave with the intention and for the purpose of importing him into this state, in violation of the act of 1815, interdicting the importation of slaves for merchandise."

Held: the purchase of a slave abroad for importation into this state, is not prohibited. The statute extends only to the actual importation.

Catherine Bodine's Will, 4 Dana 476, October 1836. " A paper purporting to be the last will of Catherine Bodine—in which, among other things, she declared that her slave Jenny should be ' set free ' whenever she should cease child-bearing, and that other slaves should be ' set free ' after designated periods not yet expired—having been exhibited by those persons, in the proper County Court, for probate, and rejected by the judgment of that Court, the same persons prosecute this writ of error against the other devisees; and the right to prosecute the writ in the names of the plaintiffs in error, being questioned, must first be decided, as a preliminary question. If the paper had been admitted to record, as the will of the testatrix, the plaintiffs nevertheless should yet be deemed to be slaves; for, even as to Jenny, there is no proof that the contingency on which her liberation depends has yet occurred. And therefore the objection to the prosecution of the writ by the plaintiffs, is that a slave cannot sue. . . [477] But, although the law of this state considers slaves as property, yet it recognizes their personal existence, and, to a qualified extent, their natural rights. They may be emancipated by their owners; and must, of course, have a right to seek and enjoy the protection of the law in the establishment of all deeds, or wills, or other legal documents of emanci-

[1] See Tevis *v.* Eliza, p. 343, *infra*.

pation; and, so far, they must be considered as natural persons, entitled to some legal rights, whenever their owners shall have declared, in a proper manner, that they shall, either *in presenti* or *in futuro*, be free; and, to this extent, the general reason of policy which disables slaves as persons, and subjects them to the condition of mere brute property, does not apply; and the reason ceasing, the law ought also to cease. In this case, if the paper in contest be the true and valid last will of Catherine Bodine, it vests in the plaintiffs an initiate legal right to freedom; and though the enjoyment of their personal liberty is postponed to a future period, they have an undoubted present and perfect legal title to the prospective fruition of that which the testatrix had a right to concede, and has endeavored to secure, to them. That right depends altogether on the establishment of the will, and cannot be deemed to exist as long as the judgment of the County Court shall remain unreversed. . . [478] The fact that they may not be responsible for costs, cannot be material; because, were they admitted to be free, they might and probably would be allowed to proceed *in forma pauperis*. Unless, then, there can be such an absurdity as a legal right without any remedy, the plaintiffs may proceed in their own proper names, for establishing the will." [Robertson, C. J.]

Hudgens v. Spencer, 4 Dana 589, November 1836. " Spencer, a man of color, claiming to be free in consequence of a deed of emancipation, acknowledged in Virginia, in 1790, by John Baker, the then owner of his mother, Judy, and liberating her and other slaves—sued Hudgens, in chancery, for the purpose of establishing his claim. The deed—duly acknowledged and recorded—is in the following words:—' Know all men by these presents, that I, John Baker of Chesterfield County, do believe that all men by nature are equally free; and, from a clear conviction of the injustice and criminality of depriving my fellow-creatures of their natural right, do hereby emancipate or set free the following men, women, and children, viz:—

Bob and Daniel,		December 25th, 1790
Grace and Amy,		December 25th, 1790
Barbara,		December 25th, 1790
Tom,	to go out	December, 1793
Sally,	to go out	October, 1796
Betty and Pat,	to go out	December, 1802
Oliver,	to go out	November, 1805
Judy,	to go out	September, 1806
Hannah,	to go out	January, 1807
Nann,	to go out	February, 1808
Peter,	to go out	December, 1809
Amy,	to go out	March, 1811

" ' I do hereby relinquish all right, title and claim to the said people after they severally arrive to the dates above mentioned, and not before. In witness whereof, I have hereunto set my hand and seal, this the ninth day of June, 1790. John Baker (L. S.) Teste—John Kobbler, Martin Baker, jr.'

" Spencer was born between the date of the acknowledgment of the deed, and September, 1806, when Judy, his mother, was 'to go out.'"

Held: [593] " the grantor intended that all his slaves should be forthwith free 'people,' and that, in postponing the times of their actual liberation, he did not mean to put off, to future periods, their enjoyment of personal rights, but intended only to reserve to himself such a title of temporary service and dominion as would effect a transition from slavery to mere servitude and pupilage for a limited time. . . [594] the question as to his [Spencer's] right to freedom was sufficiently doubtful to authorize the presumption that he had been held in slavery in good faith; and that, therefore, according to the doctrine recognized by this Court in Aleck *vs.* Tevis, (*ante*, 247-8,) he is not entitled to a decree for compensation for his services whilst he was detained by Hudgens; but that he is entitled to the amount due for his hire, under the order of the Circuit Court, during the pendency of this suit " [Robertson, C. J.]

Moore v. Beauchamp, 5 Dana 70, April 1837. Will of Robert Moore who died in 1819: [71] " It is my will and desire that my slave Will shall not be sold, nor put out of the family, except Mrs. Moore, who owns his wife, shall choose to buy him—in such case, he may be sold to her, as she owns his wife, and I desire he shall not be parted from his wife and family, and to be hired in the family, or neighborhood, at a reasonable rate, to some good master," [79] " As to the slave Will, although the executor sold him, not exactly as directed, yet he did not, as we presume, frustrate or essentially evade the intention of the testator, by a *bona fide* sale, for a full price, to one of the testator's family who lived near the slave's wife."

Jameson v. Emaline, 5 Dana 207, April 1837. " Emaline, an infant girl of color, by her next friend, sued Jameson, in an action of trespass and false imprisonment in detaining her as a slave, and the Circuit Court, on the trial on an appropriate issue, having instructed the jury that she had a right to recover, verdict and judgment were accordingly rendered in her favor. It appears that she is a daughter of Nancy, who was a child of Maria, whom her mistress, Mrs. Levy, emancipated, by an instrument of writing, signed and sealed by herself and by Evan Gwynn, purporting to be a bill of sale of 'the possession' of Maria to Gwynn, for the term of fifteen years; and declaring that, at the expiration of that term, she 'shall be and is hereby manumitted, set free and discharged from all claim of service and right of property whatsoever;' and also stipulating and declaring that, if she should have 'issue at any time or times during the said fifteen years, they and each of them shall be manumitted and set free when they shall respectively arrive at the age of thirty years.' It appears, also, that Nancy was born between the date of that document and the expiration of the prescribed term of fifteen years, and that Emaline was born before Nancy had attained thirty years of age."

Held: Maria continued to be a slave for the fifteen years inasmuch as the " right of property " is reserved for that period. Maria's daughter, Nancy, was therefore born a slave and so remained until she was thirty years of age. Emaline, born while her mother, Nancy, was a slave, as the deed of emancipation did not extend to her, or to any of Maria's grand-

children, must be deemed a slave for life. [209] " And therefore, notwithstanding the peculiar nature of the subject in issue, and the fact that a verdict has been rendered in favor of liberty, the record, as now presented, forbids an affirmance of the judgment. This, like every other case, must be decided, by this Court, according to the law of the land applied to a rational and consistent interpretation and effect of the facts proved. Judgment reversed, and cause remanded for a new trial." [Robertson, C. J.]

Carter v. Leeper, 5 Dana 261, April 1837. Leeper had " obtained a judgment . . in an action of covenant, on an obligation given [by Carter] in September, 1826, for two hundred dollars, . . Carter filed a bill enjoining the judgment on the ground . . that the only consideration of the covenant was a promise by Leeper, to emancipate two old slaves of his own, . . 1827; and that he had failed and still refused to emancipate them, . . Leeper . . [262] averred that the only consideration for the covenant by Carter, was . . that he (Leeper) had, for about two years prior to the date of it, permitted the . . slaves to go at large and acquire property, for which he considered himself entitled to compensation, . . witnesses . . swore that, but a short time before the date of the covenant, . . Leeper . . said [to Carter] that he would never incur the responsibility of emancipating the old slaves, but that he would, for two hundred dollars, agree that they might, during their lives, act for themselves without his control."

Injunction perpetuated: " there was no valuable consideration; because the slaves could not have been indebted to their master for the value of past services devoted to their own use, or for property thus acquired by their labor, and which, in judgment of law, was, and still must have continued to be, his. . . the consideration was illegal and contrary to public policy; for it is inconsistent with the policy of our State, and contrary to the fourteenth section of an act of 1798, and the first section of an act of 1802, to permit a slave to go at large and act for himself." [Robertson, C. J.]

Howard v. Samples, 5 Dana 306, May 1837. " an action of trespass . . The plaintiff derives his claim to freedom from a conveyance of his mother and himself from their master, John Howard, . . to his son, James P. Howard, by a deed executed . . January, 1830, and recorded, . . and from a deed of manumission executed by James P. Howard, in open Court, . . 1831, emancipating him . . at the death of the grantor's father, . . who died in 1835, . . The defendant resists . . upon parol evidence of a lost writing, purporting to transfer him, by gift, from James P. Howard, in March, 1830, to . . [defendant and Story] husbands of the said James' sisters. . . the possession of the plaintiff, remained in John Howard . . until his death, . . the writing said to have been given by James P. Howard to the defendant and Story, was . .[307] deposited with . . John Howard, and was not seen after his death,"

Held: " As there was no proof of actual possession by the donees, . . or of the registration of the memorial of gift, no title whatsoever passed by it, from the donor."

Bryant v. Sheely, 5 Dana 530, October 1837. Bryant had bought a horse " from the slave of Sheely, after Bryant had obtained the written

permission of Sheely to trade with said slave. . . it was proved that the slave . . was trading or dealing for himself, by the allowance of his master,"

Held: [531] "A slave, so far as he is authorized to deal in property, acts, in judgment of law, as the agent of his owner, and for his benefit. If he make a sale by authority, the master thereby loses all right to the thing sold, and acquires a legal right to the price agreed on. . . [532] But he cannot authorize the slave to coerce the payment of the price. . . if the price agreed on was not paid to the slave who made the sale, his master had a right to recover it,"

Owens v. Durham, 5 Dana 536, October 1837. "a covenant by Nathaniel Owens, to 'give' Samuel Durham, for his services in working with his slaves, and superintending his farm during the year 1833, one seventh part of the corn, wheat, oats and rye, which should be 'raised and secured'"

Maupin v. Dulany, 5 Dana 589, October 1837. [595] "it was hard, also, to charge for hire of the negro woman, for some years, when she was in such a condition that the children, who were then keeping house, kept her alternately among themselves, as a distributive burthen, rather than benefit."

Case v. Woolley, 6 Dana 17, October 1837. "A. R. Woolley—whose slave, named William Gorden, had, without his consent, been taken (in violation of the statutes of this State, of 1824—1 Stat. Law, 259-60,) on board the steam boat *Lancaster*, from Louisville in Kentucky, the place of his residence, to New Orleans, whence he had fled to some place unknown, so as to have escaped vigilant search and enquiry after him—proceeded . . to attach the said boat, for the purpose of subjecting it to the lien given by the said statutes, for the damages which he had sustained. . . [18] a jury . . fixed the amount of damages at one thousand dollars"

Susan (a colored woman) v. Ladd, 6 Dana 30, October 1837. Susan was emancipated in 1827 by the last will of Benjamin Ladd of Tennessee and "was, from thenceforth, permitted to go at large, as a free woman, until the 1st day of April, 1833, when she was taken up by the defendant as a slave."

Held: "We cannot perceive upon what ground the bill was dismissed. A bill will as well lie, to assert, and establish her freedom, and quiet her in the enjoyment of it, when she claims under the will of her deceased master, as when she claims by deed of emancipation . . [31] unless he be inhibited [from emancipating] by some municipal regulation of the State where he is domiciled and dies. . . no such inhibition is shown in this case." [Ewing, J.]

Willis v. Willis, 6 Dana 48, November 1837. "B. G. Willis and William Willis made an exchange of slaves, in the lifetime of the former, by which the latter exchanged a boy, with the former, for a girl. . . [49] The slaves were small, and the former owners of each were the owners of their mothers, and they were permitted mutually to remain with their mothers." The girl died.

Held: [50] "Each seemed to be permitted to remain in possession, as *quasi* bailee for the other, without limitation as to time when the possession might be taken, or any thing to be done to entitle either to the possession. The right of property and right of possession, therefore, vested immediately, and the risk devolved on each of the owners." He who is in possession of the living child, is liable to the action of the other for it, without any tender or act on the part of the latter.

Mitchell v. Miller, 6 Dana 79, November 1837. [80] "Claiborne having run away from Rodes, or been run off by him"

Jackson's Will, cited in 8 Dana 398, November 1837. [399] "It was after Samuel D. Jackson had been stricken on the head by one of his slaves, that affiant discovered his mental infirmity," Edes, a constable, stated that "in the summer of 1831, said Jackson brought one of his negroes to town, with a gun in his hand, and his clothes bloody, for having struck him. . . He once took this affiant to his house, to correct his negroes, of whom he had complained often; but affiant discovered that Jackson's complaints of them were not very well grounded, and that he was too insane and unreasonable to have them corrected, and he declined to do it."

Laughlin v. Ferguson, 6 Dana 111, April 1838. Smedley [115] "had the woman conveyed to Louisville, and sold for five hundred and eighty seven dollars. The child remained with Grimes, in consequence of sickness, of which it soon after died."

Bronaugh v. Bronaugh, 6 Dana 124, April 1838. [126] "such boys as Austin and Beverly would have been worth, in 1820, about as much as such a woman and child as Judy and her offspring then were; and that such a woman and child as they then were would have been worth, in 1835, about as much as Austin and Beverly were each worth at that time. . . Austin and Beverly should be estimated at about five hundred and eighty dollars each."

Nancy (a colored woman) v. Snell, 6 Dana 148, April 1838. "The appellant sued Snell for her freedom; failed in the Circuit Court, and has appealed to this Court. She claims her freedom under the will of Ann Burgess, her former mistress, who died in Maryland, in 1826 . . 'After my debts and funeral charges are paid, . . It is my will that my colored woman Nancy go free, and her two children, Charles and Richard Hamilton, go free with her;' and . . directed that others of her slaves should go free;" Claggett, administrator with the will annexed, "in March, 1832, sold Nancy and her children to one Osburn, of Scott county, Kentucky; who brought them to this State, and sold her to the defendant. . . [155] Nancy did go at large, and live as a free woman, some five or six years, from about eighteen months after her mistress' (Ann Burgess') death, and supported herself as a free woman, and was regarded and dealt with, as such, by the neighborhood."

Held: "This being with the knowledge of the administrators—which must be presumed—is strong evidence of their assent to the bequest. . . a tacit assent, and unless countervailed by other evidence . . [156] would

. . justify a finding in her favor." Slaves when emancipated by will, [149] " occupy the double character of property and legatees, or *quasi* legatees. And, as freedom is a legacy above all price, humanity, justice and the spirit of our laws, inculcate the propriety of placing them in the most favored class of legatees. . . [151] in a case like the present, where the slave has been sold in a foreign State, and hurried off to this, and where the estate, debtors and creditors, legatees and administrators of the estate are all residents of the foreign State, and without the power or control of a court of equity here, to make her claim depend upon a precedent indemnity to the purchaser, or drive her back to a court of chancery in Maryland, for redress, where she is inhibited from going, by the restraints of a master, would be tantamount to an absolute denial of justice." [Ewing, J.]

Briscoe v. Wickliffe, 6 Dana 157, April 1838. Will of Samuel Briscoe, 1822: " I . . bequeath unto my wife, Nancy Briscoe, all my real estate, during her widowhood, or until one of my children marries, which consists of eleven negroes named as follows, . . but if my wife Nancy marry again, I . . bequeath to her one third of my estate. When my first child marries, . . the balance to be equally divided between my three children." In 1824 Nancy Briscoe married Brady, and six of Briscoe's negroes were allotted to him in right of his wife as devisee. In 1827 a judgment was rendered against Briscoe's administrator for $998, and [158] " an execution thereon was levied on three negroes of Briscoe's estate, other than those which had been allotted to Brady, and in September following, they were sold by the sheriff, and purchased by C. A. Wickliffe, . . In 1834, Ruth E. Briscoe intermarried with J. W. Simpson, being the first married of the testator's children; "

Held: [167] " the slaves, until the contingency happens [the marriage of the first child] are personal property," for the purpose of satisfying debts; and [169] " while they remain in the hands of the personal representative, the future possible interest of the devisees is, for the purpose of paying debts, merged in the present estate in possession; that for this purpose the slaves are . . fully subject to sale under a judgment and execution against him; that, as between the purchaser of a slave under such sale, and the contingent devisees, the question of the necessity of the sale is concluded, and that the purchaser who has purchased the entire right, holds it freed from the contingency."

Commonwealth v. Major, 6 Dana 293, April 1838. " an old negro man slave, the property of Major, had, with his master's knowledge and permission, and in a house on his land, kept a tippling house,"

Held: [294] " the law should decide that it was the master's tippling house, and should hold him responsible for the penalties denounced against all keepers of such pestilent houses."

Bernard v. Chiles, 7 Dana 18, June 1838. In 1826, action of detinue was commenced for a female slave Esther and her son William, or their value; in 1833, judgment was obtained; in 1836, a *scire facias* was issued " for obtaining a judgment for execution, and also for ascertaining the value of five children alleged to have been borne by Esther, between the com-

mencement of the original action [1826] and the date of the judgment therein [1833], and of two other children alleged to have been borne by her since the date of the judgment, and for obtaining also, a judgment for execution therefor. . . [22] one of the two children born after judgment was born within less than one month after the date of the judgment."

Held: [23] " the judgment for Esther had the legal effect of a judgment for the child with which she was pregnant when it was rendered." A supplemental judgment expressly authorizing execution for the child is [24] " necessary for compelling a submission to the original judgment to the full extent of its comprehensive legal effect. And therefore, and the more especially as the application of the judgment to the child depends on extraneous facts, a *scire facias* is . . the only effectual proceeding " [22] " as to the children born before and the child conceived and born after judgment, there is no foundation for a *scire facias* to have execution,"

Dunlap v. Archer (*a man of color*), 7 Dana 30, June 1838. " Archer is of servile complexion, and had been held and claimed as a slave; . . more than seven years prior to the commencement of this suit, one James McDonald, now of the State of Tennessee, having sold him to one Tidence Lane . . the latter deposited with the former . . simultaneously with the sale, a ' bond,' ' binding ' himself ' to give the said Archer his freedom, at the expiration of seven years, upon condition that (he) would serve him faithfully for seven years from that time; ' that the ' bond ' was lost; and that Archer had served as a slave in Kentucky for the last four years preceding the institution of the suit "

Held: if the paper was given to the slave, or to another for his use, it did of itself constitute a conditional emancipation, which, if the seven years' service was faithfully performed by the slave, would take effect and make him free without any new writing.

Whitesides v. Dorris, 7 Dana 101, June 1838. Dorris mortgaged several slaves to Whitesides who afterwards transferred them to " Powell, who run off and sold the slaves."

Railroad Co. v. Kidd, 7 Dana 245, October 1838. " On a Sabbath day, in October, 1835, Philip . . agreed with another slave, who was one of the hands engaged to attend the cars on the railroad, to go, in his place, with them, on that day, from the city of Lexington to Midway, whither the agent of transportation was in the act of starting, with the locomotive and about ten burthen cars, for wood for the city; but the agent—being asked for his approval of the proposed substitution for that trip, and ascertaining from Philip, that he was a slave, and had no authority from his master to go with the cars—told him that he could not go; and, in reply to an expostulation from the slave who desired momentary respite by the substitution of Philip, he told him, also, that *he* knew that Philip could not go without violating the rules of the company, and that, therefore, he should not go; . . both of the slaves got upon the rear car—the agent being on the front one." Philip in jumping off the cars with others, while entering Midway, at the agent's order, [246] " boys, let us get down and stop the cars," fell, being inexperienced, and " had one of his legs crushed under the wheels of one of the cars." He died three weeks later.

Withers v. Butts, 7 Dana 329, October 1838. Plaintiff's overseer and the overseer's wife "stated, that they saw and examined the slave, on the evening of the day of her delivery to the plaintiff; that she was then obviously diseased; that she complained of a pain in one of her sides, and had a 'shortness of breath,' and an ashy, husky skin; that she was not required to do any work for four or five days; after which, 'she knocked about the house,' and spun and cooked occasionally; . . [330] that, at her own instance, she was permitted to hoe corn, in May; but that, in hoeing, she was in the habit of stopping 'to rest,' after hoeing twelve or fifteen hills; that she was pregnant, and had her child about the first of July; before which, she had been confined by her disease about a week; that she died about the first of September; . . his family physician . . was first called to her as a patient in June, 1836, . . her disease was the *cachexia Africana* or '*negro consumption*;' . . though the defendant owned other slaves, but no other woman, and had never before sold a slave, and, moreover, had reason to apprehend that, if the plaintiff should buy her, he would send her out of this State, yet he was anxious to sell her, because, as he said, she did not suit him;' and that he did sell her *alone*, though she had a child not more than four years old, still retained by him"

Graves v. Smedes, 7 Dana 344, November 1838. Letter, December 25, 1834: "Mr. Benjamin Graves.—Harry wishes to live with me another year. I will give you $100, which is the most I can do:" Harry was sent by his master to Smedes on January 1, 1835, and continued in his service during the whole of the year 1835.

Hundley v. Perry, 7 Dana 359, November 1838. Perry, a negro man, filed a bill "to assert and establish his right to freedom, against John B. Hundley, who claimed and had long held him as a slave. The complainant claims his freedom under a deed of emancipation executed by his former owner, Charles Hammond, of . . Maryland. Which deed, bearing date the 7th day of May, 1802, was proved and recorded in the county of Anne Arundel, and afterwards recorded in the county of Jefferson in this State, to which several of the slaves emancipated thereby, had been removed. Among twenty two negroes, whom this deed purports to emancipate—to be free at different periods, are Deb and her two children, Perry and Nace: Deb to be free in 1804; Perry . . [360] in 1822, and Nace in 1824." Hundley claims that Hammond had sold Deb and her two children to Dorsey and exhibited the receipt: "Received—Feb. 16th, 1801—of Edward Dorsey, seven pounds ten shillings, it being full payment for one negro woman named Deb, and her two children named Nace and Perry. Charles Hammond of Chs. Teste, Isaac Randall." [361] "at the date of the receipt . . Deb, who was about twenty years old, and her two children, (of whom one was about three or four, and the other, one or two years of age,) were worth in Maryland from four hundred and fifty to five hundred dollars; that Dorsey owned the husband of Deb, and was about to bring him to Kentucky; . . that Dorsey bought Deb and her children to prevent a separation;" [360] "in the spring of 1801, Edward Dorsey

removed from Maryland to Kentucky, bringing with him the three negroes Deb, Perry and Nace; that he used them as slaves until his death in 1804; . . [365] Deb does not appear to have been detained after 1804." [360] " Perry remained in the family until the year 1822, when Hundley having intermarried with one of Dorsey's daughters, acquired, in right of his wife, and, as he says, by purchase from the other heirs, the sole interest in him, and has held him as a slave ever since."

Held: [364] " the interest actually transferred, and for which the payment was made ['the negroes . . were worth, as slaves for life, about twenty times the entire sum paid '—' £7 10, or $25 '], was not the absolute right of property in the negroes as slaves for life, but a temporary, limited interest in their future services, . . [365] such . . as would amply compensate Dorsey for his money paid, and for the trouble and expense of removing them to Kentucky, and there maintaining the two children until they should be capable of useful service." The deed of 1802 has the effect of making Perry free in 1822. [367] " But as it does not appear that, when Hundley took possession of Perry, . . he knew or believed that Perry was entitled to be free, . . we are of opinion that this case is not one which . . entitles Perry to damages, from Hundley, for the value of his services." [T. A. Marshall, J.]

Tevis v. Eliza, 7 Dana 394, December 1838. Cloe Penn left her husband in Maryland about the year 1805, and came to Kentucky " bringing with her the negroes Nell and her daughter Nann, whom she claimed as her own, . . claiming them and the after-born children of Nann, . . until her death in the early part of 1813." Her will emancipated " Nell and the children of the latter then born, of whom [Eliza] the plaintiff was one, . . The executor named in the will assented to the freedom of the slaves, who went at large as free persons for about five years, during a great portion of which they lived in the State of Indiana, until about the year 1818, being alarmed by a rumor that they might be kidnapped there, they returned to Kentucky, and afterwards, in the year 1818 or 1819, were taken into possession by Tevis. . . [397] who, conceiving that Mrs. Penn's title was insufficient to secure the freedom of the negroes whom she attempted to emancipate, and apprehending that they might be kidnapped—employed the agency of a person who was going to Maryland, to seek out the heirs of Penn, and purchase up their claim or interest in the negroes, for the joint benefit of himself and the agent. Transfers were accordingly obtained, in the early part of the year 1818, from six of the heirs resident in Maryland and Ohio, of their interest in the negroes, at the cost of about one hundred and sixty dollars; and Tevis having shortly afterwards, at the price of five hundred dollars, acquired the interest of the agent who had procured the transfer, he emancipated Nell and Nann and one of the children of the latter, and took possession of the rest as slaves. At that time Nann had five children, and . . [398] the whole of them must have been worth more than two thousand dollars." Eliza, a daughter of Nann, brings this action of trespass against Tevis by whom she was claimed and by whom she had been held as a slave for about twelve years since he had reduced her to slavery again, in order to establish her right to freedom under the will.

Held: that the jury were authorized by the facts to infer that, by some arrangement between Mr. and Mrs. Penn, the right to the exclusive possession and disposal of the slaves was secured to the latter; or that she was entitled to and held them as her distributive part of his estate; and that the verdict in favor of the plaintiff below (the defendant in error) establishing her right to freedom, ought not to be disturbed.[1]

Carr v. Bobb, 7 Dana 417, December 1838. Held: slaves do not pass by a nuncupative will made in 1814.

Turner v. Johnson, 7 Dana 435, December 1838. [436] "the slave [Edmond] had a wife in Warren county, and the plaintiff having occasion to raise a sum of money, agreed to sell him for five hundred dollars less than his real value, in consideration that the defendant agreed to keep him in Warren county, and not separate him from his wife, and that, if he should be compelled to sell him, he would let the plaintiff have him at the same price he gave for him." But the defendant "sold him out of the county, in some one of the southern States, for a large sum of money, without giving the plaintiff notice of his intention to sell him, or offering him back to him, at the same price he gave for him;"

Held: [438] "the contract against alienation to the south, or to any except the plaintiff" is not invalid as being in restraint of trade. Slaves [440] "are property, and must under our present institutions, be treated as such. But they are human beings, with like passions, sympathies and affections with ourselves. . . It would, therefore, seem to be a hard and unconscientious rule, which would restrict a benevolent master in the sale of a favorite slave from providing, by express contract, for his peace and comfort, or against a merciless disregard of his moral rights, or that would declare such a contract void, as against the policy of trade and traffic." [Ewing, J.]

Clarkson v. White, 8 Dana 11, April 1839. Peter Clarkson proposed "that the slaves seized for the satisfaction of other judgments, should be purchased by the latter [R. L. Clarkson] for the benefit of his (Peter's) children; whereby they would remain in his use and possession, and that he should furnish, as a payment on the judgment of R. L. Clarkson against him, as much money as should become payable on the purchase of the slaves, all of which was done."

Mountjoy v. Lashbrook, 8 Dana 33, April 1839. "in 1835, land, slaves, . . were devised to his two sons, . . in trust for the use and benefit of his daughters . . to each of whom the testator devised the use, in severalty, of specific lands and slaves, . . during their respective lives, remainder to their children."

Held: the daughters are entitled to the possession, as well as the use of the slaves devised to them respectively without any bonds being given by them or their husbands, for the preservation, proper use, or surrender of the slaves, [36] "subject to such control only by the trustees, as may become necessary to prevent any abuse of the property or evasion of the trust."

[1] See Aleck *v.* Tevis, p. 334, *supra*.

Curling v. Curling, 8 Dana 38, April 1839. " James Curling, who died in 1833, by his will, published in 1815, devised his estate to his wife during her life, and then made the following devise: ' And at the decease of my said wife, it is my will and desire that my negro boy, Harry, shall cease from slavery and be emancipated and set free,' "

Chenault v. Barr, 8 Dana 148, May 1839. " on her death-bed, . .she also gave the slaves to her husband, with the solemn injunction that he should emancipate two of them, which he accordingly did, and give another to one of his daughters, which he also did, and dispose of the only remaining one as he should think fit; and this slave was, after the death of Phelps, sold by his personal representative."

Covington Ferry Company v. Moore, 8 Dana 158, May 1839. " A slave, named Preston, who had been in the habit of passing from Covington to Cincinnati, on the business of his master (a tavern-keeper of Covington), having, on one Sabbath evening, passed on the ferry-boat of the Covington Ferry Company, and escaped to Canada, Zedikiah Moore, the master, sued the company in two actions, and recovered a judgment for $891, the assessed value of the slave, and also a judgment for $200, as a penalty under a statute of 1831. . . It does not appear that any member of the company was either present when the slave was passed to Cincinnati, or had any personal knowledge of his so passing. And it does appear that the company had instructed its managers never to permit any slave to pass on the boat to the Ohio shore, without the owner's consent."

Held: the company is not liable to Moore, under the statute of 1831.

McLaughlin v. Daniel, 8 Dana 182, June 1839. [187] " shortly after the marriage, Nelly . . was put into the possession of the married couple, and most probably upon a loan, . . ' Nelly went to her old master's regularly for a number of years . . and when Nelly had two children, . . she had them at Charles Daniel's, to be under the superintendence of Mrs. Daniel, who was a midwife.' "

Held: [188] " the occasional returns proven will not suffice to exempt them from the claims of creditors. The returns . . may have been such as family servants are usually permitted to pay to their old masters," [Ewing, J.]

McIsaacs v. Hobbs, 8 Dana 268, June 1839. [269] " about twenty years before the levy now in question, Cartmel had purchased one of these slaves, who was afterward the mother of the others, and placed her in possession of Higdon, or his wife, then recently married; that they had returned annually to Cartmel's possession for a day or two, during which he claimed them; and that on the 1st of January, 1835, having gone, on that day, from Higdon's house to the late residence of Cartmel, to attend his funeral, they were there seized by the coroner." [268] " averring that they were the property of William Higdon, and, as such, subject to levy and sale,"

Singleton's Will, 8 Dana 315, June 1839. Singleton's son William charged that his father " was laboring under an unfounded prejudice against, and insane aversion " to him, when he made his will disinheriting

him. [326] " the pastor of the church in which the decedent was a member, . . says that he [Singleton] took part against William, to procure his expulsion from the church, . . and flew into a violent rage because the church would not hear the evidence of a slave against him; . . the sole ground of complaint against William, and that for which he prosecuted him in the church, was that he had been guilty of sexual intercourse with one of his negro girls; which William always solemnly denied, and which his mother and sisters believed there was no foundation for; and the only proof, as alleged by him, was that he was told so by one of his negro women, whose husband William had forbid to come on the place, on account of some charge of poisoning; . . wife of the decedent, states . . [328] She heard John Singleton say, in the presence and hearing of the old man, . . Do you see the striking likeness of Harriet's child to William? the old man said, Oh Jonny, Jonny." Another witness: [329] " Before the church committee, he said that he had been watching Will for six months, and looking out of the window one morning he had seen the girl hand Will a drink of water, and that was all he knew of his guilt. William offered to go down upon his knees and beg his father's pardon, if he would forgive him; the old man said he would forgive him, if he would leave his house, and never set foot on his place again." [326] " William behaved humbly and respectfully to his father, and, to gratify him, withdrew from the church." The testator's widow thought [335] " his drinking was sometimes the cause of his derangement and violence among his negroes " [365] " At the September term of the Woodford court, preceding testator's death, he came to witness, and said there is a prosecution against my son William, for improper treatment to his slaves, and he is below, and requested witness to go into court and get him clear of it—and asked what fee, and being told, said he would pay it;" Singleton's will was found invalid by the jury.

The circuit court refused a new trial, and the judgment was affirmed by the Court of Appeals. Robertson, C. J. dissented: [339] " The testator suspected his son William of conduct which he looked on with peculiar indignation and horror. I do not know that his suspicions were without rational foundation. There is no testimony to that effect. Nor can I admit that the father's extreme sensibility on the subject of such a supposed breach in his household, committed by a favorite son, who was a professing Christian, and a co-member with himself in the same church, was any proof of insane delusion, or insane aversion. William certainly deported himself rudely and rebelliously toward his passionate and venerable father. He told his mother he would cut his throat, if he was not his father. When about his father's dwelling, he sometimes sang spiritual songs in a boisterous and ludicrous manner, for the purpose of convincing his father, as he said, that he was not with any of the negroes. . . [340] And he admitted to William Barr, that once, when his father was in one of his fields with some of his slaves, he (William) being near, said, in a loud soliloquy, ' I see some negroes who have been telling damned lies on me, and I will have their hides;' and then naming one, and pointing his gun at him, said, ' I will have that fellow's hide,' when the negro, thus

menaced, ran off. He then said, 'I see another,' and pointing his gun at him, he ran off, also; and thereupon all of them ran out of the field, their old master with them."

Chancellor v. Milly, 9 Dana 23, October 1839. "Milly, apparently a white woman, about forty years old, and who had been treated as a slave from her birth, brought an action of trespass against Chancellor, who held and claimed her as his property. Upon the trial, . . [24] she was exhibited before the jury for their inspection; and thereupon Chancellor, in order to repel any presumption arising in her favor from her color, offered to prove that, in the family in which she was born and reared from infancy, she had ever been called and reputed the child of a woman of color, who was a slave, and the property of that family. But the circuit court refused to admit the proffered evidence, and in this there was error.

"Milly's color being only *prima facie* proof that she is free, the fact that, nevertheless, her mother was a slave, might rebut the presumption arising from her being, apparently, a white woman. And we do not doubt that such reputation of Milly's maternity as that which the plaintiff in error offered to prove, was admissible as evidence. After the lapse of forty years, such a fact would scarcely ever be susceptible of any other proof than that of reputation. . . Such reputation would have been admissible in Milly's favor, if her reputed mother had been free; and that which she might have proved to create a presumption in her favor, her adversary should be permitted to show against her. . .

"Wherefore, the judgment in favor of Milly must be reversed, and the cause remanded for a new trial." [Robertson, C. J.]

Ready v. Commonwealth, 9 Dana 38, October 1839. Cato, the slave of Ready, had been committed to prison, "on a charge of having feloniously caused the death of another slave, by striking him with a deadly weapon, with the intention of killing him." His master gave bail "for securing the appearance of Cato in the circuit court, to answer that said charge of felony. He failed to appear." Judgment "was rendered against Ready, in consequence of the forfeiture adjudged for the non-appearance:"

Affirmed: [40] "Ready had a right to bail Cato, if the offence with which he was charged would have been bailable in the case of a freeman." [1]

Offutt v. Twyman, 9 Dana 43, October 1839. Suit brought "on a covenant of warranty of soundness of a slave, . . Hilery was interested in the profits of a lot of slaves carried to the south, of which the slave in question was one."

Watham v. Oldham, 9 Dana 50, October 1839. "a decree for damages against the owners of a boat, used as a ferry-boat, on the Ohio river, between Louisville, in this state, and Jeffersonville, in Indiana, rendered on the ground that their ferryman—though without their knowledge or authority—had, in violation of a statute of 1824, permitted a slave of the appellees to pass on the boat, without their authority, from the Kentucky to the Indiana shore, whence he had fled to Canada. . . Neither of them [the two witnesses] stated that he saw the slave cross the river on the

[1] Statute of 1800, 2 Littell's Laws, 418.

boat; each of them only swore that he saw the slave on the boat before it had left the Kentucky shore, . . another witness swore that he had since seen the slave in Canada."

Held: [51] "his value is the utmost amount to which the . . owners of him, can be entitled."

Craig v. McMullin, 9 Dana 311, May 1840. "Charles McMullin, a free man of color—being desirous to buy his infant son John, a slave, whose owner was about to take him to a foreign state, whither he intended to remove—applied to one Leonard Wheeler, who had previously assisted him in purchasing his own manumission, to aid him in the purchase of his son, with a view to his ultimate emancipation also. Wheeler conferred with McCutchen, the owner of John, who, though unwilling to sell, consented, nevertheless, to take three hundred dollars from the father, for the purpose of gratifying his paternal feelings and of promoting the liberty of the son. Wheeler, not being himself able to advance the required sum, applied to Elijah Craig, who was in the habit of loaning money at ten per centum annual interest, and urged him to advance the three hundred dollars, and secure reimbursement, with profit, by a lien on John. Craig, whose chief object seems to have been to secure a debt of about fifty dollars due to him from Charles McMullin, agreed to advance as much as two hundred and seventy-five dollars, provided that Charles would, on account of his said indebtedness to him, pay fifty dollars thereof. . . McCutchen having thereupon made an absolute bill of sale of John to Craig, the latter wrote and delivered to Wheeler a memorandum, reciting that, at the instance of Charles McMullin, he had bought his son for two hundred and fifty dollars, and binding himself to deliver John to his said father, or to 'do any legal act in (his) power to secure his freedom,' if, within three years, the sum . . [312] should be refunded to him, 'with interest, and a reasonable allowance be made for the risking of his (John's) life, not exceeding the rate of ten dollars per annum for the time.' . . Craig having obtained and continued to hold the possession of John, Richard Pindell, shortly before the expiration of the prescribed period of three years, tendered to him two hundred and fifty dollars, and legal interest thereon from the date of McCutchen's bill of sale, and also about thirty dollars for the stipulated insurance of John's life, and demanded a delivery of John to himself, as the authorized friend of Charles McMullin, for whom he made the tender, under an agreement that, for his own indemnity, he should have the use of the boy for about ten years. Craig rejected this proposition on two alleged grounds: first, because, as he insisted, he was entitled to two hundred and seventy-five dollars, and ten per centum for interest thereon, and ten per centum also annually for insurance; such being, as he averred, the verbal contract, and there being, as he also averred, a mistake in the written memorandum, so far as it purports to be variant in those particulars; and secondly, because he denied that he was bound to surrender John upon any other condition than his immediate liberation; though he admitted that he was, in principle, opposed to emancipation, and that, in making the contract, he was not influenced by benevolence, but was solely actuated by a desire to secure the debt

which Charles McMullin owed, and to make profit on his money. Shortly afterward, Charles McMullin brought this suit in chancery, for compelling Craig to surrender John to him, upon equitable terms."

Held: [315] "Charles McMullin has a right to a decree for the surrender to himself of his son John, upon the condition of first paying to Craig $275 and six per centum interest thereon, together with the stipulated amount of insurance, after deducting the value to Craig of John's services, to be applied as a credit from year to year, up to the time of rendering the final decree." [Robertson, C. J.]

Jones v. Bennet, 9 Dana 333, May 1840. "Early in the year 1830, John Bennet, who, though once an owner of slaves, seems to have been in principle opposed to slavery, liberated a female slave, then the mother of four children, and the wife of a colored man named Levi Jones, once also a slave, and who was emancipated by his master, William Chenault, on the 31st of May, 1830, in the county of Madison in this state, where both Bennet and Chenault then resided. About the date of Levi's manumission, and probably on the same day, Bennet, being about to remove to Missouri, and not wishing to take with him, or to hold longer in slavery, the four children of the recently emancipated mother and father, sold and delivered them to Levi, for the inconsiderable sum of $300, payable in three annual installments, with legal interest from the date of the contract; which was not, however, committed to writing until sometime after the date of the verbal contract, and the delivery of the children to Levi. Bennet having emigrated from this state before the first installment became due, returned in the autumn of 1831, on a visit, but received no portion of the price of the four children; Levi not then seeming to be able to pay conveniently. In May, 1832, Samuel Bennet, then and yet a citizen of Kentucky, procured from his father the said John Bennet, in Missouri, a document purporting to be a bill of sale of the said four children, for the recited consideration of $336, the sum then due from Levi, according to the terms of his contract; and shortly afterward abducted the three oldest of them and whom he has ever since detained as his slaves, without Levi's consent. In 1836, Levi filed a bill in chancery against John and Samuel Bennet, praying for a decree, upon equitable terms, for restitution of his children, and averring that he had offered, and was still willing to pay, the full amount of the conventional price. John Bennet never answered the bill, and Samuel Bennet resisted any decree for relief on two grounds: first, because, as he insisted, the chancellor had no jurisdiction; and, secondly, because as he also alleged, the terms of the contract of sale to Levi authorized John Bennet to vacate the sale, in the event of a failure by Levi to make punctual payment of any one of the annual installments of the consideration; and which, as he averred, the said John had done by selling the children to him (Samuel) for a valuable consideration."

Held: [337] "the abduction and detention of the children by Samuel Bennet were unauthorized and tortious. He should, therefore, be compelled to pay damages for the wrongful detention, and make restitution of the children, upon receiving the price which his father would have been entitled to receive from Levi, and the accruing interest thereon from the

date of the contract in 1830. . . upon the return of the cause to the circuit court, a jury should be impanneled, or an auditor appointed, to ascertain the reasonable value of the use of the three children in the possession of Samuel Bennet, from the time when he took them to the date of the inquisition; and if the amount so to be assessed shall exceed the aggregate amount due from Levi, under his contract with John Bennet, the balance should be decreed to him, together with a restitution of his children. But, if the assessment should not extinguish the debt, the court should make a set-off as far as it will go, and give day for the payment of the balance due from Levi; and on his paying that balance, he should have a decree for the restoration of his children to himself." [Robertson, C. J.]

Caleb v. Field, 9 Dana 346, May 1840. Quertermus devised his slaves to his wife, "with express authority to dispose of them as she should choose at her death. . . by her last will, . . she emancipated one of those slaves named Caleb. Some time after the death of the testatrix, Caleb was sold under an execution issued on a judgment which had been obtained by one John Murphy, against the executor of the testator, . . The purchaser having sold Caleb to one Abraham Field, who treated him as a slave, he filed a bill in chancery . . asserting that he was a freeman, and praying for a decree accordingly. The circuit judge having dismissed the bill absolutely, on the final hearing, the case is now to be revised."

Held: [348] "Caleb was . . undoubtedly a freeman, with the contingent liability to be subjected to the satisfaction of any *bona fide* debt due by his deceased master. And we are clearly of the opinion that the sale of him, under Murphy's execution, was unauthorized and void. . . the lien reserved by statute in favor of the creditors of the emancipator, can not be enforced by an execution against the assets which came, or could ever come, to the hands of the executor; but can be secured only by a proceeding in which the person manumitted would be entitled to defend his rights, and should never be disfranchised for an instant, unless the debt of the pursuing creditor can not be otherwise made, nor to a greater extent than the payment of it should render necessary. . . [349] the facts in the record conduce strongly to the conclusion that the claim is fictitious, and was fraudulently contrived for the mere purpose of depriving Caleb of his freedom. . . there is not, in our opinion, any sufficient ground of equity, for resisting or postponing an immediate decree in Caleb's favor." [Robertson, C. J.]

Snead v. David, 9 Dana 350, May 1840. "This action of trespass was brought by David, a man of color, to assert his freedom, under the will of Charles Wilkins, his former owner. The will was proved and admitted to record in 1827, and in express terms emancipates David and other slaves of the testator. The defendant, Snead, relied upon a bill of sale executed by the acting executors of Wilkins, within a few months after the probate of the will, by which they sell and warrant David as a slave for life, under the apprehension, as the writing states, that the estate of said Wilkins would not be sufficient to pay his debts. And it provides that, if the estate should prove sufficient, the purchase-money should be received back, and

David restored to the executors, that the will might be executed with regard to him. It was proved that the estate of Wilkins, both real and personal, was insufficient to pay his debts; . . David, under the direction of the circuit court, obtained a verdict, and from the judgment rendered thereon, Snead appeals."

Held: [355] "under the act of November, 1800, no distinction can be made between the effect of a will which emancipates a slave, and one which devises a slave to be held as property. And from this conclusion it seems to follow, that, as the statute takes slaves devised as property, out of the reach and control of the executor, so it also takes the slaves emancipated by will, out of his reach and control; that as the slave devised as property can only be subjected to the debts of the testator by means of a direct proceeding against the devisee, so the slave emancipated by will can only be subjected by a direct proceeding against him; in which the necessity, or propriety, and manner of subjecting him to the satisfaction of the debt, and the extent to which he should be subjected, may be ascertained; that, as the devisee of a slave may retain the slave by paying his value, or so much as may be required for the satisfaction of the testator's debts, so the slave emancipated by will may retain his freedom upon the same terms. And that, as the title of the devisee of a slave is not divested by the fact that the testator is indebted greatly beyond the value of his entire estate, but can only be divested, against his will, by regular, legal proceeding, so the title of the slave emancipated by will remains until it is regularly divested under authority of law, subject only to such legal restraints as may be necessary to save the rights of creditors. . . [356] since the act of November, 1800, this restraint is to be imposed, not by the naked acts of the executor or creditor, but through the intervention of the chancellor; who, whenever it shall be made to appear that a creditor is in danger of losing his debt, in consequence of the emancipation of his debtor's slaves, by will, may subject the slaves so emancipated to such terms as will secure to the creditor all that he has a right to ask; while he will not, without absolute necessity, destroy nor impair, further than the exigency of the case shall require, the right to freedom given by the will of their owner, and subject by law only to the saving already stated. . . [358] although it seems that the value of David may be required for the payment of his former owner's debts, and although, if necessary, he may still be subjected to involuntary servitude for life by proper proceedings instituted for that purpose, he must, until that is done, be regarded at law as a freeman, and therefore was entitled to sue and recover as such in this action. Wherefore, the judgment is affirmed." [T. A. Marshall, J.]

Fletcher v. Ferrel, 9 Dana 372, May 1840. [373] "In contempt of the authority of the chancellor and of his orders, James J. Norvell run the slaves across the line [from Tennessee] into Kentucky, and left a part of them at the house of John Fletcher, in Knox county, and the others he put into a cabin on Yellow Creek, in the neighborhood of Fletcher's, but in Harlan county. . . [375] Fletcher, on the 22d day of November, 1828, for $250, hired Maria from J. J. Norvell, for ninety-nine years, and on the

2d of January, 1829, for $180, hired Lucy and Charity for the same term, and . . September, 1829, for $300, took a bill of sale for Anna, . . binding himself to permit her to be redeemed by a given day. And that Betsy and her child, Mary, were taken back to Tennessee, an execution levied upon her and her child, under which they were . . purchased by Fletcher, for $350, in . . 1829. Sharp . . procured Charles to return to Tennessee, . . when he was levied on, . . and purchased by Sharp, for $701, in November, 1829."

Weir's Will, 9 Dana 434, May 1840. Will of George Weir, written in his own hand, and attested September 26, 1839: "With respect to my negroes, I wish them to be hired out for, say two years from my decease, at the end of which time the proceeds of such hire shall be given or divided between them, and each and every one of them be set at liberty, and placed, or directed to be placed, in such situation as may be thought most advisable by my administrators. And I beg that my beloved wife will throw no hindrance in the way of such arrangement in respect to the negroes." Codicil: [435] "There will be deducted out of my estate, means sufficient to pay debts incurred in liberating my negroes, and my heirs shall not be entitled to the provision made for them, unless they shall go security to court for said negroes' good behaviour." The "foregoing paper was presented to the county court of Woodford, for probate; but the court, consisting of eight justices, being equally divided in opinion as to his capacity to make a valid will, rejection was the necessary consequence of that division. . . [436] Weir, at and about the times of writing and publishing the paper, was in extreme mental agony, bordering on total despair and absorption on the subject of religion and his eternal destiny, yet, nevertheless, he was rational and of disposing mind. . . he owned five hundred acres of land, and about twenty slaves, and a valuable personal estate; . . [437] the day after the publication [of his will], George Weir visited his brother James, . . manifested much anxiety about the emancipation of his slaves, . . and that, about ten days afterward, he handed to James Weir an abstract of debts due to him, and from him, . . [ending] [438] 'Henny ought to be set free.'[1] . . [442] Considering him an emancipator, it would be difficult to conceive for him a juster or wiser will. . . [445] It appears that he had expressed the opinion that those who emancipate their slaves and leave them in a slave state, thereby do an injury to the persons liberated, and great injustice to the resident white population; and it appears, also, that, as late as August, 1839, he offered to buy a slave or slaves at auction in his neighborhood. But his brother James testified that he (George) had always been opposed in principle to slavery, and that he had in the winter of 1838-9, evinced to him, in a confidential conversation, that he considered it his duty not to die a slaveholder. It seems, therefore, that, though he was willing to use slave labor and own slaves in a slave state, he was, in principle, an emancipator, and intended, when his capacity was unquestioned to liberate his slaves at his death. And though he may have felt rightly as to the impolicy of letting loose, in the bosom of a slave community, a degraded cast of manumitted ne-

[1] He owned only a part interest in her.

groes, yet his will does not show that he had changed that sentiment, or had forgotten his duty on that subject; for he confided the disposition of his emancipated slaves to the discretion of his brother and Mr. Stiles, who knew his own feelings and opinions as to what would probably be the best disposition of them as to residence and society. In emancipating his slaves, therefore, we can not presume that he did otherwise than he had deliberately intended when his sanity was unquestionable. . . [446] Wherefore, the order of the county court is set aside, and the paper purporting to be the last will of George Weir, deceased, is admitted to record in this court, as his true last will and testament," [Robertson, C. J.]

Commonwealth v. Edwards, 9 Dana 447, May 1840. "This is a proceeding against George S. Edwards, a free man of color, for an alleged violation of the statute of 1808, 2 Statute Law, 1219, entitled 'An act to prevent the migration of free negroes and mulattoes to this state.' A jury, impanneled in the county court, in obedience to an act of 1838, Sessions Acts, 70, requiring a jury in such cases, returned a special verdict, certifying that the accused had emigrated to this state and settled in Maysville, prior to the enactment of 1838, and about sixteen months before the institution of this prosecution; and that he had been once a slave in the state of Virginia, where he had been emancipated in the year 1803. Upon that finding, the circuit judge, being of the opinion that the act of 1838 could not be constitutionally applied to an offense previously committed, and that the act of 1808 was not enforcible without the aid of that supplementary enactment, adjudged that Edwards was not guilty, and therefore discharged him." Affirmed.

Chancellor v. Milton, 1 B. Mon. 25, October 1840. "The verdict and judgment in favor of the mother should, until reversed, be deemed conclusive proof of the fact that she was a free woman when she instituted her suit for freedom, and should be as conclusive in favor of any child borne by her after that time, as a deed of manumission of the same date could possibly be. But though, in a similar suit by her child, the record of her judgment would always be admissible as evidence of the fact that she had been adjudged free, yet, in the absence of any proof that the child was born after the impetration of her writ, her judgment, though *prima facie* evidence, would nevertheless be inconclusive as to the freedom of such child—because the judgment could not prove *per se*, or as between strangers, that she had never been a slave, and if she had ever been a slave, her emancipation, operating prospectively only, could not liberate her child born whilst she was a slave, and which child was therefore born a slave under the operation of the legal rule, *partus sequitur ventrem*" [Robertson, C. J.]

Thomas v. Beckman, 1 B. Mon. 29, October 1840. "Henry H. Thomas, of Estill county, Ky. having carried to Louisiana, a colored man named Ben Reed, claimed by him as his slave, and who had there escaped from his custody, employed Frederick Beckman, a Commission Merchant in New Orleans, to reclaim and sell the fugitive, and on the 23rd of May, 1826, gave to him the following written authority: 'Should he (Beck-

man,) be able to get in possession of my mulatto slave Ben, I give him full power to sell him at auction on the best terms, without (authority) to guaranty his character except the title.' During the year 1826, Beckman found Ben, sold him at auction, to one Florence, for $350, and gave him a Notarial bill of Sale in which, both as agent and as surety for Thomas, he guarantied that Ben was a slave—and after deducting his commission, he remitted to Thomas the price received for Ben. Florence sold Ben to one Palfry. In 1829 Ben, claiming to have been born a free man, sued Palfry in Louisiana for detaining him as a slave. According to the mode of procedure under the civil code of that State, Palfry cited his guarantor, Florence, and the latter also cited Beckman to appear; and they did appear and respectively responded and interpleaded. In December, 1831, Ben having, in the mean time, obtained a decree against Palfry for his freedom and for $450, the assessed value of his services whilst detained by him, a verdict and decree were rendered in favor of Palfry against Florence for $450, the consideration between them, and $450, the sum recovered by Ben, and another verdict and decree were rendered also, in favor of Florence against Beckman, for $350, the consideration between them, and for $450, as recovered by Palfry from Florence, for Ben's services, and interest on those sums, and the costs of the suit. And these decrees were affirmed by the Supreme Court of Louisiana. Beckman having paid to Florence $1015.69, as the total amount of principal, interest and costs due under the decree, at the time of payment, filed a bill in chancery against Thomas in the Estil Circuit Court, in the year 1835, seeking a decree for what he had thus paid as his surety. . . [31] The only evidence, tending to show that Ben was a slave, is the fact that one Gentry brought him from South Carolina, and sold him as a slave: but, according to the proof, Ben's complexion and hair indicate that he is of Indian rather than African taint— and it appears that Gentry bought him in Jail, for the prison fees only, for which he was sold, because, according to the local law, he had been imprisoned one year on suspicion that he was a fugitive slave, and no person had ever claimed him as such. These last facts conduce strongly to the conclusion that Ben was not a slave, and seem to us sufficient to repel any other presumption which might have been authorized by the fact that he had been claimed and held as a slave since Gentry's purchase; and, consequently, if the Louisiana record be only *prima facie* evidence, it remains unaffected by any countervailing fact or presumption. We therefore consider the fact that Ben was a free man sufficiently established; and, of course, a recovery against Beckman on his guaranty being therefore proper, he has unquestionable right, in equity, to demand some restitution from his constituent and principal Thomas."

Decree of the Circuit Court [30] "that Thomas should pay to Beckman $1015.69 cents, and 6 per cent. interest thereon, from the filing of the bill in this case" affirmed. [Robertson, C. J.]

Brown's Will, 1 B. Mon. 56, October 1840. "Gustavus A. Brown, of Smithland, Kentucky, having on the 10th of December, 1835, written and published his last will, in the first clause of which he emancipated his

slaves, afterwards, in the presence of a credible witness, carefully cut off so much of the paper as contained the other and succeeding devises or legacies, declaring at the time, that his purpose was to make another will at some future day respecting all his other estate, but that, lest some accident might defeat his intention to manumit his slaves, he had left unmutilated and intended to preserve the provision on that subject, which so far was and should remain his last will." A few days later "Brown was killed before he had made any other will."

Held: it is a valid will.

Haydon v. Ewing, 1 B. Mon. 111, December 1840. "George Ewing, after having, in the second clause of his will, emancipated the negro slave 'Simon,' . . [112] and his wife Judah, proceeds in the 5th clause, to devise 'the children of Si and his wife Judah,' to his daughter"

White v. Turner (a man of color), 1 B. Mon. 130, December 1840. "These appeals are prosecuted for reversing three several decrees, declaring that Jones, Turner, and Willis, men of color, and once the slaves of Wm. White, deceased, were emancipated by the valid last will of their said former master, alleged to have been destroyed by the heirs of the testator, after his death, and before there had been any probate thereof; and also ordering the survivors of said heirs . . to pay to each of the complainants $500, as the estimated value of his services. . . [The heirs] alleged that it provided for only an ultimate liberation, depending on contingencies which had not occurred, and on prescribed conditions, which had been violated by each of the appellees; and, to give color to this allegation, they exhibit a paper signed by all of them, about three months after the testator's death, and purporting to be a bond to the County Court of Jefferson, reciting the substance of the emancipating provision, and binding them, without proving the will, to effectuate its benevolent purposes, as thus recited. . . the two subscribing witnesses, both of whom read or heard the will read, testified that the testator had unquestionable capacity to make a valid will, and that the one they attested contained provisions essentially different from the pretended recital in the ostensible bond, and such as entitled the appellees to be free in September, 1834."

Held: [131] "the will was substantially such as described by the subscribing witnesses, and that it was suppressed at the instance or with the connivance of all the signers of the undelivered covenant with the County Court. . . for the purpose of defeating the title of the appellees and others to freedom. . . [132] the representatives of the five deceased heirs of Wm. White, who were parties in each of these cases, should have been equally contributory with the five survivors, to the payment of the damages decreed in each case." [Robertson, C. J.]

Crooks v. Turpen, 1 B. Mon. 183, April 1841. Linney of North Carolina, "who died in the year 1821 . . bequeathed to ten of his infant grand children . . [184] of Kentucky, several slaves . . Brunty [guardian] . . proceeded to North Carolina, and received about ten slaves,

chiefly children, and a wagon and team, as a portion of the said bequest; . . [187] probably necessary for transporting the young slaves,"

Swift v. Hopper, 1 B. Mon. 261, May 1841. Action for breach of warranty. " Malinda and her two children were sold together, at public auction, for $1030, at a general sale of negroes, by the defendants [Swift and Neet], when a great many others were sold." To the bill of sale " this clause was added: ' It being understood that the boy child had been diseased, but was supposed to have recovered.' . . the defendants offered to prove . . [262] that, when these negroes were up for sale, it was openly proclaimed that this boy was not sound and would not be warranted so."

Shelby v. Shelby, 1 B. Mon. 266, May 1841. Will of Alfred Shelby, 1832, gave [267] " to his son Isaac, on his attaining 21 years of age, . . ' six of the choice of (his) negroes, and one equal half of all the others under fifty years of age, also those over fifty years of age,' "

Johnson v. Bryan, 1 B. Mon. 292, May 1841. " the slave was taken on the coach, as a passenger, in the suburbs of Paris, between the stage office at Paris and that at Millersburg, by the stage driver, in the absence of and without a written request from his owner, and was entered on the way-bill as a passenger to Maysville, by the son of the keeper of the Stage office at Millersburg, who attended to the business of the office in the absence of his father, . . and was carried to Maysville; that the slave escaped to Ohio, and though pursued at much cost and trouble by the son of the owner, at his instance, and at the urgent solicitation of Johnson, one of the company, to spare no pains or costs in the pursuit, has never been recovered, but is lost to the owner; " The action " was brought under the statute passed the 8th February, 1838 [1] and a verdict obtained and judgment rendered for Bryan, for the value of the slave and costs expended in efforts to recover him,"

Judgment affirmed: [294] " Slaves availed themselves of the facilities afforded by stage lines and steam cars to escape from their masters. The rapidity with which they were carried by those conveyances, as also the mode of travelling, enabled them to elude pursuit and detection. The evil was growing, as stage lines were increasing and improvements advancing. A remedy was attempted to be provided, commensurate with the growing evil, and adequate to the remuneration of the injured master." [Ewing, J.]

Brizendine v. Bridge Company, 2 B. Mon. 32, September 1841. " Brizendine and Hawkins, as joint owners of a male slave and wagon and team . . sued . . for an alleged injury to the said property, resulting from the fall of the bridge whilst the slave, wagon and team were passing upon it."

Woodard v. Fitzpatrick, 2 B. Mon. 61, September 1841. " reserved a reasonable hire, to-wit: $10 a month for each of them; . . every day lost by the slaves was to be deducted in the computation of the time of their service, and all medical charges were also to be borne by him; "

[1] Acts, 1837-8, 155.

Armstrong v. Hodges, 2 B. Mon. 69, September 1841. "a free white woman named Thomason Grady, who cohabited with a black man named James Hog, and sometimes called James Grady," sold a small tract of land to Jackson. "But the complainant, [Armstrong, insisted] . . that Thomason Grady was the wife of the said James, and that, therefore, her sale to Jackson was void. The Circuit Court dismissed the bill, and we think rightly. . .

[70] "But, although there is abundant proof of cohabitation and occasional recognition, yet the fact that the said James was a slave whom the said Thomason had bought and never expressly emancipated, but sometimes threatened to sell, would alone be sufficient to repel the presumption of marriage, which would result, in ordinary cases, from mere cohabitancy ostensibly in the conjugal relation; and this repellant circumstance is fortified by the additional fact that a heavy penalty, by imprisonment and fine, is denounced against marriage between white and black persons, by an act of the colonial Legislature of Virginia, of 1753,[1] which was adopted by the Constitution of this State, and is still in force here. Under these circumstances, in the absence of more direct and specific proof, the presumption should be, that the relation between the black man slave and free white woman, was that of concubinage rather than marriage; and even if this be doubted, we are clearly of the opinion that there is not sufficient proof of the said Thomason's coverture to require us to decide that her sale to Jackson was void for want of legal capacity to bind herself or make a valid contract. Moreover, we are inclined strongly to the opinion that the marriage, if ever in fact consummated or intended, was void as against the policy and implied prohibition of the local law. It rather seems to us that our local law should be understood as prohibiting such marriages, as inconsistent here with decorum, social order, public policy, and the national sentiment; and if so, they must, therefore, be deemed unlawful, and of course void." [Robertson, C. J.]

Cook v. Colyer, 2 B. Mon. 71, September 1841. "the slave had been delivered to Colyer in June, 1830, to work for the use of money which he had loaned to Cook, and for securing which Cook had given him a lien on the slave, as well as on his land—that in November . . Slaughter, as agent to Cook, executed to Colyer, a writing purporting on its face to be an absolute bill of sale for the slave, for the recited consideration of $424, the slave being then worth, according to the proof, at least $800, and Cook being peculiarly attached to him and having refused . . to sell him for $750"

Held: [73] "It does not appear that Cook had ever contemplated or desired any fraudulent device for defeating . . his creditors, . . Cook is entitled to redeem the slave, Preston, upon equitable terms—accounting for the $424 as principal, and legal interest thereon, and being credited with the annual money value of Preston's services to Colyer as a provident and humane man, and opposed to slavery, as he seems to have been." [Robertson, C. J.]

[1] Stat. Law, 1153; 6 Hen. 361.

Reed's Will, 2 B. Mon. 79, October 1841. The will of Alexander Reed, sr., had been rejected by the county court. "The only negative facts are the testator's age and physical infirmities, his attachment to an emancipation of his slaves, . . [80] the liberation of his slaves at his own death, had been his settled purpose for many years, and when there could be no question as to his capacity."

The will was upheld by the Court of Appeals. [80] "A codicil, dated in 1840, and providing for the transportation of the emancipated persons to Liberia or the sale of them in the event of their refusal to be thus transported, has not been proved or offered for probate; and therefore, the only purpose of noticing it in this opinion, is to suggest that it may be hereafter proved and recorded as an appendage to the will, if in fact it was legally published, and the testator was competent at the time of its publication." [Robertson, C. J.]

Craddock v. Hundley, 2 B. Mon. 113, October 1841. In 1835 Craddock received "from Thomas Hundley five thousand dollars, 'to lay out in negroes for him'"

Strader v. Fore, 2 B. Mon. 123, October 1841. Damages had been assessed by a jury, for the unauthorized transportation on the steamboat *Pike,* [124] "and consequential escape of a slave,"

Waggoner v. Hardin, 2 B. Mon. 153, December 1841. [154] "on the night of the 12th Ellen was seized by the Sheriff as the property of Robert Trabue, and taken off and subsequently sold,"

Gordon v. Longest, 16 Peters 97, January 1842. [98] "Longest, of . . Kentucky, instituted an action [1] against . . Gordon [of Pennsylvania], to recover the value of a certain slave . . which . . Gordon, who was commander of the steamboat *Guyandotte,* then proceeding from Louisville up the Ohio river to Cincinnati, was alleged to have taken on board . . from the Indiana shore . . as a passenger to Cincinnati. . . a jury gave a verdict for the plaintiff, for six hundred and fifty dollars, on which judgment was entered for the plaintiff."

Narcissa v. Wathan, 2 B. Mon. 241, April 1842. "Austin Hubbard, who died . . 1823, without legitimate issue, and possessed of an estate . . then estimated at about $13,000, devised the whole to a mulatto female slave of Dr. Elliot, named Narcissa, on condition that her freedom could be purchased on reasonable terms. . . After the affirmance [of the will], Peter Sweets, who had, as early as 1824, bought the contingent interest of Austin F. Hubbard,[2] for $100, and had attended to the preparation of the case in this Court on the side of the will, offered to buy Narcissa with the avowed purpose of holding her as a slave; but her master refusing to sell her except for the purpose of liberation, in fulfillment of the testator's intentions, the said Sweets and the curator Wathan, agreed with her and Elliott, that they would pay him $350 for emancipating her, if she would

[1] Under the Kentucky act of Feb. 12, 1828.
[2] See Hubbard's Will, p. 318, *supra.*

convey to them her entire interest in the testator's estate. Accordingly, at the October County Court, 1831, Elliot acknowledged a deed of emancipation; and simultaneous or immediately afterwards, Narcissa signed a written relinquishment to Sweets and Wathan, of all her right to the property devised by A. Hubbard. In the succeeding spring, Sweets filed a bill in Chancery against Wathan, for a division of the spoil, charging that the personal estate was worth about $10,000 and the real estate and its profits, more than $5,000. Narcissa, who was made a defendant, made her answer a cross bill, in which she alleged that Sweets and Wathan had defrauded her, by concealing the value of the estate, and falsely representing that it was insolvent, or not worth more than about as much as would pay the $350 given by them to her master for her liberation; and therefore, she prayed for a rescission of the relinquishment thus fraudulently procured, and for a restitution of the estate to her as devisee. . . [242] Narcissa died and devised her whole estate to trustees, with plenary power, and in trust for the purchase and emancipation of her children, born whilst she was a slave. But, on final hearing, her cross bill, revived in the names of her trustees and executors, was dismissed; and that decree is now sought to be reversed."

Decree reversed. " the invalidity of the contract with Narcissa, cannot be reasonably doubted. . . [243] And there can be no doubt that, had not he [Wathan, her curator] and Sweets paid to Elliot the $350, some other person would have done so, especially if Wathan had disclosed candidly, as it was his duty to do, the extent of the estate. Nor is there any ground for doubting that Narcissa would have been retained in slavery and Sweets would have enjoyed the estate, under the alternative devise to A. F. Hubbard, could he have bought her as a slave from Elliot." [Robertson, C. J.]

Coppage v. Alexander, 2 B. Mon. 313, May 1842. Will of Robert Alexander: [314] " my negro man, Moses, is to stay with my said wife during her life, and to take care of her, and is to have, at her death, for his services, the one-fourth part of the half of my land and be set free;"

Commonwealth v. Jackson, 2 B. Mon. 402, May 1842. " To an indictment against John Jackson for importing slaves into Fayette county . . in violation of the prohibitory statute of 1833, he pleaded that he had since taken and registered the oath as prescribed by the statute of 1841, to emigrants who had imported slaves in good faith, but had failed to take the oath required by the first of said enactments, only because they were ignorant of the requisition. . . judgment in favor of the accused."

Affirmed.

Barnett v. Stephens, 2 B. Mon. 446, June 1842. Held: the hire and increase of slaves in the possession of an administrator are assets in his hands for administration as much as the slaves are.

Fry v. Throckmorton, 2 B. Mon. 450, June 1842. Fry sold to Throckmorton " thirteen young slaves of three different families, but connected generally by different degrees of consanguinity. About two years after the sale and delivery, one of those slaves, a young man named Jordan, died of tubercular consumption. A physician living in the Galt House,

where Jordan and most of the other slaves were kept after Throckmorton's purchase of them, was of the opinion that shortly after they were delivered he ' recognized the existence of constitutional scrofula in many of them,' and also, that ' Jordan, two years before his death, presented symptoms of scrofulous taint.' Several other persons who had known the slaves intimately from their birth, were of opinion that all of them had always been remarkably sound and healthy, and testified that their parents and grandparents, paternal and maternal, had been apparently sound, and lived, most of them, to extreme old age. Jordan was estimated in the sale at $1,000,"

Held: [453] " that Jordan himself was not unsound at the date of the warranty," [451] " Mere organic or constitutional predisposition to a particular malady is not unsoundness either in the popular, scientific or legal sense; if it were, there would perhaps be but few, if any, upon earth who are sound. . . [452] may it not be probable that the appearance of all, as interpreted by the doctor, resulted from an essential change in their habits, occupations and mode of living, after they were translated from an airy country residence to a large hotel in a crowded city?" [Robertson, C. J.]

Ewing v. Gist, 2 B. Mon. 465, June 1842. [468] " The jury have found that by the negligence of the defendants while they (or one of them) had the slave on hire, he was permitted to go off and make his escape; and from the evidence it is probable that he has gone to Ohio or Canada, and that any attempt to retake him, if not utterly hopeless, must be attended with great expense and trouble. As it is not absolutely impossible that he may still be recovered, the jury might not be authorized to find that the plaintiff had sustained damages to the full amount of his value. And although between $240 and $250 of the damages [$360] found by the jury, must be applied to the breach alleged, of the defendants having failed to return the slave, there is nothing in the record to show either that the jury found that sum as being his exact value, or that it was in fact his exact value. No witness estimates his value in money; several say that owing to his being almost white [(466) his color could not be distinguished from a white man], and to the consequent facilities of escape, they did not consider him to be worth more than half as much as other slaves of the ordinary color and capacities. But the defendants had hired him for several years at $110 a year, and it cannot be assumed on this evidence that he was only worth in full property $250. . . the damages found do not appear to be excessive." [T. A. Marshall, J.]

Price v. Boswell, 3 B. Mon. 13, September 1842. " 1819, Hawes made a public sale of the trust property, consisting of eight slaves, for the aggregate sum of $2,380, and . . Boswell became the purchaser . . [14] of Charles, at $340; Cate and child at $525; Lewis at $350; Peter at $565; and Jerry, who was claimed by a daughter of Norton, and was not present at the sale, at $90, . . and John Brand became the purchaser of Let and child at $510. . . All the slaves purchased by Boswell, except Peter, were permitted to return to the possession of Norton, where they remained for years, as Boswell contends, on hire,"

Esther v. Akins, 3 B. Mon. 60, September 1842. "David Rice, deceased, being the owner of several slaves, Dick, Edith, and the children of Edith, devised Dick to one of his sons, the 'use of Edith' to a daughter, and as to the children of Edith, made the following devise: 'But it is my will that the children that the said Edith now has, may be free, as well as those she may have hereafter, the males when they shall severally arrive at the age of 25—the females when they shall arrive at the age of 23 years. This because freedom is a natural and inalienable right, belonging to them as well as others, of which the proprietor of man has not authorized me to deprive them.' About twenty two years after the testator's death, several persons, as grand children of Edith, filed bills in Chancery for obtaining liberation from bondage . . the Circuit Court liberated all the complainants except Esther, Dudley and Nancy Jane, three grand children who were born before their mothers had attained 23 years of age."

Held: "the emancipation was prospective, and applied only to Edith's children, and after they had attained the prescribed ages. . . [61] *Partus sequitur ventrem*, hitherto applied to such cases, (however questionably in the opinion of some at first,) must, therefore, govern this case, and dooms Esther, Dudley, and Nancy Jane to slavery, because, at their births, their mothers were slaves, and the will contains no provision as to themselves." [Robertson, C. J.]

Abel v. Cave, 3 B. Mon. 159, October 1842. Action "for alledged fraud in the sale of a family of slaves,"

Dennis v. Warder, 3 B. Mon. 173, October 1842. Nelly Moss [174] "devised the said land to some persons of color, whom she emancipated."

Nutter v. Connet, 3 B. Mon. 199, October 1842. "On the night of the 9th of January, 1839, William C. Connet . . started, with his family and several slaves and other moveables, for Missouri, with the intention of permanently settling there. On the next day, (10th,) William Nutter [and others] . . filed their several bills in Chancery for attaching four slaves left by him in the possession of . . [and] alledged, substantially, that Connet was secretly removing from the State . . [200] for the purpose of . . defrauding his creditors."

Commonwealth v. Griffin, 3 B. Mon. 208, October 1842. "Griffin, a citizen of Pulaski county in this State, having been found guilty, under an indictment against him for importing a slave into this state, in violation of the statute of 1833,[1] judgment was pronounced against him for the statutory penalty of $600; and he . . was . . committed to jail until he should pay the penalty or be discharged by law."

Held: [211] "Kentucky may prohibit those who are already her citizens from bringing slaves into the State, while she invites those who are not now her citizens, to become so by allowing them to bring their slaves with them. . . [214] slavery and slave property, and commerce in slaves, are matters of a peculiar character, standing on grounds which distinguish them in all their relations, from the general subjects of property and of

[1] Stat. Law, 1482.

commerce. And whether slavery shall exist in a State, and whether if it does exist to some extent, it shall be increased by the importation of slaves from other States; in a word, whether slaves shall be an article of commerce at all, between one State and another, are questions peculiarly of internal regulation in the several States, and over which Congress has no power." [T. A. Marshall, J.]

Taylor v. Gibbs, 3 B. Mon. 316, April 1843. "Heatherly and Taylor were partners in stock trading to the south, and in the purchase of slaves in Virginia, and that Heatherly had collected in the south money due to Kincade and Rogers, and by the assent and direction of Taylor took the same to Virginia and laid it out in the purchase of partnership slaves,"

Eckler v. Eckler, 3 B. Mon. 387, May 1843. "In 1834 or 1835, Jacob Eckler gave to the appellant, his manumitted female slave, in consideration of her valuable and faithful services to himself and family, about ten acres of land, to possess and enjoy during her life. . . [388] The appellant took possession, erected a small dwelling house and out houses, and otherwise improved the little tenement."

Thompson v. Drake, 3 B. Mon. 565, June 1843. [566] "the assets of the firm consisted of . . ten negroes . . estimated by the assessor in 1839, at $7050, and in 1840, at $5800, and a colored boy who had been bound to Thompson and Drake, and hired out by them after they quit business [rope-making]; and second, of the hire of said negroes for the year 1839, coming due at the end of that year, and amounting to at least $1300;"

Frederick v. Commonwealth, 4 B. Mon. 7, September 1843. "indictment against Frederick, a free man of color, for keeping a disorderly house. . . 'drinking, tippling and otherwise greatly misbehaving themselves.' . . Emily McCune and other prostitutes, occupied the upper rooms of the defendant's house, as his tenants, . . [8] The rooms had been rented to Emily McCune by the agent of the defendant, . . the disorders were committed, mainly, by the females in the upper rooms; . . The jury found the defendant guilty, and assessed his fine at $150," Judgment reversed and cause remanded for a new trial: "he cannot be said to have had control over the rooms leased." [Ewing, C. J.]

Smith v. Pollard, 4 B. Mon. 66, September 1843. [67] "sold Faro to Moses Black, in discharge of a debt . . The slave being dissatisfied, she subsequently re-purchased him of Black, and to effect the purchase, sold a slave which she held in her own right."

Chancellor v. Wiggins, 4 B. Mon. 201, October 1843. Action "brought upon the implied warranty of title in the sale of two negroes as slaves, who afterwards recovered their freedom . . by judgment in their favor,"

Young v. Small, 4 B. Mon. 220, October 1843. "In 1826, Thomas Young, being the owner of a female slave, Fan or Fanny, placed her in possession of his niece, wife of John Morris, and executed to Morris a writing, the exact tenor of which is not certain but which conveyed at least a right to the possession and services of the girl . . until she should be twenty-one years of age; . . In 1834, . . Morris, by writing under

seal, sold and conveyed [to Small] the time and services of Fanny . . till the 1st day of November, 1836, when . . she will be twenty-one years of age . . [221] 'and then and forever thereafter the said negro woman, Fanny, is to be free;' . . while Fanny was in the possession of Small . . and probably a few months only before the time had expired, she had a male child, who remained with his mother for a few months at Smalls, and was then taken to the house of its grand-mother, a free woman of color, who resided a mile or a mile and a half from Small's farm, . . while his mother was taken into possession by Young at the expiration of the gift, . . In July, 1842, the present action of detinue was brought by Young's administrator against Small to recover the child of Fanny,"

Held: [223] "if the deed granted only the services and possession of Fanny to Morris for the time specified, and declared that she was then to be free, . . it did not grant any child . . which she might have in the interval, but the right to such child . . remained in the grantor, Young,"

Parks v. Richardson, 4 B. Mon. 276, October 1843. Nevels [278] "was a planter in Louisiana, . . killed a man and ranaway to Texas; that some of his slaves absconded from his plantation;" [293] "the slave, Tom, under the name of Henry, was taken from a steam boat and put into the work house in Louisville as a runaway, in June, 1837, and after he escaped, he was found in the possession of Parks." Parks says, [279] "while he was the owner of the slave, on account of gross misconduct, he carried the slave, bound hand and foot, to the jail, of which Chenowith was keeper, and there depositing him with Chenowith, who was trading, at the time, to the south, in negroes, authorized Chenowith to sell him to some one down the river. . . [288] Chenowith says, . . that a Mr. Bull had deposited a girl, called Louisa, for sale at the jail . . November, 1837, and . . on the 22d of December he [Chenowith] sold Louisa to Parks, and Parks agreed to pay for Louisa out of the money for which Henry should be sold,"[1] Richardson [279] "exhibits, as his title to the slave, a bill of sale [for $700] dated 28th December, 1837, . . signed by 'Edward Parks by Stephen Chenowith, his agent.' He alledges that . . the slave . . belonged to Nevels, and the sale was fraudulent, . . [280] Mr. McLean, a negro driver and overseer from Louisiana . . [deposed, in 1842, that he] [281] acted as overseer for [Nevels] . . in 1837, . . during that year Nevels worked some 25 or 30 hands. . . within the past week deponent, with some others, went into the jail in this City, to see said slave. On going in, the slave, Tom, recognized deponent as being his old overseer and called him by name,"

Held: [277] "Parks having no title to the slave . . should refund what he received, with interest. . . Richardson may be yet made responsible to the true owner for the services."

Bybee v. Tharp, 4 B. Mon. 313, October 1843. In 1823 "in virtue of his marriage and guardianship, he became possessed of a large number of slaves, of both sexes and of all ages and descriptions, . . [314] The

[1] "Parks alledges . . that . . the boy had been, by him, traded to Chenowith for a negro girl, and $150 'to boot,'"

slaves . . with few exceptions, remained in Bybee's possession" until after his ward's marriage in 1833, "many of them having been employed by him in a bagging factory, from the year 1825 or 1826."

Denny v. Williamson, 4 B. Mon. 372, April 1844. "1828, Denny loaned to F. Williamson $338, and at the same time received her negro boy, Tom, about 16 years of age, on the agreement to have his services for the use of the money. Under this agreement the boy was held for eight years, . . The value of the boy's services . . greatly exceeded the legal interest on the loan."

Stone v. Willis, 4 B. Mon. 496, May 1844. "In 1812, Elisha Stone executed to James Lillard the following bill of sale: 'Know all men by these presents, that I, Elisha Stone, of Mercer county and State of Kentucky, have this day bargained and sold unto James Lillard, one negro woman by the name of Peggy, for the consideration of the sum of three hundred dollars, to me in hand paid by the same James Lillard, the receipt whereof I do acknowledge, and I will warrant and forever defend the said negro to said Lillard, from myself, my heirs, and every other person whatever, and likewise to be sound at this time, and age to be nineteen or twenty, as witness my hand and seal this 19th day of November, 1812. Elisha Stone, Seal. *Test*, John J. Allen, David R. Reese.' On the same day the following defeasance was executed by Lillard: 'Whereas I have this day bought a negro woman by the name of Peggy, for which I give Elisha Stone $300, now if the said Elisha Stone, himself, shall pay me $300 in the course of two years, he, the said Stone, shall have the negro back if she be alive; as witness my hand this 19th of November, 1812. James Lillard. *Test*, John J. Allen, David R. Reese.' . . [497] Willis admits he had possession of the woman and her children, and been so possessed for about eleven years before the institution of the suit, claiming them as his own absolute property,"

Held: [498] "the contract was a conditional sale, and not a mortgage or pledge for the security of money."

Thompson v. Thompson, 4 B. Mon. 502, May 1844. [503] "Fleming Thompson, whose name is first upon the note in contest, was formerly the slave of Joseph Thompson, deceased, and at the date and execution of the note, was the slave of the plaintiff, who was the widow of said Joseph, and of his children; that the defendants executed the note [for $550, bearing date the 7th March, 1837,] as the securities of said Fleming, and upon the promise and undertaking of the plaintiff . . [504] in consideration that the plaintiff and a part of the other owners of Fleming [three out of five], agreed to relinquish their right to him as a slave, and to emancipate him as far as they could, and license him to go abroad and trade as a free man, and that the plaintiff and a part of the other owners, in consideration of said note, had relinquished to said Fleming their right and interest in him as a slave, and executed a partial deed of emancipation [1838] and licensed him to go abroad as a free man, and that under said deed he had so gone at large and hired himself out."

Held: I. a verbal promise to emancipate a slave is a good consideration to support a note, although promisor was only part owner of the slave; II. [506] "as three out of five have emancipated the slave, emancipation by the other two would effectually free him—it would seem then to follow, that the act of the three has, *pro tanto*, accomplished the work of freedom, and . . they have no power to recall or annul it. They . . have ceased to be owners or masters, and cannot, therefore, be liable to the penalties of the act [which prohibits the master or owner of a slave to license him to go at large and trade as a free man] . . three fifths of the work of entire emancipation has, in effect, been accomplished, and it is not improbable that an arrangement has been made or was contemplated, with the other part owners to complete it. The case is one of rare occurrence, and by no means free from difficulty," [Breck, J.]

Thomas v. McCann, 4 B. Mon. 601, June 1844. [603] "McCann . . represented . . that the negro woman, Hannah, the subject of the sale, was twenty-nine years of age, when in fact she was then about forty years old; . . that the woman had had but three children, . . as far as he knew, when it now appears she had in fact had nine or ten."

Held: [604] "such a fraud as authorized him [the vendee] to rescind the contract;"

Coombs v. Glass, 5 B. Mon. 11, September 1844. "Coombs had sold to Glass a negro woman and child for $800, on trial till the first of October next."

Graham v. Strader, 5 B. Mon. 173, October 1844. "Graham filed his bill in the Louisville Chancery Court, attaching the steamboat *Pike*, and making the owners, Strader and Gorman, parties, under the acts of 1824 and 1828, to recover damages for the unauthorized transportation of his three slaves, Reuben, Henry, and George, on board said steamboat from Louisville to Cincinnati, whence they escaped to Canada. The slaves are described as three yellow men between nineteen and twenty three years of age, well trained as dining room servants and as scientific musicians, in which capacity they had been in the habit, for some years, of playing together on various instruments, at balls and parties, and during the watering season were retained by the complainant at the house kept by him at the Harrodsburg Springs, to play for the entertainment of his company. The bill alledges and several witnesses state, that each of them were worth $1500. The evidence conduces to prove that they were taken on board the *Pike* at Louisville, about the last of January, 1841, when they had with them, besides their clothes, musical instruments and books of the value of about $250; that from Cincinnati, to which place they were transported in the boat, they escaped to Canada, and that the complainant had expended from $700 to $1000 in fruitless efforts to recover them." The defendants [174] "charge that the complainant allowed the slaves to go to Louisville to live with Williams, a free man of color, to learn music, and afterwards gave them written permission to go to the State of Ohio, that they did go and remained there a long time, and were sent there by complainant's direction, to perform service as slaves, and that in conse-

quence thereof, they acquired a right to freedom, and are free, and were so when the bill was filed and long before. The defendants seem to have filed an exhibit . . of the following tenor: 'Harrodsburg, August 30, 1837. This is to give liberty to my boys, Henry and Reuben, to go to Louisville with Williams, and to play with him till I may wish to call them home. Should Williams find it his interest to take them to Cincinnati, New Albany, or to any part of the South, even so far as New Orleans, he is at liberty to do so. I receive no compensation for their services except that he is to board and clothe them—My object is to have them well trained in music. They are young, one 17 and the other 19 years of age. They are both of good disposition and strictly honest, and such is my confidence in them that I have no fear that they will ever act knowingly wrong, or put me to trouble. They are slaves for life, and I paid for them an unusual sum; they have been faithful hardworking servants, and I have no fear but that they will always be true to their duty, no matter in what situation they may be placed. C. Graham, M. D. P. S. Should they not attend properly to their music or disobey Williams, he is not only at liberty, but requested to bring them directly home. C. Graham.' It appears that the boys, Henry and Reuben, while under the care of Williams, were with him once in Cincinnati, Ohio, once and perhaps twice in Madison, Indiana, and two or three times in New Albany, Indiana, playing as musicians, at balls or other entertainments at those places. . . [175] none of them had been under the care of Williams, or living with him, for about two years prior to their escape, but that except during the watering season, when they were required to be at home, they were stationed at Lexington as their head quarters, with liberty to go to the neighboring towns to play as musicians, and to give their master what they made beyond their expenses, and that they did thus go about to the neighboring towns. . . Graham [stated] that it would cost $500 to supply their place as musicians at the Harrodsburg Springs, for a single season. Upon the hearing, the Chancellor being of opinion that the writing of the 30th August, 1837, above set out, was a sufficient license and permission, without limit as to time, to authorize any steamboat to take the slaves Henry and Reuben on board, and land them at any place, in or out of the State, dismissed the complainant's bill and claim of damages for the exportation of those two slaves; and as to the slave George, directed a jury to be empanneled as required by the 9th section of the act of 1837,[1] to ascertain such facts as should be submitted them. . . [176] a verdict was found for the complainant, of $1000 in damages."

Decree reversed, and cause remanded: I. [177] "the writing of 30th of August, 1837, . . [179] furnishes no authority for the asportation of Henry and Reuben, in the winter of 1841, and no ground for dismissing the bill as to them. . . [II.] [181] If it were conceded that in consequence of the establishment [of the principle declared in the ordinance of 1787 'that there shall be neither slavery nor involuntary servitude',] . . in any State, the laws of that State may not only refuse their aid to a master voluntarily bringing his slave within its territory, even for a tem-

[1] 3 Stat. Law 16.

porary purpose, to enforce his claim of dominion while there,[1] but may aid the slave in resisting that claim, and thus enable him, if he will, to remain there as a free man; and this seems to be giving to the principle its fullest effect; still it does not follow that the master, in thus subjecting himself to this temporary suspension of the legal right of enforcing his dominion, would incur any thing more than the hazard of losing it forever. He certainly is not to be understood as renouncing it when he takes the slave with him as a slave, with the intention of bringing him back immediately as such. And if the slave, without resort to such means of resistance as the laws of the foreign State may have offered, acknowledges his subjection while there, and returns with his master in a state of servitude, we perceive no principle which would afterwards entitle him to claim his freedom in the domestic forum, on the ground that he might have asserted it in the foreign State, and could not have been compelled to return. . . What effect should be given here to the sentence of a foreign tribunal which, disregarding our laws upon this subject, should, on the ground that slavery is inconsistent with its own laws, wrest the slave from his master while on a temporary visit in another State, and whether if the slave should afterwards return as a free man, he would, by our laws, be held subject to his former condition, need not be considered.[2] . . [182] But . . the principle . . that a slave returning voluntarily with his master from a free State, is still a slave by the laws of his own country, is sustained by the opinion of eminent jurists even among those who have maintained that by an appeal to the foreign law while within its jurisdiction, the slave may obtain the benefit of the constitutional principle which prohibits the existence of slavery. Judge Story, in his commentary upon the conflict of laws, after intimating, in the 95th section, that in the free States of America, as in England, a slave coming within the territory, (except as a fugitive,) becomes free, goes on in the 96th section to say that, 'it is a very different question how far the original state of slavery might re-attach upon the party, if he should return to the country, by whose laws he was declared to be, and was held as a slave,' and quotes the opinion of Lord Stowell, in the case of the slave Grace,[3] that upon such a return of the slave to his original domicil, the state of slavery would re-attach upon him." III. In assessing damages, the jury had a right [185] "to take into consideration their qualities as musicians, . . they had a right to consider the appearance, and manners, and address of these slaves, their acquirements in literature as well as in music, their habits of

[1] See Stanley *v.* Earl, p. 304, *supra.* [285] "if the master voluntarily removes the slave to such non-slaveholding state, . . the master's right, so long as the slave remains there, is gone; because he has no remedy to enforce or protect it." [Boyle, C. J.]

[2] "The opinion contains no concession . . that the slaves in question were ever free, or could properly have become so by being temporarily in a free State with their master or other citizen of the State, having control of them. . . the Court does not admit that in consequence of such a fact, and by force of the mere general prohibition of slavery in the fundamental or declaratory law of the State, which might be thus visited, the relation of master and slave, as existing under the laws of their own State, would be affected. And a question is made even as to the effect to be given here, to the decision of a tribunal in the free State, which upon the appeal of the slave there, should have declared him free." Judge T. A. Marshall, in Strader *v.* Graham, 7 B. Mon. 635 (1847).

[3] P. 36, *supra.*

subordination or of independence, the liberties which had been allowed them, and the effect of all these circumstances, not only upon the value of their services, but also in generating a restlessness under restraint, and a desire of freedom, and in affording facilities and opportunities of escape, even if they had not been taken on board the *Pike*; and they had a right to determine how far any of these considerations should operate to enhance or diminish the fair value of the slaves as such. . . [186] although after ascertaining where the slaves were, it should be deemed useless and therefore imprudent to have incurred any further expenses for their recovery, still he should be entitled to the expense reasonably incurred in ascertaining their condition and the probabilities of recovering them." [T. A. Marshall, J.]

"After the return of the cause to the Louisville Chancery Court . . 1845, . . the jury . . found . . for the complainant, and assessed his damages at $3,000,"[1] and the court "decreed that the complainant is entitled." The defendants appealed, and the decree was affirmed.[2] The case was then brought by the defendants to the Supreme Court of the United States, by writ of error.[3] The writ was dismissed, for lack of jurisdiction: [94] "the condition of the negroes, as to freedom or slavery, after their return [to Kentucky], depended altogether upon the laws of that State, and could not be influenced by the laws of Ohio. . . But it seems to be supposed in the argument . . that the law of Ohio . . has some peculiar force by virtue of the Ordinance of 1787, . . The argument assumes that the six articles which that Ordinance declares to be [for ever . . unalterable unless by common consent] . . are still in force in the States since formed within the Territory, and admitted into the Union. . . The Ordinance . . if still in force, could have no more operation than the laws of Ohio in the State of Kentucky, . . But it has been settled by judicial decision in this court, that the Ordinance is not in force.[4] . . [95] when it decided that this Ordinance is not in force in Louisiana,[5] it follows that it cannot be in force in Ohio. . . [96] The Constitution was, in the language of the Ordinance, 'adopted by common consent,' and the people of the Territories must necessarily be regarded as parties to it, and bound by it, . . It became the supreme law throughout the United States. . . It is undoubtedly true, that most of the material provisions . . of these six articles, not inconsistent with the Constitution of the United States, have been the established law within this territory ever since the Ordinance was passed; and hence the Ordinance itself is sometimes spoken of as still in force. But these provisions owed their legal validity . . after the Constitution was adopted and while the territorial government continued, to the act of Congress of August 7, 1789, which adopted and continued the

[1] Graham *v.* Swigert, 12 B. Mon. 522 (523).
[2] Strader *v.* Graham, 7 B. Mon. 633 (1847).
[3] Same *v.* same, 10 How. 82 (1850).
[4] Permoli *v.* Municipality, 3 How. 589.
[5] "the act of Congress of April 7, 1798, chap. 28 (1 Stat. at Large 549), extended the Ordinance of 1787 to the then Territory of Mississippi, with the exception of the anti-slavery clause;" and the act of Mar. 2, 1805, chapter 23 (2 Stat. at Large 322), secured the same privileges to "the inhabitants of the then Territory of Orleans." 10 How. 95.

Ordinance of 1787, . . with some modifications, which were necessary to adapt its form of government to the new Constitution. And in the States since formed in the territory, these provisions, so far as they have been preserved, owe their validity and authority to the Constitution of the United States, and the constitutions and laws of the respective States, and not to the authority of the Ordinance of the old Confederation." [Taney, C. J.]

Wood v. Wickliffe, 5 B. Mon. 187, October 1844. Will of Nathan Wood, 1834, [189] " provides for the emancipation of five of his slaves, viz: Ann, Eliza, Elizabeth, Bertrand, and Louisa, and the emancipation is directed to take effect at his death. His executors are also directed to pay over to J. J. Wood and Joseph Funk, five hundred and fifty dollars, whom he appoints trustees for certain specific purposes, in reference to the liberated slaves, and directs the manner in which they are to appropriate the five hundred and fifty dollars for their use and benefit." The circuit court decreed that [188] " the attached slaves . . be sold, and the proceeds applied to the payment of the judgment, and if insufficient for the payment thereof, then the emancipated slaves, or so many of them as may be necessary for that purpose, are decreed to be sold."

Held: I. [191] " The liberated slaves were devisees, and directly and vitally interested in this controversy. They were necessary parties, and should have been brought regularly before the Court, and as several of them were infants, a guardian should have been appointed for them," II. [192] " the decree is also erroneous, in decreeing an absolute sale of the liberated slaves. After exhausting the assets in the hands of the executors, if any portion of the appellee's claim should still remain undischarged, as several of the liberated slaves have been taken under the attachment and hired out since the institution of this suit, the proceeds of their hire should be applied in payment of such residue. And, in the event of a balance still remaining unpaid, the Court should apportion such balance among those whose labor is productive, . . In making such assessment, the mother with infant children should be assessed in view of the incumbrance. . . The testator designed all to be free, and at the same time, and it is right that the labor of all should be expended for that purpose. But if the sums assessed should not be paid, nor secured by the emancipated slaves, nor by any one for them, then they should severally be sold or hired out for the shortest periods that would bring the sums respectively assessed upon each. . . The mother with infant children should be hired together." [Breck, J.]

Jones v. Perkins, 5 B. Mon. 222, October 1844. [224] " Jones was persuaded to buy the girl Minerva, then about five or six years of age. He agreed to do so upon the condition only, that she should be valued by two disinterested neighbors of Perkins, . . and she was valued at $160 in silver. . . [225] Perkins urged upon Jones the purchase of the slave Patsy, as he was the owner of her children, which was agreed to, reluctantly, by Jones, and only upon the condition that the sale was entirely satisfactory to his wife."

Grigsby v. Daniel, 5 B. Mon. 435, June 1845. "In January, 1831, at the city of New Orleans, Thomas Blackwell and A. G. Daniel, joint owners, sold and transferred to the plaintiffs, nine slaves, warranting them 'sound in body and mind, except Jerry, who is indisposed with the dysentary, and Garland, whose knee is a little swelled.'"

Throckmorton v. Jinny Lewellin, 5 B. Mon. 585, July 1845. "This is a suit instituted in chancery by Jinny Lewellin, a free woman of color, and her daughter, Mary Adams, and her three children, against Throckmorton and Russell, to enforce specifically the emancipation of Mary Adams and her three children, under the alledged contract to do so, upon their refunding to Throckmorton, out of their services, the price of their purchase by him, from one Crow, of Virginia, and interest thereon, the said Russell having purchased one of them from Throckmorton, with the like understanding, alledging that they had refunded the price and interest. If it be conceded that a parol contract for the emancipation of slaves may be specifically enforced in a Court of Chancery, we insist that the contract should be fair and reasonable, certain in its terms, made with a person able to contract, and for a fair and adequate consideration. . . [586] it clearly appears that Throckmorton purchased them for his own use, through his brother, as agent, under the authority of a letter borne by Jinny Lewellin, and shown to Crow, . . They were sold by Crow to him as slaves for life, and an absolute bill of sale executed. . . The slaves and their mother, were, no doubt, anxious for Throckmorton to buy them, as well to get clear of the hands of a slave dealer, as to get to Louisville, where the mother resided, and may have held out inducements to Crow, of an expectation of ultimate freedom. And they may, in fact, have conceived the idea, that if they could get to Louisville, that they might, through the instrumentality of Bates and Russell, and other friends, be able to obtain their freedom. But no promise or agreement is shown to have been made by Throckmorton or his agent, on the subject. The same hopes and expectations may have induced Joe, the husband of Mary Adams, to surrender up his claim for the $100 previously advanced. . . [587] Did Throckmorton before or after his absolute purchase from Crow, make any specific agreement with Jinny Lewellin, for the emancipation of the slaves? . . It is true, after the slaves arrived in Louisville, Throckmorton discovering that they would not suit his business, or having heard of the proposition of Bates and others upon the subscription to buy them, with a view to their emancipation, was willing, and proposed to Bates to take them at his purchase, including expenses; and he may have agreed, as an inducement, that they were purchased under the subscription; but Bates refused to do so, and surely this proposition cannot be construed to amount to a binding contract to emancipate, . . [588] There is nothing in the character of the accounts exhibited, of items of money deposited with Throckmorton, that is incompatible with a hiring, . . it is reasonable to suppose, that as she [Mary Adams] collected money, that she would deposit the same with her master, in advance of her hire, as the safest place of deposit. . . she did hire her own time from her master, and pay him for the same. Moreover, it is proven by Pratt, that Mary Adams acknowledged to him

that she was the slave of Throckmorton, and hired her own time from him. . . no such contract is made out as will authorize this Court to decree specifically the emancipation of the slaves, either against Throckmorton or Russell. The latter derived his title by purchase from the former, and holds under him, and has done nothing since, which lays him under any legal obligation to emancipate the slave he purchased. He said, as is proven by Bates, . . that he intended to free the slave when her services paid him the amount he advanced; but this declaration cannot be construed into a contract." Bill dismissed. [Ewing, C. J.]

Fitzhugh v. Fitzhugh, 6 B. Mon. 4, September 1845. The administrator, " having exhausted the personal estate, except a slave, in payment of debts of the deceased, filed his bill . . to subject the real estate, . . [5] and a decree [was] rendered for the sale of certain lots,"

Held: [6] " there is error in the decree, in not directing the slave to be first sold in satisfaction of the debt, there being no good reason shown why the slave should not be first sold, and the proceeds applied to lessening the burthen upon the land." [Ewing, C. J.]

Saunders v. Kastenbine, 6 B. Mon. 17, September 1845. " Saunders, a man of color, exhibited this bill in Chancery against the executor and devisees of Charles Kastenbine, alledging a purchase from the latter, in his lifetime, of a slave by the name of Matilda, the wife of complainant, and upon the following terms: that he was to pay the purchase money, which was $400, in monthly installments of not less than four dollars nor more than eight dollars per month, unless the complainant should find it convenient to pay more; that he obtained possession of the said Matilda at the time of the purchase, and yet had her in possession, but that the representatives of said Kastenbine had been recently denying his purchase and threatening to take said slave from complainant with a strong hand; that he had paid $270 of the purchase money, and was willing to go on and pay the residue according to the terms of his contract."

Held: [18] " the testimony preponderates in favor of his having purchased and not hired her [but] The contract . . falls within both the spirit and letter of the statute of frauds." Decree dismissing the bill affirmed. [Breck, J.]

Smith v. Commonwealth, 6 B. Mon. 21, September 1845. Indictment " for keeping a disorderly house. . . [22] the persons who were assembled at the defendant's house, (a grocery,) from time to time were slaves, and free persons of color. . . But the testimony does not establish that they were in the habit of cursing, swearing and making a noise, to the annoyance and disturbance of the neighbors, but the contrary appears by the proof. We do not doubt that the facts proven, or those which may be rationally inferred from the proof, constituted the house a disorderly house. The keeping of a grocery, at which that class of the community are habitually allowed to assemble, and buy whisky and tipple and drink at pleasure, is calculated to corrupt their morals, to tempt them to petty larcenies, by way of procuring the means necessary to buy, to lead them to dissipation, insubordination and vice, and obstruct the good government,

well being and harmony of society. A house in which such practices are encouraged and indulged, though no cursing or swearing or noise is made whereby the neighbors are disturbed, is a public annoyance, and may properly be denominated a public nuisance. Nor is it rendered less a public nuisance, from the fact that statutes have prescribed specific penalties for trading with, or selling or giving liquor to slaves, without the permission of their owners, or permitting more than a prescribed number to assemble. . . [23] But the peaceable and habitual assembling of white persons, in the same or any other number, at the grocery for the same purposes, and who even indulged in the same practices as those proven against the slaves, it is believed would not constitute the house a public nuisance, as such assemblies and indulgences would not be of the same evil consequences to the public, and are not prohibited by law, unless the sale of liquors by retail, and the tipling and drinking in the house, should constitute it a tipling house, . . an indictment . . should distinguish and charge that they were slaves that assembled." [Ewing, C. J.]

Bowling v. Bowling, 6 B. Mon. 31, September 1845. "the widow finding that the negro woman, Hannah, devised to her, was high tempered and unmanageable, and frequently ran away, delivered her to her son-in-law and daughter, as more capable of managing them [*sic*]; also delivered to Hord and wife a negro girl, . . Both Hannah and the girl frequently ran away from Hord, and making efforts to escape to Ohio, and Hannah succeeding once or twice in getting to Cincinnati, they were apprehended at great costs and expense, and much trouble to Hord, who after several escapes, sold Sarah to some person unknown, who removed her out of the State, and sold Hannah to one Anderson, whose executor sold her to some one, who removed her to Mississippi, where she died, leaving two children living."

Allison (a man of color) v. Bates, 6 B. Mon. 78, October 1845. Allison "claims his freedom under the will of John Bates, . . The Circuit Court having decided against his right to freedom, he has appealed to this Court." Bates's will: "I also give to my said son-in-law and daughter, in addition to the eight negroes formerly given, the following, to-wit: James, Wesley, John, Berry, Emely, Bill, Mariah and her child, also, Stephen, Margaret, and Green, to serve them eight years and then to be free, also, little Green absolutely, unless redeemed by Mrs. Todd, and should Hannah, Margaret, and Green desire to stay near my son-in-law, I desire that he shall let them have a spot of land to make a support upon. . . [79] I also give my nephew, S. W. Bates, Joe, Nash and his wife, Berry and his wife, Lewis Davis and his two children, Cuffee, and Allison, Abraham's wife and his two children, Elsey, Clabourn, Theophilus, and Betsey, Rhoda's children, Isaac Butcher and his wife, to serve eight years, and Rhoda I set free."

Judgment of the circuit court reversed: "Allison . . is entitled . . to his freedom after the service of eight years, and also, that all the persons named [Berry, Jane, Clabourn, Theophilus, Cuffey, Elsey, and Wesley,] in the agreement to await and abide the decision in the cause of Allison

against Bates, are entitled to their freedom after the expiration of eight years service, said eight years to commence running at the death of the testator." [Ewing, C. J.][1]

Anderson v. Irvine, 6 B. Mon. 231, October 1845. Held: [233] "the slaves allotted and delivered to the widow, were not liable to a seizure under an execution against the administrator *de bonis non*, as assets in his hands. . . [235] it is not the duty of the administrator to convert the slaves into money, unless it be necessary for payment of debts; but the widow and heirs have a specific interest in them, which, like the interest of the legatee of a specific chattel, becomes a perfect title by the mere assent of the administrator." [T. A. Marshall, J.]

Coleman v. Commissioners of the Lunatic Asylum, 6 B. Mon. 239, October 1845. The lunatic [241] "was kept at the charge of the Commonwealth for about five years, when the Commissioners of the Asylum discovered that during all that period he had three valuable negro men slaves, whose hire was worth annually, much more than enough to support him,"

Rachel (a girl of color) v. Emerson, 6 B. Mon. 280, October 1845. "Waggener, at the September term of the County Court . . appeared in open Court, and relinquished all right, title, and control over Rachel [a free girl of color], who was bound to him by the Court, . . 1837, and desired that the Court might take said girl under its jurisdiction and control. Whereupon, by the order of the Court, without summons or notice to the next friend, or person with whom the child resided, as required by the statute, Rachel was bound to Emerson until she arrived at the age of eighteen, to learn the art of house keeping, . . her counsel assigns for error, that the statute has not been pursued in the summons required, nor does the indenture contain a covenant to teach the girl how to spell and read."

Held: "The covenant . . is dispensed with by the statute of 1843. . . [281] She, though colored, has a right to be heard by her next friend or person with whom she resides, and the order should show that the one or the other . . was summoned or appeared in Court." [Ewing, C. J.]

Lafon v. Chinn, 6 B. Mon. 305, November 1845. "Chinn sued Caldwell and Lafon as co-partners in a bagging factory, . . for the services of a slave hired by Caldwell, to work in the factory, . . and for medical services rendered by himself as a physician, in attending the hands in the factory."

Williamson v. Williamson, 6 B. Mon. 307, November 1845. "Patrick Williamson, Sr., by his will directed" that "a negro girl of 14 years of age . . [308] be purchased by four of his children . . for the children of said John, to be put in the care of Patrick Williamson, the testator's son and executor, to see that she should not be sold, hired nor removed out of this State until the youngest child become of lawful age, then with two other slaves devised in the same manner, to be equally divided between them. The slave never was purchased."

[1] See Stephen *v.* Walker, p. 388, *infra*; also John *v.* Walker, *ibid.*

Darcus, etc. (free persons of color) v. Crump, 6 B. Mon. 363, April 1846. " Jacob Cox, a man of color, by his last will and testament, devised to his wife, Mary, during her life or widowhood, one-third of all his estate . . and at her death or marriage, to go to his two daughters, Darcus and Charlotte. The other two-thirds of his estate, he directed his executors to sell, and with the proceeds to purchase and manumit his two mentioned daughters, and the residue, if any, to go to them. The will was admitted to record . . in 1821, and Daniel Crump, one of the executors therein named, was duly qualified as such. The testator's wife was a slave, and died before he did; his daughters were also both slaves at his death, one living in Virginia, and the other in Tennessee. The executor sold all the estate, consisting of about one hundred and fifty acres of land, besides personalty. He purchased, and in 1823, emancipated Charlotte. Darcus was also purchased and emancipated in 1826. In 1841, the two daughters exhibited their bill against the executor . . [364] The Court decreed the complainants one third of the land, but subject to a lien in favor of the executor, of $442.63,"

Held: I. [365] " The provision for the complainants may . . be regarded as an executory devise, and by which a portion of the testator's estate was to vest and did vest in them as soon as they obtained their freedom. . . [II.] [366] the sale of the land was fraudulent, . . The sale was made at an unusually early hour in the day, . . But few persons had arrived when the land was sold; . . The whole tract sold for $1,210; was purchased in by Glover for the executor. . . [367] it was worth from three to five hundred dollars more than the executor paid for it." The decree of the circuit court [368] " is erroneous in awarding to the executor any thing against the complainants." [Breck, J.]

Orchard v. David (a free man of color), 6 B. Mon. 376, April 1846. Will of Alexander Orchard, dated 1845: [377] " I will that my two negroes, David and Jenny, have the privilege to bid and purchase themselves and their child, Mary Jane, provided they comply with the terms of sale in giving security for the amount of the debt, and the law, in giving security for their good behavior, etc." Codicil, dated December 4, 1845, attested by only one witness: " provided that in the event that my man David, and Jane his wife, pay or cause to be paid, four hundred dollars, in lawful money of Kentucky, they and their child be set free, as is written above, to have the same credit as is common at executors' sales, say twelve months."

Held: " the slaves in question are entitled to their freedom, upon the payment of the sum specified in the codicil. . . [378] The sum to be raised by the bid of the slaves or the charge upon them, was, by the will, to be divided among the testator's children; surely he possessed the power, by a codicil, executed as aforesaid, to take the excess over four hundred dollars, from his children and give it to the slaves." [Ewing, C. J.]

Oldham v. Bentley, 6 B. Mon. 428, April 1846. Bentley of Madison County, " being under the necessity of selling [' a family negro slave '] . . he was willing to sell her to a citizen of Madison county, to be kept in his or her family, for his or her own use, but was unwilling to sell her to be

taken by slave dealers to the south; and that the defendants being well apprised of this, . . falsely represented that they . . wished to purchase her for . . their own use, in Madison county, . . that said slave was worth, and the plaintiff could have sold her to slave dealers to be taken to the south, for $400, but would not . . that the plaintiff, giving credit to the representations aforesaid, . . sold . . said slave to them, . . for the reduced price of $325; . . but very shortly after the purchase, [they] sold her to a slave dealer or his agent to take to the south, and thereby deceived and defrauded the plaintiff and caused great distress and anxiety of mind in him and his family. . . [429] a verdict having been found for the plaintiff, a judgment was rendered in his favor for $100, the damages assessed by the jury."

McFarland v. McKnight, 6 B. Mon. 500, June 1846. "These suits [1] are against the owners and master of the steamboat *Versailles*, for having taken on board, in the Circuit of Jefferson, of this State, and transported beyond the limits of this State, a female slave called Ruthy, the property of McKnight, and a man slave [her husband] called Thornton Blackburn, the property of Oldham. . . [503] The owners of the slaves resided in Louisville, the slaves ran away from their owners, and on the next day, the steamboat *Versailles*, having just before left the port of Louisville upon a trip up the Ohio, upon being hailed by these negroes from the Indiana side of the river, was checked in her headway by taking off the steam, and whilst the boat *Versailles* was floating in the Ohio river, but a short distance above Jeffersonville, (which town is opposite to Louisville,) the two slaves were taken on board, registered as passengers on the books of the *Versailles*, conveyed on board to Cincinnati, and there landed, whereby they have been lost to their owners." The steamboat belonged to the port of Wheeling, in Virginia.

Held: [509] "The commencement of the offence is by the taking on board, from the shore of the Ohio river, opposite to this State, and is consummated by the transportation on board. . . [510] The State of Virginia ceded to the United States the territory lying northwest of the Ohio river. . . By the erection of Kentucky into an independent State, . . Kentucky, as a State, became invested with the domain, sovereignty and jurisdiction over the Ohio river, from its mouth up to Big Sandy river, as fully as formerly held and possessed by the State of Virginia. . . the whole power, legislative, executive and judicial, belongs to the State of Kentucky, over the waters of the Ohio river to the northwestern shore or bank, along its course from the mouth of Big Sandy river to the mouth of the Ohio river; . . [514] decreed, that the surviving defendants . . pay to the plaintiff, Virgil McKnight, four hundred dollars." [Bibb, Ch.]

Catholic Church v. Offutt, 6 B. Mon. 535, June 1846. Offutt's will: [536] "The balance of my slaves to be subject to my wife, and if she cannot manage them, she may sell them."

Rowe v. Williams, 7 B. Mon. 202, July 1846. [203] "the ten slaves . . were given up . . to be sold in satisfaction of the said executions"

[1] Prosecuted under the statutes of 1824, 1828, and 1837.

but the sheriff " permitted them to remain in the possession of . . [their owner] after levied on, without taking a forthcoming bond for their delivery on the day of sale, as required by law, and went on to advertise a sale, but before the day fixed, the slaves were removed and carried off . . out of the Commonwealth;"

Commonwealth v. Young, 7 B. Mon. 1, September 1846. " indictment against Young for importing, to this State, six slaves, contrary to the provisions of the Statute of 1833," [1]

Wooldridge v. Lucas, 7 B. Mon. 49, September 1846. " the plaintiff was . . sentenced to a confinement in the Penitentiary for two years, for felony; . . before his pardon and discharge, one of his sons sold the slave in question, which before his conviction was his property,"

Held: the slave reverted to him on his discharge.

Tibbs v. Tibbs, 7 B. Mon. 112, October 1846. Held: a widow renouncing the provisions of her husband's will, is entitled, under the 24th section of the statute of 1797,[2] to only one-third of the slaves of which the husband died possessed, for life, though there be no children.

James v. Langdon, 7 B. Mon. 193, October 1846. Roper was [194] " a credulous, feeble minded, very old and illiterate man, and was greatly alarmed at a suit . . for alimony by his second wife, . . his neighbor . . increased his alarm by telling him that his wife would recover one third of his entire estate, including a favorite family of slaves, whose emancipation at his death, had been long the fixed purpose of his heart, . . [196] entertained for near twenty years," [193] " Two deeds of emancipation of David Roper's slaves [Hector and Lucy, and their children], one dated . . 1834, the other . . 1837 " were sustained. By his will, 1839, " he bequeathed all his personal estate to two of the slaves whom he had emancipated by the deeds, the father and mother of the residue. . . [196] Lucy and Hector, his two elder slaves, were attentive to his wants and he was much under their influence and control, and there is good reason to believe that Lucy used means to prejudice and embitter his mind against his children," A jury found against the validity of the will.

A [199] " new inquiry directed " because [197] " some of the instructions given by the Court . . were misleading," [196] " Had the jury found against the will, unembarrassed by the instructions of the Court, we should not have felt disposed to disturb their verdict." [Ewing, C. J.]

Thomas v. Davis, 7 B. Mon. 227, October 1846. Pryor [229] " states that in the month of November, 1843, he was upon the Pharsalia Race Course, in the State of Mississippi, and heard the plaintiff tell the defendant that if he would take a negro boy the defendant had to New Orleans at the approaching races, and bet him on Lucy Dashwood the day she ran, the plaintiff would go his halves, and pay the defendant two hundred and fifty dollars if he lost said negro on said race; that afterwards, in December, 1843, at the Meterie Race Course near New Orleans, on the day of

[1] 2 Stat. Laws 1482.
[2] 1 Stat. Laws 660; 2 Stat. Laws 1544-5.

the race when Lucy Dashwood ran, the defendant called on deponent a few moments before the race, and told him that he had bet the negro boy on the race; that deponent at same time asked the defendant if he considered Davis in, and he replied he did; that Lucy Dashwood ran and won the race. . . Defendant . . won $500 on the race,"

Held: [230] " the plaintiff was entitled to a moiety."

Irvine v. Rousseau, 7 B. Mon. 233, November 1846. [234] " Charles, when an infant, was a sickly child, that he belonged to Nelson R. Owen, the father of Sarah Ann; that he, by parol, gave Charles to his daughter, Sarah Ann, then an infant of eight or ten years of age, if she would nurse and take care of him; that she did nurse and take care of him and he recovered; that afterwards, he was called in the family, Sarah Ann's, as proven by members of the family, but others, who were intimate in the family, had never heard him so called; that he remained in the possession of and under the control of N. R. Owen, as the ostensible owner, during his life, and in the possession of his widow after his death, as his administratrix, . . Irvine purchased Charles under execution against the estate of Owen, for a debt originating before the pretended gift of Charles."

Held: [235] " Such a gift . . must be pronounced absolutely fraudulent and void as to Irvine, the purchaser, and as passing no title, as against him at least, to the donee." [1]

Kendall v. Hughes, 7 B. Mon. 368, November 1846. An action " to recover two slaves, a woman and her infant child, which Kendall had purchased under executions "

Commonwealth v. Stout, 7 B. Mon. 247, June 1847. " The indictment . . was found under this statute,[2] and charges that the defendants attempted to remove from the Commonwealth of Kentucky, Nancy, a person of color, having a suit pending for freedom in the Louisville Chancery Court. The knowledge of the defendant of the pendency of the suit for freedom is not alledged,"

Held: [249] " this indictment is insufficient on account of the absence of this allegation."

Hardin v. Smith, 7 B. Mon. 390, June 1847. " In 1823, George Smith being then possessed of a tract of land of 100 acres, sixteen slaves, old and young, . . was found to be a lunatic . . [398] the charge of $100 for trouble and expenses incurred . . in recovering the slave, Jackson, who had run away while the action of detinue, in which he and the two others were recovered, was pending, should not have been allowed."

Graham v. Sam and others (*persons of color*), 7 B. Mon. 403, July 1847. " This bill in chancery was exhibited by Sam and fourteen others, persons of color, some of whom were infants, and sued by Sam as their next friend, . . claiming the benefit of the provision made for them by . . [404] Graham, their former master, in his last will. . . ' Lastly,

[1] Stat. Law 1479.
[2] 3 Stat. Laws 225.

I will that my negroes should go to Liberia, and for that purpose I now give them dispensation of ten years, viz: until the 1st of January, 1850, during which time they will be hired out annually, by my executor, but not to the highest bidder; the proceeds of said hire kept as a separate fund. Now should any or all of those slaves become willing and give themselves up to embark for Liberia, I do hereby emancipate all such for that purpose. That each grown emigrant be furnished with a decent suit of clothing and one hundred dollars cash, as an outfit, to be furnished out of the proceeds of the hires above kept as a separate fund for the purpose, if need should so require, if otherwise, at the expiration of the ten years as above, on the 1st day of January 1850, it is my will that they be equally divided amongst all my grand children by valuation, then living.' The complainants alledge that they elect to go to Liberia, and give themselves up for that purpose, and pray that the Chancellor will cause the provisions in the will for their benefit to be enforced and carried out according to the benevolent intention of the testator. The defendants resisted upon various grounds, the relief sought. The Court below decreed that the complainants should be permitted to depart immediately, or as soon as might be practicable, for Liberia, and that neither the executor or others should interpose any obstacle to prevent their emigration to that country; that the executor should pay to each of the grown complainants, one hundred dollars, and furnish them with clothing as directed by the will. The Court further decreed that the complainants were entitled to their hire subsequent to the exhibition of their bill, and their election therein to embark for Liberia, and directed the same to be paid over to them; and that out of this fund the young as well as the old, should be properly and amply furnished with clothing for their removal."

Held: I. [405] "it was not the intention of the testator that the complainants should wait till the expiration of ten years before they could exercise the privilege of electing and surrendering themselves up to embark for Liberia. It is manifest, in our opinion, that he intended to give them the privilege to elect, at any time during the ten years, and that the privilege should continue until the expiration of that period, and then cease. . . Upon their making the election and actually embarking, their emancipation should be regarded as having relation back to the death of the testator. This construction, which we think is very clearly authorized, obviates the objection that some of the complainants have been born since the death of the testator. If the freedom of the mother, upon her election and embarkation, relates back to the death of the testator, it would follow, of course, that the child would be free, and ought, not only in view of the clearly presumed intention of the testator, but in obedience to the dictates of humanity, to be considered as embraced by the provision and to follow the destiny of the mother. It is evident the testator intended that infants as well as adults, should enjoy the benefit of the provision. It was his will that all should go to Liberia, and we think the Court below was right, if the children were too young to exercise the privilege of election, in permitting the parents to do it for them, and more especially as the election was such as the Chancellor would approve. . .

[II.] [406] the widow can interpose no right of dower as an obstacle to the execution of the will . . [III. The testator] [407] evidently intended to leave the consummation of his purpose in the discretion, and indeed at the option of the complainants. The Court, therefore, if the executor under the circumstances was not deemed a suitable person, should have appointed some other person as an agent or commissioner, to make suitable arrangements for the complainants for sending them to Liberia. The funds which the complainants were entitled to, should have been directed to be paid over to such agent, with directions, after furnishing the necessary supplies for their emigration, to pay it over to them upon their embarkation. Bond and surety from such commissioner, for the faithful performance of the duties which the Court from time to time might enjoin upon him, should be required. The Court should retain the control of the whole case till the devise in regard to the complainants was fully enforced. Should a proper opportunity for conveying the complainants to Liberia not immediately occur, the Court should retain control over them, and have them hired out, and proper care taken of them till such opportunity should be presented. The complainants would of course be entitled to their hire." [Breck, J.]

Chisholm v. Ben, Celia, etc. (*persons of color*), 7 B. Mon. 408, July 1847. The county court rejected "a paper offered for probate as containing the substance of the will of Benjamin Chisholm, . . the judgment of the County Court was reversed [by the Circuit Court], and a provision giving to Mrs. Chisholm for her life, the tract of land on which Chisholm had lived, and also six slaves, Ben, Celia and others, and emancipating them at her death, was ordered to be recorded as the will of Chisholm. . . [418] there appears . . near two years before his death, to have been some dissatisfaction on the part of Mrs. Chisholm, and a short separation between herself and husband in consequence of his having made or intended to make a will emancipating his slaves, . . her dissatisfaction seems to have arisen [rather] from his emancipation of one or two slaves which she claimed, than of his freeing the others," The judgment of the county court was affirmed by the Court of Appeals.

Naylor v. Hays, 7 B. Mon. 478, July 1847. Naylor "having in his hands as Constable, an execution against Dick Hays, a man of color, and having sold, in satisfaction thereof, various articles of personal property," David Hays, the owner of Dick, brought action against Naylor for the property seized. [479] "many years previously, the slave and his master entered into a written agreement, and deposited it with the witness, stipulating for the freedom of the slave, upon the payment of a certain sum, the amount of which was not recollected by the witness. That the writing was some time thereafter surrendered to the parties, and nothing had been known of it since. It was also proved that for eight or ten years before the trial, Dick has been going at large, trading for himself, and in every respect acting as a free man, the plaintiff not exercising any control over him, nor doing or saying any thing which indicated that he was still his slave; but on the contrary, declaring that he had nothing to do with him, and using language calculated to create the impression that he was free."

Held: "third persons, who were strangers to the relations actually subsisting between the plaintiff and Dick, had a right to rely upon the conduct of the plaintiff as creating a presumption of Dick's freedom, and as estopping him from denying the fact, so far as they were concerned, unless he made it appear that they knew at the time they dealt with Dick as a free man, he was in reality a slave. If he were still a slave, and had never been emancipated, the conduct of the master was a palpable violation of the law, and to permit him under the circumstances, to hold others to an accountability as if Dick were a slave, whilst he was treating him as a free man himself, would enable him to take advantage of his own wrong, and thereby perpetrate a gross fraud upon the community." [Simpson, J.]

Mahan v. Mahan, 7 B. Mon. 579, September 1847. [580] "after the decease of myself and wife, . . I give unto the said Jas. C. Mahan, my two black boys, known by the names of Sol and Isaac, but it is expressly understood we retain both the use and right of said negroes during our natural lives."

Strader v. Graham, 7 B. Mon. 633, October 1847. See Graham *v.* Strader, p. 365, *supra.*

Swigert v. Graham, 7 B. Mon. 661, October 1847. "Edmund, the plaintiff's slave, . . while employed as a hand, hired for the service of the [steam]boat, was drowned in the Kentucky river, in August, 1844. . . [666] an order was given . . that the hands should go on shore and bring the boat with the wood. . . soon after an alarm was given, and they . . were seen in the deep water, not far from shore, between the bar and the flat boat. Edmund was nearest the shore, and as some of the witnesses say, safe in water not waist deep, when the alarm was made on account of the other two, and a cry from some one on the boat for Edmund to save one of them by name. On this he seems to have turned back and was drowned,"

Waller v. Cralle, 8 B. Mon. 11, December 1847. [13] "The slaves in controversy had been removed from this State by the directions of the plaintiff, under suspicious circumstances. They were taken by L. J. Cralle in the night, for the plaintiff, who is his mother, and hurried along with great rapidity, for the purpose of removing them to Virginia, and were in the State of Tennessee at the time they were overtaken by Waller, who there purchased them. Another creditor sued out an attachment in Tennessee, and had it levied on the slaves as the property of Long. . . Finding that he [Cralle] would be unable to withdraw the property from the reach of Long's creditors, he finally sold the slaves sued for to Waller, at a price agreed upon by the parties, and took from the purchaser a written instrument, securing the right to re-purchase the slaves at the same price, within the period of eighteen months."

Parker v. Commonwealth, 8 B. Mon. 30, December 1847. The mistress of the slave Clarissa was indicted for permitting her slave to go at large and hire herself out, and found guilty.

Held: "The law [1] is equally violated, whether the owner give the permission to the slave without promise or compensation, or is induced to do it in consideration of stipulated wages to be paid by the slave." [Simpson, J.]

Hadden v. Chorn, 8 B. Mon. 70, December 1847. [72] "the number of members [of the Baptist Church of Christ at Lulbegrud] on the 3d Saturday in July, 1843, white and colored, was 136 or 137. That of this number, 68 were white members;"

John or Jack v. Moreman, 8 B. Mon. 100, December 1847. "The last will of John Stith contains this provision: 'I desire that whenever my negro woman Susan, and her two sons, John and Nathan, consent to go to the Colony of Liberia, that they be permitted to go. Should said woman not consent to go, if after the said two boys, or either of them, shall have passed the age of twenty-one, should they consent to go, that they shall be permitted to go.' John having attained the age of twenty-one, filed this bill, alledging that he had elected to go to Liberia, and that he had been taken by force by Jesse Moreman and Richard Stith, who were runnnig him off, for the purpose, as he believes, of selling him into slavery. He prayed the Court to take charge of him, etc. Moreman and Stith, and the executrix of Stith, were made defendants, and contested the right of the complainant to freedom, or to go to Liberia. The Court below . . decreed, that John had the right to go to Liberia, and that the Court had the power to arrange for his transportation; and accordingly appointed a Commissioner to take charge of him, and to hire him out until the further order of the Court, or until an opportunity should present for a passage to Liberia, in which event the Commissioner was to make arrangements for his going. The Court was also of opinion that the complainant was not entitled to his freedom upon his mere election to go, but upon his actually going to Liberia. . . [101] further decreed the hire of the complainant after he exhibited his bill, up to the rendition of the decree, about two years, during which time he had been hired out by order of the Court,"

Held: "The Commissioner should have been directed to collect the hire, and after setting apart such portion thereof as might be deemed reasonable for discharging any necessary expenses incurred by the complainant in the prosecution of this suit, including compensation to the Commissioner, the residue, and the proceeds of his labor afterwards, should be a fund for paying the expense and securing to the complainant a comfortable passage to Liberia; and upon his embarkation, the overplus, if any, should be paid over to him. . . The complainant had an inchoate right to freedom as soon as he made his election to go to Liberia, and in the event of his going, should be regarded as *free* from the time the election was made." [Breck, J.]

Page v. Carter, 8 B. Mon. 192, January 1848. "The plaintiff, (a free person of color,) having been bound as an apprentice to the defendant . .

[1] Act of 1802 (2 Stat. Law 1480).

brought this suit after the expiration of his term of service, for a breach of the stipulations contained in the indenture." The jury found a verdict for the defendant.

Held: "The verdict was wholly unsustained and unauthorized by the evidence. . . [193] a new trial should have been granted. On the trial had in the Circuit Court, the defendant offered to introduce a man of color, as a witness, to testify in his favor against the plaintiff. The witness was rejected. The counsel for the defendant desires this Court, in the event of a reversal, to pass upon this question. . . An act . . passed in 1798,[1] contains the following enactment, which is still in force, viz: 'No negro, mulatto or Indian, shall be admitted to give evidence, but against or between negroes, mulattoes or Indians.' This seems to confine such testimony to suits between the persons named, and to proceedings by the Commonwealth against them. . . As the plaintiff . . could not rely upon such testimony, if the defendant had the right to do it, the right would not be reciprocal. . . the Legislature should not be presumed to have intended to produce such want of reciprocity" [Simpson, J.]

Miller v. Porter, 8 B. Mon. 282, January 1848. The owner of a runaway slave made a contract with "the county jailer, by which the latter, for a reward to be paid, undertook to receive and keep safely in the public jail, the runaway slave then in possession of the owner, . . [284] there was . . but one other person confined in the jail, . . the runaway slave and the other prisoner, who was a slave confined upon a charge of a heinous crime, actually made their escape,"

Held: the contract [282] "is contrary to public policy and to the law, and therefore, cannot be the basis of a recovery against the jailer . . [283] The running away of a slave is not a public but a private offence, the prevention and punishment of which the law leaves to the owner, without making any provision in aid of his rights, except that when a runaway slave is taken up by a stranger, he may be placed in a county jail, where he may be reclaimed by the owner; or if not reclaimed within a certain period, may be sold for his benefit." [T. A. Marshall, C. J.]

Dickey v. Thompson, 8 B. Mon. 312, February 1848. "M. W. Dickey borrowed from Charles Thompson a large sum of money, in 1833, and to secure the payment thereof, executed to him a mortgage upon certain lots in Georgetown, and two slaves, John and Leah. In 1834, Dickey sold, by absolute sale, the slave John, to Morehead, who the next year, sold the same to T. S. Theobald. In 1837, Dickey, by like absolute sale, sold certain tavern lots embraced in said mortgage, to Herndon, and in like manner, the slave Leah was sold to Isabella Dickey. Numerous payments having been made on the mortgage debt, but a considerable residue remaining unpaid, in 1840 Thompson filed his bill against the representatives of Dickey, the mortgagor, and against the vendees and possessors of the several parcels of property sold as aforesaid, to foreclose the mortgage and sell so much of the property as was necessary to pay the mortgage debt. The Chancellor below decreed a sale of so much of the

[1] 2 Stat. Law 1549.

property as was necessary to pay the residue of the debt and costs, first selling the slave Leah, purchased by Isabella Dickey, as the last parcel sold by the mortgagor or his representatives; next the tavern lots, and lastly the slave John, in the possession of Theobald, as the first parcel of the mortgaged property sold by the mortgagor."

Held: [314] " the burthen of the mortgage debt should not have been thrown exclusively upon the last purchasers, but should have been distributed ratably among all, according to the value of the property held by each. . . [317] by reason of the fluctuation in the value of property, the standard of value, if fixed at the date of the several purchases, might be very unequal. A slave in his prime at the date of the mortgage, might be worn out at the time of his purchase, or when the mortgage was foreclosed, and one who was young and of little value, might at the two latter periods, be greatly increased in value. So a female slave who had no issue at the date of the mortgage, might or might not have a child or children at the date of the purchase, and a numerous brood at the time of foreclosing the mortgage. . . it would seem to us to be the most just and equitable, as a general rule, to estimate the value of each parcel at the date of foreclosure." [Ewing, C. J.]

Bull v. McCrea, 8 B. Mon. 422, June 1848. Action brought " by E. McCrea, a free woman of color, against N. Bull, upon an alledged promise of Bull to support her during her life, . . [426] she had been in the habit of doing various sorts of labor or service for others, and that she was a healthy woman of thirty eight or forty years of age. And upon a compromise and reconciliation of a quarrel between her and the defendant, he promised to support and take care of her during life, if she would release him from her claim, . . amounting at most, to six or seven hundred dollars,"

[425] " conceding, what a part of the Court is greatly inclined to doubt, that the jury was authorized to find that a continuance or renewal of illicit intercourse between the defendant and plaintiff, formed no part of the consideration of the defendant's promise, we are of opinion that the verdict giving damages at the rate of $200 a year for the failure to support the plaintiff, was based upon an entire misconception of the legal effect of the contract " [T. A. Marshall, C. J.]

Mullins v. Wall, 8 B. Mon. 445, June 1848. " Cain and Dorcas, persons of color, have attempted to establish their right to freedom, under a paper executed by their former owner, Rebecca Mullins, and which, after having been offered for probate as a will, in the county Court, and there rejected, was destroyed by B. Mullins, the subscribing witness, who was also one of the two heirs of the decedent. There is no doubt, upon the evidence, that Rebecca Mullins did execute a paper intended to emancipate her slaves, and which, if effectual, would have made Cain and Dorcas free. . . [447] the slaves were the only property of the decedent; that her two brothers were, or claimed to be her only heirs; that they were averse to the emancipation of the slaves; and yet, that they were the only witnesses to the instrument executed for that purpose, and which, according to an intimation in the evidence, was written by that one who stated in Court

that he had not signed it in the presence of his sister, but who may nevertheless, and without the commission of perjury, have signed it under such circumstances as that the law would adjudge the attestation to have been in her presence. . . It further appears, that notwithstanding the rejection of the will, the eldest of the negroes intended to be emancipated thereby, and who was the mother of the others, brought an action against one of the brothers, which was defended by both, in which she established her freedom. Upon which she took her children to live with her, and all were for some time regarded as free. But the mother having died in a year or two, the brother who had offered the will, asserted a claim against his sister, which he had previously disavowed, and procuring a stranger to become administrator for the purpose, although he had at first told the Court there was no need of an administrator, obtained a judgment against him for $100, and had the negro children taken in execution; that they were all, three in number, purchased for eleven years for the debt; that the other brother and witness, whose testimony had defeated the probate, proposed at this sale that he and a third person should purchase them and run them off to a distant State, where they could not establish their freedom. These and other circumstances show that there is little probability that there was a fair trial of the question upon the will in the Court of probate, and that the beneficiaries then under disability [one of whom was an infant of tender years, and the other not born when the paper was presented as a will], should not be precluded by the rejection of the will, when it was attested by their antagonists in interest, offered for probate by one of them, and defeated by the general statement of the other, without, so far as appears, any cross examination which might elicit the particulars, or any person present who was interested in establishing the will. And as each of these interested witnesses showed himself capable of resorting to improper devices for the purpose of injuring the beneficiaries under the will, we think there is fair ground for the presumption, that the instrument subscribed by both as attesting witnesses, was, as it appeared to be, executed and attested in proper form of law. . . [449] Wherefore, the decree establishing the right of Cain and Dorcas to freedom, is affirmed." [T. A. Marshall, C. J.]

Johnson v. Johnson, 8 B. Mon. 470, June 1848. Will of Job Johnson: "I give unto Margaret Johnson, my beloved wife, the negro girl Lytha, to wait upon her as long as she lives, and in case of the death of my wife before Lytha arrives at the age of twenty-one, her services shall be rendered as is hereinafter directed. If my wife dies before my negro girl Lytha arrives at the age of twenty one, she shall also be hired out, year by year, until she arrives at that age, and then she shall be free." The widow lived "after the negro girl Lytha had attained the age of twenty one, but is now dead. After the death of the testator, and before the death of the widow, Lytha had seven children."

Held: I. Lytha is free. II. [471] "The children having been born when their mother was a slave, are themselves slaves, according to the maxim *partus sequitur ventrem*." III. [473] "the children must belong to the representatives of Margaret Johnson, deceased, inasmuch as no

remainder was created nor reversionary interest retained. . . [474] In this case the absolute property of the slave passed to the tenant for life. The slave herself is given, not merely her time and services." [Simpson, J.]

Stewart v. Wyatt, 8 B. Mon. 475, July 1848. "Alexander Stewart, deceased, by his last will and testament, gave his negro woman, Priscilla, to his wife, Catharine, during her natural life. He, in a subsequent part of his will, made the following provision, viz: 'My will and desire is, that my negro woman, Priscilla, remain with my son Isaac, until she is forty five years old, and that she then be free, and that her three children, viz: Mary, Jane and Ann, be valued, and that the amount of their valuation, added to the residue of whatever estate I possess at my death, not heretofore disposed of, shall be equally divided between all my children. . . The widow died shortly after the testator. After her death and before the period had arrived when Priscilla was to be free under the will, she had three [more] children."

Held: these children belong to Isaac. [476] "The devise to Isaac does in fact, vest in him an estate in remainder; the slave [Priscilla], in the language of the will, is to remain with him. He became the owner upon the death of his mother. His right was not subject to any qualification but that of time. The duration of his estate was limited, but in all other respects it was absolute and unconditional, from the time of its commencement. . . [As] [477] the testator reserved no interest in her, the children born during the continuance of the estate in remainder, belong to the devisee in remainder." [Simpson, J.]

Hawkins v. Phythian, 8 B. Mon. 515, July 1848. Action "for the value of a negro boy slave, alledged to have been thrown from a horse, and by reason of the injuries thereby received, to have died."

Tom Davis (of color) v. Tingle,[1] 8 B. Mon. 539, July 1848. "In 1788, a slave named Harriet, then a small girl, belonging to the estate of John Ball, deceased, was allotted to the widow of the decedent as dower. The allotment was made by the County Court of Faquier county, Virginia. The widow removed to Kentucky about the year 1796. In the year 1808, she made a deed of gift of Harriet and other slaves, to H. R. Graham, her son by a second husband; which deed purported to transfer an absolute title in the slaves to the donee. Harriet is the mother of Tom, the present plaintiff. In 1826 they were both sold under an execution against H. R. Graham, and purchased by a free man of color, the husband of Harriet and father of the plaintiff; who afterwards, in the year 1834, liberated Tom by a deed of emancipation, regularly admitted to record in the Mason County Court. The widow of John Ball died in 1836, and shortly afterwards Nicholas Warfield, claiming Tom under a purchase from A. D. Orr, whose wife was one of the heirs of John Ball, took him into his possession and held him as a slave, until 1845, when he instituted this suit asserting his right to freedom. . . [542] It was proved that Alexander D. Orr and his wife, she being one of the children and heirs of John Ball,

[1] See Warfield *v.* Davis, p. 407, *infra*.

deceased, were present when the plaintiff was sold under execution and purchased by his father. That the sale was of the absolute property in him, and the price paid was his full value at the time, and that Orr and wife remained silent in reference to their interest in the slave, made no claim to him or any disclosure on the subject, nor any objection to the sale."

Held: Orr and his wife are [543] " bound by the sale," and Warfield, " So far as he derives title under Orr, . . is not at liberty to dispute the validity of the title acquired by the purchaser at the sale under execution," Tom's father, who [544] " became tenant in common with the other heirs, and had a right to the possession of the slave, even after the expiration of the life estate of the widow, and could emancipate him to the extent of his interest, a deed of emancipation by a part owner of a slave being effectual *pro tanto*: And the emancipation of a slave by two of three joint owners, or by any majority in interest of the joint owners, would of itself make him a free man. . . Still, however, the plaintiff notwithstanding his partial manumission, continues a slave, until his emancipation is made complete by the act of the other joint owners, at which time, and not previously, the partial manumission, enures to the benefit of the slave, and becomes operative. . . But the other heirs of Ball, . . [545] . . having asserted no claim to Tom since the death of the widow, and consequent termination of the life estate in 1836, although he had been emancipated two years previously, the jury might have presumed his manumission by them, notwithstanding he was wrongfully held in slavery by Warfield part of the time, as all presumptions should be indulged in favor of human freedom. There is, however, another aspect of the case, decisive in favor of the right of the plaintiff in error, to his freedom. His father, after he had purchased him and his mother, viz: in the year 1831, removed to the State of Ohio, took them both along with him, and resided there for the space of two years. His wife became dissatisfied, and he afterwards returned to this State, bringing his family with him. By his residence in Ohio, the plaintiff became free, and being once free, his return to this State did not make him again a slave. The residence of a slave, with the consent of his owner, in any of the States formed out of what was known as the North Western Territory, results in his freedom, by virtue of the ordinance of 1787," To be sure, " his father was not his absolute owner, there being other persons who had an interest in remainder. But it must be recollected that he was the proprietor, not only of an estate in him during the life of the tenant in dower, but also by his purchase at the Sheriff's sale of an undivided third in remainder. Besides having removed him to Ohio without objection, the consent of the other part owners may be implied from their failure to resist or oppose it. Indeed when the condition of Harriet and Tom, at the time of their removal is considered, the mother feeble and declining, and the child then but a few years old, sickly, delicate, and of but little value, no great sacrifice was made in giving such assent, it being, under the circumstances, but the mere dictate of humanity." Furthermore, the law of Ohio permitted Tom to enjoy his freedom " without regard to the rights of the reversioners. In this respect it differs from the law of this State, which will not permit the tenant for life by a

deed of emancipation, to destroy the right of those in remainder or reversion. When he became domiciled in Ohio, his right to freedom was vested," [Simpson, J.]

Willis (of color) v. Bruce, 8 B. Mon. 548, September 1848. [550] " there was an understanding between Willis and his colored friends [who were free] who purchased him from Mrs. Bruce, that they were to emancipate him when he should discharge, by the proceeds of his labor, the note executed by them for two hundred and fifty dollars, with the interest which should accrue thereon; but Mrs. Bruce was no party to this arrangement," She [549] " denies positively, that she ever entertained any desire for the freedom of the complainant, or that in making the sale to her co-defendants, such purpose was contemplated by her, . . She alleges that the plaintiff, whilst she owned him, had feigned sickness, when in fact, as her physicians informed her, he was not in the least unwell; that he had become idle and worthless, had rendered her no service, under the pretence of being sick, for upwards of a year; was insolent in his language and bearing towards her, in consequence of these annoyances and the advice of her friends, she had determined to, and did make sale of him. Instead of desiring his freedom, she was opposed to it, and was induced to sell at the low price she did, on account of his worthlessness and little value; . . The other defendants [Willis's two colored friends] state that Willis, by his representations, had induced the belief, he had the means to purchase and pay for himself. Supposing such to be the fact, they had applied [in 1844] to Mrs. Bruce . . who . . agreed to take for him three hundred dollars. Willis was then applied to for the money, when it was ascertained he had none, and no means of raising any. A subscription was set on foot for the purpose of obtaining his freedom, and the sum of fifty dollars raised and paid to his mistress, by one of the defendants; and after some fruitless attempts to get the balance of the price, the project was abandoned as hopeless. Some months afterward, learning that Willis was in jail, for using towards his mistress improper and insolent language, and would, in all probability, be sold and taken out of the State, they came to the conclusion to execute to Mrs. Bruce their note for two hundred and fifty dollars, to prevent him from being separated from his wife and children, and become the purchasers of him themselves, which was done. They intended to emancipate him whenever he repaid to them by his labor, a reasonable hire, and the amount they had to pay for him, . . [550] That they permitted him during the time they owned him, to procure employment wherever he could do so, he paying to them the avails of his labor, and the amount so received by them did not exceed a reasonable hire. And having learned that he threatened to run off, and was circulating reports among the colored population prejudicial to them, they solicited Mrs. Bruce to rescind the contract and take him back, as they were unable to pay for him, which, with some hesitation, she finally concluded to do, with the avowed determination to sell him, and send him to the South." Willis [548] " relies upon a receipt purporting to be executed by his two colored friends, as . . amounting, in effect, to a conditional emancipation. . . [551] It was executed by one only of the

two joint purchasers, although it purports to be the act of both of them. . . 'Received, Lexington, Ky., March 31, 1845, of Willis Johnson, eighty four dollars, being in part payment of the sum of two hundred and fifty dollars, for which sum, with interest, William and Samuel Warfield, have become responsible as the purchase price of said Willis, and which sum, with all interest and expenses, he is fully to refund to us, before our claim on him can be released. Wm. Warfield, S. Warfield.'"

Held: It is [551] "contrary to the policy of the law, and inconsistent with the relation of master and slave, to permit a suit to be brought by the latter against the former, for the enforcement of this or any other promise. . . [552] We do not . . deem it [the receipt] to be such an instrument of writing as the law requires for the emancipation of a slave, had it even been executed by both the owners. . . his idle and vicious habits and refractory spirit, defeated their humane purpose, . . [553] the decree . . dismissing his bill, is affirmed." [Simpson, J.]

Stephen (of color) v. Walker, 8 B. Mon. 600, September 1848. For facts, see Allison *v.* Bates, p. 372, *supra.* Held: Stephen is entitled to his freedom.

John, James, etc. (of color) v. Walker, 8 B. Mon. 605, September 1848. The plaintiffs brought suit, "asserting their right to freedom under the last will and testament of John Bates, deceased [1], against his executors. It appears that although the defendant, Walker, either as executor or devisee under the will, had the possession of the complainants and retained them in slavery after the death of Bates, yet they had been sold by him, placed in the possession of the purchaser, and removed out of this State, about two years previous to the institution of the present suit; and that none of the defendants in the suit, had the possession of the complainants, or any of them, or any right to them, since that period."

Bill dismissed without prejudice: the suit "should be brought against the person claiming ownership, or having the complainants in custody at the time of its institution."

Gatliff v. Rose, 8 B. Mon. 629, September 1848. "In 1833, Rose and her children and grand children, in all now numbering thirteen, instituted actions of trespass against Charles Gatliff, etc., claiming them as slaves, for the purpose of trying their right to freedom. The suits were commenced in the county of Whitely, and the venue afterwards changed to the county of Pulaski, where they were submitted to two juries, but neither was able to agree upon a verdict. They were afterwards moved to the county of Knox, and then to the county of Estill, where, in 1846, verdicts and judgments were rendered for the plaintiffs, . . [630] On one side, the testimony conduced to prove that the mother of Rose was a mulatto woman, and a slave, by the name of Jin, and as early as 1780, was owned by one James Lauderdale, in Bottetourt [*sic*] county, Virginia; that about 1784, Lauderdale sold Rose as a slave, then being from five to seven years of age, to one Gill, who shortly afterwards brought her to Garrard county, Kentucky; that Gill very soon afterwards sold her to one

[1] See Allison *v.* Bates, p. 372, *supra.*

Jones, and he to one Gwinn, who sold her to one McNitt, who, in 1799, sold her and her oldest child, to Gatliff, by whom and his representatives, she had ever since been held as a slave. On the other side, the testimony conduced to prove, that the mother of Rose was an Indian woman by the name of Jin, and that she was free. There was also testimony conducing to prove, that Lauderdale was the father of Rose, and on that account parted with her to Gill; and that she was to be free at the age of eighteen or twenty-one. But there is great contrariety in the testimony, . . There is, however, no confliction in the testimony in regard to the color of Rose. Witnesses on all sides speak of her when young, as being very white—as white as most white children through the country—and there is proof that she was sometimes mistaken while in the family of Lauderdale, for one of his children. It very conclusively appears also, from the testimony, that she has more or less Indian blood in her. . . [633] there is proof that Jones, Gwinn and McNitt, while Rose was held by them, spoke of her as a bound or indented Indian girl, to be free at the age of eighteen or twenty-one; and that they had purchased her time on indentures."

For error in one instruction, the judgments were [634] " reversed and the causes remanded, that a new trial may be granted " [Breck, J.]

Denton v. Franklin, 9 B. Mon. 28, December 1848. [30] " during the few last years of his life, . . he [the testator, who died in 1845] seems to have had no will of his own, but to have submitted implicitly to the dictation of a colored woman whom he had emancipated, and whose familiar intercourse with him, had brought him into complete and continued subjection to her influence. . . The gratification of the wishes of this colored woman, seems to be its leading object. The natural duty of providing for his own children . . was entirely . . disregarded."

Held: the will should be rejected.

Moore v. Ann (a woman of color), 9 B. Mon. 36, December 1848. In a suit at law, brought by Ann " for her freedom, a copy of an indenture of apprenticeship, bearing date in 1811, and purporting to have been executed by Moore, . . was offered in evidence, . . It is certified by the clerk of the County Court of Campbell county, State of Virginia, . . [38] Moore availed himself of his rights as master under the indenture, claimed and enjoyed all the benefits it conferred upon him, and should not therefore now be permitted to controvert the right of the apprentice to her freedom." [Simpson, J.]

Young v. Young, 9 B. Mon. 66, December 1848. An injunction had been awarded " restraining the sale of four slaves by the Sheriff, who had taken them under sundry executions . . The bill alleges, in regard to two of the slaves, ' that they were not only family servants peculiarly endeared to the surviving children and widow of the testator, and possessing, therefore, to them, a value far above their vendible price, but the condition of the title thereto would embarrass the sale of them under said executions, and strangers might, if so sold, purchase them at a great sacrifice,' "

Bill dismissed as the " legal remedy . . was ample,"

Burnsides v. Wall, 9 B. Mon. 318, January 1849. Robert Burnsides, by his will executed in 1839, devised to his wife "eight slaves by name, of whom one was to be free at a designated period."

Henry v. Commonwealth, 9 B. Mon. 361, June 1849. Indictment "for keeping a disorderly house, which is alleged to have been a common nuisance to the neighborhood where it was located. They were found guilty, and a fine of one hundred dollars assessed against them by the jury. The proof was, that a number of slaves had on various occasions, assembled in and around the house of the plaintiffs in error, . . and had been furnished by them with spirits, and were seen on several occasions upon the Sabbath day, in considerable numbers, playing cards in an adjoining lot in their possession. That the crowd was frequently so great on the public highway near the door of the house, that it was difficult to pass along it."

Ross v. Carpenter, 9 B. Mon. 367, June 1849. The slave "died, in consequence of injuries inflicted on him by Thos. Kennedy and others. . . [His mistress] brought a suit against the persons concerned in the trespass on the slave, and recovered a judgment against them for the sum of one hundred and ninety five dollars and costs,"

Bondurant v. Jeffries, 9 B. Mon. 381, June 1849. Will of Sarah Goodwin: "After my slaves, each of them, arrive at the age of thirty years, I wish them, should they so elect, to be free." The plaintiffs, "Justices of the Peace in . . Montgomery county, . . charge that at the death of Mrs. Goodwin, two of her slaves, Bristoe and his wife Joice, were old, and that they are now very infirm; . . and they verily believe and charge, will in a short time become chargeable to the county, and are at this time, not supported by the executor or devisees. They ask that some money due to some of the devisees, be enjoined and a suitable provision made, by requiring the defendants to execute bond with security, to maintain said negroes, and such of the other slaves as may hereafter become chargeable to the county."

Bill dismissed: [382] "It is very questionable whether old Bristoe and wife are free. They were fifty years of age when the will was made, and had, therefore, long before the death of their mistress, arrived at the age of thirty years. . . The old negroes have not yet become a charge on the county, and it is to be hoped, that the humanity of those for whose benefit they have toiled in their days of vigor and strength, will not cast them, in decripitude and old age, a useless burthen on the community." [Graham, J.]

Davenport v. Gentry, 9 B. Mon. 427, June 1849. "certain negroes, claiming to be free, procured the services of Gentry to aid them in the assertion of their claim, in which they were successful. For Gentry's services, and for some expenses to which he had been put in the prosecution of their suits, they promised [verbally] to serve him five years. On the 12th of April, 1837, (after the negroes had been declared free by the judgment of the Court,) Gentry sold to Davenport six of them for five years, for the consideration of five hundred dollars, . . Some of the

negroes . . were infants. . . [428] At the July term, 1837, of the Lincoln County Court, that Court, at the instance of Davenport, directed their Clerk to bind three of the young negroes to him as apprentices."

Held: [429] "as he [Davenport] could not compel an execution on the part of the negroes, of the contract which they had made with Gentry, and as most of them refused to render him service, he cannot be compelled to pay any more than the value of the services rendered." [Graham, J.]

Collins v. America (*a woman of color*), 9 B. Mon. 565, September 1849. "This action of trespass was brought by America, a woman of color, to assert a right of freedom against Collins, who claimed to be her owner, and Harrison, who had her in possession under hire from Collins; and the plaintiff having obtained a verdict, which the Court refused to set aside, the defendants have appealed to this Court for the reversal of the judgment against them. It appears that America had been, for many years, the slave of Collins, in this State; that after the death of Mrs. Collins, she had assisted greatly in nursing and rearing her infant daughter, who afterwards intermarried with one Woodrow, and resided with him at Hillsborough, in the State of Ohio, and that, in 1844, America went, by the authority of Collins, to the residence of his daughter in Ohio, and after remaining there a short time, (about two weeks or less,) returned to the house of Collins, in company, as it would seem, with Mrs. Woodrow, his daughter; upon the termination of whose visit to her father, America went back with her to Hillsborough, and, in a few days, again returned to the residence of Collins, as his slave, and continued subject to his control as such, until December, 1846, when this suit was brought. On her first journey to Ohio, America took with her one or more written notes, or passes, . .

[566] "Greenupsburg, June 26th, 1844. Mr. C. A. Garrett: My black girl America comes to Cincinnati, on her way to Hillsborough, Ohio, to stay with my daughter, who is very unwell: will you be good enough to procure a passage for her in the stage to Hillsborough, . .

[568] "it is certain that there was no intended renunciation of dominion on his part, and no disclaimer or rejection of it on hers, either in Ohio or in Kentucky, until some time after her return, when she asserted a right to freedom, as being founded on this temporary sojourn in Ohio."

Judgment reversed and the cause remanded: [576] "if America was sent to Ohio for a merely temporary purpose, (as that of aiding her master's daughter in her illness, or of visiting or staying with her on such occasion,) and was to return upon the accomplishment of the object, which was expected to be in a few days or a few weeks, and, if, under this authority, she did go and accomplish the object intended, and returned, as expected, she can claim no benefit from her absence, nor any privilege under the law of Ohio, and is not free, but continues to be a slave." "If the opposite principle should prevail, the slave owner upon the Ohio would be absolutely deprived of his right, by sending his slave across the river, and even by permitting him to go across on the most trivial errand, or on the most pressing emergency—though it were to

rescue an individual from murder or robbery, or to extinguish the flames which were consuming his neighbor's house, or to bring a cord of wood or a bucket of water." [T. A. Marshall, C. J.]

Brasher v. Kennedy, 10 B. Mon. 28, December 1849. "Brasher was the owner of two slaves, who ran away, and were conveyed across the Ohio river on a ferry boat, at a ferry established from Covington to Cincinnati. Kennedy was part owner of the ferry, but was not present when the slaves were conveyed across the river, nor does it appear that they were carried over with his knowledge or consent. . . The slaves made their escape, and were lost to their owner."

Held: Kennedy is not liable for their value.

Esham v. Lamar, 10 B. Mon. 43, December 1849. "The father of Mrs. Esham, having by a written instrument, vested in her and her four children, the title to a young negro girl, aged about ten years," they, in 1844, removed to Kentucky. Being [44] "in almost utter destitution," Lamar lent them twenty-five dollars, taking the girl as a pledge for the repayment of the money with interest [43] "within the eighth year from this date, . . but if they do not so redeem said negro in the said eighth year, . . then they are to forfeit all right to do so," [45] "The slave is proved to be worth at least $350. Her hire for a single year, would be nearly worth the sum advanced. Here is no delay. The only complaint, as to time, is, that the complainants have come too soon."

Contract rescinded, "decreeing the $25, with interest, to have been already fully paid by the use and services of the negro girl," [Graham, J.]

Adams v. Adams, 10 B. Mon. 69, December 1849. Will of Nathan Adams, dated 1835: "It is my will that, after my death, all my negroes, viz: Mary, about 25 years old and her child, now about two months old; David, about 23 years; Jacob, about 21; Fanny, about 13; Frank, about 9; Henry, about 8; Edward, about 7; John, about 6; and Joel King, about 2, shall be and they are hereby declared to be free upon the following conditions: that they be placed under the care of my nephew, James Adams, who shall treat them humanely and allow them fair wages for their labor, and when they have earned money enough to pay their own and the smaller one's expenses, and to pay the passage of the whole to the colony on the coasts of Africa and support the whole for six months after their arrival there, then they are to be sent to that colony where they will be free, but should any, or all of them, refuse to go to Liberia, as aforesaid, each and all so refusing, are to remain slaves for life and belong to my nephew James Adams." The testator died in 1845. Between the date of the will and his death, [70] "the negro woman Mary had two other children, named James and William. . . James [Adams] took possession of all the negroes, aforesaid, and kept them until his death. By his will he emancipates a negro man, (the only slave he owned, unless those in controversy be his,) and makes no allusion, in any part of his will, to any other slaves."

Held: [71] "James and William are free on condition of going to Liberia." "the testator intended that all the slaves he might own at his death should be free." [Graham, J.]

O'Bryan v. Goslee, 10 B. Mon. 100, December 1849. Will: "I give and bequeath to all my negroes their freedom, that my heirs or executors shall have no right nor title to them after they arrive at the ages hereinafter mentioned, the males at twenty-eight years and the females at twenty-five years." John, the complainant, [101] "was born of one of the females after the testator's death, and before she arrived at twenty-five years, and his right therefore depends on the question whether the will gave his mother immediate emancipation with a postponement of its enjoyment till she attained 25, or gave her only a prospective right of emancipation to take effect, provided, or only when, she attained that age."

Held: "the testator meant immediate emancipation, with a reservation to his heirs of merely the use of their services until they attained the prescribed ages. . . The testator evidently intended to dispose, by will, of his whole estate; . . if he had intended the issue, born before [the slave mother reached the prescribed age,] . . should be slaves, and as such a part of his estate, he would have so said or made some specific disposition of them as such. . . [103] the testator meant to manumit his slaves immediately, but to postpone the perfect enjoyment of freedom, and in the meantime they were to be servants and not slaves." [Nicholas, Ch.]

[100] "We concur with the Chancellor, not only in his exposition of the law in this case, but in his reasons and arguments. We therefore affirm the decree, and adopt [it] as ours," [Graham, J.]

Berry v. Hamilton, 10 B. Mon. 129, January 1850. Will of Eliza Ann Hamilton, who died in 1844: "I will all my servants to be free, both those I am entitled to as an heir of my father, Archibald Hamilton, deceased, at this time, and those that I will be entitled to, as an heir of my father, at my mother's death, and also my portion of the servants of my sister, Maria Hamilton, deceased. And if said servants will go to Liberia, in Africa, I will each one of them one hundred dollars; but if they do not go to Liberia, I will them fifty dollars each, on their permanent removal to a free State. I will that my servants have what they earn, after the first day of January next, that is, over and above their expenses and the expense of attending to them."

Order of the county court, establishing the will, affirmed: the testatrix [133] "entertained conscientious scruples upon the subject of slavery, but was very decidedly of the opinion that slaves should not be manumitted without previous preparation. She repeatedly expressed her determination that her slaves should never serve any other person but herself. Her intention to emancipate them at her death, was evident from all her conversations on the subject. With her it was not only a desire, but she felt it to be a moral duty." [Simpson, J.] See same *v.* same, p. 455, *infra*.

Calvert v. Stone, 10 B. Mon. 152, January 1850. "some time before day light, or about day break, a negro called at his house for some spirits. That plaintiff and his son and the witnesses got up. The son went into the kitchen, and shortly afterwards called to his father that a man was there and had drawn a pistol on him. The plaintiff immediately got his gun, . . Immediately on the plaintiff's entering into the passage, some of

the defendants [Calvert, the deputy sheriff and those summoned by him to go with him to the plaintiff's house] seized him and took first his gun and then a stick from him, throwing him on the floor twice in the course of the struggle. . . [They forced] open the door by breaking the hasp." Calvert had come to levy an execution on the slaves of Stone. In an action of trespass by Stone, the jury rendered him a verdict for $200.

Moore v. Foster, 10 B. Mon. 255, June 1850. "The keeper of a ferry is authorized by the statute,[1] to take a slave across the river in the presence and company of the owner, or at his request. . . The hirer of a slave is in legal contemplation the owner for the time that he has him hired." In case of the escape of the slave, [256] "the owner must rely upon [the liability of the hirer] for his indemnity, as the keeper of a ferry . . does not incur the penalties of the statute, when the hirer authorizes him to take the slave across the river." [Simpson, J.]

O'Neal v. Beall, 10 B. Mon. 272, June 1850. "the slave, King, devised to his wife, was . . to be retained by her until the youngest child of the testator 'may get its education,' . . and 'when the youngest child may get its education,' the boy was to be hired out for the benefit of the children until the youngest arrives at full age or marries, when he is to be sold and the proceeds distributed among the testator's children."

Marsh v. Marsh, 10 B. Mon. 360, July 1850. N. C. Marsh's will emancipates a female slave, with certain directions as to her treatment, and then proceeds as follows: [362] "I devise to my brother Benedict B. Marsh, as my trustee, the farm on which I live and the slaves I own, to him and his successors forever, subject to the following condition: he is to see that my slaves are well treated and attended to and properly worked and managed as long as they live, and all the children of said slaves, born after my death, shall be raised and attended to by my said trustee, until they are twenty-one years old, and as they respectively attain to that age, they shall be free. He shall pay all of my debts and legacies as they fall due, and the balance of the yearly proceeds of the farm and slaves shall belong to the said Benedict, to be used as his own, but he is not to have the liberty to sell the land or the slaves. My object is that the land and the slaves shall be kept together until the slaves to be born shall be raised and liberated. I do not expect my said trustee to live to see the end of it, but I wish him to appoint a suitable trustee to hold and manage the farm for the purposes aforesaid, the children or heirs of said Benedict to have the proceeds after paying the trustee a reasonable compensation; and as soon as the slaves are all liberated, the fee simple title in the said land to vest in the said Benedict's heirs at law to be held by them forever."

Elliott v. Gibson, 10 B. Mon. 438, September 1850. [440] "the plaintiff [Gibson] had arrested the defendant's runaway slave in Indiana, and that after being by him brought to Louisville the negro escaped. . . having two other runaways in his charge, he, as soon as he could, and did deliver them to the jailer, immediately commenced searching for the

[1] Of 1831 (1 Stat. Law 715).

negro in the part of the city in which the slave had eluded his grasp." Vanseikles arrested the negro in Louisville. [444] "Elliott cheerfully received his slave from Gibson, and professed himself willing to compensate him." [439] "The jury . . found for the plaintiff one hundred dollars in damages." New trial refused.

Judgment affirmed: Gibson had [440] "acquired such an interest in the slave as to authorize him, upon the recapture . . and delivery to the owner, to demand the reward to which, by law, he would have been entitled, had the escape from him not have taken place, and that he was as *quasi* owner for the time being, liable to Vanseikles for the reward due to him for apprehending the runaway in Louisville. . . [441] By an act passed 16th January, 1798, a reward, increased by the distance which he might have to travel, was given to the apprehender of a runaway slave upon delivering him to his owner. . . very recently . . it was found that the compensation fixed by it was insufficient to effect its object. Escapes of slaves continued to increase and but few recaptures were made, because, as was supposed, of the inadequacy of the reward allowed by law for such services, and therefore the Legislature in the year 1835, increased the compensation to ten dollars if the fugitive was taken in the State, and to thirty dollars if taken up out of this State. It was soon ascertained that, because of the odium which in the non-slaveholding States was visited upon those of their citizens who engaged in the apprehending of fugitives from other States, it was necessary to offer a greater reward, and such as would probably be sufficient to induce men to consult their own interests, regardless of the public sentiment around them. It cannot well be doubted that to the owners of slaves generally, the act of 1838 [raising the reward to one hundred dollars, on the delivery to the owner, at his residence, of a fugitive slave 'taken without this Commonwealth, and in a State where slavery is not tolerated by law'] . . has operated very beneficially, not only because fugitives are more frequently now than formerly returned to their owners, but because the difficulty of final escape has had some tendency to prevent others from attempting it." The act of 1838 does not violate, in any particular, the organic law of the state. [444] "although the owner of the fugitive may not be under any obligation of duty to receive him from the hands of the taker up, yet if he does so, he, by the act of reception, enters into a compact to pay the prescribed reward, which has been, perhaps, the sole inducement on the part of the other to take upon himself the trouble and responsibility of apprehending the slave. As soon as the slave has escaped to the opposite shore of the Ohio, he finds himself in a land, where the institution and existence of slavery is not recognized, and unless some one shall aid the owner in his apprehension, he will most probably never be retaken. It is argued that if the owner desires the recovery of his slave, he should offer such a reward as he may be willing to pay, and the captor should look only to the compensation so offered by the owner. Such an offer would probably be known to very few of the citizens of the State to which the negro may have escaped. Even after the owner may have, at great trouble and expense, posted advertisements

through the country, it might be a curious subject of enquiry how long they would probably be permitted to remain to meet the observation of such as would be induced by it to undertake the recapture. On the other hand, the public law of a sister State upon that subject may become a topic of conversation, and very readily known to all. One person having apprehended a runaway, and obtained the $100, his neighbors soon learn that he received that sum by reason of a law of Kentucky requiring the owner to pay it; and thus a few instances will soon diffuse the information through a whole community, and the people reposing confidence in the good faith of Kentucky, will apprehend the runaway and restore him to his owner, when, under other and different circumstances, he might be permitted to escape." [Graham, J.]

Commonwealth v. Kenner, 11 B. Mon. 1, December 1850. "presentments found under the second section of the act of 1834," [1] concerning the sale of spirituous liquor to slaves by tavern keepers.

Graham v. Kinder, 11 B. Mon. 60, December 1850. "Kinder, a boy of color, exhibited a bill in chancery, in which he alledged that his mother was a free woman of color, and he was born free. That Graham was the owner of an old black man named Ned, who was the husband of complainant's mother; and that in the year 1842 Graham and his mother, entered into a written contract by which the former sold Ned to the latter, and in consideration thereof the latter sold and transferred to the former, all her right to the complainant, and to another son by the name of Timothy, until they arrived at the age of twenty-one. He also alleged that Ned was very old and of little value at the time the contract was entered into, but that Graham availing himself of the wife's affection for her husband, had fraudulently induced her to make the agreement, although Ned was so old and infirm that he was a charge instead of a benefit. The complainant also alleged that Graham by virtue of the contract, had taken him into his possession and had hired him out from year to year, whereby he had been subjected to bad treatment and harsh usage; and that a short time previously, an effort had been made by a man by the name of Hart, to sell him to a Southern trader as a slave for life, which was done with the approbation and concurrence of Graham."

Held: [62] "Regarding the boys in the light either of apprentices or wards, he had no right to hire them out, or transfer their services to other persons. The testimony shows that he treated them in every respect as slaves; and if he did not participate in the attempt to sell one of them into slavery during life, had enabled Hart to make the effort, by having sold the boy to him until he arrived at the age of twenty-one. . . [63] Kinder and Timothy, are free, and that Graham has no right to the custody or control of them;" [Simpson, J.]

Strader v. Graham, 10 How. 82, December 1850. See Graham *v.* Strader, p. 365, *supra*.

Harris v. Hill, 11 B. Mon. 199, January 1851. Harris "obtained an order directing the sheriff to take the slaves into his possession, upon an

[1] 2 Stat. Law 1503.

allegation that the mortgagor intended to remove them out of the State for the purpose of avoiding the payment of the debt. The sheriff having seized the slaves, and the defendant having failed to execute a bond as required, to have them forthcoming to abide any order or decree that might be made in the suit, he delivered them to the jailer of Mason county, where the suit was pending." Harris objected to the jailer's account as excessive.

Held: [201] "The slaves were in possession of the jailer, not as prisoners—he held them merely as the bailee of the Sheriff. The Sheriff had no power to commit them to the jail of the county, nor had the jailer any right to regard them as prisoners. They remained with him in the character of boarders, requiring, however, for their security and safe retention, a superintending care, which is not necessary to be given to ordinary boarders. The jailer, however, is only entitled to a reasonable compensation for keeping them; he has no right to demand in this case, the fees allowed by law in cases where prisoners are legally committed to his custody. Now $138 70 cents for keeping and boarding a female slave and five small children for one hundred days, even if the Court would have made an allowance for the whole time, would be unreasonable and oppressive." [Simpson, J.]

Ben Mercer (of color) v. Gilman, 11 B. Mon. 210, January 1851. "It seems to this Court that Joseph Mercer the former owner of Ben did not lose his property by hiring Ben to cut 100 cords of wood in the State of Illinois, because the purpose was defined, and the employment limited to an object to be accomplished in a short period, and the absence from Mercer's house which was still Ben's home, though altogether covering two months was generally for about one week only, at a time. The whole transaction shows that Ben was in Illinois as the slave of Joseph Mercer, and not as a free man, or for the purpose of thereby becoming free, or of residing there as his home. But there is other evidence in the cause tending to show, and which in our opinion authorizes the conclusion, that on other occasions afterwards and for several years, Ben with the knowledge and permission of Joseph Mercer, went to Illinois at pleasure, and remained there for long periods according to his own will, residing there when he pleased, and acting in all respects while there, as a free man without any control actual or implied on the part of Joseph Mercer while there or in going or coming back, and that Joseph Mercer had during this state of things and at various times not only declared that he intended that Ben should be free, and should serve no person as a slave after his own death, but that he declared on some occasions that he was then free, and so treated him. And although such declarations and corresponding acts are wholly insufficient under our laws to emancipate a slave without a deed or will, yet they may operate to show the intention with which Ben was permitted to go to and remain in Illinois at his own pleasure, and to show that he was permitted to go to a State in which slavery is not tolerated, in order that he might thereby become free, or that he was permitted to go and remain under such circumstances as made him free. And the circumstances seem at least to prove that he went with the

privilege assented to by his owner of staying as long as he should choose, and of making his home in that State if he pleased."

Held: "Benjamin Mercer was entitled to his freedom. . . [212] the decree dismissing his bill is reversed," [T. A. Marshall, C. J.]

Henry v. Nunn, 11 B. Mon. 239, January 1851. "Samuel Nunn, who resided in Crittenden county, was the owner of a large number of slaves, and of other property of very considerable value. He never married, and had no children or descendants. He had resolved to emancipate his slaves, having, as he expressed himself, determined that they should never serve any other person. In January 1844, he had a will drawn up by a lawyer to whom he had applied for the purpose, by the provisions of which, all his slaves were to be entitled to their freedom immediately after his death, except three of them, and one of the three was to be free at the expiration of six years. Of the remaining two, one was a female whose children, either born before or after the testator's death, were to be free at the age of twenty-one. He devised portions of his estate to Chesley Nunn and Samuel Nunn, and required them to become the securities of the persons he had emancipated, so far as the County Court might demand security to be given that the persons emancipated would not become a charge upon the county; and provided expressly that a failure or refusal by Chesley Nunn or Samuel Nunn to comply with that requisition, should produce a forfeiture of the estate he devised to them. He also devised a considerable part of his estate to the slaves he emancipated. But this will was not executed by him so as to be effectual either in manumitting his slaves, or disposing of his real estate. He subscribed his name to it, but never had it attested by any subscribing witnesses, although he was informed by his lawyer that it was necessary to its validity, that it should be attested by two witnesses. Afterwards in October 1845, he executed under his hand and seal, a bill of sale of all his slaves, being upwards of thirty in number, to John E. Prow, purporting to convey them to the latter as slaves for life. The consideration stated in the bill of sale was five hundred dollars. It also contains the following statement, made by the grantor: 'Having at one time made a will which was to free the above named negroes, on calling them up and enquiring of them, and explaining the matter to them, all of them that were old enough to have a judgment upon the matter, requested to be sold and live with the said John E. Prow, rather than risk giving security. I do therefore sell and deliver them unto the said John E. Prow in presence, etc.' Another instrument of writing was executed at the same time, by Samuel Nunn, purporting to be an agreement between the said Nunn of the one part and the said John E. Prow of the other part, in which it is stated that the said Nunn had that day hired of the said Prow the same slaves contained in the bill of sale, for and during the natural life of the former, for which he bound himself to furnish them with good clothes suitable to the season, to take good care of them and treat them with humanity. The writing then proceeds, substantially as follows: 'Having at one time a will emancipating the above named negroes, after consulting my own mind and the negroes on the subject, I concluded with them that I would trade them to the said

Prow, which they preferred rather than run the risk of giving security after my death, and in my will I was to give them some land and money and other property, and as the said Prow has removed all responsibility upon them to give security, I therefore bind my heirs, executors, etc., to pay all the devises made by me to the above named negroes, unto John E. Prow, and after my death the said John E. Prow is authorized to take possession of said negroes, and to receive from my executors the devises I have heretofore made to them, etc.' This instrument of writing as well as the bill of sale was attested by two witnesses; and in the month of February 1846, they were proved before the Clerk of the Crittenden County Court, and recorded. Samuel Nunn having afterwards died, the writing purporting to be his last will and testament was offered for probate, and rejected . . [241] This suit in chancery was subsequently instituted by the slaves claiming their freedom, either under the writings already adverted to, or by virtue of an alleged written or parol agreement between Nunn and Prow, binding the latter to emancipate them upon the death of the former."

Decree dismissing the bill affirmed: [243] "The most reasonable conclusion from all the evidence upon the point, . . is, that Prow was to retain the title to them and keep them nominally as slaves, but they were to be substantially free, and to enjoy many of the advantages and privileges of free persons. An arrangement which as before remarked, depends entirely for its fulfillment and observance, upon the good faith and honesty of Prow, as the substituted master and owner of the slaves. If however there were an express agreement upon the part of Prow to manumit the slaves after the death of the former owner, . . [244] Slaves cannot maintain a suit in their own names, to have a contract for their emancipation specifically executed, because not being free when the suit is brought as is apparent from the contract itself, and the object of the suit, they cannot assert any right, and also because, they cannot from their condition be regarded as parties to the contract, although it was for their benefit. The contract therefore can be enforced alone by the parties to it, or by some person having a right to do so, growing out of his relation to one of the parties." [Simpson, J.]

Wilson v. Commonwealth, 12 B. Mon. 2, June 1851. Indictment for keeping a disorderly house in the city of Lexington. Held: [3] "a house in which slaves are permitted from time to time to assemble and remain, drinking, tippling, and buying ardent spirits, is a disorderly house, and a common nuisance . . whether the liquor is sold or given to the slaves, with or without the permission of their owner." [T. A. Marshall, J.]

Blackburn v. Collins, 12 B. Mon. 16, June 1851. [19] "Both witnesses prove that the slaves [Ned and Stephen], at the time of the sale [1842], were worth $1200, and Morris [the sheriff, who made the sale] states that each negro was worth per annum $100."

Minor v. Thomas (*of color*), 12 B. Mon. 106, June 1851. Will of Jeremiah Minor, dated 1839. "By this paper, . . the testator emancipates all his slaves, and gives to them all his land, a tract of 350 acres, as well

as the greatest part of his personal property." He was [107] " between 90 and 100 years of age, . . [and] [108] two of the subscribing witnesses upon their testimony, condemn the will as the production of a mind rendered incompetent by disease and extreme old age, the other subscribing witness and draftsman of the paper, in his evidence leaves it a doubtful question, at least as to the testator's capacity to make a will. . . [109] after his wife's death, the testator lived alone with his slaves, that they had unbounded influence over him, and controlled him at discretion. . . his children were obedient and affectionate when with him, which excludes the inference that his slaves were preferred to them as subjects of his bounty on account of ungrateful or improper conduct. It is proven that Glass, who wrote the will, owned a negro woman who was one of the same family of slaves belonging to the testator; that he resided eight miles distant from the residence of the testator in a different County; that the information that the deceased wished him to come and write his will, was communicated to him at three different times by negroes, first by a negro man who was the husband of his negro woman, next by a free negro man, and the third time by a negro named Tom, one of the emancipated slaves. The style and orthography of the document, . . [110] shows most conclusively that Glass, its author, was not much better qualified to compose than the testator was to dictate a last will and testament. . . the influence of testator's slaves may have caused his selection to perform a task to which he had never been accustomed, and for the performance of which he was so indifferently qualified. . . his (testator's) slaves, and especially old Fan, the mother of the family, could make him do as they pleased;"

Held: [111] " the paper in question is not the true last will and testament of Jeremiah Minor, deceased," [Hise, J.]

Streshly v. Powell, 12 B. Mon. 178, June 1851. In 1850 Streshly sold Powell " a negro boy for the sum of $700, . . [179] The negro, however, was never delivered; and it turned out that, if he had not actually made his escape at the time the contract was made, he did so, shortly afterwards."

Western v. Short, 12 B. Mon. 153, July 1851. " Western sold to Short a female slave and her child, at the price of five hundred dollars,"

Dowrey v. Logan, 12 B. Mon. 236, September 1851. " Frazeur, in the year 1795 or 6, executed and acknowledged in the Scott County Court a deed of emancipation, by which it was provided that their mother Sukey Dowrey, should be free at the age of thirty years, and that the children to which she might thereafter give birth (she being then childless,) should each have their freedom as they severally arrived at the age of thirty years. That at the same time or on the same day, when the deed of emancipation was acknowledged, Wm. Frazeur sold and delivered their mother to Lucas, and that shortly thereafter, Lucas sold her to Moore, and that in the bills of sale from Frazeur to Lucas, and from Lucas to Moore, it was expressly stipulated and provided that Sukey Dowrey and the children born of her, should, as they respectively arrived at the age of thirty years, be free; that the deed of emancipation had been deposited and recorded in the Scott County Court Clerk's office, but that the deed

and book in which it was recorded, was, with many of its other records, destroyed when that office was burnt down in the year 1837. That Moore conveyed Sukey to Wm. Logan, the grand-father of the defendant, and whilst in his possession, she gave birth to the complainants and some other children, that some time before the institution of these suits the complainants had each arrived to the age of thirty years. . . The complainants claim compensation for labor and service done and performed by them for defendant, after they were, as they allege, entitled to their freedom. . . [238] The important provision contained in the lost record and the bills of sale attempted now to be supplied by parol proof, was short, not complicated, but simple—and would be without difficulty correctly remembered, especially by the witnesses in this case, one of whom was the daughter-in-law of Frazeur, who executed the deed of emancipation; another is the son of Lucas, to whom Sukey was conveyed by Frazeur; and the other is the son of Moore, who purchased the woman from Lucas. They, no doubt, were familiar with the facts all the time, and had heard Frazeur, Lucas, and Moore, often acknowledge the existence and contents of the deed of emancipation, and of the bills of sale, as stated by them."

Decrees of the circuit court dismissing the bills of Harvey and Robert Dowrey reversed, [239] "and the causes remanded with directions that decrees be rendered in favor of the complainants, by which their freedom shall be declared and established." But they are not entitled "to any compensation for labor and service performed by them for defendant, previous to the institution of these suits. It is not proven that the defendant had any notice or information whatever, until the commencement of these suits, that complainants were free at 30 years of age, or that they in bad faith held the complainants in bondage as slaves, knowing or believing that they were justly entitled to their freedom." [Hise, J.]

Johnston v. Jones, 12 B. Mon. 326, October 1851. [327] "At the time of the marriage [1847], Mrs. Jones was the owner of a considerable property consisting mostly of slaves. . . [329] prior to the passage of the act of February, 1846,[1] the title to the slaves, would have vested absolutely in her husband. But as she was married after the passage of that act, her slaves are to be regarded as real estate, and can only be disposed of by deed in the same manner, that husband and wife, may dispose of the lands of the wife. . . [333] the vendor acquired no interest in the slaves or land of the wife by the writings executed by the husband in their joint names," [Simpson, C. J.]

Basye v. Beard, 12 B. Mon. 581, October 1851. [584] "Billy and Jacob were purchased together in February 1833, . . at the price of $800, of which $450 was the price of Billy, . . that in March 1834, Basye sold Billy to Briscoe of Mississippi, for $550, . . it was stated by the agent of Mrs. McDonald [the former owner of Billy], and by her son, that Billy had run off from Briscoe, and was in her possession."

Chadoin v. Carter, 12 B. Mon. 383, December 1851. Held: [383] "a gift of slaves not delivered, though evidenced by any written instrument

[1] Sess. Acts 1845-6, p. 42.

except it be by will or deed duly executed, witnessed or acknowledged and recorded in due time and in the proper office, will pass no title whatever to the donees." [Hise, J.]

King v. Shanks, 12 B. Mon. 410, December 1851. [412] "the defendant took his horse (then about two years old) to the pond for the purpose of being swum, that he mounted him himself for the purpose, but the horse proving restive, he dismounted—that he requested another person . . to ride him in, but after at first assenting he declined—and that the defendant afterwards offered twelve and a half cents, to a negro, to swim the horse, when Berry coming up about this time offered to do it for 25 cents, to which the defendant agreed. . . [415] the slave, either in a rash attempt to duck the horse, . . or from other imprudence, or from carelessness or want of skill, was drowned." [411] "The evidence conduced to prove that the slave Berry had . . made some trades and acquired some little money and property, there being, however, no direct evidence of the plaintiff's knowledge of these facts. . . from his having acquired a little money, etc., and from his alacrity on the occasion now in question, it is highly probable that he had done little services for a compensation to himself, as is frequently the case with slaves. . . it could not be assumed, in the absence of all proof on the subject, that Berry had any license, express or implied, to engage even on Sunday, which was the day on which this transaction occurred, in services of an extraordinary and hazardous character. It is in proof that his master had refused to hire him where he would be exposed to water, in consequence of the danger of his being drowned."

Held: the defendant is liable for the value of the slave: [421] "he stood in effect as an insurer against the loss of Berry by drowning while engaged in the service in which he had employed [him]." [T. A. Marshall, J.]

Graham v. Swigert, 12 B. Mon. 522, January 1852. See Swigert *v.* Graham, p. 380, *supra*.

Maria v. Kirby, 12 B. Mon. 542, January 1852. "In 1848, Mrs. Rebecca Kirby, a resident citizen of Kentucky, and the owner of a female slave, Maria, took Maria with her on a journey, or trip of pleasure, to the eastward, and during a delay of three or four days in Washington county, in the state of Pennsylvania, a writ of *habeas corpus* was issued on the petition of a colored man named Brown, commanding that Maria . . should be brought before the judge. And upon the return of the writ showing that Maria was claimed as a slave purchased in Kentucky, she was discharged from custody and restraint, and declared to be a free woman, to go where she pleases without coercion or restraint from any one. But Maria returned to Kentucky with her mistress, and was here held as a slave until January, 1850, when she filed this bill, claiming that she was free by virtue of the proceedings and judgment or award on the writ of *habeas corpus* in Pennsylvania. The defendant . . [543] states that all that occurred before the judge was, that Maria, on interrogation, said she would rather go back to Kentucky, as the defendant's slave, than to remain in Pennsylvania."

Held: [551] "the transitory ingress of Mrs. Kirby and her slave into the State of Pennsylvania did not make the slave absolutely free, notwithstanding the statute [the 10th section of the statute of Pennsylvania for the abolition of slavery, passed in 1780, and also a statute of 1847 repealing the exceptions contained in said 10th section] and the decision under it." [546] "our statute [of 1798][1] is even more peremptory, and apparently more direct in its operation than that of Pennsylvania, . . And yet, while it can not be doubted that many persons who our statute declares shall not be slaves within this Commonwealth, have been brought into it as slaves, it has never been imagined that the statute, by its own force, emancipated them while temporarily here, and much less, that it made them free on their return to the domicils of their owners, from which they were brought and to which they returned, or were taken back as slaves." [T. A. Marshall, J.]

Hill v. Squire (*of color*), 12 B. Mon. 557, January 1852. Will of Humphrey Tunstall, admitted to probate in February, 1850: "I emancipate and set free my several negroes here mentioned, say, Squire, Jack, etc, (naming seven,) provided they give the Madison County Court good and sufficient security for their maintenance and good behavior. And if they should fail to comply with the above requisition, I give them all to Humphrey T. Hill, son of Harrison and Patsey Hill, as slaves for life." Two months later "five of the negroes emancipated by the foregoing clause, offered . . to execute separate bonds with security as required by the will. . . having heard the statement of one of the executors who refused to give his assent as required by the statute, the Court refused to permit the bond to be executed and to grant certificates of freedom. . . The executors . . [558] withheld their assent on account of the short period which had elapsed from the testator's death, and not being fully acquainted with his affairs, they were unwilling to incur responsibility by immediate and absolute assent, and because they had in fact taken no control over the complainants, but had let them go about as free persons." [557] "On the same day, the five negroes whose application had been thus refused, filed this bill in equity against the executors of Humphrey Tunstall, in which they state, in addition to the foregoing facts, that the testator was not indebted to the amount of $100, and left a large estate in lands and personalty worth thousands of dollars, and that the executors are in fact willing for them to be free, and they pray for general relief, and offer to execute proper bonds. . . [558] H. T. Hill, the contingent devisee . . contested . . the right of the complainants . . insisting that bond had not been tendered in proper time, nor with good security; that all the seven were required by the will to give bond so as to bind all for each, or at least that all must give bond, and that if this were not done, all were devised to him. He also insists that he is entitled to the hire of the seven from the death of the testator,"

Held: [559] "freedom is given to the slaves severally, and that each one upon compliance with the condition prescribed, is free as far as the

[1] Stat. Law 1471.

testator could make him so. . . [560] the entire proceeding and the final performance of the condition by the execution of bonds accepted by the County Court, relate back to the valid offer of performance originally tendered, and have the same effect in vesting and completing the right to freedom as if the performance tendered had been at once executed and accepted. . . [561] With regard to the claim of H. T. Hill to the hire of the complainants from the death of the testator, it is sufficient to say that the statute of 1841, although it requires the executors to hire out slaves emancipated by will until they are satisfied that there is other estate sufficient to pay the debts, . . expressly enacts . . that the hire shall be for the benefit of the emancipated slave, if the executor becomes satisfied that the other estate is sufficient. . . [562] it was certainly right to decree against him all the cost of the complainants in their contest with him;" [T. A. Marshall, J.]

Orndorff v. Hummer, 12 B. Mon. 619, January 1852. [620] "the testator provides, if his daughter should die leaving no lawful heir of her body, all his negroes should be free, and that his executors should retain $500 in their hands, to carry the same into effect."

Grigsby v. Breckinridge, 12 B. Mon. 629, January 1852. Shelby [630] "devised to his son Isaac, on his arriving at age, . . six of the choice of his negroes, and an equal half of all the others under fifty years of age,"

Commonwealth v. Cook, 13 B. Mon. 149, June 1852. Held: [150] "It is necessary, in presentments for selling spirituous liquors to slaves, or for purchasing from them any commodity without the consent of the owner or master, to describe by name the person to whom such slaves belong, or who may have the control of them and be entitled at the time to their services, or at least to identify the slaves." [Simpson, C. J.]

Hord v. Grimes, 13 B. Mon. 188, June 1852. Hord sued Dr. Grimes "for having caused his negro Bill to take and swallow poisonous drugs by reason whereof the slave became sick and died." Verdict for the defendant. Judgment reversed, and cause remanded for a new trial: [189] "the plaintiff should recover the full value of his slave," if [188] "the defendant did administer drugs, medicine, or poison to the slave of the plaintiff, without his consent," [Hise, J.]

Graves v. Allan, 13 B. Mon. 190, June 1852. "Charles Allan (a free man of color,) having by his last will, which has been duly recorded, made divers bequests to certain slaves named therein, most of whom he recognizes as his children, and others as the mothers of these children, this bill was filed by the owner of some of these slaves against the executor of Allan, claiming the money bequeathed to his slaves, . . [191] The claimants assert a right to the legacies, not as trustees for the benefit of their respective slaves, which would itself be an anomaly, but as owners of the legatees, and as therefore being entitled to the legacies themselves, absolutely, and as their own."

Decree dismissing the bill affirmed: [192] "as a slave cannot take under a devise or bequest, he is in fact incapable of being a devisee or

legatee, and any devise or bequest to him, except that of freedom, must be void, and of course unenforceable. For substantially the same reasons a devise in trust for the benefit of a slave is alike void." [T. A. Marshall, J.]

Adams v. Gardiner, 13 B. Mon. 197, June 1852. " Gardiner, the owner of a female slave, Kitty, hired her for the year 1848 to one Lemmons, who in March of that year hired her to H. C. and J. Q. Adams for the residue of the term. While in their possession she was taken sick, and after an illness of some weeks died on the seventh of August." Gardiner sued them, alleging that they neglected " to extend such care " " as men of ordinary prudence would extend and give to their own slave in like case; . . [199] a verdict was rendered in favor of the plaintiff for $500 in damages."

Hawkins v. P. F. Hawkins et al. (persons of color), 13 B. Mon. 245, September 1852. Will of James Hawkins, admitted to record in 1803: [246] " It is my will and desire that my wife Lucy should have all my negroes during her life or widowhood, with full power to emancipate them all before or at her death, as they [*sic*] said negroes arrive at the age of thirty-one years. It is my wish and desire that my wife Lucy should emancipate said negroes as above directed."

Held: I. " the will was not mandatory with respect to the emancipation of the slaves, but was precatory or advisory, and gave only a power to emancipate which rested in the discretion of Mrs. Lucy Hawkins. And as she had done no act in execution of the power in behalf of Eada or her mother, Maria, there was in that case no emancipation."

II. After the death of her husband, Lucy Hawkins sold the testator's slave, Clary, the mother of Pauline F., Jackson, James F., Harriet C. and George W. Hawkins, to William Lee, " until she should arrive at the age of thirty-one years, (she being then twelve years old,) and took from him a bond in the penalty of $2,000, conditioned to liberate and set free Clary and her children, should she have issue, as each attains the age of thirty-one years, and stipulating for various other acts in aid of that object; that in the year 1826, when Clary was about thirty-one years of age, the heirs of William Lee, in pursuance and in discharge of said bond, went into the county court of Logan, and emancipated her as appears by the record of said court; and that from that time Clary and the complainants, her children, all of whom except Jackson, were born since said act of emancipation, have gone about and been recognized as free persons, until since the death of Mrs. Lucy Hawkins, whose executor, Edmond O. Hawkins, claims to hold them as slaves."

Held: [249] " There was no valid exercise of the power by Mrs. Hawkins, nor in fact any attempt by her to execute it in or by writing, in which form alone it could be so recognized as that a court of equity would aid in a defective execution of it. And as it was not effectually transferred, and as we think could not be, it is scarcely necessary to inquire into the validity or effect of the attempted emancipation by the heirs of Lee. . . [250] none of the complainants are entitled to freedom," [T. A. Marshall, J.]

Major (of color) v. Winn, 13 B. Mon. 250, September 1852. "The complainant in this case is not only held in slavery, but he is actually a slave. No writing has ever been executed emancipating him. . . [251] It was alleged in the bill exhibited by the complainant, that Martin, his former owner, when he sold him to the defendant's intestate, did not intend to sell him as a slave during life, but only during the life of the purchaser, at whose death he was to be free; that although this was the verbal contract between the parties, the bill of sale executed by Martin did not contain that part of the agreement which secured to the complainant his freedom, but purported, according to its terms, to sell him to the purchaser, absolutely as a slave, and that the reservation of freedom to complainant was omitted to be inserted in the bill of sale, through the ignorance and mistake of the vendor, and the fraud of the purchaser."

Held: [252] "his bill was properly dismissed." [251] "Slaves cannot maintain a suit in their own names to have a contract for their emancipation specifically executed. Neither can they maintain a suit for the purpose of correcting a mistake and having an instrument of writing altered, that it may be so constructed as to confer upon them the right of freedom. . . The vendor might maintain a suit in his name" for a specific execution of the contract according to its terms. "The appropriate relief under such circumstances, would consist either in vacating the bill of sale that had been executed, and having one executed by the vendor, according to the terms of the contract, or, which would more directly attain the same end, in requiring the vendee or his personal representatives to execute a writing emancipating the slave." [Simpson, J.]

Darnall v. Adams, 13 B. Mon. 273, October 1852. "In January, 1842, Wigginton died, having first made a will, by which . . he gave to his wife . . his negro girl Artimesia and one-third of his negro man David."

Baker v. Baker, 13 B. Mon. 406, December 1852. "a mulatto boy named John" had been sold "in 1817, for the consideration of three hundred and fifty dollars,"

Bayse v. Briscoe, 13 B. Mon. 474, January 1853. [475] "I have this day sold to E. C. Briscoe one boy named William, about twenty-two years of age, for and in consideration of $550, . . I warrant said negro sound in body and mind, and a slave for life." Dated 1834. "in an action brought and tried in a court in Louisiana, it was adjudged that the slave was not the property of the plaintiff in this suit, but belonged to other persons."

Held: "the words, 'I warrant said negro a slave for life,' . . do not refer to the title of the vendor, nor to his right of property in the slave, but refer exclusively to the condition of the negro as a slave, and mean that he was not entitled to his freedom at that or any subsequent time." [Simpson, J.]

Emmerson v. Claywell, 14 B. Mon. 18, June 1853. "The title bond . . had been executed to King, and assigned by him to free Billy, a man of color, as indemnity for a debt owing to him by King, . . [19] Free Billy's right to it . . was not absolute,"

Warfield v. Davis,[1] 14 B. Mon. 40, June 1853. During the pendency of Davis's suit for freedom against Tingle, the agent of Warfield, Warfield sold him to a purchaser who took him [42] "to the south." Warfield had executed [41] "a bond with security, conditioned to have him forthcoming at a subsequent term of the court, and in the mean time not to sell or dispose of him, or send him out of the commonwealth;" Davis returned to Kentucky [42] "after a final judgment was rendered in his favor in the suit against Tingle,"

Held: [42] "The verdict and judgment in favor of the plaintiff . . having allowed him but one cent in damages for illegal detention, is conclusive against his right to any hire before that suit was instituted. And as his right to freedom was very doubtful, until it was settled by the final judgment in his favor, the same principle which denied his right to compensation for services rendered before the institution of the suit, would also deprive him of any right to it against Warfield, for services rendered during its pendency. . . [43] The bond executed by Warfield does not contain any stipulation for the payment of hire. . . The plaintiff's detention in slavery, after he had been adjudged to be free, was however, illegal, and for such detention, he has a right to be compensated in damages, and for this injury the defendant is liable upon his bond. The sale of the plaintiff, during the pendency of the appeal, was also in contravention of the object of the bond, and consequently such reasonable expenses as were necessarily occasioned thereby to the plaintiff, after his right to freedom had been established, in availing himself of that right, and in returning to this state, he is also entitled to recover in this suit." [Simpson, J.]

Harper v. Straws, 14 B. Mon. 48, June 1853. "a contest between . . two portions of a divided congregation of African Methodists, in the city of Louisville, each claiming the church property. . . about the year 1845, the lot and meeting-house thereon, which had been erected by the Methodist Protestant Church, in Louisville, at the corner of 4th and Green streets, was sold [to Harper] . . for the benefit of the African Society of Methodists, called 'Asberry Chapel;' . . [49] and in 1847, a deed was executed conveying the property . . to David Straws and four others, among whom was Harper, 'to be held . . in trust, for the use and benefit of the religious Methodist Society of the African race, now worshipping, or which may hereafter worship in said church, now called Asberry Chapel.' In the meantime, the society . . had worshipped at the house at the corner of 4th and Green streets, . . with three hundred and forty-four members, under the superintendence of the Methodist Episcopal Church, south, under the charge of William Holeman, the stationed minister at 8th street church in Louisville; and the said Harper was their pastor of the African race. . . he was expelled from the Methodist Episcopal Church, south, and his congregation supposing that his expulsion was occasioned by his unwillingness, that their church property should be given up to the Methodist Episcopal Church, south, according to the discipline of

[1] For facts see Davis *v.* Tingle, p. 385, *supra*.

that church, adhered to him, and continued for some time, to worship under his pastorship, without connection with any other organization. In a short time, however, he and they, at his instigation, were received into connection with a body called the African Methodist Episcopal Church of the U. S., which had its principal organization in the free states. Under the authority of this church, Harper was removed from the society worshipping at Asberry Chapel, in Louisville, and sent as a preacher to New Orleans, and H. S. Revel was appointed as pastor to the society in Louisville. After remaining some time in New Orleans, Harper returned to Louisville, and being expelled from the African Methodist Episcopal Church of the U. S., for insubordination, induced a number of persons who were, or had been members of the society of Asberry Chapel, to unite with him in forming an independent Methodist Church, which was done in July 1851. . . [53] if a trust for the use of a religious society of the African race be not unlawful, of which there is no intimation, then this contest presents simply a question of property, that is, of pre-existing rights, and considerations of expediency or policy growing out of the institution of slavery, and the proper relations of whites and blacks in the community, can no more authorize the imposing of conditions or restrictions upon the right when determined, than they can properly influence the determination itself. . . Harper had acted with great impropriety towards the ministers and officers of the Methodist Episcopal Church, south, while that church claimed the superintendence of the original society. . . [54] according to the weight of the testimony, so many of those who united with Harper in erecting the independent new church, had previously been expelled or withdrawn from the society, that a majority of the actual members at the time, remained with Revel." All the parties are now seeking a reunion with the Methodist Episcopal Church, south. [58] " the record contains pregnant proof that these people ought not to be left wholly to their own guidance in the management of their ecclesiastical affairs and relations; "

Held: [56] " the seceders [under Harper] lost their identity with the society from which they seceded, and forfeited the rights dependent upon that identity." [T. A. Marshall, J.]

McClelland v. Kay, 14 B. Mon. 103, July 1853. [104] " shortly after midnight, the defendant being in bed, heard a noise amongst his poultry in the trees of his orchard, whereupon he arose from his bed, and taking a double-barreled shot gun, he went from his house to the place from whence the noise came, and there perceived three men, one in a tree, the other standing by it, and the third stationed off at some distance apparently to keep watch; that they were engaged in stealing the poultry of defendant; the person standing under and near to the tree was receiving the fowls from the other, who was in the tree, and that the defendant, supposing himself to be at the distance of twenty-five yards from the thieves, and with the purpose merely of wounding one of them slightly, in order to his future identification, and with no intention of killing him, fired one barrel of his shot gun at the legs of the thief standing on the ground beneath the tree, believing at the time that his gun was loaded with small

bird shot," but he was nearer than he supposed, and his brother had reloaded the gun with large shot without informing the defendant. [105] "the night was so dark that defendant could not discern whether the thieves were black or white men, and it was impossible to identify them." [104] the wound thus inflicted caused the death of the slave in a short time. "She [the owner] demands in damages, one thousand or twelve hundred dollars for value of the slave, and the amount of the physician's bill for attendance upon him. . . verdict and judgment against the defendant for ten hundred and fifteen dollars, in damages."

Judgment reversed. [Hise, C. J.]

Craig v. Lee, 14 B. Mon. 119, July 1853. Suit "to recover from the defendant, N. T. Lee, the value of a slave that had belonged to plaintiff's intestate, upon the charge that defendant's overseer and agent, under whose control and management the defendant's farm and slaves, including the slave in question, had been placed, had so cruelly chastised, beat, and whipped the said slave, thus under his control, whilst she was in a state of pregnancy, that an abortion was thereby caused, and that in consequence thereof the said slave became sick and diseased and finally died; and that her death was caused by the sickness and disease which was superinduced by the immoderate and inhuman chastisement inflicted upon her when she was pregnant; and because she had been neglected, and was suffered to languish in her sickness, without sufficient nursing and attention." Verdict and judgment for the defendant.

Judgment reversed: [121] "the constitution and laws of this state, as well as of all the states in which the institution of slavery legally exists, so far as known, furnish some protection to the slave, and regard him as a human being, and as such, the owner, though entitled to his person and service during life, cannot kill or maim his slave; he has no right to inflict upon him such cruel and inhuman punishment, even with the purpose of securing service and obedience, as that it must result in the death of the slave as a consequence of the punishment inflicted. If then the actual owner and master is thus limited and restricted in his authority to punish his own slave, of course a mere bailee, having possession of the slave on hire, his agent or overseer may not possess and exercise over the hired slave power and authority which does not belong to the owner himself, and inflict punishment in a degree and to an extent which would be unlawful if inflicted by the master. If the owner exceeds his authority he is not civilly responsible to any other person, or to the slave himself in a civil action, for the injury done. His responsibility would be criminal, if he intentionally murders or maims his slave by a single blow, or by slow degrees, and by protracted punishment; but the bailee of the slave of another, holding him on hire, besides the criminal responsibility incurred, is responsible to the owner, if he or his overseer, in the course of his service as such, shall, by cruel neglect, or by inhuman treatment, cause the death of the slave, or impair his health, or otherwise injure him whilst in their service and possession. . . [123] If the extent of the injury done is the loss of a limb, or of the health, or the life of the slave, in such case it is not a legal presumption that sufficient cause existed for its infliction,

but on the contrary the burthen of proof is upon the defendant, to show that a sufficient cause of justification existed. . . [124] the jury . . are told, if they believe that sufficient cause existed to punish the slave, that then the overseer was not limited or restricted by law as to the degree of punishment or beating which he might inflict, short of the coercion of the absolute obedience and submission of the slave, although it might require the infliction of the most cruel tortures, and even the deprivation of the members of the body, to procure that submission, and although the slave might have the firmness to suffer death rather than to yield, . . by these instructions collectively, the bailee's overseer may beat another man's slave, for the time being in his possession, on hire, to death, if the slave will not otherwise submit to him and obey his orders. Such is not the law, and the principle embodied in the third instruction cannot receive the sanction of this court." [Hise, C. J.]

Hamilton v. Auditor, 14 B. Mon. 230, December 1853. "After the slave of Hamilton was found guilty by the jury of a capital offense, and before sentence or judgment had been given against him, he was remanded to jail, and there, before judgment, died by his own hands; and the question is, whether Hamilton, the owner, is entitled to his value from the commonwealth. The circuit court fixed the value of the slave at $900 after his death, notwithstanding no judgment had been pronounced."

Held: the auditor is not required [232] "to pay for the slave under the circumstances of this case." The statute[1] [231] "evidently contemplates a death in jail after sentence, and before execution, consequent upon that sentence, and not a death after verdict merely." [Crenshaw, J.]

Jones v. Lipscomb, 14 B. Mon. 296, January 1854. "The complainants, Dodson and Spicy, of the negro race, claim the right to their freedom, and legacies to each of two hundred dollars, under the following clause of the will of Humphrey Jones, deceased, to whom, in his lifetime, they belonged: 'In consideration of faithful services, I will and require that my executors give my slaves, Dodson and Spicy, $200 each, to be paid out of my estate. . . [299] I will and require that my slaves Bob, and Hannah, and Chantis, and Jane, be free at my death. . . [300] I will and require that my other slaves have liberty to choose their masters at their value.'" [296] "The ground taken by the complainants council [*sic*] is, that . . by giving to them [Dodson and Spicy] these legacies they have been constructively emancipated, and thereby rendered capable, in legal estimation, of claiming and receiving them as valid bequests."

Held: the residuary clause, in which [300] "Dodson and Spicy are necessarily included . . instead of supporting conclusively repels the implication founded upon the pecuniary legacies intended to be beque[a]thed to these two slaves." [Hise, C. J.]

Hart v. Soward, 14 B. Mon. 301, January 1854. Held: the act of 1846,[2] reduces the estate of a husband in the slaves of his deceased wife, [304] "which before the passage of the statute was absolute, down to a mere

[1] Rev. Stat., p. 178, sect. 7; p. 641, sect. 24.
[2] Sess. Acts 1845-6, p. 42.

life estate. But his life estate is not conditional or dependent upon there having been issue of the marriage."

McKay v. Merrifield, 14 B. Mon. 322, January 1854. Held: a devise of a slave in fee, to take effect on the death of the donor, with a limitation over in case of the death of the donee without issue, (which means issue at the death of the first taker,) is valid as an executory devise; otherwise, if the conveyance be by deed. [323] "This limitation over, however, does not have the effect to reduce the estate of the first taker to a life estate, but it continues to be a fee simple, subject only to be defeated by the failure of issue." [Simpson, J.]

Ferry v. Street, 14 B. Mon. 355, January 1854. "In the spring of the year 1838, Clarissa, a woman of color, the property of Mrs. Trigg, at the instance of her mistress, accompanied Mrs. Alexander to the city of Philadelphia. The object of Mrs. Alexander in visiting that city was to consult physicians there, upon the subject of her eyes, which were much diseased, and, if necessary and advisable, to place herself, under their treatment. Mrs. Alexander being a near relative of Mrs. Trigg, and being in a very helpless condition in consequence of defective sight, and Clarissa being a very faithful and trust-worthy servant, Mrs. Trigg determined to send Clarissa with Mrs. Alexander to Philadelphia, to take care of, and wait upon her. But before they departed on their journey Mrs. Trigg sent for Jeptha Dudley to consult him in regard to the laws of Pennsylvania, and what effect they might have upon slaves sent by their owners into that state. Dudley visited Mrs. Trigg according to her request, and informed her that he was no lawyer, but his impression was, that if Clarissa should remain in Pennsylvania as long as six months she would be entitled to her freedom. Mrs. Trigg, as Dudley states, then said that she had no calculation that Mrs. Alexander would return in less than a year, and she intended to send Clarissa with her to remain until Mrs. Alexander's return, because she could not trust Mrs. Alexander with any other person; that she did not believe Clarissa would avail herself of the laws of Pennsylvania, because she had a husband and children in Kentucky, and because Clarissa knew that she was to be free at her (Mrs. Trigg's) death; that Clarissa, having been the patient and attentive nurse of Major Trigg in his last illness, he desired her and her child to be purchased by Mrs. Trigg and liberated at her death, and that she had promised to do so. Mrs. Alexander and Clarissa departed for Philadelphia, and Clarissa remained there more than six months. She then returned to Kentucky according to the united wish of herself and Mrs. Trigg, and went again into her service. After this, Mrs. Trigg having occasion to borrow a sum of money from Miss Thompson, (now Mrs. Ferry,) her adopted daughter, who seems to have resided with her, executed to her an absolute bill of sale for Clarissa. Dudley states, that notwithstanding the absolute character of the bill of sale, it was intended only as an evidence to Miss Thompson of the debt, and to secure her in its payment, and that, before Mrs. Trigg's death she enjoined on him, who was to be her executor, to raise the means from her estate and discharge the debt to Miss Thompson, that

Clarissa might be free. Mrs. Trigg made her will, liberating her other slaves, and making Miss Thompson her devisee. And Dudley says he would soon have raised the means, from the hire of the other negroes, to redeem Clarissa, had it not been for the interposition of Miss Thompson, who desired the liberated slaves to be discharged from further service. Although Miss Thompson was the devisee of Mrs. Trigg, the amount of property realized by her from the estate does not appear to have been sufficient to discharge the debt to Miss Thompson, of $500, which constituted the consideration of the bill of sale to her of Clarissa. It is proved that Miss Thompson was cognizant of the desire and intent of Mrs. Trigg to liberate Clarissa. But the only ground upon which Clarissa bases her right to freedom, necessary to be considered, is her remaining in Pennsylvania more than six months, when she accompanied Mrs. Alexander to Philadelphia."

Decree that Clarissa is free, affirmed: [360] " the law of Pennsylvania [1] . . was, that the slave might be brought there, and her condition be unchanged for the period of six months, but that if she remained there longer than that period of time she should be deemed a free woman. Mrs. Trigg was informed that such was the law of Pennsylvania, and she resolved to hazard the consequences; and we think, that in such a state of case, the condition of Clarissa in that state, after remaining in that state longer than six months, should follow her to Kentucky, and be her condition here. Under the circumstances, she was free there, and should be free here. This result was voluntarily incurred by her then owner, of which Mrs. Ferry was apprized, and having taken her bill of sale for Clarissa with a full knowledge of the circumstances, neither she nor her husband has any cause to complain, especially as she was also apprised that it was the intention of Mrs. Trigg that at her death, or as soon thereafter as the sum of $500 could be raised out of the means of her estate to redeem Clarissa, (the raising of which sum, according to Dudley, was prevented by herself,) Clarissa was to be free." [Crenshaw, J.]

Weddington v. Sam. Sloan (of color), 15 B. Mon. 147, December 1854. " In September, 1846, James Sloan made a writing stating the terms on which his slave Sam should be free." [151] " The deed of emancipation was conditional, to become absolute on the payment of $305; he paid James Sloan $167, and before the remainder was due James Sloan died [in 1847], and appointed his wife executrix. She refused to qualify, but received the remainder of the $305. Upon proof of the foregoing facts before the Pike County Court [in 1849], Sam was ordered to give security that he would not become chargeable to any county in this state, which was done, and the clerk was ordered to give him the papers evidencing his freedom, which was done." [147] " without any notice to the heirs or devisees of James Sloan. . . [Four years later] some of the heirs of James Sloan . . took Sam into their custody, claiming him to be their slave. In 1853 Sam presented his petition to the county judge, claiming freedom under the paper given him by his former master, James Sloan,

[1] Act of 1780, section 10.

and praying a writ of *habeas corpus*, and his restoration to liberty. The writ was served, and by consent of parties the case was heard in the Pike Circuit Court, and under the writ the judge decided that Sam was free, and set him at liberty. From that decision of the judge, Weddington and others, claiming property in Sam, have appealed to this court."

Appeal dismissed: [155] " this court has no appellate jurisdiction in the present case." [154] " The writ of *habeas corpus* is not an appropriate proceeding for the trial of the right to freedom. The decision of the judge or justice, upon the return of the writ, may operate to discharge a person held in slavery from the custody of those who may have him in possession, but it does not establish his right to freedom; nor can the proceedings under the writ be used even as *prima facie* testimony of the existence of the right in an action brought to assert it. He may be again taken into possession by the claimant, and held as a slave, after he has been discharged, and another officer, if he should again resort to a similar writ, might conclude that he was rightfully held in slavery and refuse to discharge him. This principle was substantially recognized in the case of Maria *vs.* Kirby,[1] . . [155] Upon the return of a writ of *habeas corpus*, if it should appear that the petitioner is held in slavery, and asserts a right to freedom, and there seems to be any reasonable grounds for the claim, the judge, instead of undertaking to investigate the question himself, should only make such an order as would enable the petitioner to bring an action and have an opportunity afforded him of establishing the right which he claims. The proceedings on a writ of *habeas corpus* may be *ex parte*, and carried on without the knowledge of the persons directly interested in the decision. Wherever therefore a question of freedom or slavery arises, its decision should be referred to the proper tribunal, upon an investigation conducted according to the forms of law, in an action instituted for that purpose." [Simpson, J.]

Delia v. Hays, cited in 17 B. Mon. 97, December 1854. The will of Dowdell provided that " all his negroes, after the death of his wife, that shall have arrived at the age of thirty-one years, shall be freed from slavery and bondage at the death of his wife." " I also will and desire that all my negroes that I have disposed of, as well as those that are yet to come, be freed from bondage and slavery at thirty-one years of age."

Held: " that such as were embraced in the words ' those yet to come ' were not free until they severally arrived at the age of thirty-one years, and that the clause was not intended to apply to any born after the testator's death."

Allen v. Vancleave, 15 B. Mon. 236, January 1855. [241] " This action was brought by Allen to recover damages for the alleged breach of a written warranty of the soundness of a female slave, purchased by him from the defendants. The bill of sale bears date on the 10th December, 1852, and the slave died on the 5th of February following, after she had been for about two weeks under the constant attendence of a physician, who, from symptoms stated, and examinations made by him, was of

[1] P. 402, *supra*.

opinion that she had pneumonia and a chronic inflammation of the womb, which was incurable, and which in his opinion, must have been of several months' continuance before her death." "Other witnesses speak of her being an unusually healthy woman, and that plaintiff was well pleased with his contract, and said he would not take a thousand dollars for her." The jury found a verdict for the defendants.

Motion for a new trial overruled: [242] "the court allowed the witness [her attending physician] to state all the woman said as to her existing illness, and the manner of her attack, and the progress of her disease; but refused to let him state what she said in relation to any former illness, or the manner of the attack, or the progress of the disease, or the history of her former disease. . . [245] In two manuscript opinions at the present term, such declarations to the attending physician in relation to the immediate malady under which the slave was laboring at the time, were held to be admissible on the question of soundness or unsoundness at a previous time. But they do not extend to the admission of declarations as to a previous malady or illness. . . [246] the judgment is affirmed." [T. A. Marshall, C. J.]

Evans v. Gregory, 15 B. Mon. 317, January 1855. [322] "The appellant being possessed, in right of his wife, of some dower slaves, took with him, some eight or nine years since, two of said slaves, as hands on a flat boat, to the city of New Orleans, and brought them both back again with him, when he returned to his residence in this State. It appears that they were not taken out of the State by him, for any other purpose than that of assisting him to take the boat to market, and with the intention of bringing them home with him, so soon as the object of the trip was accomplished. He subsequently hired one of the same slaves at Louisville, to the captain of the steamboat *Saladin*, as a hand on that boat, which was at the time engaged in the St. Louis trade. After remaining on the boat for some months in the service for which he was employed, the slave ran away, and has finally escaped. He had been previously furnished by the appellant, with a writing authorizing him to go to Louisville and hire himself out, under which he had acted for some time. And the appellant, notwithstanding he was informed that the slave had assumed a false name and pretended to be free, still permitted him to go at large, and failed to exercise over him, that controlling restraint, which was necessary to prevent his escape, and which the law of the land required at his hands."

Held: [323] "A removal [of a dower slave] out of the state,[1] denotes, according to the usual signification of this language, an actual change of residence, and not a mere temporary absence. . . [324] neither the taking of the slaves to New Orleans, in the manner described, nor the hiring of one of them on the steamboat which was in the St. Louis trade, was such a removal of them, or either of them, out of the State as is prohibited by the statute. Consequently, no forfeiture of the dower estate was incurred by these acts. But . . [the] tenant in dower . . permitted the slave to leave his home in Muhlenburg county, and to go to Louisville and hire himself out. The act was illegal in itself, and its tendency was to

[1] Acts of 1797 (2 Stat. L. 1545) and of 1835 (3 Stat. L. 553).

furnish the slave with an opportunity to escape, if he desired to do so. Besides, after the appellant had been apprized that the slave had assumed another name, and pretended to be free, he still extended to him the same indulgence, and permitted him to regulate, in a great degree, his own movements. He must be, therefore, responsible to the appellants for the value of their reversionary interest in the slave, but not for the whole value of the slave, inasmuch as he has himself lost the life estate of his wife therein." [Simpson, J.]

Anderson, Cynthia Ann, and Lorinda (of color) v. Crawford, 15 B. Mon. 328, January 1855. [335] "Anderson and two others, children of Milly, who formerly belonged to B. Ray, and was, by him, devised to his daughter, Mrs. Crawford, filed their separate bills against Crawford, claiming that they were free, and born free. This claim, of course, depends upon the alleged freedom of their mother at the time of their respective births. But Milly was certainly the slave of Ray until his death, about the year 1819, when under his will, she passed into the possession of Crawford, and, by operation of law, became his property. She remained in his possession as a slave, until about 1828, '9, or '30, when she left with her husband, a free man of color, she being then about 18 years of age. There is some intimation in the evidence, that Milly was Ray's child, that he had intended to emancipate her by his will, but the provision to that effect was accidentally omitted." [331] "Ray was the father of Milly—that he exacted a promise of Crawford to free her at the age of eighteen years—that she was permitted to go free at that age—that Crawford frequently spoke of his promise to Ray—and soon after she left, said he would go where she was and give her her freedom—that, when lodged in jail as a runaway, he directed her release, and enclosed her forty dollars—that she was the sister of his wife, and the aunt of his children"[1] [336] "no deed or other instrument for the emancipation of Milly had been executed by Crawford before she left his possession, . . Crawford made no effort to reclaim her or her children, for a period of nearly or quite 20 years, during a great part of which, she was in the adjoining county to that of his residence, and at about 25 miles distant, passing and recognized as a free woman, until she left her first husband, and went off to a free state, as is supposed with another free man of color, and that having been arrested in this adventure, and put in jail, in one of the counties bordering on the Ohio, Crawford, when informed of the fact by a letter from the jailer, remitted to him $40 to pay fees, and told him to let Milly go, and she has not been heard of since. Within a few years after she left Crawford's possession, and before her second flight, Milly had four children, all of whom she left behind, and of whom three are claiming their freedom, in the bills contained in this record. These children were bound out as free persons by the court of the county in which they had been born, and remained in service under the indentures, until they were claimed by Crawford, as his slaves, a short time before these suits were brought, in 1848." One witness testified that Milly [337] "claimed her freedom under the will of Ray, her former owner, and that

[1] Argument of counsel for the slaves.

upon being informed of her mistake, she said she was too white to serve as a slave, and asked the witness to get her free papers from Mr. Crawford. . . [338] the information that she was not free by Ray's will, may have induced her second flight to a place where her freedom might be more secure than in the vicinity of Crawford."

Held: [340] "Milly may have become free, if, being allowed to act as a free woman, and to go where she pleased, she went to a free State, for the purpose of acquiring or enjoying freedom, and especially, if she went to reside there, with the consent or even knowledge of her owner. But if she thus acquired her freedom, it was after her children, now complaining, were born; and as they remained in Kentucky, they can have no claim to freedom on account of her thus becoming free. Nor can they derive any right from the fact that a County Court, supposing them to be free, took the control of them, as being free, and bound them out by indentures." [T. A. Marshall, C. J.]

McGaughey v. Henry, 15 B. Mon. 383, January 1855. Will of Arthur McGaughey, 1852: [394] "As to my negro property, . . my daughter Harriet got two likely young women, . . My daughter Ellen, as her sister, at her marriage got two likely negro women. My wife and son Robert are requested to call in three or five discreet men, . . to ascertain the value of my slave property, and then my widow shall have her choice of the negroes to equal one-third of the total value, and at or before the death of my widow, she is privileged to divide said slaves as she may think proper, among her children. Out of the remaining two-thirds of slave property, my widow, if she thinks proper to do so, set apart two negroes to each of my sons . . [395] to equal the value of the negroes I gave to their sisters, . . my sons having their choice to take those two negroes male or female. After this is done, the above named men . . will proceed to divide the remaining negro property equally among my children,"

Baker (of color) v. Winfrey, 15 B. Mon. 499, February 1855. [502] "These five cases are brought by appeals from the proceedings of the County Court in binding out the appellants, free persons of color, of whom some are the children of Eliza Baker and others the children of Mary Baker, free women of color. It appears that a summons issued against each of the mothers to appear at the October term of the County Court, and show cause why her children should not be bound out, etc. That on their appearance, the county attorney moved the court to bind out the children, ten in number, to five persons whom he named; to which the mothers, by their counsel, objected, claiming the right to choose the masters to whom their children should be bound, and naming four persons whom they selected under that right. But the court . . [503] denied the right claimed; and without any evidence of the condition or character of the mothers, or of their ability or inability to support the children, or their disposition to bring them up in moral courses, proceeded to bind out to the persons named by the county attorney each of the ten children, the males to learn farming, and the females to learn house-keeping. It appears from the orders and the indentures that several of the children were

between ten and fourteen years of age, one three years old, another five, and the others between five and ten. It is somewhat singular that in two or three months after these proceedings most of the persons to whom the children were bound came again into court, and on their several motions, and as the order says, for good cause shown, they were severally released from the indentures, and the children were immediately bound again to other persons. In most of these instances the mothers, by their attorney, again objected." [501] "The indentures contain all of the stipulations required, except education, which is prohibited to free negroes," [1]

Held: the county court [505] "erred in overruling the objection of the mother[s] to the persons proposed by the county attorney as the masters to whom the children were to be bound, and in disallowing their right to choose the masters, and in proceeding to bind out the children severally to the different persons objected to by the mothers. . . [507] The mere fact that these are colored persons does not put them out of the protection of the law, nor subject them to be dealt with or disposed of with a view merely to the interest of individuals. There must be some ground of necessity, in view of the requirements of the law, to authorize the binding out of these children. . . No such necessity is shown to have existed . . We only say further, that although the statutes do not in terms require it, the indentures ought, in all propriety, to contain a covenant on the part of the master to teach his apprentice the art or business for the purpose of learning which he is bound to him." [T. A. Marshall, C .J.]

Chambers v. Davis, 15 B. Mon. 522, February 1855. [526] "Jonathan Nelson died in 1846. . . He devised all his slaves to his wife, except a man named Ned, for a certain period of time, at the expiration of which they were to be free. He also bequeathed to his wife a part of his personal estate, and the residue thereof together with the rents of his land, and the hires of his slaves for one year, he constituted a fund for the payment of his debts," "every one of the slaves owned by the testator, except Ned, came by her as a part of her inheritance." The widow married the executor. The "estate which the testator provided for the payment of his debts . . proved insufficient. . . [527] the court decided that the time the slave had to serve the widow before they were to be free, should be first liable, and if the slaves proved insufficient, then so much of the land [devised to the widow during her life] should be sold as might be necessary to make the residue, . . the plaintiffs have appealed, and contend that . . all the other estate of the testator should be first exhausted, even including the right of the slaves to their freedom."

Held: [529] "The slaves were not left as assets in the hands of the executor, nor had he any power over them, except for one year. . . The devise of the slaves to her must therefore be regarded as a specific devise, . . [530] The estate in the slaves, devised by the testator to his wife, and the estate in remainder in the land, will have to be valued, and each of them will have to contribute proportionably to the payment of the balance of the debt that may be found due, after crediting thereon the personal estate and hires aforesaid." [Simpson, J.]

[1] Argument of counsel for the appellees.

Commonwealth v. Hatton, 15 B. Mon. 537, June 1855. Held: an indictment against one for giving, selling, or loaning spirituous liquors to a slave must aver that the defendant had not for the time being the rightful care and custody of such slave. [538] "sheriffs, jailers, and other officers are often the rightful custodians of slaves belonging to others, and are not entitled to their services. It would not, we suppose, be contended that under the section of the Revised Statutes referred to,[1] such officer would subject himself to the penalty of the law, if, whilst custodian of another's slave, he deemed it proper to give to him spirituous liquors in moderation." [Stites, J.]

George (of color) v. Bussing, 15 B. Mon. 558, June 1855. [565] "This appeal is prosecuted by George, a slave, who, according to the provisions of the will, was to be free at the death of the husband of the testatrix." [559] "By this will [made in 1850] Mrs. Bussing attempted to dispose of two slaves, George, the appellant, and Betty." [560] "The husband was active in having the will made; . . he now attempts to defeat his wife's benevolent intention, by enslaving the appellant." [2] [559] "John Bussing had the possession of George from his marriage until he was forcibly taken from him by Scott, the trustee [under the will], after the death of Mrs. Bussing." [565] "The court below decided that the will was invalid, so far as it attempted to make a disposition of the slaves,"

Affirmed: [564] "A verbal authority from the husband is not sufficient. The wife cannot, therefore, with the consent of her husband merely, without some other power, make a valid disposition of her slaves by will." [3] [Simpson, J.]

Williams v. Langford, 15 B. Mon. 566, June 1855. "This suit was brought by the administrator of Williams against David Langford, (a man of color,) who was the slave of Williams until the 23d of September, 1842, when he was emancipated by deed duly admitted to record. On the day after the date of the deed of emancipation, Langford, with four others as his sureties, executed and delivered to Williams a covenant by which Langford was bound to pay, in consideration of his being emancipated to Williams one hundred dollars a year during the life-time of Williams, and if Williams should survive David, then during the natural life of David; payable in equal installments on the 1st of January and 1st of July in each year, commencing with January, 1843. . . [567] Williams died . . 1850, . . Langford, a short time before the death of Williams, paid him one hundred dollars, which was accepted by him in full discharge of the covenant sued on,"

Norris (of color) v. Patton, 15 B. Mon. 575, June 1855. Norris, the property of John M. Patton, "a citizen of Virginia, was permitted by his owner, to reside in Covington, Kentucky, for some years, paying the proceeds of his labor to his master, who, being on a visit to Cincinnati,

[1] Rev. Stat. 632.
[2] Argument of counsel for the slave.
[3] Act of 1800. 2 Stat. Laws 1546.

Ohio, sent across the Ohio river a request that the appellant meet him at the house of C. A. Withers and Co., in Cincinnati, when he proposed to appellant that if he would give him $400 and pay it in five years that he might have his freedom, and that he would not sell him in the meantime. This proposition was at once agreed to by the appellant, and he immediately returned to Covington, in Kentucky. Before the expiration of the five years, and before the $400 was paid, John M. Patton, the owner of the appellant, sold him to James M. Patton, who dying, his representative came to Covington. The appellant, apprehending that he would be removed, brought this suit to enjoin his removal, asserting his right to freedom and praying that his right might be established under the contract."

Held: [583] " Norris was not free merely because he was temporarily in Ohio by the act of consent of his owner, even if he was there for the purpose of making this agreement with him. According to the principles also maintained here, and deemed essential, the agreement with him was unobligatory, and he could not sue upon it, because he was a slave. And, moreover, it could not effect his emancipation here, because it was in parol. . . Norris, even if he might have been regarded as free if the condition on which he was to be free had been performed in Ohio, can not be so regarded here when the conditions have not been performed. And who, being a slave, cannot maintain a suit in our courts." [T. A. Marshall, C. J.]

Patton v. Harris, 15 B. Mon. 607, June 1855. [615] " The bill charges that the mortgaged slaves, a female and several infant children, were in possession of Patton, living near the Ohio river; that the husband of the mother is a free colored man; that Patton desires the emancipation of the woman and her children, has declared that they shall not be sold, etc., and will, as is believed, remove them to Ohio to prevent it. . . The slaves were properly attached, and no bond having been given by Patton, they were, on the 12th of April, 1849, placed by the sheriff in the jail of Mason county, situated in Maysville. At the succeeding May term of the Mason Circuit Court, in which the bill was filed, the slaves being still in jail, were directed by an interlocutory order to be taken into possession by McMillan, a deputy sheriff, and hired out, under bond from the hirer to have them forthcoming to satisfy any decree, etc., and in case he could not hire them he was directed to deliver them to the complainant [Harris], who was directed to hire them on the same terms. This deputy sheriff states in his deposition that he could not hire the slaves on the conditions prescribed, and that in June, 1849, he delivered them to the attorney of the complainant, who took them to the neighboring county of Fleming, where he resided. At the same time of this removal the cholera prevailed in Maysville, the slaves who had been insufficiently clothed while in jail, were nearly destitute of that article, and otherwise in bad condition; one of the children died in a day or two afterwards; others had been and were still sick; one had the cholera. They were worth nothing by way of hire while in jail, nor for the remainder of the year, but their keeping, removal,

clothing, and doctoring occasioned heavy expenses,[1] which, as consequent upon the legal attachment and the directions of the court, should be borne by Patton or the mortgaged property." [612] "after a decree of sale had been rendered, the mortgaged slaves which had been attached constituting the only security for the debt, were removed from the jurisdiction of the court, and in fact taken from this State to some distant part of the State of Ohio, or to other unknown parts, so that they could not and cannot yet be subjected to the mortgage. And there being sufficient evidence that this was done by the act or contrivance of Patton, process of contempt was issued against him, and he was committed to jail under an order of the court, requiring, as the condition of his discharge, that he should pay a certain sum assumed to be the amount of the mortgage debt,"

[614] "A longer continuance of an imprisonment already protracted through a period of two or three years would, as a punishment, seem to be unreasonable and inconsistent with the spirit of the constitution with respect to excessive bail, excessive fines, and cruel punishments,[2] and also with the enactments with respect to contempts. But considering the order with respect to the commitment and imprisonment as a punishment for contempt, this court has no jurisdiction to reverse it. . . [615] it is sufficient to suggest, as we do, that unless it should be made to appear to the Circuit Court, at its first term, that a further continuance of the imprisonment will probably coerce from Patton either a payment of the decree or a production of the slaves or of such as will suffice to make the sum due, he may be discharged from imprisonment, by making a fair and full surrender of all his means of paying said decree, or of such as shall be sufficient," [T. A. Marshall, C. J.]

Bullitt v. Clement, 16 B. Mon. 193, September 1855. Three slaves were brought before a justice of the peace [198] "by a police officer in . . Louisville; and upon hearing the proof in the cause, it appeared to his satisfaction that they were runaways, and therefore he committed them, as it was his duty to do, to the jail of Jefferson county" [197] "where they were confined for the space of twenty-four hours, when, in fact said slaves had not run away," The owner sued the justice. Judgment for the defendant affirmed.

Delphia Jackson (of color) v. Collins, 16 B. Mon. 214, October 1855. [215] "Delphia, a free woman of color, brought this suit as heir-at-law to Jemima, her mother, also a free woman of color. Jemima made a will, dated in 1839, which was admitted to record, by which she devised the property in controversy to be sold and the proceeds divided between her two daughters, Delphia and Caty; . . If the daughters and their children should die without issue, then she directs that the whole be divided between the children of Mary P. Collins, wife of Willis Collins. By a codicil dated in 1851, the testatrix recites her purchase of Delphia, and

[1] [610] "The commissioner allowed $190.50 for physician's bills, and funeral expenses of one of the slaves that died in Harris' possession. . . [611] also for expenses incurred in searching for the slaves," after [616] "they were secretly abducted," [611] "and for their keeping in jail,"

[2] Art. 13, sect. 17.

gives to her two grand-sons, Billy and Ellick, sons of her son Robin, instead of her daughter Delphia, one-half of the property mentioned in the will, and of any other property she may possess at her death, except her daughter Delphia, who is to be free. Delphia was emancipated by her mother, by deed, 26th October, 1850. All the beneficiaries in the will of Jemima . . [were] slaves at her death, except the children of Mrs. Collins, . . [216] At the date of the deed by which Delphia was emancipated, no statute had been passed by the Legislature under the 10th article of the constitution of Kentucky, which took effect in June, 1850," requiring the legislature to pass laws to prevent slaves [218] "from remaining in this state after they are emancipated," The circuit court decided that Delphia was not free.

Decree reversed. Held: I. the emancipation of Delphia was valid under the provision of the act of 1798. II. Delphia, [216] "her heir-at-law and only child or grand-child who is not a slave" [229] "has at least a *prima facie* right to the relief sought, or to some relief," [227] "as the devises to the slaves in this will are void, there seems to be reason as well as justice in saying that the interest, which is, in words, given to them, being in effect undevised, shall go to the heir as if it were blotted out of the will, rather than that by an artificial construction the ultimate devisees, who were intended to have nothing until the happening of a designated contingency, shall, before that has happened, take immediately, to the exclusion of the heir, all that was intended for the preferred devisees." [T. A. Marshall, C. J.]

Spurrier v. Parker, 16 B. Mon. 274, October 1855. [279] "Emily Parker and others, persons of color, brought this suit for freedom, and base their rights thereto upon the following instrument. 'I, Samuel Peaco, of the city of Annapolis, . . Maryland, do hereby set free from bondage the following negroes, purchased by me of John Callahan and Mary Mann, viz: negro woman Rose, on the 25th day of July, 1802; negro girl Kitty, on the 25th day of July, 1817, and negro girl Harriet, on the 25th day of July, 1825; also the negro girl Poll, which I purchased at Col. Chew's sale of negroes, who is aged about nine years and six months, on the 25th day of January, 1814, and likewise the negro woman named Rose, that I bought of Eleanor Davidson, executrix of John Davidson, this present day; and I do, for myself, my executors, and administrators, release unto the negroes aforesaid, all my right and claim whatsoever as to their persons, or to any estate they may acquire after the dates to each person respectively affixed as aforesaid, and hereby declaring the above mentioned negroes absolutely free, without any interruption from me or any person claiming under me.' This instrument is signed by Peaco, and is dated the third day of August, 1798. The plaintiffs are descendants of the girl Poll, mentioned in the foregoing deed, and are children and grand-children of Lucretia, who was a daughter of Poll, and was born about the year 1807, before the 25th day of January, 1814, at which time Poll, by virtue of the deed, was no longer to be subject to service at the command of another."

[284] " the chancellor erred in decreeing the freedom of the plaintiffs." [283] " the grantor did not, when all the different clauses of the deed are put together and made to harmonize, confer immediate freedom, with a postponement of its enjoyment, but deferred it until a specified time—he ' set Poll free from bondage on the 25th day of January, 1814,' and not before. An effort was made to prove that the grantor in this deed was a Quaker, and entertained principles hostile to slavery, so as to bring this case under the influence of considerations like those mentioned in the cases in 4 Dana and 6 J. J. Mar., *supra*; but this effort signally failed of success, for whilst he is shown to have been a Quaker, and to have expressed sentiments in opposition to slavery, it was also proved that he sold Lucretia, the mother of Poll, to a southern trader." [Crenshaw, J.]

Western v. Pollard, 16 B. Mon. 315, October 1855. [319] " the hirer had employed him [the slave] in rafting or floating saw-logs, a business involving great risk and danger to both health and life, and that the slave, whilst thus employed, was drowned. The defendant contended that he hired the slave for the express purpose of working at his mill; . . [321] and he also proved that the plaintiff had been at the defendant's mill and saw the slave at work there before he was drowned, and made no objection to his being engaged in that business." Judgment for the plaintiff reversed.

Taylor v. Embry, 16 B. Mon. 340, December 1855. Held: " The devise in this case to Embry, for the benefit of Joe Traveller, his slave, is . . void, and no interest passed by it to the trustee nor the beneficiary. And the testator having no children or other relations that were free, and could take by inheritance, his wife . . [341] was his sole heir-at-law, and as such entitled to the whole of his estate. She being thus entitled to the land in question, and in possession thereof, had the right . . to file her petition in equity against Embry to quiet any claim he set up under the will, as devisee in trust for his slave." [Stites, J.]

Isaac and others (of color) v. Graves, 16 B. Mon. 365, December 1855. The will of Nelson Graves, admitted to record in 1853, directs the executor [366] " to sell all the real and personal estate of the testator except the slaves, as soon as possible, . . gives $1,000 to the Kentucky State Colonization Society. . . directs that when the above property is sold, and the proceeds collected, the executor shall pay one half of it to certain relatives of the testator. . . ' The other half is to be paid over to my slaves, each and every one of them to have an equal share. . . Each and every one of my slaves are to be liberated and placed in the hands of the Kentucky State Colonization Society for the purpose of being colonized to Liberia.' . . Many of the slaves appear to be infants,"

Held: [368] " the intended emancipation of the slaves is prospective, and so connected with the purpose of their being colonized, as to be incapable of a separate and independent operation without violating the manifest intention of the testator. The colonization . . is a condition precedent to the emancipation, . . none are entitled to the legacy who refuse or fail to do their part in the performance of the condition by

conclusively submitting themselves to be transported to Liberia for the purpose of being there colonized, and that it is only to those who thus secure their freedom as designed by the will, that the legacy is to be paid to each an equal share. . . [369] if there be no other means properly applicable to this object [the expense of their removal to Liberia] and as far as other means may be deficient, the legacies given to the persons themselves, who for their own supposed benefit are required to go or to be taken to Liberia, may and should, under the direction of the chancellor, be appropriated to that purpose. But there is another fund, viz., that arising and which may have arisen from the hires of the slaves before their departure for Liberia, which is primarily liable to be appropriated for bearing the expense of their removal. . . [371] the intermediate hires accruing before the departure for embarkation, should be a common fund to be appropriated to the general object of preparation and removal. . . [372] And the society, or its agent, undertaking to transport and colonize the negroes, may properly be selected by the court as the agent or commissioner to be entrusted, under proper security by bond or otherwise, with the duty of receiving on this side of the Atlantic, and after making proper deductions for necessary disbursements, paying over the legacies to parties entitled, on their arrival at their destination in Africa. . . [373] We think the payments should be made at any rate after embarkation, and we should think it more provident to make them even to the adults after arrival in Liberia, and that the shares of the infants should be paid there to such person or persons as, by the laws of the place, are entitled to receive and would be responsible for them. As it is of the utmost importance to the intended colonists that the funds intended for their use in their new homes, should be scrupulously guarded and secured for their use, we think it would have been provident to require the executor, or a commissioner, to ascertain what arrangements or provisions, made either by the Colonization Society or by the laws of Liberia, may be made available for this security in the present case." [T. A. Marshall, C. J.]

Carney v. Walden, 16 B. Mon. 388, December 1855. [395] "The principal question in this case arises upon the writing executed by Coates, and Carney his surety, for the hire of a female slave, during the year 1853, which writing contains a covenant for the return of the slave at the end of the year. It appears that during the year, Coates caused the death of the slave by inhuman treatment, and having immediately thereafter absconded, this action was instituted for the purpose of attaching the property of Carney, the surety, who, as alleged in the petition, was about to dispose of his property [1] with the fraudulent intention of evading his liability for the value of the slave, and the hire. The slave belonged to Lucy Walden, and had been hired by her to W. C. Thompson and R. W. Payne, for the year 1853, and they hired her to Coates," [393] "for the year 1853 at the price of $65,"

Held: Carney is liable [396] "upon the written contract, for the failure to return the slave. . . [397] Thompson and Payne were liable

[1] [394] "It was after the bringing of the suit . . that Pettit bought the negro man . . at $1,000,"

to Lucy Walden for the value of the slave, inasmuch as Coates, to whom they had hired her, had caused her death by bad treatment." [Simpson, J.]

Bracken v. Steamboat "Gulnare", 16 B. Mon. 444, December 1855. [452] "This is a proceeding by attachment against the steamer *Gulnare*, instituted in the Louisville chancery court, under the provisions of the Revised Statutes, 143-4, to obtain satisfaction for the value of a slave named Ambrose, who escaped upon her from New Madrid, Missouri," where his owner lived, in April 1855. The boat was [453] "then lying at the wharf of New Madrid, and bound for Cincinnati on her trip from New Orleans to said city, and that the boat passed through the waters of Kentucky with said slave. That the value of the slave was $1,000, and that the plaintiff had expended $100 in his efforts to recover him. The chancellor dismissed the petition, and the plaintiff has appealed to this court."

Judgment affirmed: [453] "It was, doubtless, the primary object of the legislature, in the enactment of the law above adverted to, to protect the slave owners of our own State. Still, the legislature should be regarded as having intended to protect the owners of slaves, sojourning with them in this state, though not residents thereof, and also as having intended to protect the owners of slaves who might reside in another State, and whose slaves might, at the time of their escape, be permanently or temporarily within our state; and the law should be construed to embrace such states of case. But we do not believe that the legislature intended to afford the remedy of the enactment to the citizens of another state, whose slaves do not escape from this state, but from a state in which both the owner and slaves reside, and in which they are at the time of escape, simply because the slaves, after escape, may pass in a boat up the Ohio river, over which this state has jurisdiction." [Crenshaw, J.]

Wheeler v. Jennings, 16 B. Mon. 476, December 1855. Held: [481] "The act of 1846 exempts slaves which may be given to the wife from liability for her husband's debts, whether the gift be oral or by deed."

Davis and others (of color) v. Wood, 17 B. Mon. 86, June 1856. Will of Thomas Davis, 1801: "I give and bequeath unto my son, Thomas Davis, jr., legal heirs, one negro girl named Beck, aged fourteen years.—Its my will and desire that said negro Beck, and all her offspring, shall be set free from all bondage at forty years of age." Beck died in 1819 or 1820, before she reached the age of forty years. [91] "Matilda Davis and some twenty others, persons of color, claiming to be the descendants of Beck, formerly the property of Thomas Davis, filed this petition to assert and establish their freedom, against Wood and others holding them in bondage."

Held: [92] "the attainment of that age by Beck herself was not a condition precedent to the freedom of her offspring, and that although her death under the age designated necessarily prevented her enjoyment of the freedom devised to her, it did not affect the devise to her offspring. . . [93] the testator intended that this devise should take effect at a particular time, fixed by reference to the age of Beck, instead of by naming the year itself, which might have been ascertained by calculation. . .

[100] in every instance [the testator] couples the offspring with the named ancestor in the devise of freedom. . . in no instance does he use the word slave or slaves, but always negro or negroes. . . although the plaintiffs are free, and some of them have been so for a considerable length of time, we are of opinion, upon the facts of this case, that they are not entitled to recover hire against the defendants. . . judgment dismissing the petition is reversed," [T. A. Marshall, C. J.]

Johnson v. Green, 17 B. Mon. 118, June 1856. [121] " with the consent of Mrs. Johnson, he received from her husband the girl, . . and conveyed her to New Orleans and sold her . . in the year 1849, . . she was worth from $475 to $500."

Kelly v. White, 17 B. Mon. 124, June 1856. [128] " This action was brought by White to recover the value of his slave Edmund, hired to the Kellys, who were carrying on iron works and hired the slave to aid in that business," Edmund [134] " had been regularly at work in the pit in which he was killed, until three or four days before the accident, when the pit being exhausted, the superintendent put him to work on the top of the bank, and . . [135] immediately on the edge or brink of the pit, though that side of it on which he was at work did not fall in. The superintendent says that his attention was attracted by the sound of the earth cracking, and looking round he saw Edmund leaning on his shovel in the pit, and looking up at its sides. The sides fell in and he was crushed to death." [128] " The plaintiff maintains that Edmund was hired under an express agreement that he should be employed only at the forge, and that he should not be put to work at the ore banks or in digging ore. The defendants insist that he was hired expressly to be employed as they might choose in their business at the iron works. They moreover rely on their note stipulating for the payment of the hire, also for clothing the slave, and for allowing him two weeks' vacation from labor in the year, as being written evidence of the contract,"

Held: [129] " parol testimony is competent to prove terms of the hiring not contained in the note for the hire, . . [136] as his going into the pit was a consequence of that employment, they cannot, if the employment was a violation of their contract, and a misuse of the hired slave, rely upon his act as purging their own wrong, even if he had, by an instantaneous and willful suicide, terminated at once and absolutely the unauthorized employment." [T. A. Marshall, C. J.]

McClain v. Esham, 17 B. Mon. 146, June 1856. The slave of Mrs. Esham [153] " embarked upon the boat at Vanceburg, in Lewis county, in this state, on the 4th September, 1855, in company with Thomas and William Stricklett, proceeded with them to Portsmouth, Ohio, and had not returned or been heard of since. That he had at the time no written pass or authority from his mistress; and that the said Strickletts had not hired him from her, nor had any rightful control over him. It was likewise proved that his mistress lived in Nicholas county, and that the boy had been accustomed, without restriction of his owner, to hire himself out to whom and whenever he pleased. Two of the witnesses prove him to

have been a carpenter, and worth $1,500. All say that he was obedient and subordinate; but some express the opinion that, in view of his habit of hiring himself without control, and the ease with which he could escape across the Ohio, where his recapture would be hopeless, he was not so valuable to his owner. That it was hazardous to keep slaves near the Ohio, and especially to permit them to go at large. The evidence likewise conduced to show that the escape of a slave to Ohio, was equivalent to a total loss to the owner." The clerk of the boat [152] "charged the negro full fare. If he had been taken as a servant, only half fare would have been charged." Witness proved [155] "that when the slave last worked for him, that he had a pass purporting to be from her, allowing him to pass to and from his work. . . this testimony was excluded . . very properly . . in cases where writings, passes and licenses, can and are so frequently manufactured for slaves, by evil and mischievous persons, aiding them to escape from their rightful owners." The jury [153] "returned a verdict for the plaintiff [Mrs. Esham] of $1,500 in damages; . . judgment entered for the amount,"

Judgment affirmed: [156] "The value of the slave, according to the testimony in this case, was the best criterion of such damage. What that value was, considering his age, habits, vocation, health and character for subordination and obedience, as well as his locality, and the chances or inducements for escape from his owner, the jury were to estimate." [Stites, J.]

Tunstall v. Sutton, 17 B. Mon. 345, September 1856. Tunstall had captured [346] "George, a negro boy slave about six years old, who had been taken from the owners in Kentucky by his father [who was the slave of the plaintiff], and conveyed to Cincinnati . . where the plaintiff found him, and by authority of a warrant restored him to the defendant" and claimed the reward of one hundred dollars, [348] "allowed by the statute [1] for the apprehension of a runaway slave in a state where slavery is not allowed." The chancellor dismissed the petition.

Judgment reversed: [347] "according to the reason and spirit of the statute upon the subject of runaway slaves, the slave George should be regarded as a runaway, notwithstanding he was only about six years of age. He was, doubtless, taken away by his father, who was the slave of the plaintiff; but the plaintiff had no agency in the act of the father of George, . . He was of an age capable of voluntary escape, and, no doubt, exercised it. But, suppose a mother, who is a slave, should escape from her owner, carrying with her a sucking child not capable of an agency in the escape, ought not the child, in view of the statute, to be regarded as a runaway slave as well as the mother? . . [348] George appears to have been arrested as a runaway by the plaintiff, in the State of Ohio, under a warrant issued by the authority of a law of the United States, and, by this means, the plaintiff was enabled to take and deliver him to the defendant Emily A. Sutton. George, then, has been taken and treated, in view of the law and constitution of the United States, as a fugitive from

[1] Rev. St. 636.

service. And, if he was a fugitive from service, he was a runaway slave." [Crenshaw, C. J.]

Edwards v. Woolfolk, 17 B. Mon. 376, October 1856. By a deed of trust made in 1825, [378] " the grantors conveyed to the grantee a negro woman named Sylvia, in trust for the separate use of Elizabeth Edwards during her natural life, and at her death for the use and benefit of such children as she might then have living."

Taylor v. Smith, 17 B. Mon. 536, December 1856. [540] " Taylor made the purchase, and paid his money for the slaves; that . . he carried one away with him; and it being inconvenient to take away, at the same time, those that remained, they were left upon the premises, that Taylor might, the next morning, send a vehicle for them, and take them away, by which time Mrs. Menzies said she would have their clothing ready." In the meantime the sheriff arrived and attached the slaves left on the premises as the property of Menzies, who [539] " denied that there were any slaves there, but they were found there secreted."

Held: leaving the slaves with the vendor was not fraudulent in this case. [542] " The attachment . . ought to have been vacated. . . Whether the purchase of the slaves was fraudulent in fact or not, was a question for the jury," [Crenshaw, C. J.]

Railroad Company v. Yandell, 17 B. Mon. 586, December 1856. [593] " In August, 1855, Yandell hired his negro man, Henry, to the Louisville and Nashville Railroad Company, for the price of $25 per month. . . the duty which was assigned him, was that of connecting the cars, one with another, and of connecting cars with the locomotive, and, also, of attending to the brake at the front end of the car nearest to the engine. In November, 1855, a train of cars left Louisville for Shepherdsville, under the superintendence of the conductor, Henry being aboard. . . [594] When the locomotive approached the first wood car, the negro man, Henry, as was his duty and business, got down from the train, and whilst it was stationary, fastened the first wood car to the locomotive. He then took his stand upon the pilot block, which is a part of the cow-catcher, and remained there until the train started and came in collision with the second wood car. This collision was so severe as . . to cause Henry to fall from his position on the pilot block, whereby, his leg was crushed from the knee down to the foot. The injury was so severe as to render it necessary to amputate the fractured part of the limb, and to reduce, greatly, the value of the slave, if not to render him valueless."

Held: The railroad company is liable for the injury to the slave: [596] " A slave may not, with impunity, remind and urge a free white person, who is a co-employee, to a discharge of his duties, or reprimand him for his carelessness and neglect; nor may he, with impunity, desert his post at discretion, when danger is impending, nor quit his employment on account of the unskillfulness, bad management, inattention, or neglect of others of the crew. Whatever may be the danger by reason of any of these causes, he must stand to his post, though destruction of life or limb may never be so imminent. He is fettered by the stern bonds of slavery—necessity is upon him, and he must hold on to his employment.

Slaves, to be sure, are rational beings, but without the power of obeying, at pleasure, the dictates of their reason and judgment. Whether, therefore, the doctrine which has been applied in other states, of the irresponsibility of railroad companies to their free employees, for casualties happening upon the road, through the carelessness of some of them—all being co-workers in a common business—we do not perceive the propriety of applying this doctrine to the present case, in which an injury to a slave is the complaint. . . [598] if . . the slave, Henry, voluntarily took a perilous position, and thereby contributed to the injury, still, if it might have been prevented by the observance of due and proper care and caution by the conductor and engineer—that is, by the exercise of ordinary care and prudence by them, the defendants are not exonerated from responsibility." [Crenshaw, C. J.]

Barnes v. Edward (of color), 17 B. Mon. 633, January 1857. [633] " It is alledged that the plaintiff, Edward, was the slave of Wilcox, who, by his will . . emancipated and set free the said plaintiff, and that Barnes and wife [the daughter of Wilcox] had destroyed said will a short time before Wilcox's death, and after Wilcox's death, had taken the plaintiff into their possession, and continue to hold him as a slave." [638] " Doctor Hill, the attending physician, says Barnes came to Wilcox's from two to four days before his death; that Wilcox was then incapable of doing any business . . Smith . . says he gave Wilcox his will and a pair of scissors, and he cut off his name, and chewed and swallowed it; that he handed the will and scissors to Wilcox, at the request of the defendant, Barnes;" [633] " The circuit court decided that the plaintiff was entitled to his freedom,"

Judgment [641] " reversed for the want of jurisdiction in the Larue circuit court to establish the will." " The court, however, had jurisdiction to enjoin the removal of Edward from the country, and the injunction to this effect was proper; and the court should retain the cause upon the docket, and continue to control and hire out the plaintiff, until a reasonably sufficient time shall elapse for the probate or establishment of the will in the proper county." [Crenshaw, C. J.]

Graves v. Leathers, 17 B. Mon. 665, January 1857. " the consideration paid [for the land] was a negro boy at the price of $300."

Meekin v. Thomas, 17 B. Mon. 710, January 1857. [714] " The suit was brought by Thomas against Meekin, who was captain . . of the steamboat *Empire*, to recover the value of a negro boy, Lewis, hired to Meekin as a fireman, who made his escape from the steamer into the state of Ohio, whilst she was lying at the wharf at Cincinnati. . . [715] Thomas, had left the boy with . . Sublett, a wharf-boat master at Columbus, in Hickman county, to be hired as a fireman on a steamboat—not to be hired on any particular steamboat . . Not long after . . the *Empire* hove in sight on her trip up the river from New Orleans. She was hailed from the wharf-boat, and was told by Sublett that he had a hand for the steamer, she then came up to the wharf-boat, and barely touched, . . No directions were given, and no inquiries made, as to the points at which the boat was, or was not, to land . . the crew was composed of negroes,

and that the sign-board of the boat pointed out Louisville as her place of destination" [713] "Captain Meekin was vigilant in preventing an escape, and after it had occurred used great pains, and spent $140 in endeavoring to recapture the boy. . . it is not the custom for boats hiring slaves on board to iron them or confine them when they enter a free port. If that should become common, the practice of hiring slaves on steamboats would be at an end." [712] "The jury found $900 which they regarded as his full value."

Held: Meekin is not liable: [717] "It may be, and we believe it is true, that it is more hazardous to land with slaves at Cincinnati, than at other points in free territory on the Ohio river.[1] Still the *Empire* did not go beyond her legitimate sphere, in making a voyage to that port, in the pursuit of her business and profession," [Crenshaw, C. J.]

Easley v. Easley, 18 B. Mon. 86, June 1857. [91] "The will was executed . . in 1854; the legal effect of the provisions of the will, . . must therefore be regulated . . by the Revised Statutes.[2] Since they took effect slaves are personal estate, and, upon the death of a testator, pass to his executor like any other personal estate, notwithstanding they are specifically devised. Suits may be maintained by the personal representative for their recovery, although he is expressly forbidden from selling them, unless, for the want of other assets, a sale of them be necessary to pay the debts of the decedent." [Simpson, J.]

Richardson v. Hayden, 18 B. Mon. 242, September 1857. Will of Jasper, 1850: [253] "he gave to his daughter, Mariah, a slave named Wyn, provided his real and personal estate were sufficient to pay his debts, otherwise Wyn was to be sold, . . and to Charles, a slave to be hired out until Charles arrived at age;"

Commonwealth v. White (*free negro*), 18 B. Mon. 492, December 1857. Charles White, a free man of color, was indicted for selling liquor, in violation of the statute.[3]

Kitty v. Commonwealth, 18 B. Mon. 522, December 1857. [526] "Know all men by these presents, that I, William T. Winston, of Boone county, Kentucky, for and in consideration of the sum of one hundred and fifty dollars . . have bargained, sold, and conveyed . . to Joseph Chambers, of the same county and State, a certain negro girl slave named Kitty, for and during the term and period of twelve years from this date, together with all increase which said girl Kitty may have during said term of twelve years, to have and to hold said girl Kitty for the term aforesaid, and her increase during said term absolutely and forever; and I hereby emancipate and set free the said girl Kitty at the end and expiration of said term of twelve years, should she so long live. Given under my hand and seal this 10th August, 1843. W. T. Winston." [527] "At the expiration of the term, . . in 1855, the girl Kitty claimed to be free, and was permitted to, and did conduct herself as a free woman of color until 1857,

[1] [714] "there were many people there who would aid slaves to escape."
[2] Ch. 93, art. 1, sects. 3, 4, p. 627.
[3] Rev. Stat. 643, sect. 7.

when, by order of the county court of Boone, she was directed to be placed in the custody of a trustee, to be hired out until 'a sufficient fund was raised to defray the expense of her removal to some place out of this State, and to maintain her twelve months.' This order was resisted by Kitty, and from it she has appealed to this court."

Held: [528] "as Kitty's right to freedom accrued before the adoption of the present constitution, although its enjoyment was postponed until afterwards, that the provision of the Revised statutes[1] . . requiring county courts, when the person emancipating a slave shall fail to provide for his removal out of the State, to direct such slave to be hired out until a sufficient fund shall be raised for that purpose, does not apply to her case," [Stites, J.]

Kyler v. Dunlap, 18 B. Mon. 561, December 1857. [565] "Dunlap sued out executions . . upon two judgments . . against the appellant, Stephen Kyler, a free man of color. . . [566] a constable . . levied them upon the appellant, Cynthia Kyler. Stephen and Cynthia Kyler filed their petition . . and obtained an injunction inhibiting the sale of Cynthia under the executions. The petition averred . . that one Joseph Kyler, who had once owned Stephen, and manumitted him, purchased Cynthia because she was the wife of Stephen, and being desirous to secure to Cynthia her freedom after his death, consulted a lawyer on the subject of emancipating Cynthia, who was unwilling to leave this State, and having been advised by the lawyer that under the existing constitution of Kentucky Cynthia could not be emancipated and remain in this state; and the lawyer having advised Joseph Kyler that the only way he could secure Cynthia to Stephen for a wife, whilst she remained in Kentucky, was to make a bill of sale or deed conveying her to Stephen to be held by him as a wife. A deed expressing a nominal consideration, was executed by Joseph Kyler to Stephen Kyler, conveying Cynthia to Stephen in fee, after reserving a life estate to Cynthia in the grantor, and the deed was regularly recorded." Stephen's [564] "debt was created while she belonged to" Joseph Kyler.

Burton, counsel for appellants: [564] "it is objected, that . . it is a fraud on his creditors for him to claim her but as a wife. What, a fraud for a man not to make his wife a slave? Can the forbearance to do such an act, be tortured into a fraud upon the right of any one, . . If this be so, we are of a certainty, realizing in the severest, and a practical form, one of the effects of that barbarous and piratical doctrine of the Dred Scott decision, 'that negroes have no rights that we are bound to respect.' Truly, then, has that African Adam, in his attempt at the forbidden fruit of freedom, brought worse than sin and death to the negro race."

Held: Cynthia is subject to execution for Stephen's debts. The statute[2] [567] "was never intended to protect slave property from execution; . . [568] Cynthia has not been emancipated according to the laws of this state, and that any attempt to do so, by a pretended sale of her to her husband, to be held by him only as his wife, is a mere attempt to evade the statutes of this commonwealth on the subject of free negroes, and

[1] R. S. 644, sect. 4.
[2] Rev. Stat. 628, ch. 93, art. 1, sect. 6.

obviously at war with the policy of the laws of this commonwealth. The assumption that Stephen Kyler took Cynthia as a wife only, and held the title to her in trust, cannot be maintained. . . [569] Although the laws of this state give a recognition to marriages between free negroes, yet marriages between free negroes and slaves is not recognized but to very limited extent." [Wheat, C. J.]

Martin v. Letty (*of color*), 18 B. Mon. 573, December 1857. "This suit was brought in January, 1853, . . to recover a negro woman Letty, and her children and grand children, some sixteen in number, that had been set free by Andrew Barnett, by his last will and testament," [580] "Barnett acquired the possession of the slaves in 1819, and held them in his possession until he died in 1847. This action was not commenced until 1853, upwards of thirty years after the transactions occurred, which the plaintiffs have attempted to explain by parol testimony. The only writings exhibited show an indisputable title to the slaves in Barnett, and parol evidence has been resorted to for the purpose of establishing a secret trust, inconsistent with the face of the writings."

Held: [581] "the claim is not only stale, but it is barred by the statute of limitations." [Simpson, J.]

Manion v. Titsworth, 18 B. Mon. 582, December 1857. [596] "The intestate [a resident of South Carolina] owned at the time of his death a female slave named Kate, and her two children. A sale of the personal estate, including these slaves, was made . . the slaves were purchased at the sale by the widow, at the price of $730."

Sasseen v. Hammond, 18 B. Mon. 672, January 1858. [673] "George, of color, instituted a suit in the . . circuit court against . . Hammond, to recover his freedom. Hammond answered, denying George's right to freedom, and made his answer a cross-bill against Sasseen . . alledging that he purchased George from Sasseen, and claiming a decree against Sasseen for the price given for George in case he should establish his right to freedom. Sasseen . . denied that George was a free man, . . At the fall term, 1855, or spring term, 1856, a final decree was rendered declaring George a free man, and also a decree on Hammond's cross-bill against Sasseen on his warranty of title to George."

The decrees were affirmed.

Elisha (*of color*) *ex parte*, 18 B. Mon. 675, January 1858. [678] "The appellant was emancipated by the will of Samuel Summers, and no funds having been provided for his removal from the state, the county court of Nelson county appointed a trustee to hire him out until his hire should produce a fund sufficient for that purpose, according to the provisions of article IX of the Revised Statutes, regulating the emancipation of slaves. Elisha, having been summoned to show cause why he should not leave the commonwealth without further delay, presented a petition to the Nelson county court setting forth, in substance, that the trustee had in his hands about $216 as the proceeds of his hire under the former orders of the court, and that he elected to accept his freedom under the will of his late master; that Nathaniel Talbott was the owner of a slave named

Julia, and had, by his will, emancipated Julia and her children upon condition that they would go to Liberia; that many years previously the appellant and Julia had been married by the consent of their respective masters, and that they had a family of five or six children; that his master had emancipated him chiefly for the reason that his wife and children had previously become entitled to their freedom, and he did not wish the family separated; that his wife and children had established their right to freedom, (upon the condition stated) by suit in the Nelson circuit court, which court had directed them to be hired out for the purpose of raising a fund sufficient to transport them to Liberia; that this could not be accomplished under five or six years, and he therefore proposed that the proceeds of his labor should be united with that of his wife and children, as a common fund, to be applied to the transportation of all of them, at the same time, to Liberia, and that thereby they would be enabled to leave the state in less than half the time that would be otherwise required. The material facts stated in the petition were proved, but the court, on final hearing, refused the application of Elisha, and made an order directing him to depart from the state on or before the 1st day of July, 1857. From that order he has prosecuted this appeal."

Held: [679] "There is certainly nothing in the language of this enactment,[1] or in the obvious motives of policy as well as of humanity which dictated it, that restricts its application to cases in which the entire family are emancipated by the same person or by the same instrument. The relations of husband and wife, and of parent and child, are recognized by this section, and it is apparent that one of the objects of the legislature was to prevent the disturbance of those relations, by providing means of keeping the family together. It was also a part of the legislative policy to provide for the removal, from the state, of that class of persons with as little delay as practicable. Both of these objects will be promoted by extending the provisions of the section quoted to cases like the one before us; and a case can hardly be imagined in which either the rights or interests of the commonwealth, or of the parties, could be prejudiced by the equitable construction we feel constrained to adopt. We are satisfied, therefore, that it was the duty of the county court, upon the state of case presented by this record, to have made suitable orders for the hiring out of the appellant, and such of his family as are in condition to be hired, until the proceeds of the labor of all, united in a common fund, together with any thing they may receive from other sources, shall be sufficient for the removal of all, at the same time, to Liberia. The order of the county court is therefore reversed, and the cause remanded for further proceedings in conformity with this opinion." [Duvall, J.]

Smith v. Adam (*of color*), 18 B. Mon. 685, January 1858. [687] "In January, 1854, Ormsby Gray, of Louisville, executed and delivered to his man Adam, a paper, purporting to be a deed of emancipation, but which had not been acknowledged by him, or proved in the county court as required by the Revised Statutes.[2] Adam continued to reside in Louisville,

[1] R. S. 645, art. 9, sect. 7.
[2] Rev. Stat. 643, ch. 93, art. 9, sect. 1.

doing business and acting as a free man from the delivery of the deed up to March, 1857, and during this period was occasionally in Indiana. In March, 1857, the appellants, who were creditors of Gray, caused executions against him to be levied on Adam, and were about to have him sold, when he filed his petition, asserted his freedom, and relied on the foregoing facts to establish it. The chancellor held that he was free, and not subject to the payment of Gray's debts, and from that decision the creditors have appealed."

Counsel for appellants: [686] "It is not enough that Adam, on several occasions, has breathed the air of freedom in the state of Indiana."

Judgment reversed: I. [688] "the deed of emancipation in this case is ineffectual to vest Adam with a right of freedom, because it has not been proved or acknowledged in the county court as required. . . [II.] the occasional visits of Adam to Indiana, since the execution and delivery of the deed," have not had the effect to make him a free man. [689] "Prior to the constitution of 1850, and the adoption of the Revised Statutes, . . The law then in force would have settled it at once in favor of the slave. But in our opinion the requisitions of the present constitution and the legislative enactments made in pursuance thereof,[1] have changed the law, . . the chief causes which led to the enactment of these stringent constitutional and legislative provisions was the rapid increase of that class of population [free negroes] within the state, and the evil to be apprehended therefrom. It was to prevent such increase that the constitution made it imperative upon the legislature to prevent slaves that might thereafter be emancipated from remaining in the state; . . [692] If a person desires to emancipate his slaves in Kentucky he must conform to the requisitions of the law; it can be done in no other way." [Stites, J.]

Commonwealth v. Van Tuyl, 1 Met. Ky. 1, June 1858. [2] "The defendant was indicted in Carroll county, in this state, for feloniously obtaining money, by false pretenses, of B. W. Jenkins. The facts proved upon the trial were, that the defendant was in the state of Ohio, and had along with him a negro named John, who he represented to be a runaway slave belonging to him, that he was trying to take back to a slave state; stating that he was a resident of the state of Tennessee, from which place the slave had, some three or four months previously, made his escape. That whilst he was in the state of Ohio, he sold and delivered said negro to B. W. Jenkins, at the price of five hundred dollars, which Jenkins was to pay him when they arrived in Kentucky, and the purchaser was to run the risk of taking the slave to that place. After the parties arrived in Carroll county, in this state, the defendant, not however, in his own, but in another name, executed to Jenkins a writing acknowledging the payment of the money as the price of the negro, in which he covenanted that he was the lawful owner of the negro, and that he was a slave for life: and thereupon Jenkins paid him the five hundred dollars. It was also proved that John was not a slave, but was free; that he and the defendant both resided in the state of New York, and that the latter never had resided in the state of Tennessee."

[1] Constitution of Kentucky, Art. 10; Rev. Stat. 647.

Shumate v. Ballard, 1 Met. Ky. 31, June 1858. [32] "In the year 1849 or 1850, Thomas Francis gave to Mrs. Ballard . . his daughter, a negro boy named Fayette." Soon after she exchanged Fayette for two slaves belonging to her brother, John B. Francis. [33] "the following bill of sale was executed at the time of the exchange, by Francis, and delivered to Ballard, the husband: 'I have this day traded unto James D. Ballard a negro woman named Sarah, also a boy child [of Sarah], for and in consideration of one negro boy named Fayette. I warrant the girl Sarah sound at this time, in body and mind, and warrant her a slave for life.' In . . 1856, the appellant became the purchaser of Zena, a son of Sarah, born since the year 1850, at a sale under an execution . . against Ballard . . at the price of $315." In 1857 Mrs. Ballard brought suit, alleging "that the bill of sale to her husband was made without her knowledge,"

Held: [34] "the equity of the wife would not be recognized and upheld as against the claims of innocent purchasers from the husband, without notice, or of creditors." "especially after the lapse of more than six years from the date of the transaction, during the whole of which period the slaves remained in the possession of the husband, and by him claimed and controlled as his own" [Duvall, J.]

Coffey v. Wilkerson, 1 Met. Ky. 101, June 1858. [103] "The plaintiffs alleged . . that their father had a life estate in two slaves, named Henry and Daniel, and that said slaves belonged to them after the death of their father, under a devise in the will of their grandfather. . . Coffey, some years ago, purchased the life estate in said slaves, . . and . . [105] not only sold the absolute right and title to them, but he sold them to negro-traders, persons who follow the business of taking slaves to a southern market,"

Ludwig (*of color*) *v. Combs*, 1 Met. Ky. 128, June 1858. [129] "On the 4th of October, 1824, Alexander Adams executed the following deed, which on the same day was acknowledged and admitted to record in the Logan county court: 'I, Alexander Adams, of the State of Kentucky and county of Logan, am desirous to liberate my negroes after arriving at a certain age. Now I do by these presents, for and in consideration of the premises aforesaid and the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, manumit, emancipate, liberate, and set free, and secure to her her freedom forever, one certain negro woman named Hannah, aged twenty-one years, from and after she shall attain and arrive to the age of thirty-one years, from which time she is to be free for life; and all the children which she shall have before she attains to the age of thirty-one years shall be slaves until they shall arrive to the full age of twenty-five years, and their children and grand-children, etc., to the latest generation, are to be slaves until they shall respectively arrive to the full age of twenty-five years, after which time, as they shall attain respectively to said age of twenty-five years, they shall be and remain free for life. And whereas, the said negro woman has two daughters and a son, one of the daughters named Martha, aged five years, and the other named Eliza, aged four years, and the boy named Thomas J., aged one year: now I do by these presents emancipate and set free the

said three last named negroes forever, from and after they shall arrive respectively to the age of twenty-five years, and all their children which the two last named females shall have before they shall arrive to the age of twenty-five years, and their increase to the latest generation, are to be and remain slaves until they shall respectively arrive to the full age of twenty-five years, after which time they are to the latest generation to be free to all intents and purposes. It is the express understanding of these presents, that the said negro woman is to be free at the age of thirty-one, and that all her offspring are to be slaves until they shall respectively arrive to the age of twenty-five years to the latest posterity, or so long as there shall be one of the breed in being, and shall be free as aforesaid after attaining to said age of twenty-five years.' On the 6th June, 1831, the said Alexander Adams made his last will and testament, and shortly thereafter died; . . [130] The third clause of the will is as follows: '3d. I give after the death of my wife a negro girl named Martha to my grand-children, heirs of Harriet Ragan. I also wish my daughter Harriet to have the use of said girl during her natural life, or until said girl arrives to the age of twenty-five years, at which time she is free, her increase until that time to go to the children.' . . The 7th clause is as follows: 'I wish it distinctly understood that the increase of those negroes are to serve my heirs until they are twenty-five.' This action was brought by . . a son of the negro Martha named in said deed and will; that before she arrived at the age of twenty-five years Thomas Beauchamp purchased the time she had to serve; that in March, 1839, and before she arrived at that age, the appellant was born; that he continued to serve said Beauchamp until October, 1855, when said Beauchamp sold him as a slave for life to the appellee for the sum of $850, etc. He prays a decree securing to him his right to freedom under said deed and will, at the expiration of his term of service therein mentioned, and in the mean time for a restraining order against the appellee, requiring him to have appellant forthcoming to answer any decree of the court, . . the circuit court . . dismissed the petition,"

Judgment affirmed: [131] "The rule which prohibits the creation of perpetuities, either by deed or will, requires that the limitation shall be such as that it must take effect within twenty-one years after a life or lives in being, and the usual period of gestation. Tested by this well established rule, the provisions of the deed and of the will under which the appellant claims his right to future freedom, are obviously void. . . [132] If Martha had died within a year after the birth of Ludwig, it is perfectly clear that the right of the latter to his freedom, as limited by the deed, could not have vested within the prescribed period, but could only have vested after the lapse of more than twenty-one years and nine months from the death of the mother. The circumstances that subsequent events have so transpired that the right to freedom devised by the will, will vest within the prescribed period, does not affect the operation of the rule, or obviate or cure the defect in the limitation." [Duvall, J.]

Snoddy v. Foster, 1 Met. Ky. 160, July 1858. [161] "The petitions . . charge . . that Foster [the sheriff] might and ought to have levied the

executions . . upon the slave, but negligently failed to do so, and that the slave was run away from the state, whereby the plaintiffs lost their debts. . . the jury found a verdict for plaintiffs of one cent in damages,"

Griswold v. Taylor, 1 Met. Ky. 228, September 1858. [229] "$140. I have this day [February 2, 1857] hired of Aaron Taylor a negro man named Jim, from this date until the 25th day of December next, for which I am to pay . . the sum of one hundred and forty dollars," Griswold [the appellant] and his surety alleged "that the slave Jim . . was, at the time and before he was hired, 'unsound and diseased, and of no value; that said negro rendered said defendant Griswold no service, and finally died;' . . [230] judgment was rendered against them for $140,"

Judgment reversed.

Allan v. Vanmeter, 1 Met. Ky. 264, October 1858. Will of Isaac Cunningham, 1842: [267] "as the others of my grand-children become of the age of twenty-one years, each one shall draw from the estate two hundred acres of my land, and the boys each to draw two negroes of the male part of my servants, equal in value to those I have given the other boys. The girls, each, shall have one woman and a girl, of as nearly equal value as they can be made."

Kelly v. Smith, 1 Met. Ky. 313, October 1858. [315] "the bill [of exchange] was drawn in the State of Louisiana,[1] that it was given . . as part of the price of a lot of negroes, and that the negroes, so sold and delivered in Louisiana, were guarantied by the act of sale against all the redhibitory vices, maladies, and defects prescribed by law. That several of the slaves were affected by certain of the vices, maladies, and defects thus guarantied against; that some of them were unsound and of no value;"

Enders v. Williams, 1 Met. Ky. 346, October 1858. In July 1835, [348] "a deed of gift from J. G. Williams to his two infant sons, conveying to them a slave named Jane, and a tract of land, was . . recorded . . [349] On the 26th of October, 1835, . . Williams, the father, sold the same slave, and her child born after the deed was executed, to Robert Enders, for the price of six hundred and fifty dollars, executed to him a bill of sale of that date, and delivered him the possession of the slaves. . . In 1844, . . Enders . . filed his bill . . alleging that he was a purchaser for a valuable consideration, without notice, and that the deed of gift was fraudulently made . . and prayed that the deed of gift might be set aside, . . which relief he obtained by the decree of the court."

Woodcock v. Farrell, 1 Met. Ky. 437, December 1858. [439] "For the sum of thirteen hundred and thirty-seven dollars and fifty cents, I have sold to R. Woodcock five negroes, one named Delila, aged 38 years old, one named Jane, aged 8 years old, one named Bill, 6 years old, one named George Ann, 3 years old, one named Belle, 1 year old, for which I warrant the above named negroes sound in body and mind, and slaves for life; also warrant the title good, this 2d day of June, 1857. Daniel

[1] "but payable in Kentucky, at the bank of Louisville,"

Farrell." " none of the purchase money was paid, but . . all the purchase money was to be paid on delivery of the slaves; that one of the slaves had then just recovered from measles, and as it was not known whether the other slaves would have that disease, defendant agreed to keep them until it could be known that they would have passed through that disease, . . [442] none of the slaves had the measles after the 2d day of June; that White [a partner in the purchase] was at the defendant's house on the 18th, examined the negroes, all of whom were well except one which White thought had worms, and he declined to take them—not because they were unsound, . . but simply and only because he had not the money to pay for them; that on the same day a letter was . . mailed to Woodcock, notifying him that he must . . receive and pay for the slaves on the 24th; but he failed to do so, . . and that on the 17th of August following the defendant sold two of the slaves, and sold the remaining three on the 13th September."

Verdict and judgment for the defendant.

Worthington v. Crabtree, 1 Met. Ky. 478, December 1858. [480] " the slave was ungovernable and insubordinate in his temper; was about to run away to a free state, and unless sold, would prove a total loss to the owners. . . the interests of the parties entitled in remainder were endangered by the course pursued towards the slave by Colston Crabtree, the owner of the life estate, . . [481] The slave and his owners lived in Daviess county, which borders on the Ohio river, and is only separated by that stream from a free state. One of the slaves belonging to the same estate had already escaped from service, and Henry had threatened to do likewise if he were restrained. The appellee had sold Henry his own time; had been contracting with him as free man; was permitting him to go at large and make trades for himself, did not keep or pretend to keep him in subjection, and was in various ways indulging him to an extent well calculated to render him insubordinate and valueless to the remaindermen. . . [482] It is difficult to conceive of any injury, short of an entire destruction of the property, more serious to the interests of the reversioners or remaindermen in slaves than such treatment by the tenant for life. Its inevitable tendency [is to] render them discontented, insubordinate, and disposed, whenever subjected to proper restraints, to seek such change of abode as will restore to them their usual privileges. Such acts on the part of the tenant for life certainly constitute 'good cause' for the exaction of the bond [for the forthcoming of the slave]." [1] [Stites, J.]

Thompson v. Vance, 1 Met. Ky. 669, December 1858. In 1824 George Thompson [671] "executed to his son, George C. Thompson, a deed for over one thousand acres of valuable land, and about fifty slaves. . . [In] [672] 1830, he also executed to his son a conveyance for about fifty slaves, which contains the following provisions: 'The said slaves and their increase to be had, held, and used by my said son . . during his natural life, and after his death to go to . . the children, . . or grandchildren of my said son, . . [673] as my said son shall . . choose

[1] Rev. Stat., ch. 93, art. 1, sect. 9, p. 628.

. . and if my said son shall choose . . to sell any one or more of said slaves, he is hereby authorized to do so . . or he may exchange any one or more of them for other slaves, . . And my son is also fully authorized to lend any or all of the slaves aforesaid, or of their increase, to any widow he may leave . . not exceeding the term of her widowhood, . . But it is clearly understood that in no event whatsoever, are any of the said slaves or their increase to be ever subject to a claim of dower by any widow which my said son may leave at his decease;' . . recorded in March, 1851."

Maddox v. Allen, 1 Met. Ky. 495, January 1859. [496] " By the will of Charles Masterson, admitted to record in 1836, such of his slaves as should be under the age of twenty-two years at the death of his wife, . . were directed to be hired out by his executor until they should attain to that age; the hires to be applied to the support of such of the slaves as might be infirm or disabled, except the last year's hire, which was to go to the slaves hired out. Other slaves were to be free at the death of his wife. After some specific legacies, the testator devised one half of the remainder of his estate to be disposed of by his wife at her death as she might choose; . . The widow . . by her will recorded in March, 1843, devised to her niece, Jane Aynes, the negro boy James . . until he should arrive at the age of twenty-two years, when he is to be free; and Mrs. Aynes, by her will, recorded in August, 1855, devised said negro, with the same condition, to her daughter . . the boy to have his last year's hire."

Wood v. Wood, 1 Met. Ky. 512, January 1859. [517] " the testator was married in 1848, and that, after the marriage, the father of his wife gave to her several slaves, two of which, to-wit: a woman and her child, were sold by the testator . . His wife united with him in the bill of sale for the slaves, but did not acknowledge it before the clerk of the county court, nor was she privily examined by him."

Held: the sale is of no validity and " does not of itself preclude her from asserting her right to the slaves." [1]

Commonwealth v. Thornton, 1 Met. Ky. 380, February 1859. [381] " William Thornton, a man of color, was indicted . . on a charge of vagrancy. . . after the evidence was heard, the prosecution was dismissed "

Davis v. Maria Reeves (of color), 1 Met. Ky. 589, February 1859. [590] " the will of Amos Davis . . recorded . . in 1835, provided for the emancipation of Maria when she attained the age of thirty years." " The certificate of emancipation was granted in January, 1858." " in conformity with the act of 1842,[2] and the order of court then made, she executed bond, with approved surety, that she would not become a charge upon any county of the state. The executor of Davis, however, objected to the granting of a certificate of freedom by the court, . . [591] ' 1. Because the constitution of Kentucky provides that slaves emancipated in this state shall leave the commonwealth; and 2. Because she had not

[1] Act of 1846.
[2] 3 Stat. Law 227.

had a trustee appointed to hire her out, and a sufficient fund had not accrued from her hire to remove her from the commonwealth, as prescribed by the constitution.' "

Order affirmed: [593] " in no aspect of the case has the estate of the testator been prejudiced by the order," [Stites, J.]

Overfield v. Sutton, 1 Met. Ky. 621, February 1859. Deed of gift of a female slave [662] " in consideration of the high esteem I have for my beloved grand-son." It was attested by one witness only, and possession was not delivered, [624] " the donor and the appellant residing together at the time of the execution of the writing,"

Held: no title passed.[1]

Shouse v. Utterback, 2 Met. Ky. 52, June 1859. In 1857 Shouse " sold a tract of land and some slaves for the purpose of paying some of his debts."

Jane (a slave) v. Commonwealth, 2 Met. Ky. 30, October 1859. [31] " The appellant was indicted for murder, tried and convicted of that offense, and has appealed . . the death of Jane Porter [a free white woman] was occasioned by the use of strychnine, . . a witness . . found the phial of strychnine . . hidden under rock in the corner of a fence near Porter's residence which had been so described to him [by the prisoner under a promise made by him that she would be pardoned by the governor if she would 'tell all about it'] that he went to it, and found the phial without any difficulty." New trial because of error in instruction. She was again tried and convicted, and again appealed " for the third time." [2]

Judgment affirmed.

Jane (of color) v. Prater, 2 Met. Ky. 453, December 1859. " the devise of the woman Jane to Edward Pines, a free man of color, contained in . . the will of Jeremiah Prater, (the 2d), was . . void . . [454] She now asserts a right to freedom under . . a will made by Jeremiah Prater (sr.) in 1812, and claims to have never been a slave, but free from her birth. . . 'It is also my wish and desire that negro Jinny shall be free on the day of my death. . . that negro Diner shall serve six years after the day of my death. Negro Bob to serve two years after the day of my death; and negro Tom to serve three years after my death. . . if the above named negroes can not be freed under the law of this State, they shall be sold for cash after the death of my beloved wife,' . . [455] Jane was a child of the woman 'Diner,' and that she was born before the expiration of the period of six years from the date of the death of the testator, J. Prater (sr.)"

Held: Jane is a slave, for [456] " Diner was a slave up to the termination of the period of six years from the day of the testator's death." [Wood, J.]

Munford v. Taylor, 2 Met. Ky. 599, December 1859. In 1857 the slave had escaped from his owner, Taylor, [602] " who lived in the State of

[1] R. S., ch. 24, sect. 3, p. 196; ch. 93, art. 1, sect. 7, p. 628; 2 Stat. Law 1480 (act of 1798).

[2] Same *v.* same, p. 441, *infra.*

Tennessee. The slave was arrested in Elizabethtown as a runaway, and was committed to the jail of Hardin county, where he remained until about the 1st of June, (a period of forty-seven days), when Taylor appeared, claimed and proved that the negro was his property, and having paid the expense incident to his arrest, had taken him into his buggy, and was about starting with him home, when the appellants, Munford and Larue, came up, and arrested the slave upon a charge of having stole a trunk from the mail stage in Barren county, and a horse from some person in Hart county. Taylor then proposed that he would take the slave to Hart county for trial, or that Munford and Larue might do so; but they declined. Munford proposed that if Taylor would pay $60, the value of the trunk, so as to indemnify the owners of the stage from which it had been taken, Munford being the agent of the owners, he (Taylor) might take the slave. This the latter declined, upon the ground that two other negroes were engaged in the offense, and it would not, therefore, be right that he should pay the whole of the required indemnity, and that even were he to do this, his boy might be arrested on his way home through Hart. Munford suggested that he could take him home by a different route; to which Taylor replied, that 'he had never run from the laws of his country, and would not now.' Larue and Munford then took the slave from Taylor, against his will, and delivered him to the jailer, and on the night of the same day, the slave made his escape from the jail." "to parts unknown. . . [603] The value of the slave was variously estimated at prices ranging from $1,000 to $1,300." [602] "verdict and judgment for the plaintiff [Taylor] . . for $1,135. . . [606] the offense charged [against the slave] was a misdemeanor only"[1] [605] "the arrest was made without legal authority, and in violation of the rights of the appellee."

Commonwealth v. Anthony (a slave), 2 Met. Ky. 399, February 1860. "An indictment was found against Isaac, a slave, charging him with the offense of administering a deadly poison, called corrosive sublimate, to Isaac Robinson, and his wife and child, with the intention to destroy their lives. . . Anthony, a slave, was charged with the offense of being accessory before the fact to the crime thus committed by Isaac, by having previously incited, procured, counseled, and commanded him to do it."

Held: the punishment of Anthony extends only to the infliction of stripes not exceeding one hundred.[2]

Arthur v. Green, 3 Met. Ky. 75, June 1860. [76] "This action was brought by the jailer of Hardin county against Willis Green, for his fees as jailer, for keeping a slave of the defendant that had been committed to his custody, as a runaway, by the county judge of that county."

Held: this power belongs exclusively to justices of the peace.

Maxwell v. Maxwell, 3 Met. Ky. 101, June 1860. [103] "Maxwell returned to his home in Kentucky, . . He lived until March, 1858, when he was murdered, near his residence, by certain of his own slaves."

Baum v. Winston, 3 Met. Ky. 127, September 1860. [128] "judgment for the plaintiff for $120" for the hire of a negro man for the year 1859.

[1] Acts of 1802 and 1806, sect. 3 (2 Stat. Law 1286).
[2] R. S., ch. 93, art. 7, sect. 6.

Keller v. Bate, 3 Met. Ky. 130, September 1860. "Keller sued Bate before a justice . . for a bill for medical services rendered the slaves of Bate, and obtained a judgment for $90—the amount claimed. Bate appealed to the county court, . . judgment for Keller for $6, and costs. . . Kellar has appealed," as his motion for a new trial was overruled. [132] "Dr. Marshall .. . proved that he, with appellant, had attended the slaves for twenty-two days, and left them in the exclusive charge of appellant, who continued to wait upon them, or two of them [eight days longer], until they finally recovered. . . the slaves, to whom the services were rendered, were children, living with their mother in the city of Louisville, and that they all belonged to appellee, and were under his dominion; that appellee was in town several times a week during the time, . . and also that he promised Marshall to pay his bill for services, although he, Marshall, was only called in by the mother of the slaves as a consulting physician with appellant. . . one of the slaves died whilst both physicians were in attendance."

Judgment reversed, and cause remanded for a new trial: [133] "the facts demonstrate, very clearly, not only that Bate had notice of the condition of his slaves, and the fact that Kellar was rendering them medical service, but also warrant the conclusion that he assented to such service by acquiescing therein," [Stites, C. J.]

Jane (a slave) v. Commonwealth, 3 Met. Ky. 18, October 1860. See same *v.* same, p. 439, *supra*.

Commonwealth v. Lee, 3 Met. Ky. 229, December 1860. [230] "The appellees were indicted . . for an assault and battery upon George, Betsy, and Tabitha, three negro slaves the property of A. B. Watkins." The court below dismissed the prosecution.

Judgment reversed and cause remanded: an assault and battery committed on a slave is an indictable offense. [232] "many circumstances which would not constitute a legal provocation for one white man to commit a battery upon another, would justify it when committed upon a slave; but these circumstances must be judged of by the court and jury before whom such cases are tried, having a due regard to the difference between a white man and a slave, and the habits of society." [Peters, J.]

Kentucky v. Dennison, 24 How. 66, December 1860. "A motion . . for a rule on the Governor of Ohio to show cause why a mandamus should not be issued by this court, commanding him to cause Willis Lago, a fugitive from justice, to be delivered up, to be removed to . . Kentucky, . . [67] The facts on which this motion was made . . The grand jury . . Kentucky, . . 1859, returned . . indictment against . . Lago: . . accuse Willis Lago, free man of color, of the crime of assisting a slave to escape, . . A copy . . authenticated, according to the act of Congress of 1793, was presented to the Governor of Ohio by the authorized agent of the Governor of Kentucky, and the arrest and delivery of the fugitive [Willis] demanded. The Governor of Ohio . . refused to arrest or deliver up the fugitive,"

[110] "motion for the mandamus must be overruled." [109] "the language of the act of 1793 . . implies an absolute obligation [to arrest

and deliver the fugitive] which the State authority is bound to perform. . . The performance of this duty, however, is left to depend on the fidelity of the State Executive to the compact entered into . . when it adopted the Constitution of the United States, . . But if the Governor of Ohio refuses to discharge this duty, there is no power delegated to the General Government, . . [110] to use any coercive means to compel him." [Taney, C. J.]

Clinkinbeard v. Clinkinbeard, 3 Met. Ky. 330, January 1861. [331] "The plaintiff alleges . . that she is a free woman of color, and the mother of two male children; that the defendant took the children from her possession and control, without her consent, and has ever since hired them . . and has received . . the sum of $220, to which sum she claims to be entitled. The defendant . . had been regularly appointed by the . . court guardian of the two children"

Held: [332] "the plaintiff was properly denied any relief"[1]

Townes v. Durbin, 3 Met. Ky. 352, February 1861. In 1852 [353] "the parties went to Missouri, and took with them their slaves and personalty. In the spring of 1853 they left Missouri and took up their residence in Shawneetown, Illinois, . . their slaves meanwhile remaining in Missouri."

Tharp v. Tharp, 3 Met. Ky. 372, February 1861. [373] "In 1858 Tharp sold the slave Sarah to Gentry for $950. . . Soon after Gentry sold the slave to a trader, and she was taken from the State. . . In a few weeks after the sale of Sarah to Gentry, Tharp bought from Black a negro woman, named America, with three children, at the price of $1,150"

Tudor v. Lewis, 3 Met. Ky. 378, February 1861. The slave Richard [381] "was charged with some public offense [stealing] . . he was arrested and taken to Boone's on the same day." The constable, Lewis, [379] "allowed persons to talk and converse with said slave, and threaten him with hanging, and frighten him; . . [381] There was some evidence of carelessness in watching the boy, both at night and in the morning;" About ten o'clock in the morning, he "made his escape, going towards the Kentucky river, which was only a short distance off. That his body was soon afterwards found in the river, near the crossing place, where it was supposed he was drowned. No one saw him drowned, and it did not appear whether the death was accidental or intentional."

Williams v. McClanahan, 3 Met. Ky. 420, June 1861. In 1830 [421] "of the slaves so assigned to her for her dower, a boy aged about 17 years, named Peter, was one." The widow married Williams in 1831 and Peter was [422] "sold for $400 . . [423] to a southern trader and removed from the State, . . such removal was without the consent of the owner of the reversion [a daughter by the first husband of Mrs. Williams], because she was an infant and could not consent. The estate held by Williams and wife in right of her dower was by that wrongful act forfeited, . . he permitted the price of Peter to be converted into other

[1] 1 R. S. 578, art. 2, sects. 6, 7, 14.

slaves." [422] "Shortly after the sale of Peter, two slaves, Polly and her female child Nora, were purchased at the price of four hundred and twenty dollars,"

Held: the owner of the reversion [423] "should be permitted to elect to take these remaining slaves instead of the price of Peter,"

Hocker v. Gentry, 3 Met. Ky. 463, June 1861. Will of Josiah Gentry who died in 1855: [467] "These slaves and their increase I direct my executor to hire out until the youngest of said children [grandchildren of the testator] attains the age of 21 years; then I direct my executor to sell all of said slaves and divide the proceeds equally among said children." The testator sold Daniel for $900. [468] "Kelly and his wife sold Amanda and her child for $1,250 on a credit,"

Nall v. Proctor, 3 Met. Ky. 447, October 1861. "in July, 1860, Nall, being a resident of the county of Ohio, (which is not a border county,) was the owner of a slave that ran away and was arrested by Proctor in the county of Daviess, which county borders on a State where slavery is not allowed; that Proctor lodged the slave, as a runaway, in the jail of Daviess county, telling the jailer to keep him there, and not to give him up until the fees were paid, whatever they were. That Nall afterwards applied to the jailer for the slave as his property, paid him twenty dollars, and thereupon the jailer delivered up the slave to the owner. . . [448] the circuit court rendered a judgment in favor of Proctor and against Nall for eighty dollars, in addition"

Judgment reversed: it was Proctor's duty, [449] "Either to deliver him to his owner, or the person from whom he escaped, or to 'the jail of the county where the owner resides.'" [1]

Earle v. Couch, 3 Met. Ky. 450, October 1861. In March 1851, Holland [452] "purchased the woman Esther and two female children . . at the price of $1,000,"

Commonwealth v. Garland, 3 Met. Ky. 478, December 1861. [479] "an indictment under the act of 1858,[2] . . charges that the defendants engaged in a game of cards with one Dave Wright, a slave, in which game 'money . . of the value of $5.00 was bet,' . . the evidence conduced to show that 'some money, about one dollar,' . . was played for."

Nunnally v. White, 3 Met. Ky. 584, December 1861. In 1834 there was allotted to Polly White [586] "by a parol partition . . a slave called America, who is now living as well as seven children she has since borne. Polly White married Durret White, . . Durret White . . purchased a slave, called Martha, who is now living as well as several children she has since borne. . . Polly White died in 1857, without issue, and Durret White died in 1858, leaving a will by which he declared America and Martha and their children free, and provided for their removal from Kentucky. . . [593] Durret White in right of his wife, owned three-fifths of said negroes [America and her children], viz: the interests of

[1] 2 R. S. 372, sect. 3; and appendix, p. 809 (act of Mar. 3, 1860).
[2] 1 R. S. 572, sects. 1, 2.

Jeremiah White, Mrs. Hill, and Mrs. Duncan [by a warranty made in 1833]. His will, declaring said negroes free, destroyed the tenancy in common between him and the Tribbles and Mrs. Huguely, and was a conversion, which deprived his former co-tenants of any right to the negroes, and turned their claim thereto into a money demand against Durret White's estate." [1] [Bullitt, J.]

Dougherty v. Dougherty, 4 Met. Ky. 25, June 1862. Paper offered for probate, dated 1857: [26] " as I intend starting in a few days to the State of Missouri, and should anything happen that I should not return alive my wish is, that all of my land and negroes, . . be kept in the hands of the Bishop of the Diocese . . as trustee,"

Winn v. Sam Martin (*of color*), 4 Met. Ky. 231, June 1862. [232] " The appellee, Sam, was the slave of John Martin, who died in 1837, leaving a will, by which, after devising Sam and other slaves to his wife and children, he declared as follows: ' At the expiration of eight years after my death, all the negroes above bequeathed are to be offered to the colonization society (if they are of age), to be transported to Liberia, and those that are not of age to continue to serve the persons to whom they are allotted until they come of age, that is to say, the boys until they are twenty-one, and the girls until they are eighteen years of age, when they are also to be offered to the colonization society to be transported to Liberia. None of them are to be forced to go. . . Those that do not go to Liberia are to continue to serve the persons to whom they are allotted until they are willing and do go. . . Phil, Sam and Joe to be hired out the seventh year after my death, and the money arising therefrom to be given to those that first go to Liberia, ten dollars apiece, if there should be so much, and the balance, if any, given to those that next go.' Sam was allotted to Mrs. Taylor, who resided with her son-in-law, Morrison, who had the control of Sam. In 1846, Sam, being of age, applied to Winn to purchase him, expressing a preference to remain in Kentucky as his slave rather than go to Liberia, and his determination to go to Liberia if Mr. Morrison should refuse to sell to Winn. Winn tried to buy him, but Morrison refused to sell for the sum offered. Sam then expressed to John Martin's executors a wish to go to Liberia, and they delivered him to the colonization society to be transported thither. The society soon afterward sent him, with other emigrants, to Liberia to be colonized, but he refused to become a citizen of the colony, and came back to New York on the vessel that took him out. Soon after reaching New York he caused a letter to be written to Winn, expressing his desire to return to Kentucky if Winn would buy him. In August, 1846, Winn purchased him, and he came to Kentucky and continued in the service of Winn until 1859, when he sued for his freedom and the value of his services. From a judgment in his favor Winn prosecutes this appeal. The first question is, did Sam become entitled to freedom by going to Liberia? In our opinion he did not. . . [233] We regard it [the evidence] as establishing beyond a doubt, that Sam never intended to become a Liberian colonist; that he

[1] Tom *v.* Tingle, p. 385, *supra*.

announced his intention to go to Liberia for the purpose of inducing Morrison to sell him at the price that Winn was willing to give; that he left Kentucky hoping that Winn would buy him before the sailing of the vessel on which he was to embark at New Orleans, and intending in that event to return without leaving the United States, and that being disappointed in that hope he went to Liberia intending to return as soon as possible to the United States, hoping that this technical performance of the condition of the will would induce Morrison to sell him to Winn, and intending in that event to return to Kentucky. The testator did not provide for the outfit and transportation of his slaves, but threw that burden upon the society. We perceive no reason to believe that he meant to put the slaves to the trouble of going to Liberia, and the society to the expense of transporting them thither, for the purpose of giving them a right to freedom. . . [234] His chief object was to promote the scheme of colonization, which many then regarded as giving promise of a peaceful and happy solution of the problem of African slavery. The object of the society was to colonize Liberia with negroes from the United States. The testator's object was to furnish Liberian colonists. Sam, in going to Liberia with a concealed design to return to the United States, did not comply with the will of the testator, but attempted to take an unfair advantage of his benevolent purpose, and committed a fraud upon the colonization society instead of promoting its success according to the testator's intention. If he had gone to Liberia in good faith, to dwell there, and had become a colonist and thus acquired a right to freedom, we do not suppose that he would have forfeited that right by afterward leaving the colony. But we need not decide that question now. . . [235] Morrison was informed that Sam was in the city of New York soon after his arrival there. And it is contended that the failure of his owners, during a period of about three months, to make any effort to bring him away from New York, gave him a right to freedom. . . his stay in New York did not give him a right to freedom. He went and remained there, not with the consent of his owners, but as a fugitive slave. We are not aware of any case in which it has been held that the failure of a master, during three months or any other period, to attempt to capture a fugitive slave in a non-slaveholding State, entitles the slave to freedom. . . It is also contended that Winn agreed to emancipate Sam after realizing from his services the sum paid to Morrison. If such an agreement had been made with Sam it could not be enforced. But it is not proved that Winn so agreed either with Sam or Morrison. . . Nor would Morrison's statement, that he did not consider Sam a slave, nor sell him as such, be sufficient to establish such an agreement, if conceded to be true. . . As Sam failed to allege that he now wishes to be placed in charge of the colonization society, to be transported to Liberia, he did not show himself entitled to any relief.

" The judgment is reversed, and the cause remanded, with directions to dismiss the petition." [Bullitt, J.]

Skillman v. Muir, 4 Met. Ky. 282, June 1863. " the appellants agreed to pay $105 for the hire of a slave, and to furnish him winter and summer

clothing, and a blanket. . . no part of the hire had been paid . . and that 'the clothes said slave was entitled to, and not furnished with, and the blanket, were reasonably worth $15.'"

Broadwell v. Broadwell, 4 Met. Ky. 290, July 1863. [292] "As the personal estate, including the slaves, was more than ample to pay off all the testator's debts, the court erred in subjecting the real estate descended to the heirs."

Norris v. Doniphan, 4 Met. Ky. 385, July 1863. In September, 1862, Rebecca Doniphan [386] "filed a petition seeking to recover from the appellant $5,000 due upon his note to her, executed in the year 1860. The appellant filed an answer, alleging that when the present rebellion commenced, the said Rebecca resided in the State of Missouri, and became a secessionist, and actually joined the Confederate government, and moved to the State of Arkansas, where she could better have the protection thereof, and where she has continued to this time to assist and give aid and comfort to the rebellion by her means and money; that, on the 22d day of July, 1862, the President of the United States issued his proclamation, as required by section 6 of the act of Congress, approved July 17, 1862, . . [387] and that the said Rebecca has not returned to her allegiance to the United States, but still remains in Arkansas, assisting the rebellion,"

Judgment against the defendant, Norris, reversed: I. the act of July 17, 1862, is unconstitutional. [401] "If . . the act should be regarded, as we believe it must be, as an attempt to punish citizens for treason, or for aiding or abetting the rebellion, it is unconstitutional and void, because it authorizes a trial of those crimes in a mode different from that required by the constitution. If it should be regarded as an attempt, not to punish those citizens for crime, but to support the army of the United States with the proceeds of their property, it is unconstitutional and void, because it makes no provision for compensation. . . [II.] The fact that the government is not authorized by the constitution to confiscate the debt, does not prove that the appellee is entitled, by the common law, to recover the money, during the war, and take it to Arkansas, where it may be used against the government. . . [402] those principles of the common law, which suspend an alien enemy's right of action during the war, apply to this case, and forbid our courts from aiding the appellee to recover money which might be used by her to support the war against the United States. . . the petition should be dismissed without prejudice." [Bullitt, J.] [433] "This act of Congress not only, in contravention of the United States constitution, forfeits absolutely the personal estate of the rebels, but also declares his slaves free, in contravention of the legitimate constitution and laws of the seceded States, and also in contravention of the constitution and laws of the loyal States; thus perpetrating the double violation of the United States constitution and State constitutions, and destroying an essential and integral part of its own government. . . [439] the absolute forfeiture of the slaves, and freedom thereof of those convicted under the first and second sections of said act of Congress—although the conviction and judgment otherwise may be strictly in accordance with the constitution—is also unconstitutional and void, as being in

conflict both with the constitution of the United States and of this State; for, whatever may be the embarrassments growing out of the repugnance of those who may administer the Federal government to its holding slaves, or the use to which they may desire to dedicate them, in the exercise of the right and power of the government to forfeit for the life of the offender, on judgment of treason against him, yet this can not confer on the government power forbidden by the constitution of the United States and violative of the State constitutions." [Williams, J.]

Goodman v. Boren, 1 Duvall 187, September 1864. [188] "a proceeding to sell, on account of indivisibility, a slave or slaves belonging to joint tenants, should be conformable with the provisions of" "Article 2, chapter 86, of the Revised Statutes" [1]

Maupin v. Wools, 1 Duvall 223, October 1864. [224] "her old slave Simon managed much of her business on her farm, and, so far, seemed to possess her full confidence, and might exercise some influence. But there is not a semblance of evidence tending, in any degree, to show that he exercised, or could, if he would, have exercised any influence in prompting or moulding her will."

Beverly v. Perkins, 1 Duvall 251, December 1864. [252] "In May 1860, . . Desmukes, as administrator of George Evans, sold to his mother . . a male slave, Travis, aged sixty years, for the price of $300,"

Sarah v. Miller, etc., 1 Duvall 259, December 1864. "In the year 1854, Jane Miller, an unmarried woman, about sixty-six years old, residing in the family of her brother Josiah, and owning about twenty slaves and a small personalty, published a will, whereby she emancipated her slaves on condition that all of them would elect to emigrate to Liberia, bequeathed her personal property to her said brother, and, in the event of any of the slaves declining to go to Liberia, she devised all of them to him for life, remainder to his son William and daughter Virginia. In 1855, perceiving the incongruity of the devise of freedom, she added a codicil liberating as many of her slaves as should elect, in a prescribed time, in the county court, to go to Liberia. In the will, as published in 1854, she dedicated the personalty, as bequeathed to Josiah, to the purpose of an outfit, if they should all choose freedom on the condition of emigration. . . two successive juries having found against it, the court adjudged that it was not a valid will. . . [260] her mind was above mediocrity;"

Judgment reversed: [261] "the contested document . . is her valid last will," [Robertson, J.]

Lashbrook v. Patten, 1 Duvall 316, February 1865. Lashbrook's [317] "minor son, whilst driving his two sisters to a 'picnic,' in his father's carriage, . . ran against appellee's carriage, causing his horse to . . run, . . break his carriage, and throw out his daughter."

Held: "The son must be regarded as in the father's employment, discharging a duty usually performed by a slave,"

[1] 2 Stanton 303.

Tuggle v. Gilbert, 1 Duvall 340, February 1865. "the fraudulent or unfaithful conduct of the executors of Jesse Taylor subjected the slaves devised to his wife Lucretia to sale unnecessarily,"

Hayden v. Stone, 1 Duvall 396, April 1865. In 1835 [397] "a female slave Lucy, [was] appraised at $500;" The widow married Stone about two years afterwards. He "retained and used Lucy until she had borne several children, and then sold her for $462.50. He also had, until after the institution of this suit, the use of the descendants of Lucy, all of whom he sold *pendente lite*, for $4,500."

Jones v. Commonwealth, 2 Duvall 81, June 1865. "On the 22d day of November, 1862, a justice of the peace . . certified that a colored boy named William had been arrested and brought before him as a runaway, and thereupon he committed him to the jailer . . On the 20th of April, 1863, the county court . . on the jailer's report, ordered the sale of said boy by the sheriff, who sold him on the 18th of May, 1863, to . . Jones, as highest bidder, and took . . his bond . . for $285, . . On the 18th of July, 1864, the appellants . . moved the said county court to cancel the said bond, . . charged that the commitment of William to jail was illegal, and the order of sale unauthorized and void, and that William had been taken by military power;"

Held: the commitment was illegal because the certificate on which the *mittimus* was indorsed, did not show that "the justice had adjudged that there was 'reasonable cause to suspect' that William was a runaway slave," [1]

Hughes v. Todd, 2 Duvall 188, December 1865. In January 1864, Todd executed a note to Hughes "for the payment of $150 for the hire of his slave Marshall for that year, without any express reservation or qualification. . . the slave, [in June] long before the expiration of the term of service, escaped, and was voluntarily enlisted as a soldier in the Federal army, whereby the hirer, Todd, lost the residue of his services,"

Held: the owner of the slave is not responsible for such loss, nor is the hirer entitled to any abatement of the price agreed to be paid for the hire. [191] "He, like the owner, must look alone to the government for reparation. And, if the government has neither paid him nor will pay him, its act [2] was unconstitutional and void as to him, and was, therefore, not a lawful eviction under title, but a wrongful abduction without title. . . [192] The only offer or promise to pay . . limits the maximum to $300, even though the slave may have been worth $1,500. . . If the government has power to fix at $300 the value of a slave worth $1,500, it may as well fix it at one dollar or declare that it is of no value. . . If this be so, the boasted palladium of private property against arbitrary power is but a mockery, and the constitution itself may become a dead letter." [Robertson, J.] Williams, J., dissented. See Corbin *v.* Marsh, next page.

[1] 2 Stanton's R. S. 371, ch. 93, art. 6, sect. 1.
[2] Acts of Congress authorizing the enlistment of slaves into the Federal army, July 17, 1862, and Feb. 24, 1864.

Sims v. Pearce, 2 Duvall 202, December 1865. [203] "Sims executed his note . . for $300, November 30, 1863, payable December 25, 1864, for the hire of three slaves for the year 1864. The two men enlisted as soldiers in the national army, and the woman fled into the military lines, sought and obtained their protection, before the expiration of the year." Sims asks "an abatement of the hire for the services so lost." See decision in Hughes *v.* Todd, p. 448, *supra*. Williams, J., dissented.[1]

Corbin v. Marsh, 2 Duvall 193, December 1865. [203] "Marsh sued Corbin for a woman, Milly, whom he claims as his slave. Corbin put in for defense that she was the wife of a soldier of the United States, and, by the provisions of the joint resolution of Congress of March 3, 1865, made free, and, as a free woman, by her own voluntary consent was in his employment,"

Held: the act of Congress was unconstitutional: [200] "the emancipation of the wives and children of enlisted slaves was not [a] necessary means to a constitutional end, . . [202] there was, as to Joe's wife, neither any unavoidable necessity for her instant liberation, nor any compensation provided; but Congress negatived all purpose to pay or provide for paying her owner anything. We are clearly satisfied . . that her owner's title was not divested by act of Congress. No martial law, properly defined, could have emancipated her. And there is no pretense of any such emancipation. . . war . . cannot legalize what the Constitution prohibits, nor destroy what it guarantees. . . Joe's enlistment did not emancipate his wife nor divest her owner's title to her;" [Robertson, J.] Williams, J., dissented from the majority of the court, in the three preceding cases: [215] "Armies must consist of persons; but whether free or slave, white or black, has not been designated in the Constitution. The power to raise and support armies, provide and maintain navies, as to age, color, or condition of the soldier and sailor, rests as fully within the discretion of Congress as does the age, color, or condition of the arms and vessel with which the soldier and sailor is to be equipped. . . [220] it may be safely asserted as a historical fact, that all nations have so used their slaves, and have as universally attended such use with emancipation." [210] "the insurgents, at the very commencement of the war, in all their States, employed vast numbers of their slaves in their military service, for many belligerent purposes, such as the digging intrenchments, erecting forts, breastworks, barracks, and such camp services as were necessary to the protection, efficiency, and support of their armies." He quotes the letter of General Robert E. Lee to E. Barksdale, February 18, 1865 [221]: "Under good officers and good instruction, I do not see why they should not become soldiers. . . I think those who are employed should be freed. It would be neither just nor wise, in my opinion, to require them to remain as slaves."[2] Judge Williams gives [224] "The official statistics, obtained November 8, 1865, from the war department, at Washington City, [which] show that the colored population have furnished in this war 178,735 soldiers. Of these, Kentucky

[1] See the next case.
[2] McPherson's *History of the Rebellion*, p. 611.

has furnished 23,703. It may be safely estimated that, as teamsters, and in the quartermaster's and commissary, and various staff departments, that another hundred thousand have served. Of these soldiers, the free States and Territories have only furnished 34,549, leaving the rest to come from the slave States—nearly all of whom must have been slaves. . . [228] the policy of declaring those laws unconstitutional is . . unjust to the loyal slaveholder, . . The slave soldiers from Kentucky, even at the price of $300 each, will amount to over seven million of dollars, the payment and fund being already provided for by law. The other slaves set free by the last enactment may be safely set down at 75,000, and at the price of $300 each, would amount to over twenty-two millions of dollars. . . If these slaves of Kentucky, so freed, should perchance belong to loyal owners, their claims would amount to near thirty millions of dollars, . . [229] Should all these acts of Congress be pronounced unconstitutional, then these slaves have not been made free by law, but are still slaves, and will so remain until, by the adoption of the constitutional amendment, now pending, they shall be declared free; and being so declared by constitutional amendment, no compensation will ever be granted by Congress."

Robinson v. Hicks, 1 Ky. Op. 152, December 1865. Elam hired the slave Fanny to Mrs. Price, and "in January, 1861, he permitted Price to remove Fanny from . . Ky., to New Orleans, first taking from Price a bond to indemnify him against loss for permitting him to remove said slave from Kentucky. It does not appear that she has ever been returned . . her value . . is proved to be $1,200,"

Joe Henry (of color) v. Graves, 2 Duvall 259, February 1866. Peter Matthews [260] "went to Illinois in the fall of the year 1855, for the avowed purpose of seeing the country and of buying land; that, after his return home, he went again, carried the appellant with him, bought or rented land, left Joe, the appellant, there, to raise a small crop and cultivate about two acres of garden vegetables—came back to Kentucky to marry, and in May, 1856, returned to Illinois with his wife—and remained there until the succeeding August, when, becoming dissatisfied, he came back to Kentucky with his wife and Joe, where he remained until his death, a short time afterwards—having said more than once that Joe was free."

Held: [261] "Joe, being a minor, cannot be affected in any of his resulting rights by his return to Kentucky, even if voluntary. Such a continued residence of Joe, as a slave, was, in our opinion, interdicted by the spirit, as well as the letter, of the ordinance [of 1787]; and, therefore, he became, *ipso facto*, free. Wherefore, the judgment of the circuit court dismissing his petition is reversed," [Robertson, J.]

Allen v. Shortridge, 1 Ky. Op. 361, February 1866. "a judgment . . for the recovery . . of a negro boy, valued in the judgment at $460,"

Parish v. Hill, 2 Duvall 396, June 1866. Will of William Parish, who died in 1860: [397] "I give and bequeath to my beloved wife . . all my estate . . during her natural lifetime or widowhood. After the death

of myself and beloved wife I will that all my negroes, young and old, to be set free, and to have two hundred dollars given to each one, to be paid to them out of my estate; and they, the said negroes, when freed, to be conveyed to any place where they can enjoy the right of freedom." The widow married again. " In 1864 the appellants, as the negro devisees, filed a petition . . asserting that they were free, claiming that they were entitled to their pecuniary legacies, . . and to hire, and also an outfit for migration to some other country. . . the circuit court, considering the petition premature in the lifetime of the testator's widow, dismissed it without prejudice."

Decree affirmed: [398] " But the amendment of the Constitution of the United States abolishing slavery has made them free and legally capable of taking and enjoying their legacies. . . The anticipation of the time cannot be deemed essential or contrary to his wishes. His leading purpose was their emancipation and the payment of their pecuniary legacies whenever they became free. . . but [they are entitled] to no outfit for removal, as the avowed purpose of the testamentary provision on that subject has become useless . . and as, moreover, they manifest no intention to transplant themselves from their native country, where they may now enjoy their freedom as fully and securely as elsewhere." [Robertson, J.]

Miller v. Miller, 1 Ky. Op. 174, June 1866. " the man Nick, after he had come into the hands of the administrator, was drafted, and put into the military service of the United States; that before he left the encampment an agreement was made by the administrator and appellant that if he could put William, a negro man then the property of said appellant, into the service as a substitute for Nick, that he should have Nick. William was substituted for Nick,"

Held: " the price of Nick " must " be paid over to appellant,"

Daniel v. Bank, 1 Ky. Op. 402, September 1866. Downing, by " his last will, . . admitted to record, . . had emancipated said slaves," " The sheriff . . by virtue of an execution . . against the estate of . . Downing and others, sold the slaves of said Downing . . two of whom . . Daniel purchased " who [403] " urged the sale notwithstanding [the will] and became the purchaser to speculate on the chances." He " executed his bond for their price," and sold them before instituting this action.

Held: the appellants are entitled to no relief. The contract cannot be rescinded " on the ground that they had by the alleged purchase acquired no title to the slaves."

Commonwealth v. Palmer, 2 Bush 570, October 1866. John M. Palmer was indicted for [571] " aiding Ellen, a slave of Womack, to escape from her owner in Kentucky to the State of Indiana. On the trial the parties agreed that, at the time of the admitted escape as charged, martial law had been proclaimed in Kentucky; that Palmer, as a major general of volunteers in the army of the United States, was commandant of the Department of Kentucky, and stationed at Louisville, and that the slave went to Jeffersonville, Indiana, under cover of a passport issued for that pur-

pose by a provost marshal, in obedience to the following order: 'Headquarters Department of Kentucky, Louisville, Ky., May 11th, 1865. General Order No. 32. Whereas, it has been represented to the general commanding the Department of Kentucky, in an official communication from the Hon. Philip Tompert, mayor of the city of Louisville, . . [572] that large numbers of negroes, most of them women and children (and the numbers are increasing daily) have flocked to said city, claiming to be free, and looking to the military authorities for protection and assistance; and that such colored persons have been compelled to seek shelter where they could find a place; and by reason of the crowded state of the city, and the scarcity of houses, they have crowded together in numbers so great at each place as to render disease almost certain; and that small-pox is now, from the cause aforesaid, prevailing in several localities in the city among these people; . . As an effectual co-operation with the city authorities, and to prevent the spread of disease among the people, all colored persons in the city of Louisville are advised at once to seek employment; and such as are unable to find sufficient employment for the support of their families in the city are advised to seek it elsewhere. To enable them to do so, it is ordered that the provost marshal of the post of Louisville, upon the application of any colored person who may report him or herself as unable to find sufficient employment in the city of Louisville, will issue a pass to such colored person and for his or her family, specifying the number of persons to be passed, and their names, and the point to which they wish to go to engage in or in search of employment. Conductors and managers of all railroads, steamboats, ferry-boats, and other means of travel out of and from the city of Louisville, will, upon the presentation of such pass and the payment of the usual fare, transport the persons named therein. . . [573] By command of Major General J. M. Palmer.' . . martial law had been abolished before the grand jury found the indictment 'a true bill,' and that the foregoing order 'was issued by General Palmer, by the authority of the War Department.'"

Held: [577] "Palmer was guilty of the felony well-charged in the indictment." [574] "President Lincoln's proclamation of emancipation, whatever else might be said of it, excepted Kentucky from its operation, and applied exclusively to the seceding States. That portentous document, therefore afforded no semblance of pretext for a claim to freedom by the slaves of Kentucky. The unlawful intermeddling of General Palmer inciting a spirit of servile insurrection, and encouraging escapes from servitude, by assuring military protection, invited slaves to 'crowd' Camp Nelson and other encampments of his army; . . [575] until but few were left at home, and farmers generally, and many residents of cities and towns, were suddenly left without their accustomed and necessary help, the long-established system of labor terribly disturbed, and citizens excited almost to revolution. . . [576] Aiding Kentucky slaves to run away from their owners was not a belligerent act justified by the war. . . [578] the judgment dismissing the indictment . . is reversed, and the cause remanded" [Robertson, J.]

Smith v. Payne, 2 Bush 583, October 1866. Will of James Robinson, admitted to record in Virginia, 1820: [585] "The rent of my negroes, together with the price of John, are to be equally divided among my three daughters," [586] "When the family removed [in 1838 or 1839] to Kentucky, the slaves . . with their children, were brought along; . . [587] the land was paid for by money arising from the sale of the slaves, Mildred and Hambleton, . . Mildred . . was sold in 1848, for six hundred and fifty dollars or six hundred dollars, . . and Hambleton some years thereafter, at one thousand five hundred dollars,"

Agnew v. Williams, 1 Bush 4, December 1866. Hicks [6] "attached a negro slave man who had been purchased by Telotson, but conveyed to his wife. . . the mother of Mrs. Telotson, advanced over three hundred dollars in obligatory notes to Denton to assist in relieving the negro from the attachment; Denton with these, and his own note to Hicks for $260, paid the debt and released the slave from the attachment; whereupon, Telotson and wife conveyed the slave to Denton, who, on the same day, re-conveyed him to Mrs. Telotson, reserving a lien for his liability of $260, and reserved the right to hire out the slave until reimbursed."

Jones v. Commonwealth, 1 Bush 34, December 1866. Jones was indicted in 1865 [35] "for unlawfully (but not with a felonious intention) taking . . from . . Oxley one negro woman, named Mariah, and her three children, . . of the alleged value of one thousand dollars,[1] . . Oxley proved that the appellant came to his residence in July, 1864, and said he was directed to take Mariah and her children to the headquarters of [Samuel] the provost marshal of the district, in Covington, and read . . [36] a letter from . . Samuel; . . appellant, on the next morning, came to his house, bringing an armed soldier with him, and demanded Mariah and her children; and that either Jones or the soldier went near to where the negroes were, who then came to them, and they went in company with the negroes to the Kentucky Central railroad, and were put on board and sent in company with the soldier to Covington. That he, Oxley, went on the same train . . with a letter to Samuel, to try to get the negroes; but Samuel refused to let him have them. . . there was a military force stationed at the time at Cynthiana sufficient to enforce . . [Samuel's] order, . . The woman Mariah was obedient and quiet, and not inclined to leave home if she had not been induced to do so. . . Oxley offered to execute bond with surety that he would not send the negroes outside of the Federal lines, . . [37] Jones introduced evidence . . that, in July, 1864, such negroes . . were of little marketable value in Cynthiana; that such a negro as Mariah, if not inclined to leave her master, was of considerable value to him; that slavery then in that part of Kentucky was nearly destroyed. The presence of United States troops, the recruiting of negroes into the army, and the illegal acts of persons such as Jones, had so demoralized the negroes that they were of little value. . . A verdict and judgment for two hundred dollars were rendered against Jones,"

[1] 1 R. S. 411, ch. 28, art. 25, sect. 7.

Judgment affirmed: Samuel [40] "had no discretionary power over private propety." His order to Jones "was without excuse . . to deprive Oxley of his property, produced, doubtless, by his opposition to the laws under . . which Oxley held that property, and affords no defense to appellant against this prosecution." [Peters, C. J.]

Estill v. Rogers, 1 Bush 62, December 1866. [63] "Joseph Rogers and Sally Ann Estill, both slaves until emancipated by the constitutional amendment on the 19th of December, 1865, claimed to be husband and wife by cohabitation and recognition, for more than fifteen years preceding, and until her death, in April, 1866. Early in May, 1866, her brother, Harvey Estill, without notice to Rogers, was appointed her administrator by the county court . . Three days afterwards Rogers notified Estill that he would move the said court to revoke his appointment and substitute himself as the administrator, which the court accordingly did;" The circuit court confirmed that judgment.

It was reversed by the court of appeals: [64] "had the cohabitancy . . been initiated by free persons, their marriage would have been sealed as legal, before the enactment of the Revised Statutes," which repealed the common law as to *de facto* marriages. "But as long as they were slaves, their union . . could never have become a legal marriage; nor could their cohabitation and recognition, after they became free, have legalized their union as husband and wife" (as the Revised Statutes then applied to their case), unless they had complied with the act of February 14, 1866, as to free colored persons.[1] [65] "the appellee and Sally Ann, never having made the required declaration since they became free, were never husband and wife;" [Robertson, J.]

Foster v. Grigsby, 1 Bush 86, December 1866. Deed, 1855: [91] "I also sell to the party of the second part the slaves Flandus and Howard, which I have on hire for the present year."

Turley v. Johnson, 1 Bush 116, December 1866. [124] "The deceased [Lillard] was a farmer, and a minister for many years in the Baptist Church. . . the title to quite a number of his slaves was in litigation;" [121] "In 1860 he said he could not give in a list of his blacks;" [124] "He continued to manage his estate after April, 1860, and up to his death [in 1861], without an overseer;"

Thompson v. Harris, 1 Ky. Op. 18, December 1866. In 1858 Harris sold Thompson "a slave Nancy and her two children for the price of $1,300, warranting the soundness of Nancy and one of the children in body and mind." Thompson "alleged that the woman Nancy . . was unsound with syphilis, and . . had died of tubercular consumption,"

Righter v. Forrester, 1 Bush 278, February 1867. Will of George Palmer who died in 1843: [279] "my daughter . . is to have Charles, a black man, about twenty-five years old, and Martha, a black girl, about thirteen years old, . . If my daughter . . die and have no child or children, all my negroes and their offspring is to return to my wife, . . if she

[1] 2 Rev. St. 4 (ch. 47, sect. 2).

is living, to free all or any part of them. If she is dead before the death of my daughter, and she die and have no child or children, all my negroes, and their offspring is to be free."

Corbin v. Mulligan, 1 Bush 297, February 1867. [298] " prior to the year 1833, the lot [in Lexington] . . was owned and occupied by Solomon Brindley, a free colored man, under a deed . . 1808; but that a slave of the late Hon. William T. Barry, named Peter, died in the occupancy of the property in 1833, and, for over two years before his death had occupied it; "

Martin v. Curd, 1 Bush 327, February 1867. [333] " he gave to his daughter, Mrs. Curd, in August, 1830, $1,000, to be laid out in negroes for her and 'the use of the family.' The slaves were purchased by the husband, taken into his possession, and remained under his control until his death; "

Berry v. Hamilton, 1 Bush 361, February 1867. (For facts see same *v.* same, p. 393, *supra.*) [363] " On the return of the cause to the circuit court, the colored persons, appellants herein, for themselves and nearly one hundred other colored persons, came by their counsel, and in open court filed . . their petition, . . setting out . . that they were interested in sustaining Miss Hamilton's will, because, by a devise therein, they were set free, or some of them were entitled to a chance of being set free, and were entitled to one hundred dollars each if they elected to go to Liberia, or fifty dollars each if they elected to go to any free State, and that they were also entitled to all their earnings, over and above their necessary expenses, after a named date, and these earnings they alleged to be at that time thirty thousand dollars. . . [364] the court overruled the motion of the appellants to be made parties to George Hamilton's suit,[1] . . they appealed to this court."

Held: [366] " the negroes had a right to appeal. . . [367] the devise under which they claim conferred freedom on none of them. There had been no partition amongst the heirs of Archibald and Maria Hamilton, either of negroes or lands. They had all lived together and kept the slaves in common, . . Miss Hamilton owned but an undivided interest of one fourth in the slaves, her three brothers owning the other three fourths. . . she could not convert the slaves by any disposition of her one fourth into a state of freedom. The greater interest must be held as controlling.[2] . . Each negro in the hundred or more negroes under the devise would have precisely the same right to go free, and as all cannot go free, none can. . . the devise was void " [Lindsey, J.]

Hines v. Jones, 1 Ky. Op. 219, February 1867. " May 7, 1833, Berry Stansberry conveyed the lot of ground in contest to Henry Smith, a free colored man and minister of the Baptist Church, for the valid 'consideration of the good opinion which he (vendor) entertains of the said Henry's piety and usefulness as a Baptist preacher and one dollar. . . the

[1] 14 B. Mon. 31.
[2] Davis *v.* Tingle, p. 385, *supra.*

better to enable the said Henry to devote a sufficient portion of his time from his domestic labors to the preaching of the Gospel of Jesus Christ to his black brothers and for the purpose of erecting a house of worship for the regular negro Baptist association.' . . [221] a majority of the original congregation had abandoned the use of the lot and house in controversy, and removed to the house on Fifth street, having left some of their original members still to worship in the old house,"

Held: the former, "after more than twenty years absence from said house," can not oust "the present congregation having regularly organized and continuously worshiping there from ten to fifteen years, and being of the same persuasion"

Johnson v. Waddy, 2 Ky. Op. 98, February 1867. "a covenant executed . . on the 2d day of January, 1865, for the hire of two negro boys for the year 1865, at the price of $200, . . The appellants filed an answer alleging, . . That on the day the slaves were hired, and before they had rendered any service, 'two white men, dressed in the uniform of the Federal Government,' 'who,' the answer alleges, 'were negro kidnappers,' together with a company of negroes, forcibly took said slaves out of the possession of the appellant Johnson, . . That said slaves . . were taken to the city of Paducah, where the appellee, being the owner of them, obtained and had possession and control of them, but failed to return them to appellant Johnson,"

Railroad Company v. Young, 1 Bush 401, March 1867. Young, of Elizabethtown, Kentucky, "owning two young slaves, Orville and Alfred, who had only about one fourth of negro blood in them, brought this action against the appellant for wrongfully carrying, or permitting them to be carried without his authority . . to parts unknown, whereby Orville had escaped to Illinois, . . the jury . . found a verdict for $1,150 in damages for both slaves, . . [402] judgment against the appellant for the damages so assessed."

Judgment reversed, and the cause remanded: "Alfred had returned to Elizabethtown, where he had been for months, and still was, working for himself with the appellee's knowledge. . . [403] the appellee had no right to recover, on account of Alfred's temporary escape, more than the value of his services while he was gone from home." [Robertson, J.]

Baker v. Wright, 1 Bush 500, April 1867. Baker charged [501] "the appellees, all non-combatant citizens, . . with aiding the [Confederate] army [in 1861, when they fortified 'Baker's Hill' overlooking Bowling Green], by the labor of their slaves and otherwise, in the spoliations complained of."

Faucett v. Faucett, 1 Bush 511, April 1867. Will of Robert Faucett. "The slaves he directed to be sold to his children only."

Flournoy v. Flournoy, 1 Bush. 515, April 1867. [518] "the will of John J. Flournoy, published . . 1813, . . 'I recommend Nancy Grant, John J. F. Wills, Lucy Flournoy, and John Fowler, to the tender consideration of my wife, . . hoping she will try to assist them as much as

she consistently can, having respect, unfortunately, to the numerous and heavy debts that I owe," A codicil [519] "authorized the wife of the testator to emancipate four favorite slaves by name, and give them a small stock of cattle and some other things of little value," The testator died in 1835.

Pettit v. Johnson, 1 Bush 607, June 1867. [608] "Pettit died in 1856 possessed of . . forty-four slaves. . . [610] The court having adjudged a sale of the property, . . the slaves, 44 in number, appear to have produced the aggregate price of forty-seven thousand five hundred and fifty-five dollars."

Branham v. Commonwealth, 2 Bush 3, June 1867. "Lewis, the slave of Branham, was indicted and put on trial for murder, . . 1864, . . The jury having failed to make a verdict, the court made an order admitting him to bail in the sum of three hundred dollars, which, however was not given, and Lewis was remanded to jail. After the adjournment . . the county judge admitted Lewis to bail;" He did not appear to answer the indictment.

Cook v. Redman, 2 Bush 52, June 1867. Redman and his wife sold a slave, Allan, to Cook, in 1858, [53] "for sixteen hundred dollars, and . . covenanted that he was sound and a slave for life. On the 19th of March, 1861, Cook brought this action for a rescission of the contract . . 1st, that the slave was deaf; and 2d, that the vendors had only a life estate,"

Held: Cook "may be entitled to some relief, even though the constitutional amendment abolishing slavery may have made Allan a free man, and the appellee's wife being still alive, his title had never otherwise ceased than by the slave's emancipation by law. . . [54] although the loss of Allan by a legal, as much as if it had been by a natural death, deprived the appellant of his value without the appellee's fault, yet, as the appellant, to some extent, paid for more than he got, he may be equitably entitled to restitution *pro tanto,*" [Robertson, J.]

Stewart (of color) v. Munchandler, 2 Bush 278, October 1867. Frances Stewart, a woman of color, on January 8, 1866, executed her [279] "note for three hundred and eighty-four dollars . . due one day thereafter." Being sued on the note, she "pleaded, that, at the date of said note, and for many years previous thereto, she was, and still is, a married woman, the wife of Henry Stewart, both colored persons. . . [They] were married by a colored preacher more than sixteen years before that time, without any license therefor from the county court; that they have ever since continued to live together as husband and wife; that they were slaves at the time of their marriage, and continued to be slaves until manumitted by the adoption of the amendment of the Federal Constitution; and, on the 19th of April, 1866, they went before the clerk of the Jefferson county court and took the following certificate from the said clerk: 'This day Henry Stewart and Frances Tompkins, free persons of color, appeared before me, in my office, and stated that they had lived

together as husband and wife for the period of about sixteen years, and that they desire to continue to live together as husband and wife.' "

Held: [281] " As between themselves and for all purposes enumerated in the act of February, 1866,[1] their marriage will relate back to the commencement of their union. But the effect of such marriage upon the rights of others, acquired in the interim between their emancipation and their legal marriage under said statute, is quite a different question. . . at the date of . . the execution of the note sued on, appellant was not under the disability of a feme covert, but was in legal contemplation a single woman, able and competent to contract; and the statute subsequently enacted, with which she has complied, and under which she now claims protection, can not operate so as to impair the obligation of a contract entered into by appellant when she was free, and laboring under no legal disability," [Peters, C. J.]

Monohon v. Caroline (*of color*), 2 Bush 410, November 1867. [411] " Mrs. Lucy Fine, by her last will gave freedom to her slaves, and directed that her brother, Nathan Mardis, should take them to Cincinnati, Ohio, or other suitable place, and execute deeds of manumission. She also made some specific bequest to each of them, and directed her residence to be sold, and its proceeds to be divided among them or their descendants. The slaves John and Matt had belonged to her deceased husband, and fell to her for life only. Caroline was not to enjoy freedom until the death of an aged negro named Milly, who had been a faithful slave to the testatrix. . . John and Matt were taken to Cincinnati and there manumitted, and the heirs of Jacob Fine, the testatrix's deceased husband, recovered of her estate their value; "

Held: [414] " We know of no statute nor public policy which forbid a testator, as has frequently been the case, from directing the freedom of his slaves in future, after serving a given time, and when so freed, to be paid out of his estate a given sum, or to have a given piece of property. There is nothing unjust in a testator's securing to his freed people a portion of their own earnings, or in his compensating them for their faithful services rendered, or in donating to them by way of mere gratuitous bounty. We concur with the chancellor, that the appellees were entitled to receive this legacy." [Williams, J.]

Magowan v. Everitt, 2 Ky. Op. 119, November 1867. " said executors about the 1st day of January, 1859, sold . . to . . Calk a slave named Edmund . . at the price of $750, . . That after the delivery of the slave to Calk he allowed him to return to his former home for his clothing and thereupon the slave ran off and secreted himself, and shortly thereafter Calk sold his claim and chance of recovering the slave . . for $800," The executors " subsequently recovered possession of the slave, and sold him " for $1100 or $1150.

Park v. Park, 2 Ky. Op. 133, December 1867. Held: " Though the testator certainly contemplated an equal division of his estate amongst his two classes of devisees yet, choosing, as he did, the specific property

[1] Myers's Supp. 734.

to be distributed to each subject to all contingencies, the emancipation of the slaves allotted to one class did not entitle those devises [*sic*] to any portion of the land devised to the other class, any more than the death of the slaves after the termination of the estate of the devise [*sic*] for life, would have entitled them to it."

Rice v. Johnson, 2 Ky. Op. 158, December 1867. About 1858 he "hired out her cook at $75 to $80 per year,"

Jardon v. Williams, 2 Ky. Op. 186, December 1867. "the appellee's slave was bought by the appellant for $1,000 assumed to be paid on condition that the slave should be accepted as appellant's substitute as a drafted soldier in the Federal army, and that he was so received and thereby exonerated the appellant."

Noland v. Golden, 3 Bush 84, January 1868. "Golden and Adams executed their promissory note to John Noland for two hundred and seventy-five dollars, for the hire, for the year 1865, of his slave Allan, a blacksmith, qualified by the stipulation, that if Allan should voluntarily leave their service during the term of hire, they were to pay only for the time he served. Allan served until May, 1865, when he went to Maysville, volunteered as a Federal soldier, but was rejected as unfit, procured a certificate of freedom from a provost marshal, returned to Golden and Adams, and served them until December, 1865, under a contract between him and them to pay him, instead of his owner."

Held: [85] "an actual enlistment into the Federal army would not have made Allan a free man; and certainly the felonious certificate of the intermeddling provost had no liberating effect. When, therefore, Allan returned to his hirers, he was still Noland's slave, and he continued a slave until the 20th of December, 1865. Consequently, the contract made with him by Golden and Adams was illegal and void;" [Robertson, J.]

Hanna v. Guy, 3 Bush 91, January 1868. [92] "an execution was levied on a female slave named Laura, who was sold by the officer . . on the 1st of January, 1864. On the 18th of February, 1864, Laura died of some pulmonic disease, manifested only a few days after the sale . . the testimony leaves the character and commencement of the fatal disease vexatiously doubtful."

Wilson v. Commonwealth, 3 Bush 105, January 1868. Wilson had been sentenced "to the penitentiary for two years on an indictment charging him with wounding Francis Fryrear, in January, 1864, with a ax, willfully and maliciously, with intent to kill him." Wilson and others [106] "meeting Fryrear, a stranger, carrying slaves, and apprehending, or pretending to apprehend, that he was, as others had often done during the war, running off slaves that he had no right to, attempted to stop him, and that he, not heeding them, went on with the slaves, all of which he owned; and, aiming to go to the house of Wm. Davis, about two miles off, he traveled briskly to elude his assailants, who pursued him. The appellant, traveling with more speed than his associates, overtook him at Davis' gate, and both entering at the same time, the appellant seized an

ax at Davis' 'woodpile,' and each of them struggling for the ax, the appellant held it, and striking Fryrear more than once with it, wounded his head and cut a thick neckerchief protecting his throat."

[108] "judgment of conviction . . affirmed."

Milton v. Gaither, 3 Bush 152, January 1868. [153] "In an action by the appellee against the appellant on a promissory note for seven hundred dollars, dated October 1st, 1864, the appellant answered that the only consideration of the note was a sale by the appellee to him of a slave, Henry, sold and bought only for a substitute of the appellant, who had been drafted as a soldier into the military service of the Federal army; that Henry, not being present or seen at the time of the trade, was represented by the vendor as suitable for a substitute; that the vendor not only guaranteed the adaptableness of Henry to the purpose for which the appellant needed him, but, knowing that he was under the standard height, breadth, and age, fraudulently made the false representation; that Henry was offered as a substitute, and rejected as too low and diminutive, and was worth nothing as a slave. . . a jury found for the appellee the amount of the note, and the court overruled a motion for a new trial."

Judgment reversed, and the cause remanded: [154] "Henry had been previously rejected as a substitute, because his form was too slight and his height under five feet two inches; and it was also proved that the appellee knew that the appellant's only motive for buying Henry was to relieve himself from the draft by substitution. The sale . . and purchase . . for that sole purpose implied a warranty of his suitableness to the end contemplated by both parties to the contract; . . and if . . Henry was worth nothing as a slave, there may have been an entire failure of consideration"

Thomas v. Porter, 3 Bush 177, February 1868. "If . . the order for one hundred dollars was drawn by Thomas on Proctor, in consideration of the price of a slave sold to Thomas by the appellee, which, shortly afterwards, became free by the amendment of the Federal Constitution, that contract did not import a guaranty of the service the slave might render; and the abolition of slavery, by the action of the government, was a contingency, like that of the death or escape of the slave, to be risked by the purchaser;" [Hardin, J.]

Duhme v. Young, 3 Bush 343, May 1868. Appellants alleged [345] "that Young and wife . . had in their possession [in 1860] a valuable negro woman and children . . worth between four thousand dollars and five thousand dollars, and of value sufficient to pay their debts; . . [347] Neither Mrs. Young, before her marriage with Young, nor herself and husband since then, sold any more of the slaves of intestate than were necessary to pay debts of which they had notice. . . [348] The negroes were a breeding woman and her children,"

Finnell v. Meaux, 3 Bush 449, May 1868. In 1861 Sally Meaux, a free woman of color, bought her husband, William Henry, a slave, from Finnell, his owner, and gave her note for nine hundred dollars. Her father, Humphrey Meaux, a free man of color, [451] "went her security

for the payment of the money. . . She died in 1863, and that soon after William Henry was at work at plaintiff's house; . . The only evidence of Finnell's assertion of ownership consists of his listing William Henry to work on railroads, under the military orders of General Fry, in the year 1863; . . [452] said slave ran away and escaped,"

Held: "as Finnell became executor in his own wrong, to the extent he illegally interfered with the assets of decedent Sally's estate, the amount and value of such assets in his hands should be regarded as a payment on the debt he holds against her and her father,"

Whitmer v. Nall, 2 Ky. Op. 361, May 1868. "on the 10th of November, 1865, . . Whitmer bought the man Martin at the price of $225, . . Bidwell purchased one of the women, and her child, at the price of $151, . . The other woman sold for $50, . . [364] At the date of the sale, the adoption of the amendment to the Constitution of the United States was not only most probable, but was regarded generally as an event certain to take place within a short period, whereby the slaves in the United States would be emancipated. None could buy slaves then in ignorance of the precarious tenure by which such property was held, indeed there was no intrinsic or real value in slave property, and none could buy such property with the hope that there was any more than a contingent, speculative value in it. But even if there was no value *per se* in the slaves that fact did not destroy the legal obligation of the bonds given by appellants." [Peters, J.]

Lewis v. Commonwealth, 3 Bush 539, June 1868. [540] "Appellant, a freedman, having been adjudged by the . . county court, . . 1867, to be the father of the illegitimate freed child of Julia Martin, a freed woman, which was born December 25, 1864, when both the mother and putative father were slaves, and required to pay fifty dollars annually for its support, until it should arrive at ten years of age, appealed"

Judgment reversed: [543] "When this child was born, the owner, and not the putative father, was responsible for its support. Afterwards, it and its parents were freed; but no statute has provided that the slave putative father shall be responsible for the support of his illegitimate slave child, . . for, legally speaking, all persons born in slavery were born out of lawful wedlock." [Williams, J.]

Shirley v. Landram, 3 Bush 552, June 1868. [553] "action . . against the owners of the steamboat *General Lytle*, and H. Godman, the captain of the boat, to recover damages for the loss of a slave . . who . . was taken on board of said boat at Warsaw, . . and thence conveyed to Cincinnati, Ohio, without the plaintiff's written or verbal consent, . . whereby the slave escaped . . the judge . . rendered a judgment against the appellants for five hundred dollars."

Brown v. Hawkins, 3 Bush 558, June 1868. In 1865 Brown brought an action "against the executrix of E. C. Hawkins, for the recovery of five hundred dollars on the following written contract: 'For and in consideration of one thousand dollars, I have this day sold to Mason Brown my negro man slave, Pete, aged thirty-three years. I warrant that I have

good title to him; that he is a slave for life, and sound and healthy. As the said boy has heretofore run away, I covenant that, in case he runs away and escapes from the said Brown, I will refund five hundred dollars of the purchase money, without interest, as witness my hand this 16th of October, 1858. E. C. Hawkins.' The petition alleges that in August, 1864, Pete ran away from Brown, and neither returned nor could be recovered again. On a proper issue, the jury found a verdict for the defendant, and the court rendered a judgment in bar of the action."

Judgment affirmed: [560] "The fact that Peter remained in the service of Brown six years shows that his flight, with two others of Brown's slaves, was prompted by motives common to all of them, and to many other slaves who ran off about the same time, and was apparently not actuated by any morbid or unusual passion for running away peculiar to Peter when Brown bought him; and, consequently, Peter's escape, when and as it occurred, can not be rationally ascribed to the fugitive disposition which had prompted his flights before the sale to Brown; and, according to the only consistent construction of the contract, was not such a flight as the parties contemplated and intended to provide for." [Robertson, J.]

Bailey v. Howard, 2 Ky. Op. 294, June 1868. "an action on a note executed . . on the 15th of February, 1861, . . for the price of a slave Caroline,"

Held: "The purchasers of slaves, whilst slavery was an institution of the state, took them subject to any change in the laws by which such property was held that the people of the United States, or their legally constituted agents might make, unless they expressly provided in their contract for the contingency,"

Payne v. Richardson, 4 Bush 207, October 1868. Richardson alleged "that, in 1864, he loaned to Stuart Payne fifty dollars," Both [208] "were enlisted and put into the army of the United States in October, 1864, by their then masters [as substitutes], or with their consent, they then being slaves, and were, at the date of the transaction, which caused this litigation, colored soldiers, mustered into the service of the United States;"

Held: [209] "it cannot be said that they were taken from their owners in disregard of their rights; and by putting them in voluntarily, they thereby waived their right to compensation for their value, and emancipated them by their own acts; consequently, at the time the contract was made, the parties thereto were free and able to contract." [Peters, J.]

McGehee v. Ditto, 2 Ky. Op. 614, October 1868. "Ditto . . was in 1864 in possession of two slaves named Sally and Scott, which by reason of his marriage and the death of his wife belonged to him as tenant for life, . . he received $900 for the services of Scott for one year from one Richardson, who used him as a substitute, and that he gave Scott $50 of the money, and that he sold or hired said Sally to Armstrong, conditionally for a term of two years for $200,"

Held: "the disposition made of the slave Scott was equivalent to an absolute sale for $850, and was a substantial conversion of the estate

in him in remainder, but at a time when the property in him as a slave had, in consequence of the civil war, become prospectively of little or no value; . . under all the circumstances the money so realized should be equitably apportioned between them [the owners of the slaves in remainder] and the defendant Ditto, according to their relative and respective rights;" [Hardin, J.]

Lewis v. Watson, 4 Bush 228, December 1868. [229] "In the year 1832, when colored Methodists, mostly slaves, were under the charge of the white Methodist Church then on Fourth, now on Fifth street, . . a lot of ground on Centre street," was conveyed to trustees to build "a house of worship, for the use of the Methodist Episcopal Church of the United States; . . [230] In the year 1845, . . an additional and adjoining lot . . to . . white 'trustees of the Methodist Episcopal Church, South, for the use and benefit of the African members of said church,' to hold forever in trust 'for the use of the African members of the Fourth Street former charge, and a part of the mission of colored people worshiping on Centre, now under the direction of the Methodist Episcopal Church, South,' . . said board of trustees . . always to consist of white members. About the year 1854, Mary H. McGinnis . . sold and covenanted to convey to the same uses an additional and adjoining lot . . and in 1865 she conveyed the legal title to appellant, Peter Lewis, and others, colored persons . . claiming to be 'trustees of the Centre Street Methodist Episcopal Church,' and a part of the church building is on the grounds thus conveyed." These colored "trustees" belonged to the "ruling majority" who had [229] "recently seceded and joined the Methodist organization North," and had evicted the minority who adhered to "the Methodist Episcopal Church, South."

Held: the seceding members forfeited their right to the church property.

Munday v. Robinson, 4 Bush 342, December 1868. On August 7, 1865, Hawkins executed to Robinson a note for one hundred dollars "for the hire of a negro woman named Martha for one year from this date, and in addition agree to clothe and pay all physicians' bills during the year for said girl." The amendment to the United States Constitution abolishing slavery, [343] "was declared adopted and in force on December 18, 1865,"

Held: [344] "the hirer is entitled to an abatement of the promised price" because of the legal failure of title.

Vaughn v. Edwards, 2 Ky. Op. 490, December 1868. [492] "four valuable men slaves, over twenty, and under thirty, years of age," [491] "worth [in 1855] nearly $1,200 each, and their annual hire . . worth not less than $500,"

Mulligan v. Corbins, 7 Wallace 487, December 1868. "Solomon Brindley, a free colored man, was the owner, in 1808, of a small house and lot of trifling value, on Upper Street, in the city of Lexington," which escheated to the state on his death [488] "without any known legal heirs,"

Farmers' Bank v. Johnson, 4 Bush 411, January 1869. "The original judgment, ordering a sale of Johnson's lands, slaves, etc., to pay his

creditors, and directing that the aged and infirm slaves, Nancy and Harry, should be sold to the lowest bidder—that is, to the one who would provide for them, and bury them plainly and decently, for the least sum—to be paid out of the assets of the insolvent debtor, was only providing out of his estate for both the legal and moral obligation resting on him to take care of his aged and infirm slaves. Had these slaves not been sold, Johnson would have been released from this obligation when the United States Government abolished the relation of master and slave; . . [412] The bank got Johnson's legal rights to these aged and infirm slaves, and was entitled to their services, whatever may have been the value thereof, and became legally responsible for their maintenance whilst remaining slaves, and for decent burial if they should die in slavery; but when the right to control the service of these slaves ceased by the political action of the Government, the bank's legal liability to maintain and bury them was also abolished. . . dismiss all proceedings against the bank to compel it to maintain said infirm negroes since the adoption of the Thirteenth Amendment to the United States Constitution." [Williams, C. J.]

Robinson v. Johnson, 4 Bush 433, January 1869. Will of Polly Ficklin: "In regard to the real estate placed in the hands of my executor and trustees for the benefit of my emancipated negroes, I direct that none of said negroes shall have a right to sell their interest in the same; and upon any one attempting such sale, or upon any one or more moving off, the whole property shall remain for the use of the others; nor shall said property be sold by said trustees unless it should become unlawful for colored free persons to remain in the State, when said trustees shall be authorized to sell the property and apply the proceeds towards establishing them in a new home elsewhere." The circuit judge dismissed a petition [434] "seeking a sale and partition of said property." Judgment affirmed.

Miller v. Miller, 4 Bush 482, January 1869. [483] "Charles Miller, a free man of color, previous to the year 1859, made his will, by which he devised to his two free sons two certain lots in Louisville, giving his wife a life estate in one of them, . . He requested his two free sons, if they should see proper, to buy and emancipate his slave son Henry, then belonging to Isaac Sturgeon, of St. Louis. . . Sturgeon had . . emancipated Henry before the testator's death, in the fall of 1865, . . [484] Henry complains, insisting that he is entitled to an equal share of all."

Held: "he had a descendable and distributable interest equal to his brothers;"

Ferguson v. Landram, 5 Bush 230, June 1869. Chambers [242] "had two slaves subject to draft. . . Britt had a slave subject to the draft of 1864; . . Howard . . had slaves subject to conscription,"

Patrick v. Swinney, 5 Bush 421, June 1869. [422] "the note [for seven hundred dollars] was executed [in 1858] for the price of a female slave, . . she was not sound in body, but had a tumor on her neck, and some disorder similar to negro consumption or 'cachexy.'"

Bullitt County Court v. Troutman, 5 Bush 573, September 1869. [574] "two runaway slaves were held in custody by the jailer in Bullitt county, until, according to the statute,[1] they were publicly sold; and the proceeds, when distributed, leaving a balance of $128 of the jailer's fees unpaid, he moved the court of claims of Bullitt to . . levy the amount on the county, which it refused to do;"

Held: "The statutory provisions for apprehending, keeping, and selling runaway slaves were enacted for the security of the owners . . the county is not liable for the deficit." [Robertson, J.]

Walters v. Ratliff, 5 Bush 575, September 1869. Will of Barnabas Johnson, recorded 1867, [576] "purports to emancipate a number of slaves of the testator, and to devise to them most of his real and personal estate. . . [577] the plaintiffs [claiming to be his heirs-at-law] alleged that a number of said devisees, who, if really emancipated, were, at the time of the testator's death, . . in 1862, required, as a condition of freedom, to assent to be removed from this State, had never done so, . . The court . . dismissed the action,"

[578] "judgment is reversed, and the cause remanded:" "the heirs-at-law . . had such an interest in the estate . . as would authorize them to maintain the action for its recovery;" [Hardin, J.]

Pendleton v. Pendleton, 6 Bush 469, January 1870. Two slaves were sold in 1858 for $2035.

Porter v. Ralston, 6 Bush 665, March 1870. In 1857 Page sold [667] "a large number of slaves at the aggregate price of twenty-four thousand two hundred and fifty dollars;" payable twenty years after date. "The deed contained the following covenants by Page: first, that all the slaves except three were sound; and second, that 'he will warrant the property . . when the principal of the debt . . and the several notes . . for interest . . are all paid off'"

Held: [669] "as the persons sold were the property of the vendor, and were then slaves for life, their subsequent emancipation was not, any more than their death, a breach of the warranty of title,"

Wood v. Goff, 7 Bush 59, June 1870. In 1851 [64] "Sam might have been hired, in the ordinary way of hiring out slaves from year to year, for $130 per annum,"

Roberts v. Roberts, 7 Bush 100, June 1870. [102] "about 1838 three of the slaves, named Joe, Milly, and Mary, being of vicious character or ungovernable, were sold to a slave-trader for $1,225, . . some time afterward a slave named Brice was also sold,"

Faris v. Dunn, 7 Bush 276, October 1870. [278] "Before the year 1852, William Hoskins . . owned . . seven valuable slaves, three of whom were excellent blacksmiths, . . [282] by keeping two of the blacksmiths—proved to have been worth fifteen hundred dollars each as late as the year 1863—they lost three thousand dollars as a consequence of the emancipation of those slaves in 1865."

[1] 2 Stanton 373.

Tipton v. Wright, 7 Bush 448, December 1870. [449] "The appellant sold a female slave named Jane . . for four hundred dollars in 1860,"

Ewing v. Bibb, 7 Bush 654, May 1871. [656] "Being slaves in 1824, John and Esther could not have contracted under the laws of Kentucky a legitimate marriage, . . when the *quasi* husband and wife by their emancipation became competent to contract marriage, the highest duty which they owed to themselves, their children, and to morality was to consummate and make perfect a union which had hitherto existed only by reason of the consent and approbation of their owners. Esther became a free woman in 1836, and John was emancipated February 25, 1850. From that day forward for more than a year they continued to reside together as man and wife, and held themselves out to the world as such. . . [657] Under the laws of Kentucky at that time the consent of the parties . . might be inferred from continual cohabitation as husband and wife . . these circumstances, taken in connection with the confession or declarations of the parties, would so far render the first marriage valid as to make the second legally void, if not criminal. . . the pretended marriage between John and Jane Barnett, which took place in June, 1851, Esther being at the time alive, was void in law." A lot was bought with Jane's money in March, 1852, but [658] "through some mistake the conveyance was made to John."

Held: "as the purchase price was paid by Jane, who was a feme sole, and not the wife of John, a trust resulted in her favor, . . the judgment in favor of John's children [by Esther] . . is reversed,"

Spalding v. Wathen, 7 Bush 659, May 1871. [660] "John, a man of color, who was held in bondage by Stanislaus Wathen, and who claimed to be free, brought his suit . . in 1858, . . to recover his freedom. . . upon hearing, in October, 1863, John's petition was dismissed. In 1864 John became a soldier in the United States army, . . [661] he died at Paducah . . about the 1st of April, 1865. This fact, however, does not seem to have been known either to the attorney who had been conducting John's suit or to the appellee Wathen. In December, 1865, said attorney prosecuted an appeal to this court from the judgment dismissing John's petition; and . . said judgment was reversed, and the cause remanded . . with instructions to enter judgment declaring John a free man, and for such other proceedings as might be necessary to secure to him the value of his services since the institution of proceedings to assert his freedom. The mandate and opinion of this court were filed, John's death suggested, and the suit revived in the name of . . his administrator. . . a trial . . resulted in a judgment against appellee for several hundred dollars. . . execution was issued, and . . a tract of one hundred and fifty-six acres of land, the property of Wathen, was levied upon and sold," Not till then had Wathen heard of John's death. Thereupon, in 1867, he filed a petition claiming [662] "that said appeal and reversal, and all the subsequent proceedings . . based upon the same, were absolutely void, and that the original judgment dismissing John's petition and

adjudging him to be a slave remained unreversed, and in full force and effect."

Wathen's petition was dismissed.

Emerson v. Herriford, 8 Bush 229, September 1871. [233] "twelve hundred dollars, . . the value of a negro girl," sold in 1857.

Allen v. Allen, 8 Bush 490, January 1872. Charles and Mary Allen, "formerly slaves, . . were married, and lived during their bondage in the relation of husband and wife according to the recognized custom of negro slaves in Kentucky; but who, on becoming free, did not, by complying with the statute [1] . . continue their assumed marital relations; but . . Charles Allen abandoned the appellant and married another woman; retaining the control, however, of Henry Allen, the infant son of himself and the appellant, whom he hired out, and whose wages are now the subject of this litigation. It . . [491] is now contended for the mother of Henry, that . . the condition of Henry . . was simply that of a bastard; and that she . . was entitled to his services, as against the putative father;"

Judgment for defendant (Charles Allen) reversed.

Grigsby v. Wilkinson, 9 Bush 91, October 1872. In 1849, [93] "he did pay his father the sum of $402.50 for a negro, Sylvia,"

Neely v. Merritt, 9 Bush 346, March 1873. Will of Thomas Neely, who died in 1854: [348] "It is my will and desire that my male slaves—to wit, Richard, born April 10, 1841; John Franklin, born March 28, 1848; Reuben, born May 24, 1850; and George Henry, born July 24, 1852—be free so soon as they respectively attain the age of twenty-five (25) years; and that my female slave, Malinda Ann, born October 10, 1844, be free so soon as she attains the age of fifteen years. It is also my will and desire that my negro woman Ellinder, be free if she feels disposed to go with my other slaves to the colony of Liberia, in Africa; and I hereby emancipate and set free my above-named slaves, in the manner aforesaid, upon the terms and conditions prescribed in the constitution of the state of Kentucky. And it is my desire that they be hired out by my executor until a sufficient fund is raised for their transportation to the colony of Liberia, in Africa; and that my said slave Ellinder, who is at present about thirty years of age, be free and accompany them if she desires to do so. It is also my will and desire that should the said Ellinder give birth to any child or children, that it or they be, and I hereby set them, free upon the terms and conditions prescribed above for my other slaves; that is, the males at the age of twenty-five and the females at the age of fifteen years; and that they be hired and transported as aforesaid by my executor. And it is further my will and desire that my said slaves be hired within the county of Logan aforesaid until the time for their said transportation, and that they be not hired out of said county. . . [349] By way of codicil to this my last will and testament, it is my will and desire that all my slaves be sent to Liberia when the oldest boy named in said will arrives

[1] Act of Feb. 14, 1866 (Myers's Supp. 734).

at the age of thirty (30) years, which will be in the year 1870, according to the provisions and conditions expressed in said will." The slaves were hired out, or held to service by the executor [350] "up to the 18th of December, 1865, when the thirteenth article of amendment of the Federal Constitution became part of that instrument."

Held: [353] "They were free persons from the day the will was admitted to probate. . . [354] "that after December, 1865, these appellants were not only free people, but that the fund in the hands of their trustee was their joint property. They did not forfeit their right to it by declining to subject themselves to the control of the trustee after they became absolutely free, nor by declining to remove from the state in 1870, they having then the right to remain." [Lindsay, J.]

Duncan v. Kennedy, 9 Bush 580, June 1873. The will of John L. Martin, who died in 1854, [583] "provided for the management of his plantation of about two thousand acres in . . Mississippi, with his slaves . . thereon, until 1872, . . [584] After providing . . for the emancipation of his slaves on said plantation, and their removal and colonization at the expense of the estate, . . provision is made for the care and maintenance of the testator's old and infirm slaves;"

Bush v. Groom, 9 Bush 675, October 1873. [678] "the master commissioner was directed . . to report the value of the [twenty-one] slaves, where they were, . . and whether they could be divided into 'legal parts' (judgment of December 20, 1865). This is the last order in the case touching the disposition to be made of these slaves."

Newman v. Proctor, 10 Bush 318, October 1874. "In 1858 Snead . . conveyed a lot of ground in Danville to . . in consideration of . . three hundred and twenty-five dollars . . 'in trust for the use . . of the colored members of the Methodist Episcopal Church South,' . . At the time the deed was made there was a church edifice on the lot which seems to have been built mainly by contributions made by the colored people, most of whom were then slaves and members of the same local organization with the white people in Danville, belonging to the Methodist Episcopal Church South. From the time of the erection of the church in 1849 or 1850 the colored members seem to have worshiped exclusively in this church, though they continued to be members of the same organization with the whites. In 1865, the Ohio Conference of the African Methodist Episcopal Church having extended its jurisdiction over that part of Kentucky in which Danville is situated, the colored members of the Methodist Episcopal Church South at Danville, by unanimous vote, attached themselves to the African M. E. Church,"

Whitesides v. Allen, 11 Bush 23, March 1875. [24] "These appellees are the children of Daniel Allen, who was a slave until after the war, and who, after his emancipation, became the owner of some real estate in the city of Lexington. Daniel and his wife Jane were married while slaves in accordance with the custom among negroes, and continued to live together as man and wife until his death in the year 1868, but never availed themselves of the rights and privileges granted by the act of

February 14th, 1866.[1] . . [25] The brothers and sisters of Daniel Allen are asserting a claim to this real estate against Daniel's own children,"

Held: the second proviso of the second section of the act shows "clearly an intention on the part of the law-making power to regard the children of these customary marriages born prior to its enactment as legitimate, although their parents may have neglected to make any declaration of record showing their recognition of the relation of husband and wife." [Pryor, J.]

Tanner v. Skinner, 11 Bush 120, April 1875. In 1856, [122] "One negro girl and child" were valued at $700.

[1] Myers's Supp. 735.

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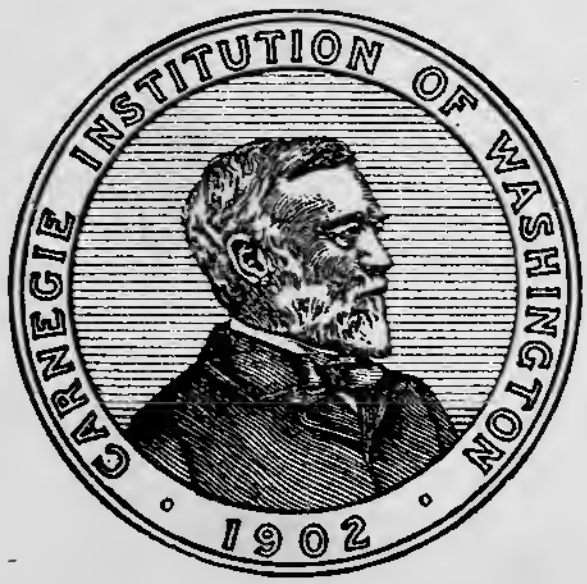

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PREFACE.

In this second volume Mrs. Catterall presents the material, appropriate to her purpose, to be found in the judicial reports of North Carolina, South Carolina, and Tennessee. The first volume embraced the English cases and those decided in the courts of Virginia, West Virginia, and Kentucky. The preface to the first volume sufficiently explains, it is believed, the purpose of these volumes, their relation to the furtherance of work in American history, the principles observed in the selection of the material, and the methods followed in its presentation. It may however be well to make the additional explanation that although the work of compilation has in the judicial reports of each state been carried to the end of 1875, it includes only cases which contain facts or events of earlier date than 1866, the period on whose history it seeks to cast light being that which was terminated by the abolition of slavery.

J. Franklin Jameson.

Washington, D. C., May 16, 1928.

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LIST OF ABBREVIATIONS.

Bailey = Henry Bailey, *Reports of Cases argued and determined in the Court of Appeals of South Carolina, on Appeal from the Courts of Law.*

Bailey Eq. = Henry Bailey, *Reports of Cases in Equity argued and determined in the Court of Appeals of South Carolina.*

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Peck = Jacob Peck, *Reports of Cases argued and adjudged in the Supreme Court of Errors and Appeals of the State of Tennessee.*

Peters = Richard Peters, jr., *Reports of Cases argued and adjudged in the Supreme Court of the United States.*

Phillips = S. F. Phillips, *Cases at Law argued and determined in the Supreme Court of North Carolina.*

Phil. Eq. = S. F. Phillips, *Reports of Cases in Equity argued and determined in the Supreme Court of North Carolina.*

P. L. = *Public Laws of South-Carolina* (Grimké).

Rev. Code (N. C.) = *Revised Code of North Carolina, enacted by the General Assembly of 1854* (B. F. Moore and Asa Biggs).

Rev. Code (Tenn.) = *A Compilation of the Statute Laws of the State of Tennessee. Of a General and Permanent Nature, compiled on the Basis of the Code of Tennessee, with Notes and References, including Acts of Session of 1870-1871* (Seymour D. Thompson and Thomas M. Steger).

Rev. St. = *The Revised Statutes of the State of North Carolina, passed by the General Assembly of 1836-1837* (James Iredell and William H. Battle).

Rice = William Rice, *Reports of Cases at Law argued and determined in the Court of Appeals and Court of Errors of South-Carolina.*
Rice Eq. = William Rice, *Reports of Cases in Chancery argued and determined in the Court of Appeals and Court of Errors of South-Carolina.*
Richardson = J. S. G. Richardson, *Reports of Cases at Law argued and determined in the Court of Appeals and Court of Errors of South Carolina.*
Rich. Eq. = J. S. G. Richardson, *Reports of Cases in Equity argued and determined in the Court of Appeals in Equity and Court of Errors of South Carolina.*
Rich. Eq. Cas. = J. S. G. Richardson, *Reports of Cases in Chancery argued and determined in the Court of Appeals of South-Carolina.*
Riley = W. Riley, *Report of Law Cases determined in the Court of Appeals of South Carolina.*
Riley Eq. = W. Riley, *Chancery Cases determined in the Court of Appeals of South-Carolina.*
S. C. = *Reports of Cases heard and determined in the Supreme Court of South Carolina.*
Scott's Rev. = Edward Scott, *Laws of the State of Tennessee, including those of North Carolina now in force in this State, from the Year 1715 to the Year 1820, inclusive.*
Sneed = John L. T. Sneed, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*
Speers = R. H. Speers (or Spears—Spears in vol. I., Speers in vol. II. and the equity volume), *Cases at Law argued and determined in the Court of Appeals of South Carolina.*
Speers Eq. = R. H. Speers, *Equity Cases argued and determined in the Court of Appeals of South Carolina.*
St. at L. = *Statutes at Large of the United States.*
St. at L. of S. C. = *The Statutes at Large of South Carolina.*
Statutes of Ohio = *Statutes of the State of Ohio, of a General Nature* (1841).
Strobhart = James A. Strobhart, *Reports of Cases argued and determined in the Court of Appeals and Court of Errors of South Carolina on Appeal from the Courts of Law.*
Strob. Eq. = James A. Strobhart, *Reports of Cases in Equity argued and determined in the Court of Appeals and in the Court of Errors of South Carolina.*
Swan = William G. Swan, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*
Taylor = John L. Taylor, *Cases determined in the Superior Courts of Law and Equity of the State of North-Carolina.*
Tay. Rev. = John L. Taylor, *A Revisal of the Laws of the State of North-Carolina.*
Tenn. Cas. = *Tennessee Cases, with Notes and Annotations, argued and determined in the Supreme Court of Tennessee, not heretofore reported, 1847-1894* (Robert T. Shannon, 1898-1899).
Tenn. Ch. = *Tennessee Chancery Reports* (William F. Cooper).
Thomp. Cas. = Seymour D. Thompson, *Unreported Tennessee Cases* [1847-1869].
Treadway = W. R. H. Treadway, *Reports of Judicial Decisions in the Constitutional Court of the State of South Carolina.*
Wallace = John W. Wallace, *Cases argued and adjudged in the Supreme Court of the United States.*
Wheaton = Henry Wheaton, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
Winston = P. H. Winston, *Cases at Law argued and determined in the Supreme Court of North Carolina.*
Winst. Eq. = P. H. Winston, *Cases in Equity argued and determined in the Supreme Court of North Carolina.*
Yerger = George S. Yerger, *Reports of Cases argued and determined in the Supreme Court of Tennessee.*

JUDICIAL CASES CONCERNING SLAVERY.

NORTH CAROLINA.

INTRODUCTION.

I.

The humanity shown the slave by the laws and courts of North Carolina has been extolled, in court and out,[1] and justly. Chief Justice Taylor observes, in 1821, in State *v.* Ben,[2] "that every time the Legislature have touched this subject since the revolution, it has been for the purpose of improving the condition of slaves." But this very case is a curious example of how "the best laid schemes o' . . men gang aft a-gley." The legislature, in 1793,[3] in extending the right of trial by jury to slaves, "in all cases . . the punishment whereof shall extend to life, limb, or member, . . and in open court of the county," instead of entrusting such trials to an informal sort of court consisting of three or more justices of the peace, and four freeholders (providing they are slaveholders), as the act of 1741 [4] had provided, had, no doubt, humane intentions and expected to better the lot of the offending slave; but it lost sight of one important fact; namely, that, by the act of 1741, the evidence necessary for conviction should be "the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes, mulattoes or Indians, bond or free, with *pregnant circumstances*, as to them shall seem convincing," [5] "credible witnesses," by the law of slavery, being white witnesses. The testimony of negroes, mulattoes, and Indians was believed to be inherently inferior, and had to be corroborated by "pregnant circumstances."

In 1816 [6] the legislature provided that the superior courts should have exclusive jurisdiction of such cases and that "the trial should be conducted in the same manner, and under the same rules, regulations and restrictions, as trials of freemen for a like offence," except that the offending slave was "entitled to the right of challenge for cause only." Even "benefit of clergy, in like manner with a free man," [7] was conceded to him.

A few years later, the slave Ben was indicted for burglary, and "the only evidence to shew any agency therein on the part of the prisoner,

[1] R. H. Taylor, "Humanizing the Slave Code of North Carolina," in *N. C. Hist. Rev.*, July, 1925; J. S. Bassett, *Slavery in North Carolina* (Johns Hopkins *Studies*, ser. XVII., nos. 7-8).

[2] 1 Hawks 434 (436).

[3] Act of 1793, ch. 5, sect. 1. Martin's *Public Acts of N. C.*, I. 38.

[4] Act of 1741, ch. 24, sect. 48. *Ibid.*, I. 65.

[5] Italics are the editor's.

[6] Revisal of 1821, ch. 912, sect. 1, p. 1354.

[7] *Ibid.*, sect. 4.

was given by a *slave*, and that evidence was direct and positive. The counsel for the prisoner contended that such evidence was insufficient to convict . . because not supported by 'pregnant circumstances.'" Nevertheless, the court charged the jury that the unsupported testimony of the slave was sufficient, if they believed it; and the prisoner was found guilty and sentenced to death. The Supreme Court, in 1821,[8] sustained the lower court in overruling a motion for a new trial. Chief Justice Taylor commends the provisions of the act of 1741 respecting evidence, as [435] "a salutary caution, to the triers, not to infer from the unusual mode of trial, that they should be satisfied with weaker evidence than the Common Law prescribes; and, since every other form by which the Law aims to secure an impartial trial was withdrawn from slaves, the Legislature prescribe, that rather more evidence shall be demanded for their conviction, than is in general necessary." He believes, however, that the act of 1793, in extending trial by jury to slaves, virtually repealed [436] "so much of the above section [of the act of 1741], as differs from the Common Law rule of evidence." Moreover, [437] "why should the act of 1816, which does the Legislature so much honor, be so construed as to place slaves on a better footing, in respect to evidence, than free persons? On the trial of the latter for a capital crime, sworn to only by one witness, the Jury is instructed to judge of the credibility of the witness, and, if they believe him, that one is sufficient to convict, without any pregnant circumstances." There seems, however, to be a flaw in the chief justice's reasoning; for, the testimony of a slave being regarded as *inherently* inferior to that of a free man, a slave would be on a worse footing "in respect to evidence, than free persons," if convicted only by the testimony of one other slave. Nevertheless, the opinion of the chief justice was concurred in by Judge Henderson, and Ben was condemned to die, on the evidence of a single slave witness, without pregnant circumstances. The "full benefit of a Common Law trial" was not beneficial to him. The humane purpose of the legislatures of 1741, 1793, and 1816 was thwarted, however conscientiously, by the decision in his case.

The case of State *v.* Will,[9] decided in 1834, is a monument to the cruelty of an overseer, and to the humanity of the court toward a slave. The court had, in State *v.* Mann, in 1829, recognized "the full dominion of the owner over the slave, except where the exercise of it is forbidden by statute."[10] That is, "the master or temporary owner is not indictable

[8] State *v.* Ben, 1 Hawks 434. Judge Hall, *dissentiente*: The act of 1816 [441] "is altogether silent, both as to the competency and credibility of witnesses: that, as I apprehend, was left to the law as it then stood, I mean the law of 1741. . . That the policy of the law of 1741 was founded on a sense of the degraded state in which those unhappy beings existed, no doubt, will be ceded. . . a humane policy forbade that the life of a human being (one of themselves) should be taken away upon testimony coming from them, unless some circumstance appeared in aid of that testimony. . . I am not aware, if we were now to examine their condition, that anything would be discovered so much more favorable to the cause of truth, as to require a repeal of the laws now in force, by the Legislature, or a construction of them, by the Courts, tending to the same end."

[9] 1 Dev. and Bat. 121.

[10] 2 Devereux 263 (268).

for a cruel and unreasonable battery of his slave" [11] if it does not result in death, the act of 1817 [12] having declared that "the offence of killing a slave shall hereafter be . . homicide, and shall partake of the same degree of guilt when accompanied with the like circumstances that homicide now does at common law." The court, in State *v.* Will, held that [171] "An attempt to take a slave's life is then an attempt to commit a grievous crime, and may rightfully be resisted." [167] "Suffering under the torture of a wound likely to terminate in death, and inflicted by a person, having indeed authority over him, but wielding power with the . . madness of fury; chased in hot pursuit; baited and hemmed in like a crippled beast of prey that cannot run far; it became instinct, almost ungovernable instinct to fly; it was human infirmity to struggle; it was terror or resentment, the strongest of human passions, or both combined, which gave to the struggle its fatal result; and this terror, this resentment, could not but have been excited in any one who had the ordinary feelings and frailities of human nature." Will was not found guilty of the murder of his overseer, but merely of manslaughter.

The slave Jarrott, indicted for the murder of a white man, not his master, who had attacked him with a knife and a fence rail, was condemned to death, but the judgment was reversed by the Supreme Court, in 1840, and a new trial granted, on the ground that [83] "insolence of a slave does not justify an excessive battery; . . [86] That is a legal provocation of which it can be pronounced . . that it would provoke well disposed slaves into a violent passion." [13]

Caesar, who, in defense of his friend who was being beaten by a white man in a drunken fury, struck the latter with a fence rail, causing his death, was found guilty of murder and condemned to death; but was given a new trial, in 1849.[14] Judge Pearson exclaims, "Does this show he has the heart of a murderer? On the contrary, are we not forced . . [406] to admire, even in a slave, the generosity, which incurs danger to save a friend?"

It was held, in 1859,[15] that a free negro had a right to strike a white man "in order to protect himself from . . grievous oppression."

The Supreme Court of North Carolina gave a further instance of its humanity by holding that a slave is not "incapacitated by his condition, from making a choice of a master." [16]

II.

It was early recognized in North Carolina that the subordination of the slave population would be endangered by proximity to free negroes. There were two ways of avoiding this danger: first, by prohibiting

[11] State *v.* Will, 1 Dev. and Bat. 121 (171).
[12] Revisal of 1821, ch. 949, p. 1407.
[13] Judge Gaston, in State *v.* Jarrott, p. 88, *infra.*
[14] State *v.* Caesar, p. 132, *infra.*
[15] State *v.* Davis, p. 231, *infra.*
[16] Redding *v.* Findley, p. 223, *infra*; Harrison *v.* Everett, p. 235, *infra.*

emancipation; secondly, by deporting the emancipated. The first method was employed for about ninety years, and was found ineffective or inhumane; then the other was adopted.

The act of 1741 [17] provided that no negro or mulatto slave should be set free "upon any pretence whatsoever, except for meritorious services, to be adjudged . . of by the county court," and if set free otherwise, he was, at the expiration of six months, to be sold by the churchwardens as a slave. If, however, he left the province before the six months had expired, and should afterwards return, he should be sold at the expiration of one month.

After April 16, 1775, "divers evil minded persons,[18] intending to disturb the public peace, did liberate . . their slaves," and it was deemed necessary, in 1777, to pass "an act to prevent domestic insurrection:" [19] "Whereas the evil and pernicious practice of freeing slaves in this state, ought at this alarming and critical time to be guarded against by every friend and wellwisher to his country," etc. The six months' leeway for the slave "otherwise" liberated was taken away and he might be apprehended by any freeholder and delivered to the sheriff to be committed to jail until the next court, and then to be sold to the highest bidder. To the "takers up" was awarded one fifth part of "the neat proceeds . . arising by such sale."

In 1779,[20] "whereas doubts have now arisen, whether the purchasers . . have a good . . title," it was enacted that all such sales "made bona fide, and for valuable consideration, shall be deemed good . . And as many negroes are now going at large, to the terror of the good people of this state," who were illegally liberated previous to the act of 1777, it was enacted that the same proceeding should be had against them as if liberated after that act, with the exception of those who had "inlisted into the service of this or the United States previous to the passing of this act."

But the act of 1777 still proved inadequate, for "divers persons, from religious motives, in violation of the said law, continue to liberate their slaves, who are now going at large to the terror of the people of this state." Consequently the act of 1788 [21] extended to "any freeman" the "emoluments" awarded for the apprehension of such slaves, which had formerly been restricted to freeholders.

Not till 1830 was emancipation of slaves permitted without the former rigorous restrictions, and then "upon the express condition, that he, she or they will leave the State, within ninety days from the granting thereof, and never will return within the State afterwards." [22]

[17] Ch. 21, sect. 56. Martin's *Public Acts*, I. 66.
[18] According to the preamble to the act of 1779, 3d sess., ch. 12. *Ibid.*, p. 266.
[19] Act of 1777, 1st sess., ch. 6. *Ibid.*, pp. 201, 202.
[20] *Ibid.*, ch. 12, pp. 266, 267.
[21] *Ibid.*, p. 450.
[22] Act of 1830, ch. 9. Rev. St., ch. 111, sect. 58.

Many attempts were made to emancipate in evasion of these laws, by bequests or deeds of slaves to trustees, but failed even though no express provision for emancipation appeared in the deed or will. In 1799 Collier Hill bequeathed all his slaves to four men "to keep or dispose of, as they shall judge most for the glory of God, and good of said slaves." [23] The court, in 1822, inferred that the purpose was emancipation and held the trust to be illegal.

In 1827 [24] the court held that the fifteen trustees "of the Religious Society . . called . . Quakers," to whom a slave had been deeded in 1817, "for the use . . of . . the said Religious Society . . forever," could not recover him in an action of detinue; that the deed was made for the benefit of the slave himself, as their religious principles forbade them to hold slaves, and was an evasion of the act of 1777.

In 1833,[25] Chief Justice Ruffin, in his opinion holding the next of kin entitled to all the slaves bequeathed by Thomas Wright, in 1816, to the Society of Friends of New Garden Monthly Meeting, accused the agents of the society of "bad faith, and wilful resistance to the cause of justice, and the claims of property," [26] and subjected them "to account upon the most rigorous principles," for the value of four slaves sent away and the hires of all the others, and interest on those sums.

Eli, to whom Godwin Cotton bequeathed his freedom after the passage of the act of 1830, "refuses the gift of freedom, because of the condition to leave the State, which the law annexes to emancipation." [27]

Sarah Freeman, who died in 1839, "had always said that it was the intention of her former husband and herself to set the negroes free, and send them to a free state . . that she could not do that, and she intended to give them to some steady old Quaker, who would not own slaves." [28] She did so, and her next of kin filed a bill charging a secret trust that the legatee, Newlin, should hold the negroes for their own benefit. The court decreed, in 1844, that the defendant must discover the trust.[29] Newlin answered that the slaves were given him "in trust, that he should have them emancipated according to law" [30] and he stated that "he would long ago have [executed the trusts] . . by sending the negroes out of this State, if he had not been prevented by the continued litigation." The trust was declared lawful in 1849, and the defendant allowed one year in which to effect the emancipation in accordance with the statute of 1830.

[23] Huckaby *v.* Jones, p. 43, *infra.*
[24] Trustees of the Quaker Society of Contentnea *v.* Dickenson, p. 52, *infra.*
[25] Redmond *v.* Coffin, p. 69, *infra.*
[26] They had compromised with the agent of the next of kin, knowing that his agency had been revoked.
[27] Dicken *v.* Cotton, p. 85, *infra.*
[28] Newlin *v.* Freeman, p. 93, *infra.*
[29] Thompson *v.* Newlin, p. 110, *infra.*
[30] Same *v.* same (1849), p. 141, *infra.*

The act of 1860 [31] forbade the emancipation of slaves "by will, deed, or any other writing, which is not to take effect in the life-time of the owner."

III.

The act of 1777 [32] provided for superior courts of law in each district, consisting of three judges. In 1782 an act [33] was passed providing that "each superior court of law . . shall also be . . a court of equity." In 1790 [34] a fourth judge was added to each superior court; in 1798,[35] a fifth; and in 1806,[36] two more.

In 1799 an act [37] was passed providing that "the Judges of the superior courts of law and equity . . shall meet . . together twice in each . . year . . for the purpose of determining all questions of law and equity . . remaining undetermined upon the circuit." This act was to be in force "only for two years, and from thence to the end of the next succeeding General Assembly." [38] In 1801 [39] an act provided that "Whereas the before-recited act . . has been found highly salutary and beneficial . . the same is hereby continued in force for three years longer; and the said meeting of the Judges shall be known by the name . . of 'The Court of Conference.'" In 1804 the act of 1801 was "declared to be in full force" [40] and "the said court shall be deemed a Court of Record." [41] The act of 1805 [42] changed the name of the court of conference to "Supreme Court of North Carolina," and the act of 1818 [43] "concerning the supreme court" reorganized it completely on a new basis, and provided that it consist of three judges appointed by joint ballot of the two chambers of the legislature.

The courts were reorganized upon the adoption of the constitution of 1868, the Supreme Court consisting thereafter of a chief justice and four associates. Article IV., section 1, abolished the "distinctions between actions at law and suits in equity, and the forms of all such actions and suits."

[31] Acts of 1860, 1st sess., ch. 37.
[32] Ch. 2, sect. 2. Martin's *Public Acts*, I. 208.
[33] Ch. 11, sect. 2. *Ibid.*, p. 312.
[34] Ch. 3, sect. 2. *Ibid.*, p. 485.
[35] Ch. 33, sect. 1. *Ibid.*, II. 128.
[36] Ch. 1, sect. 5. *Ibid.*, p. 274.
[37] Ch. 4, sect. 1. *Ibid.*, p. 133.
[38] Sect. 15. *Ibid.*, p. 135.
[39] Ch. 12, sect. 1. *Ibid.*, p. 176.
[40] Ch. 18, sect. 1. *Ibid.*, p. 235.
[41] *Ibid.*, sect. 2.
[42] Ch. 1, sect. 1. *Ibid.*, p. 256.
[43] Revisal of 1821, ch. 962.

Re negro boy, 1 Col. Rec. N. C. 585, March 1703. "Orderd that Tho Symons pay unto the petitioner the sum of five pounds, as he being executor of Charles Jones Deceased itt being for the bringing up a negro boy."

Chevin v. Reed, 2 Col. Rec. N. C. 95, April 1713. Chevin "Declares for the Sume of Twenty nine pounds five Shillings for Certain Indian Slaves by the publick: Sold . . to the Def'ts . . the Jury find for the pl't"

Overman v. Willson, 2 Col. Rec. N. C. 96, April 1713. "Information ag't William Willson . . That whereas . . by an act . . Intitled (an act Concearning Servants and Slaves . . it is Enacted That whosoever Shall . . Sell . . to . . any . . Slave . . without the . . Consant of his . . master . . Shall forfeite . . Tenn pounds to the Master . . nevertheless . . Willson . . Did . . without the leave [of Overman] . . Sell . . unto a Man Slave to him belongen named petter a Turckey Cock to the vallue of five Shillings . . the Jury find him Guilty . . Ordered that Wm. Willson be fined . . Tenn pounds . . to be payd to . . Overman with costs: and . . Overman . . remitts the fine . . Except Forty Shillings on Condition that . . Willson pay the accruing costs" So ordered.

Blish v. Sanderson, 2 Col. Rec. N. C. 97, April 1713. Action of trover "for Certaine Indian Slaves which by finding Came to the possession of the Def'ts" See same *v.* same, *ibid.* 113, *infra.*

Same v. same, ibid. 97, April 1713. Action of trover "for a Certaine Indian man: Slave called John Coneway which . . by finding came to the possession of the Said Def't"

Cary v. Tookes, 2 Col. Rec. N. C. 104, April 1713. "Miles Cary Gent: of virg'a Comes by . . his attorneys to pros his Suite ag't James Tookes . . in an accon of Tresspass: and Contempt ag't the forme of a Statute[1] . . and Saith: That: he . . Doth: harbour; and Detaine a Certaine Negro Man Slave to him the Said Miles belongen; Comonly Called Stephen: . . the Jury find for the p'lt" October 1713, [112] "Ordered: That: James Tookes pay and Deliver to . . Cary: the Said . . Stephen as alsoe the Sume of Ninty: Two pounds Ten. Shill for a hundred Eighty: five Day: Detaineing of the Said Slave:" Defendant appealed.

Blish v. Sanderson, 2 Col. Rec. N. C. 113, October 1713. See same *v.* same, *ibid.* 97. "the plt . . apprill last . . was Seized and possessed of one Indian woman Slave named Ann and one femeal Child . . and . . the afs'd Slaves afterwards (viz't) in . . June . . by finding Came to

[1] Act of 1706, "Concerning Servants and Slaves."

the . . [114] possession of the Deft Nevertheless the Deft . . the afs'd Indian Slaves to the plt to Deliver or restore . . Doth as yett Gainsaye: . . the Jury find for the plt 30£ . . Judgment . . Stayed"

Pendleton v. Guthrie, 2 Col. Rec. N. C. 114, October 1713. The plaintiff "Saith that: Dan'l Guthrie and Mary his wife . . and Especially she The Said Mary: . . Did in . . June last past on a Sabath Day . . Trade[1] to and with a negro: woman to him . . belongen Comonly Called . . Jenny: and of her Did . . receive Two: Sticks of whalebone to the value of Two: Shills in Consideration whereof She the Said negro woman Did or was to . . receive of her that Said Mary Two: fouls or Dunghill Cockes without the Leave . . [115] of him . . pendleton" The defendant demurred. Demurrer overruled. Arrest of judgment granted.

Re Indian Pompey, 2 Col. Rec.[2] N. C. 315, November 1718. "confederacy of Mr Worseleys Children and servants with his slave Pompey in order as it is believed to keep the said Slave from the deserved punishment due to him for former Roguerys of this kind. . . Ordered that Mr. Thomas Worsley . . give bond . . that he and his Daughter Mary[3] . . attend the Governor and Council or General Court at the next meeting. . . And . . Ordered that the Marshall or his Deputys in the face of the Courts immediately give to John Worseley son of . . Thomas Worseley 39 lashes well laid on his bare back and . . that Nathaniel Ming servant to . . Thomas Worseley in Consideration of his being servant and discouvering the above said Roguery have but 29 lashes on his bare back at the same time and place with Mr. Worseley son And . . Ordered that all possible means be used towards . . takeing the afos'd Indian slave either Dead or alive and in case he should be taken alive that the Governor desired to bring the said slave to speedy Justice."

Re Knight, 2 Col. Rec.[4] N. C. 341, May 1719. "Tobias Knight Esq'r Sec'ty of this province and a member of the Council attended . . to make answer to . . Depossitions and other Evidences . . Copy of several Depossitions and other Evidences given before the Court of Admiralty . . for hearing . . Piracy for . . Verginia . . for the tryal of James Blake . . and other pirates late of the Crew of Edward Thache . . [342] The four prisoners . . acknowlegeth that . . in September they went from Ocacock in a periauge with Edward Thache to the house of Tobias Knight Sec'ty of North Carolina and carried . . three or four Caggs of Sweet meets" and robbed a "periaugor" on the way back. William Bell deposed that it was his "periaugor" which was plundered: [343] "that perticularly the deponant was robbed of a silver cup of remarkeable Fashion . . which . . has been found on Board Thaches Sloop . . Two hours after . . he went to complaine to the Governor of North Carolina who sent him to Mr. Knight then Chief Justice upon which the said Knight gave him the Warrant or hue and Cry . . and

[1] See act of 1706, "Concerning Servants and Slaves."
[2] Council.
[3] *Ibid.* 358. "Mary Worseley . . made her appearance [July 1719] and acknowledged her offences and is fined . . Tenn Pounds."
[4] Council.

that notwithstanding the deponant did particularly discribe the periaugor and the men by whome he was thus robbed and did repeat . . the Language the whiteman used . . and declared that the other foure were Negroes or White men disguised as such . . yet . . Knight did not discover to the deponant that any such periaugor had been at his house" Evidence of Captain Brand: [344] "the piratical Goods afs'd were found in his Barn covered over with fodder" [345] "The Humble remonstrance of Tobias Knight [to the Governor and Council of North Carolina] . . in answer to the several Depossitions and other pretended Evidences . . as to the four next Evidence . . under the name . . of foure of Capt Thaches men is utterly false and such as . . ought not to be taken against him for that they are (tho cuningly couched under the names of Christians) no other than the four Negro Slaves which by the Laws and customs of all America Aught not to be Examined as Evidence . . against any White person whatsoever and further . . that what they did then say was in hopes of Obtaining mercy tho' they were then Condemned and since Executed . . [347] neither did . . Knight . . contract any acquaintance with . . Thache or any of his crew nor did deal buy or Sell . . with or of any of them . . Save only Two Negroe men which . . Knight purchased from Two men who had left . . Thache and had rece'd their pardons" [349] "this Board . . it appearing to them that the foure Evidences called by the names of James Blake Rich'd Stiles James White and Thomas Gates were actually no other then foure negroe Slaves and since Executed . . and that the other Evidences . . are false and malitious and that he hath behaved himself . . as becomes a . . faithful Officer . . it is the opinion of this Board that he is not guilty and ought to be acquited"

Re Low, 2 Col. Rec. N. C. 365, October 1719. "The Grand Jury presents Em'l Low for breaking the Sabbath with three of his Negros with him . . The Grand Jury presents Benj'n West for breaking the Sabbath by his negros working on the Sabbath" [411] "Ordered [1720] that if Eman'll Low, . . and Benj. West do pay . . the fine appointed by Law . . they shall be hereby discharged"

Re Palmer, 2 Col. Rec. N. C. 406, July 1720. "Paul Palmer being called to answer for suspicion of Feloniously takeing a negro man named Sambo with divers goods the estate of . . Crisp, Appeared, . . Ordered that he be continued in Custody . . he refusing to enter into Recognizance to appear" [409] "The Jurors [November 1720] . . do present that Cush als Quashey a Negro Man Slave belonging to Paul Palmer . . did . . convey . . from the Plantation of Nic's Crisp . . a negro man Slave named Sambo together with one new Rugg to the value of twenty five shillings one coat one shirt one pair of New Lether Breeches one pair of Stockings one pair of New shoes and one hatt value one pound twelve shillings and six pence . . and them did carry . . to the Dwelling house of . . Paul Palmer . . and . . did deliver to . . Paul Palmer and Joanna his wife who . . did . . take . . and keep the same" Palmer was also indicted for commanding Cush "to go with

two horses to the Plantation of Nic's Crisp . . and to take . . Sambo with his Cloaths and bedding . . And that . . [410] Cush . . did go" Also "The Jurors . . Present . . That the . . Ch. Justice of this Province . . a certain warrant . . to . . Wilkins . . Constable made . . . and Commanded him . . Cush . . to attach and to bring before him . . and also to bring . . Sambo . . which . . Wilkins . . Cush . . did take . . and him . . in his custody . . had kept . . and also . . did take and attach . . [411] Sambo and him had in his custody Nevertheless Johanna Palmer wife of . . P. Palmer . . by force [the same day] . . Sambo . . rescued and him . . then and there at large to run and go away did permitt" See *ibid.*, pp. 415, 416, 437, 442, 444, 447. Paul and Joanna Palmer, indicted [471] "for being Accessories to a Felony comitted by one Sambo [*sic*] . . made their appearance [1722] and noe person appearing to prosecute . . they were dismist without day paying costs." The Attorney General "confesst that the Misdemeanour . . against . . Palmer [1] he would not Prosecute any further. . . Palmer is Dismist . . paying costs. Joanna . . made her appearance and no person appering . . to make good the charge . . dismist without day paying costs"

Re Taylor, 2 Col. Rec.[2] N. C. 392, August 1720. "Thomas Taylor Marriner appeared . . upon a warrant from . . the Governor for his Assaulting and missuseing a negro man belonging to Coll. Fred Jones without any manner of provocation . . Ordered that he remaine in the hands of the Marshal til he give good . . security . . one hundred pound that he appear"

Re Low, 2 Col. Rec. N. C. 411, November 1720. See same, *ibid.* 365, p. 9, *supra.*

Laneer v. Harding, 2 Col. Rec. N. C. 550, March 1724. "Philander a Negro appearing at this Barr complaining that he is held as a Slave by Thomas Harding Executor of Thomas Sparrow . . altho' he was freed by . . Sparrow in his lifetime and all the practising Attorneys of this Court are retained by the said Harding and he . . Philander utterly ignorant of the Law . . prays that he may have Councill assigned" Counsel was appointed, and "exhibitted in Court the complaint . . [551] Philip Laneer alias Philander a negro man humbly complains . . for that the said Philip Lander . . being once . . held as slave by . . Sparrow was by him freed as by an Instrument under the hand of . . Sparrow and before Evidence Yet . . Harding . . doth hold the said Negro as a slave . . Ordered that . . Philander be and remaine in the . . keeping of the Provost Marshall Gen'l till the next Court;" At the next court, in April 1724, [555] "Philip Laneer . . to prosecute . . failed but this Court being informed that the . . Negro before his being freed . . was by Deeds now recorded in Maryland . . assigned: And it is also suggested that at the time of making the said Deed of freedom

[1] [443] "the Jury do find [1721] the Def't Guilty of a Misdemeaner. . . the Def't moves in Arrest of Judgment which is Granted."

[2] Council.

. . Sparrow was indebted great sums of Money . . Ordered that . . philander be hired to any person that will be security for his appearance at the next Court . . Reston . . offered to pay for his service till the conclusion of the next Generall Court five pounds" At the General Court held in October 1724 [557] "Reston produced the said Philip Lanier . . And . . Harding . . exhibited . . Sparrows Book of Accounts which being compared with this Deed . . Adjudged that . . Philander's petition be dismist the . . Deed . . being adjudged not to be the Deed of . . Sparrows"

Laneer v. Harding, 2 Col. Rec. N. C. 557, October 1724. See same *v.* same, p. 10, *supra.*

Re Cotton, 2 Col. Rec. N. C. 591, July 1725. "A Bill of Indictment ag't John Cotton for marry'n a Molatto Man to a White woman." He failed to appear. [594] "ordered that a Capias should order requiring him to appear" October 1725 Cotton appeared but the Attorney General [602] "would no further prosecute . . Ordered that he be thereof dismist without day paying Costs."

Re Blacknall, 2 Col. Rec. N. C. 662, July 1726. "Information made by the Reverend Mr. John Blacknall . . against himself for joyning together in . . Matrimony Thomas Spencer and Martha paule a Molatto Woman" [672] "whereby he the sayd John Blacknall hath incurred a penalty of fifty pounds the One half to the Informer which he therefore demands"

Re Vantrump, 2 Col. Rec. N. C. 702, March 1727. "Complaint and petition [February 3, 1727] of peter Vantrump a free Negro Sheweth that your Complainant being a free Negro . . hath hired himself to Service Sundry times particularly in New York . . and being at St. Thomas's this Summer past one Capt Mackie in a Brigantine from thence being bound (as he reported) to Europe . . Your . . Complainant agreed to go with him in Order to gett to Holland but instead . . Mackie came to North Carolina where combining with one Edmond porter and fearing . . Mackie not to be on a lawfull Trade Your Complainant was desirous to leave him and . . porter by plausible pretences gott Your Complainant to come away . . with him altho' Your Complainant often told the Sayd porter that he was not a Slave . . [703] Yet . . porter now against all right now pretends Your Complainant to be his Slave and hath held . . him as such wherefore Your Complainant prays he may be adjudged . . free" Order of the Chief Justice, February 4, 1727: "that the sayd Negro be taken by the provost Marshall . . to be had . . at the next Gen'l Court for Tryall of his liberty . . and that Edmond porter be served with a Copy of the Complaint . . and the Order thereon with a *Scire facias* . . to appear and Shew cause . . why . . peter should not be judged free and that there may be no loss in the mean time to the Owner (if any such should appear to be) it is Ordered that the provost Marshall do lett . . peter to Service to Such Safe persons as will be answerable for his forthcoming" At the March General Court, "Arguments on both Sides being . . fully heard . . Ordered that the Sayd petition be dismist."

Re Puckett, 2 Col. Rec. N. C. 704, July 1727. "A presentment against Elizabeth puckett for that she hath left her husband and hath for Some years cohabited with a Negro Man of Capt Simon Jefferies" See also *ibid.* 711.

Rex v. Jack (a slave), 1 Hawks 435 n., April 1741. "The [Craven County] Court met on the 27th of April, 1741, to enquire 'for our Soveraign Lord the King, concerning the murther of Robert Pitts.' . . terminated in the conviction and almost immediate execution of Jack, a slave of the deceased; and from the evidence, as given in detail on the record, one cannot but be forced to the conclusion, that the excitement must have been wonderful, which could have induced men to doom to death a fellow being on such testimony as, if laid before a grand jury of the present day [1821], would not induce it to find a bill." [Hawks, Reporter.]

Tims v. Potter, 1 Martin N. C. 22, 178-. Held: The increase of slaves belongs to the reversioner or remainderman,[1] not to the tenant for life of the mother. "As to the children being an incumbrance on the life estate, . . people are generally of a different opinion, as to thinking a breeding wench a loss."

Arrington v. Arrington, 1 Haywood N. C. 1, October 1789. "The [negro] boy being in Virginia at the time of the gift, and no delivery made, except of a dollar instead of the boy: the Court ruled, . . the gift was good without delivery:"

Farrel v. Perry, 1 Haywood N. C. 2, October 1790. Held: "If a father at the time of his daughter's marriage, puts a negro . . into the possession of the son-in-law, it is in law a gift, unless the contrary can be proven."

Skipper v. Hargrove, 1 Martin N. C. 74, April 1791. "Patience of the price of two hundred pounds, Ally, of the price of £100, and Violet, of the price of £100. . . Bet of the price of £50,"

State v. White, 1 Haywood N. C. 13, March 1792. "Indictment for trespass, in taking . . two negros . . out of the possession . . of"

State v. George (a free negro), 1 Martin N. C. 40, March 1794. "Jones had drawn a bill of indictment for burglary against the defendant: . . Martin . . observing that one of the witnesses about to be sworn, was a negro slave; that although the defendant was a negro, yet, he being a freeman, it was perhaps improper that a slave should testify against him. McCoy, J. . . If there be any thing in the objection, the court will attend to it at the trial. The slave was sworn, and the bill was found. The prisoner . . pleaded not guilty; but made his escape before the day assigned for his trial."

Conner v. Gwin, 1 Haywood N. C. 121, September 1794. "two executions . . were levied by the Sheriff on the property of the testator in his lifetime, and particularly on a negro fellow . . that before the day of

[1] For the probable reason, see Glasgow *v.* Flowers, 1 Haywood N. C. 233 (236).

sale, this negro privately murdered the testator, and that on the day of sale the perpetrator of the murder had not been discovered. That this negro was sold on that day, and purchased by the Plaintiff . . That afterwards . . this negro . . was tried, condemned and executed; and the bill prayed that . . this Court would decree him [the plaintiff] to stand in the place of the judgment creditors, . . [122] decree was entered accordingly."

Cox v. Dove (*a free negro*), 1 Martin N. C. 43, March 1796. "Trespass *quare clausum fregit*, . . To prove the entry a negro slave was called and offered to be sworn. But the Court [Williams, J., saying he never heard such a thing asked: Haywood, J., *tacente*] refused to admit the witness, although the defendant was stated to be a negro." [1]

State v. Evans, 1 Haywood N. C. 281, April 1796. "Nicholson said, I will not fight you myself, but I have a negro fellow shall fight you. This exasperated Evans to a great degree."

Knight v. Thomas, 1 Haywood N. C. 289, April 1796. "under the act of 1784, ch. 10, sect. 7, a parol conveyance of negroes is good as between the parties themselves, as before the making of this act; but . . void as to creditors, as well creditors who became such after the conveyance as those who were creditors at the time;"

Porter v. McClure, 1 Haywood N. C. 360, September 1796. "if the negro was really an ideot, then the vendee of Greenwood may resort to him for selling an unsound negro."

England v. Witherspoon, 1 Haywood N. C. 361, September 1796. "The note . . was for one hundred pounds, payable . . by delivery of a likely negro, of the age of eleven years, by a day certain."

Arnold v. Bell, 1 Haywood N. C. 396, October 1796. In 1795 Arnold bought a man slave from his father for £100.

Evans v. Kennedy, 1 Haywood N. C. 422, October 1796. "The Plaintiff was a person of colour, who claimed his freedom, . . The Plaintiff and Defendant had agreed that an action should be instituted without process, and an issue made up to try the fact; . . *Et per curiam*— . . The action used on such occasions for eight or ten years past, is the action of trespass and false imprisonment; . . The issue was then made up . . and the evidence not being competent to prove the Plantiff's freedom, the court recommended the withdrawing a juror, which was agreed to; and then the Plaintiff's counsel moved, that Defendant might give bond and sureties to permit the Plaintiff to appear at next term, and to treat him with humanity in the mean time." So ordered. [488] "Judge Haywood—I think the bond usually given goeth further—to allow the Plaintiff time to collect evidence and procure depositions, if necessary. Judge Williams—I do not recollect the Defendant was ever bound to that: it would produce a loss of the Plaintiff's service, which in the event of

[1] "Note.— . . see . . 1 Rev. St. ch. 31, sect. 81. It is believed that the law is now [1843] clearly settled that a slave is a competent witness against a free negro."

a verdict against him, the owner could not be compensated for. So the bond was ordered to be taken as above."

Hogg v. Ashe, 1 Haywood N. C. 471, April 1797. [472] "in 1789, the Defendant recovered against Campbell £500 for negroes of the Defendant, carried away by Campbell when he joined the enemy."

Branch v. Bradley, 2 Haywood N. C. 53 [215],[1] March 1798. Trespass. "*Per Curiam.* . . . if the constable after the arrest, suffered the negro to be beaten by Bradley, he was a trespasser; for the arrest was made for the purpose of carrying him before a magistrate, and not for that of beating him . . Verdict and judgment for the plaintiff"

State v. Weaver, 2 Haywood N. C. 54 [216],[2] March 1798. "Indictment for the murder of a negro man . . the property of Smith, not guilty pleaded: . . charge to the jury. . . Murder is where the homicide [is] . . doing the act under such circumstances as shews the heart to be exceedingly malignant . . [217] as if for a slight offence . . any man should take up his servant and beat him so excessively as to cause his death; . . This is the law with respect to a freeman who is killed, but with respect to a slave it is somewhat different; for if a free servant refuses to obey . . and the master endeavor to exact obedience by force, and the servant offers to resist by force . . and the master kills, it is not murder, nor even manslaughter, but justifiable; much more is it justifiable if the slave actually uses force and combats with the master. If . . the deceased actually attempted to kill the prisoner, who was a temporary master, having hired him for a year, and . . the prisoner killed in his own defence, he is justifiable; if . . the deceased actually used force and was resisting by force . . or if he offered to resist by force when he was killed, the prisoner is justifiable. If none of these circumstances are to be found . . and you are of opinion that the killing with the pistol was with malice aforethought . . then the prisoner is guilty of murder. . . verdict for the prisoner of not guilty."

Blount v. Mitchell, Taylor N. C. 131 [80],[3] September 1798. Trespass. [81] "The sheriff sold the negroes on the day mentioned in the advertisement, but they were not present, . . but in the possession of Blount. Mitchell purchased the negro named . . and afterwards, in company with three other defendants, went armed in the night time to Blount's plantation, and carried away the negro; . . [82] Judgment for £120."

Witherington v. Williams, Taylor N. C. 134 [83],[4] September 1798. "The defendant was the widow of . . Ferguson, who was killed at the battle of the Allemance, leaving two children. The Legislature, in order to make some provision for his family, directed that one hundred pounds should be deposited . . to purchase negroes for the widow and children. Two negroes were purchased,"

[1] Battle's edition.
[2] *Id.*
[3] *Id.*
[4] *Id.*

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State v. Piver, 2 Haywood N. C. 79 [247],[1] March 1799. "He was indicted for the murder of a negro slave, . . [the prisoner] returning home from a neighbor's house, with a gun, in a public road, the deceased came meeting him, and the prisoner, a boy of about 13 or 14, said to him jocosely, stand off, or I will shoot you; my gun is charged with buck shot: The deceased continued to walk on, and Piver got before him on that side the road which the other had taken, whereupon the negro shoved him with some violence to the other side of the road, and Piver would have fallen had he not caught on his hands; the deceased passed by, and Piver rose up and shot him, so that he died. *Per Curiam.* This is manslaughter; and in the act of Assembly[2] against the malicious killing of slaves there is no punishment affixed to manslaughter; so he must be acquitted. Verdict accordingly.

State v. Hall, Taylor N. C. 126 [76],[3] May 1799. "The prisoner was indicted upon the act of 1779, cap. 11,[4] for stealing a male slave, the property of the prosecutor, and was . . found guilty" Motion to arrest judgment because the words [79] "marking the intention" were omitted in the indictment. Reasons overruled: "the act of Assembly . . was passed in turbulent times, when a practice prevailed of carrying slaves away, under the pretence that they belonged to the public, as confiscated; or that they were owned by disaffected persons: they were sometimes carried off . . by stealth, at other times openly and by violence: the former case is embraced by the word steal:" To the latter case, the words of intention expressed in the act "must be exclusively referred." [Moore, J.]

Smith v. Weaver, Taylor N. C. 58 [42],[5] October 1799. "an action of trespass for killing a slave, the property of the plaintiff, who had been hired to the defendant." The writ in the case had been sued out, pending an indictment for the same fact. The defendant had been acquitted. Verdict for the plaintiff, and motion for a new trial denied: [44] "the trespass remains."

Spendlove v. Spendlove, Cam. and Nor. 36, June 1800. "the complainant, who is an inhabitant of the Island of Jamaica . . and the defendants are the natural children of . . Elletson, . . who . . 1783, . . devised all his estate . . to be equally divided . . among them, . . that a Court . . 1790, . . allotted twenty-six negroes as the proportion of the slaves which the complainant was entitled to under the will . . the said slaves . . were hired [out] by the County Court"

State v. Sue (*a negro woman slave, the property of John Cates*), Cam. and Nor. 54, June 1800. "The prisoner had been tried in the County Court . . on a charge of giving or procuring to be given to William Cocke and several of his family . . a poison supposed to be arsenic, with an intent to kill . . and was found guilty . . by the Jury

[1] *Id.*
[2] "the law is now altered. See 1 Rev. St., ch. 34, sect. 9."
[3] Battle's edition.
[4] 1 Rev. St., ch. 34, sect. 10.
[5] Battle's edition.

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. . on which conviction, the judges present, passed the following sentence, 'That the prisoner Sue, . . [55] the 14th day of April, 1800, be taken to the place of execution, and . . hanged by the neck until she be dead.' . . on the 6th day of April, . . Duffy [counsel for the prisoner] . . obtained writs of *Supersedeas, Certiorari,* and *Habeas Corpus,* . . in consequence of which, the Sheriff . . brought up the said slave to the Superior Court, . . Duffy . . contended that the County Court . . had no authority to pass sentence of death on the prisoner, the crime of which she was convicted, being one of such a nature as was not by the laws of the land, punishable with death, and he cited . . Act of 1794,[1] . . [56] that the Legislature had no intention to punish slaves in a more sanguinary manner than freemen convicted of the same offence; . . [58] This case being wholly new, his Honour Judge Johnston desired that it should be adjourned." Judgment reversed: [62] "The discretion given of the Act of Assembly [of 1741] is a legal discretion, not the power of altering punishments, or affixing to any offence, a punishment unknown to the law." [Macay, J.] Taylor, J., dissented: [60] "The act of 1786[2] . . does in the preamble recognize the fact, that many persons by cruel treatment to their Slaves, cause them to commit crimes for which they are executed. It then proceeds to take away the allowance which had been theretofore made to the owners of such Slaves. The cruel treatment . . must consist in withholding from them the necessaries of life, and the crimes thence resulting, are such as are calculated to furnish them with food and raiment. It then appears that in 1786, the Legislature was perfectly aware, that from 1741 until that time, it had been the practice to execute Slaves upon a conviction of grand larceny, when free persons were only burnt in the hand, . . [61] It seems to me that the acts subsequently made, had no other end than to extend to them the trial by Jury, and to ascertain the respective provinces of the Court and the Jury, still leaving the discretion of the former as to the punishment, as unlimited as the first act had made it."

Estis v. Lenox, Cam. and Nor. 73, June 1800. "an action of Debt . . to recover the penalty of fifty pounds, created by Chapter 4 of Acts of 1791, against those who should harbour or maintain any runaway slaves."

M'Allister v. Spiller, Cam. and Nor. 95, June 1800. "The Plaintiff's intestate . . was legally entitled to the service of a Negro . . by hire, for . . one year, . . Spiller, the Defendant's testator, in . . 1795, seduced . . the said Negro . . to absent himself from the service"

Mullington v. Shipman, Cam. and Nor. 113, June 1800. Mullington's will, executed 1776: "I will . . that the children, which . . may be born of the . . negro wench Moll, bequeathed to my grand-daughter Lucy Lewis, be delivered to the young children, according to their birthrights, beginning with Aaron, then Moses, so down to the youngest;"

Jesse Gober v. Gober, 2 Haywood N. C. 127 [289],[3] October 1800. "*Per Curiam.* . . The plaintiff is detained as a slave, and has com-

[1] Ch. 11, sect. 1. Iredell's Revisal, Laws of N. C.
[2] *Ibid.*, p. 588.
[3] Battle's edition.

menced this action to recover his freedom; and now moves without any affidavit, that defendant be ordered to give security, that the plaintiff shall be forth coming at the next term. . . The court will not interfere but where it is induced to believe by affidavit that defendant is about to send the plaintiff out of the country in order to defeat the end of his suit, or to adopt other means calculated for the same end."

Jones v. Jones, 2 Haywood N. C. 128 [292],[1] October 1800. "she was under the necessity of selling this negro for the support of her family."

Anonymous, 2 Haywood N. C. 134 [302],[2] January 1801. "the testator devised that his executors should procure, if possible, the emancipation of his slaves; and if it be impossible that then the plaintiff should have them. Several assemblies have been held since the death of the testator, and they are not emancipated." Held: "the complainant is entitled." "the executors had only a reasonable time, not their whole life to perform the trust: they should have applied as soon as they reasonably could. Having not done so in several years, it is to be taken that the trust is impossible to be performed;" [Taylor, J.]

Cunningham's Heirs v. Cunningham's Executors, Cam. and Nor. 353, December 1801. Cunningham's will, executed 1792: "I will . . that forty feet back [from an alley], including the house where Mr. Potts is now resident, be at the expiration of the lease rented out for the maintenance of a negro woman of mine, named Rachel, and the maintenance and education of her three mulatto children . . and the child of which she is now pregnant." He devises part of another lot in like manner, [354] "with all the rest of the land lying between Lee's creek and Deep Inlet Creek, between Rachel and her three children, share and share alike, to them and their heirs. *Item.* I will . . that my negro men Virgil and Quash, together with my negro woman Tamer, should live on the plantation where I now reside, on Lee's creek, to work for the maintenance of Rachel's children, during the natural life of the said negroes. *Item,* I will . . that Rachel and her children should be set free immediately after my decease." Cunningham's executor "took possession of that part of the real estate, the rents of which are directed . . to be applied towards the maintenance and education of . . Rachel and her children. . . Rachel and all her children, before and at the time of making the will, and ever since, have been slaves."

Held: the devise of the land is void: [355] "The intention of the testator seems plainly to have been, to transfer the beneficial interest in the lands to Rachel and her children; and were there no legal impediments . . I should think the words made use of equivalent to an express devise of the land. But it is indispensable . . that there be a devisee appointed who is competent to take: Slaves have not that competence;" [Taylor, J.]

[1] *Id.*
[2] *Id.*

State v. Boon,[1] Taylor N. C. 246 [103],[2] December 1801. "The prisoner was indicted on the third sec. [chapter four] of the act passed in 1791, . . ' that if any person shall be hereafter guilty of wilfully and maliciously killing a slave, such offender shall upon the first conviction . . be adjudged guilty of murder, and . . suffer the same punishment as if he had killed a freeman,' . . [104] The prisoner was found guilty by a Jury"

Judgment arrested: [105] "It may be thought that the words 'shall suffer the same punishment as if he had killed a freeman,' from the connexion . . should be allowed to have this meaning, . . 'as if he had wilfully and maliciously killed a free man.' I cannot agree . . [106] Punishments ought to be plainly defined . . [108] What the powers of a master were over his slave, in this country, prior to . . 1774, have not been defined. I have not heard, that any convictions and capital punishments took place before that period, for killing of negroes." [Hall, J.] Johnston, J.: [110] "The murder of a slave, appears to me, a crime of the most atrocious and barbarous nature; much more so than killing a person who is free, and on an equal footing. It is evidence of a most depraved and cruel disposition, . . [111] had there been nothing in our acts of Assembly, I should not hesitate . . to have pronounced sentence of death on the prisoner. . . The killing of a free man is punished in different ways, . . there remains no doubt in my mind respecting the intention of the Legislature; but . . in the construction of penal statutes, . . nothing shall be taken by construction . . from the context." Taylor, J., and Macay, J., delivered separate opinions concurring.[3]

Gobu v. E. Gobu, Taylor N. C. 164 [100],[4] April 1802. "Trespass and false imprisonment; plea that the plaintiff is a slave: . . the plaintiff, when an infant, apparently about eight days old, was placed in a barn by some person unknown: that the defendant, then a girl of about twelve years of age found him there, conveyed him home, and has kept possession of him ever since; treating him with humanity, but claiming him as her slave. The plaintiff was of an olive colour, between black and yellow, had long hair and a prominent nose. . . [101] the following observations were made to the jury. By the Court. I acquiesce in the rule laid down by the defendant's counsel, with respect to the presumption of every black person being a slave . . . because the negroes originally brought to this country were slaves, . . If therefore a person of that description claims his freedom, he must establish his right to it by such evidence as will destroy the force of the presumption arising from his colour. But I am not aware that the doctrine of presuming against liberty, has been urged in relation to persons of mixed blood, or to those of any colour between the two extremes of black and white; and I do not think it reasonable that such a doctrine should receive the least

[1] Court of Conference.
[2] Battle's edition.
[3] "Note.—By the act of 1817, (see 1 Rev. Stat. ch. 34, sec. 9,) it is provided that 'the offence . . shall be denominated . . homicide, and shall partake of the same degree of guilt . . that homicide now does at common law.'"
[4] Battle's edition.

countenance. Such persons may have descended from Indians in both lines, or at least in the maternal; they may have descended from a white parent in the maternal line or from mulatto parents originally free, in all which cases the offspring, following the condition of the mother, is entitled to freedom. Considering how many probabilities there are in favour of the liberty of these persons, they ought not to be deprived of it upon mere presumption: more especially as the right to hold them in slavery, if it exists, is in most instances, capable of being satisfactorily proved. Verdict that the plaintiff is free."

Cutlar v. Brown, 2 Haywood N. C. 182 [380],[1] May 1802. Action " for seducing away the plaintiff's slave from his service "

Smith v. Williams, 1 Car. L. R. 263 n., 1802. Williams sold Smith, in 1802, " one negro fellow . . about 50 years of age, for . . three hundred dollars," warranting the title, in the bill of sale, but not the quality of the negro. The negro was " afflicted with a rupture; "

Rutherford v. Craik, 2 Haywood N. C. 262, June 1803. Marriage settlement, 1761: " Jane Innis . . doth . . grant . . unto . . Swann . . all and singular her negro slaves following, by name [eighty in number], together with their future increase; . . in trust; . . to the use . . of the said Jane Innis . . until the said intended marriage shall be . . solemnized; and . . after . . to the only use of . . Swann . . in trust; nevertheless, that . . Swann . . shall . . suffer the said Jane Innis to receive all the profits arising by the negro slaves aforesaid, either from their labor, increase or hire; . . during . . her natural life for her separate use . . Provided also, . . that it shall . . be lawful . . for the said Jane . . during her natural life, and when she shall be so minded, notwithstanding her coverture, and as if she were . . unmarried, to have . . the whole and sole care, ordering, direction and management of the negro slaves,"

Troughton v. Johnston, 2 Haywood N. C. 328 [498],[2] October 1804. " the purchase . . was a mere pretence, . . the real object having been to sell to Kirk, a buyer of negroes, by running him up to a high price,"

Lavender v. Pritchard, 2 Haywood N. C. 337 [513],[3] January 1805. " Pritchard . . said to the plaintiff, a child, ' I give you all my corn and all my hogs, my horse, . . and my boy; ' (naming him.) He then took out of the wallet, an ear or two of corn, and said, here take of the corn I have given you—and gave the child an ear or two."

Held: [515] " it cannot be considered as a delivery of all the things given, because the horse . . was present, and might have been delivered, and yet was not; and as to the hogs and negro boy, no words were expressed to shew an intent that the ear of corn should be a symbol of these."

Spivey v. Farmer, 2 Haywood N. C. 339 [519],[4] January 1805. " This action was brought for, that the intestate of the defendant . . persuaded

[1] *Id.*
[2] *Id.*
[3] *Id.*
[4] *Id.*

a negro man of the plaintiff to attempt to transport him in a flat across the Neuse river, with a load which rendered the attempt dangerous, when the river was swelled and rapid: . . the flat sunk, and the negro, as well as the intestate himself, were drowned. Taylor, Judge. . . The negro was usually employed by his master to ferry over travellers and others for a reward; and that is equivalent to a command from the master to carry them over when applied to: it places him in the light of a common carrier. . . Verdict for the defendant."

Ridley v. Thorpe, 2 Haywood N. C. 343 [525],[1] April 1805. [527] " the administrator . . permitting the widow to remove from Virginia to North Carolina, with 18 or 20 negroes, in the year 1780."

Parker v. ———, 2 Haywood N. C. 345 [528],[2] May 1805. " The plaintiff sued the defendant for his freedom, . . whereupon the defendant put him in prison. The plaintiff's counsel complained of this to the court, and moved for an *habeas corpus*; and the court ordered one, . . The plaintiff was brought into court on the day appointed, and examinations in writing were taken to prove the probability that he was free; and a strong case was made out by them—these were filed in court. The court ordered that the defendant either should give security to leave the plaintiff at liberty, until the next term, to go whither he pleased to procure testimony; or should submit to the court to go immediately into the consideration of what was proper to be done in the *habeas corpus*. He chose the former; "

Walker v. Mebane, 1 Murphey 41, June 1805. " Mebane gave to his niece . . the negro slave . . when she was a small girl, and not wishing to seperate her from her parents during his life, he agreed with his niece to keep the negro girl at his own expense during his life."

Jasper v. Tooly, 2 Haywood N. C. 351 [538],[3] July 1805. Tooly " had given a bond . . with a condition underwritten, that if Tooly should recover certain negroes, and should deliver to said Jasper one-half of them, and one of them taking one, and the other another, and so on till all were divided, that then the above obligation should be void."

Rhodes v. Gregory, 2 Haywood N. C. 351 [539],[4] July 1805. " Rhodes took an attachment . . and delivered the same to . . the Sheriff, who seized a negro, and returned upon the attachment, that he escaped."

Marshall v. Williams, 2 Haywood N. C. 405 [613],[5] April 1806. " the complainant borrowed of the defendant's testator, £25, Virginia money, and gave him a bill of sale for a negro man, with an indorsement stating that if the £25, with interest should be repaid on the 25th of December, 1789, the bill of sale should be void; but if not paid . . then Williams should be entitled to the negro . . and should pay £10 more . .

[1] Battle's edition.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*

and that if the negro should die in the mean time, the loss should be the complainants;" Held: [614] "He was . . a pledge for the security of the money; was redeemable;"

Lanier v. Auld, 1 Murphey 138, June 1806. "This is to certify that I have sold a negro man by the name of Jim for the sum of one hundred and sixty pounds . . paid by Isaac Lanier; and I doth [*sic*] warrant the aforesaid slave Jim to be sound and healthy, not over twenty five years of age. . . 1796. John Auld. Teste, Fanny Dickson." [139] "The negro Jim at the time of the sale, and long before, was a free-man . . Lanier brought an action of assumpsit"

Held: "The writing signed by Auld contains no warranty that the negro Jim is a slave: . . the word *Slave* is used, but it . . is merely descriptive of the person to whom the warranty of soundness, etc. was to be applied. . . The express warranty as to soundness and age excludes any implied warranty as to other qualities. . . The Plaintiff, however, is not without a remedy; . . leave to amend his declaration by adding a count for money had and received, . . granted"

Governor v. Howard, 1 Murphey 168, July 1807. "an action of debt brought on the second section of the act of 1794, ch. 2, to recover from the defendant the penalty of one hundred pounds for selling to . . [169] Smith a negro slave imported into the state contrary to the . . act, knowing him to have been so imported. . . The defendant . . rests his defence upon this ground, that he was an honest purchaser . . without notice of his illegal importation, and that a sale to Smith under subsequent notice of this fact did not incur the forfeiture."

Held: [171] "unless it appear that the seller has contributed to the evil by some . . connivance at the negro's introduction into the state, he is no offender, he incurs no forfeiture." See same *v.* same, *infra.*

Allen v. Watson, 1 Murphey 189, July 1808. Will: "I give . . unto my . . wife . . six negroes, . . during her natural life, and after her decease to be sold and equally divided among my children."

Governor v. Horton, 1 Murphey 212, July 1808. "an action of debt to recover the penalty of one hundred pounds, for bringing a negro slave into this State, contrary to the act of 1794, ch. 2."

State v. Groff, 1 Murphey 270, July 1809. "The Defendant was indicted for receiving stolen goods, knowing them to be stolen. The principal, a negro slave, had not been indicted; he resided in the county . . and was amenable to the law." Held: [271] "he [the slave] ought to be convicted before the accessory is put upon his trial."

Smith v. Williams, 1 Murphey 426, July 1810. "the negro was unsound . . being afflicted with a rupture."

Governor v. Howard, 1 Murphey 465, July 1810. See same *v.* same, *supra.* "Pending the suit, . . the act . . was repealed; and at the next term . . the Defendant pleaded . . [the repealing act] in bar, . . the Plaintiff demurred;" Demurrer overruled.

Critcher v. Walker, 1 Murphey 488, July 1810. "Complainant . . applied to the Defendant, in . . 1785, to loan to him . . £70, Virginia currency, and that the Defendant agreed to loan the money, provided Complainant would place in his possession a negro woman named Mag, as a security for the money, and to work for the interest thereof: . . [489] the negro woman had had five children since . . that Complainant had in 1797, tendered to Defendant . . £70, . . Defendant refused to accept the money, or surrender up the negroes. . . The Defendant . . averred . . that she was to remain in his possession until the . . 25th . . December [1785], at which time Complainant was to be at liberty to take her back, upon paying the money advanced, without interest: but if Complainant failed . . she was to become the absolute property of the Defendant. That the bond was given to secure the debt in the event of the negro's death before the 25th December; that it was agreed, if she died before that day, the loss should fall on the Complainant; . . a Jury . . found, 1st. That Defendant had kept possession of the bond . . 2d. That £70, Virginia currency, was the value of . . Mag, at the time she was delivered to Defendant in 1785. . . 5th. That Complainant had not paid the money due on his bond," Bill dismissed.

Long v. Long, 2 Murphey 19, July 1811. Will of Lunsford Long, who died in 1809: [20] "I give . . all my negroes . . (except Frank Bibb, whom I wish to liberate on account of his meritorious services, and request my executors to attend to his manumission,)"

Shepherd v. Sawyer, 2 Murphey 26, July 1811. "Shepherd, started a boat loaded with brick, . . down to Davis's bay, a distance of about seven or eight miles; the boat was rowed by a white man and several negroes, among whom was the fellow Jacob, . . A few days after . . a report was circulated that the boat and all persons on board were lost. . . [27] the Defendant [then] offered to insure the negro fellow Jacob for the premium of two and a half per cent. which offer was accepted . . It afterwards appeared that Jacob and all the other hands . . were lost. . . the Plaintiff . . had no interest whatever in the property insured." [26] "The Jury found for the Plaintiff, and assessed his damages to £200." Judgment entered for the plaintiff.

Shober v. Robinson, 2 Murphey 33, July 1811. "an action of covenant, founded upon a bill of sale for a negro fellow named Peter, sold to the Plaintiff . . at the price of £240. . . 'And we do hereby covenant . . to warrant . . the said negro to be a slave.' . . The Plaintiff took Peter into his possession, immediately . . and in April 1809, Peter, claiming to be a free man, instituted an action of assault and battery and false imprisonment, . . [34] at October Term, 1809, . . the Jury found that the negro fellow Peter was a freeman, . . Shober gave notice to Hamilton and Robinson, of the claim which Peter set up . . and of the suit. . . They appeared and employed counsel to defend the suit, and Shober assisted their counsel in making defence; . . Robinson, was present at the trial, and challenged Jurors. After the verdict and judgment . . Shober brought the present suit against his vendors, . . Sho-

ber gave in evidence to the Jury, the verdict, judgment and proceedings in the suit of Peter against him, . . and relied upon them as *conclusive* against the Defendants. The Defendants . . offered evidence to prove that notwithstanding the finding of the Jury in the other case, Peter was a slave, . . The Plaintiff objected . . overruled . . the Jury found that . . Peter, on the day on which Defendants sold him to the Plaintiff, was a slave, . . it was known to Shober, as well as to Robinson and Hamilton, before the trial . . of Peter *v.* Shober, that John Hamilton, then living within the jurisdiction of the Court, could depose to facts, which would shew, that Peter was a slave, . . and that neither of them had the said John subpoenaed as a witness, . . [35] judgment for the Defendants;"

Affirmed: [36] "the fair . . construction of the warranty . . is . . that the Defendants covenanted, that when legally called upon by an action grounded on the warranty, at the instance of the Plaintiff, they would shew that . . Peter was a slave, or . . repair the Plaintiff's loss . . [37] the verdict and judgment recovered by Peter . . ought to have no other effect than merely to shew that the Plaintiff was evicted, and put the Defendants to the necessity of shewing that . . Peter was a slave; . . it is by no means conclusive" [Locke, J.]

Williams v. Jones, 2 Murphey 54, July 1811. "an action of debt on a bond given for the hire of a negro slave. By the terms of the hiring, the Defendant was not permitted to employ the slave on water . . but he . . [55] employed the slave on water, and the slave was drowned. For this he was sued, and a verdict given for the value of the slave; and now being sued upon his bond for the hire, a question arose, whether . . the Defendant be charged only for the time the slave lived."

Held: "He ought not to be relieved from the payment of his bond, because he has thought proper to do an improper act."

M'Gowen v. Chapen, 2 Murphey 61, July 1811. "the Plaintiff hired to the Defendant a negro slave for . . one year, which slave was, at the expiration of the term, returned ruptured, and greatly impaired in value. The Defendant had, . . without the consent of the Plaintiff, hired the slave to a man . . who, with his father, had . . beaten him with such severity as to occasion the rupture . . a verdict for the Plaintiff; . . Judgment for the Plaintiff."

Campbell v. Campbell, 2 Murphey 65, July 1811. Sons "purchased a negro woman for the purpose of waiting upon their mother during her life."

Bateman v. Bateman, 2 Murphey 97, January 1812. [98] "that he had let the Plaintiff have the negro [in 1804] . . in satisfaction of a debt of one hundred dollars, which he owed to him: that as the negro was small, he had agreed to keep her until she was able to do service, or was called for by the Plaintiff."

State v. Washington (*a slave*), 2 Murphey 100, January 1812. At a county court, held in February 1811, "Washington, a negro slave, was

charged with the crime of rape, . . committed upon [a white woman] . . and was found guilty by the Jury: and at May term . . he being brought to the bar, and it being demanded of him why sentence of death should not be pronounced on him, . . Jones, his counsel, shewed for cause, . . [101] The Court were of opinion, that the causes shewn were not good and sufficient, and sentence of death was pronounced . . His counsel prayed an appeal to the Superior Court, which was denied. He then moved for a writ of error to reverse the judgment, . . disallowed. . . the owner of the slave, made an affidavit setting forth the foregoing facts, and applied . . for a writ of *certiorari* to have the proceedings removed into the Superior Court, and the Judge granted the writ, and also a *supersedeas*; and the case was sent to this Court upon the following points: 1st. Whether it was competent for the County Court, at May term, 1811, to pronounce sentence of death, the conviction having taken place at February term preceding? 2d. Whether the writ of *certiorari* will lie in this case? (and this necessarily involved the question, Whether the County Court acted rightly in refusing the appeal prayed for?) And 3d. Whether a trial *de novo* is to be had in the Superior Court?"

Held, unanimously: "that the County Court had the right of pronouncing sentence of death at May term: and that if a trial was to be had in the Superior Court, it must be a trial *de novo*. . . all of the Judges, except . . Judge Hall, were of opinion, that the slave had the right of appealing" Judge Hall's dissent, *ibid.* 102-107.

Houton v. Holliday, 2 Murphey 111, January 1812. "Taylor, by his will, dated . . 1799, bequeathed to his daughter Lucy, a negro slave, named Harry. In March, 1800, Taylor borrowed of . . Holliday . . one hundred pounds, and to secure the payment thereof, executed the following deed, viz. . . [112] 'in consideration of the sum of two hundred dollars,[1] . . [I] sell . . unto . . Holliday, one negro man, named Harry, . . The condition of the above bill of sale is such, that if . . Taylor . . shall . . pay to . . Holliday . . on or before the 25th day of December next, the sum of two hundred dollars, then the above bill of sale shall be null and void; otherwise remain in full force until . . Taylor do pay . . two hundred dollars.' Taylor died in April, 1800: . . The Plaintiff intermarried with . . Lucy, in April, 1801; and upon the marriage, the executor . . assented to the legacy of negro Harry . . [He] remained in the possession of Defendant from March, 1800, until April, 1803; and it was proved that his services were worth sixty dollars per year. In April, 1803, the Plaintiff paid Holliday the sum for which the negro was pledged, . . and the negro was delivered to him. He then demanded satisfaction for the services of the negro, . . refused . . therefore the Plaintiff brought his suit . . [113] The Jury found a verdict for the Plaintiff . . for . . eighty-eight dollars, estimated as the wages . . from the time of Plaintiff's marriage . . until . . April, 1803, deducting the interest" Judgment entered for the plaintiff.

[1] "Dollars are to be valued at ten shillings each," Act of 1812. 1 Car. L. R. 126.

Nichols v. Cartwright, 2 Murphey 137, January 1812. Deed, executed 1798: "I lend to my sister Absala . . the use and labour of my negro girl . . and her increase, during her natural life, and at her death I give the said girl and her increase unto the heirs of my said sister . . forever." Held: "Absala . . took the negro girl absolutely."

Perry v. Rhodes, 2 Murphey 140, January 1812. Witherington's will: "that my executors hire out all my . . negroes yearly, till . . my youngest daughter comes of the age of twenty-one years, and the money arising . . I give to my wife . . And . . at such time as my youngest daughter comes of the age of twenty-one years, all my . . negroes, and their increase, to be equally divided among my wife" and daughters.

Scott v. Sheriff, 2 Murphey 143, January 1812. "Another *fi. fa.* issued . . on which the Sheriff returned that he had 'executed two negroes, Anaca and Clary, and one bay horse, and that he had not sold for want of bidders.' . . Another *fi. fa.* was sued out . . which the Sheriff returned 'levied on two negroes, Anaca and Clara, . . not sold, for want of bidders.' A writ of *venditioni exponas* was issued . . on which the Sheriff returned 'no sale for want of bidders.'" A new sheriff returned on a later writ of *venditioni exponas* that [144] "no such property was to be found."

Reddick v. Trotman, 2 Murphey 165, July 1812. "the Sheriff . . levied . . on the negro . . advertised, and sold him; and at this sale the negro did not bring as much by seventy dollars as at the sale when Trotman bid him off."

Spruill v. Spruill, 2 Murphey 175, July 1812. Hines's will: [176] "I lend the whole of my property . . to my . . wife . . for the purpose of raising, clothing and educating my children, and also raising the young negroes that are, or may hereafter, be born in my family,"

State v. Flowers, 1 Car. L. R. 97,[1] January 1813. "An indictment . . for Trespass . . [98] November, . . 1810, a Negro woman, the property of Wright Kirby, had taken some cloaths to wash at a creek running through the land of . . Flowers; . . near a quarter of a mile from the house of . . Kirby, . . Mrs. Kirby . . sent the negro girl, Nan then in the possession of . . Kirby . . to help bring up cloaths, and while there, . . Flowers, assisted by . . Hampton, took . . Nan [to whom he had a claim] . . and carried her toward [his] home, contrary to the will of . . Nan; . . after he had carried her nearly three hundred yards, Mrs. Kirby overtook them, . . in attempting to take the girl, . . Mrs. Kirby was once or twice pushed down by defendant and bruised—but that she was not struck, . . and that no force was used towards her, except in preventing her from taking" Nan. Judgment entered for defendants: [99] "great as the anxiety of this Court may be, to discourage . . every act of this nature, yet we cannot conceive that the circumstances of this case, (though affording good ground of a civil action) can afford evidence of a forcible taking by the defendants." [Locke, J.]

[1] Also in 2 Murphey 225.

Mann v. Parker, 2 Murphey 262, June 1813. Action "on the case for a fraud in the sale of a negro child. . . the Plaintiff, who was a speculator in negroes, applied to the Defendant for the purpose of purchasing a . . negro woman and child; the Defendant . . stated his price, and told the Plaintiff, to 'go into the kitchen, look at the negroes and judge for himself.' The Plaintiff continued in the kitchen, while the Defendant . . [263] breakfasted, . . the Defendant asked him how he liked them, and he answered, 'very well.' The bargain was concluded," On the day agreed on for the delivery of the negroes, "the Plaintiff was asked by . . a partner with him in the purchase, what sort of bargain he had made, to which Plaintiff answered, 'I have got a likely wench, and the child is middling.' . . the Defendant had bought the negroes . . at a public sale, about nine months before the sale to the Plaintiff, and at the time of the latter sale, the child was between fifteen and nineteen months old, and . . could not walk, talk or move itself except upon its back, *backwards*. That the Plaintiff shortly after . . took the negroes to South Carolina with others; that a snow fell whilst they were on the road, that the child was neglected by its mother, was attacked with a dysentery, in common with other negroes in company, and when they reached South-Carolina, the Plaintiff could not sell the child, and he gave it away. One witness, who lived in the family of the Defendant at the time the Plaintiff went to examine the mother and child, said, the child appeared to be well and ate heartily, but he thought it might appear to the most common observer, that the child was not altogether right. . . that the Defendant observed on a certain occasion, when he was looking at the child, 'I wish you were on the sand-hills and I had my money for you.'" Verdict for the defendant. New trial granted.

Williams v. Holcombe, 1 Car. L. R. 365, January 1814. A negro boy, "about 16 years of age, . . [366] the defendant and a valuable negro fellow belonging to the defendant, were engaged in defendant's still-house [in 1806], emptying brandy from the runlet . . into a larger vessel, the boy . . holding a candle . . when the spirits took fire and burned him to death and the negro fellow belonging to the defendant,"

Settle v. Wordlaw, 1 Car. L. R. 371, January 1814. Will: [372] "That if Fanny should have three children more, that they belong to . . Sarah and Nancy, two a-piece, including Nanny already given; and all the rest . . to be equally divided between Benjamin and David."

Pearson v. Fisher, 1 Car. L. R. 460, September 1814. In May 1806 the negro [462] "was of the value of two hundred and twenty-five pounds."

Sherman v. Russell, 1 Car. L. R. 467, September 1814. About 1806 a negro was sold by the constable for $549.

Gardner v. Neil, 1 Car. L. R. 492, September 1814. "an action of trespass *vi et armis*, for entering and searching the plaintiff's house, under the pretence of looking for a runaway slave. The defendant justified, under a warrant, and it appeared in evidence, that the slave was not found in the plaintiff's house."

Curtis v. Hartsfield, 1 Car. L. R. 501, September 1814. In 1813 Hartsfield "sold at public vendue, on a credit of six months, a slave named Ben . . at the price of $425,"

Johnston v. Hamblet, 2 Car. L. R. 96, January 1815. "On the day of her marriage, and before it's solemnization, she made a bill of sale to her mother of the negroes . . without the knowledge . . of her intended husband;"

Ragland v. Cross, 2 Car. L. R. 121, January 1815. "This bond was given for the hire of a negro. A few months after . . the negro . . cut his knee pan with a drawing knife. An inflammation took place . . whereupon . . Ragland took the negro to his own house. The knee mortified and the negro died." Held: [122] "an apportionment of the debt cannot be made"

Dark v. Marsh, 2 Car. L. R. 249, July 1815. "an action of debt to recover the penalty under the 4th section of the act of 1791, against harboring slaves. . . [250] The plaintiff proved a title to the two slaves, mother and child, under a bill of sale, and possession of them from February, 1807, until the September following, when she absented herself, with her child, in the night time, taking with her all her apparel, and was the next morning in possession of the defendant, who . . gave notice to the plaintiff of the fact, and said he should retain them until recovered by law; as he claimed them as his father's property. The defendant has had them in possession till 1813, harboring and maintaining them, but in an open . . manner, the woman being the wife of one of his negro men. The plaintiff sued out a writ of detinue for the slaves in 1807, and in . . 1813, recovered them, and damages . . The writ in the present action was sued out in 1809." [249] "The Jury found a verdict for the plaintiff, subject to the opinion of the Court,"

Held: [251] "the maintaining, intended by the Legislature, was *secret* . . there should be judgment for defendant."

State v. Levin (a negro slave), 2 Car. L. R. 270, July 1815. "He was convicted of stealing a horse" [271] Held: "judgment in this case must be pronounced under the 10th section of the act of 1741, *Cap.* VIII."

State v. Davis, 2 Car. L. R. 291, July 1815. "the negro ran away [December 1814] . . and . . the defendant knowing the fact, . . feloniously did steal . . and [in less than a month] afterwards did sell him"

Jordan v. Jordan, 2 Car. L. R. 409, January 1816. About 1783 Jordan bought a slave for one hundred dollars.

Nichols v. Palmer, 2 Car. L. R. 436, January 1816. "An execution . . was levied on the slave . . who had been run away for some time before,"

Drew v. Drew, 2 Car. L. R. 437, January 1816. The father said, [438] "that the mother would have a fine brood for the son, provided the son took care of them."

M'Guire v. Blair, 2 Car. L. R. 443, January 1816. "an action on the case for words; . . 'He (meaning the plaintiff) one of our little Chowan justices of the peace, was taken up a few nights ago playing cards with negro Quomana, in a rookery box, and committed to jail,' . . [444] After a verdict for the plaintiff, it was moved, in arrest of judgment, that the words . . are not actionable." Held: they are not.

Haywood v. Craven's Executors, 2 Car. L. R. 557, July 1816. "John Craven . . bequeathed to [his executors] . . three of his slaves, viz. Prince, Hannah, and Grizzy, and their increase, in trust, to have them emancipated . . by the laws of the State, in such manner and at such time, as they shall think fit. He also devised to his said executors the half of Lot . . in trust for the use of Hannah and Grizzy, and a quarter of an acre of land in trust for the use of Prince. To his sister Margaret . . he left his town house, during her life-time, . . together with a plantation and thirty slaves, and whatever else was not given away by the will. . . and bequeaths, after the death of his sister, to his executors, . . twenty nine slaves and their increase, in trust, to have them set free by the laws of the State, in such time and in such manner as they may think proper . . [558] also to his executors after the death of his sister, his plantation tools, and implements of agriculture, in trust for the use of such of the male slaves as were, at the date of the will, of the age of sixteen years or upwards, and for the females of all ages, to hold the same as naked trustees, for the use and benefit of the said negroes and their heirs for ever. The executors are empowered to bind out all the male negroes at sixteen years of age to different trades, until they attain the age of twenty one, when they are to be emancipated: he directs his executors to sell his house and lot in town after the death of his sister, . . and the interest to be collected annually and applied to the use of Prince, Hannah, and Grizzy. He also gives to his executors eight acres of land in trust for Grizzy, and directs them to sell his furniture, or if necessary, his stock for the payment of his debts; and in the event of his sister dying before him, requires his will to be carried into immediate execution; his slaves to be lawfully liberated as soon as his executors can find it convenient to do so. The testator died and his sister Margaret was put into possession of the property, and by her last will . . devised and bequeathed all her property to the complainants Stephen and Dallas Haywood; . . Prince and Hannah were emancipated by the County Court during the life time of Margaret Craven.—Grizzy died a slave."

Held: [565] "the trust attempted to be created by the will of Mr. Craven is void in law, not only as contrary to its general policy, but as repugnant to positive provisions by statute; for the law has pointed out one method only in which slaves can be liberated, act of 1741, c. 24, and the principle on which it is permitted, can by no construction be applied to the case before us. The same act directs the slaves to be sold if the owner sets them free in any other manner." [1]

[1] [564 n.] "The cause was decided by Taylor, C. J., Lowrie and Daniel, J."

Littlejohn v. Underhill's Executor, 2 Car. L. R. 574, July 1816. [575] "that among his testator's negroes was one . . so old and infirm as to be incapable of labour; and that he had set her up to be provided for during the remainder of her life, to the lowest bidder; that . . $100 was the lowest bid; and that accordingly he had paid that sum for this purpose."

Held: [579] "if fair and honest, that it is good. For we consider this as a kind of *charge* upon the estate in favour of the *community,* which in case of a deficiency of assets, is entitled to a preference against the claims of *individuals.*"

Gilchrist v. Marrow, 2 Car. L. R. 607, July 1816. Action "to recover damages for the breach [of] a warranty of soundness contained in a bill of sale, whereby the defendant sold to the plaintiff 'a girl slave, . . about eleven years of age, sound and healthy, and do . . further covenant . . [608] to warrant the right and defend the title of the said slave,'" Held: "These words [sound and healthy] are not . . barely words of description, but aver facts sufficient to maintain this action."

Dyer v. Rich, 2 Car. L. R. 610, July 1816. "after the sale of the slave [for $450], the parties entered into a contract . . that Dyer should convey the slave out of the State and dispose of him in two months; which he avers he performed. . . [611] Rich avers, that the agreement to carry the slave out of the State, was a part of the original bargain, . . and that if Dyer did remove the slave, it was done so evasively that a very short time afterwards he returned, and is now in Dyer's possession."

Administrator of Allen v. Peden, 2 Car. L. R. 638, July 1816. "Detinue for two mulatto children born of a negro woman slave, and reputed to be the children of Allen, who in his lifetime conveyed some property to each of them, and on the back of the deed, expressed a desire that they should be emancipated. After the death of Allen, administration with the will annexed was granted to the plaintiff, and the Legislature, without his consent, passed an act emancipating the children sued for."

Judgment for the plaintiff: "The administrator . . was, in law the owner of the persons emancipated by the General Assembly. The act of emancipation passed not only without his consent, but against it. However laudable the motives which led to the act of emancipation, it is too plainly in violation of the fundamental law of the land, to be sanctioned by judicial authority. We are compelled to pronounce it a nullity," [Cameron, J.]

Dodd v. Hamilton, N. C. Term Rep. 31, July 1816. "the two Hamiltons took a purse and put $12, together with two quarter-pound weights into it, and gave it to a female slave belonging to Noble Hamilton, . . They directed her to go to a certain place on the river, not far distant. She went to the place; the Defendant and Pope lying in ambush not far off. The Plaintiff came . . a short time afterwards. As soon as he came up, a Negro fellow, who was also in ambush, caught him, and called for the others; who came to his assistance. . . [32] Plaintiff . . said the servant owed him a small sum of money, which he had come to get."

West v. Dubberly, N. C. Term Rep. 38, July 1816. [39] "in 1797, . . the slave Ben . . was worth £200."

State v. Jernagan, N. C. Term Rep. 44, January 1817. "an Indictment . . under the Act of 1779, c. 11, §2, . . [45] Jeremiah Deans . . left Waynesborough on the 13th of March, 1816, . . he met Barna Jernagan, . . who . . asked him when he was going to the State of South-Carolina (or to the southward) with negroes. Defendant informed Deans he had five or six negroes lying out, that did not belong to him, who wished to be carried away, and he wished Deans to assist him . . asked Deans the consequence of doing this act? Deans informed him he did not know, but expected it would go hard with him. . . On the 18th of March, he . . met the other Defendant Lovet Jernagan, who informed him Barna wished to see him, . . Deans went to Barna's house, when Barna told him, three of the negroes were out, viz. Amos, his wife, and youngest child, and the other three he could get out at any time. . . Barna informed him the negroes were . . Pender's. . . 20th of March . . Barna informed him three of the negroes were not out. They then agreed to meet . . 22d of March, when Barna was to let him know when the negroes would be ready to start. On that day Barna did not come, but . . Lovet, came, and informed Deans that he was to go with Deans and the negroes to the south. Witness . . sent word by Lovet that Barna must meet him. . . Barna met him and then informed him that all the negroes were out. They then agreed that the negroes were to be sold, and the money to be divided equally between Deans, Lovet, and Barna. He promised to deliver the negroes at a mill-stream . . [46] Deans asked him for a bill of sale. . . Deans wrote it, and was requested by Barna to insert other than the true names of the negroes, as he expected they would be advertised. . . Barna refused to sign it, but said he would prepare one, and bring it with him when he delivered the negroes. Deans informed Pender of the whole transaction, who advised Deans to go on in the business. Deans and Pender had men placed at Smithfield bridge to apprehend the negroes and Lovet, . . Deans went to the mill-stream on the night of the 24th, as agreed on. About ten o'clock at night, Barna and Lovet came to him, and informed him the negroes had taken a scare, expecting a trick, and would not go, unless Deans would assure them that they were really going to the southward, . . Deans then went back from three to five miles with Defendants, . . Barna called 'Bush.' No answer was given. Barna then rode into the woods, and returned with the negro man Amos. He (Barna) and Amos again returned into the woods, and brought the woman and children. Barna put one of the children in the lap of Deans, and Amos, the negro man, put another behind Lovet, on his horse. . . After travelling all night, they were taken at daybreak, by the men placed at the bridge for that purpose. . . [47] Amos had been run away from Pender upwards of nine months, and was out of the actual possession of Pender at the time aforementioned, but in the possession of no other." [44] "the Jury found a general verdict of guilty, against both the Defendants;" Motion for a new trial overruled. On appeal a new trial was granted as to Lovet.

Richardson v. Saltar and others, N. C. Term Rep. 68, January 1817. "an action of Trespass *vi et armis*, . . Saltar, who was a regular Patrol, associated with him the other Defendants, . . who were not Patrols, and went to the plantation of Major Owen, where they found in an outhouse, the negro Simon, whom they called upon for a pass, which he produced, written in these words: 'Pass Simon, or let Simon pass till Monday morning.' It was in the hand-writing of the Plaintiff's wife, but in his name. Saltar told the negro the pass was not a proper one, and ordered him to strip, on which he attempted to escape, and Allen . . caught him, which enabled Saltar to seize and throw down. But Saltar alone was not strong enough to hold him down, and calling for aid, Allen and Singletary struck him, and at length, their united efforts and blows, with a stick and with their firsts, subdued the negro, and he was whipped. A Physician proved, that the temporal artery was divided, and that the negro was much weakened by the loss of blood, from the effect of which he could not probably recover in less than three or four weeks; but the wound was not so serious as to do any permanent injury. . . [69] however, . . the negro was engaged in some business in a smithery, within a few days after he was whipped." [68] "The Jury found a verdict of Not Guilty, as to all; . . motion . . for a New Trial . . overruled . . and an Appeal taken"

New trial granted: [69] "By the Act of 1794, c. 4, the County Courts are authorised to appoint in each Captain's district, a number not exceeding six discreet and proper persons, to be Patrollers. The Act of 1802, c. 15, gives the County Court power to appoint . . such numbers as they please, and to form rules and regulations for them, . . [70] The act of 1794 is not repealed, but enlarged . . It does not appear . . that the County Court of Bladen made any rules . . under the authority of the last act; . . from a full . . examination of the two acts, [I am of opinion] that . . Saltar, had not the right to exercise the powers of a Patroller by himself, and as the other Defendants were present, aiding and abetting him in an unlawful act, they were all guilty of a trespass." [Daniel, J.]

State v. Sparrows, N. C. Term Rep. 93, January 1817. "The Defendants were indicted under the Act of 1779, to prevent the stealing of slaves, . . the Jury found a verdict of . . guilty on the second [count], [98] Judgment for the State."

Cummings v. MacGill, N. C. Term Rep. 98, January 1817. See same *v.* same, p. 34, infra.

Spence v. Yellowly, N. C. Term Rep. 114, January 1817. "Detinue for a Slave. . . Boon, the former proprietor of the Negro . . made a fraudulent conveyance of the Negro to the Plaintiff his mother. The Defendant afterwards obtained a judgment against . . Boon, and . . engaged the Constable to levy an attachment . . on negro Jess, who was then a runaway, and at the Defendant's house, . . and the Negro sold under it," "When the officer was crying the Negro, a person made a bid. The Defendant asked him if he was his enemy. That his object

was to purchase the Negro for the benefit of the debtor's wife ['in a destitute situation']. That . . the person desisted from bidding. That the value of the Negro was . . 350 dollars; to which amount the said bidder would have bid. He was knocked off to the Defendant for $150 1 [*sic*]. . . [115] The Jury . . found a verdict for the Defendant."

"rule for a New Trial discharged." "there appears nothing to impeach the honesty of the Defendant's title, . . he stands in the shoes of both a creditor and purchaser." [Seawell, J.]

Laspeyre v. M'Farland, N. C. Term Rep. 187, July 1817. "a marriage settlement . . whereby this slave among others, was conveyed to . . a trustee, to permit the wife of the Plaintiff to have the labour and profits, and to allow the slave to be under the direction of the Plaintiff."

State v. Walker, N. C. Term Rep. 230, July 1817. "The negro slave . . belonged to . . Guy. He ran away on Sunday night, and on Monday about 12 o'clock he was apprehended at Peter Hairston's, nine miles distant from Guy's. Within a few minutes after the negro was apprehended, Walker, the prisoner, came to the house of Hairston, and was requested by Hairston to take the negro home. Walker agreed to take him; and Terry, the overseer of Hairston, tied his arms above the elbows to a stick across his back, and in this situation he was delivered to Walker, who was on foot and walked with the negro. At the distance of about six miles from Hairston's, in Wall's lane, the negro fell down. Wall came out from his house: Walker assisted the negro to get up and the negro walked towards the gate: but before he reached the gate, he fell twice, each time falling on his face. The negro asked for water, which was given to him, and he drank more than usual. Walker then asked Wall if he had any spirits? He said yes, and brought some. Walker took a dram and gave one to the negro. He then requested Wall to give the negro something to eat, the negro saying he had eat but very little for several days—Wall gave him some bread. After resting a little time at Wall's gate, Walker started with the negro. It was early in February and the day very cold, and the sun about one and a half hours high in the evening. Wall was doubtful whether the negro was sick or deceitful; but did not hear Walker give any opinion, further than saying to the negro, 'He had come on very well, until he had gotten to Mr. Wall's Lane; that he had there fallen down, and if he did not go on better, he should be under the necessity of compelling him.' At the distance of six hundred yards or thereabouts from Wall's house, Walker and the negro passed Webster and his son; Walker had two untrimmed switches in his hand. He was asked by Webster, 'Whom he had there'—he answered, 'A runaway, a damned sullen fellow, who would not go along; and he would kill him, if he was his own, but he did not like to be hanged for killing a negro.' The negro was walking slow and Webster thought, appeared weak. Having passed Webster a little distance, Walker gave to the negro two stripes with a brushy switch which he had in his hand, and having gone to the distance of an hundred yards or thereabouts, Webster looked back and saw the negro down in the road, and Walker whip-

ping him, he supposes with the switches, which he had in his hand, when he passed him. Webster thought Walker gave the negro an hundred stripes, but he could not speak with any certainty as to the number—The negro had on [232] a great coat and those stripes were given whilst he lay on the ground. The negro and Walker were then distant about three hundred yards from Foy's shop. Foy heard a noise down the road, and he told Williams to go and see what was the matter. Williams went and found the negro standing in the road and Walker a few yards from him. After some conversation with Walker about the negro and Walker saying he was a sullen fellow and had fallen down and would not go along, the negro started and walked about fifty yards, when he fell down on his face. As soon as he fell, he turned his head, so as to take his face from the ground; and Walker having an untrimmed Gum-switch in his hand, came up and applying both hands to the switch, struck him with it twice, violently, across the face. The switch was nearly an inch in diameter at the butt end. Then taking one end of the stick tied across his back he turned him over and dragged him by the end of the stick about six feet. The negro then said, 'Pray, sir, untie me.' Williams advised Walker to untie him: Walker refused. Walker and Williams then assisted the negro to get up, and the negro walked a short distance and fell again on his face. Walker stepped up to him and kicked him on the hinder part of the neck with violence, and immediately kicked him on the side of the head with like violence; which last kick turned his face from the ground, so that the side of the head lay on the ground. Upon receiving the last kick, the negro appeared to suffer a violent emotion in his countenance and in all his body. Walker then cut the string from one arm and partly cut it from the other. He requested Williams to untie the string, which Williams did with difficulty, as his fingers were benumbed with cold. Walker took the string, put it around the negro's neck and gave it a jerk, which raised the head a little from the ground and the negro's under jaw was observed to fall. Williams had a horse, and Walker proposed to put the negro on the horse and take him to the [233] shop; Williams at first, objected; but they put up his breast on the saddle. Having gone about 20 yards, Walker walked round the horse and Williams asked him, 'How the negro looked.' Walker answered, 'The scoundrel is holding his breath.' They proceeded about 80 yards further and Walker went round the horse, and Williams again asked him, 'How the negro looked?' Walker answered, 'The rascal is still holding his breath.' They then determined to take him down, and Foy and his son having come up, assisted in taking him to the shop, where he was placed on a plank. Williams thinks the negro never breathed after the second kick aforesaid on the head. Whilst the negro was on the saddle, Williams observed that he thought he was dying: Walker answered that he was only deceitful. Williams thought it was about 20 minutes from the time he came up until the negro was untied. That the negro was very weak and that keeping him tied was unnecessary. He thought that a child of seven years old could have managed him. Walker is a healthy man, aged about sixty years. The negro was a stout fellow

aged about twenty one years. After placing the negro on a plank in the shop, Walker observed that he believed he was dead; and immediately went on to his owner Mr. Guy. He told Guy that his negro was at Foy's shop, but did not mention to him that the negro was dead. Guy took irons to put on the negro. And on the way to the shop, Guy observed, that he feared the negro would be gone before they reached the shop: Walker then said, he expected he would not, and that he feared he was dead. He did not inform Guy . . of his ill-treatment to the negro. . . The negro died on Monday evening, and on Wednesday an inquest was holden. Several of the jurors . . [234] were of opinion that the negro's neck was dislocated, and that one of his eyes was destroyed. There was a dent in one of his temples, . . a wound across the forehead and some of the witnesses thought it was produced by the stroke of a hickory: others that it was occasioned by his fall on the ground. The upper lip was swelled and some blood oozed from the gums. He was stripped and examined, but there was no appearance of any injury on any other part of his body. . . the Judge charged the jury that the prisoner was guilty of murder, or guilty of no offence at all. . . The jury found the prisoner guilty of murder, and a new trial was moved for on behalf of the Prisoner, . . motion was disallowed" Rule for a new trial discharged. ["The prisoner was pardoned by Governor Miller."]

State v. Neese, N. C. Term Rep. 270, January 1818. The defendant was found guilty of a libel: he [271] "did . . nail up," "on a tree on the side of the Public Road," [270] "Notice to all Persons . . as I was going on I discovered A man and woman along the field side . . on [*sic*] was a Negro Seeing that they were so busily engaged I lit of [*sic*] and made toward them . . and Behold it was Betsey . . the Daughter of Miss . . and a Negro boy"

Armstrong v. Simonton, 2 Murphey 351, July 1818. "when Simonton was on a visit in North-Carolina, the Plaintiff [his father-in-law] . . gave or loaned the negro woman, then a girl to Simonton and he carried her to Georgia on his return."

Wright v. Lowe's Executors, 2 Murphey 354, July 1818. "Isaac Lowe was the owner of several slaves which by his will he directed his executors to emancipate after the death of his wife; that the wife was dead, some of the slaves having been emancipated by the County Court during her lifetime, with her consent, that the Court refused to emancipate the rest,"

Held: [356] "as to the devise to the executors in trust to liberate, the trust is void and the next of kin are entitled,"

Cummings v. MacGill, 2 Murphey 357, July 1818. "Replevin for a slave.—In December 1814, . . the Sheriff having an execution against Smith, levied it on the negro, and on the 24th of December exposed her to sale at Bladen Court House to the highest bidder, she being then present. Defendant was the last bidder at the sum of $908 15.[1] The

[1] $90.15, in same *v.* same, N. C. Term Rep. 98.

Defendant not having the money, the Sheriff . . allowed him until the next day to make payment; Defendant failed to make payment . . and a few days afterwards [the Sheriff] gave to Plaintiff, who was the next highest bidder . . a bill of sale for the negro, without having exposed her to public sale again. Soon after, Defendant obtained possession of the negro, by going at night to a place where this negro and others had assembled to dance," Judgment for the plaintiff.

Horton v. Reavis, 2 Murphey 380, July 1818. "*Case* for words spoken.—The declaration charged that Defendant had said, the wife of Plaintiff, while single, had sexual intercourse with a negro, *per quod* she lost a marriage with one Waddy, who was addressing her, and had offered her marriage. The evidence offered was, that Defendant had said there was a report that the Plaintiff's wife (then sole,) had had connexion with a man of the wrong colour; and upon being asked . . [381] whether he believed the report to be true, the Defendant answered, he did not know well how to do so, as she was a clever, smart, ingenious girl. . . and further, it was proved that there was in circulation such a report . . The jury found for the Defendant,"

State v. Dick (a slave), 2 Murphey 388, July 1818. "Indictment for a Rape in the following words: The jurors for the State, upon their oath present, that negro Dick, (the property of Mrs. Blount) . . on the twenty first day of July, . . one thousand, eight hundred and seventeen, . . upon . . spinster, . . feloniously, did make an assault, . . against the peace . . of the State. The prisoner was found guilty, and the case was transmitted to this Court . . to determine whether any . . judgment shall be pronounced." Judgment arrested: "the indictment must . . conclude *contra formam statuti*." [Seawell, J.]

Campbell v. Staiert, 2 Murphey 389, July 1818. "Trespass against Defendant for cutting timber on Plaintiff's lands. . . a slave, the property of Defendant, had cut the timber;" [390] "the Defendant did not command or assent to the trespass" [389] "verdict for Defendant. Rule for a new trial refused,"

Affirmed: [390] "a man is liable for trespasses committed by his cattle . . but he is not bound to keep his slaves confined, and if he were, it would be a monstrous thing to charge him with their depredations." [Taylor, C. J.]

State v. Jim (a slave), 3 Murphey 3, January 1819. Jim was indicted, in 1818, for stealing a banknote from "the dwelling-house . . no person being therein . . [4] contrary to the form of the statute" "The Jury found a special verdict, affirming the guilt of the prisoner, provided the Court should be of opinion that he could be legally guilty . . under the act of 1806, ch. 6; but if . . not . . and it was necessary that the indictment should conclude . . also against the form of the act of 1811, ch. 11, making bank notes a subject of larceny, then they found the prisoner not guilty."

Held: the indictment should conclude against the form of the *statutes*.

State v. Cherry (*a negro slave*), 3 Murphey 7, January 1819. The indictment charged that Abraham, a negro slave belonging to Howell, assaulted Scott, on November 4, 1817, with an axe, giving him a "mortal wound, . . of which . . [he] then and there instantly died: . . And that negro slaves Ben and Cherry . . were . . present, and did . . aid and abet" [8] "the 'then and there' are not repeated as to the blow itself." Held: [10] "Let the reasons in arrest of judgment be overruled."

State v. Barna Jernigan, 3 Murphey 12, January 1819. For facts, see same *v.* Jernagan, p. 30, *supra*. The indictment charged "that Barna Jernigan . . [13] a certain male slave named Amos, . . did steal, . . contrary to the Act"[1] "The prisoner was found guilty; and it being asked why sentence of death should not be pronounced against him, Gaston, Stanly and Mordecai shewed for cause, that . . the prisoner was entitled to the benefit of clergy;" Held: he was not.

Williams v. Howard, 3 Murphey 74, May 1819. In September 1806, [75] "notice was given by Howard to the Sheriff, that he was to purchase the negroes [Sylvia and her child] as the friend of Complainants; and they were purchased accordingly at a price little exceeding one half of their real value." He had agreed "that after the sale, the Complainants should have the possession of the negroes until 25th December . . and if the money . . were not paid to him by that time, he should take . . Sylvia . . and have the benefit of her labor for the interest of the money, until the money should be paid." On November 19 [78] "the Defendant took them away. A tender of the money was made on the 21st November . . which he refused to accept, claiming an absolute title in the negroes."

Held: [80] "the Defendant should be compelled to replace things in the state . . from which his fraudulent conduct removed them. . . With respect to other chattel property, justice may be done at law by damages for nonperformance, and therefore equity will not interpose: But for a faithful or family slave, endeared by a long course of service or early association, no damages can compensate;" [Taylor, C. J.]

James's Executors v. Masters, 3 Murphey 110, May 1819. Charles James "bequeathed to his wife Comfort James, all his estate during her natural life; and after her death he directed all his negro slaves to be emancipated, declaring that he wished to give to them their freedom as a reward for their faithful and meritorious services; and he requested his executors to use their utmost endeavors with the County Court . . [111] to obtain a license to emancipate them. . . the widow . . kept them during her life. She died . . 1816, having . . bequeathed all her property to . . the wife of the Defendant, . . The Defendant took the negroes, and . . the surviving executors of Charles James, brought an action of detinue"

Held: [114] "the Plaintiffs are entitled to recover." "In what manner the executors are to dispose of the property, is not . . before the

[1] Act of 1779, ch. 11.

Court . . however much it may be desired by those interested . . they are not parties to this suit, and their rights cannot be adjudicated." [Henderson, J.]

State v. Barrow, 3 Murphey 121, May 1819. "The Defendant was charged as putative father of a bastard child, and bound for his appearance at the County Court; where he moved for leave to plead, that the woman . . was of mixed blood, within the fourth degree, and that she ought not to swear against him. The motion was overruled, and the Defendant appealed"

Held: [122] "that this case be remanded . . that an issue be made up . . and the Defendant be at liberty to allege and prove the incompetency of the witness." [Taylor, C. J.]

Smith v. Daniel, 3 Murphey 128, May 1819. Nelly was levied on and sold at public sale in 1813 for 65 *l.*

Bulls v. Brooks, 3 Murphey 133, May 1819. "shortly after the marriage [of Bulls's daughter to Watson in 1807], Bulls told the negro Nanny that she must go to Watson's, and wait upon his daughter; that he would not part her from her husband, but she must go and stay until he got another to send in her place. . . George went into Watson's possession . . from three to six months after the marriage;"

Held: [134] "a parol gift had been made by Bulls to Watson;"[1]

Sheppard v. Murdock, 3 Murphey 218, May 1819. "Complainants filed their bill to redeem a negro slave . . mortgaged . . many years before . . December, 1784, . . Sheppard . . borrowed 30 *l* from . . Willson, and to secure the payment thereof executed . . [219] a deed . . 'I, . . Sheppard, . . have . . sold, . . and delivered, one negro boy Limus, about eight years of age, unto . . Willson, for . . thirty pounds, . . Provided . . that if . . Sheppard . . shall . . pay . . Willson, the aforesaid sum . . with lawful interest . . on or before the 20th day of March, next . . then . . the title to the said negro boy . . shall revert to . . Sheppard, . . I acknowledge to stand the risk of the within negro's life, . . Wm. Sheppard.' . . May, 1790, . . Willson assigned the said deed to . . Murdock, who took possession of . . Limus . . In the fall of . . 1790, Murdock called upon Sheppard, and requested him to take . . Limus and pay him the thirty pounds with the interest . . Sheppard refused. He . . was in good circumstances, . . In February, 1805, Sheppard tendered the money . . with the interest . . [220] and demanded the negro, and seven hundred dollars for his services whilst in Murdock's possession. Murdock refused"

Held: [222] "Sheppard may . . redeem upon paying the principal and interest due on the mortgage, . . Murdock must account for a moderate hire . . and be allowed for all expenditures made on the slave . . and for loss of time."

State v. Brown, 3 Murphey 224, May 1819. "The Jurors . . present, that . . Brown, . . shop-keeper, . . [225] on the [Lord's] day, . . sold . . divers goods, wares and spirituous liquors, to negroes and

[1] Act of 1806.

others," "The Defendant submitted;" Judgment arrested: "This offence, as charged, is not punishable by indictment,"

Walker v. Walker, 3 Murphey 265, May 1819. [267] "the [twenty-four] negroes bequeathed . . were at the time of the death of the testator [1813] of the value of 7,920 dollars; and . . April, 1818, they were of the value of 10,692 dollars;"

Bell v. Beeman, 3 Murphey 273, May 1819. In 1801 Bell borrowed two hundred dollars from Goff, and "placed in the hands of Goff a negro slave . . upon a parol agreement, that upon re-payment . . the said negro should be returned . . and that until that time Goff should . . have the benefit of his labour in lieu of interest." Two days after Bell's death, in 1803, Goff sold the negro, then about eight years old, to Beeman for two hundred and thirty dollars, Beeman having no notice of the pledge by Bell to Goff. In 1806 the complainant, to whom Bell had bequeathed the slave, upon condition that he would redeem him, [275] "tendered to Goff two hundred dollars and interest, and demanded the negro." He was [274] "informed by Goff that he had sold the negro to . . Beeman, . . the yearly value of the negro's labour was worth much more than the interest of the money." In 1816 [275] "the Complainant tendered four hundred and ninety dollars in bank bills [to Beeman], and demanded the slave, which was refused to be delivered up."

Bill dismissed: Beeman's [277] "adverse possession for more than three years, is a good defence"

Watford v. Pitt, 3 Murphey 468, May 1819. "twenty years before, Stephen was given by parol by . . Watford to his son, the Plaintiff, . . aged one or two years." A few years later Watford sold the slave to Holloman, [469] "who had express notice of the gift; and . . declared . . that on that account he would not give the full value."

Held: "the gift . . was not by deed, and . . void against creditors and purchasers under the act of 1784, ch. 10."

State v. Sparrow, 3 Murphey 487, May 1819. [488] "on Saturday morning a negro boy belonging to one of the Jury was seen to carry a vessel containing victuals . . to the window, and hand it to one of the Jury:"

Gibbons v. Dunn, 3 Murphey 548, May 1819. Dunn's will: "if the widowhood of my wife should terminate before her natural life, . . negro Nell shall remain in this place for the support of my children who may live here." See same *v.* same, p. 74, *infra.*

Blackledge v. Singleton, 3 Murphey 597, November 1819. The testator, Benjamin Blackledge, "recommended his negro woman Jenny [excepted from his residuary estate] . . to the particular care of his brother . . and requested that he would not remove her from the plantation where she lived, unless by her consent, and in case she should, by old age or infirmities, need support, that it be drawn from the hire of certain negroes," Codicil: [598] "that his negro woman Milly be left with, and precisely as his negro woman Jenny was left in his will." After the death of the testator, Milly had a child. Held: her child belongs to the next of kin.

Harkey v. Powell, 1 Hawks 17, June 1820. [18] "in 1789, . . eighty pounds was something less than the value of Grace; that at the time of filing the bill [1815], she and her increase [six children] were worth greatly more than that sum;"

State v. Scott, 1 Hawks 24, June 1820. The prisoner was [25] "charged with the murder of 'a negro man slave, . . the property of . . Marshall;' . . The deceased was slain with a dagger about ten o'clock at night. One ground of defence . . was, that he, the prisoner, was insane" He was convicted. Motion for a new trial overruled. [26] "The prisoner then prayed the benefit of clergy; but the Court refused to allow it, and passed sentence of death on him;" Affirmed.

State v. Tackett, 1 Hawks 210, December 1820. "an indictment for the murder of Daniel, a slave; . . the deceased had a free colored woman for a wife who lived on the lot of one Richardson, a carpenter, . . the deceased was generally there of nights: that the prisoner was a journeyman in the employment of Richardson, . . that on the night when the deceased was shot, he, Richardson . . was awaked by the firing of a gun, and soon after heard some person come into the room and set something down like a gun, where his generally stood, . . [211] he heard groans . . as of one injured: . . that about a week or ten days before, the prisoner told Richardson of a fight between himself and the deceased . . and said that he would kill him; but the prisoner was drunk . . In consequence of this threat, and of the rumour and belief that the prisoner kept the deceased's wife, Richardson discharged him; but took him back again in a few days, . . [212] two or three weeks before the homicide, the deceased had said . . that the prisoner kept his wife, and shewed a large stick with which he said that he had given the prisoner a beating; and that if the prisoner did not let his wife alone, he would kill him; . . about a week or ten days before the homicide, the deceased was . . standing at Richardson's gate, and . . said . . that the devil had been to pay there; that Richardson had whipped him and driven him off . . but he would be the death of Richardson or Tackett one. . . about ten days before the deceased came to his death, he came up to a work-bench where Tackett was working in the street . . a fight . . took place . . [213] the next day or the day after, he [witness] found the deceased lying in wait in Richardson's garden with two stones in his hands, and . . said that he thought the witness had been Tackett, and he had intended to knock his brains out: that after dinner of the day of the homicide . . the deceased . . said, that he did not intend that Tackett and Lotty (the deceased's wife) should out-do him; that she had behaved so meanly that he would not have her, but that the prisoner should not take her away from him; . . if he did not let her alone, he would kill Tackett or Tackett should kill him. The prisoner then offered to prove, that the deceased was a turbulent man, and that he was insolent and impudent to white people; but the Court refused to hear such testimony, unless it would prove that the deceased was insolent . . to the prisoner in particular. In the charge to the Jury, the Court instructed them, that under the

act of 1817, this case was to be determined by the same rules and principles of law as if the deceased had been a white man; . . The Jury found the prisoner guilty of murder; a motion was made for a new trial, . . [214] but it was refused, and sentence of death was pronounced"

New trial granted: I. [216] "the temper and disposition of the deceased, and his usual deportment towards white persons, might have an important bearing" on the question of "the degree of provocation received by the prisoner." II. The act of 1817 [217] "had no design beyond that of authorising a conviction for manslaughter, in cases where a slave was killed under a legal provocation. If, before that time, a white person had killed a slave under such circumstances as constituted murder, he might have been convicted and punished . . but if the homicide was extenuated to manslaughter, no punishment was annexed to that offence, and the accused persons were uniformly acquitted. It seemed just to the Legislature, that the manslaughter of a slave should be punished in the same manner with that of a white person. . . it is all they intended to provide for. They did not mean to declare that homicide, where a slave is killed, could be only extenuated by such a provocation as would have the same effect where a white person was killed. . . where slavery prevails, the relation between a white man and a slave differs from that, which subsists between free persons; and every individual in the community feels and understands, that the homicide of a slave may be extenuated by acts, which would not produce a legal provocation if done by a white person." [Taylor, C. J.]

Walker v. Campbell, 1 Hawks 204, June 1821. Orme's will, 1818: "I . . direct that my executors . . sell all my negro slaves, except Katy, and Maria, and her child, and . . that with the proceeds thereof, after paying my debts, that they redeem my bank stock,"

Denby v. Hairston, 1 Hawks 315, June 1821. [316] "March, 1818, the Defendant came to the land with his slaves, and entering . . against the will of the Plaintiff, tore down his fences, . . ploughed up his yard"

Tate v. O'Neal, 1 Hawks 418, December 1821. An action "against the Defendant and two others for beating the slave of the Plaintiff. The Defendants were the regular patrol of the Morganton district, . . and finding the slave not on his master's premises, they enquired for his pass or permit from his master; whither he was going; what was his business? . . [419] the slave returned no answer; and the Defendants, together with one other patrol, composing a majority of those officers in that district, after consultation, inflicted on the slave fifteen lashes, having first made his body naked, and confined him to the whipping-post. There was contradictory evidence as to the severity of the punishment; and one witness swore that some animosity existed between the family of one of the Defendants and the Plaintiff. The Court instructed the Jury . . that if they found the whipping to be so excessive, as to manifest that it was not inflicted with the view of executing the law, but with the intention of gratifying malice against the owner . . such owner would be entitled to recover; but . . they would not examine with the most scru-

pulous exactness into the size of the instrument, or the force with which it was used, as some discretion must necessarily be allowed patrols; . . that if the mode adopted . . in whipping the slave, was such as masters commonly adopted, they had not acted unlawfully; . . Verdict for Defendants, . . judgment, and appeal." Affirmed.

State v. Ben (*the slave of Herrington*), 1 Hawks 434, December 1821. " the fact of burglary was proved by the testimony of a white man, a witness above suspicion, but the only evidence to shew any agency therein on the part of the prisoner, was given by a *slave*, and that evidence was direct and positive. The counsel for the prisoner contended that such evidence was insufficient to convict . . because not supported by '*pregnant circumstances*' [1] The Court instructed the Jury, . . that there was no positive rule of law which should prevent them, if they believe the testimony of the slave, from finding a verdict of guilty . . although his testimony was not supported by other proof. The jury found the prisoner guilty; a motion for a new trial was overruled, and sentence of death passed,"

Affirmed: the act of 1741, passed a few years after a slave insurrection [in 1738], vested jurisdiction, in trials of slaves for capital offences, [435] " in three justices and four freeholders, who might be hastily collected at the court-house, and proceed to the condemnation and execution of a slave, without indictment, jury, or notice to the owner. . . and, since every other form by which the Law aims to secure an impartial trial was withdrawn from slaves, the Legislature prescribe, that rather more evidence shall be demanded for their conviction, than is in general necessary. . . [436] When the act of 1793 extended the trial by Jury to slaves, I strongly incline to believe, that it was a virtual repeal of so much of the above section, as differs from the Common Law rule of evidence; . . The act of 1816, giving the Superior Courts exclusive jurisdiction of capital crimes, committed by slaves, extends to those persons the full benefit of a Common Law trial, . . The first section directs, 'that the trial shall be conducted in the same manner, and under the same rules, . . as trials for free men are now conducted.' . . [437] If the grand Jury cannot find a bill upon the testimony of one credible witness, without pregnant circumstances, nor the petit Jury convict, then the trial is not conducted 'in the same manner . . as trials of freemen' . . in the act [of 1802] 'to prevent conspiracies and insurrections among the slaves,' the rule of evidence [of 1741] is re-enacted in relation to these crimes. Now the act of 1741 . . if it were not repealed by 1793, must have been in force in 1802. The act last noticed was passed soon after some disturbances had arisen among the slaves in the lower part of the State, and the clause was probably re-enacted for the purpose of tempering that excess which public excitement had produced in the trials for these offences. Upon the whole, I think the conviction is right." [Taylor, C. J.] Judge Hall dissented: [441] " Being slaves, they had no will of their own, and a humane policy forbade that the life of a human

[1] Act of 1741, ch. 24, sect. 48.

being (one of themselves) should be taken away upon testimony coming from them, unless some circumstance appeared in aid of that testimony."

State v. Poll and Lavinia (slaves), 1 Hawks 442, December 1821. " an indictment against the prisoners and one John Skinner, for the murder of Samuel Skinner, by poisoning. The bill was originally found by a grand Jury, of the county of Washington, and after . . the plea of not guilty, recorded severally for each; the solicitor for the State, and . . Skinner, consented to remove his case to the county of Chowan for trial; and the owner and counsel of the other two prisoners consented . . to a similar removal . . The indictment against Poll and Lavinia came on to be tried in Chowan Superior Court, . . The poison alleged to have been given, was white arsenic; . . the prisoners (who were domestics in the family of Samuel Skinner,) . . spoke of having put something into Samuel Skinner's soup, which would kill him and all others who partook of it. Lavinia then advised Poll to carry some of that which they had put into the soup, into the house; and if, during the night, Samuel Skinner called for water, to put some in the water, adding 'that is the way *he* said to do it;' and Poll accordingly took down from a shelf something wrapped in paper, and . . [443] placed it in her bosom. On examination . . Lavinia said, that the *he* . . was John Skinner, who had given to Poll something like lime, but it was heavier. The solicitor for the State then offered to prove, by a declaration of John Skinner, that he had purchased . . arsenic just before, under the pretence . . of curing the horse of one Marina, . . and Marina then proved that he had never requested [it.] . . Samuel Skinner . . said he was poisoned, and as he believed, by Poll, who had given him something in his food and drink. The Jury found the prisoners guilty, and a new trial was moved for; . . refused; . . then moved, in arrest of judgment, that the Superior Court of Chowan had not jurisdiction. . . overruled, and sentence of death pronounced," Judgment of death reversed, and new trial granted: I. [444] " as to the declarations of John Skinner, I know of no principle upon which they could be received as evidence against the prisoners. . . [II.] it was not competent for the owner of the slaves and their counsel, to consent to the removal of this [cause]." [Taylor, C. J.]

State v. M'Dowell, 1 Hawks 449, December 1821. [450] " M'Dowell, after some conversation with James and the slave, (who were children,) seized the slave [the property of James's sister] and placed her on the horse of Gray, and Gray carried her off."

State v. Rutherford, 1 Hawks 457, December 1821. " one of his [Magness's] slaves had been much injured by the bite of a very fierce dog, owned by Rutherford; . . Magness . . requested Spurlin [in his employ] to take a gun, go to Rutherford's house, and tell him that if he would permit his dog to be killed, he . . would be satisfied, . . the dog . . attacked him; . . he fired and . . Rutherford . . encouraged his dog, and ordered his negroes to pursue . . Rutherford . . wounded Spurlin in the head."

State v. Goode, 1 Hawks 463, December 1821. "an indictment for buying and receiving of a negro slave Essex certain goods of the value of six pence, which Defendant knew Essex had stolen, . . Essex had never been prosecuted, but was running at large, amenable to process."

State v. Farrier, 1 Hawks 487, December 1821. Challenge to fight a duel: "1820. . . [488] you called on me to explain why I should say that I would as soon vote for Jim, the barber, as you"

Reel v. Reel, 2 Hawks 63, June 1822. [67] "he said he had been to consult a negro conjuror on his complaints. Reel said the negro told him he was 'tricked' by persons who wanted his property, and told him also where the stuff was which tricked him. . . [71] he had made a smith of one of his boys." Witness talked to Reel [72] "about a negro doctor in Wayne county. Reel several times proposed they should travel together, sometimes . . to Cato Sabo, the negro doctor," Another witness: "He started on a journey . . when he returned, he said he had been to Wayne county." [73] "Reel owned three slaves, a horse, and two yokes of oxen." [74] "When Reel had corn to sell, he would refuse to dispose of it, until his negro told him he could spare it." [75] "Reel never was a bright man and drank very hard."

State v. Lewis (*a slave*), 2 Hawks 98, June 1822. "September term, 1821, . . two bills of indictment against the prisoner were found by the Grand jury—the one for burglary and larceny, the other for a robbery. . . were for the same goods . . [99] and there was but one taking. . . the prisoner was found guilty of the larceny, and not guilty of the burglary; . . the Attorney-General did not pray any judgment, . . At March term, 1822, . . the Attorney-General directed a *nol. pros.* to be entered on the indictment, . . but the Court . . refused . . The Attorney-General then moved to arraign the prisoner on the indictment for robbery; this also was refused by the Court until the first indictment should be disposed of, and on the refusal of the Attorney-General to pray judgment on the first indictment, the Court quashed the indictment for robbery. On motion of prisoner's counsel, his clergy was allowed him on the conviction for larceny, and, on the further refusal of the Attorney-General to pray judgment, the prisoner was ordered to be discharged;" Affirmed.

Huckaby v. Jones, 2 Hawks 120, June 1822. Will of Collier Hill, who died in 1799: "I . . bequeath all my slaves to four men, namely, Hill Jones . . to Edmund Jones . . to Stith Parham, . . of Virginia, and to Richard Graves of the Methodist church, in the last mentioned State, to be their lawful property, and for them to keep or dispose of, as they shall judge most for the glory of God, and good of said slaves; but in case either of those men should be dead . . before they get the said negroes . . I do . . bequeath the said slaves to those . . who may . . live to get the said negroes into possession,"

Held: [121] "I infer that the legatees named were trustees only, and that the purpose of the trust was, to effect an emancipation of the slaves.

This has been held to be an illegal trust, and the persons appointed to execute it, hold . . in trust for" the next of kin. [Taylor, C. J.]

Jones v. Loftin, 2 Hawks 199, December 1822. The sheriff, as agent for the plaintiff, on whose negroes he had levied, offered the two negroes, who were about 45 years of age, to the defendant for $400, at a credit of six months, and the defendant, " after having seen the negroes and made enquiry into their characters, agreed to take them . . It was thought necessary . . that the Sheriff should expose [the property] . . to public sale, . . they were struck down to the Defendant at . . $230, not however before he had declared . . that he considered himself bound to pay $400 . . A few days after the sale, the Defendant brought the negroes to the Sheriff, requesting him to take them back, and alleging that he was defrauded; this the Sheriff declined doing, . . [200] Plaintiff [also] refused . . The Defendant then . . paid $230, . . afterwards sold [the property]for $230. . . One of the negroes was sickly in appearance, the other was a remarkably good servant, but indolent. . . On the trial below, the presiding Judge instructed the Jury, . . this was not a defect which diminished her value, because it might be remedied by correction." Verdict and judgment for the plaintiff, who had brought the action " to recover the difference between the sum contracted to be paid, and the amount of the bid." Affirmed.

Ufford v. Lucas, 2 Hawks 214, December 1822. In 1818 [215] " Dukes was instructed by Ufford to bid to the amount of $375 for the negro, . . After the sale, Ufford requested witness to ascertain what price could be obtained for the negro from a trader in slaves then in the place."

Gilky v. Dickerson, 2 Hawks 341, June 1823. [342] " In September, 1820, Alley carried off the property [negroes] to Tennessee." [1]

State v. Reed, 2 Hawks 454, June 1823. " an indictment for the murder of a slave, which concluded *at Common Law.* The prisoner was found guilty, and moved in arrest, because of the insufficiency of the indictment. . . overruled and sentence passed, from which the prisoner appealed."

Held: [457] " judgment of death should be pronounced" " There is no statute on the subject, it is the Common Law, cut down . . by statute or custom, so as to tolerate slavery, yielding to the owner the services of the slave, . . but protecting the life and limbs of the human being; and in these particulars, it does not admit that he is without the protection of the law." [Henderson, J.]

Clancy v. Dickey, 2 Hawks 497, December 1823. Shutt's will, 1811: [499] " It is my will . . that my negroes should be kept together until my children arrive to full age or marry, and then to be divided between my . . wife and my children, share and share alike"

Brittain v. Smith, 2 Hawks 572, December 1823. " the Plaintiff being about to purchase a negro boy from the Defendant, wished him to war-

[1] " and sold them." Same *v.* same, 3 Hawks 294.

rant that a defective eye which the negro had, would not become perfectly sightless; . . Defendant replied, 'there is no doubt of the eye, in my opinion;' the Plaintiff then took the boy and gave $400 for him. The disease increased . . [573] until he became of small value, when the Defendant . . on his way to Charleston, stopped at the Plaintiff's house, . . Plaintiff asked . . if he intended to bring negroes back with him . . and understanding that he did, it was agreed, that if Defendant brought back a negro boy with him, he would let the Plaintiff have him, and take back the blind one, if the boys were of equal size; but should the boy brought from Charleston be the larger, then Plaintiff was to pay . . the difference in value, considering both boys sound. Defendant did bring back another boy and sold him to a third person;"

State v. Hale, 2 Hawks 582, December 1823. "an indictment charging the Defendant with having committed an assault on a slave, and with inhumanly beating, wounding, etc. The Jury . . found that the Defendant committed personal violence on the slave, . . by striking him,"

Held: this is an indictable offence. [585] "These offences are usually committed by men of dissolute habits, hanging loose upon society, who, being repelled from association with well disposed citizens, take refuge in the company of colored persons and slaves, whom they deprave by their example, embolden by their familiarity, and then beat, under the expectation that a slave dare not resent a blow from a white man. . . [586] Mitigated as slavery is by the humanity of our laws, the refinement of manners, and by public opinion, which revolts at every instance of cruelty towards them, it would be an anomaly in the system of police which affects them, if the offence stated in the verdict were not indictable. . . that many circumstances which would not constitute a legal provocation for a battery committed by one white man on another, would justify it, if committed on a slave, provided the battery were not excessive. . . the circumstances must be judged of . . with a due regard to the habits and feelings of society." [Taylor, C. J.]

Turner v. Whitted, 2 Hawks 613, December 1823. The will of John Whitted, who died in 1804, [614] "directed that a certain mulatto slave named Fanny, should be emancipated . . and that his executors should use all lawful means to have her set free, either by the General Assembly or other competent authority, and that his estate should defray the necessary expense, but that his 'executors should not . . ever suffer the said Fanny to be removed out of Orange county;' and . . 'if he should have no child, . . or . . [615] such child . . die before arriving at the age of twenty-one years, or without heirs . . that then . . his slaves Duncan, James, Stephen and Betty . . should be emancipated . . in the same manner . . as . . Fanny; . . that part of the money . . if no such child . . be equally divided between his brothers, . . Provided, that each of them . . pay unto my father . . £25, in trust, for the . . mulatto child, Fanny, to be paid to her when she shall arrive at full age;' . . [616] he had no child but Anne, [who] . . died . . without issue. . . [617] The bill . . stated that the Defendants, for the purpose of emancipating [Duncan, James, Stephen and Betty] . . threatened to remove

them to some State or country, beyond the jurisdiction of the Court, . . The Defendants admitted that the girl, Fanny, had been emancipated, as directed"

Held: [620] "the sum to be paid to Fanny was due at the age of twenty-one, . . [621] The direction in the tenth clause, as to the emancipation of the slaves [Duncan, James, Stephen and Betty], is void, according to the decision in Craven's case,[1] they consequently result to the next of kin of the testator." [Taylor, C. J.]

Jones v. Zollicoffer, 2 Hawks 623, December 1823. [643] "It is well known, as to slaves, we have our partialities and antipathies, regardless of their real value, . . and a person who had a right in common with another to a parcel of slaves, might be actuated by other motives than mere *caprice* or *fraud*, who refused to validate a sale made in severalty by his copartner of some favorite slaves." [Henderson, J.]

Wilson v. Twitty, 3 Hawks 44, June 1824. Held: [50] "The Sheriff was not to blame for not selling the personal property first; the negroes were kept back by the Defendant himself;"

Ayres v. Parks, 3 Hawks 59, June 1824. Bill of sale, 1818: "Received of . . Ayres, seventeen hundred and fifty dollars, . . for three negro girls, namely, Sukey, Peggy, and Jane. All . . are sound, healthy and clear of disease, and slaves for life, and warranted and defended from all manner of claims whatsoever." Peggy [60] "had long been subject [to an extraordinary bleeding at the nose] . . of which she died, within a year after Plaintiff bought her. . . the bill of sale was written by the Plaintiff, and when presented to the Defendant's intestate, she refused to sign it, unless the bleeding was excepted; the Plaintiff refused . . to purchase the negroes, unless Defendant's intestate should sign that deed; . . observing, that he was buying to sell again, and such an exception in his title would injure the sale; that he intended to carry the slave to the south, and that she would never be called on, on account of Peggy's defect: Defendant's intestate . . signed the bill of sale, and afterwards assigned as a reason . . that the price was a very large one . . and she did not expect from the distance to which the negroes were to be carried, that she would ever be called on to answer for Peggy's unsoundness. . . Verdict for Plaintiff, . . judgment" Affirmed.

Inge v. Bond, 3 Hawks 101, June 1824. "Bond and . . Slaughter well knowing . . Harry [the slave of Bond], to be afflicted with a disease of the liver, . . and deceitfully affirming . . Harry to be sound . . procured a sale of [him] . . for . . $400;" The bill of sale [102] "contained no warranty of soundness; . . Bond expressly refused to sign a bill of sale containing such warranty. . . The Jury found a verdict against Bond, and for Slaughter;"

Free Jack v. Woodruff, 3 Hawks 106, June 1824. "an action of trespass *vi et armis*, . . to recover his freedom: . . The Plaintiff was the child of a woman of colour, . . Jane Scott,[2] who, in . . 1774, was in

[1] P. 28, *supra*.
[2] See Scott *v.* Williams, p. 54, *infra*.

the possession of . . Allen: Allen stated that she was free, and . . she acted as a free-woman. In 1784, the Plaintiff was indented by Surry County Court, as a free boy, to . . Meredith, who frequently said he was free, but at length sold him to . . Woodruff; Woodruff afterwards sold him, and stated, that as he was reported to be a free boy, the purchaser must take him at his own risk. Allen . . [107] sold Jane Scott, to one Cresong, who sold her, together with twelve of her children, including the Plaintiff, to . . Lewis, . . 1788; and Lewis carried or sent such of the children as he had in his possession, (Jack not being one of them) out of the state; assigning as a reason . . his fear that if they remained he should lose them. . . On the trial below, the Defendant, to shew that Jane Scott was a slave, introduced a copy of a record from Salisbury Superior Court, . . that Jane Scott and her children had been . . set at liberty as free persons, on a writ of *habeas corpus*, returned to Surry County Court, and the judgment . . had been reversed by Salisbury Superior Court on the ground of want of jurisdiction in the County Court. Cresong . . was a party to this proceeding, and on the same day on which he sold to Lewis, executed a power of attorney to him, by virtue of which Lewis received the negroes from the Sheriff, on the process issuing upon the reversal of the judgment, and while the negroes were thus in his possession, he made the declarations" Verdict for plaintiff, new trial refused, and judgment. Affirmed.

Hart v. Newland, 3 Hawks 122, June 1824. "a deceit, in the sale of a negro. The defence . . was, that the real situation of the negro, who was consumptive, was as well known to the Plaintiff as to the Defendant, and even better. The negro, a short time before the Plaintiff purchased him, was a runaway, . . and he had been seen, two or three times, lurking about the plantations in the neighborhood of the Plaintiff, at whose house the negro's wife was; the Plaintiff knew he was a runaway, repeatedly expressed a wish to purchase him, and applied to an individual to go and purchase him, while he was a runaway. . . Defendant's counsel . . [123] asked [a] witness, whom he had seen bringing food to the negro, and stated that he expected to prove that the person was Plaintiff's wife." Evidence excluded. Verdict for the plaintiff. New trial refused.

State v. Isham (*a slave*), 3 Hawks 185, June 1824. "The Prisoner was indicted for grand larceny, found guilty and prayed the benefit of clergy; . . the State, by its Solicitor, objected on the ground that the Prisoner had, before, been allowed his clergy, on a conviction of grand larceny in Duplin county, and produced a paper purporting to be a transcript of the proceedings . . the seal attached . . was so indistinct . . that it could not, with certainty, be ascertained what seal it was. The Court below . . refused to consider the paper . . as a copy of the record . . and allowed the Prisoner his clergy," Judgment affirmed.

State v. Negro Adam, 3 Hawks 188, June 1824. "The bill charged the Defendant with wilfully . . killing two mares . . The indictment was quashed below [Superior Court] for want of jurisdiction,"

Judgment affirmed: "The crime may be said to have been created by the act of 1741, which annexes to the first offence the punishment of loss of ears, and discretionary whipping, and to the second offence, death. . . trial of this offence was transferred by the act of 1793, c. 381, to the County Courts, . . The . . act of 1816, gave to the Superior Courts jurisdiction of all offences, the punishment whereof may extend to life," [190] "although [the punishment] . . is death for committing a second offence of the same kind, in which case the Superior Courts would have jurisdiction, that consideration will not give them jurisdiction, in the first instance,"

Hilliard v. Dortch, 3 Hawks 246, December 1824. "an action . . brought to recover damages for killing a slave. The slave had been hired by the guardian of the plaintiff, for the year within which he was killed, to some other person. . . [247] the killing . . was occasioned by the exercise of immoderate force. The jury found a verdict for the plaintiff;" Judgment for the plaintiff.

Williams v. Averitt, 3 Hawks 308, December 1824. "action of trespass for beating a slave, the property of the plaintiff."

State v. Woodman, 3 Hawks 384, December 1824. "The jurors . . present, that a certain negro man slave named Tom, the property of . . Woodman, . . merchant, . . has been permitted by his master . . to go at large, hiring himself to divers persons, . . Tom having hired his own time from his . . master, . . contrary to the form of the statute"[1] "On the trial in the County Court, the jury returned a verdict of *guilty* and the defendant appealed from the judgment pronounced. In the Superior Court, the jury found a verdict of *guilty*, and the Court pronounced judgment that . . Tom should be hired out by the sheriff . . [385] at public vendue, for . . one year, . . the hire, payable to the wardens of the poor and for the use of the poor"

Affirmed: [387] "The design of the act is twofold; 1st, to fine the owner . . and 2dly, to abate the nuisance if it be continuing, or if it be at an end to pursue the slave . . in order to have him hired out. . . future owners . . take the property *cum onere*, which they must submit to like any other defect in the title." [Taylor, C. J.]

State v. Thompson, 3 Hawks 613, June 1825. "The defendant was indicted for permitting his negro slave to hire his own time, . . the Attorney General directed a *nolle prosequi*"

State v. Allen (*a negro slave*), 3 Hawks 614, June 1825. "the prisoner was indicted . . for a grand larceny in stealing a steer, and . . found guilty . . being brought to the bar for judgment, [he] prayed the benefit of his clergy. Upon which Mr. Solicitor Miller, by a counter plea . . [615] showed a conviction before had ['At a Superior Court'] of grand larceny [of twenty pieces of bacon] . . and demanded judgment of death against him. . . The record . . showed the prayer of clergy by

[1] Act of 1794, ch. 406.

the prisoner, its allowance by the Court, and a judgment of public whipping (instead of burning in the hand, according to the act of . . [616] 1816 for that purpose made.[)] . . The presiding Judge refused to pronounce any judgment against the prisoner, ordered . . the prisoner to be discharged;"

Affirmed: "the County Court alone could take original cognizance of the offence.[1] If the slave is charged with the second offence so as to incur the punishment of death . . it ought to be so stated in the indictment, that it might appear on . . the record that the court had jurisdiction." [Taylor, C. J.]

State v. Daniel, Crese, and Piety (*negro slaves*), 3 Hawks 617, June 1825. "At the spring term . . of . . Superior Court, . . the prisoners . . were indicted . . for a simple grand larceny . . in stealing a steer. . . it was . . admitted by the Solicitor that neither of the prisoners had before been admitted to the benefit of clergy, or been convicted of any felony. The presiding Judge . . ordered the indictment to be quashed."

Affirmed: "It is only upon a second conviction of the offence . . that the punishment of death is annexed to it; and it is consequently triable in the County Court, according to the act of 1793, ch. 381."

Spiers v. Clay, 4 Hawks 22, December 1825. "1822.—Received of . . Clay four hundred and fifty dollars, in full payment for two negroes,—and Dave her son,"

Pride v. Pulliam, 4 Hawks 49, December 1825. Will of Nathaniel Jones, admitted to probate in 1815: [50] "my will is, that all my negroes, male and female, who have arrived to the age of twenty-four years, and their increase as fast as they shall arrive to the said age of twenty-four years, be emancipated or liberated, whenever the law or laws of said state will admit or tolerate it. And I do most solemnly enjoin it as an injunction on my executors hereinafter named, and all my representatives, not to sell, give, swap, or convey any of the said negroes or their increase, in or out of the said state, as I may die seised or possessed of: and farther my will is, that until the said state shall pass a law or laws, for tolerating emancipation or liberation, that all my negroes that I may die seised or possessed of, may be divided among my wife and children, . . I suppose it will be asked my reasons for emancipating my negro slaves, when the laws of the state will admit or tolerate it; which reasons are as follows, to wit: Reason the first. Agreeably to the rights of man, every human being, be his or her colour what it may, is entitled to freedom, when he, she or they arrive to mature years. Reason the second. My conscience, the great criterion, condemns me for keeping them in slavery. Reason the third. The golden rule directs us to do unto every human creature, as we would wish to be done unto; and sure I am, that there is not one of us would agree to be kept in slavery during a long life. Reason the fourth and last. I wish to die with a clear conscience, that I may not be ashamed to appear before my master in a future World. These are the reasons for emancipating my slaves; and I wish every human creature

[1] See State *v.* Adam, p. 47, *supra*.

seriously to deliberate on my reasons. And so farewell to this terrestrial world." In 1823 the executor, in a petition to the Superior Court, stated, "that among the slaves of the testator at the time he died, was a black man named Allen, now of the age of twenty-eight years, whose conduct from his childhood had always been sober, honest, industrious and exemplary, in every respect as a faithful and trusty slave, and that his services had been meritorious and useful, and that accordingly he stood high in the favour and confidence of his late master; that by the intermarriage of the defendant with Amelia, one of the coheirs and legatees of the testator, the defendant became possessed of the said slave Allen, and detained him in slavery, claiming to be his owner and master; and that the defendant had sold or was about to sell said Allen to a dealer in slaves. That the petitioner was ready to furnish satisfactory evidence of the good moral character and meritorious services of Allen; and that Allen was prepared to give such security as is required in cases of emancipation by our law: and the executor, therefore prayed of the Court, that Allen might be emancipated and set free from bondage, pursuant to the will of his late master. On hearing the petition, his honor, Judge Donnell was of opinion, that a license could not be granted to emancipate upon the facts disclosed by the petition itself, and therefore ordered it to be dismissed; whereupon the petitioner appealed." Judgment affirmed: when the slaves [60] "were delivered over to his representatives by the assent of his executors, the trust would seem to cease in the latter, and attach to the former. If that is the case, the executors filed this petition without any authority from the will." [Hall, J.]

Allison v. Allison, 4 Hawks 141, December 1825. John Allison's will, executed in 1821: [145] "I bequeath to my nephew . . all the personal property . . excepting also my negro woman slave named Ann, which for divers causes and considerations me hereunto moving and meritorious services rendered to me by her in time of sickness, I do hereby . . bequeath . . to . . Bruce, with this condition, that she be not sold or given away to any other person except it be with her consent; but that . . Bruce support her with food and clothing suitable to her station; and I . . bequeath to . . Bruce . . one hundred dollars, which sum I hereby direct my said trustees to pay to him for the support of my said negro woman Ann when she may, through old age or infirmities, become unable to perform the duties of a slave and servant;"

State v. Yeates, 4 Hawks 187, December 1825. "Indictment for the murder of a slave, . . The jury found the prisoner guilty of manslaughter, and the Court sentenced him to be imprisoned eleven calendar months, and to receive at two several times thirty nine lashes. The prisoner, by his counsel, objected to that part of the sentence which imposed whipping; . . overruled,"

Judgment reversed [192] "so far as it sentences the defendant to be whipped, . . and affirmed as to the residue." [190] "in legislating on this subject,[1] the first object was to get rid of the disgracing practice of

[1] Act of 1816, ch. 20.

burning in the hand; . . the words, 'moderate pecuniary fine,' used in the act, were intended to apply to manslaughter;" [Taylor, C. J.]

Croom v. Herring, 4 Hawks 393, June 1826, Whitfield's will: [394] "I leave all my estate . . except negroes and bank stock, to be sold . . my negroes and bank stock, not disposed of by this will, I leave to be divided among all my heirs,"

Falls v. Torrence, 4 Hawks 412, June 1826. [414] "Binah was purchased at the sale in [November] 1781 . . at the price of £70 hard money, which was a fair price," "March, 1784, another sale was made . . on account of the depreciation of the [continental] currency . . in . . 1781, 1782 and 1783; . . [415] Binah was sold at the second sale"

Selby v. Dixon, 4 Hawks 424, June 1826. In 1822 a negro man was sold, at public sale, for $396.

Nelson v. Evans, 1 Devereux 9, December 1826. "an action . . for verbal Slander. The words charged . . to have been spoken were, that the Plaintiff had broken the Defendant's house and stolen his gun, or that he (the Plaintiff) had caused his negro slave to do it. . . [10] The Defendant . . offered to give in evidence, a record of the conviction of the negro slave, for breaking the house and stealing the gun, but the Judge rejected it."

Held: [12] "the record ought not to have been received." "the conviction of the slave might have arisen from evidence wholly incompetent against the master, a free white man. . . Should it be asked, if this record is inadmissible . . what is to be done with accessorial offences of white persons in such cases? It is answered, that if the record of the conviction is a *sine qua non* to the conviction of the principal, the record must be received." [Henderson, J.]

State v. Jim (*a negro slave*), 1 Devereux 142, December 1826. "The Defendant was indicted under the act of 1823 [1] for making an assault . . 'upon the body of one M. J. a white female, with intent . . to ravish,' . . the Counsel for the Defendant challenged for cause those Jurors who were not owners of slaves, . . overruled . . After a verdict for the State, the Defendant's Counsel moved in arrest of judgment, because it was not charged . . that the offence was committed 'violently, . . and against the will of . . M. J.' His honor . . for this cause, arrested the judgment, whereupon the Solicitor prayed an appeal . . The Attorney-General declined to argue the case for the State."

Judgment arrested: [143] "The charge . . was no more than a misdemeanor at common law, . . as it still continues in relation to all but the colored population. . . [144] The late act of Assembly having elevated the offence to a capital felony, affords an additional reason for . . adhering to the established forms, . . For this omission . . I think this indictment is defective. It appears to me,[2] that the act of 1793, c. 381, extending the trial by Jury to slaves, and directing the Jury to be

[1] Tay. Rev., ch. 1229.
[2] "not the decision of the Court." State *v.* Arthur, 2 Devereux 220.

composed of owners of slaves, is not repealed by any subsequent law. . . [145] That the master would have assurance of an equitable trial by persons, who had property constantly exposed to similar accusations, and who would not wantonly sacrifice the life of a slave, but yield it only to a sense of justice, daily experience is sufficient to convince us." [Taylor, C. J.] See same *v.* same, p. 54, *infra.*

Wilkes v. Clark, 1 Devereux 178, June 1827. "The Defendant had a boat commanded by one of his slaves, plying for freight on the river Roanoke, and a quantity of corn was . . delivered to the slave . . to be carried to Plymouth"

Trustees of the Quaker Society of Contentnea v. Dickenson, 1 Devereux 189, June 1827. "The action was detinue, brought in the name of Joseph Borden and fourteen other persons, . . 'Trustees of the Religious Society . . called . . Quakers,' . . to recover a negro slave . . 1817, . . William Dickenson the elder, executed a deed, by which he conveyed the negro slave . . and others, 'to Thomas Cox, Joseph Borden and Francis Mace, Trustees of the Religious Society . . Quakers,' . . to have and to hold . . 'for the use . . of . . the said Religious Society . . forever.' . . [190] the persons named . . as Trustees, were duly appointed such, according to the act . . of 1796, and that the Plaintiffs are their successors . . proved . . that the religious principles of the . . Quakers, forbid them to hold to the use of themselves individually, or to the use of the society any persons as slaves beneficially as property, or for purposes of profit—that it was the intent of . . [the] parties to the deed, as well as of the Society, . . that the Trustees as a sort of guardians of the slaves, should hold them . . for the benefit of the slaves themselves, they working under the direction of the Trustees, and entitled to receive the profits of their labor, after defraying the expenses attending their comfortable maintenance—and to be ultimately emancipated . . whenever it could be effected according to the laws of this state." Nonsuit.

Judgment affirmed: [202] "Our law allows the Trustees to hold them for the benefit of the Society, whereas in truth, they hold them for the benefit of the slaves themselves, . . [203] a contrary decision would produce most, if not all, of the ill effects which the Legislature sought to avoid by the act of 1777. If that law could be eluded by transferring slaves to this Society, . . Numerous collections of slaves, . . working for their own benefit, in the view . . of others who are compelled to labour for their owners, would naturally excite in the latter, discontent . . and lead possibly . . to the most calamitous of all contests, a *bellum servile.*" [Taylor, C. J.] Hall, J., *dissentiente*: [207] "It is not for this Court . . to apply a preventive remedy. . . if on account of our unfortunate connection with slavery, these sentiments [of humanity, mingled with the religion of the Quakers,] tend to a mistaken policy, if self preservation impels us to a different . . course, that *course* should be pointed out by the Legislature;"

Watts v. Greenlee, 1 Devereux 210, June 1827. "Case for slanderous words. . . [211] on several occasions, the Defendant asked of an old

man named Martin, who lived with him, what was the story about Watts' daughters and [defendant's] negro Ben, and Martin . . stated that all Watts' daughters were big with child by negro Ben."

Weaver v. Cryer, 1 Devereux 337, December 1827. The plaintiff "proved, that it was generally reputed, that the woman who lived with him, was his wife. It appeared that he was a mulatto, and that the woman was white."

Pierce v. Myrick, 1 Devereux 345, December 1827. "Trespass for killing the negro of the Plaintiff. . . the Plaintiff offered evidence of the peaceable and submissive character of the slave, . . rejected . . His Honor instructed the Jury, that if the circumstances . . rendered it probable . . that the Defendant killed the negro, they should find for the Plaintiff, unless they collected . . a reasonable inference that the slave was killed by the Defendant, to defend his person or property from some threatened felony. . . 'not guilty'" New trial denied.

Judgment affirmed: [346] "evidence of . . orderly deportment . . should have been received, . . But . . not . . a new trial on that ground, because the Jury having found the Defendant *not guilty*, the justification could not have been passed on by them."

Hamrick v. Hogg, 1 Devereux 350, December 1827. [351] "that in the first part of that year, her health was very bad, and that she was unable to work—but that in the latter part . . she was better, and rendered him some services"

Estes v. Hairston, 1 Devereux 354, December 1827. "the petitioner . . was on his way, with a considerable number of slaves, from Virginia to Tennessee; and while passing through the county of Stokes, his negroes were attached, and before he could . . replevy them, the expences of their maintenance, while in the custody of the Sheriff, amounted to $1400."

State v. Johnson, 1 Devereux 360, December 1827. Johnson was indicted for concealing a mulatto slave on board a vessel, without the consent of his owner, for the purpose of carrying him out of the state. He was convicted, and judgment arrested.

Affirmed: [363] "the Legislature[1] meant only to include persons attached to the vessel, . . the indictment ought to have described the prisoner as . . attached to the vessel,"

State v. Wier, 1 Devereux 363, December 1827. An accomplice [364] "swore, that while one Kenedy and himself were at the house of the prisoner, making preparations to carry off several stolen negroes, the prisoner gave them the form of a bill of sale for a slave, and directed them to draw by that form, four others—that Kenedy accordingly drew four bills of sale to him, the witness, each for a slave, signed them as an attesting witness, and put two other names to them, as witnesses also,— . . that the prisoner . . in about three hours returned them, with the name of . . Moore, signed as the vendor. . . [365] a verdict for the State . . judgment of death;" Affirmed.

[1] Act of 1825.

White v. Beattie, 1 Dev. Eq. 87, December 1827. Will of Ann J. White: "To David J. White, a likely negro boy, between eight and ten years old. To Ann J. Colvin, a likely negro girl, between four and five years old. . . [88] I would rather you would buy negroes for David J. White and Ann J. Colvin, than to separate families.[1] I wish all this done at once, so as to save their being scattered."

Dawson v. Dawson, 1 Dev. Eq. 93, December 1827. "the commissioners were . . requested either to make a division [of the slaves between the two tenants in common] by chance, after dividing the negroes into two lots, . . [94] or by allotting them indiscriminately, first to one of the legatees, then to the other; or to divide them in any fair and equitable manner."

Samuel Scott v. Williams, 1 Devereux 376, June 1828. "The Plaintiff declared in trespass for an assault and battery and false imprisonment, the object . . being to ascertain whether the Plaintiff, a negro held in slavery by the Defendant, was not in truth free. . . he was the son of Jemima, . . the daughter of Jane Scott,[2] and the question was whether Jane Scott was a free woman?—Contradictory statements of her color were given, but the Plaintiff introduced an indenture whereby Jemima was bound to the father of the Defendant, as a free girl of colour. The Plaintiff was given as a slave, by the Defendant's father to him, . . and served the Defendant from the time of the gift, to that of the trial. His honor Judge Daniel, instructed the Jury, . . If she [Jane Scott] was of a black African complexion, they might presume . . that she was a slave; if she was of a yellow complexion, no presumption of slavery arose from her color. . . if their verdict should be for the Plaintiff, they might, if they pleased, give him more than nominal damages. A verdict with substantial damages, was returned for the Plaintiff," and a new trial denied. Judgment affirmed.

State v. Hood, 1 Devereux 506, June 1828. "The Defendant, a free negro, was convicted of an assault and battery, . . Being unable to pay the costs . . the Defendant prayed that he might be discharged, upon taking the oath prescribed for insolvent debtors. The Solicitor General moved his Honor to direct the Sheriff to hire out the Defendant to any person, who would take him for the shortest term, and pay the costs of the prosecution. An order for that purpose" was made. Judgment reversed.

State v. Jim (*a negro slave*), 1 Devereux 508, June 1828. "The prisoner was indicted under the act of 1823[3] for an assault with an intent to commit a rape upon a white female. . . the only witness who directly proved the assault, was one . . whose general moral character was seriously impeached; . . [509] a gentleman of the bar . . proving

[1] It would be hard to buy a negro five years old without separating some family. The testatrix evidently objects to separating families of her own slaves only. Ed.

[2] See Free Jack *v.* Woodruff, p. 46, *supra.*

[3] Tay. Rev., ch. 1229.

a material variance between her evidence on the trial of this indictment, and that given upon a former trial [1] of the prisoner for the same offence. His honor . . instructed the Jury, that . . 'they might . . reject part of a witness's testimony which they did not believe, and act on such part as they did believe.' The prisoner being convicted, . . judgment of death awarded," Judgment reversed and new trial granted: [510] "*falsum in uno, falsum in omnibus.*"

State v. Barden, 1 Devereux 518, June 1828. "a witness stated, without any objection on the part of the Defendant, that he was informed by a negro, that the [stolen] cotton was in a house, on the premises of the Defendant—that he searched that house, and found the information of the negro to be correct."

Yarborough v. State Bank, 2 Devereux 23, December 1828. [24] "the Sheriff made the following return. . . 'they [Fox and Jones] gave me an indemnity . . and accordingly . . 1828, I seized the following negroes, having in company with Fox and Jones, spent several days in pursuit of them.'"

State v. Isaac (a slave), 2 Devereux 47, December 1828. "An indictment for murder had been found against the prisoner, . . a *nolle prosequi* was entered, and upon the motion of the owner, who had been duly notified . . the prisoner was discharged." Held: the owner is liable for the jail fees, as well as for the court costs.[2]

State v. Jones, 2 Devereux 48, December 1828. "Negro Charles, the property of the Defendant, had been convicted of a rape, and executed. A question was made . . whether . . the owner . . was liable to his prison charges, and to the fee of ten dollars allowed for carrying the sentence of death into execution. Both questions were decided for the State," Affirmed.[3]

State v. Chittem, 2 Devereux 49, December 1828. "The prisoner was indicted as an accessory before the fact, to the murder of . . Lindsey. The indictment charged March, a negro slave, to be the principal felon. On the trial . . the prosecuting officer offered in evidence the record of the conviction of March," on the indictment against whom, "negro Lamb" was indorsed as a witness. Counsel for the prisoner, Chittem, objected; overruled. [50] "The jury found the prisoner guilty, . . motion for a new trial . . overruled, and judgment of death awarded," Affirmed.

State v. Roane, 2 Devereux 58, December 1828. "The Defendant was indicted for the murder of Levin, the slave of . . McIntire. . . a waiter in the tavern of his master, at 12 o'clock of the night of his death, [he] went to the lot of the Defendant . . Defendant was awakened by the sharp barking of his dog . . seized a gun, . . saw the deceased going from the kitchen towards the gate, . . asked who was there, and no answer being returned, he fired and killed the deceased . . he did not intend to strike the negro, but to . . frighten him. . . [59] no animosity

[1] P. 51, *supra*.
[2] Acts of 1793 (Rev., ch. 381, sect. 2) and 1795 (*ibid.*, ch. 438, sect. 7).
[3] Acts of 1793, 1795, and 1797. Rev., ch. 484.

. . was proved to exist . . several out-buildings in the neighborhood had been broken open and robbed . . and that a good deal of alarm existed in the neighborhood, caused by depredations committed by runaway slaves. . . [60] The jury found the Defendant guilty of manslaughter, and sentence being pronounced, he appealed" Judgment affirmed.

Barnes v. Dickenson, 1 Dev. Eq. 373, December 1828. "Plaintiff in . . 1810, bought . . a negro woman, . . in . . 1821, the Defendant privately procured the slave and her children, to leave . . and took them into his possession."

Leake v. Gilchrist, 2 Devereux 73, June 1829. [75] "where so much of men's substance, as in North-Carolina, consists of slaves bought abroad."[1] [Ruffin, counsel for the Appellant.]

McRae v. Oneal, 2 Devereux 166, June 1829. "Case for maliciously prosecuting the Plaintiff for stealing a negro, . . The Plaintiff was a resident of Anson, and took a female slave belonging to him, and started on foot to . . Missouri, for the purpose, as he said, of selling the slave, and securing the titles to some land . . [They] stopped at the shop of the Defendant, six miles west of Morganton. . . the former applied to the latter to purchase the slave, offered her at a very low price, . . [167] the Defendant . . having his suspicions awakened, went during the night to the house where the negro slept, and examined her as to the truth . . The negro informed the Defendant that she did not belong to the Plaintiff, but had been taken by him . . by stealth." The defendant "caused the arrest . . to be made in the morning." A witness "proved that the Plaintiff and the negro passed his house two miles east of Morganton, . . on foot, the former appeared to be drunk, and was behaving in an unbecoming manner towards the latter.—The other witness swore that he was in Morganton when the Plaintiff arrived there—that both . . had no clothes except those they had on—that the manner and appearance of the Plaintiff excited suspicion, and a man had talked of having him arrested on a charge of stealing the negro" Verdict for defendant; new trial refused. Affirmed.

State v. Arthur (*a slave*), 2 Devereux 217, June 1829. "The prisoner was indicted for murder, . . it was alleged on the part of the State, and assented to by the Counsel for the Prisoner, that the jury ought to be entirely composed of slave owners. The question being considered doubtful by his Honor, he consented . . in this case, . . Two jurors were challenged by the prisoner for cause, . . not slave owners; . . allowed. Afterwards a challenge for the same cause was made by the State, and objected to by the Counsel for the prisoner, but was allowed . . the body of the Deceased was found . . 27th of November, 1828, on the side of the road. There were appearances of a fierce conflict between two men for the distance of thirty-five yards, within which space, and within twelve yards of the body, the following paper was found: 'Permit Arthur to pass and repass till Monday morning next. November 23,

[1] *I. e.,* in South Carolina and other states.

1828. Henry Sheppard.' Sheppard . . wrote this permit by the direction of the prisoner's master, and that he delivered it to a little boy, the son of the prisoner, to carry it to his father. . . The Prisoner was convicted . . and appealed" Judgment affirmed.

Peace v. Nailing, 1 Dev. Eq. 289, June 1829. "1785 . . two negroes were . . purchased . . for £132 10 *s.*"

Henderson v. Wilson, 1 Dev. Eq. 309, June 1829. Henderson's will, executed 1818: "the tract of land that I now live on . . to be . . sold . . and the profits arising to go towards paying a minister of the gospel, . . [310] The rest of my negroes, . . five in number, . . sell at public sale,"

State v. Mann, 2 Devereux 263, December 1829. "The Defendant was indicted for an assault and battery upon Lydia, the slave of one Elizabeth Jones. . . Defendant had hired the slave for a year—that during the term, the slave had committed some small offence, for which the Defendant undertook to chastise her—that while in the act of so doing, the slave ran off, whereupon the Defendant called upon her to stop, which being refused, he shot at and wounded her." Verdict for the state.

[268] "Let the judgment below be reversed, and judgment entered for the Defendant." [264] "A Judge cannot but lament, when such cases . . are brought into judgment. It is impossible that the reasons on which they go can be appreciated, but where institutions similar to our own, exist and are thoroughly understood. . . [265] in reference to all other persons but the general owner, the hirer and possessor of a slave . . is, for the time being, the owner. . . upon the general question, whether the owner is answerable *criminaliter*, for a battery upon his own slave, or other exercise of . . force, not forbidden by statute, the Court entertains but little doubt. . . There have been no prosecutions of the sort. . . [266] The power of the master must be absolute, to render the submission of the slave perfect. I most freely confess my sense of the harshness of this proposition, . . And as a principle of moral right, every person in his retirement must repudiate it. But in the actual condition of things, it must be so. . . This discipline . . constitutes the curse of slavery to both the bond and free portions of our population. . . [267] The protection already afforded by several statutes, . . the private interest of the owner, the benevolences towards each other, seated in the hearts of those who have been born and bred together, the . . deep execrations of the community upon the barbarian, who is guilty of excessive . . cruelty to his unprotected slave, . . [268] have produced a mildness of treatment, . . ameliorating the condition of the slaves. The same causes . . will continue to operate with increased action, until the disparity in numbers between the whites and blacks, shall have rendered the latter in no degree dangerous to the former, when the police [*sic*] now existing may be further relaxed." [Ruffin, J.]

State v. Pemberton and Smith, 2 Devereux 281, December 1829. The defendants were indicted for playing "at cards with certain slaves,"

Verdict for the state. Judgment arrested: it is not an offence either at common law or by statute. Affirmed.

Choat v. Wright, 2 Devereux 289, June 1830. The slave was "set up at public auction, and stricken off . . at 600 dollars;"

Hoyle v. Stowe, 2 Devereux 318, June 1830. Huson's will directed [319] "certain negroes to be hired out, for the purpose of defraying the expense of the education of his children, until their ages of twenty-one for males, and eighteen for females,"

Peterson v. Williamson, 2 Devereux 326, June 1830. In 1801 "Peterson, the father of the Plaintiff, made a parol gift of the slave Hannah to her—the slave being then only a few days old, and the Plaintiff a child aged fifteen years" After 1820 Peterson became insolvent. In 1828 the defendant, sheriff, sold Hannah and her mother, under executions against Peterson's estate. Judgment for the defendant affirmed: the gift was void as to the creditors of the father, though his debts were contracted twenty years after.

State v. Kimbrough, 2 Devereux 431, June 1830. [434] "One of the witnesses . . stated that he met a negro after night, and about the time the homicide was supposed to be committed. The Counsel for the prisoner proposed to examine him, as to the declarations of the negro made at that time. . . objected . . sustained . . because the declarations were apparently no part of the *res gestae*."

State v. Moses (*a slave*), 2 Devereux 452, June 1830. Moses was indicted, being charged with killing Gabriel, a slave. [454] "the principal witness for the prosecution deposed, that on a dark night, he was standing within ten steps of the prisoner, when he saw him pull the trigger and fire the gun which killed the deceased. . . after the deceased was shot, the prisoner and himself, both being fugitive slaves, went into the woods, where the prisoner left him . . and went towards the house of Juba, a slave . . and after being absent some time, returned and said, that Juba had charged him with being the murderer . . Juba . . positively denied having ever seen the prisoner during the whole time he was a fugitive, . . Witnesses . . gave Juba a good character, and proved especially that he stood high in the confidence of his master. . . A witness . . in support of the principal witness . . was impeached by another witness . . who swore, that . . he heard the first say that he had a grudge against the prisoner, and would hang him if he could, . . [455] his Honor instructed the jury, . . it was for them to say, whether any and what influence the witness Juba's having a good character, and standing high in the estimation of his master, might have in making him desirous to conceal any intercourse he might have had with a runaway slave." Verdict of guilty. Judgment of death affirmed.

Poindexter v. McCannon, 1 Dev. Eq. 373, June 1830. In 1811 "a likely boy about sixteen years old, and worth $500" was sold for $400.

Cannon v. Jenkins, 1 Dev. Eq. 422, June 1830. [423] "four young negroes, viz: Jacob, Phil, Tom and Sam, who were directed by the will

to be sold . . were sold in one lot, and were bid off by the administrator . . at . . $1,025 . . they were four *brothers*, whereof the eldest was not more than eight, and the two youngest twins, about four years of age. . . [424] on the same evening, [the purchaser] . . sold the negroes at the same price to Rountree, who . . held the exclusive possession . . up to his death, nearly thirteen years afterwards." [425] "a lady . . urged Rountree to purchase, as he already owned the mother of the boys. . . [426] all the witnesses prove, that the sum of $1,025 was the full value of the negroes, as they were purchased by Rountree, namely, *in one lot*. . . The Court does not favor sales by executors in large masses. . . Sometimes, indeed, as much, or more can be had, when the property is disposed of in one, than in more parcels, as in the instance of a *family* of slaves, when the children are *all* of tender years. But he, who conducts such a sale, does it at his peril, and must answer for the true value, . . It would certainly have been harsh to separate these four boys, and sever ties which bind even slaves together. True, it must be done, if the executor discovers that the interest of the estate requires it; for he is not to indulge his charities at the expense of others. . . [427] all the witnesses think it [the price] a fair one, and some of them that it is higher than the real value, and that nobody but Rountree, who owned the rest of the family, would have given as much, if the negroes had been severally sold. Indeed, it speaks for itself, being $256 25 each, for little children." [Ruffin, J.]

Jones v. Mills, 2 Devereux 540, December 1830. "Case, for seducing from the service of the Plaintiff two coloured boys, who were bound to him by the County Court . . The Plaintiff having made out his case by proof of the indentures,[1] and of the actual service of the apprentices, the Defendant produced a blank paper, signed by the Plaintiff and two sureties, intended for the bond required by the act of 1801," [2]

Held: [541] "the Defendant was not at liberty . . to avail himself of any defect in the bond required"

State v. Charity (*a slave*), 2 Devereux 543, December 1830. "The prisoner was indicted for the murder of her own child, . . On the trial, the master was offered by the prosecution, to prove the confessions of the prisoner. This was objected to by the master and by the prisoner; but the objection was overruled, and the witness examined. The prisoner was convicted, and appealed"

Judgment reversed, and new trial granted: "I do not know that the question . . has ever arisen before in this State. . . [544] The whole property in the slave is in jeopardy, and the master is liable for the costs in case of a conviction. . . [545] I think, therefore, that a master cannot be a witness for his slave. It follows, that he ought not to be forced on the other side. . . The privilege not to testify, upon the ground of interest, is that of the master and not of the slave. It may be . . waived by the former." [Ruffin, J.] Evidence of the master [548] "ought to be excluded in all cases of confessions." [Henderson, C. J.]

[1] Act of 1762. Rev., ch. 69.
[2] *Ibid.*, ch. 583.

State v. Sam (a slave), 2 Devereux 567, December 1830. "The prisoner was indicted, under the act of 1823,[1] . . 'The jurors, . . present, that Sam, a person of colour, . . upon the body of one L. S. a white female, . . violently . . did make an assault, with intent to commit a rape . . did beat, etc. against the form of the statute.' After conviction," a new trial, on the ground of surprise, was refused. "A motion in arrest of judgment was then made, because the indictment did not charge the offence to have been committed since the passage of the act of 1823. . . overruled, and judgment of death . . pronounced," Affirmed.

State v. Tom (a slave), 2 Devereux 569, December 1830. "The prisoner was indicted under the act of 1802[2] . . 'that Donum, a slave, the property of E. S. B., Tom, a slave, the property of S. F. (and six others) . . did arm themselves with guns . . and conspire to rebel . . And . . further . . that . . Tom, . . Donum, . . (and six others) . . did . . conspire the murder of one William Duncan,' . . [570] Donum was first tried and acquitted. On the trial of the prisoner, no evidence was offered on the first count. The enquiry was confined solely to a plot . . to murder Duncan, without any ulterior views to an insurrection. . . convicted, and judgment of death was pronounced;"

Judgment reversed and new trial granted, because of misdirection by the judge below. [579] "submit the case to a second jury, to consider the prisoner's guilt, as connected with that of the other Defendants, exclusive of Donum." Henderson, C. J.: [582] "by the very words of the act, one person only cannot be guilty of the crime created by it. It is contended, that no murder comes within the act, but one connected with . . the rebellious intent . . I think that this construction can be supported, neither by the words of the clause, nor the context of the act."

Huson v. McKenzie, 1 Dev. Eq. 463, December 1830. "As to my negro woman Tempe, and my two negro boys, Stephen and Leo, my will is, that these negroes be hired out annually, and the monies . . be appropriated to schooling my children, or as much . . as may be necessary . . and the balance . . (if there be any) shall be reserved to meet accidental occurrences (the death of slaves specifically bequeathed)"

Stevens v. Ely, 1 Dev. Eq. 493, December 1830. "The Plaintiff alleged, that his testatrix [Letitia Gardner], intending to emancipate her slaves, consisting of a woman and her children, conveyed them to the Defendant, in consideration of £5, 'in trust, that . . Ely, his heirs, etc. shall, from time to time, permit the said negroes and their increase, to live together, upon his . . land, and to be industriously employed, and continue to exercise a controlling power over their moral condition, and to furnish said negroes with the necessaries and comforts of life.' That by an endorsement . . [494] it was agreed, that Plaintiff's testatrix should have the use of the said slaves from year to year, during her life,

[1] Tay. Rev., ch. 1229.
[2] Rev. of 1821, ch. 618.

. . to pay the Defendant one shilling for each year—that his testatrix, by her will, bequeathed the negroes to her sister, . . the Register . . swore, that when the Defendant came to have the deed registered, he observed, that the old lady had conveyed the negroes to him, for the purpose of having them emancipated. . . His Honor . . 1829, declared that the Defendant held the slaves as a bare trustee—that the trust was one contrary to the policy of the law, and resulted for the benefit of the Plaintiff, and decreed a reconveyance by the Defendant, upon having the consideration money refunded to him, and directed an account of the rents and profits."

Affirmed; but Chief Justice Henderson observes that [496] "sensitive as we are, or ought to be, as to whatever may interfere with our laws on the question of slaves, and however severely we may . . punish those, who in the most remote manner attempt to weaken the bonds, by which we hold them, yet these sensibilities are not roused . . against a single female, who from feelings of kindness towards her three or four slaves, or from feelings of conscience, endeavors to better their condition, who has acted openly," Hall, J.: [498] "In that trust, I see nothing illegal or immoral."

Yarborough v. Harris, 3 Devereux 40, June 1831. [41] "a gift, by the intestate, of the slaves in dispute, to his lunatic" son.

Arnold v. Blackwell, 2 Dev. Eq. 1, June 1831. "a valuable negro man" was valued at $500 in 1821; and a female slave, at $300.

Allison v. Davidson, 2 Dev. Eq. 79, June 1831. "previous to . . 1817, a copartnership had subsisted between the other [two] defendants and himself [Simonton], in the purchase and sale of slaves—that in . . 1816, they sold a large number on credit in . . Mississippi, and upon the debts becoming due, it was determined that the person who went to collect them, should carry out a number of slaves with him—that Worke had left Iredell for the purpose of making purchases of slaves, and himself and Davidson were to have followed him, when he met the plaintiff's father, who proposed that the plaintiff should be taken into their copartnership, observing that as the plaintiff was a very young man, and entirely inexperienced, he did not expect him to be admitted upon terms of perfect equality, and that he, the father, was principally anxious to get the plaintiff into business, and enable him to acquire some knowledge of it from experience. . . [80] in the speculation then on foot. . . [81] the net profits . . amounted to $9,507 10, of which each partner was entitled to $2,376 25—that a capital of $4180 was advanced by the plaintiff, and $4 420 91 by each of the [three] defendants—that Simonton received for cash sales at Natchez, $20,275—that at the same time sales to the amount of $6,125 were made upon a credit," Simonton was [85] "trusted by all parties; and more particularly by the plaintiff, who alone went with him in person on the trip. . . [86] He [the plaintiff] had no confidence in the others"

Redmond v. Coffin, 2 Dev. Eq. 437, June 1831. Will of Thomas Wright, who died in April 1816: "I . . bequeath them (the slaves)

unto the Society of Friends of New [Garden] Monthly Meeting, . . [438] I also . . bequeath all the personal property of my estate to the above named black people, to be sold and equally divided amongst them." The executors, "believing the bequest to be valid, . . had in August 1816, delivered the slaves, and paid over the residue to the agents of that Meeting. . . in December, 1817, [Willie] Wright presented to them a duly authenticated power from the plaintiff [next of kin to the testator], authorising him . . to settle . . with them for the plaintiffs' [*sic*] share" They made a compromise with Wright [452] "after the plaintiff had revoked his authority, and the other parties had knowledge of the fact. . . [454] upon inadequate consideration, and by taking advantage of . . the distresses of the agent." [449] "that in 1819, one of the slaves was sent out of the State to parts unknown, or . . permitted . . to go, . . and that pending this suit . . three others of them were . . [450] sent or permitted to go away." [439] "The answer of the agents of the New Garden Meeting set forth . . the religious belief of the Society, and insisted that as a Society, they could take and hold slaves. They admitted, however, that slaves held by the Society were not worked for its profit—but that the money realised from their labor was deemed by the Society a fund to be held in trust for the slaves, and to be used for their spiritual and temporal advancement."

Held: [440] "Qualified emancipation . . stands upon the same ground as a bequest directly for that purpose.—However praiseworthy the motive for accepting such a trust, or however benevolent the will of the donor may be, it cannot be supported in a court of justice. A stern necessity arising out of the safety of the commonwealth forbids it." [Ruffin, J.] [448] "The master [in equity] . . charged the defendants [the executors and the agents of the society] jointly, with the nett residue of the estate . . $416 93, and interest thereon; with the value of four slaves, which had been carried to distant States, and interest thereon—together with the annual value of all the other slaves and interest thereon—amounting in the whole to 3,621 74 dollars." See same *v.* same, p. 69, *infra.*

Atkinson v. Clarke, 3 Devereux 171, December 1831. [172] "A deed . . to . . Pettaway, . . 1826, conveying . . 'all . . Tunstal's negro slaves, say one hundred and three in number, the names of said slaves being too lengthy to insert in this indenture, said Tunstal will give the name of each slave to said Pettaway, when called for.'"

Wilson v. Wilson, 2 Dev. Eq. 181, December 1831. David Wilson's will, 1820: "I will that the . . third part of the valuation of my negroes be placed in the hands of my executors, for the support of my son Hugh . . It is also my request that my son Moses take the negroes that may be valued for the support of Hugh . . and pay the valuation into the hands of my executors" [184] "there were only five altogether, and that four of them were of little service." [182] "two female slaves, the eldest of which was not five years old, were allotted to the plaintiff [Hugh] at $420, one third of the whole value being $373 33." These

slaves [185] "would have been expensive for several years, instead of yielding any thing towards the plaintiff's maintenance."

State v. Martin, 3 Devereux 329, June 1832. "The prisoner was tried . . upon the following indictment: 'The jurors . . present, that Martin, a slave, . . with force . . upon one S. H. a white female, . . feloniously did make an assault, and . . did feloniously attempt to ravish' . . After a verdict for the prosecution, his Honor arrested the judgment, . . appealed. . . No counsel appeared for the prisoner."

Judgment affirmed: "The statute[1] makes it a capital felony, for any person of color to *make an assault with intent to commit a rape* upon the body of a white female. . . [330] Here the word *attempt* has been used in its stead." [Ruffin, J.]

State v. McDonald, 3 Devereux 468, December 1832. A constable, in executing a search warrant for certain slaves, "accompanied by the other defendants, . . proceeded to the farm of . . P. B. . . and . . took into their possession some of the negroes . . who were laboring upon the farm . . afterwards proceeded to the dwelling-house . . and after . . admittance . . had been refused, with force . . broke open the door . . and took . . others of the negroes"

State v. Clemons, 3 Devereux 472, December 1832. Held: the act of 1794,[2] to prevent owners of slaves from hiring to them their time, does not subject the master to an indictment, the remedy being against the slave alone.

Scroggins v. Scroggins, 3 Devereux 535, December 1832. "a petition for a divorce. . . the marriage took place on the 18th of December, 1828; that the parties 'lived together in uninterrupted harmony for near five months, when the infidelity and fraud of the defendant was manifested by an occurrence which admitted of neither explanation or palliation, and dissipated all hopes of happiness, . . that on the 1st of May, 1829, the defendant became the mother of a mulatto child.'" Petition dismissed.

Judgment affirmed: [545] "persons who marry, agree to take each other *as they are*. . . The court is, nevertheless, entirely sensible of the peculiar character of this case, produced by the odious circumstances of color. . . [546] The stigma in our state of society is so indelible, the degradation so absolute, and the abhorrence of the community against the offender, and contempt for the husband so marked and unextinguishable, that the court has not been able, without a struggle, to follow those rules which their dispassionate judgment sanctions." [Ruffin, J.]

Barden v. Barden, 3 Devereux 548, December 1832. "petition for a divorce, in which the petitioner alleged that at the time of the marriage, he knew that the defendant had a child, but he thought it was his; that the defendant, by her artful conduct before the marriage, induced him to believe that she had ever behaved . . virtuously except in the instance

[1] Act of 1823. Tay. Rev., ch. 1229.
[2] Rev., ch. 406.

above mentioned, which she pretended was the result of her attachment to him; that soon after the marriage, he discovered that the child was a mulatto, upon which he had instantly parted from her. . . his Honor dismissed the petition, and the plaintiff appealed."

Judgment reversed and the cause remanded: [550] "if it should upon the proofs turn out, that the child is of mixed blood, that the petitioner and defendant are white persons, and that he believed at the time of the marriage, that the child was white, and that belief was created by the representations of the defendant, that it was the offspring of the petitioner himself, and that upon inspection at that time, the real color was not so obvious as to be detected by the petitioner [[549] 'although it were so deep as to lead to the belief now, that it is the issue of a father of full African blood'], or a person of ordinary . . intelligence, . . he would be entitled to a judgment of divorce . . This is a concession to the deep rooted and virtuous prejudices of the community upon this subject." [Ruffin, J., "hesitante."]

Boyd v. Hawkins, 2 Dev. Eq. 195, December 1832. In 1824 Alexander Boyd [197] "conveyed by deed of trust . . as a security . . a very large estate . . about 140 slaves, . . [198] Alexander Boyd owed a debt to . . Burwell of about $20,000, for securing which, there was a deed of trust for about ninety of the slaves . . [199] Hawkins [who 'purchased nearly all the property'] . . refused to deliver the negroes conveyed to Burwell, until the crops were finished,"

Turner v. Cape Fear Navigation Co., 2 Dev. Eq. 236, December 1832. The corporation [238] "had purchased a number of negroes, who were placed upon the river below [Fayetteville] . . to remove obstructions; . . that white laborers could not be employed to work in the low country,"

Hunt v. Bass, 2 Dev. Eq. 292, December 1832. [297] "the refusal to sell the land instead of the negroes, although importunately urged to do so"

Bullock v. Bullock, 2 Dev. Eq. 307, December 1832. [308] "unto my son James . . my two black-smiths,"

Cowan v. Silliman, 4 Devereux 46, December 1833. "Received [in 1818] . . four hundred and seventy-five dollars . . in full payment of a negro woman"

Gregory v. Perkins, 4 Devereux 50, December 1833. "The deed [dated 1826] . . purported . . to convey two female slaves, one of the age of twenty, and the other of nineteen years, . . upon the consideration of $400, . . agreed by parol, that . . Perkins [the vendor] might at any time redeem the negroes upon the payment of $400, and in the mean time keep them upon an annual hire of $40. . . Perkins retained the possession of the slaves . . [51] for three years and a half, and until each of them had two children; when . . the six were sold under execution."

Walton v. Stallings, 4 Devereux 56, December 1833. "a female slave and her child . . [57] in September 1831, . . were worth $325 dollars."

Dowd v. Davis, 4 Devereux 61, December 1833. "the plaintiff declared against the defendant for harboring a female mulatto . . Lydia Burnet, who had, with four others, been bound to him by the county court . . and who had absconded from his service. . . [62] the plaintiff . . produced the order of the County Court, for binding the apprentice to him and the following indenture: . . 'Gilmore, Esq. chairman, . . on behalf of the justices of said county . . in pursuance of an order of the said County Court . . doth . . bind unto the said C. D. five certain, etc. with the said C. D. to live after the manner of servants until they shall attain the age of twenty-one years, they being born of a free woman and begot by a negro slave, . . they shall not at any time absent themselves from their said master's service without leave, . . And the said C. D. doth covenant . . that he will constantly . . provide for the said servants . . sufficient diet, washing, lodging and apparel fiting [*sic*] for servants of color, and also all other things necessary both in sickness and in health.' . . the presiding Judge [of the lower court] held the indenture to be so defective as not to create the relation of master and servant between the plaintiff and the apprentice, and that if the latter upon arriving at the years of discretion, chose to leave the service . . no action could be maintained against any person for harboring her. . . the plaintiff suffered a nonsuit"

Nonsuit set aside and a new trial awarded: [63] "The 19th and 20th sections of the act of 1762[1] . . direct the County Courts to bind out apprentices, . . every female to some suitable employment . . the master . . shall teach, or cause him or her to be taught to read and write, . . that the binding . . shall be by indenture, . . [65] The indenture . . [66] does not specify 'the suitable employment' to which this female should be bound, nor . . contain any covenant . . for teaching . . her . . to read and write. . . the omission . . constitutes a very serious objection to the instrument. . . [But does] [67] not annul the instrument so as to prevent the relation of master and servant from having been created by it; and we rejoice that we can thus decide, as . . this defective instrument is copied from a form . . in *Haywood's Justice*, a book of general use in this State, and there is great reason to fear that most of the indentures recently taken are equally faulty. . . [69] the court . . feels it a duty to call the attention of the Justices . . of all the counties in the State, to the indentures which have been taken . . so that wherever they are defective, new ones may be required, stipulating for all the obligations which ought to be found in them, and on failure of the masters to comply . . [70] to cause the indentures to be vacated, and the apprentices placed with new masters under regular indentures. . . also that with respect to colored apprentices the law requires a bond to be given, not to remove them out of the county, and to produce them before the court at the expiration of their term of service." [Gaston, J.]

[1] Rev., ch. 69.

Mushat v. Brevard, 4 Devereux 73, December 1833. "The slave . . was set up by a crier . . [74] and bid off by the plaintiff and knocked down to him as the purchaser, when the crier . . said to the slave . . 'there is your master,' . . There was no delivery proved by actual corporal touching."

Barton v. Morphis, 4 Devereux 240, December 1833. "Trover for a negro slave Lary, . . The plaintiff proved by a witness, (Turner,) a confession made by the defendant in a conversation with a runaway slave named Jack, sufficient to authorise a jury to find that a conversion had been made by the defendant." Turner deposed [243] "that he saw Jack in the fall of the year 1827—that he was then a runaway—that he made certain disclosures to him, relative to the conduct of the defendant, in sending away the slave of the plaintiff, and said that a negro by the name of Joe, could give information, which would detect the defendant at any time. . . Thompson's Larry . . informed . . Stewart, that the defendant and Jack could be caught at night [in December 1827], at a little out-house in the defendant's fields . . When they got there, he saw and heard, what he had related in court." Turner also deposed [242] "that in the conversation which he overheard with Jack and the defendant, the latter said he would buy him out of the woods." [240] "The credit of Turner was attacked, and to prop . . him the plaintiff introduced several witnesses." [242] "Watts proved that the defendant admitted that he had purchased Jack for the price of $200, in January, 1829." Thomas proved: "The night the party went to apprehend Jack, the defendant left the party and again rejoined them, when he told the company that he had seen Jack, and that they had agreed to meet at the school house, where he had promised to pay him some money. At 10 o'clock the defendant, Thomas and Jack came to the school house, when after some management, Jack was arrested by the rest of the company." [240] "The testimony of these witnesses was objected to by the defendant, as being irrelevant . . but it was admitted."

Judgment for the plaintiff, affirmed: [242] "The evidence . . was material to show an intimacy between Jack and the defendant."

White v. White, 4 Devereux 257, December 1833. See same *v.* same, p. 67, *infra.*

Harriss v. Richardson, 4 Devereux 279, December 1833. "the slave Lydia . . had been sold . . by order of the County Court . . on the petition of the guardian, setting forth that his ward had no other property than the mother of Lydia and her three children, which were all expensive to her."

Bank v. Newbern, 4 Devereux 297, December 1833. [298] "the Sheriff sold [four] negroes . . and applied the proceeds . . to the satisfaction of those executions,"

State v. Seaborn, 4 Devereux 305, December 1833. "The prisoner was indicted for . . Arson. . . [306] admitted that he had the money [of Smith, whose house was burnt] in his pocket when the house was

burning, but said that he had received it from a negro Harry, the slave of Smith."

State v. May, 4 Devereux 328, December 1833. "an Indictment under the act of 1779,[1] for stealing a slave. . . the negro had left his owner . . on the 19th or 20th of March, and on the 30th . . the prisoner under a feigned name, sold the negro [in South Carolina], also under a fictitious name . . the prisoner offered to prove the issuing of a State warrant against one William May, Hardy May and the prisoner, for the same offence for which he was now indicted—that William May had absconded from the State in consequence thereof, having conveyed a negro woman and child to Mrs. Lynch, to compensate her for the loss of Harry. . . also . . the confessions of William May, that he alone was guilty of stealing the slave. . . objected to . . His Honor . . rejected [the confessions] . . The prisoner then proved . . that he . . had not been seen in that neighborhood for five or six years." Verdict of guilty. Judgment of death affirmed.

State v. Edmund (a slave), 4 Devereux 340, December 1833. "an indictment under the act of 1825, c. 22, for concealing a slave on board of a vessel, with the intent . . of conveying said slave beyond the limits of the State, and of enabling her to effect her escape . . the prisoner was . . the property of one West, of Virginia; that he had absconded several years before from his master's service—had passed as a free man, and acted as Steward on board the brig *Fisher*. . . [341] Green, the alleged owner of the slave concealed, was a free man of colour, a dark mulatto, and a resident of this State. . . The jury found 'the prisoner . . guilty of the felony of concealing, conveying and carrying as charged in the . . indictment.' . . motions for a new trial, and in arrest of judgment" [because "the prisoner, being a slave, was neither mariner nor person within the meaning of the act; and that Green . . being a mulatto, was not a citizen of the State"] overruled, and sentence of death pronounced.

Judgment reversed, and a *venire de novo* awarded: the verdict is "too ambiguous to found a judgment on," [Ruffin, C. J.] [343] "By the laws of this State, a free man of colour may own . . lands and personal property, including slaves. . . the Legislature meant to protect the slave property of every person, . . entitled to hold such . . the owner is a citizen within the meaning of the act . . [344] a slave is a person capable of committing crimes, and subject to punishment." [J. J. Daniel, J.]

White v. White, 1 Dev. and Bat. 260,[2] December 1833. Joshua White, in 1776, executed the following deed: "I . . from mature and deliberate consideration and conviction . . being fully persuaded that freedom is the natural right of all mankind, and that no law moral or divine, has given me a right or property in the persons of any of my fellow-creatures; and being desirous of fulfilling the injunctions of our Lord

[1] Rev., ch. 142.
[2] See also same *v.* same, 4 Devereux 257.

and Saviour, by doing to others as I would be done by, do therefore declare, that having under my care, a negro girl . . Hagar, aged about ten years, I do . . hereby release unto . . Hagar, all my right . . to her person, or any estate which she may acquire, after she shall attain to the age or eighteen." The deed was never delivered.[1] [261] "Joshua White sent . . Hagar to his son Jacob White, with whom she and her children lived many years. . . he [Jacob] frequently declared that he had no title to them, . . While the negroes were in the possession of Jacob, they refused to labor on his plantation, upon which, on one occasion, he told an uncle of his to take them, and do what he pleased with them. . . Joshua White . . by his will [proved in 1804] devised to . . Jacob . . 'every other article that I have already possessed him with.'" [4 Devereux 257] "in a conversation with the girl, after the death of his father, [Jacob] . . told her he would keep her no longer, that he had kept her in conformity with a promise made to his father, until she was eighteen years old, and that she should go to her protectors." In 1809 Jacob executed the following deed: [1 Dev. and Bat. 261]: "I . . in consideration of the love . . I have . . towards the Society of Friends, . . have given . . Mordecai Morris, Joshua Trublood and others, trustees for the said Society, . . for the benefit of the said society, all my right . . in certain negroes ['among whom were Hagar and her children,'] . . to hold the said negroes to them and their successors . . to the . . protection of the said society." The negroes remained in Jacob White's possession, "with the consent of the trustees, until his death in 1816, and after his death, in that of his widow, until her death in 1823. . . No slaves were mentioned in Jacob's will, and after the execution of it, he frequently declared that he did not own any." The plaintiff is one of Jacob's children, his residuary legatees. [262] "In . . 1820, . . the plaintiff claimed these negroes from one of the trustees . . but he refused to surrender them, . . This claim was repeated with similar results in 1824, and again in 1831, . . In 1827, a general agent of the society hired out all the slaves belonging to it, . . The principles of the society in respect to slavery were . . made part of the case. . . they deny its morality; but submitting to the laws, they hold their slaves as property; claiming a dominion over them, but exercising that dominion for the benefit of the slaves, and for the promotion of individual cases of emancipation."

Judgment for the plaintiff reversed, and a new trial granted: [266] "emancipation was not favoured in the province, . . [267] and if this deed [of 1776] be construed as conferring it immediately, the necessary consequence . . would be an immediate forfeiture. . . [271] the defendant was protected by the statute of limitation," [Ruffin, C. J.]

Fraser v. Alexander, 2 Dev. Eq. 348, December 1833. Sarah Carson's will: "It is my will that my Executor sell my negroes at private sale, giving to each one of them a choice of masters, that can make a choice."

[1] See same *v.* same, 4 Devereux 257.

Jones v. Jones, 2 Dev. Eq. 387, December 1833. Codicil, 1832: [388] "I further give to be divided, two infant negroes . . born since the executing of my will, between my son . . and my wife"

Clarke v. Clarke, 2 Dev. Eq. 407, December 1833. [408] "that Selby died greatly indebted, and that under executions . . all his slaves were sold,"

Smith v. Barham, 2 Dev. Eq. 420, December 1833. Held: [429] "slaves . . are not wasted by use, and if they are, that waste is supplied by their issue, . . With respect to them, service and not increase is the use of the tenant for life."

Redmond v. Coffin, 2 Dev. Eq. 437, December 1833. See same *v.* same, p. 61, *supra*. [448] "The cause was removed to this court again, at June term last, when the defendants excepted to the report:" [456] "report confirmed, and the plaintiff must be declared entitled to all the slaves . . yet in this State, and to recover from all the defendants the . . money reported to be due for the residue and for the value of the four slaves sent away, and the hires of all the others, and interest upon those several sums; for which . . the agents of the society, are liable to her in the first place," [455] "so gross a case of bad faith, and wilful resistance to the cause of justice, and the claims of property, . . as subjects the defendants to account upon the most rigorous principles," [Ruffin, C. J.]

Arnold v. Arnold, 2 Dev. Eq. 467, December 1833. "the defendant owned a female slave, who had then six children, and was expected shortly to have another, and agreed, if allowed to select . . [468] three of the children to be kept by himself, to sell the mother and the remaining four children, including the unborn one, to the plaintiff, at the price of $1000; whereof, $100 was to be, and was, paid down, and the balance payable upon the delivery of the slaves, which was to be made as soon as the mother should recover after the birth of the next child. . . but that the defendant refused to convey, and had sold three of the children, and another had been sold under execution against him; . . [469] Several witnesses stated that the negroes were worth more than $1000."

Governor v. Freeman, 4 Devereux 472, June 1834. The administrator "had hired the slave to . . Doughtry, one of the residuary legatees . . for a year; that during that year Doughtry had sold the slave to one . . who had removed him out of the State."

Perry v. Maxwell, 2 Dev. Eq. 488, June 1834. Will of Outerbridge, who died in 1824: [491] "if negro property has to be sold in any case to make payment [of the notes bequeathed to my grandchildren], I . . empower my . . Executors to purchase young negroes, . . and then hire out what negroes they may purchase."

Erwin v. Greenlee, 1 Dev. and Bat. 39, December 1834. "At the [sheriff's] sale, the defendant [whose negroes had been levied upon] stood by, and publicly recommended the negro as an intelligent boy. It was proved that the boy was an idiot, and that the defendant knew it."

State v. Negro Will (slave of James S. Battle), 1 Dev. and Bat. 121, December 1834. Special verdict: "the deceased, Richard Baxter, was the overseer of said Battle, . . early in the morning of the 22d . . January last, . . [122] the prisoner had a dispute with slave Allen, . . a foreman on the same plantation . . about a hoe which the former claimed to use exclusively on the farm on account of his having helved it in his own time; but which the latter directed another slave to use on that day. . . angry words passed . . upon which the prisoner broke out the helve, and went off about one fourth of a mile to his work, . . packing cotton with a screw: that very soon after . . the foreman . . informed the deceased . . who immediately went into his house: . . his wife was heard to say, 'I would not my dear,' to which he replied in a positive tone of voice, 'I will:' . . came out of his house . . told him [the foreman] that he . . was going after the prisoner, and directed the foreman to take his cowhide and follow after him at a distance; . . took his gun, mounted his horse and rode to the screw, . . about six hundred yards, . . dismounted . . walked directly to the box on which the prisoner was standing engaged in throwing in cotton, and ordered the prisoner to come down: that the prisoner took off his hat in an humble manner and came down: that the deceased spoke some words[1] to the prisoner, which were not heard by any of the three negroes present: that the prisoner thereupon made off, and getting between ten and fifteen steps from the deceased, the deceased fired upon him: . . and the whole load lodged in prisoner's back, covering a space of twelve inches square: . . might have produced death: . . [123] after retreating in a run about one hundred and fifty yards . . the deceased directed two of the slaves present to pursue him through the field, saying that 'he could not go far;' . . laying down his gun, mounted his horse, and having directed his foreman . . to pursue the prisoner likewise, rode round the field and headed the prisoner: . . dismounted, got over the fence . . the prisoner . . changed his course to avoid the deceased, . . the deceased came up with him, and collared him with his right hand: . . *that it was not more than six or eight minutes* from the time of the shooting, till the slaves in pursuit came . . up, and being ordered by the deceased, one of them attempted to lay hold of the prisoner, who had his knife drawn, and the left thumb of the deceased in his mouth: that the prisoner struck at said slave with his knife, missed him and cut the deceased in his thigh. That in the scuffle . . the deceased received from the prisoner a wound [[124] 'about four inches long, and two inches deep'] in his arm which occasioned his death; and that the deceased had no weapons during the scuffle. That soon after, the deceased let go his hold on the prisoner, who . . escaped: . . soon recalled the slaves, . . and as they came up . . said, 'Will has killed me; if I had minded what my poor wife said, I should not have been in this fix.' . . [124] he died on the same day . . the prisoner went the same day to his master, and surrendered himself: that the next day, upon being arrested and informed of the death of the deceased, the prisoner exclaimed, '*Is it possible!*' and appeared

[1] [164] "a communication of his purpose."

so much affected that he came near falling, and was obliged to be supported. . . judgment that the prisoner was guilty of murder, and . . sentence of death; . . the prisoner appealed to the Supreme Court."

[172] "*Per Curiam.*—Judgment upon the special verdict, that the prisoner is *not* guilty of the *murder*, . . but is guilty of the *felonious slaying . . Richard Baxter.*" Gaston, J.: [165] "Had this unfortunate affair occurred between two freemen, . . the homicide could not have been more than manslaughter. . . Unconditional submission is the *general* duty of the slave; unlimited power, is in general, the *legal* right of the master. Unquestionably there are exceptions to this rule. It is certain that the master has not the right to slay his slave, and I hold it to be equally certain that the slave has a right to defend himself against the unlawful attempt of his master to deprive him of life. . . [166] There is no *legal* limitation to the master's power of *punishment,* except that it shall not reach the life of his offending slave. It is for the legislature to remove this reproach from amongst us, if, consistently with the public safety, it can be removed. . . the act of the prisoner in attempting to evade punishment was a breach of duty. This act, however, was not *resistance* nor *rebellion*, and it certainly afforded no . . excuse for the barbarous act which followed. . . [167] But after the gun was fired, all must see that a vast change was effected in the situation of the prisoner; . . will the law . . allow in such a case ['where the slayer is a slave, and the slain is the representative of his master'] *any* passions, . . however strongly provoked . . to repel the allegation of malice? . . [171] is it a *conclusion of law,* that such passions must spring from diabolical malice? . . I cannot believe that this is the law of a civilised people and of a Christian land. . . [172] Express malice is not found by the jury. From the facts, I am satisfied as a man, that in truth malice did not exist, and I see no law which compels me as a judge to infer malice contrary to the truth."

Lanier v. Ross, I Dev. and Bat. Eq. 39, December 1834. [40] "a brother of the plaintiff's at the sale of her husband's slaves had purchased a number of them, and left them with her for her use."

State v. Blythe, 1 Dev. and Bat. 199, June 1835. Indictment under the act of 1826, ch. 13, charging that Blythe unlawfully sold spirituous liquors [200] "to certain negro slaves, whose names are to the jurors as yet unknown, . . not having . . any written authority from the owners" The defendant was convicted, and a motion in arrest of judgment sustained. Affirmed: [201] "the indictment does not sufficiently identify the slaves."

Hamilton v. M'Carty, 1 Dev. and Bat. 226, June 1835. [227] "M'Carty . . in consideration of the services of . . Cupid [for two years], doth bind . . himself to pay . . the annual sum of sixty dollars . . and further to . . provide such negro man with good and sufficient food and drink during said term . . and also teach him to the best of his ability the art and trade of boot and shoe making. . . 1827."

Morgan v. Cone, 1 Dev. and Bat. 234, June 1835. [235] "a negro slave, Green, valued at $600;"

Sorrey v. Bright, 1 Dev. and Bat. Eq. 113, June 1835. Will of Diana Sorrey: "I give to . . Simmons . . the following negroes, . . but it is my request . . that . . Simmons will admit said negroes to have the result of their own labour, but ever to be under his care and protection," Simmons was [114] "a resident of . . Virginia, and by the law of that state, bequests for the purpose of emancipation were valid."
Held: the bequest is void. [115] "The capacity to make the will is derived from our law, and the validity of its provisions is to be ascertained from the same source."

Torrence v. Graham, 1 Dev. and Bat. 284, December 1835. "James M'Knight, in . . 1800 intermarried with Betsy Torrence, . . and soon after, upon his leaving his mother-in-law's house with his wife to settle to themselves, the old lady proposed to give him two negro girls; but he declined to receive them, stating that he did not wish to own that kind of property, as he had conscientious scruples about holding slaves. His mother-in-law insisted . . alleging that her daughter was weakly, and would need their assistance; but upon his still refusing, she said she would send them, not as his, but as the property of Betsy . . [285] and upon these conditions he agreed . . After the death of Ann Torrence [Betsy's mother], the executors came to demand the slaves of M'Knight, . . he was willing to deliver them up, but his wife was not; . . agreed to leave it to arbitrators, 'to decide what Mrs. Torrence intended' . . decided that it was the old lady's *wish* for . . Betsy . . to have them during her life,' . . Betsy . . died before her husband in 1830." The jury decided that it was a loan for life.

Jones v. Young, 1 Dev. and Bat. 352, December 1835. The executor of the plaintiff's father [353] "had urged several persons to attend the sale of the slave; . . and while the officer was crying the slave, he had told a negro trader that he thought the plaintiff's title was not good, though probably the plaintiff would sue for the slave, and he asked the trader to purchase."

Henry v. Patrick, 1 Dev. and Bat. 358, December 1835. "the defendant was a negro-trader, and the plaintiff had purchased . . a negro boy, named Miles, with liberty to return him and take another, if, upon trial, he should not like him: that some time afterwards, the defendant was on his way to the south, with a parcel of slaves, and encamped on the public road, within two or three miles of the plaintiff's house: that plaintiff came to the camp, and proposed to return . . Miles, and take another; . . defendant assented: . . plaintiff then selected . . Jacob, fixed upon the price, which . . should be paid by the bond of the defendant, which the plaintiff then held, and the balance in money:"

Young v. Carson, 1 Dev. and Bat. 360, December 1835. Young's will, 1833: "doing this murder is my own fault . . and I wish my dear wife . . to get Stanford in her third of the property if she chooses, for she has raised him."

Abram Bryan v. Wadsworth, 1 Dev. and Bat. 384, December 1835. "an action of trespass *vi et armis*, brought by the plaintiff to try his right of freedom. . . The plaintiff was originally the slave of . . Elizabeth Henry, . . who at the March Term, 1808, of the County Court, filed the following petition, . . 'that she is possessed of the following slaves, whose meritorious services she desires to reward with the blessing of freedom, viz. [Abram's name is included in the list] . . She prays that she may be permitted to emancipate the said slaves at such time as she may think proper.'" The court [385] "ordered that the petitioner have the permission prayed, upon complying with the directions of the acts [1] of General Assembly in such cases provided. . . June 1808, . . Elizabeth Henry . . signed, sealed and delivered two penal bonds, one . . for . . two hundred pounds, . . 'The condition . . is such, that whereas . . permission has been granted to Elizabeth Henry, . . to emancipate . . a certain negro slave named Abram: Now, if the said negro . . shall, during his residence in . . North Carolina, behave himself as an honest and peaceable citizen, then the above obligation to be void.' The other . . for . . one hundred pounds, conditioned . . 'Now if the said negro . . shall not become chargeable to the parish . . of any . . county of this state, then the above obligation to be void.' These bonds were filed in the office of the clerk of . . County Court, . . [386] To some of the slaves mentioned in the petition, . . Elizabeth Henry executed and delivered deeds of manumission, (although she still continued in the actual possession of them,) but to . . Abram, she made no such deed, . . but . . 1820 . . sold and delivered him to . . Wadsworth, from whom the defendant purchased him;"

Judgment for the defendant affirmed: [387] "The license is a permission to do the act, and this . . the Court is authorised to grant, when it shall have adjudged that the slave has performed extraordinary services, meriting the boon . . The adjudication and the license do not *constitute* the manumission, they only legalise it. . . [388] The petition upon which the County Court acted in this instance, is of a very extraordinary character." [387] "when the ordinary course of proceeding in these cases, is attended to, and which mode, we have no doubt, was that in the contemplation of the legislature, there needs nothing more to show the act of the master, than his petition, which is a part of the record . . [388] This petition usually sets forth that the petitioner . . desires *then* to confer [freedom] . . and prays that he may be permitted so to do. The Court proceeds to examine . . adjudges . . and grants the permission. These entered of record, make the liberation required by law." [Gaston, J.]

Clancy v. Overman, 1 Dev. and Bat. 402, December 1835. "This indenture, . . 1827, . . Witnesseth that . . Clancy doth bind unto . . Overman a negro boy, named Essex, for . . three years, . . during all which time the . . boy his master shall . . serve, his . . commands . . obey; he shall not absent himself . . Clancy doth further agree to fur-

[1] Acts of 1777 (Rev., ch. 109) and of 1796 (Rev., ch. 453).

nish the . . boy with materials for clothing: And . . Overman doth . . agree . . that he will teach . . the said negro boy, the art and mystery of the coach-making business; that he will sustain the expense of making his clothes, and that he will provide . . sufficient diet and lodging." The plaintiff [403] " offered evidence to show that . . Essex did not understand the coach-making business at the expiration of his term . . The defendant . . offered evidence to show that he made all proper exertions . . but that said slave had not capacity enough to learn the coach-making business. . . Essex . . frequently, in the absence . . of the defendant, would go to a neighbouring store and procure spirits, . . become moderately intoxicated. . . when he [the defendant] would instruct Essex . . and threaten to punish him if he did not exert himself to learn, as soon as he, the defendant, was absent, Essex would declare that he did not care about learning the trade; it was no profit to him; and if he could avoid the lash, it was all he cared for. . . evidence of the declarations of Essex . . rejected"

Judgment for the plaintiff reversed and a new trial awarded: [405] " an engagement to teach . . a trade, is not an engagement that the apprentice will learn that trade. . . [406] the evidence offered of the acts and declarations of the apprentice was improperly rejected. . . because his disposition and temper are subjects of investigation;" [Gaston, J.]

Bird v. Graham, 1 Dev. and Bat. Eq. 168, December 1835. [170] " The benefit from her labour was a slender compensation for rearing her children;"

Jacocks v. Bozeman, 1 Dev. and Bat. Eq. 192, December 1835. "At the request of the widow, . . [the administrator] sold all the effects, except the negroes, . . retained the possession of the slaves, . . and hired them out until her death, . . and out of those hires he paid, also by her consent, that balance of the testator's debts."

Worth v. McAden, 1 Dev. and Bat. Eq. 199, December 1835. [202] " he received eight hundred dollars . . on account of a negro man [in 1817] . . [205] five hundred and twenty-one dollars, at which price he obtained Milly"

Koonce v. Bryan, 1 Dev. and Bat. Eq. 227, December 1835. [231] " the husband . . said he was willing to settle his wife's negroes on her, . . and requested Bryan to have a deed prepared, . . so drawn as to give to his wife no power . . over the increase of the negroes born . . during his life, as he could not nor would not raise young negroes for any person but himself."

Steed v. McRae, 1 Dev. and Bat. 435, June 1836. " to serve him as overseer, during . . 1832, for . . one hundred and twenty-five dollars, or a certain share of the crop, at the election of " the overseer. He elected the latter.

Gibbons v. Dunn, 1 Dev. and Bat. 446, June 1836. See same *v.* same, p. 38, *supra.* [450] " the death of the mother [of the testator's chil-

dren] was uncertain, and might be prolonged to such a period, that Nell would be too old to breed, and might be an expense instead of a benefit." [J. J. Daniel, J.]

Jones v. Sasser, 1 Dev. and Bat. 452, June 1836. [455] "the plaintiff . . had lived with his father . . as a manager or overseer of his slaves and other property."

Skinner v. White, 1 Dev. and Bat. 471, June 1836. "an action of slander, . . the defendant said of the plaintiff, 'that he harboured a runaway negro . . and he could prove it; and he should be prosecuted for it.'" The jury found the defendant guilty, and "assessed the plaintiff's damages to three hundred and twenty-five dollars,"

Judgment of nonsuit, affirmed: the words were not actionable.

Hamlin v. Alston, 1 Dev. and Bat. 479, June 1836. In 1820 the executors "took all the slaves . . and hired them out every year, until . . 1832; first, as executors, and afterwards as guardians of the children."

Carr v. Holliday, 1 Dev. and Bat. Eq. 344, June 1836. Carr was "found to be a lunatic . . since 1827." Thereafter, "the defendant . . obtained from him . . several slaves,"

Hite v. Goodman, 1 Dev. and Bat. Eq. 364, June 1836. "Certain runaway slaves having committed great outrages in the county of Gates, several magistrates of that county [the defendants] assembled at the court-house to deliberate upon the propriety of calling upon the colonel of the county to order out the militia for the purpose of apprehending them. . . during the recess between the regular terms of the County Court, and . . 'Ordered, that a reward of sixteen hundred dollars be given for the apprehension of negroes Jim, etc., (four in number,) or four hundred dollars for each.' The plaintiffs alleged that three . . were taken by them and one Collins: that . . Collins, after having assigned to one of them his interest in the claim for a reward, had fraudulently dismissed a suit to recover it. The prayer of the bill was for payment of . . twelve hundred dollars,"

Dismissed: [366] "If the plaintiffs have a well founded claim against the county, it ought not to be doubted but that, on proper application, they will obtain full justice."

Bell v. Culpepper, 2 Dev. and Bat. 18, December 1836. "the plaintiff claimed the slaves under a parol gift to his wife, made by her father . . in . . 1802, . . he intermarried with the daughter of the donor in 1820; that he soon after went off to house-keeping; that the slave Esther being then confined in childbed, was not taken home with him immediately, but was sent to him about a year afterwards, and, together with her child, remained with him more than twelve months, when she ran off and returned to her old master. . . [19] his father-in-law said he . . would keep them until his son-in-law should get out of debt. . . bequeathed to the plaintiff's wife and children a negro girl . . a child of . . Esther. . . a residuary clause directing the remainder . . to be sold"

State v. Ritchie, 2 Dev. and Bat. 29, December 1836. The defendant, together with Hill, was convicted upon an indictment charging that they "unlawfully[1] did play at a game of cards with two slaves,"

Whittington v. Whittington, 2 Dev. and Bat. 64, December 1836. Petition for a divorce stated [65] "that the defendant [after their separation] had indulged in criminal intercourse with both whites and mulattoes: . . and that she had three illegitimate children, one of which was a coloured child," Petition dismissed. Judgment affirmed.

Knight v. Leak, 2 Dev. and Bat. 133, December 1836. [134] "the sheriff 'did levy on a certain negro boy . . Bob, about fourteen years old, . . and having advertised, according to law, did expose . . to sale at the Court-house to the highest bidder, when . . Leak became the highest . . bidder, at the sum of three hundred and thirteen dollars, twenty-five cents;'"

State v. Ephraim (*a slave*), 2 Dev. and Bat. 162, December 1836. "an application for the discharge of the prisoner . . from confinement in the jail . . [Judge] Gaston was applied to for a writ of *habeas corpus*, which he issued, . . made returnable before the judges of the Supreme Court. The sheriff . . returned . . that the prisoner was committed to his custody by the Superior Court . . [163] charged with the murder of . . Venters . . an indictment was found against the prisoner . . the jury came into court, and declared . . that they were not likely to agree, however long they were kept together. Two . . stated that they were unwell; . . the court proposed to discharge the jury, and asked the consent of the prisoner's master and counsel, . . refused: whereupon . . the court in the exercise of its discretion . . ordered . . the jury to be discharged; . . ordered the prisoner to be remanded to the jail . . to await his trial at the next term . . before another jury."

Held: [164] "the prisoner cannot be tried again, but is entitled to his discharge, . . as if he had been acquitted by the jury. . . [176] upon the payment, by his master, of such costs as he is legally liable for, and upon his entering into recognizance for the appearance of the prisoner at the next term of the Superior Court, to answer any other charge the state may have against him." [Ruffin, C. J.]

State v. Samuel (*a slave*), 2 Dev. and Bat. 177, December 1836. "an indictment for murder, . . In proving the case for the state, the solicitor called as a witness, a slave named Mima, who was the only person that saw the rencounter . . The prisoner's counsel objected . . upon the ground that she was the wife of the prisoner; . . Lea, the owner of the witness, . . testified that the prisoner and . . Mima, had cohabited as man and wife for about ten years successively, and had had five children; that in . . August last, he heard a quarrel . . when the prisoner took a bundle of clothes, . . saying, he intended to part with his wife. Lea compelled the prisoner to leave the clothes, and told him to bring an order

[1] "The act of 1830, ch. 10, was inadvertently omitted in the Revised Statutes of 1836, but was re-enacted in 1850, (see Acts of that year, ch. 186,)." Note by reporter, second edition.

from his master . . In the course of a fortnight, the prisoner returned with an order . . procured the clothes, and was commanded by Lea not to return. Soon afterwards the deceased applied to Lea for permission to take Mima as his wife, and upon being told that he might do so, he took her as a wife accordingly. His Honor overruled the objection to the competency of . . Mima, and the prisoner was convicted. . . [178] judgment of death pronounced,"

Judgment affirmed: [183] "the witness was never, in law, the wife of the prisoner. This conclusion is in no degree shaken by the incidental notices of this connection between slaves, . . found in some of our statutes. In the act of 1729,[1] . . the ninth section . . declares, that nothing in that act shall be construed to hinder neighbours' negroes intermarrying together, license being first had of their several masters. . . this proviso can mean only that concubinage, . . voluntary on the part of the slaves, and permissive on that of the master . . with which alone, perhaps, their condition is compatible." [Ruffin, C. J.]

Black v. Ray, 1 Dev. and Bat. Eq. 443, December 1836. "Black died in . . 1807, having . . bequeathed certain slaves to his widow . . for life . . [who] sold some of them absolutely,"

Willis v. Hill, 2 Dev. and Bat. 231, June 1837. "the defendant, prior to . . October, 1833, was in partnership with . . in the purchase of slaves:"

Cole v. Terry, 2 Dev. and Bat. 252, June 1837. In 1804 [253] "the slave Charlotte, then about two years of age" was sold.

Hamlin v. Alston, 2 Dev. and Bat. 269, June 1837. [270] "The defendant made an agreement with [a third person, in whose custody a negro woman and a family of small children had been left, and from whose house they [269] 'could not be readily removed'] . . to keep them for one year for . . fifty dollars."

State v. Jesse (*a slave*), 2 Dev. and Bat. 297, June 1837. "The prisoner was tried . . upon an indictment containing two counts, the first of which charged him with a rape; and the second with an assault with intent to commit a rape, upon the body of a white female. . . acquitted upon the first . . but found guilty upon the second," in which there was [300] "no application of the term 'feloniously' to the act of assaulting." [298] "it was contended for the prisoner, that he was under the age of fourteen years at the time, . . [299] judgment of death"

Held: "omission in the indictment . . is fatal to the sentence passed on the prisoner. . . [301] judgment of death is erroneous, and must be reversed; and as the Superior Court has no jurisdiction . . there can be no judgment upon this indictment; but it must be arrested;" [Ruffin, C. J.] See same *v.* same, p. 81, *infra.*

Hatchell v. Odom, 2 Dev. and Bat. 302, June 1837. [303] "The plaintiff being about to remove to the west, purchased the slave of the

[1] Rev., ch. 19.

defendant's intestate for five hundred and eighty-four dollars; but it did not appear that there was any warranty of soundness, . . After the plaintiff had commenced his journey, the negro failed in walking from a *caries* of the bone of one of his legs; . . sent him back to . . Vaughan, his agent, to be returned . . When informed . . the intestate desired Vaughan to return the negro to him, and promised that he would either cure, or have him cured, or . . return the price. . . placed him under the care of a physician. . . the *caries* was found to be very extensive; and after an operation, the intestate took him home, where . . he still remained . . the disease very seriously affected the value of the slave;"

Held: [308] "the intestate's promise . . was without consideration and void."

Thomas v. Alexander, 2 Dev. and Bat. 385, June 1837. "an action . . for harbouring a runaway slave, in violation of the act of 1791,[1] . . his Honor . . instructed the jury . . 'that if they believed from the testimony, that the slave was . . at his [defendant's] plantation, and was not concealed . . the defendant was entitled to their verdict.' The jury found for the defendant;" Affirmed.

State v. Haney, 2 Dev. and Bat. 390; *State v. Hardin, ibid.* 407, June 1837. [390] "The jurors . . present, [first count:] that . . Hardin, . . Haney and . . Williams, . . one negro-man slave, . . Eli, . . the property of Nancy Davis, . . feloniously did steal, take and carry away, . . [391] And . . [second count:] feloniously by seduction, violence and other means, . . Eli . . did take . . with an intention . . to sell, dispose of and convert to their own use," "Haney, by consent, was tried alone; . . the only witness for the prosecution, was one Robins . . an accomplice," [408] "He testified [in Hardin's trial] that on Sunday, the next day after the disappearance of the slave [in July 1836], he saw, at a meeting-house . . Haney, . . Haney informed him, that a negro had come to him . . a little before day; and then requested witness to . . tell Hardin to meet him at . . Webb's old field that night, . . remarked, 'Hardin has missed the one he has been trying to secure; but good luck will come after bad. Tell him, this boy has come to me.' . . they [witness and Hardin] went together to the place and at the time appointed, and there found Haney. Upon a whistle by Haney, a large negro-man came up to them; . . Haney said, 'he came from the widow Davis. . . You, Robins, must take him off. It will be a safe trip, as the widow has not energy to press like some people. . . Hardin will keep him till you get ready to start.' . . Hardin . . proposed that the negro and the witness should stay in the woods until he should go to see [if there was anyone in his house.] . . came the next morning with food for them. It was then agreed between Hardin, Robins and the negro, that Robins should take the negro to South Carolina and there sell him; that he should go that day, and make his preparations; and that the negro should meet him the next day at a point designated on the road. . . [409] the negro met him according to appointment; and Robins and . . Williams, carried

[1] Rev., ch. 335, sect. 4.

him to South Carolina and sold him for nine hundred dollars; of which part was paid to Williams; . . one hundred and forty-five dollars . . to Haney, and two hundred and fifty-five dollars to . . Hardin. Upon his cross-examination, the witness stated that his habits had been moral . . until he had become acquainted with the three persons charged . . who influenced him to join an association which they called a *club*, and represented to have members spread over the country; and that this was his first adventure in the way of selling slaves. But when further pressed, he admitted that he had before sold a free negro, named Wingfield for one thousand dollars, of which he gave two hundred dollars to Wingfield himself for agreeing to be sold; two hundred dollars to a man in South Carolina, for helping him to sell the free negro; one hundred dollars to Haney, and ninety dollars to . . Hardin; and that he spent the residue himself. . . when he paid to Haney his share of the price got for Mrs. Davis's negro, Haney said to him and Hardin, 'You know our plan is to steal the negro again and sell him over, so you must make up something to pay for doing that:' . . each . . gave Haney twenty-five dollars more. . . Hardin insisted upon having the largest share, in consequence of 'his having tried so long to get a negro, in which he met with bad luck.'" Haney [392] "was acquitted upon the first count, and convicted upon the second; . . [393] judgment of death," Affirmed.

Hardin was [412] "found guilty generally, upon both counts" [411] "and sentence of death passed;" Judgment reversed, and a [419] "*venire de novo* awarded to the prisoner, Hardin." [413] I. "the larceny in this case, was committed by Haney alone. . . [II.] [419] we have no doubt that his [Hardin's] acts are within the mischief which the legislature[1] meant to remedy; but we cannot find in the act itself a warrant for holding the prisoner, or Robins, or Williams, to be more than accessories to the *felony* of seduction committed by Haney."[2] [Ruffin, C. J.] Daniel, J., concurred. Gaston, J., dissented.[3]

State v. Oxendine, 2 Dev. and Bat. 435, June 1837. "The defendant was indicted . . for an assault and battery, . . appeared and *submitted* to the Court . . fined fifteen dollars, . . and it appearing . . that the defendant was a free negro, and unable to pay the fine . . adjudged . . that the sheriff . . hire out the defendant to any person who will pay the fine for his services for the shortest space of time; . . according to the directions of the act . . passed . . 1831, c. 13. . . defendant appealed . . upon the ground that the act . . was unconstitutional and void."

Judgment reversed: [437] "the defendant not having been *convicted* of an offence, his case was not embraced within that act." [435] "The constitutional question . . has been elaborately . . argued, . . a decision of this question is not necessary for our adjudication"

[1] Act of 1779. Rev., ch. 142.

[2] Followed in State *v.* Martin, p. 156, *infra*.

[3] [424 n. (second edition).] "The acts of 1779, 1848 and 1852, as revised in the 10th section of the 34th chapter of the last Revised Code [1855], are made to conform to the opinion delivered by Judge Gaston in this case." [Reporter.]

Newby v. Skinner, 1 Dev. and Bat. Eq. 488, June 1837. Will, 1834: "directed that three negro slaves, designated by name, and a tract . . should be sold for the payment of his debts:"

Pendleton v. Blount, 1 Dev. and Bat. Eq. 491, June 1837. "Elizabeth Brazier, by her will, gave all her negroes to her 'executor . . to be by him hired out annually . . [492] and the hire . . I leave as a fund for their support when they are too old, or unable to support themselves;' and after sundry particular instructions for their comfort, and for removing them to another State or to Africa, . . 'third [of the residue] to be kept for the benefit of my negroes when he may think they need it.'" Held: "the bequests . . are illegal and void. . . [493] The slaves and said fund belong to the next of kin,"

Tyrrell v. Morris, 1 Dev. and Bat. Eq. 559, June 1837. Tyrrell, "by his will, directed that his negroes should be kept for the support of his wife and children; a part to be employed in cultivating a farm, and the residue hired out, . . [560] The executors from time to time as they were pressed by the creditors, disposed of the negroes;"

Boyce v. Warren, 2 Dev. and Bat. 498, December 1837. "the slave had once belonged to the plaintiff, who . . had been found a lunatic,"

Hobbs v. Bush, 2 Dev. and Bat. 508, December 1837. Several slaves [509] "had belonged to Mary Taylor . . then about fifty years of age, and had been from her birth an idiot."

Mead v. Young, 2 Dev. and Bat. 521, December 1837. A warrant recited "that the plaintiff 'and company' had wounded and beat a slave of the defendant,"

McConnell v. Peobles, 1 Dev. and Bat. Eq. 601, December 1837. Will, 1834: "My will is, that all my negro slaves be laid off into six lots, made equal in value, and then drawn for by my six children," [604] "a very strong inference arises . . that not only the selection of Hannah by Mrs. Smith, was made at the slave station of the trader, but that she and her husband stipulated with the trader as to the amount of the price"

Bethell v. Wilson, 1 Dev. and Bat. Eq. 610, December 1837. The parties to the suit, in 1826, "entered into a co-partnership for the purpose of buying and selling slaves: that the defendant . . was the active partner . . received the capital paid in, purchased a parcel of slaves, carried them to the south and sold them, partly for cash and partly on credit: . . [611] defendant originally resided in the county of Rockingham, in this state, but after his return from the south, removed over the state line into Virginia: . . moved [later] . . to . . Alabama."

Caroline Sampson v. Burgwin, 3 Dev. and Bat. 28, June 1838. "an action of trespass *vi et armis* brought by the plaintiff to try the question whether the defendant had a right to hold her as a slave. . . she alleged that the defendant in . . 1809 . . procured her mother and herself then one or two years old, to be emancipated by the county court . . and . . produced . . a copy of the record . . Upon the petition of . . Burg-

win, Ordered that a female negro slave . . and her child called Caroline . . be emancipated . . proved further by several witnesses that they had known her from eight to twenty years, and had always considered her as a free woman. The defendant then proved by the sheriff . . that in . . 1820 . . he levied an execution against the defendant . . on her, and sold her . . [29] His Honor, in charging the jury, told them . . that the court was not bound to presume . . that the county court had adjudged that the plaintiff had performed meritorious services, particularly as it appeared . . that she was not more than one or two years old when the record was made, . . [30] verdict for the defendant, and the plaintiff appealed."

Judgment reversed and a *venire de novo* ordered: [32] "the minutes state both what he did and what the Court did. . . their united act as appearing of record . . is expressly an immediate emancipation of the plaintiff. . . its efficacy is not impugned by its silence as to meritorious services;" [Ruffin, C. J.]

State v. Jesse (*a slave*),[1] 3 Dev. and Bat. 98, June 1838. "The prisoner was arraigned on the following indictment . . 'present, that Jesse, a slave, being a person of colour, . . did . . feloniously make an assault, . . with intent . . feloniously to commit a rape upon . . B. W. being a white female, . . contrary to the form of the statute' . . the prisoner pleaded '*autre fois acquit*,' . . [99] the evidence raised a doubt whether a rape had not in fact, been committed; . . The court . . charged . . that if the prisoner, had in fact committed a rape, yet he was not . . entitled to a verdict; . . The jury found the prisoner guilty, . . Sentence of death"

Judgment affirmed: [109] "He could not prove himself guilty of the rape, for the purpose of availing himself of the former acquittal. . . in law, the felonies . . are so distinct . . that an acquittal . . of one cannot bar a prosecution for the other." [Ruffin, C. J.]

State v. Jones, 3 Dev. and Bat. 122, June 1838. "The defendant was indicted for *petit larceny*, in stealing two pigs . . found in the possession . . of a person of color [[123] 'a free negro woman, living in the suburbs of the town'] to whom the defendant had sold them,"

State v. Hathaway, 3 Dev. and Bat. 125, June 1838. "The defendant was tried . . for 'secretly . . and fraudulently harbouring . . a runaway slave,'[2] . . [126] the negro had one or more places of concealment on the land of the defendant, . . declarations of the defendant, that he could have taken the negro if he pleased, but that he would not do so because of the confidence that the slave reposed in him, offers by the defendant to purchase, . . His Honor instructed the jury, 'that if the evidence satisfied them that the defendant had fraudulently and secretly done any act to aid . . knowing him to be a runaway, with a view to make it more easy and safe for him to stay out, or to make it more difficult for his owner to take him, as if he permitted him to make a cave or shelter,

[1] See same *v.* same, p. 77, *supra*.
[2] Rev. St., ch. 34, sect. 73.

or camp upon his land, . . and while there . . informed him when it was safe to go, or when to stay, he was guilty. . . that fraud would be implied if . . the defendant knew the negro to be a runaway' . . convicted and appealed." Judgment affirmed.

State v. Leigh, 3 Dev. and Bat. 127, June 1838. "the Jurors . . present, that . . a certain negro slave Jim, the property of . . Leigh [one of the acting justices of the peace], . . did commit a felony by . . murdering . . Washington, the property of . . Leigh; and that . . Leigh . . well knowing of the commission of the said crime . . refused to issue his warrant for the apprehension of . . Jim," Indictment quashed.

Judgment affirmed: [129] [I.] "the allegations are entirely too vague . . [II.] A master . . is not . . bound, if [the slave is] at liberty, to be . . officially active against him in any stage of the prosecution. . . their relation imposes on him the obligation of the slave's defence," [Ruffin, C. J.]

Lamb v. Gatlin, 2 Dev. and Bat. Eq. 37, June 1838. The will of Spence Hall, who died in 1807, [38] "directed, that his negroes Big George and Little George, should be set at liberty on the 1st January 1820, . . the testator's widow . . sold . . Big George, for . . $300"

Burkhead v. Colson, 2 Dev. and Bat. Eq. 77, June 1838. By Muse's will, dated 1780, he bequeathed to his daughter "a female slave to be delivered to her on her attaining the age of sixteen, or her marriage,"

State v. Manuel, 4 Dev. and Bat. 20, December 1838. "The Defendant . . was convicted of an assault and battery, and . . sentenced to pay a fine of twenty dollars, and it appearing . . that he was a free person of colour and unable to pay . . ordered . . that the Sheriff . . should hire out the defendant to any person who would pay the said fine for his services for the shortest space of time."

Held: the act of 1831, ch. 13,[1] is constitutional: [24] "Upon the Revolution, . . Slaves remained slaves. . . [25] Slaves manumitted here become freemen—and therefore if born within North Carolina are citizens of North Carolina—and all free persons born within the State are born citizens of the State. . . our constitution . . extended the elective franchise to every freeman who had arrived at the age of 21, and paid a public tax; and it is a matter of universal notoriety that under it, free persons without regard to colour, . . exercised the franchise until it was taken from free men of colour a few years since by our amended constitution. But . . the possession of political power is not essential to constitute a citizen. . . [29] the fine . . is not a debt within the meaning of the 39th section of the constitution. . . [37] the legislature . . may rightfully so apportion punishments according to the condition . . of those . . likely to offend, as to produce . . that . . practical equality in the administration of justice which it is the object of all free governments to accomplish." However [38] "by a law of the last session[2] . .

[1] Rev. St., ch. 3, sects. 86-89.
[2] Act of 1838.

[39] the defendant may discharge himself of the fine . . by remaining in prison twenty days, and complying with the provisions" "prescribed for the discharge of debtors in execution under the first and fourth sections of the fifty-eighth chapter of the Revised Statutes, entitled 'Insolvent Debtors,'" [Gaston, J.]

State v. Bennett, 4 Dev. and Bat. 43, December 1838. "The defendant was indicted together with three other persons . . 'riotously . . did break and enter [the dwelling house of one Benjamin Curry, a free man of color] . . and carry away . . five slaves' . . [44] he bought the land about twelve years before, about which time he also bought the negro woman Phillis, who was his wife and the mother of the other slaves; . . [45] Hunt, and . . Lindsay, had . . by means of usury and extortion, obtained from Curry evidences of debt . . secured by a deed of trust, fraudulently obtained, upon Curry's land and negroes; that Lindsay and Hunt caused the trustee to advertise the negroes for sale, and that Curry under great apprehensions that his wife and children would be sold and carried out of the State, applied to . . Bennett for assistance; . . Bennett came to a secret understanding with Lindsay; . . a few days before the sale . . Lindsay refused to stand to his agreement . . upon which Bennett informed Curry that he could not assist him . . whereupon Curry took the negroes and carried them to Greensborough, and applied to counsel to have a bill of injunction prepared against Lindsay and Hunt; that Lindsay and Hunt hearing of this, went to Bennett and agreed to take one hundred dollars less for their claims than had been before agreed upon, if he would . . prevent Curry from filing his bill, and induce him to return . . that Bennett . . by artful representations . . prevailed upon Curry to return with the negroes; . . just before the sale was to take place, Bennett procured Curry to execute the deeds [for the negroes and land] . . [46] with an understanding that . . if Curry should pay to Bennett in twelve months the balance he, Bennett, should have to pay on the claims of Hunt and Lindsay, then the negroes and all the other property should be re-conveyed to Curry, and in the mean time he, Curry, should retain possession; that Curry believed that all this was expressed in the deeds; . . Lindsay handed over to Bennett all the evidences of debt, and . . the deeds of trust, . . short time afterwards Bennett told Lindsay that Curry was determined to file a bill and expose all his usury and frauds, and moreover that Curry alleged that one of the notes was a forgery; that Lindsay . . agreed to compromise upon almost any terms, . . and took from him a bond for less than one fourth of . . the former to be paid when Bennett should sell the negroes. . . [48] The jury returned a verdict of guilty against all the defendants; . . adjudged . . that . . Bennett, should pay a fine of $100, and each of the other defendants . . $10. . . that . . Bennett, should be imprisoned for six calender [*sic*] months; the imprisonment to be remitted upon . . Bennett's surrendering to . . Curry the negroes and other personal property . . together with the . . evidences of debt . . and executing to . . Curry a reconveyance of the house and land, . . negroes

and other personal property . . further . . that a writ of restitution should issue to the Sheriff . . requiring him to place . . Curry in possession of the house and land"

Judgment reversed; [51] "and this opinion is to be certified to the Superior Court . . with directions to award sentence of fine or of fine and imprisonment" I. [50] "The conviction . . did not warrant a writ of restitution. . . [II.] it was irregular to annex to the sentence any condition for its subsequent remission." [Gaston, J.]

Pearson v. Taylor, 4 Dev. and Bat. 60, December 1838. Will: "to my eldest daughter . . one negro woman Dice . . the first born of Dice that is living hereafter to fall to Martha Tenneson,"

Caldwell v. Smith, 4 Dev. and Bat. 64, December 1838. [65] "the negro [a blacksmith] was hired out . . for the year 1833, . . in November . . [the agent of the owner] offered to sell the negro, . . The price fixed on was $525, . . about the 1st of January, 1834, the defendant took possession . . soon after February Court, 1834, the negro died,"

Held: the rule of *caveat emptor* applies.

Conner v. Satchwell, 4 Dev. and Bat. 72, December 1838. Will: "if my negro woman Suck should have another child, I give it to my daughter,"

M'Kesson v. M'Dowell, 4 Dev. and Bat. 120, December 1838. Allen's bond, dated February 11, 1827: "On the third day of November next I promise to pay . . one hundred and thirty five dollars for the hire of two negroes Gabriel and Alfred, which slaves I am to feed and clothe well, pay their taxes, and return them well clothed" Allen [121] "was at that time engaged in mining in the county;"

Taylor v. Brooks, 4 Dev. and Bat. 139, December 1838. "in 1836 . . the widow . . sold five negroes, being part of those descended from . . Amelia [in whom she had a life estate], to . . . negro traders, . . who immediately after their purchase, and in the night time, run the negroes out of the State of Virginia,"

Popelston v. Skinner, 4 Dev. and Bat. 156, December 1838. Peggy and her child were sold at sheriff's sale, in 1837, for $500.

Bunting v. Ricks, 2 Dev. and Bat. Eq. 130, December 1838. "there was an interlocutory decree, that a certain slave should be sold . . made the sale on the 17th day of December, 1836, . . for $1106;"

Locke v. Armstrong, 2 Dev. and Bat. Eq. 147, December 1838. "He left a small estate which was exposed to sale by the administrators in November, 1781, . . The widow became the purchaser of the slave [a negro girl] at £85, 1*s*."

Lamb v. Trogden, 2 Dev. and Bat. Eq. 190, December 1838. In 1832 "Miles, valued at $300, was drawn by the complainants . . resided in Illinois, that the negro slave could not be carried into that state, . . desirous of disposing of all their interest . . 1833 . . Lamb, caused to be written a letter [postmarked 'Paris, Illinois'] . . to the defendant,

in which he stated that he was informed that Miles was in great distress to know what the plaintiff meant to do with him, that if he could get $300 . . for Miles, he would take it,"

Beverly v. Williams, 4 Dev. and Bat. 236, June 1839. "an action of trespass *vi et armis,* brought to recover damages . . for killing a slave of the plaintiff named Elias. . . some of the defendants shot a runaway slave found in the swamps . . [237] the other defendants were present and encouraged the act to be done. . . A witness . . saw the corpse . . the day after . . and he believed it was Elias, . . so much swollen, that he could not swear positively," Verdict and judgment for the plaintiff. Affirmed.

Buffalow v. Buffalow, 2 Dev. and Bat. Eq. 241, June 1839. Buffalow, [247] "of little mental capacity," [243] "told him that judgment had just been rendered against him for $100, as a penalty for trading with a negro: Immediately afterwards, a constable . . served two other warrants on him for the like penalties,"

Dicken v. Cotton, 2 Dev. and Bat. Eq. 272, June 1839. Will of Godwin Cotton: "I give . . unto [three persons] . . all my negroes, (except negro man Eli,) . . I . . bequeath unto my negro man Eli, his freedom, and three hundred dollars in money, to be left in the hands of my executors," [273] "Eli refuses the gift of freedom, because of the condition to leave the State, which the law [1] annexes to emancipation." Held: Eli falls "into the residuum of the testator's estate;"

Tucker v. White, 2 Dev. and Bat. Eq. 289, June 1839. In 1820 four slaves were [290] "set up to sale . . in one lot, . . and . . purchased . . at the sum claimed . . as . . due . . which a little exceeded $500: . . about half their value, which was the object of selling all together, instead of each separately, as desired by persons who were present and wished to bid."

Chambers v. Hise, 2 Dev. and Bat. Eq. 305, June 1839. "The condition of this bill of sale [dated 1830] is such, that if . . Hise is not satisfied with the said negroes [Jane and her child], or, if the said negroes are not satisfied with . . Hise, then . . Chambers has privilege . . to redeem the . . negroes, at any time that he shall pay . . to . . Hise, the three hundred dollars, or a negro girl to the satisfaction of . . Hise."

Jones v. Green, 4 Dev. and Bat. 354, December 1839. "being about to send Jenny from Wayne county, . . to the county of Warren, . . as he had bound himself to do when he hired her, [he] told Lane [his brother-in-law], that if he would perform that service, he might have Rebecca," the two year old child of Jenny.

State v. Hoover, 4 Dev. and Bat. 365, December 1839. "The prisoner was put on trial . . [366] for the murder of his own female slave . . named Mira." [369] "through a period of four months, including the latter stages of pregnancy, delivery, and recent recovery therefrom, . .

[1] Act of 1830. Rev. St., ch. 111, sect. 58.

He beat her with clubs, iron chains, and other deadly weapons, time after time; burnt her; inflicted stripes over and often, with scourges, which literally excoriated her whole body; forced her out to work in inclement seasons, without being duly clad; provided for her insufficient food; exacted labour beyond her strength, and wantonly beat her because she could not comply with his requisitions. These enormities, besides others too disgusting to be particularly designated, the prisoner, without his heart once relenting, practised from the first of December until the latter end of . . March; and he did not relax even up to the last hours of his victim's existence." [1] [366] "A physician . . called to view the body . . stated that there were five wounds on the head . . four of which appeared to have been inflicted a week or more before her death; that the fifth was a fresh wound, about one and a half inches long, and to the bone, . . sufficient to have produced her death: . . many other wounds . . sufficient, independent of those on the head, to have caused death. The reasons assigned by the prisoner to those who witnessed his inhuman treatment . . were, at one time, that she stole his turnips and sold them to the worthless people in the neighborhood, and that she had attempted to burn his barn, and was disobedient and impudent to her mistress; at another, that she had attempted to burn his still house, and had put something in a pot to poison his family. There was no evidence except her own confessions, extorted by severe whippings, . . on the contrary, she seemed, as some of the witnesses testified, to do her best to obey . . His Honor charged the jury, 'that they must be satisfied . . that he intended to kill her, . . [367] convicted, . . and sentence of death pronounced,"

Judgment affirmed: [367] "With deep sorrow we have perused the statement of the case . . the acts imputed to this unhappy man do not belong to a state of civilization. . . there can scarcely be a savage of the wilderness so ferocious as not to shudder at the recital of them. . . [369] In such a case, surely, we do not speak of provocation; for nothing could palliate . . [370] Punishment thus immoderate . . loses all character of correction *in foro domestico*, and denotes plainly that the prisoner must have contemplated the fatal termination, which was the natural consequence of such barbarous cruelties. . . the party is justly answerable for all the harm he did, although he did not specially design the whole." [Ruffin, C. J.]

State v. Edney, 4 Dev. and Bat. 378, December 1839. [379] "the warrant on which the slave [George] was arrested . . charged him with 'being concerned in breaking into the smoke-house of . . Kincard, in the night time, and taking a quantity of pickled pork.'" [378] "The defendant acknowledged a recognizance before a Justice of the Peace . . in the sum of $100, to be void on condition" that George appeared at the next term. "The slave failed to appear,"

Norwood v. Marrow, 4 Dev. and Bat. 442, December 1839. [445] "Norwood had been . . involved in debt, . . it was the wish of both himself and his wife . . that the . . land . . should first be sold, in order, if possible, to save the negroes;"

[1] Ruffin, C. J.

Charles v. Elliott, 4 Dev. and Bat. 468, December 1839. "an action of *Detinue* . . [469] defendant and . . White were trustees of a Quaker society; and that the slave had been claimed by the defendant as the property of the society, under a deed given by . . Morris, which deed was void in law. The defendant . . February, 1839, . . sent the slave to White, to protect him from the attempts of the plaintiff [administrator of Morris] to take forcible possession. White sent the slave out of the State without the knowledge or consent of the defendant; but afterwards informed the defendant . . who made no objection" Judgment for the defendant, affirmed.

Joyner v. Vincent, 4 Dev. and Bat. 512, December 1839. "a deed . . for the negro . . Aggy, dated . . 1813. . . in consideration of . . $150 . . 'Provided . . [513] if . . [Robert] Johnson should . . pay unto . . Britton [Johnson] the above sum . . before his death, . . obligation to be void, only the increase, if any, to remain the property of Britton Johnson.' . . Aggy went into the possession of Britton . . and remained . . for about eighteen months or two years, when she had a child . . Jacob, and shortly afterwards ran away, leaving the child . . she went to the house of Robert . . Britton asked Robert why he did not send the girl home? To which he replied that the girl complained of Britton's wife; that she was a good girl whom he had raised and had never struck a blow; and he disliked to force her back. Britton said he had one little child now to raise by hand; if Robert kept the woman and left him all the children to raise which she might have, it would be very hard on him, as he was to have no interest for the $150, but the use of Aggy instead; . . Robert replied that . . in order that he might not complain of having to raise the little negroes, if Britton would consent to let Aggy remain with him, he would himself raise . . all the children . . for Britton,"

Watson v. Ogburn, 2 Dev. and Bat. Eq. 353, December 1839. [354] "The bill . . stated, that . . the negro woman and [five] children yielded no profits, but were expensive to maintain; and that the negro woman was disobedient and dishonest; and that for these reasons, the plaintiff, . . April, 1836, when slaves were at their maximum price, sold . . Fan and her five children to . . Dodd, for . . $2000, which he charged to have been a very full, if not extravagant, price."

Munnerlin v. Birmingham, 2 Dev. and Bat. Eq. 358, December 1839. In December 1822, a negro girl, seventeen years old, sold for $400.

Tally v. Tally, 2 Dev. and Bat. Eq. 385, December 1839. "a sister . . [386] an idiot . . in 1818, . . became entitled to three slaves, . . in 1838 . . her negroes had increased to thirteen . . her maintenance and that of her slaves had exhausted the [$500] . . and also the profits of the slaves, and that there remained . . balance due to the plaintiff [in 1837] . . $2,205: 19 cents."

Ralston v. Telfair, 2 Dev. and Bat. Eq. 414, December 1839. The will of Samuel Ralston, who died in 1829, [415] "directed four of his

slaves to be emancipated; and that another . . should be sold to discharge a note then outstanding, which was given for the price of the said slave;" Ralston's father, not mentioned in the will, [416] "instituted a suit . . for the purpose of having the probate . . recalled; . . so ordered"

Held: [421] "the defendants are [not] chargeable with hires for the negroes which the will directed to be emancipated; from whom the defendants made no profits, as they were allowed to work for themselves . . from a regard to the supposed wishes of their testator;"

Pickard v. Brewer, 2 Dev. and Bat. Eq. 428, December 1839. One of the remaindermen "living in Tennessee, . . conveyed all her part of the . . slaves to . . Pickard, who resided in Louisiana. . . in 1828, after the sale . . the defendant [the tenant for life, who had purchased the interests of the other remaindermen] sold, in absolute property, all the said negroes to slave traders, who carried them out of the State;"

State v. Jarrott (*a slave*), 1 Iredell 76, June 1840. [77] "The prisoner . . was indicted . . for the murder of . . Chatham, a white man. . . Brooks, a white boy, about fourteen . . stated that he went with the deceased, who was eighteen or nineteen years old, to a fish-trap . . where several slaves were collected, on Saturday night; . . the only white persons present; . . they remained there until about two or three hours before day, when Chatham was killed; that the prisoner and . . Hughes, a free negro, played cards, and differed about the game, when they called on the deceased to keep the game for them, . . a second difference took place . . and Hughes refused to play longer; that the prisoner had a twelve and a half cent piece of coin, upon a handkerchief, on which they had been playing—which fell among the leaves, when he jerked up the handkerchief; that the prisoner . . not finding it, said that he saw his nine pence walk into a white man's pocket, and that any white man who would steal a negro's money, was not too good to unbutton a sheep's collar; . . further said that the deceased was raised and had lived on stolen sheep; . . if he did not give it up, he would kill him—and brandished a stick over the head of the deceased; . . [78] deceased requested the prisoner to search him; which the latter refused to do; . . deceased then turned out his pockets, and the prisoner then cursed him, and told him that he had the money in his shoes; . . deceased took off his shoes and stockings; that shortly afterwards, some of the company . . found the piece of money in the leaves, . . the prisoner continued to abuse him . . deceased . . told the prisoner that if he did not hush, he . . would stick his knife in him; upon which the prisoner drew his stick ['about three feet long, made of curled hickory, about the size of a common walking cane, larger at the butt end, and with a string attached to the small end, to fasten around the prisoner's wrist'], and told the deceased to do it if he dared; . . continued to use insulting language to the deceased, who took up a piece of fence rail . . and, having the knife still in his hand, . . ran him twice around the fire, and then ran him off, . . the prisoner soon after returned . . and said something . . upon which the deceased took up the piece of rail, and having

the knife still open . . went towards the prisoner; . . witness then heard two blows, and, upon going to the place, found the deceased on the ground. . . A negro slave . . Isaac, was then called as a witness for the State; and concurred in most points, . . [79] but . . did not see [the prisoner] . . shake [his stick] . . over the deceased's head. . . that after the money was found, the quarrel ceased for . . perhaps fifteen minutes—when the deceased renewed the quarrel, and swore he would kill the prisoner, and made at him, . . saw the prisoner strike him four or five blows with the stick . . Jones, a free negro, . . concurred with Isaac . . The deceased was . . not tall, but stoutly built. The prisoner was about six feet high, and of the ordinary size of negroes of that height; . . about twenty-three years of age. . . [80] Jones, stated also, that when the deceased renewed the quarrel, . . he swore he would kill the prisoner that night; that if he did not, he would go to his master on Monday morning, and have him whipped to his satisfaction; and he would then waylay him and shoot him with a rifle. . . The prisoner's counsel asked the court to instruct the jury, . . '4thly, That the deceased had no right to correct the prisoner, with the piece of rail or the knife, for insolent language; but ought to have applied to his master, or to a justice of the peace, for redress.' . . [81] The court refused . . The jury found the prisoner guilty of murder. A motion for a new trial . . overruled, and sentence of death pronounced,"

Judgment reversed, and a *venire de novo* awarded: [83] "insolence of a slave does not justify an excessive battery; . . [86] although his passions ought to be tamed down so as to suit his condition, the law would be *savage*, if it made no allowance for passion. . . That is a legal provocation of which it can be pronounced, having due regard to the relative condition of the white man and the slave, and the obligation of the latter to conform his instinct and his passions to his condition of inferiority, that it would provoke well disposed slaves into a violent passion." [Gaston, J.]

Campbell v. Street, 1 Iredell 109, June 1840.[1] "an action of trespass *vi et armis* for false imprisonment . . will of John Campbell . . of . . Virginia; . . 'My will . . is, that my negro woman Pender should have her freedom immediately, and her emancipation recorded. . . that all the rest of my black people should serve until my youngest child should be . . twenty-one, for the use of raising my children and young negroes. After my youngest child be of age, my will is that all my negroes should have their freedom and liberty.' . . among the slaves . . was her mother . . she, the plaintiff, was born after the testator's death, but before his youngest child, John Campbell, attained . . twenty-one . . in . . 1815 or 1816; . . until 1833, she had passed as a free woman in Virginia; that she was then taken by the said John Campbell, Junior, and sold to . . a co-partner in negro trading with the defendant. . . the defendant had held . . her as a slave ever since she was brought to Person county. . . produced a statute of . . Virginia, enacted in

[1] Note by the reporter: "This case was decided several terms ago, but was overlooked by the Reporters."

. . 1782, allowing masters to liberate their slaves by deed or will. . . verdict . . for the plaintiff, and . . judgment upon the verdict," Affirmed.

Williamson v. Canady, 1 Iredell 113, June 1840. "a co-partnership . . for the purpose of buying and selling negroes; . . agreed that each member of the firm should advance . . five thousand dollars by a certain time;"

State v. Plunket, 1 Iredell 115, June 1840. "The defendant [a licensed retailer of spirituous liquors] was convicted . . on an indictment, charging that he . . sold spirituous liquors to a slave"

Hardin v. Borders, 1 Iredell 143, June 1840. "the plaintiff was arrested . . under a State's Warrant, which charged him with . . stealing a negro man . . two justices . . adjudged the plaintiff to be guilty"

Newsome v. Roles, 1 Iredell 179, June 1840. Roles's agent [180] "was . . directed . . that if he had to sell these negroes, as they were favorite slaves, . . he [the agent] should reserve a right to Roles, to redeem or re-purchase them."

Holt v. Kernodle, 1 Iredell 199, June 1840. [200] "they were the proprietors of a blacksmith shop, in which they had two slaves engaged; and . . 1836, they employed a blacksmith . . to work in the shop with the slaves,"

Stone v. Hinton, 1 Ired. Eq. 15, June 1840. Will, dated 1834, of Mrs. Sarah Stone, who died in 1838: "I consider the most benevolent plan that I can pursue toward my negroes, will be the following: I desire that they shall all be sold in families; that husband and wife, where I own both, and their small children, shall be put up together. They shall not be sold to speculators, but to persons for their own use. . . Happy, Penelope's daughter, I leave to my sister during her life, and to be sold at her death, or to be made free, if her conduct shall merit such a distinction, in the opinion of my sister."

White v. Green, 1 Ired. Eq. 45, June 1840. "Arthur Green died some time in . . 1830, leaving a will . . [46] 'It is my wish . . that my trusty negroes, Ben and Nancy, for their long, faithful and meritorious services, should, at the death of my wife, be liberated and freed of their bondage, and that I desire my friend Henry Garret to attend to the same, and see that they be so liberated and freed. . . that . . Ben and Nancy, should, at the death of my wife, have a part of the tract of land, . . also . . one cow and calf, one sow and pigs, and a certain bay mare called Jin, to them and their heirs forever." [49] "The will was made before the passage of the act of 1830." [1]

Held: "the will, as to those matters, is inoperative;"

Boon v. Rea, 1 Ired. Eq. 71, June 1840. Leak's will: "It is my will that all the remainder of my negroes not given away, to be sold—those not above the ages of ten years to be sold with their mothers,"

[1] Rev. St., ch. 111, sect. 57.

Harriss v. Mabry, 1 Iredell 240, December 1840. "an action . . for carrying a slave out of the State. . . the defendant and others were owners . . of the Piedmont line of stages from . . South Carolina . . to Prince Edward Court House, in Virginia; from which . . there was another line of stages to Baltimore. . . December,1838, a mulatto girl got into the stage at Mrs. Smith's, . . The girl paid her passage to Salisbury . . had a pass, signed by Mrs. Smith, permitting her to go to Salisbury; . . Morris [the driver] carried the girl openly . . [241] to Salisbury. She then paid her passage . . for Greensboro'. . . continued on in the Greensborough stage. Mr. Harris stated that . . the mulatto girl, the property of the plaintiff [[240] 'who lived within a few miles of Mrs. Smith's'], left the plaintiff's house without her permission, and . . he pursued on in the next stage, and heard of her along the route, until he arrived in Baltimore, . . at which place he had her apprehended, and brought her back. At several places on the route, he called at the stage offices, and saw an entry on the way-bill, 'Mary Harris, a yellow girl.' . . the plaintiff's girl was absent from her service about three weeks; that he had kept an account of his expenses . . including that of the girl on her return, and the amount was $214, exclusive of his own services. . . [242] verdict for the plaintiff. Damages $235." Judgment for the plaintiff affirmed.

Bonner v. Latham, 1 Iredell 271, December 1840. In 1840, a jury [273] "found the value of the negro Toby to be one thousand dollars,"

Smithwick v. Biggs, 1 Iredell 281, December 1840. Will, dated 1824: "I wish for the negroes lent to my wife, if they do not behave, to be hired out. I also wish for all the negroes not given to be hired out as soon as they will bring any thing."

Shirley v. Whitehead, 1 Ired. Eq. 130, December 1840. [131] "he had no white person dwelling with him, and stood in need of better nursing and more assiduous attentions than he could expect from his slaves;"

Griffin v. Pleasant, 1 Ired. Eq. 152, December 1840. [161] "the mother of Wesley died soon after giving birth to the infant; that the elder Mr. Pleasant offered the infant to any of his children who would undertake to rear it; . . they all declined . . except . . the wife of . . Griffin." [155] "after the death of their father, the boy Wesley ran away; that they found him in the employment of . . Warren; took him home,"

McDonald v. McLeod, 1 Ired. Eq. 221, December 1840. [225] "the negro was as likely as any of his age [twenty-two years] in the neighborhood, . . the witness would have given $500 for him, but he does not know that he would have sold for that sum, where not personally known,"

Lewis v. Owen, 1 Ired. Eq. 290, December 1840. [296] "in 1829 there was a depression in the price of slaves, and that $400 was the usual price of prime men; . . that $400 was the full value, if not more than the full value, of Jupiter [who was about 17 years old]; . . In

November, 1836 [when there was [295] 'a sudden and very great rise in the price of slaves'], Jupiter would have sold for $1,000." In 1834 the defendant "removed him, and a large number of other slaves, to a plantation in Mississippi, on which he remained until the winter of 1836, when the defendant sold the plantation and negroes;"

Wade v. Dick, 1 Ired. Eq. 313, December 1840. [319] "in December 1801, . . Williamson obtained a judgment . . that a *fi. fa.* issued thereon and was levied on certain negroes and other personal property; . . the sheriff . . sold . . negro woman Mary for £5. 1. 6., negro boy, Anthony, for £58. 0. 6., and negro woman Rhoda and child [Jane] for £185. 0. 6.," to Gwinn. Gwinn gave Jane to his daughter. In August 1822, Rhoda and her two children, Hannah and Esther, were sold at auction [316] "for $631 50 cts., which they aver to be . . a very high price, . . [to] Williamson, who alleged as a reason for giving such high prices, that he owned Joe, one of Rhoda's children, and had a favorable opinion of the family." In 1823 Will and Ben were sold [317] "at the price of $1,112 50 cents;"

State v. Fore and Chestnut, 1 Iredell 378, June 1841. [379] "the defendants had, continuously for a year . . co-habited together as man and wife, and had one child . . Joel [Fore] was a free person of color, and . . Susan [Chestnut] was a white woman. . . offered in evidence a licence from the Clerk of the County Court, authorizing the marriage of the defendants, bearing a date subsequent to the act of Assembly passed during the session of eighteen hundred and thirty eight—nine,[1] declaring marriages between free persons of color and white persons null and void; and . . offered to prove that the marriage was duly solemnized in . . 1840, prior to the co-habitation. The court rejected this testimony, and the defendants were convicted.[2] . . judgment pronounced for the State." Affirmed.

Matthis v. Rhea, 1 Iredell 394, June 1841. Will, dated 1834: "She is not allowed to sell . . said effects, . . with the exception of a negro boy child"

Woolard v. McCullough, 1 Iredell 432, June 1841. "overseer of a road . . had duly summoned the defendant to work on said road . . for himself and his two hands, in . . 1838; that defendant had sent two of his slaves to work on said road, one day during that year."[3]

Cobb v. Fogalman, 1 Iredell 440, June 1841. [441] "The fraud complained of, was alleged to have been committed in the sale of a female slave Sally, who, at the time of the sale, labored under cancer or other disease of the womb, . . The plaintiff produced a bill of sale . . for the said slave, and her daughter Hannah, about four years old, . . 1838, containing a warranty of title, but not of soundness, . . Sally, while in possession of the defendant, had borne, after . . Hannah, two children, . . dead, or survived but a short time; that at the time of sale, she was

[1] Act of 1838, ch. 24.
[2] Under the act against fornication and adultery. Rev. St., ch. 34, sect. 46.
[3] *Ibid.*, ch. 104, sect. 10.

advanced in pregnancy about six months; that on several occasions, soon after the purchase . . she was attacked with faintness when working in the harvest field . . and in August . . was taken in labor, when, after . . about thirty-six hours, a physician was called in, who performed the Caesarean operation, delivered her of a child, which he testified was then recently dead, and that the mother died about five or six days thereafter. He also testified . . neck of womb diseased with cancer . . and that, in his opinion, the disease had existed for several years; . . the slave had attacks of faintness, while in the defendant's possession; that defendant . . said they occurred while she was pregnant; . . had no other female slave, except a girl about 14 years old. The defendant offered evidence to shew that he had owned . . Hannah about four years; that she was a stout, vigorous looking woman, [442] and, during all the time he owned her, performed service as a cook and washerwoman for his family, or as a field hand; and was on no occasion prevented from service by sickness, except by an attack of measles, and during her confinement . . that the plaintiff, about a month before the sale . . bought . . the husband of Sally, and who had been her husband all the time that the defendant owned her; that the plaintiff owned no other slave, except a small boy; . . said, the reason why he wished to purchase her was, that he owned the husband, and that his daughters did not like to wash for the negro man;" Verdict for the plaintiff. Judgment for the plaintiff, reversed and a new trial awarded.

Redman v. Roberts, 1 Iredell 479, June 1841. "the plaintiff alleged that the defendant had sold spirituous liquors to his slave,[1] and that he had drunk to such excess as to occasion his death, and claimed from the defendant between three and four hundred dollars as the amount of damages he had sustained. . . the parties compromised, by the defendant giving two bonds for one hundred dollars each,"

Newlin v. Freeman, 1 Iredell 514, June 1841. [516] "Sarah Freeman could not read English, . . was a German woman, and could read German . . was 65 or 70 years of age . . had declared, before making her will and afterwards, that, when she was dead, her negroes should be free, and serve no one. . . Newlin [[514] 'who propounded the paper writing, as the last will . . of Sarah Freeman'] was a member of the Quaker Society. Mrs. Freeman had always said that it was the intention of her former husband and herself to set the negroes free, and send them to a free state or country—that she could not do that, and she intended to give them to some steady old Quaker, who would not own slaves, . . [517] The jury found . . that the paper writing was the last will . . [518] admitted to probate . . [519] disposing of the personal estate" See Thompson *v.* Newlin, pp. 110, 141, 163, *infra.*

Cole v. Robinson, 1 Iredell 541, June 1841. [542] "Foxhall . . bequeathed Fan, and her increase to his daughter Joanna . . for life, . . Foxhall died in 1792, . . 1803 [two of Joanna's children] . . sold . . Fan to Robinson, . . that after the said sale Fan had issue, the negroes

[1] *Ibid.*, ch. 34, sect. 75.

Tamar and Daphne, . . in 1829, Robinson sold Tamar and Daphne to a negro trader, who immediately removed them out of the State and to parts unknown;"

Ragland v. Huntingdon, 1 Iredell 561, June 1841. [562] "the testator was a free man of color, that Hannah Ragland, his widow, . . one of the plaintiffs [and a legatee], was a free woman of color, . . Rachel Ann Arey [the other plaintiff and legatee] was of pure white blood," "both of the defendants were free persons of color; . . his Honor rejected the testimony [of two witnesses, persons of color, 'offered by the caveators . . to prove admissions of Hannah']."

Held: [564] "they were competent . . [565] to give evidence of *her* [Mrs. Ragland's] admissions and declarations. It comes within the exception in the statute;[1] and the circumstance that Arey . . might be incidentally affected . . was not sufficient to exclude them."

Threadgill v. Ingram, 1 Iredell 577, June 1841. In the spring of 1841, a male slave sued for, was valued, by agreement, at $700.

Jones v. Jones, 1 Ired. Eq. 332, June 1841. "in September, 1836, . . formed a co-partnership to purchase and sell slaves on speculation . . Hardy Jones was to advance . . $3350, and the defendant one third part as much, as capital; and the defendant was to invest the same and carry the slaves to the south-west for sale, pay all expenses out of his own pocket, and divide the profits equally . . [333] sold them in Alabama, . . The answer . . states that the expenses were $501, 65 cts. . . [334] The master finds . . that the profits amounted to $2800, after deducting all expenses,"

Parker v. Hinson, 1 Ired. Eq. 381, June 1841. [384] "has heard the plaintiff's mother speak of the little negroes she had, as being raised by her for the benefit of her son; that on one occasion, when a negro child was born, she told him to go and look at his little negro; that on one occasion, . . [385] the plaintiff whipped some of them, and she said she had a good mind to send them home to him, as she was unfit to raise them;"

Bethune v. Terry, 1 Ired. Eq. 397, June 1841. [399] "The defendant avers that soon afterwards [1834], the value of negroes began to rise . . and continued to do so during . . 1835 and 1836;"

Cameron v. Commissioners, 1 Ired. Eq. 436, June 1841. [437] "The late John Rex . . bequeathed unto . . Cameron and . . Mordecai . . all his slaves, in trust to cause the said slaves, as soon after the testator's death as practicable, to be removed to Africa, and there settled in some colony, under the patronage and control of the American Colonization Society; with a proviso, that in case any . . should refuse to be so removed, the slave so refusing should be sold and the money . . added to the fund created for the removal and support of such . . as should be removed to Africa with their consent. . . 'It is my will . . that the lands . . tan yard . . all my crop, stock of every kind, plantation tools

[1] Rev. St., ch. 31, sect. 81.

and carriages, implements for tanning and currying, household and kitchen furniture, . . be sold . . and the proceeds . . shall constitute a fund to defray the expenses incidental to the removal . . and for the establishment of said slaves in such colony' . . [438] the executors . . caused all the said slaves, with the exception of . . Winney, who would not consent to leave the state, to be removed to . . Liberia . . where they are now residing as free persons."

Held: [440] "the whole of the fund appropriated to the removal and settlement of these negroes is given for the beneficial use of the removed negroes, . . as their property, . . in the act of 1830, ch. 9, . . it is the declared policy of this State to . . encourage their emancipation, so that they be but removed . . [441] without the State. As a fund, therefore, devoted to a charitable purpose, not inconsistent but in accordance with public policy . . we see no valid objections to the appropriation." [Gaston, J.]

Webb v. Griffith, 1 Ired. Eq. 446, June 1841. [449] "in January 1833, the negro girl . . and her infant children, were sold . . for . . five hundred dollars; . . October, 1834, . . he sold the negro boy Rufus[1] . . for . . $400; . . and moved off with three negroes . . to Tennessee;"

Wardens v. Cope, 2 Iredell 44, December 1841. "Bumgarner . . sued as well for himself as the Wardens of the Poor of said County, in a plea of debt for one hundred dollars, due by penalty under the act of 1826,[2] for trading with David, the slave of . . Love."

McNamara v. Kerns, 2 Iredell 66, December 1841. "an action of Trespass . . to recover the value of nine hogs . . taken by the defendants. . . the plaintiff was a farmer, and had several negroes . . who were permitted to raise hogs for themselves. The negroes had the hogs in pens, within sight of the dwelling house of the plaintiff, and the plaintiff said that they were the negroes' hogs, that what was theirs was his, and . . forbade their being taken . . a warrant, signed by five . . [67] Wardens of the Poor . . placed in the hands of the defendant, Daniel Kerns, one of the constables . . Whereas by . . information of John Kerns, planter, to the Wardens of the Poor . . that the slaves of . . McNamara, and also the slaves of . . Torrence, do, against the Statute,[3] . . raise, keep, and mark hogs as their own . . property: These are therefore to command you . . to . . seize upon the property of hogs owned by said negroes, and bring them to the Wardens of the Poor. . . to be disposed of according to Act. . . Given under our hands . . November, 1840." Verdict and judgment for the defendants. Judgment affirmed.

Buie v. Buie, 2 Iredell 87, December 1841. [88] "for the last six or eight years the defendant, with the assistance of her sons and the negro boy, made fine crops for sale,"

[1] A negro man. 1 Ired. Eq. 446.
[2] Rev. St., ch. 34, sect. 75.
[3] *Ibid.*, ch. 89, sect. 24.

Jacocks v. Mullen, 2 Iredell 162, December 1841. In 1835 Aaron was sold [164] "because of his misconduct, for . . $375;"

State v. McGowen, 2 Ired. Eq. 9, December 1841. Dickson's will, dated 1813: [10] "old Lucy and her daughter Lucy, and her son Frank and her increase hereafter to be sold in one lot and not separated, also Kit, and her three youngest children that she may have at the time of my decease to be sold in one lot and not separated. Old Tarisman is to be well treated by my executors and not let him want for any thing. The negroes not herein named are to be sold separate to the highest bidder. The remaining part of my estate . . [11] sold in the same way . . the nett proceeds . . to the use of a free school or schools for . . the poor of Duplin County."

Little v. Marsh, 2 Ired. Eq. 18, December 1841. "the sheriff . . levied the . . executions on . . Clarissa and her five children, . . and . . did, . . September, 1838, sell said negroes at the court house door . . for . . one thousand four hundred and fifty-five dollars. . . [21] The defendant . . stated . . [22] that it was understood among the said slaves, . . that . . Ashcraft [to whom he had sent Clarissa after Ashcraft's marriage to defendant's daughter] was going to convey off to Mississippi all his own negroes, . . and, it was believed, that . . he would also run off privately with them, Clarissa and her children," Consequently they [23] "ran away of their own accord and came to the defendant's house, where they remained till seized by the Sheriff" Daniel, J.: [27] "the answer of the defendant appears . . [28] to want frankness,"

Atkins v. Kron, 2 Ired. Eq. 58, December 1841. Will of Delamothe, "a native of France," dated 1838: [60] "his executors shall hire out his slaves, except one family, . . David and his wife and their daughter Charity and her four children; . . directs that they shall be put in possession of a certain piece of land, and 'there live together, provided that David and all his family support themselves, . . and in order that he may be able to accomplish this task, I desire that he should enjoy the product of that farm, with the labor of himself, his wife and daughter Charity and Charity's children, until the children attain the age of 21; and then that Charity's children be returned into the common stock, as every one of them attains . . 21.' The will then gives David and his wife . . some provisions, a horse, some farming stock and utensils, and directs that they shall 'remain in possession of that land during their natural life, free from all incumbrances.'"

Held: [66] "he did not intend their emancipation,"

Freeman v. Knight, 2 Ired. Eq. 72, December 1841. [74] "The testator bequeaths . . to his son-in-law . . Bridges, and his daughter . . for life . . a girl Franky—who at the time of making the will, had an infant child. . . Franky had been put into the possession of Bridges . . some time before the birth of this child,"

Held: [75] "in regard to this negro child there is a partial intestacy, and it is to be disposed of under our statute of distributions."

Gunn v. McAden, 2 Ired. Eq. 79, December 1841. [80] "In the latter part of . . 1835, the plaintiff and the defendant jointly purchased from one Lewis a number of slaves, at . . $32,000; . . Early in 1836, a sale was made of the same negroes to persons in Mississippi, for . . $50,000; whereof 15,000, was to be paid at a short day, and for the residue the purchasers were to give their bonds at one and two years. . . but before the cash payment . . the defendant made a new contract . . by which the price was to be $60,000, on a credit of one, two, and three years;"

M'Laurin v. Wright, 2 Ired. Eq. 94, December 1841. The female slave Edy, sixteen years old, [99] "in the opinion of one of the witnesses, was worth $350 [on February 16, 1836], and in that of the other three, $400 . . There can be no positive correctness in setting a value on a slave. One man will give or take fifty or one hundred dollars more or less in the purchase of one than another man will." [Ruffin, C. J.]

Dailey v. Dismal Swamp Canal Co., 2 Iredell 222, June 1842. "an action . . to recover damages for the negligence of the defendants' agents, in consequence of which a canal boat belonging to the plaintiff was sunk, and his negro Aaron drowned. . . he hired the negro . . from . . Watson . . at $65 for the year. . . [223] a part of the contract that the negro should not be sent by nor employed on the canal of the defendants, except at the risk of the plaintiff. . . the owner . . recovered of the plaintiff only $75." Verdict for the plaintiff for "the value of the negroe's services [not only] for the residue of the year for which he was hired, but also the $75,"

Adams v. Hayes, 2 Iredell 361, June 1842. [363] "the defendant procured two men to go to South Carolina and take the negroes [whom he had loaned or given to his daughter] from the possession of the plaintiff [his son-in-law] in the night time and bring them to him"

Blackledge v. Clark, 2 Iredell 394, June 1842. "five negro slaves [owned by Brown] . . had been levied on [in 1830] . . ran away from a tanyard, where they were employed . . and could not be taken, so as to be sold by the deputy marshal in Newbern . . [395] where they feared they would be purchased by speculators." Brown testified that [394] "he contrived to have an interview with the slaves about nine o'clock at night [April 4] at the wharf in Newbern, and prevailed upon them to accompany him to the town of Washington . . [395] delivered them [April 6] to Mr. Demilt, the deputy Marshal [who had been [396] 'requested . . to advertise Mr. Brown's slaves for sale in Washington, and on the 27th of March, 1830, he did . . to be sold on the 6th day of the following month'] . . the latter sold them at public auction, at the door of the Court-House, . . the same day . . there were four or five persons present . . one of whom . . bid them off for . . the plaintiff [Brown's brother-in-law] . . at . . $210" Brown [394] "does not recollect the price at which slaves sold in 1830, but that some

time after . . four of the slaves would have sold for $1,200 each, and the fifth for 1,500 or 1,600 dollars—and that the four first would hire for $120 each per annum, and the other for $400 per annum. . . [396] no money was paid for them . . [397] Wiswall swore that he lived in Washington in 1830, and was . . engaged in the purchase of negroes, but he never . . heard of the sale . . until after it was over." [400] "Brown supplied the money to defray the expenses . . and . . also took . . the negroes back to their old employment in the tan-yard,"

Held: [399] "The transactions . . are . . palpably dishonest on the part of Brown"

Baum v. Stevens, 2 Iredell 411, June 1842. "the defendant sold a number of negroes at public auction, . . declared, when the negro prior to Jim was offered, that he did not warrant that negro, as he was unsound—that when Jim was offered, he remarked 'here is a young, likely, healthy negro; what is bid for him?' whereupon the plantiff bid . . $480, and Jim was stricken off to him" Jim was unsound.

Lee v. Gause, 2 Iredell 440, June 1842. "Received, August 23d, 1833, . . five hundred dollars, . . for a certain negro fellow"

Cannon v. Peebles, 2 Iredell 449, June 1842. [451] "Spruill . . was engaged in fulfilling a contract for work . . on the . . Rail Road, which was to be continued throughout . . 1841, and had employed eleven of his negro slaves . . and that of the remaining sixteen slaves, all (except the children who were unable to labor and three servants . . in attendance on . . Spruill's family) were occupied in making a crop"

Willis v. Butler, 2 Ired. Eq. 145, June 1842. The Brindletown Gold Mine "was one called a surface mine, that Butler had under him a prime set of hands, that he worked them hard, on land unoperated on before, and he rendered an average account of but two pennyweights of gold to the hand per day—that his successor . . [146] the next year, with an inferior set of hands, . . having but little fresh mining land, made from four to five . . Butler in his answer . . denies . . that the mining land . . was in its primitive state . . but . . it had been operated on, . . before he took possession [1829], by one hundred and fifty or two hundred hands."

Abernathy v. Hoke, 2 Ired. Eq. 157, June 1842. In April 1827 [164] "Sue had nine children, of which five were sold separately, and of those Hoke bought two, and that the other four were sold with their mother [to Hoke] on account of their ages[1] at $632. . . these negroes sold remarkably high for their ages and appearance." Hoke left Sue and her younger children with Abernathy, their former owner, till 1831, [160] "inasmuch as he had no immediate use for them, and their services were about equal to their tax, victuals and clothing. . . [163] a negro by the name of Mingo, who was the husband of the woman, was purchased for one Dogharty, and that the winter after, or . . the next

[1] [161] "too small to separate from the mother."

. . Hoke applied . . to purchase him. . . that his reason for not buying Mingo [at the sale] was, that he went too high. . . subsequently Hoke did buy Mingo."

Averitt v. Foy, 2 Ired. Eq. 221, June 1842. [225] "The defendant said that he was giving medicine to the negro; that he thought he would be able to cure him, and make the slave useful as a cooper . . This witness states, that he believes that the negro was diseased when the plaintiff hired him; that he, as patroller, had several times visited the slaves . . and this slave was unwell and complaining. On his last visit . . the legs of the slave were swelled."

Crawford v. Shaver, 2 Ired. Eq. 238, June 1842. Will: [239] "My will . . is, that the negroes . . shall be hired out in the county . . and not without the county,"

Bradley v. Jones, 2 Ired. Eq. 245, June 1842. Will: "I give unto my son Willie Jones' children one sixth share in my negro Mary and all of her children." Mary had a grandchild.

Held: [248] "the grand-child did not pass to said legatees. . . is therefore to be sold under the residuary clause,"

Lee v. McKay, 3 Iredell 29, December 1842. "the operation of sawing and all other labor about the mill were performed by slaves."

State v. Tomlinson, 3 Iredell 32, December 1842. [33] "The defendant was indicted and tried for trading with a slave, an offence embraced in ch. 34, sec. 75, Rev. Stat."

Green v. Harris, 3 Iredell 210, December 1842. About 1798 "his father . . called Matilda and said to her, 'Go over to Bob Green's and nurse for my daughter'—that Matilda . . went to the plaintiff's and continued in his possession" till 1840. [212] "Matilda when she first went . . was a very small girl" About 1832 Hogan hired two of Matilda's children, "Lucy . . [and] Richmond and an infant child of Lucy for one year, for $12" Another witness stated, [213] "that on the birth of one of Matilda's children, he observed to the plaintiff that Matilda would make him rich,"

Mayho v. Sears, 3 Iredell 224, December 1842. Action of trespass *vi et armis*. "On the 23d of July, 1805, John Moring, then a citizen of . . Virginia, . . executed a deed of manumission . . duly acknowledged in the court . . and . . recorded . . 'Know ye, that I . . do by these presents emancipate . . a certain parcel of negroes as they come of age and time hereafter to be mentioned, Hannah, Patrick, Cherry, Jordan and Charlotte, to be free without day. Isabel to be free the first day of November, one thousand eight hundred and seven; Carter to be free the sixteenth day of August, one thousand eight hundred and twelve; Polly to be free the first day of April, one thousand eight hundred and fourteen; Burwell . . [225] the tenth day of April, one thousand eight hundred and twenty-two; Maria . . the twenty-fifth day of December, one thousand eight hundred and twenty-two; Willis . . the

eleventh day of April, one thousand eight hundred and twenty-four.' . . After the execution . . Moring removed into North Carolina, . . bringing . . Polly . . She, before the first day of April, 1814, had . . a daughter, and that daughter about . . 1830, had issue the plaintiff. After the first day of April, 1814, . . Polly, being on that day of full age, lived by herself and with her children, and acted in every respect as a free woman, and she and her daughter and the plaintiff were recognized in the neighborhood as free persons of color, and as such . . by . . Moring, . . until . . 1838, when he sold . . the plaintiff to the defendant,"

Judgment for the defendant, affirmed: [232] "the plaintiff's mother was born a slave, and so, consequently, was he."

Canaday v. Nuttall, 2 Ired. Eq. 265, December 1842. [266] "The bill . . states, . . that James Nuttall ran off the negroes,"

Whitehurst v. Harker, 2 Ired. Eq. 292, December 1842. Held: slaves are "moveable property."

Latham v. Wiswall, 2 Ired. Eq. 294, December 1842. The court made an order [295] "that all the property of the . . lunatic, except two chargeable female slaves, . . be sold"

Foscue v. Foscue, 2 Ired. Eq. 321, December 1842. In 1805 Foscue "executed a deed, whereby he conveyed to his daughter . . then an infant and lunatic, and residing with him, four slaves . . at his death,"

Hester v. Hester, 2 Ired. Eq. 330, December 1842. Will of Benjamin Hester, admitted to probate in 1838: [331] "to my wife twelve negroes, at her death to do with . . as she may think proper, six males and six females, out of Harman and Amie's family, and if my wife should think at any time that the property is burdensome to her, she can . . sell any part she may choose, . . [332] that my old man Shadrach be set free."

Roberts v. Green, 2 Ired. Eq. 346, December 1842. Will: "My two negroes . . I . . bequeath to my great-grand-daughter, . . But . . that the two . . be hired out during the natural life of my grandson . . and their wages paid to him"

Long v. Norcum, 2 Ired. Eq. 354, December 1842. [355] "the negro woman . . after becoming grown, had children, and by reason thereof no hires could be got for her . . but that she and her family became chargeable, and in 1836 . . $27, and in 1837 . . $48 were paid for keeping them." In 1829 the mother was [359] "worth probably $300," In 1838 the administrator sold her and her four children for $1487.50.

Snider v. Lackenour, 2 Ired. Eq. 360, December 1842. Will: "My negro woman Betty and her child David, I give unto my heirs . . conditioned that the . . negroes are not to be sold out of their families, . . not to misuse said negroes while they behave well, neither to hire them to any other person against any of my heirs will;"

Green v. Thompson, 2 Ired. Eq. 367, December 1842. In 1838 Edwards [366] "sold unto the defendant . . ten negroes . . two of whom

were women and the others their children, . . and . . the defendant covenanted . . to maintain . . Edwards . . during his life, . . that, if . . Edwards should prefer to reside with some other person, then he was to have the privilege to take the said negroes . . during his life, all of which, at his death, were to return to the said defendant . . the expense of maintaining the negroes was equivalent to the value of their services.— He retained . . [367] a negro man and negro woman worth together $900, . . After the quarrel, he demanded his negroes, but having avowed his determination . . to run them off to Alabama, the defendant refused to surrender them."

Morrison v. Kennedy, 2 Ired. Eq. 379, December 1842. Will of John Patterson: [380] "Having considered my negro man Simon, a slave, to be no part of the aforebequeathed property ['all my personal estate'], I . . ordain . . Kennedy [executor] the sole management and control over . . Simon. I also exclude Hilly, . . Simon's daughter, as being no part of my property."

Held: [381] "It is extremely probable . . that the testator intended a covert provision for emancipation; but nothing of the kind is brought forward in . . bill or answer, . . the two slaves must be declared . . to be held by the defendant in trust for the next of kin." [Ruffin, C. J.]

Sloan v. Williford, 3 Iredell 307, June 1843. "bill of sale . . 'Received of . . Sloan . . nine hundred dollars in full satisfaction of a negro man . . aged twenty-one or two years, which negro I warrant to be of sound mind and body, and I warrant the right and title . . 1836;' . . The plaintiffs alleged . . that the negro . . was unsound both in body and mind."

Held: [309] "a purchaser may recover on a covenant, that the slave is of sound mind, although he be not an idiot, nor, at the time, a lunatic. If . . one subject to lunacy has a lucid interval at the time of sale, but afterwards became insane, the covenant would be broken. . . So too, if the slave, though not actually an idiot, be so weak in understanding . . as to be unable to comprehend the ordinary labors of a slave, and perform them with the expertness that is common with that uneducated class of persons, his mind must be deemed unsound within the meaning of the warranty." [Ruffin, C. J.]

Re Harding, 3 Iredell 320, June 1843. "a petition . . praying for a sale, in order to make partition of certain slaves held in common by the petitioners; . . decreed . . that a sale should be made"

Lane v. Wingate, 3 Iredell 326, June 1843. [327] "the plaintiff declined selling him, alleging that he wanted Daniel to wait upon an old negro woman . . named Rhoda, who was upwards of one hundred years of age, . . defendant replied, that if the plaintiff would let him have Daniel, he would support old Rhoda during her life; the parties valued Daniel at two hundred dollars, and the defendant executed the agreement" Rhoda remained with the defendant [327] "for about four weeks, after which time she returned to the house of the plaintiff, where

she has remained ever since . . it was worth twenty-five dollars a year to support Rhoda. . . [328] verdict for the plaintiff, assessing his damages at seventy-five dollars."

Williamson v. Canaday, 3 Iredell 349, June 1843. Bill of sale: [350] "1836, December the 2d. Received of . . Williamson and Co. twenty two hundred dollars . . for two negro men, Ephraim, a blacksmith, about 32 years old, and James, about thirty-three years old, which negroes I warrant sound, healthy and free from all claims" Ephraim "was, at the time of the sale, infected with the small pox, of which disease he soon after died, . . verdict for the plaintiffs, . . damages the price paid for the slave, with interest to the time of the trial." Judgment for plaintiffs affirmed.

Lillard v. Reynolds, 3 Iredell 366, June 1843. [368] "he returned her [Sylvia] to the testator . . and received another slave . . in her stead—that this was done because Sylvia commenced breeding"

State v. Tilly, 3 Iredell 424, June 1843. "the prisoner . . was an overseer of the deceased . . said the deceased accused him of trading with his negroes, . . went off in a run, . . Soon thereafter a negro man of the plantation came to the house . . [426] for a Frow to rive the timber . . A short time after this, another negro of the plantation came running from the same direction in great alarm with the intelligence of the killing. . . [428] Gordon testified . . that he, the prisoner, . . expected they would come together; and if they did, he wished it to be where no one was present but negroes."

State v. Watters, 3 Iredell 455, June 1843. "indictment for a libel . . 'Notice. . . Tinsley . . in a suit wherein . . myself and wife were defendants, swear [*sic*] a wilful lie and I can prove it. . . William P. Watters.' . . The defendant relied on the truth of the charge as a justification. . . defendant and . . Zilpha Thompson were indicted . . 1841, for fornication and adultery. . . proved that they had been married. The State alleged that . . Watters, was a man of color, and that his marriage, therefore, with a white woman, was void. . . [456] Watters, contended that he was descended from Portuguese, and not from Negro or Indian ancestors. . . Tinsly . . swore that he knew the grandfather and grandmother of . . Watters, and they were coal black negroes. . . The defendant and Zilpha Thompson were convicted and punished . . On the trial of this [libel] case, . . witnesses . . swore that . . the mother of the defendant . . was a bright mulatto, with coarse straight hair—that her name was Elizabeth Cullom, and . . lived with . . John P. Watters, who was a white man, but of dark complexion for a white man . . was the reputed father of the present defendant. . . that . . Mary Wootten, the mother of Elizabeth . . was not as black as some negroes they had seen, and had thin lips. . . and sharp features. The defendant then proposed to prove, that Mary Wooten [*sic*] in her lifetime had stated . . that the father of Elizabeth . . was a white man. This evidence was rejected . . The jury found the defendant guilty, . . judgment . . against the defendant,"

Affirmed: [457] "admit that the defendant's grand-father was white, and the grand-mother only half African—of which last there is no evidence, still the defendant would have been within the degree prohibited from contracting marriage with a white woman. . . the act which annuls marriages between the two races, uses the words 'persons of color' . . that expression must be construed in reference to other disabilities imposed . . upon persons of mixed blood. The act of 1777, c. 115, s. 42,[1] . . and the Constitution, article 1st, s. 3, . . designate such persons as those descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person. And thus restricted, the act includes the defendant, . . But we are of opinion that the evidence was properly rejected, independent of the above ground. It was hearsay; . . [458] And, besides, it is well known that persons, of the description of this woman, have a strong bias in their minds to induce the declaration from them . . that their illegitimate child is the issue of a white man: if not to gratify a personal vanity in themselves, for the reason, that it removes their offspring one degree from the humbled caste in which he is placed by law, whereby he is excluded from the elective franchise, and from competency as a witness between white persons, and prohibited from intermarrying with them." [Ruffin, C. J.]

Copeland v. Parker, 3 Iredell 513, June 1843. "an action . . to recover damages for an injury done . . to the plaintiff's slave. . . she had hired the boy Gilbert . . about twenty years of age, to certain gentlemen, who were opening a turnpike road . . for the year ending the 25th of December, 1840; that, in November, 1840, the defendant, at . . ten paces, fired at him with a shot gun, loaded with squirrel shot, and lodged the load in his back and thigh. . . Gilbert was disabled from work for the balance of the year, and for nearly half the year, 1841. . . The defendant . . proved that he was the overseer . . that Gilbert had left his work without leave the day before, but came back in the morning . . that about 10 o'clock the defendant requested the witness, who was passing by, to stop and help him whip Gilbert for having run away. As the witness was getting off his horse, Gilbert . . [514] started off in a walk; the defendant ordered him to stop; Gilbert . . rather quickened his pace, and the defendant then fired and brought him to the ground. . . verdict for the plaintiff, and judgment"

Affirmed: "The overseer . . had no right . . to use a deadly instrument to stop him." [J. J. Daniel, J.]

Ford v. Blount, 3 Iredell 516, June 1843. In June 1838 "Skinner gave high prices for the negroes, much more than they could be now sold for;"

Satterwhite v. Carson, 3 Iredell 549, June 1843. In 1838 a deputy sheriff [550] "levied upon and sold the boy James to one Jay, for $401, who took the slave out of the State."

[1] Rev. St., ch. 111, sect. 74.

State v. Sandy (*a slave*), 3 Iredell 570, June 1843. "an indictment . . for burning the store-house of . . Cowan, and concluded 'against the form of the statutes, etc.' . . [571] store had been broken open, robbed and set on fire . . that, the next day, goods, which he identified as his, were brought to him—that, having reason to believe that the prisoner . . was the perpetrator . . he asked 'what had become of the rest of his sugars?' to which the prisoner replied, 'that the boat was so heavily loaded that he had thrown it overboard'—that he then asked the prisoner, how he got into the store, to which the prisoner replied that he forced the door with crow bars . . then asked . . who put the fire to the store, to which the prisoner replied that he did, but he did not do it alone, and then mentioned another negro . . that all this the prisoner answered, without any violence, threats or persuasions . . [573] The jury found the prisoner guilty . . judgment pronounced"

Judgment arrested: [574] "there cannot be judgment on this indictment, because it concludes 'against the form of the statutes,' while the offence depends on but a single statute." [Ruffin, C. J.]

Means v. Hogan, 2 Ired. Eq. 525, June 1843. [526] "a large number of slaves belonging to the estate were ordered to be sold by the master [in chancery] for distribution, . . [527] The bill . . charges, that . . Hogan purchased most of them at an undervalue, upon a representation that he was buying for the owners, and thereby kept off other bidders, and that . . he made large profits by a re-sale shortly afterwards,"

Held: [529] "He was the largest owner of the property offered, and might fairly bid to enhance the price,"

Everitt v. Lane, 2 Ired. Eq. 548, June 1843. [549] "'My will [made in 1838] . . is, that three of my negroes be sold, to-wit, Bill, Burwell and Edmund.' . . the provision . . for the payment of the testator's debts, . . the proceeds of their sale amounted to $1505 75"

Cheshire v. Cheshire, 2 Ired. Eq. 569, June 1843. "Cheshire . . 1832, . . bequeathed two slaves . . to his wife Susannah . . for life, remainder to the plaintiff; . . Susannah . . 1835, . . conveyed an absolute estate in . . the said slaves" for $960, [571] "to Burch Cheshire . . known to her to be entirely insolvent, who went . . with Henderson to Alabama, where the slaves were sold . . for $2100. . . [572] Henderson's wagons carrying some of his [Cheshire's] clothes, and some of his provisions; Burch having neither horse nor wagon."

Held: [573] "the plaintiff . . is entitled to [the purchase money,] . . with interest . . from the death of Mrs. Cheshire."

Hudgins v. White, 2 Ired. Eq. 575, June 1843. In 1837 a negro man, about 27 years old, was hired for $75 per annum.

McBride v. Choate, 2 Ired. Eq. 610, June 1843. [612] "Choate got the negroes from Elizabeth Woodruff, carried them off clandestinely to Georgia, and thence removed them to New Orleans for the purpose of selling them, . . [613] with full knowledge that . . Elizabeth had but a life estate in them,"

Sasser v. Jones, 3 Ired. Eq. 19, June 1843. [28] "in the deed of gift [of the negroes] . . one or two changes . . were made to keep families together, . . [38] the trustees of Arthur Jones had become alarmed at a report, that young Arthur was about to run away the negroes, . . [48] after reserving out of the negroes [five] . . which it was agreed should remain with the old man to take care of him, the rest were put into lots, . . [49] agreed, upon the suggestion of Charlotte Smith, who wanted a lot in which a particular negro was contained, that they would agree as to their respective allotments without an actual draw,"

Beam v. Blanton, 3 Ired. Eq. 59, June 1843. At a sale in June 1842 [60] "Clark, bid off a negro man slave . . at the price of three hundred dollars and five cents,"

Locke v. Gibbs, 4 Iredell 42, December 1843. "malicious prosecution of her negro slaves, in consequence of which she had been deprived of their services, and put to costs in paying their jail fees."

Hare v. Pearson, 4 Iredell 76, December 1843. "the defendant rented a small tract of land to . . Powell, a free man of colour, for . . 1841, . . Powell cultivated the land in corn, and agreed to give the defendant one half of the crop."

Walker v. Reed, 4 Iredell 152, December 1843. In 1831 "Peg, with two children . . both boys" were exchanged for a negro boy. In 1843 Peg and her two children [154] "were worth $375 each."

Skinner v. Skinner, 4 Iredell 175, December 1843. "he had come [in 1839] to get two of William's negroes to assist in clearing out a fishing ground,"

Hale v. Gause, 3 Ired. Eq. 114, December 1843. [115] "he has sold her to a man in South Carolina for $334."

Miller v. Ellison, 3 Ired. Eq. 123, December 1843. Will of Simeon McMasters, who [124] "died about the year 1840. . . gave to . . Ellison and . . Kemp a tract of land containing 150 acres. . . to . . Ellison his slave Creecy, and to . . Kemp his slave Aaron. . . all the residue . . to . . Ellison and . . Kemp. . . the testator enjoins it upon his executor [Miller] to use all lawful ways and means to emancipate the slaves . . according to the laws of this State. . . 'and if, at any time, their liberation shall be effected . . whether they shall continue to reside in this State, or consent to remove as now required by law, that then, on their becoming . . emancipated, my will . . is that all the . . estate . . shall be vested in them, . . Creecy and Aaron, . . so far as they may be capable of holding the same, or so much . . as may not have previously been expended by . . Ellison and . . Kemp, who, in the event of such emancipation . . shall be considered as *trustees* only for the uses . . herein last expressed . . but in case such liberation shall not take place, . . all the devises and bequests . . to . . Ellison and . . Kemp are to be absolute,' . . The plaintiff [executor] then states, that he . . refuses to execute the bond, required by the act of Assembly, . .

and calls on Kemp and Ellison . . and . . the next of kin and heirs at law of the testator, to interplead. . . The answers of the heirs and next of kin state, that they have never set up any claim to the property. . . [125] Ellison and Kemp claim the property, alleging that as the executor refuses to make any attempt to effect the emancipation . . no one else has a right to do so,"

Bill dismissed: "the two slaves . . are not before the court, either by the Attorney General or any relators." [J. J. Daniel, J.]

Jones v. Loftin, 3 Ired. Eq. 136, December 1843. "Sarah Loftin, in February, 1818, for $750, sold to . . Jones . . the slaves Fan and her children Ham and Joe;"

State v. Hart, 4 Iredell 222, June 1844. "an indictment against the defendants for assault and battery in shooting the prosecutor's slave."

Tilly v. Norris, 4 Iredell 229, June 1844. "the defendant claimed to be entitled to a set-off, consisting of the amount of an account against a slave of the intestate for work and labor rendered to him (the slave) at his request, and money loaned to the slave. . . the plaintiff gave in evidence sundry cases, in which the master had ratified bargains of the slave, such as contracts for jobs of work, and had claimed the benefit of them; . . also the master's declarations, going to shew a general licence to the slave to make bargains to bind him. . . the plaintiff then offered to shew declarations . . tending to rebut this presumption of a general licence; such as his [intestate's] declarations, upon discovering the slave's engagements, that he had used every effort to prevent the slave from acting in such matters without his express authority, and threats to sue persons for employing him without his permission."

Held: [230] "A general license, by the master to his slave, to make bargains for work to be done only for the benefit of the slave, and also . . to borrow money on his own account, would not render the master a *debtor* to a person, who would be so inconsiderate as to run up an account with a slave thus licenced." [J. J. Daniel, J.]

Foggart v. Blackweller, 4 Iredell 238, June 1844. "when each negro was offered by the crier, he was, by the directions of the defendants, offered as a sound negro, until they came to one, who was injured in one of his feet, and him they directed to be sold as unsound, which was done."

State v. Hart, 4 Iredell 246, June 1844. "Kee, in whose service the slave . . [247] was, suspected that the defendant induced the slave to steal his cotton and traded with him for it; . . Kee directed the slave, on a particular night, to take a bag of cotton to the defendant's house, and . . requested two white persons to watch the defendant's house, . . to prove the trading, if it should take place. . . the slave . . also took an empty jug . . about two hours before day in a very dark night. The two persons . . saw the negro go up to the house and heard him call the defendant two or three times; when the door was opened . . After a short time the slave returned . . with his bag empty and with about one quart of spirits in his jug."

Held: [249] "even the consent of the owner in writing is not sufficient, to justify the trading with a slave for a forbidden article in the night time."

Moore v. Gwyn, 4 Iredell 275, June 1844. [276] "in . . October, 1842, . . administrator . . set up the slaves to the lowest bidder for the remainder of the year, when the plaintiff bid off the slave Ann at the price of three or four dollars, and permitted the witness to retain her."

Werd v. Hatch, 4 Iredell 282, June 1844. "$1285, . . being the price of a negro man . . purchased" on or before February 10, 1837.

State v. Pollok, 4 Iredell 305, June 1844. "Watson, the prosecutor, with his son and a slave, . . March, 1842, the regular period for beginning the annual work of getting turpentine, proceeded to cultivate the trees by chopping [*sic*] them, . . [306] the second week . . the two defendants, with five or six negro men, also went on the ground, and the slaves were ordered by Pollok to go to chipping. . . Watson and his slave went off"

State v. Williams, 4 Iredell 400, June 1844. "the witness for the State swore, that he was the overseer for the defendant during . . [401] 1841, 1842 and 1843—that . . 1842, . . the defendant, having lost some corn and shoats, and suspecting his slaves . . of stealing the property or knowing who had stolen it, directed the witness to put them to work on the Sabbath day and continue them at work on the succeeding Sabbath days, until they confessed . . that the work consisted in putting up fences round his field and whiskey distillery—that after working them the third Sabbath, the defendant, discovering who had stolen his property, did not compel them to work any longer. . . that the negroes did not work the whole of the days as before mentioned, but commenced work after breakfast and ended about 12 o'clock or dinner time, and that their work was not of much value . . the place where the work was done was at such a distance from any public highway, that the laborers could not be seen, by persons passing"

Held: not an indictable offence.

State v. Scott, 4 Iredell 409, June 1844. "The prisoner was indicted for the wilful murder of . . Johnson. . . [412] The prisoner, the deceased and all the witnesses [except two] . . were colored persons." [411] "Grant [one of the white witnesses] . . heard the deceased say he would kill the prisoner, if there were no other negro left in the State, and that he informed the prisoner of the threat." A colored witness testified, "that the deceased had been on good terms with a yellow girl . . but had had a falling out with her, and she had come to stay at witness's house where the prisoner was boarding. . . [412] The jury found the prisoner guilty of murder, . . motion [for a new trial] was overruled and sentence of death pronounced, . . No counsel in this [supreme] court for the defendant." Judgment affirmed.

Setzar v. Wilson, 4 Iredell 501, June 1844. [509] "February, 1842, . . a bill of sale . . for a negro boy . . fifteen years old, in consideration of $486,"

Harris v. Delamar, 3 Ired. Eq. 219, June 1844. [221] "In the will, Mr. Delamar gives Bridget and her four children then born to the present plaintiffs [his grandchildren], and directs that they shall be hired out until . . [222] the youngest child of his daughter, should arrive to 21 years, and the hires applied to the education" of his youngest grandchild and granddaughter.

Paxton v. Rhea, 3 Ired. Eq. 248, June 1844. Will of Paxton who died in 1781: "I . . bequeath to my child that is not born . . [249] the first child that the negro wench Sive does have, if she should have any." [252] "in . . 1823, when the boy was purchased for $300, . . the one-half the price of Rose and her increse [*sic*] (upwards of four) must have been considerably larger"

Henderson v. Burton, 3 Ired. Eq. 259, June 1844. In 1841 Fullenwider [261] "executed . . a conveyance for a large estate, consisting of a number of slaves and divers valuable tracts of land, and iron factories,"

State v. Fuller, 5 Iredell 26, December 1844. Dr. Smith testified that sometime between 1818 and 1822, "a girl between six and twelve years old . . was badly diseased with white swelling in one of her legs, . . that the intestate despaired altogether of her recovery, and declined employing a physician to attend her, but told . . his son, . . [27] that if he . . would employ a physician . . at his own expense and could have her cured, he might have her . . that the witness succeeded in effecting a cure, and that the [son] . . paid . . $25 therefor . . that if the said slave had been well, she would have been worth, at the period referred to, $250 or $300, but in her diseased condition she was not worth more than $100 . . that the charge for his medical attendance was quite low."

Kinney v. Etheridge, 5 Iredell 34, December 1844. "Saunders filed a petition . . stated, that the expense of the ward's education exceeded the income of his estate, and prayed that two of his negroes should be sold under the direction of the court . . a decree was made,"

State v. Doctor F. Mann, 5 Iredell 45, December 1844. "an indictment, for an assault . . the defendant presented a loaded pistol at . . the prosecutor, while he was attempting to enter the house of the defendant, in the day time . . by virtue of a warrant . . to search . . for a negro" [46] "that had runaway"

Simpson v. Boswell, 5 Iredell 49, December 1844. Will, 1832: [50] "I give to my son . . a negro man . . and his smithing tools,"

Freeman v. Lewis, 5 Iredell 91, December 1844. [92] "in 1818 or 1819, he sold one of Hannah's children in Georgia, . . [Later on] he sold another of Hannah's children"

Buie v. Kelly, 5 Iredell 169, December 1844. In June 1838 a negro woman and her child were sold at auction for $672.

State v. Hooper, 5 Iredell 201, December 1844. "The defendants were tried in May, 1842, on an indictment for adultery; and their defense was, that they were man and wife. The jury found . . that the defendant, Hooper, is a free man of color, and the defendant, Suttles, a white woman, and that they intermarried . . in this State about ten years before that time, . . The court held, that, as the marriage was before the act of 1838, ch. 24, which prohibits marriages between colored and white persons, the marriage . . was not unlawful,"

Judgment for defendants, reversed: "His Honor overlooked the previous statute of 1830, ch. 4, . . [202] not re-enacted among the Revised Statutes of 1836. Its omission . . rendered necessary the act of 1838 to the same effect, as by the Revised Statute, c. 1, sec. 2, all prior statutes were repealed. But the same act declares such repeal should not affect . . prosecutions, arising before the repeal;" [Ruffin, C. J.]

State v. Armfield, 5 Iredell 207, December 1844. In 1843 [208] "the three defendants [white laborers] went to the dwelling house of . . Myers, after dark, and asked permission to stay all night; Myers . . ordered the slave Baal to take their horses and put them in the stable; the defendants went to accompany the slave; a few minutes afterwards, the slave was heard to cry out, as if in distress—that Myers, with . . Armsworthy . . immediately set out in the direction of the noise; . . they found Baal tied . . they both demanded to know what the meaning of this conduct was; either Booe or Armfield said, they had a process against Baal for stealing, and they meant to take him to a neighboring blacksmith's shop for trial; both Myers and Armsworthy demanded to see their process, but they refused to shew it; . . then demanded the liberation of the negro, . . refused; the defendants then went off with the negro, . . before they got to the place mentioned for trial, Martin told Armsworthy that they had no process against Baal, that this was all a sham. . . [209] they did not mean to stop at the blacksmith's shop; . . [210] The jury found the defendants guilty. . . judgment . . against the defendants," Affirmed.

State v. Clarissa (*a negro slave*), 5 Iredell 221, December 1844. "The defendant was indicted . . [222] 'The jurors . . present that Clarissa, a slave, late the property of . . Butt, . . July, 1842, . . unlawfully did hire her own time, contrary to the form of the statute'"[1]

Indictment quashed: [224] "For aught that appears on it, she never was permitted to go at large, which is indeed the *gravamen* of the offence . . and essentially necessary to its completion."

State v. Newsom, 5 Iredell 250, December 1844. "The defendant, a free person of color, was tried upon the following indictment, viz: . . 'did carry about his person, one shot gun, without having obtained a licence therefor from the Court . . [251] within one year preceding' . . the jury found the defendant guilty; . . the court arrested the judgment,"

[1] Rev. St., ch. 111, sect. 31.

Held: [255] "there was error in rendering judgment against the State." The act of 1840, ch. 30, is not unconstitutional: [254] "free people of color cannot be considered as citizens, in the largest sense of the term, or, if they are, they occupy such a position in society, as justifies the legislature in adopting a course of policy in its acts peculiar to them; so that they do not violate those great principles of justice, which ought to lie at the foundation of all laws." [Nash, J.]

Hines v. Butler, 3 Ired. Eq. 307, December 1844. "The plaintiff, being much pressed for money, . . employed the defendant as his agent to take eight of his slaves to Alabama, and sell . . for cash. The defendant . . sold them at high prices on credits, and took bonds for the purchase money."

Guyther v. Taylor, 3 Ired. Eq. 323, December 1844. Will, 1836: "It is my will, that my negroes . . shall be kept on the plantation . . until my son . . attain the age of 21 years." [324] "the profits of the plantation . . on which his slaves have been kept and worked . . have not been sufficient to educate and maintain the three younger children, and discharge the legacy of $1000,"

Thompson v. Newlin, 3 Ired. Eq. 338, December 1844. See Newlin *v.* Freeman, p. 93, *supra*. "The bill was filed by the next of kin of Sarah Freeman, . . [339] late the wife of Richard Freeman; and states, that, by her marriage settlement, she was entitled, to her separate use, to a considerable number of slaves and other personal estate, . . that she . . intended, that, after her death, her slaves should not serve any person in a state of servitude, . . the defendant, Newlin, is a member of the religious society, called Quakers, and that all the members . . are opposed, . . upon a religious principle, to slavery, and that the defendant will not hold slaves as property and for his own use; and that he had taken an active agency in procuring the manumission of slaves and had taken conveyances of slaves absolute, apparently, but had suffered such slaves to enjoy the privileges of freemen. . . the testatrix well knew . . the religious principles above mentioned of himself . . and that, in fraud of the laws of the State and the public policy, she . . bequeathed to . . Newlin all her slaves and other estate, but with the intention . . that . . Newlin should hold the negroes, not for himself, but for their own benefit . . and for the purpose of their enjoying a qualified freedom, and that he should hold the residue of the estate in trust for the said negroes. . . [340] that such a purpose was unlawful . . and that a trust of the slaves and other personal estate results to the plaintiffs, as next of kin. The bill, therefore, prays a discovery, an account and relief."

Held: the defendant must discover the trust. [342] "The law will not allow itself to be baffled . . by secret agreements," [341] "if, in truth, the trust was to send them out of the State, and the defendant intends to do so, . . and will enter into the obligations, which the law[1]

[1] Act of 1830. Rev. St., ch. 101.

requires, that they shall not return, then let him thus answer, and that will terminate the plaintiff's claim.[1] But upon the supposition, that the trust was, that the slaves should be kept here, in which case the defendant could not carry them away without a breach of trust; . . there is a resulting trust for the plaintiffs." [Ruffin, C. J.]

Cowles v. Buchanan, 3 Ired. Eq. 374, December 1844. [375] " he is tenant in common with the defendant, of the negro woman . . that he has called upon the defendant to account with him for his share of the services . . and also to make sale of said negro for the purpose of division,"

Heathman v. Hall, 3 Ired. Eq. 414, December 1844. [416] " the sale of Lucy by the constable, . . he purchased her [in 1821] for $300. . . hired her at the price of $50 a year,"

State v. Reed, 5 Iredell 357, June 1845. In 1837 " the constable levied an execution . . amounting to about thirty dollars, on a slave . . and sold the same for about five hundred and eighty-four dollars."

Haywood v. Long, 5 Iredell 438, June 1845. " The defendant . . hired to . . Long, for the year 1843, a slave . . During the year the slave was taken sick, and . . Long, without the . . knowledge of the defendant, called on the plaintiff, who is a physician, to attend the slave, . . [439] upon application to the defendant for payment he refused it, . . and the plaintiff then brought this action for his bill for medicines and attendance, . . the court non-suited the plaintiff," Judgment affirmed.

Duffy v. Averitt, 5 Iredell 455, June 1845. [456] " the defendant was the owner of twenty-eight hands, liable by law to work on this district of road,"

Jones v. Allen, 5 Iredell 473, June 1845. " an action of assumpsit for $60 . . The plaintiffs are physicians, . . in partnership, and declared for professional services, rendered in 1843, to a female slave, the property of the defendant. . . Watkins hired the said slave for . . 1843, . . and that, while the slave was so in his possession, she . . required medical aid, and that he, at the . . request of . . Watkins, rendered the services, . . The plaintiffs then offered to prove . . that, in the section of country (Caswell County,) where the hiring took place, it was the universal custom for the owners . . to pay the expense of the medical attendance, requisite for the slaves, while hired out, . . evidence . . excluded . . a verdict and a judgment . . for the defendant," Affirmed.

Gaither v. Williams, 5 Iredell 487, June 1845. In 1836 Dick was sold for $600.

Ratliff v. Huntly, 5 Iredell 545, June 1845. " action of trespass . . for beating the plaintiff's slave Mary. . . It was insisted by the defendant, that the slave then belonged to him. . . Immediately after he had beaten the slave, in the plaintiff's field, where she was then at work, . . he cursed . . the plaintiff, (who was absent) and threatened to shoot

[1] See same *v.* same, p. 141, *infra.*

or otherwise injure him. . . [547] The Jury found a verdict for the plaintiff—damages [' smart money '] $100." Judgment thereon, affirmed.

Arrington v. Gee, 5 Iredell 590, June 1845. [591] "Arrington . . took to . . Alabama, many slaves, and sold them . . to . . Gee, for . . $24,000, one-half of which was paid in cash,"

Buchanan v. Parker, 5 Iredell 597, June 1845. "a resident of . . Georgia, placed in the hands of the defendant $700, that he might purchase for her two negro boys in North Carolina, . . and bring them out to her in Georgia. . . if the . . money should not be enough, she would thank him to make up the balance, and she would repay him"

Hall v. Paschall, 5 Iredell 668, June 1845. [670] "Little Summerset was a child of Alley, . . and was sold by Thomas Christmas as early as . . 1830, to . . Christmas, of Tennessee, . . for . . $250, . . his value. Dilly was sold . . in 1833, . . to some one beyond the State for $300, . . her value, . . Sally was a child of . . Mary [deceased], and was sold . . in . . 1836, and was . . of the value of $600. . . to some one beyond the limits of the State."

Logan v. Simmons, 3 Ired. Eq. 487, June 1845. She [488] "possessed two female slaves, of whom one was thirty-seven years old and had ceased child-bearing, and the other was a girl, named Poll, about sixteen years old. . . conveyed by deed of gift to her son . . the two negroes . . reserving . . to herself, the first living child, which the girl Poll might have."

Howell v. Howell, 3 Ired. Eq. 522, June 1845. [523] "one of them is hired to work in a gold mine, whereby his value will be impaired,"

Christmas v. Mitchell, 3 Ired. Eq. 535, June 1845. [537] "has sold [since 1827] one of the . . negroes . . Tom, to persons who have carried him out of the State, and that he received for him $800, . . [538] the sale was made in Richmond by an agent,"

Acheson v. McCombs, 3 Ired. Eq. 554, June 1845. Will, 1842: "as for my negro woman Hannah, that I let my daughter Jane Kerr have the use of, and the increase of . . Hannah, that she shall have after this date, I give to my daughter Jane's increase, that she may bear after this date, and . . Hannah to remain with . . Jane until done bearing, then at her own disposal."

Waddill v. Martin, 3 Ired. Eq. 562, June 1845. "James H. Martin was a wealthy planter of Anson county, who made his will . . in which he appointed the plaintiff, a son-in-law, his executor, . . [563] The first exception is to a credit allowed to the plaintiff, of $143 97, (with interest thereon) which the plaintiff received for certain cotton made by the negroes of the testator in . . 1836, and paid by him to the negroes. . . The testator . . had been for many years in the habit of allowing his negroes to make small crops of cotton and other things, in patches of their own and for their own use. He did not, however, permit them to sell the cotton themselves, but required them, as they picked it out, to

bring it to his gin; and the testator had it ginned and carried to market and sold with his own, and then, after deducting a due proportion of the expenses, the testator paid to the negroes the cotton made by them, to enable them to purchase small articles of comfort for themselves and their families. In the year 1836, the testator's slaves had, by his permission, planted and cultivated their patches of cotton on his land: in autumn, they gathered it and delivered it to the plaintiff at the gin, to be prepared and sold for them by him, when he should sell that belonging to the estate. It was accordingly sent to market and all was sold together, and entered by the commission merchants in the accounts of the estate; so that the plaintiff in his own account as executor, gave the estate credit for the proceeds of all the cotton. But when he paid to the negroes their share of the money, viz: the sum of $143 97, he debited the estate therewith by way of cross entry."

Exception overruled: "The practice of the testator, as a master, and the conduct of the plaintiff, as executor, conform to the usage, and a most beneficial usage, which is almost universal throughout North Carolina; and we have never known or heard of an attempt hitherto, to charge an executor in favor of a legatee or even creditor, with the little crops of cotton, corn, potatoes, ground peas and the like, made by slaves by permission of their deceased owners. . . [564] it has never been considered that the negro's little crops, growing or made, were assets, any more than the little sums of money which they might have received for the crop of the preceding year, if any remnant were left in their chests, or their poultry, or their dog, or their extra clothing. Those petty gains and properties have been allowed to our servants by usage, and may be justified by policy and law, upon the same principle, that the savings of a wife in housekeeping, by sales of milk, butter, cheese, vegetables and so forth, are declared to be, by the husband's consent, the property of the wife. It is true a slave cannot have property; . . But it is equally true that a married woman can have no property in money or personal chattels in possession; but they belong in strict law to the husband, . . Nevertheless, the wife may claim them against the executor. Now we do not say, that negroes can hold any thing against the executor, because they and what they have belong, . . to the executor. But we do say, that an executor is not bound to strip a poor negro of the things his master gave him, nor to take away his petty profits from a patch, with the proceeds of which the slave, with the ordinary precaution of a prudent and humane master, may be induced, and in a measure compelled, to buy those needful comforts of food and raiment, over and above the allowances of the owner, which promote his health, cheerfulness and contentment, and enhance his value. In many instances, what the slave, with a pride that makes him happy, buys for himself, would, if not thus procured, be of necessity supplied directly by the master; so that, in point of fact, leaving to the negro the spending of his money at his own pleasure, is then a pecuniary saving to the estate; and these slight indulgencies are repaid by the attachment of the slave to the master and his family, by exerting his industry and honesty, and a spirit to make and save for the master

as well as for himself. . . [565] there is scarcely an owner of slaves, who does not act as this testator did, and no executor, we believe, ever acted otherwise in such a case, than the plaintiff did. . . Indeed, there are a number of statutes, which in regulating trading with slaves, recognize a sort of ownership by slaves of certain articles, by permission of the master, forbidding them to have certain other articles or to sell or buy them; which shews, that there is an universal sense pervading the whole community, of the utility, nay, unavoidable necessity, of leaving to the slaves some small perquisites, which may be called his and disposed of by him as his, although as against a wrong doer the property must be laid in the master, for the sake of the remedy, and although the master, if he will, may take all.—Here the sums received by the negroes were but a pittance *per capita*; not more probably, than the ducks, chickens and eggs of the same number of slaves would have brought, nor half as much as their Sunday finery would. The exception prefers an ungracious claim, and as we think an unfounded one;" [Ruffin, C. J.]

State v. Hailey, 6 Iredell 11, December 1845. Special verdict: "That in the captain's district, in which the defendants live, there were eight persons appointed Patrollers for . . 1844, by the committee of patrol, and . . that three . . went to the house of the defendants in the night as patrol, . . they went to the cook-house or kitchen, . . within the curtilage; . . were met at the door . . by the defendants; . . and the entry prevented by threats and weapons . . [12] the defendants negroes slept in said house, . . the County Court . . had not made any rules . . for the government of the patrol." The presiding judge "was of opinion, that the house in question was the subject of search, but as the County Court . . had made no rules . . less than a majority could not act; that the resistance . . was not criminal,"

Judgment affirmed: the powers of the patrol "partake of a judicial, or *quasi* judicial, and executive character. Judicial, so far as deciding upon each case of a slave taken up by them; whether the law has been violated . . and adjudging the punishment . . five stripes may in some cases be sufficient, while others may demand the full penalty of the law. All these acts . . [13] require consultation and agreement, and a less number than a majority of the whole cannot act. . . a plurality of those present must agree, or no punishment can be legally inflicted." [Nash, J.]

State v. Cozens, 6 Iredell 82, December 1845. [83] "The indictment[1] charges, that he [a free man of color], . . 'Feb. 1837, . . did buy of, . . and receive from a certain negro slave . . one peck of corn,' . . the jury convicted the defendant. . . [84] the judgment below is affirmed."

Person v. Twitty, 6 Iredell 115, December 1845. In 1845 [116] "Jacob [was] of the value of $500 and Ritter of the value of $700,"

Cox v. Williams, 4 Ired. Eq. 15, December 1845. Will of Mary Bissell: "I direct that my servant women, Molly and Maria, Maria's two

[1] "for a violation of the 5th sec. of the Act of 1826,"

children, named Mary and John, and three other children, Nancy, Priscilla and Lucy, all of whom are my property, be made over to the American Colonization Society, or to any individual authorised by the American Colonization Society to receive them, on condition that said Society will engage to send them to either of its Colonies in Africa; and that the said Society may be at no expense in sending them as directed, I wish two vacant lots belonging to me in the town of Edenton, to be sold to defray their expenses, and certain other monies also to be appropriated to their use, as is hereafter directed. . . If there should be any balance after the settlement of my estate, agreeably to the tenor of this will, I direct that it be all paid over to the American Colonization Society, for the exclusive use of the servants to be sent by them to Africa." "The bill is filed by the executor, against the next of kin of the testatrix and the American Colonization Society, . . and prays the Court to put a construction on the will, . . [16] The answer of the American Colonization Society states that the Society has been duly incorporated by two acts of the General Assembly of Maryland, with power and capacity to receive gifts and bequests of slaves for the purpose of transporting them, with their own consent, to Africa, where several colonies of free persons of colour have been established, under the auspices of the Society; and also with power and capacity to take gifts or bequests of money and other things needful to defray the expenses of transportation and to provide for the comfort of the colonists in Africa. And the answer further states, that the Society has been duly organized and has accepted the charter. The answer also engages, if the bequests to the Society should be held good, to remove the slaves, with their own consent, as soon as practicable, from this State to one of the said colonies in Africa, and thereby bestow on them emancipation." "the next of kin, on the other hand, insisting that the provision for emancipation is against law,"

Held: "a bequest of slaves for the purpose, or upon trust, to send them to another country, there to become and remain free, is valid. . . [17] It was, indeed, early found in this State, as in most of the others, in which there is slavery, that the third class of free negroes was burdensome as a charge on the community, and, from its general characteristics of idleness and dishonesty, a common nuisance. Hence the legislative policy, with us, was opposed to emancipation, and restricted it to a particular mode and upon a special consideration—which was by license of the Court and for meritorious services. But that was purely a regulation of police, . . It sought only to guard against evils arising from free negroes residing here. . . it was not intended to impose any restriction on the natural right of an owner to free his slaves. . . all our legislative regulations had a reference exclusively to emancipation, within our limits, of slaves, who were intended to remain here. . . by a modern statute, 1830, c. 9, the policy is avowed of encouraging emancipation, upon the sole condition, that the people freed shall not disturb or be chargeable to us, but keep out of our borders. . . [18] The trust in this case must therefore be declared valid; and the Colonization Society authorised to receive the slaves, and the surplus of the estate, (after paying the

costs of this suit,) for the purpose of removing them to Africa, as directed in the will. This direction, however, is necessarily dependent on a fact, to be ascertained by an enquiry; which is, whether the negroes, who are adults, are willing to go to Africa or not. . . [19] For those who are under, say the age of fourteen—their parents may elect. If any adult should refuse to go, those refusing must, of necessity, be sold, and the proceeds will go into the residue for the benefit of those who will go—according to the last clause of the will, which excludes the next of kin altogether, unless all the slaves should refuse to go. If any of the children have no parents, or their parents should elect for them not to go, liberty must be reserved to such children to make their election, when they shall arrive at the age of fourteen. It appears, indeed, that the money remaining in the hands of the executor is partly the proceeds of the sale of one of the negroes, which was rendered necessary for the payments of debts. Of course, all these charities must depend, for their validity, on the power of the party who creates them, without doing injustice to creditors. Justice stands before generosity; and the owner of a slave cannot defeat the rights of a creditor by manumitting the slave. The Colonization Society can therefore claim only the slaves which remain unsold, and can have, immediately, only such as may be willing to go." [Ruffin, C. J.]

Denny v. Closse, 4 Ired. Eq. 102, December 1845. Will: "I . . bequeath to her my negro girl Mary, . . during her natural life, and at her death, I allow the said negro to be sold, and her issue, if she should have any, and the money arising . . to be equally divided among all my children"

Hawkins v. Alston, 4 Ired. Eq. 137, December 1845. In April 1843 witness [143] "gave . . Alston . . $337 50 for 3-4ths of Caroline, . . that the woman and two boys (of whom one was 13 years old,) . . were worth $800, if he had owned the absolute property; . . latter part of . . 1843, . . Alston sold to the witness, Hester and her child, at . . $500, and the boy Trim at . . $400, and . . another woman and child to some other person, . . and . . sent the remaining negroes, except one, to the South,"

Guilford v. Guilford, 4 Ired. Eq. 168, December 1845. Will, 1837: "At the expiration of two years, I leave my negroes, (except Dan) to be sold" The testator bequeathed Dan "to Alvana Morris, an infant, and says, 'I wish my executor to hire him out, and apply the proceeds, or so much thereof as may be necessary to raise, clothe and educate said child. And if . . [169] Alvana . . should die before she arrives at the age of twenty-one years, then . . Dan . . to be sold by my executor;'"

Williams v. Alexander, 4 Ired. Eq. 207, December 1845. In 1813 [208] "she purchased the negro girl . . then an infant, from her brother . . for . . $100,"

State v. Roland, 6 Iredell 241, June 1846. "an indictment against . . a free person of color, for marrying a slave contrary to the provisions

of the Act of 1830," [1] He was found guilty at Spring Term, 1844. [242] "At Spring Term, 1846, . . the State . . prayed judgment against him . . The defendant resisted the motion, because, as he then said, the master of the slave . . had originally given his consent . . If this assertion was true, the Act . . passed in . . 1845 repealed the first Act, so far as it related to the defendant's case; and no judgment should have been rendered against him." [J. J. Daniel, J.]

Rogers v. Vines, 6 Iredell 293, June 1846. [294] "The negroes . . being a woman and her two small children, they were, taken together, unprofitable to Mrs. Rogers, and she sold them . . August, 1838, for $1000, then paid to her."

State v. Jefferson (a slave), 6 Iredell 305, June 1846. "The prisoner, a slave . . was convicted of a rape upon . . a white woman. . . she was a witness, and proved the offence fully. . . the prisoner . . alleged that it was by her consent, and that there had been a previous criminal intimacy between them. . . offered to prove by a witness . . the Court rejected this evidence. After an answer in the negative to a question . . [306] whether she had not allowed the prisoner to put his hands on her in a . . familiar manner, it was proved by another slave . . that he had frequently seen the prisoner treat her in that manner. And the prisoner offered further to prove that the witness . . had permitted other negro men to kiss her and take other liberties with her. . . rejected . . The prisoner offered further to prove, that . . the husband, had in the presence of his wife offered to compound this prosecution with . . the owner of the prisoner. . . the Court refused to admit it. . . confession of the prisoner; . . Springs . . stated . . after the prisoner had been committed to jail . . he saw the prisoner . . said, 'Yes, I have heard of you; and it is said you choked her, and had your will of her;' and the prisoner answered, that he did. The witness . . asked the prisoner why he did so, and the latter replied, that he supposed he must have been drunk; and that to the question . . 'Did you know it would hang you?' the prisoner replied that he did not. . . counsel for the prisoner objected; but the Court received it. After sentence of death upon conviction, the prisoner appealed"

[309] "nothing is found . . on which the judgment ought to be reversed;"

Wardens v. Silverthorn, 6 Iredell 356, June 1846. [357] "The wardens had maintained an aged slave . . belonging to the estate of . . Silverthorn,"

Whiteley v. Daniels, 6 Iredell 480, June 1846. [481] "The defendant was warranted, to recover the amount of a penalty alleged to have been incurred by him, in illegally trading [2] with a slave by the name of Ganze, . . The defendant admitted that his agent, at his landing, had received such articles from Ganze . . and that he had received them, but did not

[1] Rev. St., ch. 91, sect. 77.
[2] *Ibid.*, ch. 34, sect. 75.

know there was no permission in writing; that they had been entered on his barter book, but were not paid for,"

Hill v. Spruill, 4 Ired. Eq. 244, June 1846. [245] "The property consisted entirely of personalty, and chiefly of forty-one negroes."

Spencer v. Hawkins, 4 Ired. Eq. 288, June 1846. [291] "Court executions, under which . . Daphne was . . sold. The child of Daphne was taken by . . a constable, under an execution in favor of . . Gaylard, issued . . 1843." In 1834 Daphne [292] "was sick for a month, and complained of pains in her limbs. Dr. Royster . . considered it rheumatic and chronic. . . Opposed to this testimony, . . Mrs. Estis . . has known her from childhood up to 1842—never knew anything the matter . . [293] the defect in her ankles belonged to her family . . Hicks' deposition . . Daphne is an excellent hand and the strongest but one he saw in lifting."

Moore v. Banner, 4 Ired. Eq. 293, June 1846. [294] "in 1843 he purchased . . Will, at . . $676,"

Newlin v. Freeman, 4 Ired. Eq. 312, June 1846. [315] "she executed it [her will] in pursuance of a deliberate purpose, long entertained by her, with a view to the emancipation of her slaves." See same *v.* same, p. 93, *supra.*

Lindsay v. Pleasants, 4 Ired. Eq. 320, June 1846. Will of David Archer, made in 1835: [322] "that my negro man Bob be free . . to go where and when he pleases at the death or marriage of my beloved wife. . . that . . Bob have the use and profit of ten acres of my land "

State v. Hathcock, 7 Iredell 52, December 1846. "The Jurors . . present, that . . persons, to the number of ten or more, . . in . . one thousand eight hundred and forty-five, . . with sticks, . . did . . riotously . . make a . . disturbance, . . near the dwelling house of . . Shed, proclaiming that . . Shed and his wife Election Ann Shed, were persons of colour, and offering them for sale at auction, and calling them vulgar . . names, . . in a loud voice, . . to the great damage and terror of . . Shed and wife," The defendants were convicted, and a motion in arrest of judgment was overruled.

Held: [54] "the judgment below is erroneous," [53] "nothing but a civil trespass is charged."

State v. Patterson, 7 Iredell 70, December 1846. [71] "the defendant is charged with keeping a . . disorderly house; and . . causing persons, both free and slaves, to frequent it, and there to . . remain, drinking, . . and misbehaving themselves," He was convicted.

State v. Gallimore, 7 Iredell 147, December 1846. "The prisoner was indicted for stealing a negro woman . . [148] was convicted" New trial denied.

Gordon v. Brown, 4 Ired. Eq. 399, December 1846. [402] "The answer states, that . . in 1836 Sarah Gordon, on account of the bad qualities of the negro, sent Harriett to Georgia, and had her sold there

on a credit for $1,000 [in Georgia money], . . states the reason for the sale of Jim to have been, his insubordination and the apprehension, on certain circumstances mentioned, that he designed an escape into Canada or a north-western State. It admits the price to have been $637, which it says was the full value;"

State v. White, 7 Iredell 180, June 1847. Indictment for libel. "The counsel for the defendant in justification offered to prove, that . . for many years before, there was a general report in the neighborhood, . . that the prosecutor had murdered one of his slaves"

State v. Anthony (*a slave*), 7 Iredell 234, June 1847. "The prisoner . . was indicted with a free woman, for robbing Joseph Britt, in the public high-way, of one dollar and other things. When forming a jury . . three of the persons drawn . . were challenged by the Attorney General, because they were related to the owner of the prisoner; . . allowed . . convicted. . . sentence of death was passed," Affirmed.

Ricks v. Battle, 7 Iredell 269, June 1847. "The defendant advertised, that she would hire these negroes on the 5th of January 1846, at the Court House door; . . The terms of hiring were . . read to the persons, . . assembled at the hiring. . . that all persons, who hired negroes, should give bond . . and that they should be well clothed. . . [270] the plaintiff was the highest . . bidder, and the negro woman was knocked off to him; . . but the defendant refused . . to deliver the negro woman, . . witness stated that twelve months before, at the hiring of these negroes . . the defendant told the plaintiff he should never hire any negroes that she had the management of, that he was a cruel man to slaves and that she would be afraid that he would kill them, and that he would not give them enough to eat; . . [271] The Court charged . . that, if the defendant employed Griffin to cry the property . . without informing him, that he was not to cry the bid of the plaintiff . . it was too late, after the negro was knocked off, to say, that he should not have her; . . the plaintiff was entitled to recover nominal damages. . . verdict for the plaintiff." New trial denied.

State v. Miller, 7 Iredell 275, June 1847. "the evidence was, that the prisoner, in the night time, sold . . spirituous liquor to a *negro*, but the witness did not know him, and could not say whether he was a slave or not."

Held: in this state a black person is presumed to be a slave.

State v. George (*a slave*), 7 Iredell 321, June 1847. "The prisoner was separately tried upon an indictment, in which he was charged as principal, and Mary Meadows as accessary before the fact, with the murder of James Meadows. . . [322] a witness for the State . . was . . interrogated . . as to the acts and declarations of Mary Meadows, tending to show hostility to her husband, and an intention to cause some great bodily injury to be inflicted upon him. . . admitted . . Evidence was then introduced to show a guilty connexion between the prisoner and Mary Meadows, which it is not thought necessary to repeat. . .

Judgment and appeal." [332] " Judgment reversed, and *venire de novo*." [325] " there was error in the admission of the declarations of Mary Meadows." See same *v.* same, p. 123, *infra.*

Brady v. Parker, 4 Ired. Eq. 430, June 1847. In 1830 Brady purchased a negro girl [431] " at the price of fifty pounds,"

Rippy v. Gant, 4 Ired. Eq. 443, June 1847. [445] " The plaintiff had sold . . Milly to . . Freeland . . his reason was, that he was indebted, occasioned by his manager George, one of his negroes, in clearing too much land, and running too often to the Smith's shop; that Milly was a mulatto, and that he hated mulattoes, and would sell Milly if he did not get $25 for her; much or little, . . she 'should go.' . . [446] he would not sell one of his little blacks. . . his reason [for selling Milly] . . what many men of much sounder minds think a sufficient objection to the owning such property. . . [447] Among the plaintiff's witnesses the only negro trader is . . Hurdle. He states her *then* value [in the spring of 1847] to be $400, but . . [in 1844] she was not worth that sum by $150, . . Trollinger states that in the latter part of '43, he purchased negro girls and boys from nine to ten years of age at $200, but that they were worth $225; and that in the same year he was called on to value a great many negroes, preparatory to dividing them, among those entitled to them, and that negro girls of ten were valued at $225. We think the weight of the testimony is decidedly in favor of $250," in 1844. [Nash, J.]

Thompson v. Ford, 7 Iredell 418, August 1847. In January 1843 the slave Willis was sold to Ford for $600, and Ford [419] " carried the negro to Cabarrus County, . . Shortly afterwards the negro returned to the possession of the plaintiff [in Lincoln County] and he kept him about a month. He was then enticed away, by some person unknown, and carried back to Cabarrus, . . June, 1843, the plaintiff sold the woman Eliza, . . for . . $362,"

Weaver v. Upton, 7 Iredell 458, August 1847. [459] " Weaver and Upton, . . 1840, leased . . a tract of land . . to mine for gold; . . Upton was to work twenty hands, and Weaver four hands,"

Edney v. King, 4 Ired. Eq. 465, August 1847. [467] " Edney had sold . . George for $1200, . . at a sale made by the administrators, he purchased " Nelly [466] " at the price of $362,"

Love v. Raper, 4 Ired. Eq. 475, August 1847. [478] " Raper, . . 1844, made a conditional bargain . . for the purchase of . . a man and his wife and their child, about ten years of age, for . . the large sum of $2,000." [Nash, J.]

State v. Marley (*a slave*), 8 Iredell 48, December 1847. [49] " Upon application to a Justice of the Peace, a warrant was issued against the defendant, for insolence to, and an assault and battery upon a white man. He was adjudged guilty, and sentenced to receive five and twenty stripes. . . his master appealed to the Court of Pleas and Quarter Sessions. . .

being convicted, was sentenced . . to receive the same punishment. His master again appealed to the Superior Court, where he was again tried and convicted; and the judgment being arrested . . the case is brought here upon the appeal of the State."

Held: [51] "under the Act of 1842, the master . . had no right to appeal from the County to the Superior Court,"

Williams v. Avent, 5 Ired. Eq. 47, December 1847. [49] "Henry, . . being unwilling to remove with the intestate [to the west] . . ran-away from him, a short time before his removal, and came in, in a short time thereafter, and went into the possession of " his son-in-law.

Barnawell v. Threadgill, 5 Ired. Eq. 86, December 1847. The bill charges that [88] "the defendants all joined in collecting those eighteen [slaves] . . and in confining them so that they might be safely carried away, and, then, that the two defendants . . carried them out of this State, before the plaintiffs obtained judgment."

Bennehan's Executor v. Norwood, Executor [*of Campbell*], 5 Ired. Eq. 106, December 1847. "Dr. Umstead . . died in . . 1829, having made his last will . . he gives . . Catlett Campbell and Thomas D. Bennehan . . his executors, 'a negro slave Dicey, and her two children, Emeline and Harriet, in special trust and confidence, . . that my said friends, so soon after my decease, as they shall deem it expedient, shall take the necessary legal steps, to have said slave Dicey and her two children manumitted . . and, in the mean time, . . that the labour of such slaves, and the profits and proceeds thereof, shall enure to the . . benefit of the . . slaves only, . . [107] And . . in case the said trustees should fail in effecting the manumission . . the labour . . and the profits thereof, shall continue to enure to the . . benefit of said slaves and their issue, so long as . . any of them, shall live. . . I devise and bequeath to . . Campbell, and . . Bennehan . . all the . . residue of my estates,' . . at September Term 1829, of Orange Superior Court, [the executors] filed their petition for the emancipation . . and procured a decree to that effect, as to Dicey . . but the Court refused to emancipate the children, . . Campbell died in 1845, having made his last will . . 'I do most earnestly entreat Mr. Bennehan (if in his power) to perform the trust thus confided to us, by our mutual friend; and I give to my executors full power, to release any interest which I may have in said negroes, or their increase, . . to Mr. Bennehan, to enable him to accomplish this purpose, . . or to sell . . them to any other person . . for a nominal price, for the purpose of effecting their freedom, as I do not desire that they should ever be considered any part of my estate.' . . Norwood . . qualified as executor . . The other defendant, . . a creditor of Mr. Campbell, sued . . obtained a judgment, and had his execution levied on the interest of Mr. Campbell in these negroes. . . the estate . . [108] is unable to pay this judgment, without subjecting his interest in the slaves to the execution. The bill charges, that . . the trust survived to the plaintiff's testator, whose executor is now ready . . to carry it into execution. But if the Court should be of opinion, that the trust . . is void, and that . .

Mr. Campbell had any individual property in said slaves, . . that a partition may be decreed between the plaintiff and the estate of Mr. Campbell, to enable the former to perform his duty, in emancipating . . the slaves which may be allotted to him,"

Held: " the trust attempted to be created by . . Dr. Umstead, was void. . . [109] The residuary legatees . . the executors . . took the slaves . . absolutely . . This bequest of Mr. Campbell, is a valid one, as made since . . the Act of 1831,[1] . . Mr. Campbell, however, could not so dispose of his interest in the slaves, as to free them from the claims of his creditors. . . The plaintiff is entitled to have partition of the slaves, . . and he is entitled, under the will of . . Campbell . . to have delivered to him, all . . allotted to his executor, . . which are not needed to discharge the debts of his testator. . . [110] make an equal division . . between the plaintiff, and the . . executor of Campbell, and, from the importance of that division to the negroes, and their equal right to emancipation, as far as it can lawfully be effected, . . the division should be made by lot. . . if [the master in equity] . . should find that any of [Campbell's] . . debts . . will remain unpaid, after applying thereto all the assets of the testator, exclusive of his share of said negroes, the master must further enquire, what balance will remain due . . whether it will require the whole of . . Campbell's half of said slaves, or only a part thereof to be sold . . and, if the latter, the master will designate, by lot, a sufficient number, to be sold for that purpose." [Nash, J.]

Harrison v. Bradley, 5 Ired. Eq. 136, December 1847. In 1829 [137] " the defendant . . was appointed the guardian of the infant [three years old] . . and received her share of the slaves . . namely, a man aged 23 . . a girl 11 years, one 13 years, and a boy 9 years old. . . [142] The hires of the negroes . . barely supported the ward for several years, though they gradually increased, notwithstanding the charges also increased by reason of one of the negro women having a large family of young children, and the expenses of the ward's education." [146] " for about fourteen years . . the negroes . . have yielded above $1500, in hires, and have more than doubled in number."

Rea v. Rhodes, 5 Ired. Eq. 148, December 1847. [156] "A physician says, he attended some of the negroes for two years " [159] " the negroes, as negroes belonging to an estate usually are, were not regularly hired, . . but most of them were worked on the . . plantation, . . [161] such a crowd as usually attends a sale of so many negroes,"

State v. Lane, 8 Iredell 256, June 1848. " The defendant, a free man of colour, was indicted under the act of 1840, ch. 30, for . . carrying . . a pistol, without having obtained a license . . the defendant usually resides in the County of Perquimans, and . . was in the employment of a white man, . . Barker, getting shingles in the County of Pasquotank. Barker also lived in Perquimans, and had hired the defendant to carry the pistol . . to the County of Pasquotank, where they were pursuing their work. . . it was seen in his possession. . . not guilty,"

[1] Act of 1830. Rev. St., ch. 111, sect. 59.

Held: [258] "no error." [257] "Degraded as are these individuals, as a class, by their social position, it is certain, that among them are many, worthy of all confidence, and into whose hands these weapons can be safely trusted, . . He was complying with a contract, he had a right to make," [Nash, J.]

Ward v. Smith, 8 Iredell 296, June 1848. "on a Saturday night, the defendant delivered to the jailor . . in Edentown, a negro boy, and said he was hired by the plaintiff, and that he was a runaway. The jailor . . put him in jail and kept him there, until Monday morning, when upon the application of the plaintiff, he delivered him to him on his paying his prison fees, two dollars."

State v. George (a slave), 8 Iredell 324, June 1848. See same *v.* same, p. 119, *supra.* "The prisoner was indicted in the County of Granville . . and upon his affidavit his cause was removed to the County of Person, . . the dead body of James Meadows was found at the draw bars, about eighty yards from his dwelling house, . . [325] September, 1846, . . Seth Meadows, a son of the deceased . . about nine years old when his father was killed; . . [stated] that . . before day-break, he was awakened by the struggles of his father, when he saw three men drag him out of the bed, and take him out of the house . . and he thought that one of the men . . was the prisoner, because he was yellow, was built like him and was about his size. . . The prisoner's counsel then introduced witnesses, who stated that when . . Seth . . was under examination before the jury of inquest, he was asked several times, whether he knew, who took his father out of the house, to which he replied, that he did not. . . that he persisted in this answer, until after the prisoner was arrested the next day, . . [327] The jury returned a verdict of guilty. . . sentence of death pronounced," [330] "no error"

State v. John (a slave), 8 Iredell 330, June 1848. "The prisoner was indicted for the murder of Ben Shipman, a slave, . . [331] a negro woman slave, . . Flora . . stated that she was the wife of the prisoner, and had been so for about six years; that the prisoner . . was permitted to keep house, and she was permitted to live with him; . . had frequent quarrels, and sometimes separated and came together again; that, some three or four days before the homicide, the prisoner, complaining that his dinner was not properly prepared, got angry, and gave her a whipping, and turned her out of his house, saying that she should not live with him any longer; that she then went to live with her mother; that about 10 o'clock of the night of the homicide, . . the prisoner came to her mother's house and told her [Flora] . . that he intended to kill Ben . . the first time he saw him, that at the request of her mother, she and her sister . . went to the house of Ben . . about ten steps distant . . which they found open with a good fire-light in it; . . they . . commenced sewing; that shortly after Ben came in, when she told him of the prisoner's threat . . Ben . . locked [the door] . . the prisoner came to the door and knocked, . . she asked what the person wanted, . . he replied, 'open the door or I will break it down;' that he thereupon did

break it down, . . walked up to the deceased and knocked him down with a piece of iron . . struck [him] . . several times while on the floor; . . [332] Ben died that night . . To show the prisoner's insanity and drunkenness, his counsel called . . slaves Hardy and Dausey. Hardy stated that the prisoner was a house painter, . . was in the habit of talking to himself, . . [333] that . . the night when the homicide was committed . . the prisoner was . . so drunk, that he had to keep himself steady by holding on to the fence; . . seemed to be crazy . . Dausey testified, that . . about 9 o'clock . . he was talking to himself . . he seemed to be much enraged, and said he would have his wife out of Ben's house, . . The prisoner's counsel then proposed to prove that an adulterous intercourse had been carried on for some time . . between the deceased and Flora, . . The Court rejected the evidence. . . then proposed to prove by the declarations of the prisoner, . . that the prisoner was labouring under monomania on the subject of the adultery of his wife with the deceased. The Court . . admitted [the declarations of the prisoner] . . made on the night of the homicide" The jury found him guilty, and sentence of death was pronounced. No error.

McLeod v. Oates, 8 Iredell 387, June 1848. A male slave was sold for $600 in 1839.

Futrell v. Vann, 8 Iredell 402, June 1848. "The plaintiff lived in the County of Northampton. A colored boy . . was bound to him for a term of years, . . Before the expiration of the term . . the plaintiff sold the unexpired residue to the defendant, who lived in the County of Hertford," [405] "the parties seem to have been fearful, they were doing what the law[1] would not sanction, and therefore it is provided, that if the boy did not serve out his full term, the defendant should pay only for the time he did serve. A *locus penitentiae* is therefore provided for the plaintiff." [402] " Before the expiration of the time, for which the boy was indentured, he returned to the possession of the plaintiff. The action is brought to recover compensation for the services of the boy . . for the time [about fourteen months] he was in the actual employment of the defendant. . . [403] verdict for the plaintiff" Judgment thereon affirmed.

Evans v. Lea, 5 Ired. Eq. 169, June 1848. [170] "In the life time of . . Lea [who died in 1844, his son] . . as his father's agent, sold a child of the woman Rachel for $675, and after his death, . . two others at the price of $1016;"

Amis v. Satterfield, 5 Ired. Eq. 173, June 1848. [176] "the plaintiff . . was in the habit of visiting the defendant's house and holding private interviews with the slaves, and through their means had obtained an undue influence over their mistress;"

Plummer v. Brandon, 5 Ired. Eq. 190, June 1848. [192] "when Dr. Scott started for Tennessee, he . . took with him eight or ten valuable negroes."

[1] Act of 1801. Rev. St., ch. 5, sect. 7.

Atkins v. Kron, 5 Ired. Eq. 207, June 1848. See same *v.* same, p. 96, *supra.*

Whitesides v. Twitty, 8 Iredell 431, August 1848. "it was agreed . . that Morris and a son of the plaintiff should go to South Carolina and bring thence into Rutherford a slave and a waggon and team, which Staton had there, and that when brought into this State, Morris should seize them under the executions"

Cantrell v. Pinkney, 8 Iredell 436, August 1848. [437] "The plaintiff was . . an overseer of a public road in Henderson county, and the defendant owned three male slaves, over the age of sixteen and under the age of fifty years, who were assigned by the court of Pleas and Quarter sessions . . to work [on] said road . . The defendant was duly notified to send said slaves . . for four days each, which he failed . . to do; . . The defendant alleged that he was a citizen of South Carolina . . But he has a place of residence in Henderson county, which he . . occupies . . June, July, August and September. The slaves, who failed to work on said road, are servants, whom he brings with him . . and takes back on his return . . [438] judgment . . against the defendant for twelve dollars,"

Held: "he comes within the letter of our 'act concerning the public roads,'[1] . . and we can perceive nothing in its spirit to exempt him."

Parham v. Blackwelder, 8 Iredell 446, August 1848. Action of trespass. "a negro man, who belonged to the defendant, went with her wagon and team to the land of the plaintiff, and cut and hauled away a load of wood . . and carried it to the defendant's yard."

Judgment for the plaintiff, reversed: a master is not responsible for a trespass committed by his slave, which he did not order or sanction subsequently.

Smith v. Davis, 8 Iredell 508, August 1848. In 1827 the plaintiff "came into possession of the woman, . . claiming her as her own for the term of her life, until . . 1844. The other negroes were the children of Nelly, born in the possession of the plaintiff, . . At the latter period the defendant took the negroes . . and carried them to Mississippi. . . [509] verdict and judgment for the plaintiff for the value of the negroes for her life," Affirmed.

Robards v. McLean, 8 Iredell 522, August 1848. The plaintiff, a resident of McDowell County, [523] "having gone into Granville County, took with him a negro slave, his property, . . Reuben. When about to return home, Reuben complained of being unwell, and was left in the care of Dr. Robards . . An agent was afterwards sent by the plaintiff for Reuben, who . . directed him to get ready to return home the next day. That night Reuben left . . and went to Hillsboro', near which place he was permitted by the defendant's agent, to take a seat in the stage, belonging to the defendant . . to Greensborough, whence he made his escape . . One ground of defence was, that the plaintiff had given

[1] *Ibid.*, ch. 104.

. . Reuben a written permit to return home alone, . . Gibbony . . testified, that he resided . . on the direct rout, which Reuben would have to pass, on his return home . . that Reuben . . presented him a paper, which, after reading, he returned to Reuben, . . the paper writing was directed to him . . [524] requesting him, if Reuben's mule should give out, he would furnish him with a horse, and let him have ten dollars, . . and also to give him any other assistance he might require, . . verdict . . for the defendant," New trial denied. Affirmed.

Kirkpatrick v. Rogers, 6 Ired. Eq. 130, August 1848. Will of Anna Boyce: [131] " Item the 2d. I . . bequeath to my nephew, Hugh Kirkpatrick, my negroes, Mose and Nelly, and also to him my Glass plantation, the proceeds of which are to go to the support of Mose and Nelly, during their lives, and, at their death it is to become said Hugh Kirkpatrick's, for his trouble in taking care of said negroes. I also allow the said Mose a horse called Buck, and a cow and calf, also a plough and harness to work the Glass plantation, and to Mose and Nelly one year's provisions to be paid by my executors, and to Nelly all the beds she claims in Iredell as her own, and all the kitchen furniture she has there. 6th. I will that my negroes, not otherwise mentioned in this will, be valued by three disinterested men, at one fifth less than would be considered the rating price of such negroes; and the negroes have the liberty of choosing their masters, and, if the persons chosen should not be willing to take them, at valuation, that the negroes have the liberty of choosing until they get one, and Lucy's family is not to be separated, nor the negroes taken out of the county. The funds of this valuation are to remain in the hands of my executors, and by them kept on interest, to be annually divided between the negroes so valued, for their own use. As each one of these negroes, so valued, arrives at the age of forty-five, they are to receive from my executors, what would be their equal share of the principal; if any of the negroes die, their share is to be given to those living. Also I will to my boys Anderson and Jo one bed each, with complete clothing and plain bedstead. All the balance of my beds and furniture, except what may herein be disposed of, I will to my negro girl Lucy and her children. 8th. I will that all the balance of my property, not herein disposed of, be sold by my executors, and, after my debts are paid, the proceeds of the sale be divided into three divisions; . . [132] the remaining third . . to be held by my executors for my negroes Anderson, Jo, Lucy, and her children, and to be subject to the same regulations, as I have laid down in a foregoing clause relative to the proceeds of the valuation of said negroes; and to be used in the same way."

Held: [133] " the bequest contained in the 2nd item, is not void, but, that, under it, the plaintiff takes the Glass plantation, as a present devise in fee, charged with the maintenance of the two old negroes Mose and Nelly, who are also given to him—and that the provision 'the proceeds of which are to go to their support,' if not void, is merely directory. By the laws of this State, provision is made, whereby owners of slaves are compelled to furnish every slave, who has become superannuated and

unable to work, with the usual allowance of clothing, food and lodging.[1] . . [134] The benevolent testatrix . . was, therefore, not only in the performance of a high moral duty, in providing for the future maintenance of these two old and, no doubt, faithful slaves, but she is doing what the law would have compelled her estate to perform. As to the 6th clause, we are of opinion, that the bequests in it are void, and that a trust resulted, which, under the 8th clause, either passes, as therein directed, or to the next of kin. The first part of the clause is void for uncertainty. . . they are not confined to any particular persons, but have the whole country to select from. If their choice had been limited to the relations of the testatrix or to a certain number of designated persons, as it was a bequest intended for the benefit of such persons, it would have been supported, but it is too indefinite and uncertain. The bequest in the latter part of the 6th clause is void, because of the incapacity of slaves to take. It was certainly not the intention of the testatrix to free her slaves—for she expressly provided for their having masters, by directing a sale of them—and, as slaves, they are incapable of taking any thing devised to them for their maintenance. . . [135] As to the slaves [except Mose and Nelly], the testatrix died intestate, and they pass to the next of kin. . . [136] The bequests to Mose and Nelly and the other negroes are all void," [Nash, J.]

Lemmond v. Peoples, 6 Ired. Eq. 137, August 1848. In 1844 "William Query conveyed to the defendants a negro woman, named Linny, and her child, Mary, about six years old. The consideration . . was $600. Soon afterwards . . 12 acres, for the consideration, as expressed, of $36. Both deeds are absolute . . 1846, Query died intestate, and the plaintiffs administered on his estate, . . 1847, filed this bill. . . [138] charges, that the purpose of the parties was to effect the emancipation of the negroes and give them a home on the land, . . the defendants admit, that the deeds were made without any valuable consideration; . . unsolicited by them, and were accepted at the earnest request of the intestate. . . the woman was a mulatto, and had been brought up by the intestate and was regarded by him with great affection: that, for several years, a free negro, . . McAlpin, lived with her at the intestate's as his wife, . . and he . . permitted McAlpin to build a house on his land and raise crops, . . which was the place subsequently conveyed to the defendants. The defendants deny, that it was any part of the object of the bill of sale, that Linny and her children should be liberated, or sent to a free State; and say that it was designed by the deceased, that the property should be vested in them absolutely and without condition. . . that he believed that, at his death, she and her family would fall into the hands of his relatives and would be separated, . . that the defendants, . . [139] during the life of the intestate, permitted the man to occupy the land, and, for a small consideration, hired his wife to him . . until a short time before the bill was filed, when, in order to prevent the plaintiffs from getting them, the defendants took her and her children, including two born after the deed, into their own possession. . . that they

[1] Rev. St., ch. 89, sect. 19.

claim the property in the slaves, to be appropriated in any manner they think proper, and that no part of the wishes of the donor extended to the children;"

Held: [142] "There could scarcely be a plainer case of *quasi* emancipation, in violation and fraud of the law;" [139] "as it cannot be executed as intended and is unlawful, . . there is a trust for the original owner, and those who succeed him." [Ruffin, C. J.]

Cresswell v. Emberson, 6 Ired. Eq. 151, August 1848. "In . . 1831 Adam Moore [of Iredell County] made his will, . . directs, that, after the death of his wife, his boy, George Washington, shall be emancipated. The defendant, Emberson, was . . one of the executors. Mrs. Moore died, and . . by her will, gave to . . Cresswell, the boy Washington, to be emancipated, as soon as the laws will permit; that the defendant, after the death of Mrs. Moore, sold . . Washington, as the property of his testator, . . [152] the executors of A. Moore . . obtained an order from the County Court to sell Stephen, but as the deficiency [of assets to pay debts] was not large, and the negro was willed to Mrs. Moore for her life, at her request, instead of selling him, they hired him out for the purpose of paying the debts." [154] "It turned out . . that the hire of Stephen was not required to pay the debts"

Held: [153] "the direction given for [Washington's] . . emancipation was void, as contrary to law, but Mrs. Moore's interest in him was not thereby enlarged. . . [154] Washington . . upon her death, passed either to the next of kin of Adam Moore, or sunk [*sic*] into the residuum, if there was one. . . The latest case on the subject, and we hope it will be the last, is that of Lemond [*sic*] *v.* Peoples,[1] decided at this term. . . the widow was entitled . . to both" Stephen and his hire. [Nash, J.]

McCorkle v. Sherrill, 6 Ired. Eq. 173, August 1848. Will, 1844, [174] "directed the whole of his negroes to be valued, and not sold,"

Twidy v. Saunderson, 9 Iredell 5, December 1848. On January 1, 1847, the plaintiff [6] "hired to the defendant a negro man for the year . . the defendant was not to risk the slave on water or to carry him out of the County of Tyrrell; that, at the same time and place, many other slaves were hired by other persons and the same terms were . . agreed upon . . during . . 1847, the defendant hired the slave to . . Spruil, who carried him to the County of Martin, where the negro was killed. The defendant offered in evidence a note under seal, . . 'I promise to pay . . one hundred and thirty dollars, the slave is hired on the same terms as other slaves,' . . His Honor admitted the [parol] evidence. . . [7] The jury found for the plaintiff and assessed the damage at $832 56." Judgment thereon affirmed.

Duffy v. Murrill, 9 Iredell 46, December 1848. Nash, J.: [47] "Much the most valuable portion of the personal property . . of this State, consists of slaves, who, by artful and designing men having or pretending a claim of right, can be induced to leave the possession of the

[1] P. 127, *supra*.

proprietor and go into that of his opponent. To such a case the common law remedy by replevin could not apply, . . [48] the Act of 1836[1] was intended . . to apply it, when, by the common law, it could not be used."

Roulhac v. White, 9 Iredell 63, December 1848. Action "for fraud in the sale of a slave, . . The plaintiff purchased the slave . . in January, 1842, and he died in the following Fall, of consumption. . . Dr. Barron . . saw Jack in the Fall of 1841, that his appearance . . indicated . . that his health was bad. . . Jack said, he then had a sharp pain in his breast, and from the sickly appearance of his skin, and his hurried respiration, the witness had no doubt he was then laboring under the incipient stages of consumption. Dr. Armstead and Mr. Capeheart also saw the negro in the Fall or Winter of 1841, . . and testified to the declarations of Jack, as to his *then* situation." Objection to the admission of the evidence of Jack's declarations, overruled. Verdict for the plaintiff. New trial denied.

Judgment affirmed: [65] "his Honor was correct in admitting, as evidence, the declarations of the slave as to the state of his health, at the time they were made. . . [66] The Act . . upon the subject of persons of color being witnesses against white persons, does not apply." [Nash, J.]

Horne v. Horne, 9 Iredell 99, December 1848. [100] "he had 16 or 17 slaves: That one of them [Hannah] had great influence over him: . . [101] that he lived [in South Carolina] in a very uncomfortable way among his negroes, without any white family, having never married: that his farm was small and poor, and his slaves were so unproductive as to render it necessary for him to borrow money, . . proposed to . . Worley, . . to bring his slaves to Mrs. Worley's, work them upon the farm, . . but . . Worley declined . . saying, that his negroes were unmanageable, and he did not wish to have any thing to do with them."

State v. Williams, 9 Iredell 140, December 1848. [141] "on the 3rd day of April, 1848, the slave [Jim] ran away from the owner, Cobb, who lived in Wayne County, about nine miles from Goldsboro', where the prisoner lived, and there was a depot . . that . . 23rd of April . . the prisoner took passage to Wilmington and entered one of the cars, and two negro men also entered another car, in which negroes were generally transported, and . . the prisoner paid his own fare and that of the two negroes . . the prisoner, who was then unknown to the collector of the Port, took passage on board a steamer . . to Charleston for himself and two negro men, and signed a manifest, describing them, in the name of 'John Williamson:' that . . [142] the steamer would arrive at Charleston in time for a passenger to reach Hamburg on the rail road . . in the night of the 24th of April: and that on the 25th of April, 1848, the prisoner sold . . Jim and another negro to . . Trowbridge in Hamburg, the prisoner then calling himself 'John Smith:' and that in October following, suspecting that the negroes had been improperly carried

[1] Rev. St., ch. 101.

away, Trowbridge brought them back to Wayne, and Cobb claimed Jim . . [144] The prisoner was convicted"

Held: [148] "that slaves cannot be reckoned among lost things, and that a runaway is, therefore, as much a subject of larceny, as any other slave;"

Cully v. Lovick Jones, 9 Iredell 168, December 1848. "an action of trespass *vi et armis*, for false imprisonment. . . By the will of Jane Thompson, . . Reuben Jones, her executor, 'was directed to obtain the freedom of Phebe, if practicable, on account of her meritorious services.' . . Jones filed a petition in the County Court . . Whereupon it was ordered . . at November term, 1846 [1806], 'that . . Jones have license to liberate . . Phebe, he first giving bond and security as required by law.' . . after that date Phebe was permitted . . to act as a free person, . . and her children . . up to a short time before this action was brought in 1846, . . Jones neglected to give the bond . . until . . 1816 . . [169] The plaintiff . . was a child of Phebe, born in . . 1808,"

Judgment for the plaintiff, affirmed: "admiting [*sic*] that the sovereign . . might insist that the act of emancipation was not valid, because of the omission to give the bond, we are clearly of opinion, that . . Jones . . whose duty it was to give the bond, [can not] take advantage of that omission;" "and no one claiming . . through him, can . . much less a mere wrong doer, after . . so many years. . . After so long an acquiescence, almost any thing will be presumed, in order to give effect to the act of emancipation." [Pearson, J.]

Hardy v. Skinner, 9 Iredell 191, December 1848. [192] "deed . . 1841 . . conveys . . 400 acres of land, whereon the maker then lived, 11 slaves,"

Barnes v. Farmer, 9 Iredell 202, December 1848. "a suit [commenced September 1846] to recover ['certain' bequeathed] damages for harboring a slave. . . slave had belonged to . . Farmer, and had been sold under execution in 1835, and purchased by the plaintiff; that he took the . . slave into possession, and, immediately thereafter, he absconded and remained out until January, 1845. The witnesses . . testified to various acts of harboring, from shortly after the . . slave ran off, until the Fall of 1842, such as seeing him on the plantation of the defendants, at and about their house and out houses—seeing caves and a shelter on their lands, and one near their house, having the appearance of being used, as places of concealment by some one; and one witness . . had seen the slave at a camp on the land of the defendants, in company with the defendant, William, while he was out, and . . William then spoke of him as a runaway. . . [203] verdict for the plaintiff."

Judgment thereon reversed and *venire de novo*: the action was barred by the statute of limitations.

Howell v. Howell, 5 Ired. Eq. 258, December 1848. [259] "If the defendants take the negroes and sell them, there is a clear and adequate remedy at law . . [260] the damages, which the plaintiff seems to apprehend, cannot . . be considered 'irreparable,' as in the case of orna-

mental shade trees, the value of which cannot be measured by dollars and cents; or a mine, the value of which cannot be known." [Pearson, J.]

McGuire v. Evans, 5 Ired. Eq. 269, December 1848. [270] "he gives to his wife for life . . Bill (shoe-maker) and Tibby" [273] "question was made at the Bar, as to the maintainance [*sic*] of the aged negro Tibby. . . it is one which arises exclusively between two of the defendants,"

Yarbrough v. Arrington, 5 Ired. Eq. 291, December 1848. "In 1840, . . Yarbrough removed to . . Arkansas, and carried the negroes with him."

Harris v. Philpot, 5 Ired. Eq. 324, December 1848. Will, 1842: [326] "it is my desire that my daughter . . have three small negroes more,"

Doggett v. Hogan, 5 Ired. Eq. 340, December 1848. [342] "he executed a mortgage for the slaves, sold to him, about fifty in number;" [346] "the execution was levied on twenty three negroes, . . and at the sale . . Hogan purchased all but three, at . . $8770. . . Jacob, bid off . . at . . $700," A boy was purchased for $150.

Barnes v. Simms, 5 Ired. Eq. 392, December 1848. Will: [393] "it is my desire that the negroes . . shall work on the tract of land that I gave her for the support of her and her children; and if the negroes don't make a support, rent out the land and hire out the negroes. I also reserve two negroes to wait upon her;"

Graham v. Little, 5 Ired. Eq. 407, December 1848. [409] "the testator was largely indebted when he died [in 1829], . . that there were about 60 or 70 slaves, and that a considerable number of them were sold for the purpose of raising money to be applied to the discharge of the debts, and that it would have required all of them, or nearly all of them, . . to satisfy all the debts: and that . . it was thought most proper to sell such parts of the land as were unproductive and thus save some of the slaves (which were productive and increasing)"

Held: [411] "the debts must be paid . . by the personal estate as the primary fund,"

Meredith v. Anders, 9 Iredell 329, June 1849. [330] "The lessor of the plaintiff claims under the will of Elizabeth Locke . . 'For the love and affection which I have for James Meredith, and to enable him to take care of my two old negroes, Ben and Rachel, who, I wish to remain where I now live and support themselves, I give [to him] . . the land whereon I now live, . . containing two hundred acres, . . Should . . Meredith find it necessary for his own convenience and the good of the neighborhood to remove said negroes to his own house, I wish him to do so.' . . The Court . . charged, that the land was devised to the lessor of the plaintiff, and not to the two negroes, nor in trust for them."

Judgment for the plaintiff, affirmed.

State v. Stewart, 9 Iredell 342, June 1849. "The prisoner was indicted for murder, . . [343] the prisoner and Penny Anderson had lived

together for several years, as man and wife, although not married: . . October 1848, . . During the night, blows were heard and much lamentation, . . in the direction of the prisoner's house, and the cries were in the voice of a female. . . In about six weeks afterwards, her body was found, partially buried . . some five hundred yards from the house of the prisoner. . . many marks of violence, . . The prisoner was of a black complexion. He had lived in the neighborhood about ten years, and . . passed for, and was treated as, a free negro; . . The jury found the prisoner guilty of murder. . . Several of the State's witnesses were mulattoes." [345] "Another ground, upon which a new trial was asked, was, that the prisoner, being *black*, was *prima facie* a slave, and, if a slave, the Court had committed error, in not admonishing the mulatto witnesses, as required by law.[1] This point was not made till after the trial"

[346] No error: [345] "If the prisoner wished to be tried as a slave, the question should have been started 'in time.' . . It would be trifling with the administration of justice, to allow a prisoner to pass himself off as a free negro, and take his chances for a verdict; and then turn around and insist that he was a slave." [Pearson, J.]

State v. Robbins, 9 Iredell 356, June 1849. [357] "a licensed retailer of spirituous liquor" was convicted of selling one pint to a slave "in the night time."

State v. Dempsey, 9 Iredell 384, June 1849. "The defendant was indicted as a free man of color for carrying arms without a license. On behalf of the State a witness deposed, . . that he . . heard Barnacastle [a very old man, now deceased] say, that . . the paternal great-grandfather of the defendant, who was called Joseph Dempsey, . . was a coal black negro. . . defendant objected; but the Court received it. The defendant then gave evidence, that the mother of Joseph . . [385] was a white woman, and that said Joseph was a reddish copper colored man, with curly red hair and blue eyes: that . . Joseph's wife was a white woman, and that they had a son, named William: that . . William also married a white woman, and had . . a son . . Whitmel: and that . . Whitmel married a white woman, and they are the parents of the defendant."

Held: "the defendant . . was in the fourth generation from negro ancestors, and therefore within the prohibition of the Statute."[2] [388] "the term 'free person of color' in the Act of 1840, and in that of 1823, . . is to be understood in our law, at this day, to be a person descended from a negro within the fourth degree inclusive, although an ancestor in each intervening generation was white." [Ruffin, C. J.]

State v. Caesar (a slave), 9 Iredell 391, June 1849. Caesar was indicted for the murder of Mizell. [392] "on his trial, . . Brickhouse . . stated, that . . the 14th of August, 1848 . . the deceased and he . . were both intoxicated: . . went to bed . . he was awoke by the deceased,

[1] Rev. St., ch. 111, sect. 51.
[2] Act of 1840, ch. 30.

who proposed that they should . . walk out: that . . each took a drink . . that near a store house . . they found two negro men lying on the ground: . . was not acquainted with either of them, . . [393] witness informed the prisoner and Dick, that he and the deceased were patrollers, and he . . took up a piece of board and gave the prisoner and Dick each two or three slight blows: . . [394] Dick stated, that he . . thought it was done in sport . . Brickhouse then asked [Dick] . . if he could not get some girls for them, . . that he had money a plenty; witness declined doing so: . . Charles came up: Brickhouse asked Charles, if he knew they were patrollers, and took hold of Charles and ordered witness [Dick] to go and get a whip to whip Charles with: witness moved off a few steps .. Brickhouse then began to beat the witness with his fist and struck several blows on the head and in the side of witness, which hurt him, and he begged Brickhouse to quit. . . Charles stated . . [395] the prisoner . . remarked . . that he could not stand that, and run to the fence and got a rail, and . . struck . . Brickhouse on the head: the rail broke in two pieces, . . the prisoner then struck Mizell . . and felled him to the ground . . then ran off." Mizell died the next morning. [396] " The prisoner . . was employed in getting timber. . . was obedient to white persons, . . [397] The Court charged the jury, . . [398] The blows inflicted by Brickhouse . . were . . nothing more than ordinary assaults and batteries; and . . would not amount to such legal provocation as would extenuate the killing of a free white man by the slave from murder to manslaughter, however worthless and degraded the white man might be. The jury . . found the prisoner guilty [of murder], . . After sentence of death, the prisoner appealed"

Judgment reversed and new trial granted: [405] " He [Caesar] used force enough to release his associate and they made their escape without a *repetition* of the *blow*. Does this show he has the heart of a murderer? On the contrary, are we not forced . . [406] to admire, even in a slave, the generosity, which incurs danger to save a friend?" [Pearson, J.] Nash, J., concurred: [407] " it was not an ordinary assault and battery. . . [409] By the common law, the prisoner's offence would clearly be mitigated to manslaughter . . I fully admit, that the degraded state of our slaves requires laws different from those applicable to white men, but I see no authority in the Courts of justice, to make the alteration." Ruffin, C. J., dissented: [421] " Negroes—at least the great mass of them—born with deference to the white man, take the most contumelious language without answering again, and generally submit tamely to his buffets, although unlawful and unmerited. Such are the habits of the country. It is not now the question, whether these things are naturally right and proper to exist. They do exist actually, legally, and inveterately. Indeed, they are inseparable from the state of slavery; and are only to be deemed wrong upon the admission that slavery is fundamentally wrong. . . [423] it is an incontestable fact, that the great mass of slaves—nearly all of them—are the least turbulent of all men; that, when sober, they never attack a white man; and seldom, very seldom, exhibit any temper . . at even gross . . injuries from white men. They

sometimes deliberately murder; oftener at the instigation of others, than on their own motive. They sometimes kill each other in heat of blood, being sensible to the dishonor in their own caste of crouching in submission to one of themselves. That, however, is much less frequent than among whites; . . [424] Crowds of negroes in public places are often dispersed with blows by white men, and no one remembers a homicide of a white man on such occasions. . . In the course of nearly forty-two years of personal experience in the profession . . I have not . . heard of half a dozen instances of killing or attempting to kill a white man by a negro in a scuffle, although the batteries on them by whites have been without number, and often without cause or excessive. Desperate runaways sometimes resist apprehension by a resort to deadly weapons. But . . negro slaves can hardly be said to be at all sensible to the provocation of an assault from a white man, as an incentive to spill blood. . . [427] dangerous . . to hold the doctrine, that negro slaves may assume to themselves the judgment as to the right . . [428] of resistance . . to the authority . . by the whites, . . First denying their general subordination to the whites, it may be apprehended that they will end in denouncing the injustice of slavery itself, and, upon that pretext, band together to throw off their common bondage entirely."

State v. Robert Hildreth, 9 Iredell 429, June 1849. [430] " 1848, he was . . engaged in stacking fodder with his father, [and] a negro man, and a younger brother . . his father and the negro were throwing up fodder to him; . . [432] about four or five weeks before the homicide, the prisoner told a witness, the deceased was in the habit of watching his house to catch him trading with slaves, . . [433] witness [stated] . . That David . . asked him, if he ever heard Taylor say, that a negro saw him . . and his father lying in the road drunk: to which the witness replied, that he had heard the deceased say something like it—upon which David said, 'I will go over and beat old Bill Taylor nearly to death:' "

State v. David Hildreth, 9 Iredell 440, June 1849. See State *v.* Robert Hildreth, *supra.* " Edmund Taylor, stated, that, as soon as his father made the exclamation, that he was killed, he, the witness, . . seized a fence rail to strike Robert, and that the negro man took it from him. . . [441] if the jury should believe that the prisoner made use of the words, 'hush, or I will whip you both,' . . [442] with the intention of discouraging . . Edmund Taylor and the negro from interfering,"

State v. Henry (*a slave*), 9 Iredell 463, June 1849. Indictment for burglary. " in January, 1849 . . about four o'clock in the morning, he [McNatt] was awoke . . 'your mother's plantation is on fire:' . . [464] and started to his mother's, distant two miles, . . he found the family asleep: . . no fire . . [465] after her husband left, [Mrs. McNatt] . . pushed to the front door, but did not fasten it, and in . . ten or fifteen minutes . . a negro opened the door, . . 'haven't you got some money here; if you don't give it to me I will kill you;' that she . . said . . 'if I give you my husband's tin trunk, that contains his pocket

book and all his papers, will you spare me?' and the negro said, 'may be so:' . . and he took it off; . . she swore to . . [the prisoner's] identity . . White . . testified, that, the Tuesday night before . . he heard the prisoner and one Barlow, a white man, in conversation: . . [466] Barlow said . . 'you must break open Jimmy McNatt's house and get his money,' to which the prisoner made no reply: That the prisoner told Barlow to let him have two gallons of whiskey: That Barlow let him have them, and . . said, 'if you don't do what you promised, I will kill you.' It was contended for the prisoner, that there was no such breaking as would constitute a burglary, . . The Court charged, that if the prisoner made the outcry . . for the purpose of decoying McNatt out of the house, . . it would be . . constructive breaking," He was found guilty, and a new trial was refused.

Judgment reversed and a *venire de novo* awarded: [468] "the entry was not *immediate*. Fifteen minutes expired, during which there was ample opportunity, to replace the fastening." [Pearson, J.] Nash, J., concurred: [472] "I am utterly opposed to these constructive burglaries;" Ruffin, C. J., dissented.

State v. Howell, 9 Iredell 485, June 1849. "the prisoner and the deceased, both men of color, lived with their families in the same house. A quarrel took place . . [486] The prisoner [in the yard] threatened to go into the house and whip the deceased, . . was stopped . . the deceased came out and walked off in a different direction from where the prisoner stood, and observed to him, if he wanted the house he could take it. . . had gotten about fifty yards, when the prisoner swore he would whip him any how, and started after him. . . the prisoner approaching him, with his arm raised in a striking position. . . the deceased struck the prisoner, who immediately returned the blow, and the deceased fell and died in a short time. . . a deep wound in the breast . . The jury found the prisoner guilty of murder; a motion for a new trial . . refused and judgment pronounced," No error.

State v. Long, 9 Iredell 488, June 1849. "a proceeding under the bastardy Act. . . The defendant . . moved the Court to dismiss the proceedings, for the reason that Lucinda Simpson was a woman of mixed blood, within the fourth degree, and therefore incompetent to give testimony against a white man. . . The Court . . quashed the proceedings." Affirmed.

Blackwell v. Overby, 6 Ired. Eq. 38, June 1849. [39] "The plaintiff, being quite a poor man, was unable to procure any laborers [in the gold mine of which he had a lease] besides himself . . After some time, however, it was agreed between him and [the Overbys] . . that the two latter should, each, furnish a slave to work under the plaintiff, and that the three should divide the nett gains equally: and under that agreement the plaintiff collected ore . . perhaps about $100."

Powell v. Powell, 6 Ired. Eq. 50, June 1849. Will, executed in 1842: [51] "1st: It is my will . . that my executors . . dispose of such of my property . . as they may think best . . to pay my debts. 2nd: I give

unto my son . . two negro men, . . valued at eight hundred dollars each; a woman . . and her two children, . . valued at twelve hundred dollars, and their increase . . unto my daughter . . one negro man, . . valued at eight hundred dollars; one girl, . . valued at six hundred dollars; a woman, . . and her three children, . . valued at fourteen hundred and fifty-nine dollars; and their increase" [53] "The executors have sold the land and applied the proceeds . . to the payment of the debts. . . [54] a large amount received for the hire of the negroes . . has been applied to pay the debts"

Held: "the will makes the land a *primary* fund for the payment of debts, at the discretion of the executors, which has been properly exercised by selling the land to save the negroes." [Pearson, J.]

Gray v. Armistead, 6 Ired. Eq. 74, June 1849. In 1841 the administrator "sold a negro boy . . and took his note with two sureties for the price $736, payable . . six months after date,"

Ingram v. Smith, 6 Ired. Eq. 97, June 1849. "a woman, aged 17 years, and her three female children—one of the age of six years; another, four; and the youngest, about one" were sold in 1824 for $711.36.

Held: [102] "the price paid, if not the full value, was about it"

Scarborough v. Tunnell, 6 Ired. Eq. 103, June 1849. [105] "The defendant . . admits, that he shot the plaintiff's slave, but says that it was upon a just cause . . and that the plaintiff, though excited at first, readily became satisfied with the defendant's conduct upon that occasion,"

State v. Goode, 10 Iredell 49, August 1849. Nash, J.: [51] "As the law stood, upon the passage of the act of 1814, the paternity of a bastard child was . . fixed by the examination of the woman; so much so, that, if the child, when born, should prove to be black, the defendant had no redress in a Court of law,"

McNeeley v. Hart, 10 Iredell 63, August 1849. "he had agreed with the defendant to work in the crop [corn and oats] with him in 1844, . . that he kept a hand in the crop during the year, and he, himself, left the country."

Sherrill v. Shuford, 10 Iredell 200, August 1849. "removed to Tennessee, taking . . several negroes,"

Graham v. Davidson, 10 Iredell 245, August 1849. [246] "1843, the plaintiff requested his grandmother, Mrs. Byers, to allow him to sell Cato; and that Mrs. Byers . . said, 'no; and if you are tired of Cato, send him home'"

Call v. Ellis, 10 Iredell 250, August 1849. [252] "Ellis proposed [in 1841] . . that he . . would hire the [plaintiff's] negro Louisa at the rate of $5 per month, until her hire amounted to enough to pay him what he should advance for the plaintiff."

Craige v. Craige, 6 Ired. Eq. 191, August 1849. "a negro woman . . purchased [on a credit] at the price of three hundred dollars, a boy . . purchased . . for the sum of four hundred and seventy five dollars,"

Alexander v. Alexander, 6 Ired. Eq. 229, August 1849. Will, 1841: "that my land and negroes . . be put to sale, . . out of the proceeds . . that all my just debts be paid,"

Trexler v. Miller, 6 Ired. Eq. 248, August 1849. Will, 1848: [249] "to his daughter Polly a legacy in money, instead of negroes, as she did not wish to have negroes." Codicil, 1845 [*sic*]: "if my wife should be . . delivered of a child, that child shall have a negro girl named Creecy,"

Houston v. Smith, 6 Ired. Eq. 264, August 1849. "In . . 1827, . . Houston, sold to the defendant a negro girl, 17 years of age, for . . three hundred and fifty dollars, for . . the life of the defendant, who . . executed a penal bond in the sum of three hundred and fifty dollars, with condition, that . . if the defendant . . should remove the [negro girl and her issue] . . out of the county, . . Houston should take immediate possession, as though the defendant was dead. In . . 1844, the defendant executed a bill of sale to . . Grier for the said girl and her five children, for the life of the defendant, . . Grier . . carried the slaves to South Carolina, whereupon . . Samuel and James Davis, agents of . . Houston, seized the negroes, alleging that the life estate was forfeited, brought them back to this State, and afterwards sent them to . . Houston, in . . Mississippi. The defendant brought an action of trover against . . Samuel and James Davis, and, . . 1847, recovered judgment . . for . . eleven hundred and twenty dollars, the value of her life estate. . . [266] The prayer is, that the defendant be perpetually injoined from collecting . . The defendant admits that she executed the bill of sale . . but avers that she did so, because she was apprehensive, that the plaintiffs would . . run them out of the State, as . . Houston had done on a former occasion. She denies any assent, expectation or belief . . that he [Grier] would take the negroes out of the State."

Bill dismissed: [269] "the plaintiffs, if any injury has been sustained, have, by the penal bond of $350, as full redress as they stipulated, for the price of $350 for a life estate in a negro girl of 17 years of age was exorbitant."

Kelly v. Bryan, 6 Ired. Eq. 283, August 1849. [285] "they allowed their sister to keep Ember [[288] 'the best blacksmith'] and retain his wages in the black smith's shop, for the support of herself and family, from . . 1841 until 1846, when Alfred was substituted for Ember, who was sold for $500, which was applied to the plaintiff's debts;"

Beasley v. Downey, 10 Iredell 284, December 1849. "assumpsit for the hire of a negro from November 1840, to March 1843, during which time, and for some years before, the negro had been in . . Mississippi under the . . management . . of the defendant [as the plaintiff's agent]."

Johnson v. Chambers, 10 Iredell 287, December 1849. [289] "both Johnson and Chambers were intoxicated, . . that Chambers, to whom the house belonged, had reserved two rooms in it, in one of which some negroes belonging to him lodged, . . that, before he [witness] left the house, he found that Johnson had gone into the room among the negroes, . . and that he made him come out;"

Anderson v. Doak, 10 Iredell 295, December 1849. "1841, . . Weatherly moved from this state to . . Virginia, and took the slave Harper with him, . . [296] 1846, . . [Harper] committed some alleged offence and ranaway from . . Virginia, and returned to the County of Guilford in this State, where the . . sheriff . . seized the said slave . . by virtue of an attachment . . against . . Weatherly,"

Edwards v. Bennett, 10 Iredell 361, December 1849. "The petitioner alleges, that he is the owner of one half of certain slaves [[362] 'aged about thirty Judy, Eliza aged three years old, Harrison aged about eleven months old'], a tenant in common . . and prays for a decree of sale in order to effect a division."

[364] "the plaintiff declared to be entitled to partition. And as it does not appear, whether there is a necessity for a sale . . for the purpose of making partition, . . remit the cause, so that the partition made [*sic*] be made under the direction of the Court below." [Pearson, J.]

McRae v. Keller, 10 Iredell 398, December 1849. "an action . . to recover a penalty given by Statute for trading with a slave; . . [399] '1847, did sell . . to . . a slave, . . spirituous liquors, without the permission in writing or otherwise, from his master or manager, so to do.' . . judgment [for the plaintiff.]" Affirmed.

Herring v. Railroad Co., 10 Iredell 402, December 1849. An action "to recover damages . . for negligent management of their cars, . . Sunday in . . August 1845, . . afternoon, a train . . was passing . . 15 or 20 miles an hour, when the wheels . . passed over one of the plaintiff's slaves and killed him instantly, and badly injured the hand of another. . . [403] the slaves were asleep at the time, . . on the bed of the road or just outside of it, . . the plaintiff owned the plantation . . on both sides of the road. . . [405] verdict for the defendants." New trial denied.

Affirmed: [408] "as the negroes were reasonable beings, endowed with intelligence, as well as the instinct of self preservation and the power of locomotion, it was a natural . . supposition, that they would get out of the way, and the engineer was not guilty of negligence, . . [409] No fault is imputable to the owner for not preventing his negroes from going about on Sunday and lying down where they please," [Pearson, J.]

Houston v. Bogle, 10 Iredell 496, December 1849. [499] "1831, . . Davidson conveys to his son . . negro Hannah and her two children . . for . . $450, that being the value . . [500] Lucy . . given . . in exchange . . was worth as much as Hannah and her two children. . . [501] Davidson . . stated that his father retained twenty-two negroes,

. . was called upon to give the names of them; he mentioned nineteen by name and stated that there were others, whose names he could not recollect."

Hansley v. Hansley, 10 Iredell 506, December 1849. "a suit . . for a divorce *a vinculo matrimonii*, . . and for alimony. [508] 'her husband not only abandoned her bed entirely, and bedded with . . negro Lucy, but he deprived the petitioner of the control of all those domestic duties . . which belong to a wife, and placed . . Lucy in the full possession . . and insulted the petitioner by . . repeatedly ordering her to give place to the . . negro, and saying that the petitioner was an incumbrance, and encouraged . . Lucy to treat her also: . . that often he would, at night, compel the petitioner to sleep in bed with . . Lucy, when he would treat . . Lucy as his wife, he occupying the same bed with the petitioner and . . Lucy: . . that she, at length, abandoned the residence of her husband' . . [509] the plaintiff offered evidence, . . [510] that, in conversations respecting this suit, the defendant said, that he would spend everything he had in defending it, except . . Lucy and his [and Lucy's] child; . . a brother of the petitioner . . said to the [defendant] . . if he would sell Lucy he did not know what the petitioner might do as to living with him again, and that the defendant replied . . that he would part with all the property he had before he would with . . Lucy and his child, and that the petitioner might stay where she was." [509] "jury . . found . . that the defendant did separate . . from the petitioner and live in adultery with . . Lucy: . . [510] There was a decree for a divorce *a vinculo matrimonii*, and for the costs against the defendant: and an inquiry was directed as to the settlement . . proper to make on the petitioner;"

Held: [516] "the decree was erroneous," [512] "there is no allegation of any adultery by him after" "the petitioner left her husband's house," Upon the allegations of the petition, [513] "and upon such parts of the finding of the jury, as are consistent with them, the wife would be entitled to a decree for separation and alimony. . . a divorce *a mensa et thoro*. . . [514] From the evidence respecting the child, about whom the petition would hardly have been silent, if it had been born when it was filed, and from the findings of the jury, it may be presumed, that in fact the criminal and disgraceful connection . . did continue after the petitioner left him. If so, it is unfortunate that it should have been omitted in framing the petition." [Ruffin, C. J.]

State v. Boyce, 10 Iredell 536, December 1849. Indictment for keeping a disorderly house. [537] "A witness stated, that at Christmas 1845 he went to a negro quarter on the defendant's plantation [in Perquimans County], . . about 200 yards from his dwelling house, and . . found a quilting going on and dancing by negroes; . . a daughter of the defendant was there . . and some of the negroes did not belong there . . Roberts deposed, that on Christmas night 1846, he and other patrollers went to the defendant's plantation between 8 and 9 o'clock: . . much noise . . went to the negro quarter first and found several negroes

dancing . . then went to the house in which Boyce lived, and found therein twelve or fifteen negroes, of whom one was fiddling, and the others dancing and talking loud; . . some . . acted as if they were drunk, and he smelt spirits: that Boyce was in the house, and . . [538] a neighboring white man named Hollowell, a brother . . and a married daughter of the defendant and her husband . . and several children of the defendant, who lived with him and were enjoying themselves in the dance with the negroes: that several . . did not belong to Boyce, but they all had papers to go to Boyce's, and yet were whipped by the patrol, except the fiddler, who had been sent there by one of the patrol: that when the patrol seized the negroes to whip them, Goodwin, the defendant's son-in-law, had high words, and got into a fight with the patrol, but the defendant did not interfere. . . the defendant resided in a very private situation, not being within a mile of any public road. And another of the patrol stated, that they bursted open the door and were in the house before the defendant knew they were on the land: that they immediately began to tie the negroes, when Goodwin remarked to Roberts, that a person who would act as he was doing, was no better than a negro: and that brought on a fight between them. On the part of the defendant, Hollowell stated, that [they] . . were sitting quietly in conversation, when the patrol broke into the house: that all the negroes belonged to the defendant except four, . . those four had belonged to him and came there by the permission of their owners to pay a Christmas visit to their old master, and their parents and relations, who belonged to the defendant: . . they had no spirits, and made but little noise: that the defendant permitted the negroes to come into the house to dance one reel, for the amusement of his children and visitors, and there was no disorder: . . [539] The Court instructed the jury, that, . . if they found . . that the defendant had upon two or three occasions suffered white persons and negroes, of both sexes, to meet together at his house and fiddle and dance together, and get drunk and make a noise, so as to disturb the public, they should find the defendant guilty; . . The jury accordingly found the defendant guilty, and after sentence he appealed."

Judgment reversed and a *venire de novo*: [540] "It would really be a source of regret, if contrary to common custom it were to be denied to slaves, in the intervals between their toils, to indulge in mirthful pastimes, . . [541] But it is, clearly, not so. . . We may let them make the most of their idle hours, and may well make allowances for the noisy out-pourings of glad hearts, which providence bestows as a blessing on corporeal vigor united to a vacant mind. . . [542] There was nothing contrary to morals or law in all that . . unless it be that one feel aggrieved, that these poor people should for a short space be happy at finding the authority of the master give place to his benignity, and at being freed from care . . Then, as to the ingredient, . . that some of the white people also joined in their dance. . . there is much question as to the truth . . But, supposing it to be so, . . though it be not according to the custom of this part of the country, there is nothing in it forbidden by law . . and it is very possible, that the children of the family might

in Christmas times, without the least impropriety, countenance the festivities of the old servants of the family by witnessing, and even mingling in them." [Ruffin, C., J.]

Mooney v. Evans, 6 Ired. Eq. 363, December 1849. [364] "The testator [Kelly] gives to his wife, the slaves Billy and Tibby, during her life, and at her death . . to the executor, Mr. Evans, 'in trust for the . . benefit of Benjamin Rush.' . . Bill afterwards died and Tibby was stricken with palsy; she is old; there is no longer hope of her recovery; . . Mrs. Kelly is also dead. . . [365] Evans [trustee for Rush, 'who is an infant'] . . declines accepting."

Held: "It is . . the duty of the executor . . out of such part of the estate as remains in his hands . . to see that she [Tibby] is comfortably provided for, so as to prevent her from being chargeable to the County."

Alston v. Batchelor, 6 Ired. Eq. 368, December 1849. Dolly Alston, [369] "with a view to prevent a sale of the negroes, took up a note,"

Freeman v. Cook, 6 Ired. Eq. 373, December 1849. [374] "soon after he [the husband] took possession of the slaves, they were seized by officers, under executions against the husband, and sold to pay his debts. They were purchased by different persons, and some of them were carried out of the State,"

Thompson v. Newlin, 6 Ired, Eq. 380, December 1849. "Cause removed from the Court of Equity of Orange County, . . 1846. . . [381] Sarah Freeman . . had some real estate, about thirty slaves, and . . seven or eight thousand dollars; and by her will, dated . . 1835, she devised a piece of land to her husband during his life; and the remainder therein and all her other land, her negroes, . . and every other part of her estate . . to . . Newlin, . . her executor. She died in 1839, . . will . . contested by her husband, and heirs, and next of kin; . . established . . 1843 [1841].[1] In August following this bill was filed [2] by her next of kin . . prays a discovery of those [secret] trusts, . . The answer of Newlin admits, that the bequest of the slaves to him was not to his own use: and states, that the testatrix wished them to be emancipated and gave them to him in trust, that he should have them emancipated according to law. . . frequently had consultations together . . and at one time she had determined to manumit and send them out of the State, but afterwards abandoned that purpose with the view, that the defendant should have it done after her death. . . [382] at no time intended . . that they should remain here, . . that the testatrix preferred not to express the said trust in her will, but to confide in the defendant . . to take the necessary steps . . which he . . promised her to do; . . that the testatrix seemed to prefer Liberia as their place of destination; but . . left to the defendant's discretion the place, and also the manner of transporting . . he would long ago have [executed the trusts] . . by sending the negroes out of this State, if he had not been prevented by the continued litigation . . and that it is still his purpose . . to do so under

[1] Newlin *v.* Freeman, p. 93, *supra*.
[2] See same *v.* same, p. 110, *supra*.

the direction of the Court. He denies, that there was . . an understanding between the testatrix and himself to violate . . the law, by holding the negroes in a state of qualified slavery. . . that the devises and bequests of the other parts of the estate were upon the trusts . . to defray the expenses of removing the slaves and make some provision for them; and in part to compensate the defendant"

Held: [384] "the trusts disclosed . . are not unlawful. They are, indeed, in accordance with the policy plainly appearing in the act of 1830;[1] which, moreover, always prevailed here, provided only the emancipated slaves were carried, and kept, without our borders. . . [385] the trust . . is lawful and proper to be executed by procuring . . the emancipation in the manner prescribed by the Statute . . and the defendant is allowed one year . . to effect the same." [Ruffin, C. J.] Nash, J., concurred; Pearson, J., dissented.

[391] "*Per Curiam.* Decree for the emancipation of the slaves upon the defendant's complying with the requisitions of the law." See same *v.* same, p. 163, *infra.*

Lockhart v. Bell, 6 Ired. Eq. 398, December 1849. Will, 1839: [401] "It is my will . . that, if the fund set apart for the payment of my debts, . . and the sales of all the perishable estate, shall not be sufficient, then my executors shall sell such of my slaves as shall be necessary:"

Nelson v. Nelson, 6 Ired. Eq. 409, December 1849. Nelson's will, 1843: [410] "To my daughter Elizabeth one negro woman, Leah and her baby, . . her youngest child living, . . And if there should be any increase from . . Leah, I want that equally divided, between my three daughters . . some to buy and pay the others, as I do not wish any sold out of the family." While a suit was pending, [412] "the executor hired out such of the negroes as would bring wages, and for the maintenance of some he was obliged to pay. . . Between the making of the will and the death of the testator [about three months after], . . Leah . . bore no other child; but she hath since had three;" [416] "the expense of maintaining . . Leah, and her family is stated to have been $329 75;"

Held: "as to the construction of the clause disposing of any increase Leah should have, . . that the testator meant . . only such issue as the woman might thereafter have in his lifetime. . . [417] It is difficult to suppose that . . a father . . could mean, that she [Elizabeth] should be at all the expense of providing for the mother during her pregnancies and confinements . . and yet give away two thirds of the offspring—almost the only profit"

McKay v. Simpson, 6 Ired. Eq. 452, December 1849. "In May 1846, the plaintiff sold to the defendant a negro boy for . . $350, . . with a warranty of . . soundness, 'execpt a small rupture'; . . [453] The defendant . . alleges, that . . the plaintiff cheated him . . by inserting the exception . . without his knowledge, and because the rupture is in fact a large and serious one, greatly impairing the value of the slave."

[1] Rev. St., ch. 101.

Hailes v. Ingram, 6 Ired. Eq. 477, December 1849. [481] "the legatee for life, and the person, apparently entitled to the contingent limitation, joined in the sale [in 1834] of a slave [[477] 'a negro boy, . . for $550,'] . . because they wanted money to build a new mill and to support the other negroes, which was a charge on the legatee for life, . . The interest of the estate did not call for the sale of a negro as there was perishable property—the debts did not exceed twenty five dollars,"

Biles v. Holmes, 11 Iredell 16, June 1850. "an action . . in which the plaintiff claims damages for an injury to his slave . . [17] the defendants had hired from the plaintiff his slave Green, to work at the mine . . at Gold Hill; . . at the bottom of a shaft about one hundred and eighty feet deep, from which the defendants were taking gold ore; . . in the bottom of the buckets was an aperture four inches square, over which was a valve . . [18] January 1848, as one of the buckets commenced descending, . . the '*lander*' of the defendants, dropped into it four iron drills, each weighing five pounds, which instantly passed through the aperture . . and one of them struck Green on the head, and fractured his skull, which made the operation of trepanning necessary, and a large piece of the skull bone was cut out. . . Green and a white man were then working there together: . . there was no valve in the bucket, . . Another witness . . was asked, if Green did not complain much of head-ache, when exposed to the sun, and if Green did not state his inability to work in the sun, or to work in any laborious employment. The declarations of the . . slave . . were excluded by the court. . . [19] verdict in favor of the defendants. . . New trial refused"

Judgment reversed: [21] "There must be a *venire de novo.*" [20] "there was manifestly a want of ordinary care. . . to show . . that [the slave] . . was permanently injured . . it was competent to prove . . of what he complained. . . [21] The statute, excluding the testimony of a slave or free person of color against a white man, has no application. . . The actions, looks and barking of a dog are admissible . . upon a question as to his madness." [Pearson, J.]

State v. Haithcock, 11 Iredell 32, June 1850. "a free negro, was charged by a white woman with being the father of her bastard child."

Held: [33] "Free negroes . . are bound to support their bastard children, whether begotten on a free white woman or free black woman. They can set up no 'exclusive privilege' in this behalf." [Pearson, J.]

Cooke v. Beale, 11 Iredell 36, June 1850. [37] "guardian of some minor children . . removed into Virginia, near the line, and took with him a part of the slaves belonging to his wards, and kept them in his own service and hired out the remainder in this State,"

Held: the court which appointed him had the right to remove him.

Burney v. Galloway, 11 Iredell 53, June 1850. "I promise to pay . . one hundred and sixty dollars, for the hire of a negro . . and the use of two full crops of boxes on Moore's Creek. . . 1848." [54] "it is not stated . . when the hire of the negro was to begin, . . the phrase

'crops of boxes,' means as many pine trees, prepared for making turpentine, as one hand will attend during a season."

Satterfield v. Smith, 11 Iredell 60, June 1850. Action " for a breach of a contract of hiring. . . a paper writing, purporting to contain the terms of hiring, one of which was, that the negro should not be employed at a fishery or sent by water . . was read aloud by the crier, before the hiring commenced. . . that after the paper was read, . . the crier said in a loud voice, ' the negro can be sent by water or put at a fishery at the risk of the hirer.' . . [61] The defendant employed the negro at a fishery; but there was no evidence of any damage. . . the plaintiff could not recover."

Small v. Eason, 11 Iredell 94, June 1850. " he was willing his hands should . . work on the road to the width of twenty feet, but that they should not work outside thereof,"

State v. Britton, 11 Iredell 110, June 1850. [111] " Harrell sometimes threatened to sell these negroes; at other times, he spoke of them as belonging to his wife [for life], and expressed a wish to sell them, if his wife would agree to it, as he thought it was hard he should have to raise negroes for other persons."

Meadows v. Meadows, 11 Iredell 148, June 1850. " When this son . . was about ten years old, the father purchased a negro boy, and declared he intended him for his said son, . . [149] After he [the son] became eighteen years old, the father allowed the son to take the earnings of the negro . . and when he married, he . . carried the negro with him . . 1841, for some fault, he sold the boy for $700;"

State, ex rel. Fanshaw, v. Jones, 11 Iredell 154, June 1850. Will of Henry Britt, of Currituck County, who died in 1836: " The girl Mary Ann, which was picked up or found at my door, is to remain with my wife Polly, until she arrives at the age of twenty-one; and then it is my will, that she be and enjoy all the benefits of a free person of color." About 1829 Wilson of Currituck County had [155] " sold to . . Willis, a female slave, named Milly, who was pregnant. Willis . . was a negro-trader. The woman ran away from Willis in Currituck, and in some short time . . came to the house of a widow lady, . . a short distance from Britt's, bringing . . a female infant, perfectly naked and apparently not more than a day old. The lady told the woman, that she and her child would die if they continued in that condition, exposed in the woods, and advised her to go to her owner. . . in two or three days afterwards, a mulatto female infant was found at the door of Britt's house, who is the girl Mary Ann. But the lady did not see the infant in any short time, and therefore did not know her to be the same, which . . Milly brought . . but . . Mary Ann is a bright mulatto and bears a family resemblance to . . Milly. Britt and his wife had no children, and took the found child into the house with them, brought her up tenderly, and became much attached to her. About four years afterwards, Willis returned . . and claimed Mary Ann, . . and demanded her from Britt. But the latter refused to give her up . . did not claim her as a slave, and believed she

was not, but that she was the offspring of a white woman and a colored man." Since Britt's death, Mary Ann has lived with Jones, the administrator with the will annexed of Britt. [154] "The relator is the administrator of the testator's widow, who dissented from her husband's will. . . [156] the Court instructed the jury, . . If they should find that her mother was free, that their verdict should be for the defendants. But, if . . the child . . of . . slave mother, so as thereby to be, herself, a slave, . . the possession of Britt . . was insufficient to vest the property in him, unless . . he claimed a property in her; . . From a verdict and judgment against him the relator appealed."

Judgment reversed and a *venire de novo*: [157] "the possession for more than three years bars the action of the owner under the act of 1715: and then the act of 1820,[1] . . is, that the person, so in possession, . . shall be deemed to have a good . . title . . as against all persons so barred . . a slave must belong to some one, and as no one can recover from the possessor, such slave must be deemed . . the absolute property of the possessor." [Ruffin, C. J.]

Irions v. Cook, 11 Iredell 203, June 1850. Letter to Jones of Tennessee: [205] "Louisburg, N. C., . . 1846. . . I stopped . . at my brother's in Georgia, . . I have bought you a blacksmith. They tell me he is a good one. He is about 25 years old. If you will take him, you can get him for $800: and if you don't want him, my brother will take him at that price."

Ruffin v. Mebane, 6 Ired. Eq. 507, June 1850. [508] "December 1838, . . Mebane . . and . . Williams, entered into an agreement under seal . . Mebane was to furnish $4000 and Williams was to buy negroes for, and in the name of, Mebane, . . and to resell the negroes to the best advantage; and . . to be allowed one half of the nett profits, . . until January 1840. . . January 1840, the parties settled in full, and agreed to continue . . until . . January 1841. . . again settled . . and agreed to continue . . until . . January 1842. . . March 1842, the parties again settled . . and agreed to continue . . until . . January 1843. . . Mebane was a man of large estate, . . and Williams was a man possessed of no visible estate. . . September 1841, the plaintiff sold to Williams as the agent of . . Mebane, a negro man, for . . $525, . . he afterwards sold him . . Williams had been openly acting as the agent of Mebane for several years, . . in buying and selling negroes, . . [509] Williams . . became insolvent, and left the County, largely in [Mebane's] . . debt."

Reed v. Cox, 6 Ired. Eq. 511, June 1850. "the uncle of the plaintiff, 'publicly proclaimed that that boy Nelson was the playmate of his nephew, . . and if . . the creditors . . would allow him, . . at some small sum, to purchase the boy, he . . would make a present of him to his nephew,' . . [512] did purchase him for $50, he being worth $150,"

Hicks v. Forrest, 6 Ired. Eq. 528, June 1850. Before 1840 a "negro boy" was sold for $1,050 cash.

[1] Rev. St., ch. 65, sect. 18.

Smith v. Wiseman, 6 Ired. Eq. 540, June 1850. Will: [541] "I leave with my daughter-in-law, . . my negro Ambrose, to work for her and Ebenezer's four children's support, until the youngest one arrives at the age of seventeen, then to be sold, and the money to be equally divided amongst them all,"

Turner v. Faucett, 6 Ired. Eq. 549, June 1850. [550] "Crane was indebted to him . . about $225, for the hire of two negro men, blacksmiths, for the year 1842:"

Armstrong v. Baker, 6 Ired. Eq. 553, June 1850. Will: [554] "sell such of the property as can be best spared and with the proceeds buy a trusty negro fellow, who is skilful in the management of a farm and repairing implements of husbandry."

Tate v. Dalton, 6 Ired. Eq. 562, June 1850. "The estate [in 1822] . . consisted of a negro man, named Dick, and other chattels to the value of about $100. Administration was granted to . . Dalton, who married a daughter of the intestate; and he made a sale, at which he purchased . . Dick, at . . . $206. . . [564] his value at the time," [562] "several others of the children [of the intestate] were present at the sale, and were competitors . . in bidding . . but the defendant, owning the negro's wife, was willing to give more . . The intestate had also a claim to another negro, . . [563] 1830, . . a recovery was effected of the negro and also . . $800 for his hires; and the defendant then sold the negro for $334 25."

Francis v. Welch, 11 Iredell 215, August 1850. "trover for a horse, . . Love owned a slave, and permitted him to purchase a horse and use it as his own. After the death of Love, his executors delivered the slave to . . Prather, to whom he had been bequeathed . . and Prather sold . . him to the . . plaintiff. . . the slave . . took the horse with him; but, after some time, the plaintiff objected to having the horse kept there, and the slave then put him into the possession of his son, who belonged to the defendant, and kept the horse on the defendant's plantation as his own—the defendant not assuming any control over the horse. Afterwards . . the plaintiff borrowed the horse from the defendant's negro to drive to an adjoining County, and, on his return, he locked him up in his stable for the night. The next morning the horse was gone, and afterwards he was seen in the possession . . of the defendant's slave on his plantation for a few days, and until, in the absence of the defendant . . [216] the said slave sold the horse. . . the plaintiff submitted to a nonsuit and appealed."

Judgment affirmed: "There is no ground whatever for the action."

Jones v. Abernathy, 11 Iredell 280, August 1850. [281] "William Barry, of Fairfield District, South Carolina, by his will, . . proved there in 1823, gave several slaves . . to his wife . . during her life. . . 'after her death, my will is, that my negroes, Jub, Lid, Isaac, etc., be all emancipated, and continue under the care of . . trustees. . . that all my lands adjoining where I now live, with all the stock and plantation tools thereon,

do continue in the care . . of said trustees, for the benefit and support of said Jub, Lid and their increase forever. . . all the balance of my estate, after my wife's death, . . to Cynthia Jones,' . . his wife . . died . . During her life, the defendant had some of the slaves in his possession in this State, and then . . sold them beyond the limits of the State. For doing so this action is brought, in order to recover damages, alleged to have arisen thereupon to Cynthia Jones, . . the plaintiff . . suffered a nonsuit"

Judgment affirmed: [282] "although we know that slavery is established in South Carolina, yet, without evidence, it cannot be judicially assumed here, that a bequest for emancipation is not valid there; since a power . . to manumit is not so absolutely incompatible with slavery, that they cannot co-exist under the same government; and, in fact, such a power . . has been tolerated in most countries and in the States of this Union, in which that institution prevails. But, if that were otherwise, still the right of this residuary legatee would not be a legal, but an equitable one." [Ruffin, C. J.]

White v. Gibson, 11 Iredell 283, August 1850. "The copartnership . . was entered into for the purchase and sale of negroes, horses, cotton and tobacco—"

Henry v. Wilson, 11 Iredell 285, August 1850. Sarah McIntyre's will, 1815: [286] "I give to my niece, Elizabeth Henry, the services of my servant Amy, during her life, . . Amy to be liberated at her death, according to the laws of the State, provided . . Amy is well treated, but, if . . she is not well treated, I allow my executor to take her and liberate her, or put her in the hands of some person, who will treat her well; . . I do hereby . . empower my executor to be the sole judge of the treatment, that . . Amy may receive" The executor, Cannon, "put the negro in the possession of the plaintiff, who retained the possession of her and her children until 1843, when . . Cannon was about to file a bill in equity against the plaintiff, upon the ground that she intended to remove the negroes out of the State. . . the parties agreed to constitute the defendant their mutual agent . . that he would hold them during the life of the plaintiff and hire them out annually . . and pay the proceeds . . to the plaintiff, and, at her death, deliver them to . . Cannon. . . In 1845, the plaintiff demanded the negroes . . [287] judgment . . in her favor," Reversed, and judgment entered for the defendant.

Featherston v. Featherston, 11 Iredell 317, August 1850. [318] "1844, . . a division of the negroes took place, and . . a negro boy named John, aged about three years, fell in a lot to William Featherston, after which [he] . . traded him to M. C. Featherston [his sister?] for two hundred dollars . . the amount that the said boy was valued at" M. C. Featherston, the plaintiff, "lived with her mother . . and her mother owned the mother of John; . . the defendant [William Featherston] in some way got possession of him, some two years after the trade."

Foster v. Woodfin, 11 Iredell 339, August 1850. [340] "The plaintiff produced the bill of sale to his wife, dated . . 1835, . . It purported to have been made in consideration of $400[1] . . no money was paid" The vendor deposed that the slave "Lucinda was then about six years old, and . . was intended as a gift to his daughter [the plaintiff's wife], and that she was not taken away by the daughter, but left by her to wait upon her mother[2] . . who was then sickly: . . 1843 . . the plaintiff hired her to . . a son of the witness, who lived with him, . . during that year, the sheriff came to his house with executions . . [341] to levy on that slave and the others, and they were kept out of the way there about a week, and then Lucinda went into the possession of the plaintiff, who also kept her out of the way of the sheriff, and held her until she was taken under the executions in 1847, and that during that period she had the two children."

Brown v. Brown, 7 Ired. Eq. 30, August 1850. Will: "to enable my son . . [31] to build the house and kitchen . . I will him my negro man Primus and a wagon and four horses for . . ten years"

Kirkpatrick v. Rogers, 7 Ired. Eq. 44, August 1850. See same *v.* same, p. 126, *supra.*

Blanton v. Morrow, 7 Ired. Eq. 47, August 1850. "the sheriff of Cleaveland County . . offered for sale [in 1848] . . 'Morrow's interest in the . . fourteen negroes, . . [48] men, women and children.'" [47] "no one of the negroes was present, but eight of them were in South Carolina or in Rutherford County, and the others were in the possession of different persons in Cleaveland, to whom they had been hired by the tenant for life;"

Held: the sale was invalid.

Currie v. Swindall, 11 Iredell 361, December 1850. "an action . . to recover . . one hundred dollars, which . . the defendant had offered [November 1848] to give any one, who would apprehend and commit to prison, a certain person of color, named Chavis, charged with homicide. . . [362] the jailor . . proved, that the plaintiff came to his house on the Saturday night before the trial [spring term, 1849] . . and told him he wished him to go to the jail: that he . . found there Chavis and a man . . with him: . . Chavis was not confined in any way, and upon the jailor's opening the door, the plaintiff told Chavis to go in, which he . . did. . . Chavis was in the employment of the plaintiff, at the time of the homicide." [365] "the man after his acquittal went to work with the plaintiff," Verdict for the plaintiff; new trial denied.

Venire de novo: [364] "The testimony of the jailor . . did not exclude the idea, that he had surrendered himself of his own accord."

Simpson v. King, 11 Iredell 377, December 1850. Will of Letitia Foster, admitted to probate in 1837: "My girl Maria, after my death,

[1] [343] "large price" [Ruffin, C. J.].
[2] [347] "as a nurse—a very poor one truly" [Ruffin, C. J.].

I do not leave her as a bond slave to any person, I wish her to live among my children or otherwise, if she sees proper. I leave John Simpson to act as trustee for said girl. . . I . . bequeath twenty-five dollars to Maria."

Held: [379] "The trust is clearly unlawful," "the legal title is given to Simpson." [Pearson, J.]

Wilder v. Creecy, 11 Iredell 421, December 1850. "trover for a negro slave, Alfred, . . Fenill [[422] 'as the highest bidder at a public hiring'] hired the slave from the plaintiff for the year 1846, and one of the terms . . was, that the negro 'should not go by water.' Fenill placed this and other slaves for the year under the charge of . . Carter . . at a place . . on Albemarle Sound, and, in . . December . . the defendants, Creecy and Pool, hired Alfred and some other slaves from Carter to assist in . . [422] delivering some corn . . on board a vessel lying at anchor, about three or four hundred yards from the shore. . . the other defendant, Gregory, . . by the consent of Carter, sent Alfred on board . . to assist in stowing away the corn in the hold, and he . . went on shore at night. The next day he returned . . and worked . . until evening; when the Captain . . stated to Carter, that he thought there was about to be a storm, and said that he would go aboard, and send Alfred ashore, but Carter told him he need not send the boy ashore, as he might be of service in case a storm should come on. . . during its continuance the slave died from fright or cold, or their combined effects."

Held: [423] "The stipulation . . was . . merely an engagement of the hirer . . it was personal merely, and did not attach to the slave, in the nature of a covenant running with land." [Ruffin, C. J.]

Griffin v. Richardson, 11 Iredell 439, December 1850. In 1843 a female slave was sold at public auction for $625.

Caffey v. Rankin, 11 Iredell 449, December 1850. "a petition filed [by the administrator with the will annexed of James Davis, and by the administratrix with the will annexed of Sophia Davis] . . 1848 . . for permission to emancipate a negro boy, named Alvis, and other slaves named. . . [450] 1837, James Davis died, having first made [in 1831] [1] . . his last will . . 'One negro girl named Nelly, and one mulatto [man] named Nehemiah [[453] "husband and wife"], I give . . to my wife [Sophia] . . during her natural life or widowhood, then to my son, Michael C. Davis, . . except Nelly and Nehemiah are to be free, if they can comply with the requisition of the law of this State; and if they cannot . . and Michael . . should die, without any heirs of his [own] body, Nehemiah and Nelly may choose their own homes, where they like to live, and is to be sold privately at the valuation of two men:' . . between the making of the will . . and his death [1837], . . Nelly had one child named Wright, which was sold by . . Sophia as executrix . . [453] 'at public auction to Michael C. Davis for $150, [Wright being] then an infant some 12 months old, . . Michael afterwards sold to . . Sophia the . . slave, Wright, for $150 . . after the death of James

[1] See Caffey *v.* Davis, 1 Jones Eq. 1.

Davis, the negro woman Nelly had the other child Alvis:'" [450] "Michael C. Davis . . is dead, leaving an only child, . . James C. Davis, of whom . . Rankin is guardian." Will of Sophia Davis, who died in 1848: [451] "I . . bequeath to my grandson, James C. Davis, . . one negro boy named Wright, and one negro boy named Alvis, on condition if Nehemiah and Nelly, their father and mother, comply with the laws of this State and go free, it is my will they should go with them, and not be kept back on account of their age, and if not, . . Wright and Alvis, must stay with their father and mother, and not be hired out: and if not, they must have the same chance of their father and mother in choosing homes, and be sold to the same person at the valuation of the same two men, that value their father and mother, . . It is my will they never shall be parted from their parents [, for I do not believe in negro slavery; but if I had it in my power, I would set them all free[1]]." The petition further sets forth, "that Nehemiah is about . . forty-five, Nelly about forty, Wright about twelve, and Alvis about nine . . that the petitioners are desirous to emancipate all four . . but that . . Rankin . . objects . . so far as regards . . Alvis.[2] . . and the petitioners . . are ready . . to give the bonds and security required by law," At the spring term, 1850, the superior court of law of Guilford County decreed [453] "that the petitioners may emancipate . . Nehemiah, Nelly and Wright, . . when they shall enter into bonds . . payable to the State . . in the sum of one thousand dollars for each of the said slaves, . . conditioned that the . . slaves shall . . correctly demean themselves while they shall remain within the State . . and that they . . will, within ninety days . . leave the State . . and never afterwards come within the same. And . . that the petitioners . . did not have the right . . to emancipate . . Alvis, . . [454] the petitioners . . obtained an appeal"

Appeal dismissed: [455] "these questions cannot be settled in an *ex parte* proceeding." See Caffey *v.* Davis, p. 178, *infra.*

State v. Cherry, 11 Iredell 475, December 1850. "the prosecutor was a constable and had in his hands an execution against the defendant, under which he seised [*sic*] a negro belonging to the defendant. Whereupon, the defendant, . . within carrying distance of the pistol, presented the same at the prosecutor, remarking . . 'If you do not turn the negro loose I will shoot you,' by which the prosecutor was put in fear. The prosecutor did not turn the negro loose, and the defendant immediately lowered the pistol and went away."

State v. Tilghman, 11 Iredell 513, December 1850. [519] "she and deceased then had some talk about the disposition of his property after his death, when they concluded it would be better to sell the land and keep the negroes; . . [532] negro servants . . had access to the jury room. The servants entered for the purpose of carrying food and clothing to the jurors,"

[1] Caffey *v.* Davis, 1 Jones Eq. 2, [3] "the will proceeds with a prayer, 'that no one will try to stop her poor negroes;' and again says, 'she wishes to clear her skirts of them.'"

[2] "the increase of a slave, during a life estate, passes over to the remainder man." *Ibid.* 4.

State v. Jowers, 11 Iredell 555, December 1850. "The defendant, a white man, was indicted for an affray with Bob Douglass, a free black man. . . the defendant and Bob got into a quarrel, when the defendant asked Bob, why he had reported . . that he, the defendant, had told a lie, to which Bob replied, because he had told one. Upon this the defendant struck Bob, and a fight ensued, in the course of which, Bob struck the defendant with the butt end of a wagon whip, and the latter knocked him down with the broken limb of a tree. . . The presiding Judge charged, that, though the Courts have held, that insulting language, used by a slave, may justify a white man in striking him, yet the principle did not apply to the case of a free negro, stricken under similar circumstances, by a white man. The defendant was convicted, and judgment being pronounced against him, appealed."

Judgment reversed and a *venire de novo*: [556] "It is unfortunate that *this third class* exists in our society. . . [557] a free negro has no master to correct him, . . and unless a white man, to whom insolence is given, has a right to put a stop to it, in an extra judicial way, there is no remedy for it. This would be insufferable. Hence we infer from the principles of the common law, that this extra judicial remedy is excusable, provided the words or acts of a free negro be in law insolent." [Pearson, J.]

Smith v. Cameron, 11 Iredell 572, December 1850. Action [573] "to recover from the defendant, who was the plaintiff's overseer, damages for the loss of a negro man, . . Israel, . . The plaintiff owned three fields on the Cape Fear River—two on the west side and one on the east. . . on the west side of the river . . the defendant and the negroes lived; . . the defendant came up the river in his canoe with Israel, . . on his way to his business in floating off logs [from the field on the east side, 'there being . . a very large freshet']. Nardin went with them . . and after working nearly all day, the defendant, still attended by Israel, came down to a raft belonging to a man named Cameron, where he got out . . and directed Israel to carry Nardin . . to his own raft and then return for him. When Israel left Nardin's raft, he crossed directly over to the other side of the river, where the boat got entangled among the bushes, was upset, and Israel was drowned. Israel was about forty . . a stout, active man, a good waterman, and understood the management of boats and canoes, and was acquainted with the river. . . [574] a witness . . stated, that he did not consider that there was any danger, in the main current of the river, . . the other hands, who had been employed in floating off the logs, came down the river in the course that the defendant had pursued . . [575] To return from Nardin's raft to Cameron's did not require the negro to cross the river, both rafts being on the same side, . . about a hundred yards apart. Why he did cross it is not stated"

Judgment for the defendant, affirmed: "We cannot perceive of what negligence the defendant was guilty."

Glover v. Riddick, 11 Iredell 582, December 1850. "the declaration contains three counts: one in trover for the conversion of two slaves . . one for harboring the . . slaves; and one for trading with them. . . In

1843, the plaintiff purchased . . Tony and Armistead, then runaway: They were first seen in 1846 or 1847, in Nansemond County, Virginia, passing as free persons of color, under the names of Jack Douglas and Charles White: they worked for several persons, . . and exhibited certain papers, called free papers, . . they purchased goods out of the defendant's store . . and settled the account of 1846: . . asked him for a certificate of freedom, alleging that they had left their free papers, at some point distant . . [583] the defendant called on . . his Clerk, and one Everitt, for the latter of whom they had worked, to state what they knew about their freedom, and they stated, that they had passed as free persons, . . and that they had seen their papers with the County seal appended: thereupon, the defendant gave them a paper writing . . 'Newtown, November 8th, 1847. The bearer, Jack Douglas a very stout black man, about 35 years old, lives in the neighborhood of my cotton factory, is free and of good character; his partner, Charles White, also a stout black man, (not quite so tall as Jack) about 35 years old, is also free, lives in this neighborhood and is also of good character; they are looking for work. (Signed,) Abram Riddick.' . . Spring of 1848, . . they left, and were apprehended at Weldon by one Scott, in the act of taking the cars; that he committed them to Halifax jail, where they remained six weeks or two months, and from which they were taken by the plaintiff in August, 1848, and carried to Norfolk; that he paid the jail fees, . . forty dollars, and two hundred dollars to the jailor for . . Scott . . a reward he had offered by advertisement . . in 1843. . . The alleged free papers . . turned out to be forgeries. . . Scott did not know of the reward offered, at the time he apprehended the said slaves."

Judgment for the plaintiff reversed and a *venire de novo*: [587] "None of the acts of the defendant . . amount in law to a conversion. . . [588] the plaintiff cannot recover upon the counts for harboring or trading with the slaves." [583] "because it did not appear, that any law existed in Virginia, prohibiting such traffic;"

Reid v. Pass, 11 Iredell 589, December 1850. [590] "1849, . . executor . . filed a petition against the . . next of kin . . for the purpose of selling a parcel of negroes belonging to the estate . . in order to make a division among the next of kin: that a decree was made for the sale and distribution of the proceeds,"

Tarkinton v. Latham, 11 Iredell 596, December 1850. [597] "Tarkinton . . made a parol gift of her to his grand-daughter, the plaintiff, ['for a nurse,'] when she was . . quite small. . . the slave was delivered to the plaintiff, by the grand father's taking the hand of Marina and placing it in the hand of the plaintiff:"

McNair v. McKay, 11 Iredell 602, December 1850. In 1848 a negro man slave was sold for $750.

Heathcock v. Pennington, 11 Iredell 640, December 1850. "the plaintiff hired to the defendant a negro slave between the ages of ten and twelve . . for . . one year . . with permission . . to employ the slave

in driving a horse attached to a whim, at a certain Gold mine, . . [641] January, the slave was put to driving . . about 9 o'clock in the evening, with orders to continue the driving through the night until the next morning, under the directions of a young man, who was about 19 years of age and was employed as a lander, . . That the whim was about ten feet from the mouth of the shaft . . which was 160 feet deep, and at the surface 8 feet long, and 4 feet wide. That the negro boy did not have an overcoat, but was allowed to warm himself at a fire, . . about 2½ feet from the mouth of the shaft: that upon one occasion, when he went to warm, which was just before daylight . . and when it was dark, the lander called to him and directed him to start his horse, and the boy, being drowsy, in attempting to go to his horse fell into the pit and was killed. The defendant . . employed a negro boy of his own, and his son, who were about the same age with the hired boy, in the same service . . [642] verdict for the defendant,"

Judgment affirmed: [643] "the owner must have foreseen those risks . . [645] we understand that this boy took his rest through the day, as it is stated, that in the evening he commenced his duty for the night—there being three of them, who performed the task among them, and probably, by turns. We cannot say that was unreasonable;" [Ruffin, C. J.] Judge Pearson did not dissent, but he states, in 1857:[1] "I thought it amounted to ordinary negligence, to make a boy work at a dangerous position, from 9 o'clock at night, until the next morning, during . . January, and that at least one of the hands should have been a grown person. Boys, are not going to sleep, at allotted hours, in order to prepare themselves for night work, . . besides, Ch. J. Ruffin . . evidently confounds, '*ordinary*' and '*gross*' neglect."

McLeran v. McKethan, 7 Ired. Eq. 70, December 1850. In 1848 a male slave was sold for $649.

Melvin v. Robinson, 7 Ired. Eq. 80, December 1850. [81] "The plaintiff alleges, that an apprentice of his, a slave named Dorsey, was arrested under a charge made by . . Robinson, that he, through the instrumentality of the plaintiff, had enticed from his possession a negro named Riley; and that Mathis . . represented to him, that the charge . . if proved, would take Dorsey's life; and that Robinson was willing to compromise the matter . . if the plaintiff would execute his bond for $400, which he did. . . The answers of the defendants positively deny that . . the bond . . was given for the purpose alleged . . but simply to indemnify . . Robinson, for the loss of his slave, Riley, and the expenses . . in recovering him. . . there was a controversy subsisting between him and . . Sutton, concerning the title to Riley; . . and that, by the inducement of Dorsey, Riley was put into the possession of Sutton. . . [82] Robinson surrendered Dorsey to the Superior Court, to which he was bound over; and that the Prosecuting officer . . caused him to be discharged . . because . . no offence against the law had been perpetrated by him;"

[1] Couch *v.* Jones, 4 Jones N. C. 402 (409).

Hooks v. Lee, 7 Ired. Eq. 83, December 1850. In 1837 Mary Hooks had [87] "Twenty slaves; named, Owen, about 27 years; Pompey, 50 years; Charles, 30; Elijah, 24; Harry, 26; Baltimore, 14; Cader, 10; Henderson, 7; Isaac, 5; Simon, 5; Alvin, 2; Sawney, about one month; Patience, 40; Amoritt, 25; Rane, 24; Teney, 19; Ginny, 10; Margaret, 8; Munny, 3; Martha, 2;" in 1841 she sold Pompey for $340.

Easton v. Easton, 7 Ired. Eq. 98, December 1850. Will, 1843: [99] "my negroes all to be hired out in common, except those given to my wife and also loaned to her, and the hire, and interest of my notes, to go for clothing and educating of my children,"

Downey v. Bullock, 7 Ired. Eq. 102, December 1850. [109] "in 1838, . . the removal of . . Hunt and his family, and of the negroes, forming the most valuable part of the trust fund, to . . Mississippi." They did not remain there, but returned to Granville County.

Harris v. Harris, 7 Ired. Eq. 111, December 1850. In 1838 [112] "the negro woman and one of her children, then six months old, [were sold] to the defendant . . for the price of $700,"

Walton v. Walton, 7 Ired. Eq. 138, December 1850. Walton admitted [141] "that one of the negroes . . was sent to his father's . . and died, having been sent there to be nursed, Robert having no wife."

Hanner v. Winburn, 7 Ired. Eq. 142, December 1850. [144] "John Armfield was engaged in negro trading, and when about to start for the Southern market, Walker was put into his possession by his [Armfield's] father to assist him in the business; . . If he had not had Walker, he would have been obliged to hire either another negro, or a white man, to have performed the service rendered by him, . . [145] John Armfield had his services for ten or twelve years, and it is proved that he was a very valuable slave." [144] "Upon one occasion when [John] . . was offered, in Alabama, a very high price for the negro, he wrote to his father, the intestate, to know if he might sell him, . . the intestate replied, he must not sell him, he would not take any price." The commissioner valued "negro Walker, or . . his hires for ten or twelve years, . . at $1,000."

Stringer v. Burcham, 12 Iredell 41, June 1851. "trespass for false imprisonment . . On the trial . . a record, duly certified by the Clerk of Craven County Court, was introduced, showing that . . 1807, . . a petition was filed at the instance of one William Jessup, . . praying permission to emancipate certain of his slaves for meritorious services, and, amongst others, negro woman Sinah; . . it was decreed . . and bond given . . [42] the plaintiff was the daughter of Hannah, and Hannah was the daughter of Sinah, and was born after the decree of emancipation. . . Sinah and her descendants had always passed for . . free persons of color, since the said act of emancipation, except upon one occasion, a man, calling himself Jessup, and claiming to be the son of William, the petitioner, came to Craven about 1817, and endeavored to carry off

Hannah and one other: that he was arrested . . whereupon he surrendered them and has not been since heard of." [43] "After a period of thirty years, the defendant, without a pretence of right, as far as we are informed, seized upon the plaintiff and questions her right to freedom."

Judgment for the plaintiff, affirmed: " the record is neither irregular nor void, . . After so long an acquiescence by the public in her enjoyment of her freedom, every presumption is to be made in favor of her actual emancipation, especially against a trespasser and wrong-doer— " [Nash, J.]

Pitt v. Albritton, 12 Iredell 74, June 1851. [75] " Pitt . . 1850, brought to the . . sheriff . . the two slaves, and requested him to keep them in the common jail, until he should call for them "

Dickson v. Jordan, 12 Iredell 79, June 1851. Pearson, J.,: [81] "A Doctor is sent for, and attends day and night upon a slave. It would be singular, if the owner when sued for the services, should insist, ' no price was agreed on,' the declaration is upon a ' *quantum meruit*,' and I may show, in abatement of the damages, that the slave died, and so the services were of no value."

State v. Presnell, 12 Iredell 103, June 1851. " an indictment for selling spirituous liquor to a slave . . the defendant kept a shop . . on the side of a public road . . December 1849, . . Tapscott and another person came with their wagons . . and stopped for the night in the road; . . Tapscott had with him his slave, Nelson, who drove his wagon. About 8 or 9 o'clock . . the defendant went . . to the shop with three of his neighbors . . Nelson went in and asked . . whether he had spirits for sale, and . . asked for a quart, and the defendant . . received the price . . Tapscott . . stated, that Nelson was a confidential and trusty servant, and for some years had driven his wagon and gone trips to different and distant markets by himself; and that he was usually furnished with money and authorised to provide necessaries, such as provisions . . shoeing the horses, repairing the wagon . . [104] that during the day, on which they got to the defendant's, there was a cold rain, and Nelson had asked him for a dram, and he told him that when he met with any spirits he should have some; that he did not know that Nelson had gone for spirits, but that the next morning Nelson told him he had purchased it and brought him the jug containing it, which belonged to Nelson: and that he and his companion drank some of the spirits, also Nelson and another slave, who was with the other wagon; . . one of his horses was taken sick and he used the residue . . in drenching him, and then or afterwards refunded to the negro what he had paid for the spirits. . . he had never given Nelson any authority to buy spirits for him, . . [105] Verdict and Judgment for the State " Affirmed.

Simpson v. McKay, 12 Iredell 141, June 1851. An action of covenant. " Bladen County, N. C., May 13th, 1846. Received of Hugh Simpson Four Hundred and Fifty Dollars in payment for a negro boy, named Graham, about seventeen years of age; which negro I warrant both as

to soundness and right of property, except a small rupture . . Archd. S. McKay." The plaintiff alleged, "that . . Graham had a large rupture . . had other bodily diseases, of some one of which he finally died, and that he was of unsound mind. . . that the negro's feet had been severely frost-bitten, and that they sometimes became swollen and subjected the negro to inconvenience: . . [142] the defendant insisting, . . that, from the evidence, the negro died from the maltreatment of the plaintiff himself and his other slaves, . . his Honor instructed the jury, that the convenant extended as well to soundness of mind as of body, . . that this did not imply that he was very bright . . and if, from the evidence, they believed, that the slave, although dull and below the ordinary standard of human intellect, yet . . possessed sufficient capacity to perform the ordinary duties of a slave, the warranty in that respect was not broken;" Judgment for the plaintiff, affirmed.

State v. Martin, 12 Iredell 157, June 1851. "The prisoner [a man of color] was indicted[1] for stealing a slave, Giles, . . [158] Booker . . stated that . . 1850, he was passing on to the South, in company with . . Null, with two loads of tobacco, . . that they stopped for the night . . near the house of the prisoner, in the county of Davidson: that a horse . . was taken violently sick, . . that the prisoner . . assisted in procuring . . remedies . . two or three drinks were given to the prisoner by the witness: that [the prisoner] . . said he could put him into a business he could make money much faster, if he would be sworn; that he had fine stock and could make him rich as Hairston: the witness asked . . if it was horses: he said no, they were worth from $600 to $1200 a piece, and, by being smart, witness could make five or six hundred dollars in a few weeks: . . [159] the witness inferred . . what that business was, . . December . . he again came to the house of said prisoner on his way home, . . upon being informed by the witness, that he would go into it, the prisoner told him that he had several negroes out: . . he could not keep them near him for fear of being suspected: that there were a great many fox hunters around him, and he had been frequently tracked by their dogs, and been compelled to stand in water up to his waist for an hour at a time in cold weather, to escape: that he induced the negroes to believe he was going to send them to a free State: that he was interrupted . . by a man . . who . . was also going to take off negroes for him: . . the arrangement was made for the witness to return about Christmas and the prisoner would have a slave . . which he was to take off and sell and divide the profits with the prisoner: . . [160] after Christmas . . he returned . . about one hour by sun . . the prisoner gave [negro] Jeff a dram . . sent Jeff after the negro . . between midnight and day . . the prisoner came to him with the negro . . Giles: that he had had him six or seven weeks: that he must . . be off as soon as possible: . . to get his horse and go on by himself . . he was afraid, if Giles went with witness, they would be . . stopped: that he knew a bye-way, . . and he would take Giles and meet him . . that after waiting for some time . . the prisoner came with Giles, said

[1] Under the acts of 1779 and 1848.

he had been bothered by Swicegood's dogs: . . delivered Giles to him and told him to be off . . had sent off two negroes before and had never heard from them again; that he brought Giles to Salem, . . [161] and finding that the jail . . was not completed, carried him to Germantown and lodged him in jail, and immediately sent word to Smith where his negro was: . . that in a short time witness returned to the house of the prisoner for the purpose of getting another slave; was furnished . . with $400 spurious money and a fictitious note for $300; . . told him he had sold Giles for $700, and arrangements were immediately set on foot to carry off another slave, . . a blacksmith; . . that witness went to Mr. McDonald, . . a Magistrate . . and disclosed to him what he had done . . that he returned to the prisoner's . . prisoner chained his horse to the smokehouse, told him he had deceived him, . . that he would kill him that night, that he belonged to a Murrel clan and if he did not kill him some of the clan would, . . another white man . . was present, who also expressed himself, that the prisoner had been treated badly by witness: that witness, becoming alarmed, left . . that he returned next day in company with one of the neighbors, sent for Mr. McDonald and had the prisoner arrested. . . [162] Booker stated his object was to detect Martin and get the reward, if any were offered, for the negroes. . . Swicegood testified, . . that he approached the kitchen softly and got near a crack, . . that the prisoner . . said . . it was a dangerous business, but he did not know any better they could do: that his wife replied, she did not know that they could: . . [163] Smith . . proved, that he resided . . about seven or eight miles from the prisoner's, . . that his slave Giles left . . without his permission . . 22d . . of November, 1850; and he found him in Germantown jail the 8th . . of January, 1851, and carried him home and sold him immediately: . . [165] The Court . . instructed the jury, that . . the prisoner was to be tried as if he were a white man: . . that they were to divest themselves of all prejudice on account of his color, . . [167] The jury found the prisoner guilty." New trial refused.

[169] "There should be a *venire de novo.*" [168] "In '*Hardin's case,*'[1] . . it is decided, that the taking . . of the slave must be *from the possession of the owner.* . . [169] this Court cannot give to a statute the effect of creating a new felony, unless the intention of the law-makers is expressed in . . unequivocal *terms of enactment.*" [Pearson, J.]

Walters v. Jordan,[2] 12 Iredell 170, June 1851. "petition by a widow for a year's allowance out of the personal estate of her late husband,[3] who died intestate. . . The intestate seduced the petitioner and lived in adultery with her and then married her. After the marriage and while they were living together, the petitioner—she and her husband being white persons—had criminal conversation with a negro man, by whom she became pregnant. The husband . . ordered the petitioner to leave

[1] P. 78, *supra.*
[2] See same *v.* same, 13 Iredell 361, p. 167, *infra.*
[3] Rev. St., ch. 121, sect. 11.

his house. She did so . . and by his permission lived in another house on his premises, where she was delivered of a mulatto child. The husband did not receive her into his family again, nor treat her as his wife, further than to allow her to live in the said house and to maintain her there until his death; which happened soon after the birth of the child."

Held: "the petitioner was entitled to a year's support" [172] "she did not 'go away and continue with her adulterer;' whom, as far as appears, she never saw after her husband forced her to live separately from him."

Clagon v. Veasey, 7 Ired. Eq. 175, June 1851. [176] "in consequence of a punishment, inflicted upon Hasty by her mistress, for her insolence, she ranaway; when his wife insisted he should sell her: that he accordingly applied to . . Rhodes to ascertain from . . Simmons, if he would take her to Norfolk and sell her for him; that there the matter dropt:"

Hinton v. Lewis, 7 Ired. Eq. 184, June 1851. Will, 1850: [185] "in this division I wish my . . negroes may be kept in families, as far as may be practicable."

Taylor v. American Bible Society, 7 Ired. Eq. 201, June 1851. Mrs. Hollister's will: "to the Bible Society, Education, Colonization and Home Missionary Societies, each five hundred dollars. . . [202] as to my slaves, if I could any way effect it, I would emancipate them. I do not wish to entail slavery upon them. George Physioc has been promised, if I ever sell him, to let him have a chance to buy himself; if this can be done I desire it may by his paying my estate a hundred dollars."

Held: [206] "the several legacies . . are void for uncertainty . . as to the slaves . . She no where leaves them their freedom, . . As to George, so far from giving him his freedom, she expressly directs a sale, and only permits him to purchase himself at a particular price." [Nash, J.]

McEntyre v. McEntyre, 12 Iredell 299, August 1851. In 1848 a negro woman was sold for $300.

Houston v. Starnes, 12 Iredell 313, August 1851. "before the sale, the purchaser [the plaintiff] was apprised, that she had symptoms of disease upon her; and . . [314] she died of consumption," "the plaintiff . . had by his agent sold the negro in Mississippi for $175. . . in her diseased state the negro was not worth more than 75 or $100."

Craig v. Miller, 12 Iredell 375, August 1851. Mrs. Rhodes and her son-in-law, John Miller, "sold the negro [in 1834] to . . Craig, who lived in South Carolina, and kept the slave . . there for ten years, . . his executors sold him to the plaintiff, who had . . him for four years. The slave then ranaway, and came back to the residence of Mrs. Rhodes, with whom the defendant [a son of John Miller] lived; and the slave was committed to jail as a runaway, but was afterwards taken out of jail by the defendant, . . and upon demand of the plaintiff refused to deliver him; . . Judgment . . for the plaintiff for the value of the slave," Affirmed.

Polk v. Robinson, 7 Ired. Eq. 235, August 1851. [236] "Orr hired out the slaves from year to year, but, from time to time, he also made sales of some of them, as often as four times, for the purpose of paying the testator's debts."

Allen v. Bryant, 7 Ired. Eq. 276, August 1851. [279] "none of the negroes, except . . Maria, could have been hired for any thing, Grey and his wife being very old, and the four boys [Maria's children] being between the ages of eleven and five years;" Pearson, J.: [280] "four were just becoming valuable;"

Lehman v. Logan, 7 Ired. Eq. 296, August 1851. "that she is old and infirm of mind, incapable of managing the estate, . . that the slaves have been so little kept in order, that they have become idle and drunken;"

Hales v. Harrison, 7 Ired. Eq. 298, August 1851. "The plaintiffs were entitled to a reversionary interest in a negro boy, after the death of their mother. She . . in 1838, sold him to the defendant, for . . $580, who soon thereafter carried him out of the State to parts unknown, and sold him at an advance of $85. . . [299] We are satisfied the defendant had notice. . . The defendant says, these items ['expenses, commissions, etc.'] will about equal the advance in the price. . . the plaintiffs are entitled to a decree for . . $580, with interest from the death" of their mother in 1844.

State v. Dean, 13 Iredell 63, December 1851. Indictment for stealing a slave. Smith "testified that the slave Lewis ran away from his plantation in Anson county, in . . October, 1850, and was not seen by him until he was taken out of jail in Tazewell county, Virginia, in May, 1851: . . and was brought back to this State. . . White . . swore that on the first of January last, he and . . Brown arrested the slave . . in Guilford county, and were making arrangements to carry him to jail in Greensboro', as a runaway slave, when the prisoner passed by . . with his wagon. . . [64] they had no vehicle . . and proposed to him to carry him in his wagon. . . the prisoner agreed . . for . . one dollar and fifty cents, provided the witness and Brown would meet him on the road to Greensboro' at the house of one Bowman, . . the witness and Brown proceeded with the slave to the house of Bowman, and soon . . the prisoner drove up . . a hundred yards beyond the house before he stopped: that the witness carried the negro out, and the four proceeded on their way . . No one at Bowman's saw the prisoner, . . About a mile from [Pegg's] house . . the prisoner made a proposition to turn back with the slave, and keep him until a reward should be offered, and also said his horse was worried, and the weather very cold. The witness and Brown opposed . . As they approached [Pegg's] . . house, . . he gave them [a ten dollar bill] to buy liquor, and he drove on about seventy-five yards beyond the house . . before he stopped. . . When they overtook him . . the prisoner again complained of the cold and said his horse was too much fatigued to proceed. He also proposed to take the negro and keep him for a few days in a vacant house of his, . . to give time for a reward to be offered: . . and would then proceed to jail with him: . .

[65] also said, it would not do to let any one see the slave in his possession, as it was against the law. . . They all then went back to a vacant house, . . where they remained during the night with the slave. The next morning the witness and Brown returned to their homes, leaving the slave . . with the prisoner. On Saturday . . the witness returned and asked . . if he had carried the negro to jail. He replied that he had not: that no one knew where the slave was except himself and another: that he could go to him then, and expected to do so again, and would shoot any one whom he should discover watching him. He said they could only have gotten five dollars by carrying the negro to jail. . . [66] Brown . . saw the prisoner a few days after, and threatened to make the circumstances . . public. The prisoner said, if he did, that the witness and White would be punished, as they, alone, had been seen with the slave." [65] "Subsequently, [White,] . . Brown, and the prisoner were arrested" [70] "a witness . . swore, that, in April, 1851, he went to Virginia in search of the slave,—found him in the possession of . . Lowder, to whom he had been sold by [Abram] Weaver,[1]—committed the slave to jail, and caused Weaver to be arrested on a charge of negro-stealing. . . after his arrest, Weaver told the witness that he had got the slave from the prisoner, and had taken him over to Virginia, and sold him, as his agent. This [last] evidence was objected to . . [71] admitted, and for this the prisoner excepts."

Held: "The exception is well founded." New trial granted.

Washburn v. Humphries, 13 Iredell 88, December 1851. "The defendant had a negro stolen from him, and offered a reward . . for the apprehension of the felon, one Moore, and the negro: . . '$100 for the apprehension of both, or $50 for the negro out of the State, $25 for the apprehension of the negro within the State, and his delivery to the subscriber, or for keeping him so that his owner gets him again.' The plaintiffs apprehended both Moore and the negro within this State, and put Moore in Rockingham jail, and delivered the negro to the defendant, who paid them $25, but refused to pay the other $75, for which the plaintiffs bring this suit. . . [89] they had judgment for $75,"

Venire de novo awarded: "if the negro should be secured, before getting out of the State, then he leaves the felon to the vigilance of the citizens."

Foy v. Foy, 13 Iredell 90, December 1851. [93] "The petitioner . . avers, that 'since the defendant separated himself from her [in 1844], he . . has been and is living in adultery with a negro woman, or slave, the property of' —— . . [94] the jury . . say, that the defendant did separate . . [95] and live in adultery with a negro slave," The divorce was granted.

Venire de novo awarded: the finding of the jury "is 'general' as to *the time* of the separation. . . [96] time *is material*,"

Richardson v. Strong, 13 Iredell 106, December 1851. [107] "the defendant became insane, . . He had negro servants, but his physician

[1] See State *v.* Weaver, p. 162, *infra*.

and relations thought it necessary that there should be some white person with him, as a nurse and a guard against his violence;"

State v. Cheek, 13 Iredell 114, December 1851. [115] "The prisoner was indicted with Aaron Malone and Robert George, a free negro, for passing . . a counterfeit note, purporting to be a note for $20, issued . . in South Carolina. . . They were . . found guilty, and Malone and George submitted to the sentence . . Seymore . . swore, that he kept a shop, . . on a high road . . that in the evening . . March, 1850, . . Davidson, with one Stout, stopped for the night with their waggons . . about 250 yards from his house: that same evening the three prisoners came . . and said, they had been working in the employment of . . McCullock [*sic*], a contractor engaged in the improvement of Deep River . . and they asked for some liquor and to stay all night: . . George . . offered him a $20 bill . . which he refused to take, telling George that he was not a judge of South Carolina Bank Notes, but he did not think that was good: . . [116] George went back to the other prisoners, and soon returned with a peice [*sic*] of silver change . . that they retired, soon afterwards, to the room in which they were to sleep: . . Malone and George left the house; and, after some absence, they returned . . and then Cheek got up and went away with George, . . Davidson deposed, that . . George, came to the camp and said he was free, and named John George, . . proposed to buy a watch, which he saw the witness wearing, and that he refused to trade with the prisoner because he was a negro: that George . . returned with . . Malone, who said his name was . . Johnson, and . . they bargained for the watch at $13, and Malone offered . . the note . . for $20, . . saying that he and George were both interested in it; . . that they had received it from McCullock . . and thereupon the witness delivered the watch and received the note: that the witness paid Malone one dollar, but could not make change for the other six, . . [117] that, in about half an hour, . . Cheek . . came to the camp with George, and said his name was Brooks, . . that he had advanced the money to Malone for the $6, . . and he would take $5, if he would pay it at that time; and the witness borrowed . . from Stout, and paid . . McCulloch [*sic*] deposed . . that the prisoners worked under him in February or March, 1850, and that he paid to each of the white men $3, and to the negro $1; and that he did not let either of them have a $20 note. . . [118] a clerk in the Bank . . at Raleigh . . stated that it was a counterfeit,"

[123] "no error in the judgment."

Crump v. Thompson, 13 Iredell 150, December 1851. "in 1835, Peebles built a cabin, and also a still-house on the land . . and placed two of his slaves in the cabin, . . [151] and that his slaves remained there, and he used the distillery, until . . 1838, when he removed the slaves, and stopped distilling,"

State v. Nat (*a slave*), 13 Iredell 154, December 1851. "Appeal from the Superior Court . . of Beaufort County, . . [155] This was an indictment against . . a slave, for hiring his time contrary to the act of

assembly.[1] . . Nat, . . during the whole of . . 1850, spent a large portion of his time on Blount's Creek, where he had a wife, . . and that he was engaged in running a boat on the river, and carrying turpentine, and other articles, to [the town of] Washington and back . . that he . . was not subject to the . . control of any one, so far as the witness saw or heard. There was a white man . . Pritchet in the boat with Nat, the first half of the year 1850, but the latter part of the year, Nat run [*sic*] the boat alone. The witness . . hired Nat three days, to work in his new ground, in May, 1850, and paid Nat for his work. . . Nat told him . . that he hired his time from his master; that he was to give his master eighty dollars a year, and pay him quarterly. Nat further stated, he and Pritchet were partners in running the boat; that they gave the owner of the boat one-half of what they made, and divided the balance between them. . . The Jury . . found the defendant guilty. . . [156] The Court refused to grant a new trial."

Judgment reversed: [158] "the Superior Court of Beaufort county had no original jurisdiction of the offence charged against the defendant," [157] "The Act of '31[2] made no alteration in the Act of '94,[3] but introduced a new offence, to wit: suffering a slave to go at large as a free man. A custom had sprung up in the State, particularly among that class of citizens who were opposed to slavery, of permitting persons of color, who, by law, are their slaves, to go at large as free,—thereby introducing a species of *quasi* emancipation, contrary to the law, and against the policy of the State." [Nash, J.]

Sparkman v. Daughtry, 13 Iredell 168, December 1851. Action to recover the value of a slave. [168] "The defendants were the owners of the fishery, and hired Jacob of the plaintiff, as a boatman, to work there. On an attempt to put out the seine, the boat . . was upset and he drowned. Much conflicting testimony was given, . . as to the state of the weather, . . being a very dark and stormy night, and on the propriety of [carrying out the seine] . . at that time. . . [169] A verdict and judgment . . for the plaintiff" Affirmed.

State v. Weaver, 13 Iredell 203, December 1851. [204] "The prisoner was indicted for receiving from one Dean,[4] a negro man slave, named Lewis, the property of . . Smith, knowing that Dean had stolen him. . . it was stated by the Court, that under the evidence . . the prisoner could not be convicted, as . . Dean . . was then in confinement in the jail . . and had not been tried. Whereupon the Court, without the consent of the prisoner, . . ordered a juror to be withdrawn."

Held: "it was within the power of the presiding Judge, if he thought it essential to the furtherance of justice,"

Faucet v. Adams, 13 Iredell 235, December 1851. [238] "there were certain slaves which the debtor had caused to be run off to Texas,"

[1] Rev. St., ch. 111, sect. 31.
[2] *Ibid.*, sect. 32.
[3] *Ibid.*, sect. 31.
[4] See State *v.* Dean, p. 159, *supra.*

Page v. Goodman, 8 Ired. Eq. 16, December 1851. [17] "it was agreed . . that they would work the farm in the year 1838, . . under the superintendence of Creecy, as overseer; and . . Goodman was to put in the . . negro woman, and another, from his slaves at home, and two small white boys, who were the nephews of Creecy, and lived with him, . . [19] Goodman paid Creecy, in cash, . . $160, for the hire of his two nephews, in 1838, and for his part of Creecy's wages as overseer,"

Thompson v. Newlin, 8 Ired. Eq. 32, December 1851. "This cause came on, on a petition for rehearing the decretal order made . . at December Term, 1849."[1] [34] "that so zealous was she on the subject, that about a year before her death, she instructed the defendant, who was her general agent in the management of her money, to collect a sufficient sum and make preparations for then sending the slaves out of this State; but, not long afterwards, she recalled the instructions, because, she said, some of them must stay to wait on her, as she was old and infirm, and she was not willing to send some without all: . . [36] At December Term, 1850, on the motion of the plaintiffs the Clerk was directed to enquire what proceedings had been taken by the defendant for emancipating the slaves. The report states, that the defendant . . had emancipated the slaves by removing them in September, 1850, to Logan county in the State of Ohio, and there duly executing a deed of emancipation and having the same proved and recorded. . . the defendant . . stated: that he was advised by eminent counsel, that this mode of emancipation was equally effectual and within the trust, as that prescribed by Statute, and that it was preferable, as he believed, because he had reasons to apprehend, that, if the emancipation took place in this State by giving bond, some of the plaintiffs or other persons might detain some of the negroes in this State by secret means, or seduce them back, . . [37] so as thereby to forfeit his bond and subject them again to slavery: . . that the negroes were all willing to go to Ohio, and be emancipated, and live there:"

Held: [51] "the emancipation of the slaves is deemed effectual and proper, . . therefore, the bill must be dismissed with costs." [46] "the power of the owner to give, and the capacity of the slave to receive, freedom, exist in nature, and therefore may be used in every case and every way, except those in which it is forbidden by law. . . [47] neither in its terms, nor in its spirit, does it [the act of 1830] prohibit a *bona fide* removal of slaves to another State, for the sake of their freedom." [Ruffin, C. J.]

Hilborn v. Hester, 8 Ired. Eq. 55, December 1851. About 1837 the administrator [57] "sold Jane and her two children . . . for . .$1528,"

Wooten v. Becton, 8 Ired. Eq. 66, December 1851. "Susan Jones made her will . . 1846, . . 'I am anxious to reward the meritorious services of the following named [twelve] slaves with the boon of freedom, . . and all their future increase . . and I direct my executors to

[1] Same *v.* same, p. 141, *supra.*

apply a sum, not exceeding three hundred dollars, to pay their passage and settle said slaves in some one of the free States.' . . The testatrix died in . . 1848, and before her death one of the above mentioned women had a child born, . . and since her death several others have been born." The bill [67] "states, that the executors are . . desirous to carry into execution the provision for the emancipation . . by carrying them out of this State . . but that they have been advised, that it is doubtful, whether they have a right to do so without having first had them emancipated in this State: and that they are willing to procure their emancipation here, and give the bonds . . provided they may be allowed to retain the estate of the executrix . . as an indemnity against loss"

Held: "the executors cannot apply to the purpose . . more than the sum specified in the will: . . [68] The purpose of the testatrix plainly denotes . . that 'issue and increase' was meant to include all born after the making of the will. . . [69] as emancipation may . . be effected . . by transporting the slaves and their settling bona fide in a state of freedom in another country or State, . . the executors have an option, as to which of the two modes they will adopt to execute the trust." [Ruffin, C. J.]

Green v. Lane, 8 Ired. Eq. 70, December 1851. In 1828 William S. Morris, of Newbern, [76] "carried the slaves Harriett and Freeman to . . Pennsylvania, and there caused proceedings to be had for their emancipation, and did, according to the laws of Pennsylvania, . . set free, as he was there advised, the said slaves, and then returned with them . . being advised . . that said emancipation was void here, . . the testator, under the advice of Judge Gaston, executed his will [[75] 'written by Judge Gaston'] in 1831," [74] "gave to his executor [Lane] all his estates, except a negro woman, named Patsy, and her three children Faucett [Harriett?], Albert, and Freeman, in trust, . . 'that as soon after my decease as practicable, and at all events within a year . . my executor remove beyond the limits of this State, and with the intent of a permanent residence to some State or country, where emancipation is unrestricted by law, . . Patsy, Harriett, Albert and Freeman, and there cause them to be entirely emancipated. . . that my executor shall apply one half of my money, debts due me, and the proceeds of the sales [of the rest of my estate] . . as a fund wherewith to effect the removal, and emancipation . . and to provide for them . . as my executor shall judge best, as the means of their education, improvement, and comfortable subsistence:' . . [76] subsequently . . the boy, William Henry, was born," [75] "By a codicil, dated . . 1838, the testator expressly republished his will, . . and he 'devised to [his executors] . . my piece of ground with the improvements on . . Craven street, . . also my . . furniture, my cow, and calf and ten shares of the capital stock of the Merchants Bank of Newbern; to hold . . absolutely, in trust nevertheless to permit my woman Patsy, to use, occupy, and enjoy the said [property] . . and to have the dividends . . during the natural life of . . Patsy, and after her decease in trust, to surrender up said . . estate to Harriett, Albert, and Freeman, . . to be held by them in absolute prop-

erty. . . I desire my executors . . to sell the lots, No. 83, and 67, in . . Newbern . . and of the proceeds . . I give unto William Henry Morris, son of said Harriett, . . one thousand dollars' . . The testator died in 1848, . . [76] Albert died before the testator . . The answer [of the executors] further states, 'that within the year after the testator's death, and before the filing of the bill [[75] "in 1850, by the legatees . . other than the negroes, and by the heirs, and next of kin"], the defendants removed the negroes, Patsy, Harriett and Freeman, to . . Pennsylvania, with the intent of a permanent residence . . and there caused them . . to be entirely emancipated.' . . [77] The answer, then, states the application of part of the funds of the estate to the removal and subsistence of the three negroes, . . and the payment of two years rent of the house and lot to Patsy."

Held: [77] "the pretended emancipation [in 1828] . . was manifestly a fraud on our law, and the Court cannot, upon any principle of comity, give effect to it. . . [78] Therefore, Harriett's son, William Henry, is a slave still, and the gift to him fails. The other slaves are in the same condition, unless they be entitled to their manumission under the will and codicil; and the Court is of opinion that they are not. If the case stood on the will of 1831, it would be otherwise,[1] . . [79] But it does not; . . it is apparent . . that the testator must have changed his mind as to the residence of the negroes, and that, when he made the codicil, he intended that they should be free and remain here. . . It must be declared, therefore, that . . Patsy, Harriett and Freeman, were the slaves of the testator at his death, and that they are to be accounted for by the defendants, as still being slaves, and also that the trusts created for their benefit . . are not valid" [Ruffin, C. J.] See same *v.* same, Busb. Eq. 102, p. 173, *infra.*

Hardy v. Leary, 8 Ired. Eq. 94, December 1851. Bullock's will, 1839: "that the negroes be hired out annually, and the hires appropriated to the support of my wife and children; but it is my express desire, if the income of my estate should not be sufficient for the support and education of my children, that my negroes should not be sold for that purpose, but that my family shall confine their expenses to their income."

Hudson v. Pierce, 8 Ired. Eq. 126, December 1851. Will of Thomas Hudson, who died about 1825: [127] "I lend to my . . wife during her life . . negro girl, Eliza Fails: the last of whom is to be emancipated at the death of my wife, together with any and all the children she may have at that time. . . five hundred dollars . . to my wife during her life; and at her death, it is to be put out at interest for the use . . of . . Eliza Fails." The widow died and her executor has "sold a negro woman, Sally, and her child, the offspring of Eliza Fails—who died during the life of the widow . . and has also in his hands the five hundred dollars,"

Held: [128] "such a testamentary disposition of the slave, Eliza Fails, and her children, . . before . . 1830, is null and void, as being

[1] As held in Thompson *v.* Newlin, p. 163, *supra.*

for their emancipation within the State. . . and the legacy of five hundred dollars is void also."

Chesson v. Chesson, 8 Ired. Eq. 141, December 1851. Will of Chesson, who died in 1847: [142] "that his five younger daughters should . . have a negro girl each, and, if his negroes should not increase to a sufficient number in time, that some of the other negroes should be sold for the purpose of procuring the girls. . . [144] the negroes . . by reason of their rapid increase were . . expensive."

Richardson v. Pridgen, 8 Ired. Eq. 153, December 1851. [154] "in 1838 . . Pridgen surrendered to . . [his wife's children] the remaindermen, several of the children of Chane, but kept her and two of her children, . . [155] In 1846 he made a deed for them to two of the remaindermen; . . was induced to do so because the negroes were increasing so rapidly—being then seven—as to render them an expense and burthen to him: and he urged the remaindermen, that they ought not to compel him to raise a family of negroes for them, but relieve him of them by taking them . . he was exercising a sound judgment in getting rid of the family of negroes."

Moore v. Ivey, 8 Ired. Eq. 192, December 1851. [196] "the last of the year 1843, . . two persons examined the girl [8 or 10 years old], and valued her at $250,"

Avera v. Sexton, 13 Iredell 247, June 1852. McAllister swore, that [249] "he went on the defendant's raft . . and assisted the hands in going over the falls [of the Cape Fear River]; that there were ten or twelve hands on the raft, more than the number usually employed in the highest freshet; . . [250] that some of them were trained and experienced in the management of rafts, . . that negro Frank, an experienced hand, remained at his post at the hind oar, notwithstanding the [wrong] order ['all hands to the fore oar']." There were only five [251] "white persons present on the defendant's raft."

Jones v. Glass, 13 Iredell 305, June 1852. "action . . to recover damages for an injury done to a . . slave . . by the overseer of the defendant. . . The plaintiff hired a negro man, named Willie, to the defendant, . . a miner, to be employed . . in the mine. The defendant had an overseer, . . Massey, under whom . . Willie and other hands were placed, . . On a certain morning, . . early in the day [Willie] quit his work, came to the negro house, where he usually lodged, and alleged that he was sick and unable to work. Massey . . missed him at the mine, and followed . . and attempted to tie him, for the purpose of correcting him. Willie offered to submit to correction, but said he did not wish to be tied. The overseer insisted . . and succeeding in tieing one arm, on which Willie made some move towards the door, as if he would escape. . . Massey took up a piece of wood, about three feet long and three inches in diameter, and gave him a violent blow on the left side of the head, and knocked him down, where he remained until the next day. A physician, who was sent for, stated, that he found Willie

lying on the floor, speechless; that there was a large fracture or indentation of the skull, and his whole right side was paralyzed; that he expected him to die in a short time; but that, after a few days, he began to get better, and so continued until he ceased to attend him; and about three months after he received the injury, he was sent home to his master. . . [306] the defendant . . discharged Massey, as soon as he was informed of it, . . The Court charged the jury, that Massey . . had a right . . to correct the slave in a reasonable manner, . . but if . . he negligently . . used an instrument, wholly unjustifiable for reasonable correction, and a permanent injury . . was thereby inflicted, the plaintiff was entitled to recover . . The jury found a verdict for the plaintiff,"

Judgment thereon, affirmed: [307] "it is but just to suppose, that . . [Massey] was satisfied that sickness was feigned by him. . . True, Massey was guilty of great negligence in the use of an instrument, calculated, not to correct, but to kill. The responsibility, however, is not confined to Massey, but extends to his employer." [Nash, J.]

Pate v. Railroad Co., 13 Iredell 325, June 1852. [327] "the defendant always had slaves as hands about the Depot, to assist in raising produce from the boats and letting it down in to the boat,"

Daniel v. Wilkerson, 13 Iredell 329, June 1852. "The action is for slanderous words . . that the defendant said . . that he believed the plaintiff had killed and eaten the missing hog, . . [330] as he, the plaintiff, was as big a rogue as any negro in the county."

Bell v. Jeffreys, 13 Iredell 356, June 1852. Held: [358] "Nearsightedness . . is an unsoundness, because it is a defect in an important organ." [Pearson, J.] Ruffin, C. J., dissented: [360] "It is known, that there are . . many more ['myopic persons'] among the white than the black race, according to their relative numbers. . . the organ is in its natural condition, and the subject of no malady whatever."

Walters v. Jordan,[1] 13 Iredell 361, June 1852. "a petition for dower, . . [362] the husband and wife had been married and lived together several years, until about three or four months before the husband's death; . . a witness deposed, that, on the day of separation, . . as he was going to the house, he met the plaintiff coming away in tears; . . the husband told him, that he had understood his wife was pregnant by a negro man, and he had driven the strumpet off, and she should never live with him again." [361] "a few months after the separation, he filed a bill against her for a divorce for cause of adultery with a certain negro ['slave'], by whom she became pregnant of a child, . . When the copy of the bill was served, it was read to her by the witness, who asked her if it was so, and she held up the child and said, it would show for itself; . . the witness . . thought it was a negro child, and asked her if it were not; and she replied, that she was not the first white woman that negro had taken in—that, when he first came about her, she hated him, but that, after a while, she loved him better than any body in the world, and she thought he must have given her something; that the witness then

[1] See same *v.* same, p. 157, *supra.*

said, he did not blame her husband for what he had done; and she replied, she did not blame him for any thing, except that he drove her off, before he knew, whether it would be a black child or not; and the witness remarked, that she [*sic*] supposed he had good reasons to believe it. . . [362] evidence was also given, tending to show, as it seemed to the Court, that, after the separation, the plaintiff committed adultery with a negro man," [364] " though he is not identified to be the same one," [362] " she continued apart from her husband, without any reconciliation until his death, and since that time has been a lewd woman. . . [363] The Court . . told the jury, there was no evidence, that she continued with her adulterer, within the meaning of the law.[1] . . instructed the jury, that the act of separation must be voluntary on the part of the wife . . to bring the case within the meaning of the law. . . The jury found the issue for the plaintiff,"

Judgment thereon, affirmed: she does not forfeit her dower, for [364] " the plaintiff cannot be said to have willingly left her husband;"

State v. Bill (*a slave*), 13 Iredell 373, June 1852. [377] " The warrant charges, that, at a late hour of the night, Bill was discovered concealed under the bed of Thomas Thompson, with an intent to commit some felony or violence, and upon being so charged, in order to avoid it, he ' impudently and insolently ' made [[373] ' highly slanderous ']charges, injurious to the character of a young lady living in the house." [374] " the magistrate adjudged, that the slave should be punished by receiving a number of lashes.[2] . . the owner of Bill appealed to the County Court. There, a motion . . that the charge should be tried by a jury . . was refused . . and judgment being pronounced upon Bill, his master prayed an appeal to the Superior Court, which was allowed. . . dismissed . . *certiorari* . . refused, and the owner of Bill appealed to this [Supreme] Court."

Held: [378] " his Honor acted properly in dimissing the appeal and refusing the *certiorari*." [375] " The acts of our Legislature on the subject of slaves are mostly police regulations. . . if, on our Statute Book, some few acts are retained, which we could wish to see abandoned, still, the spirit of our modern legislation is to moderate the evils of slavery, . . [377] What acts in a slave towards a white person will amount to insolence, it is manifestly impossible to define—it may consist in a look, the pointing of a finger, a refusal or neglect to step out of the way when a white person is seen to approach. But each of such acts violates the rules of propriety, and if tolerated, would destroy that subordination, upon which our social system rests." [Nash, J.]

Felton v. Long, 8 Ired. Eq. 224, June 1852. [227] "At the sale in 1819, made by Simeon Long [administrator], under the order of the County Court, the boy Lewis was purchased . . for $838, and has been sent to parts unknown. Esther and her child were purchased by Simeon Long, for $776. He has sold the woman, but still has possession of her issue."

[1] Rev. St., ch. 121, sect. 11.
[2] *Ibid.*, ch. 111, sect. 41.

Sanders v. Jones, 8 Ired. Eq. 246, June 1852. [248] "The agreement between the father and son was, if the latter would take slaves to Alabama [where he resided], and hire them out, the former would give the latter one-half the proceeds; and allow him his board and schooling for one year. The number of the negroes was twelve; . . the slaves were hired out . . for . . twelve hundred dollars, and notes taken from the hirers."

Washington v. Blount, 8 Ired. Eq. 253, June 1852. Will of Nathan J. Blount: I. [254] "I desire that my two negro men . . shall continue to labor for the benefit of my estate, for three years after my death: or pay the sum of seven hundred and fifty dollars each to my executor. At the expiration of that time (three years), I desire that they may be permitted to select their masters: . . [255] and empower my executor to sell them to such . . at a nominal price: or to liberate them, if it can be done consistently with the laws of North Carolina, as they may prefer: my intention and desire being to have them kindly treated and properly taken care of for the remainder of their lives,"

Held: (1.) "Should the negroes prefer to remain in this State, it will be the duty of the executors to sell them *as slaves*, and to account to the estate for a fair and reasonable price." "to enjoy their freedom *in this State*, by selecting some one, who is to become their ostensible owner, at a *nominal price*, and who will 'treat them kindly, . . for the remainder of their lives' . . is only another . . disguise, under which to make free negroes, and introduce a sort of *quasi* freedom, wholly incompatible with our institutions. . . Of course, he [the executor] . . is not obliged to put them up on the block, . . but may sell them at private sale, . . [(2.)] Suppose they may prefer to be emancipated. The executor . . may give the bonds required by the statute [of 1830], and send them out of the State: or he may send them out of the State, and thus liberate them without the bonds." [1]

II. [256] "Should my negro woman, Harriet, desire to be sold in the neighborhood of Washington, where she was raised, I authorise . . my executor to sell her and her child Sophy to such person as she may select in that neighborhood, and for such price as he may think proper. . . to hire out said Harriet for six or twelve months, to such person as she may select, which will give her an opportunity of choosing her master, or she may remain with her mistress eight or ten years, if she wishes." "Harriett preferred to remain with her mistress (the widow of the testator): but she has had several children, and, as the widow says, her services are not worth the maintenance of herself and children."

Held: "if the widow is not willing to maintain Harriet and her children, free of charge, the executor must sell her. . . may sell to any person in the neighborhood of Washington, Harriet may select, for a reasonably fair price, at private sale. And it is evidently the testator's intention, that not only the child Sophy, but the children born since, should be sold with their mother, to some kind master. And . . the executor

[1] Thompson *v.* Newlin, p. 163, *supra*.

is at liberty to aid the woman with his advice in making a selection." [Pearson, J.]

Respass v. Lanier, 8 Ired. Eq. 281, June 1852. In 1814 a negro girl was sold for $400.

Eaves v. Twitty, 13 Iredell 468, August 1852. "The jury were . . instructed . . that a mere propensity to drink would not be in law sufficient to constitute unsoundness, unless this had been produced by it at the time he was sold. . . it was argued, that Bob had acquired such a *habit* of intemperance as materially impaired his value. But a habit is not, in itself, unsoundness, . . no error" [Nash, J.]

Lush v. McDaniel, 13 Iredell 485, August 1852. [486] "physicians, who attended the woman in the latter part of her life, . . deposed that she died of syphilis, which . . might have existed for several weeks, and probably for two or three months; . . in answer to their inquiries the woman stated her symptoms . . also told them, that she had been so diseased . . before the sale"

McEntire v. McEntire, 8 Ired. Eq. 297, August 1852. "Juno was . . subject to periodical enlargement of her legs and abdomen, which rendered her almost, if not entirely useless; . . [298] usually came on with the warm weather . . and continued until the cold weather"

State v. Levi (*a slave*), Busbee 6, December 1852. "The prisoner was indicted at Caswell . . for burglary, . . acquitted; but was found guilty of grand larceny. . . he was charged to be the property of . . Williamson, who was duly notified to come forward and defend him. . . he had hired him to . . Wagstaff, who also had notice to appear and defend the slave. . . judgment against . . Wagstaff for the costs of the prosecution,"

Reversed: [7] "upon a proper construction of the Act,[1] . . the permanent owner . . was the person intended."

State v. Abram M. Weaver, Busbee 9, December 1852. "The defendant was indicted[2] . . for taking and conveying a free negro, named Jim Corn, out of the State, with intent to sell him as a slave. . . Brown testified that . . 1848, . . While camped . . Robertson came and asked prisoner if the free negro, Jim Corn, was going with him . . over the mountains. Prisoner said, not to his knowledge. R. then remarked that he had seen Jim Corn a few hours before, and he said he was going . . The prisoner then said . . if Corn wanted to go, he should not sleep in the wagon. . . Prisoner proposed that they should take Jim Corn . . to wait on them, but witness objected, there being but a one horse wagon . . and that they would have no use for him. The prisoner finally agreed to pay the expenses of the boy on the road, . . They all went on together . . into Virginia. . . along the usual public road, . . There was no attempt to conceal the boy, . . [10] after they had passed into Virginia . . Corn gave the witness some insolence, when the latter . . knocked

[1] Rev. St., ch. 111, sect. 48.
[2] *Ibid.*, ch. 34, sect. 12.

him down. The prisoner told him not to abuse the boy—that he intended to put him in his pocket before he got back. . . said in a jocular way, . . They went . . to the house of one Lowder, with whom the prisoner . . rode off, and returned with another man. Suspecting that the prisoner intended to sell the boy . . the witness took his horse . . and returned to North Carolina. . . Evidence was also offered of the prisoner's confessions of having sold the boy . . [11] verdict of guilty. . . sentence of death . . appeal . . granted without security, it appearing that he was insolvent,"

Judgment reversed, and *venire de novo* awarded: "There was no evidence that the free negro was taken . . out of this State by violence; . . [15] this Statute does not include cases of fraud." [Pearson, J.]

State v. Melton and Byrd, Busbee 49, December 1852. [50] "The indictment [for fornication] . . is found on the Act of 1838, ch. 24th, . . Melton is of Indian descent, ['but in what degree they [the jury] could not say,'] and . . Byrd is a white woman; . . and they allege that they were legally married."

Held: "it cannot be supposed it was the intention of the Legislature to forbid marriages between white persons and persons of Indian blood, howsoever far removed. . . [51] when in 1838 they extend the penalty inflicted in the 5th sec. of the 71st ch. of the Act of 1836, they must have meant that the offence . . should be a marriage within the degrees[1] specified in the Act of 1836." [Nash, C. J.]

Allen v. Allen, Busbee 60, December 1852. "The action was trespass *vi et armis*; . . the plaintiff offered in evidence a duly certified copy from the minutes of Brunswick County Court, . . July . . 1808, . . [61] 'On motion . . by George Davis, Esq., to emancipate Sam, . . formerly the property of . . Hooper, Esq., deceased, and a mulatto woman, the property of Elkanah Allen, by the name of Clary; and it being stated to the Court that the said slaves have rendered meritorious service to their owners, the said Court do . . direct, that the said slaves be emancipated . . agreeable to the Act . . Sam, by the name of Sam Hooper, and Clary, by the name of Clary Beel. . . further ordered . . that upon sufficient security being given . . to keep the said persons . . from becoming an incumbrance upon any county in the State, that the Clerk issue a certificate of their emancipation,' . . also . . a certified copy of a bond executed by Elkanah Allen and John G. Scull, of record in Brunswick Court, . . 1809, . . 'that whereas . . Elkanah Allen did, on 26th day of July, present to the Court of Pleas . . a petition praying that Clary . . should be emancipated . . under the name of Clara Beel, . . Elkanah Allen shall . . notwithstanding the emancipation . . keep her from ever hereafter being chargeable to the county,' . . the plaintiff [Kitty Ann Allen] is a daughter of . . Clary. . . Clary, from the time of her alleged emancipation to the time of her death, acted as a free person, . . and . . the daughter . . also . . until some five or six years prior to the commencement of this suit, when she was seized by the defendant, the grand

[1] "any person of mixed blood to the third generation,"

son of Elkanah Allen, . . The plaintiff then offered to prove that she was born subsequent to the alleged emancipation . . and counter evidence was offered by the defendant . . His Honor being of opinion that the record exhibited did not show a valid act of emancipation, . . [62] the plaintiff submitted to a nonsuit,"

Judgment reversed, and *venire de novo*: [63] "Surely, after such a distinct acknowledgement by the owner, that he applied for and obtained . . the license to liberate his slave, . . and he and all other persons had for more than thirty years treated . . her and her daughter as free, every presumption ought to be made in favor of her actual emancipation according to law." [Battle, J.]

Branch v. Houston, Busbee 85, December 1852. [86] "action of debt for the penalty of one hundred dollars,[1] brought by . . the owner of a runaway slave, against the defendant for harboring said slave."

City v. Kenedy, Busbee 89, December 1852. "an action of debt for a penalty, commenced . . before the Mayor of Elizabeth City, . . against the defendant, for refusing to serve as patrol, . . It was insisted for defendant that he was exempted . . because he was a . . minister . . of the M. E. Church, south, and was, at the time, in the regular exercise of the duties of his calling. . . his Honor being of opinion that . . defendant was not so exempt, rendered judgment for the plaintiff,"

Judgment affirmed: [90] "we cannot see that there was any conflict of duties, . . Had the defendant applied to the proper authorities of the town for an exemption, no doubt can exist, but what one would have been granted, exempting not only him, but every other regular minister . . residing within the corporate limits." [Nash, C. J.]

Abrams v. Suttles, Busbee 99, December 1852. "1850, the defendant . . agreed to hire to the plaintiff, . . four negro slaves to work in the plaintiff's gold mines—the slaves to be taken the 1st of February following, and kept the remainder of the year; . . [100] $8 per month for each slave. . . [Later] the defendant said they should not have the negroes, unless they gave a bond . . to pay for the slaves absolutely, if they or either of them, should die whilst in plaintiff's employment." They refused to do so. A witness "testified to the declaration of the defendant . . that the reason why he did not let the plaintiff have the negroes was, that they were unwilling to go with him."

Armfield v. Moore, Busbee 157, December 1852. [158] "hired the . . slaves [a woman and her child among them] . . and took them to Brewer's gold mine, in South Carolina; . . [a few months later] on . . Sunday, whilst witness was absent at a camp meeting, they suddenly disappeared . . [158] Belk . . on the same day . . saw them in the possession of the defendant in a secret place, in Union County, and that the defendant . . informed him that they had been stolen from his child in North Carolina [by a relative who claimed them]; and he had been down in South Carolina and had stolen them back."

[1] Rev. St., ch. 34, sect. 73.

Fanshaw v. Fanshaw, Busbee 166, December 1852. [167] "a petition was filed by the next of kin, . . setting forth that . . certain slaves had come to them as tenants in common; that an equal partition could not be made without a sale; and praying that a commissioner might be appointed to sell said slaves, . . granted,"

Sowell v. Barrett, Busb. Eq. 50, December 1852. Jack [53] "was and is a cripple, and would not [in 1847] . . have sold for cash for more than $400 . . nor would he [the plaintiff] . . ever have thought of its redemption, except from the extraordinary rise which has recently taken place in this species of property."

Robinson v. Lewis, Busb. Eq. 58, December 1852. In 1847 a male slave was mortgaged for $600. If redeemed, the mortgagee was to account for his hire at the rate of $125 per year.

Williams v. Chambers, Busb. Eq. 75, December 1852. [78] "(owing to an impression that . . the widow and child 'would be left destitute, and that bids made for her would enure to the benefit of the child as well as herself,) [the widow was allowed] to buy many valuable negroes . . at prices merely nominal.'"

Green v. Lane, Busb. Eq. 102, December 1852. [112] "This is a petition to rehear a decretal order made . . December Term, 1851,[1] . . [115] We ask seriously, whether one man out of a hundred would suppose that Patsy . . was intended by the testator to reside in Pennsylvania, . . and yet 'use, occupy and enjoy a house . . a cow and calf, situated in . . Newbern in this State.' We answer confidently, that he would not. . . If the clauses in the codicil, relating to the children, had been separate . . from those which apply to their mother, we might perhaps be justified in putting a construction upon it more favorable to them. . . [116] But neither the will nor codicil anywhere shows an intention that they should be separated from their mother, and we think, that as the testator has evinced a disposition to evade the law of the State in relation to her, there ought something to appear in the codicil, that he wished their fate to be different from hers. . . the bequest for emancipation has failed, . . Petition dismissed," [Battle, J.]

Owen v. Owen, Busb. Eq. 121, December 1852. Will: "should any of the negroes become unruly or disobedient, they are to be hired out by my executors,"

State v. Groves, Busbee 191, June 1853. "The prisoner was indicted under the 10th section of 34th chapter of the Rev. Statutes, for the offence of stealing and carrying away a woman slave, . . [192] The prisoner was first seen in possession of the slave . . 1852, . . slave being in a covered one horse cart, muffled up in a blanket. The slave had been a runaway for about sixteen months"

State v. Locklear, Busbee 205, June 1853. "The defendant was indicted under the Act[2] . . prohibiting free persons of color from wearing

[1] Same *v.* same, p. 164, *supra.*
[2] Act of 1840, ch. 30.

or carrying arms about their persons. . . he carried a shot-gun. . . verdict and judgment . . against the defendant," Affirmed.

State v. Tom (a slave), Busbee 214, June 1853. [215] "The indictment is under the 60th sec. of the 34th ch. of the Rev. Statutes, . . 'If any *person* shall . . pass . . any counterfeit bill' . . *In rerum natura* slaves are persons; . . [216] we guard their lives, . . with the same care that we do those of the white population. In carrying out this humane policy, the Courts in putting a construction upon penal statutes, have adopted the principle that slaves are not embraced, unless mentioned." [Nash, C. J.]

State v. Jacobs, Busbee 218, June 1853. "The defendant was . . [219] charged as a free person of color with having migrated into this State, and having failed to depart . . within twenty days, after having been duly notified so to do,[1] . . On the trial, . . the defendant having pleaded the Act under which he was arrested unconstitutional,[2] his Honor . . gave judgment (*pro forma*) dismissing the appeal for want of jurisdiction," Judgment reversed.

Green v. Allen, Busbee 228, June 1853. Held: [234] "it is the duty of every owner having slaves hired out, who resides in the State, to enlist them for taxation in the county of his residence."[3] [231] "when they began to be carried to other and perhaps distant counties to labor in mines, and on works of internal improvement, and were frequently removed from one place . . to another, the loss of the State became so great that it . . produced the act now under consideration." [Battle, J.]

State v. Cardwell, Busbee 245, June 1853. [246] "he himself, with his own negroes, had worked on" the road.

State v. Thornton, Busbee 252, June 1853. "the nuisance consisted in the frequent assembling together of persons, white and black, in the day time and the night, on work-days and Sundays, . . and drinking . . swearing and quarrelling. The disturbances occasionally took place in the shop of the defendant, but more frequently in front of and around it. . . the defendant sold spirituous liquors . . verdict of guilty," Judgment thereon, affirmed.

Sample v. Bell, Busbee 338, June 1853. "the defendant, living in Washington county, . . [339] hired Jerry for that year to one Ray, on the terms, . . that he was not to be carried out of Washington county. A few weeks thereafter, Ray hired out Jerry for the residue of the year to the plaintiff, with a like restriction, . . during the year, Jerry and other slaves, who had been hired by the plaintiff, were seen by defendant in the streets of Plymouth, . . on their way to work at a shingle swamp of the plaintiff, in Martin county, and defendant was told by Ray . . that plain-

[1] Rev. St., ch. 111, sects. 65-67.
[2] Bill of Rights, sects. 7 and 8.
[3] Act of 1846, ch. 67, sect. 6.

tiff had applied to him to have the restrictions removed in regard to Jerry, but that he had refused . . thereupon defendant told Jerry, who was not far from him, ' that he was not to go out of the County, unless compelled or forced to go out,' . . Jerry . . remained in Washington several weeks; he was afterwards put to work in Martin, before the expiration of the year of hire."

Judgment for the plaintiff, affirmed: [341] " it was an unauthorised interference with the rights of the plaintiff,

Croom v. Whitfield, Busb. Eq. 143, June 1853. Whitfield's will: " that . . my boy Caleb be hired out privately to the best advantage, . . during the life time of . . Caleb, and three-fourths of the hire [given to my youngest child] . . and the other fourth . . to . . Caleb annually."

Held: [144] " the bequest to . . Caleb . . is a void legacy,"

Thacker v. Saunders, Busb. Eq. 145, June 1853. "After the sale [1850], the complainant [remainderman] went to the defendant, who was a negro-trader, and told him that he should require him not to carry the slave out of the county. . . the defendant replied that he had bought the slave to sell. Thereupon the complainant filed this bill to enjoin the defendant from removing the slave beyond the limits of the State, and also to obtain a writ of sequestration. His prayer was granted, . . the defendant . . sold the slave to some one living in this State."

Marrow v. Marrow, Busb. Eq. 148, June 1853. Will, 1846: [149] " I wish the negroes kept on the plantation if manageable, if not, I wish my executors to hire them privately to honest, humane men." The testator " possessed . . thirty or forty slaves, . . [the executor] worked them upon the plantation, with the exception of a few whom he hired out, and two whom he sold for their bad conduct."

Joyner v. Denny, Busb. Eq. 176, June 1853. In 1843 a negro girl was sold for $310.

Wright v. Grist, Busb. Eq. 203, June 1853. [204] " that she has been prevented by the defendants from using the ton timber reserved . . her slaves have been driven from the lands leased "

Forbes v. Hunter, 1 Jones N. C. 231, June 1853. Held: [233] " The power to exempt hands from working on the public roads is . . restricted to a Court consisting of seven Justices." [1]

State v. Houser, Busbee 410, August 1853. " The defendant was indicted for selling spirituous liquor to a slave . . verdict of guilty,"

McBride v. Gray, Busbee 420, August 1853. " the plaintiff declared upon a special contract and upon a *quantum meruit* for services rendered in keeping, taking care of, and boarding a helpless old negro woman that had once belonged to the father of Mrs. Gray,"

Held: recovery barred by the Statute of Limitations.

[1] Rev. St., ch. 104, sect. 12.

State v. Abernathy, Busbee 428, August 1853. "The defendant was indicted . . for the offence of buying and receiving from a slave ten pounds of Iron."

State v. Langford, Busbee 436, August 1853. The prisoner, found guilty of the murder of his wife, had previously [441] "incited a negro in the neighborhood [to kill her]."

Re Champion, Busb. Eq. 246, August 1853. Will, 1848: [247] "Having . . purchased a negro girl . . and child . . it is my will . . that my wife . . enjoy them solely as her . . property;"

Taylor v. Rickman, Busb. Eq. 278, August 1853. [280] "that being without children she greatly indulged said [two] negroes, who, being females and thus indulged, have been almost valueless to him,"

Graham v. Graham, Busb. Eq. 291, August 1853. Will, 1845: [292] "I give to my son Robert Clay . . Sarah, wife of old Isaac, . . [293] to my son James Franklin, . . Isaac the potter, . . and old Isaac, . . to my son Henry, . . twenty-eight hundred and fifty dollars worth of negroes, the value of which to be ascertained by reference to my family book." He bequeathed "$2,850 worth of negroes" to each of his three daughters.

Nichols v. Bell, 1 Jones N. C. 32, December 1853. "an action of assumpsit upon a guaranty" [33] "The plaintiff is a man of color; the case states 'that he was neither black nor white, but that he was of a brown color, between that of an African and a mulatto, and that neither of his parents could have been a white person.' The plaintiff then proved, that, 'in Onslow, where the contract was made, he was reputed to be a free person, was called . . free Alfred Nichols.' The defendant requested the Court to instruct the jury, that, in the case of persons of a *shade* of color darker than that of a mulatto, the law presumed they were slaves." The court refused. Verdict for the plaintiff. "Rule by defendant for a *venire de novo.* Rule discharged,"

Judgment affirmed: [34] "We know of no law or decision, which authorises such presumption. . . If we had the power, we certainly have not the disposition to extend the principle further, than as recognised in the cases cited.[1] Let the presumption rest upon the African color; that is a decided mark: but to carry it into shades, would lead us into darkness, doubt and uncertainty, for they are as various as the admixture of blood between the races, and against the rule that presumptions are always in favor of liberty." [Nash, C. J.]

State v. Hyman, 1 Jones N. C. 59, December 1853. "an indictment for selling spirituous liquor to Charles, a slave, . . [He had] a written order from his master, . . 'Messrs. Austin and Hyman have my consent to sell and deliver to Charles, ardent spirits, whenever he shall apply for the same during the present year. Wm. Norfleet. January 11, 1853.'"

[1] Gobu *v.* Gobu, p. 18, *supra*; Scott *v.* Williams, p. 54, *supra.*

Held: [60] " The order is *null and void,* is in derogation of the letter and spirit of the act of the General Assembly, . . it was intended to guard the interest of the community against the vice and crime, the disorder and insubordination, which would grow out of an unlimited indulgence by our slaves in procuring ardent spirits; to secure the interests of the owner, in the health and strength and obedience of his slaves, and to protect the slave himself, in his moral health, against the allurements held out to him. . . [62] a permission in writing must be given for each distinct act of trading." [Nash, C. J.]

Robertson v. Roberts, 1 Jones N. C. 74, December 1853. Will: [75] " I . . bequeath . . three hundred dollars, or a negro girl worth that money."

Dozier v. Gregory, 1 Jones N. C. 100, December 1853. [101] " There [was] . . on the premises, . . also . . a quarter kitchen,"

Spruill v. Insurance Co., 1 Jones N. C. 126, December 1853. Action of assumpsit. " The plaintiff owned a negro slave named Harry, and . . 1850, the defendants insured his life for five years, at the amount of $500, by a policy of insurance, which contained the following clause: ' In case the said slave shall die by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped authority, or by the hands of justice, this policy shall be void, null, and of no effect.' . . 1852, the slave Harry ranaway from the plaintiff, and a reward was offered by advertisement for his restoration. Afterwards, on a night of September of that year, . . patrols lawfully appointed . . went to a negro house . . [127] where the slave . . was found. They told him to submit, and he would not be hurt, but this he refused to do, and came to the door armed with a scythe-blade . . twice . . re-entered the house, and shut the door. He then opened the door and jumped out, with the blade of the scythe raised in a striking position. One of the patrol, standing in front of the door, about eighteen feet off, without saying anything to him, shot the slave in the right side, of which wound he died in a few minutes. . . his Honor was of opinion against the plaintiff, and gave judgment accordingly; "

[128] " Judgment reversed, and judgment here . . for the plaintiff, for . . $500, with interest from the 1st of September, 1852." [127] " The death of the slave Harry does not come within any of the exceptions contained in the policy." [Nash, C. J.]

McBoyle v. Hanks, 1 Jones N. C. 133, December 1853. " The defendants . . own a Steam Saw Mill, . . where the slaves . . worked,"

Cooper v. Purvis, 1 Jones N. C. 141, December 1853. " The defendant, as administrator . . hired out a negro girl at a public hiring, in June 1851, for the residue of the year, to the plaintiff. . . it soon became manifest that she was pregnant, and in the Fall she was delivered of a child. There was proof of a long and well established custom in the county, . . to allow the hirer of a woman in such cases ten dollars."

Held: [144] " the decisive objection to the allowance of such neighborhood customs is the uncertainty in relation to the proof of them, and the

great inconvenience of having local laws . . to regulate matters which ought to be the subjects of express contracts." [Battle, J.]

Outlaw v. Hurdle, 1 Jones N. C. 150, December 1853. Will of David Outlaw, dated December 20, 1848: "It is my wish . . that . . Dr. Joseph B. Outlaw, have all my property" In wills made by the testator in 1847, and in the summer of 1848, [154] "provision was made for the liberation and support of his slaves; . . he had directed his slaves to be settled," A witness deposed that in March 1849 "the deceased . . said, . . that he was going down the country to get a negro he had given away, in order that he might be liberated with the rest of his slaves;" He died a few days after. [163] "Verdict for the propounder; motion for a new trial . . refused," Judgment affirmed. See Hurdle *v.* Outlaw, p. 187, *infra.*

State v. McNair, 1 Jones N. C. 180, December 1853. "the spirits were delivered by the defendant to the slave, after night-fall, in consequence of the following order, from the overseer of the negro: 'Mr. McNair:—You will please to send me 5 quarts of whiskey, by boy Jerry. James H. Higgs.' The price of the liquor was paid by the negro on delivery. . . [181] verdict of guilty. Judgment and appeal."

Judgment reversed, and a *venire de novo* awarded: "The act under which the indictment is found had no intention to abridge the legitimate use of his slave by the owner; . . it is not denied he may use him as his agent." [Nash, C. J.]

Henderson v. Henderson, 1 Jones N. C. 221, December 1853. Will: [222] "to my wife . . I loan, during her natural life, negro woman Molly, and after her death to be sold, and equally divided among all my heirs, . . My man Peter I want to be hired to such person or persons as he wishes to live with, until my son William . . becomes eighteen . . I then give . . Peter to . . my youngest daughter,"

Caffey v. Davis, 1 Jones Eq. 1, December 1853. See Caffey *v.* Rankin, p. 149, *supra.* [3] "No steps having been taken by the Executrix, Sophia, to send off the slaves Nelly and Nehemiah, after her death the plaintiff, as administrator . . with the will annexed, of James Davis, . . filed this bill to obtain the . . instruction of the Court of Equity,"

Held: [4] "The right of . . Nehemiah, Nelly and Wright to their freedom appears . . unquestionable. . . Alvis, upon a just construction of the will of James Davis, must follow the condition of his parents, and has a right to be emancipated with them. . . [5] Had they, at the termination of the life estate, been unable to comply with the condition, their issue . . would have gone with them into servitude to the remainderman, . . Why then should not the issue go with them into freedom, upon their performance of the condition . . Why any more necessity that the testator should mention issue . . to give liberty to such increase, than to doom it to slavery? . . [8] if [Nehemiah and Nelly] . . should entitle themselves to freedom, by complying with the laws of the State, so that the legatee . . could not take them, we do not see how he could

take their issue, which is but an incident to or a part of them.[1] . . [9] The administrator must . . appropriate such of their hires or profits since the time he has received or might have received them, to the purpose of emancipating and carrying them out of the State." [Battle, J.]

Alvany (a free woman of color) v. Powell, 1 Jones Eq. 35, December 1853. Will of Benjamin Dicken, who died in 1851: "I give . . to all my negroes . . their freedom freely and cheerfully. My will is that my executor carry or send my negroes to some free State, say, 1st. Indiana, Illinois, or Ohio, or some Western State, or Middle or Eastern State, or St. Domingo, or the British West Indies. I further give and bequeath to my negroes nine thousand dollars, to be raised out of my money matters, . . and further, I give unto my negroes the three thousand dollars my friend Joseph J. W. Powell is to give for my land, or one-half of the proceeds of the sale of my lands, as the case may be. . . [36] all the balance of my money matters, after the payment of my just debts, . . I give unto my poor negroes, to be equally divided among them." "Also, by a codicil . . made just before he died, he bequeathed all the balance and residue of his estate, . . to his slaves. The slaves . . were sent out of the State, according to its requirements and of the laws of the State, except Mariah, the mother of the plaintiff, and one other who fled the country for an offence against the criminal law. Mariah, the plaintiff's mother, in due time intended to go also, and was making the necessary preparation to do so, but was prevented by her death, . . She . . left three children, the plaintiff Alvany, Florence, who has since died in Canada, an infant under age, and John, who was born forty weeks and two days after the death of the testator, and died in . . 1852, in Canada. Mariah and the defendants Isham and Carey were the children of Lettice, and were born during the time she cohabited with a slave by the permission of the testator, which slave was recognised by her and her master as her husband, although not married by any form prescribed by law. In like manner, the plaintiff and her sister Florence were born of Mariah, but at the death of the testator and since, Mariah had no husband, such as is tolerated by masters of female slaves, nor had had for several months previous to that event. The plaintiff is a resident of Canada, and has a regular guardian of approved character, and in this Court sues by her next friend, . . [37] she claims to be entitled to one share in her own right, and to the shares of her mother Mariah, her sister Florence, and her brother John."

Held: [38] "It is the settled policy of our State not to allow negroes to remain here after they are set free; but the reasons upon which this policy is based, by no means make it necessary to hold that they have not a capacity to take property until after they have left the State. Their removing is not a condition precedent to emancipation, but is a condi-

[1] Judge Pearson, referring to this case, in Cromartie *v.* Robison, 2 Jones Eq. 218 (221), observes: "When the title to herself [Nelly] is given to her, in other words, when she is set free after the determination of a particular estate, the increase during that time, goes with her ['into a condition of freedom'], because the taker of the first estate is excluded by the rule . . in regard to slaves [that the increase passes to the remainderman]." Nelly is the remainderman.

tion subsequent: . . [39] With this saving, the humanity of our laws strikes off his fetters at once, and says, go 'enjoy life, liberty and the pursuit of happiness.' 1. We are satisfied that Mariah, at the time of her death, with the restrictions necessary to compel her to leave the State, was . . a free woman, and had capacity to take property and transmit it . . to her personal representative. 2. . . that all of her children are to be considered distributees, . . Our law requires no solemnity or form in regard to the marriage of slaves, and whether they 'take up' with each other, by the express permission of their owners, or from a mere impulse of nature, in obedience to the command 'multiply and replenish the earth,' cannot, in contemplation of law, make any sort of difference. In regard to slaves and free negroes, there is no necessity, growing out of grave considerations of public policy, for the adoption of the stern rule of the common law, 'a bastard shall be deemed *nullius filius*' . . [40] Therefore, we think that John, although the state of things existing about the time of his conception was somewhat equivocal, was entitled to the same share of his mother's estate as the rest of her children. 3. . . in regard to John, at the death of the testator, . . he was not *in esse*: . . although John was entitled to a derivative share, yet he was not entitled to an original share." [Pearson, J.]

Barnes v. Strong, 1 Jones Eq. 100, December 1853. [101] "he directs that the negroes . . fourteen in number, . . with their increase, . . shall be sold by his executors:"

Corbitt v. Corbitt, 1 Jones Eq. 114, December 1853. [115] "Kate . . together with four children, were . . sold by the . . widow, to . . Watlington,"

Eyre v. Potter, 15 Howard 42, December 1853. Mrs. Potter [58] "remarked . . that the greater part of the property [of her husband, who died in 1847,] consisted of slaves, and she would not own one for any consideration." [52] "she was content with the disposition of her property until she received a letter from her son [by a former marriage] . . in Philadelphia."

State v. Thomason, 1 Jones N. C. 274, June 1854. [275] "hearing . . some one exclaiming, 'I am stabbed or cut,' he went to the spot, and found the deceased lying on the ground, in the arms of a free negro,"

State v. Curry, 1 Jones N. C. 280, June 1854. "an indictment for murder, . . The prisoner and the deceased, both free persons of color, started from Gaston to ascend the Roanoke River in a loaded boat, assisted by a slave, the deceased being the manager. . . [281] heard quarrelling by a witness . . in another boat. . . he saw the prisoner striking at some one in the bottom of the boat, . . the deceased . . lying on his back with his legs across a pushing pole ['fifteen feet long . . broken'], . . the weapon used by the prisoner . . was . . a *boat-slide*; . . about eight feet long and three and a half inches wide, and two and a half inches thick, and had iron on each side near the ends; that he [witness] went into the boat where the deceased was lying, and washed the

blood off his head and face, and said to the prisoner, 'You have killed Harris,' to which he replied, 'Damn him, he is only drunk.' The witness then asked . . why he had done so, and he replied the deceased had stricken him first. . . there was a bruise or puncture on the cheek of the prisoner, . . [282] a bruise or cut over one of his eyes, and [the prisoner] said that it was caused by blows given him by the deceased. . . [283] the jury . . found the prisoner guilty."

Held: the crime is but manslaughter.

Jackson v. Keeling, 1 Jones N. C. 299, June 1854. [301] "He saw the hands taking in the seine, . . the seine became entangled with the wheels of his boat: He sent a hand down to disengage it:"

McClees v. Sikes, 1 Jones N. C. 310, June 1854. "The plaintiffs had placed the negroes . . to work at the business of getting shingles"

Bell v. Bowen, 1 Jones N. C. 316, June 1854. "On the first of January, 1851, the plaintiff hired to the defendant and another a negro slave . . for the year ensuing, . . upon the terms, that the slave 'was not to be carried out of the county of Currituck, nor to be employed upon the water, except at the hirer's risk.' The slave . . was sent across the Albemarle Sound, and set to work in a *shingle swamp,* in another county, about one hundred miles from his owner's place of residence. He was . . in good health when he left . . upon being demanded of the co-partner of the present defendant, he said that 'the slave was dead; that he died in Plymouth of ordinary sickness, after the best medical attendance he could procure.' A verdict was rendered for the value of the slave,"

Judgment on the verdict: [318] "We are forced to make the stipulation extend to a death by sickness, without reference to the question of neglect,"

March v. Harrell, 1 Jones N. C. 329, June 1854. "sold the [female] slave . . to . . a negro trader residing in . . Virginia, who carried her off to parts unknown."

Green v. Dibble, 1 Jones N. C. 332, June 1854. Action of assumpsit for the value of a negro woman slave. "The defendants were co-partners in running a steamboat . . being in want of a cook . . they applied to the plaintiff to hire the woman in question . . The plaintiff at first refused . . on the ground that she was much addicted to drunkenness, and she was afraid the life on board a steamboat would increase the force of that vicious habit, and expose her to greater danger. Whereupon, the defendants assured the plaintiff that . . they never allowed spirits to be carried on board . . and agreed . . that . . 'they would guaranty against all loss from that source,' . . the woman . . went into the service of the defendants, . . A few weeks afterwards, the woman became much intoxicated, and . . in a fit of drunkenness, delusion or abstraction, jumped overboard, and was drowned. . . [333] Verdict for plaintiff. . . rule for a *venire de novo* . . discharged," Judgment affirmed.

Thompson v. Bryan, 1 Jones N. C. 340, June 1854. [341] "one of the stipulations was, that the witness, in consideration of $125 . . should

convey the slave . . to the plaintiff, in trust, . . he, the witness, . . placed it in the possession of the plaintiff, that it might be with its mother."

Knight v. Railroad Co., 1 Jones N. C. 357, June 1854. Bond: "On the first day of January, 1853, the . . Railroad Company promise to pay . . Laspeyere . . one hundred dollars for the hire of negro Bob, (to be paid in quarterly instalments,) until the first day of January, 1853. The Company promises to feed and clothe said negro, and pay such expenses as are customary in the case of hired negroes."

McLean v. Nelson, 1 Jones N. C. 396, June 1854. [397] "these slaves were conveyed [in 1845] to . . Wilson, of . . Virginia, to be held by him 'in trust for her own benefit until the contemplated marriage should take place, and then for the joint use . . of herself and . . Nelson during their joint lives, and after the death of either of them, for the benefit of the survivor, and for the support and education . . of the issue of such marriage . . and, after the death of such survivor, in trust, to convey the same to the issue'"

Heath v. Gregory, 1 Jones N. C. 417, June 1854. A slave was hired for the year ending December 6, 1846, for $62.

Commissioners v. Frank and John, 1 Jones N. C. 436, June 1854. "an action . . against two slaves for violating the provisions of an ordinance[1] . . [437] the Intendant of Police . . proceeded to state that he was sitting in the back room of his office, in the town of Washington, on Sunday, with the door closed; that he heard a loud noise in the street, went to the door, and saw a company of half a dozen negroes, among whom were the defendants. They were laughing and talking, making much noise. One negro had a stick in his hand, and the others were engaged in a scuffle with him, with a view of taking it away. There was no quarreling or fighting, but only laughing and talking. There was no white person present. Witness commanded the negroes to disperse, which they did, and he returned to his office. In a very few moments afterwards, the witness heard a still greater noise at the same place, and, on going to the door, he saw that they were the same negroes re-assembled, making much noise and disorder, by loud and boisterous laughing and talking. He again dispersed them. . . verdict . . for the plaintiffs." Judgment thereon affirmed.

Dozier v. Sprouse, 1 Jones Eq. 152, June 1854. In 1831 "the intestate [residing in South Carolina] owned a slave . . of great value, being a 'first rate tanner;'"

Campbell v. Smith, 1 Jones Eq. 156, June 1854. "the intestate [Polly Coile] did intend at one time to convey her slaves to the defendant upon the secret trust charged ['that he was to hold them in a qualified state of bondage.'] . . It is highly probable that she thought he being their

[1] [437] "The Commissioners for the Town of Washington do hereby prohibit . . all disorderly shouting and dancing, and all disorderly . . assemblies . . of slaves and free negroes in the streets, market and other public places . . by day and by night. . . any slave violating said ordinance shall, upon conviction, be punished with not more than thirty-nine lashes for each and every offence."

father, would not hold them in absolute slavery, but would permit them to enjoy as much of freedom as was compatible with their condition. . . Williamson [one of the three subscribing witnesses to the deed] . . testified that a short time previous to the execution of the deed, the defendant informed him that Polly Coile wished to see him; . . she told him that she wished to convey her slaves to the defendant, . . [158] he told Polly Coile that . . they would not be free, but would be slaves and liable for the defendant's debts and subject to any disposition he might think proper to make of them; . . she replied, that she was fully aware of that, but she preferred they should belong to him, in preference to any of her relations, . . two other instruments were executed at the same time, one of which was a bond for $200, given by the defendant . . for the purchase money of the slaves, and the other an obligation by him to take care of, and furnish a home for, a superanuated [*sic*] negro man owned by Polly Coile,"

Held: "The testimony of the three subscribing witnesses rebuts . . the presumption . . that the deed . . was executed upon a secret trust," [Battle, J.]

Clement v. Clement, 1 Jones Eq. 184, June 1854. [186] "George . . was purchased . . at a [trustee's] sale . . June, 1828, . . The price bid was one hundred and forty-three dollars, . . [189] was in the possession of Polly Wilson, . . the witness had heard her request . . her nephew, to take George and hire him out, because he was so unruly that she could not manage him; . . witness . . on a certain occasion corrected him for misconduct, at the request of [his mistress.] . . [192] Bold, another boy who . . belonged to . . Clement, had been taken home, because his aunts could not manage him."

Lamb v. Pigford, 1 Jones Eq. 195, June 1854. [196] "The plaintiff, . . a man of weak intellect, illiterate and easily imposed on . . had become much dissatisfied with the conduct of his wife, who had given birth to a colored child, left his domicil and went to live with his brother, . . he made an absolute conveyance of the . . land he had been living on, also of his slaves, six in number, . . to exclude his wife from any participation in the . . property."

Anderson v. Arrington, 1 Jones Eq. 215, June 1854. Will: "I give to my wife . . during her lifetime, or widowhood, . . all the negroes belonging to me that are in this State, . . [216] and in the event of the death or marriage of my wife, . . I will . . that . . all the . . property, with exception of the negroes, [be sold.] . . It is my will . . that my negroes that are in . . Alabama should continue to be hired out annually, and should any one of my negroes, either in . . Alabama or here in this State, become disobedient or ungovernable, . . my executor is hereby authorised to sell or otherwise dispose of such negro or negroes." The widow made large profits [217] "from a blacksmith shop,"

Barnett v. Barnett, 1 Jones Eq. 221, June 1854. [224] "Susan Barnett [a deaf mute] . . had the negroes all brought in, and she was re-

quested to state how they were disposed of in the deed [of gift], which she did, assigning each negro as assigned in the deed. . . [226] Dr. Jordan [who drew the deed] received his information as to the names of the negroes given through a negro woman, who was much better acquainted with the signs of her mistress than he was."

Hinton v. Powell, 1 Jones Eq. 230, June 1854. [232] "but seven are left, . . too few to cultivate the plantation to advantage and keep it up . . that lands are now high . . and slaves hiring high—and the prayer of the bill is for a sale of the land." So decreed.

Cheeves v. Bell, 1 Jones Eq. 234, June 1854. "I bequeath that after my death, that my negroes, land, and every species of my property be sold,"

Earp v. Earp, 1 Jones Eq. 239, June 1854. [240] "she did endeavor to escape from his brutality . . but she was at the command of her . . husband, carried back to his house by his servants."

Lucy Thomas v. Palmer, 1 Jones Eq. 249, June 1854. Will of Nathiniel [*sic*] P. Thomas: "My mill tract . . and the Crowder tract . . I . . devise to my executor, to be sold . . and the proceeds[1] . . to be placed at interest, after investing a portion . . in purchasing a suitable home for my mulatto woman, Lucy, and children, purchased of the trustees of . . [250] Crowder; the interest . . to be appropriated towards their support, . . My mulatto woman, Lucy, . . I . . bequeath, to . . Palmer, together with her [three] children, and any other children that she may have, in trust . . that he will provide for them a suitable home, as aforesaid, and for her support, and that of her children, until they are able to support themselves, out of the proceeds of the real estate aforesaid. . . it being understood that the said woman and children are not to be removed from the county . . without her free will and consent, and a copy of this will recorded in the clerk's office of the county, to which she may remove." Codicil: "In the event that the laws of North Carolina, or the policy of the same, as construed by the Supreme Court, shall present any obstacle to the fulfillment of the trust . . I . . direct my executor, to send them to such State, territory or country as she may select, and he may think best, and I do hereby charge my estate with a sum sufficient to provide for their removal . . and for their comfortable settlement there; it being my will . . that she shall not be continued in slavery." [251] "Lucy . . removed with her children to . . Ohio, where they . . are . . free persons. . . allege that by their own exertions, and by the partial aid of Mr. Palmer, the executor, they were enabled to get to Ohio, but that they have not been provided with a home or settlement . . and that they are in want, and destitution, and that the children being small, the mother is unable to support herself and them, without the assistance of the fund provided in the will. . . The answer of the executor . . says . . that he has already advanced funds . . to assist them in removing . . and that as soon as the condition of the estate will allow, he intends to

[1] About $1500.

provide for a comfortable settlement of them in Ohio. . . submits to the . . direction of this Court"

Held: they are not entitled to the fund produced by the sale of the two tracts of land: [253] "The provision made by the codicil is intended as a substitute for that made by the will—'*in the event*,' that the latter cannot be carried into effect."

Newland v. Newland, 1 Jones N. C. 463, August 1854. "I . . bequeath unto my wife . . two servant boys, . . to have and to hold, and to expose [*sic*] of at her own discretion, while she lives and at her death, so as not to be disposed of out of the family,"

Held: [468] "the restrictive expression is . . void."

State v. March, 1 Jones N. C. 526, August 1854. [527] "he was asked if he had not committed . . perjury in Georgia, by swearing that he had not brought negroes into the State,"

Wilson v. Hendricks, 1 Jones Eq. 295, August 1854. "he agreed to take a negro girl about eleven years old . . at the price of $525, . . a written warranty . . that the slave was sound except that she was a little near sighted. . . The bill . . sets forth that the negro girl . . was unsound at the time of the sale, being affected with consumption, and that in about twenty months thereafter, she died of that disease; . . [296] The answer . . denies that the slave . . was unsound . . or that she died of consumption, but avers that she died of pheumonia [*sic*], contracted long afterwards,"

Jones v. Perkins, 1 Jones Eq. 337, August 1854. [338] "one negro girl, . . about ten years old, valued [in 1845] about three hundred and seventy-five dollars,"

Love v. Neilson, 1 Jones Eq. 339, August 1854. "it was agreed . . that plaintiff should build a saw mill . . [340] defendant to make no charge for the work of his hands"

Tarkington v. McRae, 2 Jones N. C. 47, December 1854. [48] "for twenty-five years . . the hands belonging to the plantation . . had . . obeyed the summons of the overseers [of the road] and had worked on this part of the road, . . under the direction of the . . overseers."

State v. Samuel Jacobs, 2 Jones N. C. 52, December 1854. "order of the County Court . . January Sessions, 1851, viz: . . 'that the Sheriff . . leave a written notice at the respective dwelling houses of (fourteen persons, . . among whom was the defendant [a free negro], informing said persons that representation has been made to the Court that they are colored persons, and have come into this State contrary to law,[1] and unless they leave . . within twenty days . . they will be proceeded against' . . At the ensuing Term . . returned . . endorsed . . 'Executed by leaving notice at the dwelling houses of, or delivering to the persons of Samuel Jacobs, etc., (naming nine others,)' . . July Term . . the following proceeding was returned . . 'To the Sheriff . . You are hereby

[1] Act of 1836. Rev. St., ch. 111, sect. 65.

commanded to take the bodies of Meredith Jacobs, Samuel Jacobs, senr., and Samuel Jacobs, junr., . . and have them before . . justice of the peace, to answer a charge of having migrated into this State, and of having failed to depart . . [53] within twenty days after having been duly notified to do so,' . . (Signed by two Justices of the peace.) . . 'Meredith Jacobs and Samuel Jacobs, senr., appeared before us . . July, 1851, and after hearing the evidence, [we] bind the defendants over to our next County Court.' (Signed by two other Justices of the county . .) The defendants . . regularly appeared from term to term until October Term, 1853, when the defendant craved a trial by jury and pleaded—1st. That the 65th, 66th, and 67th sections of the Act of 1836, are unconstitutional. 2nd. That three years had elapsed after his coming . . before this proceeding was begun. . . 4th. That he is not a free negro or mulatto within the fourth degree. . . 6th. That he is a native born citizen of North Carolina, and has never forfeited his citizenship by migration from the State. . . the case transferred . . to the Superior Court . . a jury . . found the second [issue] . . in favor of the defendant, and the others in favor of the State. The Court . . was of opinion that the cause . . was barred by the Statute, and declined giving judgment for the penalty of $500,"

Affirmed: [54] "there is a preliminary objection . . which is fatal to the proceeding. . . from this return, it does not appear . . distinctly that the notice to leave the State, within twenty days, was served personally on the defendant. . . [55] The act is a highly penal one . . construed strictly. . . The time is short, very short, . . The leaving the notice . . presupposes that he is not there . . He . . may not return until the greater part, if not the whole of the twenty days, has expired. . . The Legislature never intended to act so oppressively towards a race to whom stern necessity has compelled it, in other respects, to deny so many of the privileges of freemen." [Battle, J.]

State v. Hester, 2 Jones N. C. 83, December 1854. "indictment for stealing a slave, . . The defendant was found guilty . . [84] his Honor refused a new trial,"

Banks v. Richardson, 2 Jones N. C. 109, December 1854. "Action . . for words published through the Telegraph," [110] "Portsmouth, [Virginia,] Jan'y 28, '52. Mr. Flanagan, Weldon: Two men by name James Banks and a Mr. Beach has ran off with two small negroes: please have them arrested: . . be sure and stop them. I pay all expenses."

Flanner v. Moore, 2 Jones N. C. 120, December 1854. "Petition for the sale of a slave, for partition,[1] . . The slave [had been] sold to . . a partner . . in a tannery . . he had been put to work at that business,"

Joiner v. Joiner, 2 Jones Eq. 68, December 1854. Will: [69] "to my son Noah . . the cooper Joseph, . . and James." Codicil, three years later: "that Robert Hines have . . the boy James" The testator

[1] Act of 1829, ch. 17, re-enacted in 1836. Rev. St., ch. 85, sect. 18.

owned two negroes by the name of James: "one . . was a valuable young man. The other . . was very old, supposed to be near one hundred, and not only without value, but an expense."

Held: [73] "we cannot . . believe that a father would mock his son by giving him, as an apparent bounty, an old negro, who was . . a burden"

Hurdle v. Outlaw, 2 Jones Eq. 75, December 1854. See Outlaw *v.* Hurdle, p. 178, *supra.* "the plaintiffs as next of kin of David Outlaw, . . [76] allege that among the slaves bequeathed to the defendant, there were two who were to be emancipated . . that . . David had, in his lifetime, often so declared, and that the defendant, shortly after the death of the testator, in a letter . . promised to effectuate this purpose, but that since . . has made sale of one . . They allege their willingness that this slave may still be emancipated, and that the defendant may be compelled to re-purchase him for that purpose, but . . if this cannot be done, and this trust shall be considered . . void, that he may be compelled to account for the value of these slaves to the plaintiffs."

Bill dismissed: [78] "They have no such interest in the emancipation . . as will sustain a suit for that purpose in their names."

Cohoon v. Speed, 2 Jones N. C. 133, June 1855. "Matthews, the town constable . . applied to . . the justice, for a warrant to search for, and arrest a runaway slave, supposed to be concealed upon the premises of the plaintiff: the warrant was issued, . . Matthews . . broke open the door of a stable"

Weatherly v. Miller, 2 Jones N. C. 166, June 1855. "The plaintiff had purchased from the defendant a slave for himself and his father, who were trading in slaves as partners, and having put hand-cuffs upon him, the defendant told him the slave was honest, and that if he would remove the hand-cuffs he would guarantee to him one hundred dollars if the slave should run away. The hand-cuffs were . . removed . . He ran away that night. The plaintiff immediately posted up hand-bills, making known the escape . . some of them in the neighborhood of the defendant; but did not call on the defendant to make a demand of the $100, or to notify him of the slave's escape. . . Verdict for the plaintiff."

Judgment thereon, reversed: [168] "he was entitled to personal notice"

Watkins v. Pemberton, 2 Jones N. C. 174, June 1855. "There were no debts . . beyond what could be paid out . . of the other personal property, but the administrator, deeming it the most convenient mode of settling with the distributees, applied for an order to have the slaves of the estate sold: there were thirty-one slaves; and . . eleven distributees, . . seven . . opposed the order, and on its being made, appealed to the superior court. . . [175] judgment below . . reversed;"

Shelfer v. Gooding, 2 Jones N. C. 175, June 1855. Action of slander. [176] "The defendant's slave had been brought before two justices of the peace at the instance of the plaintiff, upon a warrant, charging him

with destroying his (plaintiff's) property. Upon the trial . . the defendant being called on by the magistrate to know if he wished to be heard in behalf of his slave, said, addressing himself to the justices, . . 'what Amos Shelfer . . has sworn, is a tissue of falsehood and a damned lie from beginning to end.' . . The defendant's counsel contended that defendant acted as counsel in behalf of his slave and was privileged . . not . . liable, unless . . he used the occasion . . to gratify his malice; . . Verdict for the plaintiff."

Judgment thereon, reversed: [184] "What he said of the plaintiff was *relevant* and *pertinent* to the defense which he had a right to set up for his slave, and no malice could be inferred from it."

State v. Williams, 2 Jones N. C. 194, June 1855. "Indictment . . for petty larceny and for trading with slaves, . . Watt . . testified that . . he learned that tobacco had been taken out of one of his barns: . . saw the tracks of two persons which he followed to the plantation of . . Neal; . . thence . . to the fence of the defendant, thence . . to his house, finding on their way two leaves of tobacco. Before leaving the plantation of Mr. Neal, they made an examination of his slaves, and found that the shoes of . . Iverson and Henry, exactly fitted the track, and upon being charged, these slaves confessed that they had stolen the . . tobacco. On meeting with the defendant . . the witness . . 'asked him if he was aware that it was contrary to law to trade with negro slaves, for property which was their own, without a written permission from the owner or manager?' he replied, 'he did, and had not traded with any, he had quit that thing.' I then told him that the tobacco he got on Sunday night was my tobacco, and not the negroes'. . . [195] that . . Iverson and Henry, had confessed . . that they . . delivered it to him at his kitchen, which he denied. . . I then told him . . the negro [Iverson] said besides . . defendant asked him if he had any tobacco to sell, that it was easy to get good tobacco and that he would give a good price for good tobacco; . . defendant replied that 'it was an infernal lie.' . . I told him . . [196] that I . . should be compelled to prosecute him. He then . . requested me to go up the road with him; . . came to a barn . . He unlocked the door . . I said 'Williams, that is my tobacco, pointing to a pile on the right of the door.' He said 'yes, and that over there,' . . He remarked . . that the negroes had told me a lie; for he did not see them that night; that they brought the tobacco and put it down by his barn, and that he got it the next morning. . . Iverson owed his wife for making him a shirt, and was to pay for it in tobacco, but he supposed with his own tobacco, . . the defendant paid me for my tobacco and asked me not to prosecute him.' . . [197] Verdict of guilty of petit larceny: and not guilty on the other count." Judgment thereon, affirmed.

Mayo v. Whitson, 2 Jones N. C. 231, June 1855. "an appeal . . from a judgment . . affirming an order of the County Court . . to amend a former order of that court. The applicants for this amendment are free persons of color. They had been the slaves of Major

Absolom Tatom, but supposing they were duly emancipated by his will,[1] and by the action of the court at Feb. term, 1803, . . they have ever since . . acted as free persons, . . and accepted as such, in the community . . Not long before the date of this application, it was discovered that no order for the emancipation of the slaves . . had been entered on the minutes, or on any other record . . and several of the descendants of these persons were seized as slaves by the assignees of the next of kin of Absolom Tatom. Thereupon, the plaintiff filed his petition and gave notice to Pearce and Whitson, and the next of kin . . that he would apply . . for an amendment of the record, *nunc pro tunc*, so as that it should set forth, at February Term, the decree emancipating . . Upon a motion in court to make the amendment . . affidavit of Duncan Cameron was offered . . 'Statement made . . 1851. . . he wrote the will . . December, 1802, . . Tatom being . . a member of the General Assembly, . . he directed said slaves to be emancipated for meritorious services, rendered to him. . . the executors united in an application to the county court to emancipate said slaves; the court . . ordered the said slaves to be emancipated. This affiant drew up the decree . . and handed it (to) . . Clerk . . and directed it to be entered . . as a record . . always supposed such entry was made, . . Affiant, who was one of the executors, never regarded them as assets' . . [233] At the May Term, 1854, . . the following Order was made and entered on the minutes of the county court . . 'In the matter of George, Cate, . . on motion, and on the affidavit of Duncan Cameron, deceased, and upon the admission that the aforesaid negroes and their descendants have always been reputed free negroes . . [234] since the decree of emancipation . . until the capture of James Mayo, in 1853, . . who instituted suit therefor . . now pending in the Superior Court . . and that the estate of said Tatom was settled . . in 1825, without any claim on account of said slaves, . . It is ordered . . that the records of this Court, . . 1803, be amended by the entry, *nunc pro tunc*, of the decree for the liberation of said slaves,' . . From this order . . an appeal was taken to the superior court . . his Honor was of opinion that the record of the county court ought to be amended, as ordered . . [235] and that a writ of *procedendo* issue to that court."

Judgment affirmed: [239] "An aged man without . . any descendants . . is about to descend to the grave. Between him and his slaves exists a tie . . unknown to the master and the hireling: . . He does what he can to confer upon them the boon they hold most dear! Half a century passes away; . . it is discovered that the records are silent . . immediately, the birds of prey are upon the wing, . . It would indeed be a reproach to the law, if there were no way in which it could correct the evil, growing, in a measure, out of its negligence." [Nash, C. J.]

[1] [233] "I give . . to my friends . . my negroes, George, Cate, Sally and her child, with their future increase, young George, and Jack, . . in trust . . that they will use their best endeavors to procure them to be emancipated . . for meritorious services rendered me."

State v. Woodly, 2 Jones N. C. 276, June 1855. [277] "Spring Term, 1855. The jurors . . present, that Alfred Woodly, and Richard Wynns, free persons of color, . . did . . convey and conceal a certain negro slave, named Anthony, . . without the consent in writing of . . the owner, . . with the intent . . of carrying . . Anthony, out of the . . State,"

Held: [283] "the State was bound to prove the negative averment that the alleged offense was committed without the consent in writing, of the owner" "There is no statute of limitation against a prosecution for a . . felony, and it would be requiring too much of a person charged . . to hold him bound to keep a small piece of writing an indefinite number of years, at the peril of his life." [Battle, J.]

Brock v. King, 2 Jones N. C. 302, June 1855. "Action[1] . . for an escape of a runaway slave, . . The plaintiff . . was the owner . . he escaped from on board a steam boat on the Pee Dee river, in . . January, 1853; . . soon afterwards he was apprehended in the county of Robeson and delivered ['without the warrant of a justice of the peace, adjudging him to be a runaway,'] . . to the defendant, . . sheriff . . who committed him to the jail . . the body of the slave . . was found, about two weeks after . . in a well . . with marks of violence upon it, which produced the death of the slave. . . [303] Verdict for the plaintiff."

Judgment thereon reversed and a *venire de novo* granted:[2] [304] "he cannot be called upon for his defense until the plaintiff has shown that the statute liability has been incurred by the commitment of the slave under the warrant of the justice." [Battle, J.]

Winder v. Smith, 2 Jones N. C. 327, June 1855. Will, 1851: [330] "the whole of my servants to be treated well and provided for, except such as may become refractory and unruly, and if so, they may be sold."

Hairston v. Hairston, 2 Jones Eq. 123, June 1855. [124] "Hairston died in 1832, . . bequeathed to his daughter . . several valuable plantations in the county of Stokes, and also some seven or eight hundred slaves,"

Dunlap v. Hales, 2 Jones N. C. 381, August 1855. Letter: "The legatees . . holds [*sic*] against me a note to the amount of four hundred dollars, for two old negroes not worth ten cents. I will give them two hundred dollars to take them back, as they will not hire for anything, and they are always sick."

White v. Brown, 2 Jones N. C. 403, August 1855. "We promise to pay . . White for three boys, . . Ten Dollars per month, from 4th of January, 1853, until we finish our contracts on the Rail Road: the said White agrees to pay Dr.'s Bills, clothe them and make good lost time in sickness."

[1] Rev. St., ch. 111, sects. 11-13.
[2] See same *v.* same, p. 192, *infra.*

State v. Tom (a slave), 2 Jones N. C. 414, August 1855. "the indictment[1] upon which the prisoner was charged. . . 'did make an assault, and her [a white female], . . did beat . . with intention . . to ravish' . . [415] the cause was removed [from the county of Mecklenburg] to the county of Iredell for trial, . . prisoner . . convicted. A motion . . in arrest of judgment . . overruled,"

Judgment affirmed: [417] "the substitution of the word 'intention' for the word 'intent'" is not a sufficient ground for arresting judgment.[2]

Bivens v. Phifer, 2 Jones N. C. 436, August 1855. "My will . . is, that my executors . . shall sell my negro property in families, or at the discretion of my executors,"

Reeves v. Edwards, 2 Jones N. C. 457, August 1855. A negro woman was sold at auction, in 1838, for $500.

Johnston v. Overman, 2 Jones Eq. 182, August 1855. Sale, in 1841, "of a negro boy, at the price of $415,"

Madre v. Saunders, 3 Jones N. C. 1, December 1855. "The plaintiff declared for a breach of a contract of hiring, wherein it was agreed . . that the defendant was to have the boy Davy for one year, from the 2nd January, 1852, . . that the boy was not to be employed on water, nor at any fishery, and not to be carried out of the county. . . The slave . . [2] had gone to the river with defendant's horse, with his knowledge, but was directed by him not to ride into deep water. . . the horse . . got away from him . . The boy then proposed to . . Richardson, to let him ride his horse into the stream and wash him until the boys should come down and help him catch Saunders' horse; this Mr. Richardson permitted . . but cautioned him not to ride into deep water, as his horse was blind. He did, however, ride into the deep water, and was . . drowned. The boy was obedient, and at the time he was drowned (June, 1852) was worth $850. Perquimons river . . at this point, was shallow for a considerable distance from the shore. The boy's employment was to work about the lot of defendant and take care of the horses, (the defendant being the keeper of a Hotel in the town) and it was his practice to ride into water sometimes so as to wet the horses sides, at other times merely to wet their legs; . . with the . . approbation of the defendant, but the boy at the same time had his general instruction not to ride into deep water."

Judgment for the defendant, affirmed: "he was not employed on water. . . [3] The boy's life was lost by his own folly . . while he was . . without the knowledge . . of the hirer, engaged in the service of another person."

Gerkins v. Williams, 3 Jones N. C. 11, December 1855. [12] "Doctor Nixon . . deposed, that about a month before the sale . . he had attended . . for about two weeks, the woman in question, . . and that she had the dropsy. . . he told the defendant that she was unsound, . . advised him to get clear of her as soon as he could."

[1] Rev. St., ch. 111, sect. 78.
[2] Act of 1811. *Ibid.*, ch. 35, sect. 12.

Etheridge v. Corprew, 3 Jones N. C. 14, December 1855. "very old, and his mind so much impaired as to subject him to the entire control of his slaves;"

Midgett v. McBryde, 3 Jones N. C. 21, December 1855. [22] "Nancy Midgett, is a white woman, but her two children are mulattoes begotten by a negro father. The County Court made an order that these children should be bound to the defendant, who . . was a proper person in every respect to take such charge of them. The appellant, the mother, showed to the Court . . that for the last three years she has been living near her father, in a house built by him for her; that he has during that time taken charge of her children, and kept them diligently and industriously employed; that he is himself an honest, respectable and industrious man, well able to take care of her and her children, and willing to do so, and that she herself has, during the last three years, behaved orderly and industriously. . . his Honor . . affirmed the judgment of the County Court,"

Judgment affirmed: "That provision of the Statute [1] which relates to the occupation . . of the parents is confined to cases of free negroes and mulattoes whose children are legitimate. In such cases, if the parents have no honest or industrious occupation, the children may be bound out. These considerations do not arise when the child is a bastard." [Pearson, J.]

Murphy v. Merritt, 3 Jones N. C. 37, December 1855. Deed of gift [1839] to a grand-daughter of "my two little negroes, . . William, aged between two and three years; Kitty about six or seven months . . reserving . . unto myself, and to my wife . . the use . . during the term of our natural lives."

Brock v. King, 3 Jones N. C. 45, December 1855. See same *v.* same, p. 190, *supra.* "plaintiff declared for a breach of the contract of bailment . . [46] by means of blankets tied together, he had let himself down from the upper passage . . The cell in which the slave had been confined was a dungeon, set apart for the confinement of slaves; . . in the upper part of the jail, . . the defendant, as jailor, was in the habit of receiving pay for keeping runaways. The value of the slave was $700. . . [47] Plaintiff says such was the . . condition of the jail, that defendant ought to have chained the slave, . . Defendant says the slave was a mere runaway, not charged with any crime, . . Verdict for the defendant."

Judgment thereon, affirmed: [49] "the defendant . . could have done nothing more, unless he had placed a guard around the jail, or had put the slave in irons. The first . . too expensive, and the second cruel," [Battle, J.]

Freeman v. Hatley, 3 Jones N. C. 115, December 1855. Will of Dr. William Thornton, [116] "making various provisions for emancipating his slaves and their increase"

Hill v. Whitfield, 3 Jones N. C. 120, December 1855. [122] "begged Wm. not to sell the land; that if he must have money, to send for one of his negroes and sell him."

[1] Rev. Code, ch. 5, sect. 1.

Matthis v. Matthis, 3 Jones N. C. 132, December 1855. " 1846, James Matthis, the father of the plaintiff, by parol, gave a slave named Bartee, to the plaintiff . . During the winter of 1846, Bartee was missing, and was thought to have run away, and plaintiff advertised him, and took out an outlawry before . . [133] justices . . which outlawry was posted . . Bartee was not heard of till 1853, when plaintiff, hearing he was in Georgia, . . found Bartee . . in the possession of . . McAlpin. Six months after he went again to Savannah, and returned with Bartee. The defendant was in Charleston in 1847, with Bartee, calling him Lewis, and sold him . . to . . McBryde, who sold him to . . Oakes, who sold him to . . McAlpin "

Lawrence v. Mitchell, 3 Jones N. C. 190, December 1855. [191] " shortly after the death of Betsy, the defendant took the three negroes [her children] . . (then quite young), to the testator, desiring him to take them back, since it would be a heavy expense to him to raise them; . . the testator replied, if he . . would raise them, they should belong to him."

Moore v. Love, 3 Jones N. C. 215, December 1855. [216] " three children of color . . had been bound to him by the County Court . . These persons left the employment of their master, . . and went into that of the defendant, . . about twenty-five miles off, . . The negroes were not concealed "

State v. Sewell, 3 Jones N. C. 245, December 1855. " Indictment for murder, . . the prisoner had shot an old free negro woman (aged about 60) in the eyes and face with a pistol. That about an hour afterwards he was found on a pallet with her, and there were indications that he had ravished her as she lay insensible. There was a jug of liquor on the same pallet. . . on the way to the jail, he begged the persons about him not to hurt him, . . At other times he asked them to hang him. . . [246] about two weeks before . . the prisoner . . had *delirium tremens* . . [247] verdict . . guilty of murder. Judgment . . pronounced," Affirmed.

State v. Robbins, 3 Jones N. C. 249, December 1855. [250] " the defendant was indicted for the murder of a negro slave belonging to himself," [252] " Jim . . was about sixty years old." [250] " the testimony of three step-children of the defendant, . . the eldest . . about seventeen years old . . heard the deceased [' between sunset and dark '] at the wood-pile, crying out, ' don't kill me,' and the prisoner cursing him, and saying, ' he intended to kill him.' . . beating the deceased with the handle of an axe, . . two or three times around the wood-pile, . . [251] the prisoner . . said ' why did you not ' or ' you did not feed my horse,' to which the deceased replied, that he had fed the horse." [250] " He beat the deceased . . from thence to the barn, and from thence to the house, . . The prisoner . . striking the deceased with his fist on the side of the head, knocked him against the fire-board, . . the negro became speechless. . . the prisoner jumped on him, and stamped him for more than ten minutes; . . [251] all over; . . then called for

his wagon-whip ['of a large size, with a butt-end of wood covered with leather'], and with the butt . . beat the deceased . . for half an hour, . . then called for scalding water, and there being none, had water heated, and poured it on the head, back and sides of the deceased; . . then took salt, and putting it on the back of the deceased, whipped it into the flesh . . he heated water four or five times, and poured it on the deceased; . . this stamping, whipping . . and pouring . . continued without cessation until 9 or 10 o'clock at night. He then made the witness and her sister drag the deceased . . into the yard, . . the deceased died about 1 o'clock the next morning; and about 4 o'clock, the prisoner got up . . his family . . had all fled but Marth [about thirteen years of age]; that he made her assist him in dragging the body into his (deceased's) . . cabin; . . told her to shut the door and nail it up from the inside, and that she must come out by raising a plank of the floor; . . made [her] . . wash up the blood from the kitchen floor, and put sand on the floor;" That evening the coroner [252] "found the deceased in his cabin on a sort of bed or scaffold, dead; . . jaw-bone was broken, and his teeth knocked out; . . on the head, seven wounds, six on the front . . [255] 'guilty of murder.' Judgment and appeal."

Judgment affirmed: [256] "We adopt . . language of the Court, in . . State *v.* Hoover,[1] 'that nothing could palliate such a course of conduct.'" [Battle, J.]

Cromartie v. Robison, 2 Jones Eq. 218, December 1855. Will of General[2] James J. McKay, 1853: [219] "that the slaves ['I acquired by intermarriage . . those that I received in the division of my father's estate, old Joe and Ferryman Jim'] . . be hired out . . for two or three years, . . to raise a fund for their transportation to . . Liberia; and as soon as that object can be effected, my executors are . . strictly enjoined to take the requisite means, for the transportation . . under the direction . . of the Colonization Society."

Held: [224] "the clause directing emancipation, includes the descendants of the original stocks." [222] "The laws of our State allow old negroes[3] who are emancipated for meritorious services to remain here. . . if the intention was to liberate only the old negroes, why did the testator require them . . to be torn away from the place 'where they were raised,' and sent as exiles to Liberia? . . The purpose was to direct all the *family negroes*, in the largest sense of the words, to be sent to Liberia; and in so doing, he intended to aid . . the great and philanthropic purposes of the noble society to whose patronage he committed them. . . [223] Again, . . the hire of the old negroes will scarcely support them during the two years." [Pearson, J.]

Nixon v. Lindsay, 2 Jones Eq. 230, December 1855. "1851, her children became possessed of nine slaves as tenants in common. . . [231]

[1] P. 85, *supra*.
[2] 5 Jones Eq. 367.
[3] "over the age of fifty years," Rev. Code of 1854, ch. 107, sect. 49.

1852, . . commissioners . . valued the whole nine slaves at $4,600, each share being $1150. . . allotted to the plaintiffs . . two slaves, Gabriel, valued at $750, and Mary, at $400. . . Mary, was sick . . but it was believed by the commissioners, and others interested . . that the disease was but temporary, . . but it turned out, that she was at that time laboring under a deep and fatal disease, . . which occasioned her death in about two months . . notwithstanding the best skill, procurable in that community, was employed to attend her." Dr. Coffin, one of the commissioners, stated, [232] "that . . on the day of this partition, he heard Mrs. Jones say she had been unwell for some short time, but attributed it to exposure in sitting up with her mistress who had lately died; she then looked dull and stupid; in a short time afterwards, he was called upon to visit her, and found her afflicted with the scrofulous, sometimes called the African, consumption;" He says "he attended her up to the time of her death, and is satisfied that 'the first time he saw her, on the day of the division, she was laboring under the disease . . though he did not then suspect it.'"

Decree: [234] "The plaintiffs are entitled to contribution for the estimated value of the slave, and also for the necessary . . expense incidental to her last illness, and for loss of service:" [233] "In a partition of chattels, . . a warranty is implied . . of soundness;"

Pilkington v. Cotton, 2 Jones Eq. 238, December 1855. The master in equity [239] "reported that Nathan is [now] worth $1200; that he has been worth during the last six years $640 [in hires], making $1840; that the debt for which he was pledged is, with interest, $332.10, . . [240] The defendant excepts . . because the . . Master takes the highest price put upon Nathan by a single witness,"

Held: [241] "We concur with the Master, that if a negro boy, eighteen years of age, has such qualities and recommendations as will command a hire of $150 per annum, the value of the boy cannot be less than $1200; the opinion of a dozen witnesses to the contrary notwithstanding." [Pearson, J.]

Adams v. Gillespie, 2 Jones Eq. 244, December 1855. Held: [249] "for the purposes of a division, the girl must be sold;"

Parker v. Leathers, 2 Jones Eq. 249, December 1855. [250] "in 184—, . . the executors . . took the negroes . . and . . sold . . at public auction, for the purpose of distributing the value amongst the four children. . . Leathers, one of the executors, and one of the legatees, being anxious to own . . Jacob, by the consent of . . the other two executors, and of . . the only other person interested . . was permitted to bid . . He made the highest bid at $725, . . paid $168 . . [251] the defendant . . says, at the time of this sale, this slave was laboring under an incurable disease, of which he was not aware . . and which, notwithstanding the greatest care . . very soon ['in about 16 months'] terminated his life." [252] "the defendant refused to pay anything more, . . no fraud is alleged."

Held: "In a parol sale of personal property there is no implied warranty of soundness, and the defendant ought to have taken a written conveyance with a covenant of soundness. He has not done so, and must account for the price of Jacob, deducting the payment made by him."

Smith v. Turrentine, 2 Jones Eq. 253, December 1855. In 1854 Schoolfield "conveyed by deed to . . Smith, . . of Philadelphia, . . a negro woman . . aged about 27 years, . . for . . $800. . . the vendor . . agreed to hire the woman at five dollars per month, and . . [254] retained her in his possession . . Schoolfield was indebted to the plaintiff and his co-partners"

Hathaway v. Leary, 2 Jones Eq. 264, December 1855. [265] "that the slaves of the estate were hired out for several years, and that the income from that source far exceeded the expenses of the family;"

Grimes v. Hoyt, 2 Jones Eq. 271, December 1855. "In 1845, the Rev. Mr. Singletary conveyed to the defendant, by an absolute bill of sale, a slave . . Guilford [[274] 'forty-five years old'], reciting therein as a consideration, the receipt of $850, . . The defendant did not pay this sum in money, but . . gave . . five . . notes for $171.62, payable on credits of one, two, three, four, and five years, with a provision in each . . that if the said negro should die, or become permanently disabled before . . due, payment was only to be made, pro rata, up to the time of such event. Mr. Singletary died in less than a year . . Grimes . . qualified as executor." He filed a bill alleging that his testator, "being about to remove from the County of Beaufort . . and being much attached to the slave Guilford, who was an excellent servant in all respects, for the purpose of enabling him to remain in Beaufort county, where his wife and children lived, and . . [272] to purchase himself and be free without leaving the State, with the concurrence of . . Guilford and in pursuance of a promise made him, [[273] 'to convey him to any person whom the slave should select,'] entered into an agreement with the defendant, that he (defendant) 'was to have for his own use all the annual profits of the labor of the said slave for five years, and at the end of that time he (Guilford) was either to remain nominally the slave of the defendant, being permitted to have the use of his time and go at large as a free-man, or defendant was to convey him to his (Guilford's) wife, who was a free woman of color, (at the option of the slave,) for the same purpose;' . . The bill alleges that Guilford was worth a great deal more . . that the defendant, having received the profits of the labor of Guilford, who is a carpenter, for five years, by which he has realised $250 a year, or in the whole, $1200 [*sic*], has permitted . . Guilford ever since . . to go at large . . and only holds him in nominal servitude. . . has offered to sell the said slave for $650, with an understanding . . that when the purchaser shall have received that sum, . . the slave is to . . enjoy his freedom as he is now doing. . . that some small payments have been made on the notes . . but the same have been renewed . . have been on interest for six or eight years. . . averring that the said sale . . was . . against the policy of the State, offers to surrender the notes . . and the money paid . . prays that

the bill of sale may be declared void, . . [273] the defendant denies that he made any such . . agreement with the . . testator; but . . after the trade . . he did agree with . . Guilford himself, that if he would serve him for five years, and would make . . $1250, . . that he would liberate him; but denies that this emancipation was to be done in any other mode than that permitted"

Bill dismissed: [274] "The object of the testator was a benevolent one; but the mode resorted to, is contrary to the well-known policy of the State."

Brookshire v. Dubose, 2 Jones Eq. 276, December 1855. [278] "Newby and wife residing in Indiana . . having peculiar notions on the subject of slavery, became desirous of getting one of the slaves belonging to the estate, for the purpose of emancipating him, and caused suit to be brought [about 1842] . . in Alabama, for the slave allotted to them, and recovered him;"

Delap v. Delap, 2 Jones Eq. 290, December 1855. Will: "to my . . wife, . . [291] my negro man Tony, and my negro woman Elizabeth; . . after her death, or marriage, all to be exposed to public sale . . and the money . . and the offspring of the said negro woman (if any) to be equally divided among my children by my present wife. . . it is my will . . that . . Elizabeth and her daughter Milly are not to be sold, but to live with some of my children by my present wife, which ever they may think fit." Elizabeth and Milly "both died during the widowhood . . Milly left two children,"

Held: [293] "The mother and grand-mother being dead, and . . incapable of choosing . . the executor may permit one or more of the legatees, selected by and among themselves, to take the slaves . . upon paying a fair price for them."

Barwick v. Wood, 3 Jones N. C. 306, June 1856. [307] "1846, the slaves were taken out of the possession of the plaintiff [who claimed them under a bill of sale in 1837] by the defendant [who claimed under a bill of sale in 1846] . . in the night time, and carried South by the rail-road cars, and since then have not been heard from."

Bell v. Walker, 3 Jones N. C. 320, June 1856. [321] "an agreement, under seal, to take three negro slaves, . . and to teach them the ship-carpenter's and caulker's trade. The breach alleged was, that the defendants had not taught . . the said slaves the trades, . . evidence . . that the slaves were employed in the ship-yard of defendants as other apprentices of the same experience, and that no distinction was made between them and the others." Held: the evidence was irrelevant.

Harriet Owens v. Chaplain, 3 Jones N. C. 323, June 1856. "In 1851, the [colored] child . . had been bound at about the age of five years . . to . . Owens, a colored man, who kept her till . . 1854. In October . . Owens went on a voyage to the West India Islands, and has not been since heard from. The apprentice continued with his widow . . until some time during that year, when she was taken out of her custody by the

the path, . . having gun-shot wounds . . He saw [Patrick] . . again about mid-night upon the witness' plantation, where he (Patrick) had a wife, and asked prisoner if he had heard a gun, and where he was . . He answered that he did, and that he was at the Puncheen branch . . about half a mile from . . Green's body . . Next morning this witness . . discovered a plain track near by [the body], . . the print of the half-sole, with tacks all around it. About ten o'clock that night, the defendant was arrested under a warrant, and tied; . . asked why . . Early next morning the officer . . went to notify the owner, . . Witness . . took Patrick to the place where Green's body was lying, . . made him take off his boot, and putting it into the track, '*it seemed to fit precisely.*' He then said . . [445] 'you might as well tell all about it, for I am satisfied;' he denied it, and the witness being a little angry, said . . 'if you belonged to me I would make you tell.' . . still denied it. . . After breakfast he went to . . Patrick . . in his wife's house. He then said to witness, 'did you ever catch me in a lie?' to which he answered, 'no, not about your work.' Patrick said: 'Are you afraid to go one side with me?' Witness said, 'no.' . . Patrick still having his hands tied, . . They crossed the fence and sat down on a log. [[448] 'when he made the confessions'] . . this witness . . owned Patrick's wife, and . . had hired him for two or three years preceding . . that he was the father-in-law of the deceased. . . he could not say that he had not repeated . . half a dozen times, 'You might as well tell all about it, for I am satisfied.' . . Patrick did not . . lie down" the night he was arrested. "Thomas Fornes, said that . . the preceding witness, accused the prisoner of having threatened the life of a slave belonging to him, to which he replied, he reckoned that must have been when he was drunk, and had a quarrel with Alex. . . the coroner, said that, on the examination of the body, Patrick confessed that he had done the act, and gave the minute particulars . . [446] said no influence had been used to get him to confess, nor was any caution given him. . . the prisoner was treated kindly. . . His Honor . . permitted . . Ventres, to state the prisoner's confessions. . . guilty of murder. Judgment was pronounced,"

Affirmed: "The slave stands at the bar, clothed with the same privileges that the white man enjoys, and the trial is conducted by the same rules. . . [447] The time . . to make his challenge, is . . before, the juror is sworn, . . [450] There was no error in receiving [the confessions.]" "the prisoner seems to have made his own calculations [[449] 'of the advantages to be derived from confessing']." [Nash, C. J.]

Howerton v. Wimbish, 2 Jones Eq. 328, June 1856. Will, 1816: [329] "In case it should be more convenient to my . . wife to have the . . land, and even the negroes sold, (the latter, however, I suppose she ought to keep, as she will have two-thirds during widow-hood, and one-third in fee,) she is at liberty to do so, as she will have ample money to purchase elsewhere."

Holmes v. Holmes, 2 Jones Eq. 334, June 1856. "The plaintiff had put a free negro of bad character, by the name of Bob Valentine, in

charge of the mill, who was strenuously objected to by [his mother] . . and was, by her, turned out of it, and a slave of her own . . put in his place; this slave was, in turn, driven out by the plaintiff, and Bob replaced."

Haughton v. Benbury, 2 Jones Eq. 337, June 1856. His [338] "interest . . was sold [in 1842] at public auction, to . . Benbury, . . at less than their real value, and immediately sold by him to a speculator, with a view . . that they should be carried beyond the limits of this State, and with the intention of defeating the contingent interest of the plaintiff. . . the slaves [were] immediately carried out of the State to parts unknown to the plaintiff."

Kea v. Council, 2 Jones Eq. 345, June 1856. In 1835 Kea borrowed $925 from his sister, Sabra Council, "and to secure the payment . . executed . . an absolute bill of sale for . . Molly, and her child, Henry; and subsequently, upon a further loan, . . a like bill of sale for . . John, the child of Molly, and Jack, her husband;"

Jones v. Gordon, 2 Jones Eq. 352, June 1856. Will of Maria L. Gordon, 1854: [353] "I give my negro man, Jack Blount [[355] 'a favorite negro '] to my brother . . he knowing that I so give him, that Jack may enjoy every comfort. . . I give all my other negro slaves to the American Colonization Society, provided the said negroes are willing to go to Liberia, and provided the Colonization Society is willing to receive them and send them to Liberia." "The slaves embraced in this latter clause, had expressed their willingness to go, and the . . Society had signified its willingness to accept the trust of sending them to Africa."

Held: [355] "the bequest of emancipation extends, not only to all the slaves of Mrs. Gordon and their increase held by her in severalty, but also to the slaves which may be allotted to . . her representative, upon a partition"

Lowe v. Carter, 2 Jones Eq. 377, June 1856. Will: [379] "I loan to my daughter Sarah . . Carter, . . Peter, and his wife Mary, and their four children, . . and their increase; and at the death of . . Sarah Carter, . . the aforesaid slaves, with their increase, descends to the bodily heirs of . . Sarah Carter, . . that the following negro slaves . . shall be hired out in this section of the country . . for the benefit [of my grandchildren] . . until the youngest shall arrive at the age of twenty-two years; . . [380] then . . equally divided between all my said grandchildren, . . that the slave Harriet, and her child Cina, be sold, as it is her request, to the highest bidder. . . Item 13th. It is my desire that the personal property . . be sold," The executor "sold Harriet and her child Cina . . for $1000. . . Of the slaves loaned to Sarah Carter, . . Mary, was delivered of a female child [Nancy], between the date of the will and the death of the testator. . . [381] Some years before the death of the testator, he . . delivered to his son Thornton . . Lucy and her four children, . . Thornton took these slaves to Georgia, where he resides, and where he still has them. . . also gave . . to his son Archer, . . Silvia and her four children, . . also Henry, who took them to Mississippi and sold them."

Held: [385] "Mrs. Carter does not take a life-estate in Nancy, . . The word *increase*, is not coupled with *future*, she, therefore, did not pass to Mrs. Carter with her mother and the other children, but is included in the 13th item, and is to be sold." [Nash, C. J.]

Brown v. Godsey, 2 Jones Eq. 417, June 1856. "Lytle, being insolvent, sold all of his slaves for cash,"

Woods v. Woods, 2 Jones Eq. 420, June 1856. Will: [422] "I . . desire, that all my negroes, not mentioned . . shall be sold after my death," [425] "the husband . . took possession of the slaves bequeathed . . carried them to . . Mississippi, more than twenty years ago, where they have been ever since."

Murrell v. Weathers, 3 Jones N. C. 525, August 1856. Covenant: [526] "Murrell . . hath . . sold unto . . Weathers, one negro woman . . aged from forty-two to forty-five years . . for . . two hundred and twenty-five dollars, . . The condition . . is such that, if . . Weathers ever wished to dispose of the . . woman, that he is to give . . Murrell the refusal . . and . . Weathers further binds himself, not to ever sell . . to any speculator whatsoever," The defendant "loaned the slave . . for a week, to his son, . . about twenty miles distant . . in South Carolina, to assist him upon his farm; from thence she was removed by his son to . . Alabama, and sold, without the knowledge . . of the father."

Fulenwider v. Poston, 3 Jones N. C. 528, August 1856. "Action . . for a deceit . . the plaintiff, who was a trader in slaves, had been to the defendant's house, and had an interview . . in relation to purchasing the slave . . some three weeks before the trade . . [529] that on the day before the trade, he took with him a practicing physician . . to . . examine the slave. . . met . . Elliott, who informed them that he had heard the slave had some 'religious monomania,' and 'occasional spells in the head.' . . the defendant . . tendered . . the following bill of sale, 'Received . . eight hundred and fifty dollars, . . for a negro boy . . aged 33 years, the title of which I . . warrant . . but don't warrant him to be sound in any way whatever,' . . The trade was then concluded . . The only deficiency of the slave . . was a peculiar religious fervor, for which two physicians testified, 'there was no name in the medical books, and the symptoms of which manifested themselves in actions and motions of the head, which . . depreciated his value.' They considered the negro unsound, and the disease an affection of the nerves and brain. . . [530] Verdict and judgment for the plaintiff." Judgment reversed, and a *venire de novo.*

Sparkes v. Kearney, 2 Jones Eq. 481, August 1856. [484] "three of the slaves, Hardy, Henderson and Stephen, were, by the trustees, put to trades, and kept working at the same for two years."

Held: [485] "As trustee to sell the property for the payment of debts, it was no part of his duty to have the slaves instructed in trades. There is no testimony to show that either of the said slaves, except Hardy, was increased in value by these means;"

State v. Freeman, 4 Jones N. C. 5, December 1856. Indictment for arson. " The prisoner . . is a free woman of color, . . indented servant of Mr. Whitfield. . . [No] direct evidence of the prisoner's guilt."

State v. Burk, 4 Jones N. C. 7, December 1856. " Indictment for harboring a runaway slave,[1] . . the slave had run away . . on Saturday, and . . on Monday . . the owner proceeded, after night, to the house of the defendant, and knocked several times without any response; . . then threatened to break the door, when the defendant . . opened it. . . the witness . . found his slave under the defendant's bed. He asked . . why he had his boy harbored, when he knew he was runaway; he answered that the boy had come to him that night, and asked . . to . . stay there till morning, when he was going to give himself up to his master. . . Verdict and judgment for the State." Affirmed.

State v. Bond, 4 Jones N. C. 9, December 1856. Special verdict: " That a slave, . . 1855, in the night time, about . . 8 o'clock, went to the shop of the defendant, . . and received from the hands of a slave, belonging to the defendant, a small tin bucket, containing one quart of whiskey, . . that the defendant was not present . . that the defendant's slave . . had authority to weigh, measure and deliver, goods sold . . to customers other than slaves, but not to receive payment." Judgment in favor of the defendant.

Affirmed: [10] " The 90th section of the 34th chapter of the Revised Code, . . enacted . . 1854, . . was not to go into operation until . . January, 1856, . . if the section . . were intended to operate upon cases like the present, . . it is an *ex post facto* law "

State v. McDonald, 4 Jones N. C. 19, December 1856. Indictment for murder. [20] "A negro woman asked the prisoner if he had given the deceased any notice that he was going to shoot him; to which he replied, yes, my gun snapped. . . the widow of the deceased . . directed a negro woman to wet the lips of the deceased with water; the prisoner struck her a blow on the head with his stick, which brought her to her knees. . . a second blow on the head."

Phillips v. Murphy, 4 Jones N. C. 45, December 1856. Covenant: " Know all men by these presents, that I, Robert Mills [free negro], . . in consideration of sixty dollars, to me in hand paid, . . [46] have . . sold . . unto . . Nixon, his executors and assigns, my active services, as a servant, for the . . term of five years, and the . . entire control of my person and labor during that entire time." After the execution of this instrument, " Mills was, against his consent, put into the possession of . . [Murphy's] intestate, . . by the plaintiff, as administrator of . . Nixon, and the bond, declared on, taken as the consideration of such transfer of the said Mills." [45] " Six months after date, we . . promise to pay . . administrator of . . Nixon, . . one hundred and twenty-five dollars . . in hire of . . Robert Mills, for the term of four years, or so long as . . Nixon was entitled to the services of the said negro."

[1] Rev. Code, ch. 34, sect. 81.

Judgment for the plaintiff, affirmed: [46] "There is nothing in the transaction against the policy of the law."

Carter v. Streator, 4 Jones N. C. 62, December 1856. In May 1855 Carter "hired himself and . . [his hired slave] John to . . Ragan, to work by the day;"

Harrison v. Bridges, 4 Jones N. C. 77, December 1856. "he had cultivated a sufficient number of pine trees, with two good hands which he had employed, to make six hundred barrels of *dip and scrape*; . . also employed, at short intervals, four or five other hands."

State v. Guilford (*a slave*), 4 Jones N. C. 83, December 1856. [84] "The prisoner was found guilty of murder, and a motion was made in arrest of judgment, . . overruled" Judgment affirmed.

Daughtry v. Boothe, 4 Jones N. C. 87, December 1856. "The action was brought for a breach of a contract of hiring. . . the auctioneer, testified that he . . publicly announced [December 25, 1852] . . as one of the terms of the hiring, that the slaves were not to be taken from the County of Gates; . . Jack was bid off by the defendant. . . May, 1853, the said slave was removed by the defendant to the County of Bertie, where he remained the balance of the year in a shingle swamp. He was restored to the [plaintiffs] . . in the beginning of . . 1854, in bad health, and died in January of that year. . . [88] Verdict for the plaintiff." Judgment thereon, affirmed.

State v. Privett, 4 Jones N. C. 100, December 1856. [101] "a clerk . . had furnished the spirits to the slave in the absence of the defendant."

Hatchell v. Kimbrough, 4 Jones N. C. 163, December 1856. "the defendant caused his slaves to go to the house in which the plaintiff lived with her children, and throw off the roof of the house, and haul it away"

Batten v. Faulk, 4 Jones N. C. 233, December 1856. "The plaintiff declared on a sealed note, for seventy-five dollars, made by one Andrew Shaw, a slave, and the defendant as his surety." Held: [233] "a slave can make no contract."

Powell v. Cobb, 3 Jones Eq. 1, December 1856. [2] "that he had beaten his wife with a horsewhip, and that a certain negro woman . . had often protected her mistress from the brutal violence of the plaintiff."

Fairly v. Priest, 3 Jones Eq. 21, December 1856. Will: [22] "in regard to the future increase of . . Silvia, . . that her first child be given equally to my three grand-children, . . that her second child be given to my daughter . . and all her future children . . to my son . . and his three sisters,"

Barnawell v. Threadgill, 3 Jones Eq. 50, December 1856. [52] "It was alleged . . that, in expectation that the plaintiffs would obtain judgment . . 1845, the defendants . . secretly carried off eighteen slaves belonging to the estate . . and sold them, or otherwise disposed of them, in . . South Carolina. . . The defendant Gideon B. Threadgill stated, that . .

[53] Jinny . . was . . levied on . . and sold, when he became the purchaser at $450, . . he sent [her and three others] . . to South Carolina, but not in the manner . . charged . . He also sent with them . . Smiley and her three children, which had been levied upon by . . sheriff . . and that he sold these slaves for the sheriff, . . Charles, was carried to South Carolina and sold . . [for] $500 . . The defendant Thomas H. Threadgill stated, that the testator . . his grand-father, had, in his life-time, given him . . Will, and to his father, . . Edmund and Franky, . . that he . . carried off . . Will and Edmund, and sold the former for $562,50; that while he was in South Carolina, his brother . . brought out . . Franky and her child Harriet, . . [54] The defendant George Allen stated, that he was present when the slaves, mentioned . . were carried off; that about ten days before that time, he had sent off into South Carolina, a little girl named Dinah, the child of . . Franky, and sold her for $300; . . The defendant Wilson Allen . . [was] the agent of . . Gideon B. Threadgill, to carry off his slaves, . . was paid $50; that he sold . . Judy for $430,25,"

Gilliam v. Underwood, 3 Jones Eq. 100, December 1856. Underwood's will: [101] "The negro man Joe is to have support out of my estate as long as he shall live."

West v. Sloan, 3 Jones Eq. 102, December 1856. About 1829 Sloan, trustee for his sister, sold [104] "Hannah and two children . . at public auction, when . . Stinson became the purchaser at $440 for the three. He, immediately . . relinquished his purchase to . . Sloan, . . and Sloan took the slaves home with him . . The defendants . . say . . that . . Hannah had become feeble, and, having two young children, she could not be hired for anything, and the best thing . . was to convert the slaves into money,"

Nash, C. J.: [106] "To call this a sale is a mere mockery."

Lea v. Brown, 3 Jones Eq. 141, December 1856. Will of Nathaniel Lea: [142] "The negroes bequeathed in this clause of my will, having been faithful to me and served me well, attended and nursed me in my long and painful sickness, I hereby bequeath to my friend Thomas J. Brown, . . my servant Milly, Mariah and two children, Nat and Dilla, Mary Anne and her child Milly, Vic and old Fanny, and such other children as they, or any of them, may have after the date of this my will, and I hereby enjoin on . . Brown, to take care of the said slaves, treat them kindly and humanely, as they have been to me faithful and obedient servants. . . that . . Brown shall have the use . . of the said slaves only during his life, and at his death, or in the event he should ever become . . unable to pay his debts without the sale of the . . slaves, then, . . [143] Milly, if alive, shall select a master, and all of the above-mentioned slaves I hereby bequeath to the person she so selects; and should she be dead, then I desire Mary Anne to make the selection, and should she be dead, I desire Mariah to make it; . . my chief aim and object being to give the aforesaid slaves good masters, if possible, or a small reward for their faithful service to me. I further bequeath to . . Brown, three thousand

dollars . . to pay the expense of keeping the said slaves, they being women, and can yield no profit of great amount. But should . . Brown become insolvent, or should die, then I bequeath the said sum, or such portion as remains unexpended by him, to the person that may become the master of the slaves . . as a compensation . . for their trouble in part. I give to . . Brown, two hundred acres . . during his life only, or in case he remains solvent; but should he die, or become insolvent, then my will is, that the said land shall go . . to such person as shall be, upon the happening of either of the said events, the master or owner of said slaves mentioned above. . . the remainder of my slaves [to my brother, sister, and the children of my deceased sisters] . . [144] there must be no sale for a division, as my desire is that all my slaves are to be kept in families as far as possible, and not to separate them unnecessarily. . . [145] I hereby strictly enjoin upon my executor to see that in the division of my slaves, families are to be as little separated as possible." [146] "it is said for Mr. Brown, . . Fanny was near sixty years of age, Milly, forty-five, Mariah and Mary Anne, each, twenty or twenty-five, and the rest small children, and the bequest being to him only for life, during which time they would probably be a charge, the use of the land and money was not an unreasonable provision."

Held: "had the testator tried *on purpose*, he could not have more directly violated the provisions of this Statute,[1] or more effectually contravened the fixed policy of the State." The provision for a successor to Mr. Brown "is unusual, and proves that the object was to confer a benefit upon the slaves, and that neither Mr. Brown nor his successor were the objects of the testator's bounty, . . [147] The result, if his intentions are to be carried out, will be to establish in our midst a set of privileged negroes, causing the others to be dissatisfied and restless, and affording a harbor for the lazy and evil disposed. . . [152] decree declaring that Mr. Brown holds the negroes and money in trust for the next of kin, and the land in trust for the heirs-at-law." [Pearson, J.]

Niblett v. Herring, 4 Jones N. C. 262, June 1857. "a boy about fifteen years old . . hired to the defendant for the year 1856, at the price of fifty dollars. . . the boy served . . about seven months, and then left . . There was evidence tending to show that the boy was taken away from the defendant by the plaintiff, against the will of the former . . [263] Verdict and judgment for the defendant," Affirmed.

State v. Harriet (*a slave*), 4 Jones N. C. 264, June 1857. Held: [266] "When a slave steals to an amount which, by the common law, would have constituted grand larceny, the offence is cognizable before a single justice, and the Superior Court is ousted of its jurisdiction by the express terms of the Act." [2]

Malloy v. McNair, 4 Jones N. C. 297, June 1857. Will of Niel McNair, 1855: [298] "I give . . to my daughter Jane . . Eliza and her son . . Eliza's other child, Minerva, will be set free, if she behaves her-

[1] Rev. Code, ch. 107, sects. 28, 29.
[2] Act of 1856. *Ibid.*, ch. 107, sects. 31, 32, 34.

self as a person of good character should do, to be under the care of my daughter Jane and her daughters, to be taught to read the new testament. Also I give . . a blacksmith."

State v. Hopkins, 4 Jones N. C. 305, June 1857. "after January, 1856,[1] . . the defendant, . . a free negro, being in company with Jack, a slave, . . at a house where spirituous liquor was usually sold, received from the . . [306] slave a small piece of money, with a request that, with it, he would purchase for him a quart of spirituous liquor, which he did, and immediately delivered it to the slave. . . Verdict for the State."

Judgment thereon, reversed: [307] "the defendant was but the conduit pipe to conduct the article" [Nash, C. J.]

State v. Wright, 4 Jones N. C. 308, June 1857. Same point as in the preceding case.

Rowland v. Rorke, 4 Jones N. C. 337, June 1857. "1852, sold a slave . . at the price of $670,"

State v. Whit (*a slave*), 4 Jones N. C. 349, June 1857. Indictment for burglary. [350] "that the defendant was a runaway slave when the smoke-house was found open ['about sun-rise, . . several pieces of meat missing, and the molasses running out']; that he had been arrested a few months before the trial, when, in consequence of his resistance, much violence was used upon him. He was cut in several places, bled much, and suffered much pain. While in this situation, he was asked if he was not the boy that broke into Dr. Smallwood's smoke-house. . . he replied he was. . . he was bound to have something to eat. . . no threats, or promises, to elicit the confession. . . [351] verdict of guilty."

Judgment thereon reversed and a *venire de novo* granted: [353] "there is neither direct, nor indirect proof that the entry was in the night." On the new trial, the prisoner was convicted.[2]

State v. David, 4 Jones N. C. 353, June 1857. Indictment for murder. [354] "The deceased had been employed . . as an overseer . . in Pitt County, . . for about two months. . . a witness . . saw a negro boy ['about dark'] riding off a horse, and mentioned it to the deceased, . . He was referred by one of the slaves to the house of Fanny and David, . . Getting a light, he . . called upon them to know where the horse was. Fanny . . said she had sent after an old woman. Deceased told her she ought to have asked him about it; . . she replied, that her master had permitted her to do so, and she intended to do it, as long as there was a horse on the plantation. The deceased said he suspected it was a jug of liquor she had sent for; . . she replied, 'it was a very big jug, and he would see when it came.' The deceased said he had a great mind to whip her for her impudence; she said he would not whip her that night. The deceased then took a rope out of his pocket, and told her to cross her hands. She said she would not. Deceased said if she did not, he would

[1] Rev. Code, ch. 34, sect. 87; *ibid.,* ch. 107, sect. 67.
[2] 5 Jones N. C. 224.

knock her down. She still refused, when he struck her with a stick, . . [355] She threw up her arms and received the blow upon them. David, . . then advanced and said, 'you ain't got to do so,' or 'you must not do so here.' . . the deceased turned . . and struck David a blow on the head with his stick, which brought him nearly, or quite, to the ground. . . Fanny struck him [the deceased] on the head with a pine-knot, . . which knocked him down. . . the boy, Mack, who had been standing at the door of the cabin, . . came forward with an axe, and said, 'clear the way.' The witness got over the fence to where the parties were—drew a pistol, and told Mack to go back into the house, or he would shoot him, whereupon he did go back . . the deceased was still on the ground, and David had one knee on the ground, as if in the act of rising; his right hand was on the handle of a maul, . . Violet, a slave belonging to the same plantation, testified that she heard . . Fanny, say, some short time before . . that if the overseer tried to whip her she would fight him. . . [357] The jury found Fanny and David guilty of murder, and Mack not guilty. Judgment and appeal by David."

Judgment affirmed: [358] "The accident that the prisoner was . . disabled at the outset, can in no wise relieve him of the consequences of his unlawful act. . . the deceased was doing no more than what he ought to have done much sooner." [Pearson, J.]

Couch v. Jones, 4 Jones N. C. 402, June 1857. [403] "Parker . . testified that Calvin was hired to the defendants [contractors] for the year 1853, and again for 1854, to work upon the North Carolina railroad, . . principally engaged in blasting stone out of the road-bed, and that he [Parker] was assisted . . by one other white man, and four slaves belonging to the contractors; . . February, 1854, . . after it was too dark to see fragments of falling stones, . . that Calvin assisted in loading the [six] drills, and touched the fuse of one . . with a lighted match; . . all ran off . . and had proceeded about a hundred and fifty yards, when Calvin was struck down dead by a falling stone, . . that it was not Calvin's business to attend to the blasting, but to dump carts, and before the matches were applied, Mr. White, . . superintendent, in a loud voice, gave notice to all the hands . . to remove their carts and leave, which was done. . . that Abner, one of the regular blasting hands, left after Mr. White came up . . and Calvin took his place; . . [404] that although a general order was always given by Mr. White for all the other hands to leave . . that Calvin had often . . assisted in loading and firing the blasts in the presence of Mr. White, . . White . . stated . . that he did not see Calvin at the drills, . . saw four hands . . and supposed them to be the four, whose duty it was to be there; . . Verdict for the defendants."

Judgment thereon, affirmed: [409] "The overseer . . had nothing to arouse his suspicions, so as to keep him constantly on the alert, to prevent Calvin . . from intermeddling in business with which he had no concern." [Battle, J.] Pearson, J., dissented.

Wallace v. McIntosh, 4 Jones N. C. 434, June 1857. "Action . . for a breach of warranty, . . The overseer proved, that more than once

[[435] 'when she abstained from field-labor'], the slave told him she had a falling of the womb, and in the last conversation, she added, that she would exhibit her person to prove what she stated. This latter . . testimony was excluded" Held: it should have been received.

Shaw v. McBride, 3 Jones Eq. 173, June 1857. Will: [174] "the deficiencies [for paying my debts] I want made up by hiring out [six male] negroes . . as long as may be necessary." "the slaves ordered to be hired out, will be insufficient, even if sold, to raise the required amount [about twelve thousand dollars]."

Held: they must all be sold. [176] "The creditors are not bound to wait" "for an indefinite period,"

Brown v. Pratt, 3 Jones Eq. 202, June 1857. [203] "Becky was stolen from them by their daughter Patsey;"

Vass v. Freeman, 3 Jones Eq. 221, June 1857. Will: [222] "my negroes, perhaps they had better keep,"

Hogg v. Capehart, 5 Jones Eq. 71 n., June 1857. Will of James L. Bryan, who died in 1856: [72 n.] "I give my slaves their freedom."

Held: I. it is the duty of the executor to free the slaves. "he is bound to execute all the trusts which are not forbidden by the laws of the State. . . bequest . . of their liberty . . is lawful; . . [II.] [73 n.] By the act of 1856, Revised Code, ch. 107, . . 47th section, . . the executor is authorised to send the slaves before emancipation here, to the State or country appointed by the testator, or in the absence of such designation [1] by him, to such State, or country, as the proper court shall direct. . . It is the policy of the State, that when slaves are emancipated, they shall be sent to the place from whence a return to this State is least likely. . . we appoint Liberia . . [III.] The hires of the slaves will constitute a fund for paying the expenses of their removal, and if it shall prove insufficient, the deficiency must be furnished out of the fund contained in the residuary clause. . . [IV.] liberty cannot be forced upon any of the slaves, who are of an age to choose for themselves. If any of them refuse . . they . . sink into the residuum. A commissioner must be appointed to ascertain from the adult slaves, who are willing to go to Liberia, . . and, if there are children under the age of fourteen, their parents must elect for them. If there are any who have no parents, or whose parents elect for them not to go, they must have liberty, on coming of age, to make their election." [Nash, C. J.]

Colvard v. Waugh, 3 Jones Eq. 335, August 1857. A negro boy was sold by the sheriff, in 1845, for $530.

Woodhouse v. McRae, 5 Jones N. C. 1, December 1857. "The owner of the slave lived in Currituck county, and the defendant, . . in Washington county, some seventy or eighty miles distant, the Albemarle sound lying between the places. The defendant, who had hired the slave for . . 1853 [1855?],[2] learning that the negro's master was sick, gave him per-

[1] The act says: "Whenever . . it may not be convenient to carry them to the place specially appointed, the court shall designate."

[2] Poyner *v.* McRae, p. 216, *infra*.

mission, in . . June to visit him. The slave did not proceed to Currituck, but was seen, shortly after . . in . . Norfolk, in Virginia, under the control of no one; since then he has not been heard of, . . the Court being of opinion that the plaintiff was not entitled to recover . . [2] he submitted to a nonsuit and appealed."

Judgment affirmed: "we are sure that the fact is, and therefore the presumption must be, that in the large majority of instances, under ordinary circumstances, the slave, an intelligent being, will prefer to remain with his master or hirer, rather than flee from him to another country. Now, if a master were to take his slave seventy-five or a hundred miles from his wife, would he hesitate to permit him to visit her at suitable times? Would he, under ordinary circumstances, think he was running any risk in sending his slave that distance upon any business that required it? We believe . . [3] that there is not one case in a hundred in which the slave avails himself of the opportunity of escaping into another State. If, then, an owner of ordinary prudence would feel no hesitation in sending his slave . . seventy or eighty miles from home, we cannot think the hirer . . where there was no special ground of suspicion, ought to be charged with a want of ordinary care in permitting the slave . . to visit his sick master, . . It will not do to say that under ordinary circumstances, one who hires a slave near the border of the State, must guard him by day and imprison him or chain him at night, to prevent him from fleeing across the line." [Battle, J.]

State v. Chavers, 5 Jones N. C. 11, December 1857. "The defendant was charged,[1] as a free person of color, with carrying a shot-gun. . . proved . . A witness proved that the defendant's father was a man of dark color and had kinky hair; that he was a shade darker than the defendant . . and his hair was about as much kinked. . . [12] Green proved that . . upon a steam-boat from Wilmington, . . the price of a passage for white persons was one dollar; . . the defendant handed him one dollar, . . to pay the fare of himself and his brother . . saying that he understood that the fare of . . colored persons [was] half price, and that he and his brother were colored persons, . . The defendant's counsel insisted . . that his client was a white man, and called upon the jury to inspect him . . The Court [Person, J.] charged the jury 'that every [free?] person who had one-sixteenth of negro blood in his veins, was a free negro. That the descendants of negro ancestors became free white persons, not by being removed in generation only, but by that, coupled with purification of blood, for if that was not so, then persons of half negro blood might, and would, become white persons by law. . . [13] My construction of the statute [2] is, that no person in the fifth generation from a negro ancestor becomes a free white person, unless one ancestor in each generation was a white person; that is to say, unless there shall be such a purification of negro blood by the admixture of white blood as will reduce the quantity below the one-sixteenth part; and unless there is

[1] Rev. Code, ch. 107, sect. 66.
[2] *Ibid.,* sect. 79.

such purification it makes no difference how many generations you should have to go back to find a pure negro ancestor; even . . a hundred, still the person is a free negro.' . . The verdict was against the defendant."

Judgment thereon, arrested: [14] "the charge . . lays down the rule correctly according to the statute. . . [15] The motion for a new trial being denied him, the defendant . . moves here in arrest of the judgment, because he is charged . . as 'a free person of color,' whereas . . the act . . makes it penal for any 'free negro' to carry arms . . Free persons of color may be . . persons colored bv Indian blood, . . [16] The indictment . . cannot be sustained." [Battle, J.]

Watkins v. Hailey, 5 Jones N. C. 27, December 1857. "action of trespass for an assault and battery committed by the defendant upon a slave . . of the plaintiff, . . verdict for two dollars damages, . . the Court adjudged that the plaintiff recover . . the further sum of two dollars for costs," [1]

Held: "as it [the action] is brought for an injury to the slave, as property, it is not . . technically . . the action for assault and battery. . . judgment . . also for full costs."

Harrell v. Norvill, 5 Jones N. C. 29, December 1857. "Received of . . Harrell twelve hundred dollars for negro slave Kennedy. . . I warrant sound in mind and health, and also . . the right and title" "The breach assigned was, that the slave was not healthy . . The defect . . was a fixed contraction . . of the little finger of each hand, to such an extent as to diminish the value . . one hundred dollars, which defect was not apparent. . . no soreness, or want of strength"

Held: there was no [32] "want of soundness in health."

Bell v. Walker, 5 Jones N. C. 43, December 1857. Covenant: "Walker and . . Herrington . . promise to . . keep, and employ . . Peter, Woden and Abbott, treating them well, four years, and learn them the ship-carpenter and caulker's trades, and give annually . . [to] Bell a note for one hundred dollars for each of the negroes, . . specifying that each are not to be employed by water, by steam-mill, or fishery, or to be worked out of the county, except bv permission of the owner, and to be furnished, etc." It was proved [44] "that the defendants owned a ship-yard at Plymouth . . that, during the [four years] . . Peter was kept at work in the yard, and a part of the time in cutting and hewing timber in the woods, for the use of the yard, and a part of the time in hauling; that he made progress in acquiring skill in the trade of a ship-carpenter, but was not put to the business of caulking at all, and that he was apt and docile, and was properly taught in the ship-carpenter's trade. . . that the other two slaves were kept at work mostly in the woods, in preparing timber and in hauling it to the yard; that they were put at caulking under other slaves employed in the yard, for two weeks, and at work on ships in the yard; that they were negroes of ordinary capacity; that they repeatedly declared that they would not learn the trade; that they were unwilling to be taught; that repeated efforts were made to instruct them; that they

[1] Rev. Code, ch. 31, sect. 78.

were taken away from several jobs, upon which they had been put, because of their bad work; and that they were kept at such work, relating to the business, as they could do to the best advantage. . . that the felling, hewing and hauling ship-timber was, in this section of the country, a part of the ship-carpenter's trade, and a preliminary training towards their acquiring the art. . . further, that the two slaves, Woden and Abbott, were but little, if in any degree, improved in the trade, but that Peter was well instructed in the ship-carpenter's craft for the time he had been at work, but that no effort had been made to teach him caulking. It was further proved that this trade would add $300 to the value of the slave. . . Verdict, $600 for plaintiff."

Judgment thereon, affirmed: [46] " it was . . the duty of the defendants to coerce [Woden and Abbott] . . by such means as the law allows to masters, to enforce obedience from their apprentices. . . The slaves were four years older, with habits of obstinacy increased by indulgence,"

State v. Henry (a slave), 5 Jones N. C. 65, December 1857. [66] " Indictment for an assault with an intention to commit a rape, . . The evidence . . seemed to be very strong against the prisoner, . . The prisoner . . had advanced evidence of his good character. His Honor . . charged . . ' that in a plain case a good character would not help a prisoner,' . . defendant excepted. Upon the trial, the defendant offered to show that the prosecutrix had, previously . . made an indecent exposure of her person to the other slaves of his master, but not in the presence of the prisoner. . . ruled out . . The prisoner was found guilty. Judgment was rendered,"

Judgment reversed, and a *venire de novo* awarded: I. in all cases, a good character is to be considered; II. the testimony concerning the behavior of the prosecutrix [70] " was irrelevant for any purpose, because it was not shown that the prisoner was informed of it."

Garrett v. Freeman, 5 Jones N. C. 78, December 1857. " The declaration was for the negligent act of defendant's slaves in setting fire to certain log-heaps in his new ground, whereby the fire escaped into the . . grounds of the plaintiff " Held: the master of the slaves was liable.

Young v. McDaniel, 5 Jones N. C. 103, December 1857. " Action . . for harboring a slave,[1] . . Holt, the agent of the North-Carolina Rail-Road Company at Salisbury . . testified that the week before Christmas, 1856, . . McDaniel, came to the station . . with a wagon, . . In unloading the wagon, he was assisted by Henry. . . said to witness, ' Henry belongs to Mrs. Young, and is going to South Carolina to see his wife; she put him in my charge; here is his pass,' . . Mr. Holt, without looking at the pass, gave the negro a ticket to Charlotte, for which he paid seventy-five cents. The defendant then said to Henry, ' now, we will . . camp, and have some supper . . before you start,' . . [104] the slave . . was gone until the middle of . . March. . . McDaniel was unable to read writing. . . Verdict for defendant."

Judgment thereon, affirmed: the act was not done secretly.

[1] Rev. Code, ch. 34, sect. 81.

McLean v. Waddill, 5 Jones N. C. 137, December 1857. Action [138] "for a breach of warranty of soundness . . a bill of sale . . 22d of January, 1852, in which were full covenants of warranty of soundness. . . in the latter part of January . . the slave was affected with a diseased liver, and of a dropsical appearance; his abdomen was much enlarged, and the witness, who was a physician, gave it as his opinion that the slave was unsound. . . could not say whether the disease was chronic or not. Another physician stated that the boy was affected with a stiffness in the legs and arms. The defendant proved that the plaintiff sold the slave . . at auction for $316; that the purchaser, after owning him for twelve months, and physicking him, sold him to . . McCoy, in Robeson, for $500; and that he afterwards sold for $800. . . Verdict for the plaintiff." Judgment thereon, affirmed.

Airey v. Holmes, 5 Jones N. C. 142, December 1857. [144] "Frank, valued at $1200,"

Baines v. Drake, 5 Jones N. C. 153, December 1857. Jack was sold, in 1856, for $900. He was "utterly worthless, . . had been unsound for years before the sale—was sick at that time, and died . . a few days afterwards."

State v. John (a slave), 5 Jones N. C. 163, December 1857. Indictment for highway robbery. In June, the prosecutor [164] "having sold the tobacco . . drove out of the town [of Milton] . . [165] he stopped to water his horses, . . about dark, a negro . . enquired which of the two roads near by he intended to travel; the witness told him, . . the negro passed on along the road indicated; . . the witness soon overtook the negro, . . travelled on together in occasional conversation, . . the witness sitting in . . his wagon, until the negro told the witness [about nine o'clock] that he had found a bill . . in the streets . . and he wanted him to . . tell him how much it was; . . a torch light was struck . . the amount of the bill excited his suspicions, and he took particular notice of the negro's face, his clothes, etc.; that while . . examining the bill, the negro's hand was felt in his pocket . . a scuffle ensued, in which the witness was thrown out of the wagon . . and when he arose the negro was running off, having taken the pocket-book from his pocket, . . contained . . two hundred and twenty-seven dollars; . . that the negro . . was a large and powerful-looking man . . that the prisoner was the negro . . The case below turned chiefly upon the identity . . [166] The prisoner was convicted, and, sentence of death having been pronounced . . he appealed."

Judgment reversed and a new trial granted: [170] "the facts . . do not constitute highway robbery." [Pearson, J.] Battle, J.: [171] "I do not entirely agree with him. . . however . . The absence of the Chief Justice . . leaves but two members on the bench, and my refusal to concur in reversing . . would have the effect to keep the prisoner in jail six months longer, which I am unwilling to do."

Osborne v. Mining Co., 5 Jones N. C. 177, December 1857. "March 20th, 1854. We do hereby hire to the High Shoals Mining and Manu-

facturing Company, the following [fifteen] negro slaves, . . for . . one year . . for two thousand four hundred dollars."

Cain v. Hawkins, 5 Jones N. C. 192, December 1857. [193] "Sam [worth $850] had been the nurse and constant attendant of John P. Hawkins, a son of the intestate, a cripple, who was unable to help himself, and when he was about to be offered for sale, much sympathy was expressed for him in the crowd of bystanders, and many persons said that 'Sam must be bought in for John Hawkins.' A subscription was drawn up and signed by divers persons there present, and by the plaintiff amongst the rest, to the effect that, if the slave Sam could be bought for J. P. Hawkins at a sum under four hundred dollars, they would go in as his sureties. When the slave Sam was put up, he came forward, lifting the cripple J. P. Hawkins, and placed him in the piazza where the selling was carried on; the crier called the attention of the crowd to J. P. Hawkins' condition, and then said, 'J. P. Hawkins will give $100 for Sam, who will bid any more?' The crowd cried, 'knock him off! knock him off!' No one bid any more, and he was knocked off to J. P. Hawkins at that price. The plaintiff contended that the defendant was guilty of a *devastavit,* in permitting the slave to be sacrificed to a mistaken sympathy, amounting to an illegal combination."

Held: the plaintiff [194] "after being, in part, instrumental in bringing about the result of the sale, . . cannot be permitted to charge the administrator with a *devastavit* for not preventing it."

Everton v. Everton, 5 Jones N. C. 202, December 1857. Petition for a divorce *a mensa et thoro*: [204] "while your petitioner was . . confined to her bed, the defendant was so lost to all sense of self-respect . . as to shoot with a gun, in her hearing, a very valuable negro woman, belonging to the . . children of your petitioner, and threatened to kill her, and . . attempted to enter, by force, the room, wherein petitioner was ill, to kill said slave; . . tied, or caused to be tied, two of his own slaves, one of them grown, and the other nearly so, and brought them, or had them brought . . under the window . . immediately adjoining the room in which your petitioner was . . dangerously ill, and whipped them, or caused them to be whipped, in his presence; that the disease with which she was . . suffering, was much aggravated by the cries of the . . negroes,"

Held: [212] "none of the allegations . . are sufficient . . [213] to entitle the petitioner to the relief which she seeks."

Leary v. Nash, 3 Jones Eq. 356, December 1857. Will of Solomon W. Nash: [357] "I . . leave my negro slave woman Venice, to serve my daughters ten years from the time of my death, and after the expiration of that time, I desire her to be freed; and if she wishes to remove to any free State, I wish her to be permitted to do so; and if she may be permitted to remain in North Carolina, that she may enjoy all the privileges that . . may be, allowed by law to slaves left by their masters . . to be freed. The way I desire Venice to serve my daughters is, for her to be hired out for . . ten years, and the proceeds . . equally divided"

Between the making of the will and the death of the testator, Venice had two children.

Held: [358] "Venice has her election either to leave the State and be thereby emancipated, or to remain here as a slave. As to this there will be an enquiry. The two children . . are slaves."

Clayton v. Glover, 3 Jones Eq. 371, December 1857. [272] "that he saw the white spots in the eyes, but thought the . . slave had glass-eyes, which is a sure sign of permanent vision; that he afterwards consulted a physician, who, on an examination, informed him . . that the . . slave might go blind immediately. . . Gregory maketh oath, that he considers the . . slave worth about $500, with his eyes defective." His full value in 1857, if sound, was $1000.

Newell v. Taylor, 3 Jones Eq. 374, December 1857. Deed, 1835: [375] "sold . . to . . Taylor and . . his wife, . . negro girl . . now about the age of ten years, for . . two hundred and fifty dollars, . . during the natural life-time of them,"

Held: [376] "The terms of the act [of 1823][1] . . can [not] . . be applied . . where there is no limitation over . . The case before us . . [377] must be governed by the rules of the common law, which make this . . the grant of the absolute interest" [2]

Lane v. Bennett, 3 Jones Eq. 390, December 1857. Will of Farnifold Jernigan: [391] "to my . . wife, [thirteen slaves] . . my executors . . in trust for my daughter [nine slaves.] . . It is my will . . that my negroes, Dave, Tom, Morris, Lila and Mary, be liberated, and that my executors . . send them to a free State, and I hereby set apart . . five hundred dollars, to defray the expenses of so removing them. . . It is my will . . that the following [ten] negroes be sold by my executors, . . [392] with all the balance of my property not herein given away, and . . they first set apart the five hundred dollars" "a suit was brought against the executor . . for the recovery . . of Dave . . mortgaged to . . testator . . a decree was passed [for his redemption.] . . The executor hired out . . Tom, Lila, etc., directed to be liberated, and has the sum thus produced in hand."

Held: [394] "The slaves who have been emancipated . . are clearly entitled, each, to his or her hire from the death of the testator. They had a right to their freedom from that time, and are not to be prejudiced by the delay of the executor in effecting their emancipation. They are also entitled to the residue of the five hundred dollars appropriated . . for removing them . . after deducting one hundred dollars as the share intended for Dave, who loses his freedom because of his having been redeemed by the mortgagor." [Battle, J.]

Gardner v. Masters, 3 Jones Eq. 462, December 1857. [463] "a copartnership in the business of making, distilling and selling turpentine

[1] Rev. St., ch. 37, sect. 22.

[2] "the grant of a life estate only in slaves, in a deed executed since the [Revised] Code went into operation [1856], would carry only a life estate to the grantee," Rev. Code, ch. 37, sect. 21.

in . . Georgia, . . hired . . a number of slaves . . 1853. . . purchased a number of slaves . . [464] for carrying on the work,"

Harrison v. Bowe, 3 Jones Eq. 478, December 1857. Will of Henry Hooper, 1853: "As the laws of the State would make a different disposition of my property, after my death, than would be pleasing to me, or consistent with moral justice, . . After the death of my mother and Jane B. Richardson [mistress of the testator], and Henry McAden Richardson [illegitimate son of the testator] has arrived at the age of twenty-one years, all the negroes are to be liberated, on condition of their leaving the United States, or performing any other condition that the policy of the State and the times seem to require; but such as . . [479] wish to serve, will be at liberty to remain on the plantation as slaves,"

Bost v. Bost, 3 Jones Eq. 484, December 1857. Will: [485] "that my sons . . have my mill . . and also my negro boy George, the miller,"

Pinckton v. Cauble, 3 Jones Eq. 494, December 1857. "Her hands worked the plantation with him [her son],"

State v. Whit (a slave), 5 Jones N. C. 224, June 1858. See same *v.* same, p. 206, *supra.*

State v. George (a slave), 5 Jones N. C. 233, June 1858. [234] "The prisoner was indicted, with . . Aaron and . . Gauzey, for the murder of their master, . . There was a count also against Gauzey as principal, and Aaron and . . George, as accessories before the fact. . . The gun was discharged about seven o'clock at night [February 1858], while the deceased was standing in his back piazza, not far from the houses occupied by the accused and other slaves . . Benbury . . heard of no threats up to twelve o'clock of the day; that Gauzey was taken up about one o'clock, and was brought into the house; he, as well as George and Aaron, was in irons and closely guarded; . . Lindsay came up . . very much excited, and said to him, 'you had as well tell me whose that gun is, or I'll kill you,' at the same time he struck him a blow in the face; he then added, 'Aaron and George say you know all about it, and if you don't tell all . . I'll kill you.' . . Benbury then interposed, . . Joseph B. Davenport stated, that 'he said to . . George, "tell about it; they will hang you if you don't;" . . a large crowd on the ground . . much excited. Shortly after . . the confessions now offered to be given in evidence were made.' S. W. Davenport stated, that he heard several men say, that the negro who did it deserved to be burnt, but this was not in the presence . . of either of the prisoners. . . [The confessions were] . . admitted. The prisoners were found guilty . . [235] and upon judgment being pronounced . . George appealed"

Judgment reversed, and a *venire de novo* awarded: "The evidence discloses a horrid murder, . . The prisoner may be guilty, but . . his guilt must be proved according to law. . . The confessions were extracted by means calculated to excite *the fear of present death in the firmest mind.* . . not more than an hour—possibly only a few minutes, intervened [before the confessions], and *the circumstances of terror*

remained the same. . . . the same infuriated crowd . . [236] it was necessary to show that such a length of time had intervened, and such an entire change of circumstances . . taken place, as wholly to remove the effect of the influence . . brought to bear . . We are satisfied that the confession was made from fear, . . to avoid *present* danger and risk the future. . . to appease the crowd." [Pearson, J.]

Hendrickson v. Anderson, 5 Jones N. C. 246, June 1858. "an agreement that he should serve . . in the character of overseer and manager of his slaves, for the year 1855, . . [for] $150. . . September, . . he was discharged . . [247] rode the farm horses at night on patrol duty; . . intoxication,"

State v. Evans, 5 Jones N. C. 250, June 1858. Indictment for selling spirituous liquor to a slave without an order from his master.

Held: [251] "the averment, though a negative one," must be proved on the part of the state.

State v. Jacobs, 5 Jones N. C. 259, June 1858. "an indictment against the defendant as a free negro, for carrying arms, . . The State offered the defendant to the inspection of the jury, that they might see that he was within the prohibited degree."

Held: "it is, in effect compelling him to furnish evidence against himself in a criminal prosecution. . . [260] he is [not] bound to stand or sit within view of the jury." [Battle, J.]

Poyner v. McRae, 5 Jones N. C. 276, June 1858. "Action of covenant, . . 'State of North Carolina, . . Twelve months after date, . . we . . do promise to pay . . Poyner, . . seven hundred and twenty dollars, as the hire of four boys . . Jack, Dock, Cuse and Bill, during . . 1855; said negroes to have good winter and summer clothing, boots and socks, and said boys to be at my risk in going to and from my swamp up Roanoke, and not to go out of this State. . . January 1st, 1855.' . . [277] June, . . Cuse applied . . for permission to visit Currituck, representing that his young master was sick, and he wished to see him. . . but did not go to Currituck. . . recognized in . . Norfolk, Va., . . not been since heard of,"

Held: [278] "the meaning of the parties was not to prohibit the slaves . . from going out of the State . . under all circumstances, but to forbid the defendant from taking them to work out of the State, and to bind him to use all proper care . . in preventing them from escaping beyond its limits. . . The case of Woodhouse *v.* McRae,[1] . . shows that there was not a want of ordinary care" [Battle, J.]

Baker v. Pender, 5 Jones N. C. 351, June 1858. A male slave was valued at $1200.

Thompson v. Kirkpatrick, 5 Jones N. C. 366, June 1858. "The plaintiff declared as an overseer of a road, against the defendant, for failing to send his hands to work upon the road after due and sufficient warning." Judgment for plaintiff affirmed.

[1] P. 208, *supra*.

State v. Frank (*a slave*), 5 Jones N. C. 384, June 1858. "The defendant was indicted for the murder of Eli, a slave. . . [385] that for the last four years, Frank had been intimate with Lucy [a free woman of color, the wife of Eli]; that it had been endeavored to keep this intimacy a secret from Eli, but that on one occasion, he (defendant) had been detected at her house, and a fight had taken place . . March last, . . the body of Eli was found in a mill-pond, about half a mile from the house of . . Lucy. . . bruises . . seemed to have been produced with an axe; . . Blood was traced . . to the house of . . Lucy. . . tracks . . measured . . correspond with the shoes of the prisoner. . . [386] Verdict against the prisoner." Judgment thereon, affirmed.

Washington v. Emery, 4 Jones Eq. 32, June 1858. [33] "There was a charge upon the estate for the support of five superanuated [*sic*] slaves, . . [34] The administrator . . allowed them small sums, amounting, during the whole time, to $90. . . followed the example of the testatrix, whose universal practice it was . . that such was the usage in that community [Craven County]. . . the slaves of this estate were faithful and obedient. This item was rejected by the commissioner."

Held: [37] "policy, as well public as private, sanctions that decree of indulgence . . and . . in that section of the State, it is usual for masters to give slaves, who are hired out, presents at christmas, when the year ends, and for the hirer to allow each slave twenty-five cents at the end of every week as an inducement to good behavior." [Pearson, J.]

Holderness v. Palmer, 4 Jones Eq. 107, June 1858. [109] "The counsel for the plaintiffs contend that the executor violated his duty by selling the home tract . . that in consequence . . he had himself made it necessary to hire out the woman and children, whereby they were not properly taken care of, and several of the children died," Battle, J.: [110] "it was absolutely necessary to sell, either land or negroes, to pay the debts. . . [111] not one of the children, who died in this State, did so from want of proper attention. Two of the most valuable of them died of scarlet fever in the possession of the executor, . . under the caré of the testator's favorite overseer, . . Others were infants, from one to two or three years old, and died from the effects of teething. The remainder died in Virginia, in the possession of . . a brother of the testator, who had very shortly after the testator's death, taken them by force"

Blount v. Hawkins, 4 Jones Eq. 161, June 1858. [164] "some of the slaves, after the death of the testator, ran off and escaped to a free State, and the executrix expended a large sum in having them recaptured and brought home. They were afterwards sold by her for a less sum than the amount of the expenses incurred in their recapture."

Edney v. Edney, 4 Jones Eq. 127, August 1858. A negro woman and child sold for $435.

High Shoal Mining Co. v. Grier, 4 Jones Eq. 132, August 1858. [133] "a number of inhabitants in the city of New York, constituted . . Groot

their agent, to purchase the property of the 'High Shoals Manufacturing company,' . . which consisted of . . gold mines, iron mines, a lime quarry, . . and seventeen slaves. . . [134] that these slaves are stated to be worth from 18 to 25 thousand dollars;"

Gilreath v. Gilreath, 4 Jones Eq. 142, August 1858. [143] "the plaintiff [defendant's father] bought a female slave, who had children very fast; these, as they grew up, with the two slaves [before owned] . . and defendant's children, under his superintendence and active assistance, . . on a small tract of inferior land, made a comfortable living, . . In . . 1847, the plaintiff sold a negro girl, who had become refractory, for . . $525,"

David Jarman v. Humphrey, 6 Jones N. C. 28, December 1858. [30] "The plaintiff . . placed his claim to freedom upon two grounds: *First*, a regular act of emancipation in . . 1822, according to the then existing law." Summary of the proceedings: [29] "A petition filed by Benjamin Jarman, addressed to the Superior Court . . setting forth that the petitioner, himself, had been the slave of John Jarman, . . been manumitted by the County Court . . for meritorious services; that he had a child while in bondage, . . David; . . David was, at the filing of the petition, about thirty . . distinguished for honesty, industry and fidelity to his master; that his . . master, Edward Williams, had been offered a large sum for him, but had refused, on account of the excellent conduct of David, to take it, and had sold him to his father, the petitioner, for a reduced price. The prayer was for the emancipation of David. . . The affidavit of Edward Williams, stating that he had owned David for about thirty years; that during the whole of the time, his conduct had been in the highest degree . . meritorious; that he had reposed unusual confidence in him, . . had sold David to his father . . because he would not sell to any but his father. . . The judgment of the Superior Court . . 1822, . . 'ordered . . that the said slave may be . . set free.' Bonds were given . . The bond to the Governor, conditioned for the good behavior of David, was signed by the former owner, . . David further claims his freedom on the ground that he has acted and been considered as a free man ever since . . 1822, up to the time of the trespass complained of in this suit . . 1857, . . [30] Benjamin Jarman was a slave at the time of filing his petition for the emancipation of . . David, and it was insisted that he could not own, and therefore could not emancipate the plaintiff. . . the Court being of opinion with the plaintiff, gave judgment that he recover one dollar and his costs,"

Judgment affirmed: [31] "if Benjamin Jarman were a slave when his petition was filed, . . [the] title [of Williams to David] was undoubtedly divested in favor of the plaintiff, either by his acts in connection with the proceedings of the Court, or by his long acquiescence afterwards. . . every presumption ought to be made in favor of his actual emancipation according to all the requirements of law." [Battle, J.]

State v. Bill (*a slave*), 6 Jones N. C. 34, December 1858. "Indictment for burglary, . . Chason, (the prosecutor) lived on the borders of

the Big Swamp, . . his house was broken open and certain articles . . stolen by a number of negroes; that the prisoner was present, . . that some short time after . . about two miles from Chason's house, the camp of a number of runaway negroes was found. . . the prisoner was one of them."

[38] "the sentence of the law may be pronounced upon the prisoner." [36] "A gang of them had a camp . . not far off. . . They were renegades, . . and they were runaways; who as a class, have a known propensity to steal. . . [37] the presiding Judge did not err in admitting the testimony" [Battle, J.]

State v. Hannibal and Ned (slaves), 6 Jones N. C. 57, December 1858. "Council kept a store in the country, and in order to guard it by night, he made one of these slaves sleep in a room under the same roof . . and the other, in a house about a hundred yards off, and he gave each of them a gun, which they kept in their respective houses, where they were found by the informer." The slaves "were convicted by a justice of the peace, and sentenced to receive twenty lashes each, and it was adjudged that Council 'pay a fine of five dollars each.' The master appealed to the County Court, . . affirmed, . . appealed. In the Superior Court, . . [58] His Honor held that the case was not within the statute, and discharged the slaves, . . the State appealed."

Held: [59] "a master cannot now arm his slave for any purpose; consequently, the judgment . . for the punishment of the defendants, was according to the law,[1] . . The Court is at a loss to discover the ground on which the master was fined." [Ruffin, J.]

State v. Atkinson, 6 Jones N. C. 65, December 1858. "Indictment for a riot, . . Mrs. Jernigan testified, that . . after the family had retired, she and her husband were awakened by the cries of one or more of their slaves; . . at a short distance from their dwelling-house, she found . . Bill, tied with a rope, and held by . . Shallington; that she seized it, and in the scuffle . . the slave made his escape; that she then heard Jack cry out at some short distance . . 'I am ruined,' . . found him tied, lying on the ground, with six wounds . . on his breast, abdomen, back and head; that the defendants had two bowie knives, and on her husband's coming up, two of them branished [*sic*] these weapons over his head, . . that one . . said he had come for revenge, . . [66] that Atkinson said that Jack had cut his hand, and he would give him fifteen lashes, which was done, the boy then immediately sank down, and his bowels came out. . . before he was whipped, some one of the [three] parties said that they were acting as patrols. . . Verdict for the State."

Judgment thereon, affirmed: [68] "we are very far from thinking that the authority, which the law confers on patrols, can sanction such outrageous conduct" [Battle, J.]

State v. Nat (a slave), 6 Jones N. C. 114, December 1858. "Indictment for an attempt to commit a rape upon a white woman, . . that

[1] Rev. Code, ch. 107, sect. 26. Earlier legislation on the subject: act of 1729 (Ired. Rev. Code, ch. 5, sect. 7); act of 1741 (*ibid.*, ch. 24, sects. 40-42); Rev. St. of 1836, ch. 111, sect. 23.

immediately after the offense and the charge against the prisoner, he fled, and though searched for . . by an officer, he could not be found for a week or two. . . Edwards [his owner] . . [115] superintended his defense. . . two slaves were introduced . . to show an alibi, . . Sam and his wife Lucy. . . that Lucy was domiciled in the family of Mr. Edwards . . and that Sam, her husband, came to see her once in three weeks. . . Sam and Lucy, on their . . examination, showed much feeling and partiality for the prisoner," Verdict of guilty. Judgment thereon, affirmed.

Johnson v. Dunn, 6 Jones N. C. 122, December 1858. Action of covenant. "Johnson agrees to hire to . . Dunn three pairs[1] of sawyers, at twenty-five dollars per month per pair, to be paid . . January 1st, 1856. One pair to commence . . February, and the other two by the first of April; provided, they do not run away before. . . [123] Johnson agrees for . . Dunn to keep the said hands all the year, . . unless he becomes dissatisfied with their treatment," The third pair of sawyers "were not delivered at all, but were hired, by the plaintiff, to . . Hyman for the year. . . sometime in the summer of 1855, the plaintiff wrote a letter to the defendant, . . complained that the sawyers, then in the latter's possession, were not well treated; that their food was not of a proper kind; that no house had been erected as defendant had promised, and that they were worked in a dense, sultry and unwholesome swamp. . . the plaintiff and defendant met on the 23rd [of August] . . when the plaintiff said . . 'I suppose my negroes have run away.' The defendant replied, that they had gone away some two or three weeks before." [125] "The plaintiff [had taken] . . away the two pair of sawyers, and [hired] . . them to . . Hyman," [123] "about the first of August, . . the defendant demanded the return of the sawyers, which was refused by the plaintiff." Verdict for the defendant. Judgment thereon, reversed, and a *venire de novo.*

State v. Emory, 6 Jones N. C. 133, December 1858. "Fuller, a free negro, occupied a house, . . the family of Fuller was put out . . with violence, and . . kept out . . The defendants offered to prove, that on the next day . . Fuller . . stated that he had agreed with . . [134] Emory, that he might . . take possession . . evidence . . rejected . . Verdict—guilty."

Judgment thereon, affirmed: "Fuller, being a . . negro, was not competent as a witness,"

Bookfield v. Stanton, 6 Jones N. C. 156, December 1858. "Trespass *vi et armis* and false imprisonment, . . [157] to try the right . . to his freedom, . . the plaintiff was black. . . introduced evidence to show, that for thirty years, and more, prior to his birth, his mother and his maternal grand-mother were . . recognised . . to be free persons of color, . . that his mother, as a free person of color, removed from the county of Carteret to Hyde, and lived there as such. She was reputed to

[1] [124] "a saw cannot be operated without two practiced hands."

be the wife of a slave, but lived to herself, and was controlled by no one. . . The defendant . . offered in evidence an attachment . . levied upon . . Beck [[159] 'the plaintiff's grand-mother'], and her children, Fan and Olly, . . 1809. . . ruled out . . also . . a bill of sale for the plaintiff, . . rejected . . [158] Verdict for the plaintiff."

Judgment thereon reversed and a *venire de novo*: [159] "the bill of sale . . was . . properly excluded. We regret that we cannot say the same of the attachment" [Battle, J.]

Bell v. Morrisett, 6 Jones N. C. 178, December 1858. "the plaintiff alleged that at the sale, the slave was laboring under a chronic disease, which resulted in his death six months afterwards; . . offered to prove the declarations of the slave as to his health . . made two months before the sale, and at longer periods, and also . . several weeks after the sale."

Held: the testimony was admissible.

Howard v. Howard, 6 Jones N. C. 235, December 1858. "Action of ejectment, . . Miles Howard, a free man of color, died intestate in 1857, seized in fee of the premises . . About . . 1818, he being then . . slave . . without other ceremony, took for his wife, by consent of his master, and a Mr. Burt, Matilda, a slave of the latter, and was immediately thereafter emancipated. Miles then bought his wife, . . and by her had issue, the lessor Frances, when . . Matilda was duly emancipated. After this event, they had other issue, . . [seven] lessors, . . when . . Matilda died. In a few years . . Miles took another wife, a free woman of color, and had issue, the [four] defendants, . . The latter marriage was performed with due ceremony, the former was celebrated in the manner usual among slaves, and the parties lived together ever afterwards as man and wife, . . [236] In 1836, . . Frances, with other children who died before the intestate, Miles, was emancipated as the children and slaves of . . Miles Howard, by an act of the Legislature."

Held: [238] "the relation of master and slave is wholly incompatible with even the qualified relation of husband and wife, as it is supposed to exist among slaves, . . Frances, does not take as one of the heirs of her father. The other lessors are in a condition still more unfortunate; . . Their parents, having become free persons, were guilty of a misdemeanor in living together . . [239] without being married, as the law required; so that, there is nothing to save them from the imputation of being 'bastards.' . . To the suggestion, that as the qualified relation . . is *not unlawful,* . . emancipation should be allowed to have the effect of curing any defect . . the reply is: The relation between slaves is essentially different from that of man and wife joined in lawful wedlock. . . with slaves it may be dissolved at the pleasure of either party, or by the sale of one or both, depending on the caprice or necessity of the owners." [Pearson, C. J.]

Ponton v. Railroad Co., 6 Jones N. C. 245, December 1858. "The action was brought for the negligence of one of the servants of the company in permitting a switch to be out of place, whereby a collision took place . . which caused the . . death of the plaintiff's slave. . . The slave

. . was a breakman [*sic*], on the freight train, hired . . for that service: he was at his proper place when the collision happened, and was crushed . . between the trains."

Held: the plaintiff cannot recover: [248] "It would be singular, if the owner of a slave could recover for damage sustained by a slave,[1] when upon the same state of facts, the slave, if he had been a freeman, could not have recovered." [Ruffin, J.]

Davis v. Boyd, 6 Jones N. C. 249, December 1858. [251] "Lavinia . . he had bought [in 1848 or before], with her mother, at . . $1000. . . [252] in 1855, as . . Lavinia, was passing, the plaintiff remarked that Boyd [his son-in-law] had offered him $1500 for her, and he did not know why . . as he had given him . . Minerva, worth two of her, but he supposed he wanted her because she was a good house-keeper."

Alexander v. Torrence, 6 Jones N. C. 260, December 1858. "Caleb . . had originally belonged to . . Johnson, of . . South Carolina, who made a deed of gift of him to his sister . . intermarried with . . Burnet. On the death of . . Johnston [*sic*], his son . . 1837, sold the slave . . to . . Caldwell, who was passing through . . and he carried him to Alabama, and sold him to . . Alexander, . . Twelve years afterwards, as the plaintiff was passing through South Carolina, . . Caleb, ranaway and went into the possession of Burnet, . . and suit was brought . . decided . . that the right of property in the slave was in Burnet, *jure mariti*."

Jones v. Baird, 4 Jones Eq. 167, December 1858. "In . . 1828, it became desirable to sell . . a young negro woman . . whose conduct had become displeasing to her mistress;"

Dunlap v. Ingram, 4 Jones Eq. 178, December 1858. Will of Jeremiah Ingram, dated 1853: [179] "My desire is, that all my negroes, in . . Mississippi, (except Reuben) . . [180] be disposed of, . . I give to my friend . . my negro Reuben, . . that all my negroes in this State, except such . . hereinafter . . disposed of, be equally divided or sold, . . among the heirs of . . My further desire is, that if any of my negroes should have a choice of homes, they be valued at a low price, to such one of my legatees as they may wish to live with; . . I . . bequeath to my nephew . . Edmund, Tempe, George, Dick and Judy, in trust, with a desire that he permit them to enjoy the proceeds of their labor in all respects, in as full and ample a manner as the laws of the State will permit, and that they may have the use of a sufficient portion of my land . . for making their support. . . also . . Viger and her [four] children, . . in trust, . . and that they be permitted to have a home on my plantation."

Held: [183] "the trust expressed is unlawful, as it is very plainly for the emancipation of negroes who are to reside here. . . [184] result to the next of kin." [Ruffin, J.]

[1] Nevertheless, the Court of Appeals of Kentucky held, in 1856, that he could. Railroad Company *v.* Yandell, vol. I. of this series, p. 427.

Davis v. Marcum, 4 Jones Eq. 189, December 1858. " 1854, the defendant offered the [two] slaves for sale [in Chatham County, ' for the purpose of distribution amongst the next of kin, who were numerous,'] . . and they were bid off at the price of $2,265," to a resident of Cumberland County. Ruffin, J.: [191] " persons from a distance are often the best bidders, and it is the duty of the administrator to get the best price;"

Purnell v. Dudley, 4 Jones Eq. 203, December 1858. Will, dated 1852: " I give to my sons, . . sixty slaves, including Jim and his wife, etc., and the balance of the sixty to be chosen by my sons; . . all the residue of my slaves . . to be sold as soon as convenient, and out of the money . . [204] pay my debts," Codicil, 1853: " I increase the number of slaves, given to my sons, from sixty to seventy-five . . so as to provide for the said increase in the number of slaves," [205] " Those slaves were . . valued at $37,425,"

Redding v. Findley, 4 Jones Eq. 216, December 1858. " 1852, Anne L. Woods . . by deed, conveyed to . . Long, three slaves, in trust for her, during her natural life, and upon her death, upon trust ' to send them to Liberia or some free State, if they make choice to go, within one year after my death, and if Ellen should have any children, they are to go with her; but if the negroes should not choose to go, then they are all to belong to Alexander Findley,' . . she died intestate, in 1857; and [the slaves] . . elected to go to Liberia or to one of the United States, in which slavery does not exist, in order to be free there. . . Redding, administered . . and filed this bill . . alleging that the deed was obtained by undue influence . . when Mrs. Woods was in extreme old age . . and also insisting, that the deed is void "

Held: I. [217] " The . . proofs establish very satisfactorily the capacity of the party . . [II.] It is totally immaterial . . by what kind of instrument the trust, for emancipation, may be created, whether a deed or a will. . . [III.] [219] to the admitted capacity of accepting emancipation, there is inherent a legal capacity to assent to all those incidents which go to make the emancipation itself effectual." [Ruffin, J.]

Barker v. Swain, 4 Jones Eq. 220, December 1858. "A negro, called Daniel Jones, employed the plaintiff to sell a buggy and jackass for him. The plaintiff took . . to South Carolina, and sold them for $450; . . delivered to the negro [$200] . . [221] afterwards collected the [remainder] . . and after deducting his wages and . . charges, there remained a balance of $225,96, in his hands. Each of the defendants, Stanly and Swain, claimed the money, and the plaintiff . . sets up no claim to it. . . Some years before . . McMasters sold . . Daniel, to Joshua Stanly, at the price of $300, for which Stanly and seven others, gave their bond, with an understanding . . that the negro was to have his own time, and the proceeds of his labor, and was to pay the bond as he could earn the money; and upon the full payment, . . to be free; . . the negro did have his time, and the proceeds of his labor, for a considerable period, and carried on the business of making and selling buggies, . .

Afterwards, Joshua Stanly died, and . . [his administratrix] took the negro into possession, . . and also demands the money in the plaintiff's hands, as the earnings of the slave. . . while the negro was . . carrying on his shop, . . Swain, sold to him the jackass . . at the price of $350; . . Swain alleges that it has not been [paid], and . . claims the money from the plaintiff"

Held: [223] "the law makes such dealings [as Swain's] with a slave . . criminal; . . [224] as to the title of Stanly. It is an indictable misdemeanor in the owner . . to . . let him go at large as a freeman, . . the plaintiff . . may hold the fund, since neither of the defendants can get it from him." [Ruffin, J.]

Williams v. Smith, 4 Jones Eq. 254, December 1858. Will: "I wish Nathan and Jerry to be hired out to support and school my three youngest children, . . When the youngest . . becomes of age, then I wish for Nathan and Jerry to be sold,"

McBride v. Williams, 4 Jones Eq. 268, December 1858. [269] "In contemplation of a marriage, . . a deed was made, . . 1830, wherein . . [eighteen] slaves . . were conveyed . . in trust,"

Worth v. McNeil, 4 Jones Eq. 272, December 1858. Will, 1850: [273] "The plantation whereon I live, I wish carried on as before, by keeping the most suitable hands on it. My negroes not to be hired out . . I desire that my wife have as many negroes to wait on her, as she may want; that is to say, as many of the women and girls as may be necessary—one boy and old George to take care of the stock. . . I . . direct that Isaac and one other hand be kept at the mill, when necessary, and two others to cut and haul, . . I desire little Grace to be sold, and the money to be given to my wife, but let her be sold out of the State." As the contest of the will lasted longer than the administrator expected, [274] "he proceeded [after two years] to hire out the slaves,"

Williamson v. Williamson, 4 Jones Eq. 281, December 1858. Will, executed before the Revised Code[1] of 1854 went into operation: [282] "I . . bequeath to my . . daughter, . . one negro girl, named Mary, now in her possession, and her increase, if any; also, one negro girl, named Bethany," Mary [283] "was put into the possession of [the daughter and her husband] . . when she was about five years old, and has remained . . She had one child before the making of the will, . . Bethany, was put in [their] . . possession . . by the testator, after his will was executed, together with her first child . . who was born after the making of the will, . . Bethany, had another child before the death of the testator,"

Held: [285] "The bequest [of Mary] is . . a confirmation of the previous parol gifts, and carries with it the increase as an adjunct . . [286] The children of . . Bethany, do not . . pass with their mother, but fall into the residue to be sold" [Battle, J.]

[1] Ch. 119, sect. 27: "a bequest of a slave with her increase, shall be construed to include all her children born before the testator's death, unless a contrary intention appear by the will."

cutting. . . [282] value of the slave . . estimated by the jury, . . $1000" Judgment for the plaintiff, affirmed.

State v. Jacobs, 6 Jones N. C. 284, June 1859. [285] "Indictment against the defendant, as a free negro, for carrying fire-arms, . . The State introduced . . Pritchett, who swore that he . . had known him as long as he had known any one; that he had never seen any of defendant's ancestors, . . the solicitor with a view of showing . . witness . . qualified . . as an expert, inquired . . what business . . he followed, . . stated that he was a planter, an owner and manager of slaves, . . more than twelve years, that he . . had had much observation of the effects of the intermixture of negro . . blood with the white and Indian races, and . . was well satisfied that he could distinguish between the descendants of a negro and a white person, and the descendants of a negro and Indian; . . also say whether a person was full African . . or had more or less than half . . African blood in him, and whether the cross . . was white or Indian blood. . . stated his opinion to be that the defendant was . . a mulatto—that is, half African and half white. The defendant's counsel excepted . . and upon defendant's conviction, appealed"

Judgment affirmed: [288] "it would often require an eye rendered keen, by observation and practice, to detect, with any approach to certainty, the existence of any thing less than one-fourth of African blood . . A free negro . . may . . be a person who . . has only a sixteenth . . The ability to discover the infusion of so small a quantity of negro blood . . must be a matter of science . . admitting of the testimony of an expert; . . [289] Pritchett . . possessed the . . qualification, to testify as such." [Battle, J.]

Slocumb v. Washington, 6 Jones N. C. 357, June 1859. "The slaves . . had been hired in 1856, to the defendants as rail-road contractors, at eighty cents a day [[360] 'high wages, for mere laborers,'], and there was a stipulation that they should not be worked below Bear Creek. The defendants carried them to work below Bear Creek, and . . January, 1857, there came on a heavy fall of snow. The slaves were out in this storm [[359] 'on their journey to their master's, . . against the orders of their manager'] . . and returned to their master frost-bitten and otherwise injured. . . the shanty for the hands . . had no chimney, but in the centre . . [358] was made a fire . . that holes were left . . for the escape of smoke; that loose plank were laid down on poles for the slaves to sleep on; there was an opening for a door, but no shutter, . . that twenty or more hands were put into the cabin to sleep; . . plenty of wood . . at hand; that the slaves that remained in the cabin were not in any way injured by the storm."

Held: [360] "there was no such want of ordinary care of the slaves as authorised them to leave the situation in which the defendants had placed them,"

Wilson v. Shulkin, 6 Jones N. C. 375, June 1859. [376] "There were two . . ferrymen . . the mules became frightened, made a rush forward . . The ferrymen . . jumped over-board, . . Neither of the plain-

tiff's servants [who held his horses] jumped over-board or left the flat until it reached the shore."

Hussey v. Weathersby, 6 Jones N. C. 387, June 1859. "May 23, 1859. Received . . fourteen hundred dollars, in full of a negro man Mingo, supposed to be twenty-five years of age, which negro I warrant to be sound in mind and body," Mingo died of consumption within two years afterwards.

State v. Floyd, 6 Jones N. C. 392, June 1859. Indictment for murder. "the prisoner came to the [blacksmith] shop [of the deceased, a free negro], . . apparently friendly; . . said . . he wanted something to eat, . . [the deceased] told the prisoner to cut some of the meat . . handing him a knife" Floyd did not return it. Later on there was a fight between them, resulting in the death of the negro. [396] "The jury found the defendant guilty of murder."

Judgment thereon reversed and a *venire de novo* awarded.

Page v. Luther, 6 Jones N. C. 413, June 1859. Held: [414] "the law, as it stands in the Code of 1854,[1] . . admits of no such exception to the general prohibition of trading with slaves for spirituous liquors as that contained in the previous statutes;"

Knox v. Railroad Co., 6 Jones N. C. 415, June 1859. The plaintiff hired Alfred "to the defendant for the year, 1855, . . agreed 'that Alfred was to work upon the railroad under the eye of a white overseer all the time . . John Rhodes' . . he divided the hands into several companies . . Alfred, and five others, were placed on the road in Davidson, as a waggoner, to haul sills . . and that no white overseer was with them . . [416] because they were the most trusty slaves on the road." "Rhodes went . . forty-five miles distant; . . Alfred . . received an injury on the head which killed him in some eight or ten days; that when Rhodes heard of the hurt . . he came immediately . . found him lying in a shantee with the appearance of having received a blow . . which fractured his skull; . . several days . . before medical aid was rendered him."

Held: [418] "it was in contemplation of the parties that the life of the slave would be more exposed . . without an overseer or with a black overseer, (who could not prevent fighting and other kinds of disorder) . . the plaintiff is entitled to recover the amount of his loss, unless the defendant can reduce it to nominal damages, by showing in mitigation, that the actual loss was a consequence so remote, as in no wise to be attributable to the absence of a white overseer." [Pearson, C. J.]

State v. Harris, 6 Jones N. C. 448, June 1859. "the defendant is a free negro, . . had a license from the County Court . . 'to keep about his person, and to carry on his own land a shot-gun.' . . the defendant, in company with certain white persons, went a hunting, and carried his gun off of his own land."

[1] Ch. 35, sect. 92.

Judgment for the defendant, reversed: [449] "The authority to grant the greater privilege,[1] must, we think, necessarily include the power to grant the less, provided the applicant be willing to accept it."

Morrison v. McNeill, 6 Jones N. C. 450, June 1859. "1854, purchased . . negro woman and three children at the price of $2,400,"

Lane v. Phillips, 6 Jones N. C. 455, June 1859. "The plaintiff agreed to serve the defendant as an overseer . . during . . 1856, . . for . . $250. . . in June . . he was discharged . . The cause . . was, that he . . directed several of the men slaves to go to the farm of a neighbor and assist him about his wheat. . . [456] the defendant . . ordered them back . . saying his crop was too much in the grass to allow it. The plaintiff commanded the slaves to go on . . and swore he would shoot them if they did not. The slaves did go on, and . . the defendant pursued and turned them back. After their return the plaintiff sent one or more of them to the neighbor, without the knowledge . . of the owner." Battle, J.: "This is the first instance of such an assumption of authority, which has, so far as we are aware, come before the courts,"

State v. Carroll, 6 Jones N. C. 458, June 1859. "The defendant was convicted of trading with a slave, and sentenced . . to 'one month's imprisonment,'"

State v. Fisher, 6 Jones N. C. 478, June 1859. [479] "that the prisoner ['a man of color'] had been duly married to the woman called his wife, and that they had lived the preceding year with the deceased; that the prisoner had been hired out for court-costs, and was living at the time with a near neighbor of the deceased; . . his wife . . was living with the deceased at his house," [478] "the day after the homicide . . [an officer] having arrested the prisoner, . . ironed him and took him to the body of the deceased, . . he was there accused of the murder, . . ['several persons present'] immediately took him a short distance off, and tied him up to a tree and told him they intended to whip him until he would agree to show them the gun . . [479] not . . to make him confess the murder; . . struck him five or six licks with a whip on his bare back, when he agreed . . and they went, under his direction, and found the gun. . . on the way . . the prisoner made a partial confession. . . the witness said to the prisoner he did not see how he could have the boldness to shoot a white man, . . he replied, because he had taken away his wife—that he had kept her for some time, and he had warned them, and did not regret what he had done. . . Johnson . . testified that on the day after the arrest, he was at the jail . . and called him [the prisoner] to the window. . . said, 'Dick, you have played hell now.' . . the prisoner replied, 'yes master Johnson, they have got me now, but I did'nt intend to kill Hassell; it was dark, and the shot went higher than I intended.' . . [480] Verdict, finding the prisoner guilty of murder."

Judgment thereon, affirmed: [482] "the second confession did not proceed from the same influence which . . cruelly extorted the first. . .

[1] Rev. Code, ch. 107, sect. 66.

[484] It has been further argued . . that the second confession ought to be excluded . . for the purpose of discountenancing, and thus putting an end to such gross violation of law as the officer and his party . . were guilty of, . . We think the purposes of justice will be best accomplished by having the officer indicted and punished for his unlawful and tyrannical abuse of his official power." [Battle, J.]

State v. Johnston, 6 Jones N. C. 485, June 1859. "The indictment charged the defendant with unlawfully buying one peck of corn of a slave"

Bond v. McBoyle, 7 Jones N. C. 1, June 1859. [2] "that he hired . . 1st of January, 1855, two negroes, . . that the plaintiff represented the negroes as sound and fit for labor at a steam-mill [saw-mill]; that about March, he returned one . . as being unfit for the business;"

Mercer v. Byrd, 4 Jones Eq. 358, June 1859. "that finding her unruly, and being unable to manage her, she [the life tenant] had been compelled to hire her out, . . that . . the negroes . . were there in her way, she feeding them there, and they doing but little good or none."

McKeil v. Cutlar, 4 Jones Eq. 381, June 1859. "Catharine Cutlar . . was the owner, for her life, of a slave . . Caswell, with a remainder over . . In 1851, a charge of homicide was preferred against the slave, and either at the instance of . . Catharine, or of the slave's own motion, or both, he eluded a caption, and was secreted. While thus concealed, she employed . . Caleb Cutlar, to assist her in selling him, so that he might not fall into the hands of the law. . . Caleb . . secured the services of . . Hodges, who effected a sale . . to . . a trader, at the price of $500, and she took the money. The sale was of the entire property in the slave, and the . . understanding was, that Caswell should be carried beyond the limits of the State, secretly,"

Held: the remainderman is entitled to a share of the money received.

Fairbairn v. Fisher, 4 Jones Eq. 390, June 1859. [392] "Daniel . . had been runaway for twelve months; that when the defendant [one of the executors] got possession of him, he thought it was the surest, and, probably, the only means of securing the value of him to the estate, to sell him; that the slave was turbulent, and regarded as dangerous in the community, and that the citizens of Newbern objected to his remaining there . . [393] that this slave was insolent towards him, and threatened that unless he was permitted to select his owner, he would runaway again;" [394] "imprisoned [the slave] for the purpose of selling," The residuary legatee [393] "took the negro out of jail, . . and that this defendant and [he] . . sold the slave to a trader at a fair price,"

Davis v. Hall, 4 Jones Eq. 403, June 1859. [404] "that the original slaves were a woman and two children, and that they have increased to the number of ten or more, and that their maintenance was troublesome and expensive,"

Woodfin v. Insurance Co., 6 Jones N. C. 558, August 1859. [559] "The policy . . insures the life of the slaves for five years, . . annual payment of $12,24"

Mullins v. McCandless, 4 Jones Eq. 425, August 1859. In 1857 two slaves were sold "to a trader, who carried them to the county of Rutherford;"

Elliott v. Posten, 4 Jones Eq. 433, August 1859. [434] "a negro child was born of . . Mahala, given by the will to Mrs. Posten, after the making of the will, and before the death of the testator, . . had been sold by the defendants, and has been bought in by themselves, . . at an undervalue,"

Held: [435] "The plaintiffs, as next of kin of the testator, have a right to treat the sale . . as a nullity, and to have it resold for the purposes of a partition among them." [Battle, J.]

Parker v. Parker, 4 Jones Eq. 439, August 1859. Will: "to an idiot son . . 'three negroes, Jack, Jim, and Till, and Till's increase . . that my [other] sons . . be constituted guardians'"

Douthett v. Bodenhamer, 4 Jones Eq. 444, August 1859. [445] "The bill . . charges, that the defendant [tenant for life] removed two of the slaves to Georgia and tried to sell them to persons, who were by agreement with him, to carry them to Texas, and that he secretly removed the rest of the . . slaves from South Carolina, and has endeavored to sell them in absolute right;"

Sawyer v. Dozier, 7 Jones N. C. 7, December 1859. [8] "All my perishable estate . . together with . . Isaac, and . . Jinny, I wish my executor to sell . . and purchase two or three negro boys"

Fessenden v. Jones, 7 Jones N. C. 14, December 1859. "The plaintiff, . . a physician, declared for medicines and medical services rendered to a slave,"

Hurdle v. Richardson, 7 Jones N. C. 16, December 1859. Bond: "Twelve months after date, we . . promise to pay . . Hurdle, . . ninety-five dollars, . . for the hire of a boy, Wesley, for . . 1858, and comply with the usual terms of clothing." [17] "Wesley, served the defendant until the middle of December, 1858, when he ran away, . . On the 24th of December, the slave was apprehended . . at the request of the defendant, and while the persons . . were taking him to Richardson, the plaintiff demanded him of the captors and took him . . On the same day, . . without the consent of the defendant, gave Wesley a permit, in writing, to pass and repass, and to procure work in the counties of Gates, Chowan and Perquimons, until the 1st of January ensuing."

Held: the plaintiff is entitled to recover the amount of the bond and interest.

State v. Long, 7 Jones N. C. 24, December 1859. [25] "Soles . . was at the house of the defendant . . about eight or nine o'clock [at night]; that he heard a noise like a tap on the door; that the defendant opened it, and he saw a negro . . but who it was, he did not know; . . the defendant went out, and shortly afterwards came back . . with a jug, that would hold a quart or more, which he filled with liquor, . . and carried it out; . . Beach . . son of . . the owner of Luke . . went to watch,

whether the defendant traded with the said slave; . . saw Luke go . . with a jug, . . [26] Verdict for the State." Judgment thereon, affirmed.

Lucas v. Nichols, 7 Jones N. C. 32, December 1859. [33] "Action of slander, . . The plaintiff was a single woman. . . that . . defendant said . . 'she had got a new sweet-heart, Wesley Dean's Pete; it used to be Ben Lucas and sometimes Jake Calicoat;' . . all . . slaves, . . witness testified, that . . after suit brought, he was asked by the defendant, whether he thought the plaintiff would injure him, and on receiving an equivocal reply, he said, 'he would do her some,' for he had been told she had two or three black children. . . [34] Verdict and judgment for the defendant." Affirmed.

State v. Davis, 7 Jones N. C. 52, December 1859. "Indictment for assault and battery, . . The defendant was a free negro, . . Hart [constable] . . had in his hands a notice directed to the defendant, for him to show cause why he should not work on the streets . . for not having paid his taxes.[1] . . [53] arrested the defendant, and attempted to tie him, when the latter struck him. . . Verdict and judgment for the State,"

Judgment reversed and *venire de novo*: [55] "Is not this gross oppression? . . What degree of cruelty might not the defendant reasonably apprehend after he should be entirely in the power of one who had set upon him in so . . lawless a manner? Was he to submit tamely? . . we think his Honor ought to have instructed the jury to find the defendant not guilty." [54] "in such a case, a resort to the natural right of self-protection is not inconsistent with that feeling of submission to white men which his lowly condition imposes, and public policy requires should be exacted." [Pearson, C. J.]

State v. Elick (*a slave*), 7 Jones N. C. 68, December 1859. "Indictment for an assault with intent to ravish, . . having gone by herself about a quarter of a mile, she heard some one . . a negro . . seized her . . she halloed . . until . . Mr. and Mrs. Hill, came to her relief; that when the fellow saw them coming, he . . ran off into the woods." He had previously told his intention to three witnesses. [69] "The character of the female was proved to be very good . . [70] Verdict, guilty."

Judgment thereon, affirmed: [71] "We . . find no reason why judgment of death should not be pronounced"

Musgrove v. Kornegay, 7 Jones N. C. 71, December 1859. "a writ of *habeas corpus*, . . Simon and Lucretia, colored children, were brought before his Honor upon the petition of [their father] . . and the defendant showed as the cause for detaining them, that the petitioner . . had executed a deed . . purporting to bind them to him as apprentices. . . Simon was over twelve . . at the time . . and assented . . and served the defendant three or four years, but did not sign the deed; . . Lucretia, was only three or four years of age at the time, and did not assent . . His Honor . . [72] ordered the infants . . to be redelivered to the defendant."

[1] Ordinance of Newbern: "Ordered that all free negroes, who have not paid their taxes, shall be made to work on the streets two days for . . every dollar of tax due . . and if he refuses . . upon due notice . . he shall pay a fine, . . [53] not exceeding $10."

Order below reversed: as Simon [76] "did not execute the deed, Kornegay acquired no property under it, . . the proper order is to discharge the infant [Simon] and permit him to go where he pleases. . . In respect to . . Lucretia, . . the proper order is to restore her to the custody of the father;"

Brown v. Brooks, 7 Jones N. C. 93, December 1859. [94] "Received from Jollie, Hanks and Holt three hundred dollars, in part payment for a negro man, . . Ned, which negro has runaway, and I hereby bind myself to deliver said negro by September Court . . or forfeit to the said firm . . fifty dollars." Ned, "at the time of the declaration, was still runaway,"

Jones v. Baird, 7 Jones N. C. 152, December 1859. [153] "In 1846, . . Baird sold William, . . of about the age of thirteen, a child of one of the female slaves conveyed by Mrs. Baird to her trustee, . . at . . $325, . . his full value. This slave was, during the same year, taken . . to . . Alabama, and sold there,"

H. B. White v. Cline, 7 Jones N. C. 174, December 1859. "1851, . . Elijah, and his then master, C. L. White, went together to . . [175] California, . . the slave, if faithful, was to get a certain amount for his services, . . after about four years service, the master . . paid over several hundred dollars to the slave, who, in the fall of 1854, voluntarily, and with leave of his master, returned to North Carolina, . . and surrendered himself in bondage to H. B. White, the agent of his master, . . handed over to . . H. B. White, the money so earned . . with the request that . . White would manage and take care of it for him; . . White thereupon loaned four hundred and ten dollars of [it] . . to the defendants, who executed . . the bond [[176] 'payable to the master's agent *for the use of the slave,*'] declared on; that afterwards . . H. B. White, under instructions from C. L. White, sold . . Elijah, and transferred the said bond . . to . . Lytaker, who brings this suit. . . The Court being of opinion with the defendants, that the bond is against public policy, and . . void, gave judgment accordingly, and plaintiff appealed."

Judgment reversed, and [178] "a judgment here for the plaintiff." [176] "As long as the master keeps the actual, as well as the legal control of the fund, it can no more endanger the public safety, than any other portion of his property. . . The fact, that the slave is nominally the owner of it, is of no public concern. . . [177] That he was in an eminent degree industrious and economical, is apparent from the large sum which he accumulated, . . The history of the transaction discloses, prominently, characteristics of the relation between master and slave, not unfrequently found upon well governed plantations—relations of mutual good will . . The duties . . belonging to the relation of master and slave . . are . . diverse. Among them, on the part of the master, is that of giving strength and moral health, and consequent permanence to the system itself, as a part of the foundation upon which rest our social affairs. . . [178] Among the incentives to a virtuous and diligent course of conduct, stands prom-

inent a system of rewards, which, we confidently think, may be developed to any desired extent, without violating either the express law, or general policy of the country." [Manly, J.]

Watson v. Davis, 7 Jones N. C. 178, December 1859. [179] "The account . . sets out 'dealings' by the plaintiff, as agent of the defendant, in carrying to the south and selling a number of slaves, to wit: charges for travelling expenses; for board of slaves; for clothes; for medical bills paid, . . with credits for the price of slaves sold;"

State v. Willis (*a slave*), 7 Jones N. C. 190, December 1859. "indictment for burglary, . . a cabin . . was entered on the night . . and . . several pieces of bacon, forcibly taken from her. The entry was effected by . . going down the chimney . . [which] was in a ruinous condition. . . Verdict, . . guilty." Judgment thereon, affirmed.

Darden v. Cowper, 7 Jones N. C. 210, December 1859. [211] "declared his purpose to be to wear it [the land] out, and then remove his slave to the south-west."

State v. Oscar (*a slave*), 7 Jones N. C. 305, December 1859. "indictment . . for an assault upon a white woman, with an intent to commit a rape," "one of his fellow-servants, . . Harry, . . gave evidence tending to criminate another man, and to exculpate him. . . made some statements, which . . induced the solicitor to say that he should contend that the witness was an accomplice . . [306] The counsel for the prisoner then called his master, who testified that . . Harry, and the prisoner had shortly before had a fight, . . The solicitor then called a witness . . permitted . . to state that he saw Harry and prisoner conversing together the next morning . . apparently friendly, . . his Honor said to the jury, . . [307] 'To exclude . . rational doubt [as to the assault and as to the identity of the prisoner with the perpetrator], the evidence should be such as that men of fair ordinary capacity would act upon in matters of high importance to themselves." [305] "The prisoner was found guilty, and appealed"

Judgment reversed, and a *venire de novo*: the charge to the jury was erroneous.

Harrell v. Davenport, 5 Jones Eq. 4, December 1859. "William D. Davenport was shot and killed by two of his slaves, Ganza and Aaron, . . February, 1858. . . tried and convicted . . and afterwards executed. Another slave, George, . . was acquitted. In the will of . . Davenport, George is given to the children of William H. Davenport, Ganza to . . [5] Harrell, . . executor and plaintiff . . and to his wife, and Aaron to the children of Samuel W. Davenport. On the arraignment of these slaves, the family of the testator, and the public, were greatly incensed against them, and no counsel having been secured for them, his Honor . . ordered . . Harrell, to have them defended in the best manner, and to pay the amount necessary . . out of the estate . . considerable sums were paid out . . After the acquittal of George, he was delivered by the executor to the children of W. H. Davenport, and sold by them, and the money

divided among them. The widow of . . W. D. Davenport dissented from his will, . . the apparent value of each of these slaves was $1.200, at the testator's death."

Battle, J.: [7] "The widow . . claims that, in ascertaining the share of the personal estate to which she is entitled, she has the right to have . . Ganza and Aaron . . valued as if they had not committed any felony, . . This claim is ungracious and unfounded. Those slaves were . . of no value; just as if they had had the small-pox . . at the death of the testator, and had died thereof, soon after. . . [8] the necessary costs and expenses of . . defense [of Ganza and Aaron], must be borne by the general assets of the estate. The case of George is different; . . the legatees to whom he was bequeathed, . . took him *cum onere*, . . The bequests of . . Ganza and Aaron, were specific, and . . the loss . . by hanging, must fall on the persons to whom . . given, just as if the slaves had died a natural death."

Gossett v. Weatherly, 5 Jones Eq. 46, December 1859. "under articles, entered into in 1847, the testator Isaac, and the defendant, Joseph ['the only son'], . . with . . Close, entered into a copartnership in the business of buying and selling slaves, . . carried on until 1850, when the last . . withdrew, . . [47] The business was thence carried on extensively by . . Joseph A. Weatherly, till the death of Isaac Weatherly, . . March, 1858," The plaintiffs, the female children of Isaac and their husbands, "call for a discovery of . . profits, and a full account . . claim, also, . . as falling into the residuary fund, a negro girl named Margaret, attempted to be emancipated . . and a tract of land given to her. The facts . . In 1844, Isaac Weatherly . . [48] delivered to the defendant the following instrument: . . 'Georgia, . . Received of Jos. A. Weatherly five hundred dollars, . . for . . Lizza, . . aged twenty years, and Margaret, her daughter, a mulatto girl, aged four years, and Bill, her son, a mulatto boy, aged two years, both to be free at . . eighteen and twenty,' . . By the 4th clause of his will, . . Margaret, is simply given to the defendant. . . By a codicil, . . 1857, . . 'I will . . my yellow girl, Margaret, at the discretion of my executors to be emancipated, and give her . . two hundred dollars. . . the balance [of the tract], I will to . . Margaret, . . and desire my executor to see that she gets the benefit of the said land.' . . [49] The answer of the defendant states . . that the nett profits of his business, since 1850, is about $25,000; . . [50] The commissioner . . refused to charge the defendant with the value of . . Margaret,"

Held: [53] "the defendant must be charged with the value of this slave, which will fall into the residuary fund." [52] "If the testator had stopped after directing . . Margaret, to be emancipated, and giving her two hundred dollars, we should have been slow to come to the conclusion, that his intention was to tear asunder all of the past associations . . and to have her sent *alone* . . and turned loose among strangers in a foreign land, with an allowance of $200. But all doubt is removed . . [53] If she was to be sent out of the State, why give her a tract of land? He

had an abundance of cash means, and money was what she would need, provided it was intended . . that she was to leave the State." [Pearson, C. J.]

Meadows v. Moore, 5 Jones Eq. 54, December 1859. Moore's will: "that my negroes select for their masters whomsoever they wish to be their owners. . . I will and bequeath to each of my [eight] negroes, . . fifty dollars each."

Held: [56] "The legacies . . to each of eight slaves, do not pass from the estate, (for the want of competent persons to take) but remain integral parts thereof,"

Futrill v. Futrill, 5 Jones Eq. 61, December 1859. [62] "took charge of the slaves, Lawson and Moses, who were mechanics, and kept them employed at wages,"

Feimster v. Tucker, 5 Jones Eq. 69, December 1859. Will of William Feimster: [70] "My negro man Lindsey and his wife, . . and their two youngest children, Lindsey Walton and Louisa, at the death, marriage, or removal of my wife out of the county of Iredell, . . be freed by my executors, under the especial care of my son, Abner. I now . . bequeath to my servant, Lindsey, one half of my smith tools, my rifle gun and shot bag, subject . . to the use of my wife as long as they live together," His widow "had lately died, and . . there were several slaves descended from . . Louisa, . . Lindsey and his wife . . are over fifty years old, . . faithful, obedient and trustworthy, and rendered meritorious services, both to the testator and his late widow;"

Held: the provision as to Abner's care and the bequest of the tools, gun and shot bag, [72] "slight as they may be, show that the testator had no idea that Lindsey was to be carried out of the State, . . very certain that the testator did not intend to have his wife and children separated from him; . . [73] the trust for the emancipation . . can [not] be carried into effect under . . sections [46 and 47, of chapter 107] of the Revised Code, . . but, as . . Lindsey and his wife . . are above . . fifty years, they may be emancipated by virtue of the 49th section . . if the executor can prove meritorious services, and will, otherwise, comply with the requirements of that section. . . [74] the [other] slaves in controversy . . belong to the next of kin" [Battle, J.]

Paschall v. Hale, 5 Jones Eq. 108, December 1859. $753 was paid in 1853 for a negro man.

Harrison v. Everett, 5 Jones Eq. 163, December 1859. Will of Everett, who died in 1858: "I desire that my negroes shall have the privilege of selecting their masters, their value to be ascertained by two disinterested men, one selected by the master they may choose, and one by my executors."

Held: "It is settled in this State that such a humane provision . . is not against the policy of our law,[1] . . [164] The only argument against it, is that the slave is incapacitated by his condition, . . and that it has

[1] Washington *v.* Blount, p. 169, *supra*; Delap *v.* Delap, p. 197, *supra.*

been so held in a sister State.[1] . . We have very recently held directly the contrary;[2] and are unable now to perceive any reason for changing that opinion." [Battle, J.]

Kearney v. Harrell, 5 Jones Eq. 199, December 1859. [200] "the hire of slaves that had worked at the college building [' a female academy ' in Murfreesboro],"

Gums v. Capehart, 5 Jones Eq. 242, December 1859. In 1852 a life tenant sold four slaves to Capehart, " who kept them for a short time, and . . then sold them to . . Nelson, a negro-trader, from a distant county of this State, . . he executed the following . . ' Received of . . Nelson and Co., eleven hundred and twenty-five dollars, . . [243] for . . four negro slaves, which money I . . agree to refund, should they be prevented from proceeding to Virginia, with said slaves, on condition they are returned to me, unless they should be taken from . . Nelson and Co., by process of law—the above obligation to be void in . . ten days, or more, if they cannot sell them in so short a time.' . . Nelson proceeded unmolested to Richmond . . and there sold the slaves to a gentleman in Tennessee, and they have not been since heard of. . . Nelson . . say [*sic*], that Capehart sold him the full estate in said negroes."

Held: [244] " Capehart sold . . for the purpose of defrauding " the remaindermen. [245] " The decree will require . . Capehart, to pay . . $1125, . . with interest from 1854," the date of the expiration of the life tenancy.

Poston v. Gillespie, 5 Jones Eq. 258, December 1859. [259] " It turned out that the property . . had proved insufficient to pay the debts . . and one of the slaves bequeathed specifically to his wife and child, would have to be sold . . A negro man bequeathed to her infant son, had no wife, and it was agreed between Mrs. Gillespie and her father, that he should be taken, instead of falling on one of the two in which she had a life-estate, who had wives in the neighborhood,"

Branch v. Branch, 5 Jones Eq. 268, December 1859. Branch's will, made in Tennessee: [269] " I . . request my executors . . to sell all . . with the exception of my negroes and five trunks . . I desire that such of my negroes, as may be necessary to wait on and attend to my children, go with them to North Carolina. I greatly desire that my negroes shall be humanely treated, and should prefer, if it can be done, that they be hired out, privately, to humane persons, even at a less price, and, if possible, in families together."

Latham v. Bowen, 7 Jones N. C. 337, June 1860. [338] " 1859, . . a deed of marriage settlement, conveying all her estate, which consisted of slaves,"

Grandy v. McPherson, 7 Jones N. C. 347, June 1860. [348] " McCoy testified that the slave . . staid in a cabin on his land, . . [the consta-

[1] Bailey *v.* Poindexter, 14 Grattan 132 (vol. I. of this series, pp. 243-244); Williamson *v.* Coalter, 14 Grattan 394 (*ibid.*, pp. 246-247).

[2] Redding *v.* Findley, p. 223, *supra*.

ble] came to him [in January] . . in his field, . . told him he had levied execution on the . . woman; that she was too far gone in pregnancy to remove her then, and engaged him to take care of her until he could remove her, which he did in March, still previously to the birth of the child"

Newby v. Jackson, 7 Jones N. C. 351, June 1860. "action of trespass *vi et armis,* . . about . . 2 o'clock, A. M., the defendant shot a person near the shelter of . . Leigh, . . whom he supposed to be a certain runaway slave, named Tony; that he first hailed the person shot, and commanded him to stop, which he refused to do; . . so dark as to make it impossible to distinguish . . that about 4 o'clock . . the overseer of the plaintiff was aroused, and found the boy, Jeff, (the slave in question) badly shot . . died in a few days" "The plaintiff's counsel . . asked the witness, whether he had heard of any other person's being shot in the neighborhood, and at that time; . . ruled out. . . [352] Verdict for the defendant."

Judgment thereon reversed and a *venire de novo*: [354] "the evidence ought not to have been rejected on the ground of its being hearsay"

Wright v. Howe, 7 Jones N. C. 412, June 1860. "The maker of the will was an aged person of color, . . that she looked to Mr. Wright, the sole legatee, for counsel as a lawyer, and for protection, habitually, and, occasionally, for small sums of money . . also, that he had the collection of moneys due her for rents. . . her husband's wish was, that she should give her property in that way, and that she had got the whole property from her husband," The will was upheld.

Jones v. Norfleet, 7 Jones N. C. 473, June 1860. In 1858 Lloyd [475] "built . . a rude cabin for an aged slave, whom he had in charge, to which was attached quite a small garden, which was used by this slave." In 1860 he made a will, devising [474] "to Mary Ann Jones, a free colored woman, . . the lot of ground and the house thereon erected . . on which she now lives."

State v. Daniel Worth,[1] 7 Jones N. C. 488, June 1860. "The defendant was indicted under the 16th section of the 34th chapter of the Revised Code, for the publication and circulation of a book, . . 'The Impending Crisis of the South, by Hinton Rowan Helper[2] of North Carolina.' . . The second count . . charged that the defendant sold and delivered a copy . . to . . Bowman. The extracts compare the existence of slavery to the introduction of small-pox into a community, putting strychnine into a public well, and the turning loose of mad dogs . . and that it was the imperative duty and the determined purpose of the author and his associates to *abate the nuisance* and *exterminate the evil,* even at the cost of blood, . . asserted that slavery leads to murder, . . that 'slave owners are more criminal than common murderers;' that masters

[1] For details of the trial, see Bassett's *Anti-Slavery Leaders of North Carolina* (Johns Hopkins *Studies,* ser. XVI., no. 6), pp. 24-27.

[2] *Ibid.,* pp. 11-24, 27-29.

of slaves are worse than thieves, and with many inflamatory epithets . . a purpose is declared to effect the abolition of slavery; and unless the owners will consent to do this voluntarily, and to give each slave sixty dollars, it is threatened . . [489] to be effected by the abolitionists of the north with the assistance of the slaves, who, it says, 'in nine cases out of ten, would be delighted with an opportunity to cut their masters' throats.' . . the defendant had sold . . copies, in bound volumes, to other persons . . Verdict for the State."

Judgment thereon, affirmed: [492] "it was not necessary . . that the sale should be to a slave or a free negro, nor . . read in the presence of either. . . The Legislature seems to have assumed, that if a circulation, within the State, was once established, that its corrupting influence would inevitably reach the blacks. The enemies to our peace act upon this assumption, . . the inevitable tendency . . would be to make blacks discontented. . . [493] the expressed object of the book . . is to render the social condition of the South odious, . . to place slave holders and their slaves in . . hostile array, and thus, by force, to bring about an extinction of slavery." [Manly, J.]

Swann v. Swann, 5 Jones Eq. 297, June 1860. Will: [298] "I desire . . that my plantation and . . my negroes, Robert, a cooper, and Hannah, shall be sold . . and the proceeds applied, first, to the payment of my debts. . . that . . my executor shall invest $400, in the purchase of a maid-servant for my daughter,"

Rogers v. Brickhouse, 5 Jones Eq. 301, June 1860. Will, dated 1852: [302] "I . . bequeath to my grandaughter [*sic*], Ann Cahoon, a negro girl, named Hasty, and her increase." "At the time of the making of the will, Hasty had one child, about 18 months old, which was not named in the will, and has had no other . . Ann . . claims this child . . the others insist that it must be sold"

Held: [304] "The late case of Williamson *v.* Williamson,[1] . . shows, beyond all doubt, that . . Ann . . does not take the child"

Reeves v. Long, 5 Jones Eq. 355, June 1860. Will of Baldwin, who died in 1859: "It is my will that my negro man, Jesse, to [*sic*] choose his own master, that will pay to my executors five hundred dollars, in nine months after my decease, and direct them to make title" "The testator left a large amount of personal property, more than sufficient to meet his liabilities, without recourse to the slave . . the slave selected . . Reeves . . Reeves . . tendered . . a bond, with sufficient sureties, . . The defendants [executors] refused to make title or deliver the slave."

Held: [357] "the direction by the testator . . is not against public policy." [356] "The price fixed is not so grossly inadequate for a man, between forty-five and fifty, as to vitiate this licence." So to hold "would be to exclude from the system of slavery every indulgence . . or at least, so to hedge it about . . as to make it stiff and harsh, and thus impart to it an aspect it does not now possess." [Manly, J.]

[1] P. *224, supra.*

Myers v. Williams, 5 Jones Eq. 362, June 1860. Will of the Hon. Lewis Williams, dated 1841: "In regard to my negroes . . all of them who are above 25 years of age, shall be left to my brother, N. L. Williams, in trust, for the use of his children, . . but he . . is not to be accountable . . for the proceeds of the labor . . [363] until the . . children are 21 years of age; my object being, that . . [he] should use the proceeds . . to enable him the better to educate his children, as well as to support the . . negroes. . . it is my will . . that all of my negroes, who are under 25 years of age now, should, when they arrive at 25 . . be emancipated and sent to Liberia, . . provided, they should choose to be . . their choice . . is to be ascertained by a private examination by three justices of the peace, . . If the said negroes should not choose to be emancipated . . they shall be held in trust . . as . . the negroes . . above 25 . . my reason for making the distinction . . is, that those over 25 years would not, perhaps, better their condition in life, and they might be too sickly if sent to Africa, while those under 25 . . might be less sickly, and might make out better in Africa. . . The issue . . of [all] . . are all to be emancipated and sent to Liberia, if they choose . . after they shall arrive at 25 . . If the laws of the State prohibit emancipation, . . then all . . must go to the children of my brother," Codicil, of the same date: [364] "If any of the negroes choose to go to Liberia, . . they are to be hired out for one year, to raise the money" A bill was filed by a daughter of N. L. Williams and by her husband, [362] "against N. L. Williams, . . executor . . and against his other children, and against the Solicitor of the 6th Judicial Circuit of the State, as the legal representative of . . [the] negroes proposed to be emancipated"

Battle, J.: [365] "we regret that we have not been favored with an argument from the public officer who was made a party . . for the purpose of protecting the rights . . of the slaves. . . [366] The objections to . . the emancipation . . are mainly of three kinds. *First*, because it is against the policy of our law, to establish a nursery of young negroes with a view to their being emancipated at a certain age, if they should so desire. *Secondly*, because . . the will created a perpetuity, . . *Thirdly*, because, with regard to most, if not all the slaves embraced . . the will cannot be carried out . . without great difficulty, and without doing violence to the humane wishes . . expressed . . [367] the true principle of our law, in relation to . . emancipation . . is, that it *permits*, but does not *favor* it, . . [368] The very fact, that the same person who is to have the services of the slaves, until they arrive at the age when they may choose their freedom, . . will have a strong tendency to induce him to relax the reins of a necessary discipline, with a hope of influencing their choice of bondage for the benefit of his children. . . operating injuriously, not only to the favored slaves . . but, by . . bad example to his other slaves and to those of his neighbors. In our opinion, the policy of allowing the prospective emancipation of slaves, is carried far enough already, and . . we do not feel disposed to go further, . . [369] Besides . . there will be an insuperable difficulty, in every instance of a

female, to prevent her making a choice of freedom. In nine cases out of ten, a female of that age will have one or more very young children, which, if she elected emancipation, she would have to leave, . . In most cases, too, her hire for one year . . would be insufficient [for the expense of transportation] . . the executor must hold these slaves upon the alternative trust, indicated by the testator." Decree accordingly.

Lea v. Brown, 5 Jones Eq. 379, June 1860. Deposition of Dr. Roane: [380] " 1855, . . during the last illness of Mr. Nathaniel Lea, I was at his house on a professional visit, and he remarked that his servant, Milly,[1] had . . accumulated [some money] by selling, for years, with his permission, surplus articles . . such as fowls, butter, ice-cream, etc., and by manufacturing and selling . . bed-clothing, which he wished me to take charge of and loan out—seeing that she had the benefit . . I [finally] consented . . In reply to the question by her master, . . Milly stated that she had already several hundred dollars in the hands of Mr. . . Johnson, and that she had been collecting some other debts amounting in all to eleven or twelve hundred dollars. The money . . was carried by her (I presume) to . . Johnson, a merchant . . who shortly thereafter handed me his individual note, payable to myself, for twelve hundred dollars " A bill was filed [379] " by the residuary legatees against the executor of the will of . . Lea, for an account . . [380] commissioner . . reported, an exception was taken [by the executor] to a charge of $1560 [the principal and accumulated interest of the note],"

Exception allowed: [381] " This is not a debt due to the testator, and the executor had no means of collecting it, either at Law or in Equity. . . This Court has . . treated it as commendable, to adopt a system of rewards, by which a slave is allowed a half, or a whole day, every time ' the crop is gone over,' to work a patch of cotton, corn or watermellons [*sic*] and the like, and to sell the proceeds, so as to make a little money . . to buy small amounts of luxuries—sugar, coffee, tobacco, etc., and to indulge a fancy for ' finery in dress,' for which the African race is remarkable; but when it comes to an accumulation of $1500, the question is a very different one, . . [382] The privileges allowed a slave, . . to enable him to acquire that amount of money, extra, must, necessarily, in some degree, run counter to the policy of the statutes by which slaves are not . . allowed to hire or to have the use of their own time. . . calculated to make other slaves dissatisfied, . . not calculated to promote good morals, and should the evil become one of common occurrence, may call for some legislative enactment." [Pearson, C. J.]

Love v. Brindle, 7 Jones N. C. 560, August 1860. " action of debt on a note without seal, . . taken from defendant by a slave belonging to the plaintiff, but for the profit . . of the slave; that this slave had been permitted by his master to own and control a jackass, which he carried to Macon county, and there sold to the defendant, who gave the negro a horse and the note . . [561] Verdict and judgment for the defendant,"

Affirmed: " It is against the policy of our law for a master to permit his slave to own a jackass, horse, or other animal of the like kind, . .

[1] See same *v.* same, p. 204, *supra.*

tempted to . . steal, . . to procure the means of supporting his animal, and the allowance to him . . of the time . . necessary to purchase, manage and sell the beast, will have a tendency to make other slaves dissatisfied . . and thereby excite . . a spirit of insubordination. . . [562] The case of White *v.* Cline,[1] . . is not opposed . . because the money, which White lent to Cline, was earned in California," [Battle, J.]

Doggett v. Moseley, 7 Jones N. C. 587, August 1860. Will, 1829: " reserving the first child, . . Jinny may have for . . the son of my son . . when he arrives at mature age."

Foster v. Mills, 7 Jones N. C. 606, August 1860. " The brother of the defendant [607] " was selling slaves in the south-west in 1852; that he went to Columbus, Mississippi, and there met the defendant with some fifteen slaves, and finding them badly clad, he bought, and with his own means paid for clothing for them to the amount of eighty dollars; . . took charge of the slaves for sale, and sold them—some for cash and some on a credit, . . expenditures . . were all necessary to the business of making a favorable sale of the slaves,"

Henderson v. Crouse, 7 Jones N. C. 623, August 1860. "evidence of the acts and declarations of the slave before, at, and after the sale, which . . tended to show that he had chronic rheumatism at that time." Admissible.

Sleight v. Watson, 8 Jones N. C. 10, December 1860. [11] " On the first day of January, 1857, we promise to pay . . four hundred and ninety-five dollars . . hire of [three] negro men, . . for the year 1856, and . . to furnish said negroes with the usual clothing."

State v. Peter (*a slave*), 8 Jones N. C. 19, December 1860. " Indictment for a rape, . . about daylight . . the prisoner came to her [N. C.'s] room . . that she told no one of it until about two weeks afterwards, . . [20] that Peter had a wife at Mrs. Howard's; that she did not like him nor his wife, because they were saucy to her; that four or five days after the offence was committed, Peter came to the house where she [N. C.] and her father and brother were, and sitting down familiary [*sic*] in the piazza, had a conversation with her father and brother; that she did not tell her father, because she was afraid and ashamed to do so; . . Burroughs stated, that he arrested the prisoner . . 6th of June, and tied him in his kitchen; that he overheard a conversation between the prisoner and a negro woman, . . the latter said . . ' what did you do it for? did you not know it would carry you to the gallows? . . the prisoner replied, ' I am sorry for it.' . . The counsel for the defendant, insisted that the witness [N. C.], . . was not to be believed; . . [21] Verdict, guilty." Judgment thereon, affirmed: [22] " the word ' person ' in chapter 34, section 5,[2] does embrace a slave."

State v. Clara (*a slave*), 8 Jones N. C. 25, December 1860. Clara " was indicted with her son Jim, . . as an accessory before the fact, for

[1] P. 232, *supra.*
[2] Revised Code.

killing their master, . . and they were put on trial together. Jim was convicted, and as to [Clara] . . a slave, . . Sarah . . [testified] that on the Sunday . . before the murder, (which was on Wednesday night,) the prisoner who . . usually cooked for [the deceased] . . looked into a side-board drawer for bullets, but did not find any; she then told the witness, that if she would get some bullets, or . . some caps and lead for some person, she would be well paid . . that witness asked . . what she wanted with these things . . she answered, 'never mind; no harm.' . . night of the same day, Jim . . asked her for the caps, and asked her if his mother did not tell her to get the caps and lead for him. The witness replied, that Clara did not call any names. . . told Jim there were no caps . . Jim said, 'hush your lies, for he saw some in Mass. Roberts room, on the mantle-piece.' That witness . . gave them to Jerry . . to give to Jim. . . Monday night . . she gave Jim a piece of lead. . . Tuesday morning . . the prisoner asked . . if she had given the things to Jim; . . returned answer that she had. . . [26] Monday . . before the murder, . . Clara, said . . that 'she felt sorry for her master—that he was going to die soon, and asked witness if she did not hear the hen crow . . every morning when he came out.' The witness said she had not heard it. . . after the murder . . the prisoner said . . if Jim did kill his master, or had it done, it was no harm; for it was life for life; and she had often heard that when it was life for life, it was no harm. That Jim was her child, and she would not speak against him. . . the deceased died of gun shot-wounds; . . was found with a [bloody] bag drawn over his head; . . [27] Verdict, guilty." Judgment thereon, affirmed.

Davis v. Golston, 8 Jones N. C. 28, December 1860. "On or before 1st of January, 1856, we [partners] . . promise to pay . . five hundred and forty-five dollars, for the hire of . . [four] negroes, . . for the present year [1855]; and . . to clothe them and furnish them with shoes, hats, and four blankets, and pay doctors' bills."

Morrison v. McNeill, 8 Jones N. C. 45, December 1860. [46] "Nancy and her children . . 1854 . . carried . . to . . South Carolina, . . the following winter or Spring . . sold . . in . . Mississippi."

Drake v. Bains, 8 Jones N. C. 122, December 1860. "he heard Drake tell the defendant, on the day of the sale [1856], that he would take Jack at $900, and his wife and children at $1,900; . . defendant assented. . . Drake then turned to the slave, . . and said, 'get your things, your wife, etc., and go to my house;'"

State v. Sam (a slave), 8 Jones N. C. 150, December 1860. "The prisoner was indicted and put on trial with Noah and Perry, for the murder of one George Askew, by burning the house in which he was asleep. There was a count charging the death to have been produced from a stick. . . Ruffin gave testimony as to the confessions of Sam. . . was asked by the prisoner's counsel, 'if he had not taken up and whipped other negroes in the neighborhood.' . . objected to . . The Court asked . . 'the purpose of the question.' Defendant's counsel answered, 'to show that he has been very active about the matter.' The Court rejoined, 'if

he has, it is nothing to his discredit.' The testimony was ruled out, . . excepted. . . [151] A *nolle prosequi* was entered as to Noah. Perry was acquitted, and a verdict of guilty as to Sam, who, upon judgment . . against him, appealed."

Judgment reversed, and a *venire de novo*: [153] "although he may be guilty, his guilt has not been proved according to law." [152] "we . . understand his Honor . . to have used the word ['discredit'] in the sense of not being censurable, . . if he had . . whipped other negroes . . touching the crime then under investigation. . . such remarks should not come from the bench, because they are apt to betray feeling. . . When a witness has become so much excited, by reason of a horrible crime . . as to be induced 'to take up and whip negroes,' for the purpose of ferreting out the offenders, his excited state . . would have a tendency to make his testimony less reliable, . . the evidence . . ought to have been received," [Pearson, C. J.]

McDowell v. Bowles, 8 Jones N. C. 184, December 1860. "an action . . for slander, . . The plaintiff declared that he was a clear blooded white man, and a regular licensed minister of the Baptist Church; that the defendant said . . at . . election, where plaintiff came forward to vote, that he (plaintiff) had no right to vote; that he (plaintiff) was a free negro, and said, 'if you let free negroes vote, here, let Zach. Warden (who is a free negro) vote also.' . . no special damage laid or proved."

Held: "the words . . were not actionable."

Odom v. Bryan, 8 Jones N. C. 211, December 1860. "hire of . . Dave, from November 5th, 1857, to January 1st, 1859. . . $100, on January 1st, 1858, and $187.50, on January 1st, 1859."

State v. Norman, 8 Jones N. C. 220, December 1860. "an indictment for assault and battery, . . committed on the body of . . Richard Fisher, a free man of color, . . special verdict: . . 'Fisher had before that time been convicted of larceny, . . and by the Court was ordered to be sold for the fine imposed, to cover the costs, and was so sold for five years to . . [221] Peacock. Before the expiration . . Fisher was taken up on the charge of killing . . Hussell, . . found dead in his yard, and the defendant gave him five licks to make him show where the gun was, with which he killed Hussell. Peacock was present when Fisher was whipped, and gave his consent to it, and said it ought to be done.' . . his Honor was of opinion that the defendant was not guilty, and so adjudged;"

Judgment reversed, and judgment entered for the state: "Fisher . . stood . . in the relation of apprentice to Peacock.[1] . . No free person, of whatsoer [*sic*] color, can, according to law, be thus coerced. . . the master cannot whip for an unlawful purpose." "his assent, therefore, cannot legalise it. . . [221] every blow is an unlawful battery." [Manly, J.]

Lane v. Washington, 8 Jones N. C. 248, December 1860. [249] "prior to the heavy snow storm of January, 1857, . . the agent of the plaintiff . . hired . . [four] slaves to the defendants, . . partners in a contract

[1] Rev. Code, ch. 107, sect. 75.

for making the Atlantic Rail Road, at . . eighty cents per day; . . not to be carried below Bear creek, . . next day, Burdick [one of the partners] told him that he wished to take the . . slaves below Bear creek, into the edge of Dover swamp, . . that he (witness) told him that if they were well taken care of, he would as soon they should work there as any where; that Burdick replied that they should be well taken care of, as defendants had good accommodations there for a hundred hands; that he (witness) replied that on those terms they might go; . . gone some eight or ten days, when Wright, George and Jack came home frost bitten; that Wright died of phneumonia [*sic*], about ten days thereafter, and the other two were laid up about two months; . . never saw Abram after the hiring, but learned that he died in Kinston; that this was about the 29th of January, 1857, a short time after the heavy snow storm . . during the week succeeding the return of the slaves, . . he examined the shanties erected by the defendants for . . the hands; . . one at the Heritage place, where the overseer stayed, . . [250] a square pen, made of pine poles, with large cracks, through which one might thrust his double fists, . . no shutter to the door; that the top . . would not shed water; . . no chimney and no floor, no bed clothing and no cooking utensils, and that the fire was made in the middle of the house. . . another [similarly built, but with] . . loose planks laid down for flooring; that along the centre . . logs were placed . . and earth . . between them as a place for building fires; . . no chimney, but . . an aperture, three feet wide, at the top of the roof, . . this shanty had a door to which there was a shutter. . . other shanties . . made of cross ties . . placed on top of one another, to the height of some six feet, on three sides, . . one . . side entirely open, . . nothing like as good as are ordinarily used on works of the kind, and were nothing like as good as an ordinary horse stable. . . an overseer . . told him that if he had been well, the slaves . . would have been better attended to, ' that it was a bad chance there any how; ' . . [251] Dr. C. F. Dewey . . was called to see the boys . . that they were frost bitten—George badly—Wright not so badly, and Jack slightly; that Wright died in about two weeks, of typhoid pneumonia, and that he complained of having suffered from excessive cold for two weeks. . . that the other two would be more liable to be frost bitten after this. Wright had no cold that he could see, at his first visit. . . Loftin testified . . [252]that he had four negroes . . who stayed at these shanties, and that two . . were frost bitten, . . that these shanties did not deserve the name."

Held: [255] " the lodging of the plaintiff's slaves in any of the shanties, . . was not the taking such care of them as a man of ordinary prudence would take of his own slaves . . much less, was it the taking good care of them and furnishing them with good accommodations." [Battle, J.]

Cates v. Whitfield, 8 Jones N. C. 266, December 1860. [267] " An action of detinue had been begun . . before the judgment . . Eliza, was delivered of . . Henry,"

Held: [268] " the issue must be regarded as incidents . . and . . must follow their principal."

Howell v. Troutman, 8 Jones N. C. 304, December 1860. Will of Jacob Troutman, a [306] "very illiterate" man: [304] "I . . bequeath to Ann Allmond [my white housekeeper] two hundred and fifty dollars, provided . . Ann shall live with my [childless] wife, . . All the ballance [*sic*] of my estate . . including my gold mine . . I . . bequeath to Lucy, the infant child of . . Ann . . and if . . Lucy should die without . . child, . . all . . shall be divided between" my nephews and nieces. [305] "Ann . . had lived in his house from 1849 to 1858, in the fall of which year he died. One of the subscribing witnesses testified that Lucy . . died ['about three years old'] during the life of . . Troutman; that, in his opinion, she was a mulatto; . . that . . Troutman told him that the child was his, . . and accounted for the color from a fright which Ann . . had received while *enciente*; . . [another] of the subscribing witnesses, swore that he had no doubt the child was a half-blood mulatto; that he judged from its color; . . that . . Troutman believed the child was his, said he knew it was, and that he intended to make a lady of it. Dr. J. P. Cunningham . . was called . . to visit the child . . found her in his arms; that he called her 'daddy's baby,' and that the child was unquestionably a negro. Dr. . . [306] Wilson . . testified that the child was in his opinion a mulatto, and that . . Troutman had once remarked . . that he loved the child . . as if it was his own, that Anne [*sic*] had . . picked it up somewhere."

Held: [308] "our law imposes no prohibition upon a man to prevent him from bestowing his property upon the object of his affection."

Alston v. Lea, 6 Jones Eq. 27, December 1860. Will: "for the purpose of paying . . debts, I wish negro fellow, Cudge, negro boy, Mack, and negro girl, Milly, to be sold,"

Brown v. Haynes, 6 Jones Eq. 49, December 1860. [52] "the commissioner has charged for Jesse's [1] services at one hundred and fifty dollars per annum for five years," beginning about 1851.

Biddle v. Carraway, 6 Jones Eq. 95, December 1860. Will, 1858: [96] "should my perishable property be insufficient to pay my debts, I wish the following negroes to be sold . . Rosetta [and five male slaves], . . and also, the children . . Rosetta may hereafter have;"

Riggs v. Swann, 6 Jones Eq. 118, December 1860. In 1850 "it was agreed . . [119] [to] convey . . Joe, . . absolutely, at the price of six hundred and fifty dollars, . . to have the use of Abram at . . $125 a year,"

Johnson v. Malcolm, 6 Jones Eq. 120, December 1860. [121] "1853 . . bought . . a negro woman slave and two small children, at $775,"

Mason v. Sadler, 6 Jones Eq. 148, December 1860. [149] "Clarisa [*sic*], was sold [before 1847] . . for the payment of debts, and Mrs. Mason [widow of the testator] became the purchaser at four hundred dollars; . . It took all that could be made by the hire of Charles and

[1] [50] "old Jesse, the tanner,"

Betsy Ann to support the family [poorly] . . As to Clarisa, she soon had a family of small children, and added to the expense of the family."

Scales v. Scales, 6 Jones Eq. 163, December 1860. Will: [164] "the negroes . . loaned to my wife, during her life, after her death, be sold,"

Collins v. Creecy, 8 Jones N. C. 333, June 1861. "no one was permitted to cut trees there save her own hands,"

Poole v. Railroad Co., 8 Jones N. C. 340, June 1861. "Guilford [the slave of the plaintiff] . . was a deaf mute, and was walking on the railroad track with his back to a . . train, . . approaching him. The engineer . . could have stopped the train when he first saw the slave, but . . took it for granted that he would hear . . and get out of the way; . . finding he did not . . he gave the signal to put on the brakes, . . and . . gave the alarm whistle . . the negro was struck [and killed]. . . [341] The engineer had no knowledge of the slave's deafness. Guilford was a blacksmith, and was worth $1000."

Held: the plaintiff cannot recover.

State v. Peter, Jess, and Miles (*slaves*), 8 Jones N. C. 346, June 1861. "The slaves . . were committed to the jail . . by justices of the peace, under a criminal charge, which was not bailable. . . remained . . until . . January, 1861, when a court of Oyer and Terminer was held . . the grand jury, . . after a careful examination, reported 'that they found nothing against them,' . . discharged at the expense of their owner, excluding the jail fees,"

Held: [347] "the judgment . . should have been for the costs including the jail-fees." [1]

State v. Lauglin (*a slave*), 8 Jones N. C. 354, June 1861. "The indictment charged that the defendant 'feloniously . . did set fire to . . a . . barn then having corn in the same.' The proof was that the prisoner maliciously . . did set fire to a stable . . and that a crib with corn and peas in it, . . was partially consumed, . . Verdict, 'guilty.' . . Sentence was pronounced,"

Judgment reversed, and a *venire de novo*: [2] [356] "a barn and a crib are houses of a different kind,"

Haden v. Railroad Co., 8 Jones N. C. 362, June 1861. "Action . . for negligence . . [363] The plaintiff hired to the defendant a healthy able bodied slave for . . 1858, . . to work as a section hand . . on Sunday . . had been permitted to go on a train to see his master. On the Wednesday morning he reported himself to the section-master, . . as too unwell to work, . . was directed to go to the shanties . . In the evening, the section-master . . found him sitting up. He complained of pain . . The master gave him a teaspoon full of laudanum, and put a mustard plaster to his head. On next morning, the slave was in bed, where he remained all day. He expressed an anxiety to go home, and . . next morning was permitted . . went on the train . . forty miles . . taking

[1] Rev. Code, ch. 87, sect. 6; *ibid.*, ch. 107, sect. 69.
[2] Same *v.* same, p. 248, *infra.*

. . a note from the section-master to the station agent . . directing him to send word to the owner . . to come for him. . . The station agent first saw the slave after his arrival, . . scarcely able to stand. He was coughing and spitting blood, . . The station agent had him assisted to a shanty, . . went to see him, and had some coffee made for him; . . About 11 o'clock . . sent a messenger to plaintiff's mother, . . about three miles off, . . About sunset, a servant came with a buggy and took the boy . . Doctor Shemwell was sent for early that night, . . case of fully developed typhoid fever, . . hardly a hope . . [364] Doctor Whitehead . . came . . thought the case well nigh hopeless, but he did all he could for him. . . The slave died that night. Doctor Payne testified that . . on Friday morning before he started . . a man of ordinary intelligence would not have been able to discover that he had typhoid fever, though a physician would. . . The jury found that the disease was materially aggravated, and the danger increased by the ride. They assessed damages to $800. . . Judgment for the plaintiff,"

Judgment reversed, and a *venire de novo*: no want of due care in sending him on the train, or [365] " in the cool of the afternoon, . . to the house of the plaintiff's mother, where he was sure to have the kindness and care of a woman's ministrations."

Yarborough v. Yarborough, 6 Jones Eq. 209, June 1861. " The plaintiff having a claim upon . . slaves, . . in the possession of Thomas E. Yarborough, . . went to . . Arkansas, and was about to bring them back to this State, which . . was disagreeable to the family of . . Thomas, and particularly to his wife, . . who was attached to the slaves " Therefore, others were substituted.

Norfleet v. Slade, 6 Jones Eq. 217, June 1861. The testator bequeathed to his aunt (to whom the Roanoke plantation was devised) " all my negroes on my Roanoke plantation [in Martin County]; also, all my negroes on my Edgecombe farms, which I got from Martin county,"

Held: [220] " The bequest embraces . . [221] the offspring of slaves removed from Martin to Edgecombe, but born in the latter county. While the testator is making provision to restore the slaves to their original places of residence, and to their family connexions, it would be an inconsistent and harsh construction to hold that he intended to separate infant children from their mothers." [Manly, J.]

Lynch v. Bitting, 6 Jones Eq. 238, June 1861. " The plaintiff and defendant had been partners in the business of buying and selling slaves from . . 1847 to 1855, during which time, large profits were realised . . amounting in the latter years . . to as much as twelve thousand dollars."

Gregory v. Richards, 8 Jones N. C. 412, August 1861. Action of slander. [411] " plaintiff . . said that he had got a negro . . to put up his horse, and that when it was brought out by the negro, this bridle [belonging to the defendant] was on it; . . [412] the defendant replied, ' you or the negro stole the bridle, and I don't know which is the worse, you or the negro.' . . [413] Verdict for the plaintiff for $900." Judgment thereon, affirmed.

Pritchard v. Oldham, 8 Jones N. C. 439, June 1862. [440] " the slave was . . cried off to one Jolly at . . $1282. . . Jolly and . . Hanks were partners in merchandising and trading generally, and now and then purchased a negro or two on speculation, sending the negroes out of the State for sale."

State v. Laughlin (*a slave*), 8 Jones N. C. 455, June 1862. See same *v.* same, p. 246, *supra.* [457] " upon the new trial, . . a special verdict was rendered, in which the building was . . minutely described, and it was submitted to the Court to decide whether it was a barn . . within the meaning of the statute." The court held [456] " that it is not clearly within the purview of the act. . . adjudged that the prisoner be released: " Affirmed.

Bennett v. Merritt, 6 Jones Eq. 263, June 1862. [265] " Dilsey was an unmanageable slave and had lately runaway, and that her mistress was displeased with her, and wished her sold." " took her to Richmond and sold her "

Gillis v. Harris, 6 Jones Eq. 267, June 1862. Will, dated 1842: [268] " that my daughter, Sarah Gillis, . . have three small negroes more," In 1845 the testator conveyed to her, by bill of sale, Lizzie and her three children. [267] " Lizzie . . had been accused, and taken before a magistrate for burning a tobacco barn, and the charge was compromised by the master's consenting to send the woman out of the State. She was first sent a short distance into Virginia, and then she and her three children were put into the hands of . . one of the children of Sarah [Gillis], with the bill of sale, and carried to . . Georgia, where the family resided." The testator died in 1847. [267] " the proofs go to fix . . actual execution [of the will] . . 1847,"

Held: [271] " the legacy was not adeemed by the gift,"

Clark v. Bell, 6 Jones Eq. 272, June 1862. Will of Elijah Bell: " after the death of my sister . . I direct . . that . . negro girl, Louisa, be set free." "An enquiry has been made under the direction of the Court below, . . the woman is unwilling to accept of freedom upon the condition of leaving the State. This enquiry has been conducted with such apparent care, that the Court is satisfied with the result. . . [273] The children of . . Louisa, were born after the death of the testator."

Held: " The election of the mother . . determines the *status* of her offspring. . . Her election . . made the bequest void from the beginning, . . they pass to the residuary legatee." [Manly, J.]

Bevis v. Landis, 6 Jones Eq. 312, June 1862. " purchased Anderson at private sale, . . 1857, . . $1,000."

In the matter of Huie, 1 Winston[1] 165, May 1863. " *Habeas Corpus.* . . Huie is twenty-nine years of age; . . since the death of his father, in 1857, the overseer of his mother, . . more than twenty negroes. . . no white person lives on the place except herself, and a daughter about 19

[1] " Vol. 1, Winston's Law Reports, (containing last no. of Jones and 1st Winston.)"

years of age. Huie . . lives . . adjoining; has a wife and two small children; no other white person on the place. . . his own negroes, (some thirteen or fourteen) . . [He] managed the negroes well; kept them in good order, and made good crops. . . afflicted with bronchitis, . . 11th October, 1862, reported at the Camp of Instruction . . 'excused until 1st day of May, 1863.' . . Huie's name was put on the roll at that date [October 11, 1862], and [he] returned home and remained there until his arrest."

Held: [168] "what is called an enrollment . . October, 1862, . . void . . the petitioner . . is entitled to exemption."[1] [Pearson, C. J.]

Bailey v. Moore, 1 Winston 86, June 1863. "Hinton, was then runaway, and he was cried off to a bidder, on the condition, that if the purchaser did not get him, he was to pay no money. The slave not coming in, this sale was . . rescinded . . Afterwards, . . 1854 [1855], Nelson [the owner] executed . . the following instrument: 'Received of . . Moore his negro man, Cager, in place of my boy, Hinton, to which I warrant the . . title . . but do not warrant the delivery of . . Hinton, as he is now in the woods or runaway; therefore, . . Moore takes . . Hinton as he runs.' . . Cager . . continued to work for [Nelson] . . until his death . . 1855. After this trade, Hinton was captured and went into Moore's possession."

Mordecai v. Boylan, 6 Jones Eq. 365, June 1863. William Boylan [366] "left a large estate . . situate in both" North Carolina and Mississippi. By his will, dated 1858, he gave his daughter land in Mississippi and [368] "many slaves," and provided for the emancipation of [367] "David Matthews, his wife, and daughter, Adelaide." The testator died after the passage of the act of 1860.[2]

Held: the act forbids such emancipation. "The act declares, that no slaves shall hereafter be emancipated by will, deed, or any other writing, which is not to take effect in the life-time of the owner. . . [368] we can see no reason why it may not operate upon a will made before its passage, where the testator dies afterwards, as well as one made subsequent to the time of the enactment. . . they shall go to the next of kin," [Battle, J.]

State v. Duckworth, 1 Winston 243, June 1864. Indictment:[3] "The jurors . . present that . . Duckworth . . being the owner of a . . slave, named Peggy, . . did permit . . [244] Peggy to keep house to herself as a free person," Peggy's owner, Smyth, "moved . . several years ago; that she was reputed since . . to be the property of the defendant; . . that . . Smyth . . conveyed the house and lot in which the slave lived, to the defendant, and gave him a note for fifty dollars in consideration that he would take the slave and her husband, both old negroes, and take care of them the rest of their lives; that for a year

[1] Exemption act of May 1, 1863, amending the exemption act of Congress (C. S.), of Oct. 11, 1862.

[2] Acts of 1860, 1st sess., ch. 37.

[3] Rev. Code, ch. 107, sect. 29.

or two . . the defendant did furnish them with wood, provisions, etc., but for several years past, he has done nothing for the woman, the man being dead, and she has had to support herself . . by begging and what little work she could do. And that the defendant has not of late exercised any control over her, . . The Court charged . . that . . the contract between Smyth and the defendant . . amounted to a sale, . . Verdict for the State and judgment accordingly." Affirmed.

State v. McDaniel, 1 Winston 249, June 1864. [250] "The jurors . . present that . . McDaniel, being a free negro, . . the dwelling house . . did break and enter with intent . . a white female . . [251] against her will to ravish" The prisoner [249] " went to the back door and broke it open, entered the house, struck her violently with a water bucket, . . A child of her sister . . struck at the prisoner . . As the child went off [for help], the prisoner got off . . and left the house. . . One witness testified that the prisoner was between sixteen and seventeen . . Another, that he was between eighteen and nineteen. . . [250] The counsel for the prisoner requested the Court to instruct the jury, that . . if he afterwards desisted on account of the resistance . . or through fear or any other cause, that the prisoner was not guilty. The court declined . . The counsel for the prisoner excepted. . . moved, in arrest of judgment, . . overruled and judgment entered according to the verdict." Affirmed.

State v. Black, 1 Winston 266, June 1864. "The defendant was indicted for an assault on . . his wife. . . lived separate . . [267] He accused her of connection with a negro man and she called him a hog thief,"

Johnson v. Murchison, 1 Winston 292, June 1864. [294] "three . . notes dated . . June, 1852, 1853, 1854, for $150 each . . to secure the payment of the hire of a negro man"

State v. Sam (*a slave*), 1 Winston 300, June 1864. "The jury found . . specially 'that the prisoner made an assault on ['a female child'] . . of the age of four years . . and that the prisoner was under 14 years of age; . . that there was an emission' . . The Court gave judgment for the prisoner,"

Judgment affirmed: [301] "The presumption . . that the person under 14 cannot commit an assault with intent to commit a rape . . [302] [is] irrebuttable. . . A large portion of our population is of races from more Southern latitudes than that from which our common law comes. We have indeed an element of great importance from the torrid zone of Africa. . . climate, food, clothing and the like, have a great influence in hastening physical development. Whether it may not be advisable to move down to an earlier age than 14, the period of puberty, for a portion, if not for all the elements of our population, may be a proper inquiry for the Statesman." [Manly, J.]

State v. Norton, 1 Winston 303, June 1864. "an indictment for murder, . . The Solicitor for the State proposed to examine . . a witness, but it was objected by the prisoner, that he was of negro blood within the prohibited degree, which being proved, the Solicitor replied that the

prisoner was also of negro blood, . . a witness . . knew the father and grandmother . . and they were reputed to be of negro blood; that the grandmother . . was very dark, . . he should suppose . . at least one-fourth of negro blood; that he . . was not an expert . . Mrs. Huckaby testified that she knew the grandmother, . . that she was reputed to be a mulatto, was very dark . . [304] Two witnesses . . knew the father of the prisoner; that he was reputed to be a white man and was allowed to vote; the mother of the prisoner was a white woman from Scotland. . . the Court held that the witness was competent. . . The jury found the prisoner guilty."

Judgment thereon reversed and a *venire de novo*: [305] "when . . a collateral question arises, . . and . . the testimony is not clear, . . and there is conflicting testimony . . it is necessary for the Judge to state his conclusions as to the facts." He has not done so.

Patton v. Patton, Winst. Eq. 20, June 1864. Will, 1861: [21] "if . . my executors should think it necessary to sell one or more of the slaves directed to be sold, even before said rail road contracts ['in Tennessee and North Carolina'] are completed, for bad conduct or other cause, they are at liberty to do so."

Conly v. Kincade, Winst. Eq. 44, June 1864. Will, 1836: "to his wife a negro girl . . Adeline, . . and at her death, Adeline and her offspring together with Alfred and the plantation . . to be sold for the most that can be got for them at public sale"

White v. Mallett, 2 Winston 34, December 1864. "that the petitioner was the owner and manager of more than 15 able-bodied slaves, and that he had all the other qualifications required by the act of Congress of 17th Feb., 1864. . . that on the 20th April, 1864, the petitioner had applied for a detail as a farmer working ten hands, and that his application had not been acted on by the Department of War, when he was ordered to camp in November." "The writ of *habeas corpus* was applied for . . and issued the 22d November, 1864."

Held: [34] "Assuming that the petitioner was . . entitled to exemption as the owner or manager of fifteen hands, . . he is too late in now making an application on that ground." [Pearson, C. J.]

Casey v. Robards, 2 Winston 38, December 1864. "James Casey . . presented his petition to Reade, J., . . 17th . . Sept., 1864, setting forth that he was a free negro, and that in . . 1859, for a valuable consideration, he conveyed by deed his services for ninety-nine years, to . . Love, . . that . . 10th of Sept., 1864, he was taken by Lieutenant L. S. Robards, the enrolling officer . . into his custody as a conscript free negro,[1] . . The prayer was for a writ of *habeas corpus*; the writ issued, . . return admitted the facts . . [39] judgment rendered against the petitioner,"

Affirmed: I. [40] "the deed for service . . does not alter the social or political condition of the negro. . . [II.] [43] the law is constitu-

[1] Act of Congress (C. S.) of Feb. 17, 1864, ch. 79, sect. 1.

tional [even considering it the case of a white man] . . and eminently proper. . . When it became necessary . . to conscribe or impress negroes for military duty, it was a requirement of social order that they should be brought in in such a way as not to violate the distinctions of race. It would not have been proper, and according to usage, to mix them with the whites in such way as to compel social equality. . . [44] little room in an army for the enjoyment of civil rights." [Manly, J.]

State v. Dick (a slave), 2 Winston 45, December 1864. "The prisoner was indicted for arson in burning a barn with grain in it. . . Edson testified that the confessions were made after Kerr had represented to the prisoner, that it would be for his advantage to confess . . the Court . . adjudged that they were freely made . . and then remarked . . that after the other evidence . . the solicitor, might withdraw this, if he chose . . The solicitor declined . . [46] The jury found the prisoner guilty, and from the judgment, according to the verdict, the prisoner appealed." *Venire de novo* awarded.

State v. Honeycutt, 2 Winston 51, December 1864. "the slave, in the night time, carried a bag of corn near to the defendant's house, and threw two stones on the roof of the house, and the defendant came out . . and received the corn. The master . . suspecting . . followed the slave, and was near . . and saw . . When the corn was delivered to the defendant, he handed something to the slave, but the witness did not know what. The defendant did not know of the master's presence." Verdict of guilty.[1] Judgment thereon, affirmed.

State v. Brown, 2 Winston 54, December 1864. "an indictment . . for permitting his slave to go at large as a free person, and for permitting him to keep house . . exercising his own discretion in the employment of his time.[2] . . that the defendant was the owner of the slave, . . 65 or 70 years old: that she lived on a lot in . . Charlotte, two hundred yards from where the defendant lived, who was frequently on the lot . . having a tan yard on the lot, . . that she kept a boarding house for soldiers and other white persons, and was frequently seen in the market and in the stores, buying supplies . . that when the defendant was remonstrated with, by a policeman . . he said that she was old and unable to work, and was of little value to him while he had her, and that he permitted her to work her own way. . . [55] The jury found the defendant guilty," Judgment thereon, affirmed.

State v. Ellick (a slave), 2 Winston 56, December 1864. Indictment for murder. [64] "The prisoner and Micajah [another slave], in a starlight night . . had a fight. Micajah got the prisoner down, and then ran off. The prisoner . . had his hand to his side, as if . . holding something . . set down on the door sill, on which the deceased [another slave] was sitting. Words passed . . the prisoner got up—the deceased then rose up and reached his hand inside the door and got a stick. As

[1] Rev. Code, ch. 34, sect. 85.
[2] *Ibid.*, ch. 107, sect. 29.

he was turning round . . the prisoner stabbed him . . with a bowie knife, . . The deceased then knocked him down with the stick; . . a second and third time; prisoner ran off, the deceased followed him a few steps, and fell, and died of the wound." Verdict, guilty. Judgment thereon, affirmed.

State v. Jake, 2 Winston 80, December 1864. "an indictment for burglary, . . that the smoke house had been broken and entered in the night by the prisoner, and that some bacon had been stolen" [82] "The [tobacco] factory and the smoke house had a common inclosure, from which the log dwelling was excluded." Verdict, guilty.

Judgment thereon, reversed: [83] "The smoke house was doubtless used for the purpose of storing meat and other things for the use of all persons, white and black, who were engaged in the tobacco factory. . . the proprietors . . placed it . . [where] it would not enjoy that protection which the law affords against a burglarious entry." [Battle, J.]

Harris v. Hearne, 2 Winston 92, December 1864. Will: to his "daughter, . . four slaves, . . if [she] . . shall die childless, . . it is my desire that my . . son . . shall remove back to this country [from Tennessee], and to have them, but not to take them to any other part of the country."

Miller v. London, Winst. Eq. 81, December 1864. Will of Dr. Frederick J. Hill, who died in 1861: "I . . direct that my executrix . . purchase . . one hundred acres . . to be paid for out of my estate. And I . . devise . . said one hundred acres to my [four] worthy friends, . . I also give . . unto my said friends, . . my faithful and trusty servant, Charles, and his wife, Louisa, and his son, Jim; and . . direct that my executrix . . pay over to my said friends . . five hundred dollars, to be laid out . . in stocking said farm . . and that Charles and . . Louisa, and . . Jim, live on said farm and cultivate it."

Held: [83] "The bequest . . was manifestly for their *quasi* emancipation, without being carried from the State, and is, therefore, void . . [84] The act of 1860, ch. 39, which prohibits the emancipation of slaves by will, need not be invoked . . as the result will be the same without it." [Battle, J.]

Wilson v. Stafford, Winst. Eq. 103, December 1864. Will, 1862: "that . . my negroes . . either be hired out or worked on the plantations as thought best; but if either of them should become insolent, or unmanageable, then to be sold"

Ferrell v. Boykin, Phil. N. C. 9, June 1866. "at November Term, 1857, the County Court of Nash county bound a base-born free negro child as an apprentice to the plaintiff. The child had been born in Nash county, . . and had lived there . . until December, 1856, when he removed with his mother to the county of Wilson . . In June, 1857, soon after his mother's death, the child had been bound by his mother's husband, . . his reputed father, to . . Boykin."

Held: [10] "His residence in Wilson county, being for less than a year, . . his original settlement remained. . . it is the duty of the court

to bind out all free base-born colored children, whether they are paupers or not! At least such was the law at the time of this transaction." [Reade, J.]

State v. Thomas Brodnax (*a freedman*), Phil. N. C. 41, June 1866. Special verdict: "the prisoner . . in January, 1865, was the property of Dr. E. T. Brodnax, . . and the deceased was the overseer . . that late in the evening of the 2d day of January, after the day's work was done, and the negroes had returned to their houses, the prisoner, his sister, a grown woman, and some small children . . began to dance and sing," "in the plat of ground . . between the negro-houses and the overseer's house . . about thirty feet [away]; . . and made a considerable noise; that the deceased . . ordered them to cease . . all immediately ceased, except the prisoner, . . [42] that the deceased then said . . 'Tom, you are no better than the young ones, and you must stop your noise too;' that the prisoner replied, 'You will not let me go to master's house to play, and will not let me play here, and I don't know where to play;' that the deceased said . . 'If you say that again, I will mash your mouth;' that the prisoner repeated these words, and was . . dancing . . going backwards towards the negro-houses; that the deceased walked towards him with a stick in his hand, and struck him twice upon the head . . that the prisoner wrenched the stick out of the hand . . struck him one blow . . and fled; that the deceased . . died within a few minutes, his skull being fractured . . that the deceased was an elderly man, and the prisoner a man just grown, . . used his utmost strength; that the ['heavy hickory'] stick . . was about three inches thick at the larger end, . . and three feet in length; . . a deadly weapon, . . His Honor, considering that the facts . . constituted a case of manslaughter, gave judgment accordingly."

No error: [44] "the prisoner must be held accountable according to the principles applicable to his status, when the alleged crime was committed, . . [46] we . . have come to a conclusion with no little hesitation. The conclusion is, that the prisoner acted under a well grounded fear that his life was about to be taken, . . In support of this judgment, . . the case of State *v.* Will[1] . . is a full and direct authority." [Battle, J.]

State v. Lawson (*a freedman*), Phil. N. C. 47, June 1866. "Lawson, then a slave, and George, a free man of color, were indicted . . 1864 . . for a burglary, . . the second day after . . several persons came together at the house of the prosecutor, to aid him in detecting the perpetrators . . Information indicated George and Lawson . . [48] George was brought first and tied . . and soon afterwards Lawson . . They found [him] at work, and he denied all knowledge . . and denounced . . any one that would rob such a man as old Mr. Petre. He walked with the party to the house . . [was not tied] and was not more than fifteen yards distant from where George was confined," "The party endeavored by threats and severe whipping, to extort from George a discovery of the

[1] P. 70, *supra*.

stolen property. During a pause . . Lawson said: If you will not whip me, . . I will show you the property. . . Nether [*sic*] threats nor promises had been made to him. . . at a distance of about four hundred yards . . he showed them the stolen property, . . stated voluntarily, that he and George had broken open the window . . that George kept nothing but one bale of cotton-yarn, and he, Lawson, undertook to conceal the remainder . . until he could sell it for their joint benefit. The evidence of the remarks . . was admitted" [47] "The prisoner was convicted, and . . judgment was pronounced"

Error; *venire de novo*: [49] "Everything that the prisoner said and did, after he had witnessed the torture inflicted upon George, was 'with the fear of the lash before his eyes.'! The party had assembled . . to find out the truth by means of the lash, forgetful of the rule,—'The end does not justify the means.'" [Pearson, C. J.]

Bunting v. Harris, Phil. Eq. 11, June 1866. "the widow sold [some of the slaves] to pay . . debts" of the testator, who died in 1847.

Beard v. Hudson, Phil. N. C. 180, January 1867. "The [colored] apprentice was shown to have been bound to the master . . 1859; in May, 1865, he had run away, and was then living in an idle and disreputable manner, with his mother."

Held: the county court has the power to order the sheriff to "commit the apprentice to the custody of his master."

Woodfin v. Sluder, Phil. N. C. 200, January 1867. "The bond . . was for $2,000, dated 2d January, 1865, with condition reciting the hire of two slaves until the 25th of December, 1865, for . . 'two hundred dollars,' . . the slaves remained in the service of the defendant until the Federal troops reached Ashville, about the 25th day of April, 1865, when they went off with, or under the influence of those troops;" [202] "it was proclaimed at the hiring . . that such money would be taken as would pay the debts of the estate; . . special reference . . to a debt due the bank, which could be paid in its own notes, . . worth twenty-five cents in the dollar."

Held: "The emancipation of slaves during the year was their artificial death as slaves, . . the defendant is liable for the hire during the whole of the year. . . [204] the true value of the contract was . . $50 in coin." [Reade, J.]

State v. Tisdale, Phil. N. C. 220, January 1867. "Indictment ['found . . 1863'] . . charging the defendant with unlawfully trading with a slave, larceny, and receiving stolen goods, knowing they were stolen, . . [221] a set of buggy harness. . . verdict of 'Guilty' upon the first and third counts, . . Judgment,"

Affirmed: [222] "The former of these two is bad, because the article . . is not one of those the trading for which was prohibited[1] . . the judgment is such an one as the court had a right to render on the latter count,"

[1] Rev. Code, ch. 84, sect. 85.

State v. Penland, Phil. N. C. 222, January 1867. "The prisoner, a person of color, was indicted with two others for the murder of 'one John Wilson, a person of color,' . . [223] committed in March, 1865, . . the deceased was the slave of . . Edney, who had purchased him of . . Wilson. . . Verdict of guilty . . judgment of death,"

Error; *venire de novo*: [224] "the fact that the deceased was a slave is not set out in the indictment, . . the prisoner is entitled to the tenderness of the law in favor of life," [Pearson, C. J.]

Rogers v. Hinton, Phil. Eq. 101, January 1867. Will, 1859, "directed a [female] negro, named 'Happy,' to be sold, and the money . . 'to be applied to the payment of my debts and funeral expenses, my debts being very small, . . [102] and out of the surplus'—she gave some legacies."

Colson v. Martin, Phil. Eq. 125, January 1867. "The widow . . had allowed the defendants . . to take with them to Texas two of the slaves,"

Falls v. McCulloch, Phil. Eq. 140, January 1867. "Bill . . praying for . . a construction of . . a will, filed . . 1865; . . 'The negroes to be sold at my wife's death'"

Peter Chambers v. Davis, Phil. Eq. 152, January 1867. Will of Maxwell Chambers, who died in 1855: "I feel desirous to make ample provision for my poor old friendless woman Lucy, as well as my old man Peter; therefore rely on the humanity and tender feelings of my executors to have them well taken care of, and kindly treated, during the short time they will probably want it. I leave in the hands of my executors the annual interest as it becomes due on $1,500 of my . . bonds, or so much of it as may be necessary, . . to support them during their lives, the surplus, if any, including the principal . . to go to the trustees of Davidson College," "Bill . . filed to Fall Term, 1866," The complainant is Peter, the former slave.

Held: [153] "the clause . . [is] imperative, and that the plaintiff is entitled to whatever sum may be found necessary as an annual support during life." [Battle, J.]

Haley v. Haley, Phil. Eq. 180, January 1867. Will of Holiday Haley, dated 1857: [181] "My will . . is to set free the following slaves, . . and to [them] . . I hereby give . . freedom forever. . . I give . . to the . . liberated slaves half of the tract . . I now live on, to them and to their heirs forever, including the buildings. . . [and] the sum of seven hundred dollars annually for ten years," The testator died in June 1864.

Pearson, C. J.: [I.] [183] "If allowed to make a guess I should say this old man never heard of the act of 1861.[1] But . . take for granted . . notice of it. . . also . . that he had notice of President Lincoln's Proclamation of the 1st of January, 1863, and of the fact that the condition of slavery had become an issue in the war [[186] 'tendered and

[1] Acts of 1860, 1st sess., ch. 37.

accepted']; so that if the United States succeeded in suppressing the rebellion every one expected the slaves to be liberated. . . died, leaving his will unaltered . . as if he had said . . 'should these slaves be liberated by the result of the war, or in any other manner, . . I do . . make provision for their support.' . . [184] emancipation was the substance, and the manner of it . . not . . [II.] [185] at the . . death of the testator, . . the State government was wrongful, and formed a part of the government of the Confederate States. The legacies . . were against the policy of the Confederate States, and of the wrongful State government, but was [*sic*] in accordance with the policy of the . . United States and of the rightful government of the State . . then suspended by usurpation, . . the whole condition of things is now changed. . . the courts, which make a part of this rightful government, cannot refuse to give effect to legacies which are not opposed to the policy of the United States or to its policy as a part thereof, . . [III.] [186] whether . . [emancipation] was by the proclamation . . 1863, or by the surrender and general military order of May, 1865 and the action of the owners . . in accordance therewith, or to [*sic*] the ordinance of 1865, is immaterial," Reade, J., concurred; Battle, J., dissented. [191] "Decree for the complainants."

Wood v. Sawyer, Phil. N. C. 251, June 1867. Will of James C. Johnston, dated April 1863: [255] "that my negroes may be taken care of, and that my Real and Personal Estate may not be divided and scattered to the four winds of Heaven, and, perhaps, brought under the hammer of the auctioneer or sheriff for a division, I have placed them in the hands of . . [256] men of . . honor . . energy to carry out my wishes . . contained in my private letters to them." The letters were dated April 1863, [257] "making dispositions as regards favorite slaves," [278] "The estate . . was one of the largest in the State." Will upheld.

Banks v. Shannonhouse, Phil. N. C. 284, June 1867. [285] "a large part of [the advancement] . . consisted of slaves, the title to which the deceased had warranted to her forever, . . these had been taken from her by the act of the government, (emancipation,)"

Held: [287] "The slaves constituted an advancement as of their value at the time they went into the possession of Mrs. Shannonhouse, and their 'political death' afterwards is the same in legal effect as if they had died a natural death." [Pearson, C. J.]

State v. Taylor, Phil. N. C. 508, January 1868. [509] "Lydia Taylor was offered as a witness for the State. . . some eight or ten years before, she and the prisoner . . while slaves, had lived together as husband and wife. John Taylor was then sold, and did not again live with Lydia until December 1865, when he took her to his home . . She requested him to marry her, but he refused"

Held: [512] "She was in law nothing more than his concubine, and . . a competent witness against him."

March v. Phelps, Phil. N. C. 560, January 1868. "in February 1860 the plaintiffs ['negro-traders'] bought a slave from the defendant, and

took a bill of sale . . Received . . two thousand dollars for a negro boy named Allen, twenty-six years old, . . warranted sound in mind and in body and the title is good: . . [561] He was in fact 34 or 35 years old . . The plaintiffs . . lived near the defendant, . . and had as good an opportunity to know the age . . as the defendant had. The plaintiff Hampton . . had for five or six years prior . . been sheriff"

Held: [562] "that instrument does *not* contain a warranty as to the age"

Chandler v. Holland, Phil. N. C. 598, January 1868. "Trover for forty-one bushels of corn, . . the plaintiff . . in 1864 . . had hired to . . Jenkins a female slave for the year 1865, and was to receive . . one fourth part of the corn made by Jenkins. The woman remained . . up to the time of getting the crop in the Fall of 1865. At that time the plaintiff claimed the corn . . not only because of the contract, but because during 1865 he had supported two children of the woman . . too young to support themselves. There was also evidence . . that Jenkins measured out one-fourth . . and placed it in a crib on the premises, and delivered it to the plaintiff, and that the defendants hauled off about one half . . Evidence for the defendants . . that they had bought the corn of the negro woman, who claimed that she . . was entitled to it; also that Jenkins did not deliver the corn to the plaintiff, but placed it in the crib that he and the woman might settle . . [599] between themselves. Two military orders were also offered,"

Held: [600] "she had no claim upon that one-fourth part . . allotted to the plaintiff."

Whedbee v. Shannonhouse, Phil. Eq. 283, January 1868. James P. Whedbee's will, proved 1853: [284] "his wife . . should have the use of all his estate during her natural life or widowhood, . . at her marriage or death . . 'one-seventh to be expended together with the several funds that may be raised by my wife as directed . . in items fourth and fifth, in fitting out and removing and settling all of my negroes except Demas, Jonah and old man Jack (whom I shall provide for hereafter) to Liberia or some other free foreign colony, as it is my wish that they shall be liberated and sent there. . . And should any of the bequest be left after fitting out . . with all necessary clothing and implements of husbandry . . and expenses of removing . . the balance . . to be divided among them having due regard to merit, old age and infirmity, . . when they reach their place of destination, and . . if any of them (which it is reasonable to suppose) should not be capable of receiving and managing their fund in a . . [285] safe manner, . . to appoint them a guardian who will be certain to do them justice. And I especially desire the American Colonization Society to have an eye to this bequest so that my negroes may in no wise be defrauded' . . a codicil, revoking a legacy of one . . seventh . . to James Shannonhouse, and adding it to the share . . given to the negroes. . . that the testator died without children, and that his widow dissented . . married again and had her share . . (including slaves) allotted to her; that . . executor . . sold those parts of the estate . . designated . . for sale (amounting to $98,000); that

the breaking out of the late war had interrupted his plans for sending away the slaves that had been liberated, and that the results of that war, together with the death, disappearance, etc., of the slaves had greatly embarrassed him . . that the residuary legatees claimed that as no removal . . was necessary now, they were entitled to the money"

Held: [I.] [287] "One of the results of the war was to effect the emancipation . . without the cost of transportation to . . free countries, . . this collateral advantage caused by what, as between these parties, was a mere accident, should be a 'wind fall,' or piece of good luck to the freedmen; . . nothing . . to show that the application of a part of the fund to . . [288] transportation was to be of 'the essence of the gift,' . . at the time, . . no other mode of emancipation except by removal . . no ground for an implication that the testator desired [removal] . . as a general rule, testators have submitted to this requirement unwillingly, . . [289] it is an absolute bequest . . [II.] [290] It is [contended] . . that in regard to that portion of the fund which would have fallen to those . . slaves . . who were assigned to [the widow] . . the legacy fails, . . a complete answer . . is, that the legacy is given to the slaves *as a class*, . . entitled to the whole fund. . . as between the freedmen. The pleadings do not raise any matter of controversy . . and we are relieved from the necessity of deciding, . . [291] but it may not be amiss to say, it is a settled principle in equity that where two or more are liable to a common burden, and the whole falls upon one, he is entitled to contribution from the others;" [Pearson, C. J.]

Gully v. Holloway, 63 N. C. 84, June 1868. [85] "the personalty belonging to the estate, in consequence of the emancipation of the slaves was insufficient to pay the debts,"

Tayloe v. Johnson, 63 N. C. 381, June 1868. Will of Lee, who died in the early part of 1861: "I desire that my plantation called Green Pond shall be kept up by my executors, retaining my slaves there, and to carry on . . [382] my farm just as if I were living, to hire out my surplus negroes, or to purchase other lands to work them on, to sell such refractory and disobedient negroes as they may deem most advantageous for my estate, and purchase others in their place if necessary," [384] "The . . estate was a large one, and consisted of about one-fourth real, and three-fourths personal property; the greater portion of the personal property being slaves."

Jacobs v. Smallwood, 63 N. C. 112, January 1869. [124] "In 1866 the ordinance of emancipation took away from liability to the execution of creditors the whole slave property of their debtors, amounting probably to more than half the value of the whole property of the State." [Rodman, J.]

Buie v. Henry Parker, 63 N. C. 131, January 1869. [132] "Complaint for the recovery of a mule, . . the defendant, formerly the slave of . . McEachin . . was in 1857 . . given by verbal gift to his daughter, the wife of the plaintiff, . . the day before Sherman entered Fayetteville (13th of March 1865) the plaintiff, who had aided the Confederate

cause, as he was leaving home for safety told his slaves that they could go to 'the Yankees,' or stay at home, as they pleased. The defendant stayed . . for some months, as formerly, but during the latter part of this year [1865] he was put upon wages, and continued as a hired servant for a year or so; the mule in dispute was one of Sherman's abandoned stock, and was picked up by the defendant . . 15th of March, 1865, and was by him, on the plaintiff's return home turned into plaintiff's horse lot, he telling the plaintiff's wife, who expressed a wish for the mule, that he desired to retain it to make a crop with. The mule was worked in the plaintiff's wagon, part of the time by Henry himself, and was fed and kept with plaintiff's stock. Both parties claimed it. The plaintiff offered to pay . . for taking it up, but the defendant declined . . During the latter part of 1865 the defendant spoke of placing the mule with another person for its feed, but the plaintiff declined to let it go; in July 1868 the defendant got possession . . by the intervention of the Military. The plaintiff recovered possession, by means of the process in this action, . . October 1868. The value of the mule is $150.00, and it would hire for 50 cents per day. . . [133] judgment . . in favor of the defendant,"

Affirmed: [I.] [134] "the donee [Buie] is the owner, subject to the right of the donor [McEachin] to treat the gift as a nullity, . . [II.] [135] On the 13th of March, . . the defendant, as a [deserted] slave[1] . . came under the control of the government of the United States. . . We prefer to adjudge that his status as slave or freeman was conditional, and dependent upon the result of the war. . . [136] the possession [of the mule] . . was held in common; both parties reserving their rights, and leaving the result to depend upon future contingencies—that is, if the Confederate States was successful, both the defendant and the mule would be the property of the plaintiff—if the United States prevailed, the defendant was a freeman, and the mule was his property. . . On the part of the plaintiff it was insisted, that the act of Congress is unconstitutional. For that the government of the United States has no power to interfere with the domestic concerns of a State in the Union. The reply is: The State of North Carolina was then in rebellion. . . [137] A State in rebellion surely can not claim to be exempted from the law of nations applicable to a foreign power waging war." [Pearson, C. J.]

Kane v. McCarthy, 63 N. C. 299, January 1869. The act of Congress of 1802, section 1, provides that "Any alien, being a free white person, may . . become a citizen of the United States," on certain conditions. The act of Congress, February 10, 1855, provides that "Any woman who might lawfully be naturalised under the existing laws, married . . to a citizen of the United States, shall be deemed . . a citizen." Pearson, C. J.: [303] "the history of parties in 1855 fully explains why this equivalent expression was adopted instead of 'free *white* woman,' for at that time an angry contest was going on in reference to the words 'all men are born free and equal,' and a formidable party took the ground

[1] Act of Congress of July 17, 1862, ch. 195, sect. 9.

that the act of 1802 was in violation of the Declaration of Independence, . . If the words ' free white,' had been left out, the bill would have met with opposition from the South, and if these words had been expressed it would have met with opposition at the North, so the reason for adopting an expression, which leaves that question open, is obvious."

Capehart v. Etheridge, 63 N. C. 353, January 1869. " the complainant [a creditor] attended the sale [in 1861] . . and purchased [two] slaves to the amount in value of about $4,000,"

Lattimore v. Dickson, 63 N. C. 356, January 1869. " The bill alleged that the plaintiff was formerly the slave of one Lattimore, who had permitted him to make money for himself, under which license he had accumulated about seven hundred dollars, in good notes, which for better security, under the law, he had taken payable to one Nolin, a White man; that Lattimore having died, the defendant had persuaded him to have the notes made payable to *him*, promising to act as his friend, and telling the plaintiff further that he intended to purchase him; that the plaintiff, relying upon his assurances, had the notes transferred as requested, and that during the same year the defendant purchased him; that in 1862 the defendant sold him to one Bedford; that since his Emancipation he has made demands upon the defendant for the notes or their proceeds, and the latter refuses to account for them, or pay him any part thereof; and that the defendant has collected all or a large part of such notes, partly since the Proclamation of President Lincoln, Emancipating slaves, and partly since the Emancipation of slaves by the ordinance of 1865. The prayer was for discovery and an account, and for other relief."

Held: [359] " We are clearly of the opinion, that all the choses in action, which the defendant had received for and on account of the plaintiff, at any time, even when he was a slave, and which he held in hand at and after the time when the plaintiff was emancipated, were held in trust for the plaintiff. And for this the plaintiff is entitled to a discovery, and an account." [Reade, J.] See Lattimore *v.* Dixon, p. 265, *infra.*

Lassiter v. Wood, 63 N. C. 360, January 1869. [363] " By reason of the emancipation of the slaves, the estate other than the lands devised to his sons, is insufficient to pay the pecuniary legacies of $10,000 each to his four daughters,"

Mitchener v. Atkinson, 63 N. C. 585, January 1869. " Mitchener had died . . in 1860, leaving an estate of some $80,000 in land, slaves [[588] 'upwards of one hundred'] and other property. . . cultivated two farms: . . at the former were employed five horses and fourteen good hands, at the latter ten horses and twenty good hands; the slave women and children being divided between the two places in the like proportion." Will: [587] " that my estate in all respects be continued as if I were still living, until my . . children arrive at . . twenty-one . . or marry, . . my intention being not to have my negroes scattered or hired," " By the results of the war the personalty had been so reduced in value, that . . [a] legacy of $20,000 [to his wife] could not be paid unless the land were liable therefor."

Harrell v. Watson, 63 N. C. 454, June 1869. In September 1864 "Watson purchased [at an administrator's sale in Hertford County, [459] 'which was not within the lines . . of the army of the United States,'] a negro boy under 21 . . for . . $2,000," "The terms of sale were, that purchasers might pay in Confederate currency, to the amount of $1,000; and, for any sums in excess . . in notes of the banks of this State, . . The value of bank notes, in gold, was . . 25 per cent., or, as one to four." Watson "having paid one-half [of the price of the slave] . . gave bond [to Harrell] for the other half." Action of debt, tried 1869. [455] "verdict [for the plaintiff] and judgment for $250 *in gold*, with damages for detention, etc."

Affirmed: [458] "we do not admit . . that by force of the proclamation of the President, all slaves are set free . . January 1st, 1863. . . [459] the proclamation is, by its terms, confined to slaves personally, and in its practical effect it was limited to such slaves individually as should come under the control of the armies of the United States.[1] . . the military Order of Gen. Schofield, after the Surrender, simply had the effect of announcing, that the whole State was then under the control of the army of the United States, and that by force of the act of 1862, and the proclamation of the President, and the order of Gen. Schofield, . . all . . slaves in . . North Carolina were free . . But . . a military order could not have [the] effect of abolishing . . slavery. That . . could only be done by the *government* of the United States, or by an ordinance of a convention of the people of the State. . . [460] So far as good morals are involved, the matter is not to be viewed, as we conceive, from a standpoint, where the institution of slavery is deemed wicked . . but from a standpoint where the institution was considered as established and made lawful by the laws of the State, and recognized and protected by the Constitution of the United States, and had been handed down . . from father to son among our people, from the first settlement of the colony of Carolina." [Pearson, C. J.]

State v. McNeill, 63 N. C. 508, June 1869. [509] "that the slave was sold [by a commissioner] . . 1854, . . on a credit of six months, and that [the purchaser] . . gave his bond for $1,026,"

Robinson v. McIver, 63 N. C. 645, June 1869. Will of Henry W. Harrington, "published . . December 1860 . . [646] testator died . . 1868, . . Section 20 gave to . . Covington a slave named Alexander Hambleton, his wife and family, in trust to be removed to Mexico where they might be free, but if on account of the disturbed condition of that country, or for other reason that could not be done, then to Ohio; but if that should be impracticable, then to St. Domingo. . . $1,000 was given to said Alexander, upon his arrival and settlement in either of those places; and $500 to Mr. Covington, in trust for payment of expenses attendant upon the removal, with balance after such payment to said Alexander," [650] "residuary clause sets out a specific legacy of many slaves, with particular instructions in regard to them."

[1] Act of Congress of July 17, 1862.

Held: "The pecuniary legacy to Alexander of $1000, and of $500 to pay expenses of removal are now absolute; the condition and purposes being met by emancipation;" [Pearson, C. J.]

West v. Hall, 64 N. C. 43, January 1870. "the bill of sale [1859] . . contained a warranty that the slave was such *for life*."

Held: "no breach of the warranty. . . the contract could not, in any way be affected by . . [44] the abolition of the institution of slavery."

Maxwell v. Hipp, 64 N. C. 98, January 1870. [99] "a bond . . for $1010, . . dated January 2d 1865. . . for the hire of a negro man . . for the year 1865, and that his hire was worth $50. His Honor excluded the testimony. Verdict for $7 70, of which $6 21 is principal money, . . Judgment,"

Venire de novo: "there is a legal presumption that it was solvable in Confederate money. . . The legislative scale does not apply to this contract, as the consideration was not Confederate money:"

Finger v. Finger, 64 N. C. 183, January 1870. [186] "As to holding the administrator liable for the value of the slaves, because he did not sell them in 1863; we think it would be unreasonable: of course they could only have have been sold for Confederate money," [Rodman, J.]

July Todd v. Trott, 64 N. C. 280, January 1870. "Thomas Todd, died in . . 1869, leaving a will, published . . 1858, . . [281] 'It is my will . . that all my slaves be emancipated . . but knowing that this cannot be accomplished without their removal from this State, . . I hereby expressly direct my executors, that as soon after my death as it can conveniently be done, they cause all my negroes, to-wit: July etc. (naming seven), to be removed and settled in some free State or States etc.; . . bequeath to [my executors] . . eight hundred dollars,'" [283] "'to be . . applied in discharge of their expenses in the removal of my said slaves to a free State or States, or to Liberia, . . any balance . . after paying the expenses . . to my said slaves, to be equally divided among them.' . . Bob and Parker died unmarried and without issue, in the life time of the testator."

Held: [282] "It is immaterial how they obtained freedom." They are entitled to five sevenths of the $800.

Allison v. Railroad Co., 64 N. C. 382, January 1870. [383] "action . . brought in 1860, to recover damages for the loss of a slave . . in 1859, under a contract of hire as a section-hand. . . he was directed to sleep with other slaves of the Company and the contractor, in a house having *bunks* . . A day or two before . . owing to . . a sudden rain, a servant of the contractor had ordered a keg nearly full of powder, and open, to be put . . under a bunk. . . [The slave] was seen in the house, with a torch, looking for his hat. . . explosion . . and he was killed."

Held: [384] "To put a number of slaves into a room to cook, eat and sleep, with an open keg of powder under their . . bunk, unknown to them, is negligence," [Reade, J.]

Biggs v. Harris, 64 N. C. 413, June 1870. "two bonds executed July 27, 1860, for $75,00 each, payable . . 1st January, 1861, and 1st Janu-

ary, 1862, . . ' for the hire of a boy.' . . free colored and nineteen years of age . . May Term, 1860, . . bound as an apprentice during his minority,"

Held: [415] " a master of an apprentice cannot transfer his *mastership* to another."

Fike v. Green, 64 N. C. 665, June 1870. [667] " Green was amply solvent until his slaves were emancipated."

State v. Hanner, 64 N. C. 668, June 1870. " the testator, died . . November 1863," [671] " The executor could not have sold slaves in 1864, except for Confederate money, and that would have been worthless. He did well to keep the slaves, and their emancipation was an accident, for which he is not responsible:" [Reade, J.]

Brown v. Foust, 64 N. C. 672, June 1870. " bond . . executed Sept. 1, 1863, payable in six months, for $1400, . . price of a negro girl . . $800, paid April 30th 1864, . . $400, paid Oct. 29th 1864."

Held: " The jury . . should have estimated in gold, the value . . [673] at the time of the contract, . . deducted . . an amount which bore the same proportion to such value as the payments did to the sum specified in the bond, and . . added . . the depreciation of U. S. Treasury notes, at the time of the verdict:" [Dick, J.]

State v. Robinson, 64 N. C. 698, June 1870. [700] " The defendants . . remained amply solvent, even after the emancipation of their slaves,"

Womble v. George, 64 N. C. 759, June 1870. [760] " the slaves [remained with her], until they were emancipated,"

Lewis v. McNatt, 65 N. C. 63, January 1871. " action . . commenced in . . 1860, . . driving off his slaves and seizing the turpentine."

Erwin v. Railroad Co., 65 N. C. 79, January 1871. " the defendant hired the slaves . . on the first day of January, [1865] . . for . . one year at . . two thousand dollars each, in Confederate currency;"

Sutton v. Owen, 65 N. C. 123, January 1871. " I promise to pay . . one hundred and forty dollars for the hire of his negro Jim, for the year 1861, and to furnish . . good and sufficient clothing."

State v. Shelton, 65 N. C. 294, January 1871. [295] " the prisoner . . as late as March, 1865, . . was authorized to recruit colored troops for artillery service in the United States."

State v. Adams, 65 N. C. 537, June 1871. " the defendants . . formerly slaves . . were married in 1864, according to the custom which then prevailed . . and . . commenced cohabiting together, . . recognizing each other as man and wife, . . [538] have never complied with the acts . . of March 10th, 1866, and March 4th, 1867."

Held: not fornication and adultery, though the failure to go " before the Clerk . . or . . some Justice . . and to acknowledge . . such cohabitation, and the time of its commencement," is an indictable misdemeanor.

Hilliard v. Moore, 65 N. C. 540, June 1871. "On . . January 1st, 1866, I promise to pay . . one hundred dollars, for hire of negro girl, . . for the years 1864 and 1865 . . to be paid in current funds . . Dated July 28th, 1864."

Lattimore v. Dixon, 65 N. C. 664, June 1871. See Lattimore *v.* Dickson, p. 261, *supra*. "The defendant . . denied the allegations . . and averred that complainant, being anxious for defendant to purchase him, proposed to give him several notes [$365.95] to aid . . the referee found the defendant indebted unto the plaintiff . . one hundred and seventy dollars." Fifteen dollars more was allowed.

Alexander v. Summey, 66 N. C. 577, January 1872. [581] "the slaves, which constituted the largest part in value of his estate, were emancipated," as a result of the war.

Holland v. Clark, 67 N. C. 104, June 1872. [105] "Twelve months after date we promise to pay . . Three Hundred and Ninety-three Dollars and Seventy-five Cents, for the hire of . . [three] negro men . . and furnish them with good clothing, shoes, hat and blanket, and work them for the present year, . . January 1st, 1861."

Hutchinson v. Roberts, 67 N. C. 223, June 1872. Jenkins died in 1859, [224] "possessed of a large . . estate, . . slaves in this State and Arkansas,"

Davidson v. Elms, 67 N. C. 228, June 1872. "the first day of June next, we promise to pay Allison and Daniels, one hundred and twenty-five dollars . . for hire of negro boy . . to give him the usual clothing, say one winter suit, hat, blanket, etc., January 1st, 1857."

McLarty v. Broom, 67 N. C. 311, June 1872. At a sale, November 3, 1864, [313] "$7,000 was for a negro, . . [314] the property . . brought high Confederate prices;"

Walker v. Sharpe, 68 N. C. 363, January 1873. "the testator directs his property of every description except negroes, to be converted into cash,"

Jones v. Woods, 70 N. C. 447, January 1874. A male slave was hired for the year 1853, for $100.

Dowd v. Railroad Co., 70 N. C. 468, January 1874. [469] "On the first day of January, 1866, the North Carolina Railroad Company promises to pay to Dr. R. C. Jenkins, . . three thousand six hundred dollars, for hire of the following [four] hands, . . for the year 1865; and . . to furnish to each . . the usual clothing to hired hands—two pair of shoes, one hat, one blanket, or substitutes, payable in Confederate money," Dated January 1, 1865.

Held: the plaintiff is entitled to recover the value of the hire of the slaves for 1865, [470] "and this although the slaves were emancipated in the meantime."

Dickson v. Dickson, 70 N. C. 487, January 1874. Dickson's will: [488] "that my superannuated black people shall be supported off the plantation as long as they shall live."

Walker v. Johnston, 70 N. C. 576, January 1874. Will, 1831: [577] "at the death of my sister . . all the . . negroes herein bequeathed to [her] . . with their increase, to be sold on a credit of twelve months,"

Clark v. Williams, 70 N. C. 679, January 1874. The testator died in 1859. "Many of the slaves were settled in Louisiana and a large number in North Carolina."

Bynum v. Hill, 71 N. C. 319, June 1874. [320] "That the negroes given [in 1848] to the testator's widow for life and after death directed to be sold, would have brought some $3,500"

Gary v. Johnson, 72 N. C. 68, January 1875. [69] "medical services rendered [her] . . and her slaves,"

Bason v. Harden, 72 N. C. 281, January 1875. [284] "received his advancement in a negro girl valued at $800, and that she was an expense to him until he lost her by emancipation;"

Love v. Johnston, 72 N. C. 415, January 1875. [417] "William [[416] 'the property of the . . lunatic'], was sold [in 1857] at public auction . . at . . $1,051. It did not appear that Martha was sold at public sale; but . . taken . . at a valuation fixed by two disinterested persons, viz: at $1000."

McConnell v. Caldwell, 73 N. C. 338, June 1875. His slaves consisted of [339] "a parcel of young negroes, too young to work;"

State v. Fenner, 73 N. C. 566, June 1875. [567] "From sale of boy Fred, sold Nov. 1st, 1863, for Confederate money, $1,025, scaled, . . [568] During the war and especially the last years of the war the cost of supporting the expensive negroes was largely in excess of the ward's income. He made efforts to put them out to the lowest bidder, but . . the sums offered for certain families of said slaves were so large that he kept them at home, built houses for them and supported them."

SOUTH CAROLINA.

INTRODUCTION.

I.

The South Carolina reports contain surprises for even the seasoned reader of slave cases. At the very threshold, in a unique case,[1] that of the purchase of one slave by another, in order to set her free, Chief Justice Rutledge asks, "if the wench chose [so] to appropriate the savings of her extra labour [allowed her by her master] . . would a jury say no? He trusted not. They were too humane . . he hoped, to do such manifest violence to so singular and extraordinary an act of benevolence." The jury did not disappoint the chief justice, but, "without retiring from their box, returned a verdict for the plaintiff's ward, and she was set at liberty." To be sure, several axioms of slave law were violated in order to avoid doing violence to the benevolent act. The slave could not contract, even with her master;[2] and all her earnings belonged to him, and all she bought with them. Certainly one slave could not buy another, and Sally undoubtedly belonged to Beaty (the master of the wench), who had repented of his generosity. Judge O'Neall, in 1842,[3] admits that that case "goes further than I desire to go;" but, six years later, in advising the repeal of the act of 1820,[4] which forbade emancipation except by act of the legislature, he says: "The first thing which ought to be done, is to get back alongside of such men as C. J. Rutledge, who, in the case of Guardian of Sally . . [gave] expression . . [to] the benevolent feelings which had been tried in the crucible of the revolution; there was perhaps no very correct notion of the law in the ruling of the case, yet it spoke what, I think, always belongs to Carolina—a love of mercy, of right, and a hatred of that which is mean or oppressive. Until fanaticism and folly drove us from that position, the law of our State had uniformly favored emancipation . . with such limitations and guards as rendered the free negro, not a dangerous, but an useful member of the community, however humble he might be."[5]

It was in 1800[6] that the first step was taken by South Carolina away from that liberal position. The preamble to the act of that year regulat-

[1] Guardian of Sally (a negro) *v.* Beaty, p. 275, *infra.*

[2] But a contract by a slave was recognized by the Court of Appeals, in Linam *v.* Johnson, decided in 1831. P. 344, *infra.* See also the act of 1833, ch. 81, sect. 1. Car. and Nich. 279.

[3] Carmille *v.* Carmille, 2 McMullan 454 (471).

[4] Vinyard *v.* Passalaigue, p. 404, *infra.*

[5] 2 Strobhart 536 (548-549).

[6] "Before the act of 1800, . . there was no law prescribing the mode in which a master should emancipate a slave." Judge Johnson, in Linam *v.* Johnson, 2 Bailey 139.

ing emancipation [7] recites that "it hath been a practice for many years past in this State, for persons to emancipate . . their slaves, in cases where such slaves have been of bad or depraved characters, or, from age or infirmity, incapable of gaining their livelihood by honest means: to prevent which practice in future" it is enacted that the prospective emancipator shall produce the slave or slaves before a justice and "five indifferent freeholders, . . and shall answer . . upon oath, all such questions as they shall ask concerning the character . . and . . ability to gain a livelihood in an honest way;" and if answered to the satisfaction of a majority of them, they are to give a certificate to that effect; and "no emancipation . . shall be valid . . except it be by deed, . . accompanied by the above mentioned certificate . . recorded within six months . . And in case any slave shall . . be . . set free, otherwise than according to this Act, it shall . . be lawful for any person . . to seize . . and to keep [him] as his . . property, . . *provided* . . that no part of this Act shall be construed so as to . . invalidate any disposition by will of persons now deceased."

However, the sword was two-edged. It was not always the opponents of emanicipation (usually the next of kin) who arrived first to make the seizure.[8]

The act of 1820 [9] forbade emancipation thereafter, except by act of the legislature; and the act of 1841 [10] made void every bequest which directed slaves to be carried out of the state, in order to secure their emancipation. Samuel McCorkle, who died in 1839, had made such a provision in his will, to take effect after the slaves had been hired out long enough to pay his debts. The Court of Appeals held, in 1844, that a trust resulted for the next of kin,[11] the testator's debts not having been paid before the act of 1841 was enacted, and dismissed, in 1845, a petition for a rehearing.[12]

The shades of Somerset [13] and of "the slave Grace" [14] might seem to have hovered over little Patrick, who was taken by his master, Quinn, to Ireland in 1832 or 1833. Quinn died there, having executed a codicil to his will in 1834, bequeathing "£50 sterling to the black child" and consigning him to the care of his widow, whom he "allow[s] . . to give him a good education, and . . send him to a decent trade." The widow married again and returned to Charleston in 1838, bringing Patrick, then

[7] Act of Dec. 20, 1800, sects. 7-9. 7 St. at L. of S. C. 442, 443.
[8] Linam *v.* Johnson, p. 344; Frazier *v.* Frazier, p. 359; Escheator *v.* Dangerfield, p. 447, *infra.*
[9] Act of Dec. 20, 1820, sect. 1. 7 St. at L. of S. C. 459. See Judge O'Neall's opinion, in Vinyard *v.* Passalaigue, p. 404, *infra.*
[10] 11 St. at L. of S. C. 155; also, 10 Richardson 190 n.
[11] Gordon *v.* Gordon, p. 392, *infra.*
[12] Blackman *v.* Gordon, p. 398, *infra.*
[13] Lofft 1. See vol. I. of this series, p. 14.
[14] 2 Hagg. Adm. 94. See *ibid.*, p. 34.

between ten and twelve years old. Seven or eight years later, he was sold for the debts of her second husband and bought by her, she being a "sole trader." She soon sold him to a new mistress, from whom he ran away two years later. In an action of trover in 1850,[15] against the administrator with the will annexed of Quinn, with a count also "in case . . for inducing . . the negro to runaway," the jury were charged that "Patrick having been . . carried by the testator to Ireland, . . became . . *free*. That . . if his master had not intended he should be free," he would, on returning to South Carolina, have resumed his *status* of slave. Such had been the case of Grace, on her return with her mistress to Antigua. "But it was apparent from the codicil, the testator treated him as free;" The jury found for the defendant, and Judge O'Neall, in his opinion refusing a new trial, observes in addition, that Patrick did not return to South Carolina "of his own will [as Grace did]; for he was a minor" and his silence, when sold, "could not affect his right to freedom; for the *status* arising from his color compelled him to be silent."

The free negroes of South Carolina were accorded many of the privileges of white men. Judge Colcock, in 1826,[16] asserts that "they are a part of our militia, required to perform the duty of pioneers and musicians . . They have been permitted to hold land, . . and there are now thousands of them . . in possession of such property. And although they have not, like the freed men of Rome, or Athens, become incorporated in the body politic, it has no doubt been the result of the mark which nature has put upon them. . . some who have lost that distinctive mark,[17] hold offices, as well as lands, and even seats in the legislature."

Those who had "lost that distinctive mark" received a full measure of justice from the courts of South Carolina. In 1835[18] Judge Harper declared, that neither the state constitution nor the statutes defined "mulattoes and persons of color." "We cannot say what admixture . . will make a colored person, . . The condition . . is not to be determined solely by . . visible mixture . . but by reputation . . and it may be . . proper, that a man of worth . . should have the rank of a white man, while a vagabond of the same degree of blood should be confined to the inferior caste. . . It is hardly necessary to say that a slave cannot be a white man." Justices Johnson and O'Neall concurred.

II.

"Until December 1824 there existed in South Carolina the strange anomaly of two courts of appeal, of final resort; the one of equity, the

[15] Guillemette *v.* Harper, p. 418, *infra.*
[16] Hardcastle *ads.* Porcher, p. 334, *infra.*
[17] State *v.* Davis, p. 346.
[18] State *v.* Cantey, p. 358, *infra*; see also Johnson *v.* Boon, p. 385, and White *v.* Tax Collector, p. 400, *infra.*

other of law. At law, the state was divided into six circuits; there were six law judges, who were required to ride these circuits; . . at the termination of each of these circuits or terms . . [they] met . . [and] heard all appeals from the circuits. . . In equity, the state was divided into four circuits, and there were five chancellors, who, at the end of their circuits, likewise, met . . to hear the appeals from their circuits." [19] This system was abolished by the act of December 17, 1824,[20] and a court of appeals, for the courts both of law and of equity, was established, consisting of three judges. This act was repealed in 1835,[21] and the courts were reorganized by the act of 1836,[22] which provided " that all appeals from the courts of law shall be . . determined in a court of appeals, consisting of the law judges; and . . all appeals in equity . . in a court of appeals, consisting of the chancellors; . . That upon all constitutional questions . . an appeal shall be to the whole of the judges. . . That the judges of law and equity, when assembled as aforesaid in one chamber, shall form a court for the correction of all errors in law or equity, in the cases that may be heard before them."

A " separate " Court of Appeals was established in 1859, consisting of three judges.[23] The constitution of 1868 provided for a Supreme Court, consisting of a chief justice and two associate justices.

[19] D. J. McCord, in the preface to the first volume of his *Chancery Cases.*
[20] 7 St. at L. of S. C. 325.
[21] *Ibid.*, p. 334. Consult *ibid.*, pp. 163-342, for acts relating to courts, down to 1838.
[22] *Ibid.*, pp. 339-341.
[23] 12 St. at L. of S. C. 647.

Re Batten, 1 Counc. Journ.[1] 54, February 1673. "Resolved [February 24] that Lieu't Coll John Godfrey and Capt. Maurice Mathews be commissioned to follow, and take the bodyes of Richard Batten, and William Loe who . . 22th of February . . run away from this settlem't and have stolne, a Negroe belonging to Capt. Nathaneel Sayle, and diverse other goods" March 10. [55] "Forasmuch as Richard Batten and William Loe have been arraigned and found guilty . . and judgm't of death . . passed upon them, and the execution thereof this day to be done, And the said persons haveing with extraordinary penitency expressed their . . [56] deep sence of their crimes . . And upon the earnest solicitacon . . of the Ladyes and Gentlewomen of this Country It is Resolved that the execution . . be suspended,"

Re Sir John Yeamans's Negroes, 1 Counc. Journ. 81, April 1677. "Upon the motion of . . Moore Attorney for Capt. William Walley and Dame Margarett Yeamans his Wife the Relict of Sir John Yeamans Barr't deceased for an Injunction to inhibitt the transportation of fourteene Negroe Slaves part of the estate of Sir John Yeamans . . out of whome . . Dame Margarett Yeamans should have her thirds: It was then ordered . . by the mutuall consent of . . Moore . . and Mr John Yeamans Attorney for Dame Willoughbie Yeamans Guardian to Sir John Yeamans a minor, that twelve other Negroe Slaves now remaining at Wappoh shall . . remain there security to . . make good what Dower may be recovered by . . Margarett Yeamans out of the said fourteen Negroe slaves now to be transported to the said Lady Willoughby Yeamans being part of the estate of the said Sir John Yeamans deceased in this Province."

Re Sothell, 2 Counc. Journ. 19, May 1692. [20] "Girrard being Examained did . . give the Decleration following . . Sothell . . told me . . that 8 *s* was taken for each head of negroes that goeth of [off?] which was Extortion"

Re Indian Boy, 2 Counc. Journ. 55, August 1692. "On the aplication of Alatamhaw cheife King of the yamasees concerning an Indian boy that he calls his Sonn It is ordered that Mr. Phillipp Mullins doe forthwith deliver the Said Indian boy . . to Joseph Blake Esq'r . . Blake payeing eight pounds Currant money to . . Mullins and in case . . Mullins shall refuse . . the Provost Marshall is hereby ordered to apprehend . . Mullins and him in close prisson keepe untill he delivers the Said boy . . or be otherwise discharged by due course of Law."

Jenkins v. Putnam, 1 Bay 8, January 1784. "a privateer . . was fitted out in North-Carolina during the late revolutionary war, and in the course of a cruise against the enemy, the crew landed on Edisto-Island, while it was under the protection and jurisdiction of the English, took

[1] Ed. A. S. Salley (1907).

away a number of negroes, the property of Jenkins [an American citizen], . . and carried them to Washington, in North-Carolina, where they were condemned in a court of admiralty there, and sold as the property of the enemies of the United States, or their adherents."

Held: [9] "it was the duty of the plaintiff to have interposed his claim . . in the court of admiralty in North-Carolina, . . His not doing it, was a tacit admission of the legality of the capture."

Whitaker v. English, 1 Bay 15, April 1784. "Trespass for entering . . plantation [in 1780], and taking away . . negroes, . . The defendant . . was one of those deluded citizens of America, who joined the British army in the late war, . . no part . . was appropriated to his private emolument, . . [16] Verdict for plaintiff,"

Terry v. Brunson, 1 Rich. Eq. 80 n., June 1784. "the eight negroes consisted of 1 fellow, 4 boys, 1 wench and child, and 1 girl, all valued at a sum equivalent in federal money to $1198.42, making the average value of the slaves $148.55"

Turnbull v. Ross, 1 Bay 20, January 1785. "an action of trover, brought to recover a negro wench, Nancy. . . During the war, . . some of Dr. Turnbull's negroes ran off, or were taken by a plundering party, from a settlement of his, called Smyrnea, in East-Florida, and carried into Georgia. The wench in question (with one or two others) was afterwards brought into this state, and she came fairly and honestly into the possession of the defendant, by purchase. The plaintiff, in the mean time, removed from East-Florida into this state, and became an American citizen. . . [23] The jury found for the plaintiff to the amount of the value of the wench and children."

Porter v. Dunn, 1 Bay 53, July 1787. Porter "was an officer in general Sumter's brigade, in 1780 and 1781; and the defendant, a planter on Black river, who had joined the British while they were at Camden, and performed duty as a soldier in their militia. The negroes in question [Peter, his wife, and three children] were formerly the property of the defendant, but had been captured while the defendant was with the British, and delivered over to the plaintiff in lieu of pay, for his services as an officer in the line, and taken into North-Carolina, where he resided. They were afterwards enticed away by the defendant, . . there was no money in circulation to enlist men, or bring them into the field, the continental and state currencies having about that time died a natural death. . . [54] that in the course of the distribution of the negroes among the troops, . . the wench, Peter's wife, and one child, were delivered to Porter, the plaintiff; that he purchased Peter from a brother soldier; and that the wench had two children while they were in his possession. . . [57] verdict for the plaintiff, to the amount of the value of the negroes.[1] . . [58] The defendant . . afterwards applied to the legislature for redress."

Steel v. M'Knight, 1 Bay 64, 1789. Leslie, "employed by Barnes, the grandfather of Steel, as a ploughman, . . was called . . out of the field,

[1] Act of 1784, "for indemnifying general Sumter."

. . Barnes told him, that he had given the wench Venus (who was then a girl) to his grandson . . upon which he called the girl, and put her hand into that of his grandson, saying to Leslie, 'Bear witness to this gift: I give this girl to my grandson,'" Held: the gift was complete.

Ham v. M'Claws, 1 Bay 93, October 1789. Seven negro slaves belonged to the two infant children of Mrs. M'Claws. [94] "that the claimants had been, for some time previous to the seizure, settlers at the British settlement on the Bay of Honduras; but in consequence of a great scarcity of provisions, which had nearly produced a famine . . they had been induced to leave the settlement, and come to Carolina with a view of actually settling. . . that previous to their sailing from the bay, (about the latter end of August or beginning of September, 1788,) they had taken much pains to inform themselves whether there was any law of force in this country which prohibited them from taking along with them, the negroes belonging to the children, and were informed, that provided they went as *actual* settlers, there was no law which would operate against them; but if negroes were taken for sale, they would become forfeited.[1] That under these assurances, they embarked. . . [95] never arrived in the port of Charleston till within a few days after the 4th of November following. . . impossible for them to have known of this latter act, as they were, on the day it passed,[2] on the high seas,"

Held: [98] "the legislature never had it in their contemplation to make a forfeiture of the negroes in question, and subject the parties to so heavy a penalty for bringing slaves into the state, under the circumstances . . proved."

Beresford v. Elliott, 1 Desaussure 183, December 1790. [186] "That many of the negroes of the estate were lost by death or desertion to the British,"

State v. Gee, 1 Bay 163, Spring 1791. "The prisoner, Gee, was indicted, under the negro act, for the murder of a negro boy, named Sawney, the property of Abraham Cohen, by shooting with a gun loaded with shot. The jury . . .brought him in guilty of wilful murder; and being unable to pay the fine of 700 *l.* currency, imposed by the clause of that law, the court sentenced him . . to seven years' imprisonment, and to be kept at hard labour during that time. . . a motion was made . . to admit him to prison-bounds, preparatory to his taking the benefit of the insolvent debtor's act; . . [164] Pinckney and Ford, for the prosecution, argued, . . the atrocity of the offence . . had deserved death. That the frequency of the offence was owing, in a great measure, to the nature of the punishment, . . only a pecuniary fine where the party was able to pay, and imprisonment and hard labour where he was not . . therefore, the law, which was a penal one, ought to have a rigid construction." Motion denied.

[1] Act of Mar. 28, 1787.
[2] Nov. 4, 1788.

Phaelon v. M'Bride, 1 Bay 170, May 1791. "A negro boy was bound as an apprentice . . to learn the trade of a hair-dresser. He was seized, under a warrant of distress, for rent, . . due by the master to whom he was bound."

Held: "not liable to be distrained; upon the principle that goods in the way of trade are exempted; and also, because indentures of apprenticeship are not, even in England, liable to distress."

Eden v. Legare, 1 Bay 171, May 1791. "Slander, for calling the plaintiff a mulatto. . . the Court resolved, that the words in themselves were, in this country, *actionable*, and Rutledge, Ch. J. mentioned several cases where it had been formerly held that an action lay for them; because, if true, the party would be deprived of all civil rights, and moreover, would be liable to be tried in all cases, under the negro act, without the privilege of a trial by jury. Any words, therefore, which tended to subject a citizen to such disabilities, were actionable. As the plaintiff did not go for vindictive damages, . . Jury found 3 *l.* damages, and costs."

State v. Welch, 1 Bay 172, May 1791. "an indictment was preferred against the prisoner, for murdering a negro slave, the property of Mr. Radcliffe. . . the prisoner had taken up the negro on some pretext or other, and afterwards carried him on board of a schooner he then commanded; where, either in attempting to tie him, or secure him from going off, he threw a lead-line round the negro's neck, and strangled him." There was no person present but the parties themselves. "Pinckney, counsel for the prisoner . . offered the prisoner's exculpatory oath under the negro act, . . *Sed per Tot. Curiam.* This oath . . is only to be . . allowed to *masters, overseers, or others,* having the *charge* . . of negroes; . . The prisoner was found guilty of manslaughter; . . sentenced . . to pay a fine of 50 *l.* sterling, and stand committed till paid."

Greenland v. Brown, 1 Desaussure 196, September 1791. [197] "That she was possessed [in 1787] of two tracts of land, thirty six negro slaves, . . [198] That the crop of 1787 was not sufficient to feed the negroes; . . obliged . . to purchase corn for their use"

Johnston v. Dilliard, 1 Bay 232, April 1792. "Special action on the case, in nature of ravishment of ward, to try the freedom of a negro female slave called Miley, and her children. The plaintiffs in this action were of the society of the people called Friends or Quakers, and had taken uncommon pains to procure this wench and sundry others, their freedom. It was . . admitted at the trial, that Johnson's [*sic*] zeal on this and other like occasions, had induced him to ride near 10,000 miles at different times, in order to establish the freedom of a number of negroes, held in slavery in this state and in Georgia; and that he was supported in this arduous undertaking, by a society, or societies, formed in the northern states for that purpose. In support of the action, a deed was produced from one Charles Moorman, formerly of Virginia, deceased, . . one of the Society of Friends in that state, bearing date the 28th of May, 1778,

in which he manumits . . a number of his negroes, and among others, the wench Miley, after she should arrive at the age of 18 years. His last will[1] . . was next produced, bearing date the 2d of September, 1778, proved . . under the great seal . . of Virginia, in which he *lends* to his children, his male slaves until they should arrive at 21 years of age; and the females, until they should arrive at 18 years of age; then to be free. An act[2] of the state of Virginia was next produced, . . [233] passed the 27th of August, 1788, giving a legal sanction to the deed of manumission, and last will . . of old Moorman; saving, nevertheless, the rights of individuals, who might have a legal claim on any of the negroes in question. Several witnesses were called on behalf of the defendant, who in substance proved, that in the year 1669 [1769], one James Taylor married Mary, one of the daughters of Moorman; and that soon after, when they . . went to house-keeping, the wench in question, then a girl, was permitted to go along with his daughter Mary, . . That he also gave to his other children as they married, a negro each. That after remaining several years in their possession, to wit, till some time in . . 1778, Taylor and his wife sold the wench in question to the present defendant."

Held: this was a good gift, and, [235] "therefore, the deed of manumission was utterly void in law, as far as it related to the wench now in question." [Bay, J.]

Fannen v. Beauford, 1 Bay 235, April 1792. "bond . . dated in December, 1779; . . [236] conditioned for the delivery of a negro man, . . value 600 *l.* [old currency.]"

The Guardian of Sally (a negro) v. Beaty, 1 Bay 260, May 1792. "a negro wench slave, the property of the defendant, by working out in town, with permission of her master, had, by her industry, acquired a considerable sum of money, over and above what she had stipulated to pay for her monthly wages, to her master; and having an affection for a negro girl, Sally, she purchased her with this money, which she had been for years accumulating, and gave her her freedom. For a considerable time after the purchase was made the defendant never claimed any property in the negro girl—never paid taxes for her; but, on the contrary, acknowledged he had no property in her. Some short time, however, before the commencement of the present action, when called upon to deliver up the girl as free, he refused; in consequence of which this action was brought. . . [262] Rutledge, Ch. J. . . in his charge to the jury, observed, that . . if the master got the labour of his wench, or what he agreed to receive for her monthly wages, (which was the same thing,) he could not be injured; on the contrary, he was fully satisfied, and all that she earned over ought to be at her own disposal;[3] and if the wench chose to appropriate the savings of her extra labour to the pur-

[1] See vol. I. of this series, p. 93.
[2] 12 Hening 613.
[3] Judge O'Neall, in Carmille *v.* Carmille, 2 McMullan 454 (471): "That case goes further than I desire to go; but it is ample authority to prove, that by the law of this State a slave might acquire personal property,"

chase of this girl, in order afterwards to set her free, would a jury of the country say no? He trusted not. They were too humane and upright, he hoped, to do such manifest violence to so singular and extraordinary an act of benevolence. The jury, without retiring from their box, returned a verdict for the plaintiff's ward, and she was set at liberty."

Parker v. McIver, 1 Desaussure 274, June 1792. "G. Howell, a merchant of London, fitted out the brig *Favorite,* placed a cargo on board, and put Capt. John McIver in command of her, with instructions to pursue a particular voyage. Capt. McIver accordingly went to Madeira, where he obtained a cargo of wine, . . [275] That he proceeded to Africa as he was directed, and getting a few slaves sailed for America," [274] "came into port [Charleston] with his . . cargo, except the negroes, whom he sent by a lighter to Georgia."

Moore v. Cherry, 1 Bay 269, September 1792. "a negro man slave, taken during the war, . . from some persons called *tories,* by a scouting party under the command of one Col. Brandon, who afterwards sold the property . . and divided the proceeds among the party."

Shubrick v. Russell, 1 Desaussure 315, March 1793. [320] "In May 1784, Rose sold M'Queen's negroes [in Georgia] to the amount of 5000 *l.* sterling,"

Bull v. Horlbeck, 1 Bay 301, May 1793. "Cobb had rented a tenement from [Horlbeck] . . and there being due for rent in arrear . . he seized . . [Bull's] negro, who happened to be found accidentally on the premises. . . [302] The Chief Justice and Grimke, J, . . mentioned to the jury, that negroes [so] circumstanced . . had always been considered as liable to distress. . . Bay, J. was of a contrary opinion. . . [303] the strictest watching could not, at times, prevent them from visiting their acquaintances in a neighboring plantation or yard. Tradesmen's negro apprentices were striking instances of the necessity of such exemptions; and he was of opinion, that the same rule should extend to hired negro tradesmen of every description, and all other negroes belonging to third persons.[1] The jury found for the plaintiff."

Fitzpatrick v. Smith, 1 Desaussure 340, June 1793. [344] "Fitzpatrick bought cloth for the negroes, and left it to be made up for them. . . the rice . . had been planted by Fitzpatrick's negroes"

Timrod v. Sholbred, 1 Bay 324, September 1793. "a family of negroes was sold at public auction, viz. a fellow called Stepney, a ploughman, his wife, a young wench, their daughter and her child, bid off at 170 *l.* It appeared, in evidence, that Stepney . . broke out with the small-pox, the day after the sale, and died; . . the negroes were taken from a house where the small-pox had been, but it did not appear that the plaintiff [the vendor] knew that either of these negroes had taken the infection."

Held: [325] "In every contract all imaginable fairness ought to be observed, especially in the sale of negroes, . . selling for a sound price,

[1] See act of December 1799, by which slaves of third persons are exempted.

raises, in law, a warranty of the soundness of the thing sold. . . This warranty extends to all faults, *known* and *unknown* to the seller; and although, in general, it principally relates to *title* and *qualifications*, and not to *longevity*, yet, in some cases, it ought to be construed to extend to the latter. For if the negro sold had about him, at the time of sale, the seeds of a disorder generally difficult of cure, and which occasioned his death, it would be unreasonable to say that the purchaser shall sustain the loss." "The jury returned a verdict for the plaintiff, deducting the amount of . . Stepney."

The Ordinary of Charleston District v. Corbett, 1 Bay 328, September 1793. "during the war, when the British general Prevost's army invaded this country, the plantation of the intestate was broken up—all his negroes carried off—his house burnt—and near 800 ounces of plate taken away; so that the estate was totally ruined by the devastation of the enemy."

Heyward v. Hazard, 1 Bay 335, January 1794. [341] "He struck a dozen blows against the wall, with his hands, thinking it was his man Ben whom he beat,"

State v. Thackam and Mayson, 1 Bay 358, May 1794. "The defendants were indicted for a riot, in entering into the plantation of Colonel Gervais, at twelve o'clock at night, in January last, and breaking open an inner room in a kitchen, and taking away in a tumultuous manner, sundry negroes, etc. It appeared in evidence, that they took a negro man with them, who was armed as well as the defendant, and that they were the only persons present when this outrage was committed."

Held: [359] "a *negro was, in contemplation of law*, such a person as was capable of committing a riot, in conjunction with white men."

State v. Cynthia Simmons and Laurence Kitchen, 1 Brevard 6, Fall 1794. "The indictment stated the murder of John Simmons, the husband of the prisoner, Cynthia, by a negro man slave, the property of the deceased, and charged both the prisoners as accessaries before the fact."

Held: a white man may be indicted and convicted as an accessory to a murder committed by a slave. [8] "Negroes are under the protection of the laws, and have personal rights, and cannot be considered on a footing only with domestic animals. They have wills of their own—capacities to commit crimes; and are responsible for offences against society:" [Waties, J.]

Garner v. Garner, 1 Desaussure 437, March 1795. "a marriage settlement . . 1768, . . that the trustees should hold . . [her twelve] slaves, in trust; . . 'that they would suffer her to hire out and work the . . slaves, and the issue of the females, and receive the profits . . during her . . life;'"

Croskeys v. O'Driscoll, 1 Bay 481, May 1795. "the defendant said the plaintiff harboured his negro," Held: the words are not actionable.

Neufville v. Mitchell, 1 Desaussure 480, March 1796. Complainant sold "137 negroes for 8905 *l.* . . [481] defendant . . states . . many of

them were diseased and not taskable; . . [483] all the witnesses swear that they are a prime gang, are as orderly as most negroes and as good as any for work; there are more workers than are usually found in so large a number. . . As to those children that died with the whooping cough; . . one child died the day it was landed [from a plantation on the Savannah River]; . . [484] five or six had it afterwards and died; they were from two to three years old." The defendant picked the negroes " out from different gangs."

Held: " he has no one to blame but himself."

Stuart v. Carson, 1 Desaussure 500, September 1796. [505] " The testator [in 1777] bequeathed to his wife . . [506] one third of all his negroes, with a right of electing some of them from among his house servants."

Evans v. Evans, 1 Desaussure 515, September 1796. [516] " a few months after the testator's death, . . 1779, the executors sold . . his negro slaves [about eighty], without any necessity to do so "

White v. Chambers, 2 Bay 70, 1796. " that the negro in question, had the care of his master's fishing canoe on Sullivan's island, when the defendant went down to the landing place where it was, and said he would take it, and go out fishing in it. The negro told him he could not have it, as his master had given him orders to let no one take it away, as he was in the constant habit of using it himself, and he expected him down every minute to go out in it. The defendant, however, persisted in taking it away, and the negro in obeying his master's orders in refusing to let him have it, upon which some high words passed between them . . [71] whereupon the defendant struck him a blow with his fist, and then took up a paddle, which was in the canoe, and knocked him down, and afterwards beat him very severely, which laid him up for several days before he was able to go about his master's business again. It was . . for this injury done to his servant, that the master brought the present action. The defence set up . . was, that the negro was insolent to him, and that the beating was not more than proportioned to the nature of such insolent language. And . . that . . the plaintiff could not maintain . . action for a personal injury . . to . . a negro, . . [74] verdict, for 5 *l.* sterling, and costs of suit."

Rule for new trial, discharged: I. [74] " The late chief justice had . . informed them, that similar actions had been supported by the king's judges, many years ago, under the colonial administration; and no doubt was entertained by them previous to the revolution, . . [75] Compensation for the bare loss of labour, is not an adequate remedy, . . [II.] where a slave behaved amiss . . complain to the master, . . But if . . he was refused reasonable satisfaction; . . appeal to a civil magistrate "

State v. Fraser, 2 Bay 96, 1797. Judge Waties [98] " mentioned the case of a man who had been indicted for murdering a negro, which was the highest species of misdemeanor known in our laws,"

Rose v. Macleod, 2 Bay 108, February 1797. Action "on a bond dated November 10th, 1785, given by defendant to plaintiff, in the penalty of seventy-six new negroes, conditioned 'to pay and deliver thirty-eight negroes, on the second day's sale of any cargo defendant might choose, which he should import between that time and January 1, 1787, and if none should come by that time, a farther indulgence was to [be] given till January 1, 1788, with interest of 7 *per cent.* to be paid annually.' . . the defendant pleaded that the legislature . . in March, 1787, passed a law prohibiting the importation of slaves from Africa, or other parts beyond sea," The court held that [109] "although the intervening act . . prevented the specific delivery of the thirty-eight new negroes, . . yet . . the contract was not . . rescinded, . . the jury gave a verdict for the plaintiff for the average value at 52 *l.* sterling, round."

Snow v. Callum, 1 Desaussure 542, July 1797. [543] "With respect to the bequest of freedom [in the will of George Snow] to . . Minda and her increase, after ten years from testator's death, his intention is so plain that there can be no doubt but the children were emancipated, though their mother died within the ten years." [Rutledge, Ch.]

Booth v. L'Esperanza, 3 Fed. Cas. 885 (Bee 92), March 1798. "the crew of the *Ranger* discovered *L'Esperanza* making a signal of distress. That, suspecting her to be a privateer, they kept on their course; but, perceiving that a boat from the *Esperanza* with only two hands on board was following them, hove to. . . there were in her a Spanish boy, and a negro called Williamson, who said that the *Esperanza* had been captured, sixteen days before, off the Moro castle, by the *Charlotte,* a privateer belonging to New Providence, who put this boy and two negroes into the prize, and ordered her to that port. That they . . had neither provisions, water, compass, nor chart. Captain Booth supplied them with all these, and they then returned to their vessel. But the Spanish boy and negro Williamson came back, and requested they might remain on board the *Ranger*; saying that the other negro, who was a slave, refused to quit the vessel, or give her up. Booth . . sent his mate, Cooke, to take charge of her, together with the Spanish boy, and the negro slave; . . Cooke navigated her safely into this port; . . Restitution is contended for to the captors, on the ground of possession, (by virtue of the capture, and of the laws of war) at the time the *Ranger* met with their prize. . . The two negroes . . maintain that they held her for the captors. But it is said that, as slaves, they were incapable of possession for any purpose whatsoever. This doctrine, however, goes too far; 1st. Because by the laws of this state, a slave authorized by his master to do an act, which a slave could not otherwise do, is justified, provided the master avows the order. 2dly. Because, as most of our coasters are navigated by slaves, and frequently commanded by a slave, the owners would be continually exposed to loss of their property, in case a vessel should be blown to sea, as is often the case. There can be no doubt, however, that slaves in such a circumstance would be allowed to represent their owners, and to prove their property. It was determined in this court on solemn argument, in the case of Stone *v.* Godet, that the owner of a slave could maintain a

suit for his wages as mariner on board a coaster. The general policy of the country as to slaves must, therefore, admit of exceptions in particular cases." Pelaiz, the Spanish boy, said that the *Esperanza* " was bound to Providence. But it is said he was compelled to do so, lest the negroes should discover his intentions. If this was the case, he had not such a command on board as enabled him to go where he pleased, contrary to the consent of the owners. And this is further evinced by the conduct of the old negro, who, after Pelaiz and the other had offered to give up the vessel to the *Ranger,* still refused to go any where but to Providence. Pelaiz, in fact, reliquished his command to the black man, who, by his own account, held her for the British. . . the evidence of [Pelaiz is] . . insufficient to destroy the right of the British captors;" [Bee, J.]

Collins v. Westbury, 2 Bay 211, April 1799. " on their way removing to Georgia, . . the plaintiff sued out an attachment . . and seized their negroes . . [212] to proceed without their negroes, would have been leaving themselves without the means of support. . . they . . gave the bond "

State v. Doctor James, 2 Bay 215, April 1799. Indictment " for branding a negro with a hot iron, contrary to the form of the act of the legislature, . . which inflicted a fine of 100 *l.* for such an offence. . . convicted on very clear testimony," Judgment arrested: " the prosecution was not commenced until after . . six months next after the offence "

Leonard v. Caskin, 15 Fed. Cas. 337 (Bee 146), June 1799. " Captain Leonard only says that he boarded this vessel at sea, that she had on board ten slaves, and was going from Martinique to the Havanna. This might give cause for suspicion, but no more. The act of congress declares that the persons on board must be taken and transported with intent and purpose to sell them as slaves. The bare transportation of negroes from one place to another without proof of an intention to sell, will not incur this penalty." [Bee, J.]

Wade v. Barnwell, 2 Bay 229, 1799. " that sundry negroes . . which formerly belonged to a Mr. Knox, a British subject in Georgia, had been confiscated during the revolutionary war, and sold; but that some time in . . 1778, when the British repossessed themselves of Georgia, and overrun that country, Knox, the original owner of the negroes, regained possession of them, and when at the close of the war, the British finally evacuated that state, took them off with him to Jamaica, where he kept them several years, and then sent them into South Carolina for sale, when the defendant . . became the purchaser: whereupon Wade, who claimed under the sale by virtue of the confiscation act in Georgia, commenced his action of trover for recovery of them, as being his property." Judgment for the defendant.

Lowndes v. Lemprire, 1 Desaussure 590, June 1800. " It is evident that testatrix intended to give complainant ten negroes under the age of fifteen years, and in doing so, probably contemplated the tender age of complainant herself. . . [to] another of her nieces . . ' six young negro women slaves.' . . decreed that ten negroes, agreeable [*sic*] to the be-

quest . . [591] be chosen for complainant, and if . . any . . have died since the list filed, others shall be chosen as nearly of the age of those"

Brailsford v. Heyward, 2 Desaussure 18, November 1800. Will, dated 1776: [30] "I give . . also one mulatto carpenter boy," [20] "there were on Portroyal plantation [in 1777], . . 53 negroes, . . On Rose Hill plantation, . . forty-one negroes . . [21] on Cole's Island, . . about thirty"

Jelineau v. Jelineau, 2 Desaussure 45, June 1801. "bill . . for alimony . . that the complainant, (a lady from St. Domingo) intermarried in . . February, 1800, with Francis Jelineau, (also from St. Domingo,) . . That he cohabited with his own slave, by whom he had a mulatto child, on whom he lavished his affection; whilst he daily insulted the complainant, and encouraged his slave to do the same. . . [51] That at dinner one day, he took away the plate from complainant when she was going to help herself to something to eat, and said, when he and the negro had dined she might." [46] "The defendant states that at the time he was about to marry the complainant, he informed her that he had a mulatto child, born to him in St. Domingo, (where he stated, it was not disgraceful to have such connexions,) . . and the complainant promised to behave kindly to said child." Alimony decreed.

Taylor v. Twenty-five Thousand Dollars, 23 Fed. Cas. 806 (Bee 175), November 1801. "the schooner *Friendship* . . was wrecked . . upon the Rattlesnake shoal . . two miles distant from any shore. . . the crew were in great danger, . . they were overjoyed at the sight of a canoe and four hands, with which Taylor and Deliessline had come to their assistance. . . Deliessline's risque was unquestionably great; for, if he had perished with his boat and negroes, his numerous family would have been exposed to severe distress."

Smelie v. Reynolds, 2 Desaussure 66, January 1802. [70] "offered for sale an entire family, without restricting it to his life estate in them. . . sold one . . because worthless and diseased."

State v. Johnson, 2 Bay 385, May 1802. The prosecutrix, "having a previous dispute with the magistrate, for committing her negro to gaol, went to his house, while he was in the execution of his office as a magistrate, and before sundry persons, insulted him to his face, as also the constable who had taken the negro to gaol."

State v. May, 1 Brevard 160, May 1802. "convicted . . for buying corn from a slave, contrary to the act of 1796," [1]

Snee v. Trice, 2 Bay 345, November [2] 1802. "Trice, the defendant, had hired a field, which had been planted the year before with corn by the plaintiff Snee, in which stood a crib or corn-house, where the plaintiff had stored his crop of corn the preceding year. Early in . . March, while . . Trice was clearing up this field preparatory for his planting his ensuing crop, his negroes, who were engaged in this business, made a fire in

[1] 2 Faust 91.
[2] 1 Brevard 178.

the field, as is usual among negroes; which, it is likely, was at no great distance from this corn-house. The morning . . was still and quiet, but towards the middle of the day the wind blew up fresh, which is very common at that season of the year, and communicated the fire to some light combustible materials about this building, while the negroes were at work in a distant part of the field, . . and burnt it down, and the corn in it. Every possible exertion was made by the brother of the defendant . . and the negroes, to save the house and corn, but to no purpose," Counsel for defendant: [347] "it was well known to every planter in Carolina, that it was . . customary, and had been so from time immemorial, for negroes to carry fire into the fields with them, sometimes for warmth, at other times for cooking their meals, and at all times for their tobacco pipes, of which they were so fond that nothing could keep them from the use of them; and he would be deemed a very hard and cruel master indeed, who would attempt to deprive them of the use of this article so essential to their comfort." Judge Bay charged the jury: [348] "that there were many cases . . where masters were answerable [in damages] for the conduct of their negro servants; as in all cases where negroes are permitted to perform any public duty, or to carry on any handicraft trade or calling, or to perform or superintend any other kind of business where public confidence is to be reposed: as, for instance, keepers of public ferries. If negroes perform their duties so negligently or carelessly that a traveller's horse or carriage is lost or injured, the ownes are liable; so if a negro blacksmith prick or injure a horse in shoeing, the master is liable; so also of a negro taylor who spoils clothes or embezzles cloth, or a negro miller who takes more toll than the law allows, . . [349] but in no case, where any unauthorized act is done by a slave in his private capacity, without the knowledge or approbation of his master. . . The jury, however, . . found a verdict for the plaintiff to the whole amount of the value of the corn."

Verdict set aside, and a new trial granted: "the rigid doctrine . . in England . . [350] was by no means applicable to the . . circumstances of Carolina, where almost the whole of our servants are slaves. They were in general a headstrong, stubborn race of people, who had a volition of their own, and the physical power of doing great injuries to neighbours and others, without the possibility of their masters having any control over them; especially when they happened to be at a distance from them; and experience had taught us how little they adhered to advice and direction when left alone. . . in the present case, . . very doubtful . . whether they were to blame . . They admitted the doctrine of responsibility of masters, for the acts of their servants, in all cases in the way of trade, or any public employment; or where any injury was occasioned to another, by any act done by a servant in pursuance of his master's directions."

State v. Dawson, 2 Bay 360, 1802. Indictment "for trading with a negro, without a ticket from his master or person in whose charge he was, . . it appeared that the defendant kept a small retail store in the

neighbourhood, and that the prosecutor's negro had been seen carrying corn to this store, and delivering it to a clerk, who had the care of the store."

Carpenter, guardian of sundry free negroes, v. Coleman, 2 Bay 436, 1802. "a case in nature of ravishment of ward,[1] in order to try the right of certain negroes to their freedom, . . after the commencement of this action, . . the attorney of the plaintiff, made application to Judge Bay, . . for an order . . to oblige the defendant to enter into a recognisance in the sum of 200 *l.* sterling, . . to produce the negroes at the trial, and in the mean time, to prevent them from being ill treated . . or carried out of the state till the right . . could be determined," [2]

Held: "such order may be made . . [437] at any time during the pendency . . if the guardian . . should suspect" such a course.

Sumpter v. Murrell, 2 Bay 450, 1802. "a family of negroes . . of the value of 175 *l.* sterling, . . given in payment of a land purchase"

Wright v. Gray, 2 Bay 464, 1802. The defendant, "being concerned in a horse race, had persuaded a negro boy belonging to the plaintiff to ride his horse, without the consent of his master. In the course of the race, the horse threw the boy against a tree, and killed him on the spot. . . verdict for the plaintiff to the amount of 450 dollars." "Motion for a new trial. . . that the master . . was present on the course, and saw the boy mount . . did not forbid it. . . [465] Rule for a new trial dismissed."

Coleman ads. Guardian of a free negro named Ben,[3] 2 Bay 485. April 1803. "This case was tried . . in order to try the freedom of the plaintiff's ward . . Ben. . . [486] a record of a judgment from . . Virginia was produced, . . that . . Ben had established his right to his freedom in that state. . . One or two witnesses . . proved, that to the best of their knowledge . . they had seen this negro in Virginia; that he had there passed for a free man; . . the jury found for the plaintiff. . . [487] Rule for new trial discharged."

Maverick v. Stokes, 2 Bay 511, May 1803. Action "to try the freedom of a negro [4] man, named Michael. . . several witnesses . . deposed, that they had known the negro . . at Baltimore, where he had kept a cake and ale house; and also in Wilmington, . . Delaware, where he pursued some other business; and that in both places he appeared to be independent of any master, and conducted himself like a free man. In further support of the plaintiff's case, the following written certificate . . was produced, (to wit.) 'This is to certify . . that Michael, a negro about 5 feet 9 inches high, 21 years of age in August last, has my permission to go about his lawful business; but it is understood that this is not to operate

[1] Act of May 10, 1740, sect. 1 (Grimké's *Public Laws*, 1790, p. 164).
[2] Sect. 2, *ibid.*
[3] See Guardian of Stephen and Benjamin *v.* Coleman, 1 Brevard 232. [233] "The record produced speaks of the plaintiffs as indians; and the wards of plaintiffs here are negroes."
[4] "mulatto," 1 Brevard 272.

as a pass, if ever . . Michael, or Peggy Burton his wife, should return to . . Maryland, but that he shall be liable to be taken up and treated as a slave. Given under my hand at . . Baltimore, this second day of April, 1799. (Signed,) Thomas Rutter.' On the part of the defendant it was proved, that . . Michael did, in violation of the condition in said certificate, return to . . Maryland. . . [514] the jury, contrary to the opinion of the Judge [Grimke], found for the plaintiff."

New trial ordered: "the writing was nothing more than a pass or protection against others who might claim the slave, and did not amount to a dereliction of such slave, or a renunciation of the master's right to him."

Skirving v. Neufville, 2 Desaussure 194, May 1803. [195] "bound himself [in 1796] to pay 2775 *l.* for 37 of the negroes,"

Somers v. Smyth, 2 Desaussure 214, May 1803. [217] "bill . . to set aside deeds from Sam'l. Adams to Mrs. Kelly. Adams made his will . . 1794 [about two months before he died], and on same day executed a bill of sale to Rebecca Kelly, of his stock of cattle, furniture, etc. . . eleven negroes, and deeds . . of his lands . . [221] The complainants were judgment creditors . . The will making dispositions different from the deed" [215] "Caldwell proved . . Rebecca Adams cohabited with [Adams] . . He leased [Adams's plantation] . . at first he applied to R. Kelly, and she referred him to . . Smyth [administrator of Adams]. He paid them both in work . . Smyth sold some of the negroes to Mr. Clarkson. Some were sent off to the Havannah. . . Mr. Mazyck proved that his father had emancipated Rebecca Kelly, and had given her two slaves, and an annuity of 60 *l.* for 10 years. . . She was not industrious, and was extravigant [*sic*]. She might have made 60 *l.* or 70 *l.* per annum; . . Mr. Squib proved that Rebecca Kelly carried on the business of making mattresses extensively. She sometimes sent down 10 or 12 in a week to Charleston for sale. Adams derived more assistance from her than she did from him. . . Adams told witness he was under great obligations to R. Kelly. He would have gone to pieces without her."

Decreed [221] "that the bills of sale and deeds be set aside as voluntary and fraudulent; . . Costs to be paid by defendant Kelly." [James, Ch.]

Bass v. Five Negroes and a Canoe, 2 Fed. Cas. 1006 (Bee 201), July 1803. "It appears that these five negroes had been driven out to sea in a canoe, and that they were picked up by Captain Bass in lat. 33, near the outward edge of the Gulf Stream, and about sixty leagues from land. They were destitute of provisions and water, and, according to the account given by the negroes, had been so for four days. Captain Bass went two or three miles out of his course to take them on board; and supplied them with provisions until he arrived with them in this port, fourteen days after he found them. There was no great risque in rendering this service; but it was very important in its effects, for, without it, these people would, probably have perished. . . They were making, as they say, a West-

India course, and could never have reached land without this, or some similar, assistance. The canoe and negroes may be valued at three thousand dollars. . . Let Captain Bass be paid [one tenth of the property saved] . . and let the owner of the negroes pay the costs, as it appears that they stole the canoe, which is the property of another claimant," [Bee, J.]

Kershaw v. Boykin, 1 Brevard 301, November 1803. "The plaintiffs claimed the negro in question, by virtue of an act of assembly, passed in the year 1802,[1] which recited that a certain James Carey, who joined the enemy in the time of the American revolution, has taken and carried away sundry slaves, the property of Col. Joseph Kershaw; and that two negroes, the property of the said James Carey, were in the possession of Col. Kershaw's representatives: wherefore, the act grants all the right, title, and interest of the State, in and to the said two slaves, to the representatives of the said Col. Kershaw."

Davis v. Davis, 1 Brevard 371, April 1804. Action of trover. "one of the negroes, when a child, being in the arms of the testator's . . daughter, her mother observed ['to certain persons present'], that her daughter ought to have those negroes, . . The father . . answered . . that he had already given them to his daughter." Nonsuit. Set aside, and new trial granted: [372] "This was . . evidence of a delivery . . and accompanied with other circumstances, might be deemed sufficient proof of a prior delivery of all the negroes in dispute."

Mann v. Sacks, 16 Fed. Cas. 637 (Bee 202), April 1804. "The defendant on the 25th of December last, captured on the high seas, and carried into the island of Cuba, the schooner *Ann,* with a cargo of slaves. Sacks at that time commanded a French national brig called *La Sophie,* and was duly commissioned to cruize. When he boarded and took possession of the *Ann,* she was under the command of one Ogden, who called himself a Danish subject, and was reputed owner, to cover the property which, in fact, belonged to Mann and Foltz of this town. The vessel was sailing under a Danish flag; her register and all the papers on board were Danish; and when Sacks boarded, Ogden asked him if the French were at war with the Danes."

Held: "if American citizens will, for the sake of gain, divest themselves of their neutral character, and send their vessels to sea under foreign or masked papers, they do so at their peril. They forfeit all right to the protection of this court and of the treaties intended for the benefit of those who bring themselves fairly within their provisions. . . this vessel had no claim to be considered as American. . . the libel must be dismissed" [Bee, J.]

Graham v. Penman, 1 Brevard 399, May 1804. Trover. "that the negroes . . were included in a settlement made by the plantiff's father on her, in 1782, . . limited to the father for life, . . That afterwards the . . father . . sold the same absolutely . . to the defendant, . . The defendant . . sold . . to another person, . . carried into Georgia,"

[1] 2 Faust 480.

Held: [401] "during the life of the tenant for life, . . there could be no conversion to the prejudice of the plaintiff."

Ramsay v. Deas, 2 Desaussure 233, June 1804. "He bequeathed [1790] his house servants . . [234] to his wife for life,"

Avaunt v. Sweet, 2 Bay 528, 1804.[1] "Sweet, the defendant, who was the father of plaintiff's wife, upon her first marriage with . . Ganey, . . gave her a negro wench named Phoebe, by taking her by the hand and delivering her to his daughter, and at the same time telling her he would give her another girl named Peg; which he some time afterwards sent to her, agreeably to his promise. . . that the father, by some means or other, got Peg back from his daughter, and took her home again to his own house, and by deed of gift conveyed her to his son, . . And this wench remained 10 years in the possession of young Sweet, or his father as his guardian, till after Ganey's death, and her second marriage with the present plaintiff, . . Avaunt, when this suit was brought for recovery of Peg, and her children born in the mean time. It further appeared . . that soon after the defendant, Sweet, got Peg back into his possession, he sent a shawl, and some other articles to his daughter, Mrs. Ganey; . . not presents to Mrs. Ganey, but for Peg's wages."

Held: a good gift, but the plaintiff's right to Peg was barred by the statute of limitations.

Rowe (sheriff) v. State, 2 Bay 565, November 1804. The sheriff "had not paid over the moiety of a fine for killing a negro by undue correction, 25 *l.* sterling to the informer who carried on the prosecution against a defendant, one James Kelly, who had been convicted of the offence. . . The sheriff . . produced the governor's pardon for the whole."

Held: "the governor had no right to intermeddle with the moiety which went to the prosecutor,"

State v. Stroud, 1 Brevard 551, November 1805. The overseer "of the negro, with whom the defendant traded, had secretly permitted the negro to carry corn to the defendant, to deal with him, in order to ascertain whether the defendant would trade with the negro for it, when it did not appear to him, the defendant, that the negro had any permission so to do. It was proved that the defendant did receive from the negro a basket full of corn, for which he promised payment; the overseer being present, but unseen by the defendant. Wilds, J., charged the jury to acquit . . The jury found contrary to the judge's charge."

New trial denied: [552] "the conviction was good, and within the intent of the act."[2]

Dennis v. the Lear, 7 Fed. Cas. 476 (Bee 213), November 1805. The brig was "on a voyage from Cape Francois or Port de Paix, where she had been trading with the revolted negroes,"

Vaughan v. Campbell, 2 Brevard 53, April 1806. "Assumpsit to recover the price paid for a negro, . . without saying any thing relative

[1] April 1803, 1 Brevard 228.
[2] Act of 1796.

to the soundness . . The receipt [for the price of three negroes] was for $1012. . . [54] That plaintiff bought and sold negroes by way of trade or speculation, and would occasionally send negroes he had purchased to stay with [his brother] . . until . . disposed of. . . George was . . swelled when sent . . forty to fifty years of age; unable to work; died soon after. . . at the time . . good negroes sold for four hundred and six hundred dollars, . . George, if . . sound . . would have sold for about three hundred . . The jury found three hundred dollars and interest for plaintiff." Motion for a new trial denied: "a sound price had been given"

Reid v. Delorme, 2 Brevard 76, May 1806. [77] "the defendant had several small negro children, the mother of whom belonged to the plaintiff. That he refused to sell these children to the plaintiff, who was desirous to get them on account of their mother. That these children would frequently come to see their mother, contrary to the consent or knowledge of defendant. That the plaintiff forbade . . but she still received them, unknown to her master. That defendant, finding them absent, . . informed him that the mother harbored them in his kitchen. That plaintiff was vexed, denied . . and refused to let the defendant search . . the defendant applied for a search warrant, and had the kitchen . . searched, where the children were found . . beneath their mother's bed. The defendant then applied to the Attorney General to prosecute . . for harboring his negroes, . . refused, saying he knew Major Reid to be an honest man. The defendant then petitioned the legislature," [76] "setting forth that the Attorney General had . . refused to do his duty, in failing to prosecute Reid . . for harboring or feloniously stealing his negroes." [78] "His petition was treated with contempt by the legislature." Reid brought an action on the case for defamation. Verdict for the the plaintiff.

Judgment thereon, arrested: defendant [79] "was in the exercise of a constitutional right, . . We believe he had no just ground of complaint; but we cannot say that he, himself, knew he had not."

Palmer v. Mikell, 2 Desaussure 342, May 1806. [344] "bequeaths [in 1804] all the [64] negroes [among three nieces and one nephew] . . except 6 new negroes, bequeathed to complainant's son . . [349] Dr. Auld . . went into Mr. Calder's sick room . . [350] then went to see a sick negro,"

Jerby v. 194 slaves saved from the wreck of the brig Swan, 13 Fed. Cas. 550 (Bee 226), May 1806. [551] "The brig *Swan* . . on the 10th instant, early in the morning, got aground at the distance of six miles from the shore of Bull's Island, on this coast. She had on board a cargo of 194 slaves. At nine o'clock . . she was seen by Captain Jerby of the schooner *Victory,* who . . bore down to the vessel, and . . agreed to take the crew and cargo of negroes on board his schooner. . . the business was completely effected by eight o'clock in the evening: on the following morning at ten o'clock they all arrived safe in Charleston. . . The negroes saved have been appraised by order of the court, and are

valued, with the consent of parties, at thirty-eight thousand eight hundred dollars. The service rendered upon this occasion was great, . . and it is hardly possible that the negroes could have been preserved during the night, that succeeded their deliverance; for the waves beat over the brig in such a way that many of them must have been washed overboard. . . The risque, indeed, does not appear to have been great, . . From the nature of the cargo, too, it is evident that the trouble of conveyance from one vessel to the other was little in comparison to that of hoisting goods out of the hold of a vessel, and putting them on board another laying alongside; . . I decree . . one fifth to the libellant" [Bee, J.]

Furman v. Miller, 2 Brevard 127, January 1807. Action "to recover $200 . . paid . . for an African girl, . . [128] that, when the girl was brought first to the plaintiff's house she was sick, had a fever and a cough; that she lived about six weeks, . . was swelled, . . Doct. Ramsay swore that he was called in to attend her, and that she had the dropsy, . . that Africans, when first brought into this country, many of them, are swelled in the extremities for want of exercise;[1] . . The defendant's counsel . . relied chiefly on the circumstance of this being a contract in the course of a peculiar and new branch of traffic, which, from the nature of it, does not admit of an implied warranty; . . The presiding judge, however, charged the jury in favor of the plaintiff, for whom they found. . . Ward, in support of the motion [for a new trial], contended, that as the purchaser had a choice among a great number of slaves, . . he depended on his own judgment, . . that it was a mercantile transaction, and governed by the particular usage of trade ['in regard to the sale of Africans'], which had always been to sell without warranting the quality of the slave, or his soundness of body or mind."

New trial refused: "There was no proof of the usage of this particular trade;"

Fairchild v. Bell, 2 Brevard 129, April 1807. "The plaintiff was a physician, who seeing, not far from his residence, a female negro slave, belonging to the defendant, in the road, in a miserable condition, almost naked, shockingly beaten, and having an iron on her leg of fifteen pounds weight, was induced, from motives of humanity, to take her to his house, where she was carefully attended, clothed, nourished, and cured. The action was to recover the amount of his account for medicine and attendance, expended on that occasion. The defendant avowed the beating, and other ill treatment of the wench; but utterly refused to satisfy the plaintiff for his services, in the care and cure of her. It was clearly proved at the trial, that the defendant had exercised towards the poor slave a continued series of cruelties, and that she must have perished, but for the humane assistance of the plaintiff. When the wench was brought to the plaintiff's, he informed a justice of peace thereof, who advised the plaintiff to keep the negro, and administer relief to her. The defendant was immediately applied to, to furnish the wench with clothes and necessaries, but he refused to do so, was outrageously angry, and threatened

[1] "she was thought to be only a little swelled, from being confined in irons." Head-note.

to sue the plaintiff for harboring his slave. Wilds, J., in charging the jury, told them . . [130] The slave lives for his master's service. His time, his labor, his comforts, are all at his master's disposal. The duty of humane treatment, and of medical assistance, when clearly necessary, ought not to be withholden. That assistance was denied by the master in this case, and denied from the worst of motives. The plaintiff rendered those services, and gave that assistance which the master ought to have procured; and, therefore, ought to be compensated. In a case so circumstanced, the law will imply a contract, from the reason, justice, and necessity, of the case. The jury found for the defendant, contrary to the judge's charge. The motion for a new trial . . was granted . . No one appeared to oppose the motion." Cited in City Council *v.* Cohen, 2 Speers 408 (416): "the defendant had driven off the slave, and had forbidden the plaintiff to receive or assist her."

State v. M'Dowell, 2 Brevard 145, April 1807. "David Burden, a man of color, but born of a free white woman, was offered as a witness . . [146] and was refused . . by the judge who presided. . . it was determined in this court, by all the judges, that any person of color, if the issue of a free white woman, is entitled to give evidence . . in our courts."

Carson v. Bryant, 2 Brevard 159, April 1807. "Action for harboring a negro woman, . . had been stolen from the plaintiff . . had come bona fide into the possession of . . intestate,"

Teasdale v. Insurance Co., 2 Brevard 190, May 1807. [191] "action on a policy of insurance . . on forty negro slaves, valued at two hundred and fifty dollars each, at and from St. Thomas's to Charleston. . . a letter . . to the plaintiff by his captain, dated St. Thomas, 23rd February, . . 'I arrived here on the 20th, twenty-four days from Gambia. . . I came here for the purpose of getting some water, and some repairs'" The sloop was wrecked, and "the cargo and crew . . transferred [to the *Charlotte*] . . arrived safe at Havana on the 17th [of March], . . [192] Widow, Poey and Hermandez [correspondents of the plaintiff, wrote him] that they had received thirty-nine negroes; that only six . . were merchantable. They enclose a declaration made by four gentlemen, well versed in the African business, . . That the subscribers had carefully examined thirty-nine new negroes, consisting of twenty-six males, and thirteen females, landed from the ship *Charlotte,* . . and they were of opinion that only six of them were merchantable; that other six or eight of them might become so, if properly fed and attended to; but that the remainder of them were altogether unsalable, owing to their advanced age, and crippled condition. . . one of the inspectors [testified] . . That the Spaniards do not like old negroes, and consider those old who are but middle aged. That at the time the negroes were sold, it was difficult to procure freight for a vessel bound to Charleston, and only at very extravagant rates, from the dread of being captured by French privateers; and that considering the deplorable condition of the negroes,

humanity dictated a sale of them at Havana. . . thirty-seven sold, three having died,[1] for four thousand six hundred and eighty-five dollars."

Bethune v. Gibson, 2 Brevard 501, May 1807. "the property attached . . was a schooner, the *Doris*, and her cargo, consisting of African slaves. . . [502] arrived in port [Charleston] . . January. . . the master of the *Doris* . . called on the defendants [agents of the owner], at their counting house, to desire them to take charge . . The defendants immediately ordered clothing for the negroes, and fresh provisions. . . [One of them] went on board . . and looked at the cargo; and the next day caused an advertisement to be published in the newspapers, respecting the cargo, as having the disposal thereof."

Webb v. Bellinger, 2 Desaussure 482, May 1807. [487] "inventory was made of the personal estate of . . Webb . . 16th November, 1776: . . a full gang of negroes, to wit: two drivers, eight house servants, sixteen tradesmen, fifteen sawyers, and others of all descriptions, amounting in the whole to one hundred and seventy two persons; . . [In February 1789] the negroes . . amounted to one hundred and thirty-two . . whereof there were six tradesmen, two house servants, four sawyers, and two drivers, . . appraised at . . [488] 48,209 *l.* old currency, . . That to account for the diminution of the number . . proof, that a number . . ranaway, or were taken off by the British troops, during the war, and that although some . . returned, a number died of the camp fever, which was introduced [into the plantation] by those who returned; . . [490] Mr. Tunno . . sold [the executor] . . in December, 1785, twenty-eight negro slaves, at 80 *l.* each, . . payable in 1, 2 and 3 years, . . Mr. Josiah Smith testified, that he and Capt. Hutchinson managed the estate of Mr. Austen . . rice and provisions were the objects of culture, from 1764 to 1790. There were at an average, about 40 effective labourers, out of from 67 to 77 slaves on the plantation. They made on an average, 280 barrels of rice per annum, besides their provisions. . . nor did any of them runaway to the British. The estate belonging to persons resident in England, it was protected . . [Counsel for the complainants argued:] [493] That the rice machines [of Webb's estate] . . were allowed to go wholly to ruin, though there were six or seven carpenters among the slaves. This increased the labor of the slaves, made them more feeble, and kept them employed in getting out the crop . . and prevented his improving the lands by their labor, by ditching and banking . . [495] Chancellor James delivered the decree . . [498] it has been proved that the plantation was very much disturbed [in 1779], and that sixty four negroes went away in one night, during . . May, . . a very critical time for the making of a rice crop. . . [1779, 1780, and 1781] were years of general . . calamity, . . in which, all but the particular friends of the British thought themselves fortunate if they could raise provisions, and save their negroes from being carried off; but even

[1] [195] "From the evidence . . there is perhaps as much reason to presume that their death was occasioned in consequence of hardships they had suffered on the voyage from Gambia to St. Thomas's, as that they died in consequence of the misfortunes . . on the voyage from St. Thomas's."

in that many of our citizens entirely failed. . . it would be rigorous to charge defendant [Webb's executor] with negro hire in those three years."

Pringle v. M'Pherson,[1] 2 Desaussure 524, November 1807. Will of General John M'Pherson, dated 1803: [528] "to his son James, one hundred of his negro slaves, to be drawn by lot in families from among those usually residing on the plantation Cotton Hall, and its dependencies; in which number, . . shall be particularly included, the nurse Murriah, and her children, and her sisters and their children, and the drivers, Ben, Cato, and their families." There was added by interlineation: "in addition to the one hundred:"

Held: "their families" is restricted [545] "to the wives and children of . . Ben and Cato, living in the house with them,"

U. S. v. Schooner Kitty, 26 Fed. Cas. 791 (Bee 252), February 1808. "This suit is instituted by Captain McNeil of the revenue cutter *Gallatin,* against the schooner *Kitty,* for a breach of the first and seventh sections of the act of congress passed 2d March last, entitled 'An act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States after the 1st of January, 1808.' . . It appeared in evidence, that the *Kitty* sailed from Charleston on the 19th November, 1806, bound to the coast of Africa. She arrived there on the 1st January following, at which time her crew consisted of the captain, two mates, one steward, and seven seamen. The second mate and one seaman died in February; another seaman died in August following. The steward ran away, and the first mate was discharged as an incorrigible drunkard: so that, in . . [792] August, the captain only and five of the crew remained. At this time they had purchased no more than thirty-two slaves; and such was the scarcity of provisions on the coast, that, till the beginning of November, they were threatened with famine. In July, the captain was taken ill, and continued so till the vessel sailed. In August, the ship's papers were seized by the governor, and detained for a fortnight. In September a report of war with Great Britain obliged the vessel to run up the river to avoid being captured. In October, only two of the crew were fit for duty, and the vessel was so leaky as to be three weeks under repair; provisions for their return could not be procured till November; on the 16th of that month she sailed, and on the 16th January, 1808, was seized in Stono Inlet, near Charleston, by the captain of the revenue cutter. . . the voyage was a legal one in its inception, and continued so for nearly fourteen months afterwards. The act by which the trade was made illegal was not passed till a long time after this vessel sailed; and there is no proof that knowledge of it ever reached the captain, till his return. . . If ever there was a case of hardship, occasioned by no fault of the party, this is one; . . the act of congress upon which the suit is grounded expressly gives the court a discretionary power in extreme cases, of which this is surely one. I, therefore, dismiss the suit, but order that all the costs be paid by the claimant; for Captain

[1] See same *v.* same, p. 293, *infra.*

McNeil, in this seizure and prosecution, did no more than obey a positive law, the directions of which he would have been criminal in neglecting." [Bee, J.]

Carey v. Schooner Kitty, 5 Fed. Cas. 59 (Bee 255), April 1808. "a negro slave belonging to the owners [of the schooner] . . ran away from the vessel at Sierra Leone, and remained there. . . [60] entered in the ship's articles as one of the seamen, in the station of cook, deserts from the vessel in a foreign port, and obtains his freedom by the laws of that country. For this loss the owner claims a contribution from the wages of the crew. But I do not see how the general principle of contribution can apply to this case. . . The discipline on board of this vessel appears to have been very relaxed; there seems to have been no watch appointed for the night when this negro made his escape; if there was, no persons are named as having been upon that watch, and it is possible that the negro himself may have been upon that duty. If so, how can blame attach to the others?" [Bee, J.]

Flinn v. Leander and fifty-four Slaves, 9 Fed. Cas. 275 (Bee 260), April 1808. "The brig *Norfolk* on the 19th of March last, 250 miles from this port, to which she was bound, fell in with the *Leander*; and on the afternoon of the third day arrived with her in Charleston. The *Leander* had 56 slaves on board, but no white person. In the evening of the 19th two of the slaves died. . . From her manner of steering, and from a piece of a torn sail which looked like a white flag, she appeared to be in distress. On approaching the vessel, the negroes invited them to come on board, and an interpreter was afterwards found who explained their wish more clearly. Captain Marson then agreed to send on board five hands, with nearly one half of his provisions. The negroes told these men that all the white people had died; but, after their arrival in port, part of a journal was found by which it appeared that the crew had been driven, or thrown, overboard; two had been killed. The negroes said that eight or ten vessels had fallen in with them, without assisting them. That they had been boarded by one, who took away six or seven slaves, under a promise of supplying the rest with provisions; which, however, was not done. It appeared that the *Leander* was tight, and her rigging good, but she had no sails. It was evident from the last entry in the logbook that no reckoning had been kept for a month; from whence it was reasonably inferred that the negroes had been for that time in possession. . . There being no white persons on board, and the slaves being regarded as cargo, I must consider the *Leander* as derelict: but she does not seem to have been in any immediate danger. She was in tight condition, had on deck provisions for eight or ten days, and more in her hold. . . the ship and cargo are worth nearly sixteen thousand dollars. . . adjudge one third of the net proceeds . . by way of compensation." [Bee, J.] "It appeared, in a subsequent proceeding, that the captain and owners of the *Norfolk* had concealed two slaves, part of this cargo; . . The judge . . decreed . . a forfeiture of [their share of salvage] . . to the owners of the *Leander*."

Bickley v. Norris, 2 Brevard 252, November 1808. Jenny and her son were sold for $400 in 1806 "at a sale made by the sheriff . . under a mortgage."

Pringle v. M'Pherson, 2 Brevard 279, January 1809. The will of General John M'Pherson, dated 1803, [280] "gives to his daughter . . seventy of his negro slaves, to be drawn from these [those] usually resident at Laurium, . . to his son . . one hundred of his negroes, to be drawn in families, by lot, and some other negroes particularly named. He then bequeaths to his wife, and two younger children . . all the remainder of his negro slaves, to include part of the domestics, and carpenters, in due proportion. . . [281] One codicil relates to the emancipation of . . Molly."

Tankersley v. Anderson, 4 Desaussure 44, February 1809. [45] "seized the [eight] negroes under the mortgage, and detained them five weeks in goal [*sic*],"

M'Vaughters v. Elder, 2 Brevard 307, April 1809. The intestate [308] "left at his death a female slave, named Bet, and a mare, named Pol Jones, which property, after his death, came into the possession of Margaret M'Grew, . . next of kin, . . the wench had two children, who were born while she was in the possession of Mrs. M'Grew. The mare died while in Mrs. M'Grew's possession, having had three colts during the time of her being in the possession of Mrs. M'Grew, . . [She] died . . without ever having administered . . the plaintiff obtained letters of administration"

Held: [314] "the young of slaves . . stand on the same footing as other animals, . . this increase . . is the product of the intestate's personal estate, which . . are assets to which the administrator has a legal right."

Foster v. Taylor, 2 Brevard 348, November 1809. "The defendant was owner of a machine for cleaning cotton from the seed, for a certain toll. The plaintiff sent a quantity of cotton . . to be cleaned. The defendant worked his machine at night, by the light of a candle in an old lanthorn, under the management of a negro. The gin house, and its contents, were consumed by fire. . . The jury . . stated that the evidence proved a want of ordinary care. The court were unanimously of opinion, that . . [349] the defendant was responsible"

State v. Thornton, 2 Brevard 408, May 1810. "The indictment charged the defendant with trading [1] with a negro slave . . for an iron band . . of a mill shaft, which had been stolen from the mills of M'Ra and Cantey,"

Thompson v. Rogers, 2 Brevard 410, May 1810. "The plaintiff was taken by a pretended writ of *ca. sa.*, and afterwards discharged; but while he was in custody his plantation was broken into in the night time, and the negroes in question taken off."

[1] Act of 1796.

Whitmore v. Casey, 2 Brevard 422, May 1810. A negro slave [423] "was said to be plundered from the Jones' during the revolutionary war, and afterwards came fairly into the possession of General Casey, who sold him to Joshua Whitmore. After the sale . . the slave got, by some means, into the possession of his original owner, the Jones', against whom an action of trover was brought . . verdict for the defendants."

Anderson v. Moncrieff, 3 Desaussure 124, November 1810. "The complainants, . . London Merchants, charge that on the 6th of October, 1799, they consigned by the schooner *Phoebe* . . [125] forty-five Negroes from the Island of Bance, on the coast of Africa, to . . M'Leod [in Charleston], . . [126] 'our friend, Mr. John Tilley, of Bance Island,' . . [128] directed M'Leod, . . [133] 'should it be necessary for your slaves to proceed to the Havana, you will please act with mine as your own.'" [128] "The state law [of December 19, 1796,] prohibited importation of negroes till 1st Jan'ry, 1799: The act of 27th Dec. 1798,[1] continued the above act to the 1st January, 1801."

Held: M'Leod must [135] "account for the nett amount sales of the negroes,"

Rivers v. Rivers, 3 Desaussure 190, January 1811. [191] "the testator's estate consisted of Fifty negroes, valued at $20,300 . . Produce of the plantation for . . 1806, 1807, and 1808, averaging for each year $1,100"

Fraser v. M'Pherson, 3 Desaussure 393, February 1811. [417 n.] "bill of sale . . for fourteen negroes, . . 1790, . . for 678 *l.* 12 *s.* 3 *d.*"

Barber v. Barnes, 2 Brevard 491, April 1811. Action of trespass *vi et armis*. The slave of Barber "had a wife, who was the slave of Mrs. Barnes, . . That the plaintiff's slave sometimes ran away from him, and that he was seen with a pass, which was supposed to be given by . . John Barnes, Mrs. Barnes' young son. . . [492] Mrs. Barnes sent her son to obtain permission from a Mr. Johnson, to draw the seine for shads at his fishery, and for the use of his canoe. This was obtained; and after the hands . . were about to enter on the business, the plaintiff's slave appeared, and . . volunteered his services, without asking a formal license. After he got into the canoe, Mrs. Barnes, who happened to be present, understanding that he could not swim, signified that he had better not go in the canoe; but she soon after went away, and the slave would go in the canoe, as paddler, and by some accident, overset the vessel, in consequence of which, he was drowned. The defendant, John Barnes, was a small lad, and had no control over the slave." Nonsuit.

Bunch v. Hurst, 3 Desaussure 273, June 1811. [274] "1810 . . to make a division among the legatees, the negroes were sold for ten per cent. cash, remainder payable in one year. . . [278] Witness . . employed Bunch as an overseer, for eight or nine months, . . He gave him no more than his victuals and clothes, and never depended on his judg-

[1] 5 St. at L. of S. C. 330.

ment in his planting. He worked ten or eleven negroes." "He thinks him three parts a fool."

Alwyn v. Perkins, 3 Desaussure 297, July 1811. "The complainant, . . a British subject, filed a bill . . for an account . . of the proceeds of a vessel and cargo entrusted to the care of . . [Captain] Perkins, . . an American citizen. . . directed [June 1806] . . to purchase a vessel on . . [complainant's] account, but to take the bill of sale in the name of . . Perkins, 'for reasons of trade not forbidden by the laws of the United States.'[1] . . to proceed . . after accomplishing a prescribed voyage, to . . Charleston, and there to be subject to the . . orders of . . the agent of complainant. . . he . . arrived safe in America, with a large cargo, . . [298] The defendant denied that he was to proceed to Charleston, . . but . . to the best port he thought proper, . . arrived at Savannah . . placed part of the cargo in the hands of . . Kelly for sale, and he himself sold part . . [299] admitted an undisputed balance of $13000 and upwards, due by him to the complainant; . . arbitrators . . in June 1811 . . awarded . . $22397,77, to be due by the defendant. . . [300] sums struck out by the arbitrators . . were for covering commissions, amounting to $3753,67."

Award confirmed: [307] "I cannot sanction the covering British property as American. . . I will not trust my feelings in the expression of invectives against this usage; . . so far from bad usages ripening into law, it is a maxim of justice as well as law, that *malus usus abolendus est.*" [Desaussure, Ch.]

Susan (a free woman of color) v. Wells, 3 Brevard 11, December 1811. "The action was for assault and battery. . . It came out on the cross-examination of the plaintiff's witness that the plaintiff had been a slave, and the witness had heard she was set free by her master. The nonsuit was granted on the ground, that a slave is not entitled to maintain an action, (and here was no proof of manumission,) unless to obtain his freedom, and then he must sue by guardian."

Motion to set aside the nonsuit, rejected: [12] "The plaintiff's own witness proved her to be a slave. . . not pertinent to the issue.[2] Nevertheless it proved the disqualification of the party to sue, and the court was bound to notice it," [Grimke, J.]

Frazer v. Sanders, 3 Brevard 13, December 1811. "that the defendant, and one Bryant, had been in partnership in selling negroes,"

Stone v. Wilson, 3 Brevard 228 (Treadway 68), January 1812. "a permission to keep the negro for three years, at the rate of sixty dollars for the first year, and a hundred dollars for each of the two last years,"

Limehouse v. Gray, 3 Brevard 231 (Treadway 73), January 1812. "The plaintiff produced the advertisement, under which this slave, to-

[1] [309 n.] "the British Parliament had passed an act prohibiting British subjects from supplying foreign ports . . with slaves. Whereas the act of Congress totally prohibiting the slave trade, was not to take effect till the 1st. of January, 1808. The vessel . . arrived in America in October 1807."

[2] "Note. As the evidence was not pertinent . . and was not drawn out by the plaintiff herself, *quere*, whether the court should have permitted it to be drawn out by cross-examination? I rather think it ought not." [Reporter: Judge Brevard.]

gether with several others, was advertised to be sold, all . . described as prime negroes. . . [The vendue-master] declared at the sale, that the purchaser bought subject to every defect excepting that of title;" [235] "that when the wench was put up for sale, she appeared emaciated, that it was visible to the eye of every one, that she was diseased," [231] "The price given was as much as a sound negro of the age, appearance, and qualities, of the one purchased, usually sold for," "A day or two elapsed between the sale . . and her delivery to the plaintiff; during which time she was under the care of a person who usually attended to negroes, and to whom a reasonable compensation for that purpose was paid. When brought to the plaintiff's house, she was sick of a disorder, which a physician, called by the plaintiff, proved was in her system when sold, and was the cause of her death." Verdict for the defendant. New trial denied.

Tucker v. Palmer, 3 Brevard 47, May 1812. "1807, the plaintiff . . brought [the slaves] . . from Virginia, and hired them to the defendant for six months, to serve . . in this State."

Houston v. Gilbert, 3 Brevard 63, May 1812. [64] "that the plaintiff . . gave $500 [for the slave], under an expectation, which was well warranted by the slave's appearance, that he was fully worth that price, when, in fact, he was not worth near so much, being a notorious runaway; and that his bad qualities were concealed from the plaintiff at the time of the sale. . . the jury found . . 'for the plaintiff seven hundred dollars, and that the defendant shall have his negro again, and shall bring him, at his own expence, from Fayetteville, in North Carolina.' . . [68] New trial granted."

Wolff v. Farrell, 3 Brevard 68, May 1812. [73] "The practice of mortgaging or pawning slaves, in this country, is probably as ancient as the introduction of slavery into it. An act of assembly of 1698 . . [74] speaks of mortgages of negroes, . . as in common use at that time."

Bynum v. Bostick, 4 Desaussure 266, June 1812. Joseph Walker made "devises and bequests of real and personal estate, . . to trustees, in trust for his negro slave Betsey, and her three children, . . [267] with directions to set the slaves free according to law, . . the woman and all her children, except one, had been mortgaged by the testator to secure a just debt; and the creditor has since the testator's death enforced his rights . . and sold the woman and her children to pay the debt, . . As to the unmortgaged child, it was sold with its parent, which must have been with the consent of the executors, doubtless to keep the infant with its mother."

Held: "the statute of this state . . expressly forbids any emancipation in any other way than by deed executed in the lifetime of the master,[1] a certain time before his decease, in a prescribed form." [2] "By the

[1] Act of Dec. 20, 1800, sects. 7, 8. 7 St. at L. of S. C. 442, 443.

[2] Judge O'Neall, in Frazier *v.* Frazier, 2 Hill Eq. 304 (315), criticizes Chancellor Desaussure's opinion: "that opinion was certainly prepared . . without looking at the Act. . . not a word said about the deed being executed 'in the lifetime of the master,' or within 'a certain time before his decease.' This shows at once the unsoundness of that decision."

civil law slaves could not take property by descent or purchase; and I apprehend this to be the law in this country. Many cases of beneficent provision for slaves, are allowed to take effect *sub silentio* by the humanity of those interested. But when the law is appealed to, it must take its course." [Desaussure, Ch.]

Stoll v. Ryan, 3 Brevard 238 (Treadway 96), November 1812. [239] " retained Stoll as overseer, and was to allow him one eighth of the crop for his services:"

Robinson v. Culp, 3 Brevard 302 (Treadway 231), November 1812. Held: the civil action for enticing a slave from his master's service is not merged in the felony.

Jones v. Rivers, 3 Brevard 95, December 1812. Action of slander. " 3d count charged, that defendant said of plaintiff, that on pretence of being a Methodist preacher, he inveigled negroes, and took them off, etc. Defendant justified. The jury found for the defendant."

State v. Baldwin, 3 Brevard 309 (Treadway 289), January 1813. [316] " This was an indictment for stealing a negro, tried at Georgetown, at the April term, 1811, . . found guilty. . . It was contended on the part of the prisoner . . that a considerable prejudice had prevailed in Georgetown district, against this offence of negro stealing, insomuch that a portion of the citizens of that district had signed a remonstrance to the governor, against pardoning such offenders,"

Caborne v. Godfrey, 3 Desaussure 514, February 1813. Robert Caborne, in his will, 1808, [515] " desires proper measures to be taken to emancipate the girl Bella."

Brown v. Gilliland, 3 Desaussure 539, February 1813. [544] " purchased at public auction [January 1813] a negro woman and two children for $500;"

Brig Caroline v. U. S., 7 Cranch 496, February 1813. " The libel was . . ' United States . . did cause to be seized . . the *Caroline*, . . loaded, or otherwise prepared, within a port . . of the . . United States, or caused to sail . . for the purpose of carrying on . . traffic in slaves to a foreign country;' [1] . . [498] statement of facts: . . ' that the *Caroline* came into this port [Charleston] equipped like any common merchant vessel, that she did, after her arrival, receive fitments and take on articles calculated for the slave-trade only. . . the Claimant, after receiving information that such equipments were illegal, restored the *Caroline* to the condition in which she was when she entered this port, but that this was not done till after her seizure; and that the wooden parts of the fitments for slaves were marked as they were taken out of the vessel. That in such condition she left Charleston, bound to the Havannah and to no other port. That she arrived at the Havannah on the 28th of June, 1810, and that there she was sold about the 6th of August, 1810, to Spanish subjects who fitted her out for the African slave trade.' " The

[1] Acts of Congress of Mar. 22, 1794, and of Mar. 2, 1807.

circuit court [499] "decreed that the *Caroline* should be condemned as forfeited to the United States." [500] "sentence . . reversed, and the cause remanded . . with directions to admit the libel to be amended."[1]

Goodwin v. Bank, 4 Desaussure 389, April 1813. [390] "indebted . . to Higginson and Greenwood, merchants, of the city of London, . . to secure the said debts, a mortgage of twenty-five negroes was given [1798] . . further security . . mortgaged 48 negro slaves . . [391] April 1802, the 48 negro slaves . . were carried to . . Charleston by the direction of . . Greenwood, to be sold"

Faber v. Baldrick, 3 Brevard 350, May 1813. [352] "family physician . . attended the [negro] wench when sick."

Bailey v. Insurance Co., 3 Brevard 354 (Treadway 381), May 1813. "The second policy was upon fifty negroes, in the schooner *Lucy*," "from Charleston to the Natchez, with liberty of touching at the Havana; . . premium 7 1-2 per cent, amount of policy $1800. The third policy was upon eleven negroes, in the same schooner; . . from Charleston to the Havana, premium 5 per cent." The negroes were the property of citizens of Charleston and of New Orleans. "The *Lucy* . . sailed . . [355] 4th of July, 1806. On the 24th . . she was captured by his Britannic majesty's schooner *Haduck,* Lieut. Foley, who . . sent her into Nassau for adjudication, . . with the exception of the eleven negroes ['condemned as . . lawful prize'] . . acquitted [August 24]. . . The *Lucy,* while lying in the harbor of Nassau, was driven ashore in a violent storm, by which, the vessel and cargo received great injury. . . Many of the negroes in the *Lucy* died; the remainder were sent to New Orleans, . . sold at New Orleans, for 3 or 4000 dollars more than they would have yielded at Nassau; that negroes at Nassau can only be sold for exportation, and then at very low prices; . . entering into bonds in considerable penalties, stipulating that they should be exported. . . [356] $856 60 . . expended . . in clothes and provisions for the negroes whilst at Nassau,"

Taylor v. Mayrant, 4 Desaussure 505, May 1814. [506] "purchasing some slaves for . . an infant, about six years of age,"

Saxon v. Barksdale, 4 Desaussure 522, June 1814. About 1798 [523] "the executor . . pledged . . Dick for . . $200 to Mr. Garret, in whose possession he remained and worked for the use of the said money about 7 or 8 years, at the end of which he sold the . . fellow to Mr. Garret for $416."

Almeida v. Certain Slaves, 1 Fed. Cas. 538 (5 Hughes 55), July 1814. The privateer schooner *Caroline* (Joseph Almeida, captain), during a cruise on the high seas, captured certain slaves, "the property of the king of the United Kingdom of Great Britain and Ireland,"

Held: slaves captured in time of war cannot be libelled as prize, nor will the district court of the United States consider them as prisoners

[1] Note by F. C. Brightly: "The facts . . constituting the offence, not being directly averred,"

of war. They shall be detained in the custody of the marshal; [540] "subject to such disposition . . in favor of the United States . . as shall lawfully be declared," [Drayton, J.]

M'Gill v. Woodward, 3 Brevard 401 (Treadway 468), November 1814. Action " for enticing away and harboring a free woman of color, whom the plaintiff claimed as an indented servant." " The plaintiff purchased her from another person; yet he does not shew that that person had any right, but holds her under her own indenture, and by that indenture, she is bound to serve for fifteen years for her support only." The instrument " describes her to be above eighteen:" " The defendant relies on two grounds of defence. 1st. That the girl was a minor . . 2d. That . . [the indenture] was obtained by fraud . . taking an undue advantage of the situation of the party." The jury found for the defendant. Motion for a new trial refused.

Richardson v. M'Cray, 3 Brevard 404 (Treadway 472), November 1814. " The defendant was the owner of a . . slave, who had committed some crime in Barnwell district; . . arrested at the instance of the plaintiff, . . escaped, and got into Charleston, . . apprehended and committed to the work house. The plaintiff, without any authority . . from the defendant, . . paid the fees for apprehending and dieting this negro, and brought him to Barnwell, where he was tried for the crime . . first charged;"

Held: the defendant is not liable for the expenses paid.

Adam Garden v. Justices (cited in State *v.* Belmont), 4 Strobhart 459, 1814. " Garden moved for a prohibition to a magistrates' court, which was proceeding to try him on a criminal charge; on the ground . . descended from a free Indian woman in amity.[1] Major Garden proved that Adam was born a slave . . of an Indian woman, whom his father owned . . He had brothers and sisters in slavery. . . In 1795, Mr. Lowndes, trustee, sold Adam to . . Smith. Adam and his mother agreed to refund to Mr. Smith the sum he had contracted to pay . . and Mr. Lowndes was requested to execute a deed of manumission. . . sheriff in 1799 . . received from Adam the city capitation tax, which he continued to pay to the time of trial. He had petitioned . . to be exempt, but . . was refused. . . Mrs. Bonneau said . . Indians were permitted to remain on plantations, and were considered free. . . an old woman . . made an affidavit . . That . . she knew Adam, the son of Flora, . . daughter of Rachel, a free born Indian woman . . brought into this State by . . superintendent of Indian affairs, who . . brought her from an Indian nation. . . the Justices and freeholders found Adam Garden to be of free Indian descent, and declined to take cognizance of his offence. A motion was made in the Circuit Court for a mandamus, and . . [460] the motion was refused. . . [460] Adam again had to appeal from the magistrates' jurisdiction, and also his son, . . Their claim was allowed;" [449] " so ruled by Judge Grimke,"

[1] Act of 1740, sect. 1. 7 St. at L. of S. C. 397.

State v. Porter, 3 Brevard 175 (Treadway 694), January 1815. "Amey Lapier had been charged before the defendant [a justice of the peace] and two freeholders under the negro act,[1] . . of having slandered and insulted . . a white woman. . . She was proved to have committed barratry [*sic*], as also an assault." [2] " She was found guilty, and the court sentenced her to pay . . ten dollars, and the costs" The magistrate was indicted for extortion and malpractice in office. [176] " Judge Colcock charged, that no words, however abusive, used by a person of color, whether free, or a slave, would amount to an offence, punishable, by indictment; . . she could only be tried on the matter of complaint set forth in the warrant. . . Verdict, guilty."

New trial granted: " it could only amount to error of judgment."

Ingraham v. Insurance Co., 3 Brevard 522 (Treadway 707), January 1815. " action on a policy of insurance on the ship *Independence* commanded by Captain Churchill, at and from the coast of Africa, for . . [523] four months, beginning . . 18th . . April, . . the ship was blown up, in an insurrection of two hundred and forty slaves on board, in Leango Bay, on the 17th July [1807]." The underwriters had been promised " that the vessel would not go within five hundred miles of Congo, . . knowing that the people of that part of Africa, were much enraged against the captain, and savage-like, would go great lengths to destroy the vessel." [525] " on account of his having taken off some of the free natives of that kingdom, on his last voyage." " after a violent affray . . the Congo men had threatened to cut him off, if ever he came to the coast again." Letter of the supercargo: [524] " The people are, in Congo, much exasperated against Captain Churchill, and if they can get possession of him, I have no doubt would murder him:" The plaintiff suppressed this letter and " represented . . that he had received a letter . . informing him, that the king of Congo was so far from being displeased with the captain's conduct, that he approved of it." Verdict for the defendant. New trial denied.

Fisher v. the Sybil, 9 Fed. Cas. 141 (Brun. Col. Cas. 274), June 1816. [146] " the six colored seamen who belonged to the original crew of the *Sybil*," had entered into an agreement, after returning to the *Sybil* as volunteers, " to navigate the *Sybil* for twenty-five dollars per month. . . it was not made till they were in a situation in which every seaman feels that he is not a free agent. . . I shall therefore adjudge them entitled to a compensation by way of salvage. But what is to be done with regard to Perry? He is clearly proved to be an absconded slave, and his owner has lost his services for several years. To this I reply, that whatever may have been my decision, had he been at the time hired out for the benefit of his master, since he was in fact a runaway, his master must receive his compensation and not himself. . . [147] to the five free seamen, and to the owner of Perry the slave each one part." [Johnson, J.]

[1] Act of 1740, sects. 10, 14.

[2] [178 n.] " The conviction [of Amey] appears to have been irregular." [Reporter: Judge Brevard.]

De Tollenere v. Fuller, 1 Mill 117, May 1817. "In the year 1808 the plaintiff hired to the defendant a number of negroes, with whom the negro in question had before been associated; the defendant, however, refused to take this negro on hire at any price, in consequence of her being old, and it was finally agreed that she should remain on the plantation . . with the other negroes, for the purpose of cooking and attending the sick, etc. The defendant some time after sent her to Charleston, for the purpose of attending a sick lady. On the 12th of March, 1808, Mr. Patterson, the agent of the plaintiff, met the defendant in Charleston, and informed him that the small pox prevailed in town, and that the negro Catharine had never had it; he also expressed his surprise that the defendant had sent her there . . and warned him to send her back immediately. . . defendant replied, that she should be kept close, and sent back as soon as her services could be dispensed with. . . [118] 18th April . . defendant wrote to Patterson . . 'Notwithstanding my great care, I learn with . . sorrow that Catharine has taken the small pox;'" [117] "that in frequent conversations . . defendant . . spoke of her as having died of the small pox, . . [118] 15th of May he again wrote [Patterson] . . requesting that he would 'order up the negro who had attended Catharine, but to caution him particularly not to bring any of her clothes.' . . she was a 'good old woman, of about fifty or sixty' . . and as a cook and nurse was . . valuable; . . The Jury found a verdict for the plaintiff for 250 dollars." New trial denied.

Pepoon, Guardian of Phebe (a woman of color) v. Clarke, 1 Mill 137, May 1817. "This was an action of trespass, in nature of ravishment of ward, to try the right of the plaintiff's ward (who was held in slavery by the defendant) to her freedom, and to recover damages. . . In 1806, Alexander C. Gibson removed from Baltimore to Charleston, and brought with him the girl Phebe, . . then about twelve years of age. Shortly after . . his wife . . chastised her for having said she was free; and Gibson reproved her for it, saying that she had stated no more than was true, . . that she was the child of a free woman of colour, who lived near him in Baltimore, and that her mother had permitted her to live with them for the purpose of waiting on Mrs. Gibson, without having bound her, or having made any other contract as to the length of time, or the terms on which she was to remain with them, and that without her knowledge . . the girl Phebe had been brought away. . . that he had a great mind to send her back by the vessel which brought them. Gibson died in 1807, and a few days before his death he charged his wife in that event, to send her back to her mother. The present defendant married his widow in the course of the same year, and by this means came to the possession of . . [138] Phebe, and detained her in the character of a slave until the trial of this action, in January, 1816. Mrs. Gibson, before her intermarriage with the defendant, administered on the estate of . . Gibson, but did not include Phebe in the inventory of his estate; her services were proven to have been worth from forty to fifty dollars annually, after paying all the expenses usually incident to her

situation as a slave. The Jury found a verdict establishing her right to freedom, and 400 dollars damages for her wrongful detention in slavery."

Motion for a new trial denied: [141] "So far from thinking that the damages in this case are so excessive as to authorize the granting of a new trial, I cannot forbear to declare my own conviction, that there has been a base attempt to consign to slavery for life, this unfortunate being, whose very situation called loudly for the protection of every feeling and honest man. With this view of the case, I should not have been disposed to grant a new trial, if the damages had been much greater." [Johnson, J.]

Ex parte Ferrett, 1 Mill 194, May 1817. "motion for a prohibition to restrain the enforcement of an ordinance[1] . . imposing a . . poll tax, . . the applicants are natives of Cape Francois, in the island of St. Domingo, and had always enjoyed the rights and privileges of the free citizens of that country; that they have resided in this city for many years, and had never been called on for the above tax until very lately; that their mother was a free woman of the East Indies, and was married to a white man, their father, at the Cape, where her rights had never been questioned."

Held: [195] "The word *Indian* [in the ordinance] means unquestionably slave Indians, for it is a fact (in the history of this country) well known, that the Indians of the country were formerly made slaves; it cannot, then, be extended to the descendants of an East Indian and a white man, nor indeed to the descendants of any other free Indian not impregnated with the blood of the negro." [Colcock, J.]

Murden v. Insurance Co., 1 Mill 200, May 1817. "action . . on a policy of insurance on the brig *Commerce,* R. S. Long, master, . . from Charleston, to the westward coast of Africa; during her stay . . on the coast, and . . back to Charleston. . . added [to the printed form]: 'Warranted not to remain on the coast longer than four months;' 'also warranted free from loss, by reason of any capture, seizure, or detention, . . after the first day of December next;' which policy was executed . . 18th . . June, 1807. The protest of the captain . . stated, 'That . . 16th . . June, 1807, they set sail . . from Charleston . . with sundry goods, . . bound on a slaving voyage . . [201] experienced a heavy tornado" and other storms. They put in first at Senegal and then at Goree, whence the captain wrote, on September 5: [205] "sorry I am to inform you that I have to return, for what I have on board I can get nothing for here. Sir, I have to go to the Gambia, where I am in poor hopes to do much; but there is no alternative, for there is Mr. M'Kelvey's brig come from the leeward, and is in the Gambia; and, from the best information, there is not less than three hundred sail on the coast. The rum, tobacco, dry-goods, and powder, I shall part with in the Gambia, and the remainder I have to proceed to Senegal with. But I have little hopes of getting

[1] [195] "That . . every other free . . person of colour, whether a descendant of an Indian or otherwise, shall, etc."

home in time, and therefore I hope you will not neglect of putting a letter on board of every pilot boat to inform me how to proceed, for it will not do to make a sacrifice at present, if I am obliged to do so hereafter. The greatest offer that I have had is, fifty slaves for the whole that I have on board, say every thing that came out in her. And, sir, I must strive to make a saving voyage, if I can't do no better. Do be particular with your letters, for I will not come in sight of the bar, if it please God that I get off the coast," The " protest of the captain " stated further that the vessel [203] " proceeded to the river Gambia, . . 17th of [September] . . came to anchor abreast of Gillfree, in the said river. That on the 19th, when paying customs, a difference took place between the king's people and the crew of the said brig, which occasioned most of the said crew to jump overboard, when the cook was unfortunately drowned. That after this day commenced their trade, and continued trading without any material circumstance happening, except the loss of another man, and the crew generally in bad health, and not able to do duty. . . [204] 29th . . December . . proceeded on the voyage to return . . having on board . . belonging to the owners of said brig, eighty-three slaves, besides three privilege slaves. That having lost three men of their crew, and no others to be procured . . they were obliged to leave the coast of Africa with that number of hands short . . and considerably deficient in the article of bread for the use of the crew, it being impossible to procure any in that part of the coast . . 11th day of February [1808], . . finding no more than one third of a barrel of bread remained on board for the use of the crew, . . nine in number, many of whom, from sickness, were entirely unfit for hard . . duty; and the said brig being leaky in her upperworks, a consultation was held . . [205] it was concluded to be dangerous . . to venture on the American coast at that season of the year, and that it would be best, for the general interest of the owners of vessel and cargo, as well as for the preservation of the lives of the crew, to bear away for the first port; but being informed of the attack on the *Chesapeake,* and of other reports while on the coast of Africa, they supposed war had taken place between Great Britain and the United States; they therefore judged it more prudent . . to proceed to Matanzas, in the island of Cuba, than to put into Nassau; and they directed their course accordingly." " But unfortunately running too near the shore in the night, the vessel grounded and was lost." Verdict for the plaintiff.

New trial granted: the captain thought it [213] " more prudent and safe [to pass by Nassau, the nearest port, and] to proceed to Matanzas, that haven of safety, into which it appears that most of the vessels engaged in the African trade were blown at that time. But no words or arguments can disguise the real motives for the departure in this case. The vessel had unfortunately been detained on the coast of Africa, until it became impossible for her to return before the prohibitory act of Congress took effect. It became necessary, therefore, to look out for another port. Matanzas furnished the best prospect, perhaps, of disposing of the cargo to advantage. . . The apprehension of a war between the United States and Great Britain was a groundless pretext." [Nott, J.]

Hendrickson v. Miller, 1 Mill 296, May 1817. [298] "a warrant to seize the servant . . who had taken refuge after the death of her master with the defendant,"

Chanet v. Parker, 1 Mill 333, May 1817. "negroes . . forcibly taken . . from the plaintiff's plantation . . under pretence . . of a mortgage"

Smith v. Ehrick, 1 Mill 349, May 1817. "In 1807 or 1808, Watson . . consigned to the house of Christian and De Wolf, a cargo of Africans, 14 of whom they sold to . . Whalley, at 8280 dollars, with whom they had a running account, and to whom they also sold 10 other negroes, of a consignment from another person. . . Whalley failed in England;"

Mitchell v. Dubose, 1 Mill 360, May 1817. "sold . . the wench . . to the plaintiff, . . February, 1810, . . for . . two hundred and thirty dollars; . . plaintiff kept [her] . . upwards of a year . . then sent her down to a Mr. Croft, in Charleston, for sale, . . [361] [He] said she was upwards of fifty years of age, . . 'a crazy sort of a thing,' who had kept him in apprehensions of having his house burnt . . but . . appeared to be a healthy woman."

Penning v. Porter, 1 Mill 396, May 1817. Held: [397] "the owners of slaves, convicted of offences, are not liable for the costs of prosecution,"

Course v. Prince, 1 Mill 413, May 1817. In 1807 three negroes were bought for the work of a ferry.

State v. Greenwood, 1 Mill 420, May 1817. "two indictments . . for assaults and false imprisonment. . . confessions voluntarily made by the defendant, . . [He] fabricated a charge against [two free colored men,] . . whom he knew to be free, and procured a warrant of commitment from Justice Nobbs, and confined them in gaol, where they were kept, until they consented to indenture themselves to . . Hasket, who pretended that he would befriend them, by paying seventy or eighty dollars to defray the expenses of the prosecution against them, and as an accommodation of the sham accusation, they were then, by the order of the same Justice, released from prison, and brought before him, where they executed indentures to Hasket, who then took charge of them, and they shortly after disappeared, and have never since been heard of, notwithstanding the officers of the Charleston police have made the most diligent inquiry. The defendant, who was a constable, also acknowledged that he did the act, for the purpose of making money of them, and exulted that he was in no danger, as they had been sent off, where their complaints could not be heard; supposing that their presence was indispensably necessary to his conviction." He was found guilty.

New trial refused: [422] "the charge against these men was founded in the basest falsehood, fabricated by the defendant, for the nefarious purpose of enslaving them for life, in which it is feared he has been but too successful, with a view, to use his own language, 'to make money of them.'" [Johnson, J.]

Dubois v. Read, 1 Mill 472, May 1817. In helping to build a house, "the negro . . was worth 50 cents per day."

Lowry v. M'Burney, 1 Mill 237, June 1817. "Debt on bond . . given for a negro carpenter, . . that this negro had been the property of a Mr. Croft . . and that, when young, had been put out as an apprentice for three years to learn the trade of a carpenter; that after his term had expired, he had misbehaved, and was sold by Mr. Croft to Mr. Fickling, . . who afterwards sold him to Mr. Miller, a carpenter, in whose employ he remained till the day of Miller's death; that for several years he had behaved very well . . and was constantly employed at his trade during that time; that after Miller's death he was advertised and sold by his executor, Mr. Lowry; . . he was represented as a good plantation carpenter, and was purchased by Dr. M'Burney, for . . 1007 dollars; . . [238] that Mr. Miller . . got the same wages for him as for his white journeymen, . . For defendant one or two witnesses swore that after Dr. M'Burney took him to Jacksonborough, he turned out a drunkard, a runaway; and that he was not a good workman; and that he had there been concerned in breaking open a poultry house. . . urged by plaintiff that no man could warrant the *future conduct* of a negro . . That a negro, with proper treatment and good management, might behave very well to one man, while on the contrary he might behave very much amiss to another master. A difference of treatment, bad company, and the temptations of a village where drunkenness and intoxication prevail, and vicious habits are predominant, might seduce even the best of slaves to go astray." Verdict for the plaintiff. New trial denied.

Murden v. Beath, 1 Mill 244, June 1817. "the plaintiff being indebted to the defendants . . $2375 34, (for moneys paid by them to the United States as sureties on his bond,) gave to them his bond . . confessed judgment [December 12, 1807] . . and a *fi. fa.* was issued . . under which some slaves belonging to the plaintiff, and which had been imported by Captain Hubbel, being seized, Mr. Jones paid . . Sheriff, on 22d January, 1808, . . $2668 25, . . the slaves were released . . [245] Hubbel . . had a charge of $450 for freight of said slaves, . . [246] $1542 56 was . . received [January 28, 1808, by Mitchell, agent of the defendants,] from Messrs. Ascaratti and Son, at the Havannah, as the proceeds of . . [ten] slaves deposited in their hands by . . Cole, master of the sloop *Deborah,* from Africa, and sold by his order on account of the plaintiff; . . [247] Mitchell had also received, on the 10th February, 1808, the sum of $770, 3¼ royals, not $800, from Josey Gromez, as the proceeds of the sale of five slaves put into his hands by Captain Holden, of the *Mercury,* for sale on account of said plaintiff, . . also received from Captain Long, of ——,[1] an order on Messrs. Madau and Co. of Matanzas, $966 38 . . paid . . 8th March, 1808, out of funds arising from certain slaves brought to the Matanzas by . . Captain Long, on account of . . plaintiff, and there sold"

Johnson v. Packer, 1 N. and McC. 1, November 1817. "action of Trespass, *vi et armis,* . . [2] Grice by deed conveyed to his . . [twin]

[1] The brig *Commerce?* See Murden *v.* Insurance Co., p. 302, *supra.* Evidently the cargo was not all lost with the vessel.

grand sons, . . while they were infants, two negro girls. . . that . . Johnson . . should have the possession . . until . . grand children . . should arrive at twenty-one . . Johnson took possession of the negroes when they were very young, and kept them until . . thirteen or fourteen years of age, . . suffered them to go into . . [the twins'] possession, for the purpose of assisting them in making a crop, . . they sold . . the negroes to the plaintiff [Packer], their brother-in-law, . . and immediately after left the country, without having made provision for the payment of . . the debt of the defendant Johnson. The defendants . . entered the plaintiff's house armed, and . . forcibly carried the negroes off. . . worth from $800 to $1000. . . verdict for the plaintiff for $1500, to be released on the return of the negroes, and the payment of $150."

State v. E. and R. Smith, 1 N. and McC. 13, November 1817. "convicted . . for killing a negro in *heat* and *passion.*[1] . . sentence . . 'that they [each] pay three hundred and fifty pounds old currency.'"

Messonier v. Insurance Co., 1 N. and McC. 155, January 1818. [156] "action on two policies . . dated the 13th and 15th September, 1810, . . on the Spanish brig *San Carlos* and her cargo; . . valuing the return cargo, viz: each slave at $150, . . insured to sail from Teneriffe to the coast of Africa, and during her stay and trade there for four months, and from thence to the Havanna." The brig "sailed on the 10th day of June, 1810, from Santa Cruz, in the Island of Teneriffe, laden with tobacco, rum, India goods, planks, muskets, etc. the property of Thomas Armstrong, a native and resident of the said Island for the coast of Africa. . . [157] captured" by the British [168] "on the ground, that she was an American vessel under Spanish Colours, [[157] 'carried into Sierra Leone,'] and was acquitted, because that was not proven." The supercargo said [157] "that the vessel was saved [from condemnation] by his management, in procuring a separate Bill of Lading for the water casks, which furnished a strong ground of suspicion, as to the object of her voyage. . . [158] eleven Spanish seamen . . went off, . . he then procured a crew (all Americans,[2] but two,) . . abandoning the slave voyage altogether. . . [The plaintiff] proved, that seventeen and a half per cent. was the highest premium paid in August, 1810, and that in consequence of the zeal and activity of the British, to prevent the slave trade, it rose in the December following, to thirty-five per cent."

Held: [170] "the plaintiff is entitled to a recovery for a partial loss,"

Touro v. Cassin, 1 N. and McC. 173, January 1818. Promissory notes had been given [174] "as premiums on policies of insurance [[175] 'executed in Boston, by citizens of Boston,'] . . on slaving voyages from Africa to Charleston, or elsewhere, in 1803, which, by the laws of Massachusetts,[3] were declared void,"

[1] Act of 1740, sect. 37. P. L. 173; 2 Brev. Dig. 241.

[2] [167] "seven put on board." [163] "who had been taken on board vessels engaged in the slave trade," [157] "having been brought into the colony on board of prizes, were considered as prisoners, and were, by the Governor's orders, put on . . the . . *San Carlos,* to be conveyed out of . . Sierra Leone"

[3] Mass. act of 1788.

Held: the notes are void. [176] "The citizens of that state . . are prohibited . . from engaging in a traffic which almost the whole civilized world now unite in denouncing nefarious." [Johnson, J.]

Witsell v. Earnest, 1 N. and McC. 182, January 1818. "The defendants, who were in the service of Dr. Glover, proceeded from his plantation to Mrs. E. Witsell's, for the purpose of hunting runaway negroes. They loaded their guns with buck shot, and on approaching the house, they separated, so as to command the back of the house. A negro who was in or near the house, on their approach, jumped up, and ran off towards a swamp, which was at no great distance. The defendants fired at the same instant, and killed the negro. . . The country had been in a state of alarm in consequence of the depredations of runaway negroes, and a murder had been committed at no great distance from this place, some time previously to this."

Held: [184] "The killing, . . not being justified by the statute or Common Law, the plaintiff is entitled to compensation."

King ads. Wood, 1 N. and McC. 184, January 1818. "action of slander, for calling plaintiff's wife a *Mulatto*. . . no special damages laid in the declaration." Held: the words are actionable *per se*.

Byers v. Bostwick, 2 Mill 75, May 1818. "alleged that defendant had sold . . a negro, as a fellow that would not run away, but who, contrary to such representation . . had run away."

Quay v. McNinch, 2 Mill 78, May 1818. "This negro had left the service of his master, in . . New-Jersey, and gone to Philadelphia, where he assumed the character of a free man, and had been reputed and treated as such for several years. The defendant being in Philadelphia, and having occasion for a coachman to drive him to his . . residence in South Carolina, this fellow tendered his services. He was then engaged in the service of a gentleman as a hackney coachman. Upon inquiry, the defendant was informed that he was a faithful fellow, and a good driver; and he therefore accepted of his offer. Shortly after his arrival in Chester District, . . the negro was taken up as a slave, who had run away from his master."

Mathews v. Sims, 2 Mill 103, May 1818. In 1810 Sims sold Mathews "three negroes, one a fellow called Sawney, and two females, Annetta and Anaca. Sawney was valued at 450 dollars, and Annetta at 350," Sims warranted "all . . to be good and sound," but it turned out "that two of the negroes were not good, but . . were habitual thieves; that one of the two was a runaway, . . [104] evidence that Sawney, soon after the purchase, discovered himself to be a runaway and thief; that his temper was malicious and vindictive, and withal that he had been castrated before his being brought from Virginia into this state. . . that Annetta had been cruelly murdered . . and that Sawney had been suspected as the author of this murder. . . had been tried before a magistrate and freeholders, and . . acquitted."

Held: [108] "As to the damages . . the price paid for Sawney, with interest . . (provided his services had been of no value,) and all accruing costs, would constitute the utmost limit:"

Whitmore v. Rumple, 2 Mill 120, May 1818. "The Sheriff showed . . a bill . . charging 25 cents per day for dieting negroes, and 50 cents per day for keeping and feeding horses, taken in execution," [121] "the act of February 1791,[1] . . allows only 8 *d* for dieting negroes or other slaves; but the act of 1808 [1810][2] provides, that for each negro *confined and dieted* in any gaol . . 25 cents per diem shall be allowed . . it does not appear whether the negroes . . were . . *confined*"

State v. Wilson, 2 Mill 135, May 1818. Indictment of Wilson and Strange for swindling, by selling "a certain mulatto girl, aged about nine years," who was free.

Held: [139] "if colour was a universal badge of slavery, the facts admitted . . might amount to cheating, but everyone knows that there are persons of this colour that are free, and that among the subjects of slavery are found all the various shades of colour between the European and African." [Johnson, J.]

Davis v. Murray, 2 Mill 143, May 1818. "that the negro, at the time of sale, was afflicted with the dropsy, . . the defendant used every artifice in his power to conceal his true situation,"

Benson v. Littlefield, 2 Mill 180, May 1818. "before he purchased him [for $200] . . defendant had hired him to grub; . . a competent hand, though slow, being old, except when he had the cholic."

Arthur v. Wells, 2 Mill 314, May 1818. "Trespass for killing a negro. It appeared that the unfortunate subject of this suit ran off on the morning of the day on which he was killed, from his overseer, who was about to correct him; . . the defendant . . ordered him to stop; he, however, disregarded the command, and continued to run off from the defendant, until he reached the adjoining plantation, where he endeavoured to conceal himself under a fence, among some brushes, where he was shot by the defendant. . . [315] not . . more than ten feet from the negro" Verdict for the plaintiff.

New trial denied: [316] "It is clear, beyond doubt, that the act was intentional; and it gives me pleasure to declare, that the act is not authorized by any law of the state. The law does not authorize the killing of a negro, except in cases where the person, attempting to take one, is endangered by actual resistance, as by assaulting or striking." [Colcock, J.]

Gregg v. Thompson, 2 Mill 331, May 1818. Action to recover money due on "a promissory note, payable to the plaintiff's negro slave, Joe,"

Held: [332] "the contract . . is *ipso facto* void, . . [333] The slave cannot endorse the note, nor can he empower his master to sue for him."

[1] 1 Brev. Dig. 344.
[2] Act of 1810. 2 Brev. Dig. 227.

Collin v. Green, 2 Mill 346, May 1818. Green "devised a negro, named Frank, to his wife, for life; that when his son Frederick, the defendant, arrived at the age of sixteen, both he and Frank should be put apprentices to a bricklayer; and afterwards he bequeaths the negro, Frank, to the defendant, and his heirs for ever."

Crawford v. Wilson, 2 Mill 353, May 1818. "warranted the girl to be sound, except as to a cast in her eye, and a split . . in her lip. . . bill of sale [added:] and the consequences thereof. . . the girl . . broke out all over in ulcers, . . incurable, . . plaintiff returned the girl . . The jury found for the plaintiff."

Hobson v. Humphries, 2 Mill 371, May 1818. "action . . to recover 100 dollars, which . . defendant had promised . . if [plaintiff] . . would ride out and show him where a certain family of negroes was, . . The defendant replied in evidence, that when the plaintiff offered to show these negroes . . the defendant said, he had heard of a family . . in Newberry answering this description, . . that plaintiff replied . . that the family inquired of by defendant were more than 100 miles distant, and that if defendant would not give him that sum, he knew a man that would, . . That afterwards the plaintiff came . . for the purpose of going to show the negroes, which he then stated were in Newberry, . . proved to be the same which defendant had discovered before: . . therefore, refused to go . . or to pay . . the 100 dollars."

Caldwell v. Barkley, 2 Mill 452, May 1818. In 1814 the defendant gave a lame negro which [454] "sold [later] . . for 387 dollars," in exchange for a negro, warranted as sound. Dr. Kelly in 1815 [453] "found . . his eyes . . affected with . . a milky cataract; and that hard labour, and labouring in the sun . . might . . destroy his sight . . Martin . . had worked on shares with the defendant in the crop of 1815; . . that the defendant did . . request him not to push this negro too hard because of his eyes; . . never put him to close work. He was employed in chopping and ploughing. . . a tender of 487 dollars . . with an offer to take back the negro, . . [454] refused" [452] "if perfectly sound, he was worth 600 dollars."

Mathis v. Clark, 2 Mill 456, May 1818. "the negro for which the note [for $500] was given, had run away;"

Eastland v. Longshorn, 1 N. and McC. 194, May 1818. The mother "was diseased of the dropsy at the time of the sale, and that she afterwards died of that disease, and that the defendants had expended $51 in employing a physician to attend her. . . [195] that the child was estimated to be worth two hundred dollars,"

Teague v. Maxwell, 1 N. and McC. 200, May 1818. "trover, to recover the value of a negro child," The plaintiff "had recovered of the defendant, the value of a negro woman (mother of this child;) pending which action the child in question was born. The Presiding Judge deeming . . [that] existing circumstances . . precluded the idea of separate identity between the mother and this child, directed a non-suit,"

Set aside: "That the child . . constituted no part of the former suit. That the identity of the child is to be considered separate . . from that of the mother. The right of property whereof is still in the plaintiff."

Neel ads. Deens, 1 N. and McC. 210, May 1818. "action . . to recover . . five hundred and fifty dollars . . paid by . . an elderly widow lady, to . . dealers and traders in negroes, for a negro girl . . [A witness] [212] described . . the girl, a few days before her death, as appearing bloated . . [Another] said she was smart and lively [before the sale], and was singled out to bring water on that account." Verdict of the jury: "amount of the consideration money paid, with interest, and one hundred dollars damages" [213] "by way of 'smart-money,'" New trial ordered, unless the plaintiff will release the "smart-money."

M'Dowell ads. Murdock, 1 N. and McC. 237, May 1818. "a few hours before her death . . asked where her negroes were? . . informed . . they were present . . She said, 'I want you to take them, and treat them well.'"

Welborn v. Little, 1 N. and McC. 263, November 1818. Garrison, who had bought from the plaintiff the unexpired term of a white apprentice, "set out on his way home [to Kentucky], and one of the Commissioners [of the Poor], who lived in the neighborhood, and who had an agency in binding him to the defendant, on hearing of it, and suspecting from the character of the parties, and from the colour of the boy, (which was very dark,) that foul dealing with him was intended, issued a process of his own manufacturing, (the legality of which, it is not necessary to consider, as it answered the purpose for which it was intended, and perhaps subserved the cause of justice and humanity,) authorizing a constable to pursue Garrison, and bring the boy back; the constable did so, and . . [265] the Commissioner retained the possession of the apprentice, . . stated that . . he . . should never have interfered if the plaintiff had not, as he believed, disposed of him in such a manner as might subject him to perpetual slavery."

Bell ads. Graham, 1 N. and McC. 278, November 1818. An action for malicious prosecution against a Methodist class leader. "Some years ago, a Methodist Society had established a church at Shady Grove . . they had . . regular meetings . . numerously attended by the black population of the neighbourhood, as well as the white. For some time preceding the occurrence which gave rise to this action, the patrol, or persons assuming that character, had frequently come . . [279] on the days of worship, for the purpose of exercising their office on the slaves that were without passes, and on some occasions, conducted themselves in such a manner as to produce the greatest disturbance . . during public worship; in consequence of which the regular travelling preachers had refused to attend it, and it was left in the charge of the defendant, the class leader, who continued the regular meetings. At one of these meetings [[282] 'in the midst of day'], the plaintiff, . . then acting under regular authority from the captain of the militia, within whose beat the meeting house was situated, came with a party of three or four . . in

the time of service, some or all of them having hickory switches, the usual instruments with which they executed their commission. On their approach, the blacks began to seek their safety by flight—they caught and whipt one, at a little distance from the meeting house. They also caught several others near the house, whom they threatened, and were preparing to whip, but dismissed, on the entreaties of the defendant and the tears of a lady who interceded for them. It was impossible to ascertain from the evidence, whether the congregation, which consisted of thirty or forty persons, were constituted of a majority of blacks or whites.[1] . . The defendant, . . being urged to it by many of the most respectable members of the congregation, reluctantly consented to become the informer, . . [280] An indictment was preferred against the plaintiff . . but the Grand Jury rejected the bill, and he therefore brought this action. The Jury, contrary to . . express charge of the Presiding Judge, found a verdict for the plaintiff, for $56 25," All the justices concurred in granting the motion for a new trial.

Kid v. Mitchell, 1 N. and McC. 334, November 1818. [336] "this negro [man] was worth about $500 when he was sold [in 1813];—now [1818] worth eight or $900."

Drayton ads. Wells, 1 N. and McC. 409, January 1819. "that the plaintiff should serve . . as an overseer . . for . . 1809; and that the defendant . . should pay him the value of three hands in the crop, for his personal services, and three like shares for three negroes belonging to the plaintiff, who were to labour in the crop. . . [410] The plaintiff . . proved the value of a share to be $120." Verdict for the plaintiff.

Alston ads. Bowers, 1 N. and McC. 458, January 1819. "the Deputy Sheriff . . put the copy writ, in the piazza of the defendant's dwelling house; into the hands of one of the domestics, (a negro) of the defendant:" The negro delivered it to the overseer of the defendant.

Held: [459] "It was not the less a leaving at an obvious part of the house, because it was put into the hands of a *moral agent*, instead of being thrown on the floor, to be carried whithersoever the next puff of wind should have wafted it. . . [460] if the white agent had been as faithful as the black one, the process would, no doubt, have regularly reached the hands of the defendant." [Cheves, J.]

Ex parte Leland, 1 N. and McC. 460, January 1819. [462] "The word 'negroes' has a fixed meaning (slaves.)"

Reid v. Colcock, 1 N. and McC. 592. April 1819. [593] "that on one occasion, some person . . asked Frank, then a boy, to whom he belonged, and on his replying that he did not know, . . [plaintiff's father] gave him a severe chastisement, saying to him, he belonged to plaintiff, and desired that he might remember it for the future. . . said . . the witness's driver, was no planter, . . [594] had bought Arthur, as a body servant for the plaintiff, . . that on the plaintiff's coming home, on a visit, while at college, the negro Billy was called out of the field,

[1] Act of 1803. 2 Brev. Dig. 260, sect. 126.

by plaintiff's father, and given to him; and that on that occasion, and frequently after, when plaintiff was at home, Billy left his work in the field, and attended his person; . . Doll . . was taken into the house . . by his mother, to be made a seamstress for his use;"

State v. Miles, 2 N. and McC. 1, May 1819. "the owner . . lived in Williamsburgh district. [He had lent the negro to his brother.] . . The negro . . was taken, or absconded. . . found in Charleston, where he had been sold by the prisoner. . . [2] tried there [on an indictment for inveigling, stealing and carrying away a negro from his owner] . . convicted,"

New trial refused: [3] "The object . . of the act[1] was to give the most ample protection to the most valuable species of personal property, owned in this country; . . [4] the law implies a loss of service.—Whether it be on Sunday, when every slave is exempt from labour, or on a holiday, when his labour is voluntarily dispensed with by the owner, or in the night, when he does not require his services, or when he has run away, and he cannot command them, is perfectly immaterial." [Nott, J.]

M'Kewn ads. Barksdale, 2 N. and McC. 17, May 1819. Action "for the wages of a black bricklayer, the property of Mrs. Barksdale, and employed [36 days] by the defendant. . . It was proved by a multitude of mechanics, that when slaves were hired by the day, they received larger wages than by the month; as $1 per day, and about $16 per month. But, that, for this *extra.* compensation, they must actually labour during working hours: And if the weather was inclement, or if, from any cause, time was lost, it was deducted:"

Cook v. Gourdin, 2 N. and McC. 19, May 1819. The "patroon" of the ferry boat [20] "instead of exerting himself, in order to bring the head of the flat up, to stem the current again, left his pole and went to the stern of the flat, to chastise the helmsman; and did beat him for his inattention and carelessness. In the mean time, the current took the broadside of the flat and . . the hands threw down their oars and poles, and refused to make any further exertions."

State v. Anone, 2 N. and McC. 27, May 1819. Polydore, Anone's slave, [28] "had been long employed in the store, . . the defendant had, several different times, employed a white clerk. . . had said to the white clerk, that a ticket[2] was of no consequence;" [31] "While [the clerk] . . was sick, Polydore had the whole management. Anone directed the witness [the clerk] to buy all the corn he could, and if the negroes brought 10,000 bushels to buy it. The witness remonstrated; to which defendant said he was not fit to do business. Polydore was there, and bought corn without tickets. The witness wrote several letters informing defendant, that the negroes brought so much corn, that they must have stolen it." An overseer gave corn to a slave and [28] "sent him to the store for the purpose of detecting" Anone in trading illegally.

[1] 2 Brev. Dig. 245.
[2] Act of December 1817.

He saw Polydore receive the corn from the negro without a ticket, and give him "some articles out of the store in return. . . the Judge charged, that there was sufficient evidence to justify the inference, that Anone had instructed Polydore to trade with negroes, without tickets. The Jury found him guilty."

Motion for a new trial [34] "unanimously dismissed." I. [30] "standing by for the purpose of detecting an offender, who may trade with the slave, does not legalize the trading. . . this mean[s] of detecting . . is becoming common; and being prudently practiced, may be rendered very efficacious. . . [II.] [33] whenever a master makes a slave the minister of his crime, we can look for testimony only from his character and conduct, the object in view . . and attending circumstances." [Richardson, J.]

Hogg v. Keller, 2 N. and McC. 113, November 1819. "Keller, styling himself captain of a patrol, and the other defendants acting under his authority, did whip the plaintiff's negro, who had a pass from his master. The number of stripes was not many, nor were they severely laid on. The defendant attempted to justify, under the patrol law; and on the ground that the pass was not according to law; because it did not state to what place the negro was going. One of the witnesses said, each one gave some stripes, and that this was the usual mode of whipping by patrols."

Held: the pass need not state "to what place the negro shall be permitted to go. It is sufficient if it express a leave of absence, for such a time." [1]

State v. Turnage, 2 N. and McC. 158, November 1819. "the act on which the prisoner was indicted [for stealing a negro] was . . an act . . of the General Assembly of the province of South-Carolina, . . passed in 1754," He was convicted.

State v. Whyte, 2 N. and McC. 174, November 1819. [175] "a motion at Chambers, before Mr. Justice Johnson, for a prohibition against the magistrates and freeholders,[2] who had tried and convicted a negro man slave, . . Billy, the property of Hugh Hershaw. . . The evidence was, that the prisoner had been several times at the house of the owner of Hannah; that he had endeavoured to induce another negro woman to go off with him, saying that his young master would carry her to a free country, that she declined, and then he made the same propositions to . . Hannah, who consented. And he fixed on Saturday as the time when he would come for her; that on her suggesting a difficulty in getting off her clothes, he had promised to bring a horse. That while she was at work in her mistresses [*sic*] house on Saturday night, some person was heard to come to the door and make a noise, . . Hannah went out, and has never been since seen or heard of by her owner. One of the witnesses said she had a glimpse of his face, and thought it was Billy, from his having made the bargain to come for Hannah on that night. Some evi-

[1] 2 Brev. Dig. 231.
[2] Act of 1740. 1 Brev. Dig. 463.

dence was then offered as to the character of the prisoner; but it was rather a negative character; upon which, after hearing counsel in behalf of the accused, the Court found the prisoner guilty and pronounced upon him the sentence of death. . . [176] This motion [for a prohibition] was refused, and notice was given of an appeal. A motion was made [before the Constitutional Court] to reverse the decision"

Refused: negroes are included under the general words, "person or persons," used in the act of 1754. See Billy *ads.* State, *infra.*

Gayle v. Cunningham, Harper Eq. 124, December 1819. Held, by a divided court: the issue of a female slave, born after the execution of a will and before the death of the testator, shall go with the mother to the legatee of said slave. [128] "the legatee . . risks every consequence of breeding, . . Those who incur the *risk* are reasonably entitled to the *gain.* . . contrary decision would separate even sucking infants; . . [129] Sound policy, as well as humanity, requires that everything should be done to reconcile these unhappy beings to their lot, by keeping mothers and children together." [De Saussure, Ch.]

State v. Fisher, 2 N. and McC. 261, January 1820. "they stopped to water their horses . . a negro came out of the yard . . and demanded the bucket . . (which was their own) for the purpose . . of watering his horse. . . refused . . and some words ensued,"

Johnson v. Brailsford, 2 N. and McC. 273, January 1820. By his will, executed in 1808, a blacksmith of Charleston disposed of a large estate, directing his executors to sell certain land and his [274] "negro blacksmiths, and such other town negroes as are supernumeraries, and . . apply the proceeds to the payment of my debts and legacies;"

State v. Sonnerkalb, 2 N. and McC. 280, January 1820. Dubose testified "that a negro of his went into the store of the defendant, with some corn and an empty bottle; that after he entered, the door was closed; that he heard the corn pour out, and he heard the liquor poured into some vessel. As soon as the negro came out, he took him back into the store, and the defendant admitted, that he had given him the whiskey for the corn, and had sold him a handkerchief for a quarter of a dollar. . . [Witness] acknowledged, that he had sent the negro for the purpose of detecting the defendant." Verdict of guilty.[1]

Billy (a slave) ads. State, 2 N. and McC. 356, May 1820. See State *v.* Whyte, p. 313, *supra.* [357] "sentence was again pronounced in January last; and being again suspended by the governor, or for some cause, the sentence was again repeated in April last: From these facts, another ground [for a writ of prohibition to prevent the execution] was taken, . . That supposing the justices originally qualified, yet they were incompetent in January last, to repeat the sentence, . . had not then taken the oath prescribed by the act of [December] 1819, though they did so afterwards. . . [358] within the ninety days prescribed,"

Motion dismissed: "passing the sentence in April . . was legal,"

[1] Act of 1817. 1 Brev. Dig. 418.

Ashbell v. Witt, 2 N. and McC. 364, May 1820. Defendant said that "the plaintiff was forsworn, and he the defendant would overthrow his oath, so that it should never hurt a negro."

Foster v. Cherry, 2 N. and McC. 367, May 1820. "he was about to give some negroes to his children, . . all of whom were then young, and had called on him to be a witness"

State v. Hudnall, 2 N. and McC. 419, May 1820. [421] "a declaration in Prohibition . . that John Hudnall and William Vaughn, acting as Justices, but without being so . . and Warner Macon, and others, acting as freeholders, but not being such, tried a negro, named Manuel, the property of . . Silliman, on a charge for administering poison to Roger Parish, and before whom the said negro was convicted and sentenced to be executed. . . [422] that the negro had not been tried within [six days] . . after being apprehended; that the master had not been notified of the accusation, and that on the trial of the slave, the testimony of Roger Parish, the prosecutor, was admitted without his being sworn. . . the defendants filed a general demurrer, . . sustained . . appeal . . to this Court to reverse that decision,"

Demurrer overrruled: [424] "Every feeling of humanity and justice revolts at the idea, that any other mode of trial, less formal . . than what the act [1] has prescribed, should be sanctioned. . . But the defendants are still allowed to plead to the declaration, and in time for the trial . . at the next Circuit, . . And in the mean time, and until a final decision . . the defendants are prohibited from all further proceedings on the trial had against negro Manuel." [Gantt, J.]

Lloyd v. Monpoey, 2 N. and McC. 446, May 1820. Action for beating a negro of the plaintiff. "that defendant came . . whilst the family were at the dinner table; . . assaulted Chloe violently with his fists, knocked her down, gave her four or five blows about the head, kicked her twice in the back, and swore he would have her ears; . . that Doctor Bennett was sent for . . [448] that Chloe . . continued in a state of insensibility a long time. . . Nancy Gough, ['a professed nurse'] . . said, that Chloe was the wife of her brother; that . . she was called to nurse and attend her . . she miscarried: . . [Witness] [449] for the defendant, said, . . that on the Friday after, she saw Chloe in a back piazza shelling beans; . . heard, that Chloe stole a fowl from the defendant's yard; Chloe confessed, that she had taken the fowl, but not that she had stolen it;" witness for plaintiff said [448] "that . . it had been afterwards discovered, that the theft [for which defendant [447] 'himself had her punished'] . . had been committed by her husband, and that she was innocent; . . [450] The Jury found a verdict for the plaintiff in the sum of $500." New trial refused.

Gist v. Cole, 2 N. and McC. 456, May 1820. [457] "Mr. Gist . . had been fined by Captain Cole, . . for divers defalcations, in not performing patrol duty, to the amount of about $70; . . Captain Cole issued his

[1] Act of 1740. P. L. 165.

warrant . . pursuant to the directions of . . the patrol act,[1] . . execution, levied upon a negro . . of Mr. Gist, . . [who] sued out a writ of replevin to the sheriff . . who took away the . . negro . . and delivered him back"

Held: [464] "that the writ of replevin . . was not warranted by law, . . that the negro . . should be delivered back to the military officer . . to raise the fines" [463] "the Patrol Law . . ought to be considered as one of the safe guards of the people of South-Carolina, for the protection of their dwellings . . and as a security against insurrection; a danger of such a nature, that it never can or ought to be lost sight of in the southern states. It may justly be considered as a branch of our Militia system;" [Bay, J.]

Wallace v. Frazier, 2 N. and McC. 516, November 1820. [517] "the negro had been . . under the hands of a doctor who pronounced it to be a *white swelling*, . . probably incurable, . . lessened his value from 25 to 30 *per cent.*" [518 n.] "He was, notwithstanding . . now worth $450,"

Evans v. Rogers, 2 N. and McC. 563, November 1820. Evans, the overseer of Rogers, and [564] "five of his hands had worked in the crop of Rogers," "Rose [the slave of Evans] was worth seven or eight hundred dollars." She was sold to Rogers, under an execution, and hired to Evans "at $5 per month."

Leau v. O'Hara, 1 McCord 19, January 1821. Bill of sale, dated June 8, 1807: [20] "I . . sell . . to . . Leau, a certain negro fellow, called Charles, now in Georgetown gaol," The bill of sale "was not delivered until the 15th of June; . . the negro escaped from gaol on the 14th, . . it was known to the plaintiff that Charles was a run-away, and on that account the defendant consented to take for him [$350,] much less than his appearance and qualities ought to have commanded;"

Martin v. Maverick, 1 McCord 24, January 1821. Action of trover. "The plaintiff owned a negro woman . . who ran-away from him in June, 1809, . . In an advertisement published . . in the City Gazette, . . 1st March, 1810, offering a reward for her apprehension, . . she is said to be of the Angola country, and to speak the French Creole. . . the defendant . . alleged that he had been in the possession of this negro from . . 1805, . . and that he had then bought her on board an African slave ship. . . [25] [The plaintiff] gave in evidence . . that on a former trial . . one of the jury put a question to her . . in . . French . . which it was said she understood, and answered in the same language. . . The plaintiff's counsel objected to the defendant's going into evidence, that she spoke the Coromantee and not the Angola dialect; . . overruled . . the witness stated that he knew something of both . . and that they were so different, that those nations could not understand each other, . . propounded . . questions to her in the former, which she seemed to understand, and gave her answers in the same. . . verdict for the defendant." New trial denied.

[1] Act of Dec. 19, 1809, sect. 5. 8 St. at L. of S. C. 516.

Sampson v. White, 1 McCord 74, January 1821. "John Locklier, the other subscribing witness, was a coloured man, and therefore his testimony was rejected."

Held: [76] "The ordinary undoubtedly had a right to reject the testimony of Locklier upon inspection. Colour is in many cases an uncertain test; but . . sufficient to authorize the Court to throw the burthen of the proof upon the other side." [Nott, J.]

Ex parte Stephens, 1 McCord 87, January 1821. The testator bequeathed all of his negroes to be divided equally among his grandchildren. [88] "A sale of the negroes was made by the executors . . 1817, for the purpose of enabling each legatee to purchase in the amount of his share."

U. S. v. the Johnson, 25 Fed. Cas. 1200 (20 Niles Reg. 137), April 1821. Libel of forfeiture against the brig *Francis F. Johnson* for alleged violation of the laws relating to the slave trade.[1] The brig "departed from Alexandria . . laden with negro slaves, . . destined for . . New Orleans, . . All the slaves on board, except two, were entered on the manifest." They had been acting [1201] "one as cabin boy and the other as cook or ordinary mariner, for months past in the coasting trade of the Bay of Chesapeake, . . they belonged to a citizen of Baltimore. . . in a conversation on board he said, if one of those two negroes did not behave better, he might sell him at New Orleans." Libel dismissed.

Miles v. James, 1 McCord 157, May 1821. The ferryman refused to [158] "assist them in crossing. . . saying to them, go and pay your ferriage to the negro, and he will put you over. . . swearing he would not wet his foot for any of them that day. . . the negro brought the flat as near the bank as he could; . . every thing in the cart was lost."

Held: the ferryman is liable. [160] "further . . the law, declaring that ferries shall be kept by white men.[2] . . The negro then could not be . . his agent."

State v. Mary Fuller, 1 McCord 178, May 1821. "The defendant had been convicted of a misdemeanor, for trading with a slave, and had been afterwards pardoned by the governor, upon the condition of leaving this state in the course of two weeks."

Atkinson v. Hartley, 1 McCord 203, May 1821. Action of slander. "The words charged . . were, 'you are a damned mulatto son of a bitch.' . . that in a quarrel . . where both were much excited, and when, as it was supposed, the plaintiff had gone into the house to get a gun to fire on the defendant's son, he said to him, bring out your gun and shoot, 'you damned mulatto son of a bitch, or you damned mulatto looking son of a bitch, . . [204] if you are not a mulatto, your looks belie you damnably.' The jury . . found a verdict . . for $500 damages."

New trial granted: "the words laid in the declaration are actionable." But the words proved do not support the declaration.

[1] 2 St. at L. 426, sect. 9.
[2] 2 Brev. Dig. 191.

Davis v. Duncan, 1 McCord 213, May 1821. A negro girl was lent to the daughter of the testator on her marriage; [214] "but the husband sent her back, and refused to accept of her upon such terms." Her second husband "took this negro woman with him. The overseer, under whose charge she was, forbid him to take her. He, nevertheless, tied her, and took her away."

Smith v. McCall, 1 McCord 220, May 1821. "action . . on a note . . for part of the purchase money of a negro slave. . . bill of sale, warranting the title and soundness of the negro, but nothing else." "The defence set up was, that the negro had an inveterate habit of running away, which so much impaired his value, that the plaintiff was not entitled to receive more than had already been paid."

Held: [220] "The principle . . that a sound price implies a warranty of soundness of property . . [223] has never been extended to the moral qualities of a slave. . . The character of a slave depends so much upon the treatment he receives, the opportunities he has to commit crimes, and the temptation to which he is exposed, that we can form but a very imperfect opinion of it, abstracted from those considerations. A vice which would render him worthless in one situation, would scarcely impair his value in another. A habit that would render him useless to one man, would scarcely be considered a blot upon his character in the hands of another." [Nott, J.]

Evans ads. Parr, 1 McCord 283, May 1821. "that . . a negro child, the property of the defendant had been found dead, which was supposed to have been murdered, and that that . . prevented his entering his appearance"

City Council v. Palmer, 1 McCord 342, May 1821. [343] "the chimney blazed out in consequence of a negro . . throwing into the fire a band box filled . . [344] verdict for the city of $50." [1]

Held: the master is responsible. "the chimney was kept so foul as to take fire."

M'Neil v. Philip, 1 McCord 392, May 1821. [393] "the Revenue Cutter, commanded by the plaintiff, . . [took as] prize . . the *General Blake* . . hovering on the coast with negroes on board, . . four Africans, of whom Ellick was one. That they were all brought into Charleston by the Cutter." Captain Philip received Ellick [392] "from the plaintiff, under a promise to return him . . when the business of . . prize was settled, but thought himself as much entitled to the negro as the plaintiff. . . [393] about three years before . . [this] trial, . . [Ellick] was . . working out for captain Philip, . . in a coasting vessel, and was hired to captain Mead. Witness supposed he was not worth more than $300, as he sometimes got drunk. He further said, the usual wages of a negro coaster were from 8 to 10 dollars per month." [392] "twelve or fifteen months before [the trial, Captain Philip] . . sold Ellick to a back countryman. . . [393] Ellick was an African, and worth

[1] Ordinance, "that the owner . . [343] whose chimney shall . . blaze out . . shall be subject to a fine of not less than fifty . . dollars."

$500. . . The plaintiff . . denied that the defendant was a joint owner with him under the act of Congress, or a sole owner by occupancy."

Held: [394] "It is not necessary to inquire into the strict legal title of the plaintiff . . under the authority of the case of Norwood *v.* Manning, decided . . 1817.[1] . . [395] defendant had stipulated to return Ellick . . good faith required this contract should be fulfilled"

Brown v. Shand, 1 McCord 409, May 1821. [410] "stated, that he meant to provide [in his will] for Mary, (his slave,) and her children."

Wells v. Spears, 1 McCord 421, May 1821. "The wench had a child a year old. After she had the child, she looked thinner . . She ranaway from the plaintiff a few weeks before the sale, crossed the great Saltketcher and lay in the swamp near defendant's plantation. Defendant gave information to the plaintiff, and, on the plaintiff's coming for her, the defendant agreed to purchase, . . [422] The wench was said to be worth $500; . . defendant [gave notes for that amount and] boasted that he had made a good bargain, if the wench turned out . . sound. Soon after . . the wench was taken sick. The defendant called medical assistance . . in the last stage of the disorder, and she died in a few days . . Defendant offered to return the child, which plaintiff refused." [421] "the child being young, became . . an expense and trouble" The plaintiff brought an action for the purchase money. Verdict for the defendant. New trial [425] "ordered, unless the defendant, according to his former offer, shall return the child . . within . . three months."

White v. Helmes, 1 McCord 430, May 1821. [431] "there were none but negroes at Leger's . . [435] The appellants . . introduced a negro woman, Eliza Holmes, admitted to have been born and bred free. She was rejected, as incompetent."

Held: "properly rejected. There is no instance in which a negro has been permitted to give evidence, except in cases of absolute and indispensable necessity, nor indeed has this court ever recognised the propriety of admitting them . . where the rights of white persons were concerned. When we consider the degraded state in which they are placed by the laws of the state, and the ignorance in which most of them are reared, it would be unreasonable as well as impolitic to lay it down as a general rule that they are competent witnesses." [Colcock, J.]

Cohen v. Hume, 1 McCord 439, May 1821. [440] "The driver drove well. . . [441] The horses and front wheels were in the flat, when the carriage went over-board." [440] "The driver held by the reins, until they broke, when he caught by the wheel, having left his seat. . . [442] The current was very strong. The negroes assisted and did all they could. They stripped and dived after the carriage." [440] "one of the ladies in the carriage" was drowned.

Clifton v. Phillips, 1 McCord 469, November 1821. "an action . . in nature of an action for ravishment of ward, to try . . whether a negro the ward of plaintiff, held in slavery by the defendant, was . . en-

[1] Not reported.

titled to his freedom. The jury found a verdict establishing the right . . to freedom, but found no damages,"

Held: plaintiff is "entitled to costs." "the action . . was necessary to effect an important object."

McGee v. McCants, 1 McCord 517, November 1821. [519] "saw the negroes go into the waggon . . hired to move them."

Hughes ads. Banks, 1 McCord 537, November 1821. "Dr. Hammond . . was called in to attend the woman . . about seven weeks after the sale, . . [538] excessively ill, and died on the next evening. . . [539] proved by plaintiff [Banks], that Hughes acknowledged that the woman had had the venerial many years, (12 or 14) before, but had got entirely well; although some of her children had cutaneous eruptions, . . easily cured;" [538] "The defendant [Hughes] proved . . that she was . . one of the best hands of Hughes' whole gang of female slaves. . . fat, sound and hearty . . within two weeks of her death. . . [539] verdict for $600 and costs."

State v. Cole, 2 McCord 1, January 1822. "Motion for a prohibition . . to prevent the collection of certain fines . . for the non performance of patrol duty."

Held: [4] "The [patrol] act of 1819, is only a re-enactment of the act of 1809, and the former acts, with some small alterations. . . [5] no repugnancy . . in those particulars which can effect [*sic*] the Relator,"

State v. Marshall, 2 McCord 63, January 1822. "a Justice of the Peace, and two freeholders, were about to try a free person of colour for harbouring a slave, belonging to Anny Le Prier, another person of colour;"

State v. Cole, 2 McCord 117, May 1822. "The defendants . . were indicted for a riot. The prosecutor . . swore that . . about 1 o'clock on the morning of the 12th of January, 1821, he was roused . . by the report of a gun. Immediately after he heard another; he next heard one of his servants running round the house, enquiring if he was awake. . . before he could get his clothes on, his driver called him. . . on his way to his negro houses, he met Capt. Cole, . . who was abusing [118] one of his negro women. She was complaining that he had beaten her. The witness asked Cole what he was doing, he said he was patrolling. Witness replied it was very well, and asked him why he had beaten the negro woman. He said on account of her insolence. One of his fellows then came up and said he had struck him in the face with the but [*sic*] of his gun. Cole at first denied it; he afterwards acknowledged that he had beaten him in the manner the negro had related, and said he had done it because he had refused to obey his orders. He then asked him why they had fired the guns; he said they had been shooting dogs. Cole then advanced towards him brandishing his gun in a very angry manner, and using some threatening language. About this time the two other defendants came out of the negro houses armed with guns and sabres. They were desired to do their duty, and witness went along with them to the negro

houses. The first they came to was locked, and the owner from home; he broke the house open and let them examine it. Cole did not get off of his horse all this time; the other two were on foot. Cole then began abusing him; told him his negroes were a nuisance to the parish; that he was a damned mean fellow; that he had supported his negroes in killing his hogs. . . The negro woman had been beaten with a sabre. . . Cole had frequently been at his plantation before, and committed similar outrages under pretence of patrolling. He knew Cole to be the captain of a beat company," [124] "The prosecutor said he was actually obliged to remove his family to Charleston, to relieve them from the constant alarm in which they were kept by the turbulent conduct of the patrols." Verdict of guilty.

Motion for a new trial, refused: [123] "the duties of a commander of a company are incompatible with those of a commander of a patrol;[1] . . But admitting this was a regularly organized patrol, . . A patrol is not authorized to announce its approach with the firing of guns, to commence its operations by killing a man's dogs . . carry them on by beating his negroes, and conclude with abusing himself." [Nott, J.]

Elliott ads. Minott, 2 McCord 125, May 1822. [126] "2403 bushels of rough rice . . [were] sent by the defendant's carts and negroes to the plaintiff's vessel, and there thrown into the hold. The carts were under the direction of Mrs. Elliott's servant, who was one of the most trusty on the plantation, and who continued on board until the rice was delivered. . . When the vessel was full, by the defendant's direction, her servant Paris, went on board and remained with the rice until it was measured at the mill."

Lightner ads. Martin, 2 McCord 214, November 1822. Alleged that one of the negroes "had the venereal disease at the time of the sale. . . [215] that this woman had communicated the disease to others of his negroes, by which he had incurred great losses and expense: . . The defendant put her under the care of a physician, and after having gone through a course of medicine, she appeared to have got quite well. At length he determined to sell her, and sent her off for that purpose."

Smith v. Littlejohn, 2 McCord 362, May 1823. "the gift . . was made to the plaintiff [by her father] when [the negro] Lucy was an infant in arms, on the suggestion of the nurse."

State v. Williams, 2 McCord 383, May 1823. "The prisoner was charged with . . negro stealing, . . money raised by subscription . . for his apprehension,"

Ashley v. Reeves, 2 McCord 432, May 1823. [433] "five hundred dollars . . given for a negro fellow. . . lame, . . if sound, would have been worth . . from eight hundred to a thousand dollars."

State v. Calder, 2 McCord 462, May 1823. [464] "in this country . . the universal understanding, that when a servant is spoken of, a person of color is meant." [Nott, J.]

[1] Act of Dec. 18, 1819, sects. 2, 3. 8 St. at L. of S. C. 538.

City Council v. Van Roven, 2 McCord 465, May 1823. [466] "he and Mr. Moses saw several negroes in her shop after 8 o'clock, P. M. That some of the negroes were drinking spirits and water,"

State v. Mazyck, 2 McCord 473, May 1823. [474] "that . . Mazyck is the owner of a settled plantation . . and that from the first . . of January, 1822, he hath employed . . more than ten working slaves, and that . . [he] hath not during the said period employed . . a white man capable of performing patrol duty," [1]

Held: [476] "the default being for the whole year, . . the penalty is sixty dollars."

State v. Taylor, 2 McCord 483, May 1823. "The indictment [2] contained two counts; one for murder, the other for manslaughter. . . It appeared that two of the prisoner's negroes had run away, and Jacob particularly had been absent for some considerable length of time; that upon getting some information of them [in June 1821], he went in pursuit . . and caught them some where about Wappoo Creek; that . . he caused their hands to be tied behind their backs, and then tied the two together, and ordered them into a boat . . [484] to bring them over to Charleston, and made them sit down in the bottom of it, while he sat in the stern with a loaded double barrelled gun beside him. That . . the prisoner, when about 100 yards from the shore, took up his gun and deliberately took aim at Jacob saying, 'damn you, you shall never kill any more hogs,' and fired off one of the barrels at him. But as the negro sat in the bottom of the boat, with his knee up . . the contents of the gun struck his knee instead of entering his body. As soon as the boat reached the . . landing, Mr. Robert Hume, who was . . looking at the boat as it approached, and who saw the flash and heard the report of the gun, went with several others up to the boat, and . . found the prisoner with the gun in his hand, and the negro laying on his back in the bottom of the boat, bleeding from the wound. Mr. Hume, who was a principal witness for the prosecution, and who appears to have had great merit in carrying on this prosecution, in the cause of humanity, asked the prisoner if he had shot the negro, who answered in the negative, and said the gun had not been fired for a year. . . Mr. Hume, then demanded the gun from him, . . But he refused to give it up. Mr. Hume, however, . . forcibly took the gun from him . . and found that it had just been fired off. Upon trial, he found the other barrel loaded and primed. The defendant was very abusive, . . Mr. Hume had the wounded negro taken up to the house of Dr. Glover, . . to have the wound dressed; while the prisoner, who was opposed to it, continued to be very abusive. Dr. Glover then dressed the wound, after which, the negro was sent to the work house to be taken care of by the surgeon of the establishment, Dr. Logan. . . [485] Drs. Glover and Logan . . both attended the wounded negro carefully till the first of August following, when he died, and they were both clearly of opinion, that the wound in the knee was

[1] Act of Dec. 18, 1819, sect. 13. 8 St. at L. of S. C. 540.
[2] Act of May 10, 1740, sect. 37. 7 St. at L. of S. C. 410.

the occasion of his death. . . [492] the jury, without the smallest hesitation, found a general verdict of guilty, which convicted the prisoner of the offence of murder. A motion for a new trial and in arrest of judgment was then made,"

Dismissed: "there is no express repeal of the old law of 1740: it remained in full force . . till the act of [December 20,] 1821 [1] was passed" [Bay, J.]

State v. Gulden, 2 McCord 524, May 1823. "A Bill of indictment . . under the act of 1821, for murdering a slave. In addition to the count for murder, . . also a count for killing in sudden heat . . the grand jury found a true bill as to the last only, . . [525] the solicitor . . entered a *nolle prosequi*. A motion was then made to discharge the prisoner. In opposition . . the solicitor exhibited the examination of several witnesses taken on the inquest . . furnishing strong presumptions of the guilt . . and declared his intention of preferring a new bill . . next term. The court rejected the motion, but ordered the defendant to be bailed, himself in $2000, and two securities in $1000 each, . . A motion was made in this court to rescind that order, and for the discharge of the prisoner," Refused.

Elkison v. Deliesseline, 8 Fed. Cas. 493 (Brun. Col. Cas. 431), August 1823. "This was a case of an arrest of a [colored] British seaman, under the third section of an act of the state of South Carolina, entitled 'An act for the better regulation of free negroes and persons of color, and for other purposes,' passed in December, 1822." The sheriff took the prisoner, a native of Jamaica, "out of the ship *Homer*, a British ship trading from Liverpool to this place [Charleston]. . . the British consul has also presented the claim of this individual as a British subject, and with it a copy of a letter from Mr. Adams to Mr. Canning, of June 17th last, written in answer to a remonstrance of Mr. Canning against this law. . . It had its origin thus: Certain seizures under this act were made in January last, some on board of American vessels and others in British vessels; and among the latter one very remarkable for not having left a single man on board the vessel to guard her in the captain's absence.[2] . . I felt confident that the act had been passed hastily, and without due consideration, and knowing the unfavorable feeling that it was calculated to excite abroad, it was obviously best that relief should come from the quarter from which proceeded the act complained of. . . [494] The application was made to the state authority, and the men were relieved; . . from that time the prosecutions under this act were discontinued, until lately revived by a voluntary association of gentlemen, who have organized themselves into a society to see the laws carried into effect. . . the state officers . . from the time that they have understood that this law has been complained of on the ground of its unconstitutionality and injurious effects upon our commerce and foreign relations, . . have shown every disposition to let it sleep. . . The opposi-

[1] 6 St. at L. of S. C. 158.
[2] Calder *v.* Deliesseline, p. 326, *infra*.

tion to the discharge of the prisoner has been conducted by Mr. Holmes, the solicitor of the association, and by Col. Hunt. . . Neither of the gentlemen has attempted to prove that the power therein assumed by the state can be exercised without clashing with the general powers of the United States to regulate commerce; but they have both strenuously contended, that *ex necessitate* it was a power which the state must and would exercise, and, indeed, Mr. Holmes concluded his argument with the declaration, that, if a dissolution of the Union must be the alternative, he was ready to meet it. Nor did the argument of Col. Hunt deviate at all from the same course." This law [495] "is in effect a repeal of the laws of the United States, *pro tanto,* converting a right into a crime. . . also . . the seizure of this man, on board a British ship, is an express violation of the commercial convention with Great Britain of 1815. . . Such a law as this could not be passed even by the general government, without furnishing a just cause of war. . . [496] One gentleman likened the importation of such [free] persons [of color] to that of clothes infected with the plague, or of wild beasts from Africa; the other to that of fire-brands set to our own houses only to escape by the light. But surely if the penalty inflicted for coming here is in its effect that of being domesticated, by being sold here, then we ourselves inoculate our community . . turn loose the wild beast . . and . . put the fire-brand under our own houses. . . I am decidedly of the opinion that the third section of the state act . . is unconstitutional and void, and that every arrest made under it subjects the parties making it to an action of trespass. . . [497] This act operates only as to freemen—free persons of color—and not as to slaves; so that a whole crew of slaves entering this port would be free from its provisions. . . [498] I possess no power to issue the writ of *habeas corpus* [as the prisoner is in custody under state authority [1]]; . . for that remedy he must have recourse to the state authorities. . . as to the writ *de homine replegiando* I have no right to refuse it; but although it will unquestionably lie to a vendor under the sheriff, I doubt whether it can avail the party against the sheriff himself." [Johnson, J.]

Reed v. Price, Harper 3, November 1823. "a woman . . sent, with some others, to this State, about twenty-seven years ago" from Virginia.

Rodgers ads. Norton, Harper 5, November 1823. Held: "The act of 1788, for establishing the bounds of the prisons, . . [6] does not exclude free persons of color: nor would it be just, after forcing them into Court, to withhold a privilege so important, and which is granted to all others." [Huger, J.]

Rice ads. Spear, Harper 20, November 1823. "action . . instituted by the plaintiffs, as guardians of . . Charles, to establish his freedom, under the will of . . Wm. Hutt, . . Va. . . 'that negro boy Charles shall continue with Jas. Piggott for four years, to learn the tailor's trade, after which time he shall be free.' . . soon after the death of Wm. Hutt, Piggott . . died; at whose death . . Charles went about at large for several years in [Virginia] . . perfectly free and unrestrained . . [21]

[1] Proviso to the 14th section of the judiciary act of 1789.

was not inventoried as a part of the estate" [22] "That the estate will be able to pay debts." [21] "15 or 20 years ago . . judgment by default [against the executors] was given, . . execution thereon issued, . . levied on . . Charles, . . sale . . by the sheriff" He was bought by "a former deputy sheriff," of the same county, from whom defendant's title is "deduced."

Held: [21] "the sale . . was void; he being, at the time, a freeman . . [22] something palpably . . wrong in . . selling this man . . without a previous investigation of his claims under the will, and the executors assent thereto." [Gantt, J.]

Owens v. Ford, Harper 25, November 1823. "The defendant set up, by way of discount, that the note . . was given for a negro: . . *before* the sale [he] had committed a burglary, . . *afterwards* tried, convicted, . . his ears being cropped, his value was greatly impaired. . . the commission of the offence was unknown to both parties at the time of the sale. . . verdict for the plaintiff, for the whole amount of the note."

Motion for a new trial, refused: [26] "if there is no warranty implied, against the vices of the slave,[1] it would be inconsistent that there should be . . a warranty [implied] against the consequences of such vices."

Gray ads. Young, Harper 38, November 1823. The slave who was sold [39] "complained of a pain in her side." [41] "the witnesses . . detected at once . . a hernia of an unusually large extent, which constantly endangers her life."

Held: "the complaints . . are mere matters of inducement; . . There is another view . . equally conclusive, . . Such evidence is, I think, admissible of necessity. . . it is from these *indicia* only, that . . [a physician] is able to fix the character of the disease, . . and for the same reason that they are necessary to him, we must admit them." [Johnson, J.]

State v. Counsil, Harper 53, November 1823. A slave had been convicted, before a court consisting of magistrates and freeholders,[2] of stealing "four sides of leather and eight pair of shoes, of the value of $12," and "his sentence had been executed by whipping on the bare back." Counsil was indicted for receiving the stolen goods. [55] "the offence . . as developed by the evidence, was very flagrant," He was found guilty.

New trial ordered: [55] "as the probability is, that the prosecution will not be abandoned . . advisable to notice a few difficulties . . Whether such a conviction [of a slave] can be given in evidence on the trial of the accessory? . . [56] my mind inclines strongly . . that . . [it] may" [Johnson, J.]

Glenn v. Lopez, Harper 105, January 1824. Action against "a free person of color, (a negro,)" for harboring a slave. "verdict for $——, damages. He was then surrendered by his bail, and he gave security to

[1] Smith *v.* McCall, p. 318, *supra.*
[2] Act of 1740. P. L. 166.

and sisters all lived together; . . The receipts for rent paid by Bremar, from . . 1795, for the houses occupied by the same woman, were produced, amounting to a large sum. . . [also] [203] the deed of F. Bremar, . . March, 1794, setting . . free . . my mulatto girl, Tabitha; also, the records of two other deeds, emancipating . . her sisters; and the record of another deed, conveying to her a negro. In reply, plaintiff produced . . a deed of F. Bremar, . . April, 1794, conveying to . . 'Tabitha, a mulatto girl, lately belonging to me,' two negroes, Sally and Polly; consideration, her faithful service; also, a deed . . 1809, whereby 'in case of death,' he gives . . Tabitha, a free brown woman, a house and lot . . 'having received full value.' . . that Bremar had . . sold the house . . [a witness] swore that she saw Bremar come . . and tell plaintiff that he was going to sell these negroes, and she afterwards saw them no more. . . testified to the virtuous character of plaintiff; that Bremar had been her guardian, . . The presiding judge charged the jury . . ample consideration [for the notes] had been proved. 1. Cohabitation. 2. Surrender of property. . . [204] The jury found for the plaintiff the full amount of the notes and interest."

New trial granted: [212] "if the notes . . were given in consideration of cohabitation, though past, they must be considered as voluntary, and the plaintiff's action must fail. . . [213] the case ought to go down . . to be tried upon its merits, if any merit it has; of which the jury must judge." [Nott, J.] See same *v* same, p. 332, *infra.*

Willinck v. Davis, Harper 260, January 1824. The defendant applied to the plaintiff, the owner of a vessel, for a passage from Havana to Charleston. "She was in bad health, and required the attendance of her negro servant. Some apprehension was entertained . . that the servant could not legally be brought within the United States, . . On their arrival in Charleston, the vessel and negro were both seized under the act of congress," The property was released on payment of costs. The plaintiff paid them, the defendant having promised to indemnify him.

Held: if the promise was made at Havana, it was [261] "void as against sound policy; if made at Charleston, after the seizure . . it was . . without any consideration."

Payne ads. Robinson, Harper 279, January 1824. Action of trover. "It appears . . that in the spring of 1820 [after the execution of the treaty ceding Florida to the United States, and its ratification by the United States, but before its ratification by Spain], a British schooner . . from Jamaica, came into the river St. John's, in East Florida, with seventeen negro slaves; that they were of bad character, and understood to be convicts, who had been shipped for their crimes; . . ten were either sold [by Robinson, the plaintiff,] to Mr. Houston, on Talbot Island, or were engaged to be sold to him, and were, in March 1820, working on his plantation, . . the slaves rose one night, broke open a store-room, and plundered from it provisions, arms, and ammunition; that Mrs. Houston (Mr. Houston being absent,) requested a gentleman present to apply for assistance at Amelia Island, where there was then a United

States garrison; . . [280] requested Col. Bankhead, then in command, to send a force to take charge of the negroes on Talbot Island; . . that in that part of Florida, there could scarcely be said to be any government, . . that negro slaves had been introduced into Georgia, through Florida, in 1817 and 1818; that Col. Bankhead having also been informed, not long before . . that a company had been formed to introduce slaves into Georgia, thought this an occasion for complying with Gen. Gaines' order of the 22d May, 1819, relative to attempts on the southern frontier to introduce slaves into the United States, and detached Lieutenant Griffiths, with a competent force, to act under it, and also to protect the inhabitants of Florida from any outrages which the slaves might commit; that . . Griffiths . . took away the ten negroes . . March, 1820; that he brought them to Fernandina, where Captain Payne was . . in command; that . . they were maintained at the expense of the United States, and one of them having forcibly endeavored to make his escape, was killed by a sentinel . . that Captain Payne . . refused to deliver them up until instructed by his superior officer, . . upon the application of . . an attorney . . to the secretary at war, they were ordered to be restored on the payment of their expenses," The demand of the plaintiff, Robinson (a British subject from Jamaica), [282] "was for the expenses paid to the officer . . and for the negro shot." [280] "that he applied to Governor Coppinger, and got permission . . [281] to bring negroes into Florida; . . The judge charged . . that the officers . . were perfectly excusable; . . The jury found a verdict for $609 68,"

Motion for a new trial, granted: [285] "No more force was used than was sufficient to quell the insurrection,"

The Emily and the Caroline, 9 Wheaton 381, February 1824. [388] "These vessels, although cleared out, were seized before leaving the port of Charleston; . . [389] All the preparations were such as were peculiarly adapted to what the witnesses call slaving vessels, and not to those for the merchant service. The ship carpenter . . [390] says, the vessels were fitting in a manner similar to that in which vessels generally are for the slave trade; that the *Emily* was almost complete, and the work in which he was engaged on the *Caroline,* was of the same character and description. . . the right of seizure [1] attached. We can discover no sound reason for delaying the seizure until the vessels were on the point of sailing." [Thompson, J.] Decrees of the Circuit Court for the District of South Carolina, affirmed.

Slack v. Littlefield, Harper 298, March 1824. "The constable . . went to the plaintiff's house, and found there about sixty pounds of picked cotton, which defendant claimed as his own. . . The plaintiff's clerk . . proved that he, the witness, had a few nights before purchased twenty-four pounds of this cotton from a negro . . who had a written permit; but the permit was not produced."

Ex parte Richardson, Harper 308, March 1824. A slave had been tried for shooting with intent to kill, by a justice of the peace and two

[1] Slave trade acts of Mar. 22, 1794, ch. 187, and of Mar. 2, 1807, ch. 77.

freeholders, [309] "sentenced . . to twelve months imprisonment; and . . is now . . in the goal [*sic*]" The freeholders had not been summoned properly, and one resided outside the county where the offence was charged to have been committed and had no freehold there.[1]

Held: [311] "it was not a court, . . ordered that a prohibition do issue."

Ruger v. M'Burney, Harper Eq. 21, March 1824. [22] "the negro [man] was not worth more than four hundred dollars . . being of base character and diseased in the glands of the throat; . . occasioned considerable expense for medical attendance. . . [24] he had lost considerably by the sickness . . and his being unruly."

Haynesworth v. Cox, Harper Eq. 117, April 1824. Will: "To my niece . . the four following negroes, Barbara and her three children," "After the making of the will and before the death of the testator, . . Barbara . . had a child born."

Held: the child passed with its mother to the legatee.

Musgrove v. Wofford, Harper Eq. 175, April 1824. "allege . . that . . Wofford has altered the names of said negroes, to defraud . . remaindermen, and to prevent the negroes being identified; . . Wofford . . states that he did it for convenience." Bill to compel him to give security for their forthcoming, dismissed.

Porteous v. Hazel, Harper 332, May 1824. Action of trespass. "The defendants and others, assuming to act as a patrol, went into the house of the plaintiff, and took from thence two guns, . . The plaintiff was not then living in his house, but it was in the possession of a colored man, who took charge of, and acted as overseer of the plantation. He was asleep when they came to the house and opened the doors. No regularly appointed captain of patrol was present; but the son of the captain of patrol, who claimed to command, by the authority of his father, as his deputy. Verdict one cent." Motion for a new trial granted.

Willbourn v. Parham, Harper 375, November 1824. [376] "She took one of [the negroes] . . on her horse behind her, and got a friend to take the other, and carried them home."

Gazoway v. Moore, Harper 401, November 1824. "January 6th, 1823. On the first . . of January next I promise to pay . . eighty dollars, for the hire of . . negro man" "verbally agreed to pay $20 more . . provided cotton should bring $3 per hundred that season,"

Kennedy ads. Garlington, Harper 424, November 1824. "The process states that [three defendants] . . are indebted to the petitioner, . . fifty dollars, for illegally beating and abusing . . slaves, Hardy and Job, while quietly being in the plantation of the petitioner,"

Rhodes v. Bunch, 3 McCord 66, February 1825. [67] "The object in pulling down the house was . . to expel him . . from the neighborhood; as he was trading illicitly with the negroes." [70] "and engag-

[1] Act of 1740, sect. 10.

ing in every kind of licentiousness." [67] "a great vagabond, with whom no white man associated, . . [68] His honor . . told the jury, that . . he would have done as they [the defendants] had done, . . verdict for the plaintiff for *one cent.*" Motion for a new trial refused.

Braker ads. Knight, 3 McCord 80. February 1825. The defendant "so greatly shot, hurt, and wounded" one slave of the plaintiff, and "so greatly hurt, beat, and wounded another slave . . of the plaintiff," that both slaves died. "a verdict was found for $725, with interest from . . 1818. The defendant . . petitioned for the benefit of the prison bounds act, . . refused [by Judge Bay] . . because he considered the defendant embraced within the exception in the act." [1]

Held: [83] "the present case is not included in the exception," "The statute of 22 and 23 Car. II. c. 7 . . has given character to a class, of cases which clearly fall within" it.

Peake v. Cantey, 3 McCord 107, February 1825. Cantey seized the horses, property of the plaintiff, and "delivered them to the other defendant, James Johnson, a justice of the peace, at the same time making an affidavit, that he believed them to be the property of negroes; whereupon the said James Johnson proceeded to sell the horses, under the 34th section of the negro act," [2]

Held: I. as it was a judicial act, he was not liable in a civil action; II. the act of 1740, authorizing magistrates to sell horses belonging to slaves, is constitutional, for [III.] "slaves can have no property; . . the act [of selling it] is a mere disposition of property which belongs to no one." [Johnson, J.]

Gray v. Court of Magistrate and Freeholders, 3 McCord 175, February 1825. "The appellant . . was taken up . . on a charge of insolence, and for an attempt to strike Mr. William McDow; and a court composed of . . magistrate and two freeholders was formed . . The appellant filed his suggestion for a prohibition . . to restrain them from proceeding in the trial, alleging . . that he was not a negro, mulatto or slave under the negro act of 1740, but a free Indian, . . [176] descendant of a free Indian woman in amity with this state; . . affidavits in proof . . were also filed. Mr. Justice Richardson refused the prohibition" [177] "the court on the refusal . . [178] proceeded to judgment and execution, by inflicting corporal punishment on the relator." An appeal was made.

Held: [177] "the circuit judge [erred] . . in rejecting the application for a prohibition, before the court proceeded to judgment . . it is . . the duty of the superior courts . . to confine all subordinate jurisdictions to their proper bounds, . . [178] The sentence . . having been carried into execution, any order . . would be nugatory," [Johnson, J.]

Clarke ads. Blake, 3 McCord 179, February 1825. Action of trespass *vi et armis*. "James Sharpe, plaintiff's overseer, said several negroes were allowed to keep horses on plaintiff's plantation. Witness had these horses

[1] "if he . . is confined on account of wilful maihem, or wilful and malicious trespass," Act of Feb. 29, 1788. 2 Brev. Dig. 160.

[2] 2 Brev. Dig. 238.

driven up and selected a few for plaintiff's use, and the rest were sold [in July 1822]. A horse and mare were retained and broke for plaintiff's use. . . [180] Plaintiff's attorney . . had ordered the sale" The same month a patrol "drove the colts off, and a mare and the colt of plaintiff. Witness told them the two colts were plaintiff's. . . taken before Col. Hunter J. P. . . who said that as two had belonged to a negro, he . . wished to consult . . an attorney; witness . . told them the mare and colt never belonged to the negroes," [179] "sold at public auction, . . and defendants received some of the purchase money. . . [181] verdict for plaintiff for two hundred and twenty dollars [the value of the four]."

Motion for a new trial dismissed: [182] "The horses . . were the property of the plaintiff at the time of the seizure, . . not then appropriated for the peculiar . . benefit of slaves." [1]

State v. Wimberly, 3 McCord 190, February 1825. [191] "The prisoner was convicted . . for killing a slave [property of another] on sudden heat and passion." [2] Motion to arrest judgment, refused.

Maverick v. Lewis and Gibbs, 3 McCord 211, April 1825. Lease, dated February 15, 1823, of plantation and mill "together with the following negroes, to wit, Jack, (the miller,) Dave," and twelve others. [213] "Dave, Hannah, Lucy, Jinny, Sally, Clarissa and Martin [were] to work in the fields, and Ben, the three little boys, Joe, Ben and Cato and Benbow to attend to the vineyard and the three other gardens, and in hauling every day, manure, sand, etc., into the gardens; and Conder to cook for the whole establishment;" Ben is to carry fruit of all kinds to market and to be paid "one dollar out of every sixteen dollars so sold, he Ben to pay six and a quarter cents out of each dollar he receives to the three little boys."

Stinson ads. Piper, 3 McCord 251, April 1825. "the unsoundness [of the negro woman] . . was a want of understanding."

Held: "a warranty of soundness embraces soundness of mind as well as body."

State v. Blythe, 3 McCord 363, November 1825. "Her lot adjoins her plantation, and the negroes of the plantation were living at a short distance from her house. . . a street between;" She was indicted under the patrol act of 1819, and convicted. New trial granted.

Wingis v. Smith, 3 McCord 400, November 1825. "the empty carriage and horses . . [401] at a furious rate . . encountered a bread cart belonging to the plaintiff . . which was broken in pieces . . and the driver . . much hurt. . . His honor . . thought the master [of the coachman] was answerable for such negligence, and decreed that he should pay . . for the cost of repairing . . and also five dollars more for the loss of the services of his driver for one week."

New trial granted: the master was not liable.[3]

[1] Act of 1740, sect. 34. P. L. 171.
[2] Act of Dec. 20, 1821, sect. 2.
[3] The text and notes give a compendium of the history of slavery.

Pratt v. Wyman, 1 McCord Eq. 156, November 1825. Gale "had acted as supercargo from Havanna to the coast of Africa and back to Havanna in the summer of 1817. In the autumn . . Gale returned to Charleston, . . [157] a charge made of $2,640 for eight slaves said to have been taken by Gale from the cargo, for his own use, on the coast of Africa."

Rhame v. Rhame, 1 McCord Eq. 197, January 1826. [201] "had seen her sitting in the laps of the most vulgar men and servants."

Montgomery v. Eveleigh, 1 McCord Eq. 267, January 1826. [268] "purchased corn and potatoes at the sale to the amount of $435.27½ . . all . . went to the plantation, except $119.88 worth of the corn," [269] "the corn was purchased . . for the . . subsistence of the slaves . . there being no provisions on the place"

Singleton v. Bremar, 4 McCord 12, February 1826. See same *v.* same, p. 327, *supra.* On the new trial the judge [13] "charged the jury that if the notes were given in consideration of cohabitation, . . the plaintiff's suit could not be maintained; but that it appeared to him that the evidence was too slight to establish that point, . . That the deed . . gave her a title to the house and lot upon the death of Bremar, . . The defendant appealed"

New trial granted: [14] "a fee cannot be created to take effect *in futuro.* . . [15] there was no interest arising out of [the deed] . . which entitled her . . to any claim . . against . . Bremar,"

M'Cants v. Bee, 1 McCord Eq. 383, April 1826. [384] "the negro was taken by her in payment of the legacy, . . was a faithful family servant . . by whom complainant was brought up."

Rolain v. Darby, 1 McCord Eq. 472, April 1826. "Rolain's negroes were bricklayers, and Darby's field negroes." [477] "the executor [Darby] sold two of his own negroes, who were very inferior ones, with the two of the estate, who were very valuable tradesmen [for $2000]; . . a short time before this sale, a bricklayer of the estate was sold for $800."

Colcock v. Goode, 3 McCord 513, May 1826. "On or before the 1st January next we . . promise to pay . . four hundred and thirty dollars for the hire of Sam, Silvia, Big Peter, Dorcas, Cavannah and his wife for one year from this date, and we bind ourselves to tax, feed, shoe, and clothe them and to pay doctor's bills and to deliver them in this place on the first Monday in January, 1823. . . [514] January 17, 1822." "Cavannah was jobbing carpenter; . . defendant brought him to the mill, and put him to work as such. Thought Cavannah worked about half his time. He complained of his arm, and witness thought him ruptured. A good carpenter was worth about $150 per year."

Held: [517] "where a gross sum is paid, the warranty is considered as applying to the whole gang and not to any particular member of it." [516] "The extent of the warranty implied is, that as a body they are ordinarily good, and have not been . . culled for the purpose of deception." [Nott, J.]

State v. Raines, 3 McCord 533, May 1826. Testimony of witnesses for the prisoner: [535] "That the negro was a notorious runaway, thief, and house breaker; a sullen, perverse, desperate, dangerous villain; that he had been shot twice, and had a load of buckshot in him, and had been shot at several times; that he was a strong, powerful fellow, and when runaway was dreaded by those acquainted with his strength and character; that he had been frequently tried and whipped for his villainy; that he had broken open Hall's store, in his dwelling house, in Columbia, at night, and stolen money and goods therefrom; that he had received from his master, . . (an Englishman!) upwards of a thousand lashes on that account, six or seven weeks before his death; and had been sent off from Columbia, to prevent his being hung; that he shortly afterwards run away and was caught and lodged in Chester jail. That the prisoner having business in Chester district, the owner of the negro requested the prisoner to bring the negro down to Columbia, and at the same time cautioned the prisoner to have the negro well ironed and to guard against his violence and villainy. That the prisoner was a humane, peaceable man, and a man of good character." Declarations of the prisoner: [534] "That the negro turned sullen and refused to go further, and the prisoner whipped him to make him go along, . . and gave him . . five hundred lashes. That when the prisoner found he could not make the negro go along by whipping, he tied the negro's legs" and went for assistance. He requested two women [535] "to go back to the negro and prevent any one from cutting him loose. . . [He] had permitted the negro to ride his horse a part of the way." Witnesses for the state: "That the negro died about eight minutes after the two women reached him, . . That the negro appeared to have been severely whipped below the small of the back, and the blood appeared in several places, which seemed to have been touched by the end of the switches. That several small switches and two or three larger ones lay near, which appeared to have been much worn, also a stick with a small end and a larger end, seemed to have been used. . . [536] The oath of the prisoner was . . offered to exculpate himself under the act of 1740, which the court refused, . . The jury found the prisoner 'guilty of manslaughter,' but recommended him to mercy."

Held: [543] "No judgment . . can be pronounced on this verdict." I. [542] "Under the old act [of 1740] . . the common law kind of homicide, technically called manslaughter, was intended to be abolished; for the citizen is only made amenable for three kinds of killings, viz., murder, killing in sudden heat and passion, or by undue correction. . . no man has ever been adjudged guilty of manslaughter for killing a negro." [543] "The professed object [of the act of 1821] . . was to increase the punishment as to murder, and to omit the killing by undue correction." II. The act of 1821 did not take away the privilege of exculpation by oath. The slave [546] "is still even now for days and weeks, in many parts of the country, left entirely with the master or overseer, and if . . an accidental killing should happen, why not permit the person killing to prove how it happened? . . If he confess that he caused the

death and state the circumstances . . the whole confession is taken, and if satisfactory, will induce an acquittal." [Colcock, J.]

Wise v. Freshley, 3 McCord 547, May 1826. Two negroes were hired to Freshley at the rate of seventy-five cents a day to help remove obstructions in the Saluda River, " upon the express stipulation that they should not be employed in deep or swimming water," as neither of them could swim well. " all hands had been drinking too much. . . danger being apprehended, Freshley jumped out of the canoe and ordered all hands to jump out, . . The negro Edmond [worth one thousand dollars] jumped out and was immediately drowned. . . Freshley would not permit [his own negro] . . to go in the canoe; . . [548] That there was no necessity of Edmond's going in, . . that the other hands [in the canoe] all of whom were white men, were amply sufficient . . The jury found for the plaintiff one cent." New trial granted.

Real Estate of Mrs. Hardcastle ads. Porcher, Escheator, Harper [1] 495, 1826. [496] " Evidence was . . given . . that Mrs. Hardcastle [who died in 1820 leaving 2377 acres of land] was born in Africa, and received here as a lady well connected; that she acknowledged and treated Catharine Cleveland as her neice [*sic*], who was also born in Africa, and was brought to this State by Mrs. Hardcastle before the American revolution; that she [Mrs. Hardcastle] was generally recognized as the daughter of Captain Cleveland of the British Navy, and a relation of the family of the Kinlochs of this State. This evidence was attempted to be rebutted by testimony shewing that Mrs. Hardcastle was a colored woman, and . . [497] her niece . . also . . His Honor . . charged the jury, that they must presume Mrs. Hardcastle to have been illegitimate, as the marriage of Captain Cleveland with her mother, who was stated to have been an African Princess, was not proved, . . and that . . all the land had escheated . . not disposed of during her life time; and the verdict was found accordingly."

Judgment thereon affirmed: I. free persons of color are entitled, under the laws of this state, to acquire, hold, and transmit real estate. a. [499] " it is certain that they are not aliens, . . [b.] The tenure by which we hold [land], is that of rendering service when required, and paying . . taxes . . This class of people do both—they are a part of our militia, required to perform the duty of pioneers and musicians—and on a late occasion, formed an efficient body in the construction of the works of defence for this city. They pay all the taxes which are imposed by the legislature on property, and an additional tax besides, and, when they are within the jurisdiction of the city, all the taxes imposed by the authority of Council. . . [c.] They have been permitted to hold land, from the time that they were permitted to obtain their freedom, and there are now thousands of them, in different parts of the State, who are in possession of such property. And although they have not, like the freed men of Rome, or Athens, become incorporated in the body politic, it has no doubt been the result of the mark which nature has put upon them. For where this has been obliterated, some have obtained, and now enjoy

[1] Second edition.

all the rights of citizens; some who have lost that distinctive mark, hold offices, as well as lands, and even seats in the legislature. My earliest recollections are associated with the knowledge of one of this description, who owned a plantation and negroes. . . [500] A recent occurrence in this court, shews how far many of them have lost the distinction of color. A man was brought to the bar for some alleged offence, and would have been tried as a white man, had not some objection been made to one of the witnesses, who, it was said, was a mulatto. Upon the refusal of the presiding judge to decide the question, on the appearance of the witness, testimony was produced as to her pedigree, from which it appeared not only that she was a mulatto, but that the prisoner was also one—upon which, he was turned over to another tribunal. Such instances are not rare—there are many such persons in the community, and many of them holding lands. . . [d.] positive enactments of the legislature [the acts of 1711 and of 1740] [501] recognized [them] as forming a part of the body politic; and if not citizens, they are subjects: . . [502] the acts of 1822 and '23 . . impose a tax on the real property of free people of color, . . [II.] But as the evidence produced to prove the relationship between the deceased and the traversers was not considered as satisfactory, . . they cannot take by descent from her" [Colcock, J.]

Dr. Wells v. Kinnerly, 4 McCord 123, January 1827. "Defendant hired his slaves to [persons] . . who called on plaintiff to attend them while sick,"

Held: "the physician should have charged the hirers"

Boyce v. Barksdale, 4 McCord 141, January 1827. "Adair was confined in the gaol, wherein the sheriff did not live nor any other person than a negro woman, a servant of the sheriff." He escaped.

Richardson v. Dukes, 4 McCord 156, January 1827. The defendant "discovered two negroes stealing potatoes from a bank which he had put up near his house; he shot at them with a gun loaded with buck shot," [157] "for he was determined to kill every rascal that came inside of his plantation." One of them, [156] "a negro of bad character" belonging to the plaintiff, was killed. "The jury found a verdict for the plaintiff for one dollar." Motion for a new trial. "In the course of the argument the verdict . . [was] attempted to be supported, on the ground that there were certain runaway negroes in the neighborhood . . who were committing murders and other outrages, which kept the country in such a state of alarm, as justified the defendant"

New trial granted: [157] "No such state of alarm existed in this instance," however.

Jennings v. Fundeburg, 4 McCord 161, January 1827. "The defendant . . was one of a party who went in search of some runaway negroes who had been very mischievous in the neighborhood. They were surprised in their camp, and as they fled the defendant fired towards them, . . only to intimidate and induce them to surrender." "soon after, one of them who belonged to the plaintiff, was found dead."

Held: the owner of the slave is entitled to recover his value.

Hough v. Evans, 4 McCord 169, January 1827. Action of deceit. "He had a chronic consumption . . the defendant said . . that he had only a cough, as all his other negroes had. . . would not warrant . . that any of them would live another day. Plaintiff was heard to say after the sale that he had bought a dead or sick negro, but that he would cure him with bacon. The price paid was $482, the value if sound." The negro died shortly after. Verdict for the plaintiff. New trial refused.

Lee v. Lee, 4 McCord 183, January 1827. [186] "His constant dress was . . a negro cloth short coat, . . He would sometimes send for all his negroes to throw dirt upon the roof . . to drive off witches. . . While he lived in Pedee swamp, he dwelt in a house worse than any of his negro houses. . . [188] he killed a negro [belonging to him, in Georgia], for which he fled from that state. . . [189] He purchased . . pine land . . and put his negroes there without a house or a hut on it."

Gardner v. Harden, 2 McCord Eq. 32, February 1827. [33] "Somerset was sent out of the state, and sold to strangers, and perished, by due course of law, for a crime to which he was exposed in his new situation." "hanged in the western country;"

Leverett v. Leverett, 2 McCord Eq. 84, February 1827. "The tenant for life died on the 25th . . of March 1824. Her executors . . kept these slaves on the plantation until they finished the crop of that year,[1] . . [85] 10th . . of January 1825, when the crop was gathered."

Held: no hire is due the remaindermen.

Heyward v. Glover, 2 McCord Eq. 395, March 1827. Will, 1814: "I give to my brother . . twenty-five negroes, to be drawn by lot, in families, out of the gang I got by my father's estate," The testator "directs, in order to prevent families from being separated, that if he drew more than twenty-five, he should make compensation for the surplus."

Young ads. Plumeau, Harper[2] 543, March 1827. Violet was sold in 1811 for $399. [545] "when she was sold in [April] 1824; she was between 45 and 50 years of age." [544] "Dr. Phillips . . attended this woman when she was in goal [*sic*]; . . he attended her from the 30th March to the 13th April . . just before she was to be sold, . . he thought that whilst she remained in that place she could not get well; . . [545] had consumption; . . the vendue master . . declared aloud, prior to the sale, that nothing but the property (title) was guaranteed; that estate sales were never guaranteed as to *soundness*; . . that the wench stooped, was very sickly, . . she said aloud whoever bought her would lose their money, as she had a sore throat, rheumatism, etc. . . [546] Violet appeared very much disfigured on the table; her dress was not regularly connected; she spoke hoarsely, and looked unsound; her teeth were filed, and she certainly was a diseased negro, in witness' opinion; . . Blaney . . was rude, agitated, and threatened vengeance against witness for bidding; . . that negroes, when about to be sold, sometimes disfigure themselves when they have a particular object in view. . . Michel . .

[1] Act of 1789. P. L. 494.
[2] Second edition.

bought her [for $315] for a constable in his office, (Blaney;) . . she had kept house for Blaney for two years previous. . . he . . kept a boarding house; . . [547] witness . . did not know . . whether Blaney kept her." She died in August.

Clark adv. McDonald, 4 McCord 223, June 1827. "The defendant was the captain of a steamboat, on board of which the negroes [a woman and her child] were sent as passengers from Charleston to Georgetown. The boat came to anchor in one of the creeks . . [and] when the tide ebbed, the boat rested partly on a bed of oyster shells, in consequence of which she filled with water, and the negroes being under deck were drowned."

Held: [225] "There is a radical distinction between the liability of a carrier with respect to the transportation of a slave and of a bale of goods." "She possesses the power of locomotion, shall he bind her in fetters or confine her in the hold of the vessel? This . . would expose her to greater danger in case of . . accident,"

State v. Wright, 4 McCord 358, November 1827. "The defendant was indicted for having received a stolen ring from a negro."

Held: I. a slave can commit a felony; II. a white person can be [363] "an accessary to a person of colour, . . [Otherwise] that description of persons may be made the instruments of murder, burglary, arson, and . . the most atrocious crimes, and the real offender eseape with impunity." [Nott, J.]

Keckely ads. Commissioners, 4 McCord 463, April 1828. [465] "That . . his plantation lay partly in both parishes, . . [six] of his negro houses were . . in St. John's and four of them in St. James', his place of residence" [463] "That . . the board of commissioners from St. John's . . had fined him fifty-six dollars, . . for not making a return of the number of negroes under his management liable to work on the high roads.[1] . . that no notice had ever been given him"

Writ of prohibition granted, for lack of proper notice. Judge Johnson expresses his [470] "own conviction . . [that] his residence must be regarded as the residence of the slaves so immediately attached to him." That consequently, the slaves whose houses are in St. John's parish are not liable to do road duty in that parish.

State v. Shaw, 4 McCord 480, April 1828. "The defendant was the captain of a vessel which sailed from New Hampshire, and entered the port and city of Charleston with a negro cook on board." He was indicted in the city court, for bringing a free negro into the state contrary to the act of 1823, and convicted.

Indictment quashed: [482] "the offence was . . completed without the limits of the city, and the jurisdiction of it belonged to the circuit court."

Simpson v. Graves, Riley Eq. 232, April 1828. [235] "That deed embraced [the Devil's Elbow] Barony [consisting of six thousand acres].

[1] Act of 1825, sect. 11.

. . and also three hundred negroes. . . which were probably worth at that time one hundred and fifty thousand dollars,"

State v. Fife, 1 Bailey 1, May 1828. "Mr. Johnston, the owner of two slaves, . . sent them in the night time to the house of the defendant, each furnished with a piece of bacon, and with instructions to sell it to the defendant," who purchased both pieces.

Held: he was guilty of two distinct offences, and was indictable and punishable for each.[1]

State v. Westfield, 1 Bailey 132, December 1828. "an indictment under the 20th section of the act of 1740, commonly called the negro act,[2] . . for concealing and carrying away a slave, who had been accused of murder. . . [133] that his removal [beyond the state] had been effected by the agency of a person . . employed by the defendant for the purpose: . . verdict of guilty;" New trial refused.

Howard v. Schmidt, Rich. Eq. Cas. 452, January 1829. [453] "sale . . of the negro Bingo, (a boat hand,) . . [454] '1822. Due . . half of the packets *Eagle* and *Mary*—also half of the negroes Prince, Tartar, Henry and Sango'"

State, ex rel. Hon. William Johnson, v. Martindale, 1 Bailey 163, February 1829. "a suggestion for a prohibition, to restrain . . officers of the Charleston Neck Rangers, from enforcing the collection of certain fines [amounting to one hundred dollars], imposed on the relator, [by a court martial] for the non-performance of patrol duty[3] . . being one of the Associate Justices of the Supreme Court of the United States, . . [164] admitted, that as he was an inhabitant of the State, and the owner of slaves, he was liable according to the letter of the State laws . . but a claim to exemption was made, under the Act of Congress of May, 1792, 2 sec. . . which exempts the judicial officers . . of the United States from militia duty. . . that the exemption from militia duty extended to patrol duty," Judge Bay, "at Chambers," in 1821, refused the prohibition, holding [164] "that patrol duty was not a branch of militia duty, but a system of police, . . [165] no age, rank, or station afforded an excuse to the proprietor of slaves; . . a motion was . . made to the Court of Appeals, to reverse that decision."

Prayer for the prohibition, granted: I. [167] "patrol duty . . is not embraced in the power granted to Congress to prescribe a mode in which the militia shall be disciplined,[4] . . [but] [168] the duty which devolved on him as a Judge . . was paramount. . . [169] The patrol law imposes . . the duty of riding patrol at least once in every fortnight, and oftener, if the commanding officer shall think it necessary. This duty is usually performed in the night time, and consists in scouring the country, examining negro-houses and other suspected places, and inflicting corporal punishment on slaves found out of their owner's plantation,

[1] Act of Dec. 18, 1817. 7 St. at L. of S. C. 454.
[2] P. L. 168.
[3] Act of Dec. 18, 1819. 8 St. at L. of S. C. 538.
[4] U. S. Const., Art. I., sect. 8.

without a ticket, or some other lawful excuse. . . the United States . . may require his exclusive . . devotion to the duties of [a Judge of the Supreme Court] . . and it is wholly incompatible with these duties that he should, at any time, be called on to give his personal service in a local police regulation." [D. Johnson, J.] Colcock, J., dissented.

State v. Richard Scott, 1 Bailey 270, June 1829. "indictment, under the act of 1817, for trading with a slave without a ticket. . . found . . guilty. On being brought up for sentence, the defendant's counsel interposed an objection to the jurisdiction[1] . . that the defendant was a free person of colour, . . a mulatto, as would appear upon inspection;"

Motion in arrest of judgment, refused: [272] "matter *dehors* the record" is involved. The Court of Appeals cannot take [272] "upon itself to judge primarily as to matters of fact. . . If I were to judge from my own observation I should readily concede to the defendant the unenviable rank to which he aspires. . . [273] when the words 'negro, mulatto, etc.' are used in the act [of 1740, section 1] for the purpose of designating a *class*, they are to be interpreted by their common acceptation [[274] 'offspring of a black and a white'], and not by the rule *partus sequitur ventrem* [which 'was only intended to operate on the question of *slavery* or *freedom*']." [Johnson, J.] [274] "we have no evidence, at this time, that the defendant is a mulatto, except that he has made it a ground of appeal." [Nott, J.]

State v. Mary Hayes, 1 Bailey 275, June 1829. Report of Judge O'Neall: "the defendant was indicted and convicted of keeping a disorderly house. When brought up for sentence, I was satisfied from inspection that she was a mulatto. . . her father was a negro, but her mother was alleged to be a white woman. I refused to pass sentence, on the ground that she should have been tried by . . a Court of magistrates and freeholders, . . In order to be subject to the sentence of a Court of General Sessions, . . she should be . . a white woman, or an indian in amity with this State. It was not sufficient, that she derived her ancestry from a white mother. The African taint reduced her to the same degraded state, as if she were a free negro. . . [276] Under the Constitution of this State, could the son of a white woman, by a negro father, be allowed to vote? or be permitted to take his seat as a member of the house of representatives, or a senator?"

Motion [277] "for sentence on the defendant" refused. "This case is determined by that of the State *v.* Richard Scott," *supra*.

State v. Smith, 1 Bailey 283, December 1829. "The defendant . . was convicted [in 1821] under the act of 1754,[2] of stealing a slave, and received sentence of death; but was pardoned by Governor Bennett, on condition that he would remain in close confinement in the gaol . . [284] until the 1st of January, 1823, and would then, within fifteen days, leave the State, and never return to it."

[1] Act of 1740, sects. 9, 14. P. L. 165-167.
[2] P. L. 236.

State v. Benjamin Scott, 1 Bailey 294, December 1829. "the prisoner was brought before a Court of justices and freeholders . . and put upon his trial as a free person of colour, for negro stealing. He pleaded first to the jurisdiction . . that he was . . a free white citizen, . . and that fact being found against him, he pleaded . . that more than six days having elapsed, between his arrest and . . trial, the Court had no power to proceed . . determined in his favor . . committed him to gaol, to be further dealt with, . . next Circuit Court . . he was brought up by a writ of *habeas corpus,* . . [295] the presiding judge being of opinion that the Court of justices and freeholders had erred in point of law, on the prisoner's second ground of defence, . . ordered a writ of mandamus to issue, to compel the said Court . . to proceed to his trial on the merits."

[299] "ordered, that the proceedings of the Court of justices and freeholders be set aside, and that the order for the writ of mandamus be suspended . . in order to give the defendant an opportunity of applying for a writ of prohibition." [298] "it is very apparent . . that neither the prisoner, nor his counsel were willing to have submitted to that tribunal, the question, whether he was . . a person . . over whom the Court of justices and freeholders had jurisdiction; and that the proceeding by prohibition, to remove it to the superior Court, was not resorted to, on account of the absence of any precedent . . The question, whether the prisoner is intitled to be tried by a jury, . . or in the summary, and in some degree arbitrary manner, authorized by the act under which he was arrested, is, of itself, of little less importance than that of life and death." [Johnson, J.]

Kinloch v. Harvey, Harper [1] 508, January 1830. [509] "that . . Quico was charged with aiding in raising an insurrection in the District of Georgetown . . [510] that Charles Prioleau, a leader in the said insurrection, stated that when himself and another leader were devising the plan on a log in Georgetown . . in June or July last, . . Quico, or Quaccoo, was present with others on the same log, and when witness expressed a doubt of the possibility, all upon the log made answer, 'we can soon collect negroes enough to commence it, as there are ten blacks to one white.' They then appointed a meeting, [at which] . . they planned the mode of attack, to wit, where they were to assemble, who first to be killed, and how to follow up the work of death and plunder—none to be spared. . . at the time of the conversation on the log, he, the witness, expressed his fears of the other fellows betraying him; Quico said, 'we are all sensible men here, there is no danger.' . . Mood, the other leader . . proved that Quico was present on the log, as also Nat and Robert; the two latter . . denied that they had heard the plan of insurrection. . . Quico was apprehended on the last of July, or beginning of August . . the Court of Magistrates and Freeholders was not formed till the 12th . . of August . . [511] by reason of sickness or accident . . Besides . . it was discovered that so many were concerned in the plot . . that the public safety required this delay, in order to find out the ramifications . . counsel was refused permission to see Quico while in confinement, and all other per-

[1] Second edition.

sons, for fear of tampering with him," [510] "Quico was found guilty . . and instead of sentencing him to suffer death, he was sentenced to transportation beyond the limits of the United States, and if ever he should return, to be hanged." His owner moved [509] "for a writ of prohibition to restrain the . . magistrates and freeholders from carrying [the sentence] into execution"

Motion refused: I. [512] "It is true that the act of 1740 did require that slaves accused of capital offences should be tried within three days after their apprehension; and . . the act of . . 1754, . . limited [the time] to six days . . [513] nothing, however, in this act which says that magistrates and freeholders shall not proceed to the trial . . after the time limited . . left open to the discretion of the Court . . [II.] a matter entirely within their discretion, . . if they think proper to prevent persons of any description whatever, from visiting, or tampering, or advising with persons of that description, . . [III.] [514] the 12th clause of the act of 1740 . . gives the power to the justices and freeholders, to dispense with the common law rules of evidence entirely, by admitting of testimony, without oath, of Indians and slaves; . . [515] their consciences are made the rule of action, . . Their judgments are final. After all, it would be well if [they] . . would . . make the common law principles their rule of action, as far as they possibly can, as they are the best that human wisdom ever devised. . . [IV.] [516] Transportation . . may well be considered as a species of corporal punishment under the act [of 1740, sect. 17], . . Besides it was an act of mercy . . And I feel fortified . . by the usual decisions of the magistrates and freeholders throughout the State, for many years past, in banishing incorrigible offenders . . and in the practice of our governors, in pardoning slaves . . convicted of heinous offences, on condition of their being transported . . beyond the limits of the United States. The Court of Magistrates and Freeholders who tried the insurgents in Charleston, in 1822, . . sentenced to transportation beyond the limits of the United States, all . . who had merely consented to join in the plot, . . never to return again, under the penalty of death; . . and the second Court of Magistrates and Freeholders . . for the trial of fourteen other slaves, acquitted six, found eight guilty, but as so many lives had already been taken, they only ordered one for execution, (the ringleader,) but sentenced seven to transportation. . . [517] when the dreadful . . consequences of the insurrection of slaves in South Carolina, are taken into consideration, it appears to me, that the judges of the superior courts ought to be extremely cautious in interfering with the magistrates and freeholders . . and that they ought not to be eagle eyed in viewing their proceedings, and in finding out and supporting every formal error or neglect, where the real merits have been duly and fairly attended to, and determined according to justice." [Bay, J.]

Williams v. Inabnet, 1 Bailey 343, January 1830. "a tract of land, sold by the defendant, as agent of a free negro named Batch."

Barber v. Anderson, 1 Bailey 358, January 1830. "The period of hiring [the negro girl] expired on the 14th Dec. . . the defendant [said that he] . . had given her a pass, and sent her home. . . disappeared."

Held: [361] "If the power of volition be relied on as a reason why they may be returned in this way, . . it is obviously a two-edged sword, . . they may go elsewhere."

Myers v. Myers, Bailey Eq. 23, January 1830. [28] "It was a general rule, formerly, in the Court of Equity, to allow ten pounds, sterling, which is between forty-two and forty-three dollars for the annual labour of a slave. But since the introduction of the culture of cotton that rule has been abandoned, and certainly ought not to be resorted to for any short period of service, where the value of the labour can be ascertained by more certain evidence." [Nott, J.]

Hoover v. Alexander, 1 Bailey 510, May 1830. Action of trover. A slave owned by defendant's father had been sold by the sheriff. After a few days the slave ran away from his new master "and was seen for some time lurking about a place rented by the defendant, . . He was seen a few times . . at work in the defendant's cotton-patch, but the defendant was not present . . He was also seen once or twice in company with defendant, but was not then at work. . . an elder brother of the defendant, who lived in Georgia, and to whom their father had bequeathed this slave . . seized him and took him out of the State." Nonsuit.

Howard v. Williams, 1 Bailey 575, May 1830. On the birth of Harriet, [576] "he gave her to his daughter, . . only twelve or thirteen years of age."

Madden v. Day, 1 Bailey 587, May 1830. [588] "he had given to each of his children, a small negro."

Dr. John L. Felder v. Hon. William Johnson, 1 Bailey 624, June 1830. "an account for medical services, rendered . . to the slaves of the defendant [an associate judge of the Supreme Court of the United States]."

Lenoir v. Sylvester, 1 Bailey 632, June 1830. Will of William Wright, dated January 5, 1808: [634] "I lend the whole of my estate . . unto my wife, . . during her natural life; and after her death . . I give Leah, Esther, and Letty their freedom." He nominated his wife executrix, and Wright and Dinkins, executors; "and appointed them guardians of the slaves to whom he had bequeathed freedom. . . the widow . . qualified as executrix, . . March, 1808; and shortly afterwards captured the slaves abovementioned, under the act of 1800,[1] as slaves emancipated contrary to the provisions of that act. . . Mrs. Wright . . died on the 8th October, 1828, at which time her crop was made, but not picked out; and on the next day, the defendant . . captured the slaves, under the act of 1800:"

Held: I. [640] "no capture could be made [by her or by another] during her life estate; . . [641] her possession . . for the purpose of finishing [the crop][2] . . might have continued to the last day of December . . the defendant was liable as a trespasser; . . [II.] [642] the act

[1] 2 Brev. Dig. 255-256.
[2] Act of 1789, sect. 23. 1 Brev. Dig. 335.

of 1820 prevented their emancipation, at her death in 1828. . . The will . . is not . . to be regarded as bequeathing a legacy to persons, who can take it; but as merely directory to his executors to do an act, on a particular event, which was then to confer freedom . . the slaves had no rights, to be defeated by the act of 1820. . . [643] The intention of the testator is . . defeated by the fact, that his executors, at the time fixed to carry it into effect, have no power legally to accomplish it." [O'Neall, J.]

Smith v. Rice, 1 Bailey 648, June 1830. [649] " she was discovered to be diseased with gonorrhea, and was placed in the hands of a physician for cure."

State v. M'Kee, 1 Bailey 651, June 1830. " declaration by the foreman [of the jury] . . that he ' would not convict the defendant, or any other white person, of murdering a slave.' "

State v. Sims, 2 Bailey 29, December 1830. " The defendant was indicted for the murder of his father, . . The deceased was found shockingly mangled and butchered in his own house; and suspicion having attached to certain slaves, they were arrested, and upon their own confessions convicted of the crime by a Court of Magistrates and Freeholders, and shortly after executed. At the trial of the present indictment, the record of the conviction of the slaves, and . . their several confessions were admitted in evidence;" [35] " John [one of the slaves] . . was armed with a knife and stationed at the door to keep persons from coming in." [29] " a mass of circumstantial testimony was introduced . . verdict of guilty [as accessory before the fact]"

Held: the record of conviction of the slaves and their confessions were properly admitted in evidence against the prisoner.

State v. Taylor, 2 Bailey 49, December 1830. " The defendants had been convicted of unlawful trading with a slave, under the act of 1817; and were now indicted under the act of 1829, for receiving goods stolen by a slave. Both charges were founded on the same act [of the defendants];"

Held: [50] " two distinct offences were committed."

State v. Crank, 2 Bailey 66, January 1831. Indictment for the murder of the father of the prisoner. [76] " The proof warrants the conclusion, that the blows which the prisoner said he heard, and which it is too probable he saw, and did not prevent, were only the deadly blows which the slave inflicted on his parent, while calling the unfortunate parricide to his rescue; and that it was a deliberate and savage murder, without even the excuse of a blow from the master or father." [67] " The jury found a general verdict of guilty," Motions in arrest of judgment and for a new trial refused.

Rice v. Sims, 2 Bailey 82, January 1831. " In November, 1823, the plaintiff hired two negro fellows to the defendants, who were engaged in the boating business, and were to pay wages . . at the rate of $16, per month for each; payment to be made by boating the plaintiff's cotton to market, at the freight of $2,50 per bale."

Helton v. Caston, 2 Bailey 95, January 1831. "action of trespass for cruelly beating the plaintiff's slave. . . that the slave, who was a female, had been hired to the defendant for twelve months, under a stipulation in the contract, that he was not to beat or abuse her; and that she was severely beaten by the defendant, and in consequence returned to her master. . . the jury found for the plaintiff."

Held: [100] "trespass was the proper remedy." [98] "in this State, where slaves are a more valuable part of our property, than even land, . . and where the hiring of them is analogous to the renting of land, . . it is but reasonable . . to transfer the principles applicable to leases of lands, to contracts for the hire of slaves." [O'Neall, J.]

Linam v. Johnson, 2 Bailey 137, January 1831. Action of trover. In 1818 Bill Brock, a negro slave, was transferred to the plaintiff, by a formal bill of sale, in consideration of the sum of $900, of which $300 was paid in cash. [138] "that Bill had, ever since the sale, dealt and trafficked as a free man: that he was regarded as such in the neighbourhood from that time, and had been enrolled as a pioneer in the militia: That the land on which he lived was known by the name of Bill Brock's place, although it belonged to the plaintiff; and that Bill had, to all appearance, cultivated it for his own benefit. . . that Bill had been permitted to hire his time and work for himself, . . that he was industrious and provident, and had accumulated money. It seemed probable, from the testimony, that Bill had advanced the cash part of his purchase money; and the plaintiff admitted, that when he took the bill of sale, he gave it up to Bill for his protection. . . Tucker . . testified, that in . . 1822, he had, at the request of Bill, stated an account between him and the plaintiff, for the balance due the latter on the purchase of Bill; that Bill's discounts amounted to $1300, and there was a balance due to him on the account by the plaintiff. . . The witness considered Bill a free man from that time; and it appeared that from that date he had paid the poll tax levied on free persons of colour. In 1823, the defendant became the guardian of Bill Brock, as a free man of colour, conformably to the provisions of the act of 1822. In 1824 the plaintiff demanded Bill from him, and upon his refusal brought this action. The jury . . [139] found for the defendant;"

New trial refused: [140] "the provisions of the act of 1800, authorizing the seizure and conversion [of a slave illegally emancipated], were not repealed by the act of 1820, . . [141] Bill . . was . . a slave, without an owner, and cast upon society as a derelict, which . . any one might appropriate . . The defendant has, at most, done no more, and that with the humane view of giving effect, as far as he could, to a contract which the plaintiff had himself made, upon most ample consideration, and which he now seeks to avoid." [Johnson, J.]

Groning v. Devana, 2 Bailey 192, February 1831. Held: a free person of color is not a competent witness in any case in the courts of record of this state, although both the parties to the suit are of the same class with himself; nor can book-entries, made by a free negro, be received in evidence, on the oath of a white person to his handwriting.

M'Dowall v. M'Dowall, Bailey Eq. 324, March 1831. Will of John M'Dowall, dated 1819: [325] "to his wife . . the use of the fellow Tom, and washerwoman Mealy, during her life only, and at her death, the said slaves to be set free from their mistress." Tom was sold by the testator in his lifetime.

Shearman v. Angel, Bailey Eq. 351, March 1831. Will of Isaac Waight Tucker, "made in 1814, . . directing several of his slaves to be emancipated, and bequeathing to them . . one thousand dollars,"

Ex parte Tunno, Bailey Eq. 395, March 1831. "1823, on the petition of Martha Patience Morton, a free woman of color, the widow of Joseph Morton, . . and of . . one of the grand children . . a decretal order . . was made . . real estate was directed to be sold . . and the proceeds [$2,200] paid over to . . trustee, who invested . . paid the interest and dividends . . to . . Martha . . [396] she had recently died, . . [the granddaughter] and her children . . resided at Philadelphia, . . prohibited by law from coming into this State, they were desirous that the trust fund, should be transferred . . Isaac Norton . . a gentleman of great respectability residing in Philadelphia, [had consented] to undertake the trust;"

Held: "the prayer of the petition ought to be granted; . . [397] the *cestuys que trust* are perpetually exiled from South Carolina, and can never enjoy the trust here." [O'Neall, J.]

Miller v. Mitchell, Bailey Eq. 437, April 1831. [438] "The testator [E. N. Frisk], who died in 1812, . . directed his executor to purchase, and emancipate, a negro woman named Amy, to whom he bequeathed the residue of his estate. . . [439] $1,000, were paid by the executor for the negro woman, Amy, who was emancipated;"

Lord v. Lowry, Bailey Eq. 510, April 1831. [511] "put four slaves on the land to cut wood;"

Hart v. Edwards, 2 Bailey 306, May 1831. "At the sale, the slave looked very ill, and the auctioneer gave notice, that 'he had had the venereal, but was well or nearly well.' The defendant purchased at four hundred and sixty dollars, which was stated to be a fair price, supposing the slave to be convalescent; . . [307] if he had never had the disease, . . worth thirty or forty dollars more. The slave died seven days after, of a fever superinduced by the disease, or by an improper treatment of it." Held: "if he thought proper to purchase, without a warranty against . . consequences [of that disease], he is bound by it."

Ex parte Jesse Brown, 2 Bailey 323, May 1831. "A slave had been tried and convicted by a court of magistrates and free-holders, and sentenced to be whipped; and the sentence was executed. He was subsequently tried and condemned to death for the same offence; and Mr. Justice Richardson . . granted a prohibition to restrain the execution of the sentence. . . his decision was confirmed, unanimously, in the Court of Appeals."

State v. Fife, 2 Bailey 337, May 1831. "Fife had been prosecuted for two distinct acts of trading with slaves; . . [338] was convicted,

and sentenced to pay a fine to the State of two hundred dollars in each case."

Johnson v. Lemons, 2 Bailey 392, May 1831. [393] "plaintiff had caused the defendant to be indicted, under the act of 1821, for harbouring" his fugitive slave.

Held: he could not afterwards maintain an action for the services of the slave during the time he was harbored.

Gee v. Hicks, Rich. Eq. Cas. 5, May 1831. In 1816 [14] "the slaves . . were also to be removed, and for them she was liable to account for as much hire as could be obtained in Mississippi, which she could not expect to realize in South-Carolina. . . he promised to pay his aunt . . as much hire for her slaves as she could obtain in Mississippi."

Bacot v. Parnell, 2 Bailey 424, June 1831. "The slave died within the year [for which he was hired], and the defendant claimed a proportionate deduction for the amount of the note," Held: [425] "the hirer is bound to pay, only . . the hire . . until the slave's death."

State v. Baldwin, 2 Bailey 541, December 1831. Defendant had been convicted on an indictment under the act of 1817, for trading with a slave without a ticket, and had paid his fine into the hands of the sheriff. [542] "a moiety of the said fine was claimed by the members of the Vigilant Society of Stateburg, as informers."

Held: [543] "The act of 1817 . . makes no alteration of the act of 1796[1] . . as to the rights of the informer. The provision made by it in favour of him, is still a subsisting law."

State v. Davis; State v. Hanna, 2 Bailey 558, December 1831. "indictments under the bastardly act of 1795,[2] . . In each case the mother of the bastard, on being offered as a witness, was objected to on the ground that she was a mulatto; . . trial of the fact by a jury. In each case the jury found the mother to be a white woman, . . accordingly admitted . . as a witness. At the trial of the indictment, the objection to the colour of the mother was, in each case, again relied on as a defence; the act of 1795, being applicable only in the case of a white woman . . The jury . . found each of the defendants guilty;"

New trial granted: [559] "There is no legal definition of the term [mulatto] . . error in the Judge's charge . . in the first of the cases . . 'that a mulatto was the offspring of parents, one . . white, and the other black,' and that he 'was disposed to think that where the white blood predominated, this disqualification ought not to attach.' . . It is certainly true, as laid down by the presiding Judge, that 'every admixture of African blood with the European, or white, is not to be referred to the degraded class.' It would be dangerous and cruel to subject to this disqualification, persons bearing all the features of a white, on account of some remote admixture of negro blood; nor has the term mulatto, or person of colour, I believe, been popularly attributed to such a person. . . where there is a distinct and visible admixture of negro

[1] 2 Faust 91.
[2] *Ibid.* 74.

blood, the person is to be denominated a mulatto, or person of colour. . . a question very proper for a jury . . [560] they may have the evidence of inspection . . of reputation as to parentage; and such . . as was offered in the present case, of the person's having been received in society, and exercised the privileges of a white man [woman?]. In Louisiana, as I understand, and by the *Code Noir* of France for her colonies, the descendant of a white and a quadroon . . is accounted a white. Perhaps it would be desirable, that the Legislature should adopt some such uniform rule here. The rule may be of use to juries—not as a rule of law, which we have no authority to declare it, but as being founded on experience, and conformable to nature. . . In the case of Hanna, . . the witness was a quadroon, and such an one is clearly . . a mulatto, or person of color." [Harper, J.]

State v. Ridgell, 2 Bailey 560, December 1831. A slave had been [561] "guilty of breaking open the store-house . . and stealing from it certain goods. This store-house was at the distance of 100 yards, and more, from the dwelling house, was separated from it by a public road, and was not used as a place for sleeping by any person at the time when it was broken open." A court of magistrates and freeholders "had, nevertheless, convicted the slave of burglary, and passed sentence of death on him accordingly." A prohibition was granted [560] "to restrain the execution"

Johnston et ux v. Barrett, 2 Bailey 562, December 1831. "The defendant had left the slave in charge of his brother, who, in anticipation of the confinement of the slave, had directed her to engage the services of a coloured midwife, designating one or two to whom she might apply: but the woman engaged the services of the plaintiff's wife, by whom she had been attended on a former occasion. The latter did not communicate with the defendant, or his agent, on the subject; but it appeared in evidence, that it was not usual to communicate with the master in such cases. She was afterwards sent for during a dark and stormy night in January, and on her arrival found the slave very ill. . . [563] rendered the assistance, requisite . . The plaintiffs demanded $10, . . the usual charge. . . [But] the usual charge of coloured midwives was only $4; and the defendant offered to pay five dollars. The Magistrate was of opinion, that the plaintiffs were intitled [*sic*] to recover the whole of their demand. The slave cannot, it is true, bind the master by a contract, made without his knowledge or consent; but here was a case in which the life of the slave was in great danger, and was probably saved by means of the services rendered by the plaintiff's wife. . . it was [the master's] . . own business to look to it, and to see that the requisite assistance was at hand, when it was needed. As he had not done so, he was bound to pay the price of the plaintiff's services." Affirmed by the Court of Appeals.

State v. Covington, 2 Bailey 569, January 1832. "indictment, under the act of 1754,"[1] [570] "the prisoner and the negro set out, and went the distance of twenty-five or thirty yards, in the prosecution of an in-

[1] P. L. 236.

tention, on the part of the prisoner, to inveigle the negro from the service . . of the master; but were prevented from proceeding further by the persons lying in wait. . . [571] The owner, or rather his family in his absence, . . knew of, and had assented to the negro's meeting the prisoner, and arranging with him their plan of elopement, and moving forward in the execution of it;"

Held: [573] "Every act of the prisoner proceeded . . without any agency on the part of the owner . . His not preventing . . when he knew of it before hand, is not evidence of the assent of his will, . . only an apparent assent. The act was therefore *invito domino*, and constituted felony." [Johnson, J.]

Farr v. Sims, Rich. Eq. Cas. 122, January 1832. [126] "in 1813, he made a formal gift and delivery of a girl to his daughter, putting her hand into that of his child. . . The girl, however, remained in possession of the father, . . [who] paid taxes for her."

Held: [139] "gift . . void against subsequent creditors, without notice."

Towles v. Burton, Rich. Eq. Cas. 146, January 1832. [147] "He bequeathed one slave, to whichever of his children the slave would choose for a master or mistress. . . [155] The slaves were appraised and placed in [four] different lots with the valuations." [152] "the names of the slaves were placed on four different papers. . . [155] The lots were drawn for. . . [156] heard the old man say, his black people would not go out of the family."

State v. Mazyck, 3 Richardson 291, March 1832. "A mare was brought before [a justice of the peace] . . which had been seized by . . Norwood, as the property of a slave belonging to . . Mazyck. Mazyck had notice . . and . . that . . the justice . . had ordered her to be sold as forfeited, under the Act of 1740[1] . . [but] refused to take the oath prescribed by the statute . . went to Norwood [to whose keeping the mare had been committed], . . carried away the mare,"

Held: [295] "The remedy by action is . . perfect; . . an indictment will not lie."

Hellman v. McWhennie, 3 Richardson 364, March 1832. "action of trespass for beating a slave, . . The plaintiff had a verdict,"

Jaudon v. Gourdin, Rich. Eq. Cas. 246, March and April 1832. [247] "The Sheriff had seized two of the negroes, which were lodged in jail, and a Commissioner was proceeding to sell them,"

Tidyman v. Rose, Rich. Eq. Cas. 294, March and April 1832. "By a marriage settlement . . 1793, the estates of Mrs. Carne were settled to the use of the intended husband and wife, during their joint lives, remainder to Mr. Coffie for life—remainder to . . persons . . Mrs. Carne, by . . will, . . might . . . appoint. . . By her last will, . . 1805, . . 'I give . . to my niece, Mrs. . . Tidyman, . . Elsy, and her two children, Mary and Syphax.' All the [other] negroes, . . 'and all the issue . . of the female slaves,' she gave to her son, . . [295] in . . Great Britain, . .

[1] P. L. 171.

Mrs. Coffie died soon after . . Mr. Coffie . . died in . . 1830. During his life, a son of Elsy, . . Joe, and two children of Mary . . were born, who are [now] . . of mature age;"

Held: Joe and the children of Mary go to Mrs. Coffie's son. [300] "it might be inferred from [Haynesworth *v.* Cox[1] and Gayle *v.* Cunningham,[2]] . . that though the children were grown up, . . all must pass under the bequest of the female ancestor." [297] "they involve a departure from the most firmly settled principles, and constitute an anomaly in our system, . . we . . dissent . . [301] nothing shall pass, which was not intended to be given. Considerations of humanity might be of weight in a doubtful case, but . . I cannot regard this as [such] . . little that legal decisions can do to enforce humanity: this must depend on public opinion, and I do not fear that a single infant will be left to perish by being prematurely separated from its mother, in consequence of our present determination." [Harper, J.]

Alexander v. Maxwell, Rich. Eq. Cas. 302, March and April 1832. [307] "The certificate of Bee and Carter . . stating sales by them of several gangs of slaves, in 1823 and 1824. In 1823, they sold slaves at different times, average, $268; in 1824, . . average $299. Statement by Commissioner in Equity: in 1824 he sold 83 slaves, average, $261 59; in 1825 he sold 117 slaves, average, $257 22. The credits were short. . . Mr. Gantt testified of a sale in February or March, 1824; slaves of . . estate; . . a third or fourth cash, and balance in one, two, three and four years—average, $210; . . about ordinary price; slaves sold low then. . . has since sold some slaves, at an average of $300."

Fraser v. Goode, 3 Richardson 199, May 1832. [200] "She was the wife of Allen's fellow, and sold with him to pay the debt;"

Antonio v. Clissey, 3 Richardson 201, May 1832. [203] "that the negro was a blacksmith, and that, on this account, he had agreed to give . . a very high price, and that the negro was sick and unable to work more than a month, and as much as two weeks at one time,"

Held: [204] "all that the owner undertakes is that he is . . sound [at the time of hiring]. He who hires must take the chance of his remaining so; an abatement has been allowed in the case of the death of a negro hired, but that was pushing the matter far enough" [Johnson, J.]

Minter v. Dent, 3 Richardson 205, May 1832. "That plaintiff on the day of sale represented them as a prime gang of [forty] negroes, the pick . . of about two hundred. When this particular negro was about to be sold, . . Dent asked Minter as to her capacity, etc. . . Minter said he had lately bought her in Alabama, . . could not say anything of her of a definite character. . . [206] She was stout, . . and looked hearty. A slight examination of her countenance would convince any one that she was not a 'bright negro, but no one would suppose her to be an idiot' . . Negroes sold rapidly and high, . . women generally . . for about $350. . . this negro was set down to the defendant at $300. She was sold the next day for $173, in presence of defendant, who refused

[1] P. 329, *supra*.
[2] P. 314, *supra*.

to comply" The plaintiff brought suit to recover the difference. "The defendant . . proposed . . to shew that this negro . . was valueless. . . not . . received . . plaintiff had a verdict," New trial granted.

Robertson v. Woodward, 3 Richardson 251, May 1832. [252] "That in January, 1822, Dinah being run away, . . he [about to go west] . . told witness to take Dinah and hire her out."

Arnold v. Loveless and Taylor, 6 Richardson 511, May 1832. "a sum. pro. to recover the penalty of $50 on any one who shall whip a slave with a ticket, imposed by the Act of 1819." Held: [512] "Each should have been sued severally."

State v. Harden, 2 Speers 152 n., Spring 1832. "The offense was committed on the person of a free negro, whom the defendant, on some pretext, (for no provocation was proved,) first beat in the street, giving fifty or sixty blows with his fist, and a stick or cowhide; and then deliberately tied him, carried him out into the woods, near the village, stripped him, and gave him, on the bare back, ninety-three lashes. He was much abused, his back was severely cut, and the blood flowed freely. He fainted, or fell down under the infliction. The testimony was altogether that of white men, who witnessed it; nor did the negro appear in court. . . He was known throughout the country as free Tom Archer, and had been for ten years and upwards. . . The defendant was convicted,"

Motion for a new trial dismissed: I. [154 n.] "to no white man does the right belong of correcting, at pleasure, a free negro. . . [155 n.] The only difference in the law, as to indictments for assaults and batteries on free white men and free negroes, seems to me to consist in the different justification which would excuse an assault and battery on the one or the other. Free negroes belong to a degraded *caste* of society; they are, in no respect, on a perfect equality with the white man. . . they ought, by law, to be compelled to demean themselves as inferiors, . . words of impertinence . . addressed by a free negro, to a white man, would justify an assault and battery. As a general rule . . whatever, in the opinion of the jury, would induce them, as reasonable men, to strike a free negro, should, in all cases, be regarded as a legal justification in an indictment. . . [II.] [156 n.] From a negro born free, or manumitted before the Act of 1800, no such proof [deed of manumission] could be demanded, . . Proof that a negro has been suffered to live in a community for years, as a free man, would, *prima facie*, establish the fact of freedom." [O'Neall, J.]

Smith v. Henry, 1 Hill 16, January 1833. [20] "The value [in 1824] was proved at $275 to $300, and hire at $15 or $20 per annum for the girl alone. She might be worth hire, although the family, a woman and children, might not."

State v. Davis, 1 Hill 46, January 1833. "Robertson [deputy sheriff] found the [mortgaged] negro at Hamburg, and took him into his possession; and having occasion to stop, for the night, on his way . . when he went to bed he chained the negro to his bed-post, and . . tied the negro with a rope, one end of which was tied to his own body. The defendants [who claimed the negro] came to the house at night, . . broke the chain, cut the rope, and carried the negro off,"

Terry v. Hopkins, 1 Hill Eq. 1, January 1833. [6] "Booker did take Will back, and put in his place a negro called Phill, who on being chastised a few days after, by the overseer, ran away and returned to Mr. Booker."

Hinson v. Pickett, 1 Hill Eq. 35, January 1833. [37] "sent the . . negroes to the western country . . to avoid the claim"

Cabeen v. Gordon, 1 Hill Eq. 51, January 1833. Will, 1801: "bequeathed to his daughter, Mary . . a negro . . Jane," [54] "allowing the first child of . . Jane (if any) to my daughter Nancy . . and the second (if any) to my daughter Betsey."

Haigood v. Wells, 1 Hill Eq. 59, January 1833. Will, 1821: "directed his executors to keep the negroes on the plantation, for the support of the family, until his youngest child should come of age . . then . . equally divided among his children;"

Lyles v. Lyles, 1 Hill Eq. 76, January 1833. Johnson, J.: [87] "In some of the old cases, . . negro hire was rated at £10 for full task hands, and £5 for half hands. In the prosperous times which succeeded the late war, . . the Courts departed from this rule, and much higher prices were allowed in some cases, but . . since the present organization of the Court, the rule was resumed . . my own experience . . is, that it is as much as in general they are worth; and I . . subjoin . . an estimate upon which it is founded." Note: "by inquiries amongst the most . . successful planters of the middle and up-country, . . data . . collected, . . The first object of the planter, is to raise a sufficient supply of provisions and forage for family consumption, and no more. In the middle and up-country, the usual habit is to clothe the negroes by the labor of the females, at times when they can be conveniently dispensed with in the field; and upon lands of medium quality, two bags and a half of cotton of three hundred pounds per task hand, is regarded as a good crop, taking a series of years together, and my own experience is, that this is a high average. . .

	Dr.	
The planter, for 2½ bags cotton, of 300 lbs, each, at 12½ cents,.		$93 75
	Cr.	
Overseer's wages per hand,.....	$10 00	
Land rent, say 12 acres, per hand, at $1 50,.....	18 00	
Horse hire, per hand,.....	5 00	
Wear and tear of working tools . . etc.....	5 00	
1 blanket, $2; 1 pair shoes, $1 25,.....	3 25	
Taxes, $1; physician's bill, $2,.....	3 00	
Bagging, rope and twine, $1 per bale,.....	2 50	
Freight, per bale, $1,.....	2 50	
Commissions on selling cotton, 2½ cents pr. cwt.,....	2 29	
		$51 54
		$42 21
Negro hire, £10 = $42 86.....		42 86
Against the planter,.....		$ 65

Salt and other little articles of expense, which force themselves upon the humane master, . . are intentionally omitted,"

Nowell v. O'Hara, 1 Hill 150, April 1833. [151] "the plaintiff executed a bill of sale for William [alleged to be worth $800], . . consideration . . $400, . . 'William to be taken out of the State. . . defendant had been offered $500 . . without a condition, . . But . . sold him for $450 to . . Vincent, . . for . . St. John, of . . Georgia, . . who . . did not conceive himself bound to keep him out of the State, and sent him back, and Vincent, his agent, bought him and keeps him here. . . The jury found . . 'that the defendant did not use precautionary measures to prevent the return . . find for the plaintiff one hundred dollars damages.'"

Motions for nonsuit and new trial, dismissed: "The owners of slaves frequently send them off from amongst their kindred and associates as a punishment, and it is frequently resorted to, as the means of separating a vicious negro from amongst others exposed to be influenced and corrupted by his example. It is therefore common to require of the purchaser of such a negro, that he shall carry him out of the State. . . [152] This contract . . implies a further undertaking, that he should be domiciliated out of the State."

Sausey v. Gardner, 1 Hill 191, April 1833. [193] "the negro Phillis allotted to . . the wife of . . Sausey. . . Sausey declined taking her from her mother, on account of her tender years, but left her with . . the executor . . made him his agent to hold the slave for him,"

Lance v. Barrett, 1 Hill 204, April 1833. Dr. Daniel, of Savannah, employed the plaintiff "to purchase negroes for him, . . He was instructed to buy none but sound negroes accustomed to the swamp, and not to buy any of Graves'. The plaintiff, however, did purchase seven . . of Graves' . . Dr. Daniel . . refused to receive them. Four . . died soon after . . of diseases existing at the time of the purchase."

Motte v. Schult, 1 Hill Eq. 146, April 1833. "a seizure of the mortgaged slaves, and sold them . . except one who died in jail before any sale was effected."

Frazier v. Vaux, 1 Hill Eq. 203, April 1833. "laid out the surplus income of the estate in negroes, . . 1822, bought . . twenty-five . . on credit, at $500 per head."

Drayton v. Grimke, 1 Hill Eq. 224, April 1833. Will: "I . . bequeath my driver Dick, and his family, to wit, his wife and children; also my [three] carpenters, . . and my house servants, George [a coachman] and Daniel, with the future issue of the females, from this date, to my son" [227] "Dick, at the date of the will, had children by former wives then dead,"

Held: "The testator . . obviously intended only the wife then living . . and the issue of their cohabitation,"

Magwood v. Johnson, 1 Hill Eq. 228, April 1833. [229] "Negro cloth, . . $234 62 . . [230] the trust property has been sold . . except . . a few old and useless slaves;"

Chastain v. Bowman, 1 Hill 270, May 1833. "The boat was passing down the [Savannah] river, when the plaintiff came to a landing and asked if it could carry his cotton. The patroon (a slave belonging to one of the defendants) answered that it could. The cotton was received and was burnt on board the boat before it reached Augusta. It was proved that the defendants had given general instructions to their patroons to take in freight whenever it could be had, . . [271] The jury found for the plaintiff"

New trial refused: "a master may constitute his slave his agent, and . . [there is no] distinction between the circumstances which constitute a slave and a freeman an agent—they are both the creatures of the principal, . . There is no condition, however degraded, which deprives one of the right to act as a private agent"

Hobson v. Perry, 1 Hill 277, May 1833. "Sum. pro. in trespass for shooting a mare. . . although fed by the plaintiff, and used by him as his other horses, [she] was in fact owned by his slave. She broke into the defendant's field, . . and he shot her."

Held: "That the possession of the plaintiff was sufficient to enable him to maintain this action . . that the fact of ownership by a slave is not *ipso facto* a forfeiture under the act of 1740,[1] . . forfeiture . . is not complete, until seizure and condemnation."

Meacham v. McKie, 1 Hill 374, December 1833. "The defendant, as administrator . . had a sale of his intestate's effects, among which were a negro man and his wife. The plaintiff purchased the man; and when the woman was offered for sale and was on the point of being bid off by a stranger, the defendant (who is the plaintiff's father-in-law) urged him to buy her. He replied that he was not able: upon which the defendant promised if he would buy the negro that he (defendant) would give him one hundred dollars. The plaintiff accordingly bid off the negro,"

Held: "sufficient consideration to sustain the defendant's promise."

Rye v. Stubbs, 1 Hill 384, December 1833. "plaintiff declared in assumpsit, 'that, in consideration the plaintiff would oversee the hands of the defendant . . he would give the plaintiff one-eighth part of the produce raised.' . . [Defendant] [385] said . . that plaintiff was to work as a hand in the crop;"

Farr v. Farr, 1 Hill 393, December 1833. "a charge of one hundred dollars, which the defendant . . had agreed to pay him for going to Tennessee, for a runaway negro."

Perry v. Dunlap, 1 Hill 401, December 1833. "The defendant hired, from the plaintiff, a negro man to attend his ferry [[403] 'partially employed in the field'] for one year, . . and, after the negro had been in the defendant's employment about eight months, the sheriff levied on him and detained him in his custody about nine weeks, when the plaintiff paid the execution, and then tendered the negro again to the defendant, who refused to receive him."

[1] P. L. 171-172.

Held: [402] " the plaintiff is not entitled to recover [hire for the time the defendant had the negro]. . . the hiring was for the entire year."

Caston v. Ballard, 1 Hill 406, December 1833. " a negro woman and her children . . were the property . . of Col. Thos. Ballard, until . . 1821, when he delivered them to Samuel Caston, . . They remained in Caston's possession until 1830, (Col. Ballard meanwhile having removed to Georgia) when they ran away and went to Col. Ballard,"

Cline v. Caldwell, 1 Hill 423, December 1833. Report of Judge O'Neall: "Action of trover . . The plaintiff was a free mulatto woman, descended from a white mother: she purchased John, (who was her husband) from Cato Gallman, a free negro. John . . belonged originally to Jacob Clay, who sold him in 1822, to . . Setzler, for $650: John advanced $300 of his price, and Setzler paid the balance, $350. The understanding was, that he was to be free when the balance was paid. He sold him to . . [424] Kinard for $200, who said on his examination, that he bought without any understanding that John was to be free. He sold to . . Glymp, for the same sum, who said that if John stayed with him until he worked out the $200, he was to be free; if they disagreed, he was to get another man to buy him. He kept him near two years, and sold him back to . . Kinard: there was about $100, balance, due on his price. Mr. Kinard, however, stated that he gave $160 for him. In 1824 or 1825, he sold him to George Suber and . . Dawkins, each paid a part of his price. . . Dawkins sold his half . . to Solomon Suber, who took him into possession, and in May, 1827, sold his half to . . Caldwell, for $250. . . September, 1827, . . Caldwell and George Suber conveyed [John], by bill of sale, in consideration of, I think, $500, . . to Cato Gallman. The witness . . saw no money paid, but the sellers, the purchaser and the slave, were all present—that he made the settlement and calculations between them: the balance due Caldwell, on account of John's price, was $60, to pay which John was to remain and work until the next spring, which he did. . . [then] left . . Caldwell's possession, . . and was . . acknowledged slave [of Gallman], until he sold to the plaintiff, who had possession in Abbeville and also in Georgia, to which place last she and John removed. . . March, 1828, . . Caldwell conveyed his interest, (a moiety) in John, to his brother Samuel, in consideration of natural love, . . Samuel is dead: his widow administered, appointed the defendant her attorney, who went to Georgia, and with the assistance of [two other men] . . seized and brought off . . John. In February, 1828, . . [425] Samuel Caldwell knew of his brother's conveyance [of John] to Cato Gallman, . . At the close of the plaintiff's case, a motion was made for a non-suit, . . that neither Elizabeth Cline nor Cato Gallman (being free negroes) could own slaves. . . refused . . As free persons, they could . . own property, . . no restriction . . as to their acquisition of slaves. . . I said to the jury, . . I. [426] The act of 1820, does not declare a deed absolute on its face, but intended as a covert emancipation void: . . Until actually emancipated . . the right of property was in Cato Gallman's alienee, . . [II.] unless the slave has been permitted to go at large,

as a free man, and without the control of an owner, the act has not been violated. . . he could not be legally captured. . . [428] The jury found for the plaintiff, and the defendant appealed" The Court of Appeals concurred " with the presiding judge in his views of the law, and the verdict of the jury must be regarded as conclusive of the facts."

Burgess v. Heape, 1 Hill Eq. 397, December 1833. [401] " defendant has run away to Alabama, carrying away and selling the negroes," of whom he owed one half.

State v. Cattell, 2 Hill 291, March 1834. Held: " The using or carrying of fire arms by a slave, to be contrary to the intent and meaning of the act of 1819, and subject to seizure and forfeiture, must be an using or carrying without 'a ticket or license in writing from his owner or overseer;' and the fact that a slave having such license uses the gun in an unlawful manner, will not create a forfeiture." [O'Neall, J.]

Monk, Administrator of Judy, v. Jenkins, 2 Hill Eq. 9, March 1834. " John Cato Fields, . . 1806, executed a deed of manumission, by which Judy was . . set free. . . [He] died in 1817, . . bequeathed certain slaves and other property to Judy, and appointed . . trustee, . . executors put Judy in possession of the legacy. Shortly after . . both Judy and . . her trustee, died, and the defendant . . now in possession of the property, . . [refuses] to deliver it up." [12] " Judy, had the uninterrupted enjoyment of freedom from the date of the deed to her death,"

Held: " neither . . Fields, nor any person claiming as a volunteer under him, could dispute the validity of the emancipation, even if there had been no deed. . . [13] the master's property was divested, . . There can be no slave without a master, . . after such irregular emancipation,[1] until seizure is actually made, the emancipated slave must stand on the footing of any other free negro. . . [14] the woman was never seized, and being now dead, never can be. Her legal representative has the same standing in Court that the representative of any other free negro would have." [Harper, J.]

Johnson v. Brockelbank, 2 Hill 353, April 1834. " represented . . that the slave was a good bricklayer, when . . he was not;"

Bank v. Toomer, 1 Hill Eq. 27, April 1834. [34] " Some of the slaves retained were favorite ones, whom she desired to emancipate,"

Chestnut v. Insurance Co., 1 Hill Eq. 72, June 1834. [76] " sold in 1819 or '20, a negro woman . . and child . . for $800."

State v. Maner, 2 Hill 453, December 1834. " the defendant and Phil [a slave], who . . were on terms of intimacy, got into a quarrel and a fight ensued, after which the defendant shot him." " The defendant was indicted for an assault . . with an intent to murder . . verdict of guilty,"

Judgment thereon, affirmed: [456] " indictment will lie for an assault with an intent to murder a slave," [455] " The act of 1821 changed the

[1] Act of 1800. 2 Faust 355.

murder of a slave from a mere misdemeanor, which it was under the act of 1740, to a felony. . . It, in a criminal point of view, elevated slaves from chattels personal to human beings in the place of the State;" [O'Neall, J.]

State v. Graham, 2 Hill 457, December 1834. Graham, a free man of color, having neglected to pay "four dollars and forty cents for the general and poor tax for the year preceding," had been seized by the sheriff and advertised for sale, "for a term of time sufficient to satisfy the same not exceeding one year." [1]

Held: free negroes are not liable to be sold for a property tax. [458] "most of these persons are idle and dissolute, and possess no property. It was only necessary for securing the payment of the capitation tax imposed on such, that their service should be subjected to sale." [Harper, J.]

State v. Cheatwood, 2 Hill 459, December 1834. "Indictment for the murder of a slave." [464] "no doubt at all but that it was the prisoner's intention to injure the slave, and no reasonable doubt but that it was his intention to kill." The trial judge [461] "charged . . that he could admit no other distinction between the killing of white men and that of negros, than this—that in the latter class of cases, a smaller degree of provocation would have the effect of extenuating or excusing, as the case might be." Verdict of guilty.

Motions in arrest, and for new trial, dismissed: [462] "the general purpose of . . act [of 1821] was certainly to make the murder of a slave the same offence as the murder of a freeman at common law. . . [465] This is the first instance of conviction under the act . . that has been brought before us." [Harper, J.]

Graham v. Lewis, 2 Hill 477, December 1834. "overseer for one year, . . wages, one share and a half of the whole produce of the plantation."

Saunders v. Anderson, 2 Hill 486, December 1834. "overseer's wages, . . $10 per month for one year."

Heath v. Heath, 2 Hill Eq. 100, December 1834. [102] "the testator, in 1816, left forty-two negroes, which, in January, 1832, had increased to seventy-five;"

Sarter v. Gordon, 2 Hill Eq. 121, January 1835. Abram and his family [124] "came by Mrs. Sims in marriage, and some of them had been raised by her. They were purchased by Stevens, at sheriff's sale [in 1827], . . and after the sale he said that if the family of Sims . . would pay what he gave, and some compensation for his trouble, they should have the negroes." An agreement to that effect was executed in 1832. Specific performance decreed by Chancellor De Saussure.

Affirmed: [135] "Suppose the case, which I have known, of a slave accustomed to wait on a deaf and dumb person, and from long habit able to communicate ideas with him. This would add nothing to his market value, though rendering him inestimable to his owner. . . A slave may have been the nurse . . or may have saved the life of one of . . family. . . what mockery . . to tell the master that he might have full compen-

[1] Tax act of 1833.

sation by damages for the loss of the slave? And unless there be something very perverse in the disposition of the master or the slave, in every instance where a slave has been reared in a family, there exists a mutual attachment . . The tie of master and slave is one of the most intimate relations of society. . . [136] There may be exceptions to the rule. If . . the purchaser contracted for the slaves as merchandise to sell again, . . complete justice might be done by a compensation in damages." [Harper, J.]

Bartlett v. Thynes, 2 Hill Eq. 171, February 1835. [173] "Jack was likely and prime—was patroon of Thynes' boat for a year or two; also, worked on Thynes' farm—good for any work. The general hire for boatmen is $12 or $14 per month—field slaves . . $40 to $60 per year. Hester worked chiefly about the house . . Both Hester and Jack in the prime of life. . . when he first knew him, Jack was a boy. When Thynes first had him, hired him at seven dollars per month—he fed and clothed them. . . The two slaves were worth $100 per year, for the last five years."

Miller v. Reigne, 2 Hill 592, March 1835. Trover. "Sam Bennet . . was a man of color, and had once been the slave of a Mr. Bennet, but for more than twenty years was recognized by the community as a freeman, and had even dealt as such with his former master, who had hired him and paid his wages. On the death of Mr. Bennet, in 1814, Chloe, the wife, and Nelly, the daughter of Sam, were sold by the executor, and purchased by Mrs. Peigne, . . as it was alledged [*sic*], for Sam. They went into his possession, and there remained (except occasionally when Nelly was hired out by her father,) until his death, . . five or six years ago. . . in 1821 Peigne [as administrator of his mother] presented an account to [Sam] Bennet for the price of these negros. In 1833, Peigne [as agent of Reigne] lodged Nelly in the work house, as the property of Reigne. . . After Nelly had been [there] . . about two months, the plaintiff [administrator of Sam] . . demanded her of . . the keeper of the work house, and, on his refusal to deliver her, brought this action;" Peigne, as agent of Reigne, had given Sam [593] "a certificate that he was a freeman." The jury found for the plaintiff.

Motions for nonsuit and new trial dismissed: I. "the lapse of twenty years did well authorize the presumption of the regular execution of the deed of manumission required by the act of 1800,[1] . . [II.] [594] The lapse of twelve years [since 1821] . . raises the presumption that the balance then struck against Sam, for the price of his family, has been paid." [O'Neall, J.]

Fable v. Brown, 2 Hill Eq. 378, March 1835. "John Fable, a foreigner, settled in Charleston some years ago, . . [379] He had two (illegitimate) colored children by a female slave. . . executed . . will . . 1831, . . 'The residue of my property I will and bequeath to my children, whom I acknowledge, to be divided share and share alike . . The interest . . to be appropriated to . . [their] support . . at the dis-

[1] 2 Faust 355-357.

cretion of my executor, . . guardian . . desire that my executor will purchase, if practicable, my son, out of the funds of my estate, previous to a division of the same.' . . Both the children are in servitude, and held by the same owner." De Saussure, Ch.: [380] "The executor is bound to purchase him ['his mistress being willing to sell him'] . . [381] In what way he shall treat the boy . . is for his own discretion, in which the testator has unbounded confidence. . . respecting the property . . [382] Is it against law to direct the executor to apply the income to the support of two slaves? . . I am of opinion the executor . . ought" Decree affirmed.

Stallings v. Foreman, 2 Hill Eq. 401, March 1835. "the slave . . was, at the time of the purchase [for $350] . . a boy somewhere about twelve years of age, and capable of being a plough-boy. He has since grown up, and is a very valuable servant, and his hire for his annual services . . is . . [402] not less . . than three or four times the . . interest."

State v. Cantey, 2 Hill 614, May 1835. "Indictment for larceny. On the trial, two of the principal witnesses for the prosecution were objected to . . on the ground that they were persons of color. . . It appeared that the father of the witnesses was a white man, and their mother a descendant in the third degree of a half breed who had a white wife; their mother's father was the issue of this marriage, and he also married a white woman; so that the witnesses had one-sixteenth part of African blood. The maternal grand father of the witnesses, although of dark complexion, had been recognized as a white man, received into society, and exercised political privileges as such; their mother was uniformly treated as a white woman; their relations of the same admixture have married into respectable families, and one of them had been a candidate for the legislature. The witnesses were ordinarily fair, and exhibited none of the distinctive marks of the African race; they are respectable, have always been received into society, and recognized as white men—one of them is a militia officer, and their caste has never been questioned until now. His honor charged . . [615] that if there be a clear visible admixture evidenced by the color . . the hair or features, the person is to be regarded as of the degraded class; but if these distinctive characteristics be wanting, and the person has been received . . as white, although there may be proof of some admixture . . from a remote ancestor, yet such person is to be accounted white, . . The jury found that the witnesses were not persons of color; they were then sworn, and the defendant found guilty."

Motion for new trial, dismissed: "We feel no disposition to depart from the rule laid down in The State *v.* Davis[1] . . The ground of that decision is, that neither of the several statutes which speak of 'negros, mulattoes and persons of color,' nor the constitution of the State . . give any definition . . nor is there any known technical meaning . . to the . . popular signification we must resort . . it would be an absurdity . . to say that such an one [as these witnesses] is, in the *popu-*

[1] P. 346, *supra*.

lar sense . . a person of color. If we should say that such an one is to be regarded as a person of color, on account of *any* mixture of negro blood, however . . remote, we should be making, instead of declaring the law, and making a very cruel and mischievous law. . . We cannot say what admixture . . will make a colored person, . . [616] The condition . . is not to be determined solely by . . visible mixture . . but by reputation . . and it may be . . proper, that a man of worth . . should have the rank of a white man, while a vagabond of the same degree of blood should be confined to the inferior caste. . . It is hardly necessary to say that a slave cannot be a white man. . . We wish it to be understood that this matter is regarded as settled, . . [617] I think it to be regretted that the question was made in the present case, . . It is doing unnecessary violence to the feelings of persons . . of much worth and respectability." [Harper, J.] " Johnson and O'Neall, Js. concurred."

State v. Elliott, 2 Hill 617, May 1835. " The defendant was indicted, under the act of 1819, for not . . keeping on his plantation . . a white man capable of performing patrol duty, for . . [618] 1830 and 1831. . . overseer . . visited Social Hall twice a day," but resided on the adjoining plantation. Verdict of guilty. New trial refused.

State v. Ferguson, 2 Hill 619, May 1835. [621] " being unable to take the prisoner off Walker, . . [deceased] called in [negro] Ben to his assistance; . . Ben threw the prisoner against the wall, who called out to part them."

Frazier v. Frazier, 2 Hill Eq. 304, May 1835. Will of John Frazier, dated 1824: [305] " it is my will for my executors to hire out my negroes and see that they are treated well and not abused. . . the money arising from the hire of my negroes to be kept entire and distinct . . and after the decease of my wife, . . it is my will . . that the whole of my negroes be set free by my executors, and the . . money arising from the hire of the said negroes be equally divided among [them] . . and if the hire does not amount to one hundred dollars each, that it shall be made up to them out of the other part of my estate . . the interest of the money is to enable them, with the assistance of government, to go to St. Domingo to be colonized, or to any part that they with government may choose." Codicil, 1825: " directed that if his man slave, Isaac, would pay to his executor $600, that he, his wife Lively, and his daughter Hailey, ' shall be set free to enjoy liberty forever: ' and that if his negro boy, young Isaac, should wish to be set free, that upon the payment by him of $650 to the executors, he ' shall be set free and enjoy liberty forever more.' " After the death of the widow in 1832, " one of the executors, seized the negroes, with the view of carrying the will into effect. This bill was filed by the next of kin . . claiming . . the negroes . . [306] The case was heard . . 1833. De Saussure, Chancellor. . . the object [of the act of 1820] . . was to prevent the emancipation of the slaves held in the State. . . [307] Besides, what government was meant? If the State government, that has no foreign relations with St. Domingo, . . If the government of the United States be meant, . .

with that subject . . the government of the United States has no right to intermeddle, and . . if it made any attempts directly or indirectly, a disruption of the bonds which bind and unite the States, would necessarily take place. It is the *noli me tangere* subject. Any intermeddling by the government would be the immediate death of the Union (however valued and cherished on other grounds) by the general consent of the citizens. If the executors choose to apply to the State Legislature, they may do it. But till . . a decision be made by that body, I feel myself bound to . . treat this direction . . to emancipate slaves as an attempt to evade the statute, . . void. . . next of kin . . entitled"

Decree reversed: [316] "a testator's directions to his executor to remove his negroes from the State and set them free, are legal and valid, and must be obeyed. For he had the power in his lifetime to do the act; . . [317] defray the expenses . . out of the interest from one year after the testator's death, on the sums of $100 . . pay to . . slaves when they . . set them free . . $100 each, and any arrears of interest which may remain after defraying the expenses of their removal and emancipation." [313] "the slaves, under [the codicil,] . . have not, I presume, attempted to obtain any benefit. The probability is, that in no event could it benefit them." [O'Neall, J.]

White v. Vaughan, 2 Hill Eq. 329, June 1835. "I . . will . . that my negro man, Will, have the privilege of choosing his master, and that he be appraised by two good men, which shall be the price for which he is to be sold;"

State v. Johnson, 3 Hill 1, December 1835. Indictment for stealing three negro slaves. "The slaves disappeared from their owner's residence at separate times; one first, and afterwards, the other two."

Harley v. De Witt, 2 Hill Eq. 367, December 1835. Held: [370] "The [£10] rule [in regard to the hire of negroes] was never intended to operate imperatively, but to supply a principle . . In this case, however, the slaves were employed but a small portion of their time in planting, but for the most part in preparing timber for market, and working on the railroad; and the necessary inference is, that these were more profitable pursuits; consequently a rule based on an estimate of cotton planting cannot apply,"

Waddell v. Mordecai, 3 Hill 22, January 1836. "The defendant, as the agent of the Brig *Encomium* . . entered into a contract . . to transport twenty-five or thirty slaves from Charleston to New Orleans, at twelve dollars around. . . The vessel . . was wrecked on one of the Bahama Keys. . . The passengers were conveyed . . to Nassau. . . The slaves were taken in charge of the authorities of the island, and were liberated. Seven of them escaped, and returned to Charleston, whence they were sent to the plaintiff, at the expense of two hundred dollars."

Thompson v. Schmidt, 3 Hill 35, January 1836. The plaintiff lodged the negro "in jail for safe keeping, directing the jailor not to lock him up, to give him the liberty of the yard, and every indulgence. The defend-

ant on the same day lodged a detainer, directing the jailor not to give him up to the plaintiff, not [?] to lock him up, and whip him if necessary. . . the negro escaped from jail."

Corbett v. Cochran, 3 Hill 41, January 1836. [42] "$407.69, for goods charged originally to . . a free colored woman, but delivered to her daughter, . . with whom the defendant had some connection. . . the defendant . . promised to discharge the demand"

City Council of Charleston v. England, 3 Hill 56, January 1836. "suit for four penalties, each of twenty dollars,"[1] [57] "These slaves were employed in a bake-house owned by the defendant, but leased to Marshall . . to whom the slaves were also hired." [56] "during . . 1834, with lawful badges, which expired on the last day of December. . . 3d February, they were found . . without badges. . . not seized and carried to the workhouse, as they might have been, . . [58] [The defendant] immediately went to the City Treasurer, paid the fees, and procured badges." Verdict for the plaintiffs. New trial refused.

State v. Schroder, 3 Hill 61, April 1836. [62] "as he was walking down Market street, with Mr. Wish, [about eight o'clock in the evening] . . they remarked five negros go into a shed-room, and Mr. Schroder immediately went in after them, and took a decanter of whiskey with him. Witness and Mr. Wish, (who was also a city marshal,) forced into the door of this shed-room, where they found three of the negros sitting at a table, with liquor in some tumblers, and the decanter nearly empty. They ran off by a back-room door into a yard." Schroder was indicted, under the act of 1834, for selling spirituous liquors to a slave [65] "of a person and name unknown" without a ticket from his master, and found guilty. Similar verdicts were found on two other indictments. Motion to arrest judgment, granted.

State v. Berhman and Peters, Riley 92, April 1836. "The defendants were indicted under the act of 1834, for buying rice from a slave. . . Moses . . suspected the store of Berhman; that he and others sent a negro . . to the shop . . The boy carried 3 or 4 quarts of rice, and two bottles of lamp oil. He left the rice . . [93] Peters [the clerk] was in the store [but Berhman was not.] . . Lieut. of the Guard . . went in and saw the paper in which rice was put, lying on the binn; . . The jury found both guilty," Motion in arrest, dismissed.

State v. Lefronty, Riley 155, April 1836. One of the city marshals "suspected that spirituous liquors were sold to slaves[2] in the shop of Daniel Becker and Co.; and that with a view to detect the offenders, he gave Mr. Mintzing's Sam three cents to go into the store to buy liquor; Sam went in and came out with some whiskey.[3] . . Sam worked at the saw yard" Verdict of guilty.

[1] City Laws 185.
[2] Act of 1834.
[3] Another city marshal gave similar testimony in State *v.* Lohman, Riley 67. "There were fifteen or twenty negroes in the shop."

Heriot ads. McCauley, Riley Eq. 19, April 1836. [21] " 1819, . . Five of said negroes sold . . at $690 each, . . four . . at $710 each, . . one . . for $880—one . . for $590,—three . . at $820 each, . . and two . . at $670 each,"

State v. Gunter, 1 McMullan 458, Fall 1836. " indictment for buying corn from a . . slave, . . Bob knocked at the window . . Defendant went out. Bob brought about four bushels of corn, . . defendant paid him . . in meat, tobacco and whiskey. . . an hour or two after dark. Afterwards, Bob brought about two bushels of corn, a little before day, . . a night or two . . after " Verdict of guilty.

Free ads. State, 1 McMullan 494, Fall 1836. " The trading consisted in having sold to a slave three yards of cotton shirting, at 20 cents per yard."

State v. Green, 4 Strobhart 128n., Fall 1836. The husband of the prisoner was shot by some unknown person. [130n.] " she instantly cried out, ' Henry is killed—the negroes have risen—we shall all be killed ' . . [131 n.] There did not appear to have been any apprehensions of a rising among the negroes. . . [132n.] it was, she said, Tommy Ray's negro man, Edom, who killed him," Edom was tried and acquitted. Mrs. Green was found guilty of being an accessory before the fact.

State v. Nates, 3 Hill 200, December 1836. " Indictment for gaming with a negro . . The game . . was *Rattle and Snap* . . a game with cards and dice: " Convicted.

Held: betting is not necessary to constitute the offence of gaming with a negro, under the act of 1834.

Brunson v. King, 2 Hill Eq. 483, December 1836. Will, 1822: [485] " that Silla and all the rest of the family, with old Jack, old Phebe and old Flora, remain on the place where my family shall live; and that the said old negroes be treated humanely by my executors during their lives, but more particularly in old age."

Charlotte Miller v. Justices (cited in State v. Belmont), 4 Strobhart 450, 1836. Charlotte Miller was [460] " the descendant of an Indian woman, living in Charleston about fifty years ago," The justices [450] " were proceeding to try her under the Act of 1740.[1] . . it was unanimously decided by this court . . that the words . . ' free Indians in amity with this government,' mean Indians domiciled in this State, although disconnected with any tribe . . Accordingly, a prohibition issued against the trial "

M'Ginney v. Wallace, 3 Hill 254, February 1837. " Mr. Hopkins took his negro Pat by the hand and put her hand into the hand of Laura M. M'Ginney, and said . . ' this is no longer my property, but this child's,' (plaintiff's;) then addressing the child, he added, ' but daughter, (she was the grand child of Mrs. Hopkins,) you must let her work for grandfather (himself) while he lives.' Hopkins kept Pat during his life; but always

[1] Sect. 1. 7 St. at L. of S. C. 397.

spoke of her as plaintiff's negro." [256] "and when the negro was sick, sent for the plaintiff's mother to nurse her; and she also paid the expenses of her confinement when her children were born."

Held: "whether the donor did not intend . . to vest her immediately in the donee . . should . . have been left to the jury."

Horry v. Glover, 2 Hill Eq. 515, February 1837. [517] "the Springfield gang [eight slaves] . . were mostly superannuated and are dead, without children."

State v. Spenlove, Riley 269, February 1837. "the prosecutor . . had lost from his plantation a goat and two kids, . . a sailor . . purchased the kids from a negro."

Bennet ads. Carter, Riley 287, February 1837. "Mr. Moses deposed, that the four negroes were put up on the auction table; and he was employed by Carter as his salesman. Both Carter and himself got on the table. . . [288] no guaranty but that of title. . . The witness asked the girl what was the matter with her. She said she could not retain her water. . . the children [two boys] were four or five years old; that the mother was a good looking woman ['30 or 35 years old'], the other woman old. . . that the negroes after the first sale went to Carter's and from thence, he thinks, to the work house. . . that the woman, if sound, would have been worth $450. . . that the charge for keeping a negro at the work house is eighteen cents per day, and if fed with meat, more. . . Carter, the vendue master, . . plaintiff . . deposed . . that the four negroes sold for five hundred and sixty dollars [April 14, 1834]; and at the re-sale [May 2] for four hundred and sixty. . . that the second sale was . . at the risk, of the former purchaser. . . For the defence . . [an auctioneer] deposed . . that in 1834, negroes were not as valuable as now; . . that the two boys would have brought $600; but that selling them with the woman would decrease their value $200. A certificate of Dr. North . . [289] that the woman was valueless and offensive."

Held: "The plaintiff . . had the right . . to bring this action [for the difference in price]; but . . cannot be a witness in his own cause,"

Ferry Co. ads. Clark, Riley 300, February 1837. "two negroes came to the ferry landing, and called for the boat. . . overset . . One or two days after, the owners of Sam went to search for him. His body was found in the river." They brought an action for his value. "the jury . . found for the plaintiff."

Smith v. Bank, Riley Eq. 113, February 1837. "The complainant . . gave a . . full price . . The Bank made no representations, as to the condition of the slaves, . . striking out the warranty, . . The complainant alleges that one . . had the fever and ague, at the time . . continued ill for 6 or 7 months, . . died of dropsy."

Held: [114] "a refusal to warrant negatives all implication of warranty:"

Richards v. Towles, 3 Hill 346, May 1837. [347] "agent of M'Bride . . employed to take his negros out of the State and sell them, at a

time there were various executions and judgments against him . . unsatisfied. . . taken . . to Alabama and other places," He sold one in Georgia.

Seibels v. Whatley, 2 Hill Eq. 605, May 1837. Will, 1826: "unto my wife . . all my estate . . during her life, and at her decease, . . unto . . my nephew . . Nance and her increase," Nance [606] "had at the execution of . . will two children,"

Held: they [609] "do not pass under a bequest of the mother."

Moultrie v. Jennings, 2 McMullan 508, Spring 1837. "When the plaintiff was . . not more than 2 or 3 years old, . . his . . grand-step-father . . [gave] him a negro . . child, Jinsey,"

Dillard v. Wallace, 1 McMullan 480, Fall 1837. "There was some evidence, that, during the extreme cold weather in February, 1835, the defendant's negroes were at work, and kept from the fire by the plaintiff [overseer]; . . that in the course of the winter, 1834-1835, a negro man of the defendant's . . was badly frost bitten; but whether this was from the act of the plaintiff, did not appear. The plaintiff whipped a negro woman for sending a child from Meadow Woods to the defendant's house, the defendant complained about it, and the plaintiff said if he had done wrong, he was sorry for it. An old woman whose duty it was to attend to the children, was put to milk the cows. And a woman . . who had previously milked, and who was a crop hand, was put to cook; . . [Defendant's counsel] [481] proposed to show that the plaintiff had received the proceeds of the defendant's negroes crops, (say $163,)"

Poag v. Carroll, Dudley 1, December 1837. [2] "Upon her being called in, with the child in her arms, . . Carroll said, 'Here is the child; I intend, or allow this girl for my son John, and I give this bill of sale [of the child] to prevent them being separated.'"

Cole v. Broom, Dudley 7, December 1837. The slaves, who were assigned to a widow in Virginia for her life, were sold by the sheriff, in 1827, to Faris, who "sold them (still conveying only the life estate), to Daniel Houser and . . Marshall, of . . N. C., who carried them out of the State. . . January, 1828, . . absolute . . conveyance to Christian Houser, an insolvent person, and they were hurried off in the night to South Carolina. On information being received that the Coles were in pursuit, one Clinch was sent along with Christian Houser as a sentinel on his conduct, and to see that he did not get drunk and spend the money; and deposed, that he sold the slaves, . . [8] There had been a recovery by the [remaindermen] plaintiffs against Faris, in Virginia, for the value of the negroes . . of which some small amount had been levied;"

Held: [10] "no bar to an action of trover for the property against a person in possession here or elsewhere."

Corley v. Cleckley, Dudley 35, December 1837. Held: "a contract of hiring is a purchase for a term of the services of a slave; and if the slave be sound at the time of contracting, any loss arising from subsequent disease must fall upon the hirer, . . unless the slave should die;"

State v. Glasgow, Dudley 40, December 1837. " indicted . . for suffering his slaves to be employed in vending spirituous liquors.[1] . . proved . . the selling of half a gallon of whiskey to a negro. This was drawn out of a barrel in the defendant's own house, by his negro woman Betty, the defendant himself standing by, and part of the price was paid to him at the time, and the balance was to be paid him next day . . defendant's own acknowledgments on the trial of Betty before Justices."

Held: [42] " the slave was merely the involuntary instrument; "

Cook v. Davis, Dudley 67, December 1837. " The defendant had a valuable negro man, named Simon, whose mother, Tilly, a very aged woman, belonging [*sic*] to one Smith; and to gratify Simon, the defendant was desirous to relieve Tilly from servitude, and to place her where she would be comfortably provided for." He requested plaintiff " to purchase her if it could be done for twenty-five dollars, with an understanding that she should be maintained by the Aricks, to whom she had formerly belonged. . . L. D. Arick then purchased the negro for thirty dollars, four or five years previous to the trial. . . [68] Tilly was maintained at Arick's, and died there about two years previous to the trial."

Tennent v. Dendy, Dudley 83, December 1837. " action of trespass . . against . . a captain of patrol, appointed by the intendant of the village . . for whipping a slave, belonging to the plaintiff [but hired to another], within the limits of the corporation, before . . nine o'clock at night, at and after which time the Act authorizes the patrol to take up and whip slaves, found outside of their owner's premises without a pass. . . The negro was whipped severely with twenty stripes. . . [84] The motion for a nonsuit was overruled, and the plaintiff had a decree."

Affirmed: [85] " more analogy to slaves in . . law applicable to land, than . . found in the law of personalty. . . on the principle derived from the analogy of an easement, the owner may, notwithstanding the hiring, recover in this form of action. But the case need not rest on any such analogy. . . the master has all the means of protecting his slave in a civil point of view, which the slave, if a freeman would have. . . [86] Slaves are our most valuable property. . . too many guards cannot be interposed between it and violent unprincipled men. . . The slave ought to be fully aware that his master is to him . . a perfect security from injury. When this is the case, the relation of master and servant becomes little short of that of parent and child . . [87] and hence result those striking instances of devotion, which, at least, on one occasion in this State, induced a slave to peril his life to save that of his master, and failing in the attempt, nobly to perish with him." [O'Neall, J.]

Bogan v. White, Dudley 87, December 1837. [88] " the negro woman . . was sick, and he wished the mother of defendant's wife to stay . . and take care of the negro. . . The mother made clothes for these negroes. . . Dr. Nance . . attended on [negro] Jesse,"

Williams v. Vance, Dudley 97, December 1837. " Robin had belonged to . . Johnson, and had run away for some time before a deep snow,

[1] Act of 1831.

which fell in . . March, 1835. During the time the snow was on the ground, Robin came in to . . Godfrey, under the impression that Godfrey had bought him. He was badly clad, and had no shoes; he had a slight cough, from cold. . . Williams bought him . . about a week before he sold him to Vance [April 3, 1835, for $675]; . . the measles were on his plantation. He let Vance know . . [98] Vance inquired of Robin's mother, whether Robin had ever had the measles, . . he had. . . short time afterwards, Robin was taken with the measles. . . On the 29th [April] . . Dr. Rook was called . . ill with secondary measles, . . On the first Monday in May, Vance . . met with the witness . . and asked him 'if he had seen Williams—that he wanted him to pay for that dead negro.' Witness replied, 'is the negro dead?' Vance said, 'no, but he will die soon.' . . Robin died" that month.

Held: Vance [99] "was put on his guard, and had no right to rely on an implied warranty."

Gregg v. Harllee, Dudl. Eq. 42, December 1837. [45] "Harllee [tenant for life] . . was informed . . that . . Gregg [the remainderman], was tampering with the slaves, . . to induce them to leave his service, . . The overseer [of Harllee] . . testified that the behavior of the negroes was changed for the worse; . . One of them did . . run away and go to Gregg. . . Gregg . . had only instructed the slaves to leave the defendant in the event of his attempting to take them out of the State. . . defendant . . collected the slaves, . . chained the males, and removed them into North Carolina." Gregg pursued with three [46] "other men armed, . . Defendant had with him eight men besides his two brothers, . . all, or mostly all, armed. . . He threatened to lynch or flog [Gregg] . . [47] Gregg . . concluded to accept [$2000, about [53] 'one-fifth of the value of the slaves;'] . . decreed, that . . Harllee, deliver . . the slaves" to Gregg. Affirmed.

Righton, Guardian, v. Wood, Dudley 164, February 1838. "action of trespass in the nature of ravishment of ward to try the freedom of Abby Stoll and her child. . . [165] Abby, was born free. Subsequently to 1821, she was tried by a court of one magistrate and two freeholders for harboring a slave, and was sentenced to the penalties imposed by the Act of 1740.[1] . . being unable to pay [them] . . she was sold in . . Charleston. His Honor stated to the jury . . The Act of 1821 was a repeal of the Act of 1740, in relation to this offence . . hence the sale was void. The jury found for the plaintiff." New trial refused.

Miller v. Dawson, Dudley 174, February 1838. "that her grandmother was an Indian woman, living in Charleston at least fifty years before the trial—that her mother was the child of a white man by the same Indian woman, and that she herself was the child of a white man."

Held: "the term 'mustizo,' used in the Act of 1740,[2] signified the issue of a negro and an Indian."

[1] P. L. 160.
[2] Sect. 14. *Ibid.* 156.

State v. Singletary, Dudley 220, February 1838. Will of George Broad, "a foreigner by birth,"[1] dated 1836: [8 Rich. Eq. 96] "I . . bequeath to . . Dangerfield . . my slaves Daphne and her [eleven] children . . and her [two] grandchildren, . . together with the future issue and increase of such as are females: In trust, . . that . . Dangerfield . . permit . . the slaves . . to . . appropriate their time and labor to their own proper use . . without the intermeddling . . of any person . . whomsoever, further than may be necessary for their protection under the laws of this State, . . I give . . all the rest . . of my estate . . to . . Dangerfield . . upon trust . . [97] and for this purpose only, that the said slaves . . and increase, be permitted . . to use . . said estate . . without the interference . . of . . Dangerfield, or any person . . further than . . necessary to secure . . slaves the full use" He left no "kindred besides his natural [slave[2]] children."[3] [Dudley 221] "Dangerfield qualified as executor. He kept the negroes on . . plantation . . given him by the will . . for their support, and made crops for them . . . if the proceeds exceeded the current expenses, he appropriated the excess to his own use. He also hired out some of the negroes. The first year after the testator's death, Dangerfield paid taxes for them as belonging to . . [Broad's] estate, and tried to carry the will into effect; but the second year he treated the negroes as his own." [Rice 198[4]] "Singletary says that he was employed by [Mrs. Rebecca Rhame[5]] . . to seize the negroes[6] . . that he, [with Mrs. Rhame] . . and Mrs. Dehay, her son and servant [with some ropes[7]], went to the plantation . . about 8 o'clock, . . 31st December, 1837; . . no white person on the place . . The witness ordered the negroes out of the house, and told them . . they must go with him to Charleston. Dangerfield came and asked . . by what authority . . witness replied, he had seized them for [Mrs. Rhame] . . and read the acts of the legislature" [Dudley 221] "he signified that he intended to set the negroes free before the clerk;" [Rice 198] "Dangerfield replied, it was a pity to drag them through the mud; . . [199] ordered a boy to bring the wagon. . . that Dangerfield had been informed by a boy of what was going on, and had dispatched a messenger to colonel Ferguson, who galloped up . . told Dangerfield to order [Singletary] . . off, and if he would not go, give him the whip; and that if . . more should come . . to shoot; . . Witness said . . that he had not come to lose or take life. Whilst . . talking, a boy, (one in dispute,) came up with a duck and gun; . . was insolent and witness told him to hold his tongue or he would tie him; . . finally left . . in consequence of threatened violence," The four were indicted for a riot. [Dudley 221] "His Honor . . instructed . . [222] That as long as Dangerfield had not attempted to emancipate and abandon them, (of which facts the jury were to judge,)

[1] Escheator *v.* Dangerfield, 8 Rich. Eq. 95 (96).
[2] *Ibid.* 98.
[3] *Ibid.* 97.
[4] Rhame *v.* Ferguson (1839).
[5] Second wife of Broad's brother-in-law.
[6] Under the act of 1800.
[7] Dudley 221.

no person was authorized to seize them under the Act of 1800; . . The jury found the defendants guilty." New trial refused. See Rhame *v.* Ferguson, p. 371, *infra*; Escheator v. Dangerfield, p. 447, *infra.*

Robertson v. Wurdeman, Dudley 234, February 1838. " Mrs. Wurdeman sold the negro woman and her children. After that sale, . . [another] child . . was born in New Orleans."

State v. Hardy, Dudley 236, February 1838. " son of the prosecutor, testified, that being suspicious of his father's corn having been stolen, he watched on the night . . That he saw the defendants speaking to Paris, one of his father's negroes, and heard them inquire if he could get them some bacon." Later, he " went off to the corn house of the prosecutor, unlocked the door and brought to them a basket of corn. The witness waited a little, and then advanced and spoke to them—upon which the defendants ran off, leaving the negro still holding the corn."

Simpson v. Insurance Co., Dudley 239, February 1838. " action on a policy of insurance of thirty-eight slaves, valued at twenty thousand dollars, . . shipped [with forty other slaves] on board the *Enterprize,* from Alexandria [D. C.], . . to Charleston, . . The vessel sailed . . January, 1835; . . heavy gales . . drove her off her course . . [240] the captain bore away for Bermuda, . . [where] [241] the vessel was . . detained by the officers of the custom house; while thus detained, and while she was refitting, a writ of *habeas corpus* was issued by the Chief Justice of Bermuda, directed to Captain Smith, requiring him to bring before him the seventy-eight slaves on board . . he obeyed the writ, and the slaves were told by the Chief Justice that they were free, and at liberty to remain if they chose. All except six (not included in this policy), chose to remain, and were discharged from the custody of the captain." The risks enumerated in the policy are [241] " arrests, restraints, and detainments, of all kings, . . or people," The presiding judge ruled, that " the bringing up of the slaves, under the writ . . and the discharge of them by the Chief Justice . . was included. . . The jury found for the plaintiff." New trial refused.

Drayton ads. Moore, Dudley 268, February 1838. [269] " Dr. Drayton was the owner of a schooner, the command of which was given to a black man. The schooner being destined for Bennett's wharf, entered the creek with crowded sail " and injured the wharf of Moore. Held: the master is liable.

Parker v. Gordon, Dudley 270, February 1838. Some fishermen had lost " a car full of fish, which was run down in the dock by the defendant's sloop, navigated entirely by his slaves."

Held: the master is liable, [275] " on the principle, '*Sic utere tuo, ut alienum non laedas,*' "

Richardson v. Richardson, Dudl. Eq. 184, February 1838. James Burchell Richardson's will, dated 1826, gave to his two sons, one hundred slaves each; and to one of his daughters, " certain specific slaves, [and] one-half the number of slaves he should have on his Belvidere

plantation at his decease. To . . [185] five [other] daughters, . . each, forty negroes;" Codicil, dated 1835: [197] "to my . . wife . . the following negro slaves, . . with all their future . . increase, . . my servant Moses, raised from his infancy and appreciated for his honesty and attachment. The trusty cook-woman Harriet, and the pastry-woman Eve, both have been attentive and faithful. Also, Fanny the seamstress, Lenn the fifer, Bess the house-maid, Roller the house-servant, Lucy the washer, Sharper the weaver, Henry the gardener, Betty the child of Fanny, Dick and Frederick the bricklayers, Ellick the blacksmith, Jesse the painter, Amelia the chamber-maid, George Harriett the carpenter, Prince the carpenter, Alice the home dairy-woman, Judy and her children, Tenah and Ned, Aphnah and her children Sampson and Rolla, Clarentine, Clementine, Doll the scullion, Lizzy, old Davy, Fiscal Philly, then of Fiscal Fanny and her family, Maria, Phoebe, Sary and her infant child, Linney and her three children, Olivia,"

Rutledge v. Rutledge, Dudl. Eq. 201, February 1838. [202] "In 1793, . . Harleston, in consideration of an intended marriage between his daughter . . and . . Rutledge . . covenanted to pay . . two thousand guineas, to be laid out in slaves, . . the two thousand guineas were . . invested in thirty-seven negroes, which with their issue and increase, now [1836] amount to sixty-six in number,"

Wilder v. Richardson, Dudley 323, May 1838. A negro was hired for the year 1837. "July . . he absconded and was out of the service of the defendant for the remainder of the year."

Held: [324] "the party . . hiring must sustain the loss."

Johnson v. Wideman, Dudley 325, May 1838. See same *v.* same, p. 372, *infra.*

M'Clintock ads. Hunter, Dudley 327, May 1838. [328] "Dr. Farrow . . was permitted to narrate what Ben himself had said . . as a patient. And Ben fixed the commencement of the disease [rupture], previous to his sale." Held: the latter testimony is inadmissible.

Percival ads. McVoy, Dudley 337, May 1838. [338] "had very competent servants (slaves), particularly a woman who was an excellent nurse."

Rice v. Parham, Dudley 373, May 1838. "the defendants . . were patrolling, and found [a gun] . . in the possession of the plaintiff's negro, who was living on a plantation without any white person residing thereon. [[374] 'The negro exhibited no . . permit;'] They seized [the gun] . . and carried it to a neighboring justice . . for condemnation. . . made oath that the . . negroes . . annoyed the neighborhood by shooting it on Sundays . . The plaintiff neglected to appear and resist the proceedings, and it was accordingly condemned.[1] . . the son of the plaintiff . . testified that he had placed the gun in the possession of the negro . . for the protection of the plantation; and had given him a written permission to use it for that purpose." Nonsuit.

[1] Acts of 1819, p. 31.

State v. Arthur, 1 McMullan 456, Fall 1838. Earle, J: [458] "While at the bar, I prosecuted an indictment against two Justices, for admitting to bail one charged with the murder of a slave, and they were convicted and fined." [1]

State v. Blease, 1 McMullan 472, Fall 1838. "The prisoner was indicted under the 3d clause of the 1st section of the Act of 1754,[2] . . for aiding a slave in running away . . It was proved that a slave, . . Jim, ran away from his master's service, on the night of the 24th of December, 1836; on the 26th . . [473] he was found in . . Georgia, and a paper [in handwriting, which was testified to be that of the prisoner] was produced by him as a pass, . . 'This is to show my boy Jesse a leaf to hire is own time for next year,' (signed,) 'Wm. Barnes.' On the 24th of December, 1836, Jim was seen at the house of the prisoner . . in company with the prisoner, nailing boards upon his paleings [*sic*]."

Madison ads. M'Cullough, Rice 38, December 1838. "The defendants were negro traders, and purchased . . Charlotte [[39] 'about twenty-seven years old'], . . at . . $900. . . [39] a witness . . told [one of the defendants] . . that Charlotte was entailed property, and he said it made no difference—he intended to take her to Alabama." She was sold there. Held: "the jury were right in making the defendants pay the whole sum."

Faulkner v. Wright, Rice 107, December 1838. [109] "the steamer . . plying on Pedee, . . was under the command and care of . . Russel, master, (a white man) Prince, (a slave) Pilot, and Freeman, (a free man of color) engineer, and about twelve or thirteen black men, as the crew. . . [111] the pilot . . was trust-worthy, and distinguished for his vigilance and experience. The engineer had acted on other boats as engineer; . . [112] on board . . before . . as first fireman; . . occasionally intemperate." Judge Butler thinks "it was shown there were no spirits on board . . when the accident happened." [115] "sunk by running on a concealed and unknown snag,"

State v. Bohles, Rice 145, February 1839. Witness "saw two negroes sitting in defendant's store [about 8 p. m.]: Ann, belonging to Mrs. Dupree, was going in at the time: . . [146] saw her take a phial out of her apron, and saw the clerk . . pour liquor [gin] into the bottle, and she paid for it. Witness then went in and took the bottle, and asked the clerk if he had a written permission to sell to this negro: denied that he had sold.[3] . . defendant was not present," "has been in no way otherwise implicable in such illicit trading;" Verdict of guilty. New trial.

State v. Stone, Rice 147, February 1839. [148] "The defendant being suspected of trading with negroes, a negro man . . was furnished with twenty-five cents and a bottle, and directed to go to the store of the defendant and buy some spirits. . . he returned in a short time, with a

[1] Acts of 1839, p. 15.
[2] P. L. 335, 336.
[3] [147] "the clerk has been already punished,"

pint of rum in the bottle, and the change:" [147] "The defendant was indicted under the act of 1834," and convicted.

Butler v. Walker, Rice 182, February 1839. [183] "The defendants were contractors to embank a part of the rail road . . they hired from the plaintiff ten slaves to work thereon, and by their covenant agreed to pay $12 50 cents per month, hire, and 'not to expose the slaves to rain, or other bad weather, or dangers of any kind.' The defendants also stipulated by their covenant that they would not require the slaves to labor before daylight or after dark. . . the slaves . . were discharged from work between sun down and dark. . . a hand car . . came up: . . the overseer of the defendants . . and the negroes applied together for leave to ride . . To avoid [a collision] . . they jumped . . slave . . [184] fell, . . died in a few days. . . The jury found for the plaintiff . . about one-half the value of his slave. The defendants appealed" New trial refused.

Parkerson v. Dinkins, Rice 185, February 1839. Action "to recover the difference on a resale . . Parkerson paid to Dinkins $520 for the negro . . [186] 1837. . . Dr. Horlbeck sworn: . . she had a limp. . . She said she was unable to attend to her duties about house. . . very bow-legged. . . She said she had runaway, and took a cold, and that the swelling arose from that. . . [Dr. Howard] would not have such a negro about him at all. Says it was chronic rheumatism; it appeared she had not been treated for it at all. . . that the negro had an awkward gait . . the gait of a country negro. Dinkins [at the sale] said, there is the negro, examine her, I know nothing of her. . . [187] The jury found for the plaintiff." Motion to set aside verdict, refused.

Rhame v. Ferguson and Dangerfield, Rice 196, February 1839. Action of trover for fourteen negroes. [197] "The title of plaintiff . . was founded on an alleged seizure" See State v. Singletary, p. 367, *supra.* Singletary testified [199] "that he never saw [the negroes] . . at work; . . no signs of cultivation about the house; . . [200] Dr. Theodore Gaillard . . sometimes attends the negroes . . Knows that the negroes are under the control of Dangerfield; who makes them work; some make provisions and others work out as carpenters. Dangerfield pays their taxes and medical bills; . . The negroes are very orderly . . Dangerfield lives about half a mile from the negroes, . . [The judge] charged the jury . . [201] that Broad's will was a palpable attempt to defeat . . the laws . . against . . emancipation . . and that if it had been carried into effect, the slaves were liable to seizure." Verdict for the defendants. New trial refused. See Escheator *v.* Dangerfield, p. 447, *infra.*

M'Clure v. Richardson, Rice 215, February 1839. [216] "At night when the boat stopped, fire was communicated to the cotton by one of the hands striking up a fire on board, contrary to orders;"

Chartran v. Schmidt, Rice 229, February 1839. "The plaintiff (a free colored woman,) brought her action of trover, for negroes, under the act

of 1827, against the defendant. On the affidavit of a third person, the defendant was under order of the clerk of court, compelled to give bond and security."

Held: Such affidavit is proper and sufficient. [231] "The person making the affidavit swears from his own knowledge, . . It would be gross injustice to allow a free person of color to bring an action, and withhold the means of making it effectual." [Earle, J.]

Fripp v. Fripp, Rice Eq. 84, February 1839. Appraisement, in 1829, of forty-one negroes of W. P. Fripp's estate (pp. 95, 96); of thirty-three negroes of Miss Fripp's estate (p. 97); and of one negro of J. Fripp's estate (p. 98).

Chaplin v. Givens, Rice Eq. 132, February 1829. [148] "Givens got $303 for [boy] Abraham [in 1813]. . . Sold Abraham because he ran-away. Charity ran away too; sold Charity also. . . [153] bill of sale . . to Mary Givens, of Rosalinda and her child, for $650, . . 1816." [147] " witness hired Rosalinda . . for forty dollars per year, . . Afterwards, Rosalinda behaved so bad, that she swapped her" [140] "Received . . 1831 . . six dollars, for three months wages of the boy."

Snowden v. Logan, Rice Eq. 174, February 1839. [181] "the negroes in question here, with another set, were brought out and put in a line, with a space between the parcels, and in the presence of [witnesses] . . Mr. Pope, pointing to the parcels respectively, said to Major Logan—'This set I gave to Mr. Snowden that set I now give to you.' There were twenty-two in all. . . [182] The negroes given were house servants, and their husbands."

Johnson v. Wideman, Rice 325, May 1839. Report by Judge O'Neall: [326] "action . . on a note . . for $100, a part of the price of . . Charles, . . [336] the consideration was $1150: he is described in [the bill of sale] as a good blacksmith. The title merely was warranted. . . [337] Henry Johnson . . plaintiff's brother . . bought Charles in August, 1833, for $1200, from . . Berry; . . [340] on the day he bought Charles, he [Charles] abused Berry; told him he kept his wife, . . Berry . . wanted Johnson to take back his note and he would kill Charles." Henry Johnson [338] "was about removing to Mississippi, and understood that Charles said if he did not get his wife he would not go with him: he went to the shop and tied him, and put him in jail for safe keeping. He agreed to live with his brother [plaintiff], and he bought him [in December 1833, for $1200]." [326] "plaintiff came [to defendant's] with Charles, . . January or February, 1835. . . had come to sell him Charles; . . [330] two women . . rated at $1,100 were . . given for Charles [and the note for $100]. . . The defendant . . wanted a smith . . who could be depended on, as he would have no white man with him. The plaintiff said he would suit him." [325] "said, any ten year old boy could manage him. . . he never knew him to run away. . . [328] he told the defendant if he would buy his wife, he would live with him. . . [329] The plaintiff said . . his work would average $3 per day. . . [337] 'defendant said [to a witness] he understood he could make a

key which would unlock any door.'" [330] "when . . at work on trial . . defendant said . . he . . was almost the finest negro he ever saw . . on account of his size. The plaintiff said he was as good as he looked. . . [Defendant's witness said:] He was saucy: he once saw him shove a white man . . down. . . threatened to beat another white man . . Wells. . . [331] said to Wells 'no one man ever had or ever should master him.' . . he worked for people as he pleased; . . said that 'neither white nor black had whipped him by force.' . . [332] [Witness's] brother . . a boy . . was once about whipping Charles' wife: she broke and run, crying and calling for her husband. Charles came to her and asked what was the matter: she said William . . was whipping her: he swore he would mash him to the earth. . . [333] At a race, Berry and another white man were quarrelling. Charles came up behind his master, shut up his fist and swore that he wished he was a white man. . . [336] Kemp [Berry's overseer] told him to cut some wood . . he said he would not. Kemp said he would be damned if he should not: Charles said he would be damned if he would. Kemp followed him with a board:—Charles took it from him and struck him, and went on his way, whooping and hallooing. . . [340] [Witness said] that Charles was flogged at Berry's; he had often helped to tie and whip him; it had no effect on him; he would curse his master as soon as taken down." Plaintiff's overseer said: [332] "He was the worst disposed negro he ever knew." [327] "He . . stayed with defendant about two months and then ran away. . . [331] Lewis . . went with the defendant to catch Charles. He caught him at Berry's, in the gin house, in the night; he was crouched in a corner with a knife in one hand and a club in the other: when he found he was discovered he made a rush to escape, he was shot at, the witness seized him, he carried him out of the house, broke loose and ran off, was pursued and taken. The defendant applied to Dr. Gray to look at his wounds, . . [332] they were dressed; he was . . put in jail [September 1835, for safe keeping]. . . The defendant employed Dr. Taggart to attend the negro, and told [the jailer] . . he would pay him something extra to attend to the negro. He had, when taken out of jail [in October], the typhus fever: Dr. Hibler attended to him after he was taken home." [327] "died in about two weeks." Judge O'Neall charged the jury: [342] "Occasional flights of a slave from his master's service for special causes would not constitute any material moral defect. . . occasional thefts among the tolerably good slaves may be expected: . . [343] Like master like man was, I told them, too often the case, in drunkenness, impudence, and idleness. . . [343] The jury found for the plaintiff," New trial refused.

State v. Gaffney, Rice 431, May 1839. [432] "The defendant was indicted for the murder of a slave. The jury found him 'not guilty of murder, but guilty of killing on sudden heat and passion.'"

Held: [437] "the finding is a good verdict, under the second section of the act[1] for killing in sudden heat and passion, . . the defendant must have judgment for that offence."

[1] Act of 1821. 6 St. at L. of S. C. 158.

Rainsford v. Rainsford, Rice Eq. 343, May 1839. Testimony of Rainsford's overseer: [358] "thinks Joe [in 1838] 40 or 45 . . perhaps [50] . . able bodied field hand . . [359] Negro fellow Brit is about 18 or 19 . . able plough hand. . . Hager . . 45 or 50 . . is an excellent field hand, for a woman. . . Nelly . . about thirty . . is quite a small woman, and as a field hand, is not an extraordinary good hand. . . Nancy, about 23 . . is an able field hand, for a woman. . . has two children, one . . about 4, . . other about 5 . . thinks the hire of Nancy with her two children [in 1837] worth about $40. . . At times Brit appears stupid, but he goes on with his work as well as common negroes. Nelly is something like Brit" "thinks Joe, in . . 1837, would have hired for $125. . . Brooks . . thinks . . Joe's hire would average $70 or $75. Hagar, with two children in 1823, would have hired for $30, . . up to . . 1828, and from . . 1828, to . . 1831, about . . $37 50. Andrew in 1823, was about 10 . . worth about $25, 1824 about $30, in 1825 about $35, in 1826 $40, in 1827 about $40, in 1828 about $45, in 1829 about $55, in 1830 about 60. Brit in 1828 was 8 . . worth his food and clothes to . . 1831. . . Nancy in 1823 was about 8 . . [360] worth her food and clothes, 1824 . . 15 to $20, in 1825 $20, in 1826 worth nothing on account of a broken leg, 1827 about $25, in 1828, $30, in 1829 about $35, and in 1830 about $40. . . Addison . . Thinks Joe in 1818 and 1819 . . worth about $150, in 1820 about $100, in 1821 and 1822 about $90, in 1831 about $80, in 1832 about $90, in 1833 about the same, in 1834 about $100, 1835 about $100, in 1836 the same, in 1837 about $120. . . Andrew in 1821 and 1822 was worth about $10 the first, and $20 the second, in 1831 . . about $80, in 1832 about $100, 1833 about the same, in 1834 about $120, in 1835 about the same, in 1836 about $130, and in 1837 about $140. . . Nelly for 1831 is worth $45, in 1832 she had a child and was worth about $30, in 1833 and in 1834 about $35, from 1835 to . . 1838 an average of $40. Nancy in 1831 and in 1832 was worth about $60, in 1833 about $65, in 1834 she had a child and was worth about $50, in 1835 about $50, in 1836 she had another child and was worth, for that year and 1837, about $35." (See table of hires, pp. 360, 361.) Johnston, Ch.: [365] "Hired slaves are commonly treated more harshly, or with less care and attention, than those in possession of their owner. Their health is less attended to; they are less likely to increase, and their moral qualities are almost always deteriorated." Johnson, J.: [370] "in a case tried by me sometime ago in Georgetown, where getting lumber for market was the principal employment, full grown, able bodied females were hired publicly at from 10 to $15 annually. . . the attention bestowed by the trustee to the wants of the negroes, and to the health and comfort of the young negroes, ought to enter largely into the estimate. It is the difference in value between a gang of negroes, who have not increased and are reduced to premature old age by excessive labor, and one which has rapidly increased in healthfulness and numbers; . . impossible to prescribe any fixed rule"

State v. Ford, 3 Strobhart 517 n., Spring 1839. "The prisoner was indicted, with . . Hindman, for stealing two slaves," While their ac-

complice, Dill, was carrying them away, [520n.] " his wagon broke down, and he turned the negroes into the woods—he and they returned to Ford's. He described a house in which they were kept; out of that house, on the Sunday-week after they were stolen, the negroes were run. He said that the prisoner furnished the negroes with three dollars to buy shoes for their trip; . . [521n.] He [Dill] said he was a Patent right School master" [520n.] " the Solicitor proposed to ask . . Anderson, if . . the prisoner had proposed to him to embark in a scheme of villany like the present. . . [Ford] told him [two years before] if he would . . [521n.] *join the lodge at his house*, he would make a smart man of him. . . said there was an easier way of making money than by work. . . [522 n.] The jury found the prisoner 'guilty.'" New trial refused.

Farr v. Thompson, Executor of Farr, Cheves 37, Fall 1839. [38] " the testator was never married. He had lived for many years in a state of illicit intercourse with a [bright] mulatto woman, his own slave ['the child of . . a half brother of testator'[1]], who assumed the position of a wife, and controlled, at least, all the domestic arrangements of the family. The issue . . was a boy, named Henry, who was acknowledged by the testator as his son." [1 Richardson 87] " his respectable neighbors would not allow him to be sent to school with their children. He sent him to a distant school, from which he was ejected, so soon as his caste was discovered, although his complexion was such that it required very close inspection to decide that he was not white;" [Cheves 38] " Many years before his death, he had endeavored, by application to the Legislature, to effect the emancipation of this boy. These efforts proving unavailing, the testator, after, or about the time he arrived at manhood, sent Henry to Indiana, where he had him settled, and provided him, from time to time, with considerable sums of money. . . [41] Fan had the influence over him of a white woman and a wife. He . . bargained for a negro, but would not buy till her pleasure was consulted; sold a negro girl at her desire, and made titles to another one that she offered for sale as her own, and when he had made the titles, said 'he hoped she would now be satisfied, as there was no other woman left; he hoped he would have some peace.' . . Fan refused to let a servant come to him when he called; they quarrelled about it—she shook her fist in his face and threatened to knock his teeth down his throat; witness heard them quarrel in the night; heard her call Hannah, a servant, to bring her the whip, and she'd beat his skin off. They would get drunk together, . . had tried to kill him with a spear;" [1 Richardson 81] " The testator, by his last will . . bearing date 16th . . June 1828, gave his whole estate to [Judge] J. B. O'Neall, . . executor. On the nineteenth . . he wrote . . 'I want Fan and Henry to be free; I want Fan to have one half of my estate, and Henry the other half. When Fan dies, I want Henry to have half of Fan's half, and you the other half for your care . . and should Henry die, leaving no wife nor child, I want you to have the whole . . I want you to give Henry a good education, and do the best you can with him, and deal out his share . . as you think he will improve it. I

[1] 1 Speers 97.

want you to take Fan home with you, and build her a comfortable little house somewhere on your plantation, and let Fender and Cesley live with her as long as she lives.' The testator died in 1837. . . [83] those scenes of drunkenness and violence . . most, if not all of them, were within two years of his death, . . up to [1828] . . it does not appear . . except in a solitary instance, she ever interposed her wishes . . 'Farr said he would give Henry ten thousand dollars, and send him to a free State. The rest . . he would divide among his relations, and would secure Fan her freedom. Fan objected to the division among the relations.'" In 1836 he made another will, [Cheves 39] "substituting Dr. Thompson [his family physician] in the place of Judge O'Neall, as legatee and executor. . . [42] The jury [in 1839] found against the will [of 1836]," New trial was granted. In 1841 [1 Speers 93] "the jury again found a verdict against the will [of 1836]." After a new trial was refused, the will of 1828 was admitted to probate. The heirs at law appealed. [1 Richardson 82] "the Jury found against the will," New trial granted: [87] "nothing which resembles undue influence exercised by Fan in the procurement of this will. . . [90] codicil [of 1837, as well as the will of 1836,] is no revocation of the prior will of 1828."

City Council of Charleston v. Brandt, Cheves 72, February 1840. [73] "Sum. Pro. to recover a penalty of $20, for violation of a City Ordinance, of . . 1836,[1] . . The evidence was that, one Sunday morning, there was a concourse of negroes about defendant's shop; that they continued in and about it during nearly two hours. . . Defendant kept his gate closed, and, from time to time, opened it to let negroes in or out."

Held: "such a presumption against the defendant, as imposed on him the necessity of proving that the negroes . . were not there unlawfully."

Ivy v. Wilson, Cheves 74, February 1840. "The *Neptune* in coming in to her accustomed landing, fell foul of the other vessel, which was moored to a wharf immediately below. . . When the *Neptune* was within a hundred yards of the *Dudley,* the plaintiff [Captain of the *Dudley*] ordered up all hands to assist in bearing her off and preventing the collision. Among them was the plaintiff's slave, George, described as a bold, ambitious, adventurous fellow, who got on the guard of the boat, outside of the bulwarks, and, though warned to avoid danger, remained in that position till one of his legs was caught and crushed between the two vessels. In consequence of this injury, he soon afterwards died. . . the pilot . . testified that George's position was a proper one to prevent the collision, but was one of great danger, . . The slave was worth from $1000 to $1200. . . [75] the Court said, if they believed that the negro's position was taken to protect . . the boat . . they ought not to presume that he wantonly exposed himself to unnecessary danger. . . Verdict for the plaintiff, $750." Held: "the verdict is right."

[1] "Clause 22d, . . 'That no negroes or persons of color, . . bond or free, shall be permitted to assemble or loiter in any shop, or . . about the door . . and shall not be allowed to sit down or remain therein longer than while actually engaged in purchasing such articles they may be lawfully authorized to purchase."

Lyles v. Bass, Cheves 85, February 1840. Doll, a female slave, "had been the wife of the defendant, a free man of colour, and had been separated from him by her master, Lyles, who carried her away into North Carolina. The defendant went to North Carolina to purchase her. Lyles told him she was very sick—that she was unsound, and he had better not buy her; but he said, it was his own look out, she was his wife. Lyles then told him that, if she died before she left there, he should not pay for her, . . bargain was completed by the defendant giving his notes for $500. At the time . . and long before, Doll was obviously very ill . . of no pecuniary value. . . declined constantly till she died. When sound . . offered for sale for $300. Bass was a man slow of apprehension, and easily imposed upon." Held: [87] "it is a binding contract, . . fairly made."

Venning v. Gantt, Cheves 87, February 1840. "The plaintiff was fully informed [at the sale] that Philander had a shortness of breath, supposed to have been occasioned by a fall from a house not long previous." He died soon after of [88] "a complication of diseased lungs and dropsy;" Held: [90] "the notice to Venning was not sufficient" to relieve the vendor for a sound price from his implied warranty.

State, ex rel. Luten v. Commissioners, Cheves 95, February 1840. "for the greater part of . . 1837, the plaintiff, as a contractor on the Rail Road, had . . [eighteen] hands ['hired from, different persons'] employed in making embankments." Held: [98] "the Commissioners have a right to command their labor." [1]

State v. Toomer, Cheves 106, February 1840. "Major, a slave of the relator, was convicted by a court . . in Christ Church parish, of the murder of Mary, the slave of [another] . . sentenced to be hung. The verdict was found by one Magistrate and three Freeholders, . . the other magistrate and two freeholders finding *manslaughter*. . . deceased had received the injuries in Christ Church parish, . . removed to Charleston, (St. Philip and St. Michael's parish,) where she died. . . A writ of prohibition was ordered, to prevent the execution"

Affirmed: [108] "if the accused were tried in St. Philips [*sic*] and St. Michael's, the verdict must have been unanimous." [2]

State v. Montgomery, Cheves 120, February 1840. "The defendant and his wife, were jointly indicted under the 37th section of the Act of 1740,[3] . . for killing a slave by undue correction. The husband was acquitted, but the wife convicted, and sentenced to pay the fine . . Equivalent to $214,28."

Wilson v. Hayne, Cheves Eq. 37, February 1840. Will, 1832: [38] "twenty negro slaves, to be selected from my whole gang . . of which . . six shall be workers;"

State v. Wilson, Cheves 163, Spring 1840. [164] "Wilson was in a state of intoxication, and meeting with Stuart, a mulatto man, conceived

[1] Act of 1825, sect. 9.
[2] Act of 1832, sect. 2.
[3] P. L. 173.

him to be an Indian, immediately struck him several severe blows on the head with a pistol, thereby disabling the slave considerably, and rendering it necessary to send for a physician. After being confined at the place where he was beaten for some days, he had to be sent home to his master. The Act[1] . . designates the horse-whip, cow-skin, switch, or small stick, as instruments proper to be used for the correction of slaves. To [so] strike, therefore, with a pistol, . . [165] constituted such a beating as . . was punishable by indictment, . . The jury . . found the defendant guilty." New trial refused.

Wilson v. Ferguson, Cheves 190, Spring 1840. [191] "The objection to the woman was an enlargement of the abdomen. . . her value was materially impaired . . but she did her full work."

Seibles v. Blackwell, 1 McMullan 56, Fall 1840. [58] "physician's bill and funeral expenses [of a slave], amounting together to $16;"

Percival ads. Herbemont, 1 McMullan 59, Fall 1840. Herbemont "was entitled to the slaves . . for life. He died in June. . . a difference of opinion arose . . as to which . . negroes the plaintiff [administrator] was entitled to retain under the Act [of 1789[2]] . . [Evans, J.,] [60] "charged the jury, that the word *crop* . . meant any annual product . . the result of culture; . . wine . . included . . Yorick was a vine dresser, and did nothing but attend to the vineyard; Glasgow split rails about a month; and . . in June, he was ditching at the farm, . . after that he, as well as the rest, worked in the field . . William was a cooper and jobbing carpenter; George was a small boy, thirteen years old, and employed as a house servant. . . At the season of making wine, all the negroes were usually employed at that business;" The jury found for the plaintiff:

[60] "4 months hire of Glasgow, from 1st August to the 6th December $48,00
3 do. Yorick, 1st Sept. to 1st Dec..... 36,00
1 mo. William, carpenter, ... 20,00
4 mos. Silvia, 1st Aug. to 1st Dec..... 24,00
4 do. Camilla, ... 24,00
4 do. Malvina, ... 24,00
4 do. boy George, ... 12,00
2½ do. Moses, 15th Sept. to 1st Dec..... 20,00"

Held: [65] "in South Carolina the usual crop [in 1789] . . consisted of tobacco, indigo, rice, and indian corn, . . put in the ground after the first of March, . . The slaves were . . to be retained to . . gather a crop . . planted . . by . . administrator . . Before March, hands are usually employed in clearing, repairing fences, breaking up land, and preparing for a crop; . . [but] the plaintiff [has] recovered for more hands than were employed about any crop, and for time beyond [the finishing of the crop] . . the hire of Yorick and Moses [employed

[1] Act of 1740, sect. 45. P. L. 173.
[2] 5 St. at L. of S. C. 111.

in the vineyard] after the vintage . . and for George, . . never employed in the crop. . . [66] should [plaintiff] . . think proper to release [sixty-eight dollars] . . the verdict . . is affirmed for the balance." [Butler, J.]

Grimke v. Houseman, 1 McMullan 131, February 1841. The defendant [132] "undertook, by unauthorized violence, to redress the grievance of his own slave, not at the time when the insolence complained of was offered, but with deliberation, he pursued the plaintiff's servant, and beat her in her own house." The jury found for the defendant. New trial granted.

Wesner ads. Guardian of Tom Brister, 1 McMullan 135, February 1841. Tom Brister, a free person of color, resident in Florida, executed an instrument of writing to Yeomans: "Know all men by these presents, that I, Thomas Brister, colored man, . . in consideration of . . Yeomans having paid certain sums of money for me, viz: two hundred dollars to . . Stevens: thirty dollars to . . Colson, and divers other sums . . all for my interest, happiness and welfare, I do hereby bind myself to serve Mr. Yeomans as a laborer for . . five years from . . date . . and . . further promise that if he . . sells my said time for five years, to any other person or persons, then I will . . serve them as a laborer, to the best of my abilities, until said time is out. Given under my hand and his
seal, in . . Jacksonville, . . 1839. Thomas X Brister, [L. S.] Signed, mark
sealed and delivered in the presence of . . Fernandez. . . Bisbee." (136] "Yeomans, . . assuming to be the absolute owner of Brister, sent him to . . [137] Gadsden, a broker, to be sold as a slave. . . Gadsden committed him to the work house of Charleston . . for safe keeping until he could effect a sale. Yeomans' instructions were that Gadsden should sell Brister to some one who would carry him to New Orleans, stating that Brister would endeavor to make such statements as to procure his discharge, but that Gadsden must not believe him, etc. After Brister was committed, he made such communications as to induce the keeper of the work house [defendant] to write to one Archibald Clark, residing in Georgia, to know if Brister was a free man, as stated by himself. Clark returned an answer saying that he was, and that he (Clark) was his guardian; . . Gadsden wrote to Yeomans . . [who] sent the contract, . . Gadsden . . paid the fees of the work house, and . . discontinued any further . . control . . the plaintiff was put to his action of ravishment of ward, allowed by the Act . . of 1740, . . to try Brister's right to freedom." [135] "The jury established the freedom of Tom,"

New trial refused: [137] "Wesner received the plaintiff into custody, without any wilful participation in the infamous fraud attempted . . [138] justified in receiving Brister . . But this justification ceased after Gadsden . . discontinued his control . . From that time the defendant held him on his own responsibility, or by the direction of the commissioners of the work house," [Butler, J.]

Sherman v. Barrett, 1 McMullan 147, February 1841. [154] "He had . . a large rice plantation, (658 acres,) and fifty slaves."

State v. Boise and Stuke, 1 McMullan 191, February 1841. Stuke, "the clerk . . was asked if he had not sold a bottle of wine to a negro girl, . . and he replied, yes. . . [192] scarcely anything to implicate . . [Boise] master of the shop. . . verdict of guilty." New trial granted Boise.

Caldwell ads. Langford, 1 McMullan 275, May 1841. "The facts that the defendants severally beat the plaintiff's negroes, with tickets, were clearly proven. The beating consisted in the infliction of about fifteen stripes with a whip. The negroes were at a store, on Sunday, behaving themselves peaceably and orderly; and the flogging was without any excuse, and done in mere wantonness of power." Held: [276] "a beating and abusing within the words of the Act of 1839, sec. 5,"

Sally Bugg v. Summer, 1 McMullan 333, May 1841. "action on an account for work and labor. Sally and Sam Bugg were free persons of color, and brother and sister. They lived and worked together. Both were industrious, and the surplus of their gains, after paying expenses, was employed by Sam in the purchase of some property."

Paris v. Waddell, 1 McMullan 358, May 1841. "the plaintiff . . borrowed a cart . . and sent two of his own negroes . . with it into the woods, to catch and bring home some wild hogs which he supposed he had a right to. . . [360] that plaintiff's negroes were under little or no controul or discipline."

Bell v. Lakin, 1 McMullan 364, May 1841. [365] "Robert, a slave of the plaintiff, a bricklayer by trade, escaped from him, in 1833, and remained out of his possession until after May 1838, when he was taken up in Columbia, by . . Sowden, who lodged him in gaol, where he remained until claimed by the plaintiff, who paid the gaoler's bill, $74, and the physician's bill for attendance on him while in gaol. He had . . a certificate, signed by the defendant, as his guardian, in which he was called Thomas Oree, and was stated to be a free man, and entitled to receive, as such, the proceeds of his labor. . . The value of the slave's services while absent . . was . . one dollar per day. The defendant clearly . . shewed . . that the negro man calling himself Thomas Oree, came into Lexington district in '32 or '33, as a free man, . . that he was . . employed by [men of high standing] . . as a bricklayer and a free man. . . 1837, the defendant was appointed, by the clerk of Fairfield, (in which the negro then resided,) his guardian, and he thereupon gave the certificate of freedom before spoken of. The jury were instructed . . [366] the plaintiff, having laid the defendant's acts to have been done with a *scienter* of the fact, that the negro was the runaway slave of the plaintiff, he could not recover without proof thereof, unless the law presumed the *scienter*. . . [367] the fact that the defendant found the negro in . . state of freedom . . exercised for years, rebutted the legal presumption of slavery arising from color, so far as the defendant was concerned, . . [368] The jury found for the defendant," New trial refused.

Young v. Burton, McMul. Eq. 255, May 1841. Held: [268] "That a bill well lies [in the court of equity] for the specific delivery of slaves, generally, which are withheld from the possession of the rightful owner." [262] "Can you go into the market, daily, and buy one like him, . . No. . . there are no two human beings, black, white, or mixed, which are exactly alike . . [263] But there are other considerations . . the ties . . by which the master and the slave are united. There is the faithful and kind old nurse, who watched over your infancy, with a tenderness and devotion little short of that which is felt by a mother, and who often supplied her place; whose value estimated by the market price, would be merely nominal. There is your body servant, who has faithfully watched over your sick bed, who, from experience, knows and anticipates all your wants. There is the honest, diligent, and faithful old slave, who has followed the fortunes of your family for two or three generations, . . [264] now worn down by decrepitude . . There is the more humble, but equally faithful and devoted field slave, who recommends himself to the regard of his owner, by implicit obedience to all his commands. These are not imaginary, but cases arising out of real life; and if a stranger, by force or fraud, obtain possession of them, are you to be told that your remedy is at law; and that, with the damages which you recover, you may supply their places in the market?" [Johnson, Ch.]

Glover v. Hutson, 2 McMullan 109, December 1841. "about 1837 . . sold . . a negro woman . . for . . $700."

Commissioner v. M'Whorter, 2 McMullan 254, February 1842. "Bob ['between 50 and 60 years of age'] was sold [for partition] for $670, or $680, his full value, . . for Dr. Terrant . . for a short time before the sale, Bob had a wife at Dr. Tarrant's [*sic*]." Bob's death "took place in four or five months . . he was short-winded, . . swelled, . . Connel proved . . he . . frequently seemed to be unwell: he thought it deception. . . [256] the jury . . found for the plaintiff [on the question of soundness]."

Braveboy ads. Cockfield, 2 McMullan 270, February 1842. [271] "the negro was carried off . . in the day time, but privately, when the family were absent from home." [274] "by men who pretended, but who in point of fact had no claim to him."

Porcher ads. Caldwell, 2 McMullan 329, February 1842. An auctioneer testified: "$350 is a large price for her, if she were sound . . because she is at least forty-seven . . [330] that a first rate cook would be worth $500; . . Colcock would have given $600, if she had been willing to live with him; . . [331] At auction [in 1841] the woman declared she was unsound [[329] 'commencement of cancer']; Caldwell bid $350; . . she had been in his employ;" Held: he can [333] "maintain no action on the implied warranty."

Carmille v. Administrator of Carmille, 2 McMullan 454, February 1842. [455] "deed [by Carmille] . . 26th February, 1830 [a few days before his marriage], . . for a nominal consideration, assigns to the de-

fendants, Pringle and Chartrand, . . 'Henrietta [and her four mulatto children], Charlotte, Francis, Nancy and John,' on the special trust, . . and condition, that they will . . permit . . the negroes . . and also the future . . increase of the females, to seek out and procure employment, and to work out for their own maintenance . . and further, in trust, to allow them . . to receive . . for their sole . . benefit, all such moneys as they might obtain for their labor, or otherwise, 'after paying to the trustees . . one dollar per annum, and no more.' . . second deed . . on the same day . . purports to convey to the same trustees the slaves Tilly and Mary, in trust, to apply their labor to the use of Henrietta and her children, until her youngest child shall come to the age of twenty-one years, and then to sell . . Tilly and Mary, and divide the proceeds between Henrietta and her children, share and share alike. These deeds were not . . recorded, until 22d July, 1833, after the death of Carmille [in that month]." His wife died about January 1831, [455] "leaving the complainant surviving her, the issue of the marriage." [454] "a paper was propounded for probate, as his will. It was dated . . 1832 [?], and by it he gave all his estate to . . Henrietta, and her children, directing his executors to emancipate them, if it could be legally done, and if it could not be done within fifteen years, to send them away, and set them at liberty in some country where it could be done. The paper was rejected, on the ground, that subsequent to the execution, Carmille had married, and had issue. . . [455] On the death of the intestate these slaves went into the possession of the defendants, . . under [the] deeds . . The object of this bill is to set aside those deeds," Chancellor Dunkin held, in 1839, [456] "that the bill of sale . . is an undisguised attempt to evade the law of this State, forbidding emancipation, . . The trusts . . fail. . . decreed, that the negroes . . be delivered up by the defendants," They appealed. Grimke, for the "motion to reverse the circuit decree:" [457] "The condition is subsequent, . . By the execution of the deeds, the estate became immediately vested. . . [460] It is said, however, that to sustain the deed is contrary to the policy of the country, and at war with our peculiar institutions. . . I deny . . Besides, if presumptions are to have any weight, I would ask of the parties before the court, which is it most likely would be most willing to carry out this attempt to evade the law; viz. whether the defendants, perfect strangers to the negroes and to Carmille, would be most anxious to fly in the face of the law of the land, or whether the complainant [Julia, daughter of Carmille,] would be willing to hold in the bonds of servitude, and bind with the chains of slavery, two brothers and sisters of the half blood. So much for the morale and policy of the case, with which however we have nothing to do. . . [464] Henrietta being a slave, his children by her are not bastards in the eye of the law; the A. A. then of '95 does not apply."

[472] "The motion to reverse the circuit decree is granted, and the complainant's bill is dismissed." [471] "Both deeds are . . good . . unless by the Act of 1841,[1] . . they are rendered inoperative. . . I think

[1] 11 St. at L. of S. C. 154. "Carmille *v.* Carmille, and similar cases, led to the Act of 1841." [Dargan, Ch., in Broughton *v.* Telfer, 3 Rich. Eq. 431 (436).]

all its provisions are future." [469] "They still are slaves, . . [470] if Pringle and Chartrand [the defendants] ever relax their hold . . they would be liable to seizure, . . Kindness to slaves . . is the true policy . . *Nothing will more assuredly defeat our institution of slavery, than harsh legislation rigorously enforced.* On the other hand, as it hitherto has been, with all the protections of law and money around it, it has nothing to fear from *fanaticism abroad or examination at home.* If . . a man dared not make provision to make more comfortable faithful slaves, hard indeed would be the condition of slavery. . . The only thing which could effect [*sic*] [the second deed] . . would be the unlawfulness of the trust, if it be unlawful. . . [471] Looking back over our legislation, and our decided cases, and the usages of our people, I think we are well sustained in saying *that a slave may acquire and hold . . personal property, (not prohibited . . by Act of the Legislature) with the consent of the master . . in law to be regarded as the property of the owner"* [O'Neall, J.] [472] "Johnson, Harper, Richardson, Evans, Earle, and Butler, CC. and JJ., concurred."

Bowers v. Newman, 2 McMullan 472, February 1842. George Galphin, by his will, dated April 1776, [474] "gives freedom . . to all legatees or devisees not then free, and especially to Barbara, daughter of Rose. Then having given freedom to two mulatto girls, and one Indian, (daughter of Natechuchy) . . he leaves . . land, and . . twelve to twenty slaves, with their . . increase, to Thomas and Martha Galphin, children of Rachael Dupee, and to George and John, sons of Maturney; . . under . . limitations . . as in [case of] . . Barbara. . . to Judith, daughter of Maturney, . . lands, with eighteen slaves, . . under [same] limitations, . . to Barbara . . during her . . life . . the use of the lower half of . . thirteen or fourteen hundred acres, . . called Silver Bluff . . seventeen slaves, and their children, and . . increase, . . [475] 'in case any of the six Devisees . . die without having issue or their issue die: . . the land to be shared between . . George, Thomas and John: and the slaves . . between the said six devisees and their heirs.' . . In the first codicil [1778], . . 'I revoke that part . . wherein I leave . . Barbara . . Silver Bluff . . In lieu thereof, I leave her . . upwards of three hundred acres.' . . in the third codicil [1780] he gives . . Barbara five slaves and their children, and future issue," The testator died in 1782; Barbara, in 1830, [473] "leaving the plaintiffs, the issue of her marriage with [a white man] . . also then dead;"

Held: [486] "a free person of colour, by the laws of this State, may take and hold, convey by deed, dispose of by will, or transmit to his heir at law, both real and personal estate. . . [487] as soon as from lapse of time the assent of the executor to the legacy of freedom might be presumed, and the claims of creditors to be satisfied or barred, . . her title became . . perfect. . . [489] the words of the codicil . . created a fee." [Earle, J.]

Mathews v. Mathews, McMul. Eq. 410, February 1842. "Mathews, a free person of color, by his will, . . 1831, devised . . a house and lot

in Charleston, and several slaves, to his five younger children, reciting by his will, that he had purchased the freedom of their mother, in 1817. He appointed Mrs. Martha Ann Mathews [his widow] and . . [411] Elliott, . . his executor and executrix;"

Norris v. Shroeder, McMul. Eq. 422, February 1842. Held: [429] " the keeper of the work house in [Charleston] . . was bound to receive the slave " [1] but he " shall be regarded, not as the agent of him who delivers the [slave,] . . but as a stake holder for the true owner,"

Thomasson v. Kerr, 2 McMullan 340, May 1842. The owner of " fifteen or eighteen negroes " removed with them to Alabama.

Littlejohn v. Jones, 2 McMullan 365, May 1842. [366] " that no ferryman was kept there, that the miller, a negro with a wooden leg, put over such as desired, and accepted what was offered, which he kept;"

State v. Turner, 2 McMullan 399, May 1842. " The trading was proved, both by Wever and Hearn, who had purposely sent Isom [Wever's slave] with the [two bushels of] wheat in a bag. They saw the bag carried into the lumber room of the defendant, after it had been laid for a few minutes by a fence, and heard it poured out—listened to the conversation between him and Isom in defendant's store, and saw the delivery of the [half a pound of] coffee and [two pounds of] sugar by him to Isom." The defendant was found guilty.

Felder v. Railroad Co., 2 McMullan 403, May 1842. [405] " The plaintiff's slave [a plough boy], endued with ordinary intelligence, and acquainted with the . . manner of using the Rail Road, voluntarily laid himself down on it and went to sleep, amidst grass so high as to obstruct the view . . the engine . . passed over and killed the slave." [404] " The supposition on the part of the defendants was that he had been killed by the plaintiff's driver, and laid upon the road, so as to permit the engine to pass over his body. . . [405] The jury found for the plaintiff the value of the boy."

Devlin v. Killcrease, 2 McMullan 425, May 1842. Defendant said " his boys [slaves] had cut some rail-timber and some poles for chimneys [on plaintiff's land]. . . would have to go to law. He . . could buy him [plaintiff] and all he had, if they were black:"

State v. Jackson and Montgomery, 1 Speers 13, November 1842. " indictment against the defendants, for a riot, committed by them with a slave . . Brown [the prosecutor] had cut some house logs, . . The slave . . was found by [him] . . splitting rails upon the land which he claimed; he ordered him off. . . his employer, Jackson, . . proceeded to the place . . cut a club, and ordered Montgomery [also in his employ] and the negro to cut up the . . house logs, which they did."

Held: [14] " a negro slave . . [may] be one of the three persons necessary in law to constitute the offence ' a riot.' "

[1] Ordinance of May 8, 1807. City Laws 255.

Brock ads. Sims, 1 Speers 49, November 1842. [50] "The negro was an old man when sold, [at sheriff's sale, for $31.] . . he was a coarse shoe-maker. . . worth $300 or $400, and his hire $30 or $40."

Thompson, Executor of Farr, ads. Farr, 1 Speers 93, November 1842. See Farr *v.* Thompson, p. 375, *supra.*

Pressly v. Hunter, 1 Speers 133, November 1842. "1839, . . overseer, . . he was to have $200 certain, and more, if his crop exceeded 40 loads of corn and 40 bags of cotton."

Ruff v. Thomas, 1 Speers 163, November 1842. [165] "In 1822, . . Murphy was Mrs. Sims's overseer; he said that the girl was put into the crop by her; in the course of the year he whipped her, and the plaintiff's wife, who was then a little girl, cried about it; the old lady asked him not to whip her any more, as she was Amanda's (Mrs. Ruff's) property, and when she was whipped it made a fuss in the family. . . In 1829, a Mr. Thomas overseed for Mrs. Sims;"

Jewell v. Jewell, 1 Howard 219, January 1843. "About the year 1794 or 1795, . . Sophie Prevost . . with her family . . emigrated from the West Indies to Savannah. . . [221] they brought with them some negroes,"

Commissioners of Roads v. McPherson, 1 Speers 218, May 1843. "the defendant's overseer was notified regularly to send his hands (twenty-three) to work on the road in November. They were not sent, inasmuch as their services were needed on the plantation; . . The board [in 1841] . . fined him $115,"[1]

State v. Isaacs, 1 Speers 223, May 1843. "The defendant was indicted for selling [a horse] to a slave . . [The overseer, whose duty] was to give the negroes tickets, if any were needed . . was present, and assented . . The presiding Judge instructed . . this did not dispense with a written permit,[2] . . The jury found the defendant guilty."

Johnson v. Boon, 1 Speers 268, May 1843. Report of Judge O'Neall: "tax execution . . was about to be enforced . . against the relators, as free mulattoes. They . . obtained a prohibition *nisi,* on the ground . . free white men, but were ordered to declare in prohibition. . . Thomas and John, were in court, and submitted themselves to the inspection of the jury. . . Henry, . . darker . . is the overseer of Col. Perry, . . crop was about being planted, and his employer was not willing he should attend court. . . sister [of their mother] . . was shewn . . I should say, was a quadroon. The father . . Benjamin Johnson, (a white man,) proved that the relators were his children by Sally Johnson. She was the daughter of Lydia Tan, by . . a Dutchman, . . her second husband. Lydia Tan's mother was a white woman; her husband, Tan, was a colored man. . . [269] On inspection, I thought Thomas and John very passable white men. Thomas, particularly, had light or sandy hair, and a sunburnt complexion. . . Their father, themselves, and the whole

[1] 9 St. at L. of S. C. 561.
[2] Act of 1817, sect. 1. 7 St. at L. of S. C. 454.

family, proved excellent characters. The father was a Methodist local preacher. . . On the part of the defendants, . . proved by Mr. Warren, who had caused the relators to be expelled from Captain Snipe's company of the Round O, . . When he went into the settlement [St. Paul's parish], fifteen years ago, . . The relators . . had always been regarded *as colored*. . . They associated with white persons, but never without question. . . [Another witness said] Thomas . . voted once for Sheriff, and that . . Waring took his vote out of the box, and scratched his name off the list. He, the witness, had visited the relators, had associated and eat with them. . . Price proved that the relators *were colored*; but he always spoke to them when he met them. From the proof, it seemed in the section where the relators were raised, that little attention, in intercourse, was paid to the question whether the persons *were or were not* colored. The jury . . [270] were told, . . Color . . was sometimes a deceptive test; that it ought to be compared with all the circumstances . . and if the jury were satisfied that the color, blood, and reception in society, would justify them in rating the relators as free white men, they had a right to do so. . . that when men had been acknowledged as white men, and allowed all their privileges, it was bad policy to degrade them to the condition of free negroes. The jury *very properly* found the relators to be free white men." New trial refused.

State v. Meyer, 1 Speers 305, May 1843. "indictment under the second section of the Act of 1837, . . on a Sabbath day in . . 1840, . . [306] witness saw a negro coming out of the gate with a parcel . . opened the parcel, and found a pair of suspenders which the negro had bought there. . . Verdict, guilty."

Rodrigues ads. Habersham, 1 Speers 314, May 1843. "Hannah [sold in 1840, for $550] was represented as . . a good washer and ironer, and the only reason the defendant gave for selling her was, that he had too many in his yard, . . The plaintiff residing in . . Georgia, . . [315] hired her to . . Wiley . . [who] reurned her at the end of two months . . too sickly . . The plaintiff put her to dropping corn . . After . . three weeks, . . in very bad health, . . subjected her to the examination of two Doctors, . . seriously diseased in the ovaria and uterus, having schirrous tumors . . cancerous . . incurable. . . was brought to Charleston . . several physicians examined her, . . [316] [one] thought . . [the tumors] might, and did, probably have their origin from working in the field, . . Hannah was re-sold at the risk of the former owner, and brought $103. Her purchaser . . says that he hires her out at $6 a month, and that she is capable of doing tolerable labor. . . [317] a compromise verdict."

Johnson v. Basquiere, Justice; Miller v. Boon, Tax Collector, 1 Speers 329, May 1843. "In the first of the . . cases, the defendants . . were about to try the narrator as a free person of color, . . he had filed his declaration in prohibition, . . alleged . . he had a right to occupy . . the *status* of a free white man . . was in court, and had the appearance of a white man. He has been a member of a volunteer company, and

had voted at the general election for members of Legislature. . . [330] lineage on his father's side, . . of white, and rather respectable people. His mother, Mary, was the daughter of . . Nancy Patrick, . . Patrick, who had married Nancy, was regarded a colored man, . . but . . Patrick never claimed her, . . her mother said she was the child of an Irish schoolmaster, . . so generally regarded. Nancy['s] . . father was a white man, who married Elizabeth Tan, the great grandmother of narrator. . . a colored woman, with thick skin and long hair; . . originally from North Carolina, and claimed to be an Egyptian." [329] "The counsel for the narrator . . moved to discontinue his proceedings without publishing the verdict, . . suspected . . unfavorable . . This motion was granted . . [330] In the second case . . the question was, whether the narrator was subject to a poll tax imposed on free persons of color, of African origin . . the narrator produced . . proceedings in prohibition, . . before Judge Bay, . . 1836. . . [He] granted a writ of prohibition, restraining the tax collector . . upon the alleged ground, that the narrator . . and his wife . . were exempt . . as the descendants of Egyptians. . . The Solicitor had the narrator called . . appearance was that of a mulatto. . . the counsel for narrator moved to discontinue . . preferring to rely on the judgment of Judge Bay, rather than to trust his client's color, before the jury. . . [331] granted" Affirmed in both cases.

Hockaday ads. Willis, 1 Speers 379, May 1843. [380] "that he played at faro with Wilson in December, 1840; . . lost $1200, an order for $800, and a watch . . besides the two negroes which he refused to deliver, because he was cheated. . . The negroes were in the stable occupied by all of them." "The prices fixed . . were $950 each,"

Lindsey v. Bland, 2 Speers 30, December 1843. At a sale in 1841 the defendant purchased John, [31] "at . . 610 dollars, . . John has now . . an irreducible hernia. . . Dr. Burt . . thought it existed prior to the sale. . . would think the value diminished one half; . . [32] a verdict for the plaintiff, for the whole amount"

Rogers v. Randall, 2 Speers 38, December 1843. "1832, . . in consideration of $300, executed an absolute title of Lydia, then ten or eleven . . [39] 1841, . . Lydia had . . two children, the oldest . . about four [in 1842] . . the other about two; a third has been born since the commencement of this suit. The estimates of value . . the woman's . . in 1838, from $400 to $600;" "at the trial [in 1842], from $350 to $500; . . the two children, from $200 to $400. The hire of the whole was estimated by some, at $30 a year, and by others, at not more than the cost of good treatment."

Caldwell v. Wilson, 2 Speers 75, December 1843. [77] "that he had given Lucy and her children to Mrs. Caldwell, and that the day she came for them, when she was about starting home, the negroes made such a *fuss*, that he got her to leave them; that they were hers, and that he was raising them for her,"

Suber v. Vanlew, 2 Speers 126, December 1843. [127] "The plaintiff . . overseer . . had quit the place, because a negro woman had told the wife of defendant [employer], that the plaintiff was too familiar with her or some other woman of the place, and the defendant's wife had believed the tale—and that he felt above any such thing."

Held: [128] "such tittle tattle . . would [not] form any justifying cause" for breaking his contract.

State v. Brown, 2 Speers 129, December 1843. [131] "Hetty belonged to Charlotte Hinton, of Lexington. For about nine years, she had been allowed to hire her time about Columbia, and do pretty much as she pleased. For the last three years . . she had been hired by . . Taylor (the brother of Charlotte Hinton,) . . in Fairfield, . . by whom the woman had not been suffered to act for herself in any way." The prisoner, who had previously been employed by Taylor, put Hetty's clothes and bed on a wagon going to Columbia and they followed after. She was [131] "apprehended and was [put] in Columbia jail." [130] "The prisoner was indicted under the Act of 1754,[1] . . 2nd. In aiding such slave to run away . . [131] The jury convicted the prisoner on the second count" Motion in arrest, dismissed; new trial refused.

State v. Hill, 2 Speers 150, December 1843. [151] "The defendant was indicted for an assault and battery on, and false imprisonment of, Judah Bowser, and her daughters, Malinda, Tabitha and Lizzy, free negroes. . . 1842, a gentleman who had heard that the negroes were about to be carried off, pursued and overtook them . . short distance from . . where they lived. The negroes were in two little wagons, . . accompanied and controlled by two men of the name of Smith, whom the defendant had employed to take them [to Georgia.] . . The defendant was a short distance ahead, and when overtaken . . said he was taking them to Georgia. The negroes manifested great unwillingness to go. . . [152] they said, 'he was dragging them off.' He was advised to return the negroes to their home, and assert his claim legally, if he had any. He refused . . said he had a bill of sale or titles, and offered to shew whatever might be his claim. He, (the witness,) told him, . . that Wm. Worthy . . had had the care of those negroes, and that his executor, Preston Worthy, had succeeded to the same care. This gentleman, (Herndon Chalk,) finding he could not prevail, by reasoning and persuasion, . . returned home. The defendant and his party were pursued by Wyatt and Preston Worthy, and Uriah Wright. The negroes and the Smiths were overtaken . . in Newberry district. . . the old woman, Judah, and the other three women, were walking, followed by one of the Smiths, who was urging them on. The old woman was crying. The defendant was not in company when they overtook them. . . [153] The defendant soon came up, claimed the negroes, said they ought to be his, if he could get his right. He . . offered to shew his supposed title. . . told the prosecutor, Preston Worthy, that if he had known he had any thing to do with the negroes, he (defendant,) would not have troubled them. From 1809, to . . 1842, thirty-three

[1] 7 St. at L. of S. C. 426.

years, the old woman, Judah, and her family, had lived and passed as free. In 1826, a recovery in Fairfield district was had against Richard Hill, the defendant's father, . . Mobley, and [154] Meadows, in writs of ravishment of ward, establishing the freedom of Malinda and two other children of Judah. The pleading in that case shewed, that Judah had once been the slave of Mrs. Funderburk [great-grandmother of defendant], by whom she had been manumitted, by deed, in 1809. This deed was procured by the defendant and his brother (some short time before the negroes were seized,) from the clerk's office, . . and taken to the office of Mr. Hammond, who returned [it?] to the clerk's office, and there examined it. The last time he saw it, it was in the defendant's possession. He subsequently searched the clerk's office for it and it could not be found. He also searched the records, and could not find it on record. . . [156] The presiding Judge instructed . . [157] That after twenty years of uninterrupted enjoyment of freedom, the law would presume every thing done which was necessary to give it effect. . . convicted" Motion in arrest, and for new trial, dismissed.

Elwell v. Bradham, 2 Speers 168, December 1843. "deputy sheriffs . . took from the arms of the plaintiff, a little negro, . . hurt her much in the struggle."

Reaves v. Waterman, 2 Speers 197, December 1843. [199] "while . . Captain [Thomas] was steering for the buoy, a negro of the defendant's named Marsh, (who . . was a pilot, and had been sick in Charleston, and was coming to Georgetown with Thomas to his master,) cautioned the Captain that if he went where he was going, he would go upon a breaker, when Thomas said it was flood tide and he could go over any where;" The vessel was wrecked.

State v. Dozier, 2 Speers 211, December 1843. Dozier stabbed Pettigrew. [213] "He said it occurred from a spree the night before; that P. had protected some negroes he wished to whip,"

McCracken v. Hair, 2 Speers 256, December 1843. The overseer [257] "had improperly struck a small boy on the head; . . cruelly treated a woman;" He was dismissed.

Buchan v. James, Speers Eq. 375, December 1843. Will of the Rev. Robert Buchan of Virginia, who died in 1803: [383] "I give to the negroes that may be in my possession when I die, their freedom, after the crop on hand is finished, and the other property, which I may then possess, is all sold. It is my will also, that they should be dismissed well clothed; and that each of them shall be furnished with an axe and a hoe, at the expense of the estate. Should I die, however, before Jesse, and the boy Dudley, are twenty-five years of age, I give their services to Mr. Sidney Wishart, till they arrive at the said age . . after which, it is my will they shall be free. . . I give to the negro man, Tom, my wearing apparel."

State v. Commissioners of New Town Cut, 2 Speers 402, January 1844. [403] "whereas the able-bodied male slaves belonging to the relator,

were liable to work on the said Cut, and the said slaves having been duly summoned [in 1840] to work thereon, . . [404] he did not send his slaves," He was fined $12.

City Council v. Cohen, 2 Speers 408, January 1844. In 1837 Cohen bought Bella and her son for $675. They were warranted sound. [411] "an alderman . . committed Bella to the poor-house, . . January [1838], . . discharged . . February, 1838;" [408] "was brought to the guard-house as a maniac, dangerous to the neighborhood, by the habit she had of throwing pieces of fire about her room, . . committed [by the mayor] . . to the maniac department of the poor-house [March 1, 1838]. . . [409] fed, clothed, and provided with all needful attendance . . [at] 50 cents per day . . [410] Cohen . . tendered both slaves [to the vendor, who] . . refused to accept them back, whereupon" [409] "an action of covenant was brought . . alleged . . that at the time of the sale . . Bella was subject to insanity . . verdict . . for the plaintiff" for $675 plus interest; damages $370.95; value of boy deducted $250. Cohen [410] "paid $236 50 to the time of verdict . . 31st of May, 1839." In 1840 he wrote "the Master and Commissioners of the Poor-House . . declining any further responsibility" In June 1841 the city council brought this action [408] "to recover three hundred and eighty dollars . . for the meat, board, lodging, necessaries, care and attendance . . from 31st of May 1839, to June 30th 1841,"

Held: [415] "the verdict [of 1839] . . left Cohen . . still owner of the slaves. . . [416] clearly liable for her support . . [417] as well after as before the notice,"

Gyles v. Valk, 2 Speers 460, January 1844. [462] "There was . . a plantation in Georgia, and about 168 negroes; . . [463] of which the negroes were set down at $63,000. . . In January, 1837, . . [464] no immediate prospect of effecting the sale of the land, and if the negroes were sold off, the mills and plantation would be left exposed, . . value would be greatly diminished. . . [465] By [William] Wightman's will [in 1835], certain slaves were given to the executors, with a request that they should be allowed the control of their own time, and some provision was made in the will for their maintenance."

Mordecai v. Gadsden, 2 Speers 566, January 1844. [568] "he removed 30 or 40 of his negroes . . into Florida" about 1841.

State, ex rel. Wilkinson, v. City Council, 2 Speers 623, May 1844. "Francis Wilkinson, a free person of color, is a . . resident of Charleston Neck, . . his employment is to kill and prepare meats, which he . . vends in the market of . . Charleston. . . he pays the regular monthly stallage" Held: he must pay the "capitation tax, under an Ordinance . . [of] 1843." [1]

Jeter v. Askew, 2 Speers 633, May 1844. "The defendant said of plaintiff, he is a dam'd rascal, and has been trading with negroes."

[1] [625] "That . . free persons of color . . are . . liable . . [626] residing without the city, exercising his trade . . therein, each a tax of ten dollars."

State v. Bowers, 2 Speers 671, May 1844. "Yancey employed and directed Adam [his slave] to test the dispositions of the defendant—he and Butler watched, and heard the conversation of the defendant with Adam—ten o'clock at night. Defendant finally told Adam to take the corn into the kitchen. . . Yancey and Butler . . found the corn there" Guilty.[1]

State v. Minor McCoy, 2 Speers 711, May 1844. [712] "indictment[2] . . 1st. for inveigling, stealing and carrying away . . Enoch, Jinney and Mary, . . property of . . Spann. . . 2d. . . for aiding Stephen McCoy . . The negroes went out of their owner's possession, in Sumter district, on the night of the 13th of May, 1837. They were returned . . by the party [of four] who went after them, . . in February, 1838. They found the negroes in Hellhole Swamp, Charleston district, at the plantation . . of Charles G. McCoy, . . brought to him in August, 1837, by Stephen McCoy; the prisoner came . . January, 1838, and sold the negroes to him [their names being changed in the bill of sale] for $1500. . . The prisoner lived . . within four miles of the prosecutor Spann. . . [713] knew . . Enoch, as the property of Mr. Spann, who communicated to him the fact, that his negroes had been stolen, after they left his (Spann's) possession. . . The jury found the prisoner guilty, but recommended him to mercy." New trial refused.

Mayor ads. State, ex rel. Adger, 2 Speers 719, May 1844. [727] "Adger, resides on Charleston Neck, . . Commission Merchant, within the city. . . complains, that . . his carriage driver, Pompey, is taxed at seven dollars, and his slave, Thomas, who works in the city, in virtue of a city badge, also at seven dollars; . . four dollars [and a half] more than the general tax laid on similar property of the inhabitants of the city, ($2 50.) . . [728] obliged to pay for Thomas's badge, double the price required of the inhabitants,"

Held: the tax on Pompey is [731] "clearly beyond the taxing power given to . . the Mayor and Aldermen.[3] . . [735] "arrest . . also the excess of the tax laid upon Thomas,"

State v. Simons, 2 Speers 761, May 1844. [765] "Eliza Kohne is the owner of a slave called Emma, who had been seized by a constable, under an information made by . . Simons, to the magistrate, . . and had been carried before him to be condemned, as forfeited by the owner, for being taken by her mistress to the north of the Potomac,"[4]

Held: the act of 1835, sections 6 and 7, is unconstitutional, not being sanctioned by the law existing at the adoption of the state constitution, and not proceeding by the common law mode of trial by jury.

Ward ads. Waller, 2 Speers 786, May 1844. About 1812 Waller, [787] "in payment [for land], gave Jack, then about seventeen . . at four hundred dollars, . . a high price . . [788] was put to the black-

[1] Act of 1817.
[2] Under the act of 1754.
[3] Act of 1836.
[4] Act of 1835, sects. 6, 7. 7 St. at L. of S. C. 472, 473.

smith's trade . . name was changed to Julius. . . [789] that Jack is a very capable and trusty fellow; . . now [1842] worth at least one thousand dollars, and his annual hire two hundred dollars; and that, in 1837, he would have sold for one thousand five hundred dollars, or more."

Iorr v. Hodges, Speers Eq. 593, May 1844. Marriage settlement upon the bride, of seventeen negroes "possessed [theretofore], in her own right,"

Miller v. Yarborough, 1 Richardson 48, December 1844. Action on an implied warranty. "The defendant . . at the Sale Day in February, 1843, . . conveyed to [plaintiff, a negro boy] . . at the price of $462 50. . . lame, from a wound in the foot with a nail, but no deduction was made . . At the request of the plaintiff, Dr. Norwood examined . . thought it slight, . . The sale was concluded soon after [without any warranty of soundness in the bill of sale.] . . The weather was exceedingly cold, the boy badly clothed, and wore an old pair of boots; all of which, no doubt, aggravated the wound. . . sent by the plaintiff to . . house . . [49] well taken care of. Two days after, he was affected with convulsions; medical aid was called in, but he died . . with lock-jaw, . . The jury found for the plaintiff $450,"

New trial granted: [52] "no implication of warranty"

Farr v. Gist, 1 Richardson 68, December 1844. [72] "Mr. Gist . . did not disguise the fact that he wished to sell [two negro girls] . . because they had an objectionable habit, that of eating dirt, and which, in his opinion, rendered them unprofitable as breeding women." He received $1000 for the two, in January 1842. One of them, Linder, [70] "was ploughing when the trade was made," [69] "the defendant drew a receipt for the purchase money . . in which he stated . . [they] were dirt eaters. This plaintiff objected to, saying he wanted to sell . . [70] and it might injure their sale," Linder [69] "was sick the first day after she went to plaintiff's; . . died, about the first of April . . [having been] taken with a hemorrage [*sic*] and jaundice . . [doctor] was satisfied that the remote cause . . was from eating dirt."

Held: no implied warranty of soundness.

O'Neall, Executor of Farr, ads. Farr, 1 Richardson 80, December 1844. See Farr *v.* Thompson, p. 375, *supra.*

Gordon v. Blackman, 1 Rich. Eq. 61, December 1844. Johnston, Ch.: "This is another of those cases, multiplying of late with a fearful rapidity, in which the superstitious weakness of dying men, proceeding from an astonishing ignorance of the solid moral and scriptural foundations upon which the institution of slavery rests, and from a total inattention to the shock which their conduct is calculated to give to the whole frame of our social polity, induces them, in their last moments, to emancipate their slaves, in fraud of the indubitable and declared policy of the State. The late Samuel McCorkle . . at his death, . . 1839, left . . slaves, and a will, . . [dated] 1837, . . 'I direct my executors . . to hire, by the year, all of the [four men] negroes [children of Lydia] . . until the hire . . shall amount . . sufficient to pay off all . . debts . . it is my

desire for . . Lydia, to work for the support of herself with her two children, . . until they shall be able to work; God be pleased! . . further direct, that my executors apply to the Legislature . . [62] and use their best endeavors with the same to procure the emancipation of them all, . . and should they fail . . I direct [them] . . to transport all . . to the nearest non-slaveholding State . . or to the free colony in Africa, if they choose to go there to live. . . hire them out . . to pay off all reasonable expenses . . it is my desire for Lydia, that her [six] children . . shall help to support their mother, when she is unable to help herself by infirmities, . . that . . Lydia . . have . . my bible, my feather beds, my bedsteads, [and other furniture.]' . . The wench, Lydia, died before the testator. The plaintiff is the next of kin of the testator . . [63] prays an account . . that the bequests in favor of the slaves, and the benefits intended . . be declared void, . . The only obstacle . . is the provision for emancipating . . Whatever objections I may feel to this, and my repugnance is stronger than I can express, I am so bound by . . decisions,[1] that I cannot, on the circuit, venture to declare it void. . . [65] The complainant appealed"

Held: [66] "A trust must . . result for the next of kin." For "the testator's debts are not yet paid off. In the mean time, . . the Act of 1841 has intervened . . provides that every bequest directing slaves to be carried out of the State, with a view to their emancipation, shall be void. . . harsh to send these slaves to a new and uncongenial residence, when, as it is understood, they very much prefer to remain in their present situation. . . decree . . that after . . debts . . paid, and the Legislature shall have refused to pass the Act of emancipation . . the defendant deliver the slaves to the complainant, and account" [Harper, Ch.] "The whole court concurred." See Blackman *v.* Gordon, p. 398, *infra.*

Terry v. Brunson, 1 Rich. Eq. 78, December 1844. [80 n.] "1 fellow, 4 boys, 1 wench and child, and 1 girl, all valued [in 1784] at a sum equivalent in federal money to $1198 42, making the average value of the slaves $148 55."

McDonald v. May, 1 Rich. Eq. 91, December 1844. [93] "He sold two of the negroes purchased by him the same evening. . . that considering that the terms were cash, and that the sale was made in the summer [August 1830], the property sold well;"

McCollum v. Fitzsimons, 1 Richardson 252, January 1845. [253] "a charge [had been] made by the plaintiff, a city officer, that Fitzsimons had broken one of the police regulations for persons of his apparent caste, to which caste Fitzsimons denied he belonged," "feigned issue ordered" [252] "the defendant offered as evidence the record of a prosecution before a magistrate and freeholders in . . 1839, against the defendant, for returning to this State, contrary to the Act of 1835;[2] . . acquitted . . not a person of color. The recorder rejected the evidence . . jury . . found 'the defendant to be a mulatto.' . . appealed," New trial without prejudice, granted.

[1] Carmille *v.* Carmille, p. 381, and Frazier *v.* Frazier, p. 359, *supra.*
[2] 7 St. at L. of S. C. 470.

Nelson v. Whetmore, 1 Richardson 318, January 1845. "action to recover the value of a slave . . The first count was in trover; . . The defendant is a merchant of high character, who has often been heard to denounce abolitionism, and express opinions favorable to Southern institutions. He came from the North to Augusta, Georgia, in 1818—resided in Augusta till 1828—then removed to New York, . . but every winter usually comes to the South, (his main business connexions being with the South,) . . [319] In Nov. 1837, when the defendant spent two days at the Planters's Hotel, [Charleston,] the Boy Frank, then belonging to Calder, keeper of the Hotel, was a waiter in the Hotel. Frank is a bright mulatto; in 1841, 20 to 22 years old, freckled and with hair somewhat reddish. Porter regarded him as white, and said that he had every appearance of a white man, but every other witness . . thought him a mulatto, and those who were questioned on the subject, supposed that he could not pass as white. In November, 1838, the plaintiff bought Frank from Calder, at the price of $1200, and kept him at his place near Statesburg, as a house servant, until the night of 22d June, 1841, when, in the absence of the plaintiff on a visit to the North, Frank eloped, taking with him a horse, saddle and bridle. In the evening of 24th June, Frank, with his horse much tired, arrived at the house of M'Phail, a farmer, who lived near Randalsville, N. C., on the stage road from Cheraw to Fayetteville. He called himself Johnson, and . . being taken as a mulatto, said that he had been in the Florida war, as servant to some general officer, and was on his way to see his relations. He stayed all night there—sold his horse, saddle and bridle to M'Phail, for $20, and next morning . . departed on foot, saying that he intended to take the stage when it passed. On 25th June, the defendant reached Fayetteville in the stage, having come directly from Columbia through Cheraw. . . the probability seemed that Frank reached Fayetteville in the same stage with defendant; but if so, he did not stop at the stage office, where the defendant stayed. At Fayetteville, the defendant and Frank, each for himself, took a seat for Raleigh; Frank under the name of Jones—his mulatto color being noticed by the clerk, but not called to the attention of the stage agent, until the stage was starting. Together, and the only passengers in the stage, they reached Raleigh next evening. At the Hotel there, the defendant represented Frank to be his servant, and paid for his breakfast, and Frank demeaned himself, and was treated . . [320] by . . the hotel keeper, as a mulatto servant. The defendant and Frank went together to the Rail Road depot, Frank in charge of the baggage, and there the defendant represented Frank to be his colored servant, and paid to Whiting, the R. R. agent, for him as a colored servant—half price. At Weldon, . . Mr. Porter . . fell in with the defendant, whom he had previously known, and they travelled together to Washington City;—Frank, . . passing as white, and being represented by defendant, and taken by Porter, to be a white man who had been in Florida, and was on his way to see his relations, passing as a servant for cheapness. The defendant went on, leaving Frank in Washington. Soon afterwards, Frank went on to Baltimore with Porter, in the same capacity as he had attended defendant, and has

not since been heard of. . . When the plaintiff returned to New York, he had heard, by letters, of Frank's escape, and travelling with the defendant. . . the plaintiff called upon the defendant. The plaintiff had been much excited, but was then cool, and the conversation was civil, . . The plaintiff said that the defendant had been the means of the boy's escaping, and should assist in recovering him. The defendant . . said he would do all in his power. He stated that he had met the boy at Fayetteville—that the boy had represented himself as a free mulatto that had been in Florida, and had asked him to take him on as his servant—that the boy had desired *this for cheapness*; and that the boy had come with him to Washington, and there he had left the boy . . [321] Verdict for the plaintiff $1000." New trial ordered: [323] " essential to inquire whether the defendant knew Frank to be a slave."

Inglesby v. Beamer, 2 Richardson 425n., January 1845. " trover for a batteau [' worth $35 or $40 '] . . built by a slave of the plaintiff, named Titus, on a lot . . occupied by the defendant . . [who] claimed the right to retain the batteau . . seven or eight dollars due by Titus to the defendant, . . for materials . . furnished . . [426n.] Decree for the plaintiff for $35."

Lemacks v. Glover, 1 Rich. Eq. 141, January 1845. Will, dated 1791: " in case my son . . should die under . . twenty-one . . or before marriage, I . . give . . to my Godson . . [142] ten negroes, to be taken in families,"

Tennant v. Stoney, 1 Rich. Eq. 222, March 1845. [224] " Mr. Stoney conveys [to trustees] . . four plantations . . and 380 negroes."

Dunlap v. O'Dena, 1 Rich. Eq. 272, March 1845. " 1837, the defendant purchased . . stock in trade for . . saddlery and harness making business, . . [and] two negro workmen brought up to the said trade "

Edings v. Whaley, 1 Rich. Eq. 301, March 1845. Johnson, Ch.: [306] " Their moral qualities . . enter largely into their value, and who in this country has not witnessed how painful is the necessary or compulsory separation between the master and the slave? more intensely felt by the slave, when the government has been such as characterises the great mass of slave owners. . . These considerations, doubtless, induced our courts slowly . . to carve out a new exception in the case of slaves; . . [306] the complainant is entitled to the specific delivery of the slaves."

Pell v. Ball, 1 Rich. Eq. 361, March 1845. Harper, Ch.: [369] " decreed, . . that the negro slaves . . be . . sold . . in lots, according to families; "

Watson v. Boatwright, 1 Richardson 402, May 1845. " the parties considered Harriet to be affected with the consequences of the venerial disease, and . . valued her at $400, instead of $500, . . otherwise . . her price; . . turned out that she was laboring under an incurable disease of the heart, . . no value, . . had no venerial disease in any form."

Held: [404] " selling with notice of any defect, and for a less price . . shall not raise the implication of warranty . . as . . regards other defects . . which may have existed without the knowledge of either party."

Ordinary v. Spann, 1 Richardson 429, May 1845. [435] "Teague privately removed himself and all his personal property . . out of the limits of the State, except a slave . . who refused to go with him."

Carter v. [*Mrs.*] *Walker,* 2 Richardson 40, December 1845. [41] "the intestate . . [had] called on [Gosey] . . to cure [Dorcas] . . of a cancer in the foot." "administrators sold . . the negroes . . about the 1st January, 1843. . . When Dorcas was set up, . . [the auctioneer] said . . that she was sixty or seventy years old, and sound as far as he knew. . . sold, just before, an old woman represented as having rheumatism for more than one hundred dollars." "The defendant bid off . . Dorcas, for ninety-two or ninety-three dollars. . . [42] Mrs. Lucas [had] told Dorcas [before, in the kitchen,] 'put up your stick and go half bent, and if you don't bring much I'll buy you.' . . Defendant said 'don't you bid against me.' . . [43] Lipford . . in May or June after the sale . . went to Mrs. Walker to buy Dorcas as a nurse. . . offered one hundred dollars, . . refused; she said she did not think Dorcas would live with him. . . July . . Dorcas was carried to the Court House by the defendant, and exposed to public sale, but there was no bid; her leg was then swelled; . . [44] The jury found for the plaintiffs [administrators] about half the price the defendant had bid the negro off at." New trial refused.

Hendrix v. Trapp, 2 Richardson 93, December 1845. "while the slave was pursuing the highway to a neighbour's house, whither he had written leave to go from his master, the defendant met him, and struck him several severe blows over his head and arms with a hickory stick. A witness for the defendant testified that he heard the plaintiff admit that he had told the defendant, if he caught his negroes on his place to whip them, and that he, the plaintiff, was to do the same with the defendant's negroes. . . Verdict for the plaintiff for $200."

Parris v. Jenkins, 2 Richardson 106, December 1845. "A witness . . testified that, in the spring of 1841, when the wagon of the plaintiff was brought to the defendant's, . . [107] the driver, a negro of the plaintiff, told the defendant that his master had sent for Emily to help a little while about his crop, as he was backward."

Held: "This statement of the negro . . was admissible, as a part of the *res gestae,* explanatory of the defendant's act in sending Emily when she was sent for." Wardlaw, J.: "The words of a negro are at least as significant as the cry of a brute animal, . . and if any sound whatever, cotemporaneous with an act, . . might serve to give meaning to the act, it would be admissible,"

Norris v. Wait, 2 Richardson 148, December 1845. Trover for a negro woman, Caroline. "This slave, with five others, was claimed by the plaintiff ['a colored person'], under a parol gift from his [maternal] grandfather, . . in 1825, when he was an infant. The slaves were infants [too] . . and were taken into the possession of . . his father, . . [who] sold several [including Caroline] . . during his minority, . . [and] being indebted to insolvency, . . 1843, carried seventeen of his

[own] slaves to . . Georgia [[150] 'of whom fifteen were grown']. . . made a bill of sale of them to . . his brother-in-law, and [to plaintiff and another son, the consideration being debts amounting to $3,400 due them.] . . [149] They . . executed a power of attorney to . . Anderson, . . [who] got possession . . was advised by counsel [that the claim of the plaintiff under the bill of sale] was void by the law of Georgia, he being a colored person. Eight were sold . . part of the proceeds applied in satisfaction of . . attachment suits. The rest were brought back to South Carolina by the creditors and sold by the sheriff,"

Held: no implication that the plaintiff confirmed the sale of Caroline.

Mays v. Gillam, 2 Richardson 260, December 1845. "Bill Brown [an old negro] was a cake baker, and had a wife at defendant's. In January, 1835, he had, at the sale of . . [Abney's] estate . . been purchased by . . Broadway, at . . $355, . . May, 1835, a written agreement was made between the defendant and Broadway, . . that if the defendant should, at any time, pay . . $355, with interest . . the title of Bill should be vested in the defendant; with the express understanding . . that whenever . . Bill shall pay the . . $355, with interest . . and conform to the requisitions of the law, in such case . . provided, . . he is to become free. The defendant made payment . . 1837, a bill of sale by the defendant to . . Whitley [a neighbor], and a contemporaneous covenant by Whitley" [163 n.] "I promise to pay . . Gillam . . three hundred and fifty dollars, . . for . . Bill Brown; . . bind myself not to sell . . without the consent . . of . . Gillam. . . further . . agreed, that when . . Whitley, or Bill, shall pay [Gillam] . . three hundred and fifty dollars, with interest . . he shall be a free man, if he can give the necessary security, and pay . . in . . three years." [160] "Bill Brown never was in the actual possession of Whitley; but after . . as before, seems to have controlled his own time, being oftener at the defendant's, with his wife, sometimes laboring for wages, which he received from the persons who employed him, and sometimes going about in a cart to sell his cakes. Whitley was called his guardian, and occasionally gave him passes . . [161] In 1839, Bill made payments to the defendant on the covenant, as thereon endorsed, . . amounting to $379,09—leaving . . about 70 cents due at the date of the last payment . . July, 1839. After that . . Whitley repeatedly said that Bill had paid for himself, and that he, (Whitley,) had nothing more to do with him. . . referred persons who wished to hire Bill, to Bill himself. The defendant, . . in the latter part of 1839, gave passes to Bill; . . On 12th December, the defendant presented to Whitley the memorandum," [163 n.] "I . . set up no claim to . . Bill; . . he is to be considered the property of . . Gillam, until he is regularly liberated according to law." [161] "Whitley refused to sign it. Between that day and Christmas, . . Whitley died." His administrator brought an action of trover.

Nonsuit ordered: [162] "that so far as Whitley could make him so, Bill was free, . . in the condition of a slave emancipated contrary to law . . that Bill was therefore subject to seizure,[1] and whether seized by the

[1] Act of 1800.

defendant, or any body else, . . could not, without some act of seizure on his part, be recovered by the former owner." [Wardlaw, J.]

McKeithen v. Butler, 2 Rich. Eq. 37, December 1845. [38] "before the time for the redemption of the mortgage arrived [1840], . . defendant clandestinely removed the three mortgaged slaves from Alabama to . . this State,"

Blackman v. Gordon, 2 Rich. Eq. 43, December 1845. See Gordon *v.* Blackman, p. 392, *supra.* Petition for rehearing dismissed: [44] "the act of emancipation was to be in future, and the Act [of 1841] . . has intervened to forbid . . But is it said that an injury is done to the slaves . . that they had a vested right to freedom; and that the Act was retrospective, or *ex post facto,* with respect to them? . . the law declares them . . [45] chattels. They . . could not have come into court to enforce the execution of the trust. . . It is enough, that they were not actually manumitted, before the Act [of 1841] . . was passed." [Harper, Ch.]

Hall v. Timmons, 2 Rich. Eq. 120, December 1845. In 1818 Hall, of North Carolina, "executed a deed of gift of Friday, . . 'aged about one year,' to his grand-son, the complainant, . . The complainant and the negro were brought up together. When they were both about fifteen years of age, complainant accompanied the agent of his father to . . South Carolina, where the negro was sold."

Cregier v. Bunton, 2 Richardson 395, January 1846. Action for slander. [397] "the defendant told him that the plaintiff [overseer] had . . shot a beef [belonging to his employer], and sent some boys, (negro carpenters) to dress it; . . [398] it was negro news, but . . he stated it in such a way that he believed it. . . the jury . . found for the plaintiff"

Gist v. Toohey, 2 Richardson 424, January 1846. "1841, William, a slave of the plaintiff, who had earned one hundred dollars over and above his wages, placed that sum in the hands of the defendant, under an agreement that the defendant should purchase, for William, two of his children, for three hundred and fifty dollars; and that when William should repay to the defendant the balance . . with an additional sum of fifty dollars for each year that the balance should remain unpaid, he, the defendant, would execute a bill of sale to William, of the children. In pursuance of this agreement, the defendant bought the negroes for three hundred and fifty dollars."

Held: [425] "all the acquisitions of the slave are the property of the master. . . the $100 . . [426] belonged to the plaintiff; . . the defendant must refund"

McDaniel v. Emanuel, 2 Richardson 455, January 1846. "the shipping agent . . had employed Jack as one of the crew [on the Peedee River], by the trip; . . received peremptory instructions from the plaintiff [owner of Jack] to discharge . . Jack . . Jack . . was told . . asked leave . . to go as far as his master's place, . . carrying . . his box and luggage . . [456] Instead of stopping at the plaintiff's place,

Jack went on up the river, acting as one of the crew, by the consent of the captain. At Mar's Bluff, the boat touched at the landing, and . . one of the hands made his escape without the knowledge of the captain. After going some distance up the river, the captain ordered the boat to return, and in the manoeuvre to do so, Jack was knocked overboard and drowned—he and the captain both being much excited by spirits at the time."

Held: the owners of the boat are liable.

Boinest v. Leignez, 2 Richardson 464, January 1846. [465] "when the negroes [Pembroke, Judy, and their five children] were put up, . . [the auctioneer] was directed to warrant nothing but the title; that Pembroke said that he had a rheumatism . . that Judy [[468] 'about 40 years of age'] was a first rate cook, but had a sore leg; . . [466] had on stockings;" "the boys constituted the great value of the lot;" [465] "Leignez was the purchaser at $370 each, . . [468] Dr. . . Geddings . . examined Judy shortly after . . leg . . ulcerated; . . Pembroke . . had a tumor in one of his arms;" They were tendered back, ten days after the sale, and [466] "were re-sold [by the plaintiff] at $325 apiece;" [465] "at auction on defendant's account, at a loss of $402,42 [including charges for feeding and expenses]." Verdict for the plaintiff for that amount. New trial refused.

Guerry v. Kerton, 2 Richardson 507, January 1846. A short time before the death of his wife (the life tenant), White sold Elsey's child, eight years old, to Dickenson, partner of Kerton, [508] "engaged in merchandize, and in buying and selling negroes." [507] "Within a few days after Mrs. White's death, Elsey and her remaining children ['a girl about twelve . . a boy, two years younger; . . [and] the youngest about a year old'] were carried to Georgetown, and sold to Dickenson for $800. . . [Witness] warned Dickenson that the property had been entailed . . White offered to sell the oldest to him for three hundred dollars. . . [509] Dickenson . . sent them . . to Charleston, and from thence to New Orleans [before the pursuing remainderman arrived];" [512] "The highest price set on the negroes was $1375." Verdict for the plaintiff for $1850. [512] "The interest is $104, making . . $1479."

Held: "There must . . be a new trial, unless the plaintiffs release all . . above that sum."

Pinckney v. Pinckney, 2 Rich. Eq. 218, January 1846. The will of Thomas Pinckney, dated 1842, contained [224] "a list of the negroes on the Fairfield plantation, one hundred and twenty . . and of those on Moreland, . . seventy-three . . 'I . . give . . to my wife . . all such of the negro slaves . . belonging to Moreland plantation, as were not named in the marriage settlement[1] . . In consideration of the great loss sustained by the said plantation in the year of the Cholera, her list is now made up to her. Provided, nevertheless, that should there be a few people named originally in her settlement, and not now named in the foregoing list, or by their forming connexions with the Fairfield people; such shall remain of the Fairfield list and considered as being exchanged.'"

[1] *Ibid.* 219, 220.

State v. Harden, 2 Richardson 533, May 1846. [534] "indictment for the murder of a slave. . . found guilty,"

Morgan v. Livingston, 2 Richardson 573, May 1846. [576] "The defendant, many years ago, overseed for Col. Brooks. One of his beef cattle was killed . . near to Morgan's residence. . . An examination of Col. Brooks' negroes was concluded on, . . Mott . . denied all knowledge . . but referred them to Willis. He . . said he carried some of the beef to Esq. Martin's where he had a wife, and some to Col. Brooks' residence. . . the plaintiff . . said, 'I expect . . a part . . came to my house. I was from home, . . my wife, on my return, told me that in the night a negro hailed after she had gone to bed, and asked if she did not wish to buy some beef. She refused, and told him to be off, . . The next morning . . [577] she found some beef had been left at the door, in a basket, and fearing that something wrong was intended, she made her little boy take it and throw it away.'" [575] "Col. David Denny proved, that as the guardian of a free negro, named Wade Dennis, he sued the defendant before Esq. Giles Martin, for some wheat sold to him, the defendant, by the free negro. . . [578] Esq. Martin . . proved that Dennis, the free negro, for whom the recovery was had, told him the judgment was far too much, and left with him $1, to be refunded to the defendant. . . [said] in truth the defendant did owe him $6, but . . disputed a dollar of it. That he, the negro, was in a difficulty, (being charged with some crime,) and he would give it up."

Duncan v. Railroad Co., 2 Richardson 613, May 1846. "the defendants . . [614] hired . . three slaves, . . 1844, . . 'shall not be employed on the cars or locomotives . . Company . . at liberty . . to carry said slaves . . to . . place . . where their services may be required,' . . Wesley, in defiance of orders . . stayed at Hamburg. The next morning . . found in the baggage car . . [615] 'going to my work.' . . whilst the locomotive was going . . the boy jumped off; . . crushed" Held: the defendants are liable.

Jones v. Harris, 3 Richardson 14, May 1846. [17] "he had given his negroes off in families, and did not wish to separate them."

Carson v. Law, 2 Rich. Eq. 296, May 1846. [304] "when the nine negroes were put up, Robinson said he would give 1000 dollars, and send them back to Mrs. L. . . they were knocked down very quick, not over half a minute, he thinks, . . [305] The deputy . . cried $1000 once, $1000 twice, $1000 three times, and knocked down. Never knew as many put up together. If they had been put up separately, would have sold better; . . worth 2500 dollars."

White v. Tax Collector, 3 Richardson 136, August 1846. Report of Judge O'Neall: "They claim to be white people, and not liable to the capitation tax . . The grandmother . . was a . . much respected mulatto woman . . In an old record . . alleged that her mother was . . white . . Their grandfather was . . a revolutionary soldier. Their father, Elijah Bass, . . was a dark quadroon, if he was one: from his color he appeared to be a mulatto. . . Mrs. White [his daughter] shewed

plainly the corrupt blood. Her brother . . appeared an ordinary white sand hill boy. . . Her child, at the breast, was a fair, blue-eyed white child; no one, (not knowing its mother,) would say it had any admixture of African blood. . . [137] [Elijah Bass] was never admitted to any of the privileges of a white man. . . was never . . subjected to a capitation tax, . . a very intelligent jury . . found the relatrix and relators to be free mulattoes. A jury on the other side of the house, found the grand children of Elijah Bass (children of one of his sons by a white woman) to be free white people. I wish the court may be able to find some ground to give a new trial. For if any people tinged with African blood are worthy to be rated as white, the relatrix and relators present the very best claim" Grounds for a new trial: "although not proved . . that Elijah Bass had been admitted to all of the rights . . of a free white man, yet the affidavits of respectable persons were given . . that 'Elijah Bass is not a clear-blooded white man; but has always been treated by his neighbors as a free white man. He visits and is visited by them as a free white man, eats with them at their tables, and they with him at his, and is honest and industrious, . . He . . has been residing for upwards of fifty years in this district; and during all that time . . has never paid this capitation tax or been required to have a guardian, . . [138] He owns lands and slaves, and has raised and educated his children . . in a respectable manner . . his wife . . is a free white woman of good character, . . [Their children] were educated as free white persons at school with the other white children of the neighborhood, and are treated in society as free white persons; . . [Their daughter] has married . . Mr. Thomas White [a Scotchman], who is well educated and teaches a respectable school in the neighborhood of his father-in-law, and she is highly respected, and . . enjoys all the . . privileges of a free white woman, and is treated as such by all her neighbors,'"

New trial refused: [139] "The constant tendency of this class to assimilate to the white, and the desire of elevation, present frequent cases of embarrassment and difficulty. . . It would be difficult, if not impolitic, to define by . . inflexible rules the line of separation . . the question of the reception of colored persons into the class of citizens, must partake more of a political than a legal character, and, in a great degree, be decided by public opinion, expressed in the verdict of a jury. . . [141] the child of Mary White is not concluded by this record." [Frost, J.] "Evans and Wardlaw, JJ., concurred. Richardson and O'Neall, JJ. We dissent, and think that a new trial should have been granted. Butler, J. absent."

D'Oyley v. Loveland, 1 Strobhart 45, November, 1846. "There was a clause in the deed of settlement, providing for the sale of any of the negroes for misbehaviour, or whenever it should be for the benefit of the *cestui que trusts*,"

Rice v. Gist, 1 Strobhart 82, November 1846. [83] "It was not proved whether the plaintiff bet another negro against Bill, or only the value of Bill."

State v. Edge, 1 Strobhart 91, November 1846. "Litchfield and his brother had got possession of a negro claimed by Edge. They were carrying him off, under some supposed claim of their mother. Edge, having heard of this intention, called several friends . . some carried guns." They stopped Litchfield's "horse and chair on the road, in order to get . . negro then in the chair with Litchfield. . . holding the bridle of the horse, and using threats, regaining the negro."

Gage v. McIlwain, 1 Strobhart 135, November 1846. "Rogers . . carried on the blacksmith's business, by his slave, who had entire charge of the workshop. That this man entered on a slate . . all the work . . done, . . a notice was affixed to the door of the workshop . . that all persons who had work done there on credit, should be allowed to do so, on condition that they consented to be charged according to the memorandum made by the negro."

Bullock v. Griffin, 1 Strob. Eq. 60, November 1846. In 1828 [62] "Bullock and his wife removed to the West [Mississippi]—they took Silvia and Chima with them"

Snoddy v. Snoddy, 1 Strob. Eq. 84, November 1846. [85] "she had given Jude and her children to . . her son Alexander, . . On one occasion she said to . . Cox, that he ought to congratulate Alexander on the birth of one of Jude's children."

Dr. Guerard v. Dr. Jenkins, 1 Strobhart 171, January 1847. "a summary process to recover fifty dollars for a surgical operation. The defendant, being the plantation physician of Mrs. Eustis, and finding it necessary that a surgical operation should be performed on one of her negroes, requested the overseer to send for the plaintiff. He . . performed the operation . . His Honor . . decreed for the plaintiff;" New trial granted.

Chisolm v. Gadsden, 1 Strobhart 220, January 1847. [221] "Previous to the conclusion of the bargain, defendant was warned that the negroes were not, as they were alleged to be, North Carolina negroes, but had been brought from the vicinity of Georgetown, and were encumbered with judgments."

State v. Bierman and Jacken, 1 Strobhart 256, January 1847. "indictment under the Act of 1834, for selling . . liquor to a slave. . . marshal, with an officer, to arrest . . Saw Jacken pour out liquor (whiskey) into a jug, for a negro boy; . . he [the boy] escaped."

Roux v. Chaplin, 1 Strob. Eq. 129, January 1847. [133] "1843, . . a widow . . owning several plantations and several hundred negroes,"

State v. Kirby, 1 Strobhart 378, May 1847. "The prisoner was tried for the murder . . several counts, one charging him . . as having . . incited . . Dave, the slave of the deceased, to commit the crime. . . [379] Dave had been . . convicted . . [380] had made a confession implicating [Kirby] . . [383] the prisoner observed . . 'Lord God, Dave, what a lie you've told—recollect you've got to die.' Dave said,

'Yes, I know that—you are white men and I'm a negro, but I have told the truth.'" [381] "Col. Thomson said, 'Kirby, the dying confession of that negro will make every body believe you are guilty, unless you can make a better showing.'" He confessed later, and was convicted.

Whatley v. Murrell, 1 Strobhart 389, May 1847. [392] "Murrell then said he would bet witness two negroes to one he could whip Gomilion."

State v. Anderson, 1 Strobhart 455, May 1847. "1845, after 10 o'clock at night, they gave . . Solomon . . an empty bottle, their names . . at the bottom, secured by tallow: . . gave the boy 25 cents: . . [456] the boy came out with the bottle filled with whiskey, . . [457] searched his pockets for the 25 cts., and did not find it." "boy . . frequently left his tools in Anderson's shop. . . engaged on a roof of a barn"

Morse v. Garner, 1 Strobhart 514, May 1847. Garner's ferryman [516] "had directed the negro at the ferry, to require the plaintiff to pay ferriage."

Harrison v. Berkley, 1 Strobhart 525, May 1847. Action of trespass on the case. On December 25, 1845, "Bob, being patroon of one of the plaintiff's boats, . . applied to the defendant for liquor, but the defendant refused to let him have it. Eli Bass, a free negro, (who was chief patroon of the fleet to which Bob's boat belonged,) then took the jug and handed it to the defendant, who filled it and handed it back to Bass, who delivered it to Bob," Besides the gallon jug, he received a quart bottle of whiskey from which he drank repeatedly. He [526] "fell into a creek, in which he would have been drowned, but for the aid of some white men then in his company;" and next morning he was found dead near a house where he had "called . . and got fire, . . [528] The jury found for the plaintiff six hundred and fifty dollars;"

Held: [551] "the verdict is free from the objection, that the damages were too remote."

Bryan v. Robert, 1 Strob. Eq. 334, May 1847. Stephen was bought, in 1842, for $625, by Myers, [336] "a hog-driver from the western country; . . had a wife on . . [Robert's] plantation, and was unwilling to go with Myers [to Kentucky]. Myers exchanged Stephen with Robert for two negroes,"

Simpson v. Vaughan, 2 Strobhart 32, November 1847. [34] "Vaughan is among our wealthiest men. I once heard him say that he had twenty-five negro children too small to work."

Ex parte Boylston, 2 Strobhart 41, November 1847. "Jim had been arrested . . the offence alleged . . insolent language and behavior towards Mrs. Crook," Judge Wardlaw dismissed a motion for a prohibition. [42] "The relator moved the Court of Appeals to reverse"

Motion dismissed: [43] "a slave can invoke neither *magna charta* nor common law. . . In the very nature of things, he is subject to despotism. . . [44] trials of slaves for insolence have been, since 1796 (as without doubt they were before) frequent and unquestioned:" [Ward-

law, J.] Judge O'Neall dissented: [46] "the Legislature have not thought proper to declare it to be a crime. . . Some of the most faithful and devoted slaves have been remarkable for their liberty of speech. . . and who has ever dreamed that an open-mouthed, saucy negro, is the deep intriguer calculated to raise . . [47] an insurrection? . . It is . . said, that it is the practice of the whole State to try slaves for insolence before a magistrate and free-holders. . . I have been tolerably familiar with the administration of justice . . for last 33 years, and this is the first case which I have ever met with. . . another objection . . A free negro must be just as liable . . yet this Court, in the State *v.* Fisher, MS. Session cases 121, with the assent of every member . . (except myself), declared that insolence, on the part of a free negro, would not justify a white man in striking! . . no jurisdiction ever did exist, which is liable to more abuse than that exercised by Magistrates over slaves. Clothe them with the power to try slaves for insolence, and the result will be that passion, prejudice and ignorance will crowd abuses on this inferior jurisdiction to an extent not to be tolerated by slave owners."

State v. Smith, 2 Strobhart 77, November 1847. The prisoner fired a shot at Carter, "a free white of dark complexion," who had spoken contemptuously of a [78] "drunken crowd." "Then a plaintive voice was heard, saying that somebody was shot: and it appeared that two little negro boys, Monday and his brother, . . meeting the noisy crowd, had turned aside and sat on the fence . . The ball from the pistol had passed through Monday's brain," The prisoner said [79] "that he wished it had been Carter and not the negro: that he would rather be hung than 'take the abuse of that d—d mulatto,' meaning Carter. . . found guilty of murder," New trial refused.

Vinyard v. Passalaigue, 2 Strobhart 536, November 1847–May 1848. Action of trover. "will of Mrs. E. Peake, . . August, 1822: . . bequeathed Dido, (the mother of Mary Anne,) and her children to the plaintiff, . . 'they by no means to be considered in slavery.' From the death of the testatrix to Dec. 1842, . . Mary Anne was allowed to go at large, and do as she pleased. . . She was married to Passalaigue's baker. . . [537] In Dec. 1842, the plaintiff, Seyle, Perry and Vinyard's negro driver, entered the house where Mary Anne and her children and her husband lived, and carried her and her children to Vinyard's plantation, where they remained a few days and then escaped. They were demanded from the defendant, . . claiming them . . by possession. . . The woman Mary Anne, had often shown to the leader of the patrol, on Charleston Neck, a pass. Both parties, the plaintiff and defendant, declared in Court that their whole object was that the woman and her children should be free. . . The jury were instructed [by Judge O'Neall] . . If . . the negroes had been permitted to go at large . . 20 years, the jury might presume that they were legally manumitted . . [538] returned . . with a verdict, 'We find for the defendant, believing the negroes to be free.'"

New trial ordered: [546] "we cannot presume a Legislative Act of emancipation." [543] "The law discourages and forbids emancipation; . . [545] the long experience of very many of these United States—

all of which, at least all that were once British Colonies, held . . African slaves . . is, that the white Caucasian and the black African races cannot live together upon terms of equality. . . whether on the English settlements on the coasts of Africa, or as coolies in Jamaica, or as apprentices in Illinois, or as emancipated in New York or Philadelphia, Africans become, . . as fully as in Charleston . . the . . servants of white men." [Richardson, J.] Judge O'Neall dissented: [547] "In 1822, such an Act passed for one of the faithful and devoted servants, who revealed the contemplated insurrection of that year; and I hope the Legislature of 48-49 will adorn their statute book, by an enactment in favor of the slave who stood by his master in the bloody issues of the late Mexican campaign. Indeed, I hope, I may be allowed to say, that after 27 years' experience, under the Act of 1820, I think its policy so questionable, that it ought to be repealed. A law evaded, as it is, and against which public sentiment, within and without the State, is so much arrayed, ought not to stand. . . by repealing all such enactments, . . we should have nothing to fear from anything which our meddling friends, in other States, may think proper to say or do against slavery."

Davis v. Dr. Whitridge, 2 Strobhart 232, January 1848. "action of trespass for assault and battery. . . [233] The plaintiff had been . . 1844, . . overseer [of defendant], . . to receive 6 per cent. on the cotton to be raised from 150 acres . . The defendant, . . January, 1845, employed [another] . . The plaintiff . . would not give the keys . . that he had not had a settlement for the crop of the last year, . . the defendant came . . had to borrow corn from . . his own negroes to feed his horses. Both plaintiff and defendant were . . peaceable, prudent men . . about sunrise, . . five or six of the defendant's slaves, by his directions, and in his presence, seized and tied the plaintiff's hands, with a strong, small cord. . . the defendant ordered his negroes to search his pockets, which was done, and one key taken out. . . the plaintiff called the defendant a d—d yankee, . . [234] he and his wife were . . rowed across . . river, . . untied, . . [235] The jury found for the plaintiff $2,500 damages."

New trial refused: [242] "To employ slaves in binding with cords the person of a freeman, who but the day before were bound to obey him, was calculated to degrade him . . The defendant . . does not seem to have understood that relation which exists in popular sentiment between the white man and the negro, the freeman and the slave, which no man can violate with impunity." [Evans, J.]

Parker v. Pringle, 2 Strobhart 242, January 1848. [246] "at first . . the mill worked well—rice well threshed. The negroes worked extra work, morning and evening—one hour to one and a quarter, in the morning. The mill hands not sufficient—field hands assisted to remove the straw."

Alston v. Durant, 2 Strobhart 257, January 1848. A runaway slave was taken and lodged in Georgetown jail in August, 1845. [258] "He escaped, with a white prisoner, in January following . . by cutting a

hole through the roof. Neither the slave nor prisoner was confined in any room. They had the range of the Jail, and were not locked up at night." The sheriff [257] "advertised the escape, and offered a reward for the retaking of the slave—who was taken" He required the plaintiff to pay all expenses connected with the escape before delivering his slave to him. Held: not a voluntary payment.

State v. Chandler, 2 Strobhart 266, January 1848. "overseer of Mrs. Prioleau, having charge of the slaves Prince, Frank, and William, in February, 1846, . . exchanged with them whiskey for their weekly allowance of corn." [1]

Held: an overseer has no legal right to trade with the slaves under him without a written permit from the owner. Judge Wardlaw dissented: [269] "If he had sold them arsenic . . or abolition pamphlets, he would have done worse . . but he would not . . have come any more within the statute against trading with slaves than I think he now does."

Tuttle v. Rembert, 2 Strobhart 270, January 1848. "By indenture, dated 5th September, 1835, the defendant bound to Susan Hawkins [a milliner, now Mrs. Tuttle,] his slave Lydia, then two or three years old, as an apprentice, for the term of [ ] years. Susan Hawkins covenanted to feed and clothe the girl, and to teach her to sew. . . Lydia went into the possession of Susan Hawkins, and continued until July, 1845, when she ran away, and was discovered by plaintiffs in the possession of Mrs. Abrams. . . defendant . . said he . . had sold, or was going to sell her to Abrams," Nonsuit refused.

State v. Nicholas (slave of William Kelly), 2 Strobhart 278, January 1848. Nicholas was found [283] "guilty of grievously wounding a white person, under A. A. 1740, and sentenced to be hung." [280] "the wounds, proved to have been inflicted, were but superficial or flesh wounds, . . Magistrates are respectfully informed . . that a new trial will be urged, on the ground—That the presiding Magistrates and Freeholders, or some of them, were unaware of the 18th section of the Act of 1751, authorizing the Court, or a majority of them, to mitigate the punishment . . [281] in capital cases against slaves, to something short of death;"

New trial granted: [288] "The 18th section . . was omitted by Judge Grimke (P. L. 217). . . but the 18th section was virtually revived, by a revival Act of 1783. . . hidden from public view until the publication of the statutes at large; . . [290] the 18th section . . is of force," [Wardlaw, J.]

Gadsden v. Gasque, 2 Strobhart 324, January 1848. Letter of a slave broker in Charleston, May 1845: [326] "negroes are getting higher every day, particularly men and boys; not so small as the one you have sent—two sizes larger." Letter of same, August 1845: "you can make good profit if you buy judiciously. I do not know what effect the Mexican War will have on slave property—as soon as I can find out what public sentiment is, I will write" Letter of September 17, 1845: [327] "I sold

[1] "A peck of corn . . just a negro's allowance" Davis *v.* Whitridge, *ibid.* 236.

your man . . this day, for five hundred and eighty-five dollars; I also sold Joe, but he was returned as unsound, as per . . certificate:[1] what shall I do? Shall I sell him at a less price . . I got, in the sale just broken up, $563. I have been offered $462½ for the girl; I am trying for $500; . . You paid too much for the little boy; he is not likely; I fear you have paid also too much for the old man: . . Send me on prime negroes, and I can do well for you. . . You can give $525 for men; they will bring $575 to $600; women, $400, will sell for $475."

Rantin v. Robertson, 2 Strobhart 366, January 1848. Two slaves were put as apprentices to a house carpenter for terms of seven and eight years, the carpenter to provide them with [368] "sufficient meat, drink, working clothes, lodging and washing, fitting for an apprentice, during the said term"

Villard v. Robert, 2 Strob. Eq. 40, January 1848. [41] "In 1826, . . Nancy had no issue. . . between that time and 1845, she had borne seventeen children, of whom six were alive"

Dougherty v. Dougherty, 2 Strob. Eq. 63, January 1848. Will of John Dougherty, 1844: [64] "I leave old Tenah, her daughter Clarissa, and her [five] children . . to be left free under the guardianship of my executors, and as they wont be able to support themselves, to have a reasonable support from the estate. I give to my niece . . young Tenah, and her son . . Flora and her sister, during . . life, and at her death, they are to be left free, under the guardianship of my executors;"

Held: [67] "The bequest of freedom . . is void, by the provisions of the Act of 1841."

Pye v. [*Dr.*] *Carr,* 2 Strob. Eq. 105, January 1848. [108] "1825, when she was . . [109] about eight months old, . . Sue ['between thirty and thirty-five'] was given to her [by her grandmother]." [107] "Her child Molly, was born . . 1826; Sam, . . 1828, or . . 1829; in 1831 . . another child, that died in the month; . . Phillis was born about . . 1833; Leah . . 1837;" Sue died in 1838. "Molly, had a child . . 1844. . . Sue, and her children, as they grew up, were employed generally about the farm [of defendant, father of complainant.] . . it is the custom, in the defendant's neighborhood, of persons who have the management of estates consisting of negroes only, to hire them out (near to defendant's residence) . . to the highest bidder; or, if no offer be made . . then, to him who will maintain them at the lowest rate—the owners paying taxes and doctor's bills." The commissioner charged "For Sue's wages, 11 years at $54, . . From which take . . food for small negroes, . . $360 75; clothing of [same] . . $74 00 . . [108] The complainants excepted . . Because the Commissioner has charged for the expense of feeding and clothing . . Sam and Phillis, until . . ten years of age, and . . refused to allow the complainants any thing for their hire, until the one was 12, and the other 13 . . Because . . $9 75 per annum allowed . . for feeding the young negroes, is extravagant"

[1] Copy of Dr. Lee's certificate: [326] "Joe has a curvature of the spine and small limbs, . . probably the consequence of this first defect—I do not consider him capable of enduring continued hard work."

Held: [110] "his stewardship was faithfully and fully discharged, when he delivered over the five negroes, after the marriage of his daughter." "it is the habit in St. George's to treat with much indulgence a woman like Sue, giving birth to a child every two years. . . witness . . said, that for a woman having five children, he had, in a succession of 5 or 6 years, paid from $18 to $40 per annum, besides their services, for their rearing, etc.; that he paid doctor's bills and taxes, and furnished blankets every two years. Dr. . . Murray said he had paid thirty-six dollars per year for the support of a negro woman and three children, and this at public outcry to the lowest bidder;" [Dunkin, Ch.]

State v. Fleming, 2 Strobhart 464, May 1848. "The prisoner was indicted for the murder of . . his own slave. . . On the trial, there was no reasonable ground to convict the prisoner of murder, and the question was whether he could be convicted for the second offence, mentioned in the Act of 1821, for killing in sudden heat and passion. . . The jury were . . directed that . . [manslaughter] should be their verdict, . . [so] found"

Motion in arrest of judgment, dismissed: [470] "If the infliction of punishment be . . under the influence of passion excited by the misconduct of the slave, it would be that description of manslaughter described in the Act by . . 'sudden heat and passion,' as was the fact in this case. I come . . to the conclusion that the legislature intentionally omitted . . 'undue correction,' as useless, and intended to include every punishable homicide of a slave under the two classes enumerated . . when applied to the killing of a slave, . . [manslaughter] can only mean a killing in sudden heat and passion." [Evans, J.]

Richardson v. Broughton, 3 Strobhart 1, May 1848. The defendant came into the plaintiff's plantation [2] "and took from pens, near the negro houses, five hogs and hauled them away in the wagon. . . [He said] 'it is negro property and I intend to take it away.' . . taken to the magistrate's,"

Held: the act of 1740 does not confer the right to enter the enclosure of the owner of the slave for the purpose of seizing negro property. History of S. C. legislation as to such property. *Ibid.* 6-10.

Floyd v. Floyd, 3 Strobhart 44, May 1848. The testator said that [47] "he (Charles) was mean enough to negroes, but that Chandler and his wife were ten times meaner—that he knew of them kicking little negroes out of the door, which was high from the ground—that he had also known of Chandler setting his dogs on little children, who could not get out of the way, tearing their clothes off them, and their skin."

Boone v. Lyde, 3 Strobhart 77, May 1848. "There was a written contract, by which it was stipulated that Boone [the overseer] was to govern the negroes by Lyde's direction, and with humanity and kindness. . . it appeared from Boone's confession, that he was about to flog one of the negro men; the negro ran, and he snapt his gun at him, and said if he had fired, he would never have run again. The negro was roguish, but not insubordinate."

Stephens v. Chappell, 3 Strobhart 80, May 1848. Clarissa was sold on August 18, warranted sound. [81] " she continued well, until Saturday evening, . . picking out cotton. . . on Sunday [August 24] she was very sick; . . Dr. Peterson of the Thomsonian school was called in: he treated her for a day or two; on the 27th Dr. Gilder . . was called in; . . attended to her " every day but two, till the day of her death, September 5. " the disease was typhoid fever."

McLauchlin v. Lomas, 3 Strobhart 85, May 1848. John Howell, a negro man worth $1500, was hired to defendants, house carpenters, with three other negroes (all carpenters) belonging to plaintiff. " There were a great many workmen in the shop, some belonging to defendants, and some apprentices. Every carpenter got out his own stuff." Three of John's fingers were cut off while he was sawing laths at the circular saw, and he died of lockjaw.

Held: when the hiring is general, the hirer may employ the negro in any way he chooses, [87] " consistently with his obligation not to employ him in any dangerous work, such as a prudent man would not employ his own negro in."

State v. Scates, 3 Strobhart 106, May 1848. Three men " marked a piece of pork, got a patrol warrant and went to the defendant's at 10 o'clock at night; they gave the piece of pork to Dick to put in Scates' barrel, side of the smoke house. . . In the morning . . defendant . . looked into the barrel, . . and took the meat into his smoke house. They then got a search warrant . . found . . the very piece of meat,"

Brooks v. Penn, 2 Strob. Eq. 113, May 1848. [114] " a negro woman, Elsey, who had, for the preceding 6 or 7 years, been hired, and employed occasionally as a house servant, but principally as a wet nurse for the children of Blocker, [126] Her skill and fidelity were proved to be such that the house and the children were left to her care, in Mrs. Blocker's occasional absences; "

Johnson v. Lewis, 2 Strob. Eq. 157, May 1848. [163] " a gang of negroes, in which there were about sixteen workers, and among them a blacksmith, two carpenters, and two boat hands."

Finley v. Hunter, 2 Strob. Eq. 208, May 1848. Thomas Finley, by his will, dated 1823, bequeathed slaves to his son, after the death of his wife, [209] " on the following condition, viz: that he emancipate all the female children of my two negro women, Nancy and Jinny, or cause them to be sent to . . Indiana or Ohio, where the laws of the State will liberate them. The said female children are to be set free as they respectively arrive at the age of 25 years, and all their children with them, should they have any; as it is my wish and desire to put a stop to the slavery of the race of negroes belonging to me in future." He bequeathed to his niece a negro boy " absolutely, but to be well treated and not sold or bartered out of her family; " The testator died in 1831, and his widow in 1845. Held: the act of 1841 rendered void the condition of the bequest to his son.

Fraser v. McClenaghan, 2 Strob. Eq. 227, May 1848. Held: when a bill is properly filed for the specific delivery of slaves, and the plaintiff establishes his right of property, the court will decree compensation for such of the slaves as may have died pending the suit.

State v. Maberry, 3 Strobhart 144, November 1848. "One . . had been arrested, on a charge of selling spirits to slaves from a wagon,"

State v. Thomas, 3 Strobhart 269, November 1848. "indicted for harboring a runaway slave,[1] . . purchased by . . Kaigler . . November, or . . December, 1846. Mr. Kaigler had him in possession about three weeks; he [the slave] left his wagon in Columbia; . . [The defendants] were on their way up the [Broad] river, [January 28, 1847,] when . . about sun down, a negro hailed the boat, and asked 'dont you want to hire a hand?' The witness . . said 'he is some runaway, let us go on.' The defendant Jas. V. [Thomas], said, 'come to the Flaming Sword Landing,' then a mile above, 'and bring your master with you, and I'll hire or buy.' . . after night . . the negro came with a white man, or boy, . . who said he was the negro's master. The defendant, James V., and he traded. James V. was to keep the negro on hire, $45—till Christmas—or if he and the negro liked one another, he was to pay $525, and keep the negro. . . He said the note for the hire, or for the price of the negro, was to be left with Lakin's Tom, a negro slave, having charge of Mr. Lakin's Mill on Broad river. . . [270] He passed up in the boat, to the residence of the defendants, . . and there remained until . . [about the] first of June 1847, when . . [he was] arrested as a runaway and carried . . to Chester jail. . . The negro was kept publicly; worked openly, on the plantation; went to log-rollings and worked on the road." All the defendants were convicted. New trial refused.

McElhenny v. Wylie, 3 Strobhart 284, November 1848. The deputy and the two Wylies "examined the negro houses and kitchen—the negroes were not found. . . [then] went into the dwelling, where the plaintiff, his wife and daughter were in bed, and William, the defendant, pushed aside the plank on the loft, went up, found the negroes, seized and handed them down to the deputy, who *then* levied upon them. . . [287] the next day after this affair, he and his brother came back and demanded the negroes's clothes—they were refused; he and his brother, then, went into the negro house, . . tore down a dresser, and took away the negroes's [*sic*] clothes."

Footman v. Pendergrass, 2 Strob. Eq. 317, November 1848. [319] "Three of the negroes, Matilda, Rose and Betsy, have run away from him, and, as he has heard and believes, are in the possession of . . Footman and wife."

Moon v. Moon, 2 Strob. Eq. 327, November 1848. [328] "the slave Harriet is a breeding woman, of the age of twenty-three years; Henry is about five years old, John is about three years old, and Hannah about nine months old;" They were sent to Mississippi by Mrs. Moon, the

[1] Act of 1821.

life tenant, and [331] "she was arrested by a writ of *ne exeat*, to prevent her from doing what already had been done: sending the property out of the State." She had been confined in jail three months when this case was heard. Her answer to the bill states that [329] "the girl becoming a breeding woman, has been ever since an actual incumbrance and expense, and not a benefit to her; she was, from a child, of a delicate constitution, and has required great care and nursing from the defendant; . . [330] and she [Mrs. Moon] cannot be persuaded that any just code of morals or principles of equity can require of the defendant, at her time of life, to become the nurse of little negroes, and a servant of servants, for the plaintiffs and their posterity;"

Decreed: [333] "that the . . slaves, with their increase, be delivered up to the remainder-men at the expiration of the defendant's life estate; and that the defendant . . give bond"

Lloyd v. Barden, 3 Strobhart 343, January 1849. [345] "Tom was on the deck, he is the pilot, a black man;"

Rowand v. Bellinger, 3 Strobhart 373, January 1849. Letter, 1847, to owner of the slave Nelly: [374] "We inform you that a negro girl, calling herself Nelly, who has been recently in your possession, is in our custody. She represents herself as having left your premises this morning. She is in a place of safe keeping, without the means of communication with other negroes, and is comfortably provided for. We intend that you shall not again have possession of Nelly, but do not propose to impair any other rights which you may be able to establish in respect to her as a slave. In any communication you may desire to have with us upon this subject, we refer you to C. B. Northrop Esq., who will represent us. Respectfully yours, etc.

(signed) John Bellinger, M. D.
G. W. Cooper,
W. C. Gatewood,
C. B. Northrop."

The negro was not heard of again in the neighborhood.

Smith v. Hilliard, 3 Strob. Eq. 211, January 1849. Will, dated 1845: [213] "I . . bequeath . . four carpenters,"

Satterwhite v. Kennedy, 3 Strobhart 457, May 1849. Action of trespass *de bonis asportatis*. Kennedy, administrator of the mortgagee, "having heard a rumor . . that the plaintiff [mortgagor] was going to carry off the negroes, went with a constable one Saturday night, . . to the negro quarters of the plaintiff, and took away the mortgaged negroes. Kennedy had a gun—they made no noise" Nonsuit ordered.

Williams v. Prince, 3 Strobhart 490, May 1849. [491] "Prince said he had been giving the strap to her nurse, and his wife had interposed and he had given her some;"

State v. Brown, 3 Strobhart 508, May 1849. "the prisoner was indicted for stealing three slaves, . . and for aiding them to run away. . . A month or five weeks previous [to the disappearance of Isaac and Hagar,

'a house servant'], Verg had run away from [Truesdale] . . Isaac and Hagar disappeared at night. Hagar's children, one two years old, the other a sucking child, were gone at night: but in the morning were found in the mother's house. The owner lost at the time of their flight $3000 in money, part paper, part silver. . . [The slaves] [509] were found in the neighborhood of Jefferson, Tazewell county, Virginia, in the possession of *Big Mouth* James Brown. . . He and the negroes were under assumed names . . Brown . . as a witness for the State, . . testified that a week or two before . . the prisoner . . told him, that he had a notion to get Truesdale's negroes to get into his pile of money, bring it to him, and then he would take them, the negroes, to a free State. . . On the Sunday night that the negroes left their master, the prisoner . . came to the witness' house. . . wanted him to go with the negroes. . . The next day, . . prisoner gave him . . over $300, (50 of it to bear expenses) to go with the negroes to a free State. . . [510] the prisoner . . was to give Tom [witness's brother] $200 for writing a free pass. . . told him to tell any one who might follow, that the negroes were free, and had hired him to carry them off. He advised him to arm himself, and if any body followed, to kill the pursuer and the negroes, and throw their bodies in the river, like Murrell.[1] . . [511] The negroes . . were taken three miles from the village [Jefferson], on the road leading to Kentucky and the Ohio river, distant 160 miles." The prisoner was convicted. Motions in arrest of judgment, and for new trial, dismissed.

McKenzie v. Allen, 3 Strobhart 546, May 1849. "Two of the defendant's servants had been taken up . . for riotous behaviour on Sunday, and, with others, were about to be flogged at the market place, Monday morning, when the defendant came up—asked what they were whipped for; and said they should not be whipped; that he would whip the marshall [*sic*]. . . The defendant jirked [*sic*] the boy from the marshall, who raised his fist or his whip. The defendant then looked at the ordinance, and declared himself satisfied."

State v. Bowen, 3 Strobhart 573, May 1849. "prosecutions . . for denying, neglecting and refusing to allow . . sufficient food and clothing,[2] . . [574] The evidence shews the common opinion to be, that animal food is necessary, and the custom to supply it in the section of the State in which the defendant resided. . . The defendant did not give his negroes enough even of meal, the only provision he did give. . . Jackson, the defendant's overseer, [testified] that . . [575] The grown negroes had only a quart of meal a day. Many days . . they had no meal. Sometimes it gave out Thursday and sometimes Friday. They would then have a quart to last them till Monday evening. The stinted daily allowance when withheld, must have reduced the wretched slaves to famine. For seventeen months, Jackson did not know that shoes had been given to them. Their feet were frost-bitten and sore. During the same period no clothes were given to them." The defendant was found guilty.

[1] "They talked about Stewart's book giving an account of Murrell's villany." 3 Strobhart 521 n.

[2] Act of 1740, sect. 38.

New trials refused: "Instances do sometimes, though rarely, occur, in which it is necessary to interfere in behalf of the slave against the avarice of his master. In such cases the law should interpose its authority. It is due to public sentiment, and is necessary to protect property from the depredation of famishing slaves." [Frost, J.]

McLeish v. Burch, 3 Strob. Eq. 225, May[1] 1849. Will, dated 1837, of Mrs. Ann McCants, who died in 1839: [226] "To my . . executors, . . I leave my wench, Nancy, and her children, Louisa and Mary, and her future issue, by reason of her faithful services, and my wench, Mary Horry, a mulatto, and her child, Augustus, and any other children she may have, with this special charge, that no other service or wages shall be required of them than may be sufficient to pay their taxes." "To Louisa and Mary, . . one hundred dollars apiece, to be employed by my executors for their education. To Augustus, . . fifty dollars, to be applied in like manner. . . [227] I give Nancy twenty dollars for a mourning suit." The testatrix sold Mary Horry and Augustus, and erected a house for Nancy and her children to reside in. The executors [230] "complied with the injunction of testatrix . . but they deny, that . . they have . . in any way violated or evaded the law against the emancipation of slaves. . . unless there be some law . . requiring owners of slaves to exact from their slaves the maximum of labor and services of which they are capable, . . The said slaves were treated in precisely the same manner by the testatrix during the latter years of her life; and hundreds of faithful old servants are so treated by their grateful masters."

Decreed: [245] "that the slaves and the legacies bequeathed to them, be the absolute property of the executors," [240] "the alleged trusts merely amount to advice," [Caldwell, Ch.]

State v. Lewis (*a slave*), 4 Strobhart 47, November 1849. Lewis was tried "for burglary and assault and battery, with intent to commit a rape upon a white woman, upon . . affidavit . . 'that between the hours of nine and ten o'clock at night, a negro man . . forcibly entered her house by breaking open the door, besides greatly alarming herself and two girls, . . and committed an assault on the former; deponent . . believes his intention was to commit a rape' . . The prisoner was convicted of the second offence charged, and sentence of death was passed upon him. . . O'Neall, J. . . ordered a new trial. . . The Court were unable to agree upon a verdict, . . mistrial. His Honor then ordered that the Clerk should summon another Court . . one of the freeholders was suddenly called off to his dying wife, . . and the prisoner was remanded to jail." Judge O'Neall [48] "ordered that the Clerk do summon a Magistrate, and eight free-holders, out of whom a jury of five are to be selected, for the trial . . The Clerk will endeavor, as far as possible, to select a Magistrate and free-holders, wholly unprejudiced." Both the owner and the state appealed. Motions dismissed.

State v. Martin Posey, 4 Strobhart 103 and 142, November 1849. In the former prosecution, the prisoner "was indicted as accessary to the

[1] 1 Rich. Eq. 436.

murder of his wife." In the latter, he [142] "was charged, as principal in the first degree, with the murder of his own negro, Appling," [113] "Posey had Jeff hired, . . said he hired him first to doctor some of his negroes, and understood he was a conjuror, and that the negroes probably had told him he could do something that would secretly cause his wife's death; and he said the negro wanted him to buy, and he said he would not buy the negro till he had first done something to put his wife out of the way; . . [114] App said if Jeff were gone, he could put Mrs. Posey out of the way. . . [117] App . . talked to me of his master wanting him to put his mistress out of the way, and his master was to carry him away," [116] "he was to have his freedom for killing his mistress," A few days after her disappearance, [115] "he said he had drowned her," App ran away and was hunted with dogs. The prisoner said witness's [159] "dogs could not run his negro; I said they could, if he was on the earth, and would make a track. He offered to bet $1,000. I offered to bet the last dollar I had if he would place him where I could get on trail." [119] "Elbert Posey said, if any body has to kill him [App], Martin, I think you ought, for if he is to be killed, it is to screen you. He said he would do it." [116] "prisoner . . told [witness] . . he had killed the negro, at the head of Bog branch; shot him, after tying, with pistols." He was convicted of both crimes. New trials were refused.

Mayrant v. Guignard, 3 Strob. Eq. 112, November 1849. [120] "a planting interest was to be established . . in . . Mississippi. . . They hired an overseer, and . . Mayrant started in company with the overseer and the negroes, for the West. . . Immediately after the arrival . . in Mississippi, he sold out the whole establishment—land, slaves, mules, wagons, etc."

King v. Aughtry, 3 Strob. Eq. 149, November 1849. The Rev. Benjamin S. Ogletree became possessed of two sets of negroes by his two marriages. [150] "And after he became possessed of the second set . . while working both sets together, under overseers, he made a distinction in their discipline; conforming it to the wishes of his second wife, as to the negroes she had brought him; but exercising more of his own discretion in relation to the negroes . . which . . belonged to his first wife's children,"

Dr. Toomer v. Gadsden, 4 Strobhart 193, January 1850. "action . . to recover $155, for medical attendance on Charlotte, the slave of defendant. The plaintiff offered to prove . . [194] by his . . ledger, . . not admitted, . . [a witness] said that, in 1844, Charlotte was brought to the house of plaintiff, in a deplorable condition, . . so continued for nine months, unable to leave her chamber, and seldom leaving her bed. That she had abscesses; . . was loathsome . . required nursing and constant attention; . . About six weeks . . before she left . . she recovered so far as to walk about the yard, . . not, then, worth fifty cents a month. . . The defendant claimed wages . . [A witness] testified . . Toomer said . . he had attended her at Gadsden's, and had taken her, and

was to charge nothing for his services. That he had had her near two years, and her services were worth five dollars a month." Verdict for the defendant. New trial granted: the ledger should have been admitted.

State v. Teideman, 4 Strobhart 300, January 1850. The slave of Gadsden [301] " was hired as a drayman by . . the agent of a line of vessels between New York and Charleston, to transport goods and merchandise from the vessels to the Rail Road depot." He broke open two boxes of hats and carried part of the contents to defendant. The latter was found guilty of receiving stolen goods.

State, ex. rel. Tavel, v. Jervey, 4 Strobhart 304, January 1850. The tax collector " issued an execution for a capitation tax against Tavel, as a free colored person. Tavel applied for a writ of prohibition against the levy of the said tax, and an issue was made up to try his *status.* A verdict was rendered in favor of Tavel, by which he was exempted from payment of such tax."

State v. Clark, 4 Strobhart 311, January 1850. A diamond pin had been stolen from Oakly, who lodged with Mrs. Brown. [312] " His suspicions were directed, by what his servant told him, to the Guerillas, a band of villains then infesting Charleston Neck. . . [They] were in the habit of purchasing cigars etc. at the shop of . . Fahnstock, . . [who] had a child by a negro girl, the property of Oakly; and he was induced to aid in the recovery of the pin by the threat of Mrs. Brown, that if the pin were not restored, the child should be sold."

City Council v. Seeba, 4 Strobhart 319, January 1850. " The process alleged that the defendant did permit . . certain negro slaves, whose names and owners were unknown, to assemble and loiter in his shop," [1]

Held: [321] " it is not necessary to set forth either the names of the negroes nor of their owners nor their sex," " Such assemblages usually disperse, upon the least alarm, and few can tell their names or their owners's [*sic*] names. And as to their sex, it is so easy to disguise it by a change of clothing, that the informer . . could as rarely prove the sex "

State v. Belmont, 4 Strobhart 445, January 1850. " an indictment for assault and battery. Amelia Marchant, the prosecutrix, was offered as a witness, and was objected to, as a free colored person, . . Cohen testified, . . The grand parents were free Indians, . . She is the aunt of Thomas Mitchell, and sister of Robert.—Her father, James Mitchell, was said to be a Portuguese. . . none of the family had ever paid a capitation tax. . . Judge O'Neall had granted a prohibition against the enforcement of a capitation tax upon [Thomas and Robert] . . and had ordered an issue to be made up, if the City Council were dissatisfied, . . verdict . . that the defendants were ' of free Indian descent, unmixed with African blood.' . . Against the competency of Amelia . . [a witness] testified, . . James Mitchell . . [446] was considered a colored person. He served as a Pioneer in the Artillery, and associated with colored persons. . . Mr. Cohen recalled. . . If . . [Mitchell] had been a mulatto, they

[1] City ordinance of March 1840, sect. 5.

would not have permitted Nancy to marry him. . . [447] The jury found Amelia Marchant to be 'a free person of color.'"

Verdict set aside: [449] "free Indians have been invariably tried by a Judge and jury, . . [451] 'Indians in amity excepted'[1] . . means all Indians not in hostility. But with many exceptions, as those of Indian slaves—Indians from time to time in hostility—or declared slaves, as the Yamasees were, . . The whole State policy, in making slaves of Indians, was temporary, . . It was to deter their inroads, by the intimidations of slavery, so hateful to Indian instincts. . . They never made valuable slaves, but withered away in a state so alien to the red man's nature. . . But . . All history assures us that the negro race thrive in health, multiply greatly, become civilized and religious, feel no degradation, and are happy, when in subjection to the white race. . . [452] ought we . . to hold in the category of slaves . . the spare remnants of the red man? . . would not . . Virginia, and all the blood of Pocahontas say, this is not international—it is not like South Carolina? . . I am for adhering to the decision in . . [453] Charlotte Miller *v.* [Justices][3] . . that spares the race of Shem." [Richardson, J.] Judge Frost dissented: [454] "In the incessant wars which the tribes waged against each other, many captives were taken, . . sold to the colonists. The colonists . . seized and enslaved as many as they could take of the hostile tribes. . . The number . . [455] was very great; so that after supplying the wants of the colony, many were shipped to the West Indies. . . [457] The term 'amity,' is used in the Act [of 1740], in its proper sense, when it is applied to the friendly relations of the Province with an independent . . nation or tribe."

Lawton v. Hunt, 4 Strob. Eq. 1, January 1850. [5] "The estate [of William Matthews] consisted, principally, of a plantation in Prince George, Winyaw, three plantations in St. James, Santee, a plantation and ferry in Christ Church, and some three hundred and fifty slaves, besides two houses in . . Charleston." Dunkin, Ch.: [22] "As to the disputed point, whether the [six] carpenters . . and the [six] sloop hands and boatmen . . are part of the negroes devised to Mrs. Colburn, or of the residuary estate, the same is referred back to the Master, to take further testimony." See same *v.* same, p. 431, *infra.*

State v. Boozer, 5 Strobhart 21, May 1850. "The defendants [composing a patrol] were indicted under the Act of 1841, for unlawfully whipping the slaves of . . Rikart. . . [22] Hunter had given permission to one of his negro women to have a quilting, . . Two went from Rikart's, one girl and a boy. . . the meeting was Saturday night. . . Hunter retired to bed about ten o'clock; he had been about, and the meeting was orderly. About midnight one of his negroes informed him the patrol was there; when he got to the meeting, he found the defendants; the negroes were confined and guarded in the house. He inquired of the defendants if the negroes had been impudent; they said no;

[1] Act of 1740, sect. 1. 7 St. at L. of S. C. 397.
[2] See p. 362, *supra.*

. . Hunter was told to point out his negroes, that they might not be whipped; he begged the defendants to be moderate; he was told ' the least said the soonest mended.' The defendants did not ask the negroes for their tickets; when Hunter asked, they all cried out that they had tickets. The defendants in turn whipped all of the negroes present, except . . Hunter's. . . [23] The jury returned a verdict of guilty."

New trial refused: [124] " How many of us have permitted to our slaves the enjoyment of a wedding party and ceremony, in imitation of the custom of the higher class, and even contributed liberally, to the good cheer of the occasion? . . Our fundamental code . . is that of 1740. It was enacted soon after a violent, barbarous, and somewhat bloody servile outbreak at Stono. Not a few of its provisions took their hue from the exigency of the occasion, . . It would seem simply ridiculous to suppose that the safety of the State or . . inhabitants, was implicated by such an assemblage" [Withers, J.]

Meares v. Meares, 5 Strobhart 167, May 1850. [176] " In 1845 . . I spoke of having met Jones removing to Tennessee with negroes, . . [Meares] said ' he is taking 4 or 5 . . of mine to my daughter, . . they have sent off all the young ones, and I can't do more than make a support with the old ones.' . . [178] Carson had taught a boy, Bob, to make shoes, . . [179] [his sons] would not let him whip the negroes when he pleased; . . and negroes would not mind him. . . [180] Often . . [his sons] said to the negroes, ' don't mind him, mind us, or we will whip you.' . . [181] he got upon his horse with Tom, a little negro boy, behind him; . . [182] [his son] ordered him down; father said no; after awhile Tom got down, and . . [the son] whipped him for not getting off at once; . . father sometimes fell off his horse, and Tom could run to make it known. Sometimes father struck Tom with a stick. . . I [daughter] have sometimes told the little ones to keep out of his way when . . [183] angry. He would throw at them, but never hurt any. . . [184] hired a negro blacksmith."

Sims v. Aughtery, 4 Strob. Eq. 103, May 1850. [107] " the two negro women . . had been purchased in Charleston, in 1805, . . they were at that time two African girls, . . a negro belonging to the estate, and worth five hundred dollars, had been sold to pay a debt . . worth probably twice the value of these two African girls, in 1805,"

Hatcher v. Robertson, 4 Strob. Eq. 179, May 1850. Will, 1840: [180] " the negroes to be sold at private sale, with the privilege of selecting their masters, at an appraised valuation,"

Lanham v. Meacham, 4 Strob. Eq. 203, May 1850. Will: [204] " I wish to exempt from sale, or division, the following family of negroes, . . Biddy, about forty years of age; Henry, about twenty-five years of age; Jesse, about twenty-seven years of age; and Lizzy, about twenty-two years of age. . . it is my will . . that my brother . . take the . . negroes under his charge, and act as their guardian, and to do all things in relation to them as he may think best." " The children of Biddy, and perhaps herself, are mulattoes."

Held: to carry out the testator's intention would be [205] " a clear infraction of the Act of 1841."

Rice v. Kennedy, 4 Richardson 42, November 1850. "Received . . seven hundred and fifty dollars . . for . . Lilly, and child, James, which . . I warrant slaves for life, and sound in every respect. . . 1836."

Dr. Sill v. Railroad Co., 4 Richardson 154, November 1850. "Alick was a likely mulatto slave of the plaintiff, twenty-five or thirty years old, skilled in the business of attending a drug store, who had been hired for . . 1847, to Toland and Curtis, druggists in Columbia, . . [155] without permission from his owner or employers, he went on the rail road of defendants from Columbia to Charleston, thence in the steamboat . . to Wilmington, and thence to New York, whence he has not been regained, though the plaintiff has used all proper exertions. . . Eaton . . born at the North . . [who] kept company with negroes, . . bought [the same day] . . two tickets, one for himself, and one for a white girl of bad character . . [157] but none for Alick" though "professing to have charge of Alick," [156] "Slaves, with passes, were often allowed to pay for themselves, . . The death of [the conductor] . . prevented exact testimony as to . . Alick's passage money, . . [157] The lax rules . . the indifference manifested by the neglect of all inquiry at Columbia, or of passengers on the way, . . were brought to the view of the jury; . . found for the defendants." New trial refused.

Guillemette v. Harper, 4 Richardson 186, November 1850. Report of Judge O'Neall: "This was an action of trover . . [187] there was also a count in case against the defendant [administrator, with the will annexed], for inducing the . . negro to runaway . . Edward Quinn . . resided in . . Georgia; he visited Ireland, his place of nativity, in 1832, or 1833. . . carried with him . . Cherry and her son Patrick, . . In his will [dated March 1834] he directed all his negroes, including Cherry and Patrick, to be set free in Georgia, if an act of the Legislature could be obtained . . if not, to be sent wherever they could be free. In his codicil [September 1834] he . . alters this in relation to Patrick. . . 'I . . bequeath . . £50 sterling to the black child . . Patrick Edward Quinn, and I allow my wife to take care of him, to give him a good education, and when he arrives at the proper age, to send him to a decent trade.' At the death of the testator [in Ireland, in 1834], Patrick was in Ireland; so was . . Cherry, and a child born in Ireland, and which the codicil . . states, 'she swore was the natural child of . . McDermoth.' . . The widow . . married . . Clarke . . removed [in 1838] to Charleston, . . [188] and brought . . Patrick, . . between 10 and 12 years old. . . Clarke . . said . . that 'Patrick was not living with him and his wife as a slave, but that he was free,' . . 1845 or 1846 . . sold for debts of Clarke, and purchased by . . his wife, who was a sole trader. She sold him, in 1846, to Mrs. Guillemette, then a *feme sole*; she intermarried, in 1848. . . In June . . before her intermarriage, Patrick escaped . . The jury were told, . . Patrick having been . . carried by the testator to Ireland, he became . . *free*. That it was, however, true, if

his master had not intended he should be free, on returning with him to a country where slavery was acknowledged, he would still be a slave. . . But it was apparent from the codicil, the testator treated him as free; . . [189] that the personal estate in Georgia was in the defendant; and if they believed from . . (the letters) that Patrick came to Savannah before he went to New York, the legal estate would be in the defendant. . . The jury found for the defendant;"

New trial refused: [190] "According to Somerset *vs.* Stewart,[1] . . he became free. . . *that* case carries the law further than I would willingly acknowledge, . . But if the master carries the slave to Great Britain to set him free, or while there assents in any way to his freedom, there can be no objection to the validity of freedom thus acquired. . . if . . against his will, his slave be allowed to go as free, I have no doubt he may reclaim him—or if the slave returns to a country where slavery is recognized, he *ipso facto* is remitted to his original condition. . . [191] the codicil . . shews that he had ceased to regard him as property. . . [192] Nor did he come to the State of his own will; for he was a minor . . the silence of the negro, when sold . . could not affect his right to freedom; for the status arising from his color compelled him to be silent. . . the plaintiffs have no right of property; . . the verdict below is right." [O'Neall, J.]

State v. Laney, 4 Richardson 193, November 1850. "an indictment for gaming with a slave,[2] . . the defendant played at cards with Jim, . . no proof . . of any betting, nor . . what game was played. . . The jury found the defendant guilty;"

Held: [195] "the kind or name of the game is no part of the offence, any more than whether there was betting,"

Atcheson v. Robertson, 3 Rich. Eq. 132, November 1850. Robertson's will, dated 1840: [136n.] "As it may be impracticable to divide the negroes . . among the legatees . . and as I desire to consult the future comfort of my negroes, I hereby direct . . my executors, after my death, to select three disinterested persons to appraise my said negroes, and my executors are hereby . . required to allow my said negroes to select their owners, who may be permitted to take them on a credit of twelve months, at the said appraisement," "the reason, . . why the executors sold the slaves in a mode different from that prescribed by the testator: . . 'that nearly all . . were either unwilling or unable to select persons who would take them, under the provisions of the will, at the appraisement, and as the legatees were very numerous and . . a large portion . . reside out of the State, . . it was deemed best for all concerned, that the said negroes should be sold [at public outcry].'" Dunkin, Ch.: [137] "Strictly, this was not authorized by the will, although the executors might very well have misapprehended their power, and especially as no objection was made from any quarter."

Lewis v. Price, 3 Rich. Eq. 172, November 1850. [187] "There were four negroes: Doll was old, and not worth more than the expense of

[1] Lofft 1. See vol. I. of this series, p. 14.
[2] Act of 1834. 7 St. at L. of S. C. 469.

keeping her; the successor of Price paid fifteen dollars a year for keeping her. Mary was kept about the house, and so was Louisa, except one or two years; she was a breeding woman. Margery . . was hired out at sixty dollars,"

State v. Friday (*slave of Lopez*), 4 Richardson 291, January 1851. "Friday . . had been convicted, by a Court of Magistrates and Freeholders, of murder;" "application was made to a Judge for a new trial, which was refused." Held: no appeal lies to the Court of Appeals.

Kelly v. City Council of Charleston; *Holmes v. same*; *Toomer v. same,* 4 Richardson 426, January 1851. "actions on the case for negligence, mismanagement and lax discipline in keeping the workhouse . . Nicholas, the slave of . . Kelly, was confined in the workhouse, under sentence, by a Court of Magistrates and Freeholders, of imprisonment for three years, each alternate month in solitary confinment. George, the slave of . . Holmes, and John, the slave of . . Toomer, were committed by their owners for safe keeping. At the periods when his sentence did not require that he should be kept in solitary confinement, Nicholas, who was proved to be a very bad, ungovernable and reckless fellow, and who held that he was not a slave, and that he owed obedience to no one, was allowed to be in the yard, and . . had full communication with George and John, and other slaves. . . [427] July, 1849, Nicholas, being in the yard where negroes for sale were kept, resisted an attempt made by one Gilchrist to take out a negro girl he had bought, and beat Gilchrist's man-slave, Scotland, who was directed to take her out. Gilchrist reported the state of insubordination to the Mayor, who went to quell it, accompanied by several officers and two men of the guard, all without arms. In the attempt made to reduce Nicholas to order, he resisted, and struck the master of the workhouse, and George and John, and some other negroes in the yard taking part with him, the guard was overcome, several of them being badly hurt, and Nicholas, George and John broke out. They were recaptured in less than a hour, and restored to confinement. George . . had been entrusted, by the master, with the keys of some of the cells, and allowed to lock up the prisoners therein at night. The three slaves, Nicholas, George and John, were tried for the violence committed upon the white men, found guilty, sentenced to be hung, and executed. . . as . . to Nicholas, his Honor . . charged . . It was his voluntary criminal act, . . The jury . . allowed nothing for the loss of Nicholas. In the case of Holmes and Toomer, . . plaintiff nonsuited."

Held: [434] "It was no act of defendant that made Nicholas a pestilence and the other slaves susceptible of the infection." [Withers,J.]

Ellis v. Welsh, 4 Richardson 468, January 1851. Action on the case. "The plaintiff . . was the owner of . . Morris, whom he hired to . . keeper of the American Hotel in Charleston, at $150 per annum. Morris was intelligent and capable . . and worth at least one thousand dollars." In July 1848 a white man went to Welsh, the defendant, captain of the *Columbus,* a regular packet between Charleston and Philadelphia, [471] "to engage a passage for his servant. . . The day after, Morris came on board, and asked if a white man had been there and engaged a passage

for him; . . He referred Morris to Baker, . . Morris was well dressed, had a watch, etc." Baker [469] "was the agent of the *Columbus* . . carrying of passengers was the chief business; many free negroes went. . . [470] He . . looked at Morris's papers . . [which] certified that Thomas Chambers had been born free, in North Carolina." "He sent Morris away, and told Morris he would not be taken as a passenger, unless he produced a white man to certify that the papers were genuine, and he, Morris, the person named. . . The next day Morris brought a person, genteelly dressed, who said he had known Morris from his early youth, and knew him to be free; . . After he had received from Morris his passage money, he gave Morris an order, by the name of Thomas Chambers, to Welsh, for his passage. . . Morris went aboard without concealment. The next morning . . Morris was missed from the Hotel, and it was believed had gone in the *Columbus*." Baker telegraphed a description of Morris and followed to Philadelphia. As soon as he arrived, he informed one of the owners of the boat. "They offered a police officer a reward to take Morris; but he declined the undertaking. Baker also went to an attorney, who advised him that proof of property and a power of attorney were necessary for the arrest of Morris." [469] "Welsh cursed the telegraph office; and said, if it had forwarded the dispatch in time, he could have put Morris in jail in Delaware; said that, as soon as the steamer reached the wharf, enquiry was made from the crowd on the wharf, if the captain was aboard. Welsh asked 'if any news.' He was answered, 'yes, there is a telegraphic dispatch of a fugitive slave aboard.' He said the case then was hopeless." "Morris was noticed . . to be the first to go ashore. . . [472] It was submitted to the jury, whether practically, though not legally, . . [freedom] did not follow the escape of a slave into one of the free States; and they were told, if such were the consequence, that it exacted the utmost care . . [473] from the master of a vessel that he should not give passage to a slave into a free State. . . submitted to them whether Baker had used the necessary precaution . . [474] verdict for the plaintiff for $1,140." New trial refused.

Swinton v. Egleston, 3 Rich. Eq. 201, January 1851. Will of Hannah Swinton, dated 1832: [202] "I . . bequeath twelve shares . . of my five per cent. stock, . . unto my executors, in trust . . that they shall pay over the interest . . to my slave . . Minda, for . . her natural life, quarterly, . . and at the death of . . Minda, the said . . stock . . shall go to the Sabbath School of the Circular Church, No. one;" The testatrix died in 1843. Held: the legacy to Minda is void under the 4th section of the act of 1841.

Crossby v. Smith, 3 Rich. Eq. 244, January 1851. [251] "It appears that most of the negroes were young, many of them incapable of laboring, and that the few, who by age were capable, either could not, or for want of a better control than their aged mistress was able to exert, would not, make crops adequate to the support of themselves and the young negroes."

Skrine v. Walker, 3 Rich. Eq. 262, January 1851. Will of Mary Vereen, dated 1832: [263] "I . . bequeath unto my friend, Mary S. M.

Hardwicke, my negro woman, Phillis, together with her future issue . . trusting that the said Mary . . will fully comply with my wishes, respecting . . Phillis, and her children which may hereafter be born; and it is further my will . . that . . Phillis should be allowed to keep with her, and have the services of her child, Martha, during the lifetime of . . Phillis; and at her death, I . . bequeath unto my great-grand-daughter, Catharine . . Martha, together with her future . . increase, under the same conditions," The great-grandchildren were made residuary legatees. The testatrix died in 1833, and Catharine [264] "about . . 1839, then aged about ten years, . . Martha was from two to six years of age at the death of Mary Vereen, and she has since had issue, the slave, William. Mary S. M. Hardwicke died about . . 1837, . . after her death, if not sooner, Phillis lived in a house in Georgetown, which was conveyed to her husband, Ben, a negro who had also formerly belonged to Mrs. Vereen, and had passed into the ownership of Benjamin King, who paid taxes for him as a slave, but permitted him, in most respects, to exercise the privileges of a free negro. The plaintiff [residuary legatee of Mrs. Hardwicke] lived at Cape Romaine, and . . Waterman was his agent at Georgetown, but neither . . exacted any wages from Phillis or Martha, nor exerted any act of ownership over them. Their taxes, as slaves, were paid by the owner of Ben. The wishes of Mary Vereen respecting Phillis . . appear pretty plainly by the will itself to be, that Phillis should be held in nominal servitude only: and the acts of the parties place this beyond doubt. The plaintiff, in his bill, . . [265] states, 'that . . Phillis having been a favorite servant of her former mistress, and being now aged and infirm, and standing in need of the aid and services of some younger person, the plaintiff had permitted her, from the death of his sister, Mrs. Hardwicke, . . after the example of his . . sister, and in compliance with the testamentary wishes of Mrs. Mary Vereen, . . to pass her life in exemption from labor, with the attendance of her daughter upon her person, which he conceived himself bound in conscience and good faith to do, though a departure from his legal rights; and to this end he permitted them to live in Georgetown, without any requisition upon the labor of Martha, further than necessary to the support of the mother and infant child, also the subject of this suit.' On 31st March, 1847, the defendants [residuary legatees of Mrs. Vereen] took possession of . . Martha and William, . . claim them either as bequeathed to them by Mary Vereen, or under their seizure, as set free by the tenant for life of Phillis, in violation of the Act of 1800." [263] "The plaintiff . . seeks to compel the defendants to deliver [them] . . to him."

Bill dismissed: [268] "The testatrix has not given, directly at least, any legal interest in Martha to Mrs. Hardwicke, . . If the wife of my coachman, both slaves, should become sick, during the . . [269] absence of my neighbor, her owner, and I should write a note to his overseer, that the coachman might remain with his wife, and yield her any service; could it be pretended that my neighbor had thereby received my bill of sale of the coachman? . . A slave, although a chattel, is also a person, and, to some extent, capable of the acquisition of property, for the benefit of the

master. But a privilege attending the person of the slave, or a trust for him, or an executory contract made with him, cannot be judicially established, either for the slave or his master. . . the legal interest in Martha is given to the . . residuary legatees, and the recommendation that she might be allowed to attend . . Phillis, is addressed to their benevolence . . [270] This view supersedes the necessity of . . consideration of the question, whether, if the plaintiff had title . . his practical emancipation of them did not subject them to seizure . . If both of the questions discussed, as to the title and seizure, had been decided in favor of the plaintiff, we should still have refused to him the specific delivery of the slaves . . [which he] seeks . . not from their peculiar value to him which damages would not compensate, nor, indeed, for his own service, but for the accommodation of an old negro woman; and we should have left him to his redress at law." [Wardlaw, Ch.] Dargan, Ch.: [271] "I concur in this decree, on the ground that there was a derelection of these slaves on the part of Mrs. Hardwicke, their legal owner ['as the bequest took effect before the Act of 1841 was passed'], and that the title was in the defendants as their captors under the provisions of the Act of 1800."

Johnson v. Clarkson, 3 Rich. Eq. 305, January 1851. Will of John Clarkson, dated October 2, 1840: [306] "I . . bequeath to my brother, William Clarkson, all of my property on certain conditions made with him.—Should he decline taking it, I will and bequeath it to the Rev. Wm. H. Barnwell on the same conditions. . . I appoint . . William . . my executor." With the will were [308] "found . . several . . [loose] papers [all signed by the testator.] . . [309] To William Clarkson.—By my will all my property will come into your hands on certain conditions, or on your declining to take it, into the possession of the Rev. William H. Barnwell, on the same conditions. Some of these conditions I now express . . All of my negroes must be emancipated, either immediately or at any time the Rev. Wm. H. Barnwell shall think advisable. Should immediate emancipation be deemed inexpedient, the proceeds arising from the lands and negroes, must be placed at interest until they are liberated, and then this accumulated sum, together with the sale of my lands and other moneys not specifically appropriated, shall be given to them, . . If the law forbidding the emancipation of slaves in South Carolina is then in force, so that *all* my negroes must be removed, then the husbands or wives of any of mine belonging to other persons, must be purchased from monies of my estate not vested in lands, if there is a sufficient amount, but if there is not . . [310] then so much as is necessary in addition, must be taken from the sale of the lands. The purchase is only to be made, provided no arrangement can be effected by which the husbands and wives will not be separated. . . I wish (if possible) that the negroes should not be sent out of America. I will expect you or the Rev. Mr. Barnwell, whoever receives the property, to make a will providing for the emancipation of my negroes, together with their husbands and wives belonging to other persons as stated above, if the negroes must be sent and remain out of the neighborhood. . . October 7th 1840. Husbands and wives must on no account be separated. . . Nov. 25th

1842. I became of age on the 5th of Jan., 1832. . . [311] Betty came into my possession 5th Jan., 1832. George, Caesar, Jack, Henry, David, Robert,—owned a fourth part of these six negroes until 8th Nov., 1836, when George and Caesar were taken by me in the division that was made at that time. George owed me $112 in August 1841, and has paid me very little I think since that date. But credit him with $25. Anthony was sold . . Dec., 1832, . . I wish a calculation to be made as to what the above-named negroes could have earned me after paying all their expenses, which sums I wish paid to them—I mean during the time I owned them. Deduct the amount which George owes me, and will owe me, unless he pays. Caesar's wages should be counted up to 1837, besides that he will be on the same footing with the plantation negroes. Betty and George, besides their wages, will be on the same footing with the plantation negroes. . . Nov. 25th, 1842. . . I understand that my will cannot be lawfully carried into effect. I wish no evasion of the law practised, but application to be made to the Legislature to permit it to be executed. . . January, 1843. Should my negroes be emancipated, instead of giving to them all the proceeds from the sale of my plantation, I bequeath $5,000 of the said proceeds to Miss J—— J——, (you will know who I mean,) and $5,000 to Miss A. E. M., (Rev. J. S. Hanckel can tell you who I mean,) and should my negroes not be emancipated, and there be no intention of its being done, I wish my property divided into five equal parts: one given to missions and charity; one to my brother William Clarkson; one to my brother T. B. Clarkson; one to Miss J—— J——, . . [312] and one to Miss A. E. M. . . Rev. Mr. Barnwell must be consulted as to the propriety of giving legacies to ladies. I wish it done, if there be no impropriety in doing it. . . Feb., 1849. I do not wish my negroes forced to go to Africa, if they do not wish it. . . Aug. 13, 1849." "The testator died . . October, 1849, . . The estimated value of the . . real estate is $23,500, and of his personal estate about $93,000. . . the complainant . . is the only child of a deceased sister." [306] "is informed and believes, that the mind of his uncle was in a diseased state in relation to his right to hold his negroes in slavery; that he spoke from time to time of emancipating them, but never came to any fixed conclusions, and plaintiff apprehends and so charges that the devise and bequest to . . his brother, was made by . . John Clarkson with a view that the said slaves should, after his death, be removed from this State and be emancipated; or that they should be held in nominal servitude; and plaintiff expressly charged [charges?] that the said bequest is made void by the Act of Assembly to prevent the emancipation of slaves, passed the 17th . . December, eighteen hundred forty-one; and that the said executor is bound to deliver up the said slaves to the next of kin."

Decreed: [317] "that a writ of partition issue" [315] "These [loose] papers . . have no legal operation. . . [316] The defendant does not state very particularly . . what were the conditions . . on which the slaves and other property . . was confided to him. . . confessedly for the benefit of the slaves . . [317] so far as the law would permit. But the law permits no such benefits" Affirmed.

State v. Nathan, 4 Richardson 513, May 1851. See same *v.* same, p. 428, *infra.*

Hamilton v. Feemster, 4 Richardson 573, May 1851. "The declaration . . complained that the defendant had arrested, and caused . . a magistrate, to commit to jail, as a runaway, Frank, the slave of plaintiff, when Feemster knew that he was not a runaway, . . [574] Plaintiff had a field within ¼ of a mile of defendant's; in that field, a negro, supposed to be Frank, was ploughing . . 1849. At sundown he sent the horse . . home by another negro. He was captured in the defendant's watermelon patch; . . and confined. A note was despatched . . 'We have caught . . Frank where he had no business, and have him in custody. We wish you to come and attend to the matter immediately, or let the law take its course. We wish you to examine whether all the rest of your boys are at home.' Answer by plaintiff: 'Sir, you can use the law, or do as you please. I am not very well, and can't come to night.' Soon after . . Feemster . . went to Hood, a magistrate, having the captive tied, under custody of defendant's son. . . [575] Frank was in the habit of running away, . . Defendant told Hood he had caught him in a place he ought not to have been, and wanted a commitment to take him to jail as a runaway. Before this time, Feemster had said he did not know whether Frank was a runaway. Having procured a paper from the magistrate, he carried Frank to jail, delivered him as a runaway, received the fees provided by law in such cases, and, on the second day thereafter, the plaintiff released him from jail, on the payment of the fees to the sheriff. . . The jury returned a verdict of one hundred dollars for plaintiff." Motions for nonsuit and new trial dismissed.

Bunch v. Smith, 4 Richardson 581, May 1851. Bunch had agreed with Smith to sell him Bob, Binah, and her two children, for $1100. Smith "stepped up to Bob, and asked Bob how he would like him for a master. Bob said he would not suit. Smith replied . . 'I have not come to consult you; I have bought you; and if you run away, from January to January, you are mine,' and advised Bob to reconcile himself to the change, and give him no further trouble. Soon after, Bob, having finished a job at which he was engaged, got up, and was walking towards his house, when Smith advanced to him, and said . . [582] 'it is of no use for you to run, for I have my dogs, and can catch you.' Bob replied, that he would run from no man. Smith spoke a word of encouragement to him. Bob went to the negro house; Smith waited awhile, until the cart came. He then ordered Binah to go and get ready; that he wanted her master, while they were there, to deliver them to him. She went to the negro house; Bob was standing at the door; Smith ordered Bob to go and get ready. He walked off, as if going round the house; Smith called to him, and he went into the house. Smith, Bunch and Gilmore were standing near the door, when Bob came out . . with his throat cut, and bleeding; he made a few turns in the yard, fell on his knees, sank to the ground, and there bled to death. When he came out, Smith told Bunch he had better get the doctor. After the negro was dead, Smith said to Bunch it was no trade; to give to him, Smith, his notes, and he

would give back to Bunch his bill of sale, and drew the bill of sale from his pocket. Bunch hesitated and said, he was not aware whose loss it should be. Smith said to Bunch, it is your loss; the negroes were not delivered. . . A new trade was made for Binah and her two children, for $650. . . [583] There was some evidence that Bunch was of a temperament to be agitated by the shocking spectacle of Bob's death. . . It was submitted to the jury to determine whether Bob . . [584] had been delivered . . before Bob's death. . . The jury found a verdict for the plaintiff for $450, with interest," Motions in arrest of judgment, for nonsuit, and for new trial, dismissed.

Cox v. Buck, 5 Richardson 604, May 1851. Will, 1820: "that all my negroes . . remain together until they shall build a house . . and after . . house is done, all my negroes . . to be equally divided betwixt my two sons,"

Broughton v. Telfer, 3 Rich. Eq. 431, May 1851. In 1831 Remley [432] "executed a deed, by which, after reciting that he was the father of certain slaves, namely, Elizabeth, Catharine, Ann, Eliza, Cinda and Harriet, and that, being unable to emancipate them, he desired to give them the benefit of their labor, and to suffer them to enjoy, as far as practicable, all the privileges of free person, etc., in consideration of the love . . which he bore to said slaves, and of the sum of $5, and for 'divers other good and valuable considerations,' he . . 'conveyed and delivered' unto . . Smith, . . Shaw, . . Waterman and . . Telfer, the said slaves, in trust, to treat them with kindness;—protect them in their just rights; exact from them no wages; permit them to go where they please, and to appropriate to their own use the proceeds of their time and labor: and, in the further trust, that, if any attempt should be made to enslave them, to convey them to some non-slaveholding State, etc. . . On the same day . . [he] executed his . . will . . in which he . . recognized the deed, and . . bequeathed his whole estate to the [said] trustees . . in trust for the slaves . . and appointed the trustees executors. . . Remley died . . 1839. . . defendant made seizure of the slaves [September 7, 1846] under the Act of 1800; . . June, 1847, the will was admitted to probate, . . August, 1847, the plaintiffs [heirs at law of Remley] filed . . bill . . charged that the trusts . . were void," The bill was dismissed by Chancellor Dargan: [435] "The case presents a perfect parallel to that of Carmille *vs.* Carmille,[1] . . In *this* case, as in *that*, there was an . . undisguised attempt to evade . . the Act of 1820, . . I have never been satisfied with the decision of Carmille *vs.* Carmille. I cannot pass it without expressing my dissent and disapprobation. It is founded upon what I conceive to be a very erroneous construction of the Act of 1820. That Act declares that there shall be no emancipation but by the Legislature. But the decision in Carmille *vs.* Carmille declares that the emancipator has only to be secure of his trustee to effect the emancipation of his slaves, . . [436] in as perfect a manner as if the Act of 1820 was not on the Statute Book. He is thus enabled to do by

[1] P. 381, *supra.*

indirection, and through a very flimsy and barefaced evasion, that which the law inhibits from being done by direct means. The decision is not in harmony with the spirit, the policy, or even the language of the Act. It would have been better to have held these evasions a fraud upon the law, and to have given the Act a construction which would have made such a deed as this simply void . . not only as to the trusts, but as to the title . . and in the case of wills, to have held the bequest charged with such trusts void, . . But Carmille *vs.* Carmille stands in the way of such a decision supported as it has been by a recent case: Carmille *vs.* Carmille, and similar cases, led to the Act of 1841. But in the case before me, the Act of 1841 does not operate. The deed and the will were both executed, and the testator, Wm. Remley, died, before the passage of that Act. The case must be decided . . by the Acts of 1800 and 1820. I am bound to submit to the authority of Carmille *vs.* Carmille, and of McLeish *vs.* Burch and Taylor,[1] decided by the Court of Errors, at May Term, 1849. And, according to these decisions, the complainants have no right. There is another aspect . . unfavorable to the claims of the complainants. Whether we consider the slaves to have been illegally manumitted by Remley in his life, or . . to have been done by his grantee or legatee after his death; in either case, the slaves were liable to manucaption under the Act of 1800. And they were formally seized for this purpose by the defendant, Telfer, previous to the filing of this bill." Affirmed.

In re Susan Huff, 6 Rich. Eq. 391n., June 1851. [392n.] "Without any sense of religion, ignorant who made her, unable to read or write, very hard of hearing, scarcely able to count ten;" she "owned some eight slaves . . derived from her mother and grandfather." "witness does not think she was competent to contract marriage; . . The ceremony was performed . . It does not appear that the marriage was previously known to any of her relatives. . . [Her husband] sold all her negroes,"

Compton v. Martin, 5 Richardson 14, November 1851. "The defendant hired to the plaintiff George, a young negro man, for two years, for . . one hundred and forty dollars. The plaintiff was to instruct George to make shoes. . . After he had been a few days with the plaintiff, George went off to the defendant's. . . There was evidence of some condition annexed to the hiring, that if George was dissatisfied, after two or three months trial, the contract should be at an end. . . George, as an apprentice, would earn for the plaintiff, during the first year, thirty-five cents a day, and during the second year, fifty-five or sixty cents a day."

McClenaghan v. Brock, 5 Richardson 17, November 1851. [18] "the plaintiff . . had taken the boat [of which Brock was captain] at Charleston, and had placed Richard . . on board for transportation to his plantation on Pee Dee, . . Richard was on the lighter [taken in tow] when . . wounded; . . [19] Henry, a bright mulatto, (a free negro, I presume,) ['intelligent, civil and humble in his demeanor,'] was employed . . [as]

[1] P. 413, *supra.*

second engineer; that immediately . . Richard, was seen wounded, . . the mulatto was in a state of agitation . . with a gun in his hand . . used it in shooting sea-fowl." [18] "The wound . . was so severe as to require immediate amputation"

Nonsuit, [28] "properly ordered:" [26] "slaves . . must be considered as passengers; . . He has . . reason. . . he is to be carried and treated *far differently* from goods, or brutes. . . [27] the injury . . was . . the consequence of his own act, . . if [Henry] . . was a free man, as we understand was the fact, . . the defendant would be no more liable for his wilful act, than . . for the act of a white servant." [O'Neall, J.]

Gardner v. Williamson, 5 Richardson 28, November 1851. "defendant was to furnish ten hands, . . and plaintiff [overseer] to work as the eleventh hand;"

Hays v. Hays, 5 Richardson 31, November 1851. [34] "She [a white woman] was then residing in a negro house."

Priester v. Augley, 5 Richardson 44, November 1851. "Josiah [fourteen year old son of the defendant] . . saw some one going off with sugar cane, and he shot [as directed by his father] . . to scare him. . . The night was dark, but a negro held a torch, . . the shot killed Adam."

Held: [46] "no one has a right to kill a mere trespasser. . . the father is liable,"

State v. Nathan (*slave of Gabriel South*), 5 Richardson 219, November 1851. [220] "Elizabeth Mitchell . . maketh oath [February 26, 1851] . . and saith that, . . 22d of February, . . at the residence of my mother, . . I was attacked by a negro boy . . I had a hard scuffle; he got me down on the ground and choked me until he left marks on my neck, and by my promising him . . money . . he let me go. I went in the house and gave him one dollar; . . he left;[1] . . I am not acquainted with . . Nathan, but from . . what I have heard, I believe it to be him; . . Nathan . . was . . tried before . . magistrate, and five freeholders, under the charge of an 'assault and battery with the intention of committing a rape.' . . the prosecutrix was sworn, . . [221] says . . Nathan, is the same boy at the bar, . . The court found the prisoner guilty of 'an assault and battery, and say that he shall have one hundred lashes on the bare back, with a switch—fifty this evening and fifty on Monday week, at the Poplar Spring meeting house.' In conformity with this sentence, the prisoner was punished. . . April, 1851, Elizabeth Mitchell made a second oath . . 'She . . run to her sister's . . upon returning . . she found the place where she got the silver dollar ransacked, and a ten dollar bill gone, . . has reason to believe . . done by . . Nathan.' . . a second warrant . . was issued, . . 'that Nathan . . one silver dollar . . from the person and against the will of . . Elizabeth Mitchell . . [223] feloniously did steal,' . . found guilty, and sentenced to be hung:" Judge O'Neall, in May, ordered a writ of pro-

[1] See State *v.* South, p. 433, *infra.*

hibition, [225] " that the slave be discharged from prison and delivered to his master." [224] " 1st. The prisoner's offence is not robbery. 2d. The former conviction is a bar to any other proceeding. . . [225] the Court of Appeals set aside the order . . holding . . that the only remedy was by appeal for a new trial.[1] . . new trial . . resulted in a mistrial. . . July, . . the prisoner was . . tried, the third time, for the robbery. . . [226] The Court found [him] . . guilty, and sentenced him to be hung, . . South appealed . . [231] opinion of a majority of the Court . . That the result of the former trial [for assault, etc.] . . was no bar to this prosecution, . . That the facts . . in this case, taken in connection with the result in the former case, constitute a case of robbery: . . That the evidence concerning the general transaction which was in proof on the first trial, . . was properly admitted:" Judge O'Neall dissented: [232] " there is no larceny: it is the delivery of a dollar without compulsion. . . The prisoner has been severely whipped,—and even if that was too small a punishment, do the humane principles of the common law demand any thing further? . . If the prisoner was *a white man and not a negro*, could such a course receive the countenance of any one? . . [233] I am sure, I am more gratified by the consciousness, that none of the blood of this negro will rest upon me, than the prosecuting parties can be, who will now be gratified by offering up his blood, as a sacrifice on the altar of public justice."

Miller v. Anderson, 4 Rich. Eq. 1, November 1851. [2] " By the first wife, who died . . 1824, he had three children—Edmund, . . about five years of age at his mother's death, and Mary, . . about two years, and Emily . . about four years, younger. . . [3] on the morning after the mother . . was buried, their father, in the presence of [witnesses] called up three little negroes, Bob, (about the size of Edmund,) Sue, (about the size of Mary,) and Elvira, (about the size of Emily,) and putting Bob's hand into that of Edmund, Sue's into that of Mary, and Elvira's into that of Emily, made the gift, saying the negroes were to be theirs (the children's) at his own death, and that what he did was done in compliance with his wife's death-bed request." In August 1846 he " spoke of the reason of his not having given possession, which was, that he had no more negroes than he wanted, and that he disliked separating his families of negroes and substituting others or strange negroes in their stead, for negroes were troublesome at best, and that it was time enough for them to have them at his death," Held: no valid gift.

McMullen v. Cathcart, 4 Rich. Eq. 117, November 1851. [122] " The negroes of the testator, . . (eleven in number,) were all bid off by . . Cathcart, with the exception of one negro boy . . bid off by . . Dunovant, but the boy being anxious to go with his kindred, . . Cathcart purchased him from Dunovant, at an advance upon his bid."

Venus Huger and Sarah, her child (free persons of color), suing per prochien ami, v. Barnwell (a free person of color), 5 Richardson 273, January 1852. " The plaintiffs complain that the defendant took them . .

[1] Act of 1833. 6 St. at L. of S. C. 489. State *v.* Nathan, 4 Richardson 513.

and holdeth them to their damage. Demurrer . . that the plaintiffs being persons of color, can have the writ of ravishment of ward[1] . . and *homine replegiando* is inapplicable to their case. . . sustained"

Thorne v. Fordham, 4 Rich. Eq. 222, January 1852. [223] "John Stocks Thorne, by his last will . . executed August 11, 1824, appointed . . Fordham executor . . and after a specific devise disposed of his estate as follows: 'All the rest of all my . . estate I give unto . . Fordham, to be held in trust by him for John, Thomas, Philip, Rebecca, Caroline and Susan Thorne, persons of color, and their heirs forever, to be applied to the sole use and benefit of them,' . . The testator died the next day . . The plaintiff is a black woman, the mother of the legatees, John, Thomas, Philip, Caroline and Susan, who were recognized by the testator as his natural children. She was formerly the slave of the testator; was emancipated by him in 1811, and was afterwards called by the name of Rebecca Thorne. Her title to the legacy is resisted in behalf of another Rebecca, a brown woman, sometimes called Rebecca Thorne and sometimes Rebecca Fordham. Her mother was Judy; and to be her father seems to have been claimed by both testator and executor. Judy and her child Rebecca were bought as slaves by the testator, November 18, 1817, for $700; and they were transferred by him, November 27, 1817, to his friend Fordham, on a nominal consideration. Rebecca, the brown, was always practically free; and in 1846 she established her freedom against Fordham in the Court of Law, by process *de homine replegiando*. . . she lived in the family of the plaintiff in early life until . . 1825, when she was removed to the house of another woman of color. She was maintained and educated and otherwise treated as the legatee, without any adverse claim, until about the time of filing this bill, . . 1848, although the executor has not paid over the principal of this share of the estate. The plaintiff, Rebecca, the black, relies principally upon the facts, that, at the date of the will and of the testator's death, . . [224] she had acquired by reputation the name of Rebecca Thorne, . . and that she was then free, and capable of taking on the terms of limitation in the will to her and her heirs; and she urges that the other claimant was not, at the date of the will, known as Rebecca Thorne, and that in fact she was a slave, and incapable of taking to herself and her heirs. The proof is clear of the title of the plaintiff to freedom and to the name of Thorne; but it is not decisive against the equal claim, in these particulars, of Rebecca, the brown. . . Unfortunately for the plaintiff, she is the strongest witness for her adversary. Independent of her acts and declarations, it would be difficult . . to find in the proofs, distinct evidence that Rebecca, the brown, had acquired the name of Thorne at the death of the testator, although she had been so designated for more than twenty years. Immediately after the death of testator, . . plaintiff gave a receipt to Fordham for $15 for the use of the children of testator, describing therein Fordham as 'trustee for my children, John, Thomas, Philip, Rebecca, Caroline and Susan Thorne, as per

[1] Act of 1740, sect. 1. 7 St. at L. of S. C. 397.

the will of their father, John S. Thorne.' At the same time she signed an acknowledgment of having received from Fordham, 'trustee for the children of the late John S. Thorne, for the use of said children,' various articles of apparel, a watch, umbrella, etc. On August 24, 1824, she signed a receipt to Fordham, 'trustee for the children of the late John S. Thorne, viz: John, Thomas, Philip, Rebecca, Caroline and Susan, as per the will of their father,' for $102.50, 'to purchase mourning for the female children.' . . [225] 1844, she accepted a conveyance for her life of a house and lot in Boundary street in this city, from John, Philip, Rebecca, the brown, Susan and Caroline, (Thomas then being dead,) in . . which conveyance the grantors designate themselves by the name of Thorne, and as children of the testator, and devisees of said house and lot under his will, and convey the premises to their 'mother, Rebecca Thorne,' as a residence for life. Rebecca, the black, is unlettered; and the fact, that she is mentioned in this deed of conveyance and in the earliest receipt, as mother of the other Rebecca, is urged as proof of fraud on the part of the defendant. It is more natural, however, to attribute this mistake to the ignorance of the scrivener. . . [226] These acts of the plaintiff . . with . . her acquiescence for twenty-four years, are serious obstacles to her claim. . . The order in which the name of Rebecca is inserted . . is a circumstance . . of some weight . . So, too, the description in the will, of Rebecca, and the other legatees, as 'persons of color,' is a pretty strong circumstance against the plaintiff. It is not according to the use of language in this region to speak of one altogether black as a person of color. The phrase is almost exclusively applied to one of mixed blood and color." Held: Rebecca the black is not entitled to the legacy.

Lawton v. Hunt, 4 Rich. Eq. 233, January 1852. See same *v.* same, p. 416, *supra.* Master's report: [234] "I attach great importance to the domiciliary arrangements of these negroes,—that they had families at Tibwin [devised to Mrs. Colburn]—that their garden patches were there—and in the case of the boatmen, that by reason of their frequent absence, Mr. Mathewes had their patches cultivated . . for them. . . an important point, also, that they were on the allowance list at Tibwin, and I find accordingly, that . . [they] are not residue, but that they pass under the devise to Mrs. Colburn." Wardlaw, Ch.: [244] "Another clause of the will has some bearing as to the question concerning the carpenters and boat hands, certainly so far as Nat, one of the boat hands, is involved: 'It is my will that . . old Nat, (commonly called Capt. Nat,) and old Patty, the dairy woman, at Tibwin plantation, and old Anne, the poultry woman and nurse at Snee Farm, be allowed to remain . . on the plantations where they now respectively are . . and I request my daughters, in consideration of the faithful services of the said slaves to me, that they will treat them with all the kindness consistent with their . . condition, and pay to each of them the sum of ten dollars annually during their several lives.' Of the 370 slaves owned by the testator at the time of his death, none is named in the will except the three mentioned . . who are severally denominated old, and recommended to the

special kindness of the two principal legatees. . . the six carpenters . . were as a corps separated from the laborers of the plantation and never engaged in agricultural operations, except for a short time upon some sudden emergency. In the winter, they worked at their trade at the various places of the testator, as the exigencies of these places required their peculiar service; and in the summer, they were usually let to hire in . . [245] Charleston. The testator mostly resided at Tibwin in the winter, and at Charleston in the summer. Tibwin was the original hive from which the other plantations were chiefly settled. An ' allowance ' list, and a ' working ' list, were kept by the overseer at Tibwin; and the carpenters were on the former list, but not on the latter; which, however, also omitted the names of such of the negroes as, from being superannuated or immature, were unfit for labor. But it appears that the carpenters drew their rations indifferently from the plantations of the testator, wherever they happened to be employed. The facts concerning the boat hands are of the same general character. They, too, were detached from the operations of Tibwin. Their ordinary employment was on board the sloop of the testator, in carrying to market the crops from his several plantations, . . and in carrying wood to the Ferry, . . [247] the master relies upon the fact, that the carpenters and boatmen had their patches and cabins at Tibwin. But this fact has little weight, when we remember that Tibwin was the original place of testator, and when we consider the intermixture of the families of slaves of neighboring plantations. If a negro who has a wife, and a cabin, and a patch on a plantation, is to be regarded as belonging to it, many slaves would be within the description who are owned by others than the proprietor of the plantation. . . [248] In our opinion, the carpenters and boat hands are bequeathed by the residuary clause of the will."

Grigsby v. Chappell, 5 Richardson 443, May 1852. " The negro was employed in Edgefield . . his mistress . . lived in Newberry. On Saturday evening, 1½ hours by sun, he left his employer to visit his home." " time of a great freshet . . A portion of the [toll-]bridge . . had been taken up . . to prevent it from being washed off. . . [444] witness told him he could not [cross], the river was high. The negro replied, there was a frolic in Newberry; he had swam the river before, and could do it again." He was drowned. " The negro was a carpenter, and very valuable." Held: the owner of the toll-bridge was not liable.

State v. Harlan, 5 Richardson 470, May 1852. Report of Judge O'Neall: [471] " The defendant whipped the slave [the property of another], giving him between two and three hundred stripes; '*he was whipped from the calves of his legs to his shoulders.*' He *had a pass*. The defendant . . found the slave in the road, near Churchill Gibbs' dwelling house, where he had a wife, and took him about four hundred yards, and inflicted the whipping. . . that the slave had gone to the house of a Mr. Fant, in his absence to Columbia, in the night time; that his wife . . had sent a white man . . to the kitchen, to order him (the slave) off. He accordingly obeyed, and went off hooping and hallooing, and calling his dogs. After bed time, he returned, stopped in the lane opposite to the

house, halloed, altered his voice, and pretended to be lost; enquired the way for Churchill Gibbs', which was in a short distance, and he knew the road perfectly well. This alarmed Mrs. Fant, and she ordered him off, and sent out George Tucker to send him off. He accordingly did so, and threatened to shoot him, and the negro left. Mrs. Fant told these circumstances to [her brother] the defendant; told him to whip the negro, and gave him the whip—'*a little India rubber whip.*' The negro's character as to honesty was proved not to be good; but he was uniformly pronounced to be a *submissive negro*. . . [472] The jury . . very properly convicted [1] the defendant." New trial refused.

State v. South, 5 Richardson 489, May 1852. See State *v.* Nathan, p. 428, *supra.* [409] "About 25th February, Nathan was, by the defendant, conveyed secretly out of the State: 26th, the magistrate granted a warrant against Nathan: after ineffectual search, a reward was offered for him, and this prosecution was commenced against the master. April 4th, Nathan was brought back, through the procurement of the defendant, by a person who got the reward. Nathan was afterwards tried, . . acquitted of the felony . . and punished for a misdemeanor of which he was convicted; afterwards tried for another felony, involved in the same transaction . . convicted and sentenced to capital punishment." "The defendant was indicted, under an Act of 1843,[2] . . [491] was found guilty." New trial refused. Judge O'Neall dissented.

State v. Holland, 5 Richardson 512, May 1852. [515] "Ingram, as executor, hired out and delivered the slaves, in December, 1849, each to a different person, for the year 1850," [513] "In the Summer of 1850, they each ranaway," [515] "and while they were in the woods, to wit, in December, 1850, [Ingram] hired them [out] again;" [513] "Some time after the second hiring, they were captured, or came in of their own accord." The defendant was tried and convicted of harboring the slaves.[3]

Atkinson v. Fraser, 5 Richardson 519, May 1852. [520] "The house . . was an old and valueless one, used as a negro crib,"

Douglass v. Price, 4 Rich. Eq. 322, May 1852. [326] "Jennet had a negro woman . . and two children, with which she became displeased, and directed Robert to sell them; and that Robert did sell them, and purchased for her a family . . Julia and her children."

Evans v. Evans, 4 Rich. Eq. 334, May 1852. [336] "the freeholders were called in [in 1830] by the executor, appraised the property, and threw it into lots. . . by some inadvertence a little female negro child, by the name of Sena, then of such tender age as to render it improper to take it from its mother, was put into one lot and its mother in another. The child had been valued at one hundred dollars. The lot, including the mother, was drawn by Sarah, (Mrs. Evans,) and that including the

[1] Act of 1841. 11 St. at L. of S. C. 155.
[2] 11 St. at L. of S. C. 257.
[3] Act of 1821. 7 St. at L. of S. C. 460.

child by Elizabeth, (Mrs. Haselden.) Evans and Haselden were present; and as soon as Haselden was informed . . that the child had fallen to him, disconnected from its mother, he remonstrated. . . He said that he would not take the child home; that if whoever drew the mother would take it at the appraisement, he might, and if he would not, he would give it to him. There was a general concurrence of . . every person present, that the child and mother should go together; and Mrs. Evans having drawn the mother, it was, at the executor's suggestion, and with the appraisers' approval, . . arranged that Evans should take the child along with its mother at its appraisement. He gave his note to Haselden for the amount."

Raines v. Woodward, 4 Rich. Eq. 399, May 1852. [401] " 1847 or 1848, . . he was again sold out, except as to twelve or fourteen negroes, which he removed clandestinely from the State, leaving a large amount of executions unsatisfied."

Cummings v. Coleman, 7 Rich. Eq. 509, November 1852. [510] " at the administrators' sale of . . Boyd's estate, . . 1836, . . [his widow] having bid off three slaves, Nelson, Jim and Harriet, for the aggregate sum of eighteen hundred and sixty-four dollars, led the slaves into the house, where her children were, Nancy, then about two years old, . . and Priscilla, being about one month old, in witness's lap, and formally gave Nelson to Nancy, Jim to Priscilla, and Harriet to Nancy and Priscilla jointly."

Bradley v. Flewitt, 6 Richardson 69, November 1852. " an action of trespass . . to recover damages for shooting the plaintiff's slave, . . The plaintiff and his mother managed badly," She " was very eccentric, and the plaintiff still more so, if not actually deranged . . for three or four years, their negroes were continually running away and depredating on their neighbors' property. In the summer of 1849, Jack and two other young men, an elderly man, a woman and a girl . . were runaway. Together with another runaway man, who was intelligent and of very bad character, they made a camp in a swamp in the neighborhood of the defendants. The camp ground was a clearing in a very dense thicket, and was supposed to be about twelve or fifteen feet in diameter. From this hiding place the negroes killed the hogs and sheep and robbed the fields of the neighbors. The defendants formed a party to hunt and capture them. The defendants were armed with guns. . . The party surprised the gang in their camp. The negroes took to the thicket. They were ordered to stop, but did not. All of the defendants discharged their guns, without effect, except Flewitt, who shot Jack." Two doctors were sent for, but Jack died. [70] " William Flewitt had pursued Jack, some time before he was killed, and Jack making his escape, as he ran picked up a stick, and looking back, threatened to knock Flewitt's brains out, if Flewitt put hands on him. . . the plaintiff said he wished Flewitt had had a gun to shoot Jack. . . [72] The jury found a verdict for the defendants."

Watson v. Hamilton, 6 Richardson 75, November 1852. " action of trespass for killing a slave . . Defendant was the overseer of plaintiff . .

Hamilton . . sayeth [at the inquest], That on yesterday . . about 12 o'clock, he had some difficulty with a boy by the name of Lem, (a son of the wife of the deceased Bob) when weighing the cotton picked that morning, . . [76] Lem undertook to resist him and bit him on the hand; and while Bob . . and some others were together, and some twenty other hands . . were . . going back to the cotton-field, witness . . came up . . to them . . he overheard Bob say, 'That he wished it had been him, that Hamilton had whipped, instead of Lem—that if it had, he (Bob) would have beat him (witness) in that cotton until he could not have felt him.' Witness asked Bob who he was talking to. Bob replied, 'To you, sir.' Witness . . then stepped up towards Bob, to take hold of him, with the intention of whipping him. . . Bob then stepped off one side of the road, and stooped down (as witness thought) in search of something to fight with. Bob then turned and made at witness. . . witness drew his knife, and as soon as Bob got near to him, witness struck at Bob with his knife but missed him. Bob then stepped the other side of the road (as witness thought) in search of something to fight with, but apparently finding nothing, turned around and came at witness with his fist doubled; . . witness struck or stabbed him in the neck or shoulder with his knife. Bob then stopped and looked at him very stern, and cast his eyes around as if in search of something again to fight with, (as he thought.) Bob turned again and stepped towards witness a few steps. Witness then said to Bob he would be ready for him in a few minutes, . . and went to the house. . . when he got about two hundred yards from the place where this affair happened, he learned from the negroes, that Bob was down and like to die. Witness then sent immediately after Dr. Ready, but before Dr. Ready arrived, witness learned from the negroes that Bob was dead. Witness says that he had taken two or three drinks of spirits that morning, but that he was sober"

Held: [78] "If the verdict were to be rendered by the Court, it would probably be different from those which the jury have found. . . [82] After two verdicts against the plaintiff the Court will not send the case back for a third trial, when it is so palpable that nominal damages only will be the result." [Frost, J.]

Deloach v. Turner, 6 Richardson 117, January 1853. [119] "that the negro was an habitual runaway, and that the defendant had taken him . . to break him from running away. There was no evidence of any agreement to pay anything, and the proof was that he was so habituated to living in the woods, that his hire was not of much value. . . that no one could break him [of running away]: . . [defendant] wished to ship him but Deloach would not agree:"

White v. Arnold, 6 Richardson 138, January 1853. [142] "The defendant . . received two slaves of the plaintiff . . on a contract of hire, at the very low rate of $36 a year for both, and the consideration moving from Arnold was, that he was thoroughly to instruct the negroes in the business of a Blacksmith, during the term of five years as to one and seven years as to the other: that during those terms they were to be completely subject to him: that he was to feed, clothe and shoe them,

and to take such care of them as would be proper, under the circumstances: that in case of the sickness of either, he was to be sent, on such occasion and such only, to White, the owner and the plaintiff. The negroes ran away and were lodged in the workhouse as runaways. Arnold . . would not take them out, on account of the expenses to be paid [$41.87], though he was willing to receive them again, if White would pay the expenses, release and re-deliver them,"

Held: Arnold must pay the expenses of the slaves in the workhouse.

Rumph v. Rumph, 6 Richardson 151, January 1853. "The seventh clause directed the executor in case there should be any danger of the negro's being sold or destroyed by the husband of the legatee, to take him into his possession, and to pay over the income to her during her natural life, and then to her issue."

Horlbeck v. Erickson, 6 Richardson 154, January 1853. "Defendant had hired the negro [Andrew] at $15 per month, . . a good carpenter, worth from $900 to $1000," He and another negro went out in two boats to try to save some floating timbers belonging to defendant. He [155] "directed the negroes to come back, . . Near the boats of these two, some negroes were returning to Christ Church in a boat, . . and they took away from these two boys their oars. . . each drifted out with the ebb tide. . . One . . returned the next morning; the other [Andrew] . . has not [been] since seen." Verdict for defendant. New trial refused.

Verdier v. Trowell, 6 Richardson 166, January 1853. "action of assumpsit on the implied warranty of the soundness of a negro [sold in 1848 for $500.] . . The negro . . was a notorious runaway, and had just been taken out of the jail . . at the time of the sale. . . *Dr. Fishburne*—Examined the negro . . he had tumors on his back, . . the effect of burns. . . The tumors were so large that he could not lie down without difficulty. . . he had irons off [*sic*] his feet, and had been recently taken as a runaway. *Dr. North*— . . He had large fleshy excrescences on his back; . . incurable; they were the effect of previous burns. . . his value is impaired 75 per cent., and he would not have him at any price. *Josiah Beck* . . [167] saw what appeared to be shot holes healed up near the tumors. . . [Witness for defence testified,] Trowell . . got the negro . . from a broker [in 1847]. He gave for him a negro woman worth $500 and 25 or 50 dollars. The negro was stripped and examined. . . If he was not a runaway his value would be $800. . . [168] verdict for the plaintiff for one dollar," New trial granted.

Mikell v. Mikell, 5 Rich. Eq. 220, January 1853. Wardlaw, Ch.: [222] "It appears, by the evidence, that the defendant in the fall of 1837, was managing as administrator of his intestate, . . the Blue House plantation, in the interior of Edisto Island, . . and that he was then . . managing in his own right, a plantation on Bailey's Island, . . separated from Edisto Island by a creek about one hundred yards wide, but the landing on Bailey's Island is distant from Peter's Point, the opposite landing on Edisto Island, about four hundred yards. That the defendant having an unusually large blow of cotton on his plantation on

Bailey's Island, which might suffer from exposure, ordered four of the slaves, Jemmy, Class, Amy and Ket, under his control as administrator . . to proceed to Bailey's Island and aid in picking out his cotton; . . [they] remained on defendant's plantation for three days, . . On Thursday evening, in calm weather, the overseer of defendant, under his order, provided a large and safe boat for the transportation of the four slaves from Bailey's Island to Peter's Point, and saw the boatmen on board, and the four slaves proceeding towards the boat, but did not see them aboard the boat. Except the risk of being driven out to sea in boisterous weather, the passage across the creek is regarded as safe as transportation for equal distance on land, allowing for the difference between water and land. The passage is frequently made by children going to school, and by negroes going to church. . . yet, the three slaves last named, after they passed from the ken of the overseer, were never again seen in life by a competent witness, . . A few days afterwards, the dead body of Class was found on South Edisto beach, and . . the dead body of George, a slave of . . Mikell, sen., the owner of Peter's Point, and a small paddle boat upturned, belonging to Sampson, another slave of . . Mikell, sen. Early in the morning of Friday, . . [223] the overseer found the boat in which they were directed to be transported, at the landing in Bailey's Island, and the boatmen at their proper employment. Jemmy, one of the four slaves, returned to the Blue House plantation in proper time, and he is still alive. From all the circumstances of the case, I conclude that the four slaves were safely transported from Bailey's Island to Peter's Point, on Thursday evening, and that in an attempt, moved by their own will, to return in the night to Bailey's Island in a small boat, three of them were drowned. . . [226] as I conclude that the slaves were destroyed in prosecution of a wilful act on their part, after they had left the employment of the defendant, and after proper caution on his part, I concur with the Master, that no liability on this account attaches to the defendant." Affirmed.

Abrahams v. Cole, 5 Rich. Eq. 335, January 1853. In 1836 or 1837 " Cole removed, with the negroes . . to Alabama, where he died, . . 1841. The negroes . . were removed, shortly after his death, to Texas, . . [336] In September, 1848, the negroes were sent . . to South-Carolina, and they were hired out in Charleston "

Paslay v. Martin, 5 Rich. Eq. 351, January 1853. In 1837 Cook sold Randall and four other slaves to Gary. " At the same time an agreement in writing was made . . by which the negroes were hired to Cook at . . fifty dollars per month." In 1838 Gary sold them to Paslay, who sold them to Bird, for the use of Mrs. Cook, Paslay's sister. [352] " Randall was generally used as a cook at the Victoria Hotel, of which Cook was the keeper,"

Harley v. Platts, 6 Richardson 310, May 1853. [312] " Hester was a good field hand, 25 or 30 years of age, with one hand that had been burnt, when young, and consequently somewhat drawn, though this did not injure her as a field hand, as she was smart and active, ploughed,

hoed, etc., as hands usually, and was worth $400. George, her eldest child, was a very likely boy, 6 years old, . . worth $200, perhaps more. Benjamin, a likely boy two years old, and . . an infant, of fine healthy appearance. . . in 1851, . . the group . . well worth 700 or $800"

Owens v. Simpson, 5 Rich. Eq. 405, May 1853. The testatrix was, "at the time of her death, seventy-two years of age; had been, for many years, infirm, and was, latterly, in many respects, of weak mind. . . [407] possessed of a plantation and a few slaves [one man and four women], who, from indulgence, were of very little value to her. . . she was much attached to her negroes, and very indulgent to them, and, for some time prior to 1848, had not made a support; . . [408] 'the testatrix was greatly troubled and excited, when, . . 1848, the sheriff . . made a levy upon her land and negro woman, Lucinda.' . . when she saw that the property was about to be sold, and her cherished object, of keeping her negroes together until her death, defeated, testatrix . . proposed to defendant, that if he would assist her to keep her property together . . she would give him a thousand dollars, to be paid at her death, . . [409] [Witness] says the testatrix was 'old and childish. . . is convinced that the influence of her negroes prevented her from selling them;'"

Parris v. Cobb, 5 Rich. Eq. 450, May 1853. [455] "As to some of these negroes, . . six in number, the defendant admits, that, in 1848, he took them to Mississippi, and sold them in the aggregate for $3,000, or $3,050. . . The defendant was a young man, and . . [456] had previously been engaged in negro trading, (buying and selling slaves,) in which he had not been successful."

Williams v. Cochran, 7 Richardson 45, November 1853. "before the death of White he had been his agent to traffic in the purchase and sale of negroes, . . That after his death he continued the business for the widow, . . [46] [He] proceeded to Mississippi with a parcel of negroes," The contracts in this connection are given in notes to pages 47-50.

Lark v. Cunningham, 7 Richardson 57, November 1853. "The plaintiff was the son-in-law of defendant, . . Ben and some other slaves . . were sent [by Cunningham to Lark, in 1851.] . . Ben remained in the possession of the plaintiff until . . 1852—ranaway; soon after in possession of defendant, who . . refused to give him up, . . Ben was proved to be worth $1,000, and his annual hire about $100. . . [58] Lark . . fell out with the negro, and another . . [was] given in place; that Lark and Pitts came after the negro he first had, armed with guns. The negro was demanded [of Cunningham], and he told Lark he had better . . let the negro alone. The negro was seen ploughing in a cotton field; they broke for him, and he ran and escaped. They came back to the house; Lark demanded that he should give the negro up, and cursed him for a d—d abolitionist, and rode off."

Brandon v. Gowing, 6 Rich. Eq. 5, November 1853. "in . . 1843 and 1844, the debts were contracted to . . Sarah Rice, for the hire of her boy Eli, a shoe-maker, who worked in the shoe shop of . . Gowing, and whose earnings were applied in part towards the payment of the mortgage debt."

Mallet v. Smith, 6 Rich. Eq. 12, November 1853. Will of William Hacket, who died in 1850: "I will . . unto my . . brother, Hugh Hacket, if alive at my death, my negroes, Alsey, Mary, and her daughter Louisa, and Dick, in special charge and confidence, that as soon as may be practicable after my decease, he do erect a comfortable house for them to live in, upon the Chambers tract of land, . . [13] and that [he] permit Alsey, Mary, and her daughter and Dick, there to reside in the enjoyment of all the rents and profits of said last mentioned tract, without any person requiring or exacting any service or labor from either of the said Alsey, Mary or Louisa, and that they be supported . . on the said tract . . during their several lives, out of the interest of the sum of one thousand dollars hereby set apart to the said Hugh Hacket for that purpose, and hire of boy Dick to be applied to their common support." "Alsey, Mary and Louisa, constituted one family. Alsey is sixty-five or seventy years of age; her daughter Mary forty-five or fifty years, and Louisa, the child of Mary, and reputed child of testator, is a bright mulatto girl."

Held: the provisions for the slaves are void under the Act of 1841.[1]

Brown v. Wood, 6 Rich. Eq. 155, November 1853. [161] "February 4, 1850, . . [the sheriff] sold twenty-nine negroes, and on March 4, . . he sold eighteen more . . Among the negroes sold on February 4, . . were Sophy and Nanny, purchased by . . [162] Wood, for $770; and Charlotte, purchased by . . Ashley, for $675. . . Nanny . . is the child of Sophy. Charlotte . . is also"

Roberts v. Yates, 20 Fed. Cas. 937 (16 Law Rep. 49), 1853. [Charleston *Courier*:] "Reuben Roberts . . is a full-fledged negro, now about twenty-four years of age, although apparently much older. (It has been often remarked that negroes wear their age better in slavery than in any other state.[2]) He is a native of Nassau, in New Providence, an island of the Bahama group, and was lately a cook on board a British schooner, the *Clyde,* Capt. Bethel, which vessel arrived at this port from Baracoa on the 19th May, 1852. On that day the sheriff of Charleston district, as directed by the law,[3] boarded the vessel, arrested the cook Roberts, and confined him in jail, where he was detained until the vessel was ready for sea. . . eight days; and for this his suit was brought in the form of an action in trespass for assault, battery, and false imprisonment, the damages being laid at four thousand dollars. . . The points indicated as those chiefly relied on by the plaintiff are the commercial convention between Great Britain and the United States of the 3d July, 1810, the reciprocity act of congress of the 29th May, 1830,[4] and the proclamation of President Jackson, issued in conformity to the said act on the 5th October, 1830."[5] Attorney General Hayne, for the defense, cited South Carolina acts of 1794, 1800, 1801, 1802, 1803, 1820, 1822,

[1] 11 St. at L. of S. C. 154.
[2] Roberts was a free negro.
[3] Act of South Carolina, Dec. 19, 1835. 7 St. at L. of S. C. 470.
[4] 4 St. at L. 419.
[5] *Ibid.* 817.

1823, 1825, 1835.[1] "The defendant, in addition, refers for justification and authority to the act of congress of 28th February, 1803, concerning 'the importation of certain persons into certain states.'[2] . . Gilchrist, District Judge, . . considered the acts of the state, under which the defendant justified, as valid and constitutional, . . verdict for the defendant."

Wiley v. Lawson, 7 Richardson 152, January 1854. [153] "he about two years since ran off from . . Mississippi, over into Texas, certain negro slaves, with a view of defrauding his creditors,"

State v. Motley, 7 Richardson 327, January 1854. "indictment against . . Motley, . . Blackledge and . . Rowell, . . a negro man [22 years of age] . . was taken up as a runaway by one Grant, on July 4, 1853; that during that night, Rowell, in company with Blackledge, called upon Grant, who transferred the possession of the negro to Rowell, he undertaking to take charge of him until Grant could take him to jail . . The next day, . . the negro . . was seen in the possession of the three prisoners. They had a number of dogs with them. They called the negro Joe, and he answered to that name. They said they had whipped him because he would not tell his master's name; but he repeatedly said that he belonged to Manigault. Three witnesses testified to the cruel and barbarous treatment to which the negro was that day in their presence subjected by Motley and Blackledge—two of the witnesses thought that the treatment was sufficient itself to kill him; the third, that if sent to jail he must have died. A physician, who heard the evidence, testified that the negro would have died from the abuse he received, as detailed by the witnesses. . . Circumstances, given in evidence on the trial, led to the belief, that after the witnesses left, the negro escaped, or was permitted to fly by the prisoners, was pursued by them with their dogs, overtaken and killed not far from the place where last seen by the witnesses. . . [329] 'the negro was humble . . as a dog.'" Motley and Blackledge were found guilty of murder. [327] "Rowell's trial was continued to the next term, for want of time."

New trials refused: [336] "The extraordinary and dangerous agencies used in the original capture, the cruel and protracted abuse of the slave when in their power . . preclude all extenuation, sought to be inferred, in the absence of proof, because of an alleged attempt to escape. However such disclosures may awaken the bitter invective and calumny of ignorant and deluded opposers of our institutions, *such* means, for such an end, will never find vindication nor excuse among ourselves." [Whitner, J.]

State v. Posey, 7 Richardson 484, May 1854. "the prisoner was indicted . . for receiving stolen goods, . . [485] the prosecutor, was robbed . . of $1,022 or 32, in bank bills, by a negro woman, Jenny,[3] whom he had on hire. . . [also of] his purse, handkerchief, knife and gloves! . . Anderson, . . having . . Jenny in his possession temporarily,

[1] 7 St. at L. of S. C. 433, 436, 444, 447, 449, 459, 461, 463, 466, 470.
[2] St. at L. 205.
[3] Jenny and her husband, the slave of the prisoner's brother, were convicted of the larceny.

had his suspicions awakened about interviews between her and the prisoner. He directed her to meet the prisoner on the night . . in his . . [486] stable, or at its door. He secreted himself . . saw the prisoner approach . . his (the prisoner's) negro . . and another . . whom he took to be . . the husband of Jenny, were stationed apparently as watchers. . . The prisoner . . said to Jenny, 'Have you got any more money?' She said, . . 'a little.' . . told him 'she wanted the gloves, knife, handkerchief and purse, which she stole when she did the money.' . . [Some weeks later] the prisoner came near the stable; . . he hugged her; she broke loose and went towards the door, and said, 'there is nobody here.' He said, 'Jenny, if you trap me, I'll kill you.' . . The woman had some bills marked; some . . were received next day from the prisoner:" Posey was convicted. Motions in arrest, and for a new trial, dismissed.

State v. Kinman, 7 Richardson 497, May 1854. "The prisoner was indicted . . for stealing . . [498] Henry, . . property of . . Hunter; . . for aiding the said slave to run away . . Hunter . . July, 1852, . . missed the slave. . . the prisoner left Greenville in November, . . with two wagons . . for sale; one was a large . . [500] closely covered wagon," [498] "was in . . Montgomery, Alabama, . . December, 1852; . . had in his possession . . Henry, . . traded [the large wagon] . . for an old carriage . . [said] he could send it . . by . . Henry, to his plantation, . . spoke of . . Henry *as his own*. . . started . . Henry with it. That night the prisoner left Montgomery. The next day . . Henry was brought back" and put in the jail. He had a pass, in the handwriting of the prisoner: [504] "Permit this boy and carriag to pass Montgumray to Yeuton Green county the peapal will please let him hav Feed for himself and horsès—he will pay for it." Hunter [498] "heard by letters . . that he was in Montgomery, . . sent an agent, who . . found . . Henry . . in jail . . sold him" and "brought to [Hunter] . . his price. . . [500] The carriage and horses . . were held by the person taking up the slave . . never claimed by the prisoner, . . [501] The jury found the prisoner guilty, but recommended him to mercy." New trial refused.

Morton v. Thompson, 6 Rich. Eq. 370, May 1854. Will of David Morton: "I desire that my negro property be appraised by disinterested persons, . . and I want Matilda and her children to be appraised together; and if any of the other girls should have any child or children before that time, that they be appraised in like manner. . . My two boys Wilson and Madison to have their freedom by paying the appraisement, and that my executors give them three years to pay it in. . . My negro woman Amy, I desire that she be free by getting a guardian. I do this for her kindness towards me during the affliction that it has pleased God to afflict me with; and that her youngest child, David, go with her. . . [371] I bequeath to Fairview Church one-third of my estate, after . . expenses are paid, . . [likewise] to the Domestic Missionary Society one-third . . to the Foreign Missionary Society one-third" The executors sold Wilson, Madison, Amy, and David, "having been advised that the

provisions of the will for . . [their] emancipation . . were illegal and void, . . The Ordinary . . decreed a distribution of the nett residue . . to Fairview Church, . . Domestic Missionary Society, . . Foreign Missionary Society" The heirs at law appealed.

Appeal dismissed: [376] "The case . . is an open, barefaced infraction of the Act of 1820, not falling within either of the specific provisions of the Act of 1841," "in [which] . . the law declares that the . . next of kin shall take." [Dargan, Ch.] The Chancellor gives [372] "a brief review of the action of our Legislature upon the subject of negro emancipation. A free African population is a curse to any country, . . and the evil is exactly proportionate to the number of such population. This race, however conducive they may be in a state of slavery, to the advance of civilization, (by the results of their valuable labors,) in a state of freedom, and in the midst of a civilized community, are a dead weight to the progress of improvement. With few exceptions they become drones and *lazaroni*—consumers, without being producers. . . governed mainly by the instincts of animal nature, they make no provision for the morrow, . . As an inevitable result, they become pilferers and maurauders, and corrupters of the slaves. Our early colonial legislation bears the impress of these great truths in the repeated enactments discouraging and restricting the emancipation of slaves. . . [373] The first legislation on this subject that I will notice, is the Act of 1800.[1] . . Act [of 1820[2]] rendered every private emancipation a nullity. . . In this state of the law, there were not wanting attempts at evasions. Some . . were successful. I am constrained to say, (and I say it with all proper deference,) that, in my opinion, the Judiciary did not seem to realize the stern, but wise and necessary policy of the State, embodied in the Act of 1820. . . Should not all attempts at evasions of the law have been held ineffectual and void? . . Carmille *vs.* Carmille[3] . . [375] afforded a precedent, and a form by which the act of 1820 might be practically annulled and the policy of the State baffled. . . The case of Carmille *vs.* Carmille, and other cases occurring about the same time, gave rise to the Act of 1841. . . intended to remedy the deficiency of the Act of 1820, in carrying out the policy of the State, and to provide for cases, which, according to judicial construction, were not embraced in any previous legislation. . . While the Act of 1820 defeats and renders null any open and undisguised attempt at emancipation by the act of the owner, the Act of 1841 renders null and void any indirect attempt to accomplish that purpose, by secret trusts, and other means of evasion, which according to the decision of the Court, was not reached by the Act of 1820." Decree affirmed.

Peay v. McEwen, 8 Richardson 31, November 1854. "Defendant took from plaintiff's slave Jacob, a fifty dollar bank bill, supposing it to have been stolen. He advertised for the owner, but no one appeared, and after waiting over three years the plaintiff brought her action for the

[1] 7 St. at L. of S. C. 442, 443.
[2] *Ibid.* 459.
[3] P. 381, *supra.*

amount of the bill. The bill . . was claimed by Sarah, another slave of the plaintiff. Sarah, in consideration of washing, sewing, etc., done for Caesar, a slave of . . Starke, had received the bill from Caesar, just before the removal of his master to Florida. The bill had been placed in Jacob's possession by Sarah, to purchase some articles for her in Camden, where it was exhibited to the defendant, who detained it. . . His Honor decreed for the plaintiff fifty dollars."

Affirmed: [32] "If . . Sarah rightfully acquired the fifty dollar bill, it thereby became the property of her mistress, the plaintiff. . . the silence of . . Starke . . notwithstanding the advertisement, raises the implication of his assent"

Knight v. Knotts, 8 Richardson 35, November 1854. "The plaintiff alleged that the defendant had agreed not to employ, in certain ways, Tom, a slave of plaintiff's, which he hired for the year 1852 [for eighty dollars]; and that he did so employ Tom, whereby his death was caused. . . the jury . . found for the plaintiff eight hundred dollars."

Peeples v. Smith, 8 Richardson 90, November 1854. The testator, [91] "a very aged man, eighty-three or eighty-four years old . . [93] gave [his will] . . to Nance, his usual house-servant and favorite, and directed her to put it away. . . [Later] he wished the will . . to burn it; . . She said . . she had burnt it; he said that was a lie, he had given no such orders. . . he ordered her whipped. Mr. Young gave her a few stripes; . . [two days later] Dr. Harris severely whipped Nance to make her produce the will; she averred that she had burnt it." Two days after the testator's death it was found at the bottom of a trunk, "in the leg of an old sock."

Richardson v. Railroad Co., 8 Richardson 120, November 1854. A negro boy was killed by a train. "The boy was lying along side of the rail, and asleep on his face, though outside of the track, on the ends of the cross ties," Held: the defendants are not liable.

Yancey v. Stone, 7 Rich. Eq. 16, November 1854. "Judy is represented to be a good cook, brought up by Mrs. Earle, and belonging to a stock of which several members were given by Mrs. Earle in her lifetime to her children. . . [Witness] has heard Mrs. Earle, while chiding Judy, declare her wish that Yancey had the servant, and state that when he did get Judy, the servant would be made to know her place better. . . Mrs. E. stated that she intended a child, now dead, of Judy, for Betty Robinson. . . [17] it was only when provoked with Judy, that Mrs. E. proposed to send Judy to the plaintiffs [her daughter and husband], in Alabama, . . and that she had heard Mrs. E. express the purpose of giving the infant child of Judy (probably Noe,) to John Robinson."

Polock v. Dubose, 7 Rich. Eq. 20, November 1854. He had nine negroes [25] "of more than ordinary value; that he had mortgaged a part of them to carry a son through College,"

Sollee v. Croft, 7 Rich. Eq. 34, November 1854. [37] "that slaves had much depreciated in price since January, 1840, . . Croft had . .

purchased . . Frances and her infant child, for six hundred and fifty dollars, . . [47] Of the notes for negro hire, was . . one of six hundred dollars, for hire of shoemaker for three years." [37] "Croft brought back [from Alabama] to South Carolina, at an expense of three hundred and fourteen dollars and thirty-seven cents, all of these [twenty] slaves except Chaney, who died on the road. . . [48] The plaintiff, in her bill, strongly charges that the estate of the trustee should be made liable for the value of Chaney, . . alleging that this slave was removed prematurely after the birth of a child, against the advice of a physician, under circumstances of exposure, in very inclement weather. All the circumstances in this statement, inferring carelessness or inhumanity, are thoroughly disproved. This slave was not started for six weeks after her confinement, and then, with the approbation of a physician; she was carefully conveyed, in moderate weather, in a covered wagon; was rested on the road, and in every respect treated with care and kindness; and her child survived."

Gibbes v. Cobb, 7 Rich. Eq. 54, November 1854. [58] "The negroes purchased . . were taken from the State by Jesse Cobb and E. M. Cobb, in company with other slaves of the firm, and have been sold abroad by Jesse Cobb. . . Jesse Cobb swears that having bought on speculation, he sold the . . slaves [Jim, George, Sam, and Frances] . . at a profit of two hundred and twenty-five dollars."

Aldrich v. Kirkland, 8 Richardson 349, December 1854. [350] "Nimrod's value was shown to be four hundred dollars; he was killed by . . Kirkland, . . 1849."

City Council v. Gadsden, 8 Richardson 180, January 1855. Special verdict: "Gadsden . . is engaged in the purchase and sale of negroes. . . That . . Nachmann did place with [him] . . a negro for sale—the expenses of sheltering, clothing and feeding the said negro . . to be paid by . . Nachmann. . . Gadsden, at the time of the withdrawal of the . . negro, presented the following statement of expenses:

Advertising, ...	$4 90
Board 20 days, at 25 cents, ...	5 00
Commissions 2½ per cent. on $525, ...	13 12
	$23 02
Cryer's fee, ...	1 00
	$24 02

. . [181] We further find that the City Council of Charleston, by its ordinance, . . 1839, ordained, that 'it shall not be lawful . . to . . establish any building, lot or enclosure within the city as a . . place for the . . accommodation of the slaves of other parties, . . any person . . offending, shall for each slave so admitted . . forfeit . . five hundred dollars.'"

Held: [183] "there is not a solitary act . . found by the jury against the defendant, that can . . be construed into a violation of this ordinance."

Holmes v. Caldwell, 8 Richardson 247, January 1855. [249] "I sold to him four negro draymen,"

Tupper v. Fuller, 7 Rich. Eq. 170, January 1855. "settlement . . 1828, in contemplation of the marriage . . with Margaret L. Guerard, . . comprised the estate of the lady, consisting of landed property and one hundred and twenty-three slaves"

Drayton v. Rose, 7 Rich. Eq. 328, January 1855. Will of Dr. Philip Tidyman, dated 1843: [329] "I . . bequeath, unto my . . daughter, . . all the house-servants usually employed by me in town and country for domestic comfort; . . [330] I order . . my executors to keep my whole estate together, during the life time of my . . daughter; to have my plantations cultivated by my slaves, as they now are; . . After the death of my . . daughter, I . . bequeath, to . . my cousin, James Rose, and his wife, . . or the survivor of them, my house servants, Nancy, Lucretia, Jenny and Judy, with my earnest request to protect and treat them with kindness; . . [331] After the death of my . . daughter, I order . . the remainder of my slaves to be divided in families, by my executors into seven equal parts or shares, one-seventh part whereof I . . bequeath" to a nephew and to each of six nieces. Codicil, 1850: [332] "since the date of my will . . Judy has had a child. I now, therefore, . . bequeath the present and future . . increase of . . Judy, to . . James Rose and his wife, . . or the survivor of them, in the same manner as I have heretofore given Judy to them."

Shands v. Rogers, 7 Rich. Eq. 422, May 1855. Will, executed 1823: "I allow my . . wife six negroes . . and at the expiration of her widowhood, the above negroes are to go to my four youngest sons: . . and as for Tena and Betty, they are to be sold and equally divided between my four named sons,"

Whitesides v. Poole, 9 Richardson 68, November 1855. "Mrs. Dunkin took with her Lucy, a girl born the plaintiff's. Lucy ran away and returned to the plaintiff's. Prudence . . [69] went . . in Lucy's place,"

Ex parte Bradley, 9 Richardson 95, November 1855. "Certain slaves of the relators were prosecuted by . . Caraway, and found guilty by a magistrate and freeholders, of harboring three runaway slaves in the employment of the prosecutor. The witnesses upon the part of the prosecution were the three slaves who had been harbored. They all testified, that when first taken up, they were interrogated by Caraway, and said that they had subsisted upon what they could get in the woods; that they were whipped, and thereupon they told the tale, in reference to the harboring, which they now told in Court; and one of them further testified, that Caraway said to him, 'if he did not tell the same tale to the Court, he,' Caraway, 'would whip him again.' . . For the defence a witness was offered to prove, that on some previous occasion Caraway had

said, ' that no negro under his control should tell anything against him.' . . excluded. A writ of prohibition . . [96] granted " Reversed.

State v. Bradley, 9 Richardson 168, November 1855. Indictment " for the murder of a negro boy . . between six and eight years of age, the property of the prisoner." The jury found the prisoner guilty. New trial refused.

Reeves v. Gantt, 8 Rich. Eq. 13, November 1855. Johnston, Ch.: " Trussell . . was always very indulgent to his slaves [among them [15] ' a deaf and dumb boy ']. After having become enfeebled by age and infirmity, he allowed them to do pretty much as they pleased. He gave them many liberties, allowed them to take up goods, liquor, groceries, etc., both for use and sale; and the consequence was, as uniform experience proves in every like case, they idled away their time, dressed extravagantly, and laid the sure foundation of their master's ruin, and of their own sale into other hands. . . [18] Trussell's case was peculiar: he never had any family, or domestic companions, but these slaves. His increasing age served but to render them more necessary to his happiness. . . He loved them; and the only aim of his remaining years was to make them happy, and to place them in the hands of some one likely to prove a kind master to them after he was gone. He declared . . that Gantt had been kind to him, and he owed him a good deal, and not wishing to separate his negroes, he intended to let him have them. Gantt was represented to be very indulgent to slaves."

Gadsden v. Raysor, 9 Richardson 276, January 1856. The slave died a few weeks after the purchase, though warranted by defendant sound in all respects. "A post-mortem examination . . [disclosed] chronic affections of the liver, . . [277] one [witness] had him employed in helping him to roll logs, within two months before he was sold, . . [278] never complained, . . [The presiding judge told the jury,] I thought, if a disease of any sort was easily removed, and by neglect or maltreatment it was allowed to prove fatal, this should not be accounted unsoundness . . verdict for the defendant."

Campbell v. Kinlock, 9 Richardson 300, January 1856. Certificate: [302] " Joe is an excellent bread and cake baker; he has been brought up to the business from a boy; he has not been out of the Miller family. Mrs. Miller is now out of the business, and sells him to change the investment. Lowest cash price, $800." On the faith of this paper, Joe was sold to plaintiff, in March 1851, for $775. [304] " In two or three weeks . . [he had a] hemorrhage. [In May he was attended by two physicians.] . . bought by . . Hogan [in June]. . . [305] gave $60; . . sold him . . [to R. S. Miller, who] . . [306] bought him from sympathy; he died . . [ten days] afterwards." " In 1851 negroes were high; Joe, if sound, would have been worth $1500." [305] " negroes employed in [a bakery] . . are mostly in the bake-house; let them off on Saturday night; . . wages of a good cake baker should be about $20 per month. . . [306] negroes work day and night at this business."

Escheator v. Dangerfield, 8 Rich. Eq. 95, January 1856. See State *v.* Singletary, p. 367, *supra*; and Rhame *v.* Ferguson, p. 371, *supra*. [98] "That . . Dangerfield sold . . three of the testator's children which had been devised to him in trust aforesaid, . . [for] between nine hundred and one thousand dollars, and applied the same to his own use, . . [On Dangerfield's death, his administrator took] possession of the stock of cattle . . and would also have taken possession of the slaves . . but . . [they] have been seized as slaves illegally emancipated, and are held by Dr. Theodore Gaillard as his property under the Act of 1800."

Held: [100] "Dangerfield must be held to have taken no beneficial interest in this bequest. . . [103] The trust . . is illegal, . . decreed that [the administrator] . . account . . for the sales of . . slaves" [111] "deliver up such of the slaves as he had in possession . . or . . may hereafter get possession of; and that an unconditional delivery by Gaillard to the plaintiff shall be equivalent to a delivery by the defendant." [110] "As there were no next of kin, the State succeeded to their rights."

Rumph, Guardian, v. Waring, 8 Rich. Eq. 136, January 1856. Will of Isaac Perry, who died in 1818, "that my two mulatto boys, . . Harry and Richard, should be free, and . . I hereby specially impower by this deed or will, my executors . . to manumit, . . by a due course of law, the above two named mulatto boys," Josiah Perry, a son, alone qualified as executor. "Col. Richard Perry . . cousin of Josiah . . [testified] that in 1820, . . [he,] with [five] others, was summoned by . . a Justice . . examined . . Harry and Richard, (the former . . then about seven or eight years of age,) . . signed the certificate required by law[1] . . [138] 'that they were of good character, and capable of gaining a livelihood by honest means.'" [136] "that Josiah . . executed a deed, emancipating the . . boys, . . that on the same occasion the witness emancipated two of his own slaves, Mary and Selina; . . [137] and that the certificate and deeds were placed in the register's hands, to be recorded, who gave a receipt . . produced, . . 'Received of Richard Perry and Josiah Perry, two instruments of emancipation, setting free . . Mary, and her child, . . also . . Richard and Harry.' . . that a short time after . . he heard that the papers had been lost; . . then procured another certificate, signed by the same parties, except [one] . . who had died . . lodged [it] with the register, and took his receipt . . 'that his object was to ask the assistance of equity to correct the mishap' . . [138] an amicable proceeding, . . 1824, Chancellor Gaillard . . decreed that [he] . . should execute another deed to take effect as of the date of the original deed of emancipation [of Mary and Selina]. . . The [second] certificate of the freeholders [in relation to Harry and Richard] produced . . bears date April . . 1821; . . [139] Then follows, on the same sheet of paper, the certificate of the magistrate [dated July 1821]: 'This is to certify that the . . certificate and deed of emancipation were duly executed before me, . . November, 1820; and . . Richard and Harry, were legally emancipated'" Till the death of the executor, in 1824, "Harry resided either with his aunt, a colored woman . . belonging to

[1] Act of 1800. 7 St. at L. of S. C. 443.

. . Brownlee, or with the executor, . . Some time after . . Waring [son-in-law] . . of Isaac Perry, . . sent for Harry, who continued to reside with him until his death, in . . 1852. . . In May, 1853, Harry left . . [the] possession [of defendant, Waring's second wife and administratrix], . . was taken by her directions in July . . he having in the meantime, through his guardian [Rumph], by letters of June, 1853, insisted on his right to freedom. The defendant pleads in bar . . [140] that the possession of Harry as a slave . . for such a length of time, extinguished his claim, if he ever had any, to freedom, . . the testimony of Col. . . Perry is, that . . Waring . . was aware of Harry's being set free by the deed, which deed he knew was lost; . . a son of Isaac Perry . . [proved] that Harry was always regarded as free by every one." Chancellor Dunkin, in February 1855, [143] "decreed that the bill be dismissed, but without prejudice, and without costs." "the Court of Common Pleas is the appropriate forum"

Affirmed: [144] "This Court is entirely satisfied with the proof of the freedom of the persons in whose behalf this suit is brought; but is compelled reluctantly to deny the relief sought for want of jurisdiction."

James v. Railroad Co., 9 Richardson 416, May 1856. "When Edmund [a slave] was about five or six years old, a son of Dinkins, a few years younger, was left for a month in charge of his aunt, . . and when she brought him home to Dinkins, she brought with him Edmund, as a nurse and playmate, and returned, leaving both Dinkins' son and Edmund. . . [417] In 1854, Dinkins was stationary agent of the defendants . . put Edmund on the road, as one of the firemen, taking the wages to himself. . . run over so that he died . . How he fell no white person could testify. . . [418] The jury found for the defendants."

State v. Gossett, 9 Richardson 428, May 1856. The prisoner was indicted[1] for stealing a slave, and aiding him to depart from his master's service. [429] "He confessed that he had sold Shannon's negro to Scott, in Georgia, for five hundred dollars and a creature [a mare]—that he gave two hundred and sixty-five dollars to the man who got him to carry the negro away, and who informed him that the negro had run away for some time, and his owner believed he was drowned—that the negro came to him in the road near to his house, and that he started with him about daylight." Found guilty.

State v. Chaney, 9 Richardson 438, May 1856. "indicted under the Act of 1754, for inveigling, stealing and carrying away a slave" Found guilty.

O'Neall v. Railroad Co., 9 Richardson 465, May 1856. Report of the presiding judge: "The three slaves were all children of the same mulatto mother by white fathers. The oldest, Andrew, was darkest and had black eyes; he was a bricklayer and plasterer; the other two, George and James, reputed to be the children of a former owner, had blue eyes, [[467] straight hair,] and were very light colored, although

[1] Act of 1754.

in them the African taint was plainly visible. George was a barber and James a house painter. All were musicians, young, very likely and smart, and either of them might have been sold for one thousand five hundred dollars. . . W., the former owner, . . had bought the mother and her first child. . . [467] had treated these boys with great indulgence, perhaps never deriving any profit from them, but sometimes placing them, or Andrew particularly, under the supervision of a marshal, who had once or twice flogged him for making no wages; that they had always lived in houses hired by themselves;" After W.'s death [465] "his executors, in . . 1851, sold the mother and her three sons to P., for three thousand dollars, on condition that they should not be sent out of the State, and if practicable should be kept together. . . [466] 1852, P. not finding them profitable, conveyed them, on like conditions, to the plaintiffs for three thousand six hundred dollars, of which the slaves themselves paid six hundred dollars. The plaintiff O'Neall . . let the three boys hire their own time, and control their own motions and contracts. In 1853, he exacted no wages from them. In 1854, they paid him about four hundred dollars under an arrangement between him and them that they should pay to him a fixed sum, keeping for themselves the surplus of their earnings. In the latter part of 1854, O'Neall failed in his business . . [Soon after] the three boys disappeared from Columbia, and have never been seen here since." They were seen "standing on the platform at Kingsville near the track of the South Carolina Railroad" and later "in the boat which carries the railroad passengers across the Cape Fear River. . . [467] the plaintiff advertised them as runaways and offered a reward of three hundred dollars for their apprehension, . . that P. whilst he owned them had given to each a monthly pass for the town, but prohibited their going out of town without his special permission, and had never superintended their labor further than to require from each the payment of a fixed sum per month; that . . O'Neall, treating them as before-mentioned, kept with them an account in his books . . that they dressed well, except Andrew, when at work; that they belonged to the bands of volunteer companies, and wore on parade the uniforms of those companies; that Andrew went with a troop of cavalry to Camden, and all of them, whilst P. owned them, frequently went into the country as musicians, by his permission; . . that some persons did not know that they were slaves, . . [468] and that some other slaves in Columbia were permitted to enjoy as large liberties as they did. . . [469] The jury found for the plaintiff one thousand five hundred dollars, which I suppose was meant as the value of Andrew only,"

New trial refused: [472] "The jury may have reached the conclusion *justly* from the proof, that the appearance of two was well calculated to deceive the vigilant, and that negligence on the part of the Company could not be inferred." [Whitner, J.]

Beckman v. De Saussure, 9 Richardson 531, May 1856. General William R. Davie left by his will, dated 1819, sixty-five negroes, to three of whom he bequeathed the sum of ten dollars each.

Britton v. Lewis, 8 Rich. Eq. 271, May 1856. [274] "The three negroes . . not . . sold by the executor . . were of no value, and were

offered for sale without a bid. Two of them, Nancy and Hardtimes, were superannuated, and Ben, though not old, was palsied and worth nothing. They are dead now; or if living would be a charge upon their owner."

Sims v. McLure, 8 Rich. Eq. 286, May 1856. "By an inquisition . . it was found that . . Sims 'is of unsound mind, and has been so from his infancy,' . . [287] he was entitled by succession to seventeen negroes and several thousand dollars; and . . on his coming of age in 1850, this property was put into his unrestricted possession by his guardian, . . [289] Of the seventeen slaves . . five were accidentally burned to death, three remain in his possession, and three were sold to his father-in-law" Two of the others were sold to Hunter, two to Wilkins, one to McLure and Wilson, and one to Savage.

U. S. v. the Thomas Swan, 28 Fed. Cas. 86 (19 Law Rep. 201), July 1856. "The steamer *Thomas Swan*, in . . 1855, made a voyage from the port of Baltimore to the port of Charleston, having on board . . seven negroes belonging to Thomas Petigru. . . The libel charges that the steamer . . has incurred the penalty provided in the act of congress, of 1852,[1] because of the absence of the several provisions for the security of passengers, . . [89] decreed, that the respondents pay to the libellants the penalty of five hundred dollars, . . with the costs": [88] "although the negro is regarded, in law, as but a chattel, yet the discrimination recognized by the same law, between the negro and any other chattel, is sufficient to bring him within the definition of a passenger." [Magrath, J.]

Smith v. Hamilton, 10 Richardson 44, November 1856. Action of slander against Hamilton for saying that plaintiff, a white woman, had a mulatto child. "The jury found for the plaintiff a verdict for $3000."

Pringle v. Rhame, 10 Richardson 72, November 1856. "The plaintiff lives in Florida and has removed all his negroes there, except Flander, who was left because his wife and family are here."

Welch v. Brooks, 10 Richardson 123, November 1856. "assumpsit on a promissory note . . for three hundred and forty dollars, . . Brooks, bought . . Cato [from the plaintiff in 1854.] . . the plaintiff . . warranted . . the soundness, 'except an affection of the jaw.'" Within a few weeks Cato died of apoplexy. [124] "the complaints of Cato of pain in his breast and head, made to witness for several years before his death," were admitted in evidence. [126] "no physician was called to treat the negro before his death. . . [127] no evidence, . . that the symptoms had become so aggravated that a prudent and humane owner would not have omitted the discharge of a duty incumbent upon all." The jury found for the defendants. New trial refused.

State v. Kennerly, 10 Richardson 152, November 1856. "The defendant was indicted for perjury . . assigned upon evidence given by [him] . . before a Court of Magistrate and Freeholders on the trial of . . [his] slaves, . . charged with larceny and with the receiving of stolen

[1] 10 St. at L. 62.

goods. The negroes were arrested on Saturday, of which the defendant was informed, and of the nature of the charge; and on the same day he and Louisa, one of the negroes, were seen together between the brick yard and Columbia. On the trial, the defendant swore, . . [153] He 'searched Louisa—her pockets, etc., but did not strip her. . . He thought he made search on Monday [as he] . . Did not go down . . Sunday,' . . directly contrary to the evidence given by him . . before the Court of Magistrate and Freeholders." Held: [154] "the matter falsely sworn to . . must be material to the question depending."

Jolliffe v. Fanning, 10 Richardson 186, November 1856. Elijah Willis, by his will, dated 1854, bequeathed Amy (his slave mistress), her seven children (some of whom were his own), and their descendants to his executors, directing them [188n.] "to bring or cause said persons, and their increase, to be brought to . . Ohio, and to emancipate and set them free" He also bequeathed and devised to his executors all the rest of his property, from the sale of which to purchase lands in one of the free states for said slaves, to stock and furnish the same, and to place said persons in possession thereof. [186] "Elijah Willis, taking with him his negro slave, Amy, and her children, and her mother, in May, 1855, left his home [in South Carolina] . . for Cincinnati, . . He arrived in a steamboat, and leaving it at a landing, on the Ohio side . . [187] he died between the landing and a hack, in which he was about proceeding, with his said negroes, to his lodgings." His heirs-at-law contended that the will was void under the act of 1841, and also [191] "undertook to show insanity, fraud, and undue influence, by proving . . that the deceased was often under gloomy depression of spirits—avoiding society on account of his connection with Amy, by whom he had several children; that he permitted her to act as the mistress of his house; to use saucy and improper language; that she was drunken, and probably unfaithful to him; and that she exercised great influence over him in reference to his domestic affairs, and in taking slaves from his business, to make wheels for little wagons for his mulatto children, and in inducing him to take off for sale the negro man who was her husband. . . [He] complained of being charged one hundred dollars by a physician in Wilmington, for attendance on one of these slaves." Contrary to the instructions of the judge, the jury found against the will.

Verdict against the will set aside, and new trial ordered: [200] "the disgust which is properly felt at the course of conduct which supplied the motive to make such provisions . . in favor of such beneficiaries, [can not] be permitted to blind us to the fact, that such motives and such provisions and such objects of bounty were perfectly consistent with the unconstrained pleasure and natural sentiments of such a man as Elijah Willis was." [Withers, J.] See Willis *v.* Jolliffe, p. 469, *infra.*

Burton v. Yeldell, 9 Rich. Eq. 9, November 1856. Will, 1854: [10] "I . . direct that my executors do sell the whole of my estate both real and personal" A bill "was filed by the beneficiaries under the will . . [11] asking the Court for a specific settlement of the property named in

the will, upon the same trusts and limitations as expressed therein relative to the proceeds of the sale of the said property. It was urged by the complainants, that the slaves of the testator came to him from the family of his wife—are all of kin to each other, being chiefly the offspring of a single family—and are unusually valuable and likely, of excellent character and rapid increase, and would unquestionably yield a larger estate for transmission to the infant remainder-men, than would the fund arising from the proceeds of the sale of said estate though managed with the utmost prudence. . . The executors in their answer, . . [12] deny that the said negro slaves are of rapid increase, since . . the fifteen or sixteen negroes of which the testator died possessed, were the accumulation of some twenty-five or thirty years, and there are but few children now among them. . . [14] bill . . dismissed."

Affirmed: [17] "The increase in the entire slave population of South Carolina from 1840 to 1850 was less than eighteen per cent. for the ten years, which would be an average of less than two per cent. per annum. It may be said, *that* increase was less in consequence of emigration. But, during the same period, the increase of the slave population in the whole United States was not quite twenty-nine per cent. for the decade, or about three per cent. per annum." [Dunkin, Ch.]

State, ex rel. Mordecai, v. City Council, 10 Richardson 240, January 1857. "The Relators are brokers, . . doing business in Charleston. The slaves supposed to be liable to the tax [of ten dollars per head [1]] . . are from parts beyond the limits of this State, and are in their hands . . for sale. . . [241] [one] relator . . has been assessed nine hundred and thirty-five dollars,"

Held: I. the tax is not [245] "forbidden by the Constitution of the United States, . . clause 5, sec. 9, art. 1, . . [II.] [246] The second clause of sec. 10, art. 1, . . would seem to have a more plausible application . . two objections . . [247] the slaves brought from Virginia are not 'imports' in the sense of the Constitution. . . if they were, the tax . . is not a tax on an 'import;' for the ordinance . . interposes no obstruction to an importation . . but it levies a contribution . . after they are imported," [Withers, J.]

State v. Winningham, 10 Richardson 257, January 1857. "The prisoners, with four other persons, . . were indicted for the murder of a slave, . . James, . . [259] The proof was clear, that thirteen oxen belonging to Col. Morris, were stolen from his cattle-pen. . . In the pen was the house of the cattle-minder, James, an exceedingly vigilant and faithful negro. . . [Miller confessed] [260] that Winningham and Sancho [a slave belonging to Elliott] had been twice to the pen to get the cattle—that the negro was too watchful—that they determined to kill the negro . . [Bowman said] [261] Winningham . . knocked him down, . . Miller cut his throat, and Sancho carried him out: . . Winningham stated that . . Sancho said he had killed him. . . [262] The jury . . convicted . . Miller and . . Winningham."

[1] City ordinance of May 21, 1855.

New trial granted [269] "to Winningham as a matter of strict, technical right, and . . to Miller, *ex gratia*." Judge O'Neall dissented: [270] "when they stand before me plainly guilty of the most atrocious murder, ever committed in the State, I should feel . . derelict in my duty if I did not hold them to a strict observance of law."

Vose, administrator of Dangerfield, v. Hannahan, 10 Richardson 465, January 1857. "trover to recover damages for the conversion of . . Eve and her eight children and two grandchildren. . . [466] The defendant claimed them by virtue of a deed from the intestate, executed . . 1852, . . a few days before his death. . . Neither the defendant nor intestate expressed an intention to make the slaves nominally free. Intestate said to . . Johnson, that he wished to make his children (Eve's issue,) free, and desired defendant to act for him. . . The plaintiff resisted the deed on the ground, that there was a secret trust . . verdict for the plaintiff, for the value of the negroes."

New trial granted: [472] "it is without precedent to sustain the attempt now made by an administrator to dispute the gift of his intestate. . . The Act of 1841 . . third section . . plainly show [*sic*] that none save the 'distributees or next of kin' were intended to divest the legal estate," [O'Neall, J.]

Noble v. Burnett, 10 Richardson 505, January 1857. The testator bequeathed to his wife "his good and aged servant Doll, and all her descendants, with the husbands of her daughters;"

Huger v. Huger, 9 Rich. Eq. 217, January 1857. In 1856 the Savannah River plantation of the testator, Daniel Elliott Huger, [218] "with all the negroes thereon (one hundred and forty-two in number), stock, and other . . personal estate, belonging to the premises, including seed rice, not exceeding four thousand bushels, were sold as a whole for . . one hundred and eighty-eight thousand dollars. . . [219] [to] Izard, . . whose wife is one of the devisees . . he being . . the only bidder." Chancellor Dargan decreed [232] "that the . . sale be confirmed," "The average price at which the one hundred and forty-two negroes sold, considering the appraised value of the land to have been given, was about five hundred and fourteen dollars. There was evidence that, about that time, gangs of negroes, without being sold with land, had brought an average price as high as six hundred and nineteen dollars. It is perfectly obvious, that negroes sold without being encumbered with land would yield a higher average price than where . . the sale of the negroes was coupled with the sale of land to the amount of one hundred and thirteen thousand dollars."

Affirmed: [237] "It is said, that the sale ought to be set aside, because . . [238] one of the parties in interest . . was excluded from competition at the sale by an odious condition. To understand this objection, an explanation is necessary. The testator had a faithful and favorite slave named Jackey, who was a kind of steward, kept the keys, etc., and was eminently trustworthy. Him the executors [the four sons of Huger] wished to favor, and accorded to him the privilege of '*choos-*

ing his master;' in other words, of electing the person to whom he should be sold. And when the plantation, negroes, etc., were put up for sale *in solido*, one of the conditions was, that Jackey, with his family, should have the privilege of going with the gang to the purchaser, or of being detached from the purchase; deducting from the bid for the whole the appraised value of Jackey and his family." [222] "This was the source of much of that excitement and intensity of feeling which have pervaded these proceedings. The arrangements that were made on this subject were clearly within the discretion and competency of the executors." [Dargan, Ch.]

Monk v. Pinckney, 9 Rich. Eq. 279, May 1857. Johnston, Ch.: "This is a bill brought by colored persons formerly slaves of the late James W. Monk, against the executrix of Dr. Cotesworth Pinckney, to enforce a trust undertaken by him for their benefit. . . 1830, James W. Monk, duly executed a deed, by which, reserving a life estate to himself, he conveyed to Dr. Pinckney . . [280] Bella, (the plaintiff Isabella,) and her children then born, Margaret, Elizabeth and Anna, and also two other slaves, Sophia and Billy, *in trust*, that Dr. Pinckney on the death of Monk, should, at his own . . expense, convey . . Bella and her children, and all her and their increase and issue, existing at Monk's death, out of this State, to whatever place they might select within the Atlantic States, and then and there make them 'absolutely free' . . 1832, . . shortly before his death, Monk made his will; by which he appointed Dr. Pinckney his sole executor and legatee, and . . declared the legacies thus given to be *upon trust*, 'to afford to . . Bella, already conveyed by me under certain trusts to the said Dr. Cotesworth Pinckney, a decent support during her life, and also to educate and support such children as she may have living at the time of my death; and after the death of . . Bella, then in trust to support . . every one of the said children until they shall severally come to the age of twenty-one years; when an equal . . portion of the said property, both real and personal, shall be assigned . . to each of the said children, as they shall severally come to the said age, to be theirs in fee simple forever, free of any trust or charge whatever.' Bella and her children have been in Connecticut . . many years, and some, if not all, of her daughters, have married white men there. . . [281] 1845, Dr. Pinckney filed . . petition, . . prays leave to remit the nett balance of the estate to Bella and her children for their maintenance . . and that he be discharged of his trust. Of course the petition was dismissed. . . Mr. Burbidge . . testifies, that on two occasions, from 1838 to 1840, he carried about two hundred dollars to Bella from Dr. Pinckney. Dr. Pinckney died in 1847, and the defendant is sued as his executrix."

Decreed: that the defendant pay to Isabella Monk interest on the capital (eight hundred and eleven dollars and seven cents), from 1838 (when Monk's estate was sold), during the life of Isabella, and upon her death distribute the capital equally among her children who were living at the death of Monk.

Moore v. Hood, Guardian, 9 Rich. Eq. 311, May 1857. Will, 1840: "Daphna, and her increase, to go to said Sophia's children at her death." The guardian of the children, after their mother's death in 1841, [312] "took possession of . . Daphna, and hired her out for the years 1842, 1843, 1844, and 1845, inclusive. In that time she had five children, three of whom had died; at the October term, 1845, of the Court for said county, he applied for a sale of Daphna and her two surviving children . . stating that 'it is difficult to hire at any profit but have been an expense to the owners;' . . An order of sale was made . . [313] [and] the sale was reported to have been made . . December, 1845, viz:

Daphna and her infant child for, . . $350 00

Hannah, a small girl child, (child of Daphna) . . 160 00"

Wardlaw, Ch.: [315] "it was a most unfortunate and injudicious sale for the wards of the guardian. It occurred at a time when property was extremely low, . . the aggregate sales of Daphna and . . children did not near equal the valuation placed on Daphna alone in 1840 by the testator, . . [but] The authority to sell emanated from a Court of competent jurisdiction. It was made . . at public outcry after four weeks' notice, at a public place, and for the highest bid that could be had, when several were bidders. The negroes were bought by a speculabor in that kind of property, there being three of that class of persons at the sale. The conduct of the defendant . . was fair; for . . the auctioneer, states that the woman and infant were sold together, and the oldest girl by itself, and some persons thought they ought not to be separated; the guardian replied, 'he must sell so as to git the most.' . . [316] in the opinion of . . the auctioneer, [and two others, $510] . . was their value. . . the woman had bad teeth, feet cracked-open, frost bitten, sleepy and sluggish; the infant sickly, and looked as if it could not live. . . [Others] testify to none of these unsaleable qualities, in their opinion they were worth, . . from one thousand dollars to eleven hundred dollars. The complainants . . were present at the sale, and . . forbid it, because they were unwilling that the negroes should be sold, and because they thought the guardian had no legal authority to sell. I have no doubt this contributed in some degree to chill the bidding and injure the sale," [320] "I think . . that the guardian must be held to have taken the risk on himself that the slaves would bring a full price under the circumstances of sale, and that he is accountable for their full value. The negroes were sold to a negro trader, and have been eloigned, so that it is now impossible for the plaintiffs to pursue the property itself."

Mosely v. Crocket, 9 Rich. Eq. 339, May 1857. [342] "1846, the plaintiff executed . . a bill of sale for five negroes, viz: Nelly and her four children, . . in consideration of . . fifteen hundred dollars."

Henry v. Graham, 9 Rich. Eq. 346, May 1857. "It was proposed to charge the administrator with the value of . . Guinea Jack, appraised at six hundred dollars, and Tinker Jack, appraised at eight hundred dollars, . . In 1855 the administrator hired these negroes to the . . Railroad as track hands, and . . they were both killed. Guinea Jack, it is supposed,

placed himself in the rear of the mail car, without the knowledge of the conductor, and in jumping off, while the train was in motion, fractured his skull; . . Tinker Jack was probably run over while asleep on the track; . . [347] The usual employment of track hands is to remove obstructions, raise up the cross ties, straighten track, spike down track, and clear out the ditches. They do not go upon the train, except upon some exigency, such as an accident. . . when they are transported to the scene of the disaster under the care of an overseer. They are also, when allowed to visit their wives, carried on the train, but on such occasions a ticket is required from the overseer. . . [348] Many witnesses . . were of the opinion that there was greater risk in hiring negroes to the railroad than on a plantation, . . one or two . . expressed a preference for the railroad, and thought the negroes better treated, and the danger equal. . . testified . . by several . . employed on the railroad, that of the one hundred and thirty track hands . . these were the only instances that they had heard of any being killed." Held: the administrator is not liable.

Crouch v. Culbreath, 11 Richardson 9, November 1857. "1856, the defendant [E. Culbreath] sold to the plaintiffs [Crouch and H. C. Culbreath] a young negro man named Vincent, for one thousand and sixty dollars, . . 'I warrant . . sound in body and mind.' . . after the sale . . [two physicians were] called to examine [him] . . [11] concurred . . that Vincent had had chronic rheumatism many years, . . old Isaac, . . the reputed father of Vincent, . . [12] had scrofula, . . Crouch was then making preparations to start westward with negroes—Vincent said he was mighty willing to go—would go anywhere, so he did not belong to a Culbreath. . . H. C. Culbreath made offers to the defendant [his uncle]; first, of one hundred dollars to take Vincent back; second, to arbitrate; third, of two hundred dollars to rescind; . . [13] the defendant refused, saying that the boy was sound when he sold him, and that he would not have him again as he had jerked him down . . For the defendant, there was testimony that the defendant . . bought Vincent in 1845; . . about ten years old, . . grown to be a very large, stout and strong fellow; . . always clumsy, and was (as it was variously termed) double-jointed, box-ankled, or African-footed; . . [16] The jury found for the plaintiffs $200." New trial refused.

Hadden v. Leibeschultz, 11 Richardson 505, November 1857. The plaintiff "had entrusted the slave, his property, to the care . . of . . McEvoy, a boot-maker . . as an apprentice—that disgusted with the noise which the slave made at night in his attempts to play the fiddle, the defendant, after previous warning to the slave, but without application to McEvoy, on two successive nights, entered the shop where the slave was playing, and flogged him in the presence of McEvoy, and against his remonstrance—not desisting the last time until, after choking McEvoy, he had been hustled out of the shop by other slave-apprentices, whom McEvoy called to his assistance."

Held: the plaintiff is not entitled [506] "to recover the forfeiture prescribed by the fifth section of the Act of 1839. . . [507] an action of trespass . . was the only remedy."

Rippy v. Gilmore, 9 Rich. Eq. 365, November 1857. Will of Arndell, executed 1826: "to my beloved wife, Rhody, . . during her natural life or widowhood, . . one negro woman named Eliza," In 1846 the widow, [366] "in consideration of two hundred and fifty dollars, paid her by . . Sarratt, . . sold . . to him Emeline, a small girl, child of Eliza, warranting the title; and subsequently Sarratt sold this negro, and she has been carried out of the State, and cannot now be found. . . [367] 1857, the Commissioner . . recommended that the estate [of Rhody Arndell] . . be charged . . with [eight hundred dollars] the value [of Emeline]." Report confirmed.

Gourdin v. West, 11 Richardson 288, January 1858. "Magee . . hired . . John, of plaintiff, to work on board of the steamer . . which . . he commanded. . . the steamer . . saved a wreck. . . a Committee of the Chamber of Commerce . . awarded a certain amount to the . . crew . . Capt. Magee died a few days before . . and the defendants, his executors, represented the whole slave crew, . . giving consent for them . . and they received the amount awarded to the slave crew. . . seventy-three dollars and sixty-three cents was allowed to the steward, (John.)"
Held: [295] "the amount awarded for John's services belongs to Captain Magee, . . because his contract with the plaintiff confers the right to receive it."

Josey v. Railroad Co., 11 Richardson 399, May 1858. Rose applied "for a ticket to go to Kingsville which was refused by the agent, because she produced no authority from her owner for that purpose. She was seen on defendant's cars" and disappeared a day or two after leaving them. [400] "Scarborough was asked, at what amount he would estimate the damages to the plaintiff by the loss of Rose . . [He] answered four hundred dollars—that it was the only negro the plaintiff had, and although he would not give four hundred dollars, yet a man that wanted such a negro would." [403] "The slave was mentally an imbecile, physically a cripple, and morally a runaway, as to whom witnesses well hesitated to affix scarcely any market value." [400] "The jury found for the plaintiff three hundred and sixty-six dollars and sixty-six cents." New trial granted: [404] "The verdict appears to us wild and capricious," [Whitner, J.]

Richardson v. Dingle, 11 Richardson 405, May 1858. A slave was "hired . . in 1855, and drowned while employed on a steamboat, contrary . . to the terms of hiring."

Wilson v. Welch, 11 Richardson 410, May 1858. "forty-seven dollars and eighty-nine cents, . . for bacon, clothing, blankets, shoes, etc., furnished the slaves" in 1852.

Hair v. Hair, 10 Rich. Eq. 163, May 1858. [170] "She said he might go and leave her, provided he would leave her the negroes (three in number, the only ones he had, which he had acquired by his marriage with her.) . . Having completed his preparations, on Sunday, the 27th September, 1857, about the hour of midnight, he called his two negro women to the field, under the pretence of driving out the hogs, but in fact, with

the view of securing and carrying them off. He seized them both. They made a great outcry, which reached the ear of the plaintiff [his wife] at the house. The negroes were unwilling to go; one of them (Hagar) made her escape; the other one (Ann) he tied, went to the house and got her young child. He put them both in a conveyance which he had ready, carried them to Blackville, where he put them on the cars that same night, and carried them off to Louisiana, where they yet remain. The plaintiff . . has with her Hagar, who, immediately after the defendant's departure, came in to the plaintiff, and continues to serve her;"

Hodges v. Chick, 10 Rich. Eq. 178, May 1858. Will of Dr. Burwill Chick, dated 1846: [182n.] "As George is afflicted, my wish is that he should choose which of my children he would rather serve, and whichever he chooses will take him at valuation, by two disinterested men, which will be deducted from their part of the amount coming to them from my estate. . . [183n.] My wish is, . . should either of [the negroes] . . that I have given away, have an increase before my decease, the heir that own [*sic*] the mother must pay over the valuation to the rest of my legatees, . . If I have left out any negroes not willed, my executors will have them appraised, and let whichever of the heirs that has the family take it as so much paid them towards their legacy."

Sanders v. Anderson, 10 Rich. Eq. 232, May 1858. Articles of agreement, 1855: "and if the purchase of the plantation were completed, to hire to the plaintiff, for . . five years, beginning January 1, 1856, and in consideration of $1,000 a year, . . [twenty-three] slaves, . . and the plaintiff, Sanders, covenanted to pay the purchase money, and hire . . to the defendant, and 'that he will feed, clothe, and otherwise treat the . . slaves in a kind, humane, and proper manner; and should . . Sanders, at any time during the said five years, depart this life, or treat . . any of them cruelly, or neglect to furnish . . any of them, with proper clothing, food, houses, bedding, or medical aid in sickness, . . in such case, at the end of the year . . Anderson . . [233] shall have the right to end this agreement, so far as the hiring of the slaves forms a part of it, and take possession of the same.' . . On January 1, 1857, plaintiff paid to the defendant $1,000 for the previous year's hire; and . . the same day, the defendant retook the slaves from the plaintiff's plantation, and he still retains the possession of them. . . The defendant, in his answer, insists that the plaintiff broke, and consequently ended, the covenants concerning the hiring of the slaves, by denying defendant's right to go upon the plantation to ascertain the good or ill-treatment of the slaves, and by ill-treatment of the slaves, especially in the matter of clothing. . . [235] Concerning the treatment of the slaves hired by the plaintiff, the proof generally is, that he is a kind, even indulgent master; that he furnished food sufficient for these slaves; that he improved their habitations by building new houses, and repairing the old; and that the slaves continued in good health. The only point upon which his humane treatment has been assailed, is in respect to the clothing . . Some . . witnesses said, that the Georgia kerseys in which he clad the slaves, were too thin for workers on a rice plantation, and perhaps on a cotton planta-

tion. . . Auckland is high up on the Ashepoo, and is a mixed plantation of rice and cotton, where it is practicable in severe weather to remove the hands from the rice ditches to other employment. Most of the witnesses testified that the plaintiff clothed these slaves snugly—that he did as much in this respect as his neighbors did to theirs, and fully as much as the defendant had been in the habit of doing towards these same slaves on the same place."

In re Bates, 2 Fed. Cas. 1015 (Bett's Scr. Bk. 574), September 1858. In August 1858 "the U. S. brig *Dolphin* took possession of the brig *Echo*; that on examination she proved to be a slaver, with a cargo of three hundred and twenty negro slaves on board, a crew of Spaniards and Americans," The crew of the *Echo* were committed for piracy in engaging in the slave trade in violation of the act of May 15, 1820.[1] Motion to be discharged from custody denied.

Clanton v. Young, 11 Richardson 546, November 1858. [547] "Hiram was charged with the murder of Mrs. Young by her family, and was a runaway during most of the year 1853." [546] "Three hundred dollars reward . . [was offered by defendant for his] apprehension and delivery, to the jail" [547] "After about one year the defendant [plaintiff?], with . . McCaskill, brought Hiram, so much reduced that some . . would not have known him, to . . a magistrate . . who delivered him to . . his constable, in whose custody he continued until he was tried, a few days after, by a Court of Magistrate and Freeholders. . . Hiram was acquitted." Nonsuit ordered: [550] "not a strict compliance with the terms" of the reward.

State v. Clayton and Carter, 11 Richardson 581, November 1858. "The prisoners were indicted[2] . . for inveigling, stealing and carrying away . . Gilbert, the property of Margaret Hays; and . . for aiding Gilbert in running away" [595] "the two prisoners were in concert on the same evening of the asportavit by Carter, in an enterprise pretended to be directed towards some inveterate runaway slave [[586] 'that had been out eight years'], yet ending in the . . asportavit by Carter of Gilbert . . who was not runaway," [582] "Carter entered the cars [about midnight] . . with a negro man; they took seats opposite to each other, in the negro or conductor's car, as it is termed; . . paid the fare of the negro; . . was arrested . . [583] denied having paid . . the negro's fare, . . [584] Clayton did not enter the cars; [said later] . . [585] 'all I did was to go to the railroad and fetch back the horses; for one of the negroes sold by Carter I received one hundred dollars; . . for another . . one hundred and fifty' 'they have been persuading me to get into [this business] . . for about two years.'" Both prisoners were convicted. New trial refused.

Hudson v. Brown, 11 Richardson 643, November 1858. "Jake, a negro fellow of the defendant Brown," was suspected of stealing "a considerable sum of money" from the plaintiff. Fifty dollars were found in

[1] 3 St. at L. 600, ch. 113.
[2] Act of 1754.

Jake's box. Brown had thirty dollars of the money, [644] "which he said Jake had given to him for a watch. . . In various ways, . . the plaintiff recovered" all of the lost $898, except $259.50. "A day was appointed for a trial at Brown's. These parties and some neighbors met, but no legal proceedings were commenced. Brown said that the plaintiff would prosecute Jake if he did not get his money—that he would whip the negro himself, but he did not wish the law to whip him—that he did not want him cut up, as he intended to sell him; and that if the plaintiff would wait until January, he would pay him his money. The plaintiff agreed to wait, and . . the single bill [for 259.50] sued on was given. . . The negro was well whipped with a strap in the presence of Brown and others—Brown making great threats to scare him, and frequently saying to him, 'I have got to pay the money, and you've got to tell where it is.' Thirty or forty dollars were . . [645] got by Brown from Jake, and those to whom Jake had given portions of the money;" "The defence was that the bill was given to compound a felony. . . [645] The verdict was for the plaintiff, the amount of the single bill and interest." New trial refused. Judge O'Neall dissented: [648] "I think that the single bill was given to compound a felony."

Dr. Peake v. Scaife, 11 Richardson 672, November 1858, "Assumpsit for medical services rendered to slaves of the defendant. . . [673] '1857, . . Visit and prescription for Manuel, $2,00: mileage, $3,00.' One of the items was $15, for attendance on the same day to different slaves. . . overseer . . witnessed the services . . rendered, and thought that . . they would amount to $115, the sum claimed. . . Jeter, testified.—In December, 1854, I proposed to hire fellows from the defendant to work on the . . Railroad: offered him $156 a piece, 'I to find clothes, etc., and lose all time, he to pay the Doctor's bill.' . . Some weeks afterwards he said that I might have the fellows. . . I placed [them] . . under an overseer . . along with others that I had hired, telling the overseer to employ a physician, in case of sickness, on the best terms practicable. I continued to keep the fellows, and had them in 1857. The overseer testified—I had thirty-two fellows under me; ten or twelve of them belonged to the defendant. According to the directions which Mr. Jeter gave me, I sent for the plaintiff, the nearest physician I knew of. I sent only when it was indispensably necessary. All of the defendant's fellows were sick in the course of the time. One of them, Friday, was hurt between two cars: another, Manuel, was hurt by a bar of iron." Nonsuit ordered.

Affirmed: [675] "Jeter . . is liable for . . [Dr. Peake's] bill. It may be that he (Jeter,) can recover the amount of it after paying it, from the defendant. Between them there is privity of contract:" [O'Neall, J.]

Neal v. Sullivan, Trustee, 10 Rich. Eq. 276, November 1858. [277] "The negroes [of whom Moore has the use for life] are likely: Sylvia is about forty years old, and with her two children, a boy of six years, and a girl of one year, is worth $1,000 to $1,400 absolutely, or $60 for annual hire. Louisa, about eighteen . . [278] worth $1000, and $75 for hire. Hagar, about thirteen . . worth $900, or $75 for hire. Emma,

about eleven . . worth $800, and $60 for hire. Dave, about twenty-eight . . worth $1,100, and $150 for hire. Avarilla, about twenty, and her child, worth $1,200, and $60 for hire; and Elijah, about twenty-nine . . a plantation blacksmith, worth from $1,200 to $1,400, and for hire $150. . . [280] If sold at all, an absolute sale [and not a sale for the life of Moore] would be preferable. . . Slaves sold for an uncertain time are exposed to the risk of being overworked from the greediness of purchasers to reimburse themselves and make profit, and thus their lives may be shortened, and their fruitfulness impaired. So, too, notwithstanding every precaution of forthcoming bonds, and the like, they may be eloigned and lost. There are objections even to hiring, in its bearing on the interests of remaindermen; but it is the least objectionable . . decreed that the . . trustee [of life tenant] . . [281] while the debts . . remain unpaid, hire out the said slaves at public outcry, . . allowing discretion . . to reject the bid of any unfit hirer, and to take all proper measures to secure the humane treatment of said slaves." [Wardlaw, Ch.]

Wylie v. White, 10 Rich. Eq. 294, November 1858. Will: "I will to my son, . . during . . life, the use and benefit of . . my negro woman Patsy and her three children, . . and also my negro man named Bob; but the said negroes not to be removed from the State, or to be disposed of by him, or any other person, whatsoever, but to remain exclusively for the annual support of my . . son and family."

Lott v. DeGraffenreid, 10 Rich. Eq. 346, November 1858. [348] "he had paid her $15,000 for twenty-six negroes on Jan. 1, 1836,"

Cloud v. Calhoun, 10 Rich. Eq. 358, November 1858. [363] "Plaintiff, in . . 1853, a few days after the intermarriage of Calhoun and wife, promised to give to his daughter or son-in-law about twenty negroes, and . . Mr. Calhoun sent a wagon and team, under charge of his overseer, from Pendleton to Chester, to receive and transport the negroes. Crenshaw arrived at Dr. Cloud's . . Sunday evening, . . and was requested to abide the next day, that the plaintiff might attend a sale on Monday, . . and purchase, if practicable, a substitute for Bob, . . who had recently married the female slave of a neighbor. . . the plaintiff proceeded to the sale, . . could not purchase a negro to be put in Bob's place, and showed Crenshaw the negroes to be carried away, and directed him to set out early the next morning. Crenshaw started with the negroes homewards about daylight . . and reached the plantation of defendant, Calhoun, a week or ten days afterwards. Immediately after starting, Crenshaw received a letter from Dr. Cloud to Mr. Calhoun, . . 'Mr. Crenshaw leaves this morning with the negroes, and I think will attend to their comfort on the road. I detained him one day to attend the sale of some negroes in order to get a man to send in Bob's place, as he has a wife, but failed. If he conducts himself well and wishes to return next year, I may send another in his place.'"

Owners of Brig James Gray v. Owners of Ship John Fraser, 21 Howard 184, December 1858. [191] "there were two of the crew in the

forward part of the vessel, whose duty it was to keep a look-out; but, being colored persons, they could not, by the laws of South Carolina, be examined as witnesses. But the law requires of a colliding vessel, that she shall prove not only that she had a competent look-out stationed at the proper place, but also that the look-out was vigilantly performing his duty. And if he placed there persons who cannot be witnesses, it is his own fault; . . and can therefore be no sufficient reason for the absence of that proof which the law requires him to produce." [Taney, C. J.]

State v. Farr, 12 Richardson 24, January 1859. "shop-keeper, . . convicted of buying [one bushel of] corn from a slave [not having a permit]." Held: the indictment was good under the act of 1817 [1] or the act of 1834.[2]

City Council v. Luhrs, 12 Richardson 69, January 1859. "actions . . to recover the penalty of twenty dollars in each case, for violations of the city ordinances against negroes loitering."

Lawton v. Tison, 12 Richardson 88, January 1859. Dr. Riley testified: [95] "On the . . Road, they caught a runaway negro [in 1844], . . came to a fence across the road; . . witness held the negro, while his brother pulled the fence."

Jones v. Jones, 12 Richardson 116, January 1859. [117] "Upon the hearing of a summary process, founded on a note executed by . . a mark by the defendant, . . a free negro, and the execution purporting to have been attested by another free negro, the plaintiff . . free negro . . sought to make proof . . by answers to interrogatories served on the defendant. The Clerk . . [118] refused to swear the defendant to his answers, . . Next, . . evidence of the genuineness of the signature of the attesting witness . . was received, and upon that alone a decree . . for the plaintiff."

New trial granted: I. [119] "the Clerk ought to have sworn [defendant] . . [120] to his answers, and then . . his deposition should have been heard." [118] "such a person is entitled to the benefit of the laws for the relief of insolvent debtors, and . . [119] must be sworn to the truth of his schedule, . . The plaintiff having waived any objection and the defendant being willing to swear . . why should that be denied any more than in the case of the insolvent debtor, . . [120] [II.] the execution of the note [was not] adequately proved by the evidence of the handwriting of the subscribing witness . . The witness could not have been called . . by reason of status;" [Withers, J.] Glover, J., concurred in the opinion on the latter point, but dissented from it on the former: [123] "It is certainly the first time in South Carolina that the right of a free negro to appear on the witness' stand in the superior Courts and give evidence on the trial of causes has been recognized."

Claussen v. Salinas, 12 Richardson 124, January 1859. "Ned, if sound, would have been worth eight or nine hundred dollars. Dr. Fitch

[1] 7 St. at L. of S. C. 454.
[2] 6 St. at L. of S. C. 516.

who . . made a *post mortem* examination, stated, that he died of the softening of the brain,"

Jamison v. Knotts, 12 Richardson 190, May 1859. [193n.] "the Commissioner advertised to sell [the mortgaged slaves] . . on the sale's-day of April [1857] . . when it came to . . [his] knowledge . . that the . . negroes had been removed from this State [to Alabama], . . by the [mortgagor.] "

McKenzie v. Barnes, 12 Richardson 205, May 1859. [209] "when . . both [sheriff and jailor] were away, one or both of the women [wife and sister of the jailor], with the aid of a negro, did the duties of jailor. . . a runaway slave . . broke several locks, and having got into the room from which E. T. escaped, went through the hole,"

Belcher v. McKelvey; Tucker v. Belcher, 11 Rich. Eq. 9, May 1859. [11] "Tucker was about eighty years of age, altogether unlettered, and of a mind, originally feeble, impaired by age and disease. . . His neighbors dealt with him in small matters of trade, but usually through the agency and under the supervision of some of his slaves. . . in his small purchases . . he asked for the articles of merchandise, but one of his slaves, generally George, would make the selection. He was unmarried, and excessively fond of his slaves and indulgent to them; indeed, they fared better than he did himself. . . His slaves, especially George, had great influence over him and he anxiously desired their emancipation at his death. Of defendant Belcher, he knew nothing . . except from the representations of George, in these particulars apparently truthful, that Belcher was . . the kind master of many slaves. George was a cabinet-maker, and had worked at his trade for some years in the neighborhood of . . [12] Belcher, and had there taken . . a wife . . George was shrewd and intelligent, had been taught to read well, and he enjoyed the confidence of his master, . . 1854, he drove his master . . to the house of . . Blakely, . . and producing the bill of sale of that date, in Belcher's handwriting, and $900 in bank bills, and Tucker acknowledging the previous payment of $100 to him by George, Blakely attested as a witness the mark of Tucker to the bill of sale, and then delivered it to George. At the time, George said that $700 of the money belonged to himself, and that he had borrowed $200 from Belcher, and thereupon Tucker returned $200 to be repaid to Belcher, and Blakely, as Tucker's agent, took possession of $700. . . Johnson also attested . . [13] two or three days after . . he was sent for to Tucker's house, when Tucker said, in the presence of George, I wish you to draw a bill of sale to Belcher for my other slaves. I wish my negroes to be free at my death, and not to serve another; and George has told me that Belcher would befriend him and the other negroes by taking them to a free State. Witness said to George, you are Belcher's property, and George replied, I am not afraid; Belcher is too good a man not to do what he has said, and he will contrive a way for my escape. . . witness did draw up a deed of gift from Tucker to Belcher of the former's land and negroes, and George, from his own money, paid $1 50 for the service; but the matter was not then consummated."

In June Tucker [9] "executed a paper, purporting to be his last will . . whereby he attempted to bestow his whole estate . . [10] upon . . Belcher [[19] 'a perfect stranger']; . . also . . a bill of sale of all the [seven] slaves remaining in his possession, [reserving a life estate.] . . [14] on same day Tucker bought his burial clothes . . selected by George." [17] "George . . remained for about two years [in the possession of Belcher] . . and disappeared . . about April, 1856," He was [14] "much attached to [his wife]. . . There were reasons which induced [her owners] . . to give their active or tacit consent to her leaving the State. The defendant has no doubt she did so about April, . . 1856, and that George went with her ['probably' to Pennsylvania]. . . not in pursuance of any understanding . . with . . Tucker," Tucker died in 1855, and his will was set aside. McKelvey, the administrator, [10] "was proceeding to sell the [seven] slaves . . when . . bill . . was filed [by Belcher] for injunction . . granted . . [In 1858] bill was filed by . . next of kin . . for having declared void both of the bills of sale . . as executed through undue influence, and in violation . . of the Act of 1841 [1] to prevent emancipation, . . [12] Belcher in his answer . . says . . 'that all the money paid for George was his own money, . . no . . earnings of George.' . . [14] denies that either of said bills of sale was made under any trust"

Decreed that the deed of June 1854 is void, and [16] "that the bill of Belcher *vs.* McKelvey . . be dismissed." [22] "the defendant was not accountable . . for the value of . . George;"

Gillam v. Caldwell, 11 Rich. Eq. 73, May 1859. Will of Caldwell, who died in 1848: [77] "Should any of the slaves . . become so turbulent and unruly as to become difficult of government, . . or should . . my estate require more funds . . I authorize my executors to sell such . . as may become unruly . . or to sell a number sufficient to raise such additional funds as may be absolutely necessary for the use of my estate, provided that my executors shall be restricted to the sale of old negroes, . . and shall not be at liberty to sell off young slaves."

Fretwell v. Neal, 11 Rich. Eq. 559, May 1859. In 1831 a slave [562] "about thirty-five years old, with her two children, . . [563] about two years old, and . . four weeks old, [was sold] for . . $465, a fair but rather low price. . . they are now [1858] worth $3,000 or more."

State v. Rollins, 12 Richardson 297, November 1859. "indicted under the Act of 1817, . . that the slave went into defendant's shop with five pounds of bacon and an empty bottle, and came out without the bacon and with a bottle of whiskey. The slave said he . . would have brought more [bacon] if he had known that the defendant would have taken it, who replied, you might have brought five, ten, fifteen, twenty or fifty pounds, and I would have taken it. At this term the defendant had been before convicted, under the Act of 1834, as a . . retailer of spirituous liquors, on the same evidence, . . pleaded the former conviction in bar, which was held bad, although both offences arose from the same acts . . convicted." Judgment arrested.

[1] 11 St. at L. of S. C. 154.

Boland v. Railroad Co., 12 Richardson 368, November 1859. "a young negro man [slave] . . was on Christmas day, 1856, run over by a freight train . . had a flask with some whiskey . . probably lying [on the track] drunk and asleep . . [370] on the train, besides the runner and conductor, were a white wood-passer, . . a negro fireman and two negro laborers;"

Simons v. Fox, 12 Richardson 392, November 1859. The slave of Geiger "ran away . . was in the possession, afterwards, of . . Sineath, . . from 1848 or 1849, to his death in 1855 . . [administrator] sold [the negro to] . . Lamb, who sold to Moody, who placed him in . . hands [of Ryan, 'a broker, in Charleston,'] for sale; he sold to the plaintiff for seven hundred dollars; . . had him about two weeks, when he ran away. . . taken up as a runaway . . and put in gaol. . . [393] Geiger identified him as his runaway slave, and sold him to . . Harrison, who carried him out of the State."

Held: "Sineath . . had an adverse possession for more than four years. This defeated Geiger's title." [395] "there was no proof, that Sineath knew him to be a runaway."

American Bible Society v. Noble, 11 Rich. Eq. 156, November 1859. Autograph will of John B. Bull, dated April 1843: [162] "To my . . wife, I . . give, my good and aged servant Doritha (Doll) and all her children, and grand-children, all her descendants . . Including the husbands of her daughters.—Pompey the husband of of [*sic*] Nelly, I make this . . earnest request, that during the time of her natural life, Doll be treated with all that humanity, moderation and kindness which her advanced age and her faithful services call for.—also to my dear wife I . . [163] give all the servants on my farm at Little River. Their names as follows,"

Held: [173] "the word *children* . . has not received a restricted meaning in law confining it to *post nati.* I regret that the decision in Seibles *vs.* Whatley[1] was different as respects the import of the word *increase*: but I do not feel bound to carry it beyond its letter, and apply it to *children*, . . [174] As to the other negroes . . given by name . . without . . children . . does not carry the *post nati* issue. Such issue is . . intestate, and falls under the direction to sell." [Johnston, Ch.]

Carmichael v. Buck, 12 Richardson 451, January 1860. [453] "The custom . . has always been, that the man cutting the timber sold it and received the money . . except when negroes were the carriers [of the raft]."

Williams v. Thweatt, 12 Richardson 478, January 1860. [479] "The governor offered the reward for the apprehension and delivery of . . a fugitive slave charged with a felony, . . The plaintiff apprehended him and delivered him to the constable,"

State, ex rel. Fanning and Lord, v. Mayor, 12 Richardson 480, January 1860. "The relators . . free persons of color, . . were arrested

[1] P. 364, *supra.*

by the police of Charleston and brought before the Mayor[1] on an alleged charge of gambling;[2] . . adjudged . . guilty, . . sentenced each to pay a fine of fifty dollars, or to receive twenty lashes, and they pray that a writ of prohibition may issue, . . [because] [481] by Act of Assembly[3] the trial of free persons of color is directed to be before a Court . . of magistrates and freeholders,"

Petition dismissed: "The Act of 1839 . . embraces offences against the laws of the State, and a Magistrate's Court is not a proper tribunal to hear . . alleged violations of ordinances"

Mordecai v. Jacobi, 12 Richardson 547, January 1860. "November or December, 1858, the defendant placed [three slaves, 'Horace, his wife . . and their son'] . . in the hands of the plaintiff, who is a broker, for sale, and agreed to allow two and a-half per cent. commissions on the proceeds. The negroes were boarded by the defendant himself, but they visited the plaintiff's office almost every day, for nearly, if not quite, three weeks. . . 14th of December, the defendant . . sold them to the Rev. Mr. Lafar, for . . one thousand nine hundred dollars,"

Held: the plaintiff is not entitled to commissions.

Anderson v. Aiken, 11 Rich. Eq. 232, January 1860. [237] "The defendant, with the knowledge which the mortgage gave him, purchased . . Thomas, in satisfaction of his debt, removed him from Florida, and in Charleston sold him at auction, without a warranty, to a negro trader, for $800. . . the defendant, knowing or believing that the slave would be recovered from him, if he remained in South Carolina, sold him to one who was likely to remove him, and who did remove him to parts unknown." [233] "Thomas, 'a likely brown man, about twenty-two' . . was ruptured, but as he was recommended by Aiken as a good coachman, . . [a witness] would have given $700 . . if the title had been good."

Ford v. Porter, 11 Rich. Eq. 238, January 1860. Will of Elizabeth Williman, 1854: [239] "I give . . to my good friends, Dr. John Bellinger [and three others], . . my faithful negro slaves, George, Sam, Francis, Edwin, Sarah and Rose, with a *request* that they will extend to the said slaves all the indulgence, privilege and consideration, which the law will allow them, in the *character of owners,* to extend to them. . . I give to my kind friends, Dr. John Bellinger [and three others], . . two thousand dollars, to enable them to support the said slaves, . . when they, from age or sickness, may become chargeable upon them." Codicil, July 1855: [240] "I do hereby revoke the bequest made . . of . . Rose and Sarah, and also the provisions therein made, as far as relates to them; and I direct that . . Rose and Sarah, or the proceeds of their sale, become part of my estate;" The testatrix died the following month. [245] "The men included in the original bequest are able bodied; . . all about prime." "one of the women was young, the other was elderly,

[1] City ordinance of 1836.
[2] City ordinance of 1819.
[3] Act of 1839.

and was said to be sickly;" [252] "The legatees . . explicitly deny that there was . . any trust . . to hold said slaves in a condition of virtual freedom . . [253] one . . deposed that he . . would appropriate the wages to his own use." Chancellor Dunkin [251] "declared that the bequest of the [four] slaves . . is null and void;" [250] "Free . . persons of color, are sometimes very useful . . and the better, because they are few. But the greatest nuisances are *quasi* slaves—stalwart men, who have the same moral control over their nominal owners as, in this case, [the four negro men] . . [251] might attempt to exercise, with a copy of their mistress's injunction in their pockets . . It creates an anomaly inconsistent . . with the policy of the country, and which it was one of the prominent purposes of the Act of 1841 effectually to suppress."

Decree reversed: [254] "this Court . . is as little satisfied that to bequeath slaves with a request that the legatee shall extend . . 'all the indulgence . . which the law will allow them, in the character of owners, to extend' . . takes away their right of property . . as it is that such treatment is opposed to the policy of the law." [Johnston, J.]

Ex parte Nayler, 11 Rich. Eq. 259, January 1860. In 1858 [260] "Mrs. Kirk and her children removed to Kentucky with the negroes,"

Maffitt v. Read, 11 Rich. Eq. 285, January 1860. [291] "Clarinda . . had been purchased . . for three hundred and ten dollars; . . Mrs. Read . . brought Clarinda with her, and hired her out, as a cook, in Charleston,"

Wigg v. Simonton, 12 Richardson 583, April 1860. In 1851 Captain Peck hired Archy and John from W. H. Wigg. [584n.] "the first was steward and the latter pilot. . . He gave W. H. W., fifteen dollars per month for each, and gave them each five dollars or more ['Sunday money'], as was his habit. For about two years they behaved well, but afterwards the idea of freedom made a difference. He doubts if John's father was a white man from his appearance. Archy is lighter. He became very insolent towards the last three years he had him. . . [585n.] May 4, 1855, they quit him. Witness got a note from Archy, saying he had permission to go where he pleased, and next place he found him was in . . jail. John also left, and witness got him, and after two months they quit and were put in the work-house by W. H. W. . . John . . is quiet, and will sometimes drink. Witness thinks Archy is like W. H. W. Three years ago Archy wanted three dollars, and said he wanted to see Colonel De Lyon about his freedom, and said the Colonel told him he had better go back to his work. W. H. W. wanted to sell them, which alarmed them; and they wished witness to buy them. . . Common hands get two dollars per month. . . W. H. W. ordered them to be shipped out of the State for sale. The master of the work-house said he had a detainer placed on them, and refused to deliver them up," Simonton, "Attorney at Law," had written him in March 1856: "take notice, that the authority of . . Wigg to place in . . work-house . . Archy Wigg and John Wigg . . is disputed. . . [586n.] warned not to deliver . . to

. . Wigg," Simonton instituted proceedings to establish their claim to freedom, [583] " which the highest Court . . overruled. . . [584] Soon after the case . . was decided, early in 1858, executions against Wigg were levied on John and Archy, and they were sold by the sheriff." Wigg brought suit against Simonton: [586n.] " saith he . . hath sustained damage to the sum of three thousand dollars," Held: Simonton is not liable.

White v. Smith, 12 Richardson 595, April 1860. Moore and Smith, contractors, hired White's slave, Charles. [596] " Jackson was their agent . . the hands, and Charles among them, under the authority of Jackson, went back and forth, on the trains [from the saw-mill] . . loading and unloading the cars; . . 1857, . . while the train was . . moving slowly, . . the engineer intending to stop . . for the negroes to get on . . Jackson . . proclaimed to the negroes on the platform, 'all aboard;' . . Charles, in the attempt he made [to jump on a car] . . failed, . . two trucks passed over him, and he died "

Held: Charles was not such a representative of his master in work done " in common with other hirelings, as to constitute the master a co-employee with the hirelings." The fellow-servant rule does not apply to the case of a hired slave.

Stenhouse v. Bonum and Houston, 12 Richardson 620, April 1860. " actions . . upon a note. . . verdict . . for the plaintiff. Judgments . . entered, and the defendants moved . . [to] set aside, on the ground, that Bonum . . was a slave. . . refused . . appealed "

Motion granted: [621] " the slave . . was incapable of contracting,"

U. S. v. Corrie, 25 Fed. Cas. 658 (Charleston *Daily Courier,* April 19, 1860). The United States attorney for the district of Georgia charged that Corrie, commander of a vessel called the *Wanderer,* had decoyed and seized " on a foreign shore " and had landed in Georgia " certain negroes not held to service by the laws of either of the states or territories of the United States, with the intent to make them slaves; . . contrary to the fourth and fifth sections of the act of congress of the 15th May, 1820.[1] . . a warrant was ordered to issue " for his arrest. Corrie was " found " in South Carolina, where " he was admitted to bail, and became bound to appear . . at the next ensuing term of the circuit court of the United States for the state of South Carolina." Before that term arrived, " in the district court of the United States for the state of Georgia, a true bill was returned to that court, by the grand jury, against Wm. C. Corrie for piracy, under the act of May 15, 1820." A motion for his removal to Georgia for trial was refused by the District Judge for the district of South Carolina.

Held: the circuit court of the United States for the state of South Carolina has exclusive jurisdiction. [661] " No offence committed under the act of 1820 can be within the limits of a state: . . [662] there exists a misapprehension of the act of congress of the 15th May, 1820. It has been said that by this act of congress the slave trade has been declared

[1] 3 St. 600.

piracy. I cannot find in this act anything which sustains that construction; . . [664] in regard to the offences created by this act, it is of much consequence under the fourth and fifth sections to determine whether the negro or mulatto was bond or free, . . The intent prohibited is to make a slave. . . [665] it could not be said that there was proof of an intent to make him a slave, if he was already a slave.[1] To purchase on that foreign coast a slave may be by other laws of the United States, passed for the suppression of the slave trade, an offence punishable by fine and imprisonment; but no law has yet said that it is piracy. . . [699] If the slave trade, regarding it as a trade or business, is to be declared piracy, the act is yet to be passed by congress. If the power to congress [to declare the slave-trade piracy] was granted at a time and under circumstances which are so wholly different from the time in which we live and the circumstances which surround us, as to show that the grant of it without restriction was improvident, it is for the states by whom the grant of power was made, to resume it or require modifications of its exercise." [Magrath, J.]

State v. Elrod, 12 Richardson 662, May 1860. "The trading . . consisted in her letting the slave have a half gallon of whiskey in exchange for a bushel of corn. . . convicted [also] of retailing without a license. . . she sold a teacup full of whiskey to a slave . . for . . ten cents. At a subsequent period, the witness . . saw her deliver to the same slave half a gallon"

Parker v. Partlow, 12 Richardson 679, May 1860. "a sale . . for partition . . 1859, . . of a negro man . . at . . $890; . . the plaintiff [as commissioner] had caused to be proclaimed . . that there would be no warranty of the soundness . . [680] unsoundness ['dropsy of the heart'] . . apparently unknown to any one at the time, . . established by the post mortem examination" The slave [679] "died about eighteen days after the purchase," Held: the purchaser is bound to pay.

Weaver v. Wright, 13 Richardson 9, May 1860. [12] "sold a negro man . . 1854, for nine hundred and seventy dollars;"

Willis v. Jolliffe, 11 Rich. Eq. 447, May 1860. See Jolliffe *v.* Fanning, p. 451, *supra.* About 1846 Elijah Willis of South Carolina, unmarried, [448] "began to live in concubinage with one of his female slaves, . . Amy, who bore [him] . . [495] five mulatto children . . two of them died; . . [497] Amy [[507] 'a dark yellow woman'] was not handsome. . . had several husbands before she took up with Willis. . . Amy's last husband is still on Willis' plantation; . . Willis was distressed when one of the children died;" A witness who took dinner with Willis, [493] "thought Willis . . in giving [the mulatto children] . . the best victuals from the table, . . [494] treated them as his own children; it was then that one of the small ones got in his lap. . . He had seen Amy trading largely, and as freely as a white woman, . . at James Willis' store. James

[1] See U. S. *v.* Libby, 26 Fed. Cas. 928 (Maine, 1846), *contra.*

was a nephew of Elijah Willis, and would make much of Amy, in order to induce her to take up goods, calling her Aunt Amy, and saying to witness, with a wink, ' now I am going to make a big bill.' . . James Willis told me she had ridden there in his uncle Elijah's carriage. . . [495] I have seen other white men take up their little negroes in their laps—some coal black little negroes." [493] " Willis carried the above persons, in 1852 or '53, to . . Baltimore [[492] ' with a view to putting them at trades in that State '], and brought them back . . after a few months." Dr. Guignard testified that about 1853, he [504] " recommended placing them in the neighborhood of Norfolk, Virginia, where about two thousand . . free persons of color resided, and an ineffectual attempt for their expulsion had been made before the legislature of Virginia." [448] " He executed . . his last will . . 1854, in the office of Jolliffe and Gitchell, attorneys-at-law, . . Cincinnati . . appointed . . executors [from Ohio] . . bequeaths to his executors . . Amy and her seven children, . . and descendants, . . executors to bring . . said persons and their increase . . to . . Ohio, and to emancipate . . them " and he bequeathes and devises the rest of his estate to his executors in trust, for Amy and her children. He asked Harwood of Ohio to act as executor. [508] " He stated that he considered himself worth in the neighborhood of $75,000, . . inclined to apoplexy . . asked me to act as his executor. . . I asked him if he had other slaves . . he had. I then stated . . that if he . . expected me to act as executor in selling them, I could not consent . . He said . . he intended to make arrangements with reference to them himself, . . I urged him to liberate them, . . he wished them located on Western lands, in the farming business, either in this State, Illinois, or Wisconsin." [450] " In May, 1855, Elijah Willis left his home in Barnwell, for Cincinnati, taking with him Amy and her mother, and Amy's children, . . [495] three black ones and three white ones " [450] " the eldest three having been begotten by a man of color. . . [503] took passage on the upward train . . He had, as baggage, several new trunks, and no such luggage as negroes usually carry. The negroes were all dressed in much better style than is usual with negroes; and Mr. Willis sat with them in the car nearly all the time. . . [507] came [with them] upon the boat . . at Louisville." He told a fellow-passenger " he was going to Ohio, to set them free, and school the children. . . the younger children were light mulattoes. One was an infant, . . I asked him if the children were his own. He said he was the father of part of them." [450] " He arrived with them at a wharf in Cincinnati, . . and, having disembarked, he died betwixt the landing and a hack, in which he was about to proceed with said negroes to lodgings. . . [494] he was buried, in a negro-graveyard." The executor, in June, executed a deed of manumission. Chancellor Wardlaw, discussing the subject of slavery from the time of Moses [*ibid.* 463-491], [491] " adjudged that Amy and her children were not free persons at the death of testator, and consequently that the bequests for their benefit were void by 4 sec. A. A. 1841."

Decree reversed: [514] " they . . were free from the moment when, by the consent of their master, they were placed upon the soil of Ohio

to be free. I have no idea that the soil of Ohio *per se* confers freedom. It is the act of the master which has that effect. . . [516] to permit the devise in their favor to operate, is, we are told, contrary to the policy of South Carolina. . . But I should feel myself degraded if, like some in Ohio and other abolition States, I trampled on law and constitution, in obedience to popular will. There is no law in South Carolina which . . declares that the trusts in their favor are void." [O'Neall, C. J.] Wardlaw, J., dissented.

Wilson v. McJunkin, 11 Rich. Eq. 527, May 1860. In 1856 [528] " thirty-seven negroes [of the estate] . . were valued at $25,008 25."

Miles v. Wise, 11 Rich. Eq. 536, May 1860. The owner of the slave was [537] " partially idiotic,"

The Huntsville, 12 Fed. Cas. 996 (2 Blatchford 228), November 1860. For assisting in the salvage of the steamship *Huntsville,* on fire in Charleston harbor, $2,500 was awarded [1008] " to the owners of the [steamship] *Nina,* including therein the compensation for the negroes, either owned or hired by them, and comprising the crew of the *Nina,*"

Muldrow v. Railroad Co., 13 Richardson 69, November 1860. " Bill . . died while in the service of the company, . . April . . 1857, by . . negligence of the company . . action [for his value] . . decided against them by a verdict for fourteen hundred dollars."

Held: " the verdict . . was a good defence for . . the present claim of hire . . from . . April . . to the end of that year."

State v. Blair, 13 Richardson 93, November 1860. " The defendant was convicted of a riot. . . Oxner was passing, with his wagon . . along a public neighborhood road . . on defendant's land for about a mile. A part of the way . . had become impassable, and the neighbors for some time before had used a track adjoining the road, . . When the wagon was within about twenty feet of the new track, the defendant suddenly approached, and . . Oxner inquired, ' What does this mean? ' Defendant replied, ' To make you keep the sworn track.' Oxner ordered his servant to drive on, when the defendant struck the mules. . . [94] said he would put a hole through him. Oxner then sent for his wife, and gun, and boys. Defendant went and returned with three of his negro fellows and a double-barrelled gun, which he recapped, and immediately after more of his negroes came. After some altercation, defendant went . . to the house, leaving his three negro men and negro women, and as Oxner would attempt to turn his mules into the new track one negro man would seize the mule and the other the wagon wheel. . . finding it fruitless to attempt to advance, Oxner returned. The feet of one mule . . were beyond the bed of the old road, when defendant's negro would force him back into the road." Held: " the defendant should not escape because . . not . . present when his negroes . . seized the wheels."

Scarborough v. Reynolds, 13 Richardson 98, November 1860. " action . . for breach of a written warranty of soundness of a negro girl [mulatto woman], purchased . . for nine hundred dollars. . . [99]

one of the pretences of unsoundness was an arm dislocated in infancy, and which was badly set, rendering the arm crooked, but which did not affect her in labor; she could hoe and chop with an axe as well as women generally can. In the opinion of the witness it would affect her value on sale. . . [100] charged the jury . . not such unsoundness for which the plaintiff ought to have a verdict." Affirmed.

Sloan v. Whitlock, 13 Richardson 174, May 1861. [175] "The plaintiff . . [in 1857] continued in quarrying rock for twenty-four or twenty-five days, having in his employment his two sons, Robert and Edward, a negro woman, and a wagon and team. . . Plaintiff's work was proved to be worth two dollars per day; his son Robert, two dollars; Edward, one dollar and fifty cents; the negro woman, one dollar,"

Fountain v. Bryce, 12 Rich. Eq. 234, May 1861. In 1859 Leah (about 34), one child of hers (about 4), and twins over one year old were sold to Cobb for $1300. The vendors [238] "stipulated . . to deliver said slaves at Cobb's depot for slaves, in Carnesville, Georgia, . . for . . five dollars,"

Ex parte Graham, 13 Richardson 277, May 1864. [282] "Graham, who is within the conscript age, had, as the overseer of Eliza E. North, . . been . . December, 1863, exempted from military service for one year . . under the authority of the second section of the Act of [C. S.] Congress, . . May 1st, 1863,[1] . . On the 1st May [1864], . . the enrolling officer . . supposing that by the . . [Act of] February 17, 1864, the exemption . . had been revoked, caused Graham to be arrested . . ordered . . discharged" .

Manning v. Manning, 12 Rich. Eq. 410, May 1866. [416] "remained in the possession of all the . . negroes, . . up to the time they were emancipated by the government of the United States, except . . Alph, . . Jim, . . Jack, . . all of which slaves left their owners with the army of General W. T. Sherman, about the 7th day of March, 1865."

Richardson v. Manning, 12 Rich. Eq. 454, May 1866. Richardson's will, dated 1859: [456] "It being my express will . . that the real and personal estate . . should not be divided or separated, whereby husbands may be parted from their wives, or children from their parents. . . And I do hereby enjoin my . . executors . . to see that the slaves herein given . . be well fed and clothed, and humanely treated; and that the laboring hands, besides the customary allowance of corn for bread, be allowed half a pound of wholesome meat daily."

Boyd v. Satterwhite, 12 Rich. Eq. 487, May 1866. Will, 1857: [488] "that all the remainder . . of my negroes be sold by families,"

Mitchell v. De Schamps, 13 Rich. Eq. 9, November 1866. "Near the close of December, 1864, the plaintiff, Mitchell, sold to defendant,

[1] [278] "there shall be exempted one person on each farm or plantation the sole property of a minor, a person of unsound mind, a *feme sole,* or a person absent from home, in the military, or naval service of the Confederacy, on which there are twenty or more slaves. . . for every person exempted . . there shall be paid annually into the public treasury by the owner . . five hundred dollars"

De Schamps, a negro wench, Amelia, and her two children, at the price of $11,000, 'to be paid in cotton at one dollar and thirty-five cents per pound.' . . [10] The cotton remained in the custody . . of the defendant until after the 27th September, 1865, when he refused to deliver it to the plaintiff, contending that he was discharged from all obligation to do so by the abolition of slavery in this State." Arbitrators were chosen, and decision was made in favor of the defendant on the ground [17] "that in consequence of the previous proclamation of the President of the United States, the negroes . . were free; that, therefore, the plaintiff had no title to convey—the consideration of defendant's agreement thus failing." Chancellor Carroll set aside the award: "the ground upon which the arbitrators have rested their award is a plain, palpable, and mischievous mistake of the law." [16] "the slaves within the State cannot be considered as having been emancipated *de jure* until after the surrender of the Confederate armies, under Generals Lee and Johnston, in . . April, 1865. . . [17] The territory of this State was occupied by the forces of the United States, and, by the direct interference . . of their military authorities, slavery in South Carolina was *de facto* abolished. This, it is conceived, is the emancipation of slaves recognized by the Constitution of this State, and no other, or earlier, emancipation."

Decree reversed: [22] "assuming that the arbitrators had misapprehended the law, [nevertheless, their] . . [23] award . . must be regarded as final" [Dunkin, C. J.]

Cureton v. Massey, 13 Rich. Eq. 104, November 1866. Will of Cureton, who died in 1858: [106] "In the division I desire that my faithful slaves, Cupid and his wife, and Charlotte, shall choose their master, and be allotted to whoever [*sic*] they may desire to live with."

Railroad Co. v. Partlow, 14 Richardson 237, April 1867. [239] "Levi (colored) had belonged to the defendant, . . [who] ordered five of them [in April 1864] . . Tear up railroad and throw the rails to hell. Defendant hid himself . . When passenger train went down they tore it up. . . One of the hands was a blacksmith, one a sort of blacksmith, and one a stiller."

Jackson v. Jennings, 13 Rich. Eq. 172, April 1867. [178] "if she had received him [in 1863], . . she would, about May 15, 1865, have been deprived of his services,"

Guerard v. Gaillard, 15 Richardson 22, November 1867. [24] "In the spring of 1865, Georgetown, with the surrounding country, fell into the hands of the United States troops. For some time, . . the country was in a disturbed condition—property more or less in the possession of the negroes."

Bradley v. Jennings, 15 Richardson 34, November 1867. "On or before the 1st day of January, 1847, we . . promise to pay . . thirty-one dollars, for hire of negro woman . . We are to find said negro with one woollen frock, two cotton frocks, three shifts, two pair good shoes,

one good blanket, one pair woollen socks, pay taxes, employ doctor, if necessary, and return said negro 25th December next. . . 1st January, 1846."

McKnight v. Gordon, 13 Rich. Eq. 222, November 1867. [224] "James . . was an apprentice in the blacksmith's shop of Mrs. McKnight." In 1855 Dr. Bradley hired two of her other slaves. "When the negroes came, James was with them. . . he had no work in the blacksmith's shop, and they [Mrs. McKnight and her son] thought they would put him with the carpenters." He was levied on and "advertised for the sales-day in December, . . bid off . . for nine hundred and twenty dollars,"

Rhame v. Lewis, 13 Rich. Eq. 269, December 1867. About 1858 [272] "his plans were to purchase negroes on credit at some estate sales, . . and send them to the West and sell them for cash,"

Pickett v. Wilkins, 13 Rich. Eq. 366, December 1867. [367] "These negroes were not made free by the President's proclamation, *in law,* any more than they were *in fact,* because the President had not the right to make them free. . . [368] Emancipation . . was, in fact, accomplished by the conquest of the country. Until that took place, slavery continued after the proclamation, just as it had existed before, and it ceased to exist in the different parts of the State as they fell into the hands of the conqueror. The proclamation was, in effect, simply an advertisement of what would be a certain consequence of conquest." [Lesesne, Ch.]

Blakely v. Tisdale, 14 Rich. Eq. 90, April 1868. "1822, Martin Staggers executed his last will . . and within thirteen days afterwards died, . . [91] He bequeaths . . to his brother, William . . five negro slaves: Hannah, Venus, Peggy, Phillis, and Merica, with their future issue and increase, to be his property during his natural life and . . after his death to be free to all intents and purposes whatever. The testator also devises one hundred acres . . to his brother . . during his natural life, and 'at his death to go to the five negroes aforesaid, to them and their heirs forever.' . . directs . . that one thousand dollars . . be placed in the hands of his brother . . during his . . life, and at his death to be paid to the five colored people . . share and share alike. . . William Staggers . . died . . August, 1862. The plaintiffs, Venus and Phillis, allege [in 1867] 'that Hannah, Merica, and Peggy, have long since departed this life, without any heirs except Peggy, who was the mother of one daughter, sold many years ago as a slave in Charleston, of whose whereabouts or whether she be alive or dead, the plaintiffs have now no knowledge;' and they pray partition of the land and the payment of the pecuniary legacy . . with an account for rents and interest . . from the death of William Staggers,"

Petition dismissed: [96] "The emancipation was a contingency intended to precede the vesting of rights in them, and as it did not take place at or before the termination of the life-estate, the contingent remainders were defeated." [Wardlaw, J.] A synopsis of slave legislation in South Carolina follows.

McLure v. Steele, 14 Rich. Eq. 105, April 1868. [108] "More than twenty years before the death of William McLure, his mother-in-law gave him a negress called Judy, retaining a child of hers . . then two or three years old. Judy very naturally 'made a fuss' about such cruel separation, and the old lady then said: 'Here, take this child along with you, I allow him for Robert,' (meaning William McLure's son, . . then an infant of tender years.)"

Laurens v. Read, 14 Rich. Eq. 245, April 1868. Will of Margaret H. Laurens, 1858: [246] "I give to my servant, Sarah, now about me, and fifteen years of age, one thousand dollars, to be vested in . . safe stock, and the interest to be paid her in quarterly payments, for her comfort and support during her life, and at her death to be equally divided among her issue alive at the time of her death. I . . appoint my friends, named as my executors, her guardians and trustees, and request them to aid and assist her in any way they can in her occupation and business; and I further direct that her taxes, doctor's bills, and professional advice . . be paid out of my estate. I direct that she be allowed to work out, and the wages she makes be applied to her support, and that of her children, should she have any, and that her children be placed under her care, and the profits of their work be applied to their support, and that they be put to trades as soon as they are old [247] enough, and any expenses incidental thereto to be paid out of my estate, and they be allowed to remove from the State should it be for their advantage to do so. Should I be removed before she grows up and is able to take care of herself, I direct that she be placed under the charge of my mother's waiting-woman, Mary Ann. I give to old Sue, the servant of my father and mother, fifty dollars a year, while she lives, to be paid to her monthly. I give to Mary Ann, fifty dollars a year, while she lives, and her time, and direct that she be allowed a little girl to wait on her and assist her while she lives—the fifty dollars to be paid to Mary Ann in quarterly payments." Mrs. Laurens [257] "owned . . ninety-six slaves,"

Tindal v. Tindal, 1 S. C. 111, April 1869. "the estate of the testator had become insolvent by the emancipation of his slaves,"

Floyd v. Abney, 1 S. C. 114, April 1869. "over $1,100 were given [in 1857] for . . one woman and two children. . . [115] diseased, . . he bought them as unsound, and at a low rate. When emancipated [by the government], the woman had three children."

Crosby v. Crosby, 1 S. C. 337, November 1869. [339] "when the ward was not at school, he worked for defendant [his uncle], with his negroes, as a common laborer, during every year from 1854 [when he was thirteen years old] to 1861;"

U. S. v. Anderson, 9 Wallace 56, December 1869. [60] "Anderson, a free man of color, possessed of real and personal property, by occupation a drayman and cotton sampler, and a resident of Charleston, . . preferred, . . 1868, to the Court of Claims . . a claim . . [61] that he had bought part of the cotton in the early part of the war, and the rest in the autumn of 1864, before the evacuation of Charleston . . that . .

March, 1865, the military authorities of the United States being now in possession . . he reported it to them, . . April . . it was removed, under their direction, from its place of deposit . . sold for the United States, . . net proceeds . . $6723. . . Anderson . . had never given any aid . . to the rebellion," Judgment of the court of claims in favor of the claimant, affirmed.

Miller v. Keys, 17 Fed. Cas. 328 (3 N. B. R. 224, quarto 54), 1869. " a petition by creditor for involuntary bankruptcy of the respondent . . the position was taken . . by the defense, that he had no status in court, on the ground that one [note] was paid, and the other was ' tainted with negro.' . . the last was given for the balance of a large transaction had about the commencement of the war, only a portion of which was negroes. His honor charged the jury that a note for negroes before Lincoln's proclamation took effect was perfectly valid,"

Walker v. Covar, 2 S. C. 16, April 1870. [17] " 4th March, 1861, the Sheriff . . sold . . [a woman] one of the mortgaged slaves . . for $1,120,"

Charles v. Coker, 2 S. C. 122, April 1870. [126] " Received, . . February, 1861, . . twenty-six hundred dollars, . . for . . Charlotte, about twenty-nine . . and her four children, . . about twelve . . about seven . . six . . and infant girl, about two months old."

Mobley v. Cureton, 2 S. C. 140, April 1870. In 1855 [141] " a large portion of the lands, consisting of several plantations and one hundred and twenty slaves, were divided between the widow and children, . . thirty-seven slaves, valued at from $20,000 to $25,000, . . remained in the hands of the administrators to pay debts."

Calhoun v. Calhoun, 2 S. C. 283, April 1870. In 1854 Floride Calhoun and her daughter Cornelia [284] " conveyed to Andrew P. Calhoun the Fort Hill plantation, . . containing eleven hundred and ten acres, fifty negro slaves, and all the personal property on the plantation, with certain specified exceptions, for . . forty-nine thousand dollars. And, in payment of the same, they took the individual bond of Andrew P. Calhoun, . . the whole amount to be paid in fifteen years, from the first day of April, 1854, . . [285] in the trade, the plantation was estimated at fifteen thousand dollars, the fifty negro slaves at twenty-nine thousand dollars, . . in March, 1865, Andrew P. Calhoun died intestate, . . And his son, John C. Calhoun, administered upon his estate, which, like that of many others, was almost entirely swept away by the results of the late war;"

Held: the administrator was entitled to no abatement because of the emancipation of the slaves. [306] " the contract . . is consistent with the public opinion which prevailed in South Carolina when it was entered into. . . For upwards of two centuries slavery existed in South Carolina, owing its origin to no statutory provisions, . . [307] It existed as a common law institution . . Although . . not recognized by the common law of England, . . it lawfully prevailed in her American colonies." [300] " The 10th Section of the 1st Article of the Constitution of the

United States declares 'that no State shall pass any law impairing the obligation of contracts.' . . It is the State, no matter by what body represented, which is subjected to the restraint." The thirty-fourth section of Article IV. of the South Carolina constitution of 1868, declaring void all "contracts, . . the consideration of which were for the purchase of slaves," and providing that no suit shall be prosecuted for their enforcement, is void.

Bailey v. Railroad Co., 2 S. C. 312, November 1870. [313] "the plaintiff made a contract with the . . Railroad Company to furnish [twelve] persons to labor [from July 1, 1864, to April 30, 1865.] . . the defendants *claim* that the said persons were free from January 1, 1863, . . and, therefore, they are not indebted to the plaintiff"

Held: [314] "the defendants are liable . . whether the said laborers were or were not slaves."

Rosborough v. Rutland, 2 S. C. 378, November 1870. Will of Rosborough, who died in November 1860: [380] "to . . Rutland . . $2000 . . in trust for certain of the slaves . . gives certain directions as to the kind treatment of the slaves intended as the objects of his bounty" Held: [386] "this Court is not at liberty, under the Act of 1841, to enforce the provisions of the will as to the legacy" [Willard, J.]

Cattel v. U. S., 6 Ct. Cl. 278, December 1870. [279] "The claimant was a colored drayman residing in Charleston during the rebellion. At the time of the capture of the city he owned three bales of cotton. . . [280] The judgment . . is, that the claimant recover . . $134 70 a bale,"

Brewster v. Williams, 2 S. C. 455, April 1871. On January 17, 1865, "the plaintiff sold to the defendant two slaves . . 'Six months after peace is declared . . I promise to pay . . Five Hundred Dollars in species or its equivalent,'"

Bulow v. Witte, 3 S. C. 308, April 1871. Will, 1840: [309] "gave his . . plantation . . with about two hundred negroes," By 1857 "they had not increased, and . . the crops were deficient. . . [310] sold one hundred and seventy . . on the 10th and 31st January, 1860, . . [311] reserved twenty negroes to remain upon and cultivate the provision land . . increased to twenty-three, . . sold . . the negroes at public sale [May 1862], for $7,215, . . Payment was made in Confederate Treasury notes."

Hinton v. Kennedy, 3 S. C. 459, November 1871. Will, 1855: [480] "He directs his young negroes to be kept on one of his plantations, and empowers his executor to 'hire out all his negroes not expressly excepted,' and 'to sell any of them that are turbulent or otherwise troublesome.'" [461] "The testator . . had . . about 135 slaves; . . very much involved in debt, . . [466] hire of negroes for 1860 [1859?] and 1861 [1860?] . . amounted to $6,000." [462] "in 1865 the slaves were emancipated and . . the real estate . . depreciated thereby, so that the assets are insufficient to pay . . debts." Carroll, Ch.: [481] "The

insolvency . . must be attributed to the emancipation of slaves, with its direct consequences—the fearful depreciation of other forms of property and the general ruin of debtors."

Blease v. Pratt, 3 S. C. 513, April 1872. "note . . for $2,250 . . dated 15th September, 1863. The consideration was a slave" Held: no failure of consideration.

Russell v. Cantwell, 5 S. C. 477, November 1874. "action, for malicious prosecution, . . the defendant commenced a prosecution [July 1864] against the plaintiff [slave], before the Mayor . . for stealing some gold and silver coin. . . evidence being very slight, the plaintiff was discharged. . . The jury found for the plaintiff [in the present case] $800."

Motion for a nonsuit, granted: [478] "To permit those who were slaves . . to bring actions . . for . . injuries committed against them during the existence of slavery, would open the door to a flood of litigation . . disastrous to all classes" [Wright, J.]

De Saussure v. McClenaghan, 6 S. C. 83, November 1874. "September, 1861, the Ordinary . . made an order for the sale of the slaves,—of which the estate almost wholly consisted,—for one-sixth cash and for the balance on a 'credit of one, two and three years,' . . [84] October, . . the sale was made . . realized $6,482.81. . . all [notes] collected except three, each for $318."

Grier v. Wallace, 7 S. C. 182, November 1875. "in 1846 . . Whitesides purchased . . John [and four other slaves] . . at . . $1,750; . . paid in cash part . . that or the next year he sold Julia Ann and Agy, and in 1857 or 1858 he sold John for $1,200 cash; . . 1858, Whitesides made a payment on the note given in 1846, took up the same, and gave the note, with the defendant as his surety." When sued, in 1875, the defendant gave evidence "that John and Julia Ann were unsound at the time of the purchase;"

Held: [184] "Whitesides is estopped now from inquiring into the condition of the slaves at the time of their purchase . . the surety must be held bound."

TENNESSEE.

INTRODUCTION.

I.

Tennessee took just pride in her humane enactments and decisions in favor of the slave, going even further, in some respects, than North Carolina, her mother state.

1. In Vaughan *v.* Phebe [1] it was decided, in 1827, that evidence that Phebe "was always said to be of Indian extraction," that her mother "was always called an Indian by descent," that deponent "had often heard that . . [Phebe's great-grandmother] was always reputed an Indian, and was free" was admissible. And in Miller *v.* Denman,[2] decided in 1835, Judge Green, while admitting that the case of Vaughan *v.* Phebe "extends the right to introduce hearsay evidence to the utmost limit, and further than other courts of high authority have gone," declares that the Supreme Court "will not now disturb" that principle.

2. The legislature of Tennessee, in 1833,[3] and her Supreme Court, repeatedly,[4] recognized the right of a slave to make a contract for his freedom. In 1871, the Supreme Court capped the climax by the astounding opinion, delivered by Judge Nelson, "that a marriage between slaves, with the assent of their owners, . . was always a valid marriage in this State, . . not [however] followed by all the legal consequences, resulting from the marriage of white persons." [5]

3. The Tennessee decisions develop the theory of the twofold nature of emancipation, requiring both the assent of the master and the assent of the state.[6] After the assent of the master had been given according to the statutory requirements, he could not withdraw it, and though the slave did not become free till the assent of the state was given, he ceased to be under the dominion of his master. The status of "*quasi* slave" had no terrors for the logicians on the Tennessee bench, though scornfully rejected as impossible by those of other states.

[1] P. 492, *infra.*
[2] P. 502, *infra.*
[3] Act of 1833, ch. 81. Car. and Nich. 279.
[4] Greenlow *v.* Rawlings, p. 514; Ford *v.* Ford, p. 530; Lewis *v.* Simonton, p. 534; Bedford *v.* Williams, p. 585, *infra.*
[5] Andrews *v.* Page, p. 592, *infra.*
[6] Fisher's Negroes *v.* Dabbs, p. 499; McCullough *v.* Moore, p. 504; Greenlow *v.* Rawlings, p. 514; Hinklin *v.* Hamilton, p. 517; Lewis *v.* Simonton, p. 534; James *v.* State, p. 538; Laura Jane *v.* Hagen, p. 542; Isaac *v.* Farnsworth, p. 574; Jameson *v.* McCoy, p. 593, *infra.*

4. On the subject of emancipation, the policy of Tennessee, says Chief Justice Nicholson, in 1871,[7] "was marked by great liberality until the year 1831, when the public mind began first to be agitated by discussions in the Northern States of the question of abolishing slavery . . A more rigid policy commenced in 1831, when it was enacted that no slaves should be emancipated except upon the condition of removal from the State.[8] This policy was based upon the belief that the peace of the State would be endangered by an increase of the number of free colored persons." The act of 1833[9] exempted from this requirement "any slave or slaves, who had *bona fide* contracted for his, her or their freedom, previous to the passage of said act . . and all cases of emancipation by will or devise made by persons who died previous to the passage of the act of 1831." The act of 1842[10] extended the exemption to "any slave . . emancipated in this State, agreeably to the laws now in force," and to "any free person of color . . [who had] removed to this State, previous to . . January, 1836," who, on petitioning the county court, satisfied that court that the petitioner was "of good character, and ought to be permitted to reside in the county" "in which he . . is residing, or may wish to reside," but not in any other county. The act of 1849 provided for immediate removal;[11] the act of 1854,[12] "that hereafter all slaves in this State, acquiring a right to freedom, whether by contract or will, shall be transported to the western coast of Africa, . . Provided, that nothing in this act contained, shall be so construed as to apply to those who from age or disease are unable to go with safety."

5. Slavery was abolished in Tennessee on February 22, 1865,[13] by two amendments of the state constitution.[14]

II.

In 1809 the superior courts of law and equity, provided for by the General Assembly in 1796,[15] were abolished,[16] and a supreme court of errors and appeals was established,[17] composed of two judges in error

[7] Jameson *v.* McCoy, 5 Heiskell 108 (118).
[8] Act of 1831, ch. 102, sect. 2. Car. and Nich. 279.
[9] *Ibid.*
[10] Ch. 191, sect. 1. Nicholson's St. L. 168.
[11] Pamphlet Acts 300.
[12] Acts of 1853-1854, pp. 121, 122.
[13] Gholson *v.* Blackman, p. 583, *infra.* The deed of cession by North Carolina to the United States, of the territory comprising the later state of Tennessee, provided "That no regulations made or to be made by Congress, shall tend to emancipate slaves;" (1 St. at L. 108). Tennessee is not one of the states "designated" in the Emancipation Proclamation, within which the slaves are declared free.
[14] Art. I., sects. 1 and 2. Rev. Code (1871), I. 201.
[15] Ch. 1, sect. 1. Scott's *Laws of Tenn.* (1821), I. 545.
[16] Ch. 49, sect. 22. *Ibid.*, p. 1154.
[17] Sect. 23. *Ibid.*, p. 1155.

and one circuit judge who should sit in the supreme court held for a different circuit from his own.[18] The act of November 19, 1811, provided that the circuit judges should cease to sit in the supreme court;[19] and that of October 11, 1815, added a third supreme judge.[20] The number was raised to five by an act of 1824,[21] but reduced to three in 1827.[22] The constitution of 1834 continued the latter number;[23] that of 1870 restored the former.[24]

[18] Sect. 25. *Ibid.*
[19] Ch. 72, sect. 16. *Ibid.*, II. 39.
[20] Ch. 70. *Ibid.* 211.
[21] Ch. 14, sect. 1. Hayw. and Cobbs 170.
[22] Ch. 79, sect. 1. *Ibid.* 171.
[23] Art. VI., sect. 2. Car. and Nich. 55.
[24] Art. VI., sect. 2. Rev. Code (1871), I. 102.

Greer v. Emerson, 1 Overton 13, November 1801. "The defendant was employed by the plaintiff, and lived with him as an Overseer. The Plaintiff being from home, the defendant ordered a negro the property of the plaintiff, to catch a horse and go with him to the race paths. which were in the neighborhood, for the purpose of straining the horse and ascertaining his speed. The negro . . started the horse, the defendant being present. The horse flew the way, threw the negro, and killed him. . . [14] Verdict for the plaintiff, for $350. Rule for a new trial, which was discharged."

Ingram v. Cocke, 1 Overton 22, September 1804. In 1785 [23] "Rains owed . . M'Donald three negroes, . . Rains . . was about to abscond—Ingram . . [M'Donald's] Agent . . threatening to shoot, forced him to stop . . Immediately after which, Ingram got into his possession four negroes, the property of Rains, . . the proof . . formed a presumption irresistibly strong, that Ingram procured the negroes by menaces and duress. . . the fourth was a charge for trouble Ingram had been at in collecting M'Donald's debt. . . A short time after this, Rains went to M'Donald's and discharged the debt . . by a payment in horses, . . and some money."

Sample v. Looney, 1 Overton 85, November 1804. "Milly . . was sold by . . Mr. Milton to the plaintiff. . . Milton's wife, and perhaps others of his family, told the plaintiff, that the girl was subject to convulsion fits: they appeared to be attached to her, and used persuasions with Milton not to sell the girl, an [on ?] account of her infirmity. Robertson . . then advised [Milton] . . not to ask . . a full price for her, as he might bring himself into trouble in future. The plaintiff was present . . [86] but still persisted in endeavoring to purchase the girl which he did for much less than negroes of her appearance and age usually sold for. The plaintiff then sold the girl to the defendant, being in his boat, on his way to the Natchez, for . . 337 1-2 dollars, a full price, to be paid upon Looney's return. The plaintiff . . represented her to be sound and healthy, . . Price . . proved that . . the plaintiff . . told [him] . . that Milly had fits after he purchased her and that he had sold her to the defendant as sound; but as he was going to the Natchez he could make his own out of her, and requested the witness not to say anything about it. . . [89] Verdict for the plaintiff, damage seventy dollars."

Ragan v. Kennedy, 1 Overton 91, March 1805. "The sheriff sold the negro [girl] . . for . . $139 51 . . February, 1802."

M'Farlane v. Moore, 1 Overton 174, September 1805. "M'Farlane, had purchased a negro woman of the defendant, for a full price and took a bill of sale warranting the property of the negro. . . the negro had been in a sickly state before the plaintiff purchased her; and that the defendant knew . . Doctor Irvin . . had been called to the negro soon

after the plaintiff purchased her; that he found her in such a state, occasioned by the improper administration of Mercury, that he thought her incurable and that the complaint had been of considerable standing, that the woman afterwards died. . . verdict for the plaintiff." Rule for new trial, discharged.

Hooper v. Hooper, 1 Overton 187, November 1805. Detinue. The defendant said [188] "that he had got the mare of his son, and had given him the negro boy . . for her. The son was about fifteen . . The son intermarried with the plaintiff. . . The mother of the plaintiff . . a little time before the marriage . . observed [to the defendant], that she thought it would not do; that her daughter had not been accustomed to hard work, which she thought was the case with his son; . . upon which the defendant observed that his son had the negro boy . . and that he with his son could work; . . after his [son's] death, the defendant got possession of the negro, . . [189] Verdict, $600, the value of the negro; and $440 25, damages, for detention."

State v. Doherty, 2 Overton 80, September 1806. Mary Doherty "appeared to be between 12 and 13 years of age. Upon being arraigned [for the murder of her father], she stood mute. . . [81] When [the jailer] . . heard her speak, it was to a black girl of Mr. M'Allister. Had lately seen the negro girl try to get her to speak, but she did not. . . [82] the former jailer . . never heard her speak but once, and that was to the negro girl . . Once he saw her smile when the black girl was dressing her."

State v. Thompson, 2 Overton 96, November 1807. "Indictment for taking with force . . a negro woman from . . Deadrick . . [who] had possession of the Negro in . . Nashville. . . [97] The defendant went to a house, where there were negroes, returned, and in passing along the streets, fell in with the negro woman coming from the spring. The defendant had horsemans pistols. He told the negro, she was his property, and that she must go home with him [[96] 'about 4 miles from Nashville']. The negro seemed opposed to going, though no violence was used. . . the negro was made to sleep up stairs. . . [98] Overton, J. . . It is of the first moment, that this species of property should be inviolably guarded from the control of others than their master. They differ from all other kinds of property; they have reason and volition. . . [99] it should not be a matter of inquiry with the court, whether the negro was willing to be taken or not. Verdict for the state, . . the defendant . . was fined only."

Cheatham v. Haley, 1 Overton 265, May 1808. "no warranty as to the health of the slave. It was proved that she was a fool, and that the defendant knew it before the sale. . . Verdict for plaintiff."

Looney v. Pinckston, 1 Overton 384, April 1809. "Kincaid, gave his writing obligatory dated . . October, 1804, to the defendant for $300, which might be discharged in a likely, healthy, sensible, and well grown negro girl, over fifteen . . and under twenty, clear of any impediment, against the first day of March ensuing; . . January, 1805, the defendant assigned said covenant . . for value received."

Clarissa[1] *v. Edwards*, 1 Overton 393, May 1809. "an action of assault, battery and [false?] imprisonment. Plea, that the plaintiff was the defendant's slave. The plaintiff was a person of colour, and the object . . to recover freedom. . . in the county court of Rutherford, . . there was a verdict for the defendant. An appeal to this court. . . [394] The sale to the defendant was alledged [*sic*] to have taken place in Virginia. . . [395] insisted by the plaintiff's counsel, that this woman's colour was presumptive evidence of freedom, and cited Tay. Rep. 164. The defendant proved, that this woman was in the possession of a person . . who came from some of the West India islands, to Alexandria, in Virginia. . . he had several persons of colour, of whom the plaintiff was one, all of whom the deponent conceived were slaves. The plaintiff's counsel offered to prove, that the woman had frequently said she was free, and these conversations had been often repeated since her first coming into the country."

"*Per Curiam.* As an act to rebut the idea of acquiescence, this evidence is proper, but cannot be received as creating evidence for herself. Other evidence was offered on both sides, . . verdict for the plaintiff."

Preston v. M'Gaughey, Cooke 113, June 1812. In January 1793 M'Gaughey sold 1400 acres of land to Preston "for the sum of forty-five pounds, . . the payment of which . . [was] received in a negro girl named Milly, about twelve years old; but in case the title of the land should fall through . . the said M'Gaughey shall deliver up the said negro;" Milly "was delivered up to M'Gaughey, and remained in his possession for several years, during which time she had three children. The land . . was ultimately lost, but after the children aforesaid were born, and after one of them had been sold"

Held: [114] "it was a conditional sale . . M'Gaughey is no more entitled to the issue of the negro woman, born while he had her in possession, than if he had hired her for one year."

Appleton v. Harwell, Cooke 242, August 1812. "hired . . a negro man [represented to be sound] . . for . . $47, . . he was . . afflicted with a sore leg, . . returned . . [243] placed under the hands of a physician, by whom his leg was measurably cured, but . . [the hirer] refused to receive him again,"

Edwards v. M'Connel, Cooke 305, February 1813. "action of detinue brought by the appellant to recover . . a negro boy named Seac. The defendant in the court below plead that the negro boy was free, . . 'The plaintiff gave in evidence a bill of sale . . for the negro boy . . and his mother Clarissa; . . that he is of a *deep yellow* color. The defendant gave in evidence the following instrument . . 'I William Edwards . . relinquish all claim to a yellow boy named Seac, . . on the principle of his being free, . . 1809.' . . also . . a record . . of a suit brought by Clarissa,[2] the mother of Seac, against the plaintiff, for her freedom, which she obtained. . . [306] on the trial mentioned . . a decree of the French

[1] See Edwards *v.* M'Connel, *infra.*
[2] Clarissa *v.* Edwards, *supra.*

convention was given in evidence, by Clarissa, which . . abolished slavery in the West India Islands. . . Mr. Jones . . deposed that in 1795 he was in the Island of Guadaloupe, and that all persons there at that time were free . . Mr. Yell had deposed that before the year 1794 he was in the Island; and that the greater part of the persons of her color were free. But there was no proof that Clarissa was ever on the Island, except what might be inferred from her *speaking French*; being a *good seamstress*; and having . . letters written by the captain of a trading vessel, whom she stated was her husband, dated about twenty years ago. . . The counsel for the defendant gave in evidence the decree, dated the 25th day of March 1794, . . The plaintiff then gave in evidence, a decree of the Consular government of France, re-establishing slavery in the West India Islands, dated the 17th day of May 1802, upon the same footing as it was in 1789. . . At the date of the decree abolishing slavery, and the promulgation thereof in July 1794, the Island was in the possession of the English. The court, in charging the jury, stated that the record of Clarissa's freedom, *was conclusive evidence to prove, that her child, born after the period her freedom commenced*, was free, although that were before the commencement of the suit she brought against Edwards. . . It was proved that the boy, at the time of the present trial, was about sixteen years old." Verdict and judgment for the appellee.

Judgment reversed: [313] "the time when Clarissa's freedom commenced, does not appear from the record; and consequently it is no evidence of that fact, . . In other respects the Circuit Court was correct."

Stump v. Roberts,[1] Cooke 350, June 1813. [351] "1808 . . Roberts, . . Nashville, wrote to his father, who lived near Lexington in Kentucky, to send him Dave to assist him in making powder;"

Craig v. Estes, Cooke 381, August 1813. In 1810 a child, born after 1794, was sold for $312.50.

Lewis v. Cooper, Cooke 467, February 1814. In 1781 [471] "the girl was sold for 25,000 *l.* North Carolina money,"

Brice v. State, 2 Overton 254, May 1814. "Brice was indicted, convicted and sentenced . . for having stolen a negro slave."

Judgment affirmed: the act of North Carolina, passed in 1779, upon which the indictment was framed, is in force in Tennessee. [260] "The defendant was afterwards executed."

Netherton v. Robertson, 3 [2] Hayw. Tenn. 29, November 1816. "debt upon a bond, to deliver a negro . . on or before the first of April, 1788. . . [30] the obligee . . informed him, that a negro had been paid in part, and that £25 remained still due."

Jones v. Harrison, 3 Hayw. Tenn. 92, November 1816. "The plaintiff was entitled at the death of his mother, by will made in 1765, to the negro . . with others, which, on her death, the defendants removed from Virginia to this state. The plaintiff sued . . for these negroes, and during the pendency of the suit, they caused the negro [in question] to be sold

[1] Also in Brun. Col. Cas. 224.
[2] Haywood, vols. 1 and 2, are North Carolina Reports.

to satisfy a debt recovered against the plaintiff, whereupon the plaintiff sued by this bill. . . the value of the negro sold, was at the time of the sale, . . 275 dollars, . . at this time . . she is worth 375 dollars."

Held: [93] "the plaintiff . . must . . take the value . . at the time of . . the decree. . . the increased value . . is a loss which must fall on . . the defendant"

Coleson v. Blanton, 3 Hayw. Tenn. 152, December 1816. "deed of trust from Richard Blanton and Philip Vaughan [of Virginia] to Charles Blanton, the plaintiff, . . 1791, . . negroes were conveyed 'to . . Charles . . to the use of . . Philip, until William . . [153] son of Philip . . shall attain . . twenty-one . . or marry,' . . 15 or 20 years ago, Philip . . sold [Hagar, a child of one of the negroes,] . . to Logan, . . in North Carolina." Tate "understood his father got her from Logan." Tate's "father had sold the negro . . to Coleson . . 15 or 20 years ago; . . [154] It does not appear when William Vaughan married or attained 21."

Held: [159] "The Court cannot therefore determine whether the plaintiff be barred or not," [157] "If the owner re-take the property peaceably after three years, . . he is not bound to part with [it.][1] . . It is a question whether a removal of the property to a distance . . concealing from the plaintiff . . where it is . . will excuse the plaintiff from commencing his action within the prescribed time. . . [159] judgment [for Blanton] set aside and the cause remanded," [Haywood, J.] [Mart. and Yerg. 429] "The cause was again brought before the Supreme Court . . in 1825, and was adjudged for the defendant [Coleson], because the replication, that plaintiff did not know where his property was, . . was holden bad, and the suggestions reported in 3 Haywood, were overruled."

Read v. Staton, 3 Hayw. Tenn. 159, December 1816. [161] "The girl was dumb or nearly so. . . about 10 or 11 when purchased [in 1812]. Her price 160 dollars."

Morris v. Gilliam, 3 Hayw. Tenn. 165, December 1816. [166] "April 1806, . . Gilliam, came out with a negro of his father's and lived that summer with his brother . . in said cabin, and made corn there,"

Myrick v. Boyd, 3 Hayw. Tenn. 179, January 1817. In 1801 Myrick "delivered to him a negro girl . . 11 or 12 years old, at the price of 250 dollars, . . her full value at that time; . . An absolute bill of sale was given . . but Mrs. Myrick appearing unwilling to part with her, Myrick proposed redeeming her by giving another of equal value, or paying 250 dollars [later] . . to which Boyd assented."

Kennedy v. Woolfolk, 3 Hayw. Tenn. 195, February 1817. In October 1797 he "gave another bond for eighty pounds or a negro boy;"

M'Cutchin v. Price, 3 Hayw. Tenn. 211, February 1817. "The bill states the bequest of certain negroes by M'Cutchin[2] . . to his wife . . for

[1] A mere *dictum.* "No such question was involved" [Catron, J., in Kegler *v.* Miles, Mart. and Yerg. 429.]

[2] See p. 497, *infra.*

her life; and then said negroes to be liberated. . . That Price intermarried with the widow, . . The bill is founded upon the idea that the gift of freedom is void; . . that the next of kin are entitled in remainder, . . The evidence is, that Price said he would sell the negroes particularly when drinking. Some of the witnesses advised him to do so; one of them says, Price told him he would take them down the river and sell them, and applied to the witness to aid in confining them for that purpose. . . [212] Price is often intoxicated, and in that situation, is easily prevailed on to do whatever is recommended to him."

Held: "A testator may direct that the executors shall endeavor to procure the emancipation of his slaves; and if the executor can do so, then all claims founded upon the legal impossibility of doing so, vanish. But if the attempt fail, then their claims are valid. The possibility is such an interest as the law will . . protect. . . Decree that the clerk and master report to-morrow morning the value of said slaves and their increase, and that . . Price, shall give security . . in a bond . . with condition . . that he will not remove said negroes . . [213] beyond the bounds of this state, nor otherwise dispose of them, so as to impair the interests of those in remainder; . . Kinnard . . only hired negro Jack at 50 dollars per annum,"

Hicks v. Parham, 3 Hayw. Tenn. 224, February 1817. "The bill states that the defendant hired a negro to the complainant for a year and took his bond for the hire; that in one month the negro died; that he tendered . . satisfaction for one month's services which he refused, but sued upon the bond and recovered. Upon this bill an injunction was granted."

Injunction dissolved: [228] "the temporary owner . . is subject . . to all the casualties . . so far as his interest reaches, unless there be stipulations in his favor to the contrary."

Young v. Forgey, 4 Hayw. Tenn. 10, May 1817. "Forgey, at the instance of Henderson, purchased [in February 1805] at execution sale, a negro man, whom the sheriff sold to satisfy a debt due from Henderson, advancing for him . . 284 dollars. Articles were drawn purporting that the money might be repaid in April, May or June next following, and that the negro might be retained till . . October, . . In March 1806, an addition was made . . signed by Henderson, declaring that the death of the negro should be the loss of Henderson. In 1807, the knee of the negro being affected with rheumatic pains, a plaister, by the direction of Forgey, was applied to his knee, which produced excoriations and sores, that finally eventuated in death . . 1809. After the application being unable to labour, and growing worse every day, and being not furnished by Forgey with medical aid, one of the witnesses understanding from Forgey, that the death of the negro would be the loss of Henderson, requested that Forgey would send the negro to his house to be . . taken care of. He came 8 or 10 days afterwards, and after staying one or two days, was removed in a cart or waggon to . . Youngs, where were his children, and he there remained. In December 1807, . . Young purchased the negro from Forgey, who affirmed, that Henderson was bound

. . to pay the 284 dollars; that the death of the negro would be Henderson's loss, and that . . Young should have the benefit of these articles. . . Young . . gave his bond for the 284 dollars,"

Held: [14] "Forgey and not Young should bear the loss." [12] "If he [Forgey] had sued Henderson, he could not have recovered, for he would have been met with the objection, of a noxious administration of medicine which ruined the pledged property. . . the temporary owner shall be operated [*sic*] with the care of preserving the life . . of the slave committed to his charge. . . The evils to be apprehended from a different rule will be prevented . . the slave will not be wantonly exposed to hardships which generate disorders. He will be furnished with food and raiment needful to such preservation and cruelties which force him to absent himself will not be practiced upon him." [11] "It is because of this obligation of the temporary owner, that the price fixed for a year, is not much, if at all greater, than the half of the price given for the work of a day labourer, for whom the employer is not bound to provide."

Cunningham v. Shields, 4 Hayw. Tenn. 44, May 1817. "Shields . . was possessed of a number of negro slaves, and in his will, directed them . . to be sold for the payment of his debts, and the education of his children, . . At the sale or distribution, B. Shields, the defendant, became entitled to a negro boy Charles, then about 10 years of age. He and his brothers agreed between themselves, that if the slaves . . should behave well, they would each emancipate those they had got, at the age of 31 or 32. When Charles was near 30 . . he absconded from the service of his master, who suspected that his absence was with the knowledge of Reuben Charles. This suspicion probably was not without foundation, . . In this situation, Shields agreed to sell the negro [to Reuben Charles] for $250, about half his value, and Charles to take his chance of getting him; . . March, 1813, a bond was executed to Shields, by Charles, with Cunningham and Harris sureties, . . [45] And Shields gave a bill of sale for the negro for life. On this bond suit was . . prosecuted to judgment. . . after suit and before the judgment, [Reuben Charles] . . was obliged to run away on account of his crimes. Cunningham has filed his bill to be relieved from this judgment, and charges that the negro was sold as a slave for life, when he was entitled to his freedom in a short time. . . Shields . . insists that the negro is a slave for life, and . . the fact appears to be so. . . [46] on the very day of the sale, or before the parties had all separated, one of his [Cunningham's] own witnesses deposed, that he said to Shields, that he had *fixed himself by selling a free negro*. From this circumstance it appears as probable, that Charles and Cunningham had combined to over-reach Shields, as that Shields and Harris had privately agreed to defraud Cunningham." [Roane, J.] Bill dismissed.

Wilson v. Carver, 4 Hayw. Tenn. 90, June 1817. "350 dollars . . for a negro man . . [91] hired the negro . . at ten dollars per month."

Renney v. Field, 4 Hayw. Tenn. 165, August 1817. "In May Term, 1817, a *Habeas Corpus* issued to . . Mayfield, from a judge of the cir-

cuit Court, to bring before him the body of Rebecca Renney . . Mayfield brought her before the court . . and returned . . 'That on the day on which the annexed bill of sale bears date, he received . . possession of . . Rebecca Renney as his slave, . . That he holds said slave as his property, as he thinks he lawfully may: until by a solemn adjudication and trial by jury of the claim set up by said Rebecca to her freedom the same is decided,' . . The bill of exceptions states an offer on the part of the plaintiff to prove her freedom by evidence, which the court rejected, and refused to set her at liberty, on the ground that an action of Assault and Battery is better calculated to try the right of freedom and slavery."

Judgment affirmed: [167] "It is urged that the colour of the plaintiff, she being of an olive complexion, with straight black hair and eyes, raises a presumption in her favour. These circumstances are not in the return. . . [168] In all matters of fact . . where the common law requires an investigation by jury, we should proceed . . by a jury. . . The law has provided her with divers means, for the procurement of her liberty, if she be entitled to it. She may sue for a false return, . . Or she may bring trespass, for assault and battery and false imprisonment, . . If there be any danger of removal by the owner, a Judge . . may order a sheriff to . . hold the plaintiff in his custody . . If the plaintiff want testimony and can give security for returning to the master in case of a verdict against her, the court will order . . [169] that the plaintiff be permitted to go in search of testimony. . . And we do not doubt, that in some cases . . a bill in equity will lie for the same purposes. . . These are the provisions made by our practice for these unfortunate persons. They manifest the clemency of our laws towards them. The remedy is continually improved as emergencies present themselves, . . There is no call therefore for a departure from the ancient rules of law, in cases of *Habeas Corpus*. . . [170] very applicable . . to the case of free persons, acknowledged to be so, and *illegally* confined, but not applicable . . in cases where the plaintiffs are held as slaves: . . The applicant was correctly remanded . . to the custody of the defendant until a fair trial by Jury could be had."

Westmoreland v. Dixon, 4 Hayw. Tenn. 223, December 1817. "Shelton, . . in . . Virginia, . . February 1813, . . sold the balance of his hogs to . . Whitehead, and received in part payment a negro fellow about 30 or 40 years of age, at . . 295 dollars. Shelton immediately . . set out upon his return to this state; and after one day's travel, sold the said negro to the complainant . . in the county of Brunswick [Virginia], for 295 dollars: . . assigned the bill of sale from Whitehead . . About five days after . . the negro had a fit. On the 20th of March . . [224] he had another, being the first day of his journey from . . Virginia, to the county of Davidson in this state, . . The . . negro lived with . . Abernathy . . until the fall of . . 1813, during which time he had fits frequently of a dangerous kind, subjecting him to fall into the fire and be burned. . . in working with the negroes . . he did not keep his corn row, but would work out of it, in half a dozen hills, into another row. That in the fall when the complainant moved to Davidson, he was worth

nothing. . . The complainant in February 1814, went to . . Shelton's house, for the purpose of getting him to take the negro back. The negro was not present, having been too badly burned to be taken along. It was in proof by the testimony of one witness, that Shelton . . admitted, that he did sell the negro . . as a sound, healthy, corn field negro. . . expressly denied by Shelton, in his answer . . April . . the . . negro was offered to be returned to Shelton at his father's distillery, who refused to receive him. The negro was left there against the will of Shelton, who ordered him to go away, which he did. . . this bill is brought to have the price refunded to the complainant."

Bill dismissed: Shelton's [227] "sale of the negro after owning him only 24 hours, . . seems to preclude the knowledge of the unsoundness"

Russel v. Lanier, 4 Hayw. Tenn. 289, March 1818. "Claxton was possessed of certain negroes, and being indebted to divers persons, conveyed them to . . Lanier, reserving to himself an estate for life. . . both removed to this state from North Carolina."

Keeble v. Cummins, 5 Hayw. Tenn. 43, March 1818. The father of the complainant, [44] "being in his dotage and possessed of very little property except six slaves [[45] 'Baldy, Sukey and their four children'] . . worth at least 1400 dollars, was induced by the slaves to express a desire of liberating them. . . Cummins . . offered to aid him . . He proposed that the negroes should be conveyed to himself: that W. Keeble, senior, might keep possession of them during his life, and after that period, that he, Cummins, would liberate them. . . 1813, the defendant procured separate bills of sale . . and . . signed . . an agreement . . 'I promise to pay . . one thousand dollars in produce; . . in money if I see cause,' . . The complainant . . obtained judgments against [his father] . . and procured executions to be levied on the negro woman and her children; but before the day appointed for the sale, the defendant got possession of them,"

State v. Jones, 2 Yerger 22, May 1820. "an indictment for harboring a slave,[1] . . 'who was then runaway' . . The defendants . . were found guilty . . Judgment" Reversed: the indictment must aver that the harboring was without the consent of his owner.

Porter v. Armstrong, 2 Yerger 74, November 1820. [76] "suffered [the negro] . . to remain . . to assist him in clearing a piece of new ground;"

Allen v. Scurry, 1 Yerger 36, January 1821. Held: a remainder in a slave cannot be levied on and sold by execution.

Merril v. Johnson, 1 Yerger 71, January 1822. Milly "had three children, . . which he sold . . (except Dinah.)"

Gordon v. Farquhar, Peck 155, June 1823. [155] "the defendant met with the slave, who was absent under a pass or permit from the plaintiff, who claimed to be the owner under a purchase at sheriff's sale, and

[1] Act of 1806, ch. 32, sect. 4.

claiming an interest in the slave under a deed of trust, . . held by Tubb, as trustee, he directed the slave to go to Tubb,"

Held: "The words 'under any pretence whatever,' in the act[1] . . [156] are referable to the harboring, not to the words 'entice from the service of the owner;' this latter sentence means an acknowledged owner, not one whose claim is opposed by that of the defendant by virtue of another claim of his own." [Haywood, J.] Overruled by Marshall *v.* Penington, p. 503, *infra.*

Greer v. M'Crackin, Peck 301, May 1824. Will of John M'Crackin, 1820: [302] "that my negro girl, Spice, shall be set free, at the age of thirty-five, if my wife . . should die before that time, if not, to serve to her mistress's death, and then to be free, by giving sufficient security, and if Spice should have any children they are to be set free at the age of twenty one;"

Pursell v. Archer, Peck 317, May 1824. "Pursell sued Archer . . for slanderous words, . . [318] 'you are the rascal that wrote Mrs. Tadlock's negro's pass, and persuaded him to runaway,' . . verdict and judgment . . for the plaintiff;"

Affirmed: [319] "the words . . being malicious, are such as will maintain the action; for to forge a pass for the negro of another, and to persuade him to runaway, is an indictable offence,"

Childs v. Derrick, 1 Yerger 79, July 1824. "conveyed . . to his kinsman . . a slave . . to prevent his being sold to pay his debts."

Hope v. Johnson, 2 Yerger 123, January 1826. Will of David Beatty: "I will . . that the plantation I now live on be sold . . and the proceeds . . laid out in land in the Indiana Territory, as well situated as can be procured, and the right thereof vested in my negroes, . . (naming them,) . . with their increase, to whom I give their entire freedom, and the settling of them on the above named land, under the direction of my executors," The county court "refused . . to emancipate the negroes, and a decree was made in the present case, that twelve months should be allowed to Johnson [his executor] to procure their emancipation. He applied to the Legislature, who . . passed an act authorizing any circuit court . . to receive . . the petition of emancipation, and to grant it or not, as they might deem proper. The circuit court . . [124] granted the petition . . and the negroes were carried by Johnson to . . Indiana, . . Johnson then sold the land,"

Held: I. "To provide for the subsistence of slaves now in being, who may hereafter become free,[2] is not against any law; . . [II.] [125] the objects of the testator's bounty were capable to take in reasonable time after his death, . . [III.] [126] The mind . . of the owner may be as well expressed by will, as by . . any other instrument;" [Haywood, J.]

Crabtree v. Cheatham, 2 Yerger 138, January 1826. "The wench was unsound when Crabtree sold her . . swelled with the dropsy, and . . could not recover."

[1] Act of 1799, ch. 28, sect. 2.
[2] Acts of 1777, ch. 6, and 1801, ch. 27.

Bob (a slave) v. State, 2 Yerger 173, August 1826. "May 1825, the defendant, (a negro slave, the property of . . Patton,) was apprehended on a warrant issued by . . a Justice of the Peace . . [174] The charge . . was that he had murdered Hannah Shaddon and her child . . The Sheriff was ordered to summon three Justices of the Peace, and a jury of [twelve] slave holders, to try the defendant . . The jury . . could not agree . . June . . a *nolle prosequi* was entered . . and the prisoner was discharged; another warrant was immediately issued . . and another court and jury were convened . . the jury found the prisoner guilty [1] . . On the next day the court again met and the four . . Justices pronounced the sentence of death . . and directed that the sheriff . . [175] should on the 11th July . . execute the sentence. . . the owner . . applied . . for writs of *certiorari* and *supersedeas,* . . refused . . On the 10th of July, . . one of the Judges of the Supreme Court . . ordered a *supersedeas* to the execution to be issued until the further order of the court. The execution . . was thereupon suspended until the cause could be heard in this court. . . [176] the court was clearly of opinion . . [the evidence] was not sufficient to convict the defendant."

Ordered [185] "that the circuit court grant the writ of *certiorari*; and . . the cause being brought before him, proceed to give such judgment . . as in his opinion ought to be done." See State *v.* Waterhouse, Mart. and Yerg. 278 (282-284).

Vaughan v. Phebe (a woman of colour), Mart. and Yerg. 5, January 1827. "Phebe sued Vaughan in the court below, in an action of trespass and false imprisonment; Vaughan pleaded that Phebe was a slave . . The cause was tried . . 1823" Pool deposed [6] "that he had been acquainted with Phebe for fifty years, and that she was always said to be of Indian extraction. . . also acquainted with her mother, called Beck, who was always called an Indian by descent: . . That Phebe had been deprived of her eye by a ringworm. That Beck, her mother, was sister to Tab, . . who had always claimed her freedom, and as he believed had got her freedom by due course of law. . . That he had often heard that Murene was the grandmother of Beck and Tab, and that she . . was remarkably old, and lived about with her children and grand children, and was always reputed an Indian, and was free. That Murene was a copper colour, and that Abner, the brother of Phebe, sued . . [7] Hardeway for his freedom, and was killed by said Hardeway; and that Phebe had often solicited him to undertake to procure her freedom, but from the long acquaintance he had with her master he would not do it." Martha Jones and Phebe Tucker deposed, "that they knew many years ago, a coloured woman named Phebe, in the possession of . . Hardeway . . That they had understood that Phebe was brought to Tennessee by . . Vaughan. That Tab had obtained her freedom by due course of law, and that they believed all Phebe's relations in those parts had also obtained their freedom upon the plea of their having descended from an Indian ancestor. They always understood that Molly Moore . .

[1] Catron, J.: [191] "I have never known any person convicted . . upon evidence so slight;"

had one of the family named Minor, and several others who had since all got their freedom, as will appear of record." [6] "the record of a verdict and judgment of the superior court of Prince George county (Virginia) in the suit of Tab *et al vs.* Littleburg Tucker [was read to the jury], which record established the fact, that Tab had . . recovered her freedom, on account of her descent from Indian ancestry." Verdict for the plaintiff.

Judgment thereon reversed and the cause remanded, with directions to reject the following words in Pool's deposition: [28] "that Abner . . sued . . Hardeway, and was killed by him;" and the following words in Martha Jones's deposition: "deponent believes all Phebe's relations in those parts have also obtained theirs . . Has also understood that . . Minor, and several others, have since got free," and similar words in Phebe Tucker's deposition. [27] "So far . . as the depositions have allusion to pedigree or common reputation as to freedom, we believe them to be competent evidence." [22] "Freedom in this country is not a mere name . . [23] and it makes itself manifest by many . . *public* acts. . . transfers its possessor, even if he be black, or mulatto, or copper-coloured, from the kitchen and the cotton-field, to the court-house, and the election ground . . in some states renders him a politician, . . takes him to the ballot box—and, above all, secures to him . . trial by jury. . . It is difficult to suppose a case, where common reputation would concede to a man the right to freedom, if his right were a groundless one." Crabb, J., delivered the unanimous opinion of the court.

Hawkins v. Jamison, Mart. and Yerg. 83, January 1827. "an action of trover . . brought by Jamison . . to recover the value of a female slave . . originally the property of Jamison, and . . sold . . January, 1822, at public sale by virtue of several executions, . . Hawkins became the purchaser . . having bid . . one hundred and two dollars, . . April following, Jamison . . informed him that he came to redeem his slave, and tendered . . the sum he (Hawkins) had paid . . with 10 per cent. interest thereon,[1] . . Hawkins refused . . unless . . he . . would also satisfy some other claims he had against him. . . [84] Jamison refused . . Hawkins then offered to keep the slave and allow Jamison 300 dollars for her, which . . was about her value. This Jamison also refused;"

Held: [88] "a court of equity is the only tribunal where justice can be done in such cases."

Crenshaw v. Anthony, Mart. and Yerg. 102, January 1827. [103] "1812, in . . Virginia, . . Crenshaw . . sold . . the slave Juno . . and some others, to . . Herring, possession of the slaves accompanied the sale, and remained with Herring for a few days—he then hired them to . . Crenshaw; and re-delivered them . . Sometime after . . Herring also purchased of Crenshaw, a certain tract . . but Crenshaw's wife refused to relinquish her right to dower . . and Herring . . agreed . . if she would release her right . . to convey to her son . . for her sole . .

[1] Act of 1820, ch. 11, sects. 2-5, repealed by act of 1825, ch. 43, sect. 1.

use . . Juno and her daughter Sally, . . July, 1813. . . [104] In 1814, . . Crenshaw and his wife removed . . to . . this state, and brought four negroes, the property of [Crenshaw] . . and also . . Juno and Sally."

Smith v. Bell, Mart. and Yerg. 302, July 1827. [303] "the sale of one of the negro women and her child;"

Kegler v. Miles, Mart. and Yerg. 426, January 1828.[1] "Miles, in 1815, . . was tending to insolvency . . he made a bill of sale of [a negro] to his daughter Nancy, then about 14 years old; no consideration was given, . . In 1816 or 1817, Nancy married . . Kegler, . . resided in Mississippi. Kegler, soon after the death of his wife [in 1822], returned to . . Tennessee, with the negro girl and his two children; he made a deed of gift of the girl to the children, . . [427] Soon after . . Kegler left Tennessee, leaving the negro girl and his children with . . Miles. In 1823, . . Miles . . sold her" Kegler's children brought suit.

Held: [429] "three years possession of the slave . . acquired without fraud or force, gave to David Kegler a legal title to her," [427] "It is contended, that the *remedy* of . . Miles was barred, but the *right* remained: . . if he got possession . . peaceably by *recaption*, the right and possession were again united, of which he . . could not be deprived . . [429] No authority[2] is found giving sanction to such an idea." [Catron, J.]

Scott v. Britton, 2 Yerger 215, January 1828. [217] "Rachel [about 30 years old] and her child [about five years old] were valued at 400 dollars [in 1814], Arch at 400 dollars, Ned [about three years old] 100 dollars, and Hayden [one year old] 75 dollars. . . [222] common field negroes, worth between 1,000 and 1,300 dollars."

Fields v. State, 1 Yerger 156, January 1829. "The plaintiff in error, was indicted . . for the murder of . . Peter, the property of . . Jefferies: . . The Jury found him not guilty of the murder . . but guilty of the manslaughter, . . moved for the plaintiff in error . . that no judgment should be rendered . . because . . manslaughter . . where the person slain was a slave does not in point of law exist; the court overruled the motion . . and passed sentence . . that he be burned in the brawn of the left hand, be imprisoned thirty days and pay the costs of the prosecution."

Judgment affirmed: [160] "the offence of manslaughter, when a negro or mulatto slave is the subject of it, . . exists by the common law: because it is the unlawful killing of a human being," [Whyte, J.]

Grainger v. State, 5 Yerger 459, March 1830. The deceased charged [460] "that he had held his negroes till the children of Grainger had whipped them. Grainger denied the charges,"

[1] "1825," in the margin, is evidently a misprint.

[2] Judge Haywood's declaration in Coleson *v.* Blanton, p. 486, *supra*, was an *obiter dictum*.

David v. Bridgman, 2 Yerger 557, July 1831. "Sampson David . . made his will in 1826, and shortly thereafter died. . . [563] He devised [his slaves] . . to his wife during life, if she should die before 1840; on her death, or in any event, on the first of January, 1840, he vested them in trustees in remainder, to be hired out until a sufficient sum was earned to transfer them to some colony or state where freedom was allowed . . and directed them to be emancipated." His widow died in 1827 and "the trustees . . took the slaves into their possession, and hired them out."

Held: "This disposition violated no law or policy of Tennessee,"

Andrews v. Hartsfield, 3 Yerger 39, March 1832. In 1814 her father "told her to take the girl to nurse her child; to take good care of her, and keep her until he called for her." "The slave remained in the possession of Mr. and Mrs. Walker . . until 1828, during which time she had two children. . . levied on, and were about to be sold to satisfy the debts of the husband."

Held: "By the act of 1801, ch. 25, sec. 2, the reservation of title by [the father] the complainant, as to the creditors of Walker, is . . void;"

Walker v. Wynne, 3 Yerger 62, March 1832. "In 1817, . . Walker . . loaned . . to his son . . the slave . . 1823, when in consequence of the creditors of [the son] . . intending to levy upon him, he run off, and was taken into possession" by the father.

Kearney v. Smith, 3 Yerger 127, March 1832. "brought from Virginia two negroes, . . which he sold"

Lawrence v. Bridleman, 3 Yerger 496, August 1832. "1825, mortgaged a negro man . . to secure the payment of $500,"

Overton v. Bigelow, 3 Yerger 513, August 1832. In 1826 [516] "one woman between 25 and 30 years old, and four children" were worth $1500.

Hadley v. Latimer, 3 Yerger 537, August 1832. Hadley, who died in 1830, [541] "was averse to slavery, . . had applied to the legislature and to the courts to have them freed, but his applications had been denied; and hence . . he employed respondent to convey them to a free state [Illinois], that they might be emancipated; and for this service gave him . . 243 acres. . . [542] some of the negroes had strong claims upon Hadley for their freedom, on the ground of merit;" See Blackmore *v.* Phill., p. 501, *infra.*

Black v. State, 3 Yerger 588, August 1832. "the plaintiffs, on the night of the 24th October, 1830, . . with clubs, knives, etc. did enter the dwelling house . . and did . . take . . one negro woman, . . of the value of $300. . . The defendants . . insisted on the right to show . . a title to the property, but the court refused"

Gwin v. Latimer, 4 Yerger 22, February 1833. Jim was sold in 1831 for $400.

State v. Shropshire, 4 Yerger 52, February 1833. In 1831 they [53] "were taken before a justice of the peace, upon a warrant charging

them with negro stealing; . . committed to the jail . . 1832, . . taken upon a *habeas corpus* before . . judge . . discharged,"

Loftin v. Espy, 4 Yerger 84, February 1833. Catron, C. J.: [92] "If the slaves of A. be levied upon for the debt of B. and A can show a clear right . . to the slaves, courts of Equity have jurisdiction to restrain the creditor and sheriff until the right be tried at law, or determined in equity, if the right be undoubted, in the mind of the court. . . it must often occur that the mother will be separated from the children, or the husband from the wife, if the sheriff be permitted to sell. Nothing can be much more abhorrent to these poor people, or to the feelings of every benevolent individual, than to see a large family of slaves sold at sheriff's sale; the infant children, father and mother, to different bidders."

Shenault v. Eaton, 4 Yerger 98, February 1833. In 1828 "two negro girls, . . Jemima, about fifteen . . [99] Lucy, about twelve . . [sold for] six hundred dollars: . . [101] that [the vendors] . . had owned the two girls for a short time only, having obtained them in exchange for others; . . [102] that . . Jemima was indisposed; that defendant [from North Carolina] . . represented that it was the effect of a cold; that Jemima was afflicted with a disease of the liver and womb, which produced her death in two or three months after the purchase; . . no proof which showed that the defendants . . knew . . whether she was diseased or not."

Sylvia and Phillis, by next friend, v. Covey, 4 Yerger 297, March 1833. "a bill filed by the plaintiffs, . . people of color, alleging they have instituted a suit for freedom, and that they are apprehensive that the defendant will convey them away and sell them; and they pray . . that they be taken out of his hands, etc. An attachment was awarded, by virtue of which the plaintiffs were taken out of the custody of the defendant. To this bill the defendant demurred . . sustained . . [The court] taxed . . the next friend with all the costs." Judgment reversed, [298] "and the cause remanded . . to be retained . . until the termination of the suit . . mentioned,"

Matilda v. Crenshaw, 4 Yerger 299, March 1833. "on the 15th June, 1825, . . she declared against the defendant for an assault and battery and false imprisonment, . . [300] verdict in [her] favor . . April, 1827, final judgment . . [Between those dates] the defendant continued to hold the plaintiff to labor as his slave, but permitted her . . to collect evidence, attend court, consult her lawyers, etc. . . her labor was of the annual value of $20, and that . . in prosecuting her . . suit . . [she] was necessarily compelled to expend about fifty dollars. . . that after she had recovered, she stated she was satisfied to live with defendant as she had done before."

Held: [304] "From the 15th of June, 1825 to the [ ] day of April, 1827, she is entitled to recover at the rate of $20 per annum. . . [305] The fifty dollars will be added to the wages;"

Morgan v. Elam, 4 Yerger 375, March 1833. Marriage contract, made in Virginia, in 1820, transferring about forty slaves to a trustee for the separate use of the wife.

Hardeson v. Hays, 4 Yerger 507, March 1833. "in 1826, . . when he removed [from North Carolina] to Tennessee he carried Rachel with him; . . sold her [about 1831 for] . . three hundred and thirty dollars"

Scruggs v. Brackin, 4 Yerger 528, March 1833. "action . . to recover the price paid for a negro, on a warranty that she was a slave for life. The breach . . assigned is, that she was at the time of the sale a free woman, and has since recovered her freedom. . . 'Know all men . . that I . . have . . sold and delivered . . Fanny, a slave for life, for the sum of three hundred and forty dollars, . . 1820.'"

Shute v. Wade, 5 Yerger 1, March 1833. The slaves were brought from South Carolina to Tennessee in 1804.

Wright v. State, 5 Yerger 154, March 1833. "during the night, . . [Boon] had stolen from his wagon, . . four hundred and fifty dollars. In the morning he had several of the neighbor's taken up, . . among them was Bob, the negro of Mrs. Wright, the mother of defendant. No discovery being made . . Mr. Boon requested those present . . to keep a look out . . upon these negroes, and to try and get the money . . Bob was seen to have money, and . . asked if he could get a fifty dollar note changed; his young master took him up and got from him one hundred and fifty dollars. In a few days, suspicion fell upon Wright from some information given by Bob, and two hundred and fifty dollars was found in his trunk"

Hogan v. Carland, 5 Yerger 283, December 1833. "they warranted Betsy to be about thirty-five years of age, . . Betsy was forty-five . . the defendants offered . . to prove that . . [the purchaser] knew the true age . . but had . . thirty-five inserted, in order to aid in selling her again."

Harrison v. Chilton, 5 Yerger 293, December 1833. "contract . . to pay four hundred dollars in cash notes, accounts, judgments and pork, for . . a negro girl."

M'Cutchen v. Marshall, 8 Peters 220, January 1834. Will of Patrick M'Cutchen, who died in 1812: [222] "It is my will and desire that my negro man slave named Jack, aged about twenty-four years; . . Ben, aged about nineteen years; . . Rose, aged about twenty-six years, together with what children she may hereafter have, if any, before the death of my wife Hannah; also . . Eliza, aged about eleven years; . . Cynthia, aged about seven years; . . Thomas, aged about four years; . . Harriet, aged about two years; . . Maria, aged about two months; the four last mentioned slaves being the children of the above mentioned Rose, shall all and each, at the time of the death of my beloved wife Hannah, to whom they are given during her natural life, . . be liberated from slavery, and for ever and entirely set free: provided, those who are not

now of age or shall not have arrived at the age of twenty-one years at the happening of the death of my beloved wife Hannah, shall be subject to the following disposition, viz. Eliza shall be at the control and under the direction of my brother Samuel M'Cutchen until her arrival at the age of twenty-one years, and then be set free; Cynthia, Ben, Thomas, Harriet and Maria, shall be at the control and under the direction of James Marshall, my wife's brother, until they shall each, respectively, arrive at the age of twenty-one years; at which time, or times, they are to be each, respectively, liberated, and for ever set free."

Held: [240] "the decision in the case of Hope *v.* Executor of Beattie,[1] must be considered as settling the construction of the act of 1801,[2] and authorising the executor to petition the court for the manumission of the slaves, and justifying the proceedings of the court thereupon. This construction of the act of 1801, puts at rest the claims of the appellants to all the slaves, except the children of the females, which were born after the death of the testator, and before the death of his widow, to whom all his slaves were bequeathed, during her natural life. And this class includes the children of Eliza and Cynthia only." They must [241] "be considered slaves:" "the course of decisions in . . Tennessee, and some other states where slavery is tolerated,[3] go very strongly, if not conclusively, to establish the principle, that females thus situated, are considered slaves. That it is only a conditional manumission, and that, until the contingency happens, upon which the freedom is to take effect, they remain, to all intents and purposes, absolute slaves. And we do not mean to disturb that principle." [Thompson, J.]

Lyon v. Vick, 6 Yerger 42, March 1834. [43] "the balance of the negroes bequeathed to him . . were sold . . and the proceeds applied to the payment of testator's debts;"

King v. Cohorn, 6 Yerger 75, March 1834. [76] "The defendant was an artful . . man, . . The complainant was a negro woman, ignorant, old, addicted to drunkenness, then in bad health, and necessarily imbecile, and possessing no other property than the lot in question [worth about four hundred dollars]. The contract was made in secret. . . [77] Her husband was a slave belonging to the defendant, and worth about the same sum. Several of her neighbors had heard her say that she wanted to sell her lot for Edmund her husband. . . he was then sick at her house. Even the son-in-law of defendant says he heard her offer the lot to defendant for Edmund. But . . we find this old destitute negro woman giving . . her home . . for a heavy wagon and less than half a team of inferior horses. . . [78] a most gross fraud. . . contract . set aside," [Green, J.]

University v. Cambreling, 6 Yerger 79, March 1834. "Col. Patton, a Colonel in the North Carolina line during the revolutionary war . . caused to enlist as a musician [drummer], in the service of the United

[1] Hope *v.* Johnson, p. 491, *supra.*
[2] Tenn. act of 1801, ch. 27, sect. 1.
[3] Maria *v.* Surbaugh, vol. I. of this series, p. 138.

States, his negro slave . . Frederick, who served during the war . . and was thus entitled to a one thousand acre warrant . . 1821, a warrant . . issued to the University of North Carolina, for the services of said slave, reciting that he died without heirs," [85] " It is contended, that the act of 1782, ch. 3, sec. 6, never could have intended to provide a permanent reward in land, a home and fireside for a slave . . who, from his political and moral condition, it was impossible to reward."

Held: " This argument . . is addressed to us in vain. The board of commissioners of North Carolina has . . [86] adjudged that negro Frederick . . was entitled to one thousand acres of land. . . conclusive. . . What is earned by the slave belongs to the master, . . North Carolina held as trustee for Col. Patton," [Catron, C. J.]

Hickman v. Quinn, 6 Yerger 96, March 1834. Catron, C. J.: [103] " She felt as every woman does and should feel, that to take away the negroes her father had given her, was taking away from her part of her family, and a cruel necessity. . . [104] Most of the negroes were young and an expense to the purchasers of the life estate."

Fisher's Negroes v. Dabbs, 6 Yerger 119, March 1834. Will of Peter Fisher, 1827: [120] " I give my negroes . . their freedom, and a right to live on my . . land fifteen years; also . . one year's support; . . a sufficient quantity of horses, cows, hogs and farming utensils for them to make a support, to be divided by men appointed by court. If any of my negroes withdraw from the land, he has no right any further to do any thing with the land, but his share falls to the rest," Dabbs, administrator with the will annexed, " though urged by the negroes . . to file a petition in the county court . . [121] for the purpose of procuring their emancipation, refused . . unwilling to sign the bonds required by law. In 1829, an act was passed . . 'if the executor . . refused . . it shall be lawful for such . . slaves to file a bill in equity by their next friend;' . . After the passage of the act of 1829, the bill of Levy, Handy and others, by their next friend, . . was filed: . . [122] in 1831, the legislature passed . . an act[1] to explain . . an act passed . . 1829, ch. 29. . . 'That the . . act [of 1829], shall . . [not] extend to any case [of emancipation by will probated] . . before the passage of the [act of 1829] . . but . . it shall be the duty of the Chancellor . . to have the same stricken from the docket;' . . [123] This the Chancellor, Reese, refused to do . . The causes were afterwards tried by Chancellor Cook, who refused to emancipate any of the slaves, except one. The bill was therefore dismissed as to the residue, . . appeal "

Held: I. [131] " we give the assent of the State to the emancipation of these slaves, in accordance to Peter Fisher's will, upon the condition . . that they be transported to the coast of Africa." [126] " The idea that a will . . or deed of manumission, is void in this State, is ill founded. . . but it is an imperfect right, until the State . . assents . . It is adopting into the body politic a new member; a vastly important measure . . especially in ours . . where the free negro's vote . . is of as high value

[1] Ch. 101. Car. and Nich. 278.

as that of any man. . . most objectionable population." Review of the emancipation acts of 1777, ch. 6; 1801, ch. 27; 1829, ch. 29; 1831, ch. 52. [129] "We think it is clearly inconsistent with the policy of the State . . to give the assent of the government to the manumission . . upon any terms short of their immediate removal . . beyond the limits of the United States . . [130] additional reasons. The act of 1833, ch. 64, to aid the colonization society, . . [It] has formed a colony of free blacks at Liberia, . . The people residing there . . are enjoying a life of comfort and of equality, which it is impossible in this country to enjoy, . . [131] here . . the negro . . freed . . is a reproach and a by-word with the slave himself, who taunts his fellow slave by telling him 'he is as worthless as a free negro.' . . Generally, and almost universally, society suffers, and the negro suffers by manumission. . . [II.] [132] The act of 1831, ch. 101 . . [is] unconstitutional" [Catron, C. J.]

Harris v. Clarissa, 6 Yerger 227, March 1834. Will of Thomas Bond of Maryland, 1800: [238] "he liberated [1] several of his slaves, . . other . . bequests . . at the expiration of . . five years . . Bishop to be a free man. . . Jim, aged fourteen years, to serve . . until he is twenty five . . and then . . to be a free man. . . Frederick, aged twelve years, to serve . . until twenty five . . and then . . to be a free man. . . Abelard, aged one year, to serve . . until he is twenty five . . and then to be a free man. . . that . . Dinah, shall have her freedom at my death; . . Suck . . three years after my death; . . Rachel . . five years after . . Betty . . four years after . . that . . [239] all the young negroes . . shall have their freedom . . at the age of twenty five. . . Clarissa, at the . . . testator's death, was about ten . . Before Clarissa was twenty five, she had . . Hannah, Delia and Edward; after that age she had Edy and Martha."

Held: [245] "When the title of Harris [a distributee] ceased, his title, by our law, to the three children ceased . . when Clarissa was twenty-five. The executors have no title over, nor has any one." [Catron, C. J.]

Jordan v. Trice, 6 Yerger 479, May 1834. A negro woman, aged thirty-five, and her child were sold for $650.

Wilson v. Bryan, 6 Yerger 485, May 1834. In 1831 "'all the hands in Denmark [district?], and within three miles of the road,' were designated to work under him"

Douglass v. State, 6 Yerger 525, May 1834. [529] "Douglass, with two constables, with several others, in a threatening manner, took from the smoke house of Kincaid some of his negroes, claiming the right to do so by virtue of executions against Kincaid's son-in-law."

Reeves v. Dougherty, 7 Yerger 222, August 1834. [228] "hire of seven negro men from the 1st of March, 1816, to the 1st of March, 1819, at one hundred dollars per year [each] . . [229] three women for the same time, sixty dollars each [per year], . . two girls . . at twelve dol-

[1] Act of Maryland of 1796, ch. 67, sect. 13.

lars each [per year], . . George, a boy, [at ten dollars a year] . . credited with the following negroes: Dilce, . . $800; Jim, . . 700; Charlotte, . . 300; Joice, . . 300; Juda, a boy, . . 350; Bob, a boy, . . 200; George, a boy, . . 150"

Napier v. Person, 7 Yerger 300, March 1835. "when the contract of hiring was made [for the year 1831], it was agreed that there should be a deduction for the time the slaves might lose by sickness, and by running away; and that for the time so lost there should have been a deduction of fifty-two dollars and seventy-five cents;"

Wright v. Weatherly, 7 Yerger 367, March 1835. "Andrew, . . the property of Wright, and Jerry . . the property of Weatherly, quarrelled; . . Andrew stabbed Jerry . . and Jerry shortly afterwards died." Weatherly "recovered a judgment against Wright of five hundred and fifty dollars."

Judgment reversed: [380] "some remedy . . is loudly called for, . . to protect the people from injuries which this unfortunate, degraded and vicious class . . may inflict. The court, however, cannot afford such remedy." [Green, J.]

Blackmore v. Negro Phill, 7 Yerger 452, March 1835. Action for trespass and false imprisonment. [453] "Joshua Hadley,[1] whose slave he was, by . . a bill of sale [in 1828], transferred all his right . . to the plaintiff to . . Latimore, who . . conveyed the plaintiff to . . Illinois, and . . 1829, . . by his deed of manumission, . . [in Equality] in the county of Gallatin, . . before the proper tribunal . . freed the said plaintiff" Latimore stated, [455] "that he removed the plaintiff, with the other negroes . . and remained with them some three or four days . . That . . the . . negroes . . were taken . . to Illinois with a view of their becoming citizens of said State, and remaining there; but that after the execution of the deed of manumission, they expressed some anxiety to return to Tennessee and wait upon their old master, Capt. Hadley; and having asked . . the clerk of the court, whether they could return without endangering their liberty, and he having informed them that they were free and could go where they pleased, they returned . . and remained there until the death of Joshua Hadley; when the whole of them . . were taken into possession by defendants . . Joshua Hadley, after the return . . hired Stephen, and having fallen out with him, then hired . . Phill. . . [456] The jury found a verdict for the plaintiff [defendant in error]"

Judgment thereon, affirmed: it [465] "was well left to the jury . . that if the intention was bona fide to free the slaves, . . [466] once free in Illinois, the return to Tennessee does not replace them in the condition of slaves. . . If it be true as contended, that the original design was to evade the laws of Tennessee, and that the return of the plaintiff . . is inconsistent with our policy, still that will not place them in the condition of slaves. . . If this State designed to make such acts . . nullities, then express enactments should be shown." [Peck, J.]

[1] See Hadley *v.* Latimer, p. 495, *supra*.

Battle v. Bering, 7 Yerger 529, March 1835. "1831 . . purchased . . a blacksmith, for . . twelve hundred dollars,"

Loving v. Hunter, 8 Yerger 4, March 1835. Will of Norvell of Virginia, 1809: [5] "that the land be sold . . and the money . . laid out in young negroes," One of the slaves was brought to Tennessee by the daughter of the testator.

State v. Smith, 8 Yerger 150, May 1835. "Smith was indicted for forging the following . . 'N. Carolina. The bearer, Martin Rivers, was raised by William E. Williams, . . This is to certify, that Martin Rivers was free-born, and bound to me until he was twenty-one years of age; his time was out in 1819, and has conducted himself honestly and soberly, . . and is a well meaning man. . . May, 1825. William E. Williams.' . . [151] The indictment alleged, that the paper was . . delivered to a . . slave, named Charles, the property of . . Caruthers, as a certificate of freedom, . . convicted"

Judgment arrested: [152] "As a falsehood, the paper is of a most dangerous character; . . As a legal instrument it is nugatory on its face, . . the defendant . . is clearly not subject to the penalties of felony," [Catron, C. J.]

Miller v. Denman, 8 Yerger 233, July 1835. Action brought by Denman against Miller "for enticing out of the possession . . [234] of the plaintiff [defendant in error], a slave, . . Harriet, . . the daughter of . . Rose, . . claimed as a slave by Denman who resides in Georgia. About two years before . . Harriet made her appearance . . in this State, passing by the name of Irene Sanders, and assuming to be free, and as she was white, no one suspected that she was a slave, or that she had any negro blood. . . was residing with the defendant, when the plaintiff . . claimed her . . The girl admitted she was a slave, . . and they set out for Georgia. Some of the neighbors of defendant . . wanted to know, if there was no way of making the plaintiff prove . . He suggested . . they had better let the matter rest. Afterwards at their request he drew up a blank process, and gave it to them, and they arrested the plaintiff, and brought him and the girl before two justices, who discharged the girl, and committed the plaintiff to prison. . . the defendant was asked, what was to be done with the girl? . . he replied, he supposed she might go where she pleased, . . she left . . in company with a young man . . Evidence was introduced by the defendant, proving that Rose . . was reputed to have been free; that she came from Pennsylvania, and had been improperly reduced to bondage. . . admissions of Denman, that Rose was free; and also, that he said it was supposed she was free-born. The court charged . . [235] that Mr. Miller . . could not avail himself of such evidence"

Judgment for the plaintiff, Denman, reversed and the case remanded: [235] "it was competent for the defendant to prove that she was of fair complexion, straight hair, and that she was the daughter of a woman . . [236] reputed to be free. This principle is distinctly asserted by this court, in . . Vaughan *vs.* Phebe.[1] . . Although that case

[1] P. 492, *supra.*

extends the right to introduce hearsay evidence to the utmost limit, and further than other courts of high authority have gone; yet . . we will not now disturb it." [Green, J.]

Marshall v. Penington, 8 Yerger 424, August 1835. [425] "that Penington had the negro in possession under a hiring . . and that she left his possession at the solicitation of the defendant [Marshall, who claimed her as administrator.]" He [429] "carried her on his horse to his own house, and there concealed and kept her," [1]

Held: he "clearly incurred the penalty." [2] The doctrine of the right of recaption is [431] "now exploded" in this state. Overrules Gordon *v.* Farquhar, p. 490, *supra.*

Wharton v. Thompson, 9 Yerger 45, March 1836. "On or before the 1st of January, 1835, we . . promise to pay . . fifty dollars, for the hire of Daniel, until the 25th of December, 1834, and to furnish . . three suits of clothes, one pair of shoes, blanket and hat; . . 1st Jan. 1834." Defendants "offered to prove, that said note was executed . . about the 25th of December, 1833, . . that said negro had been wounded [[46] 'from a wad shot against him'] previous to its execution, of which wound he died . . 9th of January, 1834, and that plaintiffs and defendants were ignorant of the injury . . evidence . . rejected" Affirmed.

Shaw v. Smith, 9 Yerger 97, March 1836. A negro woman and two children were sold by the sheriff for $521. "The negroes immediately descended from the block, where they had stood with the sheriff, who said . . 'Here, Shaw, are your negroes, take them.'" [101] "purchasers at these sales . . purchase upon speculation, and often obtain property at one-half or one-third its value; scarcely ever is a fair price obtained." [Green, J.]

Hickman v. Cantrell, 9 Yerger 172, March 1836. A boy fourteen or fifteen years old was sold for $450 in 1826.

Graham v. Swearingin, 9 Yerger 276, April 1836. "On the 17th day of December next, we . . promise to pay . . one hundred and ten dollars . . hire of . . Jeff, for twelve months from this date [November 17, 1831], and to deliver . . in Memphis, said negro at the end of the term," Jeff was "to be employed in the work . . of a servant and common laborer, . . that his necessary and comfortable clothing, medical attendance and provisions were furnished by defendants, that said negro was of unruly disposition, and that said defendants attempting moderately to chastise . . he forcibly broke from them and absconded . . and that the defendants used all possible means . . by instant pursuit and by advertisements of reward . . and were unable . . to apprehend said negro." Held: it is not a covenant to insure the return of the negro.

[1] [427] "when Penington found out where she was concealed, he made up a company, broke down Marshall's door, and re-took her by force. . . indicted for the trespass." [432] "when they attempted to defend themselves . . because they had the right of re-caption as true owners . . their defence, was rejected."

[2] Act of 1799, ch. 28, sect. 2.

McCullough v. Moore, 9 Yerger 305, June 1836. [306] "1830, a court of pleas and quarter sessions . . was begun . . present . . [nineteen] magistrates . . On . . the transcript of that day's proceedings, is set forth the petition of Daniel Slavins, praying the emancipation of the plaintiff below [Fanny Moore], and various other slaves, . . certificate . . 'the court unanimously agree to grant the prayer . . on the petitioners entering into bond . . ten thousand dollars.' . . 'ordered by the court that said slaves . . be emancipated . . and thereupon . . Slavins . . entered into bond,' . . As the statute requires that a majority or nine of the acting justices should be present, and two-thirds of those present should concur in the act of emancipation, the entry . . not incorporating a statement . . so many . . present, we have, it is argued, no record evidence of the presence of nine, and the concurrence of six . . Their number fluctuates during each hour."

Held: I. [307] "those who allege the presence of a smaller number . . must show affirmatively by the record that such was the fact. . . [II.] [308] If . . the entry omit to show . . the proper number . . present to protect the interests of the public," the emancipation appears not to be voidable by the master.

Dunnaway v. State, 9 Yerger 350, December 1836. "The plaintiff in error was indicted for keeping 'a disorderly common tipling house.' The jury found a special verdict 'that the defendant on one occasion kept a house in which there was a collection of twenty or thirty negroes more than belonged to the place . . who got drunk, danced and disturbed the neighborhood with noise and uproar' . . judgment against him on the verdict." Reversed.

Turner v. Armstrong, 9 Yerger 412, December 1836. "a negro girl . . was sold at constables sale to pay his debts;"

Jenkins v. Picket, 9 Yerger 480, December 1836. [486] "the driver of the wagon was a young negro who had never been allowed to make contracts for hauling, who had never before been trusted with a wagon and team alone, . . sent to Nashville with a load of cotton . . to bring home salt,"

Henderson v. Vaulx, 10 Yerger 30, December 1836. [36] "Defendants [owners of the life estate] insist, that they have a right to remove the negroes and themselves to . . Mississippi, where slave labor is more profitable, . . making said slaves more beneficial to them, in the culture of cotton;"

Held: they may not take them from Tennessee: [37] "It is but recently, in this state at least, that the peculiar nature and character of slave property, and of the relation between master and slave, have been regarded in our courts in the spirit of a rational and humane philosophy. . . But recently . . it has been determined that a court of chancery will protect the possession . . [38] of this peculiar property, a property in intellectual and moral and social qualities, in skill, in fidelity and in gratitude, as well as in their capacity for labor; . . The remainder man is . . entitled to be secured in the specific slaves . . [39] We have a mild penal

code as regards slaves, . . We have a much greater portion of free than of slave population; and the slave, without severity, is kept in a safe subordination; . . Here there is . . protective public sentiment to the slave—there [in another state] it might be otherwise. Here the annual profit of the slave's labor bears no very large proportion to his value, and . . interest is on the side of humanity, and he may not be over worked—there the annual profit may be one third of his entire value, and the temptation would be to overwork him. Here the moderate annual profit . . makes an increase of the stock an object, and mothers and children are tenderly treated . . Here we have a . . healthful climate" [Reese, Ch.]

Overton v. Bigelow, 10 Yerger 48, December 1836. Held: [54] "mortgagee of a negro is subject to the same responsibilities . . that exist in the case of a hirer. . . essential [doctrine] to secure the slave in needful food and raiment . . and to prevent cruelties, which may force him to absent himself, so that he may be lost to the general owner;" [Reese, J.]

Galt v. Dibrell, 10 Yerger 146, December 1836. In 1821 Ross moved from Virginia to Tennessee with nine negroes.

Jones v. Ward, 10 Yerger 160, December 1836. [169] "$60 should . . be allowed . . for his expenses in keeping Sylvia and her children, during . . 1825, 6, and 7,"

Cocke v. Trotter, 10 Yerger 213, December 1836. [215] "1816, . . purchased a negro woman . . [for] $300,"

Walker v. McConnico, 10 Yerger 228, December 1836. "1832, . . executed . . a deed of trust . . five negroes, . . for . . paying his debts,"

Richmond v. Richmond, 10 Yerger 343, December 1837. Petition for a divorce. [344] "adultery . . with the negro Polly, . . [349] took . . Polly, . . to keep house for him. . . in the habit of sitting by the fire with Polly after the laborers in the shop had gone to bed." Evidence of his relations with her. [344] "tried by a jury, and the issue found against the defendant." Decree affirmed.

Copeland v. Bennet, 10 Yerger 355, December 1837. In 1828 Park "removed [from South Carolina] to . . Tennessee, bringing with him the girl . . 1833, he executed . . a bill of sale . . for the negro . . [for] $358 50,"

Pearce v. Gleaves, 10 Yerger 359, December 1837. Will: [361] "after the death of my wife, I wish my negroes to be sold," except four.

Yarbrough v. Newell, 10 Yerger 376, December 1837. "owning a negro girl, . . that he knew would be the first [property] seized upon and sold by the officers to satisfy the claims"

Thomas v. Scruggs, 10 Yerger 400, December 1837. "the executors [about 1805] sold . . the negroes . . to pay the debts . . when there was sufficient money to pay the debts;"

Dowell v. Bailey, 10 Yerger 489, December 1837. "In 1824, . . Harris requested Dowell to send him the negro for a week to pick out cotton." In 1826 he was sold for $900.

Mahala v. State, 10 Yerger 532, December 1837. Indictment of a slave for the murder of Nancy Newton. [533] "The jury still not agreeing . . the court had them confined . . and next morning, . . the jury again . . told the court it was impossible for them ever to agree, . . the court . . discharged them. . . the counsel for the prisoner [did not consent] . . moved the court to . . discharge the prisoner upon the ground . . that it operated as an acquittal. . . refused . . At a subsequent term . . convicted . . and judgment of death pronounced." Judgment reversed and the prisoner discharged.

Lavina v. Duffield's Executors, Meigs 117n., March 1838. Will of John Duffield, dated 1807: "All to . . be at my . . wife, Elizabeth Duffield's disposal . . during her life time; and at her death, all the negroes . . to be emancipated . . male negro slaves . . at 22 years of age, and the females at 19" He died in 1812, and his wife in 1832.

Held: "the intention of the testator was only to give a life estate to his widow; . . the complainants are entitled to their freedom; . . upon their giving bond . . to indemnify the county"

Potter v. Coward, Meigs 22, April 1838. "1838, . . Lewis [healthy negro], was struck off at . . $680. . . [He was not delivered to the defendant] [23] "nor did he pay any of the purchase money on that day. . . During the night Lewis died suddenly, . . defendant . . refused to pay" Held: the sale was complete; the loss is the loss of the vendee.

Dodge v. Brittain, Meigs 84, June 1838. "The testimony . . tended to prove that the plaintiff had received the lost goods from one of the defendant's slaves, by means of whom the defendant had attempted to entrap the plaintiff,"

Jacob v. Sharp, Meigs 114, June 1838. Will of Abraham Vernon, 1825: "my negroes, Jacob and Jinne, and her two children, Jack and Malinda, . . at my wife's death, I wish them to be set free: and if they should be disobedient to my wife, she may dispose of them as she pleases." His widow married Sharp in 1826, and died in May 1834, "without making any disposition of the slaves. After her death, Sharp took Jinne and Jack, Malinda having . . died, to Mississippi, where he sold them as slaves. Threatening to do the same with Jacob, he took refuge in the house of . . McKinney, Esq. to whose protection his mistress, a few hours before her death, had commended him, and by his next friend . . a brother of the testator, . . November, 1834, filed this bill, . . [115] praying for an injunction to prohibit Sharp . . till application could be made to a court of law to emancipate complainant . . granted. . . 1835, Sharp filed his answer, . . testimony . . that, in the testator's life time, Jacob had been obedient and dutiful; that afterwards, he had fallen into habits of intemperate drinking, and at such times, had been insolent and disobedient to his mistress, and had . . even threatened her life; . . had been taken before magistrates on an accusation of stealing, been pro-

nounced guilty and punished; that he had not been obedient to appellant after his intermarriage . . 1837, . . his Honor declared the complainant to be entitled . . to all the rights . . of a free man, on his giving bond and security to leave the State, within . . six months, . . and he perpetuated the injunction."

Decree affirmed: [118] "The testator did not contemplate that the slightest disobedience should constitute the right of disposition, . . proof of Jacob's disobedience could have no effect on conferring . . an absolute title to him, unless she had acted upon it . . by actually disposing of him." [Green, J.]

Jones v. State, Meigs 120, June 1838. "1836, . . the grand jury indicted the plaintiff in error, a free man of color, of petit larceny. . . a meal bag . . he said it had been given to him by Peter, a free man of color, . . proved by . . Brown that he had . . dealt in meal; that Peter . . traded in meal, beer, cakes, etc. . . He did not offer to introduce Peter as a witness; . . his counsel requested his Honor to charge [the jury] . . that Peter was not . . a competent witness; . . His Honor . . instructed them, that Peter . . was a competent witness . . for the defendant, and that he should . . have produced him, . . verdict of guilty, . . and judgment pronounced,"

Judgment reversed and new trial granted; a man of color cannot [121] "be a witness *for* the defendant and against the state." [1]

Jordan v. Black, Meigs 142, June 1838. See Underwood's case, p. 511, *infra*.

Gambling v. Read, Meigs 281, December 1838. "1837, Gambling sold Read, Hannah, a female slave for $1200, . . Hannah had a young child, [a boy, three months old,] and her distress at the separation from it induced Read to propose to purchase it; . . agreed that he should have it for 150 dollars,"

Weedon v. Wallace, Meigs 286, January 1839. John "took the negroes allotted to him and his idiot brother, and the idiot to Kentucky, . . [289] complainant had repeatedly directed Shackleford . . to sell them in Kentucky and never bring them home, because the idiot would make more fuss about them than they were worth. . . directed Shackleford to say, in the presence of the idiot, that they were *hired*, not sold."

Underwood v. Dismukes, Meigs 299, January 1839. [301] "Two negroes had, . . 1811, . . been loaned to Rutherford, who took them [from Kentucky?] to North Carolina, where they were sold for his debts."

State v. Claiborne, Meigs 331, January 1839. [338] "The defendant was indicted [in 1838] . . under the act of 1831, ch. 102, as a free man of color, emancipated in Kentucky, for removing into this State and residing here, more than twenty days. . . he demurred . . sustained"

Judgment reversed, and cause remanded: I. the act does not violate the constitution of the United States. [339] "Free negroes have always been a degraded race in the United States . . with whom public opinion

[1] Act of 1794, ch. 1, sect. 32.

has never permitted the white population to associate on terms of equality, and in relation to whom, the laws have never allowed . . the immunities of the free white citizen. . . The citizens . . spoken of [in the U. S. Constitution, article IV., section 2], are those . . entitled to '*all* the privileges . . of citizens.' But free negroes were never in any of the States, entitled to *all* . . and consequently were not intended to be included, . . [II.] [341] the word 'Freeman' as used in the bill of rights [of Tennessee], is of equally extensive signification with the word citizen as used in the Constitution of the U. States; . . although the defendant by his emancipation . . obtained a qualified freedom, he did not become a 'freeman' in the sense of *Magna Charta,* or of our Constitution." [Green, J.]

McKisick v. McKisick, Meigs 427, January 1839. [428] "In 1815 or 1816, Mrs. McKisick had a daughter . . to whom her grandfather . . immediately . . gave Sam, a slave, . . On [McKisick's] . . removal to Tennessee [from North Carolina, about 1833], he brought the slaves with him,"

Angus v. Dickerson, Meigs 459, January 1839. In 1835 "Dickerson hired the negro to . . Angus to drive his wagon and team, for nine months; . . The negro, . . desiring to live with Lane [his former master], put himself into his possession . . while on his way, to Angus. . . Lane told [Angus] . . that, as Angus was responsible . . for the hire, he, Lane, would secure the payment of it in one month, and in the mean time, would keep the negro, paying hire for that time, and surrender the negro to Angus . . [460] if he failed to give the security. . . failed . . but kept him . . 1836, the negro . . died." Held: Angus is responsible to Dickerson for the loss.

Stewart (a man of color) v. Miller, Meigs 574, February 1839. "action of trespass . . the plaintiff offered in evidence the following record of the county court . . '1837. Petition to emancipate Stewart. . . The [ten] justices . . upon the petition of . . executor of Mary McElhatton . . it appearing . . that said Mary . . declared by her will, . . proven . . [575] 1830, her negro man Stewart to be free, on his paying one hundred and fifty dollars,—and that said . . dollars have been paid . . by . . Stewart, who, being . . inspected by the court, is more particularly described . . And the [executor] . . having given bond and security, as required by the act [1] . . the Court . . do . . adjudge that . . Stewart, be . . deemed a free man.' . . this record was excluded . . verdict for the defendants."

Judgment thereon reversed, and the cause remanded: [577] "the record . . ought to have been read as evidence. . . every thing was done which the law requires, except the making and filing the report of the chairman. But . . there is a substantial compliance . . if the court . . pronounce judgment that the applicant 'shall be . . deemed free,' it is sufficient to entitle him to his freedom, although there may not be the most exact regularity in the proceeding." [Green, J.]

[1] Act of 1801, ch. 27.

Kneeland v. Ensley, Meigs 620, February 1839. [621] "Thompson, after the marriage [in 1811, in Louisiana] . . sold her slave Will for 900 dollars, and Thomas for 250 dollars." He returned to Tennessee in 1812, bringing the rest of the slaves.

Banks v. Wilks, 1 Humphreys 279, April 1839. In 1830 a negro man was sold for $700.

Hays and Wife v. Hays, 1 Humphreys 402, July 1839. "an action for words spoken . . of the plaintiff, Rebecca. . . 'You . . have killed one negro and nearly killed another.' Upon demurrer, the circuit judge [held] . . the words were not actionable, and gave judgment for the defendant,"

Reversed and the cause remanded: [403] "if the jury find them to have been used in their worst sense, the court will consider them as having been so used."

Smith v. Story, 1 Humphreys 420, July 1839. [423] "a tract of two thousand acres . . upon which he had eight negroes,"

Murphey v. Goin, 1 Humphreys 440, July 1839. Action of covenant. [442] "Goin doth hire [in 1834] a negro boy, . . about eight years old, for twelve months; and . . Murphey is to give . . fifteen dollars for said hire, and to find the . . boy in clothes, and to deliver . . boy to . . Goin at the end of the twelve months." At the end of that time "Murphey pointed to the negro . . and said to Goin, 'there is your slave, go and take him.' . . Goin took him by the arm. . . sheriff . . having . . an execution against . . Murphey, took the negro by the other arm; a scuffle ensued and [the sheriff] . . succeeded . . advertised him for sale, . . Goin forbid the sale, . . The sheriff, however, being indemnified, sold the boy for . . three hundred and forty-five dollars." Held: the delivery was a valid delivery.

Deer v. Devlin, 1 Humphreys 66, December 1839. [67] "that she . . claims to be the exclusive owner of . . Hannah and her [fourteen] children . . that she had sold one of the children . . [69] for . . three hundred and fifty dollars, . . appropriated . . to the payment of the debts"

Elijah (a slave) v. State, 1 Humphreys 102, December 1839. "the grand jury . . April, 1839, returned a true bill against Elijah . . for an assault and battery with an intent to commit murder in the first degree, by killing . . Puryer. . . the defendant pleaded not guilty, with the concurrence of his master, who defended the prosecution, . . the jury not being able to agree, . . a mis-trial entered. . . September term, 1839, . . [103] tried . . 'the owner . . was rejected by the court as an incompetent witness;'" "defendant convicted . . sentenced to be hanged"

Verdict [105] "set aside, and the judgment reversed, and the prisoner remanded to be tried again,"[1] [104] "in a case like this the law, upon high grounds of public policy, . . takes the slave out of the hands of

[1] Same *v.* same, p. 513, *infra.*

his master, . . treats the slave as a rational and intelligent human being, . . and gives him the benefit of all the forms of trial which jealousy of power and love of liberty have induced the freeman to throw around himself for his own protection. . . [105] the objection must be held to extend to the credit not to the competency of the master." [Reese, J.]

Richardson v. Thompson, 1 Humphreys 151, December 1839. "Samuel Richardson . . filed this bill . . 1837, against . . Thompson, the administrator of . . Hopkins, . . praying that certain [twenty-two] slaves . . be decreed to be delivered up to him . . to be emancipated. . . [152] alleges . . that . . he being opposed to slavery and averse to holding them, yet being unable to surrender all his means of worldly support, he received [in 1814] from Hopkins [his brother-in-law, 'a man of known humanity,'] . . sixteen hundred dollars for . . [eight] slaves, and executed to him . . [an absolute] bill of sale . . upon the express condition and trust that . . Hopkins should keep them together, not sell them, and provide at or before the death of . . Hopkins, that said slaves should be emancipated or re-conveyed to him" [151] "Hopkins sold one of the slaves . . [152] had promised him to re-purchase the slave sold, but had died [in 1836] without so doing or making provision . . for the emancipation of the others . . and that the administrator had refused to emancipate them." Bill dismissed: [153] "the trust alleged . . could not be . . sustained by parol proof,"

Horsely v. Branch, 1 Humphreys 199, December 1839. [202] "action to recover the value of a negro man, slave, . . Branch hired . . Isaac, to Horsely for . . twelve months [for one hundred and twenty dollars], and that the defendant [Horsely] . . agreed that said negro slave should 'not . . be employed in or about the water, so as to endanger his health and life: . . [203] but that defendant agreed to employ him in cutting and hauling saw-logs and on his farm,' . . that the plaintiff stated to the defendant . . that he was subject to the rheumatism, and could not swim. . . The defendant lived on one side of the river and the mills were on the other. . . They were in the habit of crossing the river above the dam in a canoe. . . [204] When they discovered the boat would go over, witness told the negroes to jump out. . . Isaac . . was drowned. . . [205] The jury found a verdict for the plaintiff . . and assessed his damages to one thousand dollars,"

Judgment thereon reversed and the cause remanded: [206] "As, by the special contract . . Isaac . . must be much about the mills and on the other side of the river opposite the house . . A fair construction . . did not forbid his crossing the river . . so as to accomplish that object." [Green, J.]

Lawrence v. State, 1 Humphreys 228, December 1839. John Lawrence, a free man of color, was indicted "for stealing bank notes of the value of four hundred and eighty dollars, . . the prosecutor . . left . . his pocket-book lying on the table [in Lawrence's barber shop]. . . the jury found Lawrence guilty of grand larceny, and fixed his term of imprison-

ment in the jail and penitentiary house of the State at eight years, and also returned a verdict against him for . . four hundred and eighty-four dollars," Judgment thereon, affirmed.

Hunt v. Watkins, 1 Humphreys 498, April 1840. [499] "The property [in 1834] . . consisted of . . about five hundred acres, thirty-nine slaves,"

Underwood's Case, 2 Humphreys 46, July 1840. "Elizabeth Morgan, being about to marry Hambright Black, executed [on the wedding day] a deed of trust . . whereby she conveyed to . . Jordan certain slaves for the purpose of having them emancipated . . and sent to Liberia at the death of said Elizabeth, she reserving to herself a life estate therein.[1] . . Threats were made by Black, that he would sell the slaves, and thereupon Jordan filed his bill . . praying an injunction, . . granted and . . 1838 . . a decree was entered up [by the Supreme Court] [2] by which it was ordered that . . 'H. Black should be perpetually enjoined from selling . . or from taking . . said slaves beyond the limits of this State.' . . Shortly after . . the slaves were clandestinely removed to . . Mississippi. Jordan, . . 1839, . . made an affidavit stating that, H. Black, W. Black and Thomas J. Underwood, had removed the slaves . . to . . Mississippi, with full notice of said decree, . . the [supreme] court . . 'directed, that an attachment issue to the Sheriff . . commanding him to have the bodies of the defendants before the court, to answer a charge of contempt in this court,' . . [47] served on Underwood. . . filed his answer, denying his knowledge of the decree"

Held: [50] "Such affidavits as may be offered to contradict the answer . . will . . be received as evidence."

Goodman v. Floyd, 2 Humphreys 59, December 1840. "The plaintiffs [in 1831] fix the value of . . Tony, . . at $500, and Priscella at $300,"

Woodfolk v. Sweeper, 2 Humphreys 88, December 1840. [89] "Peter Sweeper was black, . . born of a free black woman, in . . Maryland, . . and convicted, . . 1826, in the said State . . of persuading and conveying slaves out of . . Maryland into . . Pennsylvania, and sentenced . . to be 'banished by sale and transportation for . . seven years;' . . sold by the Sheriff . . purchased by Joseph Woodfolk, . . conveyed to . . Tennessee, and deposited with the defendant [William Woodfolk] in 1827; . . Woodfolk held him as a slave till . . 1835, and it does not appear that he had any knowledge of the plaintiff's being a freeman further than . . the occasional assertion of such claim by the plaintiff. . . 1835, Sweeper instituted an action of trespass, *vi et armis*, . . against W. Woodfolk for the recovery of his freedom; . . employed attornies, . . that the suit was laborious and expensive; that the depositions were procured at much . . cost from . . Maryland; that a witness was brought from said State . . [90] eight hundred miles, to testify . . in

[1] Also "the right to emancipate any, or all of them . . at any time during her life." Jordan *v.* Black, Meigs 142.

[2] *Ibid.*

regard to identity . . that he recovered a judgment for his freedom . . that there was an appeal . . to the supreme court . . reversed and remanded . . that the plaintiff again recovered a judgment, . . defendant again appealed to the supreme court, . . December, 1838, finally affirmed. . . the services of the attornies were estimated at $150 for the suit at law, and $25 for the suit in chancery." In January 1839 Sweeper instituted the present [88] "action of trespass, *vi et armis*, against William Woodfolk. . . averred that the defendant . . December, 1832, . . reduced him to the condition of a slave and compelled him to labor . . [89] until . . February, 1835; that . . defendant, appropriated the entire proceeds . . and that such services were reasonably worth . . seven hundred dollars. The plaintiff further averred, that . . he was compelled to expend large sums in prosecuting suits for . . his freedom, . . [90] The presiding Judge . . charged the jury that the plaintiff was *entitled* to recover as damages; 1, the value of his services . . 2, the expenses he necessarily incurred . . attornies fees; . . verdict for the plaintiff, for $743 30, in damages."

Judgment thereon reversed and the cases remanded: I. [95] "that profits for the time a free man of color has been wrongfully held in slavery, is not the subject matter of account; . . [II.] that merely nominal damages are recovered [in a suit for freedom], and that a second suit must be brought to recover the actual damages, . . [III.] the court erred . . [96] in the use of the word '*entitled*,' . . leaves the jury no discretion as to the amount of damages, but really makes it a matter of account," [Turley, J.]

Wilkins v. Gilmore, 2 Humphreys 140, December 1840. "that . . Wilkins had become dissatisfied with his tenant; that . . 1839, a slave, or a white man blacked so as to resemble a slave . . threw off the roof. . . The judge charged . . that if the slave of Wilkins threw off the roof . . by the command . . of Wilkins, Wilkins was liable . . verdict in favor of the plaintiff" [Gilmore.]

Held: [141] "the evidence . . [142] well warranted the verdict"

Coleman v. Pinkard, 2 Humphreys 185, December 1840. [186] "In 1835, Pinkard sold Hasen for . . $850, subsequently assigning as a reason . . that the slave was a bad fellow"

Guthrie v. Owen, 2 Humphreys 202, December 1840. Owen's will, 1838: [204] "My desire is, that Tom should select himself a home, and be sold privately for a moderate price."

Keaton v. Campbell, 2 Humphreys 224, December 1840. [225] "1825, went to Missouri, . . taking . . about 20 negroes,"

Long v. Hicks, 2 Humphreys 305, April 1841. "Received of Long and Byrne their note at nine months, for $825 . . for negro Hannah, aged 18 years, and her child Wesley, aged 15 months, . . sound and well, . . 1837." There was testimony "that . . Wesley was affected from his birth with a disease of the spine, . . [306] that the diseased condition . . was apparent to casual observation; that Byrne was told that the

child was unsound and that he said the woman was worth the money. . . that if Wesley had been sound, he would have brought two hundred and fifty dollars."

Held: [308] "A written warranty does not extend to defects which are visible, or of which the vendee is informed at the time of the sale."

Fowler v. Norman, 2 Humphreys 384, April 1841. "A negro man, a [runaway] slave, was committed to the custody of . . Fowler, sheriff and jailor of Shelby county, . . October, 1837, and remained . . one hundred and ninety days. A negro woman [runaway slave] was also committed to his custody . . April, 1838, and remained . . thirty days. They made their escape, and on the 18th of May, 1838, they were . . committed to the custody of the sheriff and jailor of Carroll county, as runaways. After . . three months, Fowler . . demanded the slaves of the jailor of Carroll . . [who] received his fees, ninety-nine dollars, . . however, subsequently refused the surrender of the slaves . . and offered to return the money . . declined"

Held: the sheriff of Shelby county can have no interest in their possession, as they did not remain in his jail twelve months.[1]

Grandison (a slave) v. State, 2 Humphreys 451, December 1841. "The defendant was convicted . . of an assault and battery, with intent to ravish Mary Douglass, and was sentenced to suffer death." [2]

[452] "Let the judgment be reversed and arrested, and let the prisoner be remanded to the jail" [452] "Such an act committed on a *black woman,* would not be punished with death. . . *this fact* [that the person assaulted was a white woman], which gives to the offence its enormity, . . must be charged in the indictment, and proved on the trial." [Green, J.]

Dougherty v. Curle, 2 Humphreys 453, December 1841. "Mrs. Ewing sold . . a [male] slave for $1000, in . . 1838."

Elijah (a slave) v. State, 2 Humphreys 455, December 1841. See same *v.* same, p. 509, *supra.* Elijah "was convicted . . for an assault and battery 'upon David C. Puryear, being a free white person,' with intent to commit murder in the first degree.[3] . . [465] it has been suggested, that the exhibition of Puryear, as a witness, was sufficient evidence that he was white and free,"

Judgment reversed, and a new trial awarded: "fact . . essential . . must . . be proved. . . The *name* . . imports nothing, for negroes have such names. Nor does his office as foreman in a mechanic's shop, nor the fact that he was a witness . . Many negroes are conductors of mechanic shops, and several negro slaves were witnesses in this cause." [Green, J.]

Baldwin v. Baldwin, 2 Humphreys 473, December 1841. In 1830 [476] "a *feme sole,* . . owner of . . thirty or forty negro slaves, contemplating a marriage . . executed a deed . . reserved to herself

[1] Act of 1825, ch. 77, sect. 1.
[2] Act of 1833, ch. 75, sect. 1; act of 1835, ch. 19, sect. 10. Car. and Nich. 683.
[3] Act of 1835, ch. 19, sect. 10. *Ibid.* 683.

the power to direct in what manner the slaves should be employed; . . and by her directions in writing, . . in the presence of one or more witnesses, to alienate . . also to . . bequeath . . the same"

Martin v. Fancher, 2 Humphreys 510, December 1841. A negro man was sold for $900, and a negro woman for about $600.

Harwell v. Worsham, 2 Humphreys 524, December 1841. In 1840 a negro boy was sold for $700.

Johnson v. Perry, 2 Humphreys 569, December 1841. "action of trespass, *vi et armis*, . . 1839. . . that some verbal altercation took place between the slave [of Perry] and one of the defendants, and that thereupon the defendants . . were attempting to tie him for the purpose of inflicting chastisement . . the slave made his escape, and in his flight leaped down a precipice about four feet high and fell. . . the bones of the knee were broken, . . a permanent injury, impairing much the value of the slave." "a physician of not much skill was immediately called in," A second physician, called in after the suit was brought, "stated that Perry had paid him . . fifty dollars; that the slave, previous to the injury, was worth from eight hundred to a thousand dollars; . . [570] would hire at $150 per annum, and that his boarding and clothing were worth about $50 per annum. . . The defendants introduced proof . . That the attack on the slave was produced by his insolence and intoxication, . . That Perry's management of this slave was such as to impress on him an inclination to be insolent and calculated to bring him in collision with white men. . . rejected. . . that the injury had been increased by drunkenness, exposure and unskilful treatment." Verdict for $800.

Judgment thereon reversed and the cause remanded: damages must not include medical bills contracted after the commencement of the suit.

Dillard v. Dillard, 3 Humphreys 41, April 1842. In 1827 [45] "Chany and her two children (of which Caroline is one) were set up in a lot and sold together [for $360]. . . [46] Merritt Dillard agreed with William J. Dillard, the bidder, to pay $100 of his bid and take . . Caroline [four years old] for his daughter," about five years old. He [41] "removed to . . Mississippi, carrying his daughter and the slave with him,"

Greenlow v. Rawlings, 3 Humphreys 90, April 1842. "1837, Isaac Rawlings applied to the county court by petition to emancipate William Isaac Rawlings, a mulatto boy, the son of a slave of . . Isaac, whom he had always recognized as his son," [92] "brought up in his family as a free boy—and so regarded by . . Isaac, who never intended he should be a slave. . . The chairman . . endorsed . . that in his opinion it would be consistent with the interest of the state,[1] that it be granted;" [91] "A bond was given . . to keep the . . slave from becoming chargeable upon the county." [93] "the court proceeded to adjudge that . . William Isaac Rawlings be free. . . It is not shown by the said judgment, that . . Isaac Rawlings entered into bond, conditioned that . . William should leave the State, as the act of 1831, ch. 102, sec. 2,[2] re-

[1] Act of 1801, ch. 27. Car. and Nich. 277.
[2] *Ibid.* 279.

quires; nor is it stated in the *judgment* that William I. Rawlings had contracted for his freedom previously to the passages of the act of 1831, . . whereby to exempt him from its provisions, under the act of 1833, ch. 81." [1] [91] "Isaac Rawlings died, . . [by] will . . he gave all his estate . . to his 'natural son' . . and made him executor thereof." As executor, William I. Rawlings endorsed to Greenlow a note executed by Thomas J. Rawlings to Isaac Rawlings. "Greenlow instituted an action . . against the maker and endorser. The maker pleaded that the endorser . . [92] was a slave, and the endorsement void."

Held: [94] "the act of 1833 does *not* require, that proof of the contract, the existence of which dispenses with the provisions of the act of 1831, shall be placed upon the record as part of the judgment. . . we are to presume that the proof required . . was made; [2] . . The evidence . . is ample to show, that Isaac Rawlings, long before . . 1831, had . . treated William I. Rawlings as free, . . It is unnecessary to decide whether this conduct . . amount to a *contract*, within the meaning of the act of 1833; because we hold that the legislature conferred by that act, on the county court the right to judge of the existence of such contract, and therefore give the assent of the state, . . its judgment is final" [Green, J.]

Britain v. State, 3 Humphreys 203, July 1842. "indictment charged that . . 1840, . . 'Britain . . did . . commit . . notorious lewdness by . . causing and permitting his . . slaves to go about . . so naked and destitute of clothing, that their organs of generation and other parts . . which should have been clothed and concealed, were publicly exposed' . . Proof . . that the slave was seen on various occasions . . almost entirely destitute of clothing, with some tattered rags hanging upon her, and her body exposed indecently . . verdict of guilty. . . [204] judgment . . against the defendant, that he pay a fine of $25 and cost," Affirmed.

Hartsell v. George, 3 Humphreys 255, July 1842. Action of trespass *vi et armis* brought by "George, a free boy of color, under twenty-one . . by his next friend . . 1836, . . [256] The plaintiff introduced a document as evidence . . 'at a court of pleas and quarter sessions, . . 1821, . . [fourteen] justices being present, . . a majority of the justices of the county, the following record was made, . . "The petition of John Bayless, Sen., . . that your petitioner is now the owner . . of . . Jenny, about . . 25, which slave, I, being fully impressed with the great impropriety of slavery, and believing liberty to be the unalienable right of all human beings, desire to manumit at the time hereinafter mentioned, for the following reasons: 1st. That by the time hereinafter mentioned, she will by her industry have compensated your petitioner for the money expended in the purchase of her. 2d. That by reason of her good qualities, she would be a fit subject for civil society, and will support herself. . . your petitioner prays that an order be made, liberating

[1] *Ibid.*

[2] "all presumptions in favor of personal liberty and freedom ought to be made." Oatfield *v.* Waring, 14 John. N. Y. 188 (193).

said slave at . . the death of petitioner or wife, or the survivor" . . granted' [signed by ten of the fourteen justices present] . . [257] Bayless gave bond in the penalty of $600 . . 'to be void on condition that Jenny . . this day emancipated at the death of . . Bayless and wife, shall not become chargeable to . . county.' . . During the time she was held by the widow (still living), she bore . . George. George was . . sold [by a son of the deceased] . . to Hartsell, . . as a slave for life. . . Testimony was offered on the part of Hartsell, for the purpose of showing that Bayless was insane at the time of the record"

Held: I. the omission of any of the justices to sign in the character of chairman does not invalidate the act of emancipation; II. [259] "it was an act of emancipation *in presenti* . . to be enjoyed . . on the part of the slave in future. . . The act was consummate; . . the character of slave ceased. . . [III.] the defendant in error was born free." IV. The jury [257] "had no right to enquire into the sanity . . of the deceased at the time the order of liberation was made."

Gass v. Gass, 3 Humphreys 278, July 1842. "John Gass, at an advanced age, and infirm health, made his last will . . 1837. . . [279] an eccentric man, having peculiar opinions . . that the state of pre-eminence he would acquire in his future existence depended in some measure upon the amount of estate he should acquire, and the charitable purpose to which he should contribute it. . . The will . . directed, that at the death or marriage of his wife, his slaves should be set free, and . . $100 given to each family, to enable such family to remove to a non-slaveholding State." Held: such opinions constitute no evidence of insanity.

Field v. Arrowsmith, 3 Humphreys 442, December 1842. About 1841 a negro man was sold for $650 cash.

Loyd v. Currin, 3 Humphreys 462, December 1842. About 1829 a [463] "negro boy, then six or seven years old . . had been pledged . . for the security of a small sum of money;"

Sydney (a slave) v. State, 3 Humphreys 478, December 1842. "the third count charges, 'that Sydney, a negro boy slave, . . 1841, . . upon . . a free white woman of the age of six years, . . did . . make an assault, with the intent . . to ravish' . . defendant demurred . . sustained"

Affirmed: [480] "the Legislature did not mean, by the word woman, in the act [of] 1835 [ch. 19, sect. 10], . . a child under the age of ten years."

Jacob (a slave) v. State, 3 Humphreys 493, December 1842. "indicted for the murder of his master, R. Bradford. . . [494] 1840, the slaves of Bradford . . were engaged in pulling fodder, . . Jacob with another boy had been at play . . That Bradford had . . reproached Jacob . . and threatened to whip and sell him. Jacob then told his master that he was as tired of him (Bradford) as he (Bradford) was of him. Bradford . . attempted to whip Jacob. Jacob snatched the whip . . broke it up and ran off. In a day or so Jacob came home. Bradford ordered Jacob to get a rope,

informing him that he must be tied and whipt. . . Jacob refused . . Bradford then ordered him to go off until he was willing to be tied and whipped. On Sunday [a few days later] . . Jacob came home. Bradford asked . . if he was willing to be tied and whipt. . . not. He (Bradford) then told him to go to the smoke-house and take out as much provision as would do him until he was willing . . and clear out, he did not wish him to be pillaging his neighbors. Jacob then left the plantation . . Bradford went to the house of his brother Frederick . . and requested him to come over in the morning and help him to tie and whip Jacob. Jacob was not in the habit of carrying deadly weapons of any description, but had prepared a large butcher-knife, and ground it and concealed it under his clothes. On Monday morning Jacob passed by . . on his way home. F. Bradford started on after him in a short time. . . borrowed a stick of one of his negroes . . [495] called Jacob [at the barn] . . Robert said 'I am going to whip him,' . . seized him. Jacob attempted to . . escape. Frederick . . seized Jacob by the collar of his coat; . . said, 'you must not fool with me or I'll strike you.' Jacob then replied, 'beat me then, and kill me if you please.' Frederick . . struck him two blows on the head with the stick . . The two Bradford's threw Jacob, and Jacob turning his face down rose with them on his back. . . [did so] again . . Jacob . . drew the knife from his bosom, . . struck Robert . . exclaiming, 'damn it, clear the way.' Robert . . died in about five minutes. Jacob made his escape and was arrested in an adjoining State some months afterwards. The character of the deceased, as proved by his neighbors and by his slaves, was that of an indulgent and kind master. . . [499] verdict of guilty. . . sentenced to be hanged."

Judgment affirmed: [521] "the right to obedience . . in all lawful things . . is perfect in the master; and the power to inflict any punishment, not affecting life or limb, . . for the purpose of . . enforcing such obedience . . is secured to him by law, and if in the exercise of it, with or without cause, the slave resist and slay him, it is murder . . because the law cannot recognize the violence of the master as a legitimate cause of provocation." [Turley, J.]

Wade v. Green, 3 Humphreys 547, December 1842. [549] "Hannah . . with three others were previous to 1822, placed in the possession of . . Hill, who resided in . . Tennessee, by his father-in-law . . of Virginia,"

Hinklin v. Hamilton, 3 Humphreys 569, December 1842. "1821, Hugh Hinklin executed his . . will, . . devised to . . Will and . . Suky, his wife, their freedom at his death, and bequeathed them the use of a part of the land on which he resided, during their lives. . . No steps were taken by the executors . . to procure an order of emancipation from the county court. . . [570] The negroes were regarded and treated by every body as free, from the date of the probate . . They continued to live upon the land . . till . . May, 1840, when Suky having become nearly blind . . came to the residence of . . Hamilton . . where she remained till . . October, 1840, when she died. . . At the April term, 1840, . . Suky, and her two children [born after the death

of the testator], . . by their next friend, . . Hamilton, filed their petition in the county court . . asking to be emancipated . . which was ordered, upon the bond of . . Nevins and . . Mayfield . . The children . . are in the possession of . . Hamilton, they having been bound as apprentices to him. . . September, 1840, . . Avery M. Hinklin [the surviving executor, who [569] 'left the State shortly after the death of testator, and was absent for many years'], filed his bill . . asking that said negroes be delivered up to him as slaves,"

Held: [573] "the county court . . has given the assent of the State, . . [575] [the executor's] assent is not necessary to their freedom, . . the right of freedom, given to the . . children . . is complete and [we] enjoin . . Hinklin . . from . . molesting them" [Turley, J.]

Porter v. Porter, 3 Humphreys 586, December 1842. "about 1825, . . the boy having contracted bad habits and become refractory, [the complainant] . . was unable to govern him. . . 1829, . . [the son of the complainant] sold Henry without complainant's consent, and he was taken to Louisiana."

Thompson v. McKisick, 3 Humphreys 631, December 1842. Peters' will: [632] "It is my will . . that . . [my daughter] have the benefit of said [seven] negroes, either by keeping them . . or selling them and having the proceeds . . But I . . direct that they be sold in the neighborhood . . as I do not wish them to be carried to a distance, if she should choose to sell them."

Bowman v. Tucker, 3 Humphreys 648, December 1842. Will: "I bequeath to daughter . . wife of . . Tucker, one negro woman, Eliza, who is to be under my daughter's control entirely, until . . Tucker may furnish her another, that my daughter . . may accept in place of Eliza. I further give . . three children of Eliza's, . . And in case . . Tucker . . refuses to take the . . negroes on the above conditions, my executors . . shall . . sell them together to the highest bidder . . the proceeds . . for the benefit of my daughter; . . in case my daughter . . should die without issue, . . all the property . . to be given to the Lord's treasury, to wit, to religious societies, such as the Presbyterian church may direct."

Hinton v. Cole, 3 Humphreys 656, December 1842. "the testator [in 1823] devised his negroes to his wife, and created a charge upon his real estate for the payment of his debts."

Timmons v. Garrison, 4 Humphreys 148, July 1843. "The attachment . . was levied in . . Tennessee, upon a negro man . . decoyed out of . . Georgia . . for the purpose of giving the courts of Tennessee jurisdiction" Held: [149] "No court . . would entertain jurisdiction of a case based upon such illegal . . conduct."

Pettitt v. Pettitt, 4 Humphreys 191, July 1843. "he had been . . living in retirement, . . with no family about him but his slaves."

Henry v. Hogan, 4 Humphreys 208, July 1843. Will of William Conway, 1838: "In accordance with my constant desire for the last twenty years, I will that at my death all the negroes then belonging to my estate

shall be liberated; . . [209] I wish my executors to present my request . . to the legislature, that that . . body may allow my slaves to remain in the State. If, however, . . not . . it is my will that my executors should take such steps as may be . . necessary to secure . . their freedom in any one of the United States . . As . . some delay will take place before it can be ascertained whether . . allowed to remain . . I desire that the proceeds of my lands should be appropriated . . to their . . benefit, until their liberty is fully . . secured . . If my slaves have to be removed . . out of the State, or even . . transferred to Liberia, the expenses are to be paid out of my personal estate . . and I desire that . . a sum shall be appropriated . . to provide for the wants and support of my negroes until they can by their labor provide for themselves." " insuperable difficulties arose to the emancipation . . in the United States, . . necessary . . to procure an order [in 1841] from the county court . . [210] for their emancipation upon the condition of their removal to Liberia:"

Held: " that the devise of the land in fee to others was with this charge upon it and that they take it *cum onere* . . [211] till the emancipation . . in 1842."

Hunter v. Foster, 4 Humphreys 211, July 1843. A family, with a negro girl, removed from Virginia to Tennessee.

State v. Love, 4 Humphreys 255, December 1843. " a presentment . . 1842, . . for permitting his slave . . to retail . . spirituous liquors"

State v. Watkins, 4 Humphreys 256, December 1843. " indictment . . for forcibly taking . . out of the field . . of . . Loon, a negro slave, . . property of . . Loon." Quashed.

Yerger v. Rains, 4 Humphreys 259, December 1843. Action of trover to recover the value of two slaves. Before Yerger's removal from Tennessee to Mississippi, in 1838, he sold two slaves. The contract was rescinded, and [260] " the slaves having been placed in jail for safe keeping, Yerger wrote to his agent . . to send them to him at Vicksburg, . . thought they would bring a better price at that place, . . sent . . 1839, sold them to . . Lane for twelve hundred dollars, on twelve months credit, . . Lane brought them to Tennessee . . levied on . . at the sale by the defendant as sheriff, Yerger, by his agent, forbid the sale . . [261] the Mississippi constitution [of 1832] . . declares, 'that the introduction of slaves into that State as merchandise, or for sale, shall be prohibited . . after the first day of May, 1833.' . . The High Court of Errors and Appeals of . . Mississippi . . had determined [1] that the clause . . [262] is an inhibition *per se*, . . The Supreme Court of the United States . . hold [2] the clause to be mandatory to the legislature to prohibit . . Since . . that opinion, . . the Court of Errors and Appeals of Mississippi [3] . . unanimously declare their adherence to their first conclusions." Verdict for the defendant.

[1] Green *v.* Robertson, 5 How. Miss. 80 (December 1840); Glidewell *v.* Hite, *ibid.* 110 (December 1840); Cowen *v.* Boyce, *ibid.* 769 (January 1841).
[2] Groves *v.* Slaughter, 15 Peters 449 (January 1841).
[3] Brian *v.* Williamson, 7 How. Miss. 14 (January 1843).

Judgment thereon, affirmed: the contract of sale, being void by the law of Mississippi, is void in Tennessee also.

Henry (a slave) v. State, 4 Humphreys 270, December 1843. "The plaintiff was indicted . . for an assault upon . . a white woman, with intent to commit a rape. . . [271] The girl . . states, that the prisoner met her at the spring, . . and after asking her some questions upon indifferent subjects she became alarmed and started towards the house, . . he caught her by the back of the neck and choked her down several times; that she cried out, and he left her." Verdict of guilty.

Judgment thereon, reversed: [272] "the jury were, perhaps, warranted in arriving at the conclusion, that the assault was commenced with an intention to ravish, . . we would feel scarcely authorized to give a new trial upon this evidence. . . But in this record, there is no entry showing that the grand jury returned . . 'a true bill.' . . It is no where shown, in this bill of exceptions, that [the person attacked] . . is a white woman." [Green, J.]

Jim (a slave) v. State, 4 Humphreys 289, December 1843. See same *v.* same, p. 522, *infra.*

Foster v. Hall, 4 Humphreys 346, December 1843. [348] "Eaton, . . 1840, gave direction for the transfer, from Nashville to Washington, of . . a female slave to serve him as a cook;"

Herring v. Pollard, 4 Humphreys 362, December 1843. [363] "delivered him a negro woman and child, at the price of $800."

Gilliam v. Bransford, 4 Humphreys 398, December 1843. "bill to enjoin the collection of a judgment . . for the hire of a negro man, . . that the negro was addicted to stealing, which information was not communicated at the time of the hiring: that . . he stole . . more than . . his hire; . . [399] had been hired to Yeatman and Co. previously, and had stolen from them."

Bill dismissed: "we cannot see upon what ground a moral defect should be disclosed in the hire or sale of a slave, more than a vicious habit in a horse, . . unless the contract be made especially with a view to such quality." [Turley, J.]

Cunningham v. Wood, 4 Humphreys 417, December 1843. [418] "that her father . . devised to her a negro man, . . that she sold [him] . . for twelve hundred dollars, and that with four hundred dollars of that sum," Malinda was purchased.

Macon v. State, 4 Humphreys 421, April 1844. "Macon was the owner of . . Jack, and permitted Jack to go about the country practicing medicine, . . He was indicted [1] . . proof, that the defendant [Jack] was an obedient, exemplary slave, and a most successful practitioner of medicine; that he had performed many cures of a most extraordinary character, and that his character was so well established for skill in . . healing the sick, that all his time was occupied in attending the calls of

[1] Act of 1831, ch. 103, sect. 3.

. . [422] diseased persons, . . The court . . charged the jury, that a slave had no right to practice medicine under any circumstance. . . verdict of guilty. . . the defendant having been fined one dollar, appealed."

Judgment affirmed: [423] "the legislature was guarding against . . insurrectionary movements on the part of the slaves. . . A slave under pretence of practicing medicine, might convey intelligence from one plantation to another, of a contemplated insurrectionary movement; and thus enable the slaves to act in concert to a considerable extent, and perpetrate the most shocking masacres [*sic*]. . . it was thought most safe to prohibit slaves from practicing medicine altogether." [Green, J.]

McAlister v. Marberry, 4 Humphreys 426, April 1844. Covenant to pay debts amounting to $500 11 "for two negro boys, . . [to be] delivered . . January, 1843."

Halloway v. Lacy, 4 Humphreys 468, April 1844. "agrees . . to pay . . two hundred and twenty-five dollars for his services as overseer . . to commence overseeing on the 1st January, 1842."

Cain v. Kelly, 4 Humphreys 472, April 1844. "Henry . . eloped from . . his owner [Kelly], . . and gave himself up to a Justice of the Peace . . [473] committed to jail as a runaway slave. . . While in Cain's custody [several months], the negro was . . employed in his service, ploughing his ground, chopping his wood and conveying water, . . made his escape . . a general verdict for the plaintiff [Kelly] for $400," Judgment thereon, affirmed.

Payne v. Payne, 4 Humphreys 500, April 1844. [501] "he was in the habit of using such language to her [his wife], as is not usual to be addressed to slaves."

Belew v. Clark, 4 Humphreys 506, April 1844. "February, 1839, Hurt sold . . negro girl . . to Clark. The bill of sale [for $250] represented her to be about six years of age, and warranted her to be sound. . . Hurt said that she had an obstinate, mulish, sullen temper, . . he had owned her about four years; that at times her actions indicated an absence of intellect, and that at others she seemed to have as much as usual with those who had no better tutoring [[509] 'She had been brought up . . altogether with negroes, having had little or no communication whatever with white persons']; one of her legs had been broken, and her toes were frostbitten. . . [507] April, 1839, Clark sold her to Belew . . [for] three hundred dollars, and warranted her 'to be sound.' . . The bill charges, that she was absolutely an idiot, and of no value; . . known to the defendant . . The answer admits that he represented her to possess a sound mind, but that he stated that she was not sprightly . . and that her dullness and refusal to talk . . resulted from her having been badly treated, and from want of tutoring, . . Two physicians . . made a partial examination from two to four hours, and stated . . that she was . . stupid, to an extent bordering on idiocy, . . [508] appeared, that the complainant kept the slave for nearly a year; . . and had authorized

her to be sold at auction as sound in body and mind." Bill dismissed. Decree affirmed [510] "without prejudice to the complainant's right to sue at law,"

Morgan v. McGhee, 5 Humphreys 13, September 1844. "that Margaret Morgan . . was a half-blood Cherokee, . . that the slaves . . were delivered to [her] . . in 1828 by her mother,"

Lamden v. State, 5 Humphreys 83, September 1844. [86] "In . . 1839, Butcher, who was a 'steam doctor,' . . did render, to the plaintiff in error himself, and a servant of his, medical services in that line. . . judgment . . for . . one hundred dollars. . . void; . . no jurisdiction,"

Sword v. State, 5 Humphreys 102, September 1844. "Sword was indicted, under the act of 1842, ch. 141, and convicted . . for selling a quart of whiskey to a slave without permission from the master. . . fined fifty dollars" Affirmed, and [103] "we . . direct that, in addition . . the defendant be imprisoned one week."

Pulse v. State, 5 Humphreys 108, September 1844. "Pulse had sold a barrel of whiskey to the slave without the consent of his master, and had employed an agent to deliver it . . intercepted . . The jury found the defendant guilty, . . sentenced to be imprisoned one week, and fined five dollars."

Judgment reversed, and the case remanded: [109] "the evil intended to be suppressed by the statute,[1] was the consumption of spirits by slaves, to the detriment of their moral character, and the danger of the peace of the community. A contract of sale without a delivery could by no possibility be attended with any such evils," [Turley, J.]

Crippen v. Bearden, 5 Humphreys 129, September 1844. In 1836 a negro girl and her child were sold for $660.

Thompson v. State, 5 Humphreys 138, December 1844. "Thompson . . was convicted . . upon the testimony of one witness, . . that he saw the defendant sell a quart of whiskey to a slave . . [for] twelve and one half cents . . [139] defendant admits that he expected the State's witness to prove that his negro slave, attending to his liquor booth for him, sold the whiskey; and yet he was not prepared to prove that it had been done . . against his positive orders." Judgment affirmed.

Jim (a slave) v. State, 5 Humphreys 145, December 1844. "Isaac, a slave, . . of . . Avant, was murdered [in 1843] in the kitchen of . . Williams, . . [147] where his negroes sleep," "sleeping on the floor with his feet towards the fire;" [145] "George, against whose owner executions were in the hands of the sheriff, and . . Jim, against whose owner an attachment had issued, were both . . [146] concealing themselves in the woods, . . near . . The persons having the executions against George, had employed Isaac to catch George, . . they both made frequent threats that they would take his life. Both were armed: . .

[1] Act of 1842, ch. 141.

were connected, George's wife being Jim's cousin; . . Cindy [George's wife] says, . . [147] the prisoner . . told her that he had shot the damned rascal, through a crack . . Williams and . . Avant found tracks . . [148] deficiency in the sole of the shoe that made it: on examining the prisoner's shoes, a [corresponding] piece was wanting . . Boyd arrested the prisoner . . in a cave about half a mile from . . Williams's house. . . said he had sold his pistol to . . Creps two or three weeks before for a dollar and a half, and had paid Cellar's Mary fifty cents for washing, and Hart's Daphney thirty-seven and a half cents for a shirt pattern, and still had a 'bit.' . . Creps denies . . Williams's Nancy" and her mother, Becky, gave testimony conflicting with Cindy's. Cindy told Mary [149] "she did not want to destroy Jim for such a fellow as Isaac was. The State proved by . . [three] sons of Williams, . . the owner of Cindy, Nancy and Becky, that Cindy is a woman of truth, . . but that Nancy and Becky are in the habit of telling stories," Jim [145] "was tried . . 1843, and convicted. He appealed, and the judgment was reversed [because of the misconduct of the jury].[1] . . He was again tried, . . 1844, . . and condemned to be executed."

Judgment affirmed: [151] "Isaac . . seems to have lost *caste* . . He had combined with the white folks to betray George . . no slight offence in their eyes: that one of their own color, subject to a like servitude, should abandon the interests of his *caste*, and, for hire, betray black folks to the white people, rendered him an object of general aversion. . . hence it was, that Cindy did not wish to destroy Jim for such a fellow." [Green, J.]

Bill (a slave) v. State, 5 Humphreys 155, December 1844. "Bill . . was indicted . . for an assault with intent to commit a rape on . . a free white woman." [157] "Mrs. Smith . . was badly mounted and encumbered with a child and luggage, and travelled slowly." [155] "she met . . about half a mile from the town, a negro, whom she at first supposed to be one of her mother's; she asked him who he was, to which he replied, *one*, . . parted . . After proceeding one mile and a half further . . she found a negro standing in the corner of the fence; a negro boy . . travelling with her, spoke to him, and he answered as if he was alarmed, or had been running; she passed on, and he pursued, . . after . . [156] insolent language pulled her from her horse and threw her upon the ground, informing her what his designs were. The negro boy beat off the assailant, upon which she fled . . an apron for a small boy, nurse, was dropped, . . Watson proves . . that he saw her pass, and a short time afterwards a negro man rode up and enquired of him, who those were . . observed, that he thought it was Mrs. Husbands and Zack; and said he wanted to see Zack, and immediately turned in pursuit in a gallop or trot. . . thought the negro was either Bill . . or his brother . . Tom, a slave, . . heard the screams . . Bill came to the fence . . [157] holding his horse; he enquired . . if his brother . . had been there . . he [Tom] then enquired of the prisoner if he had heard the hollowing, to which he answered no. Witness then observed,

[1] Same *v.* same, 4 Humphreys 289.

that it might have been heard to town. Prisoner then observed, that he believed he did hear a little . . [159] the cloth[e]s of the nurse of Mrs. Smith . . were afterwards found in the possession of the prisoner," [155] "He was tried . . February term, 1844, and convicted and sentenced to be executed."

Judgment affirmed: [160] "the more easily to overtake her, . . he dismounted from his horse, and by taking the hypotenuse of the angle . . he came into the road in advance of her;" [Turley, J.]

Norment v. Wilson, 5 Humphreys 310, December 1844. Will: "that the younger children should be educated out of the profits of the farm and the hire of the slaves, . . and that a certain child who was afflicted should always have a slave to wait on him, so long as one belonged to the estate;"

Turner v. Grainger, 5 Humphreys 347, December 1844. About 1840 "a negro girl slave" was sold for $450.

Martin v. Ramsey, 5 Humphreys 349, December 1844. [351] "that if he lost a suit . . he intended the girl Milly to pay the debt, and if she would not be sufficient, Daniel should go to pay it."

Owen v. Owen, 5 Humphreys 352, December 1844. [356] "that the negro is worth from two to four hundred dollars; that he was hired for one hundred dollars per year; and that when put up for sale by the Clerk and Master, he looked badly, as if he was sick. He sold for only one hundred dollars, on six months credit. . . gross inadequacy of price, . . indiscreet . . to sell him under such unfavorable circumstances;" [Green, J.]

Howard v. Clemmons, 5 Humphreys 368, December 1844. "that the negroes were directed to be freed by the last will . . of John Clemmons. . . that the executor has not taken the proper steps for obtaining a legal sanction on the part of the State" The distributees and heirs filed a bill for a distribution of the negroes. "The executor responds, that it is his intention to apply to the County Court . . at the earliest practicable period, for such sanction, and that he has not done so heretofore, on account of the tender age of a portion of the negroes, which renders it improper that they should as yet be emancipated." Bill dismissed. Affirmed.

Puryear v. Thompson, 5 Humphreys 397, December 1844. "an action . . to recover the value of a negro boy, . . killed by the overseer of [Puryear] . . whilst inflicting punishment . . Thompson . . hired . . Harry to Puryear for the year 1842. . . to work in Puryear's factory, where . . Newcomb was . . overseer. . . a difficulty occurred . . when Newcomb attempted to chastise the negro, who ranaway, and did not come home until the next Monday morning. About nine o'clock, . . Puryear had the negro tied . . and after striking him eight or ten licks, he handed the cowhide to Newcomb, telling him 'to give the negro a good whipping—be sure to humble him before you let him down, and then put him to work, for he has had his way long enough.' . . [398] Several hours

after Puryear left the factory, he was informed that . . Harry was dead. . . went home, expressing much regret, . . met Newcomb, who . . said 'he had whipped the negro too much, and was sorry for it.' The negro . . appeared to have been severely whipped, and there were bruises on his head and neck, as though . . made by a piece of timber which lay near, three inches wide at one end, and tapering to the other . . upwards of an inch thick. Newcomb, previously . . had treated the negroes humanely, and had a good character. . . [399] verdict for the plaintiff,"

Judgment thereon reversed and the case remanded: the trial judge did not so charge the jury [400] "as to leave them free to determine . . whether the blows . . were intended by Newcomb to take his life, or whether in his purpose to humble the slave, at all events, he grew . . reckless of the means . . employed, and thereby killed him, not having intended that result."

Peter v. State, 5 Humphreys 436, December 1844. "indicted . . November, 1844, . . for an attempt to commit an assault on . . a free white woman, . . May preceding." Her father, "the prosecutor, . . hired the slave . . of . . the owner . . [437] convicted. A motion for a new trial . . overruled, . . sentenced to be executed."

Judgment reversed: [440] "the record does not satisfy our minds as to the character of the acts committed or intended by the prisoner."

Herron v. Marshall, 5 Humphreys 443, December 1844. In 1828 a negro man was sold for $450.

Gookin v. Graham, 5 Humphreys 480, December 1844. Graham, the former owner of Betsy, and a resident of Alabama, [481] "did . . clandestinely take [her] from the possession of Trousdale [in whose custody she was], and run her to . . Tennessee, where he sold her to . . Campbell . . [482] when persons . . in pursuit of Graham from Alabama arrived . . Campbell concealed the negro"

Booker v. Booker, 5 Humphreys 505, December 1844. Will, 1839: "to his son . . $6000 worth of negro slaves, men to be valued at $600 and women at $400,"

Gift v. Anderson, 5 Humphreys 577, April 1845. [578] "An execution had been issued against the plaintiff in error and was levied upon a negro child of infantine age [with other slaves], and he authorized the sheriff to expose the same [infant] to public sale without" [577] "her presence."

State v. Curtis, 5 Humphreys 601, April 1845. "the grand jurors . . present, that . . Curtis, . . laborer, . . 1843, . . did harbor and conceal . . Mary, . . [602] of the value of five hundred dollars, . . with the intent . . to deprive . . the true owner" [601] "convicted . . and sentenced to three years imprisonment. . . [602] judgment . . arrested, and the defendant ordered to be discharged."

Affirmed: the allegations do not constitute a charge of felony. By the act of 1835, ch. 58, such slaves must have been also persuaded to leave the owner.

Elias v. Smith, 6 Humphreys 33, September 1845. Smith "had recovered judgment against Elias [a free man of color] and executions were levied on Tenor his wife and Daniel his son. This bill was filed to restrain the sale on the ground that the title to the slaves was vested in him for the purpose of emancipating them, and that they were entitled to their freedom and not subject to his debts." [34] "many years ago Elias was emancipated by . . Inman. He was permitted by . . Read, to intermarry with his slave, Tenor; after they had two children, Elias and . . Read entered into a contract, [a covenant under seal], . . that Elias should take the woman and children, and support . . them, until the latter became ten years of age, at which time, . . the two children, should be returned to Read; but the woman was to continue to live with the husband, who was to . . keep her . . from being chargeable to . . Read, or to the county. . . The latter were returned according to the stipulations . . Read died, . . having made no disposition of her. . . his administrator was advised that it might be safe . . at the sale . . to sell the woman and a child then lately born . . Elias, . . after much importunity and with great reluctance, consented to bring them to the place of sale, being assured by the administrator and all the heirs at law that, regarding their father as having purposed her freedom, they had no thought of reducing her and the child to slavery, and that he . . might . . buy them, for a trifle. . . Elias became the purchaser . . for . . ten dollars; . . worth [if slaves] . . six or seven hundred dollars. The other complainants have been born since . . ever since been regarded and treated by . . [35] Elias, and others, as his wife and children, and not as his slaves and property." Bill dismissed.

Reversed. "We decree . . as to the sale of the woman and the children, a perpetual injunction against the defendant, and that he pay the costs in the chancery court, and in this court." "accompanying this transfer of the mere legal title [to Elias], was a trust in favor of the freedom of the wife and children, arising necessarily from the very nature of the whole transaction. . . [36] But as Elias has power to emancipate . . with the consent of the County Court . . it is not clear that this court . . is the proper forum . . to give the consent of the government. Let application be made to the County Court." [Reese, J.]

King v. Smith, 6 Humphreys 55, September 1845. "King died [in 1798] having made his wife tenant for life of certain slaves by his will, with remainder to his children. The widow [in 1832] sold" Amy and her two children to Sharp for six hundred dollars. He "was informed of the facts in regard to title. He sold the slaves to a negro-trader who removed them beyond the limits of the State."

Held: Sharp [58] "was bound to hold them subject to the rights of those in remainder. . . the remainder-men are entitled to their delivery, or compensation."

Vanleer v. Fain, 6 Humphreys 104, December 1845. "An auctioneer in Nashville read out . . the terms of the hiring of the slaves of Fain . . 'not to be removed out of the county . . the person who hires them to furnish them with one summer suit and one winter suit of new clothes,

with shoes and blanket each; bond with . . security required when the slaves are delivered.' Joiner, agent for Vanleer, Hicks and Co., hired Philip for $140; . . did not hear any restrictions as to . . where the slave was to be employed." He [106] "executed the note in pursuance of the terms of the contract, but not specifying therein that the negro was not to be removed out of the county. The negro was . . [107] removed out of the county . . and employed at the iron works of the defendant, where, in the course of the year, he sickened and died." [105] "proved to be worth from $700 to $800. . . The jury returned a verdict for . . $583." Judgment thereon, affirmed.

Jones v. Marable, 6 Humphreys 116, December 1845. "Mary W. Jordan was the daughter of the complainant [Mrs. Jones], . . 1842, she intermarried with the defendant . . [117] in Arkansas," where she had removed "about two years before . . from Tennessee . . taking her negroes with her, . . shortly after the marriage, the parties came to Tennessee, where the defendant commenced building . . had despatched an agent to Arkansas for her negroes, but they had not been removed at the time of her death [in December 1842]. . . By an act of the Arkansas legislature, . . 1840, it is enacted, 'That slaves . . hereafter shall descend . . as real estate,'" Held: [119] "the complainant is entitled to the negroes . . by inheritance, according to the laws of Arkansas."

Reuben v. Parrish, 6 Humphreys 122, December 1845. The will of Elizabeth May, who died in Kentucky, in 1840, "directed that all her negroes . . should be emancipated at her death." Her executor "removed the negroes from . . Kentucky to . . Tennessee, the former place of residence of the testatrix, where they have been ever since kept by, and hired out by him; . . bill . . filed on the part of the negroes, to have a decree of emancipation . . [123] and for other . . relief," [122] "The presiding chancellor dismissed the bill, and complainants appealed."

Held: the Kentucky acts of 1798[1] and 1800[2] [123] "establish beyond a doubt the right of the complainants to as full freedom in . . Kentucky, as if they had been born free, from the date of the probate . . The provision of the act of 1799, which gives the County Court full power to demand bond . . [126] for the maintenance of any . . slaves that may be aged, or infirm, . . is not a judicial act necessary to perfect the emancipation, but a mere police regulation, . . We are, therefore, of opinion that these complainants . . have been wrongfully removed from Kentucky . . and that the defendant is chargeable to them for all sums of money, or other things, received by him, the proceeds of their labor, during the time he has had them in his wrongful possession, and that he account . . Decree accordingly." [Turley, J.]

Martin v. State, 6 Humphreys 204, December 1845. [205] "The indictment[3] alleged that . . 'Martin . . 1845, . . was guilty of selling spirituous liquors to a . . slave, . . without a permit in writing from his master,' . . convicted . . sentenced to imprisonment for ten days and to pay the costs of the prosecution."

[1] Morehead and Brown's *Digest*, p. 608.
[2] *Ibid.*, p. 609.
[3] Under the acts of 1829, ch. 76, and of 1842, ch. 141.

Affirmed: [206] "there may be no overseer or agent—in nine cases out of ten there would be none, and why negative that which may by bare possibility exist,"

Hester v. Wilkinson, 6 Humphreys 215, December 1845. [218] "removed [from North Carolina] to . . Tennessee, bringing with them the . . slaves. . . [219] The slaves were women and children, whose services could not be very profitable;"

Hoggatt v. Bigley, 6 Humphreys 236, December 1845. [237] "A watchman apprehended . . Jim [in 1843], . . for violating the corporation ordinance of Nashville, in hiring his own time, and carried him before . . a justice of the peace . . [who] 'committed [him] to jail . . the owner refusing to pay the fine.'" [1] Held: [239] "This Ordinance is not repugnant to the State Law," [2]

Fletcher v. State, 6 Humphreys 249, December 1845. "The indictment charged that Fletcher . . passed five pieces of counterfeited coin to . . a slave,"

Held: [256] "much better to charge according to the fact, . . than merely according to the legal effect."

Jenkins v. Brown, 6 Humphreys 299, December 1845. John and Tom "were barbers in the town of Columbia acting for themselves with the permission of their masters. They earned a large sum of money which was placed in the hands of . . Brown to be . . loaned out, and he loaned . . to Jenkins, . . When . . due he instituted suit . . suit was dismissed upon an agreement that Jenkins should have three years time, . . and notes [for $2424.37] taken accordingly. . . this bill was filed . . to restrain the collection . . dismissed"

Affirmed: [302] "the money loaned belonged to [their masters] . . to whom [Brown] . . is responsible for the payment . . clearly entitled to recover it back from those to whom he loaned it, and in the absence of objection on the part of the masters, it does not lie in the mouths of the borrowers to object to the refunding the sum borrowed upon the ground that it was . . the money . . of third persons." [Turley, J.]

Croft v. State, 6 Humphreys 317, December 1845. "convicted . . for stealing a slave. . . was arrested with the slave in his possession in Illinois;" "sentenced to five years confinement in the penitentiary." Affirmed.

Read v. Bostick, 6 Humphreys 321, December 1845. [322] "the real estate consisted of lands considerably worn, . . deemed . . less valuable . . than the negroes. A bill was filed for the sale of the lands for the payment of debts." So decreed.

Irwin v. Burnett, 6 Humphreys 342, December 1845. "in 1840 the defendant sold in . . Nashville, at auction, a negro man slave to . .

[1] Nashville ordinance of 1840, sect. 11, "which imposes a fine of twenty dollars for a slave hiring his own time, and imprisonment of the slave if the owner refuse to pay the fine." *Ibid.* 239.

[2] Act of 1777, ch. 6, sect. 5. Car. and Nich. 675.

Robertson, a steamboat captain, engaged in the Nashville and New Orleans trade, for . . [343] seven hundred and five dollars. . . in a few hours . . he put the slave on board a steamboat and sent him forthwith to the south . . the security was not satisfactory to [the defendant] . . and he caused the note to be returned to the maker [a friend of Robertson] . . did not doubt that Robertson would surrender . . the slave, and proposed to sell him to the complainant . . [also] a captain of a steamboat, engaged in the trade between Nashville and New Orleans, . . agreed . . when he first saw Robertson, . . after the return of the latter from the Republic of Texas, . . he was informed . . that he had left the slave . . in Texas, and that he would not be delivered up . . In fact, it is probable that by the laws of the United States, he could not then have been delivered to him within the United States as a slave, after having been so taken to Texas." Bill to enjoin the enforcement of a judgment recovered on the note executed by Irwin for the slave.

Held: [344] "The slave . . was as much lost to the complainant as if he had been dead. . . entitled to the relief prayed for"

Yeatman v. Hart, 6 Humphreys 375, December 1845. "the slave had been employed on board a steamboat, where he became sick with a disease of the bowels, which resulted in mortification and death in two days after the boat arrived at Nashville, when a physician was for the first time called in. . . The boy told him he had been sick three weeks with dysentery. . . [376] The jury found for the plaintiff,"

Judgment thereon, affirmed: "the declaration of the slave . . [was] clearly admissible."

Turner v. Petigrew, 6 Humphreys 438, April 1846. "the negroes . . were sold, in order to make distribution among the heirs;"

Ballard v. Jones, 6 Humphreys 455, April 1846. [456] "the slave was one of peculiar value, worth not less than a thousand dollars; he had been brought up from infancy with the complainant, who was a young man, and they were reciprocally attached to each other; the slave had been mortgaged to a person in the neighborhood for . . $325, and was in his possession, and, as complainant believed, about to be lost to him. . . applied to the defendant for a loan of three hundred and twenty-five dollars . . advanced . . slave redeemed." [455] "Jones took a bill of sale" [456] "It acknowledges the payment of . . eight hundred dollars. . . [But nothing] [457] more than the three hundred and twenty-five dollars was advanced. . . The slave . . would have hired at least for a hundred dollars per annum. . . the negro subsequently ran away." Held: "a most unquestionable case of mortgage;"

Alston v. Boyd, 6 Humphreys 504, April 1846. [505] "1825, his mind became diseased. . . [506] got a fancy that something was in his head . . offered his slave his freedom if he would split his head open with an axe."

Farnsworth v. Earnest, 7 Humphreys 24, September 1846. In 1839 "the defendant . . made a public sale . . among other things the negro boy . . the complainant being the purchaser at . . four hundred dollars.

At the sale the boy was crying, and complainant was unable to judge of his mental capacity, . . [25] proof . . that the boy is ignorant and dull . . not worth more than half the value of a sprightly sensible boy of the same age." Bill to enjoin a portion of the price was filed in 1844. Dismissed.

Decree affirmed: "he may be greatly deficient in skill in the management of horses, arranging the harness, etc., and yet for the ordinary services of a field hand, it is probable he will be found equal to other slaves of his age." [Green, J.]

Kennedy v. Williams, 7 Humphreys 50, September 1846. Reese, J.: [53] "The value of slaves depends upon physical strength, upon intellectual capacity, upon mental culture, upon moral worth, as fidelity, honesty, obedience, etc., and upon handicraft skill, in short upon a thousand things; it is only in the wretched market of the mere slave trader, that his value can be rated by pound averdupois [*sic*]."

Ford v. Ford, 7 Humphreys 92, September 1846. "Loyd Ford . . 1840, made a will, which directed an emancipation of his slaves, John Ford and others, and appointed two of his sons . . ex'rs. The sons refused to act . . and the slaves by their next friend, Phebe Stuart, offered the will for probate" [98] "the negroes were reputed to be the children of the testator. . . the testator had frequently said that they were" Green, J.: [95] "A slave is not in the condition of a horse . . he is made after the image of the Creator. He has mental capacities, and an immortal principle in his nature, that constitute him equal to his owner, but for the accidental position in which fortune has placed him. . . [96] the laws . . cannot extinguish his high born nature, nor deprive him of many rights which are inherent in man. . . he can make a contract for his freedom, which our laws recognize, and he can take a bequest of his freedom, and by the same will he can take personal or real estate."

Bob (a slave) v. State, 7 Humphreys 129, December 1846. "indicted . . convicted of murder, and condemned to be hung. . . the record does not show where the court, by whom the indictment was taken, was holden." Held: "the omission is fatal, . . Reverse the judgment, and remand the prisoner . . to be proceeded against."

Runyan v. Caldwell, 7 Humphreys 134, December 1846. "Caldwell hired the negro for the year 1841, to . . Downs, who hired him to Runyan . . [who] employed the boy as a ferryman, . . he disappeared, . . Whether the negro is dead or has escaped . . is not clear from the proof."

Prince (a slave) v. State, 7 Humphreys 137, December 1846. "Prince, . . the property of . . London, was indicted for robbery . . and acquitted. . . [138] the costs and attendance of . . witnesses amounted to . . two hundred and eleven dollars six and a fourth cents, part of which had been paid . . by . . London"

Held: [140] "the act of 1819, (N. and C. 679,) . . is to be expounded, as limited to the costs of the prosecution, . . The slave is in the same category with the free man in that respect, and the witnesses for him are in no worse condition, than he who is witness for an insolvent free man;"

Duncan v. State, 7 Humphreys 148, December 1846. "Duncan, was indicted[1] [in 1845] and convicted . . for unlawfully carrying away a slave by steamboat," [151] "He did not receive the negro, and when he ascertained that he was on board of his boat, he made use of all reasonable exertions to secure him, and he fled and could not be overtaken." Judgment arrested and the defendant discharged.

Williams v. McCormack, 7 Humphreys 308, December 1846. "became the purchaser [December 1841] of a girl . . at . . $526. About a year after . . the girl died, . . [309] the proof shows, that this girl had not been hired out during . . 1841, on account of her bad health; that during that year she had been treated by Mrs. King, a doctress . . and had greatly improved in her appearance. Mrs. King and other witnesses thought she was well." No fraud.

Tubb v. Williams, 7 Humphreys 367, December 1846. [368] "Jacob, by the negligence, if not contrivance of defendants, secured his freedom [[371] 'as early as 1841 '] by escaping to Illinois,"

John v. Tate, 7 Humphreys 388, December 1846. "John, Andrew, Isaac, Charity and Cina, by their next friend, filed their bill . . [which] charges, that Ignatius Jones made his . . will . . 1824, . . that by said will the complainants were entitled to their freedom after the expiration of certain periods, which had elapsed, . . will was regularly proven [in 1824] . . That Tate, the executor, who had married the daughter of Jones, fraudulently procured the widow . . [389] to contest . . the probate was set aside [in 1827] . . and the complainants were distributed . . Tate . . denied . . stated, that . . John was given to him by Jones in his lifetime," [392] "told . . Oneal, that if the negroes had sense enough, they could get their freedom."

Decree in favor of the complainants, affirmed: [392], "the probate of 1824 . . becomes reinstated . . [393] As to the claim . . to . . John, . . we are satisfied, from the proof, that no such gift was made. . . the testator died before the passage of the act of 1829. The complainants may therefore apply to the County Court . . to be liberated . . the cause will be retained in this court, that after such emancipation . . an account may be taken, and the rights of the parties adjusted in this cause," [Green, J.]

Sypert v. Sawyer, 7 Humphreys 413, December 1846. "executor . . sold a slave, Eda, at public auction [for $400] . . cried off as sound, healthy, and sensible, . . was afflicted with scrofula . . bill . . filed . . to enjoin the collection of the purchase money" Held: [414] "no fraud . . the complainant must be left to his remedy at law"

Webb v. Patterson, 7 Humphreys 431, December 1846. [432] "it further appeared to the court, that . . Tom [taken as security by Patterson] was of bad character and habits, and addicted to running away; that he was uncontrollable and difficult to be retained in servitude; that . . Foster purchased him in irons [[434] 'as a runaway slave in Alabama;'] . . did not communicate [these traits] . . to . . Patterson,

[1] Under the act of 1833, ch. 111.

. . that a day or two after . . Patterson took possession . . he ran away . . that . . Patterson advertised, offered a reward, and used all diligence to recapture him—but that he failed to do so until he had lain in jail [in [434] 'Kentucky, where he had been taken up and kept in jail as a runaway slave, for nearly a year;'] . . that after said slave was recaptured, he was detained in jail to prevent his running away."

Held: [435] "a fraud upon Patterson." Webb and Foster "ought to pay these expenses."

Washington v. Johnson, 7 Humphreys 468, December 1846. "action of debt . . Johnson tendered [in payment] a negro girl, . . aged fifteen, at the price of 825 dollars. Washington objected to the price, but took the girl on trial, . . January, 1842. She remained in his possession till . . [469] October, 1843, when she died of common autumnal fever, without neglect . . The presiding judge . . charged the jury . . that . . goods . . must be returned in a reasonable time, or the sale becomes absolute. . . [470] verdict in favor of the plaintiff for the balance of the debt deducting the price of the slave." Judgment thereon, affirmed.

Carey v. State, 7 Humphreys 499, April 1847. "Carey was indicted in the . . Court at Memphis, under the act of 1829, ch. 23, sec. 22, for slave stealing." [500] "the hirer of the slave . . testified that . . 1846 . . August he was in the act of inflicting corporal punishment upon the slave, when he broke loose from him and ran away. . . He sought diligently for the slave for three weeks . . and could hear nothing. He afterwards heard of him in . . Mississippi. On the 28th of September, in . . Mississippi, two hundred miles from Memphis, the prisoner brought the slave with him in the stage coach and stopped at a tavern; he claimed the slave as his; he used no force to restrain or art to conceal him." Verdict of guilty. Judgment thereon reversed and a new trial granted: "no proof that the slave was stolen by any person"

Taylor v. State, 7 Humphreys 510, April 1847. "indictment . . 1846, . . charges that the defendant sold spirituous liquors to . . a negro slave . . without a written permission from his owner."

Held: the indictment is defective. [511] "the act of 1842 [ch. 141] . . repeals ['by implication'] the act of 1829 [ch. 76], . . The act of 1829, required . . that the permission should be in writing; the act of 1842, nothing but a permission."

State v. Weaks, 7 Humphreys 522, April 1847. "The defendant was indicted[1] . . for permitting [in 1844] a slave, his property, to trade in spirituous liquors as if a free person of color. . . found guilty . . judgment . . arrested,"

Judgment reversed: it was not necessary to allege [523] "that spirituous liquors were actually sold to any one. If the slave have his shop, and . . is seen waiting on customers . . The defendant will be fined five dollars."

[1] Under the act of 1839, ch. 47.

Gilbert v. State, 7 Humphreys 524, April 1847. "indicted . . for the murder of his master, . . found guilty . . and sentenced to be hung. . . appealed." "The principal witness for the prosecution, (Jackson, a black boy, about 17 years old,) . . [525] says, that himself and the prisoner [his half brother] were sent to a tobacco barn to strip tobacco, (the prisoner taking . . a large hickory stick . . he had cut the day before,) that after . . a short time their master came, and . . while he was . . stripping tobacco, Gilbert . . struck the deceased on the head, . . that the deceased fell and did not speak. The prisoner then sent the witness for fire, which he brought, and then ran . . soon afterwards saw the barn . . on fire, and the prisoner . . told him they must say the barn caught on fire, . . and their master got burned up; . . The deceased was an old and very nearly blind man. . . in the evening . . a great many persons were collected . . he told them . . that he and the prisoner . . could not get their master out, that J. E. Porter and others caught witness, and tied him and took him to a log and told him, they intended to make him lay there until they whipped him to death, if he did not tell . . he then told them the prisoner killed him, the witness stated he was scared nearly to death, and would have told . . any tale in the world, true or false, . . and that he would be afraid to tell any other tale than the one he told the men if it was a lie; he was not afraid to tell the same tale . . because it was the truth. . . [526] the prisoner had whipped him frequently severely, and he sometimes would have been willing to see him hung, but they were friendly the day of the murder. The deceased was a kind master. The witness . . said he was afraid of Gilbert. . . [528] Coleman [another negro boy] says, that the prisoner had a wife at his master's house, and that he wished to leave her and get a girl of Dunlap's for a wife, but that his master refused . . Coleman heard the prisoner threaten his master's life several times, and had seen him with the hickory, which he called the peace-maker. . . [529] The [master's] purse [was] hid out by the prisoner eighty yards from the barn, and he does not attempt to account for the manner in which he got it; . . his master . . was kind and indulgent to him, and that he could not hope to fall into better hands. . . [530] On the trial J. C. Porter proved that he saw blood on the prisoner's pantaloons, . . After the trial the prisoner filed his affidavit, stating that he was surprised by this testimony, . . that on the morning the barn was burned, he went hunting, and his dogs treed an opossum . . bit it . . bled freely, . . Marr made affidavit that . . the opossum . . was very bloody, . . did not tell the prisoner that he knew these facts until after the proof was closed"

Judgment affirmed: [528] "we think there can be no doubt of the truth of Jackson's testimony" "we do not think that the witness, agitated by extreme alarm as he was, could have fabricated a tale so consistent and probable . . [530] the affidavits make out no case of surprise" [Green, J.]

Nelson (a slave) v. State, 7 Humphreys 542, April 1847. "Indictment for murder" "when the deceased [a white man] after having been wounded, was brought to the house, he told his wife 'not to be alarmed,

that he . . was not going to die.' About ten minutes afterwards, . . told . . Mangum that Nelson . . 'had stabbed him.' . . witness . . thinks he was trying to say, 'that Nelson had tried to kill him two or three times before,' . . [543] that the prisoner had stabbed the deceased . . was not disputed . . The object of this proof was . . to show malice." He was [542] "convicted and sentenced to be hung." Judgment reversed, and a new trial granted: [543] "This testimony was illegal."

Tom (a slave) v. State, 8 Humphreys 86, December 1847. "Tom was indicted . . for an assault . . with the intent to commit murder in the first degree." [87] "absconded . . and while concealed in the woods, fired a pistol . . at . . Haley, giving him a severe wound . . in his right arm. Haley was . . hunting and came . . unexpectedly upon the prisoner concealed behind a log, . . convicted" "sentenced to be executed."

Turley, J.: [87] "fairly to be inferred that the prisoner supposed he was in pursuit of him, . . [88] no offence for any individual to arrest a runaway slave, . . if he resist it and slay . . he is guilty of murder in the first degree, . . It may be painful to the feelings to hold such doctrine, but it is a necessary incident to the institution of slavery. . . no pretence whatever for the assault, however the prisoner no doubt thought otherwise, . . however much we may regret the consequences, we must affirm the judgment."

State v. Brown, 8 Humphreys 89, December 1847. "Brown ['a grocery keeper'] was indicted . . for permitting an unlawful assemblage of [ten or more] slaves on his premises.[1] . . found guilty . . the judge arrested the judgment." Reversed: [93] "order that he be fined five dollars,"

Turnpike Co. v. Young, 8 Humphreys 103, December 1847. "six negro men which the company had hired to work on the road and keep it in repair,"

Marshall v. Stephens, 8 Humphreys 159, December 1847. In 1829 Alley and her child were sold for $400.

Lewis v. Simonton, 8 Humphreys 185, December 1847. "Moses Lewis, a free person of color, filed this bill . . charged . . that he was the owner of a note [for $400, given for his services before his emancipation, but after he was entitled to enjoy the fruits of his labor] . . and that defendant seised [*sic*] him and kept him imprisoned, and threatened him with a criminal prosecution, and thereby . . compelled him to surrender . . the note . . a final decree in favor of the complainant, directing the delivery of the note . . to the complainant, and in the event of failure . . that execution should issue against the defendant for the amount of the note and interest . . the defendant appealed" [187] "It is insisted, that, . . the complainant . . is still a slave, . . it appears that in . . 1835 the complainant purchased his freedom from . . Topp [a non-resident], at . . $1000. . . the complainant . . was residing

[1] Act of 1831, ch. 113, sects. 1, 2.

with . . Martin, in Giles county, . . He had a wife and child, . . residing in said county, whose freedom he also wished to purchase, and he desired to remain in this state until, from the proceeds of his labor, he could realize money enough to enable him to do so. But as he could not remain . . if emancipated, it was mutually agreed . . that his emancipation should be postponed for a time, and that Topp should make a conveyance of complainant to Martin, in trust, to permit him to labor for himself . . until such time as he should desire to be emancipated; . . Some years afterwards, the complainant having removed . . Martin being unwilling to remain longer responsible . . executed a . . bill of sale of complainant and his wife, (the complainant having purchased her freedom in the mean time,) to . . Buchanan, of Lawrenceburg, which shows . . the trust in favor of complainant and his wife . . [188] Buchanan, in . . 1843, or . . 1844, . . in writing, on the back of the bill of sale . . disclaimed his acceptance thereof, and all right . . to the complainant and his wife; . . 1845, the complainant was desirous of removing from this state; and for the purpose of enabling himself and wife to obtain their emancipation, . . Martin conveyed them to . . Stephenson, and . . Stephenson presented a petition to the county court of Lawrence county for their emancipation, . . granted; . . and bond . . given for their removal from this state; they shortly after removed to . . Illinois. The record of the emancipation . . forms part of the bill; the bill of sale . . to Buchanan . . also . . but the disclaimer . . by Buchanan, is not produced, nor proved."

Held: [190] "the validity of the emancipation . . is not affected by the omission either of Topp, . . or of Buchanan, the trustee, to present the petition . . the proceedings of the tribunal entrusted by law to give the assent of the state cannot be impeached, when collaterally brought in question, unless upon their face they be absolutely void. . . [191] his freedom will be held to relate back ['to the time when the right first accrued'], to entitle him to recover the proceeds of his labor wrongfully extorted from him during such interval. . . Decree of the chancellor . . affirmed with costs." [McKinney, J.]

Patton v. Overton, 8 Humphreys 192, December 1847. [193] "returned [in 1836] to Tennessee [from Louisiana], bringing with them their . . [inherited] slaves,"

English v. Tomlinson, 8 Humphreys 378, December 1847. [383] "Tomlinson on the day of the sale [in 1843], deterred bidders by representing . . that Arrowsmith was to purchase the negroes, [[382] 'in order, that they might be kept together,'] and permit him to redeem them. By this means the negroes [[381] 'a woman . . and her two children, a girl 7 years old, and a boy 5 years old'], worth $700, were sold for only $501."

Mullen v. Ensley, 8 Humphreys 428, December 1847. "Jordan was hired . . put to the business of blasting rock, for the construction of a turnpike. . . was 'blown up,' one of his eyes put out, and one of his hands severely injured."

Held: [429] "not an ordinary and usual" employment. Decree against the defendant for $250, [428] "the amount of the deterioration in the value of the slave," with interest from the date of the accident, [429] "and that no more hire should be allowed after the accident, than . . could have been had."

Bowling v. Stratton and Swann, 8 Humphreys 430, December 1847. "action . . for the loss of a negro man . . hired . . and never returned: . . [Cheatham's] father [then the guardian of the heirs] requested him to . . take the note of . . Swann for $100, for the hire of Edmund for the year 1845, . . [431] That his father had permitted the negroes . . to seek the places or masters to whom they wished to be hired; . . that Edmund was thought to be a good and trustworthy boy. That . . in the summer . . Swann stated to him that Edmund was desirous of making something for himself, by driving a hack, and asked . . if there would be any impropriety in permitting him . . he replied, he thought not, . . that he went to Memphis with his hack in the fall, . . remained a month or two, that the mother and sister of Edmund lived in Springfield [where the guardian lived], . . usual for him to visit them occasionally, that he had been hired at the Inn in Nashville for several years previous, . . Philips . . summer of 1845, . . sold a horse to . . Edmund, with the consent of the defendants, and took his note . . that he acted as a free person of color, . . that . . about the 23rd of December, he showed him a pass signed by one of the defendants, permitting him to go to Springfield, . . [432] about 25 miles from Nashville, that he, witness, hired him a horse to ride there, . . has never since seen either him or the horse. . . appeared from the testimony of . . Bateman, who had been in the habit of hiring out negroes for a long time, that it was not the custom to make a formal delivery of them at the expiration of the time . . but that they were allowed to go at large, and to return home at the end of the year: and that it was usual to give hired negroes some days holiday about Christmas." Verdict for the plaintiff.

Judgment thereon reversed and the case remanded: [434] "The defendants were clearly justifiable in giving him a pass to go to Springfield,"

Williams v. Otey, 8 Humphreys 563, December 1847. [565] "6th day of September 1834, Kitty was sold by a constable . . [to] Otey at the price of $401, . . 20th . . of September . . trustee, sold at public sale . . [her children] Lucinda and Albert, to . . Parish . . 1836, . . Parish sold . . Lucinda to . . Whyte, . . 1841, . . Whyte having . . died, Lucinda was sold at public sale . . to . . Rupe, who . . 1842, sold . . her to Susan A. Whyte, . . 1839, . . Parish sold . . Albert to . . Tappan, . . levied upon . . [566] and sold . . 1840 . . [to] Thompson,"

Jim v. State, 8 Humphreys 603, April 1848. Jim, a free person of color, was indicted [1] for obtaining five dollars on the false pretence of making a final payment on a wagon and harness which he pretended to have bought for Massey. [604] "found guilty . . and sentenced . . to three years imprisonment in the penitentiary," Affirmed.

[1] Act of 1842, ch. 48, sect. 1.

Mayor v. Winfield, 8 Humphreys 707, April 1848. "Winfield, a free man of color was arrested by a watchman after ten o'clock at night, in the streets of Memphis, and lodged in the city prison, where he remained till morning. On payment of ten dollars he was discharged, . . [708] He procured the issuance of a warrant against the corporation, which was returned before Roland, a justice of the peace, who rendered judgment for ten dollars, declaring the ordinance[1] . . void. The city authorities appealed to the commercial and criminal court, . . tried . . by judge King. He was of the opinion that the ordinance . . was oppressive and void, and affirmed the judgment"

Affirmed: [709] "This new curfew law . . is high handed and oppressive, and enacted . . without any authority . . A free negro is not . . a citizen of full privileges in our state, but still he is a free person, and cannot be punished in this summary mode ['without trial'] . . for an act innocent in itself, . . The lot of a free negro is hard enough at the best, . . and it is both cruel and useless to add to his troubles by unnecessary . . restraints . . in cities, very often, the most profitable employment is to be found in the night, loading and unloading steamboats and other craft, waiting about hotels, theatres, . . [710] the various handicraft employments, such as that of barber, . . sources . . of much profit to the free man of color, and you . . deprive him of them entirely, if you compel him, like a wild beast, to hide his head in his den from ten o'clock till daylight," [Turley, J.]

Wiley v. Lashlee, 8 Humphreys 717, April 1848. [718] "Jesse [was sold at administrator's sale] for $560 00, Maria for $483 50, and Mary for $13 12½,"

State v. Brady, 9 Humphreys 74, September 1848. "indictment upon the Act of 1822, ch. 19, sec. 3. . . charges . . that . . Brady, a mulatto man and . . a white woman, did unlawfully live together as man and wife, . . jointly convicted, and judgment was pronounced upon the [woman] . . but . . arrested . . as to . . Brady,"

Affirmed: [75] "the statute is obviously confined to one of the parties, viz, the white man or woman who 'shall presume to live with any negro, mustee or mulatto . . as man and wife:'"

Harry v. Green, 9 Humphreys 182, September 1848. "The last will . . of . . Solomon Green [proved 1841] . . [183] contains a bequest of freedom to all of the slaves . . by name. The executors . . renounced the execution . . Green became administrator . . refused to apply to the County Court by petition, to obtain the emancipation of the complainants, and they come into the Court of Chancery for a decree . . there are demands against the estate that cannot be satisfied, unless the complainants shall be held to servitude," The chancellor decreed that the complainants should be sold to pay the debts.

Decree reversed and the cause remanded: [185] "The complainants are legatees of their own freedom, and this is a specific legacy. In case

[1] Ordinance of Mar. 18, 1839: "it shall be the duty of the watchmen to arrest any free negro or slave . . out after ten o'clock, and lodge them in the calaboose, . . till next morning, . . If a free person of color, he . . shall be fined . . ten dollars,"

. . [of] a deficiency of assets . . the complainants must contribute . . And should they fail to raise the money . . they will be placed in the hands of a receiver, and hired out, until the debts shall be paid;" [Green, J.]

James v. State, 9 Humphreys 308, December 1848. [310] "Morrow . . had said to defendant [his slave] that he might go and be free, . . but . . had executed no writing . . nor had he made any application to the County Court" [308] "James, acting as a freeman, sold spirituous liquors without license. . . indicted . . found guilty . . and fined"

Judgment reversed and the case remanded: he is not indictable for a misdemeanor, as a freeman. [311] "has an incomplete right to his freedom, so that his master could not re-assert his dominion . . not a freeman, until the State . . consents . . Until that is done, the master may be indicted for permitting him to act as a freeman, and is liable to all the other consequences that would have existed, if he had not consented" [1]

Hackney v. Hackney, 9 Humphreys 450, December 1848. "owner of about one hundred and sixty acres of land, fifteen or twenty slaves,"

The Case of F. Gray, 9 Humphreys 513, December 1848. "Frances Gray presented a petition to the Circuit Court . . stated that the County Court . . had emancipated her on the petition of her master, and that she had given security to remove beyond the limits of the State; . . at the same time . . presented her petition to the county court 'setting forth . . [514] that long before . . 1836, she was in this State, . . had several children belonging to citizens of the county, . . without husband or friends beyond the limits of the State, she desired to remain . . and proposed to enter into bond conditioned that she should not become chargable [*sic*] . . and that she had introduced indubitable testimony as to her good character, . . That the county court . . refused . . petitioner prayed an appeal; . . refused.' This petition prayed a writ of *certiorari* . . The circuit court refused"

No error: [515] "the unlimited discretion with which the county court is invested by the act of 1842, ch. 191, sec. 1, to adjudge whether . . consistent with the . . policy of the State to permit any manumitted person . . to reside [here] . . is not subject to the . . control of the superior judicial tribunals. . . [516] it would avail nothing to show, as we think might easily be done, that in acceding to the prayer . . the . . humane views of the legislature would have been better effectuated by the county court. . . The refusal of the county court . . however, will not preclude the petitioner from renewing her application to the same court, or to the court of any other county in the State." [McKinney, J.]

Goodloe v. White, 9 Humphreys 528, December 1848. "White sold a negro [for $600, in 1833] to . . Goodloe, and executed a warranty that the negro . . was a slave for life. The negro brought suit for his freedom and recovered it;" [531] "1846, the plaintiffs brought an action for a breach"

[1] See Morrow *v.* State, p. 541, *infra*.

Held: [532] "the contract of warranty was broken as soon as it was executed, . . The statute of limitations commences running immediately,"

Young v. Jones, 9 Humphreys 551, December 1848. [552] "The farm was conducted principally under the direction of a negro man, Mrs. Wair's father permitted to work for her."

Nancy v. Wright, 9 Humphreys 597, December 1848. Bill by the complainants "to have their freedom declared, . . under the will of Abram Earhart, made . . in . . North Carolina . . 1812. . . 'After the death of my wife . . I allow my executors, at the expense . . of my estate, to use their endeavors to have the whole of my negroes and their increase removed into . . [598] Ohio, and set free agreeable to the laws of said State, and in case that cannot be accomplished, I will the whole . . to my brother . . and his children' . . After the death [of the widow,] . . the executors . . delivered" the negroes to those devisees who removed them to Tennessee and sold them to the defendants. Bill dismissed.

Decree affirmed: I. [599] "no emancipation could be effected [in North Carolina] . . in the manner provided for in this will: . . [II.] [601] The negroes as slaves could not have been legally introduced into . . Ohio[1] there to be emancipated; [III.] they could not, as free men, have been introduced into the State, without the bonds required,[2] and it is obvious that these North Carolina executors could not have procured these bonds. [IV.] But it is said that by what may be called the common law of Ohio, a slave . . carried there voluntarily by his owner, is *ipso facto* free; . . [602] The executors refuse . . we . . have no power over them. . . [V.] [603] we cannot . . hold, that if an executor be instructed to carry a slave to a free State . . he shall be considered to have done so, though he never has" [Turley, J.]

Isaac v. McGill, 9 Humphreys 616, December 1848. Bill "to have their freedom declared" Will of James McGill, who died in 1833: [617] "I will . . to my wife, Nancy . . all . . during her . . life, or widowhood; at her death, or marriage, I will that all my negroes, with their posterity, . . be sent to the colony in Africa. I also leave it to the pleasure of my wife to send a part or all . . before her death, if she think proper and they are willing; if they are not willing . . she can dispose of them as she may think best." The negroes "were retained in her service until her death, . . 1840. . . her will . . : 'that my black people be free from me, my heirs and estate forever.' . . several legacies to some of the complainants. . . The executors have taken no steps to emancipate . . but . . David McGill claims the complainants as his slaves. . . insists . . slaves were unwilling to go to . . Africa during the life time of . . Nancy; . . [618] states that at the earnest solicitation of the complainants, he has purchased them for . . fifteen hundred dollars, from the other distributees, . . The Chancellor decreed . . complainants . . entitled to their freedom, on entering into bond . . to

[1] Ohio act of Jan. 5, 1804. Statutes of Ohio, p. 592.
[2] Ohio act of Jan. 25, 1807. *Ibid.*, p. 593.

leave the State;" [616] "allowed six months . . also . . entitled to . . legacies . . and directed an account for the value of their services."

Affirmed: [619] "there were only casual conversations . . in which some . . expressed their unwillingness to go to Africa. To hold that such conversations . . should be their solemn decision to remain slaves, rather than be free, would outrage every principle of justice." [Green, J.]

Morehead v. State, 9 Humphreys 635, April 1849. Morehead and Bryant "were indicted and convicted, jointly, of the crime of stealing a . . slave . . June, 1847, said slave absented himself . . and was advertised as a runaway. . . August . . the prisoners were arrested . . had said slave concealed . . two or three weeks . . afterwards . . Bryant run said slave to Mississippi and sold him to . . [636] Norwell, . . failing to make payment, Bryant took the slave back, and placed him in the hands of . . a confederate . . to be run elsewhere and sold; . . the Circuit Judge instructed . . that a runaway slave was presumed to be in the possession of his master, and was the subject of larceny."

Affirmed: [638] "he . . cannot be, lost in the sense in which . . even a horse, may be lost."

Collomb v. Taylor, 9 Humphreys 689, April 1849. [694] "1844, . . she was stolen or enticed away [from her owner in Louisiana], and conveyed first to Vicksburg . . and soon afterwards to Memphis. . . sold at auction, at the instance of a stranger, and under circumstances which excited doubt as to the title, and after some two or three intermediate sales, was sold to the defendant in error, . . 1845, . . Mrs. Bond [mother of the rightful owner] . . procured the plaintiff in error . . to take all . . measures . . necessary to regain the . . slave. . . about an hour after . . [he] arrived at Memphis . . he saw the slave . . coming towards him on . . street alone, . . quietly took possession . . afterwards conveyed her to Louisiana." Taylor brought an action of trespass *vi et armis.* Verdict in his favor and damages [695] "assessed . . to five hundred and thirteen dollars,"

Judgment reversed and the case remanded: [700] "if the slave be found off the premises of the person having had the possession, the owner may lawfully recapture him, provided he do so without force or breach of the peace."

Price v. Allen, 9 Humphreys 703, April 1849. [709] "Allen . . agrees to give . . Price the use of . . Elleck, from [April 11, 1846] . . until Christmas; and . . Price . . delivers to . . Allen, one mule, of the value of sixty dollars, as compensation ['to remain . . until . . the time expires.'] . . Price is to find two suits of Summer clothing for said boy;" Price [710] "retained the slave in his own . . service until after his tobacco crop was gathered; and then hired [him] . . till Christmas, to . . Edwards, who took him . . [to] the Mississippi river, . . to cut wood" He became sick and died. "evidence was introduced . . of a verbal agreement . . previous . . that the slave was to be employed by Price . . on his farm, . . [711] verdict for five hundred and ninety-four dollars damages,"

Judgment thereon reversed, and the cause remanded: "the court erred in refusing to exclude the parol evidence"

Bogard v. Jones, 9 Humphreys 739, April 1849. "action of replevin . . plaintiff purchased [Julia and her child] . . 1846, . . in . . Mississippi, for . . five hundred and seventy-five dollars, . . 1847, they were found in the possession of the defendant in . . Tennessee. . . Julia was the child of . . Sally, . . devised to Fanny Morris for life, with remainder to her children, . . in . . North Carolina, . . defendant claimed . . Julia and her child . . [740] by virtue of a bill of sale executed . . 1845, by . . Freeman . . a son-in-law of Fanny Morris, who was dead before . . [741] the jury returned a verdict for the defendant, and assessed the value of the negroes at eight hundred and thirty-six dollars,"

Judgment thereon, affirmed: [742] "the owner . . has the right to take peaceable possession"

West v. Lanier, 9 Humphreys 762, April 1849. In 1845 "Lanier placed slaves on the land . . they cut timber, and dug and removed iron ore"

Wheaton v. Weld, 9 Humphreys 773, April 1849. [776] "he had sent the boy . . to his brother . . to serve him [[778] 'in nursing his children,'] in place of the one drowned."

Peak v. State, 10 Humphreys 99, December 1849. [100] "His negro woman lives with and cooks for this woman; . . his negro, riding his horse, goes for the midwife, . . and his negroes were employed fixing the chimney"

Cash v. State, 10 Humphreys 111, December 1849. Held: [113] "although the negro might be runaway when he was taken, still, if the owner pursued him and continued to enquire after him, he might be the subject of larceny."

Morrow v. State,[1] 10 Humphreys 120, December 1849. "The indictment . . charges that the defendant 'unlawfully did permit . . Jim, . . to trade in spirituous liquors, horses, cows, hogs, provisions, and other property, as if a free person of color, . . [121] to hire his own time" He was tried and convicted.

Judgment thereon, reversed and arrested: [122] "The word unlawfully . . does not describe the offence declared by the statute."[2]

Bank v. Barnes, 10 Humphreys 244, December 1849. "levied upon . . negro boy, . . about ten years of age, agreed to be worth four hundred dollars . . 1849."

Lunsford v. Baynham, 10 Humphreys 267, December 1849. [268] "on the first of January, 1847, the slave [owned by plaintiff, Baynham,] . . was hired to [Lunsford and Davie] . . 'to work on the farm,' for one year. Some six or seven days prior to the 25th of February . . taken

[1] See James *v.* State, p. 538, *supra.*
[2] Act of 1839, ch. 47.

ill . . bronchitis accompanied with fever; . . Shortly before . . seen driving a wagon . . the day was extremely wet and cold, and he was clad in some old clothes, so far worn that his arms and legs, up to his knees, were wholly uncovered; he had neither overcoat, blanket, or other covering . . a week after the illness . . a physician, who chanced to be passing, was requested by an agent of the plaintiffs in error, to call and see the slave; . . found him lying on the floor on a blanket. . . not called again until the first of March, . . [269] found the slave much worse, and informed Mr. Davie that if he were not particularly attended to, he would die. But there was no one, at any time, to wait upon him, capable of nursing or attending to him; . . thinks that with proper attention the slave would have recovered." He died on March 21. Verdict and judgment for the plaintiff for $500.

Judgment affirmed: "the hirer of a slave should be taught . . that more is required of him than to exact from the slave the greatest amount of service, with the least degree of attention to his comfort, health, or even life." [McKinney, J.]

Lawrence v. Vick, 10 Humphreys 285, December 1849. A slave girl was sold for $475.

Lewis v. Daniel, 10 Humphreys 305, December 1849. [307] "at the January term, 1816, of the county court . . Peter Singleton filed his petition . . 'that after his death, and [that] . . of his wife, . . he wishes the following negroes (viz, the complainants) to be emancipated; . . ordered . . he . . having given bond' . . present . . but three of the justices" The act of 1801, ch. 27, requires that nine or a majority of the justices should be present. "nothing further was done, until . . 1839, when . . his will was proven . . [308] 'Whereas, I have heretofore petitioned . . and being still desirous . . to continue the proceedings . . I do will . . their freedom to my negro slaves, . . at the death of my wife, . . I will, that should there be any legal . . objection . . to the emancipation . . so that the same cannot be done . . by the proceedings heretofore had . . my . . executor shall . . emancipate . . provided . . that said slaves . . shall be permitted . . to remain in . . [309] Tennessee. In case my . . slaves cannot . . be emancipated . . and remain . . I . . bequeath each . . to . . executor.'"

Held: [312] "the testator, had the emancipation . . greatly at heart . . the primary provisions . . shall prevail . . [315] this is a case for the exercise of the jurisdiction of a court of chancery, under the act of 1829, ch. 29, subject to the restrictions of the act of 1831, ch. 102. . . [316] declare that the petitioners shall be emancipated, upon their giving bond . . to remove forthwith from the State, . . unless the county court shall permit them to remain . . according to the provisions of the act of 1842, ch. 191." [Turley, J.]

Laura Jane v. Hagen, 10 Humphreys 332, December 1849. Will of Isaac Sitler, proved 1837: [333] "that my negro slave Malinda, . . aged about 26 years, Elmira, and her child Laura Jane, . . about six years, be free;" He "directs his executor to reserve, out of the residue

of his estate . . sufficient money for the education of . . Laura Jane, to the amount of two hundred dollars per annum, . . until . . Laura Jane arrive at the age of sixteen . . and if the . . profits of the residue . . [334] be not sufficient . . raised out of . . property devised . . for the benefit of testator's daughter, . . The executor . . renounced, . . The administrator took no steps . . and shortly after the death of the testator, Elmira . . removed her to Cincinnati . . No part of the annuity . . has ever been paid, . . the residue of the estate of the testator has been exhausted in the payment of debts;"

Held: she was [335] "discharged from all obligation of service . . though the assent of the State [had not] . . been obtained. . . removal . . neither violated the constitution of the United States, nor was it prohibited by the laws or policy of this State. . . [336] having her domicil in a State where slavery does not exist, she is free; and . . may maintain this suit [for the annuity]. . . the complainant is entitled to the entire sum at this time. . . not . . interest . . residence . . unknown . . and no proper application . . made" [Green, J.]

Rowan v. Mercer, 10 Humphreys 359, December 1849. [360] "a decree of foreclosure was pronounced, and the negro girl . . sold [in 1836 for] . . four hundred and fifty-six dollars and ten cents; . . [364] a fair price; and after the sale, and before [1847] . . the value of the slave had become much greater by the birth of a child and the increase of the price of property."

James v. Jones, 10 Humphreys 384, December 1849. "James, a person of color, instituted an action of trespass *vi et armis* . . to assert his right to freedom. . . offered in evidence the record of a suit brought by [a relative on the maternal side] . . against Prichard, . . by which he obtained his freedom." Held: this evidence should have been admitted.

Moses v. State, 10 Humphreys 456, April 1850. Moses was convicted of the murder of a white man and sentenced to death. "the prisoner exhausted his peremptory challenges before the jury was made up. One of the jurors . . had formed an opinion, . . 'The court . . [457] pronounced him a competent juror,' and he was put to the prisoner." Judgment reversed.

Settle v. Settle, 10 Humphreys 474, April 1850. "The negro woman had thirteen children three of whom were sold" by the tenant for life, before he removed from Virginia to Tennessee.

Nelson v. State, 10 Humphreys 518, April 1850. [519] "1845, the prisoner and . . other negroes were at a corn-husking, at the house of . . Nesbit, having been invited . . a quarrel arose between some of the negroes, . . The deceased [Sellars] (who was the son-in-law of Nesbit, and had been requested by Nesbit to superintend the putting away of the husks,) . . struck one of the negroes. Nelson thereupon spoke in an abrupt manner to Sellars, who then struck Nelson two or three blows with the [hickory] stick or club. . . [520] as large as a chair-post. . . negroes . . went off . . called back to get their supper, by . . son of [Nesbit] . . Sellars . . spoke to Nelson, . . 'You have come back again,

have you?' . . Nelson replied, 'Yes, and if you will give me a white man's chance, I will whip you like damnation.' The deceased then struck Nelson several times . . knocking him down or to his knees; . . Nelson . . stabbed him with a long knife . . Nelson is a basket-maker, and had the knife . . to work in white oak, . . usually carried it . . had one or two bad cuts on his head, made by the blows . . [522] the jury returned the following verdict: 'We find Nelson . . guilty of murder in the second degree, and submit him to the mercy of the court.' The defendant moved for a new trial, . . five of the jurors . . state, 'that they agreed . . only that they believed . . that the court had the power to commute the punishment from hanging to any less punishment. . . [523] it was in this view . . only, that they would ever have been induced to join in the verdict' . . The court overruled the motion for a new trial, and pronounced sentence of death"

Judgment reversed, and the prisoner remanded for a new trial: I. [525] "We fully concur with . . view . . taken by the supreme court of North Carolina [1] [[524] 'that an assault and battery [wantonly committed] upon a slave by a stranger is indictable']. . . [II.] [530] "If the slave . . by his insolence has provoked merited chastisement, and punishment be reasonably inflicted, it is his duty to submit; and if he . . slay . . it will be murder. But if the punishment be . . excessive, the killing will be only manslaughter. . . [533] We do not think, that a verdict ought to stand, when . . [534] life . . is involved, which has been rendered under the influence of such manifest misconceptions of the legal effect of it;" [Green, J.]

Stubbs v. Stubbs, 11 Humphreys 43, September 1850. Will: [44] "the land and negro man, to be divided equally amongst his children."

Farnsworth v. Lemons, 11 Humphreys 140, September 1850. [141] "some thirty years past, the slave . . gave birth to Eliza and died, leaving Eliza a helpless infant, that by request . . she, . . defendant, agreed . . to raise and protect it—they . . agreeing that . . she should have the child as her absolute property. . . that she . . did . . raise it at much trouble, care and expense. The children of Eliza have also been so far an expense, the oldest being only some ten years of age."

Ann v. State, 11 Humphreys 159, December 1850. Ann "was indicted . . for the murder of . . the infant child ['only five weeks old'] of . . master and mistress. . . [160] A day or two preceding the death . . the prisoner [not over fifteen] was taken from the negro-quarter . . to serve in the capacity of nurse. . . [The mother] went into another room . . leaving the child asleep . . absent about fifteen minutes . . during which time the laudanum was administered. . . The prisoner for some time denied . . Her master was much excited; inflicted blows with his hand . . threatened to shoot her, but was induced to desist by the persuasion of his wife, and sent her off to the quarter, where she was put in chains around her body and neck." The next evening "the overseer . . went . . after night to the house where the prisoner was confined.

[1] State *v.* Hale, p. 45, *supra*. See also Tennessee act of 1813, ch. 56. Ed.

. . told her to speak. . . said Tom had been at her to meet him out at night, and told her if she would give it laudanum it would sleep until she could get back; that she had asked . . [161] if it would hurt; he said no, he had given it many times to his wife . . and it never hurt her. She was told, she had better come out and tell the truth—it would be better for her. . . She said she . . had poured some in her hand and given it. . . Tom denied all this. . . improper intimacy . . for some weeks previous . . [The overseer] detected them, but . . 'he passed on and said nothing, as it was no business of his, and he did not care what they did.'" Verdict of guilty.

Judgment thereon, reversed: [161] "Judging from . . avowal of the overseer, the morals of the slaves . . [162] were in bad keeping; . . not much to be wondered at, that the prisoner . . had a more imperfect sense of the obligations of morality . . than is even usual among . . her own caste" I. Her confession should have been excluded; II. [166] "her relation as a slave, taken in connection with her disregard of . . positive direction [not to administer anything], and the gross heedlessness . . of the act, might constitute her offence manslaughter, but certainly nothing more. . . then the Circuit Court had no jurisdiction"[1] [McKinney, J.]

Kit v. State, 11 Humphreys 167, December 1850. "The Grand Jurors . . present, that Kit, a slave, . . did make an assault, . . and [bank-notes] . . [168] silver coin . . two shirts . . one cap . . and one pocket handkerchief . . did . . steal and carry away" He was found guilty and the judgment was arrested.

Judgment in arrest, affirmed: "the indictment . . does not aver that the goods were taken from the person of the prosecutor and against his will."

Worley v. State, 11 Humphreys 172, December 1850. [173] "that Worley, a man somewhat advanced in life [[175] 'remarkable for his . . humanity towards his slaves'], . . with . . a wife, one son and two single daughters, was the owner of Josiah, . . about . . twenty one; . . turbulent, insolent, and ungovernable; . . [174] much absent from home at night, was lewd, that he kept other slaves in alarm from his threats, and frequently ranaway . . in May he ranaway; that on Saturday in that month the female part of Worley's family left home; that on Sunday, Josiah was tied . . and castrated by Worley and his son, . . that Worley sent immediately for his family physician, . . that the slave recovered completely in a very short time." Worley "was convicted . . on a charge of mayhem" "The jury . . fixed his period of confinement at two years."

Judgment thereon, affirmed: [175] "We utterly repudiate the idea of any such power . . of the master over the slave, as would authorise him thus to maim his slave for the purpose of his moral reform. . . the malice sufficiently appears . . at least by legal implication. . . [176] a

[1] Act of 1815, ch. 138. 2 Scott's Rev. 246-247.

white person may be indicted and convicted under . . code [1] for murder, mayhem or manslaughter, committed upon the person of a slave." [Totten, J.]

Walker v. Brown, 11 Humphreys 179, December 1850. [180] "action of trespass . . for whipping the slave of the plaintiff. . . The defendant . . pleaded specially, that he was a patrol, . . went to the house of the plaintiff's slave, in search of other negroes . . slave refused to admit . . by barring the door . . talked impudently . . wherefore he did moderately chastise her, as he had a right to do. . . This plea . . ordered to be stricken out, . . verdict for forty dollars . . for the plaintiff.

Judgment thereon, affirmed: [182] "the act of 1806 [ch. 32, sect. 3] . . have [*sic*] impliedly negatived the idea of the right of the party insulted to beat the slave without the order of a justice. The master . . is entitled to his action for damages, although . . the government may choose by law to exempt the party from a criminal prosecution [when the correction is only moderate and reasonable]." [2] [Green, J.]

Young v. State, 11 Humphreys 200, December 1850. "that Stephen [a slave] made threats that he would beat Young [a free man of color] badly on sight; . . pursued him . . and that Young being informed . . procured a pistol, loaded it, and stationed himself on the street, and that a conflict took place . . in which Stephen was killed. The defendant was convicted of murder in the second degree." "sentenced to ten years imprisonment"

Judgment reversed, and the prisoner remanded for another trial, because the trial judge charged the jury [201] "too strongly against the prisoner."

Anne (a slave) v. State, 11 Humphreys 205, December 1850. Anne "was indicted and convicted of murder;"

Held: "the costs shall be paid out of the State Treasury." [3]

State v. Wills, 11 Humphreys 222, December 1850. "1848, . . a presentment . . for selling spirituous liquors to a slave,"

Henry v. State, 11 Humphreys 224, December 1850. [225] "On Sunday, . . 1850, about 11 o'clock, at night, . . Eelbeck and . . Barham were slain in the street . . by a single stab in the breast of each, with a bowie or butcher's knife, . . inflicted by a powerful and skilful hand, well acquainted with the seat of the vital organs; . . the person who committed it, had stolen four hams . . [226] encountered by the two deceased. . . a number of negroes were passing . . from Hannah Henderson's where they had been at a prayer meeting. Oney, slave . . thought the black man was Henry . . he wore his beard and whiskers long at this time, . . had on a dark frock coat and a black cap; . . heard some negro say, 'Look there, they are about to take that negro:' . . saw the

[1] Act of 1829, ch. 23, sect. 55.
[2] Act of 1813, ch. 56, and Nelson *v.* State, p. 543, *supra.*
[3] Acts of 1827, ch. 36, sect. 1, and of 1835, ch. 19, sect. 9.

three men scuffle, and thinking they were about to whip the negro, she pushed on home." Other slaves corroborated. [228] "On Sunday, about one o'clock, . . Tom . . met Henry, . . and enquired where he was going; he replied, to the Campbellite Church, to prepare for the sacrament; . . in his left bosom a butcher's knife. . . Henry was then hired to work at the tanyard, . . Before . . had been . . a butcher. . . Mourning, a slave, . . about sun down . . noticed that he had a stick . . [229] knots cut off, split, . . found in the hand of Barham as he lay dead . . neither [Barham nor Eelbeck] . . had any stick [when seen shortly before the murder.] . . Henry . . is a man of great physical force . . [230] found [apparently] asleep, in a few minutes after [being informed of the murder] . . His conduct next morning was suspicious. . . [231] The prisoner was defended in the court below, by the same able counsel, that defended him here, and he was convicted under a most favorable charge of the court. . . Judgment affirmed." [McKinney, J.]

Moses (a slave) [1] *v. State*, 11 Humphreys 232, December 1850. [239] "The deceased . . was his master. . . kind, and humane . . though . . of firm, and decided character. The defendant is a boy just arriving at manhood, and had been raised by the deceased. . . been whipped by his master but once before the day of the murder. About a year before, . . had disobeyed the deceased, who being about to correct him, he ran off . . and remained out several weeks. When he went home, he was nearly starved, and greatly emaciated. After he . . had recovered his health, the deceased whipped him, somewhat severely, but not cruelly. A short time before the murder, the prisoner had . . remained out some weeks. . . [240] told . . [Mr. Brown's] Ira, that he was going home, and if his master got him in a close place, and he could not get out, he would knock him down and kill him, before he would be beaten as he had been. . . said when he ran away before, the deceased took his shirt off and whipped him a good deal; . . went home, and for several days the deceased forebore to chastise him. . . On the morning of the murder, . . The defendant was engaged in hauling rock [to build a fence]. . . While . . engaged in yoking the ox, the deceased . . ordered two slaves to hold him. . . locked a log chain around the defendant's leg, and sent him to the quarry to work, striking him several blows with the ox switch as he went off. The deceased . . got a rope; . . tied a piece of leather seven inches long, and three inches wide to a handle, and left them at the stable. . . went to the quarry, and commanded the defendant to follow him, which he did, taking a mattock, and large knife along. . . struck the deceased on the head with the mattock, . . five wounds . . each of which would have been fatal; and then . . four stabs in the breast with the knife. . . went back to where the other slaves were at work and told them . . [241] When asked why . . he replied, he was obliged to do it." He was indicted in the circuit court of Sumner county. [237] "The trial commenced one Tuesday, and a jury was not made up until Friday; . . two hundred and twelve men had been summoned."

[1] Not the Moses of Moses *v.* State, p. 543, *supra*.

[233] " after nine jurors had been selected, the prisoner filed an affidavit, alleging . . that great excitement existed against him . . [234] prayed the court to change the venue . . refused "

Judgment affirmed: [239] " The matter [of change of venue] is left to the discretion of the circuit judge, . . extremely difficult, in any case, to . . say he has erred; . . [241] clearly murder." [Green, J.]

Bedford v. Flowers, 11 Humphreys 242, December 1850. " on the 4th day of January 1847, [Bedford and McCall] . . hired from [Flowers] . . [243] two slaves, Jesse and John, by a contract in writing, which stipulates . . that the service . . was, 'to cut cord-wood on the Mississippi river, at or near Mills' Point, and for no other purpose.' . . April 1847, during a flood . . Jesse together with several others . . was put to assist in the removal of cord-wood, in a boat and on rafts, from an island . . to the bank, to prevent its being carried off by the flood. . . Jesse was drowned, in the effort to rescue another slave who could not swim." [242] " action . . to recover damages for the conversion . . The jury found for the plaintiff below, and assessed his damages, . . to six hundred and ninety three dollars." Judgment thereon, affirmed.

Kemp v. State, 11 Humphreys 320, December 1850. " that on the night of . . July, 1850, . . Pentecost learned that the prisoner had arranged to steal Alfred, and he sent him to his master to tell him . . and told Alfred to carry out the agreement between himself and the prisoner, and to take his master's horse from the stable and go to the prisoner on the Penitentiary road. The prosecutor [Alfred's owner] at first ordered Alfred to go to the back yard, but upon Pentecost expostulating . . and offering to manage the affair, . . consented, and himself and . . Nichol went out on the . . road, where . . the prisoner and Alfred were to meet. . . met . . and rode on together. . . as the prisoner and Alfred rode up, . . the master . . rode ahead of them in the road; . . Alfred fled back home, and the prisoner was secured. . . said he was not trying to steal the boy." He was found guilty of larceny and judgment entered. Reversed and the cause remanded.

Carter v. Rolland, 11 Humphreys 333, December 1850. [335] " Jim, alledged [*sic*] to be of bad and unmanageable habits and character, was sold . . and removed from the State."

Maultsby v. Carty, 11 Humphreys 361, December 1850. [362] " Maultsby died in North Carolina, about . . 1800, having made his will, whereby he directed, that a negro woman should be purchased with . . three hundred dollars, . . About . . 1818 the family removed to Tennessee, . . The negro was brought "

Morris v. Richardson, 11 Humphreys 389, December 1850. [391] " The slaves were sold [for the purpose of a division] privately, except Maria and child, . . all to relations . . of the guardian. . . [395] from the description of the slaves, . . the hire . . would be reasonably worth double the interest of the money for which they would be sold . . the judge . . clearly erred in not " refusing to order a sale.

Hall v. McLain, 11 Humphreys 425, December 1850. [426] " Robinson came into the possession of the estate on his marriage [with the widow], and sold some of the negroes, and with the proceeds bought others,"

Doss v. Birks, 11 Humphreys 431, December 1850. Birks brought " an action for slanderous words . . alleges that . . Doss said . . while speaking of the trial of . . [Doss's] slave for insolence that the plaintiff swore a lie. . . [432] The jury found for the plaintiff three hundred and fifty dollars damages." No error.

Womack v. Smith, 11 Humphreys 478, December 1850. In June 1844 [479] " Emma and her two children, Maria and Charlton, of the value of six hundred dollars " were placed in Lindsey's possession in Virginia, " with the understanding that . . Lindsey's family [beneficiaries of the trust] should have the use . . No . . conveyance . . In November, 1845, the plaintiff [trustee] caused said slaves to be taken out of the possession . . being apprehensive that he was about to remove them; but . . on receiving strong assurance to the contrary, restored [them.] . . Lindsey . . immediately afterwards, and in the night, ran off with the slaves, . . to . . Tennessee, except . . Maria, who . . he sold on the way. . . [Lindsey] died 1846, . . his wife administered . . procured an order of court to sell . . Emma, and her infant child, Archer, . . sold at public auction . . [480] 1847, for $415 " to Smith. Later Charlton was sold to Tinsley for $210.

Weatherhead v. Baskerville, 11 Howard 329, December 1850. Will, 1788: " my wife to keep possession of the four oldest negroes for the maintenance of the family; "

Rowe v. State, 11 Humphreys 491, April 1851. " indicted for the murder of a negro man, Frank, . . found guilty, and sentenced to ten years imprisonment . . [492] judgment pronounced upon the verdict; " Affirmed.

State v. McCarn, 11 Humphreys 494, April 1851. [496] " McCarn ['laborer'] was indicted . . as accessory before the fact, to a felony committed by David [his slave], . . assault upon . . Elizabeth McCarn, a free white woman, by shooting at her with a gun, with the intent, her . . to . . murder in the first degree. . . [497] averred . . that . . the prisoner did . . command his . . slave, to commit the offence." Judgment that the indictment against McCarn be quashed.

Judgment reversed, and the prisoner remanded: [497] " David . . is liable, in his own person, as a principal offender. . . as the slave may lawfully resist his [master's] command to perpetrate a crime, . . [498] accessories before the fact, 'shall be punished, as their principals are punished.' [1] Now, for an assault upon any free white person, with intent to commit murder in the first degree, if done by a slave, the punishment is death; [2] if done by a free white person, it is confinement in the peni-

[1] Criminal Code, 1829, ch. 23, sect. 63.
[2] Act of 1835, ch. 19, sect. 10.

tentiary, . . [499] not less than three, nor more than twenty-one years.[1] . . The distinction being made in the punishment of the principal offenders, we think it a . . reasonable construction . . to observe the same distinction, in the punishment of accessories." [Totten, J.]

Wesley v. State, 11 Humphreys 502, April 1851. "indicted . . for the murder of . . his master, . . eight jurors were empannelled and sworn. . . [503] with the consent of the defendant and Attorney General, were, by the court, permitted to disperse until the next morning. . . [Then] two others were elected, and they, with the eight . . were [likewise] permitted . . until Monday" He was found guilty and sentence of death was pronounced.

Judgment reversed, and the prisoner remanded for another trial: [505] "the consent of a prisoner, in such case, [ought not] to be taken. . . where the prisoner is a slave, and ignorant of his rights, and the case one calculated to excite the community against him, the rules of law to secure an impartial trial . . ought to be the more firmly enforced." [Green, J.]

Gillespie v. Edmonston, 11 Humphreys 553, April 1851. "a negro girl . . aged about sixteen or seventeen years, left with a Mr. Carter, to be delivered of a child; . . was, in quality, number one; . . to remain . . for ten days after the birth . . and after the expiration . . if said negro girl and child did well . . [554] plaintiff was to . . pay . . five hundred and fifty dollars, . . for . . girl and child. . . but the defendant . . removed the girl from Carter's . . before she was delivered"

Cheek v. Wheatley, 11 Humphreys 556, April 1851. "the slave was sold . . to defendant, who . . disposed of [it] . . in . . Mississippi."

Hinson v. Partee, 11 Humphreys 587, April 1851. "1841, . . $700, . . for a negro woman . . and her child Richmond; . . [589] Mrs. Webb [their former mistress] proves, that when the child was burned, Partee's negro, on Partee's horse came for her to go and see it."

Sam v. State, 1 Swan 61, September 1851. "a slave, . . convicted, in the circuit court of Anderson county, of an assault upon . . a free white person, with an intent to commit murder in the first degree. . . [62] on the trial . . seriously controverted . . whether the offence . . had been committed in the county of Anderson, . . or . . Roane. . . after the jury had retired, . . 'stated by one of the jurors . . [63] that he . . had seen the marked line, . . and that Hankins' house [where 'the offence is said to have been committed,'] would be in Anderson,'" Judgment of death, reversed and the case remanded.

Eaves v. Gillespie, 1 Swan 128, September 1851. [129] "1807, in . . South Carolina, Mary Johns . . intermarried with . . Eaves, and that 'shortly' after this marriage, Jesse Johns, the father . . [130] 'took [Isabella] . . by the hand and gave her to Mary Eaves and her increase.' . . that . . Eaves was present, and that Jesse Johns said he had no negroes to give to him, and that . . Eaves was dissatisfied" [129] "About

[1] Act of 1829, ch. 23, sect. 52.

1822, . . Eaves removed . . to . . Tennessee, where . . 1834, . . he sold . . at . . twelve hundred dollars, . . Isabella and her [four] children," Held: [132] "the claim to the separate use cannot prevail."

State v. Dan Cherry, 1 Swan 160, December 1851. "The first count . . charges, that . . Dan, a negro, made an assault upon . . a white female, with an intent to have carnal knowledge . . The second . . charges, that . . Dan . . did ravish . . The third . . that . . Dan . . did make an assault upon . . a white female child, under the age of ten years, and did . . carnally know and abuse her. . . verdict of guilty generally," Judgment arrested.

Affirmed: [164] "the offence charged in this third count, having been expressly excluded from the catalogue of capital crimes committed by slaves, by the act of 1819 [ch. 35, sect. 1], . . it is not at this time . . a capital offence . . a singular omission of the Legislature[1] . . the third count was improperly joined with the first and second" [Green, J.]

White v. Suttle, 1 Swan 169, December 1851. Suttle [171] "who worked about twenty hands," [170] "resided at another farm, but had his hands and overseer on the farm in question, . . defendant [White] . . claimed . . the land . . went with an overseer and some . . slaves and took possession . . forced the plaintiff's negroes out of their houses . . [171] Suttle's houses, for his overseer and hands, were taken down and removed to another part of the farm, leaving Suttle's slaves and their clothing without a shelter." [170] "White employed his hands in cutting rail timber, making rails, breaking down cotton stalks, and repairing the houses."

Wiley v. State, 1 Swan 256, December 1851. "Wiley, a free person of color, was convicted, . . September term, 1851, upon a charge, that he had . . persuaded a negro slave . . to leave his owner,[2] . . the jury were permitted, by consent of the State's Attorney and the prisoner, to disperse . . from one day to another." New trial granted: [257] "his refusal would have been construed, as a want of confidence"

Bailey v. Rawley, 1 Swan 295, December 1851. "On the 25th December, we . . promise to pay . . thirty-five dollars for the hire of a negro girl, . . for the year 1848. . . agree to furnish . . two suits of good summer clothes—one suit of good woolen winter clothes—a good blanket, worth two dollars and a half—a pair of good shoes and stockings, and pay her tax and doctor's bill for the year 1848."

Ellick v. State, 1 Swan 325, December 1851. [326] "Ellick, a slave was indicted in the circuit court of Giles, for an assault, with intent to commit a rape upon . . a free white woman,[3] and . . 1849 . . was tried and convicted . . appealed . . judgment . . reversed, and the prisoner was remanded . . At August term, 1850, . . the venue was changed to the county of Maury; . . May term, 1851, . . again convicted . . and sentence of death pronounced" Affirmed.

[1] "*Vid.* Act of 1852, chap. 174, sec. 2, passed after this opinion was delivered.—REP."
[2] Act of 1835, ch. 58.
[3] *Ibid.*, ch. 19, sect. 10.

Caruthers v. Moore, Thomp. Cas. 86, December 1851. [87] "the defendant . . before administration had been granted in Mississippi, took possession of several slaves belonging to said estate, and brought them to Tennessee,"

State v. Payne, 1 Swan 383, April 1852. [384] "The indictment . . charges . . that . . Payne, knowing that . . McCarn had . . incited . . [his slave] David to commit the . . assault ['upon . . a . . white woman, with intent to kill'], did . . conceal, aid and comfort . . McCarn."

Lally v. Holland, 1 Swan 396, April 1852. [398] "the slave . . had been brought [from Mississippi] to Memphis, . . was sold, . . 1849, at . . $885,"

Flowers v. Wilkes, 1 Swan 408, April 1852. In 1842 a female slave was sold for $400.

Bennett v. State, 1 Swan 411, April 1852. "convicted, in the common law court of . . Memphis, of *petit larceny*, and sentenced to one year's imprisonment . . proved, on the trial, that he is '*a negro of black complexion*;' but the indictment is . . silent as to his *color* or *condition*,"
Judgment reversed: [412] "utter want of jurisdiction." "his *color* is . . *prima facie* proof of slavery."

Barham v. Turbeville, 1 Swan 437, April 1852. "In 1843, he, with . . slaves, removed from Louisiana to Tennessee,"

Loftus v. Penn, 1 Swan 445, April 1852. Ante-nuptial contract, 1845, that the husband shall have no right to the wife's slaves.

Adams v. State, 1 Swan 466, April 1852. "convicted . . under the act of 1835, chap. 65, . . of harboring a runaway slave. . . judgment . . [467] reversed, and the prisoner remanded . . [in 1851] a jury could not be had, the venue was changed, . . 1852, . . again convicted" Judgment of the circuit court, affirmed.

Craddock v. Cabiness, 1 Swan 474, April 1852. [476] "Cabiness . . talked of taking the servant of complainant, whom she had brought there to wait upon her, from her bedside, to labor in the field; whereupon she returned"

Cawthon v. Coppedge, 1 Swan 487, April 1852. "to aid my . . grand children's support, in their raising and education; I . . convey to them [in 1848]—reserving the use . . to my . . daughter . . during her . . life—my negro boy . . aged about twelve years, and my negro girl . . aged about sixteen years."

Woods v. Sullivan, 1 Swan 507, April 1852. Will: [508] "at his wife's death, it shall all be sold, except the land and negroes."

Simpson v. Peck, 2 Swan 54, September 1852. In 1850 a negro man was hired for "twelve months, at eight dollars per month. . . 'If . . Simpson sees proper at . . any time during the year, to give . . Peck two hundred dollars, . . Peck, binds himself to make . . bill of sale . . and . . not to receive any thing for the hire'"

Bedford v. State, 2 Swan 72, September 1852. [73.] "convicted . . of the offence of selling spirituous liquor to a slave, under the act of 1843, ch. 141."

Richardson v. Cole, 2 Swan 100, September 1852. In 1844 the sheriff sold a negro woman for $427.

Vanleer v. Crawford, 2 Swan 117, December 1852. [122] "On or before the 25th of December next, we . . promise to pay . . six hundred and ninety dollars, for the hire of [six negroes] . . from now [January 29, 1849] until that time; and . . to let said boys come home twice during the year, and furnish them the usual clothing customary at iron works."

Lawrence v. Lawrence, 2 Swan 141, December 1852. [142] "found by the jury that [in 1847] the life estate of Mary Lawrence [now 87 years of age] was worth four hundred dollars, the [man] slave being worth about eight hundred dollars."

Doran v. Brazelton, 2 Swan 149, December 1852. [152] "This bill is filed by eleven persons of color in their own names to establish their right to freedom . . They charge, that they were the slaves of . . [153] James Doran of . . Alabama, who made his will in 1840, . . providing for the emancipation of petitioners at the death of his widow. . . defendants moved to dismiss the suit upon the ground that slaves can only sue by next friend, . . sustained"

Decree dismissing the bill, affirmed: [155] "A slave can have no *status* in court except by a next friend." "no difficulty is ever found where the claim is calculated to inspire the least confidence in its justice, in procuring the agency of responsible citizens to stand forth as next friend," [Caruthers, J.]

Kimbro v. Hamilton, 2 Swan 190, December 1852. In 1847 a negro girl was sold for $325.

Layne v. Pardee, 2 Swan 232, December 1852. In 1837 [236] "he brought the slaves of his wife here" from Texas.

Nelson v. State, 2 Swan 237, December 1852. [238] "two years ago, Nelson [slave of Hyde] and Sam [slave of Spann], with other negroes, were . . at a corn shucking . . witness [Blankenship] . . found Nelson swearing with his knife in his hand, behind him. Hudson took the knife out of Nelson's hand, and witness kicked him several times and drove him away. . . Nelson said he wanted his knife; said it was his bailing knife. Witness kept the knife, and afterwards gave it to another of Hyde's negroes, . . [239] Jim, slave, . . left about the same time with Nelson, . . Nelson said that Sam had caused Blankenship [*sic*] to take his knife from him, . . and that he would have his revenge . . [242] Harkless, slave, said, . . I have a wife at Dick Blan Vaughan's. [Seven negroes] . . were at the house of Dick Blan Vaughan, Sunday. . . [243] Sam and Nelson were friendly when I left them" "the next day . . about forty or fifty yards [from the place where I left them] . . we found the body of Sam . . [248] a cut . . four inches long . . Sam

had no knife . . [249] the Sunday that Sam was killed . . Nelson . . had blood on his shirt bosom; more on . . pantaloons. . . [250] Frank, slave, . . Heard Sam say that if ever he caught Nelson off from home he intended to beat him nearly to death with a stick. . . that Nelson had hurt him; . . [256] verdict of guilty of murder in the first degree, . . judgment accordingly"

Reversed, and prisoner remanded for a new trial: [262] "the charge of the law ought to have been more full"

State v. Gossage, 2 Swan 263, December 1852. Held: an indictment may be preferred without a prosecutor against a person who sells spirituous liquors to a slave in violation of the statutes, [264] "the most odious and mischievous of all the minor misdemeanors," [Caruthers, J.]

Burke v. Clarke, 2 Swan 310, December 1852. "The defence . . was, that the slave was of unsound mind at the time of the sale."

Wyatt (a slave) v. State, 2 Swan 394, December 1852. [395] "The first count charges an intent to commit larceny; the second, to commit a rape upon . . a free white woman; . . It was proved that the prisoner forced the door of the dwelling house of the prosecutor, in which he and his wife were sleeping, about 11 or 12 o'clock, at night; that he approached the bed . . and put his hand upon her, which aroused her . . and she gave the alarm, when the prisoner fled; the prosecutor pursuing him with his dogs and gun, until he overtook, shot, and disabled him." [394] "convicted . . and sentence of death pronounced" [395] "The error . . relied upon for a new trial, is . . part of the judge's charge . . 'If the jury believe that the defendant attempted, either by force, or by fraudulently inducing [her] . . to believe that it was her husband, . . that then they ought to find him guilty.'"

Judgment reversed, and the defendant remanded for a new trial: [398] "*Fraud* . . [399] cannot be substituted for *force*, as an element of this offence, according to the existing law."[1] [Caruthers, J.]

Jones v. State, 2 Swan 399, December 1852. Indictment under the act of 1835, ch. 58, sect. 1. The jury found a special verdict: [402] "that Jesse, . . a slave, the property of the Duck river Slack Water Navigation Company . . formed the determination to run away, . . without his being . . enticed thereto by the defendant. . . communicated this determination to the defendant . . [who] undertook to aid . . in procuring free papers, and applied to a white man[2] for the purpose; when the plot was detected." "The court adjudged that the defendant was guilty,"

Judgment reversed, and the prisoner [404] "discharged from *this* prosecution," [403] "the *intent* . . to convey said slave out of this State; or to deprive the true owner . . is the chief ingredient of the offense, . . no finding of such an intent" [McKinney, J.]

Swanson v. Swanson, 2 Swan 446, December 1852. Will of William B. Theobald, who died in 1844: [459] "I bequeath . . except Madison,

[1] Act of 1829, ch. 23, sect. 13.
[2] This would imply that Jones was colored. Ed.

(a slave,) which is to be set free at my wife's death, . . provided he make her a faithful and obedient servant; if not, she is to dispose of him as she thinks proper."

Morgan v. Winston, 2 Swan 472, December 1852. Deposition: [473] "a short time before her death her flesh wasted away very rapidly, . . she had such symptoms as I believe persons generally have, who die of secondary syphilis, which I suppose to be her disease."

Foster v. Jordan, 2 Swan 476, December 1852. [477] "On their removal from Virginia [in 1824], they brought . . the said slaves,"

Carnahan v. Wood, 2 Swan 500, December 1852. In 1845 [502] "he left the slave, Milly, . . to wait on . . his mother, who was enfeebled by disease,"

Alfred and Anthony v. State, 2 Swan 581, April 1853. "indicted and convicted of the murder of their master, . . sentence of death" Errors relied upon for a reversal: I. Incompetency of jurymen. [584] "N. Pate stated that he had heard that Peck's negroes had killed him, that he believed it, and does now, . . upon rumor . . has a bias upon his mind, . . [II.] [588] the confessions made previous to the investigation before the committing court, were attended by such circumstances, as to render them incompetent. . . permitted to go to the jury. . . The court expressly stated to the jury that the evidence was illegal and must not be regarded . . But the confessions . . taken down by the committing magistrate . . [590] were freely and voluntarily made, . . properly admitted . . amply sufficient to establish the guilt" No error in the proceedings. Judgment affirmed.

Jones v. Jones, 2 Swan 605, April 1853. [606] "a contract . . to oversee . . plantation and his servants, . . and affairs connected therewith, for the year 1851. . . wages . . were to be two hundred and seventy-five dollars. . . May . . he was discharged . . evidence tending to show . . guilty of abuse and cruelty towards the servants, . . A witness testified . . he was proverbial for his cruelty and inhumanity to negroes, and was of opinion that defendant knew his character in this respect before the employment. Another witness stated that plaintiff was uncontrollable, was very cruel to slaves, . . [607] After the plaintiff was discharged, he was employed by Mr. Nevil . . as an overseer . . for the balance of the year," Held: [608] "sufficient cause for his discharge, if he be guilty of cruelty to the slaves," [Totten, J.]

State v. Bradshaw, 2 Swan 627, April 1853. Held: to convict one charged with giving spirituous liquors to a slave, in violation of the act of 1852, ch. 174, sect. 10, it must [628] "be averred and proved that the defendant was, at the time, . . grocer or retailer;"

Sidney (a man of color) v. White, 1 Sneed 91, September 1853. Suit for freedom instituted in 1849. [92] "Prior to . . this suit he had been arrested by the defendants as a fugitive slave from . . Alabama, and taken before the Judge of the Federal court for the Eastern district of Tennessee, who, upon investigating their claim, ordered him to be

delivered up[1] . . to the defendants, who claimed him as agents for the owner in Alabama. This fact was specially plead by the defendants in bar of the action; . . plaintiff replied that the proceeding before the Federal Judge was *ex parte* and in fraud of his rights. . . defendants demurred, . . sustained" . .

Affirmed: [93] "it is clear, upon the facts in this record, that he was *freeborn*, according to the uniform course of decision in this State. But . . The act of 1793 . . declares that the certificate of the judge . . 'shall be sufficient warrant for removing the fugitive . . to the State . . from which he . . fled.' . . it follows . . that the tribunals of the State in which the fugitive may be found, have no jurisdiction to entertain a suit for the purpose of trying his right to freedom, after the delivery of the fugitive to the claimant under the act of Congress." [McKinney, J.]

Isham v. State, 1 Sneed 111, September 1853. "The plaintiff in error, a negro slave, was indicted . . for an assault and battery upon a free white female with intent to commit a rape. . . 1843, . . tried, . . convicted and sentenced to death. His motions for a new trial and in arrest of judgment were . . overruled" [113] "assigned for error here . . [114] The objections . . are all purely technical, . . The proof is not even given on which the conviction was founded."

Judgment affirmed: [115] "it must be inferred, that [the proof] . . was entirely conclusive of his guilt. The day has now passed for rescuing the guilty upon mere technicalities." [Caruthers, J.]

McGavock v. Wood, 1 Sneed 181, December 1853. "The plaintiffs [Wood and brother] purchased the slave [in 1852] for the southern market for $700, and sold her in Alabama for $950. Soon afterwards . . returned to them as unsound, and they refunded the purchase money and brought the slave back . . and commenced this action against McGavock upon the warranty [of soundness], claiming also compensation in damages for their necessary nursing and medical attention . . and the expenses of her journey to and from Alabama." The charge of the judge below allowed doctor's bills and expenses of travelling to be included in the damages. [182] "verdict and judgment for the plaintiffs for $250,"

Reversed, and cause remanded: [184] "If [the purchaser] . . prefers to hold on to the slave and leave the contract open, he must be at all expenses himself;" [Caruthers, J.]

Bridgewater (*executor of Pride*) *v. Legatees of Pride*, 1 Sneed 195, December 1853. The will of Francis Pride, who died in 1850, [199] "provides that all his slaves be hired out until a fund is produced sufficient to pay all debts and expenses to be incurred in setting them free and removing them to Illinois, if they should be taken there, with one year's support. . . 'I will . . all the . . slaves their freedom, if they can be emancipated according to the laws of Tennessee and remain in Tennessee as free persons of color, or when emancipated here if they can be removed to . . Illinois and . . be protected as free persons of color by the constitution and laws of that State. . . I direct if my said slaves

[1] Under the act of Congress of 1793.

cannot be emancipated and remain in Tennessee, or be removed to Illinois, and remain there as free persons, that they be sold, except' . . [200] eleven . . to be . . taken care of by the executor, or such person for him as will treat them kindly, . . but to have their freedom at as early a time as practicable. . . those . . to be sold on the condition aforesaid, being twenty-eight or thirty in number,"

Held: the latter slaves must be sold: "after manumission . . they cannot be allowed to remain in this State.[1] By an act of the Legislature of Illinois,[2] . . they are prohibited under heavy penalties, from emigrating to or settling in that State. . . Those reserved from sale will be kept by the executor, as directed, until they can be set free by a compliance with the law," [Caruthers, J.]

Watkins v. Barnes, 1 Sneed 201, December 1853. [202] "The value of ['one negro man . . about 30 years old, and Keziah, aged about 24 years] . . levied upon [August 1851] is stated . . at $1,150."

Brakefield v. State, 1 Sneed 215, December 1853. [216] "The prisoner resided with Mr. Adams [his father-in-law], and made a crop, aided by two slaves, the property of Mr. Adams. In September, 1852, the prisoner tied one of the slaves to a tree . . and whipped him; . . went to get more switches, and . . Mr. Adams came to the slave and released him. The prisoner returned—a quarrel ensued . . and Mr. Adams . . received the wounds of which he died about three hours thereafter. . . [217] was assisted to the house, . . called the negro slave; asked him if he was badly injured, and said to the slave, in presence of witness, Willis has given me my deathly wound; I expect I will die, and you will have to be hired out. I want you to be good to my daughter."

Savage v. Hale, 1 Sneed 365, December 1853. [366] "The widow came to this State [from Virginia in 1843] with the children and slaves."

Cooper v. Summers, 1 Sneed 453, December 1853. A woman, whom a jury found to be a lunatic, was the owner of four slaves.

Houston v. Embry, 1 Sneed 480, December 1853. [487] "He disposed of a slave, Charles [the separate property of his wife], seven or eight years old, . . to one Simmons [in 1843]; from whom the defendant acquired Charles by bill of sale" a few days later.

Franklin v. Ezell, 1 Sneed 497, December 1853. [498] "Franklin . . of Tennessee . . April, 1851, . . gave a written authority to Fitzpatrick 'to sell' . . [a female] slave,[3] . . the agent made the sale [in May] to Ezell [in Mississippi] at . . $700, . . warranting said slave 'to be sound and healthy.' . . the next day . . examined by the physicians, and . . found to be laboring under *umbilical hernia* in a most aggravated form, . . incurable, . . [rendering] the slave almost, if not altogether valueless. The evidence tends to establish that the agent, on his way . . [499]

[1] Act of Dec. 30, 1849, ch. 107: "hereafter no slave shall be emancipated in this State except upon the . . conditions imposed by the act of 1831, ch. 102."

[2] Act of Feb. 12, 1853.

[3] "not over 21 or 22 years old." Ezell *v.* Franklin, p. 559, *infra*.

became fully aware . . if not informed of it before; . . fairly to be presumed that the injury . . which perhaps had been of recent origin, was . . the sole cause for sending her off to be sold." Judgment for the defendant, in an action of debt brought by Franklin. Affirmed.

Boon v. Lancaster (*next friend*), 1 Sneed 577, April 1854. Will of James N. Watt, 1852: "I direct that all my slaves be set free, and be sent to a Free State at my expense as soon as possible."

Held: I. the primary object of the testator (to free his slaves) cannot be defeated by the fact that they cannot be sent [580] "to a Free State of this Union, . . because of their prohibitory laws, or a rule of general comity, forbidding that one community should cast its refuse population upon another." [1] II. [585] "They must be sent to the western coast of Africa;[2] . . [586] The fund necessary to send them to Liberia cannot be raised out of the estate [being much larger than the sum required for sending them to a free state], but must be created by hiring . . or derived from other sources under the direction of the chancery court." [Caruthers, J.] Totten, J., dissented.

Major v. State, 2 Sneed 11, December 1854. [12] "The prisoner, a slave, was indicted in . . Scott county, for an assault and battery upon a free white woman, with intent to commit a rape. After an unsuccessful attempt to empannel a jury . . the court changed the venue . . and [again] . . for a like reason . . a girl of sixteen . . had known the prisoner well from her earliest years—and had been much associated with him since her childhood. He had never . . attempted a rude approach toward her, or uttered a coarse . . [13] word in her presence. On the night of the assault . . she, with the children [of a neighbor], had retired to bed, . . knocking . . she opened [the door], and the person . . ran off . . Greatly alarmed . . she . . waked the children and . . proceeded with them toward her own home. . . after leaving the lot, . . a person, who, by moonlight, resembled the prisoner, and whom she believed to be him, suddenly sprang upon her, . . greatly disguised, with 'his head all bundled up with rags, and looking like a ghost,' . . She called him by name, and begged him to desist. He did not reply, but after . . about three minutes, . . without accomplishing his purpose, he . . ran off . . Early next morning . . [14] neighbors . . found . . large foot-prints, made . . with broad-toed shoes . . The prisoner had been seen, about sunset of the day . . the offence was committed, without shoes; . . seen a few months before, . . occasionally wearing . . broad-toed shoes. . . tried and convicted. . . judgment of death"

Reversed, and the cause remanded: [17] "The *identity* of the prisoner with the person who committed the assault, is a point on which . . more . . satisfactory proof may be adduced." [Totten, J.] See same *v.* same, p. 564, *infra.*

Turner v. Turner, 2 Sneed 27, December 1854. [29] "Received of Wm. Weatherhead, a negro boy about seven years old, . . which I will

[1] Counsel for the executor is credited with this expression. Ed.
[2] Acts of 1853-1854, ch. 50.

keep with me, to be subject to the order of Sumpter Turner at any time when called on. Priscilla Turner. . . 1834"

Cobb v. Johnson, 2 Sneed 73, December 1854. "The slave was hired during the year 1851, . . for service at their iron works. . . the defendants agreed to keep the slave out of 'dangerous places, by which life or limb might be endangered.'" [79] "put to work at an ore bank, and while digging ore, was killed by the falling in of the bank above him."

State v. Harris, 2 Sneed 224, December 1854. Held: an indictment for giving spirituous liquors to a slave, [225] "name unknown, and the name of the owner . . unknown, . . without the consent in writing of the owner, or person having the lawful control" is good.

Ezell v. Franklin, 2 Sneed 236, December 1854. Action of trespass to recover damages for a breach of warranty of the soundness of a slave. See Franklin *v.* Ezell, p. 557, *supra.*

Mosely v. Baker, 2 Sneed 362, December 1854. In 1850 Rose and her child were sold for $300.

Stratton v. Brigham, 2 Sneed 420, December 1854. [422] "In . . 1853, he . . came to Tennessee [from New York] . . rented a house . . purchased a servant for a cook,"

Cobb v. O'Neal, 2 Sneed 438, December 1854. In 1853 Cobb purchased Priscilla for $800. A few months later he sold her to O'Neal for $750. Just before the execution of the bill of sale, witness [440] "heard the slave . . cough, and asked her about it; she said she had been sick for some time, and had a severe hemorrage [*sic*] of the lungs. Witness told O'Neal and Cobb . . Cobb replied, that 'she was merely putting on, she did not want to go to the country; that she was sound, and he would warrant her to be so.' . . physicians . . examined the slave a few days after . . she was laboring under consumption, and . . of no value. . . [441] Cobb was a physician." [439] "The plaintiff [O'Neal] recovered $833 75 damages, for which judgment was rendered;" Affirmed.

Smith v. Smith, 2 Sneed 473, April 1855. "action for slanderous words . . 'I don't want anything to do with a man that sells liquor to my negroes on Sunday, and he does that thing.' 'You can tell him, I will not go to such a man's house, who sells my negroes liquor without my permission, and that I know *he* does.' . . [474] verdict for the plaintiff [for $235]." Held: [481] "the words were actionable *per se.*" "this offence . . involves the highest degree of moral turpitude." [Totten, J.]

Hughes v. Boyd, 2 Sneed 512, April 1855. Will: [513] "that any surplus . . as well as the proceeds of a tract of land . . [514] 'be laid out in young negroes for the benefit of my wife and children.'"

Carnes v. Apperson, 2 Sneed 562, April 1855. A negro woman was sold in 1852 for $700.

Pearson v. Johnson, 2 Sneed 580, April 1855. [581] "In . . 1853, the clerk of the circuit court . . in pursuance of a decretal order [for distribution among the children of an intestate] . . sold at public auction

. . a slave, George, at $1005," Before the confirmation of the sale, the purchaser petitioned the court to set it aside, as [580] " the slave was affected with a malady, which . . reduced his value one-half," [582] " He had a protracted sickness, . . 1851, . . health then revived, and . . he was able to perform ordinary labor on the farm in 1852. . . soon after [sale], relapsed " Sale was set aside by the court.

Affirmed: " the owners . . stand acquitted of any fraudulent practice in relation to the sale. . . [583] But the contract is *not executed*, . . [584] the court [will] refuse to . . enforce an inequitable contract, made under its own decree," [Totten, J.]

Bloomer v. State, 3 Sneed 66, September 1855. Bloomer was indicted for an assault. [67] " met [John] Minor in the road, . . asked Minor for a marriage license, which he suspected him to have. Minor denied . . Bloomer . . then told him if he did not give up the license he would cut his throat, having his open knife in his hand . . [68] Minor . . gave them [*sic*] up . . Defendant offered to prove that John Minor was the brother of Wilson Minor, who had abducted the niece of the defendant for the purpose of marrying her, and that said Minors were free persons of color within the degrees prohibited by the statute from intermarrying with white persons, and that the young lady . . was white and an infant of tender years. . . this proof was rejected . . The jury found the defendant guilty. . . judgment for a fine of one cent, and costs "

Affirmed: [69] " however laudable his purposes may have been, there is no pretence that these facts . . would amount in law, to a justification " [Harris, J.]

Fulkerson v. Bullard, 3 Sneed 260, September 1855. Bullard's will, 1852: [261] " that my negroes . . be hired out . . from time to time, . . to the best advantage, . . but to such persons as will treat them kindly and not abuse them, . . and at the expiration of five years [be divided] . . equally amongst all my children; "

Elliott v. Cochran, 2 Sneed 468, December 1855. " petition of the executors . . that it was manifestly to the interest of the legatees that the slaves be sold, two of them being old and infirm, and the other an infant of tender years, all unproductive of profit to the estate. . . the Chancellor . . vested the executors with discretionary power to sell, fixing the *minimum* price at $600. For this price the executors sold . . [469] The bill [filed by the legatees, minors,] charges, that the sale was unnecessary—the hire of two of the slaves being . . productive of profit . . also charged . . [they] were not made parties " Held: the sale was void, as against the complainants.

Bell v. Cummings, 3 Sneed 275, December 1855. [276] " The plaintiff hired his negro man [for the year 1852] . . to the defendant . . keeper of a livery stable . . [277] no stipulation . . as to . . the particular kind of service . . the defendant hired the negro to Mr. Parish, to drive his dray to and from the wharf [[283] 'amidst dangers and exposures '] . . received an injury in his breast, by a dray running over him. . . The plaintiff . . [then] requested the defendant, if he did

not want the boy at his stable, to hire him to the Corporation [of Nashville], to work on the streets. . . defendant refused . . but afterwards . . hired him to the Corporation, . . [283] put . . with a crowd of hands, upon the public streets, under a hard public driver, where the wages are higher in proportion to the expense and hazard." [277] "he sickened and died of typhoid fever. . . no proof of want of due care . . either in sickness or in health." Verdict and judgment for the plaintiff for $800.

Affirmed: [285] "the simple act of sub-hiring, without the assent of the owner . . is a tort, which . . renders the bailee immediately liable . . The efforts of the owner . . to procure good homes and kind treatment for his slaves, will under this simple rule, be far less liable to frustration. . . [287] We do not say . . that full force and effect were given to the acts of the plaintiff, going to show a waiver, . . but this action being in both case and trover, and the finding general, we think it is sustained by the facts and the law," [Caruthers, J.]

White v. Harmond, 3 Sneed 322, December 1855. "The plaintiff hired a slave to the defendant . . for the year 1853. Both parties were . . [323] resident citizens of Giles county. . . no expressed stipulation . . as to the place where the slave, who was a blacksmith, was to be employed." [324] "afterwards the defendant removed . . to . . Alabama, and without the consent of the plaintiff, carried the slave with him, where . . he sickened and died." Action to recover the value of the slave. Verdict and judgment for the defendant. Reversed: the hirer removed him [325] "at his peril."

James v. Drake, 3 Sneed 340, December 1855. See same *v.* same p. 567, *infra.*

Young v. Shumate, 3 Sneed 369, December 1855. A slave was sold, in 1853, under a decree of the county court, for $1105.

Rosson v. Hancock, 3 Sneed 434, April 1856. "The plaintiff declares that the defendant . . 'deceitfully represented the . . slave to be sound except one hip, and a good house servant; whereas . . [435] one of her arms had been broken, or out of place, and she . . had a dangerous and violent temper . . was ungovernable, lazy and totally unfit for a house servant . . well known to the defendant.' . . the defendant, at the time of the sale, spoke in high praise of the girl as a house servant and field hand, except for ploughing, etc." The price for which she was sold, was $390. [437] "No return of the slave was . . offered to be made." Verdict and judgment for the defendant affirmed.

Lowe v. Morris, 4 Sneed 69, September 1856. "1855, . . he purchased . . [70] two slaves . . for . . twelve hundred dollars. . . general warranty of soundness and of the age of one of the slaves. That said slave was near twenty years older than represented . . laboring under various diseases, . . and was worth at least four hundred dollars less than . . if . . sound and of the age represented"

Lea v. White, 4 Sneed 73, September 1856. "petition . . alleging that the defendant . . [74] detained from her two free girls of color, . .

bound as apprentices to her . . writ of *habeas corpus* . . granted, . . quashed . . affirmed." See same *v.* same, *infra.*

Seay v. Bacon, 4 Sneed 99, September 1856. In 1831 [101] "Seay and wife removed [from Virginia] to Tennessee, and brought with them . . Dinah, . . some thirteen years of age. . . 1832 . . conveyed . . Dinah . . for . . four hundred dollars." Before 1852 "Dinah gave birth to six children,"

Lea v. White, 4 Sneed 111, September 1856. Action for a libel. "charges that, in a return to a writ of *habeas corpus* for two apprentices[1] . . [112] the defendant . . published a . . scandalous libel . . 'that . . the order binding out said children was revoked,' on the ground 'that said Mary C. Lea was . . utterly unable to support them, . . said children were cruelly neglected and maltreated by . . her . . and there was reason to believe that they would be sold . . as slaves.'"

Held: [115] "within the class of absolutely privileged communications, . . not actionable."

Bugg v. Franklin, 4 Sneed 129, December 1856. [131] "In 1819 the parties removed [from Virginia] to Tennessee, . . bringing their respective negroes,"

Carter v. Peck, 4 Sneed 203, December 1856. [204] "purchased . . through tickets [on the stage-coach] for himself, his wife, and servant,"

Turner v. Fisher, 4 Sneed 209, December 1856. [210] "Turner, a free man of color, died . . in 1853. . . bequeathed [his small personal estate] jointly to his wife and children. . . The children . . are in the condition of *slavery*: . . not the issue of the [widow] . . but of a female slave, the property of a stranger to the testator, to whom they also belong. The widow dissented"

Held: "the 'children' . . are incapable . . of taking any benefit . . [211] one-third of the personal estate [goes to the widow.] . . [212] The remaining two-thirds . . will be charged with . . expenses of the administration. And the residue thereof . . declared to have escheated to the State for the benefit of the 'common school fund,'" [McKinney, J.]

Baxter v. Stewart, 4 Sneed 213, December 1856. [214] "On or before the 25th day of December next, I promise to pay . . two thousand dollars for the hire of [twenty-two] . . negro men, . . and I bind myself to give them the iron-works' clothing. . . 1854."

Searcy v. Carter, 4 Sneed 471, December 1856. Till 1833 [277] "Searcy had him . . making his crops, or hiring him out . . sometimes running him off to Missouri and getting the hire from there, . . [278] the children were too young to hire or to be of much advantage; but Grace . . engaged in washing and . . other home work, . . being there with her children,"

James v. Carper, 4 Sneed 397, April 1857. [398] "an action of trespass brought . . by Mrs. James . . Champ, the keeper of a public-house

[1] See same *v.* same, *supra.*

. . hired . . [her] slave Bill . . for a few days . . to assist as a servant . . [399] at seventy-five cents per day. . . Carper [a guest] . . on retiring . . placed his pocket-book, containing about one hundred and twenty dollars, under the head of his bed, and in the morning forgot to remove it. . . mentioned the matter to Champ [who] . . inquired of . . Bill—who made up the bed . . the slave replied that he put it back where he found it, . . Champ . . found . . as the slave had stated, but there was no money in it. Without further inquiry, Champ immediately ordered the slave to go to the stable, and proceeded there himself, in company with the defendant and . . Simpson. Champ stripped the slave, 'and . . bucked him over a wheelbarrow;' took out his knife, and threatened to *castrate* the slave if he did not give up the money, the slave earnestly declaring his innocence . . Champ then took a martingale and inflicted some twelve or fifteen blows . . when he was called to the house. On leaving . . he told Carper . . to whip the God damned negro's guts out, unless he gave up the money.' The defendant then tied him to a stall, and continued . . with the martingale, the slave all the time protesting his innocence. Champ then . . returned him to the plaintiff. . . physician . . called in . . shoulders and back were bruised and wounded, . . skin was broken in several places, . . [400] that some of the injuries had the appearance of having been done with the ring of a martingale, and his shirt was stained with blood; that the slave complained of his kidneys being affected, and also of an injury to his head. The proof clearly shows that the slave was entirely innocent, and that, immediately after the beating . . it was ascertained that a vagrant white man about the house had committed the theft;"

Judgment for the defendant reversed and the case remanded: [402] "the hirer must always, at his peril, be able to show . . reasonable ground for the chastisement, and that it did not . . exceed the bounds of moderate correction, . . [403] One of the great dangers to the owners . . is the reckless and wanton disregard, on the part of hirers, of the safety of the slave" [McKinney, J.]

Gass v. Mason, 4 Sneed 497, September 1857. [498] "in 1846 complainant was stricken with paralysis, . . [499] deprived of her powers of locomotion and of speech, . . that she was the owner of the [female] slave . . whose services were her only means of support; that this slave had waited upon her during her entire affliction, . . about eight years; that she better understood the signs by which she signified her wants . . than any other person,"

Railroad Co. v. Fulton, 4 Sneed 589, September 1857. [590] "another slave, the brother of Jack, was in the service . . of the Railroad at Atlanta, and the master of transportation . . had given to the said slave . . a 'pass,' authorizing him to go to Chattanooga and return again . . Jack became possessed of this 'pass,' and the conductor, believing [it] . . genuine, and Jack to be the slave named . . 1856, . . conveyed him to Atlanta free of charge. Soon . . seized and sold to satisfy a judgment against the person from whom the plaintiff [Fulton]

had bought him, and who, . . by the law of Georgia, had a valid lien" "The Court gave judgment for the plaintiff for nine hundred dollars,"

Affirmed: [591] "the agent . . is bound to inquire and know that the owner has given permission"

Major v. State, 4 Sneed 598, December 1857. See same *v.* same, p. 558, *supra.* [598] "After several changes of venue and three several convictions, he was again arraigned . . August Term, 1857, . . convicted and adjudged to suffer death."

Judgment reversed, and the cause remanded for another trial: [611] "The main witness is not only contradicted by three credible witnesses, but she flatly contradicts herself, and firmly persists in it." [602] "The prisoner . . [603] had lived on the same plantation where she was for years; . . had slept in the same room with her and her mother after he was grown; . . had never given her or her mother a saucy word; . . She was then asked if she did not have great feeling against the prisoner? . . she had: that she wanted him and his counsel, and all that would take his part and defend him, hung; that she could . . hang him herself, and saw his head off with an old saw, and would do so if they would let her, and also the counsel that defended him. . . [604] [Her mother] testified . . The prisoner . . had a brother in the neighborhood . . now in Kentucky . . taller, more slender, and brighter-complected . . no other slaves in the neighborhood for four or five miles. . . she never heard him [the prisoner] say a . . smutty word in her life. . . asked if she had not strong feelings against the prisoner? She said she could cut off his head with a case-knife, and be a week at it."

Bartee v. Tompkins, 4 Sneed 623, December 1857. [632] "1840, Shelby sold . . Peter . . for $1075."

Randolph v. Wendel, 4 Sneed 646, December 1857. Mary Randolph's will, 1827: [647] "Ailsey and her child are not to be sold for the payment of any of my debts;"

Shelton v. Johnson, 4 Sneed 672, December 1857. [678] "removed with the slaves [from Virginia] to Tennessee in 1820."

Cole v. Cole, 5 Sneed 57, December 1857. [61] "Her delusion consisted in ungrounded . . apprehension of conspiracies against her life by her own slaves, and her kindred, and others. . . [63] sold slaves, purchased and made up her negro clothing,"

Jones v. Walkup, 5 Sneed 135, December 1857. In December 1855 two slaves were sold by commissioners for $2074.

Luna v. Edmiston, 5 Sneed 159, December 1857. [160] "I purchased . . in 1836, a mulatto woman . . and her four children, for . . $1350."

Scruggs v. Davis, 5 Sneed 261, December 1857. [262] "the slave, having run away, was arrested in Kentucky, and brought aboard the defendant's steamboat . . by the plaintiff [owner of the slave], and the passage of both paid . . The master had his slave securely tied with his hands behind him, . . fastened to a post. . . [263] Smith, the engineer, [testified:] . . 'he untied him and put him to pumping water . . and

that defendant . . saw him, that after . . pumping, he tied his hands behind him again, . . but did not tie him to the post . . on the next day, [also] . . Scruggs saw the negro walking on the deck . . but he never authorized the negro to be untied,' . . on the arrival at Nashville he was missing," See same *v.* same, p. 576, *infra.*

Insurance Co. v. Hamilton, 5 Sneed 269, December 1857. [270] "I hereby make over this policy of insurance on my life, to Adelaide Eliza Goram, a colored woman; and desire that, at my death, the amount, say five thousand dollars, be paid to her. . . [271] 1849." "The assured died . . 1855." The assignee "resides in New Orleans, . . [278] avers that she is a *free woman,*" Decree in her favor, affirmed.

Arendale v. Morgan, 5 Sneed 703, December 1857. [709] "1854, the complainant made an exchange of slaves, with a stranger, . . Vichouse, in . . Alabama, the residence of the complainant. . . [710] 1855, the slave . . was demanded from the complainant, by the agent of . . a citizen of Georgia, from whose possession said slave had been feloniously taken,"

Prince v. Broach, 5 Sneed 318, April 1858. [319] "The girl . . was given [to his daughter] . . in 1847, when she [the negro] was very small,"

Parker v. Thompson, 5 Sneed 349, April 1858. [350] "that the hiring [for one year] was general, and that this negro [man] worked with other slaves of the defendant . . usually got up about daylight, and were employed in feeding the stock until breakfast, then they went to the farm and worked there. After supper they usually worked until 9 or 10 o'clock; sometimes sacking dried fruit, peas, etc., and sometimes they ginned and baled cotton; at other times they removed fence, etc. . . defendant's order for them to work every night, except when it rained or snowed, but to stop at 9 o'clock. . . not usual for farmers in that neighborhood to work so late . . unless . . in saving fodder or hay, . . the defendant did not live upon his farm; was only there . . once in every two or three weeks; . . was a reasonable and prudent man and a good master. That his overseer 'was a kind, prudent man and indulgent to the negroes.' . . did not attend the negroes after night. This was usually done by one of the clerks in the store, he worked himself, with the negroes, and did as much as either of them, without injury to himself. . . September, 1852, the slave . . was sent out with others . . [351] to bind up the fodder and stack it in the field; instead . . [he] and another, concluded to haul [it] . . to the barn, . . fell from the wagon and . . died . . This occurred between 9 and 10 o'clock at night, and the negro was worth one thousand or twelve hundred dollars." Verdict and judgment for the defendant, affirmed.

Kirkwood v. Miller, 5 Sneed 455, April 1858. Action of trespass for killing the slave of the plaintiff. [456] "the defendants relied [in the trial in 1857] . . upon the ground that, at the time they slew the slave, they had good reason to believe . . that an insurrection of the negroes

was then contemplated, and that the slave in question was engaged in it. In that trial, . . [457] permitted . . to give in evidence, newspaper publications, the proceedings of public meetings, and the general fears . . of the people, on that exciting subject, before and at that time. We reversed that judgment [for the defendants], and gave a new trial, . . grounds, . . illegal evidence . . no *legal* evidence to sustain the verdict, . . [458] Nothing appears connecting this slave, in any way, with any insurrectionary scheme, if any existed outside of the distempered imagination of the people, . . [459] He had not misbehaved himself in any way, . . and was entirely . . docile. After being . . unlawfully tied with a rope, he became alarmed . . and in endeavoring to make his escape from this unlawful confinement, was slain by [Kirkwood] one of his pursuers," [458] "The case went back, . . verdict against all of the defendants, for the value of the slave, $800."

Judgment thereon, affirmed: [459] "This species of property, above all others, must be protected . . from *wanton* abuse. . . [460] Every description of mob-law, and reckless invasion of the rights of others, should be visited with the highest penalties." [Caruthers, J.]

Hollingsworth v. Miller, 5 Sneed 472, September 1858. In 1828 a father gave a negro girl, then a child, to his daughter, some six or eight months after her marriage.

Marley v. Cummings, 5 Sneed 479, September 1858. [481] "1858, the Chancellor . . ordered the slave to be sold for distribution amongst the creditors."

Railroad Co. v. St. John, 5 Sneed 524, September 1858. [529] "The negro boy [about eight years old] of the plaintiff was asleep upon the road at a water-gap; he could have been seen a quarter of a mile before . . reached by the locomotive . . at first supposed to be a coat . . discovered to be a person, and no signal or alarm was given . . The excuse . . is that they would have been ineffectual, on account of their proximity" The slave was killed and his owner recovered damages to the amount of $962.33. Judgment affirmed.

McKenzie v. Kerr, 5 Sneed 539, September 1858. [541] "The slave is proved to have been an excellent cook, wash-woman and ironer, and the reason given by defendant for selling her, was her . . ungovernable temper. . . [542] The disease of which she died, appears to have been dropsy."

John (a slave) v. State, 1 Head 49, September 1858. "indicted [at the December term, 1857, just before the close of the term] . . for the murder of a female slave, the wife of the prisoner. . . [50] not arraigned . . until . . April Term." He then asked a continuance, "on the ground of the great excitement in the public mind to his prejudice. . . refused" He was [49] "found guilty, and sentenced to be hung." Judgment reversed, and the prisoner remanded for a new trial.

Traynor v. Johnson, 1 Head 51, September 1858. [52] "The defendant kept a public hotel and the slave was hired to him . . 1856, upon

an express agreement that he was to be employed as a servant in the hotel. . . the defendant *subhired* the boy to . . Cowan, to work in a brickyard . . employment, which the defendant was informed, at the time of hiring, the plaintiff would not suffer him to be engaged in. . . [53] taken ill with a violent dysentery, . . A physician was called in . . 'saw the plaintiff [later] and suggested . . she had better have the boy brought to her house,' . . well attended to at Cowan's; but . . his opinion that he would do better with the plaintiff;" He died in a short time. Held: [55] "not . . sufficient evidence of a waiver of the conversion."

Kelly v. Davis, 1 Head 71, September 1858. Suit [72] "commenced . . under the third section of the act of 1813, ch. 135, which prohibits all traffic with slaves (except for articles of 'their own manufacture') without permission of the owner. . . [73] he had recovered a former judgment against the defendant for $10, . . [74] for the same cause of action"

Abram (a man of color) v. Johnson, 1 Head 120, September 1858. A bill for freedom. Levi Greer presented a petition to the county court for the liberation of the complainant, his slave, and gave bond to indemnify the county. Johnson, clerk of the county court, then [122] "took a conveyance of complainant . . with full notice of . . [his] right to freedom." "only holds him in mortgage to secure $300, and complainant is worth greatly more . . strong reasons for believing that a faithful record of the action of the Court . . was not kept. . . nothing can be found but the petition. Johnson told complainant not to be uneasy, that he would write out his free papers the first opportunity, and that he was then as *safe* as if he had them."

Held: [123] "The complainant must be sent to the Western Coast of Africa, and a decree for his freedom will be drawn upon the terms . . laid down in the act of . . 1854, ch. 50.[1] . . Defendant Johnson will pay the costs." [Wright, J.]

Young v. Wilkinson, Thomp. Cas. 161, September 1858. [162] "He owned [in 1838] a tract of 867 acres of land, and thirty-two slaves,"

James v. Drake, Thomp. Cas. 170, September 1858. "an action . . instituted by . . Drake[2] . . to recover the value of a slave named Bill, . .This slave had been hired by the defendants [T. G. James and T. C. Simpkins] for the year 1847, and used on the farm of the defendant James . . [173] J. D. James . . stated that he had returned from the South [New Orleans] in June [August] 1847, bringing home with him a negro girl named Kitty, and others; that he afterward had the small pox; that the girl Kitty some two or three weeks after his return was sent to the house of the defendant [James] to stay, and ['some four or five days after'][3] took . . the small pox." [171] "the defendant

[1] Acts of 1853-1854, p. 121.
[2] Same *v.* same, 3 Sneed 340.
[3] *Ibid.* 342. "'she had a breaking out upon her, which was believed to be . . measles;' but which proved to be small-pox."

James, was aware for some days, or weeks before the negro Bill was attacked with the small pox, that the disease was in his family and amongst his negroes, but did not have Bill vaccinated . . and he took the small pox subsequently, and died ['in a few days thereafter'] . . whilst in the defendant's possession. . . [173] there is not . . the least evidence of a want of care in the treatment of this slave after he was attacked. On the contrary, . . Mr. James remained on his farm during the whole time of the slave's illness, and visited him several time a day."

Judgment for the plaintiff (Drake) affirmed: [172] "it was gross neglect in [the defendant James] . . not to have had him [Bill] vaccinated. He was as much bound to protect the slave from danger, and the taking of the disease, before he was attacked, as in the treatment of him afterwards. . . The omission of the plaintiff . . to inoculate the slave anterior to the hiring, furnishes no excuse whatever to the defendant." [Wright, J.]

Saunders v. Harris, 1 Head 185, December 1858. [199] "1843, Mrs. Saunders sold . . for $800, a negro boy . . son of old Lydia, . . died . . 1851, having made a will directing that her two servants, Lydia and Molly, have the privilege of living with whomsoever they pleased;"

Dickenson v. Cruise, 1 Head 258, December 1858. A negro man was hired, January 1, 1856, "for that year, for $132. . . delivered . . the next day, and . . the same month, died of typhoid fever, . . [259] rendered no service . . the attending physician . . makes it probable that the disease . . was upon him when he was hired." The plaintiff's agent, "who hired the negro . . proves . . That he looked as well as he ever did, . . and that he had seen him chopping wood . . during the Christmas holidays. . . the defendant . . was to loose [*sic*] all time, and furnish the usual clothing—the plaintiff paying the doctor's bills, if the slave became sick." Held: the hirer is bound for the hire.

Crittenden v. Posey, 1 Head 311, December 1858. [318] "the slaves [were] brought to this State" from Virginia, about 1836.

Polk v. Fancher, 1 Head 336, December 1858. Action on the case. [337] "The Court [below] permitted the defendants to prove the character of the slave to be bad, . . Most of them stated that they had never seen . . him until . . apprehended for rape and murder, and put into the jail . . and in view of that charge . . considered him worth nothing. . . already in manacles, . . [338] no chance for escape. Some of the defendants by written agreement to stand by each other, and others without having signed it, moved by concert to the jail, broke down the door, took out the negro, and hung him till he was dead." The jury returned a verdict for one cent damages.

Judgment thereon reversed, and a new trial granted: [338] "The courts and juries, public officers and citizens, should set their faces like flint against . . mobs in all their forms. . . [339] His value should be determined from age, appearance, health, and . . what he would sell for in the market; . . [340] The general moral traits . . would constitute elements in the estimation of value, but without reference to the accusa-

. . directed by Jones to go home. . . some, (and Isaac among the number,) remained . . [633] some half an hour, . . wrestling. . . a white man ['who came there drunk, and without being invited'] . . without any provocation, . . stabbed him mortally, . . the messenger . . to Allen for help, did not deliver the message, but Jones was not informed . . until sometime after the murder . . no direct evidence that . . Isaac went . . by the permission, or with the knowledge of his master. . . Jones handed around spirituous liquor to the hands while at work, . . no intimation that Isaac . . was intoxicated," Verdict and judgment for the plaintiff (Allen) for $1050.

Judgment reversed: [636] "By . . universal usage, they are constituted the agents of their masters, and are sent on their business without written authority. And in like manner, . . sent to perform those neighborly good offices, common in every community. . . are allowed, by universal sufferance, at night, on Sundays, holidays, and other occasions, to go abroad, to attend church, to visit [relatives] . . and to exercise other innocent enjoyments, without its ever entering the mind of any good citizen, to demand *written authority* of them. . . [638] verbal consent may . . be implied from circumstances. . . But, supposing . . that the slave merely of his own volition, went . . [no] conversion." [McKinney, J.]

State v. Bonner, 2 Head 135, December 1858. Held: as [138] "the sale of liquor by a slave is a criminal offence,[1] . . [139] the defendant [who bought liquor from him] [2] . . is liable to be prosecuted . . as if the offence charged upon the slave had been committed by a white man."

Leetch v. State, 2 Head 140, December 1858. "an indictment under the act of 1831, ch. 103, secs. 1 and 2, . . the first which has come before us. . . [142] It is a police regulation, . . cannot, however, . . apply to . . congregations of slaves on occasions of funerals, preaching, and other ordinary lawful purposes, by permission . . express or implied. The present case does not fall under . . those exceptions. It was an assembly of . . forty or fifty, for social enjoyment, . . without . . even the knowledge of the owners, from anything that appears. . . The defendant was convicted and fined fifteen dollars. We affirm the judgment." [Caruthers, J.]

Brown v. State, 2 Head 180, December 1858. [182] "Brown . . a grocery keeper . . being suspected of selling liquor to slaves, a plan was concerted for his detection. . . before daylight, one of the owners and another . . gave the slave an empty flask and a dime, and the owner directed him to go to Brown's . . and get . . liquor. The slave proceeded to the back door . . admitted by Brown, . . came out with the flask full . . The owner and person . . with him, . . within three or four feet . . where, unperceived by Brown, they could distinctly see," Brown was convicted and sentenced to pay a fine of $50, [181] "and to suffer four months imprisonment . . and declared incapable of ever hereafter obtaining a license for the sale of spirituous liquors" in the county.

[1] Act of 1829, ch. 74, sect. 1, and act of 1835, ch. 57, sect. 2.
[2] Before the new code went into operation.

Judgment affirmed: [182] "the master was not present . . in the sense of the law. . . such a ['*visible*'] presence as necessarily implies . . assent to the act of selling" [McKinney, J.]

Beasley v. Jenkins, 2 Head 191, December 1858. Will, 1837: [192] "to sell, immediately, . . his negro man"

Woods v. Burrough, 2 Head 202, December 1858. In 1856 a negro man was sold [205] "at public auction . . at . . $1053.00,"

Pilcher v. Smith, 2 Head 208, December 1858. [209] "1846, . . Hannah Smith . . covenanted to convey to Hannah Higgins (a free woman of color) a lot of ground in Nashville, for . . $350."

Gee v. Graves, 2 Head 239, December 1858. [241] "Received . . five hundred and twenty-five dollars for a negro girl . . aged twenty-one or two years, . . 1840."

Conner v. Crunk, 2 Head 246, December 1858. About December 1, 1854, James Crunk, a physician, bought [247] "Lucretia, about 25 years old, and her son, Jordan, about six, . . as unsound . . for $600." "his vendor, Dr. Burdett, . . says they were very delicate; that he [Burdett] purchased them as 'unsound property,' and sold them with a full disclosure . . James, told witness, . . that he knew they were diseased, but that 'he could make something on them by patching them up.' Afterwards [December 27] . . 'sent them to Alabama by his [insolvent] brother Jeff., and Jeff. had sold them.'" "for $1150, and executed *his* bill of sale warranting title and soundness. The negro woman died . . a few days after . . [248] [James] boasted that he had made from five to seven hundred dollars upon the negroes." Action was brought upon the ground of deceit. [250] "no fraud imputed as to the boy, he having been . . retained as sound;"

Held: the plaintiff was entitled to a verdict for the price given for the woman, with interest.

Fisher v. Pollard, 2 Head 314, April 1859. In 1857 Pollard sold [315] "a slave named Bill, for $800, . . provided the slave, then runaway, could be obtained in possession by the vendee. . . [316] The contingency . . happened,"

Adams v. Mayor, 2 Head 363, April 1859. Ordinance: [364] "That all negro traders who shall expose negroes for sale within . . the town of Somerville, . . shall pay a yearly license tax of twenty dollars." Further, "that if any person shall exercise the privilege, without first obtaining a license, 'he shall . . pay double' . . [365] Adams . . exposed negroes for sale, and sold one . . 1856, without obtaining a license," Judgment for the corporation, affirmed.

Dement v. Scott, 2 Head 367, April 1859. [369] "The slave was hired out at public auction [for the year 1856] . . The auctioneer states that the terms proclaimed were, . . 'not to work on railroads, mills, rivers, boats, or public works.' . . the defendant stated . . the terms precluded him. . . that he was about to build a new mill, . . [The guardian of the owner] . . then told him to bid on. . . other testimony . . that the

boy was not to work in mud or water. . . the slave was put to digging a mill-race and foundation for the mill, . . exposed to standing in mud and water, . . death . . caused." Judgment for defendant, reversed.

Nored v. Adams, 2 Head 449, April 1859. Action for breach of warranty of the soundness of a slave, conveyed in 1857. [450] " 1858, . . during the pendency of this suit, [witness] . . had a conversation with the girl . . in the street, . . 'The girl wanted him to buy her; he told her that she was diseased; She replied that she was sound when she went to plaintiff's; that she had become diseased since . . from carrying wood and water, and meal and flour from the mill; that plaintiff's was a hard place to get along at; that she had been whipped . . and bore the marks upon her back; and that she would go anywhere in preference to living with plaintiff.'" Judgment for defendant reversed: "This entire statement of the witness ought to have been rejected."

Isaac (a slave) v. State, 2 Head 458, April 1859. "convicted of the murder of a white man, . . and sentenced to be hung."

Judgment reversed and new trial granted, because the court had recalled a juror, after having discharged him.

Railroad Co. v. Jones, 2 Head 517, April 1859. Jones hired to the Railroad Company, "for the year 1856, two negro boys . . [518] at twenty-three dollars per month, for each. . . 'all . . liability to accidents, . . covered by the pay; . . company assuming no responsibility for damages from . . any cause whatever.' The slave . . was lying on the track . . most probable that he was under the influence of liquor. The engineer . . 'thought it was a carpet-sack, or an old bag of clothes.' The train was stopped, but . . all the cars, except one or two, had run over [him.] . . the road . . was straight," The plaintiff recovered judgment for $1232. Affirmed.

Smith v. Cozart, 2 Head 526, April 1859. [528] "Mrs. Cozart had raised the girl, and . . 1853 . . sold her to Smith. . . frequently importuned Smith to assent to a re-sale. . . 1856, . . Smith proposed to purchase [Mrs. Cozart's share in a house and lot] . . if Lightfoot [her agent] would take . . girl at $1000, . . excited . . his suspicions . . and he inquired . . if she was sound. Smith replied that 'she had had a cough, and suppressed menstruation . . temporary only.'" "agreed . . that Smith should convey . . directly to Mrs. Cozart, . . [529] 'Received . . one thousand dollars in payment of . . Maria, . . I consider the negro unhealthy, and sell her as unsound property,'" [528] "shortly after . . a physician . . found the girl had consumption . . [529] for six or twelve months; . . worthless. . . died . . 1857." [527] "an action . . for fraud . . There was recovery for $1,112.50." Affirmed.

Tomlinson v. Darnall, 2 Head 538, April 1859. [539] "The slave was found [by the patrol] from home without a pass, and attempted to escape, when he was pursued, knocked down, and whipped. . . The jury . . assessed the damages at fifteen dollars."

Reversed: [542] "If they exceeded the bounds of moderation . . they will be liable under a verdict . . on the proper issue to be raised by an amendment of the pleadings."

Henry v. Compton, 2 Head 549, April 1859. In 1855 [550] "a negro woman . . was struck off . . at $501,"

Parker v. Hall, 2 Head 641, April 1859. In 1843 [643] "a woman aged about twenty years, and . . her child, aged about two years" were bought for $600. In 1845 the mother and another child, about six months old, were sold for $600.

Sandeford v. Hess, 2 Head 680, April 1859. A negro woman was sold for $800 in June 1858; in August [682] "sheriff, by virtue of . . levies, sold [her] . . [683] at . . $700."

Traynor v. Johnson, 3 Head 44, September 1859. See same *v.* same, p. 566, *supra.* [46] "The defendant was substantially informed, at the time he hired the slave, that the plaintiff would not allow him to be hired to . . Cowan, on occount of the nature of the employment, though higher wages could be obtained . . [47] the defendant. after retaining the slave some two months, hired him to . . Cowan, for the remaining ten months, . . for a sum nearly equal to the amount . . he was to pay for the entire year's services . . put to labor out of doors, exposed to the sun, in mid-summer; . . when taken ill . . no physician was called in until the fifth day" The jury again found for the defendant.

Judgment thereon reversed and the case remanded: [46] "between the owner and hirer of a slave, there is a personal trust . . and a contract implied by law, which forbids the hirer to transfer the possession or services . . to a third person, without the owner's consent. . . [47] This presents a case of . . aggravated violation of the rights of the plaintiff, . . for which a jury would be warranted in giving the highest measure of damages." [McKinney, J.]

Johnson v. Byerly, 3 Head 194, September 1859. "Johnson carried on a large tannery . . A good deal of his leather was stolen, and he traced it to the slave of the defendants, . . received by Owens, . . from a slave, knowing that it was stolen. . . admitted his guilt, and agreed to pay . . $250, the supposed value of the leather, to keep the matter secret,"

Isaac (a man of color) v. Sliger, 3 Head 214, September 1859. [215] "The allegation of the bill [for freedom] is, 'that . . Henry [Sliger, his former owner], . . agreed with . . Isaac, that he should be free at the death of [his wife] . . in the event that he conducted himself properly up to the happening of that event.' . . Sliger died . . in 1834. . . bequeathed all his property . . to his widow during her life or widowhood, with remainder to his seven children. . . [216] witness heard the testator say, the evening he died, 'that he wanted his black boy, Isaac, set free at the death of his wife, if he was a good boy to her.' . . in the expectation of approaching dissolution." [215] "complainant . . served his mistress, up to . . her death [in 1855]. And although his treatment of her, and his general good conduct, are complained of by the defendants . . [216] the relief . . could not be successfully resisted on this ground."

[215] " attempt being made, soon after her death, by some of the children . . to sell complainant, this bill was filed."

Decree in favor of complainant reversed, and bill dismissed: [218] " The widow . . could not, as against the owners of the remainder interest, have emancipated the complainant."

State v. Adams, 3 Head 259, September 1859. [260] " indicted . . for stealing and harboring a slave, . . [261] of . . Gaut, . . of South Carolina," [260] " He gave bail for his appearance, which was forfeited;"

Isaac (*a man of color*) *v. Farnsworth*, 3 Head 275, September 1859. Bill for freedom. [279] " Isaac had served her faithfully for nearly a score of years," [276] " she proposed . . that if he would procure any one to advance three hundred dollars in gold or silver to her, she would give him his freedom, and gave him . . a written authority to make the best arrangement he could for the money. He succeeded in making a contract with . . Michael George . . to advance the amount . . [277] for eight years' services. . . she executed an absolute bill of sale [in 1846] . . with an understanding . . that he would, at the of the term, emancipate Isaac. . . About fifteen months before the termination . . the old lady . . sold Isaac to McCampbell . . and made him an absolute bill of sale, to take effect in possession at the termination of the eight years. Upon application to George to acknowledge this title, he refused, . . A bill was then filed . . to reform the bill of sale of George, . . compromised by the surrender, by George, both of his title and the slave, upon the payment . . by McCampbell, of one hundred dollars . . he not choosing to enter into litigation "

Decree in favor of the complainant, affirmed: [279] " she executed the purpose as far as it could be done by her, it being prospective, by parting with the title, and, in effects, conferring the right to freedom, incumbered with the eight years' service. She . . could not revoke what she had done. . . [280] McCampbell, will be allowed a credit for the unexpired term " [Caruthers, J.]

Acuff v. Rice, 3 Head 293, September 1859. In 1858 a negro girl was sold for $710.

Perry v. High, 3 Head 349, December 1859. Held: increase of the female slaves of the testator, born after the execution of his will, and before his death, do [350] " not go to the respective legatees . . of the mothers, . . but as to them he died intestate, . . distributable amongst his next of kin."

Brown v. Cannon, 3 Head 354, December 1859. Will, made in Georgia, in 1850, [356] " provides for a sale of . . slaves who may misbehave, by the trustees, who are to reinvest . . in other slaves,"

White v. White, 3 Head 404, December 1859. [410] "A. C. White . . was born in . . North Carolina, but had been a resident [of Pulaski, Tennessee] . . for forty years. . . He had accumulated . . a very large estate, consisting principally of money, and some seventy-five or eighty

negroes, many of them valuable mechanics. . . 1856 . . begun to entertain the idea of purchasing a Southern plantation," Will, executed in Tennessee, January 10, 1857: [406] "I wish all my negroes . . set free at my death, . . [407] [my nephews and nieces] to hire out all my slave property [at my death], with the exception of . . Nancy, . . aged about twenty-two years, for . . one year, or longer if necessary, . . to raise a fund to transport them to the western coast of Africa, and support them for six months after reaching there; . . to transport . . Nancy, immediately to Africa, with funds . . to support her for one year" [410] "About the first of the year 1857, he . . hired out most of his negroes in [Tennessee] . . for the year—two or three of his mechanics with the privilege . . of keeping them from three to five years. A few of his mechanics, . . to Memphis, and there hired them. . . [He then went] to . . Miss., to look for a place; [returned home] and . . [411] May, 1857, . . bought . . some seventeen hundred acres [in Mississippi], the deeds . . delivered to him at his office in [Tennessee.] . . 5th of June, . . we find him at Memphis, giving a pass to two of his negroes, hired at that place, to return to Pulaski. . . he returns to Pulaski, and hires the negroes who had been at Memphis, remarking to the [hirer] . . that he could give his note . . when, he, White, came back, . . We next find him in . . Missouri, . . some weeks purchasing [ten] slaves to take to his . . [Mississippi] place. . . arrived . . about the first of October. . . latter part of the month . . after he had built one log cabin [for his negroes] . . he took sick, and died upon a blanket . . no other bed clothing nor furniture of any kind whatsoever . . in the cabin. . . His office in Pulaski . . contained his bedstead, . . and other . . furniture. . . the will [in a bureau drawer.]" It was sent to Mississippi and admitted to probate there. [408] "the provisions [concerning emancipation of the slaves] . . were pronounced . . void as contrary to the laws of Mississippi,"[1] His heirs and distributees filed a bill in the chancery court at Pulaski to have the bequest of freedom declared void. The chancellor held [406] "that the domicil of the testator was in Tennessee, and that the provisions of the will were valid by the law of this State;" Affirmed.

Huggins v. Moore, 3 Head 426, December 1859. Action of trover. "hired the slave . . for the year 1857, . . [to] proprietors of a steam flouring mill. . . to work in the mill, but not 'to work or act as fireman.' . . was required [so] to act . . and . . was *sub*-hired" "Judgment for the plaintiffs for one thousand dollars damages." Affirmed.

Brown v. Allen, 3 Head 429, December 1859. In 1859 [430] "Perry was . . worth $1100 and Jim about $600,"

Overton v. Allen, 3 Head 440, December 1859. In 1855 a negro man was hired for $100 a year.

Whitson v. Gray, 3 Head 441, December 1859. [442] "1857, . . sold . . a negro woman slave [twenty-nine and a half years old] and her

[1] Miss. Rev. Code, p. 236, sect. 3.

child for $1550. The bill of sale recites that the woman was about twenty-five . . The witnesses give their opinions as to the difference in value . . [443] vary from one to three or four hundred dollars in favor of the [latter] . . age. . . The Court . . held that the plaintiff [vendor] might prove that she was worth, with her child, more than the amount given, even if she had been twenty-nine and a half . . and if only twenty-five, about $1800. . . [444] the jury properly found . . no injury . . fraud without damage."

Norton v. Moore, 3 Head 480, December 1859. The purchaser "avers, that . . both . . slaves were unsound." Sarah Hitchcock, [483] "called . . to attend this slave as a physician," stated: [481] "I found her to be very much diseased; . . I laid my hand upon her abdomen, she shrunk from the pressure or from great pain, and instantly coughed up a profuse quantity . . her bowels were . . swollen . . and her blood-vessels . . distended" The overseer stated, concerning the other slave: [484] "She . . is . . almost, if not quite an idiot. . . If she is ordered to do anything, if she goes at all, she is as apt to do anything else as that which she was bid to do. . . would sleep always if she was not roused up." Held: admissible.

Gupton v. Gupton, 3 Head 488, December 1859. "1859, the owner of 10,000 acres . . about one hundred slaves,"

Jennings v. State, 3 Head 520, December 1859. Held: [522] "under *no circumstances*, not even in the presence, or by permission . . of the master, can spirits be '*sold or delivered*' to a slave, *for his own use*, but *only* for the *use* of the master, and even in that case, the 'owner or master' must be present, or send a written order, specifying that it is for himself, and the quantity . . not confined to licensed tiplers [*sic*]." [1]

Nickson v. Toney, 3 Head 655, December 1859. [656] "Winnie and Betty, of the value [in 1858], respectively of $900.00 and $416.00,"

Scruggs v. Davis, 3 Head 664, December 1859. See same *v.* same, p. 564, *supra*. [665] "He told the clerk he would rather die than return home, of which his master was immediately informed, . . and . . said there was no danger. . . his body was . . sufficiently identified, by the fact that his arms were still tied"

Judgment in favor of [owner and captain of the boat,] affirmed: the carrier was "bound to [use] ordinary diligence only in taking care of him"

Elliott v. Holder, 3 Head 698, December 1859. In 1854 [699] "the slaves were brought to Tennessee," from Alabama.

Stephenson v. Harrison, 3 Head 728, December 1859. Will of Samuel Winston, made 1845: [730] "'my tract of land near Spring Hill, and my house and lot in Spring Hill, and my lots in Franklin' . . to be sold . . and the consideration, when collected . . 'deposited in the . . Bank . . and also the . . money and debts due me, reserving to my wife any

[1] Code, sections 2676-2678, 2680, 4865.

of the last mentioned money, that she may need for the . . benefit of my negroes, during her life, and at her death, it is my will that all my slaves be set free, [7 Coldwell 195] and . . that the County Court appoint some good, disinterested man, to make the necessary arrangements for taking my negroes to Liberia;' . . that, in case any . . be unwilling to go . . they may choose masters in Williamson county, and that the money which it would cost to carry them to Liberia be paid to them here; but if . . not . . legal . . such slaves to be sold to the person chosen and the proceeds . . to be given, one-fourth to the slave so sold and the other three-fourths to . . the other negroes. . . [196] directs that if the County Court will not appoint a person to take the negroes to Liberia, the executors should appoint . . and that 'the money so deposited in the bank from the sale of my land and lots, together with any remaining money . . not otherwise disposed of, after all expense is paid, to be divided equally with my negroes that go to Liberia.'" Codicil, 1851, just before his death: [730] "that all my money . . deposited in the Bank by my executors, . . shall be applied . . to the same object . . as the money arising from my Spring Hill tract" [731] "at the death of the testator, . . about $4,000 of cash . . in the bank, and good notes to collect, of about $12,000. . . [732] a large amount was realized by . . the sale . . and the executors . . had used it in loaning at usury, . . large amount of profit"

Held: I. [733] "the slaves have a standing in court [according to '*our* liberal slave and emancipation Code, let *others* be as they may']." "where rights may be endangered, . . connected with a certain grant of freedom, to take effect in future. . . [II.] any profit . . would constitute an addition to the fund . . [734] and go with it to the slaves upon their emancipation." [Caruthers, J.] See Milly *v.* Harrison, p. 587, *infra.*

Lee v. State, 1 Coldwell 62, April 1860. [63] "The prisoner is a free man of color, . . regarded as prudent and humane, but upon one occasion, . . arrested for fast driving." [62] "convicted of involuntary manslaughter, . . [63] for the slaying of . . boy, between 3 and 4 years of age, . . run over . . by a hack driven by the prisoner, . . [60] deliberately saw the danger . . and yet drove on;" [62] "sentenced to the Penitentiary for five years, the highest term of punishment for this offence," Judgment affirmed: [66] "a more proper conviction would have been, for murder." [Wright, J.]

Bayless v. Elcan, 1 Coldwell 96, April 1860. [97] "1831, . . moved [from Georgia] to Tennessee with . . slaves."

DeGraffenreid v. Green, 1 Coldwell 109, April 1860. [113] "we are satisfied that the health of the slaves is endangered, their morals exposed to debauchery, their opportunities for escape to free States, made more easy, and the probability of a misapplication of the proceeds of their labor, increased, by their removal to Memphis; and, although . . the increase from their labor or hires is greater, their future and permanent value to the children, is impaired. . . [114] the trustee . . should . . keep them employed upon the farm." [Stephens, J.]

Roberts v. Westbrook, 1 Coldwell 115, April 1860. [116] "negro girl . . was struck off to . . Jarrett, . . at . . six hundred and five dollars. . . refusing to pay . . [constable] re-sold her at public auction . . at . . five hundred dollars,"

Queener v. Morrow, 1 Coldwell 123, September 1860. [124] "1853, perhaps, a trunk, containing about twenty-five hundred dollars in bank notes . . taken from the dwelling-house of the plaintiff [Morrow] . . [125] The defendant was . . subjected to a search, . . the slave Dan, said, that Queener 'got him and Gosh [slave of Queener, in Morrow's service],' to steal the trunk. . . denied by Queener. Dan also stated, that 'Queener talked to him in the field;' . . Queener replied, that 'he was in the field, but was not talking about Morrow's money!' . . the isolated admission . . that 'he was in the field,' was allowed to go to the jury." Held relevant.

Harris v. Bank, 1 Coldwell 152, September 1860. About 1855 [153] "a gift to Mrs. Harris, of . . $800.00, . . for . . purpose of purchasing a *nurse* for a child of Mrs. Harris, . . a negro girl was purchased . . but turned out to be . . of bad temper . . unsuited for a nurse, . . sold; and with the proceeds, . . [154] $950.00, . . 1856, purchased another negro girl . . and her child,"

Bank v. Nelson, 1 Coldwell 186, September 1860. [189] "The negro woman and child were sold . . at . . $1,200, . . a fair price,"

Brown v. Welcker, 1 Coldwell 197, September 1860. [198] "Brown agreed to pay $1,200 for the [man] slave, provided he were as likely as a certain slave belonging to him,"

McCloud v. Chiles, 1 Coldwell 248, September 1860. "December, 1850, and . . January, 1851, Henry Chiles conveyed certain slaves to . . Williams and . . Rodgers, respectively, by bills of sale absolute . . [249] reserving possession during his life. . . this method was resorted to, by . . [their] advice . . that . . the slaves could not be emancipated by Will, or otherwise than in the mode stated. Finding . . that they were fraudulently setting up claims . . as absolute owner, because the trust had not been expressed upon the face of the bills . . Chiles filed a bill . . 1853, . . to have the absolute bill of sale cancelled, . . their emancipation is re-affirmed to be his 'favorite object,' to secure which . . was the sole purpose of the bill. Pending that suit, Chiles died, . . [having] [250] made . . Will [1854] . . in which he provides for the emancipation of said slaves; and devises and bequeathes to them certain real and personal property. The widow dissented" [249] "1857, . . bills of sale were declared . . void,"

Held: by [251] "the *parol* trust, previously declared in favor of the slaves, [they] . . were vested with as perfect right of freedom, as it was in their owner's power to bestow; . . [252] they must be sent to the Western coast of Africa, unless they shall bring themselves within the exemption of the recent enactment upon that subject." [1] [McKinney, J.]

[1] Act of Feb. 24, 1854. "Provided, that nothing in this act . . shall be so construed as to apply to those who from age or disease are unable to go with safety."

Tally v. Smith, 1 Coldwell 290, September 1860. [295] "heard Mr. Tally say he would not sell [the negroes] . . that he never intended to separate them while he lived. Smith . . said, that he would work them out of him yet;"

Waters v. Barton, 1 Coldwell 450, December 1860. In 1842 [452] "his father, placed two slaves in his possession, to take with him . . to his home, in Texas,"

Arrington v. Grissom, 1 Coldwell 522, December 1860. Will, 1842, gave Sally to widow for life or widowhood, remainder to her children. [523] "In 1855, . . widow . . presented a petition . . asking to have . . Sally [[524] 'a capable, valuable servant'], sold . . that, by reason of her bad temper, violent passions, immoral habits, and refusal to submit . . she could not be managed; . . afraid to keep her in the family. . . had given birth to several children . . Upon the proof of . . Grissom [and one other], that it would be for the manifest benefit of the owners, that she . . be sold and sent off from the neighborhood, . . decreed, that she . . be sold; . . sold to . . Grissom, . . (who lived in little over a mile of the residence of petitioner,) for . . $700. . . [524] has given birth to several . . children, since"

Decree reversed: "the sale of the slave, so peculiarly valuable for her physical capacity of child-bearing, so far from being for the benefit of the owners of the remainder-interest, was an enormous sacrifice, though it may have been otherwise, as to the life-owner." [McKinney, J.]

Nelson v. Smithpeter, 2 Coldwell 13, September 1865. Will of Michael Smithpeter, who died in 1856: "Susan and Lucinda shall be emancipated, if the laws . . will permit them to remain in the State; or if they . . shall prefer to go to a (!) free country; and if not, then they shall enjoy a *quasi* freedom in this country, . . [14] have the right of managing and working for themselves; and it is my will my executors pay to each . . two hundred dollars, . . and allow them . . their clothing and kitchen furniture, which they . . may have . . at the time of my death." "A decree . . declaring the slaves . . free, and directing their removal to the Western coast of Africa. . . Susan, electing to remain and go into voluntary servitude, under the . . Act of 24th of March, 1858, a supplemented bill was filed by the executors, claiming Susan, and William Ross, the child of Lucinda, . . as the property of the estate."

Held: "The amended Constitution . . of Tennessee, adopted on the 22d of February, 1865, prohibits slavery or voluntary servitude, . . Susan and Lucinda, were . . entitled to take the legacy . . [15] entitled to the proceeds of their hire." [Shackelford, J.]

Thomas v. Thomas, 2 Coldwell 123, September 1865. [124] "With, or without cause, her confidence in her husband's fidelity was shaken at an early period of their wedded life, by the birth of a mulatto child. . . [129] this husband had been guilty . . of denying the paternity of the first child . . since deceased. . . [130] comparison . . was instituted between the features of this . . child and the mulatto child that occasioned so much trouble in the family. . . he attempted to induce one of

his negro men to criminate his mistress in adultery with himself. Speaking . . to one of his neighbors, he said the reply of the negro was, 'That if he had, his mistress made him.' . . the gross and unfounded accusations made against her, illustrate ['the . . state of his feelings toward his wife.'] . . A divorce from bed and board only, will be granted her." [Maynard, J.]

Bearden v. Taylor, 2 Coldwell 134, September 1865. In 1828 Minor, of North Carolina, sent to his daughter in Tennessee a negro boy, born in 1819, and a negro girl, born in 1814. In 1833 the girl was sold for $450.

McCroskey v. State, 2 Coldwell 178, September 1865. A man of color was found guilty of the malicious shooting of a free white woman.

State v. Davidson, 2 Coldwell 184, December 1865. [186] "subsequent to the adoption ['of the amendment [1] of the Constitution of this State, . . by which slavery was abolished, the defendant'] . . was indicted . . for the crime of rape upon a free white woman; . . The offense was committed . . March 1864, and the jury . . in addition to finding the defendant guilty . . also found that . . [he] was a slave at the time of the commission of the offense;"

Held: his [194] "being now a free man of color, constitutes no ground for arresting the judgment upon the verdict"

Brothers v. State, 2 Coldwell 201, December 1865. [202] "the alleged offense [horse-stealing] was committed in April, 1864, . . the prisoner was . . the slave of Mrs. Brothers, but . . had been acting as a free man, and occasionally working for his mistress under a contract of hire." "The jury found a verdict of guilty, and fixed the term of the prisoner's confinement in the Penitentiary for three years."

Judgment thereon reversed, and the prisoner discharged: I. the circuit court had no jurisdiction: [203] "Prior to the 22d of February, 1865, . . slavery had little or no practical existence in the State, but its legal existence was such as . . [204] for many purposes, to compel the Courts to recognize it as a subsisting institution. . . [II.] [211] a crime committed by a slave, the punishment of which is fixed by law, could not, after his freedom was declared, be punished with any heavier punishment." [210] "it was the policy of the law to inflict punishment . . so, as least, to affect the owner's interest . . not to confine them in the Penitentiary;" [Milligan, J.]

Younkins v. State, 2 Coldwell 219, December 1865. "a free man of color, . . indicted and convicted . . April Term, 1865 . . for stealing a hog. . . [220] told a colored woman . . he had a hog over the hill, and that he would give her a piece of it. She declined going further,"

Judgment reversed, and a new trial awarded: [221] "insufficient to establish the *corpus delicti*,"

Abernathy v. Black, 2 Coldwell 314, December 1865. Action of debt. [315] "By the 25th day of December next, I promise to pay John Black

[1] Feb. 22, 1865.

. . one hundred and fifty dollars, for the hire of . . Bob. The negro to have two summer suits and one winter, blanket and hat, and two pair shoes. . . if the negro is sick . . more than two weeks, Black agrees to lose it . . January 1st, 1859." Indorsed: "For clothing slave, blanket and hat, $7.35. For loss of time, $16.60. Balance due, $141.31." "some time after the slave had been in the service of [Abernathy] . . he ran off and returned to his master. . . [316] [Abernathy] formally demanded his return. . . [Black] told him . . if he would agree not to whip him, he would return the slave . . which he declined to do; and after consultation with his wife, . . [Black] positively refused to allow the slave to go back." Verdict and judgment for Black [315] "for $116 and costs"

Judgment reversed, and a new trial awarded: [317] "moderate chastisement . . was rather an incident to a contract of hiring than otherwise, . . [318] not . . a valid excuse for the non-performance of the contract." [Milligan, J.]

Brown v. Bibb, 2 Coldwell 434, December 1865. [436] "In . . 1817, the widow . . removed from Virginia to Kentucky . . carrying . . the negroes, . . In 1836, . . sold [one] . . to . . Hough . . [who] carried . . negro to Nashville . . In . . 1852, the widow sold, in Tennessee . . child" of the other.

Banks v. Banks, 2 Coldwell 546, December 1865. Will of Miss Anna J. Banks, made in 1858: [550] "Having long entertained conscientious and religious scruples upon the subject of slavery, and the slaves I own being family servants, and faithful and meritorious, I will, that immediately after my death, or after the death of my sister Mary, if she should survive me, but not before, the whole of my slaves, . . and any increase . . shall be set free, and transported to . . Liberia, . . ['some special legacies to certain slaves, mothers of children'] . . all the . . residue of my estate, . . to be sold" and the proceeds paid over [551] "to her before mentioned servants; upon their embarkation . . [554] gives to her executors in trust, if necessary, a sum not to exceed one thousand dollars, to purchase the freedom of . . Squire . . that 'we have hired him for many years, and he has been faithful to us.' . . providing for the transportation . . to Liberia, and his support for six months, in the event of his purchase . . 'I also give . . Squire, . . fifty dollars, to be paid . . upon his embarkation'" The provisions of the will of Miss Mary H. Banks, made on the same day, [551] "are precisely similar" excepting as to Squire. Bill filed in March 1865. [548] "Miss Anna J. Banks has been dead about six years; and Miss Mary H. Banks, about two years."

Held: [553] "by virtue of . . change in the organic law of the State, complainants are free persons of color, and have a legal right to remain in . . Tennessee, and take the . . legacies . . [555] Squire is not entitled to said one thousand dollars, . . has been emancipated . . by the Government, . . must go to the complainants, who were the slaves of [the Misses Banks] . . and the increase of the female servants, if any, . . But . . Squire, is entitled to the . . fifty dollars," [Gaut, J.]

Richardson v. State, 3 Coldwell 122, September 1866. Richardson "was presented . . July Term, 1860, . . for selling spirituous liquors to a slave.[1] A trial and conviction . . 1866. . . [123] fine of $50" Affirmed.

Pesterfield v. Vickers, 3 Coldwell 205, September 1866. [206] "1858, . . [Vickers] was partially intoxicated, and . . had a quarrel with a negro servant, who had placed a ladder on the street to clean the gas lamps. Some citizens . . prevented him from molesting the servant." Vickers was arrested and "taken to the lock-up"

Henly v. Franklin, 3 Coldwell 472, December 1866. In January 1860 a negro man was sold for $1,565.

Dibrell v. Williams, 3 Coldwell 528, December 1866. In 1857 a [529] "negro girl and her infant child, were sold under a decretal order" for $745.

Williams v. Sneed, 3 Coldwell 533, December 1866. In 1863 Sneed's daughters, [540] "during the absence of their husbands, some of whom were then confined in military prisons, went to the house of . . Sneed, and took the slaves . . by force, alleging . . that . . the slaves belonged to them, and they needed their services to get wood, make fire, etc."

Wirt v. Cannon, 4 Coldwell 121, April 1867. [128] "he became displeased with a family of slaves, and . . attempted to convey them, to his wife, . . with the understanding they should no longer remain on his place, and his wife might dispose of them to whom she pleased;"

Vancil v. Evans, 4 Coldwell 340, September 1867. Will, 1852: [341] "if either . . of the . . negroes . . should become dissipated and disobedient, the said negro, or negroes, shall, or may be, hired out;"

Coward v. Thompson, 4 Coldwell 442, November 1867. "a note for $200, executed . . 31st December, 1864, and due December 25th, 1865. . . [443] the consideration . . was for the hire of a negro slave for the year 1865."

Held: [444] "the defendant [to whom the slave was hired] . . must bear the loss [due to emancipation]."

Gholson v. Blackman, 4 Coldwell 580, December 1867. [581] "Gholson . . hired . . Ellen, to Blackman, for the years 1860, 1861, 1862 and 1863. . . Ellen, and her son . . continued in the service . . of Blackman from 1863 up to the 22d of February, 1865. The military forces of the United States occupied . . Clarksville as a military post during 1864, and up to the 22d of February, 1865; . . Blackman lived within the lines . . During this period, a great many slaves came within the lines, . . No master could control his slave. They hired themselves to whom they pleased, and received the hire. Many of the citizens of Clarksville were compelled to hire these negroes or do without servants, and it was their common practice to hire any negro boy they wanted, who would consent to live with them. Blackman paid Gholson for the hire up to 1864,

[1] Code, sects. 2677, 2679.

. . [582] At the first of the year 1864, the husband of . . Ellen, notified Blackman . . that from that time the wages must be paid to her; and accordingly, Blackman paid the woman her hire for . . 1864 and 1865." Gholson brought this suit "to recover the hire for . . 1864, and up to the 22d of February, 1865."

Held: payment to the slave did not discharge the liability to pay the owner. In the war measure of January 1, 1863, [586] "Tennessee was not one of the designated States, . . the status of . . slaves in . . Tennessee, was not changed; . . [587] The amendment to the constitution of the State, ratified . . 22d of February, 1865, is . . the deed of emancipation, . . [588] had the contest been between freedom . . and slavery . . and freedom had triumphed, then, perhaps, . . he, who was once a slave, would now be held . . free from the beginning of the struggle, or from the time . . he declared himself a freeman. But such was not the issue. . . as an incident to the struggle, slavery perished" [Hawkins, J.] Shackelford, J., dissented: [593] "in 1864, slavery was practically abolished in Tennessee. The government enlisted them . . provided for the families of the males, and treated them as freedmen. . . this species of property became contraband of war, . . controlled by the principles of international law, and of the laws of war. . . [595] The people . . of Tennessee had been declared to be in a state of insurrection . . 24th of April, 1863, instructions were . . issued . . by . . Secretary of War, . . approved by the President . . No. 100. Section 42 . . [597] The rights of the owner ceased as soon as she placed herself and son under the protecting influence of the armies of the United States."

Curd v. Bonner, 4 Coldwell 632, December 1867. [634] "the proceeds of two old slaves . . had been applied [in 1859] in the payment of debts; . . [635] 1860, . . Master . . in his report, . . states . . 'that a sale of the entire slaves should be made.' . . sold . . [636] October . . 1865, . . Thompson filed his petition . . alleging that he purchased . . Nancy, and her two children, Jack and Dallas—at . . two thousand dollars,—four hundred . . paid, and his note . . for the remainder."

Held: [641] "he must bear the loss . . The destruction of the institution of slavery was the inevitable result of the great contest . . the incidental prize," [Milligan, J.]

Wharton v. State, 5 Coldwell 1, December 1867. [2] "In 1860, . . indicted . . for an alleged rape, committed when he was about seventeen, and . . slave . . upon the body of [a free white woman] . . three times convicted . . twice sentenced to death, . . [3] third time, before this Court, under sentence of imprisonment . . for . . ten years."

Judgment reversed, and the prisoner discharged: [6] "The second section of the Act of 1866, chapter 40, by necessary implication, takes away the death penalty . . when committed by a colored man upon a white woman, after its passage, and substitutes . . imprisonment . . inconsistent with . . Code, sec. 2625; and if so, the fourth section of the Act of 1866, expressly repeals it [sec. 2625]. . . [7] The repeal of a penal statute, operates as a pardon of all crimes . . committed before that time . . except when . . [it] contains a provision expressly saving the right to prosecute. No such provision" [Milligan, J.]

McReynolds v. State, 5 Coldwell 18, December 1867. [19] "In 1856 the plaintiff in error . . a slave, and Eliza Elder, a slave, were married . . by Fred. Martin, a colored preacher; . . with the consent of the owners . . had one child. . . 1867, the plaintiff in error procured a license . . and [married] . . Betsy Edrington, a free woman of color." He was convicted of bigamy and "sentenced to two years imprisonment"

Held: [24] "having continued to live with the woman he had married in a state of slavery, it was a ratification" [Shackelford, J.]

Keith v. State, 5 Coldwell 35, December 1867. [36] "the plaintiff in error, while a slave in 1864, upon discovering the deceased, . . also a slave, in bed with the wife of the plaintiff in error, inflicted . . a wound of which he . . died." [35] "indicted . . November Term, 1865, . . March Term, 1867, . . he . . [36] was tried and convicted of voluntary manslaughter. . . sentenced to imprisonment at hard labor . . for . . three years;"

Judgment reversed and the cause remanded: [38] "the provisions of the slave code . . [were] virtually repealed . . because . . there were no slaves to punish. . . Had the jury, by their verdict, ascertained the fact, as it appears in proof, that the plaintiff in error was a slave at the time . . the prisoner [would be] discharged; . . a new trial . . [granted, when] this fact [can be] . . ascertained" [Hawkins, J.]

Barber v. Mason, 5 Coldwell 108, December 1867. By a will of 1852 [110] "the negroes are grouped into families, and these families disposed of . . [111] executor . . had sale made of some eight or nine young negroes . . born since the date of the Will"

House v. Woodard, 5 Coldwell 196, December 1867. [198] "Every bid was cried by the auctioneer [in 1855], and each slave knocked off to the highest bidder. . . [199] the children and sons-in-law bought all the slaves that were sold."

Bedford v. Williams, 5 Coldwell 202, December 1867. In 1847 Persons [203] "executed a deed in trust, to . . Bedford, whereby he conveyed . . Nelson, Amy, John, and Cynthia, for the 'sole use . . and comfortable support' of . . Letitia and Emily . . daughter of Letitia. . . and after the death of both . . for the support . . of the children of [Emily] . . 'If [they] . . [204] should wish any, or all . . sold, and other slaves bought in place of them; or . . prefer to have the money got for any or all . . I authorize . . trustee . . to sell' . . [Emily] [206] was the reputed daughter of [Persons] . . he publicly acknowledged her as such, and at all times manifested great tenderness . . for her. . . Letitia . . died without any formal emancipation; but that many years before her death, she and her daughter lived in a separate house, and her master . . cohabited with her . . and in every respect, treated her as a free woman." [204] "Amy and Cynthia went into the possession of the beneficiaries; and in 1858, . . Persons, sold . . Nelson and John, together with some sixteen other slaves—all he then owned—to . . Taylor, for . . $10,000. Taylor . . sold Nelson, and perhaps some others, to . . Chilton, who . . re-sold him to . . Persons, who . . died

on the first day of January, 1854, application should be made to these negroes to know whether they were willing to go to Liberia; and all . . willing . . should be free on that day; and those who . . refuse . . should be sold. Certain . . were to have the proceeds of their hire for a certain length of time previous to their emancipation; twenty dollars for each negro going to Africa were to be paid to the American Colonization Society, provided that society would undertake to transport . . and the remainder . . arising from the sale or hire . . to be divided between" his heirs. He [171] "does not expressly designate any fund for the payment of debts and expenses." The widow dissented. [174] "The three negroes over . . twenty-five ['old and of little value'] were sold . . [175] the Court decreed [December Term, 1852] . . that the slaves directed to be emancipated . . be hired out . . until the proceeds . . should be sufficient to pay all the liabilities . . [176] The negroes . . expressed their desire to go to Liberia. The total hire . . up to . . January, 1854, was $1,024.33, . . the slaves were hired out . . till . . October Term, 1860, when the Clerk and Master reported . . all the . . liabilities . . paid, and . . a large balance . . not sufficient to send the negroes to Liberia; . . [decree] directing . . to hire them out for the year 1861. . . do not appear to have been so hired after that time. . . 1867, . . [177] amount arising from the hire . . on hand . . was $3,107.43."

Held: [178] "This fund clearly belongs to those for whose benefit it was intended and by whose labor it has been created. . . The bequest of freedom is of a higher nature than a pecuniary legacy, and . . will not abate . . to satisfy such a legacy, or be compelled to contribute if it is absorbed by the debts" [Andrews, J.]

Milly v. Harrison, 7 Coldwell 191, December 1869. See Stephenson *v.* Harrison, p. 576, *supra*. The widow died in 1862. [198] "A supplemental bill was then filed by the next friend, on behalf of the negroes, . . stating that the negroes were now free, but in an unprotected condition, and without means of support, except the fund bequeathed . . the Court . . appointed . . a receiver to take charge of the negroes, and to hire out those capable of labor. On the same day, the next friend . . presented to the Court a written stipulation for the settlement of the litigation . . and a decree was entered in accordance with the said agreement; . . the executors were charged with a balance of cash in their hands, belonging to the fund of the negroes, (after crediting them with . . $8,498.98, for payment of debts, expenses . . and compensation to the executors,) of $27,177.44. They are charged with . . $6,645.29, as interest . . and are [further] credited with . . $4,823.33, for moneys advanced and for [further] services . . [199] The next friend . . waived all claim . . for the profits of speculations . . The making of such . . is positively denied"

Held: I. [200] "as . . the Court . . was satisfied . . that nothing further could be realized by pursuing a litigation as to that matter [profits], we will not . . disturb the decree in that respect. . . [II. The executors] [203] had no right to pay . . debts and expenses [[201] 'to the amount of more than thirteen thousand dollars'] out of the fund

belonging to the negroes, unless the fund first liable proved insufficient; . . If [so] . . and these have been paid out of the trust fund, then this fund is entitled to contribution from the other legatees . . [III.] [205] In the anomalous, half emancipated condition in which . . these negroes were left at the [widow's] decease . . and in the turmoil of the late war, the appointment of a receiver was probably necessary . . entitled to reasonable compensation . . out of the earnings of the negroes. . . [IV.] [206] by the change in the letter and policy of our laws [February 22, 1865], they became entitled to receive . . the fund . . without the necessity of going to Liberia" [Andrews, J.]

Wiseman v. Russey, 7 Coldwell 233, December 1869. [234] "Complainants allege [in 1867], that about the first of January, 1863, they hired . . five negroes . . for the year 1863, . . gave their note for $750; 'that the contract . . was made with a view to a payment in Confederate money, . . then much depreciated, . . very little, [or no other money,] in circulation . . The hire . . was . . double the value . . in any good currency.' . . stipulated that they were to give up the negroes if called for at any time, . . This was for the purpose of removing the negroes in the event that kind of property should be further jeopardized by the advance of the Federal troops. The troops came, and two of the men went with them; the others remained, but were of very little service." Bill dismissed. Affirmed: [235] "It is . . upon its face, a contract to pay legal currency. . . [236] the hirer took all the risks of owner" [Hawkins, J.]

Wheless v. Espy, 7 Coldwell 237, December 1869. [240] "In 1833 she sold Melinda, and with the proceeds bought furniture."

Ketchum v. Dew, 7 Coldwell 532, April 1870. [534] "September, 1859, Leonidas [Ketchum] . . bought these [five] negroes from [his aunt] Mrs. Dew. . . [535] he agrees to pay . . $5,100 . . January, 1862; and also . . $600, as interest [on each subsequent 1st of January, including the 1st of January, 1862.] . . Mrs. Dew lived at Philadelphia, . . [537] These were family negroes. . . He had had possession [in Memphis] . . for some time before his purchase, hiring them out, and controling [*sic*] them for Mrs. Dew;" [535] "Leonidas, . . after this sale was . . agreed upon, took one of the negroes—a boy, named Isham—to New Orleans, and placed him in a negro mart for sale; . . he died from . . an overdose of laudanum. . . [538] $2,000 was included in the note as his price, . . [539] Leonidas had insured Isham, . . [540] It is alleged that the insurance company refused to pay because Isham committed suicide. . . The Chancellor . . disallowed the $600 interest per annum, and decreed that defendant's debt be reduced to $5,100, . . with interest" from September 1, 1859. Affirmed.

Morgan v. Pope, 7 Coldwell 541, April 1870. Pope made his will in January 1863, and died in March 1865. The will directs [542] "that all his estate . . be sold . . but that the executors might reserve . . two favorite house servants; and each of his sons might also select and receive one . . [544] At the breaking out of the war . . the testator was

the owner of . . some seventy or eighty slaves, worth about $60,000. During the progress of the war, and before the date of the will, slave property had decreased in value, and at the date of the will slaves were not worth more than one-fourth their value at the breaking out of the war. Before the date of the will, a portion of the slaves . . amounting . . to about one-fourth of the value of the entire lot, had abandoned his services; and . . at the date of the will the testator regarded . . slavery as virtually abolished. In 1863, he said if he could secure two crops of cotton at the then existing prices, the negroes might go, and he would be satisfied. He did secure the crops of 1863 and of 1864, and sold them at greatly enhanced prices. . . [545] At the breaking out of the war, the testator was the owner of . . real estate in and near . . Memphis" "In consequence of the war, [such property] . . was worth [in October, 1866,] from 75 to 100 per cent. more than it was before the war. . . the testator's whole estate, in 1866, was worth as much, or within ten or fifteen thousand dollars of as much, as his whole estate, including the slaves, was worth in April, 1861, and about fifty thousand dollars more than his estate was worth at the date of the will, leaving the slaves out"

State v. Mosely, 7 Coldwell 576, April 1870. In 1852 or 1853 [579] "the deputy [sheriff] . . went to the house of . . Turner, . . and read to him the injunction which accompanied the attachment. The slaves were present, on the plantation, and a list of their names was obtained, . . [580] During the night the slaves escaped, and they were never recovered."

Marshall v. Dodson, 1 Heiskell 95, September 1870. On December 2, 1862, a slave was sold for $1025.

Clevenger v. Clevenger, 1 Heiskell 104, September 1870. "impracticable to divide the slaves, . . directed, by decree at March Term, 1861, to be sold . . most of the slaves were purchased by the distributees. One . . at . . $1,100, one . . for $1,005, and one . . for $889. . . Clerk and Master of . . Court, . . and the administrator . . [106] announced that when the notes fell due [in twelve months], they would receive payment in whatever was the currency then in use."

Witt v. Haun, 1 Heiskell 160, September 1870. The plaintiff, in the spring of 1864, [161] "applied to Col. Giltner, then in command of the Confederate forces, to send a scout for the purpose of breaking up a band of forty or fifty white men and negroes, ('bush-whackers,' . .) who . . were supposed to be the persons who had pillaged the mill."

Cochreham v. Kirkpatrick, 1 Heiskell 327, September 1870. William Smith's will, executed July, 1859: [329] "that my black girl, Eliza, be free at my death, . . and that she is to have the privilege of living on the land that I have given to my son . . or living with any of the connection, as the case may be." Codicil, executed September 1859: "that my black girl . . be not free until the death of my wife." The widow is still living. The son died after the death of the testator, and [329] "his interest in the land was sold to pay his debts, and bought by . . Kirk-

patrick, who . . brought an action of unlawful detainer against the complainants [Eliza and her husband];" who filed a bill to enjoin the suit. Bill dismissed.

Decree affirmed: "It does not appear that . . Eliza, ever obtained . . [330] the assent of the State to her emancipation. It was manifestly the intention of the testator that she should remain in the State, and the bequest of freedom, on this condition, was . . void,[1] . . The privilege of living upon the land was void, . . contrary to the policy of the State at the date of the will, and . . death of the testator, . . Article 13 of the Constitution of the United States, and later provisions in the Constitution of Tennessee . . could [not] so operate as to vest an interest in the land, . . contrary to . . the laws and policy of the State, existing . . when [the will] . . took effect." [Nelson, J.]

Burts v. Evans, 1 Heiskell 420, September 1870. In 1860 a negro man was sold for $1200.

Lynch v. Burts, 1 Heiskell 600, September 1870. George Squibb's will, executed in October 1852: "that my negro girl, Jennie, shall, at the decease of my wife, be set free, and sent to Liberia or some other suitable place; and to meet the expense . . [601] I . . direct my executors to set apart . . five hundred dollars . . to inure to the benefit of . . Jennie." "The bill alleges that Jennie . . had abandoned her mistress in September, 1863, claiming to be free under the public events of the late civil war; . . [602] The answer denies the abandonment, and avers that . . about the latter part of the war, . . her . . mistress . . commanded her to leave the place;"

Held: [605] "The will had invested her with the right of freedom, . . its enjoyment was postponed, but the right to the pecuniary bounty was a part of the bequest of freedom,"

Rucker v. Moore, 1 Heiskell 726, September 1870. On April 3, 1862, [733] "boy Westley, girls Harriet, Letta and Amanda, and two children" were sold for partition, for $3,590.60, payable in six months. [730] "The sale is ordered upon the report of the Clerk, based upon . . [insufficient] testimony . . By the decree, no . . advertisement of the time of sale is directed, . . [731] [other] errors and omissions," Held: "the sale . . was absolutely void."

Kissom v. Nelson, 2 Heiskell 4, Dcember 1870. [9] "a deed indented [in 1859], . . to retain the legal title [to fifty acres] for the benefit of himself and wife and his old slave, Chloe,"

McLean v. Houston, 2 Heiskell 37, December 1870. In February 1863 a slave was sold for $1025, payable in twelve months. In 1864 [39] "he had gone off, and was, practically, free,"

Snell v. Elam, 2 Heiskell 82, December 1870. Valuation of estate, November 17, 1861 (?): [85] "Charles, $1,000; Amy, $800; Davy, $1000; Tom, $800; Margaret, $600; Ruth, $600; John, $450."

[1] Code, sects. 2692-2710.

Wynne v. Warren, 2 Heiskell 118, December 1870. [120] "1860, the defendants reported that they had found it impracticable to exchange . . negro boy . . for a [young] woman or woman and child [for the advantage of both the life estate and the estate in remainder], and that they had sold the negro boy for one thousand dollars, his full value, . . [121] due the 25th December, 1859, . . payment of the purchase money and interest . . 10th of January, 1861, . . [123] The price of negroes, in the meantime, was rapidly rising; there were no more sales known to them. That, in February, 1862, they found a woman for sale, . . but the complainant . . did not like her;"

Wiseman v. Bean, 2 Heiskell 390, January 1871. [391] "On the 2nd of April, 1860, . . Wakefield bought a slave at a sale made by the Clerk and Master . . for $1,300. The note not . . paid at maturity, . . [394] Arnold . . sold her at public sale, . . as a deputy Sheriff, when she was bid off . . at $901."

Lester v. Vick, 2 Heiskell 476, January 1871. Jemima Carr's will, 1857: [477] "I direct that my executor sell my two slaves, Amanda and Alexander, which he may do at private sale, in order to secure . . [478] good masters. I prefer that they should select their masters, provided they select men that will buy them at a fair price."

Officer v. Sims, 2 Heiskell 501, January 1871. [503] "Twelve months after date, we promise to pay . . five hundred and seventy-five dollars, . . for a negro girl, . . But we . . reserve a lien . . for the purpose of securing the payment . . at which time we agree to make a bill of sale . . This 9th of January, 1862." "signed only by the purchasers, who are the defendants . . [504] refused to pay" Suit was instituted in 1866.

Held: [510] "The subsequent changes in the organic law,[2] by which that species of property was destroyed, does not relieve the purchaser of the obligation to pay"

Johnson v. Johnson, 2 Heiskell 521, January 1871. [523] "In December, 1862, . . [a bill was] filed . . for the purpose of procuring the sale of . . slaves, . . that the proceeds might be partitioned . . A decree of sale was made, . . [524] three of the distributees, purchased four . . at . . $3,580, paying $179 in cash, and giving their notes, . . the report of sale was never confirmed [by the court]. . . [525] 'about the last of July, 1863, when Bragg's forces were leaving . . Tennessee, and the Federals advancing, John A. Johnson [administrator and one of the purchasing distributees], of his own will, and by the . . advice of C. M. Johnson, one of the joint purchasers [and a distributee] . . removed [the negroes] . . to . . Alabama, and that in 1865, after the . . close of the war, said negroes were brought back.'"

Held: the loss of the slaves falls on all the distributees.[2] John A. Johnson and C. M. Johnson are responsible for reasonable hire for the slaves till their emancipation.

[1] Tenn. Constitution, Feb. 22, 1865.
[2] Act of 1827, ch. 61, and Code, sect. 2246.

Hudson v. King, 2 Heiskell 560, January 1871. On February 18, 1862, the executor sold [562] "on a credit of one year . . [563] the man, Green, for $1,050, . . and Anthony for $950, . . [564] held by the purchasers . . until . . emancipation."

Held: [575] "The purchasers will be required to pay"

Matthews v. Thompson, 2 Heiskell 588, January 1871. [589] "the . . slaves belonging to his estate were sold, pursuant to a decree, . . September Term, 1859. . . sales . . confirmed by a decree . . May, 1860, when a further order was made, directing a sale of . . four slaves, who had not been sold. The notes . . amounted to $20,669.50."

Killebrew v. Murphy, 3 Heiskell 546, February 1871. [560] "that the slaves were impressed by military authority, or absconded of their own volition, or . . all ultimately lost by the results of the war."

Andrews v. Page, 3 Heiskell 653, February 1871. Andrews [657] "was the owner of . . Bill, Brit and Dilly, in . . 1857; that he sold them to Harry Page, the husband and father, for $3,200; . . in 1859 . . about one-half . . had been paid;" [656] "left the country in consequence of great political excitement and because of an apprehension that he and his family would be reduced to slavery, . . first went to Cincinnati, but afterwards . . to . . Nashville . . [657] killed [there] . . in a saw mill, in 1864; that he and Dilly had lived together as husband and wife for fifteen years," [654] "this attachment bill charging that there was a balance due of $1,550, was filed [in 1861.] . . [656] he owned three tracts of land, of six, seven and one hundred and ninety-six acres . . and was the equitable owner of about one hundred and twelve acres" "1866, an answer and cross bill was filed in the names of Dilly Page . . and others, . . alleged that . . [657] Dilly is entitled to dower;"

Held: [660] "it was generally held, in the slaveholding States, that the marriage of slaves was utterly . . void; . . But we are not aware that this doctrine ever was distinctly and explicitly recognized in this State. Before the . . unconstitutional, and impertinent interference, of . . intermedlers [*sic*] in other States . . rendered it necessary for the State to guard against the effect of their incendiary publications, and to tighten the bonds of slavery by defensive legislation, against . . untiring efforts to produce insurrection, the uniform course of decision in this State was shaped with a view to ameliorate the condition of the slave, . . [666] there were circumstances under which the courts of this State recognized the relation of husband and wife . . as existing among slaves, . . and we hold, that a marriage between slaves, with the assent of their owners, whether contracted in common law form, or celebrated under the statute,[1] always was a valid marriage in this State, and that the issue . . were not illegitimates. . . not . . followed by all the legal consequences, resulting from the marriage of white persons. . . [670] when Dilly . . [was] purchased by her husband, she acquired an inchoate right to freedom, . . needed nothing to perfect it but the assent of the State;

[1] The marriage act of 1778, ch. 7. Car. and Nich. 450.

. . given by general emancipation; . . her rights as a free woman thereby relate back to the date of her purchase, . . there is no difference between her right to dower and the right provided by the general laws;" [Nelson, J.]

Puryear v. Edmondson, 4 Heiskell 43, March 1871. [47] "The pervading idea of the will [of Samuel Winstead], . . executed several years before the late civil war, seems to have been the emancipation of the large number of slaves . . and their transportation to Liberia, for which purpose the will creates an ample fund"

Robertson v. Simmons, 4 Heiskell 135, March 1871. [138] "During the years 1861 and 1862, a large quantity of cotton was raised, by the slaves on the plantation,"

Barber v. Williams, 4 Heiskell 522, May 1871. [523] "In 1862 or 1863, plaintiff sold . . a boy . . and a girl . . for one thousand six hundred dollars in gold."

Taylor v. McDaniel, 4 Heiskell 545, May 1871. [546] "1860, . . allotted . . a man . . estimated at nine hundred dollars. . . The bill alleges that the slave . . was diseased . . and died . . 1862,"

Jameson v. McCoy, 5 Heiskell 108, May 1871. [109] "About . . 1842 . . Ward . . of North Carolina, determined to remove to Tennessee. . . To avoid separating Kissee and her children from Caesar [her husband], Ward purchased him, and . . agreed with Caesar, that, 'after they reached Tennessee, he should have his time by repaying the amount paid for him.' . . About a year after they settled in Dyer county Caesar . . was ready to pay for himself. Ward received the money, and 'let Caesar set up for himself.' . . Ward leased . . land . . and gave it up to Caesar to cultivate for his own benefit. From this time Caesar ceased to have a master, . . He was industrious, frugal and energetic . . [110] cautious and shrewd . . and soon gathered around him a competency . . built himself a house, and then Ward allowed his wife . . to go and live with her husband. Soon after Caesar bought his wife . . with the view of securing her freedom. After a few years . . Caesar heard . . that, if his old master should die, he might again be returned to slavery by one of his sons. . . requested him [Ward] to make a bill of sale . . to . . Warren . . who would stand for him as his protector and trustee. . . a common mode by which the rigid laws against increasing the number of free persons of color . . by emancipation was evaded. . . the arrangement was carried out . . Caesar was virtually free, except that the State had not given her consent. . . McCoy . . succeeded in so completely winning the confidence of Caesar, that he induced him to apply to Warren to transfer the guardianship . . to McCoy. . . [111] Ward and Warren yielded, . . McCoy removed to a different part of Dyer county, . . carried with him Caesar and his wife, and all of their stock, consisting of horses, hogs, etc.; their farming implements, household furniture, provisions, etc. . . about a year [after] . . McCoy commenced . . treating him as a slave . . upon Caesar's manifesting too much dissatisfaction with the restraint imposed . . McCoy asserted the right to

inflict corporal punishment . . whereupon Caesar ran away and returned to his old master . . [112] McCoy . . assured Warren that if Caesar would return and make some little acknowledgments, he might gather up his property and return to his old neighborhood. . . Caesar . . agreed to go back . . for his wife and property. . . immediately seized and committed to the jail . . as a runaway . . McCoy went to a blacksmith . . Vaughn, to have a pair of handcuffs made . . Vaughn proposed to buy him, having no knowledge of his claim to freedom. The trade was made on the condition that he should be sent South and sold. Vaughn paid McCoy $500 for Caesar and his wife, and . . carried them to Memphis, . . sold to Forrest and Hill, who kept a slave mart . . In a short time they were sold to C. R. Jameson in Mississippi, . . Before selling them to Vaughn, McCoy had made such threats . . in the event they disclosed their claims to freedom, that they remained several years with Jameson before they ventured to allude to their true condition. . . [113] Jameson wrote to Ward, . . received a letter, fully confirming . . He immediately set them at liberty, and they returned . . but in a short time they concluded to . . live with Jameson, . . he removed to Arkansas, the old negroes going with him. Caesar . . died . . about 1860, and in 1861 Kissee died in Memphis. They left several children . . Jameson came to Dyer county, took out letters of administration"

Held: I. [120] "after . . Ward . . allowed him *to set up for himself* . . [121] Caesar . . ceased to be a slave, but he was still not a freeman, yet he was capable of holding property. . . So long as the State did not object, his right to remain and to exercise all the privileges . . attached to his new . . condition, could be interfered with by no one. . . He could not sue and be sued, but he could . . possess the fruits of his . . earnings, . . the policy of the law having since so changed as to invest his children with the rights of freemen, . . the County Court . . had jurisdiction to grant administration" II. McCoy must be charged [114] "with the $500 received of Vaughn and interest, with the value of the personal property left by Caesar at McCoy's, and with the services of Caesar and Kissee from the time they went to McCoy's . . [122] about . . August, 1850, until about August or September, 1856, when they were released" by Jameson. [Nicholson, C. J.]

Hardin v. Williams, 5 Heiskell 385, June 1871. "note for $200, of date the 1st January, 1861, due twelve months after . . for the hire of a negro slave,"

Crisp v. Miller, 5 Heiskell 697, June 1871. [698] "May, 1861, Miller gave . . a negro man slave as a pledge . . to secure the payment . . with power to sell . . for not less than $1,100,"

Queener v. Trew, 6 Heiskell 59, September 1871. [65] "The Clerk reported . . at the November Sessions, 1862, . . a negro boy . . [sold] for $1,600; . . [another] for $900; and a negro woman . . for $108."

Sweat v. Rogers, 6 Heiskell 117, September 1871. [118] "action . . commenced . . in February, 1861, by Rogers, . . The first two [counts] allege that the [two] slaves were of bad character for stealing . . and

that Sweat . . their owner, was cognizant . . and did not prevent them . . The third count alleges that the slaves, with the . . instigation of [Sweat,] . . set fire to the store-house of [Rogers,] . . that those chattels . . not so consumed the . . slaves did steal"

Held: [119] "the first two counts do not contain the necessary allegations to make the defendant liable . . but the allegation in the third count . . was sufficient,"

Young v. Cavitt, 7 Heiskell 18, December 1871. Will of Jacob Young, 1858: [20] "that my three negro boys . . have the right to choose their masters, and that he pay whatever he pleases, and if they become dissatisfied, that they have the right to choose again, by the last master paying to the first, whatever he paid, and so on; and I request my executors to see to this, as they have been faithful servants to me, and I desire that they shall be well treated." The administrator with the will annexed "hired [them] out . . from 1859 to 1864, receiving annually for each from $100 to $150. He desired to hire them out for 1864, but they had become apprized of the provision . . in the will, and selected their masters for that year, who tendered each to the administrator one dollar. . . refused . . negroes were not hired out for that year. . . [24] the three negroes . . had served the testator long and faithfully . . his confidence in them [was] as great, as if they had been his own children. . . [25] When informed by an attorney, . . that they could not be made free without leaving the country, . . he shed tears. . . asked if he could not fix it so that they might remain nominally slaves, but really be free, as the poor fellows did not want to be sent off."

Held: [27] "it was the . . purpose of the testator that the masters . . were to own them as trustees, and that the negroes were to be the beneficiaries, with the substantial rights of free men. . . [But they] were kept in absolute slavery [by the administrator], being hired out . . [hire amounting to] several thousand dollars . . [31] No others than themselves have an equitable claim to the fund." [30] "there always has been an intermediate state between absolute slavery and absolute freedom, recognized by our Courts, in which . . the inchoate legal right to freedom, and the vested equitable right to its benefits, have been . . capable of being enforced . . The administrator . . had no right to refuse to execute the trust . . as inconsistent with public policy; this was a question for the State to determine. [Nicholson, C. J.]

Pointer v. Smith, 7 Heiskell 137, January 1872. [138] "in 1863 the negroes of Pointer had been hired to Noble and Bro. in Alabama for that year, . . letter . . by Pointer to . . Smith, . . January 27th, 1864. . . [139] while Pointer was within the Federal lines of occupation, at his home in Williamson county; . . Smith had become a member . . of Noble, Bro. and Co., and as the negroes were in their employ at their furnace, Pointer . . [was] much gratified . . as Smith was his 'friend and neighbor, . . I place my negroes in your hands . . Watch the movements, and run my negroes; hire them out, sell them, and invest . . as your discretion may dictate, for I would not give nine dollars a dozen for all the negroes in Tennessee as they are.' He then goes on to give some

advice to the negroes themselves by way of preventing a desire . . [140] to run away; and tells Smith to give them ' whatever they want in reason, and charge all *extras* to me. . . I do not want my negroes sold except in an extreme case,' but advises they be run whenever necessary, and all expenses and travel charged to him, . . Smith got the negroes from Noble Bros., . . and hired them to Claybough and Co., [who had an iron furnace] at Talledega, Alabama, about last of February . . 1864, for . . $4,500 [Confederate money], . . but afterwards, owing perhaps to failure of Claybough and Co. to clothe them, it was agreed they should pay $3,000 [Confederate money], or about this sum, . . to Smith, and he should clothe them. . . [154] Confederate money, [was] then worth seven to one, part of the time less;"

Frierson v. General Assembly of the Presbyterian Church, 7 Heiskell 683, March 1872. William E. Kennedy [687] "died on the 17th of December, 1863, . . having before this time emancipated the larger portion of his slaves, sending them to Liberia, through the agency of the American Colonization Society." Will: [688] "one thousand dollars to the Rev. W. McLane and the Rev. R. R. Gurley, Secretaries of the American Colonization Society in Washington, D. C., and their successors, to be . . used in promoting the objects . . of said society in colonizing negroes in Liberia,"

Galloway v. Myers, 7 Heiskell 709, March 1872. In December 1860 an execution was levied on [710] "Carter, aged 12 years, value $800; Nimrod, aged 7 years, value $400; and Jim, aged 4 years, value $300; . . to be sold at the market-house"

Logan v. Coal Co., 9 Heiskell 689, April 1872. "the defendant, without the plaintiff's permission, had employed the slave in unloading a coal barge in the Mississippi river; . . the slave fell overboard and was drowned."

Taylor v. Mayhew, 11 Heiskell 596, September 1872. [597] "a bond [executed in Georgia] . . for the payment of $300. . . given for the hire of two negroes, . . February 5, 1863;"
Held: [598] "the President had no power to free the slaves in the southern States by his proclamation [of January 1, 1863]."

Lewis v. Woodfolk, 2 Baxter 25, December 1872. [27] "action . . upon . . promissory notes executed by the defendant . . January, 1860, . . [29] two plantations [in Louisiana] were . . in operation for the benefit of the three owners, . . [who] resided in Virginia. . . sold for partition . . [30] At the sale of the Ashton estate the land, slaves, [ninety-eight in number,] stock and provisions were all sold in bulk, at public auction, . . [35] 'The negroes were drawn up in a line, and were carefully inspected by Mr. Woodfolk, . . All the defects . . were carefully explained' . . the overseer [stated] . . 'He looked at the negroes many times [before the time of sale]. . . talked with them about what they could do, about their disposition to be bought by him;' . . [38] The defendant read to the jury the clause of the Constitution of

Louisiana of 1864, abolishing slavery . . and . . the Constitution of 1868, . . 'Contracts for the sale of persons . . shall not be enforced'"

Held: [53] "the Courts of this State [cannot] tolerate a defence . . based on a provision of the Constitution of Louisiana, which is repugnant to the organic law of the land." [Sneed, J.]

Topp v. White, 12 Heiskell 165, April 1873. [169] "contract, . . February, 1860, . . Davis . . sold . . slaves . . now on . . plantation [in Mississippi]; . . (naming forty-eight). . . [170] Jenny was burned on her leg, which injures her to some extent." "that five of the slaves . . are valued at nothing . . and that . . Davis is at liberty to retain them if he will." It was alleged [204] "That lands in the Mississippi bottom were . . readily had, but was often difficult to find parties who would dispose of their slaves, and when plantations were offered for sale with the slaves upon them, the slaves almost universally constituted the chief inducement . . to buy the property."

Hartfield v. Simmons, 12 Heiskell 253, April 1873. [254] "in 1860, he . . conveyed to his mother a little negro of two years of age for . . $150, paid . . in care and attention bestowed on other slaves of the vendor;"

Gregory v. Hasbrook, 1 Tenn. Ch. 218, April 1873. [219] "hired to him for . . 1862, a negro woman . . for $75,"

Seay v. Ferguson, 1 Tenn. Ch. 287, [April ?] 1873. [287] "1858, . . sold . . a negro woman and child for $1,200,"

Cross v. Bloomer, 6 Baxter 74, September 1873. Will, 1850: [75] "hire out his negro man . . for ten years for the maintenance of his widow and two minor children,"

Embry v. Morrison, 1 Tenn. Ch. 434, October 1873. [435] "November, 1864, the defendant sold to the complainant, then a slave . . of . . Embry, a house and lot in Nashville, . . [for] $2,800, of which $1,000 were paid in cash by the complainant at the time, and the residue secured by his four . . notes . . at 6, 12, 18 and 24 months, . . The complainant afterwards paid the first of these notes, and made three payments on the second . . in all . . $190, . . 1867, this bill was filed to be relieved from this contract"

Held: "a slave has no power to make a contract, unless . . for his freedom, . . The contract of sale was . . absolutely void. . . [436] But . . if the master . . recognize the right of the slave to . . property . . and the slave is afterwards emancipated, his freedom by relation will be held to extend to the time when the right first accrued.[1] . . The complainant is, therefore, entitled to have his notes cancelled . . and to recover the purchase-money paid by him, . . also . . entitled to the value of any permanent improvements . . and to a credit for taxes and necessary repairs paid, and must account for rent . . also pay the costs . . heretofore accrued." [Cooper, Ch.]

[1] See Lewis *v.* Simonton, p. 534, *supra*.

Work v. Walker, 1 Tenn. Ch. 487, October 1873. "all her property . . consisting principally of slaves, . . [488] which for many years, and up to the late war, brought in a handsome income,"

Ensley v. U. S., 9 Ct. Cl. 11, October 1873. [12] "Early in 1864, the claimant executed, at Memphis, a power of attorney to . . Dickman, a subject of Denmark, authorizing him to dispose of . . property . . in Mobile, . . Dickman obtained a passport . . passed through the lines [of the United States forces] . . to Mobile, prior to April, 1864, . . sold for $200,000, in 'confederate money,' certain negroes, . . and invested . . in cotton and turpentine,"

Odom v. Owen, 2 Baxter 446, December 1873. Odom's will [448] "provided that a . . negro woman . . should remain with his father . . and wait on his children, but if she would not do so peaceably, but became refractory, so that she could not be controlled without punishment, . . she was to be sold, . . the contingency having happened . . sold [1860 ?] . . for . . over $1,100."

Ott v. Smith, 3 Baxter 135, December 1873. [136] "given [December 1861], by way of advancements, to my daughter, . . [137] a negro woman, purchased for her at $1,160, and a negro girl at $700,"

DeBerry v. Hurt, 7 Baxter 390, April 1874. Will of Allen DeBerry, 1847: [391] "In consideration of Donelson being my body servant, and his good behavior, I wish him to be set free, and if the laws of the State will not allow it . . that he may be permitted to go to a State where he will be free, . . I also give to my executor . . five hundred dollars, in trust, to be given to . . Donelson when he may be set free, or go off to act for himself, or to do with it as the circumstances . . of . . Donelson may seem most prudent" The executor [392] "provided him with fifteen or twenty acres of good land, and furnished him the means to build a house thereon; . . Donelson was never formally freed, but was allowed . . to live to himself and enjoy the fruits of his own labor until 1859, when he died." Held: Donelson's administratrix [393] "may maintain a suit for the recovery of any balance [of the legacy] . . which may be due:"

Robinson v. Harrison, 2 Tenn. Ch. 11, April 1874. Will of the Hon. John Catron, who died in May 1865: [12] "for the use of his negro man, Henry, 'two thousand dollars in stock . . the interest . . to be drawn by Mrs. Catron . . during her life-time,' . . third codicil . . the stock has since increased to . . nominally . . $5,802.50, . . 'I hereby give . . all [for the use of Henry] . . my executors . . to pay the proceeds of said two thousand dollars over to Henry as . . received. The balance of the proceeds . . to be received by my wife during her life-time, and is to go to Henry at his mistress' death; and if he be then dead, Henry's wife, Pauline, is to be his successor, . . and if she fails to dispose of the same, then the stock, at Pauline's death, is given to her daughter, Mary, absolutely.' Henry died in 1866,"

Long v. Granberry, 2 Tenn. Ch. 85, July 1874. [88] "The facts presented . . by the complainants . . are . . [89] That, only a few hours before his death [in 1841], . . Boddie called for his boy-servant, Washington . . in whom for years he had reposed confidence, handed to him his will, with instructions to carry it to . . Dawson, . . but the same was taken from him by [Boddie's sister] . . and has never since been forthcoming. That Washington, immediately after the death of Boddie, was caused by said [sister] . . to be arrested, sent to jail, placed in irons, sent to south Alabama, and sold, on account of his knowledge of the disposition of the will."

Brown v. Dortch, 12 Heiskell 740, December 1874. [744] "land [belonging to the estate of Aaron V. Brown, Postmaster General] in . . Mississippi [was sold] . . in January, 1860, . . The negroes on this place were then removed to the farm in . . Arkansas. It was then found impossible to employ the slaves profitably . . in connection with those already on the place; . . property . . divided by commissioners . . [745] two shares of negroes combined . . [746] were of the value of $44,850."

Estill v. Deckerd, 4 Baxter 497, December 1874. Will of Wallis Estill, who died in 1835: [500] "after three years from my death my executor shall remove my slaves to my . . land on Crow Creek and lay off one hundred and fifty acres thereof . . and, if he thinks proper, fifty acres more, . . in trust . . My . . negroes are to reside and labor on said land, under superintendence and control of my executor (such farm paying annually to my estate such sum as my executor, with the advice of my representatives, may prescribe; the balance to be applied to the maintenance, etc., of said slaves and their offspring), for twenty years," At the end of that time "slaves and their offspring are to be emancipated, . . land to be divided into lots, as my executor may think just, and assigned to the different families of negroes and their use forever—the title . . to remain in my executor in trust for them. . . [501] for malconduct . . they may forfeit their right to freedom, and in such case they are ordered . . to be sold," Codicil: "Taking into consideration the moral and religious benefit of my slaves . . my will is that the lands [on Crow Creek] . . be sold and the proceeds applied to the purchase of a tract . . on this side of the mountain, where my executor can the better have the oversight and control . . [502] which tract . . is to be subject to all of the [foregoing] provisions." In 1849 Kincaid, "a party interested under the will of . . Estill, . . along with others, . . [503] prayed for a sale of said slaves on account of alleged misconduct . . the Court seems to have refused . . Deckerd, having purchased a number of interests in the estate . . applies to the Court [before September 12, 1853] . . to have said slaves sold as having forfeited their right to freedom by misconduct. . . [504] an order was made . . slaves . . not having been made parties. The Court . . is said, however, to have remarked that the slaves would have a right to . . contest . . On the 12th of September, the slaves . . by Garrett Estill, . .

next friend, filed . . injunction bill, . . 1855, a decree . . enjoining the sale . . and declaring them emancipated upon complying with the Acts . . [507] appointed two persons trustees to hire them out to raise the means to send them to Liberia, and, for ought that appears, they were still under the operation of the decree till 1860, when, upon a bill filed by Samuel Estill and others, claiming their services, they were again placed under control of the Chancery Court . . until . . in effect, freed by . . the civil war. . . December, 1865, this bill was filed by Harry and others . . alleging . . that they were entitled to two hundred acres . . of the Crow Hill farm;"

Held: [518] "Upon the sale of the lands, complainants will be given the option to receive the proceeds in money, or to have the same vested [*sic*] in other lands,"

Kimbrough v. Kimbrough, 1 Tenn. Cas. 305, December 1874. [306] "The will was made in 1858, and provides that complainant [his widow] should have . . as many of his negroes and so much of his stock . . as she wanted, during her life, and at her death to go to his children." The testator died in 1863. "she elected to take . . all the stock on hand, the negroes having been freed by the events of the war."

Pearson v. State, 1 Tenn. Cas. 311, December 1874. [314] "the horse rode by the deceased [in January 1865] had a brand of U. S. upon him. . . he had purchased the horse, which seems to have been an old, wornout animal, from a negro for $12."

Carter v. Montgomery, 2 Tenn. Ch. 216, April 1875. [217] "Dinah Carter . . was a free woman of color, and the keeper of an assignation house, and seems to have been . . implicated [in 1862] in bringing about the illicit cohabitation of Bruner and Myra [both white]. . . 1864, the Hendersons conveyed the land . . to . . Dinah Carter . . The money . . was paid by Bruner. . . Dinah Carter . . conveyed the land . . to Myra, . . at the instance of Bruner. . . March, 1865, she intermarried . . with . . James M. Garrett. . . September, 1865, filed a bill against her husband for divorce, on the ground of cruel treatment. . . [Two days later,] on her refusal [to return to him], he killed her . . committed to jail . . [218] released upon bond . . never returned. . . [225] James Garrett, a white man, removed from North Carolina to . . this state early in the century, and died about 1833. By his will he emancipated . . Sarah and Esther, of whom he was the reputed father, dividing between them the farm on which he resided, . . Sarah . . had several children, without ever being married, of whom Paralee is one. Paralee . . has had two illegitimate children, of whom . . James M. Garrett is the eldest. . . [226] Paralee, was . . the daughter of a white man. . . witness . . says [the mother of Sarah, 'whom he saw a dozen times'] . . was . . a full black negro [slave of James Garrett]. . . [227] On the other side . . Paralee . . states, as upon information derived from Sarah, Esther, and other members of the family, that Sarah's mother was a mulatto . . [231] Five witnesses describe [Sarah] . . as a dark-skinned mulatto, with Kinky hair, flat nose, and thick lips."

Held: [230] "The hearsay evidence . . as to the color of Sarah's mother, is . . inadmissible, . . It must be conceded, then that . . [she] was a full-blooded negress, or, at any rate—to put it most favorably for those who claim under Garrett—there is no evidence on the point. . . [231] My opinion, from the direct testimony, is that Sarah was only one remove from the negro. . . I am clearly of opinion that James M. Garrett is in the third degree of mixed blood, and that the marriage between him and Myra was void."[1] Myra being illegitimate, and her mother having died, her mother's children are entitled to the land in controversy. [Cooper, Ch.]

[1] Act of 1822, ch. 19, sect. 1. Code of 1873, sect. 2437.

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LIST OF ABBREVIATIONS.

Abb. U. S. = Benjamin V. Abbott, *Reports of Decisions rendered in the Circuit and District Courts of the United States.*

Aikin's *Digest* = John G. Aikin, *Digest of the Laws of the State of Alabama* (2d ed.).

Ala. = *Reports of Cases argued and adjudged in the Supreme Court of Alabama.*

Am. Law Reg. = *American Law Register* (Philadelphia).

Bailey = Henry Bailey, *Reports of Cases argued and determined in the Court of Appeals of South-Carolina, on Appeal from the Courts of Law.*

B. and C. = Henry A. Bullard and Thomas Curry, *A New Digest of the Statute Laws of the State of Louisiana from the Change of Government to the Year 1841 inclusive.*

Black. Com. = Sir William Blackstone, *Commentaries on the Laws of England.*

C. C. = *Civil Code of the State of Louisiana. By Authority, New-Orleans* (1825).

Civ. Code = *A Digest of the Civil Laws now in force in the Territory of Orleans, with Alterations and Amendments adapted to its Present System of Government. By Authority, New-Orleans* (1808).

Clay's *Digest* = C. C. Clay, *Digest of the Laws of the State of Alabama* (1843).

Clayton's *Digest* = Augustin S. Clayton, *A Compilation of the Laws of the State of Georgia.*

Cobb = Thomas R. R. Cobb, *Reports of Cases in Law and Equity argued and determined in the Supreme Court of the State of Georgia.*

Cobb's *Digest* = Howell Cobb, *Compilation of the General and Public Statutes of the State of Georgia.*

Code (of Ala.) = *The Code of Alabama.* Prepared by John J. Ormond, Arthur P. Bagby, George Goldthwaite (1852).

Code (of Ga.) = William A. Hotchkiss, *A Codefication of the Statute Law of Georgia, including the English Statutes of Force* (1845).

Col. Rec. of Ga. = *Colonial Records of Georgia.*

Cranch = William Cranch, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*

Ct. Cl. = *Cases decided in the Court of Claims of the United States.*

Digest of City Laws = Donatien Augustin, *A General Digest of the Ordinances and Resolutions passed by the City Council of New Orleans* (French and English, 1831).

Dudl. Ga. = G. M. Dudley, *Reports of Decisions made by the Judges of the Superior Courts of Law and Chancery of the State of Georgia.*

Duval's *Compilation* = John P. Duval, *Compilation of the Public Acts of the Legislative Council of the Territory of Florida, passed prior to 1840.*

Fed. Cas. = *The Federal Cases, comprising Cases argued and determined in the Circuit and District Courts of the United States to 1880.*

Fla. = *Reports of Cases argued and determined in the Supreme Court of Florida.*

Fr. Miss. Ch. = John D. Freeman, *Reports of Cases decided in the Superior Court of Chancery of the State of Mississippi.*

Ga. = *Reports of Cases in Law and Equity argued and determined in the Supreme Court of the State of Georgia.*

Ga. Dec. = *Georgia Decisions, Superior Courts* (1841-1843).

Grat. = Peachy R. Grattan, *Reports of Cases decided in the Supreme Court of Appeals and in the General Court of Virginia.*

Har. and J. = Thomas Harris, jr., and Reverdy Johnson, *Reports of Cases argued and determined in the General Court and Court of Appeals of the State of Maryland from 1800 to 1805, inclusive.*

Har. and McH. = Thomas Harris, jr., and John McHenry, *Maryland Reports, being a Series of the Most Important Law Cases argued and determined in the Provincial Court and Court of Appeals of the then Province of Maryland, from the year 1700 down to the American Revolution.* [Later volumes refer to the General Court and Court of Appeals of the State of Maryland.]

Hen. and M. = William W. Hening and William Munford, *Reports of Cases argued and determined in the Supreme Court of Appeals of Virginia.*
Howard = Benjamin C. Howard, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
How. and Hutch. = Volney E. Howard and A. Hutchinson, *Statutes of the State of Mississippi of a public and General Nature . . .*
How, Miss. = Volney E. Howard, *Reports of Cases argued and determined in the High Court of Errors and Appeals of the State of Mississippi.*
Hutch. Code = A. Hutchinson, *Code of Mississippi: being an Analytical Compilation of the Public and General Statutes of the Territory and State* (1798-1848).
La. = *Louisiana Term Reports or Cases argued and determined in the Supreme Court of the State of Louisiana.*
La. An. = *Reports of Cases argued and determined in the Supreme Court of Louisiana.*
La. Hist. Q. = *Louisiana Historical Quarterly.*
Law Rep. = *Monthly Law Reporter.*
Leigh = Benjamin W. Leigh, *Reports of Cases argued and determined in the Court of Appeals and in the General Court of Virginia.*
McNutt's Code = *Laws of the State of Mississippi embracing all Acts of a Public Nature from . . . 1824 to . . . 1838 inclusive* (1838).
Mart. La. = François X. Martin, vols. I., II. *Orleans Term Reports or Cases argued and determined in the Superior Court of the Territory of Orleans;* III.-XII. *Louisiana Term Reports or Cases argued and determined in the Supreme Court of that State.*
Mart. N. S. = François X. Martin, *Louisiana Term Reports or Cases argued and determined in the Supreme Court of that State* (1823-1830).
Martin's *Digest* = François X. Martin, *Digest of Acts, Territory of Orleans and State of Louisiana* (English and French, 3 vols.).
Meigs = Return J. Meigs, *Reports of Cases argued and determined in the Supreme. Court of Tennessee.*
Minor = Henry Minor, *Reports of Cases argued and determined in the Supreme Court of Alabama.*
Miss. = *Reports of Cases decided by the Supreme Court of Mississippi.*
Mo. = *Reports of Cases argued and determined in the Supreme Court of the State of Missouri.*
Moreau's *Digest* = Louis Moreau Lislet, *The General Digest of the Acts of the Legislature of Louisiana* (1804-1827).
Newberry = John S. Newberry, *Reports of Admiralty Cases argued and adjudged in the District Courts of the United States.*
New Code = *The Revised Code of the Statute Laws of the State of Mississippi* (1857).
Otto = William T. Otto, *Cases argued and adjudged in the Supreme Court of the United States.*
Partid. = *The Laws of las Siete Partidas, which are still in force in the State of Louisiana.* By Moreau Lislet and Carleton (1820).
Penal Code (of Ala.) = See Clay's *Digest.*
Phila. = Henry E. Wallace, *Philadelphia Reports: or, Legal Intelligencer condensed, containing the Decisions published in the Legal Intelligencer, from 1850 to 1855 inclusive* (3d ed., 1870).
Pickering = Octavius Pickering, *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.*
Porter = Benjamin F. Porter, *Reports of Cases argued and adjudged in the Supreme Court of Alabama.*
Prince's *Digest* = Oliver H. Prince, *Digest of the Laws of the State of Georgia.*
Rev. Code = *The Revised Code of the Laws of Mississippi, in which are comprised all such Acts of the General Assembly, of a Public Nature, as were in force at the End of the Year 1823.*
Rev. St. = *The Consolidation and Revision of the Statutes of the State* [*of Louisiana*] *of a General Nature.* Prepared by Levi Peirce, Miles Taylor, William W. King (New Orleans, 1852).
R. M. C. = Robert M. Charlton, *Reports of Decisions made in the Superior Courts of the Eastern District of Georgia.*
Rob. La. = Merritt M .Robinson, *Reports of Cases argued and determined in the Supreme Court of Louisiana.*
S. and M. = W. C. Smedes and T. A. Marshall, *Reports of Cases argued and determined in the High Court of Errors and Appeals for the State of Mississippi.*

S. and M. Ch. = W. C. Smedes and T. A. Marshall, *Reports of Cases argued and determined in the Superior Court of Chancery of the State of Mississippi.*
S. and R. = Thomas Sergeant and William Rawle, jr., *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
Stat. at L. = *Statutes at Large of the United States.*
Stewart = George N. Stewart, *Reports of Cases argued and determined in the Supreme Court of Alabama.*
Stew. and P. = George N. Stewart and Benjamin F. Porter, *Reports of Cases at Law and in Equity argued and determined in the Supreme Court of Alabama.*
Thompson's *Digest* = Leslie A. Thompson, *A Manual or Digest of Statute Law of the State of Florida, in force at the end of the Second Session of the General Assembly of the State, January 6, 1847.*
Toulmin's *Digest* = Harry Toulmin, *Digest of the Laws of the State of Alabama.*
T. U. P. C. = Thomas U. P. Charlton, *Reports of Cases argued and determined in the Superior Courts of the Eastern District of the State of Georgia.*
U. S. = *Cases argued and adjudged in the Supreme Court of the United States.*
Walk, Miss. = R. J. Walker, *Reports of Cases adjudged in the Supreme Court of Mississippi.*
Wallace = John W. Wallace, *Cases argued and adjudged in the Supreme Court of the United States.*
Wheaton = Henry Wheaton, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
Winston = P. H. Winston, *Cases argued and determined in the Supreme Court of North Carolina.*

JUDICIAL CASES CONCERNING SLAVERY

GEORGIA

INTRODUCTION

I.

Judge Lumpkin states in 1853 [1] that "the condition of the African race is different in every slave state;[2] and is less favorable in the extreme Southern, than in the more Northern slave States." This condition became still less favorable after that date through certain decisions of the Supreme Court of Georgia in regard to emancipation.

The act of 1801 [3] forbade emancipation except by act of the legislature, and made it unlawful to record "any deed of manumission, or other paper which shall have for object the manumitting . . any slave." The act of 1818 [4] increased the penalties, but provided that the act of 1801 should be "construed . . to inhibit the recording only of so much of any instrument . . as shall relate to the manumitting . . of . . slaves." In a long series of decisions from 1830 to 1871 [5] the court held that wills directing emancipation outside the state did not violate either "the letter or spirit" [6] of those acts. The Supreme Court was "strongly urged in 1854 [7] . . to lean to that interpretation [of Waters's will] most unfavorable to manumission," but the extra-territorial emancipation of his slaves was upheld. Judge Lumpkin contended that, even down to 1824, [514] "the true character of . . slavery had not been fully understood . . at the South; and that she looked to emancipation . . in the uncertain future, as the only cure for the supposed evil;" for in that year the senate of Georgia, though censuring as "indelicate" a resolution of the legislature of Ohio on the subject of abolition, concluded its own resolution in response: "Georgia claims the right . . of moving this question when an enlarged system of . . philanthropic exertions, in consistency with her rights and interest, shall render it practicable." But the situation changed. "Thanks to the blind zealots of the North, for their unwarrantable interference . . the public mind [was 'roused'] to a thorough investigation . . [resulting in] a settled conviction that it was wisely ordained by a forecast high as heaven above

[1] Bryan *v.* Walton, p. 33, *infra.*

[2] "Slave-holding state" is the usual expression employed in "the more Northern slave States."

[3] Prince's *Digest* (ed. 1837), p. 787.

[4] *Ibid.*, p. 794.

[5] Jordan *v.* Bradley, p. 12, Roser *v.* Marlow, p. 14, Vance *v.* Crawford, p. 19, Cooper *v.* Blakey, p. 28, Cleland *v.* Waters, pp. 38, 46, Sanders *v.* Ward, p. 61, Myrick *v.* Vineburgh, p. 75, Green *v.* Anderson, p. 98, and Hargroves *v.* Redd, p. 102, *infra.*

[6] Sanders *v.* Ward, p. 61, *infra.*

[7] Cleland *v.* Waters, p. 38, *infra.*

man's, for the good of both races, and a calm and fixed determination to . . defend it, at any and all hazards." Nevertheless, extra-territorial emancipation had uniformly been upheld by the courts of Georgia. [520] "Whatever change is made, *if any,* should be by the law-making, rather than by the law-administering department of the government." In 1858[8] he thinks the [118] "change in circumstances demands a new policy;" but if it does, "let it . . be inaugurated by the Legislature. . . [124] I have no partiality for foreign any more than domestic manumission. . . Shall I therefore undertake . . to dictate to . . my fellow-citizens, what shall be the law, by wresting these ancient statutes from what I believe to be their true and only meaning?" He holds that [121] "exterior manumission [does not] depend upon domestic emancipation as a condition precedent." In fact attempted domestic emancipation to last even for one moment was fatal to subsequent foreign emancipation.[9] Some testators unwarily provided that their slaves should be "manumitted and sent to a free state," instead of directing that they be "sent and manumitted." This transposition of the verbs made all the difference between slavery and freedom. Beall's will, employing the former phraseology, was held void because [43] "the emancipation . . was to take effect in Georgia," though it "was intended to be *enjoyed* in Liberia, California, or some other free State or Territory."[10]

Beall's will had also violated the law by providing that [28] "those negroes that I have . . emancipated, shall be kept on my plantation . . four years after my death, for the purpose of raising funds" which were to be divided among the negroes after "defraying all expenses." As Judge Benning had observed the year before, in Thornton *v.* Chisholm,[11] "Every successive moment . . would have brought the negroes nearer and nearer to the confines of freedom. . . Is it not plain that evils would result . . the same in kind as . . from putting them in a condition of entire freedom?" On this principle McCoy's will was held void in 1857.[12] The testator had conformed with the legal order, directing that his slaves "be conveyed" to a free state and "there left;" but the removal was postponed till his debts were paid, by their hire if necessary, and till a fund of eighteen hundred dollars had been raised.

The will of Bivens avoided the pitfalls of General Bledsoe's will,[13] which did not mention manumission, but simply directed the removal of his negroes to Illinois or Indiana, and which was held impossible to

[8] Sanders *v.* Ward, p. 61, *infra.*

[9] "the mistake he [Beall] committed was in supposing that a gift of freedom, *in praesenti,* . . to vest after his death, although it be but for a moment of time, was not unlawful." Drane *v.* Beall, 21 Ga. 21 (43). "If the Will gives the slave his freedom to be enjoyed but for one hour within the limits of Georgia, it is void; but if, with an honest intent to put him out of our way and keep him there, *it carries him over the State line as a slave,* it may make what it pleases of him afterwards." Myrick *v.* Vineburgh, 30 Ga. 161 (163).

[10] Drane *v.* Beall, p. 52, *infra.*

[11] P. 50, *infra.*

[12] Pinckard *v.* McCoy, p. 54, *infra.*

[13] Hunter *v.* Bass, p. 42, *infra.*

execute because both states had prohibited the introduction of negroes.[14] Bivens provided [15] that his slaves should be taken to some state or territory "which will admit them, where slavery is not tolerated; to the end that my . . slaves be free," but the removal was not to take place till after the death of his wife. This will was held void because the instant after Mrs. Bivens's death they would be "freemen in this State."

The Gordian knot was cut as to deeds and wills executed after December 14, 1859, for on that day the legislature acted on the suggestion of Judge Lumpkin, made in 1858 and published in 1859,[16] and passed "An Act to prohibit the post mortem manumission of slaves." [17]

The Supreme Court of Georgia in 1855 [18] refused to enforce the law of Maryland to free Margaret, who by a Maryland will of 1828 was to be free at the age of thirty, but had been sent to Georgia "and sold from one to another," and was about to be sold again with her children and removed beyond the state. Judge Lumpkin asks [263] "Can the laws of a sister State . . allowing freedom . . be executed by the Courts of Georgia? [19] Dare we say, in the face of the Acts of 1801 and 1818, that these foreign laws are not prejudicial to our own rights and interests? . . No one pretends that negroes can be carried to New York . . and held there in perpetual bondage . . With what more propriety can slaves be brought here and emancipated?"

The decision of Curry *v.* Curry in 1860 [20] tightened the bonds of slavery in two different ways by overruling two different decisions which had favored emancipation. Dugger's will had provided an alternative: emancipation of his negroes in Georgia if possible; if not, "send them where it can be done out of the state." The court had held in 1837 [21] that the executors should execute "the alternative command" if the legislature refused to emancipate. But in 1860 the direction by Curry, to carry his slaves to a non-slaveholding state, when the alternative, "to elect a master in this State," was held void, was declared void also because the latter showed "the intention of the testator in his entire scheme . . that being to violate . . the manumission laws." In holding the slaves incapable of electing or selecting a master the court overruled the decision in Cleland *v.* Waters [22] in which Judge Lumpkin says:

[14] "the monstrous doctrine of Cypres [*sic*] is not to have given it one inch of ground beyond the *possessio pedis*." [Benning, J.]

[15] Bivens *v.* Crawford, p. 65, *infra*.

[16] Sanders *v.* Ward, p. 61, *infra*.

[17] Laws of 1859, p. 68: "any and every clause in any deed, will, or other instrument made for the purpose of conferring freedom . . directly or indirectly, within or without the State, to take effect after the death of the owner, shall be absolutely null and void."

[18] Knight *v.* Hardeman, p. 40, *infra*.

[19] The Supreme Court of Missouri was of a like opinion in Dred Scott *v.* Emerson (15 Mo. 176), decided in 1852: [584] "It is a humiliating spectacle, to see the courts of a State confiscating the property of her own citizens by the command of a foreign law." [Scott, J.]

[20] P. 76, *infra*.

[21] Roser *v.* Marlow, p. 14, *infra*.

[22] P. 46, *infra*.

[40] " The reasoning which seeks to invalidate this will upon the ground that slaves, as such, are incapable of choosing, is too technical to commend itself to my approval. . . [It is] [41] at war with the whole train of decisions in this and our sister States,[23] as well as of every other civilized country."

The charter of the American Colonization Society was scrutinized in 1857 [24] and a bequest of slaves to the society was held void, as they could not own slaves under their charter; [451] " neither could they take . . them in trust . . to transport them, as slaves," their purpose being to colonize only " free people of color." Judge Lumpkin even inquires if it is not [459] " repugnant to our State policy . . to allow the American Colonization Society to sue in our Courts? " Though " organized with the approbation . . of the wisest and best men of the South from Maryland to Louisiana," the general assembly of Georgia in 1827 protested against the appropriation of money to the society by Congress: [461] " they . . strongly feel the advantages of the Federal Union; . . they will ever defend it from foes, internal as well as external; but they will not, even in the preservation of that Union, permit their rights to be assailed; . . their property to be rendered useless . . by those who come among us under the cloak of a . . hypocritical benevolence." In 1828 they " view with . . distrust, all associations having for their object the abolition of slavery." In 1829 the committee of the legislature refers to the "dangerous movements of the Colonization Society."

The case of Bryan *v.* Walton [25] sheds light on the position of free persons of color, and interprets the acts of 1818 [26] and 1819 [27] in regard to their capacity to hold property.

The Supreme Court in 1846 "cordially, confidently and unanimously agreed " that the fellow-servant rule " cannot be extended to slaves, *ex necessitate rei.*" [28]

II

Judge Robert M. Charlton, in the preface to his " Reports of Decisions made in the Superior Courts of the Eastern District of Georgia," says: [iii] " There are [in 1838] ten judicial districts in . . Georgia. For each, a ' Judge of the Superior Courts ' is appointed. To this judicial functionary, powers are entrusted . . of no ordinary character. . . [He is] presiding officer of a common law tribunal, . . also acts as a Chancellor, . . [iv] His fiat is conclusive. . . The Constitution of the State . . declares, that there shall be ' a Supreme Court for the correc-

[23] Alabama in 1848 (13 Ala. 102) and Virginia in 1858 (vol. I. of this series, pp. 73, 74) repudiated the doctrine that slaves have capacity to select their master.
[24] American Colonization Society *v.* Gartrell, p. 58, *infra.*
[25] Pp. 33, 50, *infra.*
[26] Cobb 993.
[27] *Ibid.* 995.
[28] Scudder *v.* Woodbridge, p. 16, *infra*.. So held in 1856 in Kentucky. Railroad Co. *v.* Yandell, vol. I. of this series, p. 427.

tion of errors,' but the Legislature . . have hitherto disregarded the solemn mandate." In 1845 the mandate was complied with and a " Court for the Correction of Errors, to be called the Supreme Court," was established. " In the constitution of the Court, there was made by law no titular distinction among its [three] members. . . The elective Body assigned to Colonel Lumpkin the longest term, . . whilst, in the course of time, the seats on either side of him repeatedly changed occupants, the same venerable form steadily holding the centre, came to be regarded as the impersonation of the Court. So entirely did this idea pervade the public mind that the Legislature, at length, made him by title, as he had ever been in fact, Chief Justice of the Supreme Court." [29]

[29] Memorial to Chief Justice Lumpkin, 36 Ga. 23.

Re Negro, 10 Col. Rec. of Ga. 246, July 1767. A petition from Mackenzie "concerning a Negroe of his under Sentence of Death for Robbery . . The Board [1] . . were Unanimous in Opinion that the Sentence of Death . . ought to be executed"

Re Negro Dickson, 10 Col. Rec. of Ga. 631, October 1768. "report of the Justices who sat at the Tryal of a Negro . . Dickson . . found Guilty of the Murder of a free Negroe . . and Sentenced to be Executed . . but . . recommended by the Jury for Mercy . . The Board were unanimous . . that the Sentence . . ought to be executed"

Re Negro, 11 Col. Rec. of Ga. 305, March 1771. "a Report . . by . . Justices . . Concerning the Trial of . . Man Slave Convicted of breaking a Shop and Stealing Sundry goods thereout and also a Memorial of John Glen the Owner of . . Slave praying that . . Slave might be Transported and not executed . . the Board . . were of Opinion the Sentence of the Justices should be carried into Execution"

Re Slaves, 12 Col. Rec. of Ga. 214, February 1772. Presentments of the grand jury in December 1771 before the chief justice and assistant judges: "5th That Slaves are permitted to Rent houses in the lands and Invirons . . of Savannah in said houses meetings of Slaves are very frequent, Spirits and other liquors are sold, and Stolen goods often Concealed . . 6th Peter Randon . . for refusing to deliver up to Justice . . Male Slave . . property of . . Randon said to be Guilty of Felony, . . 7th Peter Randon . . for keeping a Cow pen on great Ogechee River under the directions of Negroes and Indians"

Re Fugitive Slaves, 12 Col. Rec. of Ga. 325, July 1772. "The Presentments of the Grand Jury . . was read and it appearing thereby That a Number of fugitive Slaves have Assembled . . on or near the borders of the River Savannah and are frequently committing Depredations . . with Impunity"

State v. Monaquas, T. U. P. C. 16, January 1805. "that the deceased was one of the crew of a privateer, . . that he left . . vessel in company with three Spaniards, a Portuguese, and a black man;"

Telfair v. Stead, 2 Cranch (6 U. S.) 407, February 1805. "copartners in merchandise, were, . . 1775, indebted to . . a British creditor . . [They] drew out considerable proportions of the partnership funds . . before payment of their debts, and . . invested part . . in . . negroes as their own separate property." In 1796 and in 1799 it was decreed [412] "that . . negroes . . be sold at public sale by the marshal . . and that the proceeds be applied to the discharge of the . . debt."

[1] The Council.

State v. Roberts, T. U. P. C. 26, May 1805. "Indictment for a misdemeanor in receiving stolen goods. . . [28] in the present case, the court cannot take judicial cognizance of the conviction of the principal felon, he being a negro, and not amenable to this jurisdiction, and over that court, (the justices' court) before which he has been tried and convicted, this court [Superior Court] has no control as to criminal charges exhibited against that class of people."

Ex parte George, T. U. P. C. 80, May 1806. "Upon the petition of . . Borroughs and . . Sturges, on . . behalf of George, a free man of colour, . . now in confinement, in the common jail . . under sentence founded upon a conviction for inveigling, or attempting to inveigle a negro; . . stating . . conviction and sentence are illegal and void; . . praying, that a *certiorari* may be granted to remove the said proceedings" [81] "grounds of exceptions to the proceedings . . Because, the justices did not suspend the execution of the sentence, and lay a statement thereof before the governor after security tendered, but proceeded to execute the same. . . Because, the sentence is not warranted by the 12th sect. of the act . . passed 10th May, 1770, . . or of any other act in force in . . Georgia. . . [82] Because, justices of the peace have no jurisdiction in the trial of criminal cases."

Jones, J.: [92] "a *certiorari* ought to issue." [93] "On the return of the *certiorari* the court delivered the following opinion: January Term, 1807. . . George, whether he be a free man or a slave, is equally entitled to the benefit of an appeal to the executive, . . And if it appeared to the court . . that the act under which the prisoner was convicted is deficient in not describing the punishment to be inflicted for the crimes specified in the 12th section, when committed by a free man of colour, it is unnecessary to decide upon the last ground. . . ordered, that the . . conviction and sentence be reversed, and set aside, and that . . George, be discharged from his confinement."

State v. Asselin, T. U. P. C. 184, November 1808. [185] "he took possession of the negroes [[184] 'Sophia, and her son, a child; Benjamin, Delphine, and her son; Muttpuin, Dublin, Antonia'] . . in pursuance of a letter of attorney from . . an inhabitant of the island of Cuba, . . dated . . 1808. . . the wife of the proprietor [when in Georgia had been] . . delegated . . 1806, . . to sell or otherwise to dispose of them for his advantage."

Bank v. Marchand, T. U. P. C. 247, June 1809. [248] "1807, in consideration of a marriage to be solemnized . . Reingeard settles upon Miss Coquillon and her future issue" "three negro slaves, all the merchandise which he then possessed, . . [251] argued . . object . . frustrated by the . . transitory nature of such chattels;" Held: [252] "there is no distinction in this State between one species of chattel and another," [Charlton, J.]

State v. Caswell, T. U. P. C. 280, December 1809. "to answer to a bill of indictment for . . carrying away six negroes"

Hopkins v. Bolton, T. U. P. C. 294, April 1810. "A levy was made by the sheriff, the property sold, and he has presented . . bill of fees . . 201 days' subsistence, from 15th September, 1809, to 3d April, 1810, of fifty negroes, at 12½ cents per day [1] . . $1256 25 . . [295] conceded . . that the negroes had not been removed from the plantation . . that he had not furnished provisions . . It was urged, that if the sheriff had discharged his duty *with rigour,* the consequence would have been, a confinement of the slaves in the common prison . . [296] from the depositions submitted by the purchasers, it appeared that no responsibility was considered as attached to the sheriff, either for the delivery of the negroes on the day of sale, or for any losses . . in the mean time." Held: [299] "the fee for subsistence under the particular circumstances of *this case,* ought to be deducted." [T. U. P. Charlton, J.]

State v. Couper, T. U. P. C. 306, June 14, 1810. "1799, . . Couper . . acknowledged himself indebted to the governor . . £5000 sterling, the condition of which is . . 'Whereas fifty-two negro slaves have been imported . . in the schooner *Liberty* . . from North Carolina, the property of persons emigrating from thence and addressed to the care of . . Couper: . . if . . Couper, or the proprietors of the . . negroes shall produce such documents as the law requires . . or . . deliver up the . . negroes . . then . . this obligation to be void,' . . Upon the non-performance, or the supposed non-performance, of the terms stipulated . . a *scire facias* [2] was brought"

Carnochan v. Abrahams, T. U. P. C. 196, June 16, 1810. [201] "a power of attorney from Lydia Haven, . . England, . . to obtain administration on the estates of her husbands, . . Haven, and . . M'Kinnon; . . the latter died . . in Nassau, New-Providence, . .to dispose of negroes and other property in Georgia, . . [203] Mrs. Haven . . calls her father 'formerly of Antigua.'"

Forbes v. Morel, R. M. C. 23, January 1816. Berrien, J.: "it is contended, that for as much as these negroes were not actually in the custody of the Sheriff during the period intervening between the levy and the sale, but were by him permitted to remain in the possession of the defendant, that the Sheriff has therefore no right to subsistence money. . . [24] I shall depart with extreme reluctance from a precedent [3] . . supported by so many considerations of humanity and of equity. . . [25] It cannot be required that the Sheriff should be subject to the responsibility . . without security against the risk, or compensation for incurring it. If the latter be with-held, the former will be enforced, and . . our jails would be crowded with the miserable victims of the principle which this motion is calculated to establish."

[1] Act of Dec. 18, 1792. Prince's *Digest* (1822), p. 175.

[2] [307] "founded upon the infraction of the second section of the act to prohibit the farther importation of slaves . . 'if any person . . shall bring into this state, from any other state in the United States, any . . slave, . . or make sale . . to any of the inhabitants of this state, . . [he] shall forfeit . . for the first offense . . five hundred dollars, and for . . every subsequent offence, one thousand dollars, for every . . slave, brought."

[3] Hopkins *v.* Bolton, *supra.*

Spencer v. Negroes Amy and Thomas, R. M. C. 178, May 1822. "will of the elder Spencer, directing the manumission of these slaves, and the deed of the heirs carrying the wishes of the testator into effect, dated . . 1808," Held: [179] "under the operation of the Act of 1801,[1] these slaves remained the property of William Spencer, . . they must now be considered the property of that estate; and that interest can only be divested by an Act of the Legislature,"

State v. Abbot, R. M. C. 244, December 1822. "application to bail a prisoner . . committed for homicide, . . [247] The inquest states that . . Ezekiel . . came to his death by a shot . . from a gun by his master . . depositions . . contain the voluntary confession of the prisoner to the physician who was called to attend the deceased, narrating at length the causes which impelled him to the deed." [249] "The application . . for bail is refused, and the prisoner must be remanded."

The Antelope, 10 Wheaton (U. S.) 66, February 1825. [67] "A privateer, called the *Columbia,* sailing under a Venezuelan commission, entered the port of Baltimore in . . 1819; clandestinely shipped a crew of thirty or forty men; proceeded to sea, and hoisted the Artegan flag, assuming the name of the *Arraganta,* and prosecuted a voyage along the coast of Africa; her officers and the greater part of her crew being citizens of the United States. Off the coast of Africa she captured an American vessel, from Bristol, in Rhode Island, from which she took twenty-five Africans; she captured several Portuguese vessels, from which she also took Africans; and she captured a Spanish vessel, called the *Antelope,* in which she also took a considerable number of Africans. The two vessels then sailed in company to the coast of Brazil, where the *Arraganta* was wrecked, and her master, Metcalf, and a great part of his crew, made prisoners; the rest of the crew, with the armament of the *Arraganta,* were transferred to the *Antelope,* which . . [68] assumed the name of the *General Ramirez,* under the command of John Smith, a citizen of the United States; and on board this vessel were all the Africans, which had been captured by the privateer in the course of her voyage. This vessel, thus freighted, was found hovering near the coast of the United States, by the revenue cutter, *Dallas,* . . and finally brought into the port of Savannah for adjudication. The Africans, at the time of her capture, amounted to upwards of two hundred and eighty. . . [69] about one-third of them [had] died,"

Decreed: [132] "restitution to be made to the Spanish claimant, shall be according to the ratio which ninety-three . . bears to the whole number, comprehending as well those originally on board the *Antelope,* as those which were put on board that vessel by the Captain of the *Arraganta.* . . deducting from the number the rateable loss . . [133] and all the remaining Africans are to be delivered to the United States, to be disposed of according to law;" [114] "the United States assert no property in themselves. They appear in the character of guardians, or next friends, of these Africans, who are brought, without any act of their

[1] Prince's *Digest* (1822), pp. 456, 457.

own, into the bosom of our country, insist on their right to freedom, and submit their claim to the laws of the land, and to the tribunals of the nation. . . [122] this traffic remains lawful to those whose governments have not forbidden it. If it is consistent with the law of nations, it cannot in itself be piracy. It can be made so only by statute; and the obligation of the statute cannot transcend the legislative power of the state which may enact it. . . the right of bringing in for adjudication in time of peace, even where the vessel belongs to a nation which has prohibited the trade, cannot exist. . . [130] no subject of the crown of Portugal has appeared to assert his title to this property, . . That Americans, and others, who cannot use the flag of their own nation, carry on this criminal and inhuman traffic under the flags of other countries, is a fact of such general notoriety, that Courts of admiralty may act upon it. . . This long, and otherwise unaccountable absence, of any Portuguese claimant, furnishes irresistible testimony, that no such claimant exists, and that the real owner belongs to some other nation, and feels the necessity of concealment." [Marshall, C. J.]

The Antelope, 11 Wheaton (U. S.) 413, 1826. "A mandate having issued to the Circuit Court for the District of Georgia, to carry into execution the decree of this Court [*supra*] . . [414] ordered . . that in executing the . . mandate, the Africans to be delivered ['to the Spanish consul for Spanish claimants'] must be designated by proof made to the satisfaction of that Court." See *infra.*

The Antelope, 12 Wheaton (U. S.) 546, March 1827. [548] "sixteen cents *per diem* was allowed the marshal for the custody, maintenance, etc. of the Africans; and the Spanish claimants were charged . . after this rate, . . [552] in the original cause it had been established . . that ninety-three of the Africans . . were the property of the Spanish claimants; but, as many of the Africans had died, it was the opinion of this Court, that number should be reduced according to the whole number living. The Circuit Court . . fixed the whole number to which the Spanish claimants were entitled at fifty, and then proceeded to inquire as to their identity. . . [553] It appears, that the Africans captured, and brought in with the *Antelope,* were put into the possession of Mr. William Richardson; and that he had about fifty of them employed at work upon the fortifications at Savannah; that while there, Grondona ['second officer on board the *Antelope* when the Spanish Africans were purchased . . on the coast of Africa'] came out with the marshal for the purpose of identifying the Spanish Africans; that the fifty Africans were drawn up in a line; that Grondona made signs, and spoke to the negroes, and they to him, and they generally appeared to recognize him as an acquaintance. . . The Africans of the *Antelope* being paraded in front of the court house, Mr. Richardson was directed by the Court to point out . . individually, the Africans who had worked on the fortifications, and he designated thirty-four. . . that Grondona recognized five others, who were with other persons, and that they appeared to recognize Grondona as an acquaintance. . . Grondona, and the Africans, both spoke languages

not understood by the witnesses; yet . . understood each other; . . [554] We think this evidence was sufficient . . reasonably to satisfy the mind of the identity of thirty-nine . . as belonging to the Spanish claimants." [Trimble, J.]

Williamson v. Daniel, 12 Wheaton (U. S.) 568, March 1827. Will of James Daniel: "I lend my wife [Nancy Daniel] twenty-one negroes, . . during her natural life." [569] "Some of the slaves, to wit, Sally and her children, were born in the lifetime of Nancy Daniel. The Court below . . decreed that the slaves, Sally and her children, did not belong to the estate of the tenant for life."

Decree affirmed: [570] "The . . point is, we believe, well settled. The issue is, we believe, universally [1] considered as following the mother, unless they be separated from each other by the terms of the instrument which disposes of the mother." [Marshall, C. J.]

Governor of Georgia v. Madrazo, 1 Peters (U. S.) 110, January 1828. "The schooner *Isabelita,* a Spanish vessel, owned by Juan Madrazo, . . domiciliated at Havana, was despatched by him . . in . . 1817, on a voyage to the coast of Africa, where she took in a cargo of [one hundred and twelve] [2] slaves. On her return voyage she was captured by a cruiser . . under the piratical flag of Commodore Aury . . commanded by one Moore, an American citizen; . . The *Isabelita* and the slaves . . were carried to Fernandina, in Amelia Island, and there condemned by a pretended Court of Admiralty, exercising jurisdiction under Commodore Aury; and sold . . [111] to . . Bowen. The negroes . . were conveyed to the Creek nation,[3] in consequence, as it was alleged, of the disturbed state of East Florida, the insecurity of property there, and with a view to their settlement in West Florida; then a province of the Spanish monarchy. Being found within the limits of the state of Georgia, they were seized [early in January 1818] by an officer of the customs of the United States, and delivered to an agent appointed by the governor of Georgia, under . . the Act of the Legislature [4] . . passed in conformity to . . the Act of Congress of March 1807, prohibiting the importation of slaves into the United States; . . Some of the negroes were sold by an order of the governor, . . and the proceeds [$38,000] paid over to the treasurer of Georgia." [119] "The Colonization Society [5] applied for those remaining unsold, amounting to rather more than twenty, and offered to comply with the conditions prescribed in the Act

[1] Not in Maryland. Scott *v.* Dobson, 1 Har. and McH. 160.

[2] *Ex parte* Madrazzo, 7 Peters 627 (628).

[3] "where, at a place called 'the United States Agency,' they were, to the number of ninety-five, seized . . by an officer of the United States, and brought within the limits . . of Georgia." *Ibid.* 629.

[4] Act of Dec. 19, 1817. Prince's *Digest* (1837), p. 793.

[5] Johnson, J., in his dissenting opinion, says: [125] "the actual *promovent contestatio litis,* was the colonizing society; . . and had not the decision below been against their claim, . . it is fair to conjecture, that the exception here taken to the jurisdiction, would never have been suggested; nor, had that society possessed a legal existence, so as to prosecute a suit, in its own name, is there the least reason to believe, that the governor of Georgia would ever have presented himself, in the Courts of the United States, upon this subject."

of December 1817. In May, 1820, the governor . . filed an information in the District Court of Georgia, . . In November 1820, . . Bowen filed his claim to the said Africans, . . [120] In February 1821, Juan Madrazo filed his libel, . . the District Court dismissed" both claims and libel. On appeal to the circuit court, "the sentence, dismissing the claim of Bowen, was affirmed. That dismissing the libel of Madrazo was reversed, and a decree was made, that the slaves remaining unsold, should be delivered to him; on his giving security to transport them out of the United States—and farther, that the proceeds of those which were sold, should be paid to him. From this decree, the governor . . and . . Bowen have appealed"

[135] "the Circuit Court not having jurisdiction of a cause, in which the plaintiff asserts a claim upon the state . . the libel of . . Madrazo is ordered to be dismissed." [124] "no error in so much of . . decree as dismisses the information of the governor . . and the claim of . . Bowen." [Marshall, C. J.]

Jordan v. Bradley, Dudl. Ga. 170, October 1830. "Bill in Equity filed by the executor of James A. Bradley . . praying the direction of the court . . The will . . directs that if any of his slaves should desire to go to the African colony, they should be permitted to go, and their expenses to the port of embarkation should be paid."

Held: [171] "neither the letter nor intention of the several statutes of this State, are in opposition to the provisions of the will . . If there be a deficiency of funds to defray their expenses to a port of embarkation, those desiring to emigrate might be hired out, till the requisite sum should be obtained."

Evans v. Lampkin, Dudl. Ga. 193, January 1831. [194] "she . . directed him to sell two of the negroes . . and pay the purchase money to two . . neices [*sic*], and two other negroes and her household furniture for the payment of her debts,"

Harris v. Williams, Dudl. Ga. 199, January 1831. "In . . 1809, . . an attachment against . . a resident of South Carolina . . was levied upon two negro men and one woman; . . one man and the woman sold for the rise [price ?] of $900; the other negro escaped."

Hunter v. Shaffer, Dudl. Ga. 224, January 1831. "Plaintiff's title to the slave is a deed from Judith Ann Lehiffe to him, . . 1812, . . registered in the Secretary of State's Office, South Carolina, . . 1812, and in Edgefield district . . 1826. . . Mrs. Lehiffe was the daughter of Mrs. Holmes, who was the daughter of . . Galphin by a black woman, and a recovery was resisted on the ground that the deed . . is void, having been executed by the descendants of an African, presumed by law to be a slave, . . of the condition of . . the grand-mother of Mrs. Lehiffe, there was no evidence; but there was evidence that Mrs. Holmes and Mrs. Lehiffe were always considered free, and were the wives of free white citizens of South Carolina."

Held: [226] " the fact that those persons have been considered free, and enjoyed their liberty and property for nearly half a century in a neighboring State, that they have formed contracts of marriage with free white citizens, . . will require this court to presume them free,"

Flournoy v. Coxe, Dudl. Ga. 5, July 1831. " That the negroes . . were originally the property of . . Coxe of . . Virginia—that about . . 1798, his daughter . . brought said negroes to . . this State,"

State v. Fraser, Jailor, Dudl. Ga. 42, July 1831. " *Habeas Corpus* on Petition of Winney Stephens. . . The jailor having brought up . . Winney, returns the following order of the Inferior Court, as the cause of her detention . . ' it appearing to the court, that . . Winney . . is probably a free woman of color, and . . probable that if left in the custody of Dr. William Savage, or any other person, she might be removed from the State. . . [43] ordered that . . Winney . . be removed for protection . . to the . . jail, . . until the person who claims property in her, *viz.* John N. Philpot shall give bond . . that he . . shall produce . . Winney . . when required . . and also that . . Winney . . shall be . . humanely treated . . until the decision of her claims to freedom,' . . counsel for Winney . . reads several letters and affidavits representing her to have been born of free parents in . . Maryland. . . The counsel for . . Philpot . . contends that . . the court must remit her to her legal remedy, and in the mean time leave her at the disposal of her alleged master. A bill of sale of Winney . . to Philpot is produced."

[45] " All that the court can do is to discharge the petitioner from her present imprisonment, and permit her to return to Dr. William Savage from whose possession she was taken by virtue of the order for her imprisonment, and to leave both Philpot and Winney to their legal remedies. Let Winney be discharged."

State v. John N. Philpot, Dudl. Ga. 46, July 1831. Philpot [48] " had in his custody, power or control, the boy James, averred to be free," [46] " The writ before the court is a *habeas corpus ad subjiciendum*; . . [48] The first step taken by Philpot is his appearance [October 17, 1829] in obedience to the writ, and moving to adjourn the return to a future day, to enable him to produce the boy, . . [55] followed by his evasive return [November 2]," [54] " very material facts are suppressed; . . admission . . by Philpot himself since the service of the writ . . that he had the boy." [48] " the return . . was adjudged evasive and insufficient, and an attachment ordered. And lastly, a motion for discharge from the attachment, . . [58] Judge Crawford . . declared that . . ' Philpot ought to remain attached, until he produces the boy James, or shows that it is impossible to produce him.' " [46] " The court is again moved . . upon grounds not then assumed, and is prayed to reconsider its decision . . [49] The 2d ground . . it was contended that *free* negroes or persons of color, were not, under the constitution and laws of Georgia, entitled to the benefit of the writ, . . [54] The 6th ground ' Because, if any contempt was committed, it was purged by the affidavits ' . . [55] Carey's affidavit shows his purchase of the boy from Philpot

between the 6th and 13th October, 1829," " That of Turley . . that on the 28th May, 1830, he purchased the boy from Carey, and the next day removed him to the western country, where he sold him."

Motion overruled: II. [49] " with but a single exception known to the court, the decisions and practice throughout the State . . have been uniform, to extend to this class of persons the benefit of the writ of *habeas corpus*. . . [52] A right of the benefits of a *habeas corpus* does not . . belong to a slave, as it would be inconsistent with the rights of the master. . . But . . the free person of color enjoying personal liberty has the benefit of the *habeas corpus* secured to him by a constitutional guaranty. . . [VI.] [55] Philpot is manifestly in contempt, . . Not an act of his has been shown, nor an effort . . to obey, although six months elapsed from the return of the writ until the removal of the boy, during all which time he was kept within a few miles of Philpot's residence, . . and was for sale,"

Jane Irwin v. Morell, Dudl. Ga. 72, July 1831. " an uncle of the plaintiff, about the time the line was run between . . Georgia and the Indians, . . gave to the plaintiff a negro girl, three or four years old, . . Hannah; . . put the hand of the girl into that of the plaintiff [' about the age of . . Hannah '], and told her that he gave her that negro girl."

Habersham v. Huguenin, R. M. C. 376, May 1832. " that the complainant, as a practicing physician . . attended upon the negroes on the plantation of the late Gen. Jacob Read, prescribing for them in sickness and furnishing medicines for several years, commencing in 1825, and ending in October, 1830; . . services . . performed at the . . request of the executor," Held: [379] " as the estate has had the benefit . . it should respond to his claim."

Hogg v. Odom, Dudl. Ga. 185, December 1832. Bill of Sale: " I, . . of . . South Carolina, . . have . . sold in . . open market, unto the children of Nancy Jones, at the death of Leonard Nobles three negroes and their increase, to wit, Silva, Jim and Luce, for . . three hundred pounds sterling of the State aforesaid, . . set my hand and seal this 25th . . December, 1786."

Ex parte Madrazzo, 7 Peters (U. S.) 627, January 1833. See Governor of Georgia *v.* Madrazo, p. 11, *supra.* " libel, in the admiralty, against the state of Georgia, . . [631] by the sale and dispersion of the slaves, the libellant is prevented seizing or identifying his property; he is without remedy . . unless this court will cause the state of Georgia to do him right " Held: [632] " no private person has a right to commence an original suit in this court against a state." [Marshall, C. J.]

Shellman v. Scott, R. M. C. 380, May 1833. [381] " two of the negroes . . are so diseased as greatly to impair the real value; . . the defendant's . . opinion in one case, that derangement was feigned, and the omission wholly in the other to communicate the existence of a disease which could not be detected, which greatly reduces the value,"

Roser, next friend of negro woman Antoinette, her two children, and negro man Jack, v. Marlow, R. M. C. 542, May 1837. " The applica-

tion for *certiorari* . . sets forth, that John Dugger, jr. . . a short time before his death, made his last will . . ' that my negro woman Antoinette, and her two children, together with my negro man Jack, should be emancipated . . if that can be done in any manner, either by the Legislature or otherwise, and if it cannot. . I direct my executors . . to send them where it can be done out of the state;' . . presented for probate at the March term of the Court of Ordinary . . [543] but that said court, . . ' determined that such clause was . . absolutely void,' "

[550] " ordered, that the writ of *certiorari* do issue . . and that in the meantime, . . all proceedings be stayed." [548] " The intent of the statutes [relating to manumission] is expressed in the preamble to the Act of December 19th, 1818,[1] . . The object . . was, to prevent a horde of free persons of color, from ravaging the morals, and corrupting the feelings of our slaves. . . The Legislature is then the proper tribunal, (if I may use that term,) to determine whether the case . . is one in which none of these dangers exist, one, for which reason and humanity plead. To them, the executors . . should make the application, and if . . refused, then they should fulfil the alternative command, by sending these slaves out of the State." [R. M. Charlton, J.]

State v. a Negro Man (*Peter*), Ga. Dec. (Part I.) 46, January 1842. " Indictment, Murder.—Verdict, Guilty. *Certiorari.*"

New trial ordered: [48] " in order to give the Inferior Court jurisdiction of a capital offence against a slave, . . [the fact] must be established . . that the defendant has been brought before a Court of Magistrates, and his case examined: and that the Justices have decided, that the offence is of a capital nature, and turned the prisoner over to the Inferior Court for trial. . . In this case, . . no such evidence before the Inferior Court," [Shly, J.]

Crewes v. Davie, Ga. Dec. (Part I.) 66, March 1842. " that the defendants are now . . preparing to remove . . into . . Kentucky, and to carry with them . . negro slaves "

Brown v. Lester, Ga. Dec. (Part I.) 77, May 1842. " an action founded upon a . . note given for a negro woman. The defence set up was a . . failure of consideration, . . that the negro was unsound, . . a witness . . [78] states . . ' I frequently saw the girl at my house, with my black people, . . and I infer that she was healthy, as I knew she grew fast, and had every appearance of health.' . . the negro was sold by Brown to Lester . . March, 1839; and the [two] physicians . . were first called . . in Sept. 1839—that they found her . . labouring under remittent fever, with very strong asthmatic symptoms, also symptoms of dysmenorrhaea, which they found, on enquiry, to have existed ever since she had been in the possession of Lester, and the negro stated, sometime previous to his purchasing her . . [79] That portion of the testimony, which consisted of the sayings of the negro as to the commencement of her disease . . was rejected " Verdict for the plaintiff. New trial refused.

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[1] Prince's *Digest* (1822), p. 465.

Bagshaw v. Dorsett, Ga. Dec. (Part II.) 42, May 1842. " the following account: . . For wages of Edward, 8 weeks and 3 days, $4.50 pr. week, $38.50 . . [44] The negro had a ticket from his mistress, to work out and receive his wages."

Davis, Guardian of Erasmus, claiming his freedom, v. Hale, Ga. Dec. (Part II.) 82, January 1843. "Trespass, in Nature of Ravishment of Ward. . . there have been two concurring verdicts, in favor of the plaintiff, establishing his freedom; . . The proofs . . were of a contrary character. According to one set of witnesses, the boy . . was said to be the son of a white woman; and from other evidence . . that he was the son of a white man, who left him free at twenty-one years of age. . . the boy had been left in the care of some person in South Carolina, not in the character of a slave, but more in the character of a free person of color. . . next we hear of him . . in this State, in possession of . . Sims, . . as a slave, . . who sold him as such . . But whilst the boy was held by Sims . . Sims said, he had no right to hold the boy, after he arrived at . . twenty-one " New trial refused.

Pendleton v. Mills, Ga. Dec. (Part II.) 166, March 1843. [167] " 1838 . . she was sent . . to wait on his wife, who was sick,"

Bulloch v. the Lamar, 4 Fed. Cas. 654 (1 West. Law J. 444), May 1844. " two negroes [Mary and Andrew] were drowned, the canoe in which they were, having been run under by the steamer *Lamar,* in tide water, in the Savannah river. . . [655] they were worth one thousand dollars." They were going from Savannah to their owner's plantation. Decree [658] " directing that the libellant shall recover one thousand dollars, and that the respondents shall pay all costs."

Scudder v. Woodbridge, 1 Ga. 195, June 1846. [198] "Woodbridge brought an action . . to recover the value of a negro boy, . . hired as a carpenter, to make the trip from Savannah to St. Mary's, and becoming entangled in the water-wheel, in getting the boat off, he was drowned. . . [199] The engineer on the *Ivanhoe* was a colored man." [198] " Judge Fleming . . charged the jury, that if . . death . . was occasioned by the negligence or want of skill in the officers . . in the employment of . . Scudder [the owner of the boat], . . *he* was liable . . The jury returned a verdict for five hundred dollars."

Judgment thereon affirmed: " interest to the owner, and humanity to the slave, forbid . . application [of the fellow-servant rule] to any other than *free white agents.*[1] . . it cannot be extended to slaves, *ex necessitate rei.* . . [199] Once let it be promulgated that the owner of negroes hired to the numerous navigation, railroad, mining and manufacturing companies . . must look for compensation to the *co-servant* who occasioned the mischief," " that the *employer* is not liable, . . [200] and I hesitate not to affirm, that the life of no *hired* slave would be safe. . . We are . . confidently and unanimously agreed," [Lumpkin, J.]

[1] See Railroad Co. *v.* Yandell, vol. I. of this series, p. 427.

Johnson v. Watson, 1 Ga. 348, August 1846. [350] " action of trover, brought by . . Watson . . agreed . . that Watson should go to . . Macon, and bring home to Mrs. Johnson some slaves of hers . . and also to Columbus, and catch and bring home to her a fellow of hers, which was lurking about the city. . . [351] likewise to attend to her business for two years; and for these services she agreed to let him have Jerusha . . valued at five hundred dollars. . . At the expiration of the year 1840, Watson went after Jerusha [who had been hired out in Columbus], . . Within a few days thereafter, at the request of Mrs. Johnson, he exchanged the girl with her for . . Lucy, . . a temporary swap only, made on account of Lucy's bad habits, and with a view to their correction by Watson. Mrs. Johnson, after . . obtaining the possession of Jerusha, refused to return her," Nonsuit refused. Affirmed.

Robinson v. State, 1 Ga. 563, November 1846. " indictment . . for the larceny of a slave named George . . resulted in the conviction of the prisoner. . . [564] George, with Edy, his mother, . . was sold at Sheriff's sale, as the property of the prisoner, . . 1842, . . George was worth about $500. . . missing from the prosecutor's plantation . . 1846. . . proven . . by . . Searcy, that prosecutor's son went for him to go with his dogs and catch two boys, Edward and . . George, that had run away . . caught . . Edward, and struck another track . . to the river, and down the river . . The counsel for the prisoner . . offered to prove the admission of the prosecutor, that . . George, in all likelihood, was drowned . . [565] not permitted "

Badgett v. Broughton, 1 Ga. 591, November 1846. " Dec. 12, 1843. . . Received of . . Broughton, two hundred and seventy-five dollars . . for . . Lucinda; the . . title . . I will warrant . . I also warrant her sound in body and mind." " Lucinda . . was then unsound, by a disease of her lungs . . 25th . . January, 1844, the defendant in error sold [her] . . to . . Attaway, and instead of executing a separate bill of sale, endorsed over the original bill of sale . . ' I hereby transfer the within bill of sale,' . . [592] August following . . she died. . . verdict for [Broughton] . . for $275." Judgment thereon affirmed.

Jones v. State, 1 Ga. 610, November 1846. [611] " that the slave, Mariah, the subject of the alleged larceny, was the property of . . the prosecutor, who resided in Florida, and who had . . left her in charge of . . Paul . . until . . Paul should himself remove to Florida."

Hicks v. Moore, 2 Ga. 240, February 1847. The sheriff claimed $807.62 [242] " for dieting the negroes, . . [243] The jury . . found that the Sheriff has received, from the . . labour of the defendant's negroes while in his possession, sufficient to indemnify him for keeping them; . . he hired some of them out, and received the money for their hire"

Aycock v. Buffington, 2 Ga. 268, March 1847. [269] "he levied upon and sold a negro woman and an infant child, which brought the sum of six hundred dollars."

Paschal v. Davis, 3 Ga. 256, August 1847. "Received . . [257] six hundred dollars . . for . . Jim, about twenty-eight years of age . . 1834."

Thurmond v. Reese, 3 Ga. 449, November 1847. "levied on the whole of the property . . except five negroes, which were run off."

Carter v. Buchannon, 3 Ga. 513, November 1847. [514] "that she had heard . . Bull . . show how, he made the gift [in 1814], by placing the hand of the girl . . in the hand of his grand-daughter [[513] 'when she was quite a child'] . . and tell her that was her negro."

Taylor v. State, 4 Ga. 14, January 1848. [17] "descendants of a negro, given her when a few years old, on the occasion of her baptism;"

Cooper and Worsham, by their next friend, v. Mayor and Aldermen, 4 Ga. 68, January 1848. "application for discharge under a writ of *Habeas Corpus,*" [72] "the prisoners were arrested and imprisoned by virtue of a warrant issued from under the hand of the Mayor of . . Savannah, . . 1847, for a violation of the 5th Section of an ordinance passed by the Mayor and Aldermen . . 27th . . August, 1839,"[1] [69] "his Honor [Judge Fleming] decided . . 'So far from the ordinance conflicting with the laws of the State, it has carried out the very letter . . they are not citizens, and God forbid they ever should be. . . ordered that the prisoners be remanded to jail.'"

[75] "Let the judgment . . be reversed, and the petitioners discharged." I. "Free persons of color have never been recognized here as citizens;[2] . . They have always . . been regarded as our wards, and . . we should be extremely careful to guard . . all the rights secured to them by our municipal regulations. They have no *political* rights, but they have *personal* rights, one of which is personal liberty. . . [74] When we take into consideration the *object* of the ordinance, . . our minds are irresistibly forced to the conclusion that the section which imposed the payment of one hundred dollars . . is . . nothing else but a tax, and being a tax, its collection cannot be enforced, by the imprisonment of the petitioners. The mode for collecting . . is pointed out by the act of 1815,[3] which provides the petitioners shall be hired out . . and that portion of the ordinance which declares the prisoners shall be imprisoned for the

[1] [72] "An ordinance to amend and consolidate the various ordinances of . . Savannah; for raising a fund for the support of a watch, and to prescribe the mode of . . collecting taxes." "Each free person of color who may remove to this city to reside herein, from any other part of the State, shall pay to the Treasurer . . one hundred dollars, within thirty days . . in addition to any . . other tax, . . and if . . not paid . . such free person of color shall be confined [in the common jail] . . until . . paid, or he . . shall be discharged by order of council or due course of law."

[2] "Note.—By a joint resolution of the Legislature of Georgia, in 1842, it was *unanimously* Resolved, that free negroes are not citizens of the U. S., 'and that Georgia will never recognize such citizenship.' *Pam.* Acts, 1842, p. 182. [REP.]" "further Resolved, That . . the Governor, transmit a copy of the . . Resolutions to the Governors of the several States of this Confederacy." *Ibid.*

[3] Prince's *Digest* (1837), p. 859.

non-payment . . is repugnant to the laws of the State and void." [Warner, J.]

Spalding v. Grigg, 4 Ga. 75, January 1848. [77] " Know all men by these presents, that I, Ann Cunningham, . . do . . sell and deliver unto . . Ann Grigg . . [78] Judy, Bella, and John her son, . . with the future issue . . Provided, that . . Ann Grigg, after the . . slaves shall come into her possession, will pay to each . . two dollars per month during their . . lives. . . eighteen hundred and thirty-eight." Ann Grigg " claimed title . . tendered in evidence the instrument . . which was demurred to . . The court admitted the evidence, determining that the paper was . . not against the policy of the laws against manumission, and not in conflict with the Act of 1818." [1]

Judgment affirmed: [91] " The Act of 1801 made . . void all acts of manumission. . . The Act of 1818, labors to prohibit . . not only manumission, but all attempts at it. . . [93] it is the custom . . to permit slaves to enjoy such little sums as are given to them, or as they may earn with the consent of their owners. It is the habit of some planters to give annually to their slaves a limited sum of money, or the use of a modicum of land to till for their own advantage, or to make and vend certain articles . . not prohibited by law. . . [94] with such charities . . [the law] does not interfere; nor are they adverse to the anti-manumission policy of the State." [Nisbet, J.]

Neal v. Kerrs, 4 Ga. 161, February 1848. In 1845 a man slave was sold for $890.

Nisbet v. Walker, 4 Ga. 221, February 1848. [229] "all of the negroes, except Dan, were sold [in 1842] at the Court House door in . . Macon, at high prices. That Dan was privately sold the same day, for $1150, . . that all . . including Dan, brought . . $20,600, . . $19,712 . . in Central [Bank] money, and $888 in specie funds,"

Vance v. Crawford, 4 Ga. 445, May 1848. Marshall Keith's will, executed in 1839, probated in 1842: [452] " It is my desire, that my servant Ishmael should be freed; but if that cannot be accomplished, I give him to my Executors . . in trust, for his own use, to go wherever he may please, and if it suits him to take with him, sell or dispose of, the property hereinafter devised . . in trust for . . Ishmael; he making in writing, application . . in which case, I do authorize my . . Executors to sell all or any part . . the proceeds to be paid to . . Ishmael. . . I give to my Executors in trust, for the use of . . Ishmael, one hundred and fifty shares of the Mechanics' Bank of Augusta. I also give . . in trust, as a home for . . Ishmael, and his sisters Minny and Elizabeth . . all my land on the east side . . to be under the sole . . control of . . Ishmael; but should . . land be sold . . that Minny should receive one third of the amount of the sale. I also give to my Executors in trust, for the use of Ishmael, the following, *viz*: Hannibal, Delila and her two children, also, the blacksmith's tools; choice of one cart and oxen; choice of my horses,

[1] *Ibid.,* pp. 794-796.

and choice of three mules; also, corn, fodder and pork for one year; also stock of cattle, sheep and hogs, as many as my Executors may deem necessary; also, one bed and furniture; . . in trust, for . . Ishmael and his heirs forever, with power to will the same. I also give . . in trust for Ishmael . . Boling, Robert and Green, children of yellow Agg, . . [453] what I leave to Minny and Elizabeth, I leave in the same manner . . and I leave them . . in trust for their own use. . . in trust, for Minny and her heirs, one hundred shares of Mechanic's Bank . . a girl named Blanche, also Minta, also one bed and furniture, spinning wheel, and loom. . . in trust for Elizabeth, fifteen shares . . and one bed and furniture. . . I give to the Secretary of the Colonization Society . . Alfred, Daniel and Thornton, for the purpose of being sent to Liberia, and also five shares of the . . Bank . . for each—the proceeds to be paid to them or the survivor, on their arrival in Liberia, . . optional with them to go . . should . . either . . refuse, I give him or them as follows: Alfred and Daniel . . in trust, for the use of Ishmael—and also, the shares . . should Thornton refuse . . I give him and the . . five shares, to Wm. Jones, . . I give my servant Nancy in trust to my Executors for her own use, charging her maintenance on her son Ishmael. . . I give my servant Ned, blacksmith, . . in trust, for his own use, and also five shares . . for his maintenance, and at his death, I give the same to Ishmael. . . I give in trust . . for the use of . . Ishmael and Minny, the residue of my furniture, . . It is my will . . that the servants I have freed or left in trust . . should not be appraised. . . that my Executors should not suffer those servants . . to live in, or within three miles of any town or village in Georgia or South Carolina." [458] "after standing by for five years, and seeing the Executors . . distribute the estate, by the payment of legacies, and the removal of the negroes, who were freed . . to . . Ohio, . . [the next of kin] now . . undertake to set aside the will" [456] "The Special Jury found a verdict for the Executors."

Judgment thereon affirmed: [458] "As to . . such parts of the will as authorize the emancipation of three . . in Liberia, . . it was entirely competent for him to make such post mortem disposition . . *Foreign* emancipation . . [459] is in accordance with our declared policy.[1] The colored population in the U. States in 1790, was 697,697. It is now nearly 3,000,000. . . It has been the constant effort of our State . . to prevent the increase . . Neither humanity, nor religion, nor common justice, requires of us to sanction . . domestic emancipation;" [Lumpkin, J.]

Simmons v. State, 4 Ga. 465, May 1848. "indictment for 'receiving stolen goods from a slave.' . . the watch was stolen . . 1843. . . [466] the negro, Bob, made a fire in his room the day the watch was stolen." [465] "arrested, . . tried and acquitted by the magistrates."

Graybill v. Warren, 4 Ga. 528, May 1848. Will of Jeremiah Warren, who died in 1832: "I give to [my executors] . . negroes, Coleman, Mary and her three children, and Pat and John, . . and four thousand dollars . . to be loaned out at interest for the support of the negroes,

[1] Act of 1817, sect. 3. Prince's *Digest* (1837), pp. 793, 794.

and if they can at any time be freed by the laws of the country, it is my will it shall be done. All the remainder of my property, I will to be managed by my executors for five years . . having regard to humanity in their treatment, not hiring them to any persons who will abuse them. If they cannot have them freed by the laws of our country in that time, they are to be equally divided between my brothers and sisters "

Wynn v. Lee, 5 Ga. 217, July 1848. [226] " Lewis bought him in Georgia, . . removed to Mississippi, taking the slave with him." " Wynn . . having bought the slave . . brought him back to Georgia "

Hicks v. Ayer, 5 Ga. 298, July. 1848. "January, 1847, four negroes . . were bid off by Hicks . . Jenny and child, at $530; Amelia, at $650; and Charles, at $405. Hicks failed to comply . . and delivered . . engagement, that . . slaves might be re-sold [a week after the first sale] . . and that he would pay the loss . . re-sold, at a loss of two hundred and seventy-eight dollars. Charles being again knocked off to Hicks, at $235."

Beall v. Mann, 5 Ga. 456, September 1848. Will of Stallings, 1847: [461] " that all the rest . . be sold . . my negroes choosing their owners, to be approved by my executor," [467] " said he would not have sent her up but on account of her son . . whom he could not do without, and he was unwilling to part him from his mother;"

Martin v. Broach, 6 Ga. 21, January 1849. [22] " 1836. Dec. 2. To cash received for sale of negro man . . $1700 "

Scranton v. Rose Demere and John Demere, by prochein ami, 6 Ga. 92, January 1849. [93] " In 1828, Raymond Demere made his will . . 'Whereas, from the fidelity of my negro man Joy, and my negro woman Rose, who not only saved and protected a great part of my property during the time the British occupied St. Simons, but actually buried and saved a large sum of money, with which they might have absconded and obtained their freedom; it is therefore my will, and I direct my executors to petition the Legislature to pass an Act for the manumission of my said negroes, and their two children, Jim and John, and any other children Rose may have, setting forth their meritorious behavior and faithful conduct during a period of invasion, when nearly all the negroes on St. Simons deserted and joined the British. . . also . . I direct if . . Joy, Rose and her children are freed by law, and remain in Georgia, that the said Joy, Rose and her son Jim, shall each receive two cows and calves from my stock on St. Simons.' After making a devise of land to said negroes, testator further provides: 'And also, that said Joy, Rose and her children, shall receive from my estate, one year's provision, from the time they take possession of their land; and also, that my executors shall pay . . to . . Rose, during her lifetime, an annuity of seventy-five dollars; and also, the further sum of seventy-five dollars, for the support of her son John, until he arrives at the age of twenty-one years; and then, my executors are directed to pay unto . . [94] John, from my estate, the sum of $1000 lawful money.' After making provision for the education of John, and the protection of their rights, the testator divides his estate . . one half to . . his son, and

one half to . . grandsons. The Legislature of Georgia manumitted the said slaves, . . The executors failed to pay the legacies and annuities to Joy, Rose and her children, but distributed the whole estate to the residuary legatees. In 1843, (Joy and Jim being dead,) Rose Demere and John Demere, by their next friend, . . filed their bill against the executors, praying an account of their annuities and legacies; and . . at April Term, 1845, a decree was rendered in favor of the complainant, . . in behalf of Rose Demere, . . ' $3,000, the amount due her 31st December, 1842, $150 for her annuity for 1843, and $75 for every year as long as she lives;' and . . in behalf of John Demere, ' the sum of $1024.' ' And we further decree, that this decree shall be a lien upon, and bind the whole estate of . . Raymond Demere.' "

Nelson v. Biggers, 6 Ga. 205, January 1849. Bill of sale: " 1844, received . . five hundred dollars, for . . Betty, and her child, Anonicat—the said woman about 27 . . and the child about seventeen months old; which . . negroes I warrant . . to be healthy," " The defendants pleaded . . that . . negro was imbecile . . so as to be incapable of performing the ordinary duties . . of a slave;"

Held: [206] " The usual term ' sound,' being omitted . . and . . [207] ' healthy ' only inserted, . . it may fairly be presumed that it was the intention of the . . parties, that the warranty should only extend to the body of the slave," [Warner, J.]

Mayor v. Howard, 6 Ga. 213, January 1849. [214] " agent of Mrs. Howard . . [215] hired the negro to the Council, to work on the streets; the negro was worth $600 or $650; . . he and seven or eight others were at work on the sewer, grading the . . ravine . . suddenly a piece broke loose from above, . . negro was killed . . [216] The Jury returned a verdict for [Mrs. Howard] . . for $800." Judgment thereon affirmed.

Thompson v. Mapp, 6 Ga. 260, February 1849. [261] "levied . . on . . a boy about eight years of age, . . [and] a girl, about six years old, . . not produced on the day of sale " as they had been sold privately.

Potts v. House, 6 Ga. 324, February 1849. [327] " the testator . . was about ninety . . almost speechless by age and the loss of his health; . . [363] Potts' negroes did pretty much as they pleased, and his principal house woman appeared to exercise a controlling influence over him—she was his interpreter;" [326] " the subscribing witness . . wrote the will . . could not understand the testator distinctly, and relied entirely on the interpretation of the negro woman Charity and James Potts, jr. who alternately interpreted for him." " Charity and her two children were bequeathed to the propounder, . . Lucy, the mother of Charity, was manumitted . . as far as the laws of the State would permit."

Held: [348] " if a negro interpreter, incapable . . of being sworn, is the *only* channel of communication . . the will cannot be executed. But if the will be written in the presence of the testator, . . is read over to him, and his dictation and approval . . are interpreted by a negro in his hearing, and in the hearing of others interested . . and he . . is

understood to express himself satisfied, the will may be established;" [Lumpkin, J.]

Alfred (a slave) v. State, 6 Ga. 483, March 1849. [484] "Alfred . . was placed upon his trial before the Justices of the Inferior Court . . for the offence of an assault with intent to commit a rape, upon the person of a white girl of about four years of age. *Twenty-three* [1] Jurors were impannelled, and the farther impannelling was waived by the owner [James W. M. Berrien] . . acting as counsel for the slave. . . the Court being of the opinion that the testimony was insufficient to find . . guilty, charged . . that there would be no impropriety in a verdict of guilty of an assault and battery, . . the Jury returned a verdict of guilty of the crime charged."

New trial refused: I. [485] "the owner . . had the legal right . . to make such waiver." "Not only the interest which the owner has in his slave, but his personal attachment . . will always prompt him to be vigilant . . and, as is too often the case, as we all know, the just penalty of the law is defeated in consequence of such interest and attachment. . . [II.] Had we been the Jurors . . we might have . . felt it to have been our duty to have found the slave not guilty; but there was *some* evidence of which the Jury were the *exclusive* judges," [Warner, J.]

Robinson v. King, 6 Ga. 539, May 1849. Will of Elisha King: [540] "that my old servant, Writ, and her five children . . and her husband . . may be made to live comfortable under the superintendence of my friends, . . Robinson and . . Wood, into whose care . . I do hereby give and place the negroes, in view of their being treated with humanity and justice, subject to the laws made . . in such cases." Bangs testified that [541] "Robinson, after the death of King, asked the advice of witness what to do; that King, by his will, intended to free his negroes, and said he was afraid the community would think hard of him;" Held: [546] "void, because it is in conflict with the Act of 1818." [Nisbet, J.]

Dye v. Wall, 6 Ga. 584, May 1849. "Received [in 1842] . . six hundred and eighty dollars . . for two negroes, . . a girl, about twelve . . a boy, about eleven . . warrant to be sound as far as I know." The boy was alleged to be unsound.

Tooke v. Hardeman, 7 Ga. 20, June 1849. Tooke's will, 1837: [22] "that my faithful old servant man, Brit, shall not be put under any overseer, but remain on my plantation, to take care of my stock, and that he be favored by my executor as far as may be expedient."

Mayor v. Goetchius, 7 Ga. 139, July 1849. "in 1843 the small pox broke out in the white family of Dr. Chipley, the City Physician . . The City authorities placed a guard around the lot, . . Crawford, a negro . . mechanic, the property of Goetchius, had a wife on the lot, and being there was retained by the guard. . . attacked with confluent small pox . . and there died. During his sickness he was in a small house, sixteen by twenty feet, with one door and one window, but no chimney. The

[1] Act of 1816, sect. 9.

witness saw no one paying any attention to Crawford. Dr. Boswell . . [140] notified the City Physician that the house was too small, and not well ventilated. The negro was lying on blankets, and the pustules breaking, . . There are twenty chances to one that the negro, if vaccinated, would have recovered." [139] "Goetchius commenced an action of trover . . against the City Council . . for the value of . . Crawford." Verdict for the plaintiff. New trial refused. Affirmed.

Thomas v. Brinsfield, 7 Ga. 154, July 1849. In 1829 Polly Thomas removed from North Carolina to Georgia "together with the property of which she was possessed, consisting of a horse and four negroes,"

Stroud v. Mays, 7 Ga. 269, August 1849. "January, 1846, Beersheba Stroud . . and . . Mays . . jointly sold the slave to James Stroud, a relative from . . Ala. for $550, and gave a bill of sale without warranty. . . May, 1846, the slave died, and James Stroud brought an action . . for deceit, . . [270] Dr. . . Low attended on the negro, from 6th May to 27th, when he died. . . Smith had the negro to roll logs with him a few days after his purchase. He was deficient in strength in his ankles. . . Mrs. Stroud told . . that Dr. Webb said he could not cure the negro, but if she would stop him from work, he could patch him up so that she could sell him. Dr. Webb . . attended on him from . . Nov. 1844, to . . April, 1845. His disease was chronic pneumonia. . . He informed defendant . . who told witness the boy had been attacked while working in a gold mine . . [271] Witness is of the Botanic, or Thompsonian school of doctors. . . a short time before the sale, [the negro] was at a house-raising, and carried up his corner. . . Verdict for the plaintiff, for $675; . . The Court granted a new trial," Judgment reversed.

Watts v. Kilburn, 7 Ga. 356, August 1849. [357] "clandestinely removed his property, consisting of negroes, to . . Alabama, . . to avoid the payment of his debts. . . [Three were] subsequently brought . . back to . . Georgia" and levied upon.

Dicken v. Johnson, 7 Ga. 484, November 1849. [485] "He was repeatedly deranged—so much so that he appeared to be afraid that his own negroes would kill him,"

Jordan v. Thornton, 7 Ga. 517, November 1849. [519] "in 1836, mortgaged him to the Georgia Rail Road and Banking Co. He was shortly afterwards taken to Florida, and there sold under the mortgage. In 1845, he was brought back"

Papot v. Gibson, 7 Ga. 530, November 1849. [531] "a marriage settlement, whereby she reserved to herself a life estate in the slaves, then in her possession, with remainder in fee to the offspring of the intended nuptials."

Davis v. Irwin, 8 Ga. 153, February 1850. [155] "Polly, was bid off by . . Chappell, and was delivered to him by the Sheriff, . . that Chappell directed the slave . . to procure a dray, and take her things to Dr. Lamar's residence, and that he would send for her next morning

. . informed the Sheriff that he would leave a check for the purchase money . . with . . Munroe . . that when the Sheriff called for the check the next morning, Munroe refused it, under Chappell's instructions, upon the ground that said negro ran away, or was carried off, during the previous night."

Railroad Co. v. Holt, 8 Ga. 157, February 1850. "A slave . . property of . . Holt, having an ordinary 'pass' to go from Macon to his owner's place, some eight or ten miles out, was received by the officers of the plaintiff in error, on board its freight train . . for the usual passage money for slaves [[163] 'twenty-five cents'] . . The negro, in getting from the cars, within 250 or 300 yards of the station to which he had paid, (the cars being still in motion,) had his leg broken. The master had no knowledge that the negro was going to ride on the cars, . . no negligence by the company; . . the negro jumped off, of his own accord, . . Holt recovered [damages] below,"

Judgment affirmed: [159] "A general pass . . conveys no authority to the slave to place himself on the cars . . [165] The company . . are *tort feasors,* and . . liable for all injuries,"

Dean v. Traylor, 8 Ga. 169, February 1850. "Dean, . . May, 1847, sold, with warranty, . . Sofa, and her three children, for $1350 [$600 being the price of Sofa]. . . April, 1848, Sofa died of consumption; the opinion of physicians was unhesitating . . that she was 'diseased in that way, previous to . . May, 1847' . . The plaintiff below declared for damages, not only for the unsoundness and loss of Sofa, but for the unsoundness of the children. The proof . . was, that 'the disease is hereditary, and, of course, the children cannot be as valuable as if born of a healthy mother,' . . [170] witness values the children at half price, on said account. Another witness thinks two of the children have 'consumptive marks about them' . . about $150 of the finding ['$750, with costs'] was on account of the children." Held: [171]"the verdict, as to the woman, was justified by the proof; but . . wholly insufficient as to the children."

Judge (a slave) v. State, 8 Ga. 173, February 1850. "Judge . . was . . tried, convicted and sentenced for the crime of murder. On the trial, prisoner's counsel objected—1st. To the array, because a former Jury had been regularly drawn and summoned to try said negro, on the same charge, which Jury had been discharged, (and, so far as now *appears,* capriciously discharged.) . . [174] 4th. . . prisoner's counsel asked the Court to charge the Jury, that they must acquit . . because the . . preliminary proceedings before the Magistrates, had not been offered in evidence . . refused, and the State allowed them to introduce said evidence; . . *certiorari* . . refused." Judgment reversed.

Rogers v. Parham, 8 Ga. 190, February 1850. [191] "overseer . . for the year 1847, . . to receive a certain portion of the corn, cotton, fodder and wheat made on the farm."

Buckner v. Lee, 8 Ga. 285, February 1850. [286] " that Everitt was to put in with Lee, some negroes to work with him in his [blacksmith] shop; that Lee was to ' furnish all supplies, pay all expenses, and give Everitt one-half the net proceeds, for the use of the negroes.' "

McWhorter v. Beevers, 8 Ga. 300, March 1850. [301] " a negro woman and child . . sold at Sheriff's sale . . at . . $450 "

Malone v. State, 8 Ga. 408, May 1850. [411] " it looked bad to see a man walking and having a negro;"

Johnson v. State, 8 Ga. 453, July 1850. [454] " The defendant requested the Court to charge, that the bare fact of playing at cards with a negro, without betting . . was not an offence under the Act of 1847, . . The Court refused " Judgment affirmed.

Anthony (a slave) v. State, 9 Ga. 264, January 1851. " Anthony . . was indicted in . . Superior Court, for the murder of . . a free man of color. . . the preliminary proceedings had before the committing magistrates, were not set forth in the indictment," Verdict of voluntary manslaughter.

Held: I. [271] " The Act of 1811 . . was . . wisely and constitutionally repealed by the Act of 1850." [268] " the Act of 1850, giving to slaves and free persons of color the same rights of trial, when charged with capital offences, which the laws accord to white persons, reflects distinguished honor upon the State, and exhibits, in clear and strong lights, the humanity of our laws towards them. . . [II.] [274] the Act of 1821 . . [275] provides punishment for this case." [1] [Nisbet, J.]

Brooks v. Ashburn, 9 Ga. 297, January 1851. [298] " Ashburn and . . Drawhorn went to the house of . . Lockett, on the Sabbath day, in search of a runaway negro of Drawhorn's. Seeing some negroes collected, they approached . . the negroes ran in different directions. . . Drawhorn struck the negro of plaintiff, and killed him. The value . . $800. . . Defendant proved that he was commissioned as a Captain of Patrols, in the first of the year, 1846, (in which . . the negro was killed,) . . The negro was killed within his patrol district."

Tyler v. Gray, 9 Ga. 408, February 1851. [409] " Disbursed during three months . . Paid . . Collins for the hire of his negroes [[408] ' upon the . . Railroad '] . . $662.00 . . Gray's negroes . . $431.12 . . Martin's negroes . . $201.53."

Allen (a slave) v. State, 9 Ga. 492, February 1851. "1850, . . Allen . . was put on his trial for the alleged murder . . of Sam, a slave, . . The Court . . admitted " " the opinion in writing of the Magistrates before whom the defendant was tried," [494] " that the prisoner is guilty " Held: [495] " it was error to admit this evidence, we send this case back," [494] " By the Act [of 1850], the slave is to be indicted and tried, as in cases of white persons." [Nisbet, J.]

[1] "the punishment shall be by whipping, at the discretion of the court, and branded on the cheek with the letter M." Prince's *Digest* (1837), p. 799.

Yancy v. Harris, 9 Ga. 535, April 1851. " writ of *habeas corpus* sued out by Jacob Yancy, alleging that he was illegally confined . . defendant returned that the plaintiff had been brought before the Inferior Court . . as a free person of color, charged with violating the laws . . on the subject of registration of such persons; . . pleaded guilty . . sentenced to pay a fine of one hundred dollars, and in default thereof had been hired, by order of the Court, to defendant . . [536] it was admitted that plaintiff was of dark complexion; that he was the son of a white woman, and that after he was fourteen . . but before . . twenty-one, he had applied . . to the Inferior Court . . to have a guardian . . and had applied to the Clerk to be registered as [a free person of color.] . . Plaintiff contended that, as the child of a white woman, he was presumed to be . . white . . until found otherwise by two Juries . . The Court . . remanded plaintiff into the custody of defendant;"

Judgment affirmed: [537] " Their judgment is a valid, subsisting judgment—if irregular in any particular, it can be set aside, and until that is done, we have no power to discharge the petitioner. The question made by his counsel might have been made before the Inferior Court, and . . thence brought . . before this Court, but it was not made." [Nisbet, J.]

Neal v. Farmer, 9 Ga. 555, May 1851. An action of trespass "brought by Nancy Farmer . . to recover damages for the killing of a . . slave, . . the plaintiff proved the killing and closed. The defendant introduced no testimony. The jury found a verdict for plaintiff for $825. The defendant moved for a new trial, . . there was no evidence that the plaintiff had prosecuted the defendant either to conviction or acquittal for the killing. . . [556] The Court refused . . upon the ground that the killing of a slave was not a felony at Common Law, . . not necessary . . to prosecute . . criminally, before . . civil action."

Judgment affirmed: [578] " We hold it . . settled, upon authority, that *African slavery* does not, and never did exist in England. . . that such a thing as killing a negro slave in England, is a legal impossibility, and could not be a felony under the Common Law. . . [580] The faculty of holding slaves [in Georgia] was derived from the Trustees of the Colony, acting under authority of the British Crown, as a *civil* right, in 1751, . . The property in the slave in the [Georgia] planter, became . . just the property of the original captor. In the absence of any statutory limitation . . he holds it as unqualifiedly as the first proprietor held it; . . [582] Christ . . recognizing the relation of master and servant . . ordained it an *institution* of *christianity.* It is the crowning glory of this age and of this land, that our legislation has responded to the requirements of the New Testament in great part, and if let alone, the time is not distant when we, the slaveholders, will come fully up to our obligations as such, under the christian dispensation. . . public sentiment, in conformity with indispensable legal restraints, extends to the slave the . . blessings of our Holy Religion. . . [583] Moreover, the Act of 1770, . . the first Colonial Act providing for the punishment of white men for killing slaves, is perfectly conclusive, that prior to that time it

was not an offence against the law—of course the Common Law—to kill a slave," [Nisbet, J.]

Cooper v. Blakey, 10 Ga. 263, July 1851. Patterson's will: [264] "that Sophy, a colored girl, (now three years old since . . 1848,) the daughter of my woman Margaret, be not considered as a part . . of my estate; that my executor deliver . . Sophy, to my friend . . Blakey, . . of Kentucky, who I hereby . . appoint guardian . . desire that . . Blakey shall take . . Sophy to his residence, and as soon as she can be manumitted by the laws of said State, to have it done; but should the laws of Kentucky be adverse to manumission . . take her to such a State where she may be manumitted . . I also wish . . that . . Blakey shall superintend the education . . and that she remain under his care and control until . . sixteen . . unless (with his consent) she marries. . . I . . bequeath to Sophy . . two thousand dollars in cash, . . to be on interest from . . my death; . . the interest . . to be applied to the education and support of . . Sophy. . . should . . Sophy marry, that . . Blakey purchase a homestead (in some State where the laws will permit) for the use of . . Sophy and her heirs . . and such other property as may be necessary for the . . comfort of herself and family. . . that in case . . Sophy should die without issue (except in case of her marriage) . . the said . . money to go to . . Blakey. . . [265] I also desire . . that . . Sophy be carried free of charge . . to the residence of . . Blakey,"

Held: "that it is not against the *policy* of . . Georgia, for the owner of slaves to remove them *out of the State* for manumission, and that he may direct it to be done by will."

Fowler v. Waldrip, 10 Ga. 350, August 1851. [351] "swore, that the woman in . . 1848, was worth $600.00, and the child $150 or $200, . . thinks he is now [1851] worth $350 or $400,"

Clifford v. State, 10 Ga. 422, August 1851. "Clifford was put on his trial for stealing a negro boy, the property of . . [423] Armstrong. . . letters written by . . defendant . . [November 23, 1850] 'Dear Sir and Chum: . . there is another dodge, . . I have four negroes whom I have promised to carry North, agreeing that they will consent to be sold once on the way. . . stout carpenters, worth from ten to fifteen hundred dollars each. Well, we could sell them and *cut* thus, with four or five thousand we could *burst* it for two years, and then play the same game again. These negroes meet me at their father's who is *free,* at Christmas, 25th next month, their father furnishes a couple of horses and wagon to start on. The horses will sell for grog money. . . Unless I make the negro business work, I am dead broke at present. . . I think the best thing is, to go home till christmas, or about a week before, and then come on, and we'll raise a storm on these negroes. The business might be carried on gloriously for some time.' . . 'December 19, 1850. . . I . . will put this thing through. . . Don't fear, for there is no danger *here.*' . . [424] they were received by Crawford and taken from him by the officers, who arrested him in . . Virginia. . . Mrs. Carver . . testified 'that she was acquainted with two men slaves, who are the reputed sons of free

George; these two boys came frequently to her house to buy horses,' . . It appeared . . that a free negro, . . George, lived in the neighborhood of the place where the defendant, Clifford, taught school, and that he had four sons who were carpenters, and belonged to citizens of Bibb County; that one of them . . the property of . . Armstrong . . was missing about the 1st of May, 1851, and that he is still absent." [426] "The Jury . . found [Clifford] . . guilty of an *attempt* to commit the offence charged." Judgment thereon affirmed.

Arrington v. Cherry, 10 Ga. 429, August 1851. Marriage settlement, 1827: [430] "sixteen slaves were conveyed . . for the . . separate use of . . Rhoda, reserving to . . Richard the use . . during his . . life,"

Yarborough v. West, 10 Ga. 471, August 1851. "1818, . . Wingo, of . . South Carolina, made a parol gift of . . Peter, about five years of age, to his daughter, Jincy West, . . [472] West removed to Georgia in 1835 or 1836, and about that time sold . . negro . . for . . nine hundred dollars."

Carlton v. Price, 10 Ga. 495, October 1851. Will of Mrs. Lucy Carlton of Alabama: [496] "I . . bequeath to my son . . Aggy . . and . . her children, . . and all their increase . . Nevertheless, if . . [my son] shall die without an heir, . . it is my desire that the . . negroes and their increase be set free at his death."

Berry v. State, 10 Ga. 511, October 1851. [513] "an indictment for larceny . . 'seven thousand dollars, . . in . . coin, . . [514] and three thousand dollars in . . notes' . . the proof went to show that the felony had been committed by two negroes . . Phil and Tom, and the State sought to convict the defendant, by showing that he procured the negroes to commit it, . . proved that . . Phil was whipped for the purpose of forcing him to disclose . . that defendant and several others were present and all agreed that the negro should tell all . . that the negro then accused defendant of being concerned in it, . . defendant . . enraged . . approached the negro with a knife . . threatening to kill him, but was prevented . . said . . that he knew from the negro's countenance, that he was going to accuse him. . . verdict of guilty."

Held: I. [519] "the Court was right in overruling the motion to arrest the judgment." [518] "The law institutes him in the place of the slave, and treats him as the . . principal in the first degree." [1] II. New trial denied: the testimony of Phil [519] "was admitted for the purpose of explaining the reply and conduct of Berry, when thus impeached. . . It is immaterial from what source . . the accusation was made, . . from a talking ass, or a talking snake, . . [520] it is admissible as a key to . . what was said and done by the prisoner." [Lumpkin, J.]

Coyle v. Campbell, 10 Ga. 570, November 1851. The defendant, Coyle, offered to prove his account: [571] "1846. March 14. To 499 days' Hydropathic treatment of servant, Henrietta—3 baths a day—1497 baths, at 12½ a bath, . . 1847. July 14. To 499 days' nursing,

[1] Cobb's *Digest,* p. 780.

at 25 cents, . . 499 days' board, at 25, . . 1 outfit for Henrietta of linen, cotton cloth and woolen blankets . . $18.00 . . 499 days' professional fees I do not charge for, $311 87½, it being . . understood . . gratuitous." " Plaintiff's counsel objected, . . that defendant was not licensed, . . and was not allowed to charge for the cure of diseases. . . sustained " Affirmed.

Aven v. Beckom, 11 Ga. 1, January 1852. [2] " he was satisfied about the negro, as he knew him better than Aven, for he had a wife near his house."

Lennard v. Boynton, 11 Ga. 109, January 1852. "Boynton brought suit . . on a note for $100, given for the hire of a negro, for the year 1850, . . the negro died on the 1st May,"

Held: [112] " He hired the negro for the year, *unconditionally.* He must comply with his engagement." [1] [111] " the maxim of the Common Law, *actus Dei nemini facit injuriam,* is invoked . . I beg leave to demur . . Negroes were hired at the beginning of last year [1851], owing to the high price of cotton and other produce, at the most extravagant rates, throughout the State. Owing to the unparalleled drought in the middle counties, the failure in the crops was almost entire. . . If the death of the negro would entitle him to relief, why should not this other Providential visitation? . . neither should. . . [II.] [113] Humanity to this dependent . . class . . requires, that we should remove from the hirer . . all temptation to neglect them . . or to expose them to situations of unusual peril " [Lumpkin, J.]

Whaley v. State, 11 Ga. 123, January 1852. [125] " after the arrest, witness . . said, from his manner and appearance, he must be the man who had stolen Mr. Peake's negroes, and sold them in Alabama; . . witness said he could tell, as the negroes were on Mr. Peake's plantation, and that he would send for them,"

Mangham v. Reed, 11 Ga. 137, February 1852. " action of trespass . . for the beating of a slave belonging to the plaintiff." [140] " the finding of the Jury, was, in legal contemplation, a finding for the defendant,"

Wyche v. Greene, 11 Ga. 159, February 1852. Deed of gift, 1817: [161] " give . . unto . . Greene . . Sally, now runaway, Moses, Ellick and Sealy, . . with all their increase " [162] "Sally and Sealy, had issue, twenty-nine negroes, all of which Greene had in his possession . . 1850."

Stephen (a slave) v. State, 11 Ga. 225, February 1852. [227] " The Grand Jurors . . charge . . Stephen . . with the offence of rape . . upon . . [228] a free white female " There was also a count for " an attempt to commit a rape." [231] " the State elected to try on the first count. . . [233] the prisoner [confessed] . . [234] that, ' he was very sorry that he had done as he had, and that had it not been for Anthony (another slave) he should not have acted so. . . he did not succeed . . the devil had

[1] Contrary to the decisions in Virginia (2 Hen. and M. 5), South Carolina (2 Bailey 424), and Missouri (9 Mo. 867).

induced him to do it.' . . The boy was chained at the time [of the confession]. He stated further, 'he sent for the girl to bring him a pin, making out that he had a splinter in his finger, . . She was picking cotton on one side of the fence, and he at work on the other.'" The girl was over ten years of age, but [238] "poorly grown. . . nothing but a child; . . 'weak-minded' creature, . . on which account partly, she was not brought as a witness" [228] "the mother . . testified that immediately after the commission of the act . . [233] her daughter . . said 'it was Stephen that hurt her,' . . [241] The verdict is, . . 'guilty of an attempt to commit a rape.'" Motions in arrest of judgment and for a new trial overruled.

Affirmed: [230] "The very helplessness of the accused . . appeals to our sympathy. And a controversy between the State of Georgia and a *slave* is so unequal, as of itself to divest the mind of all . . prejudice, . . [242] the Act of February, 1850, . . makes it the duty of the Solicitor General, *to frame* and send before the Grand Jury, bills of indictment against colored persons charging them with capital crimes, in the same manner as in cases of free white persons . . obviously designing to place both in all respects upon the same footing. Under the Code, a free white person could be indicted for a rape and convicted of the attempt," [Lumpkin, J.]

Grady v. State, 11 Ga. 253, February 1852. "Indictment . . for 'attempt to procure a slave to commit a crime.' . . On the night . . 1851, . . the defendant was heard . . advising a negro slave, named James, the property of . . Moreland," [257] "it was agreed . . that for twenty dollars, Jim was to induce the other two negroes [also the property of Moreland] to escape and accompany Grady to Boston or some free State. . . directions were communicated to them, 'to get their master's money, and cut the damned old rascal's throat, if they could not obtain it otherwise.'" [256] "Moreland . . testified that the negro told him that he was to meet a white man . . that night . . and it seems . . that it was this information which induced the prosecutor, in company with others, to waylay the prisoner." [254] "The Jury found the defendant guilty, and the Court sentenced him to four years' imprisonment in the penitentiary."

Affirmed: [256] "the crimes or misdemeanors spoken of in the Act of 1850, are such as may be committed only by a free white citizen." [255] "The design of the Legislature in the passage of this law, and the previous Act of 1838, . . was to make the white man responsible directly, for crimes committed or attempted, through the agency of negroes," [Lumpkin, J.]

Murphy v. Justices, 11 Ga. 331, May 1852. [332] "The Inferior Court . . ordered the sale of a runaway negro . . after a due advertisement"[1] He was sold for $451. [334] "No claim [to the slave] whatever was established at any time."

[1] Cobb's *Digest,* pp. 1003, 1004.

Ligon v. Rogers, 12 Ga. 281, October 1852. "In 1838 . . action . . for the loss of a negro man, a team of horses, and a wagon . . by the sinking of a ferry-boat"

Railroad v. Davis, 13 Ga. 68, February 1853. [77] "arbitrators . . to assess damages for the killing of a negro man . . about 38 or 40 years old, and destroying a rockaway carriage, . . 1851, . . award of $800 for the killing of the man . . [80] The 1st section of the Act of 1847, makes the Railroads liable for damage done to live stock, or *other property,* . . It is argued . . that the Legislature did not mean to place . . property of the dignity and importance of slaves, who are reasoning . . agents, upon the same footing with live stock," Held: "The words . . embrace *all* property, and of course include slaves."

McBain v. Smith, 13 Ga. 315, May 1853. [316] "the negro was stolen from Smith in Alabama, brought to Georgia and sold to McBain."

Laughlin v. Greene, 13 Ga. 359, June 1853. [861] "Laughlin died . . 1796; . . left three negroes, Sambo, Sucky and Alcy, . . the girls hired at one dollar per week each, and the man at ten dollars per month." "old Sambo . . sold . . to pay the debts"

Warner v. Robertson, 13 Ga. 370, June 1853. On April 15, 1842, by a bill of sale, [371] "absolute on its face," Warner sold Betsey and all her children, six in number, to Robertson for $1750. On the next day, Robertson signed the following instrument: [375] "The said bargain between . . Warner and . . Robertson, is to certify that whenever . . Warner pays all demands that . . Robertson holds against . . Warner, the property is to be refunded back" Robertson took possession of the four older children "from the time of the sale to the present time. . . [376] Before the suit commenced, . . Miller, under authority of complainant, called on R. . . proposing to pay what was due; . . R. declined going into any account . . contending that he held . . under an absolute bill of sale." Depositions in 1851: the negroes still in Warner's possession are [376] "Betsey, about 40 or 50 years of age, valued at $650. Julia, about 13 or 14 . . $650. Billy, about 10 or 11 . . $650. Jim, about 8 or 9 . . $400. John, about 6 . . $300. Harriet, about 3 or 4 . . $200. Boy child, 1 or little more . . $100. Annual hire . . [377] Betsey, with all her children with her till last year, nothing. Something ought to have been paid for keeping them, say $35 or $40—last year, (1850), and now, per annum, all about $100. . . Those [children of Betsey] in possession of Robertson . . Charles, about 27 . . worth . . $1200. Maria (and child,) she about 22 . . $900. Ben, about 19 . . $900. Eliza, about 16 . . $600. Hire . . Charles, per annum, . . $150. Maria and child, if living . . $70. If child not living . . $90. Ben . . $120. Eliza . . $60." [371] "The bill prayed that the contract . . might be decreed a mortgage, . . the jury found for the complainant; an appeal . . the jury found" as before. New trial granted. Judgment of the court below, granting a new trial, reversed.

Gorman v. Campbell, 14 Ga. 137, August 1853. [139] "1852, [Gorman] hired his boy London to . . Campbell . . at . . fifteen dollars per month, to go upon the . . rivers, as a boat-hand. . . the Captain and white hands were engaged in clearing a new passage . . it not being the custom for negroes hired as boat-hands to engage in removing obstructions . . London, of his own accord, in the presence of the Captain, went into the river and commenced cutting a log. . . about half an hour in cutting . . *and the Captain was present during that time.* . . [140] to save himself from being carried down stream, he jumped upon another log . . drowned . . That when the Captain saw that the log which London was cutting was about to be carried down stream, he called to him several times to desist." Held: [142] "the defendant should be made liable, because the Captain did not arrest the work *immediately,* and before it was too late."

Bryan v. Walton, 14 Ga. 185, August 1853. [187] "action [of trover] brought [in 1851] by . . Walton . . administrator of Joseph Nunez, a free person of color, who died without descendants, to recover possession of certain negroes . . [188] [which] had belonged to James Nunez, the father of Joseph, who died in 1809, . . the defendant introduced a deed of gift . . by Joseph Nunez to [his guardian] . . dated . . 1846,"

Held: [205] " It is by virtue of . . Act of 1819,[1] . . that Joseph Nunez held these slaves. But this Act will be analyzed in vain, for authority in either father or son, to give these negroes by will or deed." [198] "the *status* of the African in Georgia, whether bond or free, is such that he has no civil, social or political rights or capacity, whatever, except such as are bestowed on him by Statute; . . the act of manumission confers no other right but . . freedom from the dominion of the master, and the limited liberty of locomotion; . . [199] the condition of the African race is different in every slave state; and is less favorable in the extreme Southern, than in the more Northern slave States; . . [201] to become a citizen of the body politic, capable of contracting, of marrying, of voting, requires something more than the mere act of enfranchisement. . . A white man is liable to a fine of five hundred dollars and imprisonment . . [203] for teaching a *free* negro to read and write; and if one *free* negro teach another, he is punishable by fine and whipping, or fine or whipping, . . these severe restrictions . . have my hearty and cordial approval. . . Everything must be interdicted which is calculated to render the slave discontented " [Lumpkin, J.]. See same *v.* same, p. 50, *infra.*

Latimer v. Alexander, 14 Ga. 259, August 1853. Latimer "had hired a negro man to . . Thompson . . for a year." [266] "bid off . . at public outcry at $91. He is employed as a waiter in the hotel of Dr. Thompson . . [267] A guest is attacked with small pox, and the boy is put to wait on him, and contracts the disease;" [260] "Thompson immediately called in Dr. Alexander . . to attend the negro, without previously notifying his owner that he was sick. Dr. Alexander . . on the refusal of the owner to pay his bill [$100] . . brought this action " Verdict for the plaintiff

[1] Cobb 995.

Judgment thereon reversed: [267] "Mr. Latimer had by the contract of hiring, lost all control over this slave."

Williamson v. Nabers, 14 Ga. 286, October 1853. [289] "Mrs. W. wanted to send for [her son] . . to help her attend to [her daughter] . . and the negroes, who were sick; . . [304] [A witness] heard the old man say . . his negroes were spoiling his children;"

Simmons v. Blackman, 14 Ga. 318, October 1853. "the defendant, in support of his plea of partial failure of consideration, offered testimony that one of the women was, at the time of the hiring, in a state of pregnancy."

Carr v. State, 14 Ga. 358, November 1853. [360] "you talk to me worse than if I was a negro."

Mealing v. Pace, 14 Ga. 596, January 1854. [600] "Chany was born in August, 1847; . . Susan . . in . . May, 1849. I know these facts from a private record kept by my late husband, of the births of his negroes;" Will, 1847: [611] " desire that Lany, after the death of my wife, live amongst my children, when she thinks proper."

Marchman v. Todd, 15 Ga. 25, February 1854. [35] "that he sent his servant and ox-cart . . for the negroes; . . that the negroes . . stated that they were going back to old masters, not to return any more;"

Robert v. West, 15 Ga. 122, February 1854. Jacob Wood's will, 1840: [127] " dispose of all my real and personal estate, (my negro slaves and all their issue expressly excepted,) . . all investments . . shall be made on . . real estate in . . Boston, . . Massachusetts: . . [128] positively direct, that all my negro slaves . . and increase . . be shipped . . to the north east side of the Island of Hayti, (San Domingo,) to occupy, cultivate, and plant for my use, land that I have bought . . and . . devise . . five thousand dollars, to pay the expenses of their removal;"

Bennett v. Woolfolk, 15 Ga. 213, February 1854. "Bennett . . alleged that in September, 1843, he entered into an agreement with D. and W. Gunn, to pursue the business of buying and selling negroes as partners, . . D. and W. Gunn were to furnish all the funds, and Bennett to attend to the purchases and sales, and the nett profits . . equally divided between the firm and Bennett; that he proceeded to Virginia, and elsewhere, and purchased . . [one hundred and forty-one] negroes, . . until May, 1846, . . [214] The profits . . amounted to $15,940 50/100." [220] " the Act of 22d December, 1843,[1] . . declares ' That the Act . . to repeal all laws prohibiting the free introduction of slaves into this State, assented to December 27th, 1842,[2] . . is hereby repealed.' . . It appears from the bill of particulars . . that a very large proportion of the negroes were brought in . . 1843; of this proportion a large part was, it is to be presumed, bought before the 27th [22d?] of December, 1843,"

[1] Acts of 1843, p. 167.
[2] Acts of 1842, p. 165.

Held: "at the time when the contract was made, the contract was legal. It remained so . . several months. . . As to [negroes purchased during that time] . . Bennett . . is most certainly entitled to his suit."

Ray v. State, 15 Ga. 223, February 1854. [233] "the negro is fond of liquor, but witness never saw him drunk, though he has seen him drink a good deal,"

Hately v. State, 15 Ga. 346, April 1854. [347] "Turner was the Clerk of Hately, and . . furnished the liquor to a slave, in the absence of Hately."

Dunn v. State, 15 Ga. 419, June 1854. "The only question . . was, whether an indictment for trading with a slave, was such a case as could be settled under the Act of 1850,[1] without the consent of the prosecuting officer of the State. The Court below held, that it was not"

Affirmed: [221] "the community have too deep a stake in suppressing this evil. . . While the actual owner is damaged by corrupting his slave, every inhabitant in the neighborhood is made to suffer, by the stimulation given by this traffic, to acts of pilfering" [Lumpkin, J.]

Baker v. State, 15 Ga. 498, July 1854. Indictment "for aiding a prisoner, a negro slave, to escape from jail; . . [499] the negro was in jail, upon a charge for an assault, with intent to commit a rape; . . pushed through the door and over the jailer, . . fell and the jailer . . got on him, . . A man came up . . drew a pistol and placed it to the jailer's head, with a threat to fire if he did not release the negro; the negro was loosed and escaped." The prisoners [506] "came to town . . to aid Sam to escape, . . [One] held the horses, upon one of which the negro escaped,"

Held: [504] "it is not true that slaves are only chattels, . . and therefore, it is not true that it is not possible for them to be prisoners. . . [505] the Penal Code . . has them in contemplation . . in the first division[2] . . as persons capable of committing crimes; and as a . . consequence . . as capable of becoming prisoners" [Benning, J.]

Jim (a slave) v. State, 15 Ga. 535, July 1854. [536] "Jim . . stood indicted for the murder of a white man, his overseer. A motion was made for a continuance, on the ground that the excitement and prejudice . . were so great . . the . . offence being committed in January, 1854. . . refused . . The State offered . . the confessions [[541] 'not extracted by promises or threats'] . . the prisoner was . . tied . . at the time the confessions were made, . . The Court over-ruled the objection" "that they were made under duress. . . The confessions were, that the deceased, a youth weighing about 100 lbs. raised a maul and attempted to strike the prisoner, a stout man; that the prisoner then knocked him with an axe, and struck him more than once; said that deceased ran from him, and begged him to desist, but that he would not, because he was mad." The court refused to charge [537] "that if a master or overseer, in-

[1] Cobb 814.
[2] Cobb 778-781.

flicts unmerciful . . punishment . . such as would amount to a crime, under our Penal Code, and the slave, in a moment of passion, . . kills him, it is manslaughter and not murder." Jim was convicted and a new trial was refused.

Judgment affirmed: I. [539] "a continuance . . would have been fruitless. Speaking for myself, alone, . . I was strongly stimulated . . to grant . . a continuance (and would . . have favored it, if . . it would have availed him anything,) by the consideration that his master had failed or refused to give him assistance. . . this prisoner found able and zealous assistance at Court. But my idea of the master's duty . . [540] is, that he should, if able, (and . . ability was not wanting in this case,) see to it, that his slave has the benefit of counsel . . at the earliest convenient moment . . that this duty . . is in return for the profits of the bondman's labor . . is as binding . . as the obligation to procure . . medical attendance . . or food and clothing . . that the conduct of the master who shrinks from this duty, whatever . . *his* opinion of the slave's guilt, or whatever the public excitement . . is highly reprehensible. . . [II.] [542] the homicide of his master, overseer, or employer . . by a slave, in resistance to an assault made upon him by that master, overseer, or employer, must, in all cases, be either justifiable homicide or murder." [541] "The legal principles which we . . deem it necessary to assert, and some of the sentiments . . may shock those who are prejudiced against . . slavery . . who are blind to the difficulties in dealing with the subject, on the part of those whose interests are involved . . and *their right* to deal with it for themselves, . . in view of the solemn responsibilities, under which they rest to their Maker. . . [543] If the master exceed the bounds of reason . . in his chastisement, the slave must submit, as the child submits . . and trust to the law for his vindication. He cannot, himself, undertake to redress his wrong, unless the attack . . be calculated to produce death. . . our laws refuse . . indulgence to the passion of the slave . . [544] because, to allow it, would be to make him the judge . . as to the . . unreasonableness of the extent . . of that patriarchal discipline which the master is permitted to exercise—would be . . to encourage servile insurrection and bloodshed." [Starnes, J.]

Long v. Lewis, 16 Ga. 154, August 1854. "action brought by . . Lewis . . on a contract . . December 1st, 1850, . . agreed that Lewis should serve Long, as overseer, . . 13 months . . [for] One Hundred and Fifty Dollars. . . [155] quit . . in March, 1851. . . [157] [Long told a witness] he had told one of the negroes to tell plaintiff, if he did not do better he might leave. . . He said plaintiff had gone to sleep in the new ground." One witness [155] "thought that Mr. Lewis was a very hard-working man; frequently heard the hands working late after night and before day, while they were under Mr. Lewis. . . [156] [Another] says: . . Plaintiff appeared to be controlling the hands; saw him whipping a little negro in the field. . . [159] He said the reason he left . . the old lady complained of him for . . waking up the negroes before day, and going to work before day. . . the [five] hands, besides building a chim-

ney, were chiefly employed in clearing land" [163] "non-suit . . should have been granted."

John (a slave) v. State, 16 Ga. 200, August 1854. "indicted for the murder of Mark Swinney. . . [201] the deceased had died from wounds with a knife, . . verdict of guilty."

Dacy v. Gay, 16 Ga. 203, August 1854. [204] "action brought by Gay against Dacy, for harboring a slave named Joe, . . and for the value of his services during the time . . The plaintiff proved that he was run away from him, from April 1st, 1851, until November 8th, 1852; that the defendant . . hired him out to work, with . . Henderson and Carlisle for nine months on a rail road contract; that . . Lindsay, for two months hired him out and received money for his hire . . Henderson and Carlisle paid . . twenty dollars a month, and that his labor was worth from 20 to 30 dollars per month. . . that defendant had, some years previously, known . . Joe as the property of Mr. Gay; that he had worked with him a year or two. Also, that he called the slave at one time Dave, at another Pompey. . . [205] The Jury found for the plaintiff, Three Hundred and Eighty dollars." Judgment thereon affirmed.

Albertson v. Halloway, 16 Ga. 377, August 1854. Ann was [378] "valued at the time of the sale [in 1847] . . at $450 . . . from the time Albertson purchased her . . she has been . . afflicted with rheumatism—unable to work, and worth nothing; at the time of the trade, Halloway said her feet were sore from traveling."

Mosely v. Gordon, 16 Ga. 384, August 1854. [385] "action . . brought by Gordon . . to recover the value of a negro sold by defendant . . with warranty of soundness. . . [391] [The agent of the firm of which Mosely was a member testified:] Travelling in company . . [with] Allen, and he a trader also, we made a joint trade [in January 1848] with Gordon, swapping two negroes for one" Dr. Calhoun deposed that he [387] "first gave medicine [to Daniel] . . May . . 1848. . . General dropsy . . accompanied with a painful affection of the joints . . The liver was . . materially enlarged, as also the mesenteric glands, spleen, etc. . . I took Daniel to my own house . . and kept him there, under treatment, until he died, . . August, 1848. . . I think . . diseased long anterior to the December or January preceding. . . the amount charged by me . . was twenty-four dollars and seventy-five cents. . . [388] Defendant . . introduced Dr. . . Ridley . . [389] He believed the case . . was produced by exposure, neglect, etc. . . Defendant was very careful with his negroes, and frequently sent for witness, professionally, when it was really not necessary. Had never been called to see Daniel. . . [390] Duprey . . raised him . . 9 years old in 1847, when I sold him to [the firm] . . at Charlotte C. H. Va., . . carried to Georgia in that fall . . as healthy a boy as I ever knew . . [392] The defendant . . proposed to prove [by three witnesses] the general . . reputation of . . Gordon . . for his . . cruel treatment of his slaves, generally; and . . that . . [he] had been indicted for cruel treatment . . rejected . . [393] verdict for the plaintiff" Affirmed.

Collins v. Lester, 16 Ga. 410, August 1854. [411] "That . . [January 2,] 1852, at the request of defendant, he hired for defendant, two . . negroes [at $125 and $150, [412] 'time of hire to expire . . 24th December next'] . . before they were delivered . . he exchanged one of them with the plaintiff, for a boy named Tom, who, she said, was hard to manage. . . *distinct understanding* that the negroes were to work . . on . . Rail-road. In August or September . . defendant informed witness . . grading . . was completed; . . asked . . that he might take Tom to Brunswick [two or three hundred miles away]; . . refused . . [Nevertheless, Tom was sent there] and in a few days . . was taken sick and died." Judgment for plaintiff affirmed.

Drumright v. Philpot, 16 Ga. 424, August 1854. [425] "inherited Becky . . and owned her for twenty-four years, when he sold her and her [two] children . . to Drumright, who . . bought for Drumright and Nixon as partners—received $300 for the children, with the understanding that Drumright was to take Becky for nothing—she being diseased with scrofula; the children were sound and healthy, at that time." The firm sold them in a lot with two others to Philpot, [426] "warranting that they were sound and healthy," [424] "physician—called . . to examine . . thinks Becky . . had been diseased several years . . can't be cured . . the children . . had unusual glandular swellings about their throats" Judgment for Philpot affirmed.

Sweeny v. State, 16 Ga. 467, August 1854. "The presentment charged, 'that . . defendant did . . furnish a . . [468] man slave . . with spirituous liquors for his . . own use, . . Sweeney not being . . the owner, overseer or employer' . . found guilty;"

Lyon v. Howard, 16 Ga. 481, August 1854. [482] "1818, . . Howard of . . South Carolina . . bequeathed to his wife . . a negro woman . . Jinney, and her increase; . . in 1823 . . [the widow] removed to [Georgia] . . and there . . Jinney bore . . [fourteen] children . . in 1838 . . [the widow] gave up [to her children] all . . except a girl . . and a man named Lindsey, . . the . . negroes were sold . . thirteen in number, including Lindsey, by . . Howard, as executor . . who then lived in . . Mississippi;"

Cleland v. Waters, 16 Ga. 496, October 1854. Will of Thomas J. Waters: "Thirdly. Whereas, I own . . the [forty-four] undernamed slaves, . . [497] On account of the faithful services of my body servant, William (the husband of Peggy) I will . . his emancipation . . with the future issue . . of all the females mentioned . . If it is incompatible with the humanity, etc. of the authorities . . of Georgia, I direct my . . executors to send . . slaves out of the State . . to such place as they [the slaves] may select; and . . expenses . . paid . . and that the whole . . proceeding be conducted according to the laws . . of Georgia, I having no desire . . to violate the spirit . . or policy of such laws; . . [498] Eighth. I direct . . executors, in the division of my [other] negroes among my children, to divide . . in families, so that the principles of humanity may be ob-

served, and the separation from each other be as free from pain as possible." [499] "The testator possessed . . a large number of negroes not mentioned in the third item . . A number of those mentioned were lineal descendants of testator. . . The Court below . . [held] that the negroes . . enumerated, were all emancipated."

Affirmed. [508] "We have been strongly urged . . to lean to that interpretation most unfavorable to manumission, on the ground that the favor shown to liberty by the Common Law . . does not apply to negroes in Georgia—the granting of freedom being against the express provisions of our Statutes, and opposed to the public policy of our laws. [Review of the statutes concerning slaves and free negroes, *ibid.* 509-513.] . . [513] While public opinion has never wavered in this State, for the past fifty years, so far as *domestic* manumission was concerned, the same steadfastness of purpose has not been manifested, as to extra-territorial and foreign colonization. The policy of transporting our free blacks to Liberia, received at its commencement in 1816, the . . approbation of our greatest and best men. . . [514] In 1824, a resolution from . . Ohio, on the subject of . . abolition . . having been laid . . before the Legislature, . . the report . . adopted thereon, after expressing regret 'at this unnecessary interference' . . concludes . . 'Georgia claims the right . . of moving this question when an enlarged system of . . philanthropic exertions, in consistency with her rights and interest, shall render it practicable.'[1] Is it not apparent, that up to this period, the true character of . . slavery had not been fully understood . . at the South; and that she looked to emancipation . . in the uncertain future, as the only cure for the supposed evil? Thanks to the blind zealots of the North, for their unwarrantable interference . . It has roused the public mind to a thorough investigation . . The result is, a settled conviction that it was wisely ordained by a forecast high as heaven above man's, for the good of both races, and a calm and fixed determination to preserve and defend it, at any and all hazards. . . [516] in 1828, the Legislature having under consideration resolutions from . . South Carolina and Ohio, . . say . . 'The Colonization Society is considered . . as one of a dangerous character in . . respect [to abolition]. Its schemes of colonization are . . visionary.' . . So much for our legislation" But the decisions of the court in Jordan *v.* Bradley[2] and in Roser *v.* Marlow[3] uphold foreign emancipation. [520] "Whatever change is made, *if any,* should be by the law-making, rather than by the law-administering department of the government." [Lumpkin, J.] See same *v.* same, p. 46, *infra.*

[1] "In Senate, Nov. 19, 1824. . . [159] Your committee are . . constrained to view the resolution of the legislature of . . Ohio as calculated to infringe the rights . . of Georgia, in common with other states similarly situated, and as indelicate in those from whom it emanates. . . Your committee . .'consider the resolution as violative of the true dictates of humanity—and this idea is supported by a contrast of the slave population of the south with the wretched . . condition of the free people of color who crowd the houses of punishment . . in some of our sister states. . . Your committee . . recommend . . resolution: . . [160] That the resolutions . . of Ohio, proposing the emancipation of slaves, . . be and the same is hereby disapproved . . and that . . the Governor be . . requested to transmit a copy . . to the executive of each of the United States." Acts of 1824, pp. 158-160.

[2] P. 12, *supra.*

[3] P. 14, *supra.*

Freeman v. Flood, 16 Ga. 528, October 1854. The father said: [530] "here is this girl; you can take her home with you; she is not worth much, but may do you some good; she will do to pick up chips;"

Ricks v. State, 16 Ga. 600. January 1855. [601] "indictment for buying cotton from a slave, without permission.[1] . . Walthour . . having reason to suspect . . had furnished one of [his father's slaves] . . with . . cotton and sent him to defendant's house, while he went to watch . . defendant bought . . paying . . in liquor and tobacco; witness heard them also talk of a former transaction of the same kind, and made an arrangement for a future one." Verdict of guilty. Judgment thereon affirmed.

Dudley v. Porter, 16 Ga. 613, January 1855. Indenture, dated 1821, "witnesseth" the sale to grantor's sister-in-law of [614] "a negro girl . . about three months of age," the consideration being $100.

Curry v. Gaulden, 17 Ga. 72, January 1855. [73] "bond given . . at the time of hiring . . that the obligors 'shall cause Allen . . to be forthcoming . . 25th day of December, 1845.' . . the negro ran away" Held: the hirer is not excused.

Hannahan v. Nichols, 17 Ga. 77, January 1855. "in 1853, . . he sold . . a negro for $1100,"

Tompkins v. Tigner, 17 Ga. 103, January 1855. "hire . . for the year 1852—[of] a man at one hundred dollars—a woman at seventy-five dollars;"

Mercer v. State, 17 Ga. 146, January 1855. [149] "had gone out of the house, as humble as any negro or dog, . . [160] Witness was jailor . . Prisoner [under charge of murder], with . . Hogan and . . Lester, and two negroes, at the time of making his escape, was confined in the dungeon; all got out except Lester, . . [161] when witness went to the dungeon, a negro . . confined within, asked witness to take a piece of money and get him some tobacco; witness paying no attention . . the prisoner at the bar remarked that the negro had but a short time to live, and thought he ought to have all the luxuries he could procure, whereupon he went into the dungeon, to get the money, supposing the negroes were chained."

McGlawn v. McGlawn, 17 Ga. 234, January 1855. "in consideration of . . Five Hundred Dollars, . . paid, by my son, David . . sold [in 1836] . . to . . David . . negro girl about 13 years old, of black complexion, named Liz; . . to be delivered . . at my death,"

Knight, as pro. ami of Margaret (a free woman of color) and others, v. Hardeman, 17 Ga. 253, February 1855. "In 1822, Henry Duvall . . of Maryland, made his . . will . . 'that my black woman Rebecca shall be free on the 1st . . [254] January, 1828; and all her issue to be free as they arrive at the age of 30 . . and all . . of my young blacks that are not manumitted, shall be free as they arrive at . . thirty years.' Mar-

[1] Cobb 827.

garet, (one of the complainants and the mother of the others,) was the daughter of Rebecca, and 'a young black' at . . testator's death. She arrived at 30 . . in 1835. . . before reaching that age, she was sent . . into Georgia, and sold from one to another until bought [[255] 'in . . 1840, or thereabouts'] by . . Healey. . . [His] executors were about to sell . . Margaret and her children. . . Knight . . applied to . . Hardeman [executor], the Judge of the Circuit where Margaret was domiciled, to be appointed guardian . . refused . . appealed to the Supreme Court . . but the negroes would be sold before a decision could be had; that a suit at Law would not protect them—1st. Because all the witnesses are resident in Maryland, and their testimony could not be procured before the sale. 2d. Because they would be sold and removed from the State before a hearing could be had. The prayer was for an injunction and a decree, declaring complainants free. . . demurrer . . bill dismissed."

Affirmed: [260] " do . . not [the acts of 1770, 1835, and 1837], singly or combined, afford the most . . complete remedy, . . [261] As to the complaint against Judge Hardeman, . . why call upon him to prejudice the estate of his testator, . . why was not the application . . made to the Judge of the Macon . . Circuit [within which another executor resided]? . . under each of the Acts . . cited, abundant provision is made for protecting persons of color from being eloined . . beyond the jurisdiction of the State before a trial can be had. . . Decisions have been read from Virginia, Tennessee and several other of the slave or quasi slave States, . . [262] that in suits for freedom, the jurisdiction of Chancery is not ousted by the enactment of Statutes for this purpose. . . questions involving slavery, have not, heretofore, been discussed, even in the slave States, with that thoroughness which either principle or their intrinsic importance demanded. . . we are strongly inclined to hold the very converse of the doctrine referred to from our sister States to be true, . . This whole question is one of State policy, and should not be put upon these principles of *meum et tuum,* which regulate individual rights. . . to my mind, there lies . . a much stronger objection to this whole proceeding . . because neither Courts of Law nor of Equity have any right to grant the relief . . [263] Can the laws of a sister State . . allowing freedom . . be executed by the Courts of Georgia? Dare we say, in the face of the Acts of 1801 and 1818, that these foreign laws are not prejudicial to our own rights and interests? . . No one pretends that negroes can be carried to New York . . and held there in perpetual bondage . . With what more propriety can slaves be brought here and emancipated?" [Lumpkin, J.]

Wellborn v. Weaver, 17 Ga. 267, February 1855. [68] " he sent the negro woman to defendant's, to wait on his . . wife; and the boy [son of the negro] afterwards ran away and went to defendant's who refused to give him up."

Hollifield v. Stell, 17 Ga. 280, February 1855. Will, 1801: " I . . give to my son . . Kate, and in case . . Kate shall bear a child to live to the age of two . . that my daughter, Christina . . may be possessed of it;

and in case . . Christina should die without an heir of her body . . the said child to be sold"

Walker v. Hunter, 17 Ga. 364, February 1855. [374] "Hunter . . replied, that it was terrifying to him to have his negroes scattered all over the world. . . [To] prevent that . . he had [by his will] given the negroes to Charles Walker's child, and that by the time that child would die, the negroes would die with old age. . . [384] he had never bought a negro, and he never wanted them divided" [380] "as they all came from one family, . . [383] Hunter's mind was between the two extremes of an idiot and a strong mind;"

Wright v. Greenwood, 17 Ga. 418, February 1855. "Greenwood and Co. sued . . Wright on a note for $816 . . given for . . a negro girl . . March, 1851, . . in the summer and fall of 1852, and in . . 1853, the negro had white swelling in her left arm. . . proven by neighbors who had known the negro in North Carolina, that she was sound, and did the ordinary work of negroes, up to the time of her sale. . . verdict for Greenwood and Co." Judgment thereon affirmed.

Dacy v. State, 17 Ga. 439, February 1855. "indictment for receiving corn from a slave, . . 1852. . . [440] verdict of guilty. . . Afterwards, the defendant's Counsel moved in arrest of judgment, and for a new trial, and produced an order of Court, . . 1853, granting an acquittal . . predicated on two successive demands for trial under the Penal Code. . . The Court refused . . holding the proof of identity . . not sufficient, and sentenced the defendant to thirty day's [*sic*] imprisonment, and payment of costs." Judgment reversed and new trial awarded, [444] "odious as the crime may be . . and notwithstanding he escaped through a loop in the Statute,"

McGuffie v. State, 17 Ga. 497, April 1855. [500] "Prisoner . . raised his gun . . deceased [who [503] 'had control of the yard'] was engaged, with others, . . [501] packing brick; and he said boys, go and take the gun away from him; some of the boys said, Mr. McGuffie, don't shoot here; . . [504] generally had some white man to take charge of the hands in the yard;"

Hunter v. Bass; American Colonization Society v. Bass, 18 Ga. 127, May 1855. Will of General Robert Bledsoe, dated August 17, 1846: "I will . . that there shall be a sufficiency of good, arable land, purchased either in . . Indiana or Illinois, for all my negroes to locate upon and cultivate, with a sufficiency of land for timber and firewood included—to be done within a reasonable time after my death, by my executors . . and to remove all of said negroes to said tract . . but would recommend for the title to . . [128] land to be made to my executors, for fear they might be defrauded . . or squander it . . I will . . after the removal and location . . west of the Ohio river, that they be furnished an outfit of farming utensils, including the wagons and teams used in their removal . . that there be also purchased . . the first year's provisions" "After the making of the will, and before the death of Bledsoe, . .

Indiana prohibited the introduction of negroes[1] . . After his death . . Illinois passed a similar Act.[2] . . Bass, the executor . . filed a bill for direction, . . Hunter moved to be made a party . . as guardian *ad litem* for the negroes, . . The American Colonization Society also moved . . to be made a party, calling the attention of the Court to the Colony of Liberia as a proper location for the slaves, and tendering their organization as a proper scheme for carrying out the . . bequests . . The Court below refused both applications,"

Affirmed: [129] "it cannot be said, with any degree of confidence, that he wished them to be free in Ohio or Massachusetts, Canada or Congo, Liberia or wherever else his executor or some Court might say. . . the monstrous doctrine of *Cypres* [*sic*] is not to have given it one inch of ground beyond the *possessio pedis.*" "if the will cannot be executed . . And if the slaves take no rights under it, then none on behalf of the slaves do, or on behalf of the slaves can appear in Court" [Benning, J.]

Adams v. Bass, 18 Ga. 130, May 1855. See Hunter *v.* Bass, *supra.* Held: I. the bequests of the will as to the negroes cannot be executed under the "cy pres" doctrine [136] "without manifesting, by a single syllable, any general intent to manumit . . his sole and definite proposition is to have his negroes removed to Indiana or Illinois, . . [138] as a man, I do not regret the failure of this bequest. . . [139] what friend of the African or of humanity, would desire to see these children of the sun, who . . perish with cold in higher latitudes, brought into close contact and competition with the hardy and industrious population . . northwest of the Ohio, and who loathe negroes as they would so many lepers?" II. [138] "the slaves must descend to . . the heirs at law of the decedent." [Lumpkin, J.]

Judge Starnes concurred: [145] "it cannot correctly be said, that the policy of . . Acts [of 1801 and of 1818] is opposed to the manumission of slaves, by sending them out of the State. . . [146] As to what may be considered the truly sound policy *of the State* . . is . . a question for the legislator. . . I, myself, doubt the policy of permitting free persons of color to be sent into the Northern and Western States of this Union, to increase the number of paupers and aid in swelling the abolition chorus . . Yet, several . . cogent reasons can be assigned, why it would not be for the best interests of the slave holding citizens of the State to prohibit the removal of slaves from the State to any place whatever." Judge Benning dissented in twenty-three pages. [166] "These Acts . . testify that every sort of emancipation is forbidden by the *policy* of the State."

Jones v. Railroad Co., 18 Ga. 247, June 1855. "action . . for the killing of a slave, by the negligent running of their cars."

Manes v. Kenyon, 18 Ga. 291, July 1855. "Manes . . warranted the negro to be 'sound in body and mind, except some deficiency about

[1] Constitution of 1851, sect. 1: "No Negro or Mulatto shall come into, or settle in this State, after the adoption of this Constitution."
[2] Act of Feb. 12, 1853.

her feet or ankles.' Kenyon brought an action for deceit . . alleging, that from some disease of the feet and ankles, she was utterly worthless"

William (a slave) v. State, 18 Ga. 356, July 1855. "Bill . . was indicted for the murder of Caesar, . . both were employed about a livery stable . . Bill was just grown . . Caesar . . weighed 188 pounds. . . Bill 'devilled' Caesar . . dared Caesar 'to make a riffle towards him, and he would cut his heart out of him.' Caesar would not hit him . . Bill . . slapped Caesar . . on the shoulder. Caesar showed no fight. Bill then stabbed him."

Judgment affirmed: [359] "the definition of murder and manslaughter, as contained in the Penal Code of 1833," is applicable to the trial of a slave. He is [360] "punished, under the discretionary power vested in the Inferior Court, by the Act of 1816."[1]

Bartee v. Andrews, 18 Ga. 407, July 1855. "overseer . . was to have one-fifth of the crop made."

Harden v. Mangham, 18 Ga. 563, August 1855. Will of Mrs. Christiana Hall: [564] "As manumission is, by the laws of the State, forbidden, (which I could have wished otherwise) I . . bequeath unto . . Mangham, my trusty and faithful servants, Charity and Starling, . . unto him and his executors forever, in fee, with the very urgent request that he and they will treat said negroes kindly and affectionately, and watch over and protect them—finding them a comfortable home, and allowing them as many privileges . . as the laws of the State will permit negro slaves to . . enjoy." The will was upheld.

Poole v. State, 18 Ga. 567, August 1855. Indictment for stealing a slave.

Dawson v. Callaway, 18 Ga. 573, August 1855. [574] "a bill of sale [in 1815] . . for a negro girl . . [for] $375."

Hart v. Powell, 18 Ga. 635, August 1855. "action of trespass . . against . . Powell" [637] "Bill, a negro fellow about twenty-five . . worth $1,000, had runaway . . in 1852. . . he was a negro of violent character, and considered a dangerous man . . had knocked several negroes in the head; had been absent for some time; . . some one . . had tried to catch him, and [he] had 'made fight upon his pursuer with a stick.' Being found lurking about a plantation . . having been run from the fodder-house . . a little before day . . application was made to the defendant to track him with his dogs, which were trained for that purpose. . . informed, that Bill had a knife and a stick, which induced him to get his pistol." [635] "came up with him; a contest ensued" [638] "The account that the defendant gave . . was, that the negro had killed one of the dogs and disabled the balance, . . that refusing to submit, he shot, at first, to disable him, . . the negro advancing upon him, a conflict ensued, and he discharged the third load" He blew his horn and called out [640] "for a physician to be sent for, for that he

[1] Prince's *Digest* (1837), p. 792.

fears he has killed Bill, and that he would not have done so for all the negroes above the earth;" Verdict for Powell. No error.

Collier v. Lyons, 18 Ga. 648, August 1855. Trover. [649] "the plaintiff sent his negro man . . to the [defendant's] mill, with corn to be ground. While there, the water-wheel got out of order; while assisting in . . prizing up the wheel, the negro . . received a blow by the lever falling, that killed him. The defendant . . was present . . though it does not appear . . that he requested . . the boy to render assistance" [650] "the Jury . . added interest to the value, from the death to the time of trial. . . Let it stand."

Durand v. Grimes, 18 Ga. 693, August 1855. "assumpsit . . on an open account for sixty-five dollars, for medical services and medicine rendered and furnished a slave . . [694] house-girl . . property of defendant . . was left with Mr. King and [his wife, the mother-in-law of defendant,] . . without any instructions about calling a physician. Witness did not call Dr. Grimes to the girl as the property of the defendant" Judgment affirmed.

Harrell v. Green, 18 Ga. 711, August 1855. Will of Mrs. Harrell, 1833: [714] "hire . . negro ['about thirteen'] . . into hands that will treat her well, until . . [my grandson] comes of age . . and apply . . portion of . . hire to the purchase of necessaries for my daughter, . . I wish . . Ellick, about eleven years old, to be sold, and the money . . divided . . I wish my negro woman, Esther, to be sold;"

Moran v. Davis, 18 Ga. 722, August 1855. "action on the case . . for the recovery of the value of a negro boy . . alleged to have been worth $1200. . . hired . . to the defendant, for the year 1852. . . the negro run away, and . . the defendant employed . . Hamblin to chase him with dogs. The negro was found drowned in a creek, into which he had plunged during the pursuit . . the Court charged . . the owner, the hirer or overseer . . has the right to pursue . . with such dogs as may track him . . provided it be done with such . . as cannot lacerate . . and if in doing so, harm should befall . . the hirer or overseer will not be responsible"

Judgment for defendant affirmed: [723] "if a capture . . could not be accomplished but by . . dogs, . . a pursuit in this mode would be justifiable, provided . . made with such . . as would not lacerate or otherwise materially injure the slave. . . the Amendatory Act of 1851—'2,[1] . . [724] to the other acts of cruelty . . specified [in [723] 'the XIIth section of the 13th division of the Penal Code'][2] . . adds . . '*unnecessarily* biting or tearing with dogs.' Is not the inference irresistible, that dogs may be employed, prudently . . The South has lost, already, upwards of 60,000 slaves, worth between 25 and 30 millions of dollars. Instead . . of relaxing the means allowed by law for the security and enjoyment of this species of property, the facilities afforded for its escape and the . . encouragement held out to induce it, constrain us, willingly or other-

[1] Acts of 1851-1852, p. 268.
[2] Cobb's *Digest,* p. 827.

wise, . . to tighten the chords [*sic*] which bind the negro to his condition of servitude—a condition which is to last, if the Apocalypse be inspired, until the end of time; . . every *bondman* . . and every *freeman,* hid themselves . . (*Rev.* 6 *ch.* 12 *to* 17 *verses, inclusive.*)" [Lumpkin, J.]

Cleland v. Waters, 19 Ga. 35, September 1855. See same *v.* same, p. 38, *supra.* [36] "1854, we held, unanimously, that it was the *intention* of the testator, to manumit *all* the slaves mentioned in the third item . . can that intention be executed? . . [I.] [40] The reasoning which seeks to invalidate this will upon the ground that slaves, as such, are incapable of choosing, is too technical to commend itself to my approval. . . It would go to the full extent of maintaining that freedom could not be conferred . . *at all,* . . because . . he would be incapable to consenting to be free! . . [41] at war with the whole train of adjudications in this and our sister States,[1] as well as of every other civilized country. . . [II.] I utterly repudiate the whole current of decisions . . from Somerset's case [2] down . . which hold that the bare removal . . to a free country, either by way of transit . . or . . temporary sojourn, will give freedom . . [42] Prior to 1836, the Courts even in Massachusetts [3] had made no such decision. This fungus has been engrafted upon their Codes by the foul . . spirit of modern fanaticism. . . Still . . whenever . . removed to a free country . . to remain there permanently, they cease to be slaves, . . The right of removal . . was all that was needed to bestow freedom upon these slaves. . . [III.] [53] we see nothing [in the acts of 1801 and 1818] . . limiting the power of the testator to send his slaves to Africa [4] or elsewhere, in his lifetime, there to remain free; or to direct it to be done . . after his death. And . . nothing in the policy of the State, *as declared in these Acts* . . opposed . . [IV.] [54] if it be assumed that a trust is void because of the legal incapacity of the slave to enforce it, then I deny the doctrine." [Lumpkin, J.] Judge Starnes concurred. Judge Benning dissented.

Pressley (a slave) v. State, 19 Ga. 192, November 1855. The court charged: [193] "If you believe, from the evidence, that prisoner killed Boston (the dec'd [slave]) because Boston called him a d——d white-eyed son of a b——h, this is no considerable provocation," New trial refused.

Akin v. Anderson, 19 Ga. 229, January 1856. Special verdict: "that Fanny Williams, a free woman of color, departed this life . . eighteen hundred and forty-three; that from . . eighteen hundred and twenty-five . . she was the owner of . . lot . . in . . Savannah; . . left two children, . . Susan, the ward of the plaintiff, and William . . William . . departed this life . . 1850, without leaving a child . . Margaret . . the ward of the defendant, was recognized by . . William . . as his wife, . . Margaret kept possession of one half of said lot" Susan claimed it. The Judge

[1] Overruled by Curry *v.* Curry, p. 76, *infra.*
[2] Vol. I. of this series, p. 14.
[3] Commonwealth *v.* Aves, 18 Pickering 193.
[4] In 1858, in Sanders *v.* Ward (25 Ga. 109 (129)), Judge Benning says: "Already one or more of the negroes manumitted by the Waters Will have returned from Liberia."

below held [233] " that Margaret, as the wife . . is entitled . . to the said premises " " Marriage . . among free persons of color, is recognized by the Act of 1819,[1] so far as to determine the question of descent. In the table of descents, the wife stands in the first degree along with children." Affirmed.

Smith v. Dunwoody, 19 Ga. 237, January 1856. Will of James Smith, dated 1853: [240] " to . . wife . . the choice of any of my house servants, to the number of five, . . she owned a negro woman . . finding her a supernumerary . . as well as naughty . . in the sale of her . . four hundred and fifty . . dollars could only be obtained for her . . which sum . . shall be paid over to [wife] . . [241] all the lands . . within three miles of . . the Sidon estate . . to be considered as an appendage of said estate, with all the negroes . . shall be considered as my general estate, to be kept in perpetuity, . . [242] my mind revolting in the separation of their families, for a division . . annual income . . to be divided . . (reserving . . amounts . . hereafter . . named,) . . between my . . children, grand and great grand do. . . [243] give each of my servants or slaves, annually, . . over the age of seventeen years, (remembering the superannuated among them,) as a small testimony of my regard . . this for their little comfort: to say, five . . dollars each; as well as in remembrance of their spiritual relations . . one hundred dollars . . annually . . in aid of the ministry, . . one . . of the Baptist denomination . . shall give his labors at least twice in the month. The chapel on the estate, to be kept in good repair. As my mind has long been exercised, not from any view that slavery is to be considered a sin, but otherwise, fully justified from the oracles of truth, . . I, . . for their gradual emancipation, the following provision . . do hereby make . . that . . an annual register will be kept of all the births . . on said estate, the same being recorded in the annals of the county, . . [244] and that every tenth . . birth, at the age of eigh(18)teen . . shall have faithfully made known to him or her . . this arrangement . . and in the event of such accepting of it, such shall be . . reported to . . the Colonization Society of the United States of America, for the purpose of providing . . for their freedom, . . and should such reject this provision . . shall continue in slavery; if a female, it shall not . . deprive her issues "

Held: [256] " inasmuch as . . the annual payment of $5 to each slave, of $100 to a preacher and the repairs . . to the church, required *a perpetuity* to support them, they are illegal . . [256] the emancipation clause . . [260] is void, because dependent upon the perpetuity section, . . void for another reason. This testator having given these slaves absolutely to his grand-children and great grand-child, this direction for the emancipation of one tenth . . is repugnant to the rights of property in the legatees. . . And what confusion would spring up, should . . the property [be] saddled with this condition!" [Lumpkin, J.]

Callaway v. Jones, 19 Ga. 277, January 1856. [278] " alleging that Jones and Quattlebum, . . 1850, sold . . Tenah and Rachel, for . . $1100,

[1] Cobb 995.

and gave a written warranty of soundness; . . that both . . were unsound, Tenah having a disease of the womb, and Rachel . . a defect in one of her eyes; and that the amount already paid [$425] was the full value"

McDaniel v. Strohecker, 19 Ga. 432, January 1856. Action of deceit. [434] "that the negro, during the negotiation [in February 1854], was sent by defendant [a physician] to plaintiff, that he might examine her; that plaintiff was a negro dealer;" [433] "no marks then on her breast; the negro had a vial of cherry pectoral" [434] "that plaintiff then requested witness to . . offer $700, if the defendant would warrant the health, or $600 without any warranty; . . but defendant refused to change his terms . . $700 without warranty of health; . . plaintiff . . [said] I will take her and risk it, . . Witness . . thought the plaintiff, who knew her, having sold her . . [435] some . . two years before, to defendant, would have given $800 for her if . . no suspicion of unsoundness," [433] "Dr. Ricks saw the negro . . May, 1854 . . in second stage of pulmonary consumption . . now dead; saw marks of blistering and cupping on her breast; . . Bunn . . saw the negro shortly after her arrival in North Carolina; she was then sick and feeble." Held: no deceit.

Railroad Co. v. Winn, 19 Ga. 440, January 1856. "hearing the cars, Mrs. Winn directed the negro to wait till the train passed. He said he could cross before it reached the spot, [[26 Ga. 267] 'said it would not do to stop where we were'] . . on the track, the mules . . refused to move. The engine . . killed the driver, the mules, three of the children," [447] "temerity was, in all probability, produced by the bottle, which was found upon his person." He was, when [26 Ga. 252] "sober, . . a highly trustworthy servant,"

Rafe (a slave) v. State, 20 Ga. 60, June 1856. The sheriff asked the prisoner [62] "if he had killed his master; prisoner said he did not; . . Witness told him . . that the people of Liberty were so satisfied he did it they would hang him any how. . . asked him what made him kill his master. Prisoner said the devil had got into him. Witness asked . . how he did it. Prisoner said his master allowed him to carry a stick, to carry carpet bag on his shoulder; . . Witness asked how he struck . . Prisoner said he held the stick in both hands, and knocked him off the horse; . . [63] When witness put the questions, he was not under the impression that he was using threats" Held: [68] "the confessions . . were voluntarily made, and are admissible,"

Bennett v. Terrill, 20 Ga. 83, June 1856. Two negroes were hired for the year 1852 for $160.

Brooks v. Cook, 20 Ga. 87, June 1856. "action . . for the recovery of $170, . . A plea of set-off, exhibiting an account . . against plaintiff, . . $24 50, for attending and nursing George, a slave, the property of plaintiff, eighteen days; . . [88] $8, for furnishing coffin and burial expenses . . Another plea of set-off . . 'For that the note sued on was given for the hire of . . George; that at the time of hiring, the plaintiff

informed defendant the life . . was insured for $11.50 [$1150?], two-thirds of which he was entitled to recover, if the slave died; that . . slave was attacked by disease . . August, and died . . September, 1852. . . defendant called in . . physician, who constantly attended upon him . . bill . . was one hundred and seven dollars. The defendant used his best efforts to notify . . plaintiff of the illness . . that plaintiff did not receive . . notice, in consequence of his absence from home; . . plaintiff recovered of . . insurance company . . seven hundred and sixty-six dollars;' " Held: strike out " pleas of set-off, with exception of . . [89] items . . for the coffin, and . . burial expenses "

Jackson v. Stewart, 20 Ga. 120, June 1856. [121] " The second Jury decreed . . 'that instead of . . three hundred and twenty-five, . . defendant (she) shall receive . . a girl now about seven years old, and . . a boy about six . . with the limitation that the title . . shall vest in . . the infant child of the parties, after the decease of defendant,' "

Justices v. Moreland, 20 Ga. 145, June 1856. [146] " the negro levied on [in 1848] was worth some $1200,"

Bailey v. Brockett, 20 Ga. 148, June 1856. In 1841 Dixon bought Nancy and her three children, Armstead, Tom, and Sam, in Florida. Brockett [149] " held the negroes by deed of gift from . . Dixon [his father-in-law] to Brockett's wife and children. . . [151] Brockett came to Georgia . . in 1841, and brought Armstead and Tom with him." [149] " Armsted [*sic*] was seven or eight years of age; Tom about five . . both stout built and quite dark. . . [April] 1845 . . defendant swapped Tom for . . Reddick and . . Margaret. Tom was considered . . worth some three hundred and fifty or four hundred dollars." [148] " September . . 1845 . . a *fi. fa.* . . was levied on . . 'Reddick, about six years old, and . . Margaret, about four years old,' "

Jesse (a slave) v. State, 20 Ga. 156, June 1856. [159] " My wife assigned two reasons for threatening to run Jes off: one was, that his owner did not furnish . . sufficient clothing, and it took up too much of . . [her] time in patching and washing for him; the other . . was, that he was of an impudent family . . and he believes his former owners were afraid of him. She had some fears, and believed her own negro woman was more indolent on account of him." She testified: [160] " When he (prisoner) left my bedroom, four of my children ['in the room'] were awake . . two lying on my bed . . commenced crying . . which caused him to leave the bed. . . I followed close behind . . into the shed-room . . and he pushed me back. . . When the negro man jumped out of the window, my little girl said, 'that looks like Jes.' " [161] " the prisoner did not try to get out of the way; . . was then (at the house of . . [prosecutor]) with his wife," [170] " the count in the bill of indictment for rape had been abandoned, . . they went to trial on the count for attempt to commit rape, exclusively;" [160] " the Solicitor . . in his . . comments to the Jury, . . [remarked] 'I call on you . . this night to make a mark on the slave population, that will curb them in the commission of this dastardly crime . . make an example of this

wretch . . to protect . . the honor . . of the County of Decatur,' " The prisoner, by his counsel, excepted to certain charges and refusals to charge. No error.

Thornton v. Chisholm, 20 Ga. 338, June 1856. Deed executed by Thornton in 1855, a few days before his death: " I . . from motives of benevolence . . hereby manumit . . Jane, . . about twenty-seven . . of dark complexion . . and . . [339] her daughter, about thirteen . . of yellow complexion; and . . son . . about one year and six months old; and Amanda . . about nineteen . . of yellow complexion; and her daughter . . about five . . of yellow complexion; and her son . . about three and a half . . and her daughter, Mary Elizabeth, very white complexion, about one year and six months old; all . . to remain, during my . . life, subject to my control . . after which I . . grant . . unto my trusty friends, . . trustees . . All of said slaves, with . . increase . . to remove said slaves to some free State or to . . Liberia . . pay the expenses . . and all monies or effects of mine . . remaining . . to be given . . to said . . slaves, for their . . maintenance." Chisholm " took the property in hand with a view to perform . . trusts, his co-trustee refusing to act;" He filed his bill in equity, alleging that " Thornton died, leaving neither wife nor lawful children, . . [340] that he was the father of the children mentioned in the deed; that . . [his brother] John . . claimed said property as next of kin, . . The answer . . denied that the deceased was the father of said children,"

Held: " The instrument . . was void by the Acts of 1801 [1] and 1818,[2] . . Every successive moment after the execution of the deed, would have brought the negroes nearer and nearer to the confines of freedom. . . [341] And during the whole term of this condition . . they would or might have been residents of the State, . . this deed, conferring . . partial freedom, must be considered as at least within the reason of the Acts." [Benning, J.]

Brown v. Harris, 20 Ga. 403, June 1856. [404] " Brown and Harris, hired the negro [in 1850] . . to be employed . . in the ' Washington Hall ' hotel, . . ' hire . . per year, one hundred and thirty dollars, and clothe him;' "

Clayton v. Tucker, 20 Ga. 452, June 1856. Bill of sale, 1851: [453] " Received . . eight hundred dollars for a . . brown girl . . about twenty-five "

Bryan v. Walton, 20 Ga. 480, June 1856. See same *v.* same, p. 33, *supra.* [481] " Plaintiff [Nunez's administrator] . . tendered in evidence . . testimony . . [which] went to prove that Joseph Nunez was a free person of color, . . Counsel [for defendant who had bought the negroes in question from Nunez's guardian, to whom Nunez had deeded them,] objected . . over-ruled . . excepted; . . [483] James Nunez, they say, was also a free person of color; . . the negroes . . were . . children

[1] Cobb 983.
[2] *Ibid.* 989.

[of Joseph Nunez], by Patience . . his slave; . . [488] The value . . will depend rather upon their health and quality than upon their looks and size. . . Negro boys and girls should be ten or twelve years of age before they are put to work. . . [491] Defendant . . read to the Jury . . answers . . to . . interrogatories . . Lucy Anderson [Joseph Nunez's mother] . . was a free white woman and a very pretty one too. James Nunez was an American; his father was a Portuguese; he passed as a white man. Witness has frequently seen him writing and acting as a clerk in the counting room . . Jim Nunez . . was of mixed Indian and white blood; . . [492] had a straight, long nose, thin lips, straight . . hair, . . red complexion; . . kept as good company as any body in the neighborhood. . . Free negroes . . associated in the family of Joseph Nunez, but witness thinks it was because Joe had a negro for his wife. . . [496] Jim Nunez's dancing . . was very graceful . . was never regarded . . by . . any of the neighborhood as a negro, . . was often at their balls and parties . . where no free negro was allowed . . and dined with the whites . . [497] deed from Joseph Nunez to . . Urquhart [his guardian] for Patience and her children . . [498] 1846, . . bill of sale . . from . . Urquhart to . . Bryan . . 1847, . . contained the following admission: . . ' that Joseph Nunez never enrolled himself as a free person of color, in the Clerk's Office . . 1855. (Signed) . . Plaintiff's Att'y.' . . plaintiff offered in rebuttal . . they passed . . as free colored persons; . . [502] tendered an exemplification from the Inferior Court . . [503] Upon the petition [in 1843] of Joseph Nunez, a free person of color, . . Urquhart . . appointed guardian . . [504] Defendant, by his Counsel, . . requested the Court to charge . . [506] 11. That if the Jury shall be of opinion that Joseph Nunez was not registered . . as a free person of color . . he was not such a free person of color as is disabled from . . selling . . [507] In refusing the eleventh request . . [the Court] charged, that if a person had any negro blood, he was disabled from conveying slaves; and in answer to a question propounded by a Juror, ' what is a free person of color? ' he replied, . . one who has some negro blood; . . to . . charges and refusals to charge, defendant . . excepted;"

Held: [511] " under the Act of 1819, property can be transmitted by descent to the illegitimate offspring of the father, provided they be free persons of color, whether the mother be a free white woman, an Indian or a free person of color. . . [512] The fact that Joseph Nunez did not register himself as a free person of color . . was . . a circumstance . . which the Jury had a right to weigh, . . we are not prepared to indorse the doctrine enunciated in the instructions . . that ' if a person has any negro blood, he is disabled from conveying slaves.' . . we should say that to put him under such a disability, he must have one-eighth of African blood in his veins. If he is descended from one who stands further off than the third degree or generation to him or her who was or is not a free white citizen of . . any . . State whose . . Laws tolerate involuntary servitude, he may exercise all the rights and privileges of a free man:" [1] [Lumpkin, J.] See same *v.* same, p. 87, *infra.*

[1] Cobb 531.

Averett v. Brady, 20 Ga. 523, June 1856. [524] "He had a negro cabin ['worth $15 or $20'] . . that his ferryman lived in said cabin."

Roberts v. Prior, 20 Ga. 561, August 1856. "hire of negro boy Jim for 1848, $220 . . for 1849, $225 . . for 1850, $225 . . for 1851, $225"

Goodwyn v. Goodwyn, 20 Ga. 600, August 1856. [612] "Plaintiff . . would frequently find fault with defendant [his mother] for whipping his negroes. Defendant would tell him the negroes were not his. . . They came from Virginia to Georgia in . . 1843."

Bullock v. Cannon, 20 Ga. 652, August 1856. A negro man was sold in 1842 for $800.

Crook v. Garrett, 20 Ga. 664, August 1856. "1850, . . Garret hired from . . Crook, guardian for . . Thompson, . . a negro man, for the . . year, . . [665] for $120 50. . . In a short time, he began to show signs of ill health . . Crook, or his ward under his direction, removed him home and kept him until the latter part of the year, when he died of consumption. . . Suit on the note against Garrett, who pleaded failure of consideration, . . verdict for the plaintiff, . . prayer . . for an injunction against the judgment"

[666] "Judgment . . must be affirmed . . because, it is no where alleged that the contract . . was rescinded by the consent of . . Thompson. . . the inference is, that the slave was taken from . . Garrett to relieve him from the trouble and expense of nursing him."

Reid v. State, 20 Ga. 681, August 1856. [686] "the negro was stolen . . 1855. The . . co-operation in the larceny of the four brothers, Reids, is distinctly established" [684] "proof . . [685] from which the Jury might infer that this slave departed from the service of his owner, in consequence of a concerted plan between the Reids and himself; for one of the witnesses . . heard them say that . . 'they would keep him runaway, and Reveire would whip him severely; when they would report, that Reveire had killed him, and made the other negroes bury him after night.'"

Bailey v. State, 20 Ga. 742, November 1856. See same *v.* same, p. 67, *infra.*

Pope v. Toombs, 20 Ga. 762, November 1856. [764] "Mr. Pope was buying negroes [in 1852] to carry on rail road work; . . the negroes were not sold separately. The object I had being to place family negroes together, in the hands of a friend; and hence, the prices I set . . were lower than the market prices of similar negroes."

Willingham v. Bentley, 20 Ga. 783, November 1856. Garrett's will: [784] "it shall be left to the discretion of my executors whether . . the negroes shall be hired out, or land purchased, and they be kept thereon so as to be treated with humanity, and raised so as to benefit the heirs"

Drane v. Beall, 21 Ga. 21, January 1857. Will of Thomas E. Beall, dated 1853: [24] "to my two cousins . . each an amount . . sufficient to

purchase . . one negro girl a piece, . . [25] *Item Ninth*: I reserve . . one hundred acres . . for the use . . of Nancy Goings, a free person of color, (it being the place whereon she now resides,) during her . . life, . . [26] *Item Twelfth*: I . . bequeath to . . Satterwhite, *in trust,* my house servant Mariah . . to take charge of her . . and that . . Mariah shall be as free as the laws of the State will allow her to be, and in the event that she shall become dissatisfied with . . Satterwhite, she . . shall have the right to choose any other person . . as her trustee, and she may continue to choose any other . . from time to time, as she may become dissatisfied . . *Item Thirteenth*: Whereas . . Mariah . . is liable to severe spells of sickness, and will shortly become superannuated, I . . bequeath, in trust, to . . Satterwhite, the income of my twenty shares . . shall be paid over to her . . as the same may be received, to be disposed of as she may think proper. *Item Fourteenth*: I . . [27] bequeath to . . Satterwhite . . a portion of the tract . . And, whereas . . I design this tract . . as a home for . . Mariah, . . [it] shall not be liable to the debts of . . Satterwhite until after the death of . . Mariah. *Item Fifteenth*: I will that all my negroes shall receive their freedom . . except those hereinafter mentioned. And such negroes so freed . . shall be sent to Liberia, California, or any free State or Territory . . as they choose to elect. *Item Sixteenth*: If . . my negroes . . shall choose . . Liberia, I will to the Colonization Society . . fifteen hundred dollars, to be expended in transporting them there; and if they choose . . California, or any other free State or Territory . . their passage shall be paid . . [28] *Item Seventeenth*: . . those negroes that I have . . emancipated, shall be kept on my plantation . . four years after my death, for the purpose of raising funds, and after defraying all expenses . . the net proceeds shall be equally divided among . . my negroes freed . . And my executors, out of the . . funds, shall furnish each of the negroes above eight years of age, two good blankets . . and the whole of the negroes freed . . shall receive two good suits of clothes, a hat, a pair of shoes; and those . . under eight . . one good blanket each. . . *Item Nineteenth*: . . if any of my negroes freed, shall elect to go to Liberia or California, . . my executors . . shall see them on board the vessel, and shall pay over the money to my negroes so emancipated . . only on board . . in the presence of the captain . . or owner . . and a certificate of the captain . . or owner . . that they saw my executors . . pay over the money . . and also . . [29] a list of the negroes' names [furnished by the captain or owner] . . for my executors to tender as a voucher in the final settlement of my estate." In 1856 Judge Holt, of the Columbia superior court, declared the twelfth, thirteenth, and fourteenth clauses null, but upheld the fifteenth and subsequent clauses: [35] "It is plain . . that this manumission is to take effect out of the State." The caveator (next of kin) excepted.

Held: The fourteenth clause [39] "should be executed. . . [40] Satterwhite took an absolute fee in the land, subject to the incumbrance only of allowing . . Mariah to live on it . . [43] the bequest of freedom [in the fifteenth clause] . . is void, as it was to take effect in this State, . . we do not find it necessary to dwell at length upon the 17th item, . .

[44] Suppose . . that the hand of the Executor is upon these slaves, as the hand of the master, until they leave Georgia, . . can it be denied, that during this four years, these slaves are working for themselves?" [Lumpkin, J.]

Hook v. Stovall and Co., 21 Ga. 69, January 1857. " 1852. Received . . six hundred and thirty dollars . . for a negro girl . . about fourteen . . dark complected, the right eye smaller than the left . . warrant . . sound in every respect " [70] " Dr. Dixon . . found the left eye much protruded . . result of a diseased tumor . . He would not want her himself at any price. . . [71] jury . . found for the plaintiffs the full amount of the note." New trial refused. Judgment reversed.

Johnson v. Nelms, 21 Ga. 192, January 1857. In 1855 a negro woman was hired " at the rate of ten dollars per month."

Johnson v. Morris, 21 Ga. 238, January 1857. " ninety dollars for the hire of a negro . . [for] the year 1852."

Dorsett v. Frith, 21 Ga. 245, January 1857. [246] " in 1843, . . he sold . . girl [about seventeen] with her only child, Ben, . . [247] for five hundred dollars,"

Brooks v. Smith, 21 Ga. 261, January 1857. " action . . upon . . note . . ' By the 25th of December, 1853, we . . promise to pay . . Brooks . . four hundred dollars ' . . The defendant pleaded . . note was given for the hire of a negro fellow . . a blacksmith, and his tools for the year 1853; that the agreement was . . if . . negro died, defendant should only pay for the time he lived. . . [262] did die about the 1st of March, . . [263] The jury found for the plaintiff . . seventy-two dollars and thirty-two cents, and cost of suit." Judgment thereon affirmed.

Collins v. Hutchins, 21 Ga. 270, January 1857. [271] " Hutchins, hired the negro to . . Collins, for the year 1853, for . . $180 . . to be worked on the . . Railroad in . . [certain] counties . . In March, defendant moved his hands . . to . . [another] Road, in . . [another] county, . . June, he was sent home sick to his master " [273] " The negro was under the medical treatment of Collins' physician. . . His physician, after he had ceased to visit him, considering him out of danger, saw him near his office [where he had told him to call when he got stronger], eating peaches and water-melons, and rebuked him. . . relapsed " and died. Hutchins brought this action to recover his value. [271] " verdict for the plaintiff for . . twelve hundred dollars, with interest from the 1st of January, 1854;" Judgment thereon affirmed.

Pace v. Mealing, 21 Ga. 464, January 1857. Will, 1847: [466] " I want Lany [an old and faithful servant] to live amongst my children;" [481] " the old man had some unruly negroes, . . said he was at a loss to know what disposition to make of them, to do right and to do justice."

Pinckard v. McCoy, 22 Ga. 28, March 1857. Thomas McCoy's will, executed in 1854: " I will . . that all my . . personable [*sic*] property, (except my negroes or slaves) be sold, . . if the money arising from the

sale, . . [29] and that on hand at my death . . shall not be sufficient to pay my debts, I . . desire that all my negroes be hired out, and the proceeds . . applied . . and after the payment of my debts . . my will . . is, that all my negroes be hired out until the proceeds . . together with any . . surplus . . from my estate, shall amount to . . eighteen hundred dollars. . . [Thereupon] I will . . to my executor the following negro slaves, and their increase, . . in trust, to be conveyed . . to some one of the free or non-slave-holding States, and there left . . But . . [if] prevented from any cause . . I will . . the whole . . in trust to my executor, to be delivered . . to the Colonization Society. . . that any surplus . . after carrying said negroes . . to a free State or the Colonization Society, be . . paid to said negroes, share and share alike."

Held: [30] "this case does not differ in principle, from the case of Beall's will, decided . . 1857.[1] . . [31] all the emancipation parts of this will are void." [Benning, J.]

Force v. Leather Co., 22 Ga. 86, March 1857. "judgment against . . Leather . . Company, . . *fi. fa.* . . levied upon a negro belonging to . . one of the stockholders"

Mitchell v. State, 22 Ga. 211, March 1857. [227] "Another time when witness [jailer] had a runaway negro in the jail, . . [the prisoner] got into a spell, and witness carried them both up stairs in the prison, for fear of some injury;"

Escheator v. Candler, 22 Ga. 281, May 1857. "The declaration of forfeiture alleges, that three of said slaves were purchased by Joe Butler, . . a free person of color, since . . the Act of 19th December, 1818; and since the purchase . . one . . a woman, has had eight children; that . . Joe has recently died, and all said slaves . . are forfeited to the State. . . [282] verdict for the escheator."

Arline v. Miller, 22 Ga. 330, May 1857. [335] "Abram is worthless at this time from old age; hire has been worth $60 per annum for the last twenty-five years."

Beale v. Hall, 22 Ga. 431, June 1857. [442] "Buck aged about 30 years [in 1856], worth . . $1,000; Matt aged 28 or 30 years, worth . . $1,000; Martha aged about 20 years, worth . . $800 . . hired Buck, in 1850 or 1851, for $140, . . [443] Dr. . . Campbell . . Each of them had hernia, which disease impairs the value of a slave one half. . . some 18 months ago, that they were brought to me for treatment."

Jordan v. State, 22 Ga. 545, June 1857. Indictment for murder. Lawton's overseer testified that Mariah [551] "was brought in as a runaway." [548] "Mariah was taken and brought to witness by another negro girl, and he gave her up to Jordan [overseer for her owner], . . [550] Cannot say how many licks Jordan gave her . . but thinks there was between four hundred and a thousand." [549] "The strap was a leather one, very thick; commencing at the butt three ply, and after eight

[1] P. 52, *supra*.

or ten inches two ply, and then one ply; the strap had a leather handle; . . [551] He never saw but one before. They are used to keep from drawing blood like a cowhide;" [549] "after he had whipped her a while, [witness] called to him to stop; . . he spoke low, because he did not want the negroes to hear him. Jordan would sometimes turn her on her all fours; . . sometimes had her head down, and sometimes up; . . [550] Jordan was walking beside another negro, who appeared determined to go where the girl was lying, and appeared to be attempting to keep him off, thinks he struck the negro boy with his strap; the boy was named Spencer. . . Spencer was the girl's father as witness thinks." [549] "witness heard some of the negroes who were working in the field hollow out; 'Mr. Jordan has killed Mariah.' . . she was dying, or had fainted, and had a white froth on her lips. Jordan remarked, that he thought she was 'possoming.' Witness said he thought not. Jordan then sent after Dr. Dickinson," Roberts testified: [551] "She . . was the worst whipped girl he ever saw; . . thinks she was about thirteen . . [552] thinks there ought to be a great difference made in the correction of negroes, and would not think of whipping a girl of that size with more than a switch. . . Would not suffer such a strap to be used on his place. . . Any man of common sense ought to know that a negro ought not to be whipped with such a strap, and if whipped with such . . it ought to be . . very lightly. . . [553] The jury found the defendant guilty of voluntary manslaughter, and recommended him to the mercy of the Court."

New trial refused: [557] "no error in admitting the evidence of the prisoner's striking Spencer. . . [558] the prisoner's refusal to allow her father to go to her . . relief . . was certainly evidence of deeply seated malice against the girl he had beaten. . . although the jury have found . . some circumstances which . .they thought justified them in reducing the crime to manslaughter, . . it is difficult for us . . to come to the same conclusion. . . [559] I have looked in vain through the evidence for a single mitigating circumstance . . to reduce the crime below the grade of murder. The prisoner had power over the slave. He exercised it most cruelly, inflicting . . a beating . . which showed . .' an abandoned and malignant heart.' " [McDonald, J.]

Feagin v. Beasley, 23 Ga. 17, June 1857. "Received . . Seven Hundred Dollars for negro man . . about 28 years old, which I warrant sound . . 1848." "that the negro was . . laboring under a disease of the heart, . . worthless; and that plaintiff had been put to expense in employing physicians . . and in boarding and taking care of him, amounting to . . two hundred dollars."

Aiken v. Cato, 23 Ga. 154, June 1857. [155] "The value of . . girl is now $850. In 1855, her hire was worth $60; in 1856, her hire was worth $75."

Newell and McHugh v. Smith, 23 Ga. 170, June 1857. "action . . on . . note, . . 'By the 25th of December next, we promise to pay . . [171] two hundred and eighty dollars, and also to furnish boy Henry,

clothes, shoes and a blanket. . . January 28th, 1854.' . . Defendants . . proved that he was a negro of delicate frame, and 'his health was poor.' . . very far from being a good tanner, . . ruined a great deal of leather for them. Plaintiff . . introduced two witnesses, who testified that Henry when in their employ was a good or fair *negro* Tanner. . . particularly, a good 'finisher,' . . The jury found for the plaintiff the amount of the note." Judgment thereon affirmed.

Lingo v. Miller, 23 Ga. 187, June 1857. [188] "1856 . . the grand jury found a true bill against . . slave . . of defendant, for the offence of arson. . . tried . . and acquitted. . . that to defend successfully such a case, was reasonably worth four or five hundred dollars. . . that Lingo . . refused to defend him or employ counsel . . and that plaintiffs, without any contract . . did defend . . that Lingo was not present at the trial, but after he was acquitted, took him off and sold him. . . [189] The jury found for the plaintiffs, two hundred dollars [the amount laid in their declaration]."

New trial granted: "We do not know of any law that imposes such an obligation, upon the master. . . [190] it may be pretty safely assumed, that if . . the master refuses to employ lawyers . . the case is one in which the master ought not to be required to" [Benning, J.]

Flanders v. Flanders, 23 Ga. 249, June 1857. [251] "For Complainants: Miss . . Abbott . . [252] thinks . . [Winny and her two children] were worth a thousand dollars [in 1845], and are now [1857] worth from twenty-five hundred to three thousand dollars. . . [253] For Defendant . . witness bid about $650 [for Winny and her two children], thinking . . he could make fifty dollars, the negroes being worth about $700, and he desired to speculate on them; negroes were then [1845] pretty low, . . now pretty high, a girl 17 or 18 . . would bring $900, a girl 13 would bring $700,"

Wheeler v. State, 23 Ga. 292, August 1857. "Indictment for negro stealing . . [293] owner of the negro, told him . . that he . . had whipped the negro and he ran away. . . was whipped severely . . between daylight and breakfast" [295] "he had owned the negro for six weeks before the negro left;"

Walton v. Jordan, 23 Ga. 420, August 1857. Action on a note for $450 "given [in August 1853] for a negro fellow [about 40 or 45 years old] . . represented to be not entirely sound, but . . able to do good work, . . [421] Mr. Jordan, (def't,) told [plaintiff in March 1854] . . that the boy had done him two or three months good work; and that they had a falling out, and he whipped the boy; and that he had run away, and had never been able to do him any work since; that he considered the boy rather deceitful, . . [422] Jim had a woman of defendant's for a wife; supposes for ten years;" Dr. Steel testified: [423] "negro man . . was brought to my office . . by . . Walton . . February, 1853 . . [424] diseased with a chronic inflammation of the stomach, involving the viscera generally, and particularly the liver. . . under my treatment for a month or six weeks;" Dr. Doss "was called

on by . . Jordan, in the latter part of the summer or fall of 1853, to . . attend upon . . [425] Jim; . . he died in . . May, 1854," when Dr. Westmoreland was attending him. Verdict for the defendant. Judgment thereon reversed: [429] "It is not right that the plaintiff should recover nothing"

American Colonization Society v. Gartrell, 23 Ga. 448, August 1857. Francis Gideon's will, executed in 1853, bequeathed to the Colonization Society [451] "for the purpose of sending them to Liberia . . all his slaves," and also bequeathed to the society certain legacies, in trust, [445] "for the use of said slaves, when they shall be delivered over . . and sent to Liberia," [451] "By their constitution, the association is empowered to receive property . . and to use it . . 'for the purpose of colonizing, with their own consent, in Africa, the free people of color residing in the United States, and for no other purpose whatsoever.'"

Held: [454] "The legacy is void," [451] "the unconditional right to them as *slaves,* could not be vested in the Society, under their Act of incorporation; neither could they take . . them in trust, for a purpose not allowed by their charter; that is, to transport them, as slaves, . . with or *without* their consent. . . [458] There is another . . view to take of the main question . . [459] is it repugnant to our State policy . . to allow the American Colonization Society, to sue in our Courts? . . This society was organized with the approbation . . of the wisest and best men in the South from Maryland to Louisiana, . . Hence in 1817, by an Act [of Georgia] . . the Governor . . was directed to deliver to the . . Society, Africans illegally imported . . and 'to aid in promoting the benevolent views'[1] . . [461] in 1827 . . the public mind had been roused . . It grew out of the question as to the right . . of the Congress . . appropriating money . . in aid of the Colonization Society. . . The General Assembly . . say 'they . . strongly feel the advantages of the Federal Union; . . they will ever defend it from foes, internal as well as external; but they . . will not, even in the preservation of that Union, permit their rights to be assailed; . . their property to be rendered worthless . . by those who come among us under the cloak of a . . hypocritical benevolence.' . . [462] Again, in 1828, the Legislature having under consideration a resolution from . . Ohio, say: 'These States must view with . . distrust, all associations having for their object the abolition of slavery. . . The Colonization Society is considered . . one of a dangerous character in this respect.' . . [463] Finally, in 1829, the Legislature having under consideration resolutions from . . Louisiana and Mississippi, say: 'The people of the slaveholding States cannot but be aware that there is in the other States an influence . . which has for its object . . not only to destroy the prosperity of the southern slaveholding States . . but to prostrate their political strength . . In evidence . . your committee will . . refer to . . the open . . operations of abolition societies; and the more secret . . but dangerous movements of the Colonization Society;' . . [464] I was once the friend . . of this enterprise. I now regard it as

[1] Cobb 989.

a failure . . as I do every effort . . for the abolition . . any experiment . . will demonstrate . . that it is a vain thing . . to fight against the Almighty. His ways are higher than ours; . . [465] Let our women and old men, and persons of weak and infirm minds, be disabused of the false . . notion that slavery is sinful, and that they will peril their souls if they do not disinherit their offspring by emancipating their slaves!" [Lumpkin, J.]

Candler v. Escheator, 23 Ga. 493, November 1857. See Escheator *v.* Candler, p. 77, *infra.*

Gaither v. Gaither, 23 Ga. 521, November 1857. Will, 1853: [522] " that none of the negroes . . be sold unless it shall be found necessary . . to prevent the separation of husband and wife, or except in cases of habitual insubordination."

Burch v. Burch, 23 Ga. 536, November 1857. [541] " complainants claim that . . her executor . . should account for the hire or value of the slaves, about one hundred in number, employed in finishing the crop, after the death of the tenant for life, . . July, 1855, to the time of their sale, . . February, 1856."

Ivey v. State, 23 Ga. 576, November 1857. [577] " Defendant employed Elmira occasionally . . to cut and make negro clothes;"

Bailey v. Barnelly, 23 Ga. 582, November 1857. [583] " defendant . . left the Court in consequence of the dangerous illness of one of his slaves, . . The plaintiff . . stated the books . . were his books of original entries, in his hand-writing, . . That his blacksmith . . was a slave, and that he had no white person in the shop. . . [584] ' some [of the work done] was reported to him by his smith.' "

Held: [589] " We admit these books because it was proven by the customers . . who had had their work done there by the same smith for a quarter of a century, that the accounts were kept correctly. And we fully concur in the . . philosophical views urged by . . counsel for [plaintiff] . . that it was reasonable to rely upon the habits even of the blackman, for honesty, which were . . firmly fixed for such a length of time." " to reject them, is to enact that shops kept by negro smiths cannot collect their accounts—a startling proclamation to make to the country." [Lumpkin, J.]

Collins v. Barksdale, 23 Ga. 602, November 1857. [603] " tenant for life . . [placed] two valuable negro men . . in the hands of [the executor] . . who . . sold [them absolutely] . . for $2,150 00."

Wise v. State, 24 Ga. 31, January 1858. [35] " slave . . came in with a harness . . which . . he loaned to . . Wise " " was a negro of very bad character, and was sent away on suspicion of burning the stable."

Roberts v. Boylan, 24 Ga. 40, January 1858. [41] " We find the value of . . negro woman . . [42] four hundred and sixty dollars, and her annual hire, seventy-two dollars. . . 1857."

Railroad Co. v. McElmurry, 24 Ga. 75, January 1858. [76] "killing a negro woman . . of the value of one thousand dollars, and tearing to pieces . . a . . cart"

Hicks v. Johnston, 24 Ga. 194, January 1858. [195] "big Milly . . worth from $900 to $1,000 and her annual hire $100."

Buckholts v. Buckholts, 24 Ga. 238, January 1858. [243] "he had struck plaintiff [his wife], two or three licks with a negro whip, but he did not hurt her."

Hughes v. Meredith, 24 Ga. 325, January 1858. [327] "The jury . . found for the will [of John W. Allen], with the exception of the . . clauses . . attempting the emancipation of slaves contrary to the laws . . of Georgia."

Smithwick v. Evans, 24 Ga. 461, January 1858. [464] "The testator . . directs . . Henry, and all other property he might leave at . . his death, to be converted into money, and . . debts to be paid." "his negro woman . . and her four children to be placed under the charge of the American Colonization Society, to be conveyed . . to Liberia . . and there to be set free . . that if his wishes . . cannot be carried out . . his executors shall carry the . . negroes to some State, where . . they can be set free. The expenses . . were to be first paid out of the proceeds of the sale of his property, . . He does not wish [them] . . hired out, provided there is a sufficiency . . from the sale of Henry and his other property, to pay their expenses . . between his death and their departure, his executors are to have the . . negroes in trust for the purposes aforesaid."

Held: [465] "The bequest . . of extra-territorial freedom was inconsistent with their sale under the general direction . . for the sale of all . . property, and being a later clause in the will, it must prevail, unless . . void according to the construction placed by this Court on the statutes of 1801 and 1818." "It is not certain . . that the testator did not intend the negroes . . to remain in Georgia, free, an indefinite . . time. . . the case goes back for a new trial on other grounds."

Harrison v. Powell, 24 Ga. 530, January 1858. [531] "Frank . . valued in the trade [in 1855] at $1,100, and worth that . . if sound. . . the disease was gleet,"

Wellborn v. Rogers, 24 Ga. 558, January 1858. Will, 1816: [561] "that my negro man . . should be hired out and the hire appropriated to the schooling of my . . five youngest children."

Sanderlin v. Sanderlin, 24 Ga. 583, January 1858. [584] "Elias . . worth $1200, annual hire $150."

Pyron v. Parker, 25 Ga. 17, March 1858. [20] "Shipp bought Caroline and employed . . Woods to carry her off and sell her; . . he took her up behind him . . as . . [Woods'] mare was unruly; . . witness sold her to a man . . in . . Alabama, for over $500 . . in 1851"

Walker v. Walker, 25 Ga. 76, March 1858. [78] "his father . . sent Hannah . . to cook for [Walker] . . until Rebecca got well; . . [McDaniel] was going to whip her, and . . Walker told him not to do so, as if he did his father would . . take her back home."

Sanders v. Ward, 25 Ga. 109, March 1858. "Nathaniel T. Myrick . . 1856, executed his last will . . 'I . . require my executors . . to remove my servants Owen [and eight others] . . to some free State, as my executors may choose . . and there to manumit . . them . . My executors . . shall purchase in such . . State . . land sufficient . . with a supply of provisions, household . . [110] furniture, farming utensils, horses or mules, cattle, hogs and sheep, with the money arising from the sale of my estate . . and shall pay over any surplus . . to my servant Owen, . . each one to have . . an equal portion'"

Held: [117] "foreign emancipation is neither within the letter or spirit of the law.[1] . . [118] Had the entire State been polled in 1818, ten men would not have been found opposed to foreign manumission. . . The North and South had not been arrayed . . in hostile antagonism . . touching African slavery. If this change of circumstances demands a new policy . . and for myself I think it does—let it . . be inaugurated by the Legislature . . [119] it is by no means certain that a majority of our people are in favor of depriving themselves of the right of sending their slaves abroad, to be liberated at their death. . . I have been informed by a . . Representative of the House, that [such] a bill was introduced in the other branch . . and voted down by an overwhelming majority . . [121] exterior manumission [does not] depend upon domestic emancipation as a condition precedent" [120] "suppose a testator bequeaths his slaves to Stephen A. Douglass [*sic*] . . or Rufus Choate . . and says no more; does not the bondage . . continue until they set foot on the soil of their new home? . . [124] I have no partiality for foreign any more than domestic manumission. . . Especially do I object to the colonization of our negroes upon our northwestern frontier. They facilitate the escape of our fugitive slaves. In case of civil war, they would become an element of strength to the enemy . . But . . Shall I therefore undertake . . to dictate to . . my fellow-citizens, what shall be the law, by wresting these ancient statutes from what I believe to be their true and only meaning?"[2] [Lumpkin, J.] Judge Benning dissented.

Hopkins v. Tilman, 25 Ga. 212, March 1858. "Received . . 1853 . . six hundred and fifty dollars for a negro woman . . about seventeen . . warrant to be sound except being deaf and a small old hurt on the hand." [214] "she has about two fits every month, . . plaintiff . . offered defendant $75, to take her back, . . he refused . . verdict for the defendant;" New trial refused. Affirmed.

Thornton (a slave) v. State, 25 Ga. 301, May 1858. "Thornton . . was indicted as accessory before the fact . . in abetting and procuring a

[1] Acts of 1801 and of 1818. Cobb 983, 989.

[2] In 1859 the legislature passed "An Act to prohibit the post mortem manumission of slaves." Laws of 1859, p. 68.

negro slave, John, to commit the murder. . . [302] the State offered as a witness . . John, who had been convicted . . but on whom judgment had not been passed. . . The defendant was found guilty and sentenced to death." Affirmed.

State, ex rel. Tucker, v. Lavinia (a person of color); same v. Wilkes (a slave), 25 Ga. 311, May 1858. "A warrant . . was issued against . . Lavinia . . for residing in . . Georgia, without her name being inserted in the book of registry of free persons of color kept by the Clerk of the Inferior Court; enjoying the profit of her labor . . contrary to the 5th and 6th sections of the Act of . . 1818[1] . . Hart . . swore that . . Lavinia lived in a house not belonging to him, nor provided . . by him; that . . Lavinia belonged to him, but did not work for him, nor had she done so for ten or fifteen years, nor did she work for any white person by virtue of any contract for his benefit; witness gave her papers. . . [312] Prosecutor . . moved the Court to declare . . Lavinia forfeited. . . refused . . decided that . . Lavinia was the slave of . . Hart . . the prosecutor appealed by *certiorari* to the Superior Court. . . dismissed" "A warrant was also issued against Wilkes . . for returning to . . Georgia from . . New York . . in contravention of the 5th section of the statute . . 1835,[2] . . the prosecutor proved by . . Hart that . . the prisoner was in . . New York, New Jersey, and Pennsylvania in 1853, and moved the Court to adjudge him forfeited . . The Court . . dismissed the warrant . . the prosecutor appealed by *certiorari* to the Superior Court. . . dismissed . . on the ground 'that as the original proceedings . . was [*sic*] of a criminal nature, and . . decided in favor of the defendant . . [313] the Superior Court had no constitutional power to order a rehearing.'"

Judgments affirmed: "Independent of the Act of 1803,[3] which negatives the idea that slaves can be twice tried for the same offence, . . [314] we see no reason why this great principle of the common law should not be applicable to slaves and free persons of color, as well as to white persons." [Lumpkin, J.]

Walker v. Walker, 25 Ga. 420, June 1858. Will of Francis J. Walker, 1856: "*Item* [II.]. I direct my executors . . to send to . . [421] Liberia . . at the expense of my estate, the following named slaves . . Louisa (mulatto) and her [three] children, . . Louisa (light negro) and her [two] children, . . Sue and her son . . and Cecilia and her daughter . . *Item* [III.]. I authorize my executors, in their discretion, to send to Liberia . . any and all [of] my slaves not above named, . . as they may or may not ascertain the balance of my estate to be sufficient for the provision hereinafter made for the children above named. *Item* [IV.]. I authorize my executors . . to sell . . all my property . . and any . . of my slaves, except those specially named . . which they may think it best to sell . . to carry out my wishes . . *Item* [V.]. I direct my executors

[1] Cobb 992.
[2] Cobb 1009.
[3] Clayton's *Digest,* p. 133.

. . to invest the entire proceeds . . and to transfer the whole . . to the American Colonization Society, . . in trust for the . . support of the [seven] children named . . and their descendants." [427] " his Honor . . held, that the second clause . . was valid; . . Counsel for the caveators . . abandoned . . their objections to the decision . . upon the second item "

Held, as to the fourth and fifth items: " the American Colonization Society can not, under its charter [1] execute this trust . . [429] As to the best mode of executing this trust, it will become a matter for the discretion of the Chancellor below. We would suggest . . That the executors be appointed trustees in lieu of the Colonization Society . . As each male *cestui que trust* arrives at age, let his share be given off to him, . . So upon the coming of age of any female *cestui que trust,* or her marriage," [Lumpkin, J.]

Beall v. Drane, 25 Ga. 430, June 1858. See Drane *v.* Beall, p. 52, *supra.* Held: [441] " free persons of color in Georgia . . may acquire real estate [except in Savannah, Augusta, and Darien]." [2]

Stringfield v. State, 25 Ga. 474, June 1858. " The indictment charged that the defendant . . ' did receive from a . . slave . . jar containing lard . . without written permission from the owner ' . . guilty "

Martin v. State, 25 Ga. 494, June 1858. " Green Martin was indicted for the murder of his negro. . . Dr. . . Tucker . . was requested by Mr. Martin to examine the negro boy [[496] ' between twelve and thirteen ']; . . [495] it was at the Coroner's request;" [494] " the boy was disinterred . . [495] [in] a negro grave yard; . . a dislocation of the neck caused the death . . the daughter of Green Martin . . [says:] Alfred . . died . . 1857, at my father's house . . My father, two sisters, and my brother Godfrey and myself were present. . . Godfrey is not [at?] present in the county. I don't know where he is; . . [498] I saw my father throw him down twice and choke him twice." [496] " the boy was on his all fours. My brother put the saddle on him and then got upon it; he remained some quarter of an hour, . . but did not make him carry him. . . [497] The whipping commenced about twelve o'clock, while my father was sitting on the boy. . . [498] The cause of the whipping . . The boy told brother to kiss his backside . . very saucy and uncontrollable. . . [500] The punishment continued three hours . . continually kept up until the boy's death." Verdict of guilty. After the trial, Osborn, one of the jurors, remarked that [506] " the Martins, must be bad men anyhow, for he had heard that they had beat a man pretty nigh to death last spring " [513] " on account of . . gross insult . . to the female members of Martin's family," New trial refused. Judgment reversed: [513] " On the ground of the disqualification of Osborn as a juror,"

Conner v. State, 25 Ga. 515, June 1858. [516] " indictment for stealing a . . slave, . . The defendant confessed . . the boy was brought to him

[1] 25 Ga. 423-426.
[2] Act of 1819, sect. 3. Cobb 995.

. . by [two men] . . about the time the boy disappeared [in 1854], and he carried him away to . . Alabama, and was to receive two hundred dollars therefor. . . [517] that the negro had attempted to play him false and he took him to the bluff of Selma, and then that was the end of that damned negro. . . [518] White men . . had conversed with [the slave] . . and thought him a white man from his color. He had long black hair." Verdict of guilty. Judgment thereon affirmed: [522] "If the confessions . . be true, . . guilty . . of murder also."

Parker v. Johnson, 25 Ga. 576, June 1858. The plaintiff, administrator of Dorsey, [577] "introduced a bill of sale . . conveying to him for $600 a negro girl . . warranting her to be sound . . dated November 27th, 1855." She died January 29, 1856. "Dr. Boon testified: That at the request of . . Philips [[582] 'a dormant partner of Dorsey in the purchase and sale of negroes'], he made a post mortem examination . . pericordial dropsy . . opinion, she had had it more than three months; . . [578] [A brother of] Philips testified . . She ran away in December 1855, when it was quite cold, and was gone several days; . . Dr. . . Green testified: That the negro . . was in his possession for the two months immediately preceding the sale . . constantly employed in cooking or washing or cleaning up the house . . was not sick a day . . [582] verdict for the plaintiff for the $600 . . with interest" New trial refused. Reversed.

Camp v. State, 25 Ga. 689, June 1858. [690] "The grand jurors . . accuse . . Camp . . with . . manslaughter, for that [he] . . a carriage trace . . upon a . . man slave . . property of [another] . . upon the back . . the shoulders, and the loins . . did strike . . giving . . divers wounds of which . . [he] died." Verdict of involuntary manslaughter. Judgment thereon affirmed.

McLaren v. Long, 25 Ga. 708, June 1858. [710] "McLaren sold the negro to Latham [in 1850] for $600, and he was to stay in the store until Latham could see if he could sell him. In a few days Long called to enquire . . McLaren . . said he was a good for nothing drunken dog, and Long said if that was all the trouble . . [711] he could manage that, when he got him to his plantation away from liquor; and Long agreed to give Latham his note for $700" Four physicians [710] "believed him dropsical at the time of the purchase"

Griffin v. Railroad Co., 26 Ga. 111, June 1858. Trover. [112] "admission of . . conductor . . that he carried . . Warren, over the road, knowing him to be a negro, and that he belonged to plaintiff; the negro was passing for a white man, and he humored the joke, and charged him full fare."

Railroad Co. v. Neal, 26 Ga. 120, June 1858. "proceeding . . for the recovery of damages for killing a negro belonging to plaintiff, upon their road, which negro was in the employ of the company" [122] "by the running of the engines and cars, 'and other machinery;'"

Tilman v. Stringer, 26 Ga. 171, June 1858. Action of debt. "The negro woman was left by defendant with plaintiff for a short time before the purchase, on trial; . . [172] apparently a tolerably good looking negro, and quite *pert.* . . bill of sale . . to plaintiff . . 1854, whereby the defendant acknowledged the receipt of nine hundred dollars for said negro, aged thirty years, and warranting her sound" "five or ten days after the purchase . . she . . complained of pains . . The negro was in the field . . but seemed to be lagging behind the other hands. . . physician . . was called in some two years after the sale, . . most of his information was derived from her own statements. . . [173] That his . . opinion was . . that the womb . . was affected, . . [175] The jury found for the plaintiff $900 and cost of suit."

Judgment affirmed: [177] "provided the plaintiff will . . return the woman . . or offer to do so."

Bivens v. Crawford, 26 Ga. 225, June 1858. Will of Thomas Bivens: "*Item fifth.* After the death of my wife . . it is my will . . that my executor . . shall take all of my slaves and their increase . . to some State or Territory . . which will admit them, where slavery is not tolerated; to the end that my . . slaves be free; and in the event that no State or territory will admit . . slaves as residents, to be free, then . . transport . . to . . Liberia, in accordance with the advice . . and regulations of the Colonization Society. *Item sixth.* . . that after the death of my wife . . executor shall sell all of my estate, (the slaves excepted,) . . and that the money . . be applied . . in aid of carrying out the provisions in the fifth item; and if . . [226] not . . sufficient . . hire out . . until"

Held void: [227] "These negroes were the property of Mrs. Bivens till . . death. The instant afterwards they were, by the . . will, freemen in this State. But were this not so, we are inclined to think, that policy forbids . . such a construction . . put upon our anti-emancipation laws, as to allow negroes to remain . . who are ultimately, after . . one or more lives, entitled to their freedom." [Lumpkin, J.]

Calhoun v. Stokes, 26 Ga. 325, August 1858. [326] "note . . for the hire of a negro for the year 1855 . . was for ninety dollars. The defendant [Dr.] Calhoun, plead as an off-set, an account . . [of] eighty-three dollars . . for medical services . . November and December, 1855, . . while in defendant's service." [327] "He was cured of a malignant attack ['of Typhus *Gravior*']; . . the two months' board, five dollars per month, is quite reasonable."

Hudgins v. State, 26 Ga. 350, August 1858. "indicted . . for stealing . . man slave" [351] "The negro had belonged to defendant's father" "the boy came to his house" "he was taken off from his house and sold in Tennessee by a cousin of his, with his consent, and knowing him to be the property of McCowen; he, too, to share the proceeds" Verdict of guilty. Judgment thereon affirmed.

Ponder v. Cox, 26 Ga. 485, November 1858. "1856, the complainant Cox . . purchased of . . Ponder . . a valuable blacksmith, named . . Giles Price, for . . eighteen hundred dollars: . . [486] bill of sale . . war-

ranted the soundness and title . . In about twelve months . . [Cox] received information that . . Price was born in . . Maryland, a free person, and that some eighteen years before, for some crime . . he had been sentenced to be sold as a slave for . . fifteen years; . . bought [in 1838] by the defendant, who was . . engaged in buying and selling negroes, . . brought to Georgia, . . and after changing hands several times, had again fallen into the possession of defendant, who sold him . . to complainant. . . [487] Price, by his next friend, has instituted proceedings to . . recover his freedom"

Held: I. [491] "There is no statute bar to suits for freedom. . . [II.] [492] A negro brought to this State as a slave, cannot be presumed to have any intention to violate our law,[1] . . There is no law against the introduction of free persons of color, subject to temporary slavery, . . by the persons having a right to their services . . for a term of years. . . They certainly do not remain in a state of slavery, after the expiration of their term of service," [McDonald, J.]

Durham v. Broddus, 26 Ga. 524, November 1858. Action for breach of warranty of soundness. Durham bought Lucy on January 3, 1852, and Dr. Dickerson examined her for insurance on January 22, 1852, and in January 1853. [526] "from the 17th to the 28th of May [1853], . . [he] visited her daily, and generally, twice a day, more for the purpose of mitigating her sufferings, than with a hope of effecting a cure. During most of the time . . Dr. . . Nelson attended Lucy with" him. Dr. Nelson testified that she "must have been diseased before the 3d . . January, 1852." Dr. Durham testified "that the woman was brought under his treatment . . July, 1853. . . cancer of the womb, . . [527] 'diseased, . . in all probability, for some years. . . death . . November, 1853.' . . Dr. Maddux . . family physician of Broddus, (the defendant,) . . never knew her sick at any time." Verdict for the defendant. Judgment thereon affirmed.

J. C. McDowell v. Preston, 26 Ga. 528, November 1858. [532] "witness was passing through the Court House [in 1855], plaintiff asked witness to run the negroes for him, when they were exposed to sale. Does not recollect what price he was to run them to;" [529] "Mary and her child Henry, brought $705; . . Whilst Kesiah was being cried, some one asked . . the crier, if . . sound . . the owner Mr. Preston . . called on Daniel McDowell [a former owner] to state . . [He] got upon the stand and stated . . sound" Mrs. Davidson testified that she hired Kesiah from Preston "about six weeks. I paid eight dollars and a quarter for her, for the time . . When I would hurry her about her business, she would excuse herself on account of the pain. I informed . . Preston of the condition . . [530] two hundred dollars a big price for her. . . Baker . . overseed for Daniel McDowell . . Kesiah complained when put to plowing; complained of pains in her legs, knees, etc., at times; had to be taken from the plow and put to the hoe" The present owner [535] "has hired out the woman this year for forty-five dollars, a fair

[1] Cobb 990.

price, considering that she cost only $435. Still it was for a preacher, and possibly for inn-door [*sic*] service."

Bailey v. State, 26 Ga. 579, November 1858. "1852, . . Bailey was indicted for the murder of his slave, . . At August Term, 1856, . . trial, and found guilty of voluntary manslaughter. Bailey carried the case to the Supreme Court, and . . Nov. 1856, that Court . . adjudged that [the verdict be set aside and] a new trial be granted, it being the opinion of this Court that the Court below erred in not requiring the questions mentioned in the bill of exceptions to be put to the jurors . . 1858, the defendant . . was again put upon his trial, . . and pleaded specially: . . That the former finding . . of 'voluntary manslaughter,' was an acquittal . . of murder, and he cannot again be put upon trial for said offence. . . [580] The Court [held it] . . no sufficient bar" Judgment affirmed: [581] "the defendant . . must plead and prove a *subsisting* record of acquittal. It is no record if set aside." [McDonald, J.]

Cook v. State, 26 Ga. 593, November 1858. [603] "Rogers, the owner of the runaway slave, had offered a reward . . in the newspapers . . ten dollars for the delivery of the slave to him, and 'fifty dollars, if found in the possession of any white man who' was 'attempting to make off with him, with sufficient proofs to convict' . . [604] But the charge against Cook was . . for harboring him." The slave [596] "had been run away three months; . . Sheriff told Cook he had a search warrant. . . Dogs started the negro; . . After catching negro, Sheriff arrested Cook. . . [597] Cook had him for a month or two. Negro hired his own time while Cook had him." [596] "Negro worth $600 to $700 before he ran away. Negro looked [when caught] not very ragged nor dirty. . . his clothes were torn by dogs. Did not look like the same negro he was before he ran away. . . sold [next day] for $500. Looked poor, as if worked hard." Verdict: [598] "guilty of concealing and employing the negro to the injury of the owner." Judgment thereon affirmed.

Castleberry v. Kelly, 26 Ga. 606, November 1858. "action . . for words spoken . . Sarah Castleberry 'did . . say' . . 'Your wife's sister . . had a negro child, and . . negroes have been with your wife, and I can prove it.' The jury found for the plaintiffs five hundred dollars. . . [607] The Court . . overruled the motion in arrest of judgment,"

Reversed: [608] "a negro man who commits the act with a white woman, cannot be indicted under the code; . . This view . . is supported by legislative construction; for the General Assembly, in . . 1852, deemed it necessary to enact, that the offence may be committed by a white man with a woman of color. . . it follows, that words charging the act are not slanderous of themselves, because they do not impute an offence punishable by the law, . . I . . reluctantly assent" [McDonald, J.]

Hines v. State, 26 Ga. 614, January 1859. "indicted for . . selling or furnishing whisky to a slave, without the knowledge . . of the owner . . [615] convicted, . . sentenced . . to imprisonment for thirty days, and

. . fine of two hundred dollars . . the punishment authorized for a second offence."

Carpenter v. State, 26 Ga. 622, January 1859. "indicted for receiving from a slave . . eight hides, . . value of thirty-four dollars, . . [623] Carpenter said that the hides were there, and that he got the hides from a negro about three o'clock in the morning." "The butchers . . give . . [their] negroes permission to sell meat after market hours; and it is usual for them to do so." Verdict of guilty, [624] "but recommended him to the mercy of the Court." New trial refused. Affirmed.

Dickinson v. Solomons, 26 Ga. 684, January 1859. [685] "first of January, 1844, I promise to pay . . sixty dollars for the hire of his negro woman and child for one year and four months' hire."

Carrie v. Cumming, 26 Ga. 690, January 1859. Will of John Carrie, 1847: [691] "To my friends . . all my estate" [697] "The caveators proposed to prove by general reputation, that . . the testator, and Mary Bouyer, . . a woman of color, lived together in a state of concubinage, . . rejected . . legatee . . was asked . . what was his intention as to the disposition of . . [the] property . . [698] And if he intended to use [it] . . for the benefit of Mary Bouyer, was not that intention based upon . . the known wishes of Mr. Carrie, . . objected . . sustained" Affirmed: "no trust created" by the will.

Slade v. Street, 27 Ga. 17, January 1859. The will of William Slade, who died in 1846, "attempted to manumit slaves."

Everett v. Whitfield, 27 Ga. 133, January 1859. [143] "Elizabeth Whitfield did bring [from South Carolina] to Georgia . . in . . 1824 . . sixteen negroes, and one more which was born on the road while she was moving to Georgia," [141] "The negroes were sold in a lump [in 1828]. . . It is not usual to put up negroes in families at Sheriff's sales . . [154] he considered young negroes able to earn their vituals [*sic*] and clothes before 14 or 15 . . but not more, and that it is worth two hundred and sixty dollars a head to raise young negroes till they can earn their support;" On page 152 of this report the ages and values of twenty-six slaves are given.

Hargrove v. Webb and Allen, 27 Ga. 172, January 1859. "complaint by Webb and Allen, on an account, . . defendant moved an amendment to his plea . . that Allen G. Webb . . was a free person of color, and not entitled to sue, nor to make contracts without the written permission of a guardian."

Held: [173] "the Act of 1833[1] . . was the *protection* of free persons of color . . [174] must not be made an . . engine of mischief to them. . . The guardian may ratify the contract, and a suit upon it is always sufficient evidence of ratification." [McDonald, J.]

[1] Cobb 1005.

McNair v. Bateman, 27 Ga. 181, January 1859. [182] "Both mortgages [dated 1854 and 1857] contained . . George, who was levied upon by the Sheriff . . and sold for $1,500."

Elmore v. Spear, 27 Ga. 193, January 1859. [195] "speculates in negroes,"

Lockett v. Mims, 27 Ga. 207, January 1859. [209] "asked . . [for] his wagon to move his negroes to Howard's station; . . father replied . . better take them to Macon. Witness replied, no, . . too far to take them through the cold,"

Marshall v. Drawhorn, 27 Ga. 275, January 1859. [277] "When Marshall came to the house of Drawhorn, . . he found the boy tied to a tree. He had been severely whipped. A negotiation for the purchase . . was started. Drawhorn called . . attention . . to the flogging, and remarking that he did not wish to cheat him, informed him that the negro had a stiff neck; and . . turned the negro's head about as well as he could." [276] "being sold at a reduced price [$800], was not to be warranted as to his neck or the consequences of the whipping"

Hardin v. Brown, 27 Ga. 314, January 1859. In April 1856 Brown, the plaintiff, sold to Hardin [315] "a negro woman . . and her child about one year old, for . . eleven hundred dollars. . . August . . Hardin . . told Brown he must take the negroes back . . 'because when I bought her, I thought she was in the family way, but she was not.' Brown said, if she was not, he would take her back. . . the physician said she was very low, and if she had another fit she would die; . . agreed . . trade . . cancelled; . . [316] she died about twelve hours after . . Dr. Simmons . . 17 or 18 days after . . exhumed the body [[320] 'by torch light'] . . opinion . . no *foetus* . . from 30 to 60 days before the woman's death; . . Hardin procured him to examine . . Brown admitted that if the woman was not pregnant, she was unsound when he sold her. . . Dr. Searcy . . thought she was in the early stages of pregnancy," He and two other physicians [317] "swore, that they did not think such information [as Dr. Simmons swore to] could be obtained" so long after death. Verdict for defendant. New trial refused. Affirmed.

Flanders v. Meath, 27 Ga. 358, January 1859. [360] "After running over the plaintiff [[359] 'a very wild . . child, in the habit of running in the streets'] . . the driver . . kept on . . the negroes on the dray were in the habit of driving unusually fast, and were frequently dancing and singing on the dray, as it was in motion. . . [361] The jury found for the plaintiff fifty dollars," New trial granted. Reversed.

Phillips v. Stewart, 27 Ga. 402, January 1859. In March 1857 Patty and Martha Stewart sold to Phillips a negro girl, eighteen years old, for $950, warranting her sound. "told Phillips . . that the negro had a cough, . . lately recovered from the measles. . . [403] April . . overseer . . put the girl to sowing cotton seed, but she became perfectly exhausted in an hour or two; . . breathed with much difficulty; . . she did not work in the field any more, but stayed about the house; . . June . . called Dr.

Rice in . . [404] Dr. Hammond . . was called in . . eight or ten days before she died [about July 20]; made a post-mortem examination . . the right lung was hepatized . . thinks the girl ought to have received medical treatment before she got it; . . verdict for the defendants." New trial refused. Affirmed.

Orr v. Huff, 27 Ga. 422, January 1859. " 1850. Received from . . Huff, four hundred dollars . . for a negro girl . . about nine years of age. I warrant . . sound in body and mind. . . A. J. Orr." Dr. Saunders [423] " examined the girl in . . 1854; . . affected with . . St. Vitus dance; scarcely able to stand . . idiotic expression " Dr. Harrison examined her a few months later, " found that she was idiotic . . treated her for about eight months, and then took her to his own house, . . fifteen or twenty days, . . [424] seven to eight fits a day; . . she died soon after leaving his . . house . . Huff, a son of plaintiff, swore . . she was put to work immediately [after the purchase], and witness worked with her, . . very dull, . . grew worse . . never grew much after his father bought her . . [425] D. W. Orr . . testified . . he purchased her for A. J. Orr, in Virginia, . . has bought and sold negroes, several hundred; hardly ever made a mistake in the soundness of one; . . [426] she was as smart as other negroes of her age; . . the jury found for the plaintiff four hundred dollars, and interest . . from . . 1850." New trial refused. Affirmed.

Dukes v. Nelson, 27 Ga. 457, March 1859. On December 25, 1854, Henry was sold to Dukes for $950, being warranted sound. Dukes sold him to Gilreath January 22, 1855; [459] " Weems bought him from Gilreath in September," "Henry died in Weems' possession " " some time [before May 1856] . . with the dropsy "

Stanley v. Gilmer, 27 Ga. 589, March 1859. [590] " levied on . . Martha, eleven or twelve years old,"

Johnson v. Andrews, 28 Ga. 17, March 1859. " administrators sold a negro girl about thirteen . . at public outcry, . . complainant became the purchaser at . . nine hundred dollars . . bill of sale . . without warranty of soundness . . [18] she died [of consumption] in one month and twenty days " Bill filed to enjoin collection of note. Injunction refused.

Sims v. Railroad Co., 28 Ga. 93, March 1859. " the negro, about fifty years old, was sitting on the end of a cross-tie, and was struck by the cow-catcher . . and killed . . [94] the presumption is he was asleep . . The court . . ordered a non-suit " Affirmed.

Jossey v. White, 28 Ga. 265, March 1859. Will, 1850: [266] " to my daughter . . my old man Jim, 65 years old; she is not to pay anything for him, but clothe him well and feed him;"

Hunt v. Printup, 28 Ga. 297, March 1859. [298] " the eleven negroes . . were levied on . . put . . in jail [in 1854] . . detained eight or nine months—they were hired before at $75 per month . . [300] Witness and plaintiff did own said negroes jointly. . . [301] there was one levied on . . a child in my arms at the time ".

Giles v. State, 28 Ga. 462, June 1859. [463] " Willis, and about forty other slaves belonging to . . Giles, were arrested and brought before a court of magistrates charged with . . murder. . . the magistrates were of opinion that there was sufficient evidence to warrant the commitment of Willis to the jail . . As to the others . . no evidence at all against them, . . ordered . . discharged . . upon the payment of the jail fees and all the costs of the examination. . . Giles . . excepted "

Held: the act of 1811, section 1, giving justices of the peace a discretion to award costs " when any person . . shall be discharged for want of sufficient cause of commitment " does not apply to slaves.

Sarah (a slave) v. State, 28 Ga. 576, June 1859. " Indictment for an attempt to poison " [577] " the victuals had a bitter taste, two were made sick; then a piece of bread . . was given to a dog . . dropped dead . . Sarah . . was the cook . . she did not eat anything; his father asked her if she drew water that morning, she replied she did not, . . [578] she . . confessed that she had white powders . . Dr. Hatchell . . thinks the powders are strychnine, . . Evidence for the defence. William Howell testified that he was at the house of . . Williams the night before his family were poisoned, he drew a bucket of water . . and put strychnine and arsenic in it; . . did not tell Sarah . . [579] He had given Sarah poison before to put in the bucket, but she would not do it; . . the jury found the defendant guilty." Motion for a new trial: " Because the witness . . stated portions of prisoner's confessions after he had stated . . that she had been whipped that morning by her master for the offence, . . [580] Because after . . Howell had . . confessed . . the court suspended the proceedings, and in the presence of the jury, sentenced the witness for the crime ' of attempting to procure a negro to commit the crime of poisoning.' (Howell having been . . convicted, at the same term, of said offence.) The Judge remarking . . that he intended to sentence him to five years . . but after his . . bold confession, he would sentence him for seven . . and if he had the authority he would sentence him for fifty years. The Court when charging the jury, remarked . . ' he has confessed his guilt of the most diabolical crime known . . it is for you to attach such credit to his evidence as you . . think it deserves.' " Motion for new trial overruled.

Judgment affirmed: [582] " It may be that the presiding Judge yielded to the excitement of the moment, elicited by the bare-faced confession of Howell, evidently made to screen his guilty paramour; still he did not violate the statute which forbids the Judge to . . [583] intimate an opinion as to what has . . been proven; . . [584] We are satisfied . . that the defendant is guilty, . . Is the punishment . . disproportioned to the offence, inasmuch as no one was killed? The law has left it discretionary . . to inflict the death penalty . . When we consider the facility with which this crime may be committed, the temptation . . in a clear case of guilt the stroke should not be averted." [Lumpkin, J.]

Hill (a slave) v. State, 28 Ga. 604, June 1859. " Hill . . property of . . Perkins, was indicted for the murder of Margaret Saddler " [612]

" He struck no blow upon the deceased, . . He did not *help* the other negro, but was himself engaged with another woman, whom he neither killed nor tried to kill," Verdict of guilty as principal in the first degree. New trial refused. Affirmed. Judge Stephens dissented: " I do not think the proof shows even that the two negroes had any common intent of murder. Their mission was probably one of lust,"

O'Byrne v. State, 29 Ga. 36, June 1859. " guilty of . . furnishing a slave with spirituous liquor." New trial refused. Reversed: the judge below had intimated his opinion as to the evidence.

Martin v. McConnell, 29 Ga. 204, August 1859. Will, 1840: [205] " To my wife . . during her life, the control of . . all the black people, while she enjoys senses to command them justly. . . At the division . . all the blacks to have liberty to choose their homes among my children,"

Drumright v. State, 29 Ga. 430, August 1859. [431] " He was indicted under the Act of 1856 [1] . . for carrying a negro out of the county . . without the consent of the owner "

Reinhart v. State, 29 Ga. 522, November 1859. [525] " that the defendant had repeatedly sold liquor to the negro . . and that the negro had drunk [it] . . in his presence. . . attempted to justify . . under a general verbal order from the employer . . to let the negro have spirits in ' reasonable quantity,' whenever he wanted it. . . The law does allow the owner, overseer or employer . . to furnish . . such quantity as . . [526] [he] may deem beneficial . . but . . has not . . put this same discretion in him who sells the spirits, nor can it be put there by delegation "

Gay v. Gay, 29 Ga. 549, November 1859. Will of Robert Sims: [551] " After the decease of my . . wife, . . I want the slaves . . freed, if the laws of our country will authorize it."

Ingram v. Fraley, 29 Ga. 553, November 1859. Will, 1856: [554] " being desirous of keeping my negroes together, as long as it can be done; and having the utmost confidence in . . Fraley [my brother-in-law] . . and that he will entirely carry out my wishes . . expressed . . either verbally or in writing; and knowing . . [he] will, by this will, be able more effectually to dispose of my estate, as I wish . . than I could at this time do myself, . . I . . give . . Fraley my entire estate " [555] " about . . 1832, purchased jointly the plantation . . and placed their negroes on it; . . purchased jointly . . a family of negroes placed on the farm; their negroes have intermarried, . . Testator was a bachelor; lived on the farm; encouraged this intermarriage, and treated all the negroes with like humanity . . Among the negroes . . were a family of mulattos, to which testator, for reasons not necessary to be repeated, had a strong affection;" Held: [562] " some trust was intended, . . the legatee takes nothing beneficially . . the estate is subject to distribution between the next of kin "

[1] Acts of 1855-1856, p. 264.

Re Slave Trade, 30 Fed. Cas. 1026 (3 Phila. 527), November 1859. "Wayne, Circuit Justice [1] (charging the grand jury). A circumstance has recently occurred in this city which impresses the larger portion of its people, I may say all, with few exceptions, that the same vessel has been positively taken from this port [Savannah?] to be engaged again in the same unlawful trade. This incident . . induces me . . to charge you upon the legislation of Congress [for the prohibition of the slave trade.] . . [1028] The acts of 1818,[2] 1819,[3] 1820,[4] severe as they may seem to be, particularly the last, had the active and marked support of the most distinguished representatives in congress from . . South Carolina, and that of the ablest representatives of every other state in the Union. . . [1029] The general pacification in Europe in 1814, and that of the United States with Great Britain, threw out of employment numbers of men who had been accustomed to the violence of war and to the hazards and gains of privateering. . . At first they were pirates without combinations, but afterwards became associated and had places of depot for the sale and division of their spoil. . . At length an adventurer, daring and knowing, conceived an idea and executed it, to make the Island of Fernandina their rendezvous. He seized it, declaring it to be no longer a dependence of Spain, and organized a government there, in conjunction with citizens of the United States who were men of broken fortunes at home. They claimed for themselves the privileges of nationality, invited an accession of numbers from every part of the world, recruited them as soldiers, and employed them on board of cruisers which had commissions of their own, with simulated documentary papers of the United States and the nations of Europe. . . In a short time the little island . . was filled with the stolen products of commerce. The plan was to smuggle them into the adjoining districts of the United States, overland by the way of Florida, and from points on the St. Mary's river into the interior. Our citizens from the north and the south did not resist the temptation; men from the utmost east of the United States and the nearer south to the locality were there for unlawful purposes, just as they had been a few years before, during the war of the United States and England, to smuggle our cotton into Fernandina on English account, and in return, to smuggle into the United States the fabrics of her manufacturers. In a short time this assumed government opened the island as a depot for slaves from Africa. Two cargoes of them arrived there in the year 1818, in such a condition of misery from long confinement, starvation and scourging, that the representation of it caused all over the United States a deep and indignant sympathy. Those, and there were but few of them who survived, were bought by a citizen . . of Pennsylvania, and by a resident merchant of Savannah, and were successfully introduced into the United States. A third cargo arrived under like circumstances and with the same results. . . Mr. Monroe, then president,

[1] Circuit court for the district of Georgia.
[2] 3 St. at L. 450.
[3] *Ibid.* 532.
[4] *Ibid.* 600.

determined to take possession of the island. It was done by a military force. . . Aury's government and forces, after a show of resistance, surrendered. Himself and his officers fled, and thus an end was put to their combination for smuggling and piracy." History of "the legislation of Congress to prohibit the African slave trade, with especial reference to the religious, moral, and political considerations on which it rests, and to the constitutionality of the act of 1820, making the trade piracy, punishable by death. . . [1032] 1853, the United States was called upon to consider the measures for the execution of the treaty of Ghent . . relative to the suppression of the slave trade. These measures will be found in . . the 'Webster-Ashburton Treaty.' . . Vessels of war cruising on the coast of Africa under our act of 1819 [1] have been directed to search our own vessels, to arrest the violators of the law, to bring in the ships for condemnation, and the men for punishment. At this time the government is not unmindful of this treaty obligation, for our next squadron for the coast of Africa will consist, I believe, of four steamers and as many sloops-of-war, and four steam ships will probably cruise off Cuba to intercept slaves that may escape the ships on the African coast."

Pannell v. State, 29 Ga. 681, January 1860. [684] "The evidence . . having disclosed . . that the slave went into defendant's shop . . after nine o'clock at night, and before daybreak . . with an empty bottle, and came out with [it] . . filled with whiskey, the presumption of the guilt . . could not be rebutted by the facts, that the . . owner knew . . and permitted . . or that the overseer . . was present . . unless the negro was sent by the owner or overseer for the whiskey;"

Hobbs v. Davis, 30 Ga. 423, January 1860. [424] "contract for the hire of the negro woman . . 1858 . . eight dollars per month. She was to take her one month . . on trial, and if she was satisfied with the woman and the woman with her, she was then to keep her at that price. . . hired for the purpose of making a crop"

Sheftall v. Roberts, 30 Ga. 453, January 1860. Will, 1808: [459] "It is my particular request . . that my old faithful negro man, London, who has labored hard with me forty years and upwards, be kindly, carefully and well treated as long as he lives."

Kirkpatrick v. Bank, 30 Ga. 465, January 1860. [471] "Billy and Joe, Bob and John, have been employed on the steamboats . . [on] the Savannah River; that the owners of . . steamboats are indebted . . [472] $800 00 for services . . by Billy and Joe . . from the 10th of November, 1858, at . . four hundred dollars per annum . . each; . . $400 00 for the services of . . Bob and John . . at . . two hundred dollars each per annum"

Ingram v. Mitchell, 30 Ga. 547, January 1860. "1856, . . Simon was committed to jail to await his trial on the charge of attempting to commit a rape on a free white female . . at the October Term . . a true bill . . was found against him. Previous to October Term, Ingram, the owner

[1] 3 St. at L. 532.

. . gave bond for the appearance . . and took charge of him, . . August, 1857, Ingram entered into an agreement with Mitchell . . the latter should take Simon away and sell him . . [548] to enable Mitchell to convey title . . Mitchell gavè Ingram his promissory note for $1,200 . . Mitchell . . sold him in . . Georgia, for $1,200" [549] "not very remote from the place where the alleged offense was committed. The prosecution was quashed ten or twelve days before the negro was sold, the woman herself and every body else being satisfied of his innocence; . . he was immediately re-purchased and brought back by Ingram," [548] "Mitchell being called on to pay over the $1,200, the proceeds of the sale made by him, refused . . insisting that the agreement having been made to screen Simon from trial and punishment, is illegal," Verdict for the defendant. New trial refused.

Reversed: [550] "Why should Mitchell not pay the note? But apart from this . . He must abide by the contract or repudiate it. If he abides by it, he must pay; if he repudiates it, he holds in his hands the price of Ingram's negro, and he must turn it over."

Mitchell v. Railroad Co., 30 Ga. 22, March 1860. "plaintiff, with his wife and children, and about ten of his negroes, took passage . . The negroes were paid for as passengers, and went on the second-class passenger-cars; . . the train stopped . . at a . . water station, and, upon starting, one of . . negroes (a boy about ten or twelve years old) was run over . . and badly hurt." Held: [26] "The doctrine of common carriers, as to goods, does not apply to the carriage of slaves,"

Glass v. Cook, 30 Ga. 133, March 1860. "Received . . seven hundred and twenty-five dollars . . for a negro boy . . about 9 years old, of dark complexion, which negro I warrant to be sound . . 1857." The executor [134] "stated publicly at the time . . that the negro was sound . . and 'the best negro of the flock,'" He died shortly after.

Myrick v. Vineburgh, 30 Ga. 161, March 1860. The will of Nathaniel T. Myrick [163] "directs certain negroes . . to be removed to some free State, and there manumitted; and that certain property shall be there bought for them." Held: "This does not violate the policy of our Statutes against manumission,"

Pitts v. Thrower, 30 Ga. 212, March 1860. [215] "Thrower . . was . . about . . 1802, on a visit to his wife's father, . . White, in . . Louisiana; . . White gave to him, for his wife . . a negro. But when Thrower started on his return . . [216] the negro kept out of his way, so that he came home, leaving her there."

Williams v. Fambro, 30 Ga. 232, March 1860. "action brought by . . Fambro . . for the recovery of damage for killing a . . man slave . . worth $1200, . . 1857, the defendant was overseeing for plaintiff; . . None of the witnesses . . was present . . the negro was found dead—stabbed . . The defendant . . left immediately after the killing. . . [233] the defendant offered to read the depositions of . . Walker, . . that . . [Jim's] character in the neighborhood was, that he was hard to manage

. . witness remained on plaintiff's plantation four months, and whipped Jim three times;" " plaintiff . . told witness that if Jim complained of being sick, to give him some medicine, and if he was not sick, to put him to work; witness . . told him if he was well enough, to take his tools and go to work . Jim replied, that when he was sick his master never allowed him to work, and he'd be damned if he would do it; witness struck him with his fist, and went to get his whip, when Jim . . picked up an axe and went back into his house. . . plaintiff said the negro was dangerous, and advised witness to go armed, so as to defend himself. About three weeks after . . witness undertook to whip him for playing cards; he swore he'd be damned if he should . . and picked up a stick and struck at witness; witness then had him tied and whipped him; . . objected . . sustained . . and ruled out the depositions, so far as they went to prove the general character . . [234] unless some act of violence was shown to defendant, . . The Jury found for the plaintiff twelve hundred dollars." New trial refused.

Reversed: " defendant ought . . to have had the benefit of Walker's testimony . . so far as it related to . . [his] own general knowledge of the negro's disposition, or to Mr. Fambro's statements . . but not admissible so far as it related to previous particular acts of violence . . or to general reputation as to his disposition. . . [235] the thing to be proven in this case was . . his character . . especially his aptness for strife . . [I.] to render more probable the evidence which tended to show an act of rebellion at the time he was killed; and this probability is . . not affected in the slightest degree by Williams' previous knowledge of the fact. . . [II.] a negro's bad character . . ought to lessen the damages for killing him." [Stephens, J.]

Curry v. Curry, 30 Ga. 253, March 1860. Will of Wiley Curry: " I give my servants, John, a man of yellow complexion, and Betsy, a woman of yellow complexion, to my executor, . . in trust to carry . . immediately after my death, to some one of the non-slaveholding States . . as . . executor may select, or to whomsoever said servants may elect for a master in this State, before . . Stephens. . . [254] pay . . Goodman . . one thousand dollars, the interest on which is to be annually paid to my servants . . after their removal to a free State, . . and at the death of . . John and Betsy, said sum to be equally divided between their children. . . if either die without children his share to go to the other " After the execution of the will " the negroes . . informed . . testator whom they would choose as their master, and testator expressed himself satisfied . . the negroes . . did a few days after testator's death, choose their masters, . . They were not appraised as a part of testator's estate."

Held void: [257] " The intention of testator was that these negroes should be free . . [258] The bequest was in fact, placing a charter of the liberty of these negroes in their hands to go throughout the State and trade . . on it till such person should be found who would give them the largest liberty for the least consideration; . . obnoxious to the provisions of the Act of . . 1818. . . [259] other reasons why this bequest

is void. . . [260] as slaves they could not elect;[1] . . [262] It may be contended that, although this clause . . is void, yet, the direction to convey . . to a non-slave-holding State is not, . . To this, there are two replies: One is, that the clause void serves to demonstrate . . the intention of the testator in his entire scheme . . and that being to violate . . the manumission laws . . the whole scheme is void. The other . . given by Allen, J., in Williamson *vs.* Coulter, 14 *Grat.*, 398. 'No one . . can say, what would have been the disposition of the testator if he had known he could not submit the alternative to the choice of slaves.' . . Of course the bequest of one thousand dollars . . falls with the clause in their favor," [Lyon, J.]

Escheator v. Candler, 30 Ga. 275, May 1860. "a proceeding by . . escheator . . to condemn escheat certain negroes, as being the property of a free negro, Joe." [276] "The sole point on which this case turns, is the *status* of . . Joe." [23 Ga. 494] "contract between Joe . . and his master [Holt] for his manumission" [495] "deed of . . Holt . . to . . Butler, in . . 1821" [30 Ga. 277] "Butler's quick succeeding manumission of him in New Jersey" [23 Ga. 499] "by a proceeding under the laws of that State." [30 Ga. 277] "Joe's immediate return thereafter to Georgia," [23 Ga. 495] "the evidence of . . Simpson and the Book of Enrollments of free negroes . . and certificates of registry issued by the Clerk of the Inferior Court . . for thirty-three years, and the tax receipts . . [496] all show that Joe was *prima facie* and presumptively free, . . a farmer with lands . . and household, living without the control or presence of any white man for 35 or 40 years, and having a guardian during all that time."

Held: [30 Ga. 277] "It was a piece of machinery intended to evade our Statute against manumission,[2] . . void from the first step to the last . . But it was contended that he was free from lapse of time, he having been registered as a freeman, and enjoyed the privileges . . ever since 1811. . . Our Law does not allow conveyances, nor contrivances, nor time, to convert a slave into a free man in Georgia, to swell the ranks of a population which the Legislature has carefully guarded from increase from any source whatever, save that of procreation." Being a slave, the Escheat Act of 1817, [276] "against the holding of slaves by free persons of color . . does not apply." [Stephens, J.]

Black v. Thornton, 30 Ga. 361, May 1860. [364] "the quarter was seven or eight miles from the home place. . . [365] I have seen Sina and Jacob ploughing;"

Johnson v. Gorman, 30 Ga. 612, June 1860. "action . . to recover . . three hundred and fifty dollars . . [613] for overseeing for the year 1858. . . Defendant refused" [614] "to turn over his plantation and

[1] Overruling the decision in Cleland v. Waters (p. 46, *supra*), but following Carroll *v.* Brumby (p. 166, *infra*), and Baily *v.* Poindexter (vol. I. of this series, p. 243), and Williamson *v.* Coalter (*ibid.* p. 247).

[2] Act of 1818.

property into the hands of an overseer drunk at the time." Held justifiable.

Rutherford v. Newson, 30 Ga. 728, June 1860. [729] " Rutherford, was a physician, and with a view to purchase, had Joe in his possession some time before the trade was made " He gave his note for $900, dated 1854. "In December, 1855, Joe was attacked, while at work, apparently with his old complaint in the breast, and died in a few minutes "

Gill v. Wilkinson, 30 Ga. 760, June 1860. " the Sheriff answered . . that at the time he received . . negro, the jail . . was insecure . . that the weather was extremely cold, and he took . . negro to his home and kept her there, as he thought humanity required. . . that afterwards the woman was stolen . . and that he was subjected to great trouble . . to find and retake her "

Shine v. Redwine, 30 Ga. 780, June 1860. [787] " Henry, being a blacksmith, is worth now [1859] $1,800, and $200 per year for hire since 1845 "

Webb v. Fleming, 30 Ga. 808, June 1860. Will of Mark Sanders: [811] " selling his boy Henry and with the proceeds purchasing the girl Rose, who was, by . . his executor, to be freed from service to himself or any other person." Held void.

Bostick v. Hardy, 30 Ga. 836, June 1860. In 1859 a negro woman was sold for $850.

Hawkins v. King, 30 Ga. 909, June 1860. In 1856 a negro woman was sold at auction for $900.

Smith v. Bell, 30 Ga. 919, June 1860. [920] " 1855 . . a negro woman . . and her child, was put up to the highest bidder, and bought . . for . . thirteen hundred dollars;"

Wade v. Powell, 31 Ga. August 1860. [8] " We, the arbitrators . . 1857 . . award that . . Wade retain . . at the following prices . . an old man, $100.00; . . an old woman, $1.00; . . a man, $1,000.00; . . a young man, 1,100.00; . . a young woman, $900.00;"

Evans v. Lipscomb, 31 Ga. 71, August 1860. [74] " Harlan, about 4 years old, worth $350; another child . . walking, about $250; . . [96] her mother had always said that she wanted her negroes to have the privilege of picking their masters."

Allen v. Hollis, 31 Ga. 143, August 1860. [144] " he valued . . Rose, at seven hundred dollars [in 1858], she being a number one field hand."

Johnson v. Lovett, 31 Ga. 187, August 1860. Action of trespass. " 1858, it being the Sabbath day, the defendant inflicted upon . . Dinah, belonging to . . Wiggins, . . a severe whipping, with a cow-hide, and by kicking her in the abdomen, and knocking out one of her teeth, and otherwise beating . . commenced in the public streets . . and was continued in the kitchen of defendant . . [who] was aided by two other negroes, one . . ordered to take hold of Dinah's feet, and the other . . of her head;

. . the negro . . was confined, in consequence . . for about two weeks, but afterwards . . seemed as sprightly . . as before . . the defendant gave as an excuse . . Dinah . . pursued the business of a washer-woman . . the dresses were sent for by another servant girl, she . . reported a message from Dinah, that she would not send the dresses until she had got them done, and that forty devils and the defendant himself could not make her send them until she got ready; . . Dinah, was, at the time . . hired to . . Johnson . . the physician's bill . . was about fifty dollars, . . verdict for the defendant, with cost of suit. . . plaintiff . . moved for a new trial . . [189] has discovered, since the trial . . Mrs. Thomas heard the message . . and that Dinah did not send the message . . communicated . . overruled"

Affirmed: but [190] "we state, as a Court, that there is much to condemn in the conduct of the defendant. . . [191] It is dangerous, in this hasty way, to act upon the *ex parte* representations of another servant. . . the punishment . . was both indecent and excessive," [Lumpkin, J.]

Tharp v. Anderson, 31 Ga. 293, August 1860. "defendant . . employed . . negro boy [twenty years old] without the consent of the [owner] . . the falling tree . . struck . . negro . . so that he died . . was worth fifteen hundred dollars, and . . for hire, one hundred and fifty dollars per annum."

Hambright v. Stover, 31 Ga. 300, August 1860. In 1854 a note for $700 was given by defendant for a negro woman. [301] "the negro was pregnant, and was left at Mrs. Brittains, . . a midwife, to be attended to . . during her confinement [[302] 'at the expense of the defendant']; . . Mrs. Brittain had attended the negro two or three times before, . . and the children were either born dead or died a few minutes after birth; . . her last confinement . . was a protracted one, she died . . [302] The plaintiff . . proved by the physician . . called . . in her last sickness, and also by another physician who aided in the post mortem examination, that . . woman failed to give birth . . on account of the unusually large size of the child;" Held: [303] "A warranty of soundness does not extend to the subsequent casualties of parturition."

Cone v. Force, 31 Ga. 328, August 1860. "Cone made an affidavit . . 'That, on the 19th of January, 1860, . . Sarah, and her three children . . in . . [his] peaceably acquired possession . . were . . carried away . . by . . Force' . . Force was arrested . . [329] The defendant . . proved that . . Black had seen a small negro girl in the possession of Mrs. Cone, . . said to be the child of a certain white woman, . . also introduced . . Dean, to prove that the negroes were free, according to what . . Cone had said. . . offered in evidence an order of the Superior Court . . 19th of January, 1860, appointing . . Force guardian . . testimony admitted . . adjudged that the negroes . . remain in the possession of . . Force,"

Reversed: [330] "It was not competent for the Magistrate's Court to . . adjudicate the question of freedom . . in this proceeding. The General Assembly has . . provided, both the proceeding . . and the

forum [1] . . before their freedom shall have been established . . the presumption of law is against their freedom."

Cross v. Payne, 31 Ga. 342, August 1860. In 1859 [343] "complainant bought . . negro boy [for $1200] . . for the purpose of selling him again, . . sent . . negro . . off for sale, and spent about one hundred dollars for his board, clothing, etc., and failed to sell him, because he was ruptured . . [345] defendant . . proposed . . to . . take the negro back . . complainant refused . . saying that he . . could sell . . for fifteen hundred dollars."

Palmer v. Clarke, 31 Ga. 351, August 1860. "1833 . . Baird made a deed of gift to [his granddaughter] . . conveying a negro girl . . about three years old . . [352] [A witness] testified . . that in Christmas holidays, in 1836, he saw her concealed up stairs in the house of . . Cleveland [to whom Baird had later sold the girl] who offered to sell her to witness . . provided the witness would run her to Mississippi and alter her name, . . witness replied . . he would not cheat . . [353] she never brought but one child, which died in a day or two after its birth; . . she is not a good field hand; never saw her splitting rails; has seen her plough and wash sometimes;"

Congers v. Bowen, 31 Ga. 382, August 1860 [384] "now has him hired out for $180"

Hughes v. Allen, 31 Ga. 483, November 1860. Will of John W. Allen, 1856: [486] "I hereby manumit . . a woman about thirty-five . . a girl about eight . . a boy about five . . a boy about seven months old; allowing her to keep her bed and bed-clothes, and trunk which are strictly hers; and . . two hundred dollars . . and appropriate . . money sufficient . . to be used by my executors . . to . . transport her to any place wheresoever she may wish to go, . . with her children. . . [487] I desire that my faithful old servant, Pleasant, shall go where she pleases, and . . not belong to any one, and that . . one hundred dollars shall be reserved for her . . support." "in relation to . . slaves so attempted to be manumitted . . an intestacy was declared . . [488] sold by an order of the Ordinary"

Maddox v. Simmons, 31 Ga. 512, November 1860. "1856 . . Maria, aged fifty . . worth one hundred dollars; Dawson, aged seventeen . . worth eleven hundred . . Nancy, aged thirteen . . worth eight hundred . . John Wesley, aged eight . . worth six hundred . . Raymond, aged five . . worth one hundred . . and Merrill, aged four . . worth three hundred dollars. . . [515] Henry . . was sold by the sheriff . . 1856 . . [for] twelve hundred and fifty dollars"

Strozier v. Carroll, 31 Ga. November 1860. [562] "That in the latter part of . . 1856, or . . January, 1857, he bought from Carroll a negro girl . . Silvia [[559] 'about fourteen or fifteen'], at seven hundred dollars . . latter part of February, 1857, he sold her back to Carroll for eight hundred and seventy . . Carroll told him, at the time he bought her . .

[1] Cobb 1007, 1011.

that she was a dirt-eater, as he had been informed, but that during the two months that he (Carroll) had owned her, she seemed . . healthy" On February 28 Carroll sold her to Strozier, who [557], " in the trade, let defendant have a negro man valued at one thousand dollars, and the defendant was to pay him one hundred dollars to boot; the girl . . had a bad cough, and complained of a pain in her side; the defendant represented her as sound, . . said that she had got wet, . . taken a bad cold; . . the girl was sent to the field to work, and plowed about one-half hour, and complained so much of a pain in her side, . . set . . to picking up trash; . . she could not do that . . [558] measles prevailed at the time amongst plaintiff's negroes; . . she was kept in Mrs. Strozier's room, and treated well all the while; . . [559] a negro girl taken from the field to wait on her; . . [561] Dr. . . Bledsoe testified . . she had an abscess of the right lung . . she died . . 31st of March . . [562] must have been diseased at least three or four years; I was called . . 30th of March . . I made the post mortem examination . . Dr. . . Twitty . . was present when the girl died;" Verdict for the defendant. New trial refused. Affirmed: [563] " The case turns upon the fact of warranty. There was none in writing, and but one witness testifies to this point. . . [564] discredited"

Lynch v. Jackson, 31 Ga. 668, November 1860. " 1850 . . the grandfather of the plaintiff, gave . . the . . girl . . to the plaintiff . . telling the mother of the plaintiff to take charge of the negro and learn her to sew, etc., until the plaintiff married, or became of sufficient age to control and manage the negro herself." [671] " the plaintiff was twenty-one . . [in] 1856,"

Mapp v. Phillips, 32 Ga. 72, January 1861. [74] " General . . Armstrong testified: Gilbert, . . professed agent of Mapp, bargained the negro ['twenty-four'] . . to the witness at $1,250 [in 1859]; . . was left in my possession . . ran away; . . [75] finding that the boy was a drunkard and a gambler . . and that the price was raised to $1,300, he delivered the boy to Bishop," agent authorized by Mapp to sell to Armstrong. Bishop then sold him to Cox. Cox testified: [73] " That as the agent of Phillips . . he bought the negro . . put the negro in the guard house, and that Phillips sent the negro to New Orleans, where he was sold." " some time after . . Mapp . . [was] looking for Bishop, to get the money" [79] " fair to infer that he then supposed Bishop had sold to Armstrong, as authorized, and made way with the purchase money,"

Ball v. Wallace, 32 Ga. 170, January 1861. "1858 . . the negro boy . . was worth $700.00, and was worth, for hire, $150.00,"

Howard v. Snelling, 32 Ga. 195, January 1861. In 1839 a negro girl, about fifteen years of age, was sold for $750.

Sullivan v. Hugly, 32 Ga. 316, March 1861. " bill . . brought against . . Sullivan, as administrator of Franklin Hugly, for an account and distribution, by . . next friend of . . [ten] minors, who allege that they are the next of kin, and heirs-at-law of Franklin Hugly, on the paternal side, . . Sullivan . . [317] denies . . further answers that the estate . .

is subject to distribution among the brothers and sisters of Caroline [mother of Franklin Hugly and daughter of Sullivan] . . 'that the estate sought . . was, by the will of Amos Hugly, bequeathed . . to his wife Caroline and . . Franklin, and that . . Franklin being an adulterine bastard, and one-half negro blood, and incapable of holding estate . . the bequest to Franklin became void,' . . Zelner testified . . Amos was very mad because . . Franklin . . was reported to be a negro child, and said . . he believed the child to be his; . . [318] Mrs. Crawford saw the child about fifteen minutes after its birth, . . from the dark color . . his curly black hair and low forehead, she would say he was one-half negro. . . Amos treated Franklin as his son. . . Dr. . . Hammond . . [319] of the opinion . . offspring was a mulatto, . . [320] ' The midwife . . pronounced it to be a mulatto at its birth,' which [last testimony] . . was rejected . . verdict in favor of the complainants for $10,710.00." New trial refused.

Affirmed: [323] " The examinations were made . . before its features were fully developed. . . after the child was removed with its parents . . among strangers . . no one seems to be impressed with the idea . . that it was of negro descent." [Lyon, J.]

Jackson v. Jackson, 32 Ga. 325, March 1861. [330] " his sons worked in the field . . [331] like slaves,"

Mann v. Railroad Co., 32 Ga. 345, March 1861. [346] " the negro was fed by [his master] . . and came to his master's every Saturday night, to get his food for the week. . . The hands . . stayed in a shanty, . . the overseer, gave . . orders to Pitts and Smith . . to let the negroes on the railroad have liquor when they wanted it. . . It was a rule for the hands to stay with the overseer. On a moonlight night . . the negro was lying on or very near to the rail track . . The engine . . killed him . . [347] non-suit . . the action being . . for negligently permitting the negro to get drunk, stray off, and get killed, . . no evidence that the negro had drank . . on the night he was killed." Affirmed.

Ramsey v. Blalock, 32 Ga. 376, March 1861. In 1857 a negro girl, seven years old, [377] " was knocked off . . at . . $530 00. . . the little negro girl had contracted the habit of eating dirt, . . [378] died of typhoid pneumonia " six months after the sale.

Wooten v. Calahan, 32 Ga. 382, March 1861. [383] " 1853, Wooten and Goolsby sold to . . Calahan a negro woman . . about twenty [for $775.] . . died in about one week . . [384] Dr. Saunders attended the negro, and was of opinion that she had fever, complicated with pneumonia;"

Lewis v. McAfee, 32 Ga. 465, March 1861. [466] " witness . . states that his recollection is, that the negro was hired to do shop work. . . put to service on a passenger train, as a train hand, to attend the break [*sic*] and wait upon the passengers. . . permitted to ride . . once and sometimes twice a week, to see his wife." [468] " on his return from the car shed, where he had been sent . . the boy . . chose to ride back " [466] " jumped . . died . . [467] verdict for the plaintiff for $1200 00." New trial refused. Affirmed.

Whidby v. Lewis, 32 Ga. 472, March 1861. " the negro boy . . [473] was about twenty-two . . stout built, of good character," " upon a wagon . . waiting for the train to move off . . moved off . . suddenly reversed . . struck his wagon . . killed . . the man at the switch . . told him not to come " Verdict for plaintiff for $1250. New Trial granted. Affirmed.

Wallace and Wallace v. Spullock, 32 Ga. 488, March 1861. [490] " the boy was . . worth about $1200 00; . . a number of witnesses . . had seen Sam about the store of the plaintiffs . . considered him a white man; . . bought goods from him . . his complexion was light, his hair straight, . . One . . had been in the habit of calling him Mr. Wallace, and regarded him as a member of the firm." [489] " conductor . . left Chattanooga a short time after seeing . . Sam, and on arriving at Atlanta, reported to the plaintiffs . . afterward he saw the boy in Chicago, . . where he passed as a white man, and was taking drinks at the bar with white men; . . the presiding Judge charged . . [491] ' if . . the agents of the road . . could not have detected any of the marks of the negro, . . no such negligence as would make the road liable.' . . verdict in favor of the defendant [superintendent of the railroad]." New trial refused.

Affirmed: [492] " To prescribe any more stringent rules . . would be to enjoin upon . . conductors the duty of questioning . . every white passenger having a dark complexion, and refusing . . conveyance unless he could prove his descent from Caucasian parents." [Jenkins, J.]

Cox v. State, 32 Ga. 515, March 1861. [518] " Cox said [to Echols] that he was getting on at Jones' pretty well; that he had all the negroes under subjection except Humphrey; that he owed him a whipping . . had found a rock in a basket of cotton. . . witness asked Cox why he shot the negro, . . Cox answered, that he went up behind the negro, where he was chopping . . and took hold of him, and witness thinks that Cox said the negro . . [519] turned upon him and took him by the throat . . [Cox] called . . another negro . . deceased then . . broke to run, and . . Cox . . fired " Jones, who employed Cox [516] " to work with and control the negroes under witness's direction " " told Cox that he had a great mind to . . shoot his brains out, . . the negro had never resisted anybody; . . [518] two or three weeks before . . the deceased and witness [for defendant] were talking about Cox . . the deceased said that he whipped some of them mighty bad; that he did not want Cox to whip him that way, . . if he did, he . . would have to do something that he did not want to do; that Jones had offered to sell him . . but . . when Bob Jones had offered to give the $1600 . . his master, refused . . [520] The Court charged . . ' if . . negro . . ran, . . [he] was not in revolt at the time when he ran,' . . verdict . . voluntary manslaughter." New trial refused.

Reversed: [521] " in the charge, one view of the case . . was omitted, . . Cox . . said [to Thompson], that ' he went up to the negro, and the negro took hold of him, and he shot him.' . . if the prisoner shot while the negro had hold of him, . . he is not guilty of a crime," [Lyon, J.] Jenkins, J., dissented.

Word v. Mitchell, 32 Ga. 623, May 1861. *Sixth item* of the will of William D. Martin: "I desire that my faithful and trusty negroes, Gabe and Willis, also . . [two] sons of Gabe, be free as far as is consistent with the laws of this State, and I give to their use . . as a home during life . . a part of tract on which I now live . . also . . four cows of their choice [and other personal property.] . . appoint . . Mitchell guardian . . to trade for them, and . . control their business . . as compensation . . I give to . . [624] Mitchell . . note which I now hold on him for . . $1200 00." *Eighteenth item*: "All the remainder . . to . . Mitchell," Held: "When a legacy fails . . because it is void . . it . . passes to residuary legatee,"

Waters v. Cleland, 32 Ga. 633, May 1861. "1852, complainant . . was engaged in the study of medicine. His all of property . . was a favorite negro boy . . about sixteen . . worth $800 . . the gift of his grandfather, and to whom he had become much attached . . having been partly raised with him," "Finding that he could not prosecute his . . studies . . without a sale or mortgage . . [634] induced to give an absolute bill of sale [to Waters] instead of a mortgage, because . . he did not know the difference . . as to legal effect, . . 1856, tendered the [$500 advanced] . . Waters refused to deliver, saying that he had become attached to the boy," Held: a conditional sale. [636] "the complainant's right to redeem was not . . barred by lapse of time."

Monday (a slave) v. State, 32 Ga. 672, June 1861. "Assault with intent to murder, . . Tried . . April Term, 1861. . . [673] October, 1860, . . between daybreak and sunrise . . [674] negro came toward [Bass.] . . Bass asked who it was; the negro replied, Monday McRea; . . a sack lying by the road . . found to contain bacon. Bass told the negro to pick it up, . . go with him to town, . . Bass struck him once or twice . . The negro caught Bass by the throat and choked him severely, . . persons . . came to his relief . . negro ran off. . . In about one-half or three-quarters of an hour after . . Monday was in his mistress' kitchen putting on his shoes. . . [675] The prisoner relied on the proof of an *alibi,*" [679] "much negro testimony was offered in support" [675] "This defence was met . . by the testimony of . . Mrs. Barfield . . early on the morning . . she saw Monday going toward Mrs. McRea's, . . After the testimony had closed, . . counsel for the prisoner learned . . that he could prove by . . Ragan, that Mrs. Barfield was mistaken . . [676] moved the Court to suspend the case until Ragan (who was gone some four or five miles in pursuit of a runaway slave) could be sent for . . refused . . verdict of guilty . . [677] Counsel for defendant . . moved for a new trial . . Because the Court erred in not charging . . 'That prisoner's rights were to be considered with the same care . . as if he were . . white . . and the . . apprehensions of insurrection or irrepressible conflict . . must having [*sic*] nothing to do with this case,' . . [678] counsel for the prosecution, in . . argument to the jury, urging . . the irrepressible conflict as a reason . . [to] convict . . The Court charged in lieu . . 'disregard all outside considerations,' . . The motion . . was overruled."

Judgment reversed: [679] " The Court . . did right to exclude . . all allusion to the irrepressible conflict, . . [680] The testimony of . . Ragan . . was material . . the Court ought . . to have suspended the trial . . or to have continued the trial " [Lyon, J.]

Redding Evans v. State, 33 Ga. 1, June 1861. " Motion in arrest of judgment . . a special presentment, charging . . a free person of color, with the offense of murder, . . [2] verdict . . guilty of voluntary manslaughter. Counsel for the defendant then made a motion in arrest . . Because a free person of color cannot be legally convicted of voluntary manslaughter upon a free white person, . . overruled " Affirmed.

Redding Evans v. State, 33 Ga. 4, June 1861. " the accused, was the reputed son of . . Dolly Evans . . known . . as a free person of color . . half black and half white; the defendant lived with, and called Dolly Evans mother, when . . a boy, but had been known to deny that she was his mother; . . Smith, the deceased, . . was living separate from his wife; . . Evans and Smith had been unfriendly, on account of Evans' criminal intimacy with Smith's wife; . . [5] Evans had threatened to kill Smith on . . [several] occasions. . . Smith went to the house where his wife and children lived, . . as Evans approached, Smith fired . . with a single-barrelled shot gun, and wounded him . . Evans then fired upon Smith five times . . Smith was walking . . off from Evans, when the latter killed him. . . [6] verdict . . of guilty of voluntary manslaughter," New trial refused. Affirmed.

McCurdy v. Terry, 33 Ga. 49, August 1861. [50] " Rawlins . . was a keen, shrewd trader . . sold to Terry [in 1857] a negro man . . about fifty or fifty-five . . and worth, if sound, about $400 00 or $450 00, for . . $800 00. . . The sale . . occurred on Friday . . [51] Rawlins was to send the negro . . on the Friday following . . but in consequence of the negro's affliction with flux, or bloody dysentery . . he concluded to send the negro . . on Monday . . for fear the negro might die. . . very sick on the way . . [54] died in a week after the purchase," Verdict for Terry. New trial refused. Affirmed.

Stancell v. Kenan, 33 Ga. 56, August 1861. Kenan's will, 1860: [57] " I give . . to my neices [*sic*] . . a man of yellow complexion . . his wife . . a girl . . a boy, a copper color, . . [two boys] of yellow complexion; . . a man of yellow complexion . . and his wife, . . half Indian, and . . [their] son . . and direct, that out of the proceeds of their labor, they are to be fed and clothed liberally, and as they have been faithful servants . . they are to be kindly . . treated, and not to be worked cruelly . . they are to be kept together in families, unless some one of them should steal or be guilty of some other bad conduct, then . . to be sold. . . [58] at Christmas of each year, I wish a present made of five, ten, fifteen, or twenty dollars, to each . . according to their age and faithful conduct, . . All . . my wearing apparel, bedding, and bed-clothing, as my . . neices may not desire . . is to be . . divided amongst my said faithful servants,"

Gaulden v. Lawrence, 33 Ga. 159, January 1862. In 1855 Lawrence sold to Gaulden "a negro girl . . for . . $950 00. . . warranted . .' sound in body and mind, and a number one slave.' . . 1857, Lawrence instituted an action . . to recover the amount due . . Gaulden set up . . that the negro was unsound, . . [160] proved by two witnesses, who first became acquainted with the negro in . . 1858, and . . 1859, that she complained of pains . . was lazy . . and slovenly; . . that, with all attention and driving, the witnesses, who had charge of her, could not make her do more than half the labor of an ordinary hand of the same appearance; . . that they tried her at hoeing, ploughing, picking cotton, and other plantation work; . . unfit for a house servant."

Cornell v. Fain, 33 Ga. 219, March 1862. [219] "bought . . 1853, . . for $1,000, cash. Thena . . about thirty-two . . small and unlikely, and of copper color; [and her children] Antona about four . . a very likely mulatto girl, and Jane about eighteen months old and very unlikely. He sold the negroes . . for $1,100."

John (a slave) v. *State,* 33 Ga. 257, May 1862. [261] "a slave, testifies: . . John was telling her his troubles; that he had a wife . . that Jackson had gained her affections . . but . . [262] would meet his deserts before he died. . . [263] He said . . I don't want to murder any man, and Buckner [his master] . . would not pay five cents to save him. . . [262] After preaching, I heard John ask Jackson to go home with him." A white witness [258] "met a negro who told me . . a negro . . had been murdered. . . [259] I . . sent word to Haygood . . to meet me . . with his hounds. . . [260] blood . . on . . [John's] clothes;" Verdict: guilty of murder. New trial refused. Affirmed.

Lamb v. Girtman, 33 Ga. 289, June 1862. Girtman said [290] "that he gave the negroes the privilege of choosing their owner . . that he once thought of freeing them, but . . Spier told him . . he could not manumit in Georgia, and the negroes did not want to go off;"

Henry (a slave) v. State, 33 Ga. 441, January 1863. [446] "Prisoner and deceased belonged to . . Pace; prisoner is a blacksmith, and deceased was a striker under him; . . [447] Henry had accused him of stealing shop keys and stable keys" A slave [446] "asked him if he was going to strike deceased with the axe-handle [in his hand], and prisoner said 'no, he was going to whip him;' prisoner was drunk" [445] "he struck deceased with . . axe-handle." Dr. Gilbert "thinks the blow produced death; . . An ordinary axe-handle, in the hands of a strong man, would produce death. The skulls of negroes are thicker than those of white persons." Verdict: guilty of murder. Motion for a new trial: [443] "Because on the prisoner's asking . . whether he . . was not a blacksmith, and had control of the shop, . . the Court ruled out . . stating that a negro . . could not have control of a shop."

Held: [449] "there was no error in ruling out evidence of this fact; for if the prisoner did control the shop, such control was illegal . . [450] Believing . . that the evidence is insufficient to make out a case of murder, . . the Court . . ought to have granted a new trial"

Tyson v. Rogers, 33 Ga. 473, March 1863. [474] " All the able-bodied soldiers on duty, in the hospitals at Dalton, as cooks and nurses, having been ordered to report . . for active duty in the field, . . it became necessary, if the order was enforced . . to hire cooks and nurses . . and as that was impossible, the commandant . . was directed, by the Commander of the Army of Tennessee . . to impress negro slaves . . about sixty . . were impressed . . Among them was the negro of . . Rogers . . Judge Walker . . ordered the negro to be returned . . that such a case of *extreme necessity* was not made out . . as would justify . . At the time . . there was no statutory provision "

Affirmed: [475] " there was no reason why details could not be made from the army. . . It is no answer . . that the public service required that all able-bodied soldiers . . be sent to the field; because it was . . the province, of Congress to declare what was for the good of the public service, and not the commanders " [Lyon, J.]

Watkins v. Defoor, 33 Ga. 494, July 1863. [495] " 1857. Received of Watkins and Bullard, one thousand and fifty dollars . . for . . a woman . . twenty years of age, of copper complexion, at eight hundred dollars, . . a negro girl, two years of age, of copper color, at two hundred and fifty dollars. . . I warrant to be sound . . J. N. Defoor." " At the time . . the child had a film over one of its eyes, which destroyed the sight, and both were afflicted with . . a frequent jerking . . of the head, neck, arms and eyelids. . . congenital, and incurable. . . March, 1858, . . sold to . . Bradfield, warranting . . sound . . The child died . . December, 1858."

Camfield v. Patterson, 33 Ga. 561, July 1863. [563] " The applicant for the writ of *habeas corpus* . . alleges that the defendant . . enrolling officer . . had arrested him, as a conscript, . . under the Act of Congress [of the Confederate States] approved 16th April, 1862, and that he was not so subject, for . . December, 1862, he became . . overseer of a *feme sole,* on a plantation whereon are more than twenty slaves, and no white person, other than . . *feme sole,* her small children, and the petitioner; which facts entitle him to exemption, under the Act of Congress [passed October 11, 1862.] . . The defendant responds . . that . . April, 1862, . . the applicant was a merchant . . and entered into the employment . . as overseer . . seeking to secure . . exemption " Held: not entitled to exemption.

Bryan v. Walton, Suppl. to 33 Ga. 11, March 1864. See same *v.* same, pp. 33, 50 *supra.* [12] " The case was tried [for the third time] . . 1859, . . [16] The plaintiff [administrator of Joseph Nunez] . . introduced in evidence . . copy of . . will of Moses Nunez, the father of James Nunez . . bears date . . 1785," [24] " The old Portuguese ancestor took ' mulatto Rose ' for his concubine, acknowledged her as such in his will, (feeling no degradation by the fact,) in which he styles himself 'gentleman,' and renders thanks to the mercy . . of God ' in preserving to him a sound mind . . by which he is enabled to give freedom to . . Rose and their . . offspring, James [and three other children] . . and, also, negroes and other property, as a reward and acknowledgement of the faithful

conduct . . of . . Rose toward him and his children.' " [23] " James . . emigrated to a then distant part of the country," Witness for the defendant [15] " testified . . that he was never regarded as having negro blood in him; . . of dark complexion, with straight dark or black hair, which he wore in plaits, tied at the end with ribbons; . . that his nose was not flat, or his lips thick, . . that he had the air . . of a gentleman; . . did not associate with negroes, but with whites; . . was a graceful dancer, and attended the . . social gatherings . . from which negroes were excluded " [23] "intermarried with a very pretty white woman, . . Joseph [their son] was lighter than his father," [20 Ga. 509] " James Nunez died in 1809 " and Joseph Nunez inherited Nanny, the mother of Patience. [Suppl. to 33 Ga. 14] " Joseph Nunez left no children by any lawful wife, and the [five] children of Patience were his children, . . [16] ate, associated and slept with negroes—did not vote, serve on juries, muster, . . applied to the Inferior Court [in 1843] to appoint a guardian [Urquhart] for him, and called himself a free person of color," [15] " 20th of December, 1846, . . conveyed the negroes [Patience and her children] . . to . . Urquhart . . with a stipulation that . . [they] should . . remain in . . possession . . of . . Nunez, for . . his . . life;" He died about nine days later. In February 1847 Urquhart [15] " conveyed the negroes to . . Bryan for $1,200 00;" Verdict for the plaintiff [12] " for $6,200 00, the value of the negroes, and $3,820 00 for the hire [[15] ' worth, for hire, $450 00 per annum.'] . . motion for a new trial . . [16] overruled . . [17] 1862, the defendant brought a bill in equity, . . assigning error upon the rulings, decisions and charges . . and praying that the judgment . . be set aside and a new trial . . awarded . . [20] Walton set up a demurrer . . sustained " Bill dismissed.

Affirmed. Lumpkin, C. J.: [21] " as to the abstract justice of this case, . . [22] there never was a fairer case for doubt on the main point involved, to-wit: the *status* of Joseph Nunez. . . Let in the evidence . . of the will of old man Nunez, and there is moral, if not legal, certainty . . [24] Is it strange that persons should have mistaken the blood of James and Joseph Nunez? It is done daily in our midst. A mistress and her maid recently received Episcopal confirmation . . kneeling side by side at the same altar, boarding at the same hotel, where the latter was . . treated as a white woman by the inn-keeper and his female guests, when the latter turned out to be a mulatto, and was promptly hurled from her position of social equality. A man, at the beginning of this war, dropped into a village of . . Middle Georgia, and becoming rather famous for his pugilism, he was chosen an officer in one of the volunteer companies . . His *status* was never questioned, until, accosted rather familiarly by his *fellow-servant,* who had known him long . . an investigation was had, and Sambo was returned to his owner. Which of us has not narrowly escaped petting one of the pretty little mulattoes belonging to our neighbors as one of the family? "

Miller v. Lewis, Suppl. to 33 Ga. 61, March 1864. Will of Benjamin Lewis: [62] " that my place . . containing three hundred and fifty acres

. . shall be kept up by my friend, Dr. . . Miller, . . and that the following . . negroes be . . kept thereon . . Rachel and her . . [four] children, . . also, the sister of Rachel . . and her child, Tina and Tina's [two] children, . . and any other children that Tina may hereafter have. . . that said place and slaves shall belong to Dr. . . Miller, . . that the slaves shall be treated with all kindness . . and that provision shall be made for their support from the proceeds of my other property. . . placed under the exclusive management of . . Dr. . . Miller . . $1,000 00 for his trouble" Held: [66] "utterly null and void, . . [67] it was the intention of the testator . . to confer *quasi* freedom"

Gates v. McManus, Suppl. to 33 Ga. 67, March 1864. [68] "the detail was applied for on the ground that the applicant . . had under his control on . . plantation ten negroes, eight of whom were over sixteen . . [69] that he was also . . overseeing a farm for Mrs. . . Bivins . . on which there were eleven . . ten of whom were over sixteen . . that besides himself there was on neither place any white male adult except a very old decrepit man . . a negro foreman on each of the farms"

Hooks v. Harris, Suppl. to 33 Ga. 81, March 1864. Hooks [82] "being summoned . . appeared [at Macon] and claimed that he was exempt, because . . the owner of . . about one thousand and two hundred acres . . and of twenty-five . . slaves . . seventeen of whom are full working hands; that he was employed and acting as overseer . . previous to the 16th April, 1862, . . that he is now absent from home in the military service [1] . . and there is no white male adult on his . . farm who is not liable to military duty; that . . no overseer can be procured . . who is not liable to military duty;" [83] "Exemption . . is sought . . under the Act [of Congress of the Confederate States], approved May 1st, 1863, . . 'to repeal certain clauses of . . an Act to exempt . . approved 11th October, 1862.' This Act [of 1863] . . repeals the exemptions given . . to . . owners . . proceeds to grant exemptions in lieu . . 'one person on each farm . . the sole property of a minor, a person of unsound mind, a *feme sole,* or a person absent . . in the military or naval service of the Confederacy, on which there are twenty or more slaves, provided the person exempted was employed and acting as an overseer previous to the 16th April 1862,'" Held: [84] "The Congress meant . . an overseer *hired*"

William (a slave) v. State, Suppl. to 33 Ga. 85, March 1864. Paul, a slave, testified: [88] "Bill was foreman on the place; it is common to have them; . . they got along like brothers; so did George till they had a dispute about his wife . . Bill and Ann was never married by the book, only went to mistress and master; Ann was cook for the house. Ann, (a slave,) sworn: . . [89] the night George was killed . . defendant . . asked her if George was gone; she told him yes, . . he went on out . . and picked up . . his axe . . she heard a noise like a screaming, like somebody was getting a whipping" [85] "The jury found the defendant guilty of willful murder, but recommended him to the mercy of the Court."

[1] [83] "he proceeds under the idea that when . . [84] he repaired to Macon, he was absent from home, and in the military service."

Judgment reversed: [93] " the Court below erred in admitting the testimony of . . the wife of the prisoner." " By the 1666th section [of the Code] the marriage relation or what passes with them as that is recognized. By section 4698, the same rules of evidence must obtain in their trial, as in the trial of whites," [Lyon, J.]

Andrews v. Strong, Suppl. to 33 Ga. 166, March 1864. [167] " Strong . . was exempted by the Exemption Act of 11th October, 1862, on the ground that he was the owner of a plantation on which he had twenty negroes over sixteen . . and on which there was no white male adult not liable to military duty. This part . . being repealed . . May 1st, 1863, he . . applied [in September] to the president for a special exemption by reason of his being overseer of ten negroes over sixteen . . Instead of granting the exemption he was enrolled . . as a conscript, and then he was detailed as overseer for himself until further orders. . . December, 1863, Strong's detail . . [was] revoked,"

Fountaine v. Urquhart, Suppl. to 33 Ga. 184, March 1864. " 1836, . . Ayer and . . Urquhart entered into a . . copartnership for . . buying and selling negroes . . they had on hand twenty-nine negroes, and it was stipulated that Urquhart should render all the services in his power in procuring funds and making the purchases, . . Ayer . . the labor . . of carrying the negroes already purchased, and . . hereafter purchased, to the best market "

Caldwell v. State, 34 Ga. 10, November 1864. [12] " about 8 o'clock on the night . . 1864, Collier . . with his family . . was sitting by the fire . . A servant girl was spinning . . in the same room."

Barber v. Irwin, etc., 34 Ga. 27, November 1864. [29] " There being on the plantation over fifteen able bodied male hands, his employer . . procured his exemption [1] as an overseer for twelve months, (not yet expired) . . He was thus exempted as a bonded overseer, and had delivered, during the year, a considerable quantity of produce to the Commissary. . . Brinson . . was, in March, 1864, . . exempted for twelve months, as an overseer upon the plantation of . . testator's minor children. . . [30] Warren . . had been exempted for twelve months . . as the overseer of . . a *feme sole,* and of . . a soldier in service." Held: [41] " subject to the military service exacted of them by the State of Georgia."

Thornton v. Towns, 34 Ga. 125, March 1865. Thornton " hired the negroes, and leased the plantation to the defendant for the whole period of his wife's life, . . commencing with . . 1864, . . The contract . . subjected the defendant . . [126] to be divested . . for inhumanity . . to the negroes, or for taking any of them out of the country . . The Bill [filed in January 1865] . . charges the defendant with . . cruelty . . [127] further states, that certain of the negroes having come to the plaintiff's house to spend the Christmas holidays, he . . still holds them, and that the defendant has sued out a possessory warrant to regain the possession. . . prays . . for injunction against the . . warrant; . . for . . cancellation

[1] Act of the Confederate Congress, approved Feb. 17, 1864.

of the contract; . . The Answer denies . . any inhumanity . . It answers the charge respecting . . Chena . . that Dr. Hardwick, after treating her some four or five weeks, advised that she be put to her business . . cooking, . . that she ran away that night, lay out in the woods three or four weeks with her disease [rheumatism] aggravated; and that, after lying up again three or four weeks under the treatment of the same physician, she got well, . . Golding [[129] 'about ten or eleven'] . . was whipped moderately twice, to make him tell . . who had moved him to break into defendant's smoke-house, a deed . . committed under the coercion of another negro, . . In reference to . . [128] Ellen and her child . . when she was in the field, there were, besides defendant's wife, an old negro woman and two little negroes to look after the child. Touching Julia and her child, . . he hired a nurse for it, the one selected by its parents, and after the death of the nurse, its mother had just what time she desired to attend to it; . . how often she should suckle it was left to her own discretion; . . Touching Peter . . sent out of the county, . . an order came to the Sheriff to impress one-fifth of all the able bodied negro men for public work at Anderson, . . [129] that Peter was absent three months; that in that period he ran away and came home, and was taken and sent back; . . [131] affidavits . . when . . Golding was whipped. Defendant gave him about ten or twelve licks with a small cow-hide, and witness, at defendant's request, added a few more. Witness also threatened [[127] 'in a jesting manner'] to hang him if he did not tell who was with him in robbing the smoke-house. . . Julia was allowed to nurse her child, and . . it was cared for by an old man . . hired by defendant to do so. Besides several little negroes, large enough to take care of the child, there was in the house, most of the time, a woman . . who usually kept the children in her house when the grown hands were out at work. . . [132] The child [of Julia] got burnt—witness [overseer] does not know how; . . not very serious, . . witness did not inform defendant . . [133] Dr. Hardwick . . was always sent for promptly to see the sick negroes, several times when it was unnecessary, . . [134] well fed, and not over-worked . . well clothed." Injunction refused. Affirmed.

Hand v. Armstrong, 34 Ga. 232, June 1866. [233] "Received, January 9th, 1860, of . . Hand, forty-seven hundred and six 50-100 dollars, . . for . . Richard, about 20 . . Tona, about 23, and Catharine, about 19 . . I warrant . . that they are slaves for life. . . Armstrong." "action . . by Armstrong . . to recover the amount of two promissory notes covering the purchase money . . verdict . . for the whole sum claimed"

Judgment affirmed: [236] "No words implying a future state . . are used; . . [237] the loss occasioned by . . action of the Government . . [must] fall . . upon [Hand] the party who owned the property . . at the time of emancipation."

Freeman v. Bass, 34 Ga. 355, June 1866. See Bass *v.* Freeman, p. 95, *infra.*

Moore v. Colly, 34 Ga. 375, June 1866. [376] "proved acts of unchastity . . with negro women . . one of them . . resulting in pregnancy."

Bass v. Ware, 34 Ga. 386, June 1866. "Received . . forty-four thousand dollars . . for . . negroes . . which . . I do hereby warrant . . to be slaves for life. . . January, 1857." Held: emancipation by the government is no defence to the note.

Cobb v. Battle, 34 Ga. 458, June 1866. Bailey's will, 1861: [460] "I will [the residue] . . unto my . . nephew, Lawrence Battle, to be his absolutely. . . As to the following . . negroes, . . my house servant Adeline and her child Tolbert [*sic*] have been good, trusty, and faithful . . it is my wish . . that . . Adeline shall not be separated from her child . . and . . that . . Battle . . shall . . see that they are as comfortably provided for as their condition in life and their conduct . . will justify. I wish him to treat them just as he may . . think I would treat them" [474] "The testator, an old bachelor, under prosecution for killing a negro in 1861 . . [475] disclosed to his attorney his wish to manumit . . Adeline and her child, to leave with her a negro, and to set apart $20,000 for their use . . and for the education of Talbot, and at the death of Adeline the whole to go to Talbot . . the acknowledged child of Bailey . . six to eight years old." His attorney [465] "told him that he could not emancipate . . He then asked if he could not direct in his will for them to be . . settled in another State. I told him . . that an Act of our Legislature [1] . . declared all such clauses void, but that he could settle them in another State before he died." A witness testified: [468] "Adeline staid about the house and superintended the milking, weaving, etc.; had known him [testator] to whip her, . . not her as much as some of the rest;" [475] "In 1863, a short time before his death, he said to another witness, that Lawrence had promised to carry out his wishes." [464] "Battle . . put . . [Adeline] in the possession of the keys, and . . his . . sister did not like it." He [476] "had lived with [the testator] . . for years;"

Held: [477] "Bailey's statements sufficiently established a parol trust, as to placing Adeline and Talbot in a condition at variance with then existing laws, and setting apart $20,000 . . for them. That trust is void; . . [483] Whilst it is true that the recognition by the convention in Georgia, in November, 1865, of the abolition of slavery, *thenceforth* swept away, at a blow, all laws in reference to negroes as slaves, their freedom began then: it did not . . acquire any relation back. . . at the death of Bailey, these slaves had no legal capacity to . . receive property" [Harris, J.]

Faulkner v. Ware, 34 Ga. 498, June 1866. "The note bore date January 28th, 1862, . . for the hire of a negro man . . that year; and the maker (the defendant below) stipulated therein to furnish the negro ordinary clothing, shoes, and bed covering. . . the negro revolted, knocked the defendant down with an axe, and ran away, . . April, 1862, and afterwards rendered him no service whatever"

Middlebrook v. Nelson, 34 Ga. 506, June 1866. [507] "The note sued on was given for the hire of a negro man, . . dated January . . 1861,

[1] Act of Dec. 14, 1859.

. . in February, 1861, . . he was accused of committing a rape, or attempting to commit a rape, on a white woman. Witness and . . Spence went to the house of defendant to examine . . negro, and tied him. . . defendant . . requested them to allow him to send for the plaintiff, the owner . . Plaintiff took control of him and sent for the magistrates. The negro was put in jail, from which he was forcibly taken ['by a mob'] and burnt to death . . February, 1861. . . [508] the verdict of the jury . . was for the full amount of the note"

Judgment thereon affirmed. Lumpkin, C. J.: "It is a hard case on Mr. Middlebrook [defendant]; and we feel it the more, as, had the Code [1] been in force at the time the negro was put to death, Middlebrook would have been relieved."

Amos v. State, 34 Ga. 531, June 1866. "Indictment [in 1864] for Furnishing a Slave with Spirituous Liquors. . . [532] saw a negro . . taking a drink out of a decanter, and saw him hand the defendant a $2 bill, Confederate money. Defendant returned $1 in change, and the negro said he would take another drink," Convicted.

State v. Berry, 34 Ga. 546, June 1866. Held: a recognizance given by a master for the appearance of his slave to answer a criminal charge, is not operative since the abolition of slavery.

Suttle v. Caldwell, 34 Ga. 551, June 1866. [553] "He . . removed to Texas in . . 1857, and then took off with him eleven of the negroes,"

Riley v. Martin, 35 Ga. 136, December 1866. [138] "Riley, as Deputy Marshal . . levied an execution . . upon a negro, as the property of John Martin, . . induced to make this levy by Durham, the security of John Martin, giving him a mortgage [upon negroes] to indemnify him . . James E. Martin [the true owner] . . repurchased the negro at the Deputy Marshal's sale" August 8, 1860, for $1000, and "brought Trover [in 1866] against Riley, to recover the value of his property thus taken" "The jury found for the plaintiff one thousand dollars, with interest from August 8th, 1860."

No error. Lumpkin, C. J.: "The conversion of Riley being previous to emancipation, he . . must pay the value . . James E. Martin, having repurchased . . [139] loses the negro by freedom; and Riley the benefit of his mortgage taken from Durham. So that manumission is not only a *two-edged* sword, but rather like the flaming sword placed at the East of the garden of Eden, at Adam's expulsion, *turning every way* towards the community."

Comas (a person of color) v. Reddish, 35 Ga. 236, December 1866. Comas, "while a slave, took for his wife another slave, his owner and hers both consenting, . . she bore five children, one of whom was . . Henry, now thirteen or fourteen . . He then abandoned this woman, and took up with another; after which, the mother of Henry died. Henry became the slave of the defendant in error, and after emancipation, remained with him until about September, 1865, when he left and went to

[1] Sect. 2066.

. . his father . . (a man of good character for honesty, industry and morality, and abundantly able to support his family,) . . In May, 1866, the Ordinary . . without the knowledge of Henry or of his father, bound out Henry to the defendant in error, as an apprentice;[1] and indentures . . were executed . . in which the Ordinary recited . . that it had been made to appear . . that Henry was without any parent residing in that county, and without means for his support and education. . . Henry's father . . [237] September following . . sued out a writ of *habeas corpus* . . Judge Sessions . . awarded the custody . . to the defendant in error."

Judgment reversed: [238] "The testimony . . shows . . the strongest reasons why . . [the Ordinary] should not have yielded to the wish of Reddish" [237] "It should be borne always in mind . . that slavery is with the days beyond the flood; . . [238] and that *its continuance will not by any honest public functionary be tolerated . . directly or indirectly.*" [Harris, J.]

Railroad Co. v. Pickett, 36 Ga. 85, June 1867. "Trover. . . Amanda . . was a good cook, washer, ironer, seamstress, and house-woman, worth $2,500.00, and worth for hire $150.00 per annum. In . . 1860, Amanda went away on the . . Railroad, and remained away a year and a day, . . brought back by the agents of the Company. . . Witness [her former owner] went to Macon in pursuit of her, at an expense of fifty dollars. . . [86] that she was as white as himself . . and that no one who did not know her . . would have suspected that she was a slave; . . that she paid . . for the ticket which she had. . . verdict for $207.00, with costs."

No error: [87] "However white . . we have no power to regard that fact as excusatory . . This is . . a hard case on the Railroad Company; but such an one cannot, since the abolition of slavery, occur again." [Harris, J.]

Floyd v. State, 36 Ga. 91, June 1867. "Whilden . . asked Floyd if he had been accusing him of collecting money for his (Floyd's) slave and stealing it. Floyd said he did. . . Whilden struck . . Floyd stabbed him"

Tucker v. Toomer, 36 Ga. 138, June 1867. [139] "The mortgagor [Tucker] . . showed . . partial failure of consideration . . that . . bond was given for ninety-one . . slaves sold by [Toomer of South Carolina] . . to [Tucker] . . 1857, and [[37 Ga. 442] 'Tucker executed a mortgage on the slaves . . as cumulative security;'] that on the 11th December, 1864, said slaves . . were captured by the military forces of the United States . . and emancipated and set at large . . and . . in . . 1865, by the concurrent action of the Governments of the United States and the State of Georgia, said capture and emancipation . . were legalized," [156] "The negroes were allowed to remain with the mortgagor at his own request," Held: [155] "the legal title vested in the mortgagee by condition broken does not create that absolute ownership which would cost the loss by emancipation on him."

Adams v. Adams, 36 Ga. 236, June 1867. *Habeas corpus.* "the petitioner . . swore that he was the father of said minors . . that he, they,

[1] Act of Mar. 17, 1866.

and their mother belonged to . . defendant while in slavery; . . [237] that when the children . . were born, witness had a wife at . . Pearson's . . and . . went to see that wife Saturday nights; that when the two oldest children were born their mother had no husband, but habitually slept with witness . . that after the birth of the two oldest their mother married another man, named Taylor . . but during this marriage witness continued to sleep with said mother as before, and before the youngest . . was born, . . Taylor died; . . that while witness and said mother were cohabiting, witness' wife was sold and carried away, and witness married another woman . . and lived as her husband till she bore a mulatto child; then witness quit her and married the said mother . . and lived with her till her death"

Rutherford v. Newson, 36 Ga. 246, June 1867. [250] "hired Joe in 1853 . . as a diseased or unsound negro, was to pay . . ten dollars per month, deducting for all lost time on account of Joe's sickness or from Joe's running away—Joe ran away for one week"

Odom v. Odom, 36 Ga. 286, June 1867. "Divorce. . . The libel charged . . [287] that he had been guilty of adultery with his slave Hester. . . [302] she . . told the children [her step-children?] that Hester's child was their sister; . . [305] she accused him . . [306] of adultery with other negroes,"

Lewis v. Whidber, 36 Ga. 371, June 1867. "1857, the slave of Mrs. Whidber was killed . . by the cars . . [376] The jury found for the plaintiff $1,200 damages with costs." New trial refused. Affirmed.

Brown v. Railroad Co., 36 Ga. 377, June 1867. [378] "Plaintiff's slave was a valuable painter, worth for hire three dollars per day, was carried . . to Macon . . on defendant's cars, without permission . . of Brown; he stayed away about six weeks; Brown went in pursuit . . and sent . . Atkinson to Memphis for the slave, who paid his jail expenses, and brought back the boy and the white man who stole him."

Held: I. [379] "In the absence of a written permit . . the Road had no right to receive the negro on board its cars,[1] . . [II.] Plaintiff was entitled to recover as damages, not only the hire . . with interest . . but . . also . . the reasonable . . expenses incurred in reclaiming him."

Bass v. Freeman, 36 Ga. 435, June 1867. "1858, . . Bass bought in . . Arkansas, from . . Freeman . . land . . and seventy-three slaves. He gave . . his promissory notes . . [436] Freeman gave him a bill of sale to said . . 'slaves for life,' . . Bass plead that the consideration . . had wholly failed . . [437] evidence . . that in 1862 defendant brought said negroes from Arkansas, when the Federal army overrun that State, to Georgia, . . were in defendant's possession 'till they were emancipated by the military authority of the United States in April, 1865,' . . [439] The Court . . charged . . that . . 'such emancipation was the loss of the defendant'" Affirmed.

[1] Act of 1850. Cobb 399-400.

Martin v. Bartow Iron Works, 35 Ga. 320, September 1867. Action of debt. On January 6, 1864, Hightower, superintendent of the Bartow Iron Works, promised Ann V. Martin of Mississippi three thousand dollars for [321] "the hire of twenty negro men to work . . at the Iron Works in Bartow county, Georgia, for the year 1864, and that it was agreed . . that if the Federal army approached near said county, defendant [Hightower] was to remove these hired men and their families, at the expense of plaintiff, and that no hire should be paid for the time lost by reason of said removal. . . that the contingency thus provided for happened, and that he removed them to Macon, Georgia, and that there they were taken possession of by the authorities of the so-called Confederate states, and that he received no hire nor other benefit from their services. . . [327] The eighth plea alleges that the consideration for the promise was illegal—being contrary to the public policy of the government of the United States; that it was made for the hire of negroes as slaves, and . . that it was a part of the consideration of the contract, that the defendant was to remove said negroes, and keep them removed from the territory within the lines of the Federal army, with a . . design of preventing their liberation from their former state of servitude,"

Held: [329] "It needs no argument to show that this agreement was in contravention of the previously settled policy of the government, and wicked in itself. . . [330] Judgment. *Nil capiat*" [Erskine, J.]

Burts v. Duncan, 36 Ga. 575, December 1867. "Martin . . sold Violet in Mississippi [his residence], and in 1851, brought the others to Georgia, and sold them"

Haslett v. Harris, 36 Ga. 632, December 1867. "On the first . . April, 1863, Harris sold to Haslett, a negro . . 'and title of said negro girl, I warrant and forever defend,' and took in payment . . obligation for twelve hundred dollars, . . Haslett plead . . that the girl was only worth $240, that the contract was within the scaling ordinance, . . verdict for plaintiff for $292.66, with interest and costs. . . Haslett also plead that, by virtue of the proclamation of the President . . 1st January, 1863, said negro became free . . no longer subject matter for sale, . . demurrer . . sustained"

Affirmed: [634] "While [Cobb *v.* Battle [1]] . . may not be precisely in point, yet the principle is the same," [Walker, J.]

Manufacturing Co. v. Dykes, 36 Ga. 633, December 1867. Bill of sale, April 24, 1865: "I have this day . . sold . . to . . Dykes, nine slaves . . and the title I will warrant and defend" [634] "Defendant . . proved that the federal army reached Macon . . about the 20th April . . and Hawkinsville . . early in May; that he . . was at the date of the obligation, ignorant of the fact that the slaves had been manumitted by the proclamation of the President . . that after said army reached Macon, these negroes were valueless, because they could not be controlled." Ver-

[1] P. 92, *supra.*

dict for the defendant. Error: [635] "We do not hold that negroes were freed in Georgia on the first of January, 1863."

Whatley v. Slaton, 36 Ga. 653, December 1867. Will, executed November 1864: [654] "I direct my Executor, in the sale of my negro property, not to divide the families, but to settle families together."

Markham v. Brown, 37 Ga. 277, December 1867. "1863 . . made a small-pox hospital of . . [his] premises, . . and that a slave belonging to him . . contracted small-pox and died"

Wilkes v. Hughes, 37 Ga. 361, December 1867. [362] "defendant hired Ben . . 28th December, 1864, until the 25th December, 1865, at public outcry, at $301.00, to be paid in Confederate money . . eleven dollars per month in present currency. . . negroes ceased to be used as slaves about the first of June, 1865. . . witnesses . . put the monthly hire at $7.00 or $8.00 per month, in United States currency. . . The jury found for the plaintiff for $40.00 [legal tender paper currency of the United States] and interest."

[364] "we affirm the judgment . . apportioning the hire" [363] "By a force not to be resisted . . the hirer . . lost . . the services . . [364] his defence [is] clearly within the provisions . . of the Code,"[1]

Holmes v. Railroad Co., 37 Ga. 593, June 1868. "sued . . for killing a slave (in July, 1854,)" [596] "evidence . . that the negro was lying down on the track," Held: "The facts . . show the exercise of all ordinary . . care"

Caruthers v. Corbin, 38 Ga. 75, June 1868. [82] "In 1834, John J. Saylor, . . of . . South Carolina, made his will, . . provided for the practical emancipation of six . . favorite slaves, and made sundry bequests in their favor. . . the other bequests were made conditional upon all the beneficiaries . . aiding to effectuate this object. . . [85] the specific devises in favor of . . negroes . . [were] strictly carried out . . [86] this portion . . by the laws of that State, . . in 1835, was invalid; . . could not have been enforced, if resisted," [Walker, J.]

Kimbrough v. Worrill, 38 Ga. 119, December 1868. "March 14th, 1868[?]. Rec'd of . . Kimbrough eight thousand dollars . . [for] a man about twenty-four . . black, . . a woman about twenty-nine . . dark, copper-color, which . . I . . warrant . . slaves for life, said negroes being now runaway. I also warrant their recovery in six months . . if not . . I am to refund said amount, in the new issue of Confederate notes . . 1st of April next"

Held: [120] "not a suit on a contract, the 'consideration' of which was a slave[2] . . The 'consideration' . . is the money paid . . which Worrill was to pay back . . in a contingency which has happened."

Lamar v. Glawson, 38 Ga. 252, December 1868. "complaint by . . Glawson . . upon an account for 'services as an overseer, from January

[1] Sect. 2066.
[2] Constitution of 1868, art. V, sect. 17.

1st, 1860, to January 1st, 1861, $550 00.' . . [253] the highest wages of any person known by witness as overseer in the county; . . Miss . . Lamar . . testified . . During Christmas-week of 1859, the negro man and some of the women came from the plantation, and told her mother, defendant, that they would not stay there, if plaintiff was employed as overseer . . witness' brother came from New York, on the first day of January, 1860, and he, learning the state of matters . . went to the plantation on the second . . paid plaintiff and dismissed him."

Cutts v. Hardee, 38 Ga. 350, December 1868. [353] "one hundred negroes, worth $100,000 00, were manumitted, and the property therein destroyed;"

Green v. Anderson, 38 Ga. 655, June 1869. The will of Augustus H. Anderson, 1853, [656] "gave to . . two old slaves, $20 00 each, per annum, and provided for their kind treatment. *Item 6th* . . 'I . . direct that my executors cause to be removed to a free State, and there emancipated, John, son of . . Louisa; . . pay the expenses of such removal, and for the reasonable support and schooling of . . John, until he is put to a trade, and . . when, if he do, reach . . twenty-one . . invest . . for his benefit . . three thousand dollars . . [*Item 7th*] that . . Louisa . . shall be kept at my . . plantation till . . 1875, . . kindly treated and provided for, . . employed as a seamstress as heretofore, . . be paid . . annually, until that time, . . fifty dollars, if she choose then (in 1875) to go to a free State and be emancipated, my executors are directed to carry out her determination, and to invest . . for her use . . two thousand dollars . . the interest of which she is to receive during her life, and then . . John . . to have the benefit . . absolutely. If . . Louisa shall determine not to go . . I give her to my son-in-law . . if then in life, or if not, to any one of the . . descendants of my daughters . . that said slave may select' . . $100 00 per annum till . . 1875, to pay a missionary for his slaves. . . [658] Green, alone of . . executors, qualified as such. . . in [November term] 1855 there was a decree . . that Green . . should . . 'make such . . investment for the slaves, . . and such disposition of them as will substantially carry out the provisions of the will' . . sell all the land . . Green . . bought most of it himself . . he paid Louisa nothing. She died in 1858 or 1859. He did not execute the will as to John, but he was kept in Georgia and used as a slave until slavery was abolished. He became of age in [February] 1862. . . [John filed] his bill for account against Green . . in April, 1868, . . [659] Judge Gibson overruled the demurrer as to John's claim under the 6th item,"

Affirmed: [660] "this was a legal bequest, and . . constituted a legal trust, . . [661] It ought to be executed, . . But it is insisted that the changed condition of the country, renders it impossible . . as John has become free in Georgia, and no one has the right to compel him to go to a free State, . . [662] It is true, the will cannot now be literally executed. By the neglect of the executor, to use the very mildest term, John was not permitted to go to a free State while a minor . . But soon after he came of age, the free state, by the results of the late unfortunate

civil war, came to him. . . he now has the right, in a Court of Equity, to call the executor to account, . . and to recover, not only the legacy . . but such reasonable . . compensation for the support and education . . as may be found to be due" [Brown, C. J.] See Anderson *v.* Green, p. 104, *infra.*

Shorter v. Cobb, 39 Ga. 285, June 1869. "note . . 1861 . . given for slaves." Held: [286] "the Courts of this State have [no] jurisdiction to enforce the collection . . [296] Soon after the surrender, the President . . required the Conventions . . to insert in their State Constitutions a clause abolishing slavery, without any provision for compensation . . The result . . was the destruction of nearly half the taxable property of the State. . . [298] What solid distinction . . can be drawn between the right of property in a slave, and . . in a note given for the same slave? . . [303] the Constitution under which we now live . . is the Constitution . . approved by the Congress of . . the conquering power . . [304] If then the obligation of the contract . . to pay money for slaves has been impaired, it was done by Congress . . and there is no violation of the tenth section of the first article of the Constitution of the United States, which does not apply to Congress." [Brown, C. J.] Warner, J., dissented. See White *v.* Hart, p. 103, *infra,* overruling this decision.

White v. Hart, 39 Ga. 306, June 1869. See same *v.* same, p. 103, *infra.*

Adams v. Jones, 39 Ga. 479, June 1869. [488] "that Melinda was a runaway, in chains, when he bought her [in 1849], and that he soon sold her; she was barren."

Arnold v. Trice, 39 Ga. 511, June 1869. [515] "Two hundred acres . . are sold in October, 1864, for a negro fellow, within a month before Sherman swept as a besom of destruction through the State . . when a negro fellow was not, in any portion of the State, worth fifty dollars in gold." [514] "he went off with Sherman's army,"

Berry v. Railroad Co., 39 Ga. 554, June 1869. "Berry brought case . . averred that . . Berry's slave . . June, 1862, . . employed . . as a train hand, was, by the carelessness of the defendant's . . employees, killed" Held: [556] "the cause of action . . was a debt, and as the whole consideration was a slave, . . the Courts . . have . . no jurisdiction to enforce it."

Redd v. Hargroves, 40 Ga. 18, December 1869. Will of Owen Thomas, which was executed in 1852: [19] "*Item 3d.* I desire that . . Griffin and his wife Esther, and their chlidren . . and such as they may hereafter have, (and others with their children born or to be born, naming them,) . . be conveyed to Liberia, or any other free State . . into which they severally elect to go, and in which they may lawfully reside, and there . . manumitted . . *Item 4th.* I desire all the residue of my negroes, my lands . . and property of every kind sold . . and the proceeds . . disposed of as follows . . payment of debts, the defrayal of the ex-

penses . . and the residue by eventual division among my negroes who shall thus become free. *Item 5th.* . . I give to Griffin (the father) and Maria, each, . . $2,500 00, . . additional to, what they receive in common . . These . . sums being abstracted . . I wish the remainder divided into as many parts as there are freed negroes . . and one part paid to each person eighteen years of age, on . . arrival in . . new home, . . and the remaining parts divided among the parents . . in the precise proportion the several families of children [bear] to each other." Thomas died in 1868, [21] " without having ever married," The court charged that these items were void.

Reversed: the act of 1859 did not [24] " have a *retroactive* operation so as to defeat the *legal* expressed intention of the testator . . [26] it is the duty of the Court to carry into effect *that intention,* which, under the present . . laws . . can as well be done *here* as in Liberia," [Warner, J.] See Hargroves *v.* Redd, p. 102, *infra.*

McAffee v. Mulkey, 40 Ga. 115, December 1869. Action of deceit. Mulkey, the plaintiff, traded a house and lot, worth $1000, for Ann in December 1862. Mrs. McAffee [117] " did not wish McAffee to sell Ann . . [He] was then asked to let [plaintiff] . . have another of . . [three] women [offered for his selection] and consented, but upon that woman saying she would not go with plaintiff, defendant said, ' you see I have done all I can,' and plaintiff said no more." McAffee warranted Ann [116] " sound . . up to that date . . she . . died February, 1863, . . [from] [117] an abcess of the lungs which must have been some time in forming, . . [118] The jury found for plaintiff $1,100 00, with costs." New trial refused: [119] " The Court had jurisdiction "

King v. State, 40 Ga. 244, December 1869. [245] " Bigamy. . . that Stephen King and Nancy Moreland [colored persons], in 1864, took each other by the hand, in presence of witnesses, and said they were husband and wife; that at the end of the war he left her, . . January, 1866, . . he went back, and took her with him . . slept with her . . but did not recognize her as his wife more than he did the other women; . . paid her for washing for him . . before he married Henrietta Grubbs, he conferred with a Justice of the Peace, who told him that he did not know that he could be punished if he married again. . . His counsel objected . . [246] to the evidence of cohabitation since the war . . overruled . . found guilty."

Error: the act of March 7, 1866, [248] " legalizes, for all civil purposes, the marriages of persons of color living together at the date of that Act. But if, on the publication of that Act, such persons should immediately have ceased to live together as man and wife, we do not think it . . bigamy . . to contract a subsequent marriage." [McCay, J.]

White v. Ross, 40 Ga. 339, December 1869. [340] " Alfred Ross . . averred that he was the illegitimate child of . . a negro . . who died intestate [in July 1866], leaving . . $6,000, and no heir but his wife . . not Alfred's mother . . and himself; that . . [the intestate]' always owned, recognized and treated Alfred as his son ' . . that said property was ac-

cumulated by the labor of [intestate] . . assisted by . . Alfred;" Held: [341] " the right of the complainant to inherit, as the legitimate child . . was . . vested in him under the " act of March 9, 1866. The act of December 12, 1866 [342] " did not defeat . . his right "

Cobb v. Moriss, 40 Ga. 671, June 1870. " June 1859, . . became partners as negro-traders. . . June 1860 . . new articles of partnership. . . July 1864 . . a bill . . to compel . . settlement of said business "

Pascal v. Jones, 41 Ga. 220, June 1870. " Dinah and Hector . . had been slaves, lived together as man and wife and had . . a boy, now ten or eleven . . After the birth . . they separated . . though belonging to the same master and living at the same place [near Columbus.] . . About the time of the surrender . . without Dinah's consent, Hector carried . . boy to Dougherty county. . . 1870 . . he went into Dinah's possession. Hector privately and violently took him away . . Since emancipation Hector has taken another wife, and Dinah another husband "

Held: [221] " the child . . is, under the Acts of 1865,[1] and the Act of 1866,[2] the legitimate child of Hector Jones. . . Both the parents stand unimpeached as to their industry and morality,"

Thornton v. McLendon, 41 Ga. 263, June 1870. " 1861, to the 1st of January, 1865, . . [264] he . . charged work as it was reported to him by his blacksmith,"

Washington v. Barnes, 41 Ga. 307, June 1870. [309] " The negro . . was never a slave. He was kidnapped when a boy, and brought from the District of Columbia to Richmond county, and forcibly held as a slave by . . intestate [Walton], who annually received large sums for his hire. At length he raised $1,200 00 and procured . . Moore . . to pay this to intestate, and take a bill of sale . . In 1853 he was adjudged free (because free-born) in the District Court of said District, returned to Richmond county, was registered as a freeman of color ". In 1867 he filed his action against Walton's administrator [367] " upon . . open account . . 1849. . . For twelve hundred dollars . . [308] Work . . done, and money . . paid to . . Walton . . $4,000 00 . . Walton died between September, 1849 and the 14th of January, 1850," The administrator " filed no defense. . . 1868 . . [the negro's] attorney took a verdict against . . administrator, for . . $5,200 00 and entered a judgment for that amount . . against him . . Barnes [surety for the administrator] filed his bill for an injunction . . [309] This judgment was taken . . in violation of General Order No. 37,[3] of Major General Meade . . [310] The injunction was granted,"

Affirmed. McCay, J.: [314] " The presumption of fraud and collusion between the plaintiff in this judgment and . . the administrator, is almost conclusive."

[1] Acts of 1865 and 1866, pp. 239, 240.
[2] Acts of 1866, pp. 156, 157.
[3] " Said Order . . at the instance of the Convention of Georgia, temporarily put in force certain parts of the Constitution . . not then ratified . . 'No Court . . shall have jurisdiction to try . . any suit . . upon any contract made . . prior to . . June, 1865.' "

Bugg v. Towner, 41 Ga. 315, June 1870. [316] "Towner brought ejectment against Bugg. . . 1863 . . he left the country, leaving Bugg, as his slave, in possession, . . when he returned, after emancipation, [Bugg] refused to give him possession. . . The defense offered to show . . that . . Bugg was about to be sold and begged Towner to buy him, let him repay the price and then be actually free, though nominally Towner's slave; . . agreed . . Bugg repaid . . and that Towner agreed to buy this place for Bugg, let Bugg pay for it, . . that Bugg did so pay . . All this testimony was ruled out, upon the ground that . . a slave . . could not . . contract. The plaintiff had a verdict for the premises" New trial refused.

Judgment reversed: [318] "the Courts . . will leave the parties where they find them" "plaintiff . . undertook to emancipate . . in this State . . illegal transaction, in violation of . . public policy . . at that time." [Brown, C. J.]

Fisher v. U. S., 6 Ct. Cl. 235, December 1870. [236] "eight bales of upland cotton, captured at Savannah [December 1864], amounting to $2,120 40. . . [237] procured in exchange for two negro men, . . in the fall of 1863,"

Mills v. U. S., 6 Ct. Cl. 253, December 1870. [254] "in Savannah, . . at the outbreak of the rebellion, . . [255] The captain of a British ship was tarred and feathered for favor shown to a negro man. A Yankee school-master was treated in the same way."

Ellis v. Rachels, 42 Ga. 175, January 1871. Truitt's will, 1858: "I give . . unto my . . friend . . Ellis . . my [eleven] old and faithful slaves . . three good mules, . . wagon, six months supply of provisions, and two hundred acres . . after the death of my wife . . in trust . . for the purpose of providing for . . them . . [176] slaves to be kindly treated . . and to . . cultivate said land for their support." Testator's wife died in 1860. In 1869 Ellis "filed his bill . . concluded with a prayer for a decree . . to secure . . rights of said negroes." Bill dismissed. Affirmed: if a legal will, [179] "it cannot now be enforced."

Godfrey v. Walker, 42 Ga. 562, January 1871. [567] "1845, the trustees of the Methodist Episcopal Church, of Savannah, made a deed to the trustees of the Methodist Episcopal Church, South, to a . . lot . . in trust, upon . . conditions . . that such trustees were to erect . . a house of worship for the use of the colored members of the Methodist Episcopal Church, South, . . called it Andrew Chapel. . . within the protection of the General Conference . . until the capture . . of Savannah . . In the convulsion of public sentiment . . several of the members of Andrew Chapel joined the African Methodist Episcopal Church, and . . the Trustees . . [568] permitted the occupancy . . for public worship, which was continued by the members of the new organization"

Hargroves v. Redd, 43 Ga. 142, January 1871. See Redd *v.* Hargroves, p. 99, *supra.* [144] "To the grounds of *caveat* set forth in the original case, were added several others . . [145] executor . . swore . . that in

conversations after the war . . Thomas denounced, with bitter curses, his negroes, saying that they had abandoned him when set free, and left him to starve in his old age, knowing as they did, what he had intended to do for them if he could have had his own way. . . [146] said he was glad the will was no account, and that he would never give them a cent. He praised Margaret, and said she had been very kind to him; but he cursed Jim, her brother, above all the rest, because Jim . . had brought him before the military bureau, charged with stealing his jewelry. . . [148] Thomas was discharged for lack of any evidence against him." [147] " Witness gave the will [' the same paper propounded '] to Margaret, stating to her to keep it; it might benefit her some day. . . [149] The paper was . . established as the will " Affirmed.

Ayer v. Cochran, 43 Ga. 459, July 1871. " that he lost $73,500 00 by the emancipation of the slaves "

Collins v. Collins, 44 Ga. 128, July 1871. [45] " in the fall of 1863 . . bought . . two slaves at $5,000 00, Confederate valuation, to be paid for in pork . . and partly in cotton "

White v. Hart, 13 Wallace (80 U. S.) 646, December 1871. The plaintiff brought suit in 1866 [647] " upon a promissory note made to him by the defendants . . for twelve hundred and thirty dollars, dated . . 1859, and payable . . 1860. The defendant pleaded [in 1869 [1]] . . that ' the consideration of the note was a slave,' and that ' by the present Constitution of Georgia,[2] . . adopted since the last pleadings in this case, the court is prohibited to take . . jurisdiction . . therein.' . . the plaintiff demurred. The court overruled the demurrer and gave judgment for the defendants. The plaintiff excepted and removed the case to the Supreme Court of the State, . . affirmed, . . the plaintiff thereupon prosecuted this writ of error."

[654] " Judgment reversed and the case remanded to the Supreme Court of Georgia, with directions to proceed in conformity to this opinion." [651] " At no time were the rebellious States out of the pale of the Union. . . Their constitutional duties . . remained the same. . .[652] a State can no more impair the obligation of a contract by adopting a constitution than by passing a law. . . [654] when the contract here in question was entered into, ample remedies existed. All were taken away by the proviso in the new constitution. . . The proviso . . is . . a nullity." [Swayne, J.] Chief Justice Chase dissented.

Mitchell v. McElvin, 45 Ga. 558, January 1872. [559] " Simon Bisset was born . . about fourteen years before the trial; . . his mother . . and his father . . were the slaves of different masters, but lived together as husband and wife, after the manner of slaves, for many years . . just before the close of the war . . [the father] having become involved in a difficulty, had to run away, and when he returned his wife refused to live with him. When the Federal army passed through . . [the mother] and

[1] Same *v.* same, 39 Ga. 306.
[2] Constitution of 1868, art. V, sect. 17, par. 7.

her children moved . . about three years before the trial, . . [the father] went . . to see his former wife, and offered to help her take care of the children, saying that he had married another woman; . . [the mother] consented that he should take the two boys," In 1871 she made a deed of apprenticeship to McElvin.

Held: [560] "A colored child, born before the 9th day of March, 1866,[1] within what was regarded as a state of wedlock between its parents, while slaves, and . . acknowledged by its father, is the legitimate child of both parents. If the parents separate before that date, and the child remained with the mother, she is entitled to the control . . during minority. But if she voluntarily yield the control to the father . . she cannot afterwards resume the control without the assent of the father, no reason being shown why the father should not retain the custody"

Houston v. Davidson, 45 Ga. 574, January 1872. "about the commencement of this century, . . a free person of color, became the mother . . of . . [six] children, . . [One of them] [575] acquired considerable personal and real estate, and . . died in 1862 [?] . . 1860 [?] [the administrator] . . sold the real estate for . . $10,000"

Colquitt v. Tarver, 45 Ga. 631, July 1872. Tarver's will, 1850: [637] "that my executors should set apart ninety negroes . . for each of my . . [two] children, . . [638] to be selected by my executors, in families, as near, as it can be done, so as to be equitable."

Green v. Lowry, 46 Ga. 55, July 1872. [62] "My means of support [in November 1863] was from the labor of my negroes; we had thirty-nine . . outside of the lines, hiring for about five thousand dollars per annum;"

Anderson v. Green, 46 Ga. 361, July 1872. See Green *v.* Anderson, p. 98, *supra.* [367] "The jury returned the following verdict: . . '$5,000 with . . interest thereon from . . November, 1855, for the complainant, John Anderson, to be raised out of the estate of A. H. Anderson, . . in the hands of . . Green, executor.' . . [368] The defendant moved for a new trial upon . . thirty-seven [grounds.]" New trial ordered.

Judgment reversed: [382] "The verdict . . [383] being just such . . as should have been rendered . . we are of opinion that the complainant is entitled to a judgment thereon *de bonis testatoris et si non de bonis propriis.* . . We do not think $5,000 with interest . . an unreasonable price for twelve years of slavery, a deprivation of education, and three thousand dollars . . and the interest . . from February, 1862, . . Nor are we prepared to say that he was not entitled to the $2,000 left to his mother for life," [Montgomery, J.]

Bennett v. Williams, 46 Ga. 399, July 1872. Cotton's will, dated 1850: [400] "I give . . Jones at the death of my wife . . two lots . . on the trust . . profits to be applied to the benefit of . . old Perry, his wife . . and their grand-daughter . . a mulatto girl," The testator died in 1859.

[1] Acts of 1865 and 1866, p. 240.

Held: [401] " null and void . . in the very teeth of the provisions of the Act of 1818,"

Lindsay v. Railroad Co., 46 Ga. 447, July 1872. " 1864 . . train was backing . . plaintiff . . about ten years old, got on platform . . a negro man emerged from the car . . and asked . . what he was doing there? Plaintiff replied, 'Is that anything to you?' The negro said, 'Yes, I have charge of this car,' . . told plaintiff he must get off; plaintiff told him he would not, . . the negro succeeded in pushing him off,"

Dennis v. Weekes, 46 Ga. 514, July 1872. [519] " he was the enrolling officer . . 1863 and 1864 . . duty to grant details of overseers on plantations having twenty . . slaves working thereon, and . . no white man residing thereon competent to manage . . Stallings was of unsound mind . . detail was granted "

Redd v. Railroad Co., 48 Ga. 102, January 1873. [103] " The negro [worth $2000] . . August 14th, 1861 . . accompanied . . Robert [Thweatt, whose father had raised him,] . . as a servant. Robert . . was a member of a volunteer company . . There was a gap in the embankment . . causing the death of the negro." See Railroad Co. *v.* Redd, p. 106, *infra.*

Mosely v. Lyon, 48 Ga. 398, January 1873. [400] " In October, 1859, . . [he] was in Baltimore, on the eve of departing to the coast of Africa for the purpose of purchasing slaves. He had not been heard from since "

Dorsey v. Simmons, 49 Ga. 245, July 1873. [248] " During [1849 to 1862] . . four, and sometimes six, valuable negro men were hired out annually for $150 00 to $200 00, they being mechanics and railroad hands;"

Simmons v. Byrd, 49 Ga. 285, July 1873. [287] " The defendants qualified as executor and executrix on December 7th, 1863, . . The plaintiff urged [them] . . to sell the negroes, on account of the near approach of the Federal army. . . they refused [1] . . and hired out most of the negroes for the year 1864; but on July 6th, 1864, at the solicitation of the creditors . . consented . . levied on . . and went into the custody of the sheriff. Shortly thereafter, on account of the approach of the Federal forces, by consent of all parties interested, the negroes were sent out of the county " "where they remained until slavery ceased to exist."

Tennille v. Phelps, 49 Ga. 532, July 1873. Will of testatrix who died in 1864: [533] " direct that . . my plantation . . shall be cultivated, with my slaves thereon . . unless . . my slaves be dissatisfied, and from any cause . . threatening a great depreciation in their value or loss, or if . . farm shall become unprofitable. In any of these events . . dispose of the whole . . [534] if . . practicable . . permit my slaves . . to select their owners, who may be willing to pay a fair price . . and, as far as practicable, . . sell them in families." [536] " in the event her . . son should die with-

[1] " impossible to sell . . except for Confederate money, which the plaintiff refused to take upon his claims."

out wife . . or children, living . . and after the death of her husband, she gives . . Georgia Conference, for negro missions, $1,000 00; . . Gives direction as to the instruction and management of the slaves."

Thweatt v. Redd, 50 Ga. 181, July 1873. See Redd *v.* Hargroves, p. 99, and Hargroves *v.* Redd, p. 102, *supra.* [189] "It is contended . . that it is the clear meaning of the will that the negroes were not to take, unless they remained the slaves of the testator until his death." Held: "it is equally as apparent that the testator did intend that the legacy should be given to them when they were free"

Ferguson v. Ferguson, 51 Ga. 340, January 1874. [342] "The hire of the negroes for . . 1863, 1864 and 1865, amounted annually to $250 00."

Strong v. Middleton, 51 Ga. 462, January 1874. Will of Samuel Strong, who died in 1828: "I lend to my . . wife . . as long as she remains a widow, or during her . . life, nine negroes, . . Also, the use of my land . . and if my . . wife should . . remain single until my son, William . . comes of age, then I wish all . . I have lent [her] . . to be equally divided between [her] . . and . . William, . . and at . . [her] marriage or death . . the part I have left her I give to my son . . if my . . son . . should die without a lawful begotten heir . . I give all the negroes I have given him . . and one-half of the tract . . whereon I now live to the agent of the Colonization Society . . in trust for the Colonization Society, for them to send the . . negroes with their increase, to Liberia . . that they may be free, and the money arising from the sale of the land to bear their expenses and support them one year when there. . . for my wife . . to hold the other half of my land . . during . . life, and at her death for all the negroes that I lent her, I give in trust to the . . agent of the . . Society, for them to send such . . negroes to Africa to be free and the other half of this land to bear their expenses and support when there." The widow married in 1830 and the son died in 1867 [463] "without a lawful heir of his body begotten; that plaintiffs are the negroes, and the heirs of those who are dead, . . that they do not desire to go to Liberia . . pray that said land may be adjudged to belong to them"

Held: [465] "the fee vested absolutely in William . . at her marriage. The limitation over, if William should die without a lawfully begotten heir of his body, is void, as being too remote."

Tudor v. James, 53 Ga. 302, July 1874. "that it was the intention of the testator [Thomas Tudor, who died in January 1864,] in giving the property to Tillery . . to confer freedom on certain negro slaves, in violation of the then existing laws of this state."

Railroad Co. v. Redd, 54 Ga. 33, January 1875. See Redd *v.* Railroad Co., p. 105, *supra.* [34] "Thweatt . . testified that he did not pay his fare, . . [35] Captain Chapman . . stated that he applied to defendant for transportation for so many men, including servants, and obtained it." Held: the rule of *in pari delicto* applies. [48 Ga. 108] "If the war with the United States was illegal, . . both [the company and the owner of the negro] . . were engaged in an illegal undertaking,"

FLORIDA

INTRODUCTION

I.

"From her early history as a Territory," Florida had been "opposed to the settlement" of free negroes "within her borders." [1] In 1829 an act was passed providing "that any person bringing into the State any slaves after the passage of the act, and wishing to manumit them, . . before he grants such manumission, shall give bond . . in a sum equal to the value of such slaves . . conditioned for the transportation of such slaves beyond the . . State, within thirty days after such manumission. . . that any slave manumitted contrary to its provisions, 'shall not be deemed free,' but shall be liable to be . . sold by the Sheriff." [2] In 1830 Sarah and Susan were brought to Florida by Jacob Bryan, and Susan thereafter gave birth to Dennis and Mary. In 1842 Bryan executed a deed emancipating these and other slaves; but he gave no bond conditioned for their transportation beyond the state, and they continued to reside in Florida. After his death in 1847 his heirs filed a petition in Chancery to recover them. The Supreme Court held in 1852 [3] that though it was conceded that Dennis and Mary "are not within the letter of the law, . . *non constat,* they are not within its policy and spirit. . . If we construe this law so as to restrict its application to slaves brought into the State, and not include their descendants . . we . . entail upon the State an evil . . which it is manifest it was the design of the Legislature to suppress." "In 1832,[4] the Legislature of the then Territory were compelled to enact the most stringent laws to arrest the evil, by prohibiting the further migration of free negroes within her limits; and the emphatic language of the Constitution of the State,[5] depriving the Legislature of the power of passing laws for the manumission of slaves, was but carrying out the principles of that policy settled upon by the previous Legislation of the country."

The Supreme Court in 1864-1865 [6] declared the will of Gaskins void, which provided that his slave might "go, if she wishes, to a free State," or remain in Florida enjoying "such privileges and freedom as is consistent with law." The court held that the slave had no capacity to elect, nor could she remain in Florida in a state of *quasi* slavery. [78] "There is no evil against which the policy of our laws is more pointedly directed than that of allowing slaves to have any other status than that of pure slavery."

[2] Bryan *v.* Dennis, p. 113, *infra.*
[3] Same *v.* same, 4 Fla. 445 (451). Thompson's *Digest,* p. 533.
[1] Bryan *v.* Dennis, p. 113, *infra.*
[4] Act of Feb. 10, 1832. Thompson's *Digest,* p. 534.
[5] Constitution of 1838, art. XVI., sect. 1. "The General Assembly shall have no power to pass laws for the emancipation of slaves."
[6] Miller *v.* Gaskins, p. 123, *infra.*

Nevertheless, in spite of this policy, a partnership was formed in 1863 [7] between a slave and a white man "in the business of blacksmithing." The slave "refused to continue" it after 1863, but it was renewed in 1866. It was held in 1874 that "the subsequent negotiations resulting in a renewal of the copartnership after he became free recognized his rights as though he was free in 1863, and he is entitled to the benefit of that recognition."

The fellow-servant rule was held in 1853 [8] not to apply to slaves.

II.

"During the Territorial Government, . . [appellate] judicial power was invested in five inferior Judges, termed Judges of the Superior Court. This, after organization into the State, continued by provision of the Constitution, vesting the appellate power for five years in Circuit Judges. At the expiration of this time,[9] . . a separate Supreme Court was organized, to consist of three Justices." [10]

[7] Price *v.* Hicks, p. 125, *infra.*
[8] Forsyth *v.* Perry, p. 115, *infra.*
[9] Act of Dec. 20, 1850.
[10] Baltzell, C. J., in 8 Fla. 468.

U. S. v. Wiggins, 14 Peters (U. S.) 334, January 1840. [344] "Isabel Wiggins . . of Fernandina . . supplicates your Excellency to be pleased to grant to her three hundred acres . . as she has five children and five slaves, with herself; . . 1st August, 1815." [348] "By the regulations of Governor White, published in 1803, it was declared, that to every head of a family there should be distributed fifty acres; and to the children and slaves, sixteen years of age, twenty-five acres for each one; but from the age of eight to sixteen years, only fifteen acres."

U. S. v. Forbes, 15 Peters (U. S.) 173, January 1841. [174] "the . . firm of Panton, Leslie, and Company obtained, in . . one thousand seven hundred and ninety-nine, a grant of fifteen thousand acres of vacant lands . . in order to employ their slaves in the agriculture and for grazing their cattle; but . . being of an inferior quality . . I ['Don Juan Forbes, partner of . . successors of Panton'], from this moment [July 27, 1814], abandon the said fifteen thousand acres of land in behalf of his majesty," "wishing to establish a rice plantation, which production we have been, until the present time, under the necessity to import from foreign parts: . . supplicating . . an equivalent in the district of Nassau river."

Buyck v. U. S., 15 Peters (U. S.) 215, January 1841, [216] "Don Augustin Buyck . . says [to Governor White]: That, having a large number of new negroes, (negroes bozales,) and there being also some white persons, native citizens of the United States . . who wish to join him for the settlement . . of the lands at Musquito, he solicits that this government will grant him fifty thousand acres . . [217] St. Augustine of Florida, 22d July, 1802."

Edwards v. Union Bank, 1 Fla. 136, January 1846. [143] "action of trespass . . that . . defendant, by its officers, . . [144] seized [in 1842] . . forty-one negro slaves"

Manley v. Union Bank, 1 Fla. 160, January 1846. [169] "two mortgages . . [170] to . . Bank, the first . . 1839, on twenty slaves, . . the second . . 1840, . . on the same twenty . . and on twenty-two other slaves, together with the future . . increase of the females,"

State v. Charles (*a slave*), 1 Fla. 298, January 1847. "The prisoner . . was indicted[1] . . for an assault with an intent to commit a rape on" Z. P., who "was a white woman, but the indictment did not so charge. A question was raised in the Court below, upon the validity of the indictment . . and the Judge . . made a statement in writing . . and brought . . [299] to this Court," Held: "this Court . . has no jurisdiction of a case thus brought up."

[1] Under the act of Nov. 21, 1828, sect. 39. Duval's *Compilation,* p. 224.

U. S. v. Lawton, 5 Howard (U. S.) 10, January 1847. [18] "in . . 1818, . . to make a survey . . Two black men, one . . belonging to Mr. Bulger of St. Augustine, and Peter Survel [the guide], a free black mulatto, were the chain-carriers."

Camp v. Moseley. 2 Fla. 171, January 1848. [191] "The administrators . . of Parkhill brought this action of trespass *vi et armis* . . against Camp for seizing . . a hundred and eighty [slaves] . . Camp . . justified . . that he had taken the negroes by virtue . . of an execution" At the sale [1] in 1845 [176] "Gov. Moseley [administrator] . . arranged the negroes in lots; . . said his reason for separating the families, (which was contrary to the wish of witness,) was, that he was determined to make them bring as much as possible; . . All the negroes were mortgaged; . . witness . . was authorized to buy one hundred negroes; . . Anderson . . proposed to give a certain sum for a family of negroes. . . Gov. Moseley . . replied that the negroes must be sold separately." Judgment for the plaintiffs reversed: Moseley is estopped.

Ponder v. Moseley, 2 Fla. 207, January 1848. [216] "one of the slaves . . applied to . . Moseley before the sale to purchase her, because she had a husband owned by Ponder, who resided in the neighborhood; Moseley . . recommended the slave to apply to Ponder . . [217] Accordingly the slave went over to Ponder's place, and afterwards Ponder came to the Court House . . bid [her] off . . [[175] 'the last night, after the sale'] Archer . . observed that he intended to stop the negroes bought at the sale, . . which the purchasers intended to send for sale to New Orleans. . . [218] at that time the slaves . . were near town on their way to be embarked; . . Juba, for an old woman, was a good hand, and was worth from forty to seventy dollars per year; Caroline about eighty dollars, the price fluctuating and generally low. A female slave of thirteen would hire for about thirty dollars; a girl of eleven and a boy of ten would be worth about their victuals and clothes." [208] "Juba . . [was] appraised [in 1844 or 1845] at three hundred and fifty dollars; . . Caroline, at five hundred and fifty . . Thinks slaves have advanced in value since that time twenty-five per centum."

Le Baron v. Fauntleroy, 2 Fla. 276, January 1848. Will of George L. Fauntleroy of Pensacola, 1839: [277] "To my slaves Davy, James, Maria Ann, and the children of James and Maria Ann, I give their freedom . . to be liberated at the expiration of six months after my decease."

McRaeny v. Johnson, 2 Fla. 520, January 1849. [521] "action of trespass . . against . . Johnson . . [and] Moore . . claiming damages for a trespass . . which consisted in . . beating a . . slave of plaintiff, so that he died. . . verdict: . . 'guilty . . assess the plaintiff's damages . . to four hundred and thirty-five dollars.'"

Doggett v. Jordan, 2 Fla. 541, January 1849. [542] "1842 . . Henry Doggett employed plaintiff as an overseer . . continued . . during 1842,

[1] [670] "184 slaves, sold by . . Camp, Marshal, . . $57,033 00."

1843, and 1844; . . [543] Henry Doggett had forty hands, and John eight." [542] " that plaintiff's services . . were worth $400 or $500 per annum."

Sibley v. Maria (a woman of color), 2 Fla. 553, January 1849. Will of William Oliphant of South Carolina, admitted to probate in 1828: [561] " I give . . to my nephew . . my estate . . under the following conditions . . that . . Maria, and her four children as his property and under his protection shall be allowed all the privileges of free persons, consistently with . . a proper subordination, and shall be allowed . . two hundred and fifty dollars each, to be paid . . at such times and in such quantities as in his judgment will be most proper, otherwise to take them to . . Ohio, and the balance . . above what will be expended in their passage to be paid to them there; and in case . . [he] should refuse or neglect . . or should die without . . heir, . . all the interests . . shall go to John H. Hollingsworth," Maria brought an action of trespass in 1847 against Sibley, who claimed her as a slave. [564] " we know nothing of the time of Maria's arrival in our State, or the circumstances in which she came." [554] " the Court charged . . That it was the duty of the executor . . to give freedom, and that, in the absence of all testimony . . as to the mode in which she has been held, . . and after the lapse of time, the jury may infer that that duty was performed. . . according to the law [of South Carolina] . . the bequest gave clear . . right of freedom to plaintiff."

Affirmed: [566] " the question involving the policy and statutes of our State . . cannot arise . . because the presumption is that she was free when she came here; and if she came after the passage of the law of 1829, she only rendered herself amenable to that act and that of 1832, prohibiting the coming of free persons of color to our State." [Hawkins, J.]

Lanier v. Chappell, 2 Fla. 621, January 1849. [627] " On the first . . January next, we promise to pay . . [628] three hundred and thirty-five dollars, for the hire of two negro boys, . . Treasurer Steam Saw Mill Company. January 1, 1841."

Summerall v. Thoms, 3 Fla. 298, January 1850. [302] " Petty . . sold . . Phoebe, and her child, Peter, to the children—John . . Joseph . . and Eliza Summerall, . . [for] three hundred dollars, and the grandfather . . acted as their guardian, to divide the children of Phoebe . . John . . was to take Peter, and Joseph was to have the next, and Eliza the next . . [303] The three that fell to John died. . . Old Simon, the husband of Phoebe, bought her for $750—which was divided among them. . . Sue was an infant [in 1838] . . lived with Phoebe until the early part of 1844 . . [304] Phoebe lived within gun shot . . of John . . but not on his place. At the birth of twins by Phoebe, (which was after she had been sold,) Sue was permitted to go and nurse the twins . . Sue is worth $400."

Barnard v. Moseley, 3 Fla. 322, January 1850. [323] " Moseley, receiver . . took into his possession the land, steam saw mill and negroes . . 1847 . . he sold . . [325] Noah . . for [$] 1205 . . Arthur . . 850 . .

Mary . . 100 . . Samson . . 447 . . Nero . . 375 . . March . . 655 . . York . . 687 . . Seley, Maria, and Cloe . . 600"

Carter v. Bennett, 4 Fla. 283, January 1852. In 1839 Colonel Jordan of Georgia mortgaged eighty-four negroes to the Georgia Railroad and Banking Company. There were [292] "twenty-four fellows," including "carriage driver . . house servant . . shoemaker . . waggoner . . superior house carpenter . . [and two] good house carpenters," nine "lads," twenty women and thirty children. Deposition of Thornton, Jordan's father-in-law: [296] "About the first of March, 1842, . . Jordan employed . . Harris . . to take charge of about eighty negroes, for the purpose of carrying them to Texas and settling a plantation for him, . . Harris [[6 Fla. 217] 'did in the night time receive said slaves and proceeded'] . . to Apalachicola, on the steamboat . . [297] for which passage he paid . . a likely young fellow, that would now command from six to seven hundred dollars. . . went into the custom-house, for . . a certificate of clearance . . a pre-requisite to their being shipped, and while there the negroes were arrested by the deputy marshal . . under . . attachment [1] sued out . . for the Central Bank of Georgia . . and placed in jail. . . [298] witness received the bill of sale from Jordan . . for the sole . . purpose of enabling him to replevy them for . . Jordan . . [299] found it impossible . . finally [March 16] sold the negroes to Bennett and Floyd, as they were, in the jail" [6 Fla. 219] "for . . about $14,000, . . not one half of the value" "fearing the creditors of Jordan would soon pursue the property, . . Bennett and Floyd . . delivered to Thornton an instrument . . [220] certifying that the . . slaves were sold subject to all liabilities against them . . either as the property of . . Jordan or of . . Thornton" [219] "That immediately . . Bennett and Floyd, obtained . . possession . . by giving bond . . and that a large number of said slaves were immediately . . sent out of Florida for . . sale beyond the reach of the creditors of Jordan." [4 Fla. 286] "The negroes were divided, in the schooner . . at sea, . . by virtue of an execution upon a judgment in favor of Carter, assignee [on May 31] of . . [Jordan's] mortgage to the Georgia Railroad and Banking Company" [6 Fla. 220] "attachment was issued [December 10] and levied upon thirty of . . slaves, in possession of . . Bennett . . [221] sold on the 31 day of December, 1842, and on the 9 day of January, 1843, and were bid in by . . Long, for the benefit of [Carter.] . . on the 15 day of December, 1842, . . Bennett instituted an action of Trover against . . Carter," [4 Fla. 285] "1848 . . a trial was had, which resulted in a verdict and judgment for plaintiff" [2]

Affirmed with costs: [358] "Whether Bennett's possession was rightful or not, Carter had no right to divest him of it *manu forti,* without

[1] "Watson of . . Georgia, perceiving suspicious circumstances, instituted proceedings at random," Same *v.* same, 6 Fla. 214 (218).

[2] "There was great prejudice and feeling against Rennet [in Apalachicola] at the time the suit was instituted, but a most prompt reaction took place before the trial. . . most was made of a case, whatever its legal claims to success, morally it had none, in the opinion of witness." 8 Fla. 183 (186).

showing that he was a judgment creditor or a mortgage creditor of Jordan's." [348] " Carter stood before the Court and jury as the assignee of the mortgage, without an interest in the debt. This was not sufficient to make him a mortgage creditor, or a creditor in any sense of Jordan " [Anderson, C. J.] See same *v.* same, p. 116, *infra.*

Bryan v. Dennis, Mary, et al., 4 Fla. 445, 1852. [450] " 1830, Jacob Bryan, . . of Georgia, removed to Florida, bringing . . Sarah and Susan, the mother of Dennis and Mary, who were subsequently born . . [451] 1842 . . Bryan executed an instrument in writing . . which, by its terms, emancipated . . the defendants . . as well as other negroes . . Bryan never gave bond, as required by law, for the transportation of these negroes beyond . . Florida, and . . they continued to reside here until after the death of Bryan . . in 1847 " His heirs filed a [450] " petition in Chancery . . for the recovery of . . negroes, . . process was issued . . and three of them . . were taken into custody by the Sheriff . . These defendants . . filed . . their plea, and upon the issue of *liber vel non,* the cause was set for hearing. . . decreed that . . Dennis and Mary were free . . and that . . Sarah was a slave, and as such to be sold, . . From that portion . . liberating Dennis and Mary, an appeal was taken " Counsel for appellees contended: [449] " Dennis and Mary, were born in the State . . and are not subject to the penalties imposed by the act [of 1829[1]]."

Held: I. [452] " This construction . . cannot be sustained. That these two negroes are not within the letter of the law, is conceded, but *non constat,* they are not within its policy and spirit. . . the policy of this State in reference to free negroes . . is . . well settled. From her early history as a Territory, she has been opposed to the settlement of this class . . within her borders, . . [454] In 1832, the Legislature . . were compelled to enact the most stringent laws to arrest the evil, by prohibiting the further migration of free negroes within her limits; and the emphatic language of the Constitution of the State, depriving the Legislature of the power of passing laws for . . manumission . . was but carrying out the principles of that policy . . If we construe this law [the act of 1829] so as to restrict its application to slaves brought into the State, and not include their descendants . . we . . entail upon the State an evil . . which it is manifest it was the design of the Legislature to suppress. . . [II.] its provisions embracing all the negroes mentioned . . was the act of manumission . . consummated by the deed? . . [455] It is not pretended that the grantor ever gave bond, as required by the first section . . a condition precedent . . without it the deed has no legal existence," [Semmes, J.] [5 Fla. 240] " several days after the rendition of the . . decree . . Dennis, absconded,"

Barrow v. Bailey, 5 Fla. 9, January 1853. [30] " Of the property conveyed [in 1845 to his brother-in-law residing in Louisiana], there were one hundred and seventy-eight slaves; the value of those on the plantation in Jefferson County [Florida] . . is estimated . . [31] at the average price of $300 each. Another witness . . disclaiming all particular knowl-

[1] Thompson's *Digest,* p. 533.

edge of those in question, fixes the market price at an average of $275. . . Dr. Elliott, who claims to have a personal knowledge . . describes them as sickly, feeble, etc., the result of ill-treatment, and insufficient feeding and clothing; but the testimony of . . the overseer . . is in direct . . contradiction . . And . . a near neighbor . . answers, 'that the general appearance of the plantation, negroes, etc., was about the same as the neighboring plantations.' . . Mr. Branch . . says he had no personal knowledge . . that Doggett's negroes 'were said to be an unusually sorry lot.' . . [32] The Court is disposed to take the average given by Gov. Moseley, $275, . . especially as . . there were but few small children in the gangs."

Lines v. Darden, 5 Fla. 51, January 1853. Robinson's will, 1838: [54] "My will . . is, that my boy George, the carpenter, shall be allowed to choose his own employer, annually, . . such employer paying . . one dollar to my executors."

Luke (a slave) v. State, 5 Fla. 185, 1853. "an indictment . . for maliciously wounding animals. . . [186] 'a negro driver of . . Hernandez, in searching for . . mules . . of his . . master, found one dead . . and two others badly injured with gun shot wounds, . . traced the mules to the plantation of . . Dupont, prisoner's master, . . and meeting with prisoner, asked . . who had shot . . Prisoner replied that he had . . and was ordered so to do by his master . . that prisoner was the head driver'" [191] "The jury having found the prisoner guilty, assessed the punishment under the 59th section of the Act of February 10, 1832, . . at three months imprisonment, and the Court entered judgment"

Reversed: [195] "the Legislature, in 1832, did not intend to disturb the distinction established in 1828, between the two classes . . The Act of November 21, 1828 . . is in full force . . [196] there being no punishment specially providing for malicious mischief when committed by a slave, resort should have been had to the 61st section of the Act of November 21, 1828," [Thompson, J.]

Waterman v. Mattair, 5 Fla. 211, 1853 [212] "that the plaintiff . . incurred great expense for medical services, and in feeding and clothing her."

Loammi Davis v. Fitchett, 5 Fla. 261, 1853. [262] "The appellant, . . a free man of color, was sued . . upon a promissory note for . . fifty dollars, . . the Act of January 8, 1848, . . first section . . provides . . that free persons of color shall be required to have guardians, . . The second section provides, that such guardians 'shall have power to sue for . . money . . owing to such free negro,'"

Held: [264] "free persons of color . . may appear and defend by attorney as other persons of full age," [263] "The statute . . is silent as to those cases in which he is the debtor and defendant; . . [266] It is argued that the appellant, being a free man of color, could not interpose a plea denying the execution of a . . writing sued on . . in a case

where a white man is a party[1] . . it is difficult to see how an affidavit, by a party to his plea, would constitute him a witness. . . [267] There is nothing in this objection;" [Thompson, J.]

Simon (a slave) v. State, 5 Fla. 285, 1853. [299] "On the 17th October . . the dwelling-house . . was burned . . On the 21st or 22d . . Simon . . was apprehended and taken before the mayor . . on suspicion" The mayor testified that he [286] "said to Simon . . that if he . . was the one who burned the house, he would be put upon his trial, and would be certainly hung; that if he had any accomplices he would, by testifying against them, become State's evidence, and they would be put upon their trial and not him. . . [287] He replied, send for my master, and I will tell the whole. . . then said, he had set fire . . there was great excitement among the people . . [288] Witness . . thinks that but for his protection . . the people would have taken him into their own hands . . the excitement . . was sometimes in the presence of the prisoner, and sometimes not, but in his hearing. . . [291] McVoy [Simon's master] said . . that he never saw any one more terrified . . the crowd on the outside." The mayor [288] "had several interviews with the prisoner in jail, . . said . . you are in irons and you cannot escape." [298] "witnesses . . unimpeached, and . . uncontradicted, established the fact, that the confessions . . as to the particulars of the burning, were altogether untrue." [297] "he was convicted and sentenced to be hung." Judgment reversed and new trial ordered: "few cases . . where stronger influences were brought to bear . . to extract a confession"

Forsyth v. Perry, 5 Fla. 337, 1853. [341] "an action of trespass . . brought by the respondent against . . owners of the Steamboat . . to recover the value of a . . slave . . hired on board . . The slave was ordered [by the mate] to jump on board . . from a flat-boat . . he struck the guards of the steamer, . . and was drowned. . . The jury returned a verdict for the respondent, and thereby established the fact of gross negligence"

Judgment thereon affirmed: [343] "Unlike white persons, the slave does not, upon entering into the service of another, voluntarily incur the risks and dangers incident to such service. He has no power to guard against them by refusing to incur the peril, or by leaving the service of his employer. He is but a passive instrument . . [344] the case . . is governed by the law of bailments." [Semmes, J.]

Bellamy v. Sheriff, 6 Fla. 62, January 1855. In 1845 Samuel C. Bellamy conveyed to Dr. Edward C. Bellamy his equity of redemption in sixty-four slaves. The latter said: [83] "Of the sixty-four . . one old man has since died, and eight . . are perfectly worthless, by reason of consumption, dropsy, deformity from sickness, burns and chronic rheumatism, with which . . they were afflicted at the time of . . conveyance, . . an expense to the plantation. Thirteen . . were children, under . . nine [[73] 'five'] . . and about eight . . were from forty-five to seventy years old, and about eight or ten others . . from five to ten years of age,

[1] Act of Nov. 21, 1828, sect. 42.

at the time . . conveyance was made, . . not likely, . . an expensive set to support, and . . not at the time . . worth upon an average . . more than about two hundred and fifty dollars apiece. . . [86] Carlton . . in behalf of complainant [administrator *ex officio* of Samuel C. Bellamy], states: 'That he came to this country with Samuel C. Bellamy, and overseed for him in . . 1836, 1837, 1839 and 1840, . . 40 working hands at the time . . [87] as valuable a set of hands as any in . . County. . . That since they had gone out of Dr. S. C. Bellamy's possession he had not seen any of them well clothed, that they appeared poor and scrawny, and he frequently met them on the road and did not know them as some of the negroes he came from North Carolina with.' . . [95] 'April 10th, 1845. . . [96] Moore is to do the duties of an overseer . . [for] three hundred and fifty dollars out of the crop made' " [130] " Judge Baker . . says . . negroes, though saleable, were low; . . I [Judge King] consider a liberal valuation . . $300 each on an average for the negroes,"

Carter v. Bennett, 6 Fla. 214, January 1855. Carter filed a bill in the [217] " Circuit Court . . sitting in Chancery." [234] " to cancel . . bill of sale [of slaves] from . . Thornton to . . Bennett and Floyd, and to require the defendants . . to release all . . claim . . to said slaves . . also to set aside a judgment at law in an action of Trover [1] . . [235] And that . . defendants be enjoined from further proceeding . . until the final decree in this cause." He alleged that [217] " the . . Georgia Railroad and Banking Company, for a valuable consideration, assigned the said mortgage and the notes for which it was a security, to him . . [223] that by reason of the irregularities in the . . proceedings in the suit for the foreclosure of the mortgage . . which did not reach . . the merits of said mortgage, or the mortgage debt . . he could not defend himself in a Court of law by setting up his equities as assignee of the mortgage debt as his equities as judgment creditor of . . Jordan," [236] " An injunction . . was granted . . and upon the coming in of the answer of . . Bennett . . injunction . . was ordered to be dissolved." Held: [260] " the injunction must stand and the cause remanded " [Forward, J.]

Frances (a slave) v. State, 6 Fla. 306, February 1855. In 1854 Frances was found guilty of an assault and battery upon a white person.

Maiben v. Bobe, 6 Fla. 381, April 1855. [388] " 1829, . . Tate gave by deed . . to his sister . . several negroes . . 'not to be subject to the control, or debts, or contracts of her husband,' . . The two latter . . removed [from Alabama] to Pensacola . . where a sale was made by them to Bobe, . . 1847, of . . Henry, for . . three hundred dollars, and . . 1848, of . . Jents and her child Flemming, for . . six hundred dollars [[385] 'about half their value']. . . [401] She charges that 'her husband informed her, unless she signed the bills of sale he would run all the negroes to New Orleans and sell them,' . . [402] that 'a short time previous . . her husband took a valuable female slave of hers in open defiance of her, and placed her on . . a vessel to be shipped to New Orleans for sale when a friend of hers . . interposed . . and prevailed' "

[1] Same *v.* same, p. 112, *supra.*

Sanderson v. Jones, 6 Fla. 430, April 1855. Marriage settlement made in Georgia in 1813, conveying sixteen slaves to trustees for the use of [432] "Harrison and . . his intended wife . . [435] The marriage . . was shortly after solemnized and the parties . . removed to Florida . . whilst . . a provence [*sic*] of Spain."

Perry v. Lewis, 6 Fla. 555, January 1856. "an action of Trover brought to recover the value of a slave lost by Lewis, the plaintiff . . in . . Alabama, in July, 1844—sold by . . Jones, to Henshaw of . . Alabama, . . November, 1844—by Henshaw . . to Criglar of . . [556] Florida . . 1848—and finally sold by Criglar to . . Perry . . of the same county . . 1849, the plaintiff being ignorant whose possession the slave was in, until . . 1851." Verdict for the plaintiff. Judgment thereon affirmed.

McDougall v. Van Brunt, 6 Fla. 570, January 1856. "in March 1845, . . Lea . . borrowed of . . Van Brunt . . two hundred and fifty dollars, for which he gave his . . note . . and . . a bill of sale for . . Maria as a security . . [572] in . . 1846 . . she was . . three or four years of age. Her value then was about two hundred dollars. . . She remained in . . [Lea's] possession until his death [[570] 'the latter part of . . 1846, or early in 1847']." [571] "the day after" [570] "Van Brunt . . removed her from the premises,"

Joe (a person of color) v. State, 6 Fla. 591, January 1856. [600] "a free man of color . . [604] and the person complaining of being poisoned, a slave named Rebecca, were . . engaged in getting breakfast —the woman for the white family.—The prisoner handed Rebecca some cow haslet which he had been cooking . . she ate . . and immediately felt a pain" [591] "was blind when the 'misery was on.' . . She was friendly with the prisoner. . . Dr. . . Nash . . was called in . . on the second day . . [592] of opinion that these effects were produced by . . arsenic . . There were no . . chemical tests applied . . verdict of guilty" of administering poison. Motion for a new trial: "4th. Newly discovered evidence . . to prove by a witness that she herself partook with impunity from the same pot at the same time. 5th. The general good disposition of prisoner, . . [593] 6th. The absence of prisoner's original counsel, the counsel who defended the prisoner not having been appointed until the morning of the trial. 7th. The status and condition of the prisoner whose ignorance almost wholly incapacitated him from affording his counsel any intelligent or useful information in the conduct of the case. The Court . . refused a new trial," Judgment reversed and the cause remanded.

Cherry v. State, 6 Fla. 679, February 1856. [680] "convicted for the statutory offence of 'living in a state of fornication with a colored female.' . . [681] a motion was made to arrest the judgment . . overruled" Affirmed.

Kelly v. Wallace, 6 Fla. 690, February 1856. [700] "Peter . . was hired to work at a saw-mill owned by defendants . . for a year [1853], at . . $15 a month. . . about 25 or 30 . . [701] 'generally understood at

the mill that Peter could not swim; that he acted as though he was afraid when he went near deep water; . . was employed at work in the boom by order of the superintendent . . another boy . . was sent outside by him for a particular stick; he told Peter to go for it, . . it was then . . he was drowned;' " [695] " negroes . . were worth $1,000 in the spring and summer of those years. . . [Another witness] thinks good negroes were worth at that time from $800 to $1,000." Verdict and judgment in favor of the plaintiff. Affirmed.

Hooker v. Johnson, 6 Fla. 730, March 1856. [733] " Johnson obligates himself to cultivate . . the farm [of Hooker] . . with three hands in conjunction with [Nancy, Dick, and Josh] . . furnished by Hooker, . . entitled to have . . [734] one equal-half part of . . the crop of 1853."

Hollingsworth v. Handcock, 7 Fla. 338, March 1856. [339] " bill of sale [in 1845] . . of . . a negro girl . . about fourteen . . [for] four hundred dollars "

Smith v. Croom, 7 Fla. 81, January 1857. [98] " 1831—Hardy [Croom] is in Florida, his negroes having arrived [from North Carolina] before him, . . [103] 1835—Mrs. Croom at Newbern writes Hardy at Tallahassee . . says she would like . . a good house in Florida but dreads the expense as it would be better in negroes; . . [104] sends her love to the negroes and to ' tell them to have all things ready against I come out there.' . . [107] Croom [to his brother] . . Newbern, Oct. 13, 1836. . . I have bought horses and pedlars' wagons to carry our servants out [to Charleston] . . [113] Croom [from Newbern] to Mrs. Armistead, 1837, . . I do hope that you and your Ma will sell out here and send your negroes to Florida, where you may either carry on a plantation, or hire them out to great advantage. I think you need have no fears of the climate, for I have not lost one by bilious disease in the six years they have been there. . . [121] One of the advantages of Charleston was that he could remain there . . without the necessity of going to Florida more than once or twice during the winter to see how his overseer was managing;" Whitfield testified: [136] " I removed the greater number of my negroes [from North Carolina] to Florida in 1835, . . The balance . . were brought . . in 1836, except my house servants. Came to Florida with my family in 1845;"

McHardy v. McHardy, 7 Fla. 301, February 1857. [303] " McHardy . . in . . 1798 . . had intermarried with . . a resident of Nassau, New Providence; . . that some time after 1802 they had removed [from Nassau] to the Territory of Florida, bringing the negroes with which the crops were made, . . [304] The increase . . from nine to twenty-five, were sold . . in 1823."

Heffron v. State, 8 Fla. 73, 1858. " Two indictments . . for selling liquor to a negro,"

Price v. Sanchez, 8 Fla. 136, 1858. [138] " Crespo . . bought the negro boy in Charleston . . made the bill of sale [in 1847] . . to [his daughter] . . wife of . . DuPont . . Mrs. DuPont went to live in Jacksonville in . . 1851."

Linton v. Walker, 8 Fla. 144, 1858. [150] " infant children . . of . . Mrs. . . Walker, claiming . . the hire of fifteen slaves . . a legacy from their grandfather . . who, in . . 1824, made his will in . . Georgia, giving this . . property to his daughter . . their mother, and after her death to her children." After her death, however, their father hired the slaves in 1850 to Linton for five years for [148] " six thousand dollars, in five equal annual instalments, falling due . . first day of January . . 1851, 1852, 1853, 1854 and 1855, each instalment being for . . twelve hundred dollars. . . [Linton] covenants to treat said slaves kindly and to supply them with the usual amount of food and clothing, and on the first day of January, 1855, to return such . . as shall be alive, with the increase of the females," [147] " Linton was speaking at the time of the good bargain he had made . . and the cheapness of the price he was to pay for the hires."

Wynn v. Ely, 8 Fla. 232, 1858. [234] " 1846 . . shipped Jack . . to Columbus, Georgia," and sold him.

Abernathy v. Abernathy, 8 Fla. 243, 1858. [244] " About the 1st of January, 1853, this defendant . . with his wife . . with . . [four] slaves . . started to remove from . . Alabama to . . Texas, and at the close of the first day's travel, . . [245] was induced by . . his . . wife . . to exchange . . Rachel and her two children . . for a negro girl . . represented to be sound . . and a valuable house servant. . . Rachel could be of little or no service . . in keeping house . . that a short time after their arrival in . . Texas said negro girl . . proved to be seriously diseased . . defendant started back to Alabama with . . girl . . to return her . . but learned that Rachel and her children had been mortgaged . . was induced . . to exchange . . girl . . with a negro speculator for a negro girl named Malinda; that some months after the return [to Texas] . . Malinda also became diseased . . sold for . . about six hundred dollars. . . [249] Witness [in 1855] hired a negro boy . . for about twelve months, amounting to about $116,"

Railroad Co. v. Macon, 8 Fla. 299, 1859. " action . . for the recovery of the value of a . . slave hired to the appellant, who, it was alleged, died from the neglect . . Dr. . . Betton . . at the request of the plaintiff . . visited . . Esop on . . day . . Esop died. [[302] ' He found him very sick with pneumonia.'] . . He was in a car, one side of which was open. . . if closed . . no opening for the air to enter. He stayed . . about one hour; . . ought to have been sent for earlier. The negro had not the necessary conveniences, . . Considered the negro . . between forty and forty-five . . supposed he was worth from eight hundred to a thousand dollars." The overseer employed by the railroad testified that [300] " Esop never handled the rails; he had not the strength, and was put to light work, such as ramming dirt under the cross-ties. . . In the opinion of witness, he was between fifty and sixty . . did not consider him worth over three hundred dollars. . . [301] The cook-woman was directed to attend to him if he needed attention. . . the jury . . rendered a verdict in favor of plaintiff for six hundred dollars." New trial refused. Affirmed.

Broome v. Alston, 8 Fla. 307, 1859. [312] "that the slaves embraced in the marriage settlement and covered by the mortgages of the Bank this defendant . . has hired . . out annually by private hirings and with a view to the comfort and happiness of the slaves as well as to make them profitable,"

Clark v. Gautier, in behalf of Dick (a person of color), 8 Fla. 360, 1859. [361] "On the petition of . . Gautier in behalf of Dick, . . a writ of *habeas corpus* was issued against . . Clark to show why he detained . . Dick. . . Dick is a mulatto . . held in servitude from early infancy. The witnesses for the petitioner deposed that his mother was a white woman, and that he was sold for a small price until he was twenty-one years old. . . controverted by witnesses examined by defendant. The Court below decided that Dick was entitled to his freedom,"

Reversed: [367] "where there is a . . fair subject of controversy as to the facts of freedom, the writ of *habeas corpus* is not the appropriate remedy"

Tucker v. Hancock, 8 Fla. 435, 1859. "suit instituted upon . . notes given [by Hancock] for . . a negro man . . [436] Tucker bought the negro from . . Stafford [in September 1853 for $725]; had him four or five days before he sold him to Hancock. . . [440] asked Hancock $1,000 for the boy;" [438] "Tucker said he was a strong able-bodied boy and had split 250 or 300 rails a day, and he could do it again, just give him enough to eat." [437] "Dr. Todd . . says he prescribed for . . negro . . for dropsy some years since; . . but did not see him; . . [438] McLelland saw the boy in possession of Hancock; . . [439] appeared to be very much swollen and in a good deal of pain; . . McCarty . . [440] sold him [to Stafford] because he would run away . . Dr. Kendrick . . traveled with Tucker and the boy from Fort Dade to Hancock's . . 30 or 35 miles; . . the boy on foot . . stood the journey remarkably well;" The negro died in April 1854. Verdict for the defendant. New trial refused. Affirmed.

The Mulhouse, 17 Fed. Cas. 962 (22 Law Rep. 276), 1859. [967] "Compensation for saving life, except the life of a slave unconnected with the saving of property, is left by the law to the voluntary bounty of individuals."

Kitrol v. State, 9 Fla. 9, 1860. [10] "indicted . . 1858, under the act of January 6, 1855, entitled 'An Act to prevent white persons from gaming with negroes or other persons of color.' . . [11] convicted, and the Court assessed the punishment to a fine of one hundred dollars."

Harris v. State, 9 Fla. 156, 1860. "indicted . . for buying grain [[157] 'a half bushel of corn'] from a slave without a permit, under the statute of 1851.[1] . . [157] convicted, and a fine of one hundred dollars imposed"

Cato (a slave) v. State, 9 Fla. 163, 1860. "indicted for the offence of rape, . . [164] tried at the October term, 1859, . . Susan Leonard [a

[1] Acts of 1850, p. 133.

white woman] . . testified . . Cato came . . about one hour and a half before day; . . hand on each of my arms; I told him to go . . I said, who is this, and he said it is one of Dr. Ely's black men; . . he said 'hush, hush . . or I'll kill you;' . . drew the knife across my throat, and I was compelled to give up; . . Sarah A. Alsobrook . . testified . . heard Mrs. Leonard say, Lord-a-mercy, is this you Cato? . . [165] Mrs. Leonard said she was almost willing to swear it was Cato; . . he said it was Bill who lived at the hotel; . . she did not cry out; . . For the defence there were twelve witnesses, who testified that both the witnesses for the prosecution were common prostitutes [[181] 'of the lowest grade']." [164] "convicted and sentenced to be hanged on . . 16th . . December, 1859. . . [169] 22d . . October . . his attorney moved . . for a new trial" Refused.

Held: [186] "the prisoner is justly entitled to a new trial." [173] "it is the crowning glory of our 'peculiar institutions' [*sic*], that whenever life is involved, the slave stands upon as safe ground as the master. . . [186] *Ordered* that the sentence of death . . [187] be . . annulled, . . verdict . . set aside, and . . the cause . . remanded" [DuPont, C. J.]

Clem Murray (a slave) v. State, 9 Fla. 246, 1860. "Clem Murray . . was indicted[1] . . [248] two counts . . in the first it is alleged that . . [he] did . . play and bet at a gaming table, at a game of . . poker, with . . Jim Dunham, . . better known as Jim Deblois, . . In the second, he is charged, that he did . . in a place of which he . . had the charge, . . Clem's barber shop, permit . . Jim Dunham Deblois, a negro, . . to play for money, . . found guilty, and the jury assessed his punishment at fifty lashes. . . motion . . in arrest of judgment . . overruled"

[254] "*Per curiam.* Let the judgment . . be arrested and the defendant discharged." [251] "The legislature were creating a new offence[2] . . [252] they fix a punishment which to the slave is no punishment at all, because he has no means . . of paying a fine, nor . . liberty of which to be deprived. . . the policy of the State legislation was clearly . . established . . in keeping up the distinction between free persons and slaves, in separate codes, and in providing different punishments. We do not think the legislature intended including this class of persons, because as an additional reason, the offence is one a slave cannot . . commit. . . The slave has no control . . that is not under the master. . . [253] he has nothing to bet with; . . our general code . . creates the offence of adultery and fornication, and . . does not discriminate between white persons and negroes. Yet no one would think of indicting a slave for such an offence," [Forward, J.]

Judge v. Moore, 9 Fla. 269, 1860. "note [for $300] was given for the hire of . . Henry and Randall, for . . 1853" After two months [276] "Randall ran away . . and went back to plaintiff [his owner] . . plaintiff, on demand of defendant, delivered him up, . . boy ran away again and

[1] Under the act of Feb. 27, 1839, amending the act of Feb. 10, 1832, and under an amendment of the act of 1839, passed Jan. 8, 1853, and under the act of Nov. 21, 1828, sect. 61.

[2] Act of 1839, sects. 1 and 2.

went back to plaintiff, who thereupon proposed to defendant to take . . boy back and allow a credit of $150 on the note, but that defendant refused . . saying that he would sue plaintiff for damages." He told a witness that he "had got rid of a bad bargain, as Randall was a bad negro"

Kendig v. Giles, 9 Fla. 278, 1860. Bill of sale: [279] "Mobile, May 5th, 1858. Received . . eight hundred and fifty dollars . . for a negro man . . aged about twenty-three . . which slave I . . warrant sound in body and mind" The purchaser "has been put to great charges . . in employing physicians to prescribe for and nurse and attend said negro slave,"

Powell v. Leonard, 9 Fla. 359, 1861. [363] "Partridge . . was attended by . . Leonard . . as his physician; that a few hours before the death of . . Partridge, the slave Ann . . in the presence of witnesses, told her master that she had selected Dr. Leonard for her future master; that thereupon . . Partridge . . directed a bill of sale . . of . . Ann [and her four children] . . to be drawn up, which was accordingly done by . . Leonard" Held: [365] "the delivery of the mother was a sufficient delivery of the children."

Donaldson v. State, 9 Fla. 402, 1861. "The defendant . . was indicted[1] . . [in] Duval county. . . The first [count] charged that the defendant received grain from a slave, said slave not having a permit from the person having the control of said slave; the second, that the defendant purchased grain from a slave, not having such permit. . . [403] verdict of 'guilty' . . with a recommendation to the clemency of the Court; . . fine of twenty-five dollars against her" Judgment reversed: the eighth section of the act of February 5, 1834, was repealed as to East Florida, with the exception of Columbia County, by the act of February 14, 1835.

McLeod v. Executor of B. M. Dell, 9 Fla. 427, 1861. Dell's will, 1855: [432] "I . . bequeath to my Executors . . in trust for the Methodist Episcopal Church, in the place where my wife shall choose to reside . . in East Florida, . . one thousand dollars, . . the interest paid annually for the benefit of said Church, but under no circumstances to be paid to any man raised North of Mason and Dixon's Line, or tinctured with Abolitionism in the least degree;"

McLeod v. Executor of W. Dell, 9 Fla. 451, 1861. Held: [461] "it was the purpose of our Legislature in the enactment of the 51st section of the act of the 20th Nov. 1828, to withdraw slaves from the class of personalty to which they belong for ordinary purposes, and to place them upon an equal footing with realty, whenever a testamentary disposition is to be made of them; . . The growth . . of the 'peculiar institution' in the Southern States, has inspired sentiments which impart to that particular species of property even a greater degree of permanence than is accorded to realty. It is the cherished subject of inheritance, and a man . . [462] will strip himself of every other species of property,

[1] Under the act of Feb. 5, 1834, sect. 8. Thompson's *Digest,* p. 508.

even the old 'homestead,' . . before he will consent to part with his slaves. . . the land and slaves embraced in the nuncupative will of William Dell . . did not pass . . in respect to these, he is to be considered as having died intestate." [DuPont, C. J.]

Harrell v. Durrance, 9 Fla. 490, 1861. [493] "price and value of . . three negroes . . thirty-three hundred dollars" in 1858.

Chaires v. Brady, 10 Fla. 133, 1862. [139] "This family of slaves [[141] 'a negro woman . . and I think eight children said to be hers'] constituting the bulk of his property, . . he was dependent upon it for a support"

Smith v. Hines, 10 Fla. 258, 1863-1864. [262] "Slaves were hired in . . Lowndes [County, Georgia,] . . for the years 1857,—'8,—'9,—'60 and '61, No. 1 hands at from one hundred and sixty-five dollars—women at from one hundred to one hundred and twenty dollars; slaves, the present year, (1862,) men at one hundred and fifty dollars, women eighty-five dollars. . . [263] negroes hired for more in Hamilton county, Florida, . . [295] he takes all his negroes . . leaves Georgia and settles in . . Florida, in . . 1854;" He sold Olivia for $925.

Owens v. Rhodes, 10 Fla. 319, 1863-1864. [321] "Received of . . Rhodes a negro woman . . about thirty-five, which I am to take to . . Alabama to sell for seven hundred dollars or more; also a negro woman . . and her child, which I am to sell at one thousand dollars or more, . . Tallahassee, Dec. 23, 1853."

Miller v. Gaskins, 11 Fla. 73, 1864-1865. Sixth clause of the will of Thomas G. Gaskins, who died June 13, 1862: [74] "I give . . to . . Miller, Sarah and William Henry, in trust, that he will allow . . Sarah to go, if she wishes, to any free State, and for that purpose I direct my executor to pay him . . one hundred dollars, and upon trust that he will have William Henry bound out to a useful trade until he is twenty-one; and upon further trust that he will allow Sarah and William Henry to enjoy such privileges and freedom as is consistent with law, and I direct that . . Miller shall have the sole control . . without any account to any one." The bill alleges that Miller has "in a great measure given . . Sarah her freedom, allowing her to go at large . . without payment of any wages to him and without any subjection to him . . that Miller has . . William Henry with him . . in camps, to wait upon him and serve him as a slave in all respects, and treating him with great severity; . . not been put to a trade . . [75] The answer of Miller . . 'denies that he has given . . Sarah her freedom . . admits he has the boy . . in camps with him, but denies that he is treated with severity'"

Held: [78] "this devise [is] null and void. There is no evil against which the policy of our laws is more pointedly directed than that of allowing slaves to have any other status than that of pure slavery. . . [79] In answer to the argument that the woman was to be allowed to go . . if she wished, we say that she being a slave is incapable of electing . . [80] the property . . was not disposed of by the will" [Walker, J.]

Robertson v. Baker, 11 Fla. 192, 1866-1867. [212] " 1847 . . they purchased . . plantation . . with fifty-one slaves "

Walker v. Gatlin, 12 Fla. 1, 1867-1868. Held: [16] " the vendor and vendee—the one giving and the other accepting the warranty, that the negro was ' to be a slave for life,' contracted . . in the full understanding that their contract was subservient to any change in the political status of the negro . . which the supreme authority of the State might . . decree. . . [17] there was no *insurance* . . against the exercise of this right of sovereignty " [DuPont, C. J.]

June v. Myers, 12 Fla. 310, 1868-1869. " complainant . . alleges, that in . . 1861, he . . left this State, leaving in possession of the appellant three . . slaves . . agreement that they were to work . . upon the plantation of the appellant . . the complainant to receive . . an equal share per hand of the entire gross crop . . that said slaves labored continuously . . to the first of May, 1865,"

Slaback v. Cushman, 12 Fla. 472, 1868-1869. " action . . commenced in 1866 . . to recover for the services of a negro woman . . from October 20, 1863, to March 20, 1865. . . [473] Verdict for plaintiff . . for $136,"
No error: the emancipation proclamation [478] "was not effective *outside of the line of military occupation,*"

Railroad Co. v. Nash, 12 Fla. 497, 1868-1869. [507] " The slave Jackson was hired . . for the company, of . . Nash, in January, for the balance of the year 1860, for two hundred dollars. . . [509] Plaintiff asked more wages for Jackson, in consequence of the risk he would run as fireman, than he asked for him to work in the country. Jackson was in the employ of the . . company . . in 1857, as a fireman. . . He had objected to the manner in which he had been employed, first at one thing, then at another. . . The strict duties of a fireman were to be performed [in 1860]. He was not to attend to the coupling . . or shifting . . He got off to attach a rope to the train and engine . . when the train got far enough he loosed the rope and said, ' All right, come back,' . . [510] There was plenty of time from the time the rope was loosened to the time the engine started, to have got on before it started." [509] "getting back [while the ' engine was barely moving '] fell, and the wheel ran over his foot." " died from lockjaw, . . [511] The jury returned a verdict for the plaintiff, and assessed the damages at $1800."
New trial awarded: [517] " Jackson was not injured . . while employed in an act not warranted by the contract of hiring; that if he *had* lately *been* so engaged, the injury did not occur in its performance "

Branch v. Wilson, 12 Fla. 543, 1868-1869. [547] " Branch . . testified . . [Wilson] said Dr. McMickan thought the woman could not be safely moved for eight or ten days. I replied, if I purchased I should be my own judge as to the time of removing them. . . Handed him the note " [544] " five thousand dollars [in Confederate bonds] for . . Anna, and her four children, this 12th day of September, 1863." [547] " I said to him: ' As you have my note, I now demand the delivery of

the negroes.' He became agitated, and said: ' No, no, Dr. Branch, I cannot deliver them now, my property would be all exposed,' . . [548] he would have to move first; . . he would . . deliver them . . on Tuesday . . I replied, . . ' you live so near the line the Yankees may come up and carry them off, or they may run away.' He replied, ' That will be my risk,' " [546] " on Monday morning . . Wilson said: ' All my negroes are gone; they went last night.' "

McNealy v. Gregory, 13 Fla. 417, 1869, 1870, 1871. Held: [442] " The abolition of slavery . . does not destroy the right of action which the vendor of the slave so emancipated has against the vendee . . and any action of a convention . . which directs the courts to hold otherwise is void, as it impairs the obligation of the contract." [Westcott, J.]

Stephens v. Gibbes, 14 Fla. 331, October 1873. In 1860 General Kilcreasa's [332] " real estate consisted of . . many thousand acres, . . [333] the personal property consisted of 177 slaves, appraised at $135,-550; other personal property appraised at $16,240; . . [335] upon the close of the war, through the emancipation of the slaves and the depreciation of the real estate, the estate . . [became] insolvent,"

Price v. Hicks, 14 Fla. 565, July 1874. [566] " Hicks, complainant, . . alleged . . that in 1863 . . [he] was a slave . . that with the consent of his owner he formed a partnership with . . Fitts in the business of blacksmithing at Tallahassee, which continued for about a year, . . [567] Fitts keeping the accounts and collecting the moneys earned. . . The hire of Hicks from his owner in 1863 was to be paid at $600 per year out of Hicks ' share of the earnings. During . . 1863, there was purchased by the partners . . two town lots . . in . . Tallahassee, . . two mules and one horse were purchased by the firm, . . A valuable wagon was made by the firm as their property," [578] " It does not appear that there was a continuing copartnership from 1863 to 1866, because the complainant expressly states that he refused to continue it after 1863," [567] " From January, 1866, they again carried on the business as partners until Fitts' death in July." [583] " witnesses say that Fitts told them that Hicks owned one-half interest in [' the Lasch land . . 40 acres '] . . and that they were cropping the land together." [582] " The title . . was undoubtedly taken in the name of another than Hicks, because of his then legal incapacity to hold in his own name; and the transaction was managed by a very intelligent and honorable member of the bar, (Judge Hogue,) selected by Hicks himself for the purpose."

Held: [578] " whatever question might have been raised as to the rights of the parties on account of the status of the complainant in 1863, . . the subsequent negotiations resulting in a renewal of the copartnership after he became free recognized his rights as though he was free in 1863, and he is entitled to the benefit of that recognition." [Randall, C. J.]

ALABAMA

INTRODUCTION

I.

A liberal spirit pervades the Alabama decisions down to 1859. The Supreme Court of that state did not even become excited in 1837 over the case of M'Donald, a free negro apparently, who had tried to instigate a slave to start an insurrection. It held that his "conviction was unauthorized," as his suggestions had failed to instigate and there was no actual insurrection on foot.[1]

In the matter of emancipation the Supreme Court of Alabama, unlike that of Georgia,[2] did not "stand upon the order" of the words "liberate" and "remove," but held in 1852[3] that the slaves which the testator directed should "be liberated and removed . . knowing full well they cannot be given their freedom to remain in this State," could be emancipated by removal to a free state, thus defeating the claim to the slaves, made by the heirs, who, it should be noted, resided in Wisconsin.

From 1830 to 1854[4] the Supreme Court of Alabama consistently held that slaves could not be emancipated by will, unless the emancipation was to take effect outside of Alabama. Chief Justice Collier declared, in Trotter *v.* Blocker,[5] that "the Constitution [of 1819], by investing the General Assembly with the power 'to pass laws to permit the owners of slaves to emancipate them,' has impliedly, abrogated all pre-existing modes." But in 1854[6] the court overruled Trotter *v.* Blocker on this point, holding that Darby's bond to emancipate the slaves of Mrs. Prater who had been sold to him by her on that condition, and whom he directed his executors to emancipate "in that manner which . . [they] can . . lawfully do," without specifying where, was legal, there being "nothing on the face of Darby's bond which requires him to free the slaves *in this State.*" Prater *v.* Darby was in turn overruled in 1859[7] when the court dismissed a bill for the specific performance of a contract which had been repudiated by the new owner of a slave blacksmith, who had agreed with the old, to free the slave as soon as he refunded the $1250 paid for him, with ten per cent. interest. The ground for dismissal was that the [452] "contract contains no term . . which looks beyond . . Alabama for its performance." The chancellor in the court below had ordered

[1] State *v.* M'Donald, p. 141, *infra.*

[2] See introduction to the Georgia cases. The Supreme Court of Mississippi was more explicit than that of Alabama. See introduction to the Mississippi cases.

[3] Atwood's Heirs *v.* Beck, p. 183, *infra.*

[4] Isbell *v.* Stamp, p. 135, Trotter *v.* Blocker, p. 143, Alston *v.* Coleman, p. 155, Harrison *v.* Harrison, p. 159, and Roberson *v.* Roberson, p. 182, *infra.*

[5] P. 143, *infra.*

[6] Prater's Administrator *v.* Darby, p. 195, *infra.*

[7] Evans *v.* Kittrell, p. 230, *infra.*

the defendant to remove the slave "to some non-slaveholding State or country, and there emancipate . . him." But the upper court refused to permit him to "engraft . . a term, not inserted by the parties."

A blunder of the court in 1848, in regard to Wallis's will, would have had more disastrous consequences for the slaves of Creswell in 1861 if the date of the decision relegating them to slavery had not been so momentous. Wallis's will had provided that eight "kind and faithful servants . . be permitted to go to Africa, . . [but if they] prefer to remain subject to my . . daughter, . . they may be permitted to do so," and the court had held (in Carroll *v.* Brumby)[8] that they had [105] "not the legal capacity . . to choose—the law forbids this, (see 6th Porter, 269)."[9] Therefore freedom was denied. But the question of choosing freedom or slavery did not arise in "6th Porter, 269" and was not even mentioned in that case. Nevertheless in 1861[10] the decision in Carroll *v.* Brumby was upheld by the Supreme Court. Creswell had directed his executor to take his four "faithful slaves . . to some non-slaveholding State, or to . . Liberia, as the . . slaves may prefer, . . But, should . . any . . of them, prefer to remain in slavery," they were bequeathed to his sister. The court denied to the slaves the capacity either to elect freedom, or, even if that were conceded, to choose where they would go to enjoy it, "a condition, the performance of which is essential to the execution of the trust in their favor."

In 1867 the Alabama Constitution of 1819[11] was invoked by Mrs. Frances L. Logan when seeking to recover from the state the value of her slaves, who, she alleged, had been emancipated by the state without her consent and without any offer of compensation; but the court held, in accordance with two of its decisions in 1866,[12] that slavery had not been abolished in Alabama by the convention of September 1865, but by the act of war—the occupation of the state by a federal army in May 1865. The judges of reconstruction days made some fine-spun distinctions in regard to this subject; but even with respect to them they did not unanimously concur.[13]

While the rule *"partus sequitur ventrem"* was rigidly applied in the slaveholding states (except in Maryland from 1664 to 1681), the Supreme Court of Alabama held, in two remarkable cases, "that all the incidents of the mother's condition at the . . birth of the child do not invariably attach to the offspring."[14] The first case[15] was that of the child George, born in 1848 in Indiana, where his mother and another infant, born in Alabama, had been taken by their owner and emancipated by deed in September 1847. The mother and children returned to Alabama a few

[8] P. 166, *infra.*
[9] Trotter *v.* Blocker, p. 143, *infra.*
[10] Creswell's Executor *v.* Walker, p. 247, *infra.*
[11] Art. VI. "The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated."
[12] Jeffries and Jeffries *v.* State, p. 262, and Ferdinand Smith *v.* State, p. 264, *infra.*
[13] Morgan *v.* Nelson, p. 269, and McElvain *v.* Mudd, p. 270, *infra.*
[14] 23 Ala. 166.
[15] Bank *v.* Benham, p. 188, *infra.*

months after George's birth. In the meantime their former owner had departed for California, leaving unpaid a debt due in May 1847. An execution was twice levied on these three negroes in 1849, and each time they were taken out of the possession of the sheriff, under a writ of *habeas corpus,* and discharged. The Supreme Court of Alabama held that George was not subject to the levy. Though his mother " was liable . . to be subjected into slavery to satisfy the claims of antecedent creditors, . . until such creditors had obtained a lien, . . she must be regarded free to all the world." [16]

In the second case,[17] the owner of a slave who had fled from Virginia to Kentucky sought to recover her children, born after her flight, invoking the fugitive slave act of 1793; but the Supreme Court of Alabama held that the quality of " fugitive " was not inheritable.[18]

The number of cases in which slaves convicted of crimes were granted new trials is remarkable, all the resources of the law being invoked in their favor.[19] Special caution was observed in admitting their confessions.[20]

The frequency of unlawful acts in regard to slaves, such as " running them off " in the night to avoid creditors,[21] or seizing them violently in cases of disputed ownership,[22] reminds one of the lawlessness of the prohibition era. Such acts set a bad example to slaves and they followed it in numerous instances, particularly in running away from their hirer to their owner,[23] or from a new master to the old.[24]. The single instance of the suicide of a slave found among these Alabama cases is that of one who did not wish to go with a new master.[25]

[16] Judge Ligon, commenting on this case, in his opinion in Fields *v.* Walker (23 Ala. 155), says: [167] "notwithstanding the mother's *status,* on her return to this State, was that of slavery, so far as the creditors of her former master are concerned, this incident of her condition did not attach to the child born in Indiana after her emancipation, although she brought it here with her."

[17] Fields *v.* Walker, p. 189, *infra.* Judge Porter, giving the opinion of the Supreme Court of Louisiana in Volant *v.* Lambert in 1828, had declared: "The article in the constitution of the United States does not apply to a case where the citizens of another state, whose laws recognize slavery, set up a title to a slave found within its limits." P. 484, *infra.*

[18] Judge Yeates of Pennsylvania had declared in 1816: " It cannot be supposed for a moment, that the child . . who was not in existence when her mother ran away . . was a fugitive." 2 S. and R. 305 (308).

[19] Chief Justice A. J. Walker declared in 1866 that " it is alike creditable to the impartiality of our courts, and the wisdom of our laws, as well as to the sympathies and humanity of our slave-owners, that no class of culprits in the State have been more carefully or ably defended by counsel, or have more fully enjoyed the benefit of those wise principles which the law has appointed for the protection of innocent persons." 39 Ala. 620.

[20] See index, under Confessions rejected. Judge A. J. Walker declared in 1858 that " a slave who has once made a confession from the prospect of favor, may persist in the same statement, lest he might be punished for the change of his statements. . . a sufficient reason for the use of more caution in the admission of a slave's than of a freeman's subsequent confessions." 32 Ala. 568.

[21] See index under Running off slaves.

[22] *Ibid.* under Violent seizure of slaves.

[23] *Ibid.* under Running away from hirer to owner.

[24] *Ibid,* under Running away to former owner.

[25] Thomason *v.* Dill, p. 216, *infra.* There is a single instance of the same kind among the South Carolina excerpts (vol. II. of this series, p. 425). Other instances for other reasons are given in vol. I., p. 410, and in vol. II., pp. 586, 588.

The free negro appears to have flourished in Alabama. Lewis Young died in 1834, " seized of a lot . . with several tenements . . and possessed of two slaves, . . together with sundry notes and accounts . . and two soldiers' land warrants, each for one hundred and sixty acres " [26] in Arkansas. Another free negro rented a house, using the lower rooms as a barber's shop and the upper " in experimenting, and attempting to learn the art of taking daguerreotypes." After he " had abandoned the attempt to learn the daguerrean art," his dark room was appropriately used by ten or twelve white men for surreptitious gambling.[27] Another, Chavis, held the office of constable in 1859, and a white man was indicted for offering resistance to arrest at his hands. The defendant offered to prove that Chavis's great-grandparents were mulattoes, and that consequently his election as constable " was an absolute nullity . . and that the defendant had the right . . to prevent himself from being arrested by a free negro." The court excluded the evidence, holding that Chavis was an officer *de facto,* and that his pedigree could not be called in question.[28] If debts may be taken as an index of prosperity, Lawson Thomas owed $475 in 1847,[29] and a firm consisting of a free negro and a silent white partner owed $1500 in 1859.[30] Lydia, who had " made considerable money " as a midwife, was permitted to redeem a house and lot, the property of her husband, a blacksmith, by paying " upwards of three hundred dollars." [31]

Certain slaves did not lag far behind. One slave who was permitted " to hire his own time, make contracts, etc., and to keep what he made, paying his master hire . . had three or four hundred dollars " before he began working in a store. There he was " detected in purloining goods," his house was examined and five hundred and eight dollars found, of which he paid two hundred and fifty for the goods he had stolen.[32] Spencer, a slave, hired George, a good slave painter, for the year 1852 for $140. Hoke had previously hired Spencer from his owner, and permitted him to go at large, make contracts and collect the money, with the understanding that Spencer, on refunding his hire, " was himself to have the balance of his earnings; . . Spencer did business in the same way in . . 1851, and for several years prior." Such a " setting-up for himself " was in violation of the law; but the court held that acquisitions by a slave, absolutely disposed of by him, could not be reclaimed.[33] Dick " followed ditching . . and made a good deal of money in that way; . . had a shoe shop, and had hands employed under him . . also . . a shop . . where he sold candy, cheese, tobacco, etc.; . . he also purchased . . two negro boys." [34]

[26] Bentley *v.* Cleaveland, p. 188, *infra.*
[27] Moore *v.* State, p. 218, *infra.*
[28] Heath *v.* State, pp. 232, and 241, *infra.*
[29] Fambro *v.* Gantt, p. 164, *infra.*
[30] Ingersoll *v.* Robinson, p. 236, *infra.*
[31] Becton *v.* Ferguson, p. 187, *infra.*
[32] Jones *v.* Nirdlinger, p. 181, *infra.*
[33] Stanley *v.* Nelson, p. 208, *infra.*
[34] Broadhead *v.* Jones, p. 257, *infra*; see also Evans *v.* Kittrell, p. 230, Martin *v.* Reed, p. 247, and Webb *v.* Kelly, p. 249, *infra.*

The doctrine of states' rights proved a two-edged sword in the hands of Chief Justice A. J. Walker of Alabama. He gave an opinion in 1863 [35] that an Alabama court had no more right to obstruct the execution of the Confederate conscript law than a Wisconsin court [36] "to thwart the execution of the fugitive-slave law in that State." The sword was however blunted by the adverse decision of his colleagues in a later case [37] of the same term. In his dissenting opinion of twenty-eight pages the chief justice asks: [489] "upon what ground . . can it be maintained, that the State laws can interfere with the execution of the conscript law, and yet were without power to interfere with the enforcement of the fugitive-slave act? . . [497] [Ableman *v.* Booth [38]] ought to have settled the question; and in all probability the point would never again have been agitated, if we had continued to occupy our former relation to the United States. *Tempora mutantur, nos et mutamur in illis.*"

He predicts what may be the effect of holding that [499] "the officer charged with the execution of the conscript law has no authority to decide the question of liability to conscription." "The tribunals of a single State . . may utterly subvert the application of the power to raise armies to [*sic*] that State. They may even invite the people from other States, by peculiar rulings, to fly to their jurisdiction as a shelter from the enforcement of the law. It is to be apprehended that our government will not be permitted to pass through its infancy, without experiencing some or all of the ruinous consequences which are (as I believe) probable results of the proposition, that State courts have the jurisdiction claimed for them." But the chief justice stood alone in his broad assertion of the principle: [504] "in no case known to me has an appellate State court sustained the doctrine which I maintain. Both of my brother judges differ from me. . . Under the circumstances . . I shall . . suffer the State jurisdiction to be exercised, to the extent agreed upon [39] by this court, without further controversy."

II.

The Alabama constitution of 1819 provided that, until the general assembly should otherwise prescribe, "the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts;" [40] and this system continued till 1832, when a

[35] *Ex parte* Hill, *in re* Willis, *v.* Confederate States, p. 255, *infra.*
[36] Ableman *v.* Booth, 21 Howard (U. S.) 506 (1858).
[37] *Ex parte* Hill, *in re* Armistead, *v.* Confederate States, p. 256, *infra.*
[38] 21 Howard (U. S.) 506.
[39] [504] "whenever a person in the custody of an enrolling officer . . shows that he belongs to any one of the classes . . expressly 'exempted' . . by the laws of [C. S.] congress; or that, having furnished a substitute, he has obtained a discharge, which is still . . operative; or that he is not of conscript age; or that, because of non-residence, color, or other legitimate reason, the law of conscription does not apply to him, it is . . the sacred duty of the judges of the State courts, to discharge him on *habeas corpus.*" [R. W. Walker, J.]
[40] By the act of Dec. 14, 1819, the state was divided into five judicial circuits.

separate Supreme Court was created, consisting of three members.[41] The number of the judges was increased to five in 1851,[42] but reduced to three again in 1854.[43]

[41] Act. of Jan. 14, 1832
[42] Act of Dec. 20, 1851.
[43] Act of Feb. 1, 1854.

McGrew v. Cato's Executors, Minor 8, May 1820. "Sterling Cato brought his action of trespass *vi et armis* . . *vs.* . . . McGrew and another for killing his slave. . . Verdict of Guilty against McGrew, and of Not Guilty as to his co-defendant. Judgment against McGrew, on which he brought his Writ of error."

Judgment reversed: "The Court below erred . . in instructing the Jury that the plaintiffs could recover for the private injury before an acquittal for the presumed felony."

Humphrey (*a slave*) *v. State,* Minor 64, June 1822. "The prisoner was tried in the County Court . . April, 1822, under the Laws of this State for the trial of slaves charged with capital offences, and convicted of burglary. He appealed to this Court." Held: no jurisdiction.

Meeker v. Childress, Minor 109, June 1823. "Childress . . hired the slave for a year to . . Smith . . who called in the plaintiff, a practicing physician, to attend the slave." Held: "the hirer . . is bound to pay the physician for his services,"

The Merino, 9 Wheaton (U. S.) 391, February 1824. [393] "The *Merino* cleared out at Havana on the 2d of June, 1818, for Mobile, and the *Constitution* and *Louisa,* on the 10th . . for New-Orleans." They had "each received on board . . a number of slaves, newly imported from the coast of Africa, . . belonging to subjects of Spain, residents either of Havana or Pensacola, to be transported from the former to the latter place. . . [394] On their arrival within, or near to, the bay of Pensacola, that place was found in possession of the American army, under the command of Gen. Jackson." The *Merino* and *Louisa* were seized by the United States ketch *Surprise.* "The *Constitution* was taken possession of by Col. Brooke, . . [but] was boarded off Mobile point by the United States revenue boat, and was carried in and reported by Capt. Lewis, commanding said boat, . . as having been seized by him, . . the vessels [owned by citizens of the United States] and their cargoes were severally condemned as forfeited to the United States." [1]

Held: [408] "that in the case of Antonio de Frias [who imported the slaves from Africa] and David Nagle [who had purchased part of the slaves from de Frias] against eighty-four African slaves [on board the *Constitution*], the sentence of the Court below is erroneous, and ought to be reversed, and that a decree of restitution ought to be made." "The possession of the vessel . . being lawfully vested in Col. Brooke, at the time she was boarded by the revenue boat, . . it could not . . be asserted, that she was employed in carrying on trade, contrary to law, at the time she was so boarded. . . If . . a capture of the vessel could not be legally

[1] Acts of Congress, May 10, 1800, and Apr. 20, 1818.

made by the revenue boat, then the claims of the owners of the slaves on board, is [*sic*] not precluded by the 4th section of the act of 1800;" [Washington, J.]

Outlaw v. Cook, Minor 257, December 1824. " the note on which the action was brought was given for the hire of a slave for a year, who was in good health when hired; but two or three months afterwards, by an accidental wound, was disabled from performing any labour, and rendered . . expensive to the hirer . . The Court below charged the Jury, that unless it had been otherwise specially agreed, the hirer was nevertheless bound to pay the full amount " No error.

Barnes v. Baker, Minor 373, December 1824. [374] " Levied on one negro woman . . and child named Henderson, . . March, 1823." They were sold " for $540 12½ "

State v. Moses, Minor 393, December 1825. " Moses . . was indicted for the murder of . . his master. The indictment did not charge that the slain was a *free person.*[1] The prisoner was found guilty of manslaughter. . . judgment of death "

Judgment arrested and the cause remanded: [394] " the words of the indictment, ' master and owner of . . Moses,' does not necessarily imply a free person;" [Crenshaw, J.]

Rogers v. Wilson, Minor 407, July 1826. Wilson [408] " had stated . . that the negro of Rogers, who had run away, applied to him one night through the medium of another negro of Rogers, for a pass, and that he had refused to give it; and that another time, while the negro was run away, he was applied to to leave provisions for him in the woods where they had been at work—that Wilson was then in the employ of Rogers—that when asked why he did not then inform Rogers where his negro was, he said, because he ' did not wish to make a fuss.' . . witness . . has seen Wilson with one of Rogers's negroes . . buying liquor in the day time, when . . they ought to have been at work."

State v. Phil, 1 Stewart 31, January 1827. " March term 1825 . . Phil, a slave, was indicted and found guilty of an assault, with an intent to commit a rape. The judgement was arrested. At October term, 1825, an indictment for the same offence, charging the assault to have been on a free white woman, was returned a true bill. The venue was changed . . November term, 1825, . . On the appearance of the jurors . . so many were set aside that a sufficient jury was not left. . . a sufficient number . . could not be obtained at that term. At April term, 1826, . . [32] the presiding judge was informed of the alarming illness of his family, and gave intimation that the Court would . . adjourn. The counsel for the prisoner moved for his discharge;[2] . . refused . . At November term, 1826, . . the prisoner was found guilty and sentence of death passed on him." Judgment reversed, [33] " and that the prisoner be discharged."

[1] Act of 1814.
[2] Act of 1807, sect. 6. Toulmin's *Digest* (1823), p. 662.

State v. Peter, 1 Stewart 38, January 1827. " the prisoner was indicted for the murder of another slave, and found not guilty of murder, but guilty of manslaughter: . . judgement that he should be whipped and branded," [1] Affirmed.

Morgan v. Rhodes, 1 Stewart 70, January 1827. "Rhodes brought an action of trespass against Morgan, charging him with having killed his, the plaintiff's slave, of the value of $1000, . . The defendant . . plead ' that the plaintiff did not produce any witnesses before the grand jury, or use any exertions to have a bill of indictment found against the defendant, but . . [71] used all exertions to prevent, . . this plea was ordered to be stricken out. . . verdict and judgement for the plaintiff." Judgment reversed and the cause remanded: " public justice must be answered before the owner . . can obtain redress . . if the master becomes prosecutor . . he should conduct the prosecution in good faith. If an acquittal should be brought about by his collusion, he cannot afterwards sustain an action for the trespass." [Lipscomb, C. J.]

Ross v. Wells, 1 Stewart 139, January 1827. [140] " the consideration of the note [for $950] was three negro girls "

Goodwin v. Morgan, 1 Stewart 278, January 1828. [279] " when plaintiff was four or five years old, and Rose a little older, . . [his mother,] in the presence of [witnesses,] . . took Rose by the hand and placed it in the hand of the plaintiff, saying that she gave her to him as his property forever."

Brandon v. Bank, 1 Stewart 320, January 1828. [337] " an action of trover to recover $2,190 in notes of the Huntsville Bank." A witness " heard the boy [slave of the plaintiffs] exclaim he had found the money, and saw the boy hand the bundle . . to Pryor;" Pryor deposited the notes in the bank, but returned the next day and " demanded the notes of the Cashier, who refused to deliver them. . . that the plaintiffs were both absent from home, . . October, 1825 [eleven months later], . . Brandon, one of the plaintiffs, . . [demanded] of the Cashier . . the said notes . . and that the Cashier refused to deliver them," Held: [338] " the owner [of the slave] . . is entitled by law to sue . . [339] in the absence of any evidence respecting the loser " [344] " The defendants . . [are] *tort feasors* or trespassers "

Bassett v. Jordan, 1 Stewart 352, January 1828. " hired . . four negroes, from the first of July [1816] till the last day of September . . [at] $17 50 per month each, for two of the negroes, and $18 25 per month each, for the other two."

Rivers v. Loving, 1 Stewart 395, January 1828. " On the 25th day of December next, I promise to pay . . two hundred and thirty dollars current money, of the county . . for the hire of two negro men, . . which boys I promise to clothe with a summer and winter suit, blanket, hat and shoes, and return . . [396] on the 25th day of December next. . . 10th

[1] Toulmin's *Digest,* p. 185.

day of January, 1824." Endorsed on the back: "25th of December, 1824, credit for Doctor fee $10, to two pairs of shoes $5;"

Caldwell v. Bennett, 1 Stewart 425, January 1828. [426] "it was agreed . . 'that inasmuch as the negro was sickly, for the hire of whom the note was given, the defendants should deal tenderly with the . . negro; and that the value of the time . . lost . . on account of sickness, should be deducted'"

Gayle v. Singleton, 1 Stewart 566, July 1828. "1811 he lent to . . Gayle, who . . resided in South Carolina, eleven hundred dollars; and . . took . . a mortgage of fifteen negroes. . . some time after . . Gayle moved to the Alabama river, . . within the then Mississippi Territory, carrying with him the negroes"

Brannan v. Oliver, 2 Stewart 47, July 1829. "In 1817 . . removed with . . the slaves [from South Carolina] to . . Alabama."

Hobbs v. Bibb, 2 Stewart 54, July 1829. In 1825 four negroes were sold for $2700. They were hired [55] "for the year 1827, for $200"

Moore v. Dudley, 2 Stewart 170, July 1829. Bass's will, 1819: "unto my daughters, . . Susan [and four others] . . a lot of negroes to each, equal in value to the lots [of eight negroes each] given to my daughters Sarah . . and Ann . . as my daughters marry or come of age, that their lots of negroes should be valued and laid off" [171] "At the death of the testator . . the executor . . estimated each lot [belonging to Sarah and Ann] at about $3,900, . . In February, 1824, Susan . . intermarried . . The negroes being hired out . . in January following, the executor, with the assistance of two other persons, proceeded to set apart . . a lot of eight negroes, corresponding in age, size, comeliness, and capacity, to the lots . . assigned to . . the elder daughters." Susan and her husband "objected to receiving this lot as full satisfaction, . . three persons chosen by them . . valued them . . at $2,435, . . the County Court . . decreed that additional negroes should be set apart . . to the value of $1,515;"

Reversed: [173] "the testator intended to make these legacies . . equal . . by division; for otherwise . . It would depend alone on the contingent state of the negro market when either daughter might marry . . one might speculate handsomely on her brothers and sisters, by the temptation to favor a match at a time of extreme depression, as in 1824; while another, at a different period, might be compelled to postpone an acceptable offer, or yield her claim to four or five negroes, because the times should exhibit the delusive appearance of prosperity, as in 1819." [R. Saffold, J.]

Brandon v. Snows, 2 Stewart 255, January 1830. In 1824 a negro boy was levied on and sold for $255. He was hired soon after [256] "at $20 per year, . . a reasonable rate"

Isbell v. Stamp (cited in 6 Porter 293), January 1830. Held: "that slaves could not be emancipated by will . . that it was essential, that the authority should be given, either by general or special enactment."

Duff v. Ivy, 3 Stewart 140, July 1830. "Received . . three hundred and fifty dollars for . . Charity, which I warrant and defend" Held: [144] "the warranty extends . . to the soundness as well as the title."

McMillion v. Pigg, 3 Stewart 165, July 1830. "1827, he purchased a slave . . paid . . $150 . . and gave . . his note for $200, . . that the slave at the time . . and ever since, has been unsound in both his legs and other parts of his body, so that he has not been able to render service sufficient to pay for his maintenance;"

Smith v. Wiggins, 3 Stewart 221, July 1830. [222] "during two years, Smith . . had hired him out for $125 each year."

Cary v. Gregg, 3 Stewart 433, January 1831. [434] "levied on negro woman . . April, 1829, the negro . . was sold for $301,"

Smith v. Rogers, 1 Stew. and P. 317, January 1832. [323] "fraudulent sale of the negroes and running them to Florida"

Standefer v. Chisholm, 1 Stew. and P. 449, January 1832. [452] "on . . taking possession of the slaves, . . he procured . . Standefer to carry them to . . Mississippi . . where they remained on hire . . for a considerable time, and until . . they were brought back"

Glover v. Millings, 2 Stew. and P. 28, January 1832. "Charles Millings, a negro, filed a petition . . alleging that he was a free man, and . . illegally held in bondage by . . Glover; . . verdict . . in favor of the petitioner:" Bill of exceptions: [30] "The defendant . . moved the Court to exclude . . evidence . . it was material for the petitioner to prove, that he . . had been in the northern army, . . [31] witness [deposed]—'said Charles lived in Windsor [Vermont], with his parents, from his boyhood, until . . not far from the commencement of the late war with Great Britain, at which period, as deponent has understood by general remark, . . Charles, in some way, became attached to the army;' . . motion . . overruled, . . A witness . . swore that the petitioner had made himself known to him, as having known him . . in the northern army; that the petitioner had called to his mind things that did happen there; that from said circumstances, and also from the appearance of the boy, (he being evidently a northern negro) . . he believed him to be the boy he saw in the northern army; . . [32] evidence . . received." Judgment reversed and the cause remanded.

Moorehead v. Gayle, 2 Stew. and P. 224, June 1832. "assumpsit . . to recover the amount of a . . note . . given for . . a slave, . . [225] the vendor . . executed a bill of sale, containing an absolute warranty of the soundness of the slave; that on the second day after . . the overseer . . 'was told that the . . slave, from his appearance . . was unsound,' . . eight days after the sale the slave died. . . the slave continued to work on the defendant's plantation, from the sale till his death." Verdict for the defendant. No error.

Tarver v. Richardson, 2 Stew. and P. 331, June 1832. [332] "the defendant bought [in August 1827] . . a man, woman and child, at . .

nine hundred dollars, . . the woman was sick, and it was agreed that unless she recovered she was not to be paid for; . . the other two . . were not worth more than five hundred dollars, which . . was paid down . . the woman had not recovered in December following, . . tendered her back . . [The vendor] refused to receive her; . . she continued . . an expense . . until the fall of 1828, when Richardson sold all three [in Louisiana] for one thousand dollars, the woman being estimated at one hundred dollars."

Baker v. Rowan, 2 Stew. and P. 361, June 1832. Held: [371] " family slaves, to which owners are attached, should be preserved in *specie,* by the interposition of Chancery,"

Prince v. State, 3 Stew. and P. 253, January 1833. " indictment . . for negro stealing;[1] . . found guilty."

Cozzins v. Whitaker, 3 Stew. and P. 322, January 1833. [323] " action . . to recover damages for a deceit . . The declaration . . alleges, that the defendant, by . . representing . . that the slave was honest, industrious and free from vice, . . and would command a high price (when he . . knew the very reverse . . to be true) . . induced the plaintiff to purchase" Bill of sale: [324] " for . . five hundred and twenty-five dollars . . sold . . Anthony . . about eighteen . . (warranted sound, in body and mind, and a slave for live,)" [323] " The slave was, in fact, so dishonest, lazy and vicious . . that he . . was of little or no value, to the plaintiff." Held: [325] " it is competent for the vendee to prove by *parol,* that the sale was effected by fraudulent means."

Richards v. Vanner, 4 Stew. and P. 64, January 1833. [65] " Vanner doth . . hire to . . Richards [on January 31 or February 1, 1821], two . . slaves . . for the services of which . . Richards doth bind himself . . to give . . twelve dollars each, per month [for nine months]; and . . one summer suit"

Caldwell v. Wallace, 4 Stew. and P. 282, June 1833. [283] " Received . . four hundred dollars . . for a negro woman . . supposed to be about twenty-four . . which I warrant to be well and sound in person, . . 1830." " The plaintiff . . proved that the negro . . was of weak and unsound mind, being deficient in understanding." Held: " the warranty extended as well to defects of mind, as of body;"

Hogan v. Bell, 4 Stew. and P. 286, June 1833. [298] " bought three negroes [in North Carolina] from a Virginia trader" before 1798.

Wyatt v. Greer, 4 Stew. and P. 318, June 1833. " Wyatt filed a bill . . setting forth, that . . 1822, he purchased . . a negro man . . transferred . . a note . . for . . five hundred and fifty-one dollars and two cents . . and also a horse, saddle and bridle, estimated at one hundred dollars. . . That the bill of sale [warranting the good character of the slave] had been lost . . That the slave had been but a few days in . . [his] possession . . before he ran away, and, having committed a theft, was shot at

[1] Act of 1807, sect. 18. Toulmin's *Digest* p. 208.

and wounded; and after apprehension, . . [319] absconded a second and third time; and had been taken up, tried and executed for felony.—That . . the complainant had not more than one week's service from him: that his death was attributable, alone to his bad character—which was known to [the vendor] . . the slave having been removed from . . Georgia, in consequence of his infamous reputation. . . That the complainant had been put to great expense in defending said slave, on the charge of felony, . . The answer . . [320] denied . . any warranty of . . character . . Charged the complainant with cruelty to his slaves, generally, and alleged this as a reason why the slave absconded." Held: [324] "The testimony . . preponderates in favor of the truth of the allegation . . of a warranty of the character . . fact . . should be tried by a jury,"

Caldwell v. Wallace, 5 Stew. and P. 312, January 1834. Bill of sale, executed in Tennessee in 1830: [316] "Received . . eight hundred and fifty dollars . . for . . a woman . . about thirty . . a boy, twelve or thirteen . . a boy, about two . . and the other child, about sixth months old—all of a black complexion" The negroes had been brought to Alabama in 1829.

White v. Martin, 1 Porter 215, June 1834. "In . . 1824, Martin instituted an action of trover against White, for the permanent conversion of . . Charity. . . recovered a judgment . . for the full value . . satisfied in full. While the . . action was pending, . . two [children] . . subject of the present suit, were born of . . Charity," Judgment for the plaintiff, Martin.

Reversed: Martin has had [221] "full redress . . the full value . . at the time of the taking, with interest . . a jury would place a higher value on a female slave promising issue, than on one of a contrary description; if she has proved the issue, between the conversion and the trial, she has furnished the best evidence of that quality. . . while increasing the damages on account of the developement [*sic*] of the prolific nature of the female, they would . . consider the expense of . . raising the offspring." [R. Saffold, J.]

Hatter v. Greenlee, 1 Porter 222, June 1834. "Greenlee had been arrested in . . Mississippi, on the charge of having stolen or concealed . . [Hatter's] slave, . . when brought before the justice of the peace . . a compromise took place . . that Greenlee, in consideration of his discharge, should execute a bill of sale . . of the slave . . and give his note for five hundred dollars. . . [223] the slave was delivered."

Tatum v. Young, 1 Porter 298, January 1835. [307] "in 1818 or 1819, the slave came here [from Georgia] with the donor and donees," "Gorham . . had been employed . . to go after the slave . . to . . Selma, . . found the slave [without a pass] in a grog shop." [298] "Tatum . . paid him for the service . . fifty dollars."

Commons v. Walters, 1 Porter 323, January 1835. "action of slander . . for saying . . that he hired negroes to steal cotton and bought it of them."

English v. Lane, 1 Porter 328, January 1835. [342] "twenty eight negroes . . were worth nine thousand dollars [in 1826], . . [346] he put them to making brick . . twelve or eighteen months, when Lane said the business was unprofitable, and sent them on a farm. . . [347] that the negroes . . could have been hired at auction at from fourteen hundred to sixteen hundred dollars [per year], but in that way they would have been more exposed to loss from hardships, than when under the charge of one interested in their welfare."

Harrison v. Hicks, 1 Porter 423, January 1835. [429] "that the slave [worth $700] . . had been . . sold under an execution, upon a judgment obtained according to the laws and usages of the nation of Cherokee Indians,"

Hawkins v. State, 1 Porter 475, January 1835. "he had been convicted for negro-stealing . . pardoned"

Hatfield v. Montgomery, 2 Porter 58, January 1835. [70] "the girl was only about nine years of age [in 1807 or 1809], and there is not a *scintilla* of proof that the three hundred dollars paid, was not the full value . . the answer avers it to have been considerably more." [62] "Hatfield removed from . . Tennessee . . within six or nine months of the filing this bill . . to . . this state, with said girl and her issue, (six or eight children,)"

Cawthorn v. Deas, 2 Porter 276, June 1835. Thornton, J.: [279] "by adopting the principles of the Common Law, . . it will result from the peculiar nature of our slavery, that there is no redress, *civiliter,* for any injury done by a slave, not acting in obedience to his master's authority, express, or implied. . . so far as remuneration is concerned, it is, as if the injury was effected by the natural elements of air, or fire. . . But notwithstanding all this, . . I feel bound to adopt . . the principles of the Common Law, as applied to master and servant."

Baylor v. Scott, 2 Porter 315, June 1835. [320] "sheriff [in 1830] . . sold . . a negro boy about ten, and a girl about twelve . . [for] $650. . . twelve dollars for the hire of the boy for three months . . before the levy,"

Hopkins v. Thompson, 2 Porter 433, June 1835. The former owner "returned to Tennessee, and secretly took the slaves from a plantation . . upon which they were, under the control of an overseer, and conveyed them to this State;"

Ivey v. Hardy, 2 Porter 548, June 1835. Held: [549] "when a white man sues a free person of color or of mixed blood within the third degree, in a case under twenty dollars, and offers his own oath to establish his claim, the defendant can be permitted to be examined on oath, touching the suit, in his own defence . . [550] To give the plaintiff the benefit of this statute,[1] and exclude the defendant from it, under the prohibition of the other,[2] would open a door to very great frauds," [Hitchcock, J.]

[1] Aikin's *Digest,* p. 294.
[2] *Ibid.,* p. 452.

Stone v. Dennis, 3 Porter 231, January 1836. [235] "to furnish . . negroes [in 1831] . . to build . . [saw] mills, . . and to continue them thereafter . . at the rate of fifteen dollars a month,"

Overton v. Morris, 3 Porter 249, January 1836. [251] "negroes . . sent . . to Alabama; the sale being made in Virginia,"

Carroll v. Pathkiller, 3 Porter 279, January 1836. [281] "the slave belonged to the estate of . . a native Cherokee Indian, . . the son of Pathkiller, the king,"

Middleton v. Holmes, 3 Porter 424, June 1836. "an action of trespass, for killing a slave, . . no averment, that the defendant had been tried by the State, . . the defendant, . . a constable, had received a warrant . . commanding him to arrest the slave, on a charge of being at large without a pass; with wearing weapons; and with way-laying the path of . . Mise. That, in proceeding to arrest the slave, . . he had fled; and that the killing had been perpetrated,"

Held: I. [425] "the person injured, by the trespass, . . [cannot seek] his own redress, till it shall be . . determined, by the proper tribunal, what the justice of the State, requires of the accused, . . [II.] [429] He was not justifiable in killing the slave,"

Charles (a slave) v. State, 3 Porter 440, June 1836. "application for a writ of error, to reverse a sentence of . . death. . . forty-seven days will have intervened, between the commencement of this term of the [Supreme] Court, and the day fixed for the execution" No error: [441] "We consider the statute [1] as directory, only; . . the prolongation of the time, is not such an injury to the accused, as to warrant a reversal"

Charles (a slave) v. State, 4 Porter 107, June 1836. "Charles . . was indicted . . at the October term, eighteen hundred and thirty-five . . for the murder of . . Sanford: . . found guilty . . The Court . . adjourned . . to the succeeding term, without rendering judgment . . At April term . . a motion was made . . for his discharge, on the ground, that the judge . . had died . . overruled . . also one made in arrest of judgment" Affirmed.

Flora (a slave) v. State, 4 Porter 111, June 1836. "The indictment charged, that Flora, . . the property of . . administrators of the estate of . . Sanford, committed the murder upon the body of . . Sanford; . . found guilty. . . No proof . . that administration . . had ever been granted . . the prisoner's counsel moved the Court to instruct . . [112] the proof did not sustain the indictment . . refused"

Judgment reversed and the cause remanded: [114] "As the right of the owner to receive a part of the value of the slave, must appear from the record,[2] the fact of ownership . . as well as the fact of guilt . . ought to be put in issue"

Darwin v. Railroad Co., 4 Porter 160, June 1836. "The cause of action was for the exposure of the plaintiff's negro, while in the defen-

[1] Aikin's *Digest,* p. 614.
[2] *Ibid.,* p. 124.

dants' service, to such hardships in inclement weather, as to cause his death;"

Williams v. Taylor, 4 Porter 234, June 1836 [237] "an action . . against . . the owners of a steam-boat . . to recover the value of a negro man . . employed as a steward . . killed . . by slipping and falling into the pit of the fly wheel of the boat; . . the fly wheel was not guarded by strips" Held: I. [239] "carrier is liable only for gross negligence, . . [II.] [240] If . . the master [of the slave] . . knew . . of the defects in the boat," he [239] "takes upon himself the risk of accidents"

Portis v. Creagh, 4 Porter 332, January 1837. Will, 1825: [333] "I want the most obedient children to have the most obedient negroes, or such as their mother thinks will suit best."

State v. Brown, 4 Porter 410, January 1837. "convicted of slave-stealing,[1] . . and received sentence of death."

State v. M'Donald, 4 Porter 449, January 1837. Indictment under the act of 1812.[2] [451] "that the master of . . Moses, in consequence of suspicions . . directed Moses, that if the prisoner should come . . he should conduct him to a particular spot, . . held the conversation . . in the hearing of his master and another, . . the defendant said the negroes ought to rise, . . that they had hard masters. That they must raise five hundred men, but he would start with three hundred . . Frank, was to furnish . . a horse. The defendant promised to give the rifle he had with him to Moses, when they started: . . that they would go to Mobile, and that if they did not like that, . . to Pensacola . . a weaker place. . . get arms and ammunition there, . . press a ship, with which they could go to Texas . . a free place . . [452] That they would be joined by other slaves on their way . . Moses, the next evening went, with his master and several gentlemen . . to . . defendant's residence. These gentlemen concealed themselves, and the slave was sent for the defendant, . . The defendant then told the slave that he must get him one thousand men, but he would start with five hundred. . . That it was not safe to stay in Florida, as the United States would reach them: . . they could get guns from their masters, with ammunition and horses, . . The defendant said there was no white men[3] engaged—he would head them, and that Frank would be second in command, and Moses third . . [453] The master of the slave stated, that the slave was faithful and obedient, and that the earliest information was received from him. . . The witnesses all stated that there was no disturbance in the county among the slaves . . no evidence of . . any illegal conduct further than . . these conversations."

Held: [459] "The *free person,* whether white or colored, who . . even . . [though] professing to be prompted by the *pure spirit of christianity,* shall proclaim to our slaves the doctrine of universal emancipation, . . and estrange the affections of the slave . . with the intention of arousing him to the effort to break by force the bonds of servitude, renders him-

[1] *Ibid.,* p. 103.
[2] *Ibid.,* p. 108, sect. 44.
[3] This would indicate that the prisoner was colored.

self a *subject* for criminal justice. . . [460] the indictment intended to embrace the first class of offences, declared by the second branch of the act — for advising, plotting or consulting with a slave, etc. for the purpose of . . assisting *any such* insurrection . . The words . . mean an actual or meditated rebellion. . . [461] The witnesses all state that there was no insurrection . . clear, that Moses never participated in any criminal design of the prisoner. . . [466] the conviction of the prisoner was unauthorized" [Collier, J.]

State v. Coleman, 5 Porter 32, January 1837. [36] "The first count charges . . the prisoner, in conjunction with . . Kennedy, with making an assault 'upon . . Primus, (a negro man . . belonging to . . Roll,) and . . Kennedy, with discharging the contents of a pistol at Primus, by means of which he was wounded, and thereafter died.'" The jury found the prisoner "guilty of manslaughter . . and assess his imprisonment at sixty-eight days, and a fine of one hundred dollars." Motion in arrest of judgment overruled. Affirmed.

Turner v. Thrower, 5 Porter 43, January 1837. [44] "action of detinue . . The plaintiff offered evidence, conducing to prove title . . The defendant sat [*sic*] up title, under the sale of the slave, by the sheriff . . proved a warrant of commitment . . and . . an advertisement in the Mobile *Commercial Register,* . . 'Committed to the jail . . 13th inst. by . . a justice of the peace, . . as a runaway slave, a negro man, who calls his name William Thompson, and says he is free, and that he came from . . [45] Virginia, as the servant of a Mr. Thompson: . . five feet, four or five inches high, twenty-five or thirty years of age, black, and has a number of small scars on his face. His owner is requested to come forward, . . otherwise he will be sold according to the statute[1] . . to pay jail fees. March 19, 1833.' This advertisement, and none other, was continued to be published . . until the fourteenth day of September, . . Defendant then . . proved, an advertisement . . 'Notice is hereby given, that . . William Thompson, committed as a runaway slave . . not having been claimed . . will on the 14th October next, at the Court House . . be sold . . September 14, 1833.' This last advertisement was followed by [another:] . . [46] 'sale is postponed until . . 21st October, . . October 12, 1833.' . . twenty-sixth [[47] 'twenty-first'] . . of October . . the negro was . . purchased by the defendant. . . sheriff . . testified, that he did not put up . . advertisement at the Court house, or any other public places,"

Held: the sale was invalid. [49] "The act . . does not authorise [the sheriff] . . to make any preparation to sell, until six months after the first publication. . . [51] the notice of the sale . . must be given by advertisement, . . in some newspaper in this State, at the court house . . and two other public places within the same county,"

Childress v. M'Cullough, 5 Porter 54, January 1837. Articles of agreement, January 1833: "that . . Childress has leased unto . . M'Cullough, for . . two years . . his plantation . . [55] and . . [twenty-five]

[1] Act of 1809. Aikin's *Digest,* p. 395, sect. 25.

slaves, . . M'Cullough is to furnish each of the male slaves . . with three shirts, three pair of pantaloons, a roundabout, a hat, blanket and pair of shoes; and the women with three shirts, three frocks, a blanket, hat and pair of shoes, annually. M'Cullough is to pay the State and county tax, on . . negroes and physician's bill, for attending . . [56] slaves; each of the negroes is to have three pounds of bacon, and one peck of meal per week. M'Cullough is to find provisions for the children of Anny and Hannah, and Childress, to furnish them with clothes. . . The negroes are not to be taken off the plantation to be worked, without the consent . . of . . Childress."

M'Coy v. Moss, 5 Porter 88, January 1837. A bill of sale was made in Alabama conveying [89] "a man about thirty . . and . . a woman about twenty" for $1050. The purchaser's agent "had taken the . . [man] slave into possession in Georgia," but he escaped.

Hall v. M'Henry, 5 Porter 123, January 1837. [124] "Royster . . ran the [two] negroes [claimed by others] out of the country."

Burt v. Kimball, 5 Porter 137, January 1837. In 1819 or 1820 a slave was brought from North Carolina to Alabama.

Perry v. Hewlett, 5 Porter 318, June 1837. "an agreement under seal, whereby the defendants, on [December 23, 1833,] . . covenanted to pay the plaintiff . . one hundred and fifty dollars, for the hire of two negroes, and to return them" on December 25, 1834. In June [319] "one of the slaves, a female . . died. That the surviving slave, on being permitted to visit the plaintiff, shortly afterwards, was detained by him."

Held: I. "the death of the female slave, if . . without the fault . . of the defendants,—discharged the covenant to return her. . . [II.] if the plaintiff detained the surviving slave . . the covenant to pay for the hire of both . . was discharged."

Sutherland v. Goff, 5 Porter 508, June 1837. [511] "that the defendant [in 1834] hired of the plaintiff . . a negro girl [about twelve years of age] . . and agreed to treat the slave with . . humanity, and to return her at the end of the year, but that by his negligence . . [512] the negro died, . . that [a third person] . . estimated the value of the slave, to be three hundred dollars."

Trotter v. Blocker, 6 Porter 269, January 1838. Will of William Butler, which was executed in 1832: [288] "It is my will . . after my death, that . . every one of my negro slaves be free . . they and their heirs forever.—I . . bequeath unto [them] . . all my plantation utensils, and my kitchen furniture, and give them one year's clothing, one year's provision, out of my estate, and should the laws of my State be such, that the said negroes can not remain within the limits of the State, free, I . . bequeath . . one hundred dollars, to the said negroes, to remove them to some other State" The testator died in 1836.

Held: [306] "the slaves . . are not entitled to freedom." I. [290] "If the bequest of freedom be considered as a legacy to the slaves, . . they have not the capacity to take property, . . [II.] [295] the Consti-

tution [of 1819], by investing the General Assembly with the power 'to pass laws to permit the owners of slaves to emancipate them,' has impliedly, abrogated all the pre-existing modes" [292] "until a general law was passed on this subject [in 1834[1]], . . applications were made to the legislature, at every session, for leave to emancipate slaves,[2] and . . after the adoption of the constitution, up to that time, there was no instance of emancipation being effected, otherwise than by legislative permission. . . [294] This statute [of 1834] authorises the owner to make an application for the manumission . . the mere authority to execute a will does not confer the ownership of property, . . [295] there is [therefore] a want of authority to confer freedom by will, . . [III.] [306] The bequest of plantation utensils, . . etc. being made in anticipation of the freedom of the slaves, must of course fail," [Collier, C. J.]

Martin v. Chapman, 6 Porter 344, January 1838. Articles of agreement, March 31, 1834: [348] "to attend to . . Martin's business, in the capacity of an overseer, . . also to work when necessary, at light work, such as he may prefer, and also after the crop is laid by, to attend without labor, to . . the [eleven] hands, in whatever business . . Martin may wish them to do, . . [349] these hands are to be under the control of [the overseer] . . in crop-time. . . Martin agrees to pay [him] . . the eighth part of corn, fodder, and cotton," "October . . misunderstanding took place . . in relation to the . . control of the hands, . . That the plaintiff insisted they should pick out cotton and the defendant [Martin] insisted that a part of them should saw some lumber for . . a gin-house, and . . others should get stocks to be sawed, and accordingly ordered . . the plaintiff left" The jury found for the plaintiff. New trial refused. Affirmed.

Powers v. Bryant, 7 Porter 9, January 1838. [10] "promised to pay [in 1833] . . three hundred dollars, in good negro property"

Copewood v. Taylor, 7 Porter 33, January 1838. [34] "a jury . . assessed the value of the boy Dick at one thousand dollars, and the boy Tink also"

Greene v. Linton, 7 Porter 133, January 1838. [134] "being desirous of carrying on the blacksmith's business, . . they would furnish three good hands to work under plaintiff;"

Steel v. Worthington, 7 Porter 266, January 1838. [267] "slave went to town . . by permission of . . overseers, with instructions to return home in a reasonable time, . . he went into the possession of [his former owner], . . who sold . . him"

Ned (a slave) v. State, 7 Porter 187, June 1838. [188] "indicted at the October term [1836] . . for . . murder . . 'The jurors . . say,

[1] Aikin's *Digest,* p. 647.

[2] [278] "See acts of 1825, p.p. 122, 3, 4—12 persons emancipated. Acts of 1830, p.p. 36, 7, 8, 9, 77—about 60 persons emancipated and in several instances on the applications of executors. Acts of 1832, p. 98—12 persons emancipated." [Counsel for the plaintiff in error.]

that they cannot, by any reasonable probability, agree . . [189] ordered by the court, that . . jury be discharged . . that the prisoner be remanded to jail, for trial at the next term' . . At the Spring term . . The jury . . could not agree . . They were, . . because of the expiration of the term of the court, discharged. At October term, . . the jury returned a verdict of guilty, and his value was assessed at eight hundred dollars. The prisoner was sentenced to be executed"

[217] "the judgment . . must be reversed, and the prisoner discharged." [214] "the discharge of the first jury . . was irregular, and unwarranted by law: . . [216] the unwarranted discharge . . is equivalent to an acquittal." [Goldthwaite, J.]

Lamb v. Wragg, 8 Porter 73, June 1838. Slaves were brought from South Carolina by their owner in 1826.

Ricks v. Dillahunty, 8 Porter 133, June 1838. [135] "the first day of January next, we . . promise to pay . . three hundred and forty eight dollars, for the hire of three negro men; . . 13th . . February, 1834." One of the negroes "died five or six weeks thereafter." Held: [140] "the loss of service must be borne by the hirer,"

Gray v. Crocheron, 8 Porter 191, June 1838. Trover. "the slave . . was sent across the Coosa river with a letter, by the defendant. The slave was the ferryman . . and was afterwards missing. His clothes were found about twenty yards above the ferry landing, and the skiff and flat . . [192] were at their proper places."

Held: [195] "if after having reached the other side . . and discharged his errand, he was lost, while following the inclination of his own will, the defendant would be liable only for the temporary conversion."

Heirs of Capal v. M'Millan, 8 Porter 197, June 1838. The bill stated: [201] "That the negroes could be hired out in Mobile to better advantage than in Wilcox, . . The answer . . thought the negroes would be exposed to injury in health and morals, by removing them to Mobile,"

Rochelle v. Harrison, 8 Porter 351, January 1839. [353] "That the [two] slaves sued for, were too small to work in the field, and they remained in the house, waiting on . . family."

Hogan v. Thorington, 8 Porter 428, January 1839. "the plaintiff . . proved the unsoundness . . at the time of the sale, in February [1833] . . and that at that time, she was not worth one half as much as . . if sound; that the price paid by plaintiff . . was five hundred and fifty dollars. . . that since the sale . . [429] negroes had greatly increased in price, and that the slave . . had apparently recovered . . The defendant proved, that the plaintiff sold said slave for one thousand dollars, without any warranty of soundness."

Held: the plaintiff [431] "has been prevented from realising the profit he was entitled to, by so much as the sums paid for medical attendance, nursing, etc. diminished it; and for this loss, he is entitled to recover."

State v. Hawkins, 8 Porter 461, January 1839. Indictment for stealing a slave.[1] "it was proven . . that the defendant had taken . . Jane . . and had attempted to place her on board . . the brig *Martha,* then just about sailing for a northern port, with a view . . to secure her freedom, . . that having failed to find the . . [462] brig . . on account of the darkness . . the defendant concealed [Jane] in the forecastle of the schooner . . (on which he was cook,) . . for several days, for the purpose of enabling her to make her escape to a free . . State."

Held: [465] "There being . . no intention to convert the slave to his own use,—he cannot . . be found guilty of larcency. . . [466] but the prisoner is to remain in custody . . to enable the solicitor . . to prefer an indictment against him for harboring or concealing . . Jane . . or for a conspiracy to deprive the owner . . of his property." [Ormond, J.]

State v. Wisdom, 8 Porter 511, January 1839. Indictment for negro-stealing. [514] "the prisoner . . between ten and eleven o'clock . . was discovered [in Dallas County] . . near where . . Dick was at work . . then . . went to a field . . where . . Peter . . was at work . . the negroes were missing . . the night of the same day. . . the prisoner arrived . . in the morning . . in Perry county: . . had . . with him . . Dick, and . . Peter." One of the negroes was [513] "traced . . to Mississippi, and found . . at a mill belonging to the prisoner;" The prisoner [512] "was tried, convicted, and sentenced to death,"

Judgment reversed and the case remanded: [521] "an individual cannot commit a larceny in one county, who is, at the time . . in another, and . . not near enough to aid"

Swift v. Fitzhugh, 9 Porter 39, January 1839. In 1834 a slave was hired [43] "at eighteen dollars per month"

Fisher v. Campbell, 9 Porter 210, January 1839. An overseer [211] "purchased . . eight barrels of pork, for the . . slaves"

State v. Duncan, 9 Porter 260, January 1839. "The first [count] charged him with concealing 'Ned . . the property of . . the said . . Duncan, so that he cannot be brought to condign punishment . . Ned being . . charged with a capital crime[2] . . of having committed an assault and battery with intent to kill, on . . a white person' . . no proof to show that legal proceedings had been instituted against Ned, . . [261] verdict of guilty" Judgment reversed and the case remanded.

Skinner v. Gunn, 9 Porter 305, June 1839. [307] "in consideration of . . one thousand dollars, . . sold . . Ned, supposed to be thirty . . which negro I warrant to be sound in body and mind" [305] "the negro died shortly after"

State v. Saunders, 9 Porter 326, June 1839. "The first count charges that the defendant: 'did buy . . from Dick . . two hundred pounds of

[1] Aikin's *Digest,* p. 103, sect. 19.
[2] *Ibid.,* p. 124.

cotton, for five dollars, without the consent of the master '[1] . . verdict and judgment against the defendant,"

Reed v. Brasher, 9 Porter 438, June 1839. A female slave was the property of an Indian belonging to the Creek tribe.

Brown v. Lipscomb, 9 Porter 472, June 1839. [473] "The services of the slave [in 1834] were worth one hundred and fifty, or two hundred dollars per annum."

State v. Murphy, 9 Porter 487, June 1839. "indictment for selling spirituous liquor to a slave, without the permission of the owner."

Falls v. Gaither, 9 Porter 605, June 1839. [606] "1835. Received . . one thousand dollars, for two negro girls . . about seventeen [and twenty] years old,"

Hardeman v. Sims, 3 Ala. 747, January 1840. [748] "The bill charges that the grand-father of the complainants . . 1822, by deed . . recorded in . . Virginia, conveyed to them . . slaves . . shortly after brought . . to this State. . . their father being a man of extravagant habits . . sold many of the negroes, . . one . . was . . purchased by . . Sims. . . a girl, now about fifteen . . 'a family negro . . and that they have all that personal regard for her . . entertained for property of this kind by all families, and therefore, seek her recovery in specie.' . . Sims, in his answer, . . [states] that he purchased the negro at public sale: she was then about six" Bill dismissed: [750] "the defendant . . must be presumed . . to be more attached to her, than those who had only known her in early infancy,"

Gaines v. McKinley, 1 Ala. 446, June 1840. "Received . . five hundred and twenty-five dollars, for . . [447] John, about twenty-seven . . and five hundred and twenty-five dollars, for . . Jackson, about seventeen"

Black and Manning v. Oliver, 1 Ala. 449, June 1840. "Detinue by the defendant in error . . and judgment in his favor in the court below, . . The facts . . are that the defendant in error, about eighteen months after his removal . . from South Carolina, sold . . the negro woman . . to . . Sweet. . . that Sweet gave his note . . for two hundred and fifty dollars, . . That the slave was worth from six to eight hundred dollars; and that the inducement for the sale . . to Sweet, was, that he was to make her his wife, and emancipate her. The plaintiffs in error proved, that they purchased the slave from Sweet for two hundred dollars . . knew the circumstances . . before they purchased . . Sweet, before his purchase . . told [a witness] . . that he had followed [Oliver] . . from Carolina, for the purpose of cheating him out of this negro,"

Judgment reversed and the cause remanded: [450] "We must infer . . that . . in this State, where a marriage between a white and colored person would be illegal . . it was probably intended, that the parties should live together in a state of concubinage. As either would be in violation

[1] *Ibid.,* p. 396.

of the law of this State, morality, and public decency, the stipulation would be void; and . . Sweet acquired the absolute property . . [451] It is difficult to resist the conclusion that the whole case does not appear on the record. What the law would be . . where the condition of a nominal sale of this character, was, to take the subject of it to some other country, where such marriages were lawful, it is not necessary now to determine." [Ormond, J.]

Stringfellow v. Mariott, 1 Ala. 573, June 1840. "Received . . a note . . for twelve hundred dollars . . for . . a negro girl . . twenty-two years old. I warrant . . negro to be sound . . 1836." [574] "that before the sale of the slave to the plaintiffs in error, the defendant in error . . sold the . . slave to the witness . . [who] kept her about four days, and then returned her . . informed him that the . . slave, said she was unsound, . . This evidence, so far as it related to the declarations of the slave, was excluded"

Humphres v. Terrell, 1 Ala. 650, June 1840. [651] "purchased the slaves [a woman and her child] at a constable's sale, . . 1830, for . . three hundred and fifty-one dollars,"

State v. Marler, 2 Ala. 43, January 1841. [44] "negro woman had been in the possession of the defendant for eight or ten years, and was, at the time the killing took place, in the possession of the deceased—that the defendant . . ordered said negro home, that she refused to go—and evidence was also offered, tending to show, that deceased called for his gun, and had it cocked"

Gould v. Womack, 2 Ala. 83, January 1841. [94] "He possessed . . one hundred and eighty slaves, and an immense landed estate,"

Sims v. Sims, 2 Ala. 117, January 1841. "the father of the plaintiff, . . in the presence of several persons, in 1832 or '3, called the woman Rachel into the yard, and . . the plaintiff ['five or six years old'] to the door . . and then said 'In the presence of you all, I give this negro to my daughter'" Ormond, J.: [124] "It rarely happens, I apprehend, that in any case of the gift of a slave, the senseless mummery is gone through of placing the hand of the slave in the hand of the donee."

State v. John (a slave), 2 Ala. 127, January 1841. "The prisoner was indicted for the crime of murder, and convicted. . . it does not appear, that after the verdict . . the jury were again sworn . . to assess the value of the slave."[1] Held: [129] "an omission in this particular, cannot avail the convict;" See John *v.* State, *infra.*

Lucas v. Kernodle, 2 Ala. 199, January 1841. [200] "hired two [slaves] . . for . . one year, commencing . . first of January, 1837, for six hundred dollars,"

Litchfield v. Falconer, 2 Ala. 280, January 1841. A negro woman was sold in 1836 for $800.

[1] Aikin's *Digest,* p. 124, sects. 60, 64.

John (a slave) v. State, 2 Ala. 290, January 1841. "One count . . charges Ruff and . . Anderson [owner of John] as assessories [*sic*] before the fact, and in subsequent counts, . . Ruff principal, and the others accessories. . . [291] the plaintiff in error was . . sentenced to be hung on . . 22d January, 1841. A question was reserved . . for the decision of the Supreme Court."[1] [292] "This Court commenced . . fourth day of January, . . only seventeen days could intervene . . when the shortest period permitted by the statute[2] is twenty-five." Judgment reversed and the case remanded: [292] "It was erroneous not to suspend the execution of the sentence"

Watts v. Sheppard, 2 Ala. 425, January 1841. [427] "claims . . about three thousand acres; . . also . . all the negroes . . on said plantation [in 1834] . . about one hundred and twenty-four in number;"

Jones v. Yarborough, 2 Ala. 524, June 1841. "note, made . . [525] November, 1838, for [$193.34] . . The consideration . . was the purchase of a negro man . . A physician . . testified, that on the 25th December . . he visited the negro . . and found him laboring under a chronic disease of the chest, and believed he could not ever be sound again."

Caraway v. Wallace, 2 Ala. 542, June 1841. [543] "sale . . of twenty-seven slaves [in 1836], for . . twenty-nine thousand dollars; . . another slave was added, at . . twelve hundred dollars,"

Sims v. Canfield, 2 Ala. 555, June 1841. [558] "he was willing to make him a bill of sale . . but as his wife was unwilling to part with the girl, he wished to hire her for two or three months, believing in that time his wife would be reconciled to the arrangement."

Harrell v. Floyd, 3 Ala. 16, June 1841. [17] "Delila and child Margaret" were sold in 1828 for $427.

McCord v. Love, 3 Ala. 107, June 1841. "Williams lived in South Carolina, and had sent three slaves to Alabama, by Love, for the purpose of farming together."

Bryant v. Peters, 3 Ala. 160, June 1841. [161] "a writing, which . . some persons say, is the last will . . By that paper, a legacy of one hundred dollars is given to a negro woman . . and the like sum to each of several other negroes:"

Mock v. Kelly, 3 Ala. 387, January 1842. Dr. Kelly "said, in order to cure [the slave] . . he must have her at Hayneville, whither she was sent, and died soon after her return, of dropsey, the same disease . . she had"

Calhoun v. Cozens, 3 Ala. 498, January 1842. In 1840 an attachment was levied, in Alabama, upon the complainant's four slaves [499] "while . . [her] agent . . was removing them from North Carolina to her residence in Mississippi,"

[1] State *v.* John, p. 148, *supra.*
[2] Act of 1836. Aikin's *Digest,* p. 614, sect. 1.

Wood v. Wood, 3 Ala. 756, January 1842. [758] "he received . . a negro man . . in 1822, who was worth but little, but would have sold for five hundred dollars;"

Oden v. Stubblefield, 4 Ala. 40, June 1842. "the plaintiff gave the negro woman . . to his son . . 1837," [42] "in 1838, [she] ran away . . and went to the plaintiff's house, where she remained for eight or ten days; . . [the son] had some difficulty in getting her away from the family, and to satisfy them, he had promised to return her at the end of the year."

Bank v. Marshall, 4 Ala. 60, June 1842. In 1836 [61] "he sold a negro man, (a blacksmith,) . . for . . twenty-one hundred dollars,"

Gibson v. Andrews, 4 Ala. 66, June 1842. [67] "that the plaintiff was a physician, and being at Pascagoula in Mississippi, attended on a slave of the defendant who was dangerously ill . . that there did not appear to be any one at Pascagoula whose duty it was to attend to said negro, the defendant being in Alabama. The defendant . . declined to pay . . alledging [*sic*] that . . Field was responsible."

Held: "The master . . is under both a moral and legal obligation to supply his necessary wants. . . [68] The hirer could not, any more than the owner voluntarily permit the slave to be absent from him; and in such a case there can be no doubt that the owner as well as the hirer would be responsible for necessary medical services" [Ormond, J.]

McWhorter v. Lewis, 4 Ala. 198, June 1842. "On the first day of January next, I promise to pay . . five hundred and fifty-three dollars, for the hire of three negro men for the present year, . . 1838." Signed by the president of the "W. and Coosa R. R. Company."

State v. Abram, 4 Ala. 272, June 1842. "The prisoner, a slave of . . Long, was indicted at the Circuit Court . . in 1842, for the murder of Reuben, a slave of the same master. . . he pleaded in abatement, that . . 1841, he was tried for the offence . . by a special Court, composed of the Judge of the County Court and two Justices of the Peace [1] . . and found guilty, . . obtained a *certiorari,* and caused the proceedings to be removed to the Circuit Court, where the verdict and judgment were reversed . . on the ground that the special Court permitted one of the Justices . . [273] after the trial had commenced, to withdraw . . and another to take his place. The judgment also directed the prisoner to be remanded to custody, until discharged by due course of law." As there [272] "has been no other trial of him . . by the special court . . he prays that the indictment may be quashed. This plea was adjudged bad on demurrer; and thereupon the prisoner pleaded—1. Not guilty. 2. Autrefois acquit. . . found guilty and sentenced to death,"

Judgment affirmed: I. [276] "The Court authorized [by the act of 1832] . . ceases with the occasion which gave it life. . . the Circuit Court could not have remanded the case" II. The withdrawal of the justice did not entitle the prisoner to a discharge.

[1] Act of 1832. Aikin's *Digest,* p. 124.

Rasco v. Willis, 5 Ala. 38, January 1843. [39] "proved . . the defendant . . carried on . . a poorly furnished grog shop, about which negroes resorted, with other circumstances, conducing to show that an unlawful traffic with slaves was carried on; and . . that the Brantleys were in the habit of receiving stolen goods from negroes,"

Stallsworth v. Stallsworth, 5 Ala. 143, January 1843. Will: [145] "that the residue of my negroes . . be valued and put into eleven equal parts, regard being had to the families of negroes; . . and that each of my children . . draw one share"

Kennedy v. McArthur, 5 Ala. 151, January 1843. "The declaration . . alleges, that the slave had run away . . and that the defendant, well knowing the fact, . . did . . conceal said slave . . judgment given against him for the damages assessed."

Thomas v. Wallace, 5 Ala. 268, January 1843. [269] "when the slave . . had run away and came to the agent [of the trustee], he was sent home by him."

Vaughn v. Wood, 5 Ala. 304, January 1843. "1839 . . five hundred dollars . . for . . Mahala"

Bethea v. McColl, 5 Ala. 308, January 1843. Ormond, J.: [314] "The ascertainment of the value of the labor of a slave . . depends upon the ability of the slave . . the quality of the soil . . the skill with which it is directed—and the price of its product."

McAden v. Gibson, 5 Ala. 341, January 1843. "a man, . . [two] women, . . [three] boys, and . . a girl . . were the property of the . . Rail Road Company;"

Taylor v. Savage, 1 Howard (U. S.) 282, January 1843. [283] "among the subjects of said levy were some family negroes, who had been for several generations in the family, whom it would be especially painful to part with;"

Lazarus v. Lewis, 5 Ala. 457, June 1843. [458] "Henly, about sixteen . . valued at five hundred and fifty dollars; Maria . . about eight . . valued at two hundred and fifty . . Major . . about four . . valued at one hundred and seventy-five . . Dick . . seven years old valued at two hundred and seventy-five dollars,"

State v. Flanigan, 5 Ala. 477, June 1843. [478] "The prisoner was an overseer . . was seen . . to whip [the slave] . . and strike him about the head with the handle of the whip, and a short time afterwards he was found dead . . A physician, who made a post mortem examination of the body . . stated, that it gave evidence that many blows and stripes had been inflicted with great violence; . . [479] The jury found the prisoner guilty of murder in the second degree, and he was . . sentenced . . to ten years imprisonment" Affirmed.

State v. Jones, 5 Ala. 666, June 1843. "The defendant was indicted . . for the murder of his own slave [Isabel] . . by beating with clubs,

sticks and whips . . cruelly, barbarously and inhumanly" He was found guilty of murder in the second degree and was sentenced [667] "to be confined in the penitentiary for ten years." Affirmed.

Todd v. Hardie, 5 Ala. 698, June 1843. [699] "he bought the slave . . in 1829 or '30, for . . three hundred and fifty dollars, which he considered his value, as he was runaway at the time. . . [701] witnesses . . state that negro men in the fall of 1828, were worth from three hundred and fifty to five hundred dollars, and that Jack was worth from four to four hundred and fifty dollars." Collier, C. J.: [702] "this, if we were to speak from the history of the times, we should think a fair estimate. Property . . was greatly depressed in 1828."

Craddock v. Stewart, 6 Ala. 77, January 1844. "at the sale of intestate's estate, in January, 1838, . . the defendant bought . . Billy, a man, for one thousand and ten dollars; . . a boy, for six hundred dollars; . . a boy, for one thousand and one dollars; and . . a man, for eight hundred and seventy-one dollars." The administrator warranted them to be sound. [78] "evidence . . that Billy was diseased, as early as 1834, of a spinal affection, . . more or less pain, up to . . August, 1839, when he died." Held: the administrator is chargeable in his representative character.

Nabors v. State, 6 Ala. 200, January 1844. "The indictment . . charges, that he . . a negro boy slave . . of the value of three hundred dollars . . did steal . . The jury returned [at 2 a.m. on Sunday morning] a verdict 'of guilty' . . and the court . . sentenced him to seven years imprisonment"

Reversed and remanded: I. [203] "no judicial act can be performed on Sunday, . . [II.] [204] if the verdict had been allowed to stand, no judgment could have been rendered on it, except for the punishment of grand larceny,[1] . . because the additional punishment provided by the 18th section of the 4th chapter of the Penal Code, creates a distinct offence,"

Washington v. Cole, 6 Ala. 212, January 1844. "The witness stated, that as a physician, he attended upon a negro boy . . from the 15th of May to the 19th of June, 1841, . . that the boy was at his house during the period . . that his death was occasioned by the dropsy, and witness' charge for his services was ten dollars. . . the deponent was sometimes called Doctor . . but was not a physician."

Seawell v. Henry, 6 Ala. 226, January 1844. See Sewall *v.* same, p. 158.

Nelson (a slave) v. State, 6 Ala. 394, January 1844. "indicted . . for an assault . . 'upon . . [395] Williams,' 'with intent . . to . . murder.' . . the jury by their verdict said, 'that they find the defendant guilty . . and also, . . Williams . . to be a white person:' and the court pronounced

[1] Not less than two nor more than five years in the penitentiary. Penal Code, ch. 4, sect. 57.

the sentence of death [1] . . It does not appear that any of the jurors . . were slave holders." [2]

Held: I. [398] "For the defectiveness of the indictment, the judgment . . is reversed, and the prisoner is directed to be detained in custody to await further proceedings, or until he be legally discharged." II. "The circuit court, in declaring that the jury are 'good and lawful men,' must be understood as saying that they were such as the law required." See State *v.* Nelson, p. 155, *infra.*

Tuggle v. Barclay, 6 Ala. 407, January 1844. [408] "November, 1842, a writ of *fieri facias* was issued . . Phebe and three other negroes had been run and secreted by Carter [their owner], after the plaintiff in execution had obtained the judgment under which his execution issued. Witness . . went with Barclay [to whom Carter had sold Phebe on December 2], and showed him the negroes, secreted among some rocks in the Warrior hills . . [409] and delivered Phebe to him." In January 1843 the sheriff [408] "levied this *fi. fa.* on . . Phebe . . and a negro boy . . about two years old"

Hogan v. Carr, 6 Ala. 471, January 1844. "the note sued on, was given for the hire of a slave, for one year, to . . Carr; and the defence was, that the plaintiff took the slave [back] . . about five months before the expiration of the year, . . The plaintiff, in excuse, offered to prove that, in consequence of mal-treatment by Carr, the slave . . required rest and immediate medical attention. And further, offered to prove by physicians . . called at the request of plaintiff and Carr, that to continue the slave at work . . would be at the extreme hazard of one of his legs, and, perhaps, of his life; . . Carr refused to call in medical aid, or to give the slave rest . . without regard to the consequences. The plaintiff . . retained the slave only so long as was necessary for medical treatment; . . Carr refused to receive him."

Held: [472] "The hirer . . impliedly stipulates, that he will treat the slave humanely, and provide for his necessary wants. . . The conduct of the defendant . . was a violation of the contract . . and being an injury to the reversion, authorizes the owner to rescind . . or to consider the contract as still subsisting, . . [473] by returning, or offering to return, the slave as soon as he was able to labor."

Nancy (a slave) v. State, 6 Ala. 483, January 1844. "indictment . . for an assault with intent to kill and murder Mary Beasley, a white person. . . 'a jury . . two thirds of whom being slaveholders . . find . . prisoner guilty of an assault, with intent to kill.' . . sentence of death by hanging," Affirmed: [486] "any voluntary attempt by a slave, to take the life of a white person, although the attempt, if executed, would make a case of manslaughter only," is a capital offence.

Moore v. Spence, 6 Ala. 506, January 1844. "1837 . . his father, informed him that his wife's mother had died in Virginia, and had given

[1] Clay's *Digest,* p. 472.
[2] *Ibid.,* p. 473.

to the wife some ten or twelve negroes, and that he, plaintiff, might have them if he would go or send for them. He . . sent an agent, who . . 1837 . . brought them to Talladega, . . until they could be sent [in 1839] to Mississippi, where plaintiff was then living."

Sledge v. Clapton, 6 Ala. 589, January 1844. [593] "The negroes were crying as they were about to leave [in 1829], and Mr. Sledge said to them, that they need not be disturbed, for complainant [their mistress] would make the money [due him] and bring them back."

Turnipseed v. State, 6 Ala. 664, June 1844. "indicted . . for having inflicted, 'on a negro woman . . [his] property . . cruel and unusual punishment,'[1] . . a jury . . returned a verdict of guilty, and assessed a fine of fifty dollars against him; for which sum, as well as the costs of prosecution, a judgment was rendered." Reversed [667] "and the defendant is directed to remain in custody to abide further proceedings, unless he shall be otherwise discharged." "the indictment is defective, because of the generality of the terms . . We regret the necessity of reversing . . however odious the offence, we must admeasure right to every one according to law." [Collier, C. J.]

State v. Slack, 6 Ala. 676, June 1844. "indicted for the murder of a slave. The jury found him guilty of murder in the second degree, and the court sentenced him to imprisonment . . for ten years." New trial granted.

Pettus v. Roberts, 6 Ala. 811, June 1844. "Received . . eight hundred and fifty dollars . . for . . Caroline, aged twenty-seven, and her daughter . . about nine. . . 1842." "the consideration was not [$850] . . but a negro man."

McLane v. Spence, 6 Ala. 894, June 1844. Ormond, J.: [897] "the executor purchased [[895] 'a man and his wife and ten children'] . . at his own sale . . in one lot . . for less than they would have sold, if sold separately . . although it would doubtless be proper to sell husband and wife, or parent and small children together, it could not be tolerated that twelve slaves, most of whom were grown, should be sold in one lot,"

State v. Newman, 7 Ala. 69, June 1844. "indicted for selling to a slave one yard of cotton cloth, without the consent of his master,"

Davis v. Hunter, 7 Ala. 135, June 1844. "Trespass by Hunter against Davis, for killing a slave. . . [136] One of the jurors . . had heard . . that the plaintiff's overseer, (the defendant,) had killed one of his slaves . . but he . . felt no more bias in this, than in suits of a similar character. . . The Court refused to exclude" the juror. Judgment affirmed.

Doyle v. Bouler, 7 Ala. 246, January 1845. Will, dated 1795, makes [247] "provision in respect to the manner in which . . [testator] desires his slaves treated, etc., after his death,"

Wheat v. Croom, 7 Ala. 349, January 1845. "Trespass, *vi et armis,* . . for an assault and battery on a slave, the property of the plaintiff. . .

[1] Clay's *Digest,* p. 431.

a witness had accused the defendant in the presence of the plaintiff . . defendant . . replied: 'If I whipped the negro, you prove it—I shall not tell you anything to commit myself.' . . the Court charged . . it was presumptive evidence that he was guilty . . Also, that the jury . . might give smart money." Affirmed.

Johnston v. Bank, 7 Ala. 379, January 1845. [380] "1843, Mary was hired . . at the rate of $100 per annum" for the purpose of "cooking and waiting on them"

Couch v. Couch, 7 Ala. 519, January 1845. [521] "On the day she died, heard her tell her negro to be a good boy, and that Henry would treat him well."

State v. Nelson, 7 Ala. 610, January 1845. See Nelson *v.* State, p 153, *supra.* [612] "the prisoner was tried, convicted and sentenced . at the Fall Term, 1844." Affirmed.

Olds v. Powell, 7 Ala. 652, January 1845. Deposition: [653] "Father said, that he would send the [three] negroes down [to my sister on her marriage], but the boy Daniel, he would take back; that he was a family negro, and had a wife at home. . . Father told sister that if the girl Susan did not suit her, she could return her and take . . Nancy."

Smith v. Armistead, 7 Ala. 698, January 1845. [699] "27th of February, 1830, . . promised to pay . . eighty dollars, on the first of January thereafter for the hire of Rachel and her child Emma, and her daughter Ann."

Litchfield v. Allen, 7 Ala. 779, January 1845. "1836 . . sold . . a negro man for $800,"

Alston v. Coleman, 7 Ala. 795, January 1845. Will of Jesse Coleman: "I give . . to my wife . . during her life time, a . . child slave . . Caroline, and at the death of my wife, it is my wish that . . Caroline be set free." "Tamer, the mother, is given to the same person in fee. . . Dave, to one of the testator's sons, to hold for . . twenty years, after which . . it is his earnest request . . that the slave should be set free." "I wish $1,500 to be reserved . . to be applied to the . . benefit of . . Caroline, . . at the discretion of my executors,"

Held: slaves [796] "can only be made free in the mode . . provided by statute . . [797] we are constrained to declare the will ineffectual to emancipate . . Caroline; . . the trust created for her benefit is illegal," [Goldthwaite, J.]

Bell v. Pharr, 7 Ala. 807, January 1845. A jury valued "a woman about twenty-four, and her . . boy about eight, [and] a boy about six . . [810] $1,100;" [807] "a boy about two, and her infant child . . [810] $300; Milley [[807] 'about nineteen . . and her . . boy about two . . and her infant child'] . . $1,000; Mary and two children, $900; Lucinda, $600, and two children, $300."

Held: [812] "The omission of the jury to ascertain the several values . . is a fatal defect . . our Courts have never recognized any course of proceeding, tending to authorize a forced separation of children of tender years from their parents, when slaves; but no such principle seems involved here," [Goldthwaite, J.]

Winston v. Metcalf, 7 Ala. 837, January 1845. "Assumpsit by . . indorsee of a promissory note . . for the payment of $200 . . 1st January, 1842, for the hire of two slaves, which were to be returned, clothed as slaves usually are. The breach assigned is, the nonpayment . . and the not returning the slaves clothed in the usual manner."

Held: [841] "the [latter] engagement . . is not assignable within the statute."

Williamson v. Bank, 7 Ala. 906, January 1845. [909] "removed from Virginia in 1837, bringing . . with him" "a large number of slaves,"

Wier v. Buford, 8 Ala. 134, June 1845. [135] "the latter part of December, 1841, . . the agent of Eleanor Williams, hired out, at public auction, . . two slaves . . bid off by Wier; Fanny at $120 50 ['to the 25th December, 1842.'] . . April, or May, . . Fanny, ranaway . . to the residence of Mrs. Eleanor Williams; . . Wier inquired, if she intended to give her up. Mrs. Williams replied . . that he had no right to retain them if he treated them cruelly; or if they were dissatisfied. . . the slave did not afterwards . . return to Wier."

State v. Marshall (a slave), 8 Ala. 302, June 1845. "The prisoner was indicted . . for burglary. . . [303] Upon the trial, the prisoner proved that he was a bright mulatto, and that for a number of years he had acted as a free person—that he owned property, or claimed it, and had made contracts as a free person. To prove that he was a slave, the State offered . . witness . . charged to be the owner, who stated . . That some six or seven years before, a bill of sale of the prisoner had been transferred to him, by . . Erwin; that in his opinion he had acquired no right of ownership under the bill of sale, that it was brought to him by the prisoner—that he had not given Erwin any consideration for it, . . The State then offered . . Breedon [an attorney at law] . . who testified that several years before, the prisoner had applied to him to draw up a petition to the Legislature for his freedom. . . the prisoner never called for it, . . [304] The prisoner being convicted, moved in arrest of judgment, . . The Court refused"

Judgment reversed and the cause remanded [308] "in *favorem vitae,* as the jury may have been . . misled, by the permission . . to speak of the bill of sale, without limiting the evidence to the fact of the admission of the prisoner [of his status as a slave], to be inferred from the *act,*" [Ormond, J.]

Mooney et al v. State, 8 Ala. 328, June 1845. [329] "that the defendants with others, had entered into a combination to steal negroes in the neighborhood, and . . the prisoner . . was furnished with a horse, and ten dollars, and told by Brewer, to go to . . a place . . near Barnett's

house, and inform the negroes, that . . Brewer, and McKowen, would be at that place on the next night . . to take them off. That he communicated the message to the slaves, . . That Barnett, being advised . . with some of his neighbors repaired to the place . . that Brewer and McKowen, came riding up, . . and after inducing [the slaves] . . to go with them a few steps, were hailed, and fired upon . . abandoned the possession of the slaves, and galloped off." Verdict of guilty.

Judgment thereon affirmed: [332] " at the time of the passage of this act,[1] . . it was intended to make a radical change in the law . . and to make the offence consist, not in the actual manucaption,[2] but in the seduction of the slave from his master's allegiance, and thus to strike at the root of the evil. . . [336] it was the intention of the Legislature, to create an offence essentially distinct from larceny at common law. . . when the slave . . is induced to abandon his master's service, . . whether the prisoner . . is, or is not present, when the determination to escape is manifested, by the act of leaving . . is to ' inveigle or entice away,' under the statute," [Ormond, J.]

O'Neil v. Teague, 8 Ala. 345, June 1845. [346] " This *fi. fa.* was . . levied [in 1844] on . . Caroline . . about twelve, and Henry, about eight . . Caroline was worth from $300 to $325, and . . Henry . . about $300."

Julian v. Reynolds, 8 Ala. 680, June 1845. [681] " At the sale [in South Carolina] . . the administratrix purchased the slaves . . and removed with them to Alabama,"

Bogan v. Martins, 8 Ala. 807, June 1845. " Received [$256.97] . . for a negro boy . . aged about 40 years; . . 1841." " liberty of repurchasing " if the same sum is repaid within four months.

Garey v. Hines, 8 Ala. 837, January 1846. [838] " the sheriff proceeded . . to levy on the slaves of the defendant . . who . . threatened to shoot the sheriff, if he persisted . . The sheriff abandoned the slaves,"

Pinkston and Wife v. Greene, 9 Ala. 19, January 1846. " Trespass *vi et armis* . . The second count, charges the assault and battery [upon the wife of the plaintiff] to have been committed by a negro man . . the slave of the defendant, by the command of his wife. The defendants pleaded . . [20] that . . Sarah [wife of the plaintiff] . . made an assault upon . . an infant child of . . Matilda [wife of the defendant] . . and . . Matilda immediately . . commanded . . slave . . to defend . . and in so doing the said slave did . . unavoidably a little beat . . Sarah . . the plaintiffs demurred, . . sustained . . verdict for two thousand dollars, for which judgment was rendered."

Reversed and the cause remanded: [22] " From the degraded condition of the slave, . . he is unfit to interpose in a difficulty between white persons, especially females; and therefore, the employment of such an instrument of defence would . . aggravate the injury, and enhance the damages, unless the threatened danger was so imminent as to render a

[1] Feb. 11, 1843. Clay's *Digest,* p. 419, sect. 18.
[2] See State *v.* Hawkins, and State *v.* Wisdom, p. 146, *supra.*

resort to any means justifiable, . . to prevent a battery . . she commanded the slave to defend her, . . This, if true, and if the battery [committed by him] was not . . pushed beyond the necessary defence of his mistress, constituted an excuse." [Ormond, J.]

Sewall v. Henry, 9 Ala. 24, January 1846. Sewall sold Tom, aged about twenty-four, in July 1841 for $250 to Henry, who agreed to sell him back to Sewall for the same price [25] " if applied for on the first day of January next." [6 *id.* 226] " October . . he was hired to a steam-boat, from which he runaway. . . November, the slave came into . . possession " of Sewall, who offered to pay Henry $250 for him on January 1, 1842. [227] " Henry refused to receive it." [9 *id.* 26] " witness, who had formerly owned the slave . . stated that in the summer of 1841, he was worth $400 or $450."

Mobley v. Pickett, 9 Ala. 97, January 1846. A negro woman was sold in 1840 for $600.

Shanklin v. Johnson, 9 Ala. 271, January 1846. [274] " Moses was permitted to labor in Mobile, upon the payment to Mrs. Owen of stated wages, all that he could earn beyond these, he was permitted to dispose of at pleasure; . . [275] he saved two hundred dollars, which the defendant [a free negro] invested in a lot . . receiving a legal conveyance . . to himself. . . Whether the lot was sold . . before the plaintiff became the master of Moses, does not conclusively appear . . But . . the ownership of the plaintiff had already commenced " when the defendant and Moses [271] " came to the witnesses [*sic*] house, and asked him to count money; . . [272] he counted seven hundred dollars, when defendant remarked, that he had sold Moses' lot for that sum, that he would use a part of it to purchase his (defendant's) daughter, but would return it to Moses at some future time."

Held: [275] " Moses was incompetent to make any contract . . There was then nothing more than a moral duty incumbent on the defendant, to give him the proceeds . . This moral duty imposed a legal obligation when the defendant produced the money, counted it for Moses, acknowledging it to be his, . . When this took place, the plaintiff was the master, and the right to the money of course inured to him. . . If . . the plaintiff is not entitled . . the defendant . . may retain it against all the rest of the world. This would be exceedingly unjust to the slave, as we must suppose, that whatever is recovered will be appropriated to his benefit, although the law might not coerce the performance of such a duty." [Collier, C. J.]

Barney v. Bush, 9 Ala. 345, January 1846. Held: [347] " an owner of slaves residing in another county, can be sued in the county where a default takes place, for the omission of his slaves to work upon the road."

Gillian v. Senter, 9 Ala. 379, January 1846. " action of trespass at the suit of the defendant in error, for violently beating, bruising and ill-treating a negro man . . belonging to him. . . that the defendant [over-

seer of the plaintiff] whipped his slave with severity. The defendant . . proved that . . in the absence of his employer from the State, the slave . . was detected in stealing from . . one of the . . neighbors, who thereupon brought him to the defendant, saying, 'If you will correct this boy . . I will not enforce the law against him.' Whereupon Gillian inflicted the punishment . . The court charged . . that . . [396] the authority of . . overseer, did not confer the right to whip the slave for . . committing a crime," Verdict and judgment for the plaintiff.

Reversed and the cause remanded: [397] "it is the duty of the overseer . . to punish slaves . . for offences against good morals. It cannot . . be important to inquire whether the offence is criminally punishable . . So far as it concerns the public, it is . . perhaps better, that his punishment should be admeasured by a domestic tribunal. Certainly . . preferable for the master, as it would relieve him both from anxiety and from the necessity of expending money." [Collier, C. J.]

Borum v. Garland, 9 Ala. 452, January 1846. In "March, the boy Henry was whipped by the patrol, at the house of his wife, and on the next day, the plaintiff [his owner], at the request of the boy, gave him a pass, to return to the house where his wife lived, and on that day, or night, the boy ran away, without having returned to . . Garland, the hirer. . . the plaintiff . . told Garland, that he should not have the boy again, even if he came back, . . [453] [In] May, plaintiff wrote to Garland . . that Henry was in jail . . and requesting him to take him out, . . that he should hold him responsible for the whole hire; . . Garland replied, refusing"

Harrison v. Harrison, 9 Ala. 470, January 1846. Harrison's will: [475] "I hereby emancipate . . the following slaves, . . and wish they should remain in . . Alabama, provided there can be a special act of the legislature obtained for that purpose. And if not, then it is my will . . they be removed to some free State, and be supplied . . with suitable means for a comfortable location . . I give . . unto . . Poole for the sole . . use . . of the said slaves . . the following [twenty-seven] negroes, . . to be kept . . for the sole . . use . . of the . . emancipated slaves." "Certain lands are devised to Poole, for the same trusts," [471] "decedent [in 1843] . . died without children," Held: [481] "The bequest of emancipation, and that for the use of the slaves intended to be freed, are entirely void." See Harrison *v.* Pool, p. 170, *infra.*

Sorrelle v. Craig, 9 Ala. 534, January 1846. [535] "engaged in purchasing negroes elsewhere, to be sold in Alabama; . . [536] up to 1835," [538] "a trade . . which required a considerable cash capital;"

Givens v. Lawler, 9 Ala. 543, January 1846. [544] "in December, 1843, . . a woman and her child, went from the possession of the defendant to . . [that] of the plaintiff; about the same time, $500 . . went from . . the plaintiff to . . the defendant. . . 14th January, 1844, the woman was burned to death" The negro child was resold a few days later to her former owner for $100.

James v. Scott, 9 Ala. 579, January 1846. [580] " the plaintiff agrees that he will place in the possession of Stiggins [a Creek Indian], the following [three] slaves . . and others, . . as an equivalent for the lease . . during his life."

Bank v. James, 9 Ala. 949, June 1846. [950] " 1842. . . On the plantation [of two thousand acres] there are six hundred acres of cleared land, . . with forty able working hands."

Smith (a slave) v. State, 9 Ala. 990, June 1846. " The prisoner was . . convicted on indictment for the murder of . . Edmund, also a slave, . . all the evidence was circumstantial. A slave . . Sam . . denied all knowledge of the murder . . Sam had been . . acquitted. . . while Sam was in jail, . . he . . desired . . Neal, a white man . . also confined . . to request the jailor to send for his master, and then stated . . that he . . had wrongfully accused the boy Smith . . the court refused to allow Sam's statements . . to go to the jury for any other purpose than to discredit him, . . [991] The prisoner . . proved, that . . Sam said Edmund and his wife were too intimate, and if he ever caught them together he would kill Edmund. . . the State attempted to establish . . the jealousy of the prisoner, . . and . . introduced the prisoner's wife as a witness against him. The prisoner objected . . but the court allowed her to be sworn " New trial refused.

Affirmed: I. the declaration of Sam [996] " was correctly refused . . [II.] whilst we admit the moral obligation . . in the relation of husband and wife, among slaves, all its legal consequences must flow from the municipal law. This does not recognize . . the marriages of slaves, and therefore there is no prohibition against the husband and wife being witnesses for, or against each other." [Ormond, J.] Goldthwaite, J., dissented as to admitting the declaration of Sam. [998] " Note.—The prisoner was pardoned by the Executive."

Snedicor v. Leachman, 10 Ala. 330, June 1846. " the overseer . . was to receive a part of the crop . . for his services,"

Abney v. Kingsland, 10 Ala. 355, June 1846. [363] " carried his father's slaves to Texas "

Andrews v. Jones, 10 Ala. 460, June 1846. [463] " the claimant had between seventy-five and one hundred slaves, . . with a valuable plantation of 12 or 1500 acres "

Rivers v. Dubose, 10 Ala. 475, June 1846. " the plaintiff . . said he had not agreed to warrant the soundness of the slave, which he had publicly proclaimed at the sale to be sold as a sick slave;"

Catterlin v. Hardy, 10 Ala. 511, June 1846. Slaves were removed from North Carolina to Alabama in 1834.

Hansford v. Hansford, 10 Ala. 561, June 1846. " Bill by . . free man of color, against Maria Hansford, who is not described as colored, for a divorce. . . married . . 1825, in accordance with the laws of Alabama. The ground . . is the alledged [*sic*] adultery of the wife,

and charges the birth of a child, . . white, with blue eyes, and it is charged that the defendant . . declared her intention that all subsequently born should be of that color. . . The testimony . . is chiefly by . . blacks or mulattoes." The chancellor decreed a divorce and gave the father the custody of the minor children.

Affirmed: [564] "in an appellate court, . . the presumption is, that both parties and witnesses are free persons of color, and it arises alike from the allegations . . that the parties were married according to the laws of Alabama,"

Spence v. McMillan, 10 Ala. 583, June 1846. [584] "committed to the jail . . on a charge of negro stealing, . . [585] he had swapped . . two slaves belonging to Mallory and Welsh, for a negro boy, and got some $600 or $700 . . to boot."

Stewart v. Hood, 10 Ala. 600, June 1846. [602] "knew the slave in South-Carolina, where he was delicate and troubled with a cough." "in 1842 . . the slave was afflicted with what the family thought were rheumatic pains." [601] "Feb. 1843, the day of the sale [of Sims's property] . . the slave . . had a sickly languid look, . . Hood lived about six miles from the place of sale, and was taking the slave home on horseback behind him. . . [602] The slave died . . in July, 1843. . . [603] a few weeks before . . [defendant] took him to Mr. Stewart's, . . to return him. Stewart [as administrator of Sims] declined receiving the slave, and the defendant went off . . but after riding a few miles, determined to go back . . forced the slave on Stewart, who afterwards sued Hood, and recovered judgment for the board of, and attention to the slave . . until he died."

Steele v. Knox, 10 Ala. 608, June 1846. [609] "that the slaves, with the exception of two, were all of one family; that the mother had children rapidly, and was generally pregnant, or had one at the breast, and that it was . . [610] proper that the mother and three youngest children should be kept together, and that the slaves, if taken by one person, would be worth to the hirer, ten per cent. less than . . if hired separately; and that the estate would be benefitted [*sic*] in that ratio by their being kept together."

Brashear v. Williams, 10 Ala. 630, June 1846. [633] "a Choctaw Indian, died in the Indian nation, previous to our laws being extended over it, in possession of a number of slaves."

Huckabee v. Albritton, 10 Ala. 657, June 1846. "About a week after the purchase it was discovered that the slave was greatly diseased in one leg, . . also . . had a violent diarrhoea, of which . . the slave died, about three months after the purchase. . . [The vendor] said the slave was as sound as any man, except being an old man, he would sometimes grunt a little."

Lee v. Mathews, 10 Ala. 682, June 1846. [687] "removed with his family [from North Carolina in 1829] to Alabama, bringing the slaves with him."

State v. Ware, 10 Ala. 814, June 1846. "indicted . . for the stealing . . two slaves,"

Inge v. Murphy, 10 Ala. 885, June 1846. [887] "1819, Dr. Inge removed . . [with] the slaves [from North Carolina] . . to . . Alabama. . . [888] Nazareth was . . employed as a sawyer. . . Tabby, Eliza and . . [their] children . . did not . . go [in 1837] into the possession of his son . . [because] they had husbands on Dr. Inge's plantation. Tabby was old, Eliza sickly, and the . . children, . . would be of no use to one commencing in the woods;"

State v. Abram (*a slave*), 10 Ala. 928. January 1847. "Kirkendall, . . the overseer . . seeing him loitering about the negro cabins, told him to go to work. The prisoner replied he was sick . . the overseer felt his pulse, told him he was not sick, and again ordered him to his work. The prisoner moved off slowly, and Kirkendall struck him with his whip, which was caught by the prisoner. Kirkendall then kicked at him, and Abram . . threw him down, and whilst down, . . [the former] drew a pistol, which Abram knocked out of his hand, . . They then engaged in mutual combat, . . Abram bit off a piece of the upper part, or rim of Kirkendall's ear, and received in his own side a severe cut from Kirkendall's knife. Abram sustained a good character, as an obedient servant. . . [929] The prisoner was found guilty,[1] and sentenced to be executed."

Judgment reversed and the cause remanded: I. [931] "the refusal of the court to charge, that the biting off a small piece of the ear . . was not mayhem, was erroneous, . . [II.] to constitute mayhem, it must be done . . in the case of a slave wilfully. . . [932] Slave though he be, . . and forbidden to resist . . he is nevertheless a human being, and when engaged in mortal strife, his adversary armed with a deadly weapon, and he defenceless, the law . . would attribute such a mutilation . . to the instinct of self defence, in which the will did not co-operate; unless . . wantonly done; . . [III.] [933] the master, or the overseer . . must be the judge of the capacity of the slave to labor." [Ormond, J.]

Price v. Tally, 10 Ala. 946, January 1847. [947] "they continued to reside in Virginia until 1812, when they moved [with the slaves] to Tennessee, and . . 1820 . . to . . Alabama,"

State v. Clarissa (a slave), 11 Ala. 57, January 1847. [58] "The grand jurors . . charged . . that Clarissa . . did administer to . . Parsons [her overseer], and . . Bussey, . . white persons, a large quantity of . . the seed of Jimson weed . . with intent . . to poison, . . [59] Chloe, the mother of the prisoner, . . stated, that she cooked for the negroes . . and was often in the kitchen, where the prisoner prepared the overseer's meals. . . she had seen the prisoner put a small bag of the seed . . in the coffee-pot . . That not wishing to see Bussey her master [who was eating breakfast with Parsons] poisoned, during the absence of the prisoner . . she took the bag of seed from the coffee-pot, . . that at first she had denied all knowledge . . but on being whipped by Bussey, had

[1] Clay's *Digest,* p. 472, sect. 4.

disclosed the above facts, . . That the prisoner was also whipped with great severity, but refused to make any confession; but on being informed by . . her master, that Chloe had confessed . . made a confession, that she had prepared and administered the poison . . This confession was . . excluded. . . after this confession, . . the prisoner was removed . . to the field, and on the next Saturday . . the overseer . . asked her which she liked the best, cooking, or working in the field, . . she preferred the former, he then asked . . [60] why she had continued to give him poison, when she saw him so near dying from the effect . . She replied that she did not know, unless it was the devil that put it into her head. . . the court refused to [exclude this confession.] . . The prisoner was found guilty, and condemned to be hung."

Judgment reversed: I. [61] "the indictment should alledge [*sic*], that the substance administered was a deadly poison, . . [II.] [62] To hold that the reply of a slave to her overseer, under such circumstances, was testimony of the fact, thus impliedly asserted, because it could not be denied, would be exceedingly improper. The humane policy of our law would exclude such evidence, coming from a white person, and the reason is much stronger for excluding it in the case of a slave. . . the prisoner will remain in custody for another indictment, or until discharged by due course of law." [Ormond, J.]

Hale v. Brown, 11 Ala. 87, January 1847. [88] "Attached to this plantation was a blacksmith and waggon-making shop, . . It was conducted by slaves, the principal one having been purchased . . and the others afterwards learned the trade. . . [90] [The overseer's] wages were paid out of collections made by him from the shop, and . . in one year besides . . his wages, . . [the shop] had made . . as much as $1500 . . [91] it was carried on with one forger and two hands;" See Rembert and Hale *v.* Brown, p. 167, *infra.*

Clopton v. Martin, 11 Ala. 187, January 1847. "Some years previous to the sale [in 1841], the slave had been afflicted with spasms or fits. Of this the complainant fully informed Clopton . . [188] asked $800 as his price, but for the reason that the slave had been so afflicted, although the complainant did not believe they would . . recur, and because he did not intend to warrant his health, he agreed to take $700. . . the slave after the purchase was afflicted in a similar manner . . [189] A physician was examined to prove his attendance on the slave in 1839, when he was considered cured—the cause was supposed to be worms, or too rapid growth."

Martin v. Everett, 11 Ala. 375, January 1847. "the defendant employed the plaintiff as an overseer for twelve months, . . 1845, at $25 per month, . . that the plaintiff had treated one of his slaves cruelly, in April or May, preceding his dismissal" in "September . . for being absent from his plantation . . for a day or two . . without his consent." Held: [377] "if the defendant overlooked that outrage, and still continued the plaintiff in his employment, he could not justify his action [in dismissing him], some four months afterwards upon that ground." [Collier, C. J.]

Hooe v. Harrison, 11 Ala. 499, January 1847. [501] "his removal from Virginia to Alabama in . . 1831 . . [with] sixteen slaves"

White v. Strother, 11 Ala. 720, January 1847. [721] "To identify the slaves, . . witness was . . asked . . whether he had ever heard these four slaves, call the negro . . mamma." Held: [724] "we can perceive no just ground to exclude the evidence [as information [722] 'derived from what was said by the slaves'], any more than to exclude proof that the [supposed mother] . . had nursed them when infants." [Goldthwaite, J.]

Milton v. Rowland, 11 Ala. 732, January 1847. In 1843 [734] "she was called in her capacity of midwife . . to visit . . Harriet . . and found her . . diseased with the *gonorrhoea* in its last stages. The child was also diseased in consequence of sucking its mother's milk [and died.] . . the slave was affected at the same time with *prolapsus uteri,*" The plaintiff had sold these slaves to the defendant a few weeks before and had warranted them sound. [735] "two months afterwards . . the defendant . . sold the slave, without the child, for $600 ['an advance, although the slave was unsound']."

Taylor v. Benham, 5 Howard (U. S.) 233, January 1847. The will of W. F. Taylor of South Carolina in 1811 gave [235] "a legacy to his negro woman Sylvia."

Cook v. Kennerly, 12 Ala. 42, June 1847. [45] "had concealed the slaves, and endeavored to run them off, to prevent their being levied on,"

Rumph v. Abercrombie, 12 Ala. 64, June 1847. [65] "That the negroes are family slaves, to which complainants are much attached, having been raised with them,"

Goodgame v. Cole, 12 Ala. 77, June 1847. [79] "the slaves were employed in the tavern,"

Bank v. Hodges, 12 Ala. 118, June 1847. [119] "that Booth had won Bob at a game called *Faro,* in . . 1838,"

Hodges v. Hoole, 12 Ala. 177, June 1847. [178] "that the plaintiffs had rendered medical services to the amount of $45 to slaves . . at her request."

Simerson v. Bank, 12 Ala. 205, June 1847. [206] "the slaves . . worked [in 1844] . . at a brick yard, . . a person was employed . . to superintend the slaves . . one of the slaves . . had been in the employ of the claimant to build a chimney for him."

Adams v. Garrett, 12 Ala. 229, June 1847. In 1841 a certain slave's [230] "yearly services were worth $100."

Fambro v. Gantt, 12 Ala. 298, June 1847. [299] "defendant, as attorney for . . Fiffe, held for collection certain notes made by . . Gantt, . . about $2100. It was agreed by the plaintiff [Gantt's administrator] . . that . . [he] should settle the notes by selling to Fiffe the family of ne-

groes [belonging to Gantt's estate.] . . While the transaction was in the progress of consummation, the plaintiff objected to going on with it, stating that . . Lawson Thomas, a free negro, who was the husband of the woman and father of the children about to be sold, owed him $475, and he feared he would not be able to collect it of him, if he allowed his wife and children to go—that being the only hold on him. . . The defendant then said that he had Lawson's effects in his hands, and if the bill of sale was executed, he would see the debt paid; . . [300] the plaintiff sent to the person having charge of a tin box of Lawson's, which contained some notes and accounts of the latter, for the most part, if not entirely valueless, to inquire of Lawson's ability to pay, . . the plaintiff spoke to Lawson [later] about paying him some money . . and said to Lawson if he did not pay it he would kill him, or words to that effect."

Stewart v. Weaver, 12 Ala. 538, June 1847. In 1840 "Stewart [the plaintiff] agrees to bore a well for Weaver, . . Weaver to furnish provisions for the hands employed . . [539] by 11 o'clock they pecked 18 inches. . . by night had finished 18 inches more. . . The plaintiff . . returned later in the evening . . appeared . . to be in bad humor, without any cause, and commenced beating one of his hands on some frivolous ground. Out of this occurrence, and from some remark made upon it by the witness [Weaver's agent and overseer], some unpleasant feeling arose"

McLane v. Miller, 12 Ala. 643, June 1847. "in August, 1842, . . he . . had a large crop of cotton, and . . [three slaves] were engaged in picking it out, when the defendant [as coroner] took them, and it was some weeks before he could procure others"

Sidney v. White, 12 Ala. 728, June 1847. "The plaintiff in error, a colored man, sued for his freedom, and . . proved, that by the will of William Patterson, of . . Delaware, . . Phillis, was bequeathed her freedom, and providing that she should remain in servitude, until she became thirty-one . . That she was carried to . . Tennessee . . and that whilst there . . before she attained the age of thirty-one . . she gave birth to the plaintiff, who was sold to . . an innocent purchaser, . . The court . . charged the jury, that if they believed the plaintiff was born before his mother attained the age of thirty-one, he . . [729] was not entitled to his freedom."

No error: I. [730] "Until the event happened, upon which the mother was entitled to her freedom, she continued a slave, . . it follows that the child born whilst the mother was a slave, is also a slave.[1] . . [731] In . . Tennessee, . . a different rule prevails,[2] . . if he had remained there, he would have been free when his mother became thirty-one . . and this right . . will follow him wherever he may be carried, . . if the question . . was presented upon the record; but it does not appear

[1] Maria *v.* Surbaugh, vol. I. of this series, p. 138.
[2] Harris *v.* Clarissa, vol. II. of this series, p. 500.

from the record, that there was any proof offered of the law . . of Tennessee. . . [732] this court cannot take notice of it," [Ormond, J.]

Worrell v. State, 12 Ala. 732, June 1847. "indicted for selling to a slave . . 'eight gallons of whiskey, without having first obtained the . . consent of the master . . or overseer'"[1]

Carroll v. Brumby, 13 Ala. 102, January 1848. Will of John F. Wallis: "In relation to my kind and faithful servants, Jane Harper and her [three] children, . . Millary and her two children, . . and Aaron, . . it is my will that they be permitted to go to Africa, their passage paid, and two years support . . after their arrival, . . If however, my said servants prefer to remain subject to my . . daughter, as they are to me, they may be permitted to do so, but in no event shall they be sold, or deprived of their privilege, either before or after the death of my . . [103] daughter. It is further my will, that my executors buy, if practicable, Tilly and Kora, children of said Milly [*sic*], which were sold by me, the first for a supposed fault, and the other at the request of the mother, and advice of friends. Said servants . . are to be allowed to accompany [the others] to Africa . . or to remain under the control of my daughter, as they shall prefer . . who is hereby admonished to treat them kindly, and to attend to their religious instruction. Should they . . remain in servitude until the death of my daughter, they must be sent to what free colony my executors may consider most advantageous."

Held: [105] "they have not the legal capacity . . to choose—the law forbids this, (see 6th Porter, 269,)[2] . . [106] In this case, the legatee (the slave) has not capacity to accept; . . the gift . . to the daughter ought not to fail, if the slave will not, or by law cannot, accept of his freedom. . . the administrator is not responsible for their hire, nor are the slaves liable to pay the legacies." [Dargan, J.]

Barney v. Earle, 13 Ala. 106, January 1848. [107] "1837, complainant formed a partnership with defendant . . for 3 years; the complainant putting into the concern as stock, 58 negro slaves, estimated . . at $52,000, and . . defendant . . furnishing lands,"

Scott v. Baber, 13 Ala. 182, January 1848. The plaintiff said: [183] "Baber did not make his . . negroes work so as to make a support,"

Brown v. Brown, 13 Ala. 208, January 1848. "1828, Charles was delivered to [the plaintiff] . . in . . South Carolina, . . [209] the plaintiff carried Charles to Mississippi, where he was forcibly taken by the defendant [sister of the plaintiff] . . 1836,"

Pope v. Randolph, 13 Ala. 214, January 1848. In 1839 [215] "he was to give the intestate $300 for his services as overseer for the year, and $300 for the hire of the [three] slaves,"

[1] Clay's *Digest,* p. 437, sect. 8.

[2] The question of the legal capacity of slaves to choose freedom or servitude did not arise in Trotter *v.* Blocker (p. 143, *supra*), the case cited. Ed.

Nelson v. Dunn, 13 Ala. 259, January 1848. [260] "1840, Nelson and Hatch purchased . . land and about ninety slaves, . . The witness stated . . That he wrote down the name of each as they passed before him, and also the estimated value of each. . . the vendor, gave no information to the vendees, that any of the slaves were unsound, except . . two . . [261] that four of the [female] slaves priced by . . the witness, as sound, . . were unsound, with incurable diseases, which could not be discovered by external observation, . . That . . [their] value was impaired . . to the amount of $1200,"

Bishop v. Bishop, 13 Ala. 475, January 1848. [476] "in 1827 [he] brought the slaves to Alabama" from Georgia.

Bohannan v. Chapman, 13 Ala. 641, January 1848. [642] "removed with . . slave to Mississippi, . . [In] 1839, . . the . . slave was brought into . . Alabama, and sold to . . Bohannan, . . [who,] in January, 1843, removed to the republic of Texas, . . in December, 1843, said slave was again brought into this State,"

Harris v. Mauldin, 13 Ala. 674, January 1848. [675] "Mauldin . . attempted to take the negro from the plaintiff, which he prevented, by raising an axe."

Welch v. Welch, 14 Ala. 76, January 1848. [77] "In 1832, the last will . . of Thomas Welch . . was admitted to probate," [82] "the testator attempted to liberate four slaves . . and requested his executors to have them set free, as soon as it could be done. . . the administrators applied to the legislature . . but the legislature refused . . These four slaves ['by an agreement between the administrators, who were the husbands of two of the distributees, and the husbands of the other distributees'] were permitted to go at large, and the administrators exercised no control over them. John . . is gone to Arkansas. After several years, the administrators said the distributees divided the others, with their increase, as slaves,"

Sanders v. Watson, 14 Ala. 198, January 1848. [199] "has removed . . and now resides in Mississippi. That he secretly carried off his slaves from the State."

Chapman v. Hughes, 14 Ala. 218, January 1848. [221] "he was to have the woman and children for their victuals and clothes,"

Rembert and Hale v. Brown, 14 Ala. 360, June 1848. See Hale *v.* Brown, p. 163, *supra.* Woods and his brother [361] "carried on a large plantation, on which were some sixty or seventy hands. . . The plaintiff commenced . . as overseer, in 1834, . . receiving for his wages the first year $400, the second $500, and afterwards $600 per annum, with certain privileges, estimated to be worth several hundred dollars more. That the Woods' lived at Selma, forty miles from the plantation, which they visited two or three times a-year, and that the plaintiff had entire control"

Wilks v. Greer, 14 Ala. 437, June 1848. Held: [445] "the issue of slaves, born pending the life estate," go to the remainderman. "the

law . . treats [slaves] . . as human beings, deprived, doubtless for wise purposes, of their freedom. The maxim of the common [civil] law, '*partus sequitur ventrem,*' applies to them, and in our opinion the rule which applies to animals has no application to them." [Chilton, J.]

State v. Daily, 14 Ala. 469, June 1848. [471] "that prior to the seizure, the [flat] boat had been in the actual possession of a slave of Feny called Jim, . . That Daily [as constable] had intrusted the custody of the boat to . . his bailiff, who, after the discharge of the boat, meeting . . Jim in sight of the boat, said . . 'Jim, there is your boat.'"

Held: I. a slave may be an agent; II. [472] "The expressions used, amount to a mere pointing out, . . The question whether there was a delivery, was one of fact, and the jury could alone judge whether the evidence sufficiently proved it. . . no delivery was made, unless the servant was apprized of the . . intention to make it, by the terms employed."

State v. Adams, 14 Ala. 486, June 1848. [489] "that there existed in adjacent parts of Florida and Alabama, a set of men who had confederated to steal and run negroes from Florida to Alabama, and that the defendant was one of those concerned. That the [two] slaves were inveigled or stolen . . in pursuance of such scheme, . . The slaves secretly left their owner in Florida in April, 1846, were next found in possession of . . Smith, in [Alabama] . . in June, . . the prisoner obtained them from Smith by a sale . . [490] or what purported to be a sale."

Held: [491] "the facts shown . . did not sustain the indictment,[1] . . the presumption is created that Smith honestly brought the slaves from . . Florida, and until this presumption was rebutted, the prisoner was entitled to his acquittal, . . cause remanded." [Chilton, J.]

Wragg v. State, 14 Ala. 492, June 1848. After the purchase of cotton by the defendant, [493] "a free person of color accompanied the classifier of the defendant, and under his directions . . he used a gimlet, to draw from the bale a sample of the cotton. . . carried by the free negro to the office of the defendant."

Held: the defendant did not violate the seventh section of the act approved February 29, 1848. [495] "negroes . . are prohibited from sampling cotton . . in those cases only, where the cotton does not belong to the person employing the slave or free person of color;"

Mosely v. Wilkinson, 14 Ala. 812, June 1848. "Trespass on the case, by the plaintiff, against the defendant . . for carelessness . . in the treatment of a negro girl, hired . . to the latter. . . that the . . girl was sick, and died in a few days. That . . overseer of . . Hughes, (to whom the defendant had hired the slave,) bled her, applied mustard plasters, etc."

Hunley v. Hunley, 15 Ala. 91, June 1848. [101] "Hunley pointed out . . eight young negroes, then standing in his yard, saying he had given them to his four grand-children, . . two apiece;"

[1] Clay's *Digest,* p. 420, sect. 25.

Snodgrass v. Cabiness, 15 Ala. 160, June 1848. [161] "the slaves were left in the possession of . . Harris, . . and that he ran off with them to . . Tennessee," etc. See also Swink *v.* Snodgrass, p. 175, *infra.*

Howell v. Hair, 15 Ala. 194, January 1849. "About the year 1832, the slave was taken by fraud, force, or felony, from . . Mrs. Drummond, in Florida, and carried to . . Georgia, and there sold. . . [195] 1839 . . Drummond . . covertly obtained possession of him, and brought him to Alabama."

Williams v. State, 15 Ala. 259, January 1849. [260] "Indictment . . for larceny of a slave, . . the slave . . was taken from the possession of his owner . . in . . Tennessee, and was afterwards found in the possession of the prisoner, in . . Alabama. . . The jury . . found the defendant 'guilty . . as charged in the bill of indictment.' . . sentence of ten years imprisonment in the penitentiary."

Judgment reversed: [263] "The statute [1] must be followed, and *quo animo* the act was committed, must be specially stated. . . [264] issue a mandate . . commanding the . . sheriff to transfer the prisoner to the jail"

Dean v. Rathbone, 15 Ala. 328, January 1849. "immediately after the sale [in 1843], the slaves were . . carried . . to Tennessee."

State v. Stephen (*a slave*), 15 Ala. 534, January 1849. "indictment . . for the murder of . . a white man. . . verdict: . . 'guilty of voluntary manslaughter.' . . sentence of death" Affirmed.

Geron v. Geron, 15 Ala. 558, January 1849. [559] "allowed . . to remove . . slave from Tennessee to . . Alabama, where he . . hired her out from year to year, until 1846, for $75 a year."

Marshall v. Gantt, 15 Ala. 682, January 1849. [683] "that about two months after the purchase of the negroes, . . one . . received a gun-shot wound . . passing through the arm, . . that his attending physicians soon discovered that his lungs were seriously affected: . . that in two days after his arm was amputated, he died. His physicians gave it as their opinion that his lungs were diseased at the time of the sale, and that but for that reason, he would have recovered from the wound. . . Testimony was introduced . . tending to show unsoundness in another . . at the time of the sale, . . [684] This last slave was . . exhibited to the jury,"

Held: I. the defendant [686] "cannot be held liable, for injuries received afterwards, which, . . conjointly with the disease, hastens [*sic*] his death. . . [II.] the practice of producing the slave before the jury, should not be encouraged." [Dargan, J.]

Jordan v. State, 15 Ala. 746, January 1849. [747] "indicted under the 2d section of the act of 1846, for selling slaves without license, and before trial, the revenue act of 1848 was passed, . . re-enacting . . that of 1846, except laying the tax at $10 on each slave sold, instead of $5."

[1] Clay's *Digest,* p. 420, sect. 25.

Held: [748] "the act of 1846, is repealed by the act of 1848. . . he could not be convicted."

Craig v. McGehee, 16 Ala. 41, January 1849. [47] "the widow . . worked in the cotton-field with the hands daily, during the cotton season, for eleven years," In 1835 she bought a negro girl for $437.50.

Cook v. Lewis, 16 Ala. 67, January 1849. Will: [68] "I give unto my daughter . . and her children, twenty negroes, which I cannot name; but . . to be selected . . out of the balance of my negroes, by families as nearly as can be, after my wife makes her selection."

Barnes v. Blair, 16 Ala. 71, January 1849. Bill of sale: [72] "Received, Mobile . . 1845 . . six hundred and fifty dollars for . . Joe, about 25 years old, sound and healthy; the title to the same I fully guarantee." Held: no warranty of soundness.

Harrison v. Pool, 16 Ala. 167, January 1849. [168] "Detinue . . [by Pool] against . . administrator with the will annexed of . . Harrison, . . The slaves . . belonged to the decedent in South Carolina, and were in charge of [Pool] . . as his overseer. The latter lived with an illegitimate daughter of the decedent as his wife, but they were never married. . . removed . . to this State, and the slaves . . remained in . . [Pool's] possession . . for some fifteen years . . Just before the decedent's death, he executed a will,[1] by which he bequeathed said slaves to [Pool] . . his administrator demanded the slaves . . surrendered . . distributed . . [Pool] took no steps in opposition"

Judgment reversed and the cause remanded: Pool is estopped from setting up any claim to the slaves. See Pool *v.* Harrison, p. 177, *infra.*

Hearrin v. Savage, 16 Ala. 286, June 1849. [288] "claimed . . expenses and compensation in going to Louisiana in pursuit of, and in capturing and bringing back to Alabama about forty negroes belonging to the estate, which had been run off by one of the heirs."

Williams v. Shackelford, 16 Ala. 318, June 1849. [319] "Being unable to make a sale of the slave [in Mississippi], . . and inasmuch as the plaintiff [who resided in North Carolina] did not desire . . the slave . . taken back to him, . . [the agent of the plaintiff] proposed to the defendant [who resided in Alabama] again to hire him. This the defendant refused to do at any price, alleging that the slave was a bad negro, and old, and was injurious to his younger negroes"

Vaught v. Wellborn, 16 Ala. 377, June 1849. [381] "During the preparation for the removal of . . [the Cherokee tribe,] Catharine [a member of the tribe] . . pointed out two of the slaves . . and claiming them as her property [from her father's estate], induced the soldiers ['under the command of Gen. Scott'] to take charge of them."

Robinson v. Farrelly, 16 Ala. 472, June 1849. In 1846 Mary, aged twenty-five, was sold for $460. [475] "The defendant was a negro trader, . . complainant was also"

[1] See Harrison *v.* Harrison, p. 159, *supra.*

Boling v. Wright, 16 Ala. 664, June 1849. " action of trespass *vi et armis* . . one of the defendants, introduced evidence tending to show that . . the slave was run from his premises, and that the plaintiff had authorised him [some three years before] to whip said slave should he thereafter be found there, . . that about three years before, but since the authority was given . . defendant caught the slave on his premises and gave him eighty lashes. . . the whipping now complained of was unusually severe and such as to incapacitate the slave for labor for . . two weeks,"

Held: [666] " the evidence [of the first whipping] was proper in mitigation," The defendants " proposed to show . . the repetition of his offence . . rendered it necessary, under the license they had, to use more severity than before."

Eldridge v. Spence, 16 Ala. 682, June 1849. " the sheriff . . levied on . . three slaves . . [683] and delivered two of them to . . [his] overseer . . to be carried to . . the jail. The overseer was not accompanied by the sheriff, nor were the slaves in any manner confined, they being on foot, and the overseer on horseback. When they reached the jail, and whilst the overseer was dismounting, one of the slaves ran off." [684] " and has never been retaken." Held: the sheriff is liable.

Sharpe v. Hunter, 16 Ala. 765, June 1849. [766] "levied on a negro woman and child, who were committed to jail and there confined for eight months;"

Phereby (a slave) v. State, 16 Ala. 774, June 1849. [775]" The plaintiff in error was indicted for the murder of Elizabeth Sheppard, and was described in the indictment as her property. . . The prisoner's counsel requested the court to charge . . ' that unless a property in the prisoner, at the time of the finding of the indictment, was proved, the jury must acquit ' [1] . . the court refused "

Judgment reversed and the cause remanded. " The prisoner, however, will be retained in custody to abide another trial, unless . . discharged in the meantime by due course of law."

Cobia v. State, 16 Ala. 781, June 1849. "Francis J. Cobia was indicted for the murder of . . a slave, the property of . . Crawford. . . verdict of ' Guilty in manner and form as charged in the indictment.' . . [782] sentence, that the prisoner be imprisoned . . ten years."

Judgment reversed and the cause remanded: [783] " before the court can pronounce judgment, it must be ascertained by the verdict . . whether he be guilty in the first or second degree. . . [784] he may be tried again."

Stapler v. Hurt, 16 Ala. 799, June 1849. [804] " the bill . . charges a fraudulent transfer of the slaves " Letter, 1841: [801] " You had better start the negroes from the house before it is night, and let them come a mile or two and wait until dark—tell them where they are coming, for fear they may not want to come."

Marshall v. Wood, 16 Ala. 806, June 1849. [807] " that the slave . . with her child, was purchased . . at the price of six hundred dollars . .

[1] See Flora *v.* State, p. 140, *supra.*

that the woman alone, if sound, would have been worth $550 . . that she was a short time after the sale affected with a disease, termed Amenorrhoea, in consequence of which she was not worth more than two hundred dollars, and that the disease was apparently of several years standing, the defendant . . about a month after the sale . . proposed to the plaintiff to take the slave back"

Drew v. Ricks, 17 Ala. 25, June 1849. "Ricks, did arrest the slave and take him before a justice, . . the slave belonged to Drew and had run away; . . the justice ordered the slave to be committed, but . . Ricks refused to take the slave to jail . . or to deliver him to his master;" Held: Ricks is [26] "entitled to the reward of six dollars,[1] . . The rest becomes the official duty of the justice."

Field v. Milly Walker, 17 Ala. 80, June 1849. *Habeas corpus.* [81] "The petition sets forth that the petitioners are free persons of color . . confined in the common jail . . The return of the officer . . shows that he detains them as the slaves of Field, under an order . . by three justices of the peace, . . record of a recovery of their freedom by a portion of these petitioners, against Jones," [2]

Held: I. [83] "from the nature of the institution of slavery, from the design of the writ of *habeas corpus,* and from the legislation of the state, that the person asserting his title as owner cannot be compelled to submit to this summary jurisdiction, but is entitled to have his rights adjudicated according to the statute [3] . . [II.] [84] improper for us to express any opinion as to the effect of the recovery . . of their freedom, as against Jones, coupled with his possession . . for a length of time sufficient, if he held adversely, to bar the right of Field . . as against him." [Chilton, J.]

Kirkman v. Mason, 17 Ala. 134, June 1849. Will: [137] "that his slaves in Mississippi be sold at the expiration of a year from his death, unless in the opinion of his executors it be advisable not to sell; in that event, they were directed to rent land in Mississippi and save another crop; and at the expiration of this year . . to sell"

Montgomery v. Givhan, 24 Ala. 568, November 1849. [578] "that Sam died in less than a year after his purchase; . . Peggy . . in about three years after her purchase, and Scipio in about four years"

Gerald v. Bunkley, 17 Ala. 170, January 1850. Dargan, C. J.: [175] "It became necessary to build negro houses . . as those left by the deceased had become rotten and dilapidated; . . Not only common prudence but common humanity demands of the master that he should provide suitable houses . . [177] the intestate did not leave land sufficient to employ his force as profitably as it might have been, and . . the administratrix purchased . . two tracts"

[1] Clay's *Digest,* p. 541, sect. 14.
[2] Cited in Fields *v.* Walker, p. 189, *infra.*
[3] Clay's *Digest,* p. 542, sect. 19.

Ham v. State, 17 Ala. 188, January 1850. "The indictment . . alleges that . . Ham . . 1847, 'a slave . . [189] of the value of seven hundred dollars, . . did steal' . . The evidence tended to show that the slave was stolen . . in . . Mississippi, and brought . . to . . this State." Held: "the judgment of conviction . . cannot be supported.[1] . . Let . . the prisoner be retained in custody to await a further trial"

Pleasant (a slave) v. State, 17 Ala. 190, January 1850. [191] "Pleasant . . was indicted . . for the murder of . . Copeland, and having been convicted and judgment of death pronounced . . he prosecutes a writ of error . . The indictment charges him to be . . the property of the late . . Copeland,"

Held: "it is necessary to prove the ownership of a slave when indicted for a capital offence, . . The accused is . . alleged to be the property of one not in life. . . the indictment is consequently defective. . . the accused will be retained in custody to abide another trial,"

Spence (a slave) v. State, 17 Ala. 192, January 1850. Spence, the property of Cole, was found guilty of the murder of John Ramsey and sentenced to be executed. "a bill of exceptions . . presents the following points . . 1. Was Scurlock a competent juror? . . [193] he did not then hold any slaves, but . . he expected to receive some slaves as his distributive share. . . We are clear . . that this juror . . was not a slaveholder in the sense contemplated by the act[2] . . [194] 2. Is the master a competent witness for the slave? . . [196] we are inclined to place the competency of the master upon the high ground that society on the one hand, and the slave whose life is at stake, on the other, have each an interest in the master's testimony, compared with which the pecuniary interest of the master sinks into insignificance, and should not be regarded except as affecting the credit to be given to it. . . [197] 3. . . that the prisoner was arrested by his master at the house of the latter; that his master immediately had his hands tied, and that . . the slave made certain confessions to a third person with whom his master had temporarily left him. . . the prisoner's counsel proposed to prove by the master . . 'that he . . had always been in the habit of tying his slaves when they were charged . . and whipping them till they confessed . . and that he had frequently treated the prisoner in the same way.' . . [198] is there anything unreasonable in the proposition that the slave . . should suppose . . that the temporary absence of the master was but to provide the means of torture which his confessions might avert? . . the proof proposed to be made . . was legitimate, as tending to show whether the confessions were voluntary or otherwise. Let the judgment be reversed and the cause remanded, that the prisoner may be again tried." [Chilton, J.]

Townsend et al. v. Jeffries' Executors, 17 Ala. 276, January 1850. [278] "action of trespass . . for beating and wounding a slave . . The defendants pleaded . . That they only punished [him] . . moderately for

[1] See Williams *v.* State, p. 169, *supra.*
[2] Clay's *Digest,* p. 473. sect. 10.

having killed and used, and for injuring their hogs, . . That the punishment . . was authorised by said plaintiffs, . . the jury find for the plaintiffs and assess their damages at . . three hundred and seventy-five dollars." Judgment thereon reversed on error, and the cause remanded. See Townsend *v.* Jeffries' Administrator, p. 194, *infra.*

Merriwether v. Eames, 17 Ala. 330, January 1850. [332] "sent the slave with her clothes and bedding in his wagon to the house of . . his daughter's husband, . . daughter had been married about twenty years" Held: "a gift should be presumed;"

Nesbitt et al. v. Drew, 17 Ala. 379, January 1850. "Assumpsit . . on a promissory note for one hundred and sixty-eight dollars, . . 'I, John Drew . . hired unto . . Nesbitt . . Jeffro and Daniel, for . . twelve months from the twenty-fifth day of January [1847] . . [380] I am to clothe said negroes comfortably, and all time lost by sickness or otherwise I am to deduct' . . Sept. Jeffro was taken sick and went home, whence he never returned, and that . . November, Drew . . took Daniel . . and refused to return him . . that he could not swim and Nesbitt had put him to rafting logs . . the defendants proved . . that . . there was no restriction . . as to the kind of work . . that they were hired to work . . at Nesbitt's steam mill; and that rafting saw logs was . . a part of the ordinary weekly labor" Held: [383] "Drew . . violated the contract . . [384] no sufficient excuse for the withdrawal of . . Daniel"

Leaird v. Davis, 17 Ala. 448, January 1850. "1848. . . I have this day hired to . . Leaird eight negroes . . and the service of me as overseer and laborer for this year, for . . four hundred dollars, and am to furnish my own meat and bread, and two horses, one yoke of oxen and cart, for the use of the farm"

Baalam (a slave) v. State, 17 Ala. 451, January 1850. [453] "convicted of the murder of Ellen, a slave. . . the deceased and the accused had been seen together . . going apparently in the direction of the church, and he had been seen afterwards to return alone. . . however, shown that he did not intend going all the way . . The dead body was found about half a mile from the road leading to the church, . . a shoe track, which . . was changed to the track of a bare foot. The prisoner was bare foot when he returned and also when he left home. He did not attempt to conceal himself . . Several witnesses who had examined the tracks near the dead body testified that they corresponded with the tracks of the prisoner. The prosecutor then offered a witness to prove that the deceased and the prisoner were husband and wife, and about a year previous . . had quarreled and separated,"

Held: [454] "Had there been no other circumstances implicating the accused . . such proof . . might well have been rejected: . . [455] the judgment must be affirmed and sentence of death be here pronounced"

Knox v. Fair, 17 Ala. 503, January 1850. In 1844 Cater and Holt sold Sarah and her children to Fair for $1200. [504] "The money was handed to *Fair by Sarah,* who paid it to C. and H., but the proof did not

show from whom Sarah got the money. . . some weeks before the sale . . after the house [of Taylor] was burned Cater told her to . . stay at his house, which she did for two months; but . . Cater neither directed nor controlled her labor, but she paid wages for her time, which she had done for several years previously. . . Sarah was industrious and a good . . dress-maker, but there was no evidence that she ever received money for such services. Sarah lived with Taylor until . . 1848, when . . [he] left,—an indictment having been found against him. . . Sarah left the house and hired one for one month, when . . Coleman rented one for her, in which she lived till levied on."

Johnson v. State, 17 Ala. 618, January 1850. Dying declaration of Mrs. Johnson: [621] "That . . a negro girl, gave her some wine, and told her that . . Johnson gave it to said negro, and told said negro that it would do her [his wife] good"

Swink v. Snodgrass, 17 Ala. 653, January 1850. [654] "Harris ran the slaves to Mississippi . . with the consent of the administrator. The slaves were pursued by an agent of the Bank . . and brought back"

Walker v. Blassingame, 17 Ala. 810, January 1850. [811] "1837 or 1838, Walker . . had given the negro girl . . to his daughter, . . and that [his son-in-law] . . came to carry her home, but about the time he was starting, she gave him the slip,"

Gaunt v. Tucker, 18 Ala. 27, June 1850. [30] "a deed of gift, by which the testator [Hartwell Tucker] conveyed [Frederick] . . to him about a month before his death. . . contended that this deed was upon a secret trust that . . the donee, should emancipate the slave, . . [but] [31] if the testator recovered . . the slave was to continue the property of the testator." Held: "the title will vest absolutely in the donee,"

Tucker v. Magee, 18 Ala. 99, June 1850. [100] "Samuel Acre, in . . 1836, put the slave into the possession of . . a brick-layer and plasterer, and then agreed with the latter that he should . . feed and clothe him for five years, and teach him the trade . . and deliver him, at the end of that time, to . . Samuel's niece, . . made a deed of indenture"

State v. Richardson, 18 Ala. 109, June 1850. [111] "The defendant was indicted . . for concealing a slave, who had been indicted for a capital offence. He was convicted and fined one thousand dollars, and sentenced to imprisonment in the . . jail . . until the fine and costs were paid. After . . some time, he was pardoned" Held: [112] "it was not the intention of the Executive to release the fine,"

Sims and Jones v. Knox, 18 Ala. 236, June 1850. [237] "I have . . hired from . . Drish . . his boy William for the balance of this year, . . at the rate of six hundred dollars per annum, and do further agree to find . . William in summer and winter clothing and his board. . . 21st January 1848.—William Knox." "the slave was . . extremely ill with brain

fever at the house of . . Norment, a note . . by Dr. Sims . . to Mrs. Knox . . ' The Dutch doctor . . visited him yesterday without my knowledge . . I called on him afterwards to ascertain the motive of his interference, and he stated that you had told him to do so, and that Mr. Knox was the agent of the negro. I would beg leave . . to inform you that I was sent for to attend . . William at his own request, and the consent of his real agent, Mr. Pfister, and that his master, Dr. Drish, has written to Mr. Norment expressing his satisfaction ' " Held: [240]" the plaintiffs . . must . . look to Drish . . for payment."

Thurman v. State, 18 Ala. 276, June 1850. " indicted for a rape on a white woman." [278] " he had ' kinky hair and yellow skin ' . . The prisoner's counsel asked the court to charge the jury ' that if they were satisfied . . that the prisoner was the offspring of a white mother and a mulatto father, or a father of any other cross of the negro and the white race, that . . the prisoner was not a free negro . . or mulatto as charged,"[1] which the court refused,"

Judgment reversed and the cause remanded: " A mulatto is . . ' the offspring of a negress by a white man, or of a white woman by a negro.' . . [279] there is another law that embraces his case,[2] and the atrocity of the crime . . was a proper matter for Legislative, . . not for judicial consideration. . . If the statute against mulattoes is by construction to include quadroons, then where are we to stop? . . are we not bound to pursue the line of descendants, as long as there is a drop of negro blood remaining?" [Parsons, J.]

Hooper v. Edwards, 18 Ala. 280, June 1850. [281] " Mangham absconded . . with all his negroes and was pursued . . overtaken "

Hooks v. Smith, 18 Ala. 338, June 1850. [341] " in January 1847, hired a slave . . to the defendant . . for that year, for house service exclusively, but that in July . . he put her to work on his plantation, in which business, as she was crossing a creek on a log, she fell in and was drowned. . . had become rogueish, ill natured and unmanageable." Held: " no excuse for putting her into the field, . . he was clearly liable for her value."

Wolfe v. Parham, 18 Ala. 441, June 1850. [443] " the garnishee employed Tucker to go to Mississippi, and take and bring to Mobile three negroes . . for which service Tucker was to receive one of the negroes, or one third the value of the three;"

Myers v. Gilbert, 18 Ala. 467, June 1850. A slave, hired for [470] " three months, at twenty dollars per month," [468] " as a deck hand on . . a steamboat . . a regular packet between Mobile and New Orleans; . . fell from said boat and was drowned . . whilst said boat was making a trip up the Tombeckbee river for the purpose of taking on board some negroes that were to be carried to New Orleans."

[1] Clay's *Digest,* p. 472, sect. 4.
[2] *Ibid.,* p. 445, sect. 42.

Pool v. Harrison, 18 Ala. 514, June 1850. See Harrison *v.* Pool, p. 170, *supra.* On the second trial, the plaintiff [516] "replied over to both pleas of estoppel, that the slaves . . belonged to him under . . the . . will" [517] "of . . Harrison, thus going behind the estoppel, . . [518] The will makes him a trustee of the slaves sued for, for the use of other slaves attempted to be emancipated" Held: "this trust is void,"

Crow v. State, 18 Ala. 541, January 1851. [544] "The prisoner [1] resided in Butler [County], and in his vicinity, . . the slave had a wife, but belonged himself to a plantation in Lowndes. . . he escaped . . but the evidence conduced to prove that he was enticed . . [545] into Butler by the prisoner," [542] "the slave was seen on a Stockton steamboat at the wharf in Mobile, . . taken up by a city officer, who found in his possession a pass . . and a letter to . . Lesesne, both signed . . Readmond, but which there was evidence conducing to show were in the handwriting of the prisoner. The latter instructed Lesesne to hire the slave out . . for account of the writer, who spoke of the slave as his property."

White v. Adkins, 18 Ala. 636, January 1851. "in 1826, . . Bell contracted to sell . . twenty slaves for . . $19,000, payable in ten annual instalments; that ten . . were . . [637] to be delivered . . in 1826, and the remainder in . . 1827;"

Felix (a slave) v. State, 18 Ala. 720, January 1851. [721] "indicted . . for the murder of . . Francis Saturnina . . called Spanish Frank, a free negro, . . It appears that at a ball for colored persons given in Mobile, . . [722] the deceased ['a bright mulatto'] was a manager, and the prisoner, though uninvited, attended and took part in a musical band, as a performer on the bass drum; . . shortly before its close ['about two in the morning'], the deceased and prisoner had some words, when the deceased reminded the prisoner that he was there without an invitation, . . they came violently together; . . Thomas Lorant, a free person of color, . . took hold of the prisoner, telling him not to make a fuss, . . the prisoner replied, 'I have no complaint against you Thomas, but as to Frank, I will kill him to-night.' This took place in a negro shanty . . composed of two rooms. Lorant . . was . . called into the other room to take a drink, . . heard some one cry out that Frank was dying . . stabbed . . The prisoner introduced two witnesses, who swore that . . he had borne an exceedingly good and peaceable character," He was found guilty and sentenced to be hanged. Judgment reversed for error in the charge to the jury. [726] "As to the supposed variance . . We do not think a bright mulatto . . fills the description of a negro. This can . . be remedied by an additional count"

Murray v. State, 18 Ala. 727, January 1851. "the slaves were stolen in . . [728] Louisiana . . and brought . . into this State,"

Rowland v. Walker, 18 Ala. 749, January 1851. "asked the witness [not a physician] to state of what the slave complained, . . permitted to

[1] Clay's *Digest,* p. 419, sect. 18.

answer . . [750] and he stated that he complained of pain in his head, back and knees, and said he was sick all over," Held [752] " no error in admitting the negro's declarations . . They were to be carefully weighed by the jury."

Hurt v. State, 19 Ala. 19, January 1851. " Mr. Hurt was convicted [1] . . for selling a pair of shoes to a slave. On the trial he admitted the sale, . . But he then proved by the owner . . that, two months before . . he gave to Mr. Hurt verbal permission to sell dry goods, at any time, to the same slave, provided he made him pay the money for them, but prohibited the sale of ardent spirits. The court charged that the particular articles to be sold . . must be expressed in the permission;"

Judgment affirmed: " Most owners, I believe, allow to their slaves reasonable time to make provision for the comfort of themselves and families, and, to that end, permit them to deal with honest white persons, so far as to sell their commodities, or to expend their money, in the purchase of necessaries. . . [20] In requiring the articles to be specifically stated, . . the Legislature designed to suppress . . a general evil in some parts of the country, growing out of a clandestine traffic between slaves and a particular class of white persons. It was intended . . that the negro should have the privilege of making himself and family comfortable and even respectable in his caste, but not to dispense with the owner's discretion . . altogether. For if a negro may buy all sorts of dry goods . . he might soon . . become a pedlar among other negroes and the class of white men, whose conduct led to the passage of the act," [Parsons,J.] Dargan, C. J., dissented: " I think the term, dry goods, sufficiently descriptive "

Smith v. Hooks, 19 Ala. 101, January 1851. [102] " The defendant . . hired a female slave . . [103] the slave was drowned, under circumstances that rendered the defendant liable for her value."

Strong v. Gregory, 19 Ala. 146, January 1851. [147] "Susan Gregory, before her intermarriage, was possessed of ninety-two slaves in . . Georgia, . . an agreement in writing . . to settle . . sixty-one . . on . . Nesbit," to her use for life. The other slaves were sold under the order of her husband, and they " removed to Alabama, and brought the sixty-one slaves with them,"

McClung v. Spotswood, 19 Ala. 165, January 1851. Mrs. Spotswood was [169] " engaged in waiting on the girl [slave] . . who was sick,"

Gilmer v. Ware, 19 Ala. 252, January 1851. [255] " 1849, the slave . . was sold under a mortgage, made by . . Benbow, to secure a debt due to the . . Bank . . bid in by . . Whiting . . the agent . . of . . Bank. On the day after . . Whiting sold the slave to . Ware, for five hundred and fifty dollars, . . an advance upon the price . . Ware agreeing to give his note . . but on the same day, Ware came . . and said that the boy was unsound, having a defect in one eye, . . Whiting replied . . Benbow said . . nothing was the matter with him. . . they found one of his eyes de-

[1] Clay's *Digest,* p. 437, sect. 8.

fective, but Ware . . did not object . . About two weeks afterwards . . Ware . . said he could not comply, because he was told by one of his negroes that the boy had had a fit, and . . was subject to them, . . that although Benbow thought they were spasms occasioned from eating [something ' that disagreed with him '], . . Ware, thought they were fits, and . . asked Whiting to rescind . . refused . . Ware . . said, if Whiting would sell the negro that day as the property of Benbow, under the mortgage, he would make up the difference, . . [256] ' to be sold without warranty.' . . the negro [was] sold at auction, and was purchased by Gilmer at $550 cash. . . all sales made under mortgages to the bank were without warranty . . Whiting . . disclosed to [Gilmer] . . all that had passed . . Gilmer replied . . that if what Benbow said was true, the negro was a cheap bargain, and if what Ware said was true, he would send the negro up to some of the negro traders in Montgomery, and get them to sell him; and he then paid the money . . if the negro had been sound, he would have been worth $700;" Held: [259] " he cannot be said to have been defrauded,"

Turner v. Fenner, 19 Ala. 355, June 1851. In 1843 negroes were brought to Alabama from North Carolina.

Hirschfelder v. State, 19 Ala. 534, June 1851. [537] " The indictment charges that the plaintiff in error . . ' did sell to a negro man slave . . one bowl, of the value of twenty-five cents, and one set of plates of the value of fifty cents,' "

Held: the act of February 7, 1850,[1] renders it unnecessary to state the name of the owner or to aver that the commodities were sold without his consent. The act is constitutional. [540] " The consent proven . . which does not express the articles to be purchased, . . furnishes no protection to the accused."

Lindsay v. State, 19 Ala. 560, June 1851. " proven that the defendant sold . . to the slave . . several drinks of either ale or whiskey "

Doss v. Campbell, 19 Ala. 590, June 1851. [592] " removed [from Texas] to Alabama, bringing the slaves with them;"

Carter v. Balfour, 19 Ala. 814, June 1851. Will, 1843: [816] " I give one thousand dollars . . betwixt . . the Baptist Societies for Foreign and Domestic Missions, and the American and Foreign Bible Societies; and at my sister Emily's death, if the boy Mike given to her during her life-time be alive, he shall be sold . . and the proceeds . . equally divided . . between the societies "

Seaborn and Jim v. State, 20 Ala. 15, January 1852. " slaves . . indicted for the murder of another slave. . . The committing magistrate . . testified, ' that when he reached the place where the examination took place, . . the two prisoners were sitting down, each chained with a padlock around his neck, and that they looked quite melancholy; that the owner of the prisoners and the owner of the deceased were present, and

[1] Pamphlet Acts, p. 51.

that there was a gun and a stick in the company; that the witness said to the prisoners, 'that it was a bad . . situation, they were in;' that Seaborn replied 'yes, it was; but that it was too late,' and shook his head; that . . witness . . sent . . Jim, with two men, one of whom had a gun, out of the hearing . . [16] asked Seaborn if he was guilty, or not guilty, and Seaborn replied . . 'guilty;' witness then asked him to state how the killing occurred, and he replied,' . . detailing the circumstances . . Jim was afterwards examined apart . . and his confession corroborated . . The State also produced other proof corroborating . . verdict of 'guilty' . . sentenced to be executed"

Affirmed: [18] "the admissions of guilt . . were voluntarily made . . That they were made to the examining magistrate, who did not previously caution them, as he undoubtedly ought to have done, as to the effect . . would not justify the court in excluding them." [Chilton, J.]

State, ex rel. Savary, v. Caroline (a slave) et al., 20 Ala. 19, January 1852. "Libel to forfeit slaves brought into Alabama from the Republic of Texas. The relator alleges that the slaves . . were brought in . . contrary to the act of Congress for the suppression of the slave trade, and prays that they may be declared forfeited, and sold for the benefit of the State and himself." Libel dismissed.

Affirmed: [22] "By the fourth section of an act of Congress, approved 3d March, 1819, . . [23] all power over the subject is conferred on the District Courts of the United States, their attorneys and marshals; and the power of disposing of the persons unlawfully imported is taken from the States, and conferred on the President of the United States."

Spencer v. State, 20 Ala. 24, January 1852. "indicted for 'inveigling . . and enticing away a slave, with a view to convert . . to his own use,'[1] . . the State offered to prove the . . declarations of the slave, made the day after the prisoner's arrest, . . in his presence . . some person . . asked the prisoner if he did not intend to whip the slave for making them, . . he replied that 'he did.' . . admitted . . The State also offered to prove . . declarations made by the slave . . while the prisoner was being conveyed to jail . . which declarations were not contradicted by the prisoner. . . admitted . . There was also evidence . . that the slave had run away from his overseer when about to be whipped by him, in . . Georgia." Held: I. [28] "no error . . in the admission of the testimony . . [II.] [29] the indictment must be framed on the eighteenth section" of chapter 4 of the Penal Code.[2]

Winter and Scisson v. State, 20 Ala. 39, January 1852. [42] "indicted . . for . . aiding . . Henry and George [mulattoes], to escape from their master's service. . . they had lived with . . Jones for several years, when Jones died, and the prosecutor . . his administrator, . . did not include [them] in his inventory . . The plaintiffs in error . . introduced

[1] [25] "The indictment was found under the provisions of the 25th . . section." Clay's *Digest,* p. 420.
[2] *Ibid.,* p. 419.

proof . . tending strongly to show that Henry and George were . . free persons of color." [40] " declarations of Jones that they were . . born of a free woman, . . and never having exercised acts of ownership over them for fifteen years;" [41] " treated them as his children " Held: [42] " the prisoners . . should have been acquitted."

Smith v. Hooper, 20 Ala. 245, January 1852. [246] " By . . consent, the acts of the executor in conveying to Ohio certain slaves of the testator [John Hooper], which he directed should be done in order to effect their emancipation, and the appropriation of three hundred dollars from the share of each distributee, to defray the expense of their removal, . . a sum considerably below what the testator had appropriated for that purpose, were . . approved. . . the husband [of one of the distributees] . . was not before the court to make any consent," Held: " the whole proceeding . . is erroneous."

Patton v. Rambo, 20 Ala. 485, January 1852. " about August, the slave had an attack of fever, and was sick until winter. . . Dr. Jackson . . was called in . . in November, and prescribed for him for a month or two; . . had given the boy a thorough examination, . . his opinion . . that the boy was unsound at the time of the sale [in April]. . . Dr. Henkle had been called . . about two months before "

Jones v. Nirdlinger, 20 Ala. 488, January 1852. [490] " The master sought to recover money which the slave had paid to the defendants." It was proved that [489] " the slave was allowed by his master . . to hire his own time, make contracts, etc., and to keep what he made, paying his master hire. . . was employed by the defendants . . in their store . . detected in purloining goods . . taken up by the clerk . . who . . with the . . constable, examined his house, and found . . goods belonging to the defendants, and five hundred and eight dollars . . the slave had three or four hundred dollars before he entered the defendants' service. . . the slave confessed . . that he . . had frequently stolen from them, and had sent some of their goods to Limestone County; . . he was satisfied he had taken enough to amount to two hundred and fifty dollars, . . would willingly pay it . . The defendants . . accepted . . and the slave kept the goods. . . plaintiff's counsel moved to exclude the confessions . . overruled " Verdict for the defendants. Affirmed: [491] " parts of the *res gestae;*"

Hooper v. Edwards, 20 Ala. 528, January 1852. [529] " 1848 . . left . . clandestinely, and carried with him all his negroes, except the boy . . previously levied on "

Carpenter v. Going, 20 Ala. 587, January 1852. [590] " At . . sale, the defendant became the purchaser of the slave . . paid . . a thousand and one dollars."

Harrison v. Harrison, 20 Ala. 629, June 1852. [632] " her happiness . . did not . . enter into his views, as was manifest from . . his abandoning her bed, and taking to his embrace a negro woman belonging to him,

with whom he slept in regular companionship, . . she did return . . to the residence of her parents"

Ewing v. Blount, 20 Ala. 694, June 1852. "the slave ran away from the plaintiff in January, 1849, and soon afterwards was in the possession of the defendant, who sold him to . . Vaughan. . . the negro ran away from Vaughan in . . 1850, and was arrested and put in jail . . as a runaway. . . the plaintiff expended about thirty dollars in regaining the possession . . he was worth from eight hundred to one thousand dollars, and his hire by the month from twelve to sixteen dollars."

Brainard v. McDevitt, 21 Ala. 119, June 1852. "McDevitt . . purchased her of . . Montgomery, for . . four hundred dollars . . 1845; . . Montgomery, after the sale . . [120] made a bill of sale of said slave to . . Devine, for the purpose of having [her] . . emancipated, but . . Devine . . paid nothing . . execution of a bill of sale for the same slave, by Montgomery, to . . Brainard, . . 1848; . . some money passed . . no delivery . . after the death of Montgomery, Brainard . . assumed the control . . but she was permitted to live in the city where she pleased."

Roberson v. Roberson, 21 Ala. 273, June 1852. Will of John Roberson, 1844: [274] "for good services and regard that I have for my four slaves, . . Old Peter and . . his wife, and Little Peter and . . his wife, I hereby set them free at my death." They were sold by the executors. Held: the bequest was void. They go to the residuary legatees.

Gingles v. Caldwell, 21 Ala. 444, June 1852. Bill of sale: [445] "1842, received . . three hundred and forty dollars, for . . Joe, aged eight years; . . warrant Joe to be sound . . with the exception of his legs, and I . . bind myself, . . if Joe's legs should injure him from being a serviceable boy at . . fifteen years, to make him good" "the slave's legs had been burned before the sale, . . grew worse, . . at . . fifteen, his legs had become more crooked, . . one thigh and hip seemed to have dwindled away, . . however, . . although not 'a full hand,' he could render valuable service." Held: the warranty [447] "has no reference to his market value,"

Shomo v. Caldwell, 21 Ala. 448, June 1852. "1847, Joseph Shomo . . removed with [the two slaves] . . to . . Florida. In 1849, Caldwell [the plaintiff] . . purchased . . brought the slaves back to Alabama, when they ran away from him, and went into the possession of [D. T. Shomo] . . of whom they were demanded . . [449] refused . . agreed that . . Edgar was worth $800, and Abram $900; that the hire for each is $10 per month. . . judgment for the plaintiff for the agreed value . . and damages for their detention." Affirmed.

Tannis v. Doe, ex dem. St. Cyre, 21 Ala. 449, June 1852. [450] "Ejectment by Lucy St. Cyre . . to recover a certain lot . . in . . Mobile, which the plaintiff claimed as the sister and heir at law of . . Cyrus Evans, a free man of color. . . that the only child of . . Cyrus was a slave, and that his brothers and sisters, with the exception of herself, were either dead or slaves; that the plaintiff was a slave at her birth, but was

emancipated under the Spanish law about . . 1818, at which time she was a resident of Florida; . . found residing in Alabama, after the treaty of cession of 1819,"

Held: [454] "incapacity [to hold property] . . can only be fixed upon [a free person of color or an emancipated slave] . . by express legislative enactment, or by necessary implication." I. [453] "the legislature . . having . . virtually exempted from the operation of the laws directed against free persons of color, those who came into the State prior to 1832, no argument founded on the policy of the law can be maintained against those so situated. The charge of the court, therefore, that a negro could hold and inherit lands, was, as a general rule, correct; . . we do not decide the question as to the right of a free person of color to inherit lands . . where the descent was cast since the passage of the act of 1832, and the heir was not a resident . . on the first day of February of that year. . . [II.] previous to the act of 1834,[1] . . there was no law which required the slave to leave the State, . . to complete, the act of emancipation. . . [454] the defendant in error would, therefore, be exempted from its operation." [Goldthwaite, J.]

Patterson v. State, 21 Ala. 571, June 1852. [572] "indicted for selling . . a half gallon of rum . . to a slave, without the written permission required by the statute."

Ganaway v. Mayor, 21 Ala. 577, June 1852. "judgment was rendered . . 1850, for . . fifty dollars, besides costs . . for violating the ordinance . . of Mobile . . [578] that if any white person . . shall be . . within . . Mobile, found in company . . with slaves, at any . . meeting of such slaves, or if he . . harbor, secrete or entertain any slave . . without the consent of his . . owner, . . every person . . being thereof legally convicted, shall . . pay . . a fine of fifty dollars."

Atwood's Heirs v. Beck, Administrator, 21 Ala. 590, December 1852. Will of Henry S. Atwood, executed in 1843, admitted to probate in 1851: [593] "I give . . to a mulatto boy . . aged about fifteen, also to his sister, a mulatto girl aged about twelve . . now [and [624] 'for many years'] residing in Ohio,[2] in charge of . . Brown, . . also to their sister . . Cebille, aged about nine, also to her brother, . . Julius, aged about eight . . also to his brother, John, aged about five, the three latter . . being on my plantation, . . and all . . being children of a negro woman belonging to me, . . [594] Candis; I also give . . to a mulatto boy . . aged about six . . and to his brother . . aged less than one year, . . children of a slave of mine named Mary, who resides at my plantation . . six miles [away] . . eight thousand dollars each, . . and the bondage . . to which said children, by the laws of the State, are subjected, I . . invest in the hands of my executors . . for the purpose of . . removing [the last five] . . to a free State; the other two . . being already in a free State, from which they are not to be removed into any slave State, it being my desire to give to each . . their freedom, . . I also will . . to nine

[1] Clay's *Digest,* p. 545, sects. 37 and 38.
[2] [593] "Atwood took [them] . . to . . Ohio in his lifetime;"

of my servants their freedom, and . . invest in my . . executors . . the control and ownership . . so far as . . necessary to remove [them] . . to a free State, . . at furthest in one year after the probate . . The . . slaves . . to be liberated and removed [1] are Candis, . . aged about thirty-six, she being the mother of five . . mentioned, and her two black children . . aged about eighteen . . and . . fifteen . . also Seaborn, . . about twenty-seven, and four small children of his . . To . . Candis, Seaborn and Mary I . . bequeath . . two thousand dollars each, . . [595] The expense of removing . . to be borne by my estate, and the means furnished them for a six months' supply of provisions . . All the personal effects they have . . here, to . . belong unto them," " Testator further requires, that the . . fifty-six thousand dollars, be invested in lands in Indiana, Illinois or Michigan, which can be entered at Government price, . . until one half . . [596] is invested, and the other half to be loaned out . . that his land and [other] negroes be sold . . He desires . . the children of Candis to be well supported . . and educated, . . The residue . . to the children of . . his sister, resident in . . New York: . . further . . 'I . . invest in my executors full . . power to remove . . and that the . . ownership in the said persons be . . complete for so removing them, knowing full well they cannot be given their freedom to remain in this State.'" [591] " estate . . estimated . . at three or four hundred thousand dollars; . . the executors named refused to qualify, . . complainants [children of his sister] resided in Wisconsin, . . the administrators . . proceeded to obtain an order . . for the sale of one hundred of the slaves for cash, and one hundred and seventy-five more on a credit of twelve months, at public auction; . . sold . . [592] The complainants charge . . that the bequests in favor of said slaves, as well as the legacies . . are absolutely void, and if this be so, they pray . . that the slaves be distributed among those entitled; that if . . valid . . the complainants . . pray they may be appointed the guardians and trustees . . that the applicants are residents of a free State [Wisconsin], and could carry the slaves and settle them in the State of their residence at less expense than any one else; . . [593] they would feel bound, by the ties of blood as well as those of justice and humanity, to carry into full . . execution . . the intention of . . Atwood, . . [598] the Chancellor pronounced a decree . . That the trusts . . in favor of slaves who are in this State, are void; that they cannot be emancipated in the manner pointed out in the will, without the consent of the parties interested in the estate;"

Decree reversed and the cause remanded: [614] " There is nothing said, either in the Constitution, statutes or decisions of Alabama, about the power of the owner to remove his slaves to a non-slaveholding State, either by himself, his agent or his personal representative; nor any attempt to forestall emancipation by such means. . . [623] the executors hold the funds, as they do the bondage and title to the slaves, in trust, upon a use to spring up . . upon the condition of their removal, when the intended beneficiaries shall be capable of taking. . . [624] the trustee

[1] In Georgia this order of words would have nullified the bequest of freedom. See introduction to the Georgia cases, p. 2, *supra*.

is willing and proposes to carry [the trust] . . into execution." [Chilton, C. J.]

Nimmo v. Stewart, 21 Ala. 682, December 1852. [684] " conveyed away some of the negroes [bequeathed in Virginia] in . . Tennessee, . . some are . . in . . Texas, . . [two] are in . . Alabama "

Michan v. Wyatt, 21 Ala. 813, December 1852. [816] " Leah Michan has had possession of the slaves . . since 1819—a part of the time in South Carolina, a part in Georgia, and then in Alabama;" [814] " that they are family slaves, to which . . Leah is greatly attached, she having raised most of them in her dwelling house with her own children; . . [818] witness . . told Leah . . his opinion that the sheriff intended to levy . . on Ann and her child, . . on the night of this day the slaves were sent away . . and hired "

DeLane v. Moore, 14 Howard (U. S.) 253, December 1852. [261] " the decedent did . . obtain . . in . . 1822, a negro woman slave, . . and her child . . in payment of a store account . . for sugar, coffee, pork, butter, clothing, and other necessaries "

Ben v. State, 22 Ala. 9, January 1853. " indictment . . that . . Ben, a slave, . . [10] ' did administer [in 1851] . . to . . [three] white persons . . arsenic . . one-half ounce ' . . found . . guilty . . and . . sentenced . . to be executed." Affirmed.

Dave v. State, 22 Ala. 23, January 1853. [24] " Indictment . . for an assault . . with intent to kill. . . ' Cunningham . . had the boy Dave [hired from Mrs. Underwood] under his control; . . had a negro whip in his hand, . . caught . . Dave . . by the collar or neck handkerchief, and . . asked him why he had disobeyed his orders, and had not fed the horses and mules . . Dave replied, that his master, Franklin Morgan, had sent word to him that one of his dogs had run mad . . wished . . Dave, to help him kill him; . . witness then told Dave, that he . . had to obey him, and not . . any body else, . . ordered . . Dave to drop his pantaloons; . . Dave replied, that he had done nothing to be whipped for, and that he would not do it; that witness then ordered the other two boys . . to take hold of . . Dave; . . witness struck Dave over the head with the butt of the whip . . and . . Dave drew out his pocket knife . . and told the other boys that if they took hold of him he would cut them or kill them, and . . [25] cut the left hand of the witness . . the other boys refused to take hold . . witness then told . . Step to take the axe and knock him in the head, and that he would stand between him and all danger; that Dave cut the witness . . in about twenty-six places, but many of the cuts were very slight;' ' when the boy cut his right hand, Dave got away . . the difficulty lasted about a minute and a half.' . . The defendant introduced a witness to prove his general character as a peaceable and obedient boy; ' and the court explained . . [26] that general character was, what a majority of . . neighbors said or thought of him;' . . excepted." Judgment reversed and the cause remanded.

Dill v. Camp, 22 Ala. 249, January 1853. "On the 25th day of December next, we . . promise to pay to . . Dill, guardian of . . Goodwin, . . one hundred and twenty-five 50/100 dollars . . for the hire of two negro boys, Carter and Alexander, which I promise to feed with good and wholesome diet, and furnish two good cotton and one woolen suit of clothing, one blanket, hat, two pair of shoes, and pay their taxes; this 27th day of Dec., 1848." [251] "Aleck staid all the year, and Carter some four or five weeks, and then ran away and returned no more.[1] . . Aleck could not plow, was but an indifferent hoe-hand, and greatly lacking in intellect; as witness [the overseer] supposed, was more trouble than his work was worth. . . Goodwin said that the negro [Carter] had been whipped, and he should not go back"

Chenault v. Walker, 22 Ala. 275, January 1853. "sheriff . . levied upon and sold eight slaves . . 'Sheriff's fees for victualing, clothing, and paying tax for eight negroes twelve months, and commission fees'"

Walker v. Bolling, 22 Ala. 294, January 1853. "Trespass on the case . . to recover damages from . . the owner of the steamboat . . for the value of one slave . . killed, and of several others . . [295] injured, by the explosion of the boilers . . hired . . as deck hands . . the first engineer, was grossly . . negligent . . the captain . . was told of this . . one or two trips before the explosion . . the rate of hire for steamboat hands is greater than in service on land." Held: the owner of the steamboat is responsible.

Hunter v. Green, 22 Ala. 329, January 1853. Will of Thomas Finley[2] of South Carolina, who died in 1831: [330] "After the death of my . . wife . . I give . . to . . Ann Finley, my negro boy Franklin, . . and also my negro girl Peggy, until she arrive at . . twenty-five . . at which age she is to be emancipated or sent to . . Indiana or Ohio, where the laws will free them [*sic*], and her children, if she have any, shall go free with her. . . Franklin is not to be bartered or sold out of her family, where I trust he will be well treated." In 1832 Ann removed to Alabama, bringing Franklin and Peggy [332] "with the . . consent of . . the widow of the testator, and . . of the executor, the plaintiff." [331] "The plaintiff introduced an act . . of South Carolina, passed . . December, 1841,"[3] [335] "some two years before the passage of this act, . . Peggy had reached the age of twenty-five"

Held: [342] "There is nothing in our law making the trust imposed . . illegal; and the defendant, if he thinks proper, may execute it. But even if he does not, . . the defendant and the property are entirely unaffected by the act of the legislature of South Carolina of 1841." [Gibbons, J.]

[1] [27 Ala. 556] "remained in the woods until . . September;" [554] "about September . . [Burns] hired . . Carter . . for the remainder of the year; . . the boy was then in the woods, but was soon afterwards recovered,"

[2] See Finley *v.* Hunter, vol. II. of this series, p. 409.

[3] "That any bequest . . whereby the removal of any slave . . without . . this State, is intended with a view to emancipation . . shall be . . void"

Dixon v. Barclay, 22 Ala. 370, January 1853. Bill of sale: [371] "Received of . . Cunningham, four hundred and twenty-five dollars . . for a negro boy . . about 32 . . 1845." The plaintiff proved "that . . Cunningham, agreed to take the slave . . to . . Texas [but he is still in Alabama], and that the plaintiff let him go at less than his real value, in consideration of such agreement. . . [372] that his value was about $600 . . that Cunningham, after he purchased the slave, permitted him, with the consent of the plaintiff, to go down into the neighborhood . . to get some things, . . [but] not to be allowed to go on his (plaintiff's) premises; that Cunningham sent the negro down tied, and in charge of two able-bodied men, but . . he made his escape, and was runaway some months; . . that Cunningham . . paid a reward . . when he . . was retaken; . . Defendant . . offered to prove by . . a negro trader . . that in the spring of 1848, the slave . . was not worth, in Talladega, more than $400; . . that any diminution in value from the increase in the age . . since 1845. was more than overcome by the existing advance in the price of negroes;"

White v. Word, 22 Ala. 442, January 1853. Malinda was hired for $60 for 1840, and for $55 for 1842.

Roberts v. Trawick, 22 Ala. 490, January 1853. [491] "two days before his death . . [he] spoke of his slaves giving him a great deal of trouble, and said he did not know what to do with them;"

Becton v. Ferguson, 22 Ala. 599, January 1853. [600] "Jeter . . was . . of copper complexion, and . . his wife, Lydia, was . . a colored woman, of dark complexion. The plaintiff, . . to rebut the presumption of slavery, proved 'that . . Jeter had been, for some sixteen or seventeen years, residing in . . [601] Selma, . . and during the whole of that time had been engaged in the blacksmith business, working and trading as a free man, . . the witnesses had never known . . any one . . to claim . . Jeter as their property,'" [600] "Lydia . . lived also as a free woman, . . was a midwife, and made considerable money by that business; . . [The garnishee] made an arrangement with . . Lydia, that he would permit her to redeem a certain house and lot, which he had taken from . . Jeter to indemnify himself . . and . . he had received from her upwards of three hundred dollars."

Held: [601] "The effect of the proof offered to rebut the presumption arising from his color, was for the jury to decide. . . [602] We see nothing in the present record that militates against the idea that Jeter was born free." [Gibbons, J.]

Lindsay v. Griffin, 22 Ala. 629, January 1853. "action of trespass *vi et armis*, . . that the overseer [of the defendant] directed the slaves to put the hogs of the plaintiff . . out of the field [of the defendant], and that in doing this the slaves had killed some and injured others . . that the defendant did not know" Held: not liable.

Newcomb v. Leavitt, 22 Ala. 631, January 1853. [632] "Fields, in 1843, . . was largely indebted . . [His] negroes were sent away from his plantation . . in the night" and were sold to a resident of Mississippi.

Bentley v. Cleaveland, 22 Ala. 814, June 1853. "The complainants, . . Bentley and Cecilia, his wife, and Lewis Young, a minor, who sues by . . his next friend, set out . . that . . Cecilia and Lewis are the only heirs at law and distributees of the estate of Lewis Young . . a free man of color . . who died intestate in 1834 . . seized of a lot . . with several tenements . . and possessed of two slaves, a woman about forty . . and a man about fifty . . together with sundry notes and accounts . . and two soldiers' land warrants, each for one hundred and sixty acres . . in . . Arkansas; . . [815] that . . Cleaveland was the friend [of their father] . . and at his death . . took charge of his estate, . . refuses to account . . The answer sets up matter in bar to the persons of the complainants, averring that . . the children of . . Young . . are slaves, denying that Bentley is free, and averring that he is of full African descent. . . [816] the evidence . . established that the mother of Bentley's wife, and of the infant . . Young, was a slave, the property, first, of Dr. Gannard, and then, by purchase from him, of Lewis Young, deceased, . . and she was never manumitted by her husband according to the laws of this State." Bill dismissed. Affirmed: [818] "A slave can have no standing in a court of chancery in this State."

Boling v. Boling, 22 Ala. 826, June 1853. Memorandum made in 1852 by a lawyer: [827] "I somewhat prefer a plantation and negroes to other investments . . because I think property of this kind, if not the most profitable, or the most desirable to own, is as little liable to be wasted. It is hazardous to loan money, or to invest in stocks in this State, and unpleasant to hire negroes out; I can think of no investment so sure as a plantation and negroes."

Carpenter v. State, 23 Ala. 84, June 1853. "indicted for an assault and battery, with intent to murder . . [85] a slave of . . Hand. . . The jury . . found the defendant [a white man] 'guilty of assault and battery' merely, and fined him $500; . . judgment . . rendered . . affirmed."

Ex parte Smith, 23 Ala. 94, June 1853. "The bill . . alleges . . that, in 1846, he committed adultery, with one of his own negro women, . . [95] that [complainant, his wife,] having detected him in the act, he threatened complainant with personal violence, and pursued her out of the room" In 1852 Smith [96] "executed a deed for . . some eighteen hundred acres, and between seventy and eighty slaves, being the shares alloted to his wife, . . in trust for . . [her] separate use . . [97] The bill charges . . that serious loss and injury have occurred to the negroes from his giving them medicine when he was intoxicated; that on this subject . . he is a monomaniac, and no entreaty . . can induce him to desist;"

Bank v. Benham, 23 Ala. 143, June 1853. [145] "Lucinda and Henry Hewett . . were in . . September, 1847, carried by . . Campbell [their owner] from this State to . . Ohio, where they remained about three weeks, . . and from there went to Indiana, where they remained seven months, and where George . . was born; . . in November or December,

1848, . . [they] returned to Alabama, bringing . . George; . . deed of manumission of . . Lucinda and Henry, executed by Campbell [in Indiana] . . Know all men . . that I, . . from motives of benevolence and humanity, have manumitted . . Lucinda Hewett, aged about seventeen years, and her son Henry, aged about twelve months, . . Campbell . . removed to California in the spring of 1848." In October 1849 an execution, "upon a debt" due in May 1847, was levied on Lucinda and her two children, as the property of Campbell. Endorsement on the execution: [143] "The negroes . . were . . taken out of my possession by the coroner . . under a writ of *habeas corpus,* and were discharged from the levy by . . the judge . . (Signed) V. M. Benham, sheriff." "Two other endorsements . . [144] to the effect that a levy was made upon the same negroes . . November, 1849, and that they were taken from the possession of the sheriff . . January . . under a writ of *habeas corpus* issued by the judge . . and were by him discharged . . February, 1850, from the levy." The bank [151] "was attempting to charge the defendant in error for failing to make the money upon . . [the] writ of execution . . which he had received as sheriff."

Held: "the two writs of *habeas corpus* and the returns thereon" were admissible evidence. [153] "the magistrate had jurisdiction to try the legality of the confinement . . provided it did not touch the relation of owner;[1] . . [154] where negroes not held as slaves are levied on and discharged, the sheriff, when ruled for failing to make the money, may repel the presumption arising from the levy, by showing that the negroes were free. The execution . . was upon a debt . . due before the act of manumission; . . simply a gift of freedom . . and must be governed by the same rules that apply to other gifts. These considerations . . do not apply to . . George, . . [His mother] was liable . . to be subjected into slavery to satisfy the claims of antecedent creditors, but . . not . . until such creditors had obtained a lien, and until that contingency happened, she must be regarded free to all the world; and the child born while she was in that condition, would, as a matter of course, follow the *status* . . of the mother at the time of the birth." [Goldthwaite, J.] Judge Ligon cites this case, in his opinion in Fields *v.* Walker,[2] and declares that [166] "all the incidents of the mother's condition at the time of the birth of the child do not invariably attach to the offspring."

Fields v. Walker, 23 Ala. 155, June 1853. [156] "John Walker and . . his brothers [Stephen[3] and three others] and sister [*sic*], filed their petition for freedom . . setting forth . . that they were born in this State, and under its laws are entitled to be free, their mother [Milley Walker] being free at the time of their birth; . . The petition also sets out the proceedings on a former petition for freedom . . in the Circuit Court . . by Milley Walker . . for herself and the present petitioners, against . . Jones,[4] . . on which . . they were declared free persons of color,

[1] Field *v.* Milly Walker, p. 172, *supra.*
[2] *Infra.*
[3] See Jones *v.* Covey, p. 203, *infra.*
[4] [162] "Jones had the defendants in his possession, claiming them as his slaves, as a purchaser for valuable consideration, for a period that barred the claim of Fields." [17 Ala. 84] "if he held adversely,"

at the September term, 1833, of that court. The appellant . . was not a party to those proceedings. . . Fields, the appellant, . . pleaded . . 'that this . . court cannot . . take jurisdiction . . because he says . . 1848, the petitioners were . . arrested,[1] in . . Alabama, by the defendant . . a resident . . of . . Virginia . . taken before three magistrates . . and under the act of Congress . . 1793 . . the defendant produced . . [157] proof . . whereupon the . . magistrates . . executed . . the certificate required' . . 'Be it known that . . Milley, and her children John, Le Roy and Priscilla, were arrested . . as fugitive slaves, and brought before us, . . and claimed as slaves and owing service to . . Fields of . . Virginia; and after an investigation of two days, both parties represented by counsel, we were satisfied by the proof . . that Milley and her children, Armistead, Eliza, John, Le Roy, Priscilla and Stephen, are slaves under the laws . . of Virginia, from which State . . Milley fled, or was stolen, before the birth of her . . children, and that said slaves owe service to . . Fields . . that . . Fields . . may remove said slaves to . . Virginia,' . . the petitioners filed a demurrer . . The court sustained the demurrer . . and allowed the defendant to plead over. What plea was put in under this order, the record does not show. . . [158] on the trial . . the defendant proved the death of . . Wyatt, who had testified on the proceedings before the justices under the act of Congress, and offered to prove what . . Wyatt had sworn . . objection . . sustained," The jury "found for the petitioners, and judgment was rendered accordingly."

Affirmed: I. [163] "no error in sustaining the demurrer." "The matter . . should have been pleaded in bar, . . [II.] [164] the testimony . . [of] Wyatt . . was rightly excluded." [a] "the proceeding under the act of Congress was not such a trial as would authorize such proof to be made. . . [b] Milley is not here a party, nor were Stephen and Armistead arrested on the warrant of the justice of the peace. . . [c] [165] the proceedings before the justices . . and those arising in this suit, are materially different. . . [167] the petitioners . . cannot be regarded as *fugitives* . . within the meaning of the constitution . . and the act of Congress of the 12th Feb. 1793. . . as to them, the proceedings before the justices . . are wholly without authority of law." [Ligon, J.]

Gantt v. Phillips, 23 Ala. 275, June 1853. [277] "a trade made . . in . . 1831 or 1832; . . Mrs. Gantt . . stating that she owned the wife of . . negro man [belonging to Dr. Phillips], and that she would give in exchange . . two ['small'] boys for the negro man and one hundred dollars; she urged, as an additional reason, that she owned no negro man, and that the family very much needed one, to cut and haul wood, and do other work which could not be done by women; . . the negro man and the one hundred dollars was a full and fair consideration and more."

Walker v. Jones, 23 Ala. 448, June 1853. Will, 1847: [449] "I give my old servant woman . . to my daughter . . that she may be taken care of in her old age, as she is now valueless."

[1] See Field *v.* Walker, p. 172, *supra.*

Seay v. Marks, 23 Ala. 532, June 1853. Contract of hire: "we promise to pay . . Marks . . one hundred and seventy dollars for the hire of King until the 25th day of December next, when he is to be returned, having been first provided with a summer and winter suit of clothes, hat, blanket and pair of shoes; . . [533] Marks to pay physician's bills. . . 1st . . January, 1852." "Parol evidence was admitted to prove that Seay hired the slave to assist in carrying on a livery stable. . . [Later] he was hired by the agent or superintendent of Seay . . to . . Nance, to assist him in rafting lumber . . without the knowledge . . of Marks, the owner. Nance directed him to cross . . at a certain ferry . . but the slave disobeyed . . and went to another crossing . . and with five others was drowned. . . customary for persons who hired slaves to re-hire them by the day or week," [537] "case . . remanded, for the error in admitting the parol evidence"

Hudson v. Helmes, 23 Ala. 585, June 1853. [586] "Peter was . . about twenty-two . . of bad character, a blacksmith . . in the whitesmith department . . had nine skeleton keys . . and had entered into the storehouse of . . Sevier and stolen . . was threatened with a prosecution . . Helmes, the guardian [of the owner], . . sold said boy for $503 50, to . . Sevier . . 1844, understanding that . . Sevier was to carry the slave out of this State, and allowed Sevier the supposed value of the goods . . stolen . . reducing the amount realized to $486 50; . . carried to Tennessee by . . Sevier, and disposed of there. Sevier said the negro would now be worth about $700." [585] "The ward . . introduced witnesses who proved . . [586] that he is . . now worth $1000. . . that the hire . . was worth at least $150 a year, on an average, from 1844, to this time inclusive;" [590] "the Probate Court made the guardian pay $700 for Peter," Affirmed.

Whitsett v. Slater, 23 Ala. 626, June 1853. [627] "Petty . . was specially charged . . to keep . . Bob and Eliza, beyond the reach of any one who might approach, as it was apprehended the sheriff would try to levy upon them; that early in June [1849] the sheriff came . . and [Petty] told . . Bob to hide in the gin-house; . . soon after the sheriff was gone, the door leading to the second story of the house was unlocked, and . . Eliza came out; that about two weeks afterwards the sheriff came again . . that in the intermediate time Mrs. Boyd had carried off . . Eliza, and disposed of her; that . . Bob slipped off into the woods . . [628] that the sheriff came twice in July . . but the slave was studiously kept out of his way."

Harris v. Rowland, 23 Ala. 644, June 1853. Bill of sale: [645] "Received of . . Rowland five hundred and fifty dollars . . for . . Rhoda, aged about nineteen . . and her boy . . about two . . also her girl . . aged about five months; . . 1846." The agent of the vendor "called on . . Rowland, before the negroes . . were delivered . . and proposed . . rescission . . on the ground that Rowland had not paid enough . . refused."

Furlow v. Merrell, 23 Ala. 705, June 1853. Will, 1813: [707] "I give . . to my grand-son . . negro girl Chany, her first child to be the property of [my granddaughter.] . . [708] I give . . the first issue of my negro woman, Suckey," to another granddaughter.

Brown v. Mayor, etc., 23 Ala. 722, June 1853. Brown was charged in 1850 with violating [725] "the ordinance of . . Mobile against trading with slaves . . This ordinance is substantially the same with the statute of the State . . except as to the punishment." [722] "He was found guilty, and fined by the Mayor $50; . . he appealed to the Circuit Court." The statement of the case filed therein did not aver [725] "either the name, or owner, or employer of the slave" The defendant [723] "demurred to this statement, . . overruled . . the plaintiffs . . introduced two witnesses, who testified that they saw a negro, . . a slave, enter the defendant's grocery in the night time, with an empty bottle . . and the defendant . . went into the house with the slave, from which they both presently came out, the negro with the same bottle nearly filled with spirituous liquors;" Judgment against the defendant. Reversed and the cause remanded.

Randall v. Lang, 23 Ala. 751, June 1853. [752] "the slave [boy] levied on was seven or eight years old . . and was born and raised in the family"

Jordan v. Roney, 23 Ala. 758, June 1853. [759] "Memorandum of an agreement . . Roney agrees to take a . . negro boy of . . Jordan, . . who has a sore leg, and effect a cure . . free of any charge for board, in consideration of which . . Jordan agrees to pay . . one hundred dollars . . six months from the time the cure . . is effected, . . May 8th, 1851." "The plaintiff . . proved that the boy was returned . . September, 1851, and offered evidence tending to show that . . negro was cured . . but . . the evidence was conflicting. . . The defendant then offered evidence tending to show, that from the appearance . . of the . . leg in July, 1852, he was not cured at the time he was returned."

Foster v. Sykes, 23 Ala. 796, June 1853. Held: [797] "the hirers of of the slaves . . are liable for the physician's bill, independent of their contract [to that effect] with the owner."

Benning v. Nelson, 23 Ala. 801, June 1853. "about 1844, . . [802] he removed . . to . . Georgia; . . he continued to cultivate . . plantation [in Alabama], with the same slaves which he had . . used . . previous to 1844, and has employed overseers . . and has . . spent his summers on said plantation;"

Nelson v. Iverson, 24 Ala. 9, June 1853. [20] "Dawkins, some few months before the birth of the plaintiff [James Nelson], delivered [a negro girl] . . to [his sister] . . the mother of the plaintiff, . . to belong to her child . . should it be a boy."

Held: "this would invest in him an inchoate right, which would become perfected at his birth, without any further . . delivery. The mother would hold in trust for him." [Chilton, C. J.]

Cook v. Parham, 24 Ala. 21, June 1853. [22] "June . . was hired as a deck hand . . 1847, a collision took place . . June, with some other hands, was ordered aft to launch the yawl, . . June unnecessarily jumped overboard . . and was drowned; . . [23] slaves hire for greater wages as deck hands on steamboats, than elsewhere,"

McElhaney v. State, 24 Ala. 71, January 1854. "The appellant was indicted under the fourteenth section of the fourth chapter of the Penal Code, . . The court charged . . that to constitute the act of harboring, it was sufficient if McElhaney, knowing her to be a runaway, supported and entertained her, or provided her with a home . . although she did 'go about the streets, and was seen by the neighbors.'" Judgment affirmed.

Tucker v. State, 24 Ala. 77, January 1854. "indicted for selling spirituous liquors to 'one Dade Massey, a free person of color.' . . 'several witnesses . . stated . . that he has acted . . as a free man, residing in . . Alabama for more than twenty years, . . that, from hearsay and general reputation, they had always considered him a free person;" Evidence admitted.

Judgment of conviction affirmed: [79] "from the necessity of the case, hearsay evidence or reputation as to the *status* of the party must be received in prosecutions of this kind;" [Chilton, C. J.]

Millard v. Hall, 24 Ala. 209, January 1854. [211] "in 1845 removed [from Alabama] to Mississippi, where his negroes, more than twenty . . remained until . . 1847, when they were secretly removed back . . 1848 . . a judgment against him [in Mississippi] . . [212] he started his overseer, in the night time, with ten negroes, . . afterwards levied on . . instructing him to go to Louisiana, or somewhere west, and do the best he could for him with them."

Florey's Executors v. Florey, 24 Ala. 241, January 1854. [242] "will . . by which . . [Gustavus Florey] gave to Edward G. Florey, whom he recognized as his son, a life estate in his property, with remainder to his children, if any, . . 'witness for the contestant . . testified, that . . [243] [Gustavus] would doze off, and then wake up looking perfectly wild; . . called Edward G., who had hold of him by his side, and said, "I suppose he is out drinking and frolicking with the negroes;" . . witness . . was of opinion he was of unsound mind. . . [244] Proof having been given . . that . . Gustavus Florey intermarried with the mother of . . Edward G. about . . 1816, and that . . two or three years thereafter . . Edward G. was born; that . . Gustavus . . has ever recognized [him] . . as his son; that . . Gustavus was a white man, of fair skin, and that the mother of . . Edward G. was also of fair skin, and a white woman, while . . Edward G. was of dark skin, and mulatto color, with woolly or kinky hair, the defendant asked the court to charge the jury, that, if they believed . . that . . Gustavus . . was under an insane delusion as to Edward G. being his son, and that the will was the . . result . . the will is void,' . . the plaintiffs objected, . . overruled,"

Affirmed: [249] "the belief of the testator, in opposition to this evidence, was admissible, for the purpose of showing delusion upon this particular subject."

Pinckard v. Pinckard, 24 Ala. 250, January 1854. [252] "the boy Lambert, who was a blacksmith, had been hired out . . for the year 1850, to a carriage-maker, for . . $175, on condition that he should be found to suit the business: . . the decedent had hired out the boy Randall, . . a blacksmith, for the year 1850, for . . $150, to . . a carriage and wagon maker . . on condition that the boy would suit . . Amy was hired out . . February, for the balance of . . 1850, . . for $45, . . in June, . . proved to be pregnant, and . . returned . . [253] The [two] girls . . who were employed about the house . . as a nurse, and . . as a house girl, were kept in the family . . [also] a cook woman, an old negro man about seventy . . who tended the garden, an old man who was unable to take care of himself, two small girls six or seven . . and a small boy less than the girls; . . [254] 'purchased . . 1850 . . thread which was made into cloth for the use of the negroes. . . some bacon . . for the use of the negroes, . . that the amount of clothing purchased was less than is usually found necessary to clothe the same number of negroes, and that the negroes were all well clothed when delivered to the heirs.'"

Bush v. Jackson, 24 Ala. 273, January 1854. [274] "Dr. Peebles . . attended the . . slave in her last sickness, . . she died with chronic pneumonia, . . had never recovered from an attack of acute pneumonia which she had anterior to the bill of sale."

Townsend v. Jeffries' Administrator, 24 Ala. 329, January 1854. See Townsend *v.* Jeffries' Executors, p. 173, *supra.* [331] "1852 . . the cause being tried" a witness testified [336] "that the defendants inflicted a most cruel whipping upon the slave, without authority, or even well founded excuse, for so doing." Verdict and judgment for the plaintiff. Affirmed.

Maury v. Coleman, 24 Ala. 381, January 1854. [382] "On the first of January, 1852, we . . promise to pay . . Phillips one hundred and thirty-five dollars, for the hire of a negro man . . and to furnish . . the usual clothing." "The evidence tended to show that Maury [one of the hirers] treated the slave humanely, but that . . September . . he ran away, . . that Maury went to a neighbor . . procured dogs accustomed to trailing negroes, . . and in company with their owner, trailed the slave to his master's house; . . Phillips, came out, and Maury demanded the slave, being free from excitement, and telling Phillips that the slave should go into no one's hands but his own, and should not be treated harshly; but Phillips refused to deliver the slave, . . [383] Phillips . . tendered him the slave about an hour after . . when . . Maury . . told him, that, as he could not get the slave when he wanted him, he would not take him,"

Moseley v. Wilkinson, 24 Ala. 411, January 1854. See Wilkinson *v.* Moseley, p. 218, *infra.*

Stevenson v. Reaves, 24 Ala. 425, January 1854. " the plaintiff proved, that he had purchased the slave . . at . . $540, . . [426] not worth $50. . . ' that the defendant . . represented . . slave to be sound, and to be deceitful in pretending to be sick frequently; and that . . all she needed was a master to drive her, . . a breeding woman, . . of good qualities and capacity for household and field work;' that said slave was . . incapable of . . bearing children,"

McNeill v. Easley, 24 Ala. 455, January 1854. [456] " the [plaintiff's] slave was hired, . . ran away . . found at plaintiff's house, [having been] captured [by a third person] . . as a runaway;" Plaintiff " refused to deliver him, saying that he had reason to believe that the slave had been treated with inhumanity, . . [Later on] plaintiff . . told said slave to return to defendant, . . instead of returning . . ran away."

Prater's Administrator v. Darby, 24 Ala. 496, January 1854. [498] " Mrs. Prater, prior to . . 1826, . . had entertained a fixed and frequently expressed purpose of emancipating [her slaves;] . . was on the eve of leaving . . for Illinois . . for the purpose . . Rachel had, at that time, a husband in this county, who belonged to some other person " On January 14, 1826, Mrs. Prater executed the following instrument: [496] " Received of Richard Darby five hundred and twenty-five dollars, in notes, for . . Rachel, about twenty-five . . and her three children, Eliza [Elijah?], about eight . . William, about five . . Thomas, about three " Darby executed a bond for $1050: [497] " The condition . . is such, that if . . Darby doth liberate . . Rachel and her children, when a reasonable compensation is made . . for his trouble . . above obligation to be void;" " the negroes . . were then delivered . . [498] Mrs. Prater left for Illinois [on the same day] . . and remained there till her death in 1834;" Darby died in 1834, leaving a will: [497] " I give . . wife . . Lige, William and Tom, to labor for her support and the benefit of my children; . . it is my desire that each of my negro boys . . be emancipated at the age of twenty-eight; to be effected in that manner which my executors can . . lawfully do."

Held: [505] " the undertaking of Darby to free the slaves was legal; . . There is nothing on the face of Darby's bond which requires him to free the slaves *in this State*; . . [506] We have been cited to the case of Trotter . . *v.* Blocker [1] . . [507] we feel constrained to dissent from it, and, as to so much . . as is expressed in the first clause of the fifth headnote,[2] to overrule it. . . power given to the General Assembly to legislate upon certain rights . . cannot be construed . . into an abrogation of such rights." [Chilton, C. J.]

Tate v. Shackelford, 24 Ala. 510, January 1854. " contract . . for the services of a slave . . in the erection of a boat, for which service she was to pay . . $52 50."

[1] P. 143, *supra.*

[2] "The first article of the constitution of Alabama, in relation to slaves, is equivalent to a positive inhibition of the owner to emancipate them, except only under such regulations as the legislature may prescribe." 6 Porter 269.

Trust Co. v. Pettway, 24 Ala. 544, January 1854. [561] "partners in buying and selling slaves, and also in planting . . did not use a firm name, but the business was usually conducted in the individual name of the partner who transacted the business. They became embarrassed in . . 1845," Pettway purchased from one of the partners [564] "thirty-six [slaves] . . in North Carolina; the price was $15,000, . . [565] with the view of securing himself . . against the liabilities he was under" for the partners.

Malinda and Sarah v. Gardner, 24 Ala. 719, June 1854. "final settlement of the estate of Tom, a free negro, . . belonged to Baxter Smith, who died . . in 1828, leaving a . . will . . he directed his executors to emancipate . . Tom and . . Charity, with whom . . Tom had cohabited, and by whom he had two children, Malinda and Sarah, . . [720] After the death of . . Smith, an act was passed . . authorizing his executor to emancipate . . Tom and Charity, and their children, upon entering into bond conditioned that they should not become a charge . . executor . . emancipated the slaves. Before the death of . . Smith Tom had ceased cohabitating with . . Charity, and had formed another connection with a woman of the same name, . . also a slave, and whom he purchased after his emancipation; . . had three children by her, . . Organ, Miles and Rebecca. Tom . . died in 1850, letters of administration . . were granted to . . Gardner . . An act . . was passed . . 1852, emancipating the 'negro slaves belonging to the estate of . . Tom,' . . upon their removal from the State within two years . . relinquishing all the rights which had accrued to the State, by escheat, in the property of . . Tom; and enacting that, upon . . Gardner's executing a bond for the removal . . 'then . . Charity ["his widow"], Malinda, Sarah, Organ, Miles, and Rebecca shall be qualified . . to . . inherit the estate . . in such portions as would descend to them by the statute of distributions.'[1] . . Gardner executed the bond . . the court decided, that . . Malinda, Sarah, Miles, Organ and Rebecca, were entitled to share equally, . . Malinda and Sarah excepted."

Held: [724] "The cohabitation . . was not marriage [in either case.] . . no . . heirs . . his property would escheat to the State. The State . . relinquished all its right . . and the appellants . . [725] having no inheritable blood, . . can only take by virtue of the relinquishment . . the Legislature regarded the slaves as the property of the State, and in the capacity of owner the State emancipates them." [Goldthwaite, J.]

Wyatt (a slave) v. State, 25 Ala. 9, June 1854. [13] "His master's gin-house had been burned the night of the day on which the prisoner had run away . . the foreman, with other slaves, had been directed to watch and capture . . him, dead or alive. . . on the second or third night . . brought to his owner, who said, 'Well, boy, you have done it now' . . assuming his guilt. . . The master, returning next morning to where he had left the prisoner bound, . . discovered that he had cut his hands with a razor in an attempt to sever the rope . . The master then said . . 'Boy, these denials only make the matter worse' . . the prisoner replied,

[1] Pamphlet Acts, 1851-1852, p. 486.

'Master, I have done wrong.' . . 'I burnt your gin-house.' On the same day, the witness (the master) carried the slave before a justice of the peace . . 'He has burnt my gin-house;' . . The justice then examined the prisoner in the presence of the master, and the same confessions were made" [9] "His confessions . . were admitted in evidence on the trial below" "convicted, and sentenced to death."

[15] "the sentence of conviction must be reversed, and the cause remanded," "where confessions have once been made by a slave to his master, under circumstances which will render them improper as evidence, the utmost precaution should be taken to advise him of their . . effect, by the examining officer, and it must be clearly shown that he was free from the least apprehension of punishment from his master as a result of his recantation. Even then . . unsafe to convict . . upon such subsequent confessions, if wholly uncorroborated by other proof." [Chilton, C. J.]

Eskridge v. State, 25 Ala. 30, June 1854. [31] "Richard M. Eskridge . . was indicted . . for disabling the leg of . . Maria, alleged to be 'the property of Mrs. Eskridge,' by shooting . . The principal evidence . . consisted of his own confessions, as testified to by the physicians who amputated the limb" [33] "It is said, the defendant was much intoxicated when he made the declarations . . [36] when the master attempted to chastise the slave, she seized an axe and told him not to come near her, else she would kill him; . . [37] got his gun, with which his boys had been . . shooting birds with small shot, but which, without his knowledge, had been loaded . . with buck shot; . . the slave moved off . . defendant . . called to her to stop, which she refused to do, and thereupon he shot her, . . [38] so near that the shot made but one orifice," The evidence showed that the defendant was the owner. Judgment against him reversed and the cause remanded: the variance as to the ownership is material.

Starr v. State, 25 Ala. 38, June 1854. "indicted for trading with 'a slave, the property of Benajah S. Bibb, whose name is to the jury unknown.' . . found guilty . . and fined $200." Held: [40] "This description is too general to require the defendant to be put to his answer of the charge."

Thompson et al. v. State, 25 Ala. 41, June 1854. [48] "while the search was going on, or just as it had terminated, a female slave fled shrieking from the negro house to the chamber of her mistress, pursued by two of the party [defendants], who planted themselves beside the door . . and when the owner . . attempted to pass in, civilly requesting the defendants to leave . . he was . . severely beaten by one of the party," [44] "Burps, who led the party, . . [had] 'stated to Bennett that his slave Josh had stolen two hogs from him, and that he had been searching . . Josh's house for the meat; . . Bennett [had] replied . . that . . defendant had done right.'" Counsel for the state: [45] "Bennett's words of approval were spoken before he knew the number, character and object of the parties"

Held: [46] "The house of the slave is the house of his owner; . . [47] parties invading the premises of the master, or the dwelling of the slave [without a search warrant], are trespassers,"

Starr v. State, 25 Ala. 49, June 1854. "the slave named . . was seen carrying bricks to the lot owned by the defendant, . . received by the defendant. . . the owner of the slave . . 'believed from their size [that they] were made at his brick-yard;'" Judgment against defendant. Affirmed.

Lodano v. State, 25 Ala. 64, June 1854. "Jones or Budd, to whom the liquors were sold, was the child of a free woman of color, who was an inhabitant of Mobile . . when the territory was ceded to the United States; . . both she and his father, who was a negro, had always been free."

Held: [67] "in order to exempt the free persons of color protected by the treaty of cession[1] from Spain to the United States from being included in the act of 1852,[2] it should have been declared in the act itself that the terms used . . should not apply to them." [Ligon, J.]

Martin v. Martin, 25 Ala. 201, June 1854. "that the defendant kept . . [202] slave . . secreted about his house and farm during the fall of 1847, and furnished him with the means of escaping from persons who were searching for him; . . 'then procured . . Blake to take . . slave off, . . agreed . . that Blake was to . . sell him two or three times, and then take him to a free State, and send back to defendant one half of the proceeds of the sales; . . that Blake promised witness, on the night he left with the slave, that he would pay him $10 if he would keep this affair secret, . . Blake . . taught school . . in 1847, and boarded at defendant's house;'"

Crosby v. Hawthorn, 25 Ala. 221, June 1854. "warrant issued by a justice of the peace . . on the affidavit of . . Hawthorn . . 'that he . . did believe, that . . Crosby . . was trying to persuade, two of his hired negroes to leave his premises.'"

Held: [223] "the affidavit . . was substantially sufficient to justify the warrant." [228] "one who procures a slave to run away . . by such means as beget and strengthen the slave's determination to do so . . is guilty of aiding"[3] [227] "Such an omission [by the Legislature] . . would be leaving wide the door for the . . disaffecting of the slave population . . by the vile and fanatical, with impunity, and would greatly depreciate the value, if not endanger the permanency of the institution itself." [Chilton, C. J.] Judge Goldthwaite dissented: [224] "The term 'aid' . . is . . very different from 'persuasion'"

Vanzant v. Morris, 25 Ala. 285, June 1854. Will: [286] "if there is only one slave born, Hannah shall be sold; if two slave children, Prudence shall be sold also,"

[1] Article VI. 8 St. at Large 256, 258.
[2] Pamphlet Acts, 1851-1852, p. 80.
[3] Clay's *Digest,* p. 419, sect. 16.

Rives v. Baptiste, 25 Ala. 382, June 1854. [385] "January, 1847, he did . . in Mobile, sell all the property . . described in . . deed of trust [of September, 1845], except five slaves, three of which . . had died . . [386] and the two others . . after the sale were carried . . to New Orleans, and there sold"

Gould v. Hays, 25 Ala. 426, June 1854. [428] "the estate consisted of a large body of lands, embracing two plantations in this State and other lands in Mississippi, and about one hundred and sixty negroes; . . [429] The record tends to show that . . [the executor] seldom visited the plantations; he employed overseers at the highest rates; the condition of the cabins is proved to have been bad, and there was a scarcity of blankets;"

Jelks v. McRae, 25 Ala. 440, June 1854. "1851, the plaintiff accused . . slave belonging to defendant, named Bill, of having received $200 . . lost by him, from . . another slave belonging to . . Threadgill; . . Bill confessed . . defendant . . requested plaintiff to whip said slave . . but the plaintiff declined . . and delivered the slave to defendant, and told him that he held him responsible for the money; that defendant promised to pay . . the $200; . . [441] that immediately after . . defendant . . caused him to be whipped, in part to make him disclose or deliver up the money, but the slave did neither," Held: [443] "the promise . . [444] was without consideration; . . an owner is not bound to answer for the illegal and unauthorized acts of his slave."

Petty v. Gayle, 25 Ala. 472, June 1854. "that he had hired the slave for . . four months, at $15 per month, . . that the universal custom in Mobile was, to pay only for a full month of twenty-six working days, unless . . a special contract to the contrary."

Stallings v. Finch, 25 Ala. 518, June 1854. "that, in 1844, William Finch . . came [from Georgia] to Alabama, . . and placed [Charlotte] . . in the possession of the defendant [John Finch] to hold for him; that . . in 1846 . . William Finch again came . . informed witness that he had that day left said negro woman with plaintiff and his wife, and . . that if he never called for her plaintiff's wife was to have her, . . negro had remained . . until . . 1850, when she ran away, and went to defendant's, . . [519] he delivered her up to . . the executor of . . William Finch . . [who] died, in Georgia, in 1849, . . never married; . . omitted . . Charlotte in . . will." Letter written to plaintiff in 1847 by William Finch: "Gives me great satisfaction that . . Charlotte is satisfied. . . Tell Charlotte I don't know what to do; I can't sell my land yet. . . Tell her that her father and mother is well, and all of her brothers and sisters, and her children. . . Tell her, if she can get a good master to live with, may-be it would be best for her; but I would ask six hundred dollars for her, if she wants to be sold, and can get that price for her. . . if she don't want to be sold, I expect I can hire her out for something; but I think, if she had a good master, her mind would be better off, and better satisfied," "Plaintiff offered to prove, that the negro woman was a kept mistress of . . William Finch; also, that she had children by him;"

Perry v. Marsh, 25 Ala. 659, June 1854. [660] " a slave of the plaintiff had been killed while at work as a mason in a cotton press owned by the defendant, by the falling in of the roof; . . slave had been apprenticed by his owner to . . Sadler to learn the bricklayer's trade, and was in the possession of . . a master mason, by Sadler's consent;"

Chambers v. State, 26 Ala. 59, January 1855. Chilton, C. J.: [64] " A slave merchant or trader . . is often migratory with his slaves, . . we are of opinion, that if he follows this business anywhere in the State without license, he may be indicted . . in any county in which he sells or exhibits his slaves for sale,"

Martha (a slave) v. State, 26 Ala. 72, January 1855. " indicted . . [73] for arson [for burning a dwelling-house]. . . The prisoner pleaded . . *autrefois acquit*; . . [74] not sustained by the proof;" Judgment affirmed, [75] " and the sentence of death . . must be carried into execution."

Spivey v. State, 26 Ala. 90, January 1855. [92] " that the defendant . . [in 1853] applied to . . Skinner to let him have Joe to nurse his . . children, saying that he was too poor to hire . . or to buy . . Joe was delivered . . [93] Longmaster . . testified, that in March or February, 1854, defendant came to witness' house in Mobile, and placed the boy . . there for sale; . . that the boy remained . . for about ten days, and during that time defendant took him in [*sic*] public places and offered him for sale; . . placed him at a slave depot on Royal street," [91] " defendant . . sold Joe in New Orleans for $600,"

Brister et al. (slaves) v. State, 26 Ala. 107, January 1855. [109] " 1853 . . an indictment for the murder of John Rickard was found against . . [eleven] slaves, . . charging that Wash struck the mortal blow. . . a *nolle pros.* was entered as to . . Jerry; . . John Wallace [the slave foreman], Wash and George were . . convicted, and sentenced to death; and the cause was continued as to the other defendants, . . on the application of the defendants, the venue was changed . . a trial was had . . 1854. . . [110] evidence: That the body of . . Rickard was found interred in the bank of a ditch . . February, 1853; . . that two wounds . . had fractured his skull, . . that he disappeared . . January . . [111] that he had thirteen negro men (slaves) in his employment as a ditcher, . . among whom were the prisoners and . . John Wallace, Wash, and George . . that the deceased and said thirteen slaves . . together occupied a cabin . . about sixteen feet square, . . in the centre of which the fires were made; . . the only white person . . [114] A witness . . testified, that on the morning after . . the disappearance . . he went to the ditch . . and . . asked . . where Mr. Rickard was, . . that . . some one of them told witness to ask John Wallace . . and he said that the deceased had gone to New Orleans." [111] " some time after . . suspicions were aroused . . slaves . . still continued to work together on the ditch. . . some sixteen or seventeen of the neighbors, some . . armed with double-barreled guns, others . . having negro whips commonly used by over-

seers, and others with sticks, went . . to the place . . that one of the company also carried along a pack of negro dogs . . known to be such to all the prisoners, Jeff, Caesar, Brister and John Rodgers; . . took [the slaves] . . in custody, . . some of them were tied, and the company then separated them . . [112] not . . so far . . but that they could hear any blows . . inflicted on any of them . . some conflict in the testimony, as to whether the confessions were made before or after the boy Bill Stokely . . was whipped. . . [While the slaves] were being examined, it was announced so that said slaves . . could hear, that . . Ned confessed; . . then . . Caesar confessed that a plot had been mentioned to him by John Wallace . . that he had assented . . was in the house when the deceased was killed, but was asleep . . had assisted in . . burying him." Brister, Jeff and John Rodgers made similar confessions, all of which the court admitted. [115] "Archer . . [said] that he had no knowledge of the killing, . . [118] verdict of guilty against . . Caesar, Brister, Jeff, and John Rodgers, and not guilty as to Bill and Archer; and the court . . pronounced sentence of death on the four first-named, but ordered the execution to be suspended until the decision of the Supreme Court . . upon the points reserved" Reversed and the cause remanded: [129] "A majority of the court are of opinion, that the confessions . . were improperly received,"

Ex parte Vincent (a slave), 26 Ala. 145, January 1855. [146] "Application for the writ of *habeas corpus,* . . The petitioner alleges, that he is . . the property of Hon. Samuel F. Rice,[1] that he was arrested . . under a warrant . . issued on the affidavit of . . Adler that petitioner 'did . . commit the crime of burglary,' . . [147] on the trial . . two justices of the peace presided, . . they were requested by said slave, through his counsel, to call in the probate judge, and summon a jury, and try the case upon its merits, which they refused to do, and committed . . slave to jail to answer an indictment to be preferred" He [146] "made application to . . Chancellor . . to be discharged upon *habeas corpus,* but . . chancellor . . remanded the petitioner to jail; . . bill of exceptions . . as follows: 'The prisoner . . admitted that he did . . break into the front room of . . "Adler's store," in the night-time, and took . . goods. . . Adler and his brother . . were sleeping in the back room'"

Motion refused: [153] "The old law,[2] which punished capitally every case of burglary when committed by a slave, was regarded as too severe, and . . the meaning of the dwelling-house . . was narrowed. It was required that there should be a white person in the house . . and . . that the building must be actually . . parcel of the dwelling-house.[3] [Goldthwaite, J.] [154] "Rice, J., not sitting."

[1] [3 n.] "Elected by the Legislature to fill the vacancy [in the Supreme Court] caused by the resignation of the Hon. David G. Ligon, which took effect on the 1st January, 1855."

[2] Clay's *Digest,* p. 472, sect. 4.

[3] Code, sects. 3308, 3309.

Miller v. Jones, 26 Ala. 247, January 1855. [251] "a suit arising . . the slave was run off from Louisiana . . sold at public auction . . 1852 . . for . . $850;" She was a [249] "mulatto girl, about eighteen"

Walker v. Walker, 26 Ala. 262, January 1855. [271] "The record shows, that in 1852, and prior thereto, the executrix had . . an overseer who was cruel and severe upon slaves; that some . . had been severely whipped . . and several of them had run away in consequence of his cruelty, and been taken up and committed to jail, . . before the particular slaves ran away [in August and September] for whose jail fees [$34.50] a credit . . is now claimed . . that said overseer made good crops, and continued in the service of the estate until in the fall of 1852 . . discharged . . on account of his severity to slaves."

Nelson et al. v. Bondurant et al., 26 Ala. 341, January 1855. [342] "Trespass *vi et armis* . . against . . Nelson, . . Jackson, [and three others.] . . The declaration . . averred, that . . [343] 'the . . defendants . . were duly prosecuted before the grand jury . . no bill of indictment' . . [344] evidence . . That . . Sam was hired by the plaintiffs to . . [345] Nelson for the year 1850, . . that on Saturday night, in . . April, the slave wanted a pass to go to his wife's house, but Nelson told the overseer not to let him go until the next morning, as the creek was so high; . . the boy . . disobeyed . . and went that night; that when the overseer went into the field . . Monday morning, Sam picked up a club . . and left; . . went to . . Bondurant's, who tied him and whipped him . . about thirty blows with a handful of switches, and . . sent him back . . by Mr. Jackson; . . Nelson took hold of him by the collar . . but the boy drew a knife . . cut him . . in several places; that Nelson . . called to his wife to bring . . a rope, but . . the boy cut her in the face . . and attempted to stab a negro woman who ran to her relief; that Nelson succeeded in throwing the boy, who . . struck his head on a root or stump; that the other defendants came up . . and with their assistance the boy was . . tied [[346] 'hand and foot'], . . whipped by Nelson, Jackson, and Booker . . between thirty and forty blows . . some of which cut the skin; that the boy resisted to the last, and was insolent and rebellious after he was finally turned loose. . . The boy . . walked about the house and yard, but complained of being sick, and did no work; . . Sunday . . following he suddenly died. The defendants offered evidence tending to show that . . they did not know that he had been whipped by . . Bondurant . . A post mortem examination . . was made by several physicians,"

Judgment reversed and the cause remanded: I. [350] "The allegation that they were duly prosecuted . . is sufficient. . . [II.] [351] In every contract of hiring, . . a reservation is implied, requiring the bailee to treat him with humanity, . . If he fails to do this, . . the owner can resume the possession. . . And if the act is forcible, as well as unlawful, the owner can maintain trespass; . . [III.] [352] The charge seems to lay some stress upon the fact of the slave being secured, so as to be unable to resist . . but this cannot in any way affect the rights in re-

spect to correction. If . . the punishment is not cruel . . there is no liability even should death ensue." [Goldthwaite, J.]

Denson v. Mitchell, 26 Ala. 360, January 1855. Will, 1851: [361] "I will . . to my son . . Nancy and her children, provided he takes up his permanent residence in Barbour county . . if . . not, then I desire my executors to sell her . . and her children, at public outcry, to the highest bidder, . . [362] to my wife . . my three negro men . . also, two girls, . . during her . . life, and after her death to be sold at public outcry,"

Stewart v. Bradford, 26 Ala. 410, January 1855. "the appellant took the slave 'at his own risk.' . . deposition . . 'A few days after . . [411] [I] examined her at his request, and found her to be so unsound that I would not have had her as a gift.'"

Jones v. Covey, 26 Ala. 464, January 1855. [465] "that . . Stephen Walker and others had . . instituted a suit against . . Field [1] [*sic*] . . to recover their freedom; that pending the suit, the court made an order . . requiring the plaintiffs to enter into the statutory recognizance; that . . defendant and others became bail for said Walker; that afterwards defendant, for himself and his co-sureties, surrendered . . Walker to the sheriff, in discharge of their . . bond, . . committed . . to jail; . . that on the trial of the . . petition, the plaintiffs therein recovered a judgment declaring them to be free." The jailer brought suit [464] "to recover $36 50 . . for boarding Stephen Walker . . [465] before the trial of his . . suit for freedom;" Held: "the statute [2] imposes no duty on the sheriff to detain him . . [466] his mistake of the law . . should not prejudice other parties."

Johnson v. Boyles et al., 26 Ala. 576, January 1855. [577] "Trover . . against . . Johnson, . . [578] 1847 . . Boyles, . . owning two young negroes, sent them to . . Abney for the purpose of trading . . them for a negro woman for his wife [Abney's sister], . . June or July, . . [Abney] sent . . Eliza to the house of Boyles, in Monroe county, . . August . . Abney executed . . deed [of trust], and the woman remained . . until about frost . . when she ran away to . . Abney in Butler county. . . [579] Abney paid hire for Eliza to Mrs. Boyles, at . . $75 per year; . . on two occasions . . he . . had sent her to Mobile and New Orleans for a few weeks, for the purpose of selling her;" In 1851 Johnson "purchased Eliza from . . Abney, for $875," Judgment for plaintiffs affirmed.

Dearing v. Moore, 26 Ala. 586, January 1855. "Trespass *vi et armis* by . . Dearing against . . Moore . . 'a witness [Williams] . . stated . . that the dogs commenced a sharp barking . . that he . . [587] discovered the camp of what he took to be runaway slaves, but saw no slaves; . . got the defendant, who had a pack of dogs trained to run slaves; . . they caught one negro man; that defendant put [him] . . into

[1] Fields *v.* Walker, p. 189, *supra.*
[2] Clay's *Digest,* p. 542, sect. 19.

the possession of witness, and gave witness his pistol; . . that they took the negro to show them . . where he had separated from the other, and the dogs there took the trail . . through the woods to the field . . that defendant . . followed . . and witness went with . . slave to the . . field; . . on his way . . heard the report of a gun, or pistol, . . defendant came to him from the swamp . . and told him that he came up with the negro in the field . . and that the negro turned on him with a large stick, and that he retreated' . . Robinson . . 'stated, that he came to the . . [588] field while the . . slave was pursuing defendant with a large stick; . . that defendant got his pistol, . . told him not to follow the slave into the swamp, that he said he would not be taken—that he would die before he would be taken;'" [587] "defendant further told [Williams] . . that he . . pursued the negro to the swamp, . . and shot him just as the negro was turning on him; that they . . put him in a cart, and carried him to plaintiff, and that plaintiff sent for a physician." "died about a year afterwards;" Judgment in favor of defendant. Affirmed.

Bennett v. Fail and Patterson, 26 Ala. 605, January 1855. [606] "Assumpsit by Fail and Patterson . . on a . . note for $2,100, . . given [in 1852] for . . three slaves . . as one entire contract . . Doctors Riddle, Howell, Robbins, and Hutchinson . . examined each one . . a few weeks after . . that Mary Jane had syphilis, Nancy chronic gonorrhea, and Judy umbilical hernia; that . . these diseases must have existed from a period anterior . . and that the slaves . . stated such to be the fact. On the part of the plaintiffs, Dr. Mattheson testified, that he examined the slaves about six weeks after the sale, . . and his professional opinion was, that Mary Jane and Nancy had not been diseased more than three weeks, and that Judy's disease . . was curable, . . Doctors Troy and Bythwood . . did not concur with Dr. Riddle, from the symptoms which he described, as to the character and degree of Mary Jane's disease."

Eckles and Brown v. Bates, 26 Ala. 655, January 1855. [656] "Covenant . . against Eckles and Brown, to recover damages for the breach of a warranty of soundness . . Doct. Peterson . . testified, that he had been called to see the slave . . 'I learned from him, though he made the statement with extreme reluctance, that he had been subject to similar attacks before, and had been very ill from one such attack years previous. . . From the statement . . and the symptoms . . together with the post-mortem examination, my . . opinion is, that the negro had been unsound for years.' . . [657] Mrs. Treadwell [deposed] . . 'when said slave was suffering under the illness ["severe pain in the stomach"] of which he died, he made frequent suggestions as to the treatment . . had generally been relieved by drinking soap-suds. . . He opposed the use of the remedies which we had been applying, . . the remedies which he suggested . . seemed to afford momentary relief. . . he said, he had also been benefited previously by being put in a barrel of warm water.' . . [658] Miss Stevens [deposed] . . 'I have heard said slave . . suggest the use of red pepper, which he usually carried in his pocket and used habitu-

ally. . . he often asked for syrup, and said meat would hurt him. His ordinary movements . . were slow, and in a stooping attitude.' "

Held: [659] " the declarations . . as to his previous attacks . . made . . to the female witnesses . . [660] who are not skilled in the science of medicine, were improperly allowed to go to the jury."

Allen v. Harper, 26 Ala. 686, January 1855. Articles of agreement: [687] " Harper does . . obligate himself to attend to . . Lee's business as an overseer, during . . 1852, . . Lee does agree to give . . Harper full control, so far as the management of the slaves is concerned, . . to furnish . . Harper with seven good hands, and all the necessary implements . . and to pay him three-sixteenths of all the cotton, corn and fodder made . . to board, wash and furnish . . Harper with a horse to ride on Sabbath days, . . also, to gin and haul . . Harper's cotton, with his own, clear of charges."

Frank et al. (slaves) v. State, 27 Ala. 37, June 1855. [38] " Frank, Jerry and Trussvan, with four other slaves, were indicted . . for the murder of another slave named La Fayette," [44] " Trussvan . . knocked La Fayette down with a pine knot while [the latter was] retreating from Jerry's assault, . . Frank killed La Fayette by stabbing him after he was knocked down." Judgment reversed and the cause remanded.

Powell v. State, 27 Ala. 51, June 1855. " Whitesides, who was the overseer of . . slave, and at work with him in a stable for stage horses, would . . tell defendant that he would send the . . slave for some spirituous liquor, naming the quantity and quality; that when . . Whitesides returned to the stable, . . he would send . . slave with a jug . . and defendant would put the . . liquor in the jug," Held: [52] " not a sale . . to a slave, within the meaning of section 3243 of the Code, . . lawful without any order in writing."

Gibson v. Land, 27 Ala. 117, June 1855. Will, made in South Carolina in 1793: [126] " I lend unto my . . wife . . negro girl . . I . . desire, if my wife marries, that my eldest daughter may have the . . girl; and if the negro should have children, . . that my second daughter may have her first child, . . my third . . daughter the . . second child."

Woodward v. Donally, 27 Ala. 198, June 1855. [199] " plaintiff's guardian in . . Tennessee . . brought the slaves [a woman and her children] to this State, and sold them . . to raise money for . . paying plaintiff's expenses at a medical school,"

Rowan v. Hutchisson, 27 Ala. 328, June 1855. [329] " Tom, about seven . . and Mary . . about nine . . levied . . on "

Fluker v. Henry, 27 Ala. 403, June 1855. [404] " that J. G. Dent and Co. arrived in Tennessee . . with their hands and implements, the . . negro being one of them;" " commenced working on a railroad where they had taken a contract, . . negro . . breathed like he had . . ' the bellowses', and complained of pains in his side or chest; that within three or four weeks . . his feet and ankles were swollen, and the swelling

extended up his legs and system, . . in twelve or fifteen months he died; . . did not work more than one-third of his time, . . that a good deal of the time he had to be . . waited on by some one of the other negroes; that the wages of a hand were usually about $13 per month and boarded;"

Freeman v. Scurlock, 27 Ala. 407, June 1855. [411] "The sheriff . . had gone . . in search of [Lucy and her infant child] . . only two days before they were carried off. The slaves, with Mrs. Freeman and her two brothers, . . all left . . in the night. . . traveled an unusual route . . to Montgomery . . where . . Scurlock, and his sister, Mrs. Freeman, proceeded to Texas with the slaves by steamboat;"

Abercrombie's Executor v. Abercrombie's Heirs, 27 Ala. 489, June 1855. Will of Albert G. Abercrombie, dated 1848: [491] "I . . convey unto . . Ware . . all of my property . . for the purposes hereinafter mentioned . . to receive . . at my death . . Nancy, and her six children . . Ware is to take care of . . and control [the children], until they arrive at age, . . treating them with humanity, according to the position they occupy in society, and see that they are not imposed upon by others. And when the . . children shall have arrived at age, . . Ware is to have their freedom secured to them, by the laws . . of Alabama, if it can be done, so that they may remain in the State. If he cannot . . he . . is to send them to some free State or country, wherever in his discretion will be best for them. . . after having paid . . debts . . and having compensated himself for . . trouble and expense . . the remainder [of my property], if any, shall be paid over to the . . children and . . Nancy."

Held: I. [494] "there is . . nothing in the language used, from which it could legitimately be inferred that the children were to occupy ['until they arrived at age'] any other position than that of slaves, . . [II.] As to the directions for the emancipation of the children . . it was a perfectly valid trust, . . [495] and if . . [the executor] was so regardless of . . duties . . as to fail in the faithful execution . . the powers of the court of chancery . . are amply sufficient to enforce it; . . [III.] by the terms of the will, . . Nancy is not to be emancipated. If we were at liberty to resort to parol evidence, the case might be different. . . [496] [IV.] the legacies to the children were valid. . . [V.] The bequest to . . Nancy was void, as she had no capacity to take; . . this slave, and the portion bequeathed to her . . must be regarded as not disposed of by the testator," [Goldthwaite, J.]

Harris v. Bell, 27 Ala. 520, June 1855. [521] "Mary . . with her husband, was hired by plaintiff to . . Maury, for . . 1852. Maury rehired [them] . . to Allison, for himself and Bell, and the woman died" "plaintiff . . had told . . Mary . . to go back to Bell's, and stay there as long as Bell treated her well, and if he mistreated her, to come to him;"

Railroad Co. v. Burke, 27 Ala. 535, June 1855. [536] "Allen . . was hired . . January, 1852, . . to work on . . railroad as a laborer . . at . . $200. . . the railroad company promised to clothe the slave, and it was

agreed that a deduction should be made for any loss of time caused by his running away; . . employed as an ox-driver . . November he became sick, . . [537] ' the person who had control of Allen . . consulted with . . a physician . . as to the propriety of sending Allen to Selma for medical treatment; . . advised that Allen should be sent ' " [536] " the night on which he was sent down [on the railroad] was cold . . and inclement: . . Marlow . . who had been requested by the plaintiff to pay attention to his negroes hired on the railroad, removed him that night to his own house, and called in a physician . . next morning, . . dropsy of the chest; . . the slave died within forty hours afterwards."

Morton v. Bradley, 27 Ala. 640, June 1855. " The plaintiff claims . . damages for . . killing a negro man slave . . by shooting him with a gun "

Agee v. Williams, 27 Ala. 644, June 1855. [645] " bill of sale for . . negro . . from . . Walker . . evidence tending to show that . . Walker had stolen the negro."

Stalls v. State, 28 Ala. 25, January 1856. " indicted . . for harboring or concealing a runaway slave,"

Martin v. State, 28 Ala. 71, January 1856. [78] " Rawles . . had had his attention particularly called to Cortez, by finding out that he and his wife were boarding in the house of his (witness') slaves; . . that he would not . . believe him on oath,"

May v. May, 28 Ala. 141, January 1856. [146] " I lived with Mr. May, as an overseer, in 1843, '44, '45, and '46, and went back to live with him in 1848." " First three years I lived with May, sixty hands went to field; eighty on the place. . . Negroes were low in 1843, and did rise much till 1849. Don't know what negroes were worth . . in 1849."

Hair v. Little, 28 Ala. 236, January 1856. [237] " Hair claimed the slaves under a purchase from . . Little, . . [240] one of the negroes now sued for came to Hair's house, with a letter informing him that the negroes sued for would be sent to Mississippi the next day by the plaintiffs, to be sold, unless he came up and attended to his own interests; . . arrived at Mrs. Little's about midnight; . . brought them away;"

Hair v. Avery, 28 Ala. 267, January 1856. [268] " a large number of valuable family slaves . . were . . divided [in Virginia] among the residuary legatees . . [One of them] ' removed to . . this State [about 1837], bringing . . slaves ' "

Irons v. Reynolds, 28 Ala. 305, January 1856. Mr. and Mrs. Irons [307] " removed to this State in January, 1853," In the spring a female slave was purchased in Mobile with [308] " the proceeds of property secured by an antenuptial contract entered into . . in . . Ohio;"

Henderson v. Segars, 28 Ala. 352, January 1856. [354] " the negroes [a woman and her three children] had been privately removed to Arkansas [in 1845] . . to avoid the debts " A few weeks later they were

[355] "carried . . to Misssissippi, and . . sold . . for $700, which was about the average market price"

Walker v. Fenner, 28 Ala. 367, January 1856. Negroes, conveyed by will in North Carolina in 1842, were removed to Alabama in 1843.

Livingston v. Arrington, 28 Ala. 424, January 1856. Action brought on a promissory note. Bill of sale: [427] "Received . . 1850, of . . Livingston . . six hundred and eighty dollars . . for . . negro girl . . which . . negro I do warrant and defend to him," [425] "$80 of this sum was for the hire of the slave for the year preceding . . she died within six months after the sale. Dr. Peterson, one of the physicians who prescribed for her . . testified that the slave had irregular menstrual discharges, caused by ulceration of the *os uteri,* and accompanied by dyspeptic derangement of the stomach, and functional derangement of the liver; . . that she had been laboring under the disease for a considerable length of time, . . 'The plaintiff then proved that Livingston hired said slave . . from the spring of 1849 . . that several times . . he called in a physician to attend her, . . that said physician, before the sale, informed Livingston of the . . extent of the disease'" Held: [428] "the bill of sale . . contains a warranty of soundness as well as of title," [Rice, C. J.] See Duff *v.* Ivy, p. 136, *supra*

Andrews v. Andrews, 28 Ala. 432, January 1856. [434] "The bill alleges . . that the complainant refused to assign her right of dower in . . lands . . until . . induced by the defendant's promise that he [her husband] would settle on her . . Sarah and her children [bequeathed to her by her father]; . . that the negroes are family slaves, between whom and complainant there exists a strong personal attachment; . . The bill prays . . for a specific performance," Decreed.

Stanley v. Nelson, 28 Ala. 514, January 1856. Action founded on a note: "I promise (to pay), to . . Nelson, one hundred and forty dollars, for the hire of George for . . 1852. . . (signed) H. Stanley." Testimony of plaintiff: [515] "The price for the hire . . was agreed on with . . Spencer [a slave], provided he brought me a note . . from some responsible white man, who should control . . George during that year. . . Spencer was engaged in the business of painting. . . [George] was then a good painter. . . I received from . . Spencer . . with the understanding that they were to go to the credit of an account due me for the hire of George for the preceding year, the following amounts: for painting my house, $13 50; . . Malone's note, . . $67 10. . . also . . with the agreement that the same was to be credited on defendant's note, . . Donnell's note, for work, paints, etc., furnished . . $65 85," Hoke testified [516] "that he had hired Spencer from his owner [Thompson] for . . 1852; that he permitted . . [him] to go at large . . to make his own contracts . . and to collect the money . . that witness paid Thompson the hire, and that the understanding was, that Spencer was to pay witness the amount of the hire, and was himself to have the balance of his earnings; . . if any had refused to pay, witness . . considered that he had a right to

sue therefor; that Spencer did business in the same way in . . 1851, and for several years prior" [520] "The defendant insisted that the amount . . appropriated [to the hire of George for 1851] should be credited on the bond sued on."

Held: I. a slave may act as the agent of his owner or hirer; II. the note is void; [518] "the law, as it existed in 1852,[1] is not only violated in its letter, but in its wise policy. . . [III.] [520] acquisitions by his labor . . absolutely disposed of . . by the slave" cannot be reclaimed.

Rawdon v. Rawdon, 28 Ala. 565, January 1856. [566] "that during his paroxysms of insanity . . complainant was several times compelled to interfere, to prevent him from killing some of the negroes;"

Walker v. Smith, 28 Ala. 569, January 1856. Complainant hired two slaves to Mrs. Walker for the year 1853 to work in [570] "a steam saw-mill . . a part of her separate estate . . [They] ran away, and were lodged in jail . . that Mrs. Walker . . was requested by complainant to take them out, but she . . refused . . that complainant, after the expiration of the term of hiring, was compelled, in order to regain the possession . . to pay jail fees amounting to $175;" Held: "Mrs. Walker is . . bound to refund [from her separate estate] . . the amount . . paid . . as also the amount of their hire"

Ivey v. Owens, 28 Ala. 641, January 1856. [642] "that, in 1841, '42, or '43, . . testator called up his daughter Nancy and the slave Jinney, . . [643] then a small negro, placed the hand of Jinney in the hand of . . Nancy, and said that he gave the negro to his daughter, . . for the long services . . rendered to him and his family after she had come of age, and called upon the witness to witness . . when Nancy was about leaving for Louisiana, . . her father objected to her taking the slave . . that she was too young to be . . parted from the family, but stated that . . he would send her the next fall, . . 1853 . . he sold her for $800." Held: the gift was complete.

Foust v. Yielding, 28 Ala. 658, January 1856. [659] "The defendant . . proved . . by . . Anderton, that plaintiff, defendant and himself entered into a recognizance with . . William Patterson, a negro claiming his freedom, for the appearance of . . Patterson to abide his trial; . . Patterson wanted to know to whom he would first go,—that he was willing to give his labor to his sureties until he obtained his freedom; . . witness said, that he would prefer . . that plaintiff should keep the boy, as he would be better able to rescue him, if he should be . . forced away; . . plaintiff . . to pay each of the other sureties in proportion to the boy's work . . that plaintiff had had him twelve months." "The plaintiff . . offered evidence tending to reduce the amount . . [660] claimed by the defendant, by showing that he . . had . . incurred considerable expense, in the prosecution of . . Patterson's suit"

Mastin v. Cullom, 28 Ala. 670, January 1856. In 1855 [671] "a negro man . . [was levied on and sold] for $795; and the woman . . for $700."

[1] Clay's *Digest,* p. 541, sects. 12 and 13.

Jones v. Sterns, 28 Ala. 677, January 1856. [678] "the appellee in New Orleans, in 1851, . . wished to send a slave by witness to his plantation in Texas; . . told witness, that he had been to Texas frequently."

Barlow v. Lambert, 28 Ala. 704, January 1856. "the note [for $175] was given for the hire of a slave [for the year 1853] . . before the note was executed, 'plaintiff told defendant that . . defendant . . would have to lose the negro's lost time,' . . [705] negro died, during the year" [704] "The defendants offered two witnesses, 'to prove that . . "lose the negro's lost time" . . [705] had a . . well understood meaning in Baldwin county, . . related to time lost by sickness or running away, and not to time lost . . [by] death.' . . which testimony the court ruled inadmissible," No error.

Bob (a slave) v. State, 29 Ala. 20, June 1856. [21] "The prisoner was indicted for the murder of . . a white child between seven and eight years old, and was convicted. . . The deceased was much attached to . . Dinah . . had gone with her into a field . . where Dinah was clearing up new ground, while the prisoner was employed . . a few hundred yards distant making rails. . . 'came . . and told witness [Dinah] to hand him her axe, . . refused . . the prisoner succeeded in wrenching it out of her hand, and . . struck the deceased with it. . . attempted to stab [Dinah.] . . Witness . . begged for her life; but the prisoner said, "No, I came here to kill you and Lou" . . Witness asked him to let her try to bring the deceased to life, by washing her face . . in the branch; . . refused . . [22] ran after her, struck her and jumped on her . . about 12 o'clock . . she recovered her senses.' On cross-examination, Dinah stated, 'that it was possible the prisoner struck the deceased in wresting the axe from the hands of witness;' . . The father of the deceased testified, 'that he and his partner, who lived nearly a mile apart, had hired Dinah and the prisoner . . that during the first of last year, . . [they] lived . . at the house of witness, as man and wife. . . in August of last year . . quarreled; that the prisoner beat Dinah severely, and they . . had not since lived together; that he then gave the prisoner a whipping, and sent him to live at the house of his partner;'"

Judgment reversed and the cause remanded: [25] "if a slave, in the attempt . . to commit an assault . . on another slave, kill a white person by misadventure, he is guilty of involuntary manslaughter, under section 3312 of the Code. . . [26] under an indictment charging the defendant with murder, he can not be convicted of involuntary manslaughter," [Stone, J.] Overruled in Henry *v.* State, p. 229, *infra.*

Anthony (a slave) v. State, 29 Ala. 27, June 1856. "The indictment . . charged 'that Anthony . . the property of Elias G. Hodges, did attempt to poison Elias G. Hodges . . and Mary C. Hodges,'"

Judgment reversed: [29] "no indictment for an attempt to poison can be good, which does not, by a direct and express allegation, impose upon the State the burden of proving that the substance employed . . was a deadly poison, . . [30] the prisoner must remain in custody, to take his

trial on a new indictment, unless in the mean time he be discharged by due course of law." [Rice, C. J.]

Bill (a slave) v. State, 29 Ala. 34, June 1856. "indicted for the murder of another slave, and . . convicted" [36] "The bill of exceptions . . shows, that the defendant was not in actual custody, and that he had counsel whose names had been regularly entered as such; and no application for a list of the jurors summoned . . appears to have been made, either by him or his counsel." Judgment affirmed: in such a case, "the right to such list does not arise, except, 'on application'"[1]

Mangham v. Cox and Waring, 29 Ala. 81, June 1856. "plaintiff . . claims of . . part owners of . . steamboat . . the value of . . slave . . pursuant to section 1010 of the Code of Alabama." "the plaintiff . . was the owner of . . [82] Spencer; . . slave ran away . . in . . Mobile, in February, 1853, . . was not discovered on . . boat, until . . some seventy-five miles above Mobile; . . put in irons, by the direction of the captain, . . and chained to a post some eight or ten feet aft the boiler; . . had no covering . . except the clothes he had on, but there were some blankets belonging to the boat hands near where he was chained, and he was told that he could use them; . . a relative of plaintiff, went to the office of Waring and Co., . . having been informed that . . negro had probably been carried off on said boat; that a dispatch was . . sent to the agent . . at Cahaba and at Montgomery . . 'To Capt. J. J. Cox.—See if you have . . Spencer on board, . . The boy came down with you the last trip. If on board, bring him back.' . . [83] Sheppard . . testified . . that he . . recognized [the slave] as plaintiff's boy Spencer, brought on shore in chains; . . thought him very sick with pneumonia; . . told [the men in charge of the slave] . . the boy would certainly die if they carried him to jail in that condition,—that they had better let him take the boy . . to the house where he kept his own negroes, and have him attended to,—and that he was going to Mobile in a few days, and would take the boy down to his master's brother; that they replied . . they were responsible for him, and intended to carry him to jail," [82] "physicians were called to see him [at the jail], . . attended by them until his death; . . defendants paid the physicians' bills." Judgment for defendants.

Reversed and the cause remanded: [88] "The immense value . . the peculiar nature of slaves; the known disposition of at least a portion of the abolitionists of the non-slave-holding States, to delude them by art or persuasion to avail themselves of all facilities for escaping . . the number of steamboats and vessels . . and of vehicles running upon railroads . . and the consequent exposedness of the owners of slaves, to the depredations of the fanatical and vicious . . have called forth the legislation upon the meaning of which this case must turn. . . [89] The legislature has scrupulously exacted . . '*written* authority.' . . [90] section 1010 . . does not use the word 'receive'[2] . . from which an implication

[1] Code, sect. 3576.

[2] [89] "the statutes of Tennessee, Kentucky and Louisiana differ . . [90] from section 1010 of our Code."

can . . be drawn, that the act must be *knowingly* done, to entitle the owner of the slave to . . recover." [Rice, C. J.]

Ashley v. Robinson, 29 Ala. 112, June 1856. [121] "a few weeks after filing his petition in bankruptcy, . . he wanted a horse . . 'to send to North Carolina for four or five negroes he had hid out there.'"

Upson v. Raiford, 29 Ala. 188, June 1856. [190] "that Minerva was almost blind from a scrofulous affection, . . and some of her children also exhibited symptoms of scrofula; and that the slaves, . . with the exception of two years [out of six], 'were a bill of expense' to him."

Abercrombie v. Allen, 29 Ala. 281, June 1856. "on the trial of a suit before a justice of the peace, for damages for wasting provisions set apart for the slaves under the charge of . . overseer, . . [282] [the overseer] said that he had discharged his duty as defendant's overseer, and that either he or his wife was always present when meat was given out for the negroes."

Morgan v. Smith, 29 Ala. 283, June 1856. In 1852 a negro man, about thirty, was sold for $800.

Grant v. Moseley, 29 Ala. 302, June 1856. "The slave . . a girl about seventeen . . was, with her mistress a [cabin] passenger on the steamer . . from New Orleans to Mobile; and had gone ashore . . but was sent back for some articles . . [303] at the forward gangway ['used by the crew and deck passengers'] . . meeting on the plank two of the boat hands, with a handbarrow loaded with wood, her clothes became entangled in the wood, and she was thrown into the water, and drowned." Judgment for her owner. Affirmed.

Mosser v. Mosser, 29 Ala. 313, June 1856. [314] "bill filed by Mrs. . . Mosser, seeking a divorce from her husband . . on the ground of his alleged adultery with a mulatto girl named Holland, the property of his wife." Mrs. Wood, his housekeeper during his wife's absence in Florida, testified: "a little negro girl . . came and told Holland that her master said she must go . . in the store; . . repeated four mornings in succession, . . [315] The defendant . . was frequently in the kitchen with her when she was cooking; . . I have seen her go into his bed-room, and the door was shut-to; . . he fondled around her more than he did around his wife . . and the girl acted impertinently to me . . saw the impression where two persons had laid in the bed, and two headings: . . I then told him, that I was going away . . that when I said anything was so, she would say it was not so; and she replied, that she did not say it, and then flirted out of the room with a great air." [316] "On the part of the defendant, it was proved . . that during his wife's absence . . he was afflicted with a cutaneous eruption on his legs, . . required to be dressed with poultices several times a day. . . Mrs. Williams . . testified . . that on one occasion . . she saw the defendant, on the complaint of Mrs. Wood, give Holland a severe whipping; that she heard him tell Mrs.

Wood to whip the girl whenever she was disobedient;" Decree for the complainant.

Reversed and a decree rendered dismissing the complainant's bill: I. adultery, as the term is used in the statute which makes it a ground for divorce,[1] may [316] " be committed by sexual connection with a slave . . [318] [II.] I think the charge in this case is sufficiently sustained by the testimony, but my brothers [Rice, C. J., and Walker, J.,] think it insufficient . . that the circumstances . . are all susceptible of a reasonable interpretation, consistent with the innocence of Mr. Mosser." [Stone, J.]

Burton v. Holley, 29 Ala. 318, June 1856. [319] " that he had procured provisions, and other articles . . for the feed and support of . . [six] slaves for the year 1854, which cost . . from $100 to $125;"

Atwood's Administrator v. Wright, 29 Ala. 346, June 1856. " action . . founded on . . note for $575." Bill of exceptions: [347] " the sale of . . slave, together with two or three hundred others of the estate of Atwood, was made under an order of the probate court . . before the sale commenced, and repeatedly during the sale, . . one of the administrators, publicly announced . . that the administrators knew none of the negroes, except a few house-servants, and would warrant none of them to be sound," " that while . . auctioneer was crying her, . . slave spoke, and said, ' that she was diseased, and had a knot in her belly '; that the auctioneer then said to her, audibly, in a jocular way, ' hush, you are not diseased, you have eaten too many peas or potatoes, and they have swelled your belly '; that the bidding had stopped when this remark . . was made; but was afterwards resumed, and . . Wright became the purchaser." Witnesses proved the slave " to have been unsound before the sale, and almost (if not quite) valueless; and . . that Wright, before the sale was over, . . tendered her back to the plaintiff, who refused to receive her. . . [348] no evidence . . that either [the auctioneer] . . or . . administrators knew of the unsoundness " Judgment for Wright affirmed.

Lockhart v. Cameron, 29 Ala. 355, June 1856. " the deed of gift was executed in South Carolina, in 1824, . . The bill alleges . . [357] that . . Clay, when Cameron asked the hand of his daughter . . informed him . . that the family of slaves to which Louisa belonged had been entailed on him by his grand-father, and he intended that Louisa and her increase should be entailed on his grand-children in the same way;"

Massey v. Cole, 29 Ala. 364, June 1856. " action . . against the appellants, as the owners of the steamboat . . to recover the penalty of fifty dollars for their transportation of plaintiff's slave . . without his written permission; . . ' A witness for plaintiff testified, that the slave . . [365] had been run away about six weeks, and he was employed . . to hunt him up . . found the slave near . . steamboat, on the wharf in Mobile; . . heard Massey . . after . . slave was arrested, admit that the slave had been on board . . about sixteen days, and had been used as second cook

[1] Code, sect. 1961.

. . was first discovered above Claiborne, on the upward trip, and was then placed in charge of the steward . . without being confined in any manner. . . that when . . boat reached Mobile, no steps were taken . . to restore the slave . . but he was permitted to . . go about at large; the witness arrested him on the morning after the boat arrived . . and was paid the reward . . The defendants offered evidence . . that said slave, . . a small boy about twelve or fifteen . . got on board . . without the knowledge . . of any one in charge . . that . . [when] discovered, . . [he] was . . put in charge of the steward . . with instructions . . to deliver him up to his owner; that the boat was . . sixteen days . . aground; . . that the boy . . was not employed, but was an expense; . . was in the habit of running away and making trips on other boats," Judgment affirmed.

Stoudenmeier v. Williamson, 29 Ala. 558, January 1857. [559] "evidence . . that . . slave . . was affected with a venereal disease; . . [A physician] testified, that the slave, some ten or fifteen days after the sale, was delivered of a child, which soon afterwards had symptoms of the same disease in its primary form, and died. . . that the old negro woman, who acted as midwife . . had the same disease, in its secondary or tertiary stage, and that it was possible both the child and its mother might have taken the disease from the old woman. . . [560] the auctioneer . . testified, 'that . . [he] publicly proclaimed . . that the slaves were sold by . . administrator, that he would not warrant the title or the soundness'"

Trippe v. Trippe, 29 Ala. 637, January 1857. Will, 1840: [638] "I desire that none of the negroes be sold, but that the farm be carried on"

Ex parte Howard, 30 Ala. 43, January 1857. "indicted . . for the homicide [[44] 'of his slave Jake'] . . alleged to have been caused by cruel whipping or beating. . . his case was continued . . against his objection. . . applied for bail, on *habeas corpus,* . . refused . . renews his application to this court."

Held: [43] "The indictment . . is framed in reference to section 3296 of the Code, . . [44] there cannot be a conviction under it for murder in the first degree. And therefore, under our constitution and Code, we are compelled to hold, that he is entitled to bail . . ordered . . five thousand dollars;" [Rice, C. J.]

Lewis (a slave) v. State, 30 Ala. 54, January 1857. "The indictment . . charged, that the prisoner . . 'did forcibly ravish, or attempt forcibly to ravish . . a white female.' The prosecutrix testified . . that . . she was awakened by some one rubbing his face against hers; . . that she at first supposed it was her husband, . . put her hand on his hand, when she discovered that it was a negro; . . [55] ordered him to 'clear out,' and the negro got up; that on her calling out to her uncle . . sleeping in an adjoining room, the negro said, 'hush,' and ran out of the room; that she recognized the prisoner from his voice. . . the prosecutrix made contradictory statements . . at one time admitting . . connection . . at another time saying that she did not know"

Judgment against him reversed and the cause remanded: [56] " force is a necessary ingredient . . There was, in this case, at least some evidence tending to show that the act of the prisoner was an attempt to accomplish his object by fraudulent personation of the husband; . . [57] We depart from our usual course, for the purpose of inviting the attention of the legislature to this subject. Under our . . laws, one who obtains . . goods . . under false . . pretenses, is held guilty . . as if he had . . stolen them. He who contaminates female purity under like fraudulent pretenses, goes unwhipped of justice. Let the prisoner remain in custody until discharge by due course of law." [Stone, J.]

McReynolds v. Jones, 30 Ala. 101, January 1857. [102] " The . . will . . of John McReynolds . . was propounded for probate . . 4th September, 1854, . . the testator directed all his slaves to be carried to Liberia by his executor, and there emancipated; bequeathed $8000 to his wife, ' as her full . . portion ' . . and directed his executor to sell all his lands . . and divide the proceeds . . among his residuary legatees. On the 5th September, . . the widow filed her written dissent . . On 1st January, 1855, commissioners were appointed . . to divide the slaves . . and allot to her her portion. On the 15th . . the commissioners made their report, . . ' confirmed by the court, and ordered to be spread on the minutes.' . . [103] February, . . the widow filed her petition, asking the court ' to set aside the order appointing commissioners . . and also the order made . . on the return of the report ' . . on the following grounds: 1st, that said proceedings were had before the expiration of eighteen months from the grant of administration . . 2d, that said application was made by her under the apprehension that the property . . other than slaves, was not sufficient to pay her distributive share; 3d, that said proceedings . . would defeat the provisions . . respecting the emancipation . . ' ordered by the court, that said motion be refused,' "

Affirmed: I. [104] " It is true . . that the application by the widow . . was premature. . . But . . [sections 1771 and 1772 of the Code were] intended for the protection . . of the administrator. If he does not object, we think the widow cannot . . [II.] [105] The personal estate, other than slaves, is not . . sufficient to pay the debts and expenses of administration, and . . the widow's share, which is one half the personalty. . . the argument [of her counsel] brings in the lands left after the allotment of the dower, and seeks to regard them as money, because . . devised to be sold. . . The will devised the entire real estate to be sold; . . This would have the effect of destroying the dower proper; . . [106] the widow can[not] claim both against the will and under it." [Stone, J.]

Mitchell v. County, 30 Ala. 130, January 1857. " action . . brought by the appellant, to recover . . the amount of an account for medicines . . and services rendered by him, as a physician, at the request of the sheriff, . . a slave . . was confined in jail on a charge of having murdered his . . master, and . . the relatives . . who were his prosecutors, refused to procure medical aid for him."

Held: [131] "there is no law which creates a liability against *the county* . . The . . master . . being dead, his representative must be regarded as his master. . . cannot 'absolve himself from the obligation' . . to provide for his necessary wants in sickness, whilst confined under a criminal charge." [1] [Rice, C. J.]

McKenzie v. Bentley, 30 Ala. 139, January 1857. [140] "she permitted . . Bentley and wife [her daughter] to take one of her slaves, . . under an agreement that . . Bentley should clothe and pay taxes . . during . . 1853, and return her . . at the end of that year; that Bentley and wife shortly afterwards left the country, secretly, and by night, taking . . slave . . and removed to . . Georgia,"

Farrow v. Bragg, 30 Ala. 261, January 1857. [263] "wishing to get a slave . . out of the town . . on account of . . feeble health, and to keep him from getting into difficulties, [he] placed him in the possession of the defendant, who lived in the country, . . to . . keep . . until called for, and pay nothing for his hire"

Thomason v. Dill, 30 Ala. 444, January 1857. [445] "Action . . brought by . . Dill . . founded on . . note, . . Witness and defendant went [on April 26, 1853,] to plaintiff's field, where the slave was, and examined him; . . when they returned to the house, plaintiff was at home. . . plaintiff said that he had sold the negro once before, and had recanted, but that the negro had disobeyed him, and he now had to go. . . defendant agreed to give [$800.] . . said, that he would give security, if plaintiff desired it. Plaintiff said, . . not . . but, if he got uneasy, . . defendant could secure it. Defendant then executed the note sued on, and delivered it to plaintiff, who . . delivered . . a bill of sale . . Plaintiff sent . . for the negro, and told him that he had sold him to Thomason. The negro commenced crying, and begged plaintiff to rescind the trade. Plaintiff's wife also requested him to rescind . . [446] Defendant refused to rue, and wanted to take the negro . . that evening. Plaintiff remarked, that he would bring the negro, with his clothes, to Ashville the next morning. . . [448] The negro [when brought] was in his shirt sleeves, and had no clothes [with him] except what he wore; . . Plaintiff proposed to give defendant $10 to rue,—saying, that he had $5, and the negro $5." [446] "Defendant declined . . saying that he never made a negro trade for less than $50. . . [448] plaintiff then said, 'If you wont rue, go and get security as you promised,' . . [The brother of defendant] said . . 'I have the money, and will deposit it,'" [447] "until the defendant could . . get security. Plaintiff said, 'No,' . . but objected that some of the parties to the proposed note lived in [different counties.] . . Witness then persuaded [*sic*] defendant to rue with plaintiff . . without requiring any pay, but defendant declined. Plaintiff then said, that the negro had some debts due to him in the neighborhood, which he could collect in a few days; that he had a bed and some clothes; and that defendant could . . get a note signed with security, come back

[1] Gibson *v.* Andrews, p. 150, *supra.*

. . and get the negro." [446] " The negro committed suicide [by hanging] a few days afterwards, . . [449] before delivering said note . . [defendant] had heard . . that the negro was dead." Grady [449] " carried the [new] note to plaintiff . . told plaintiff, that he was instructed to demand the negro . . plaintiff replied, . . that . . [he] could have his body or his bones, if he desired them."

Held: [454] " The . . agreements . . reduced to writing, on the 26th April, . . amounted to an executed contract, passing the title . . to Thomason, . . [455] The agreement by which the slave was permitted to remain one night with Dill . . had no effect to impair Thomason's title. . . [457] [But] it should have been left to the jury . . whether by agreement the first contract was so far modified, as to be made executory,—Thomason's *right* to the slave not to attach until he . . tendered the proposed note. . . [458] For the error . . the judgment . . is reversed, and the cause remanded." [Stone, J.] The second trial also resulted in a judgment in favor of Dill. Judgment affirmed.[1]

Brooks v. State, 30 Ala. 513, June 1857. [514] " The indictment . . charged, that . . Brooks, ' being a negro-trader, broker, or agent for the sale of slaves, sold . . a slave named Rufus, the property of . . Carson, without a license,' [2] . . ' the defendant's clerk . . testified, that the defendant was an auctioneer, . . selling real estate, slaves . . and whatever was sent to him for sale; . . that he had sold during the year last before trial, more than one hundred slaves for other presons, . . some privately; that some of those sold privately were for persons living out of the State; that when slaves were sent . . for sale, he boarded them with a Mrs. Moseley, . . and charged it to the owner on settlement; that he had . . place of business . . in . . Mobile, opposite the court-house, where slaves sent to him . . were generally kept during the day, exposed publicly to the . . examination of those wishing to purchase, and . . sometimes sold privately when the price would be agreed on. . . that the slave sold belonged to . . Carson, . . of North Carolina, . . that . . Carson brought this slave ["lately "], with a number of others, to Mobile for sale; that the defendant . . advertised the sale regularly, through the newspapers and hand-bills; that these slaves were boarded at . . the " Eutaw house," . . nearly opposite to defendant's place of business, where a sort of negro boarding-house is now kept; that Carson was . . recommended to this house by defendant, but paid the bills . . himself; that defendant sold . . Rufus . . 1857, in front of the court-house . . at public auction; that Carson was present . . and executed the bill of sale ' "

Held: [516] " It is not necessary that the sale of slaves shall constitute the entire business of such agent or broker. . . the general auction licence . . gave him no authority to sell slaves as an agent, broker, or auctioneer . . engaged in the business of selling slaves." [Stone, J.]

Case v. Mayor, 30 Ala. 538, June 1857. [539] " Plaintiff claims . . $50 as a fine, for that the defendant, . . 1856, did sell to certain slaves,

[1] Same *v.* same, 34 Ala. 175.

[2] Code, sect. 397, par. 17; and the act amendatory thereof, approved Feb. 7, 1856 (Pamphlet Acts, p. 25).

. . a yellow boy, about thirty-four years of age, and . . a black boy, about twenty-two years of age, . . spirituous liquors, without the written permission of the owner,"

Eberlin v. Mayor, 30 Ala. 548, June 1857. [549] "Plaintiff charges, that the defendant, . . 1856, . . sold to . . one black boy, about twenty . . and one yellow boy, stout and heavy, . . candles and sugar, . . without the written or personal assent . . of the owner,"

Moore v. State, 30 Ala. 550, June 1857. [551] "the State proved, by [witnesses] . . that they had seen the defendant . . play cards . . in a back room in the upper story of a house . . rented and controlled by . . Shandy Jones, a free man of color, . . that the lower rooms . . were used by . . Jones as a barber's shop; . . that he used . . [the upper] rooms in experimenting, and attempting to learn the art of taking daguerreotypes; that he took the pictures in the front room, and subjected them to . . chemical process in the back room, . . for which purpose he had . . suspended . . before each window . . thick curtains, . . that of ten or twelve gentlemen named, four frequently, and six or seven occasionally, . . played cards in this room; that the key . . was kept by . . Jones, . . [552] that Jones, prior to the time when the playing took place, had abandoned the attempt to learn the daguerrean art;" Held: the room is within the prohibition of the statute against gaming.

Wilkinson v. Moseley, 30 Ala. 562, June 1857. [563] "action . . brought by . . Moseley . . to recover damages for the loss of a hired slave. . . [565] plaintiff hired to defendant . . for the year 1844, or until Christmas . . a girl [Adeline] who had cooked in the country for two years,[1] and a boy ['to wait in his store']; . . $90 for the girl, and $50 for the boy; . . before the . . delivery of the notes . . and . . the delivery of the negroes, defendant asked . . why he hired his negroes in the city rather than the country, and the plaintiff replied, because he could get better prices . . and . . it was healthier . . in March or April . . [566] defendant hired . . Adeline [and the boy] to . . Hughes . . whose plantation lay upon the Alabama river; that Hughes . . worked her in the field with his other field-negroes; and . . in July or August . . she died. . . sick but about three days. Moore, the overseer of Hughes . . testified . . the girl had a chill and fever . . that he gave her calomel on Sunday night . . and castor oil on Monday morning, . . appeared much better . . that on Monday night . . she was much worse, . . that he took about a half-pint of blood from her, and put a mustard-plaster on her side and stomach, and on her wrists; that she . . went to sleep; that he remained . . until eleven . . left a negro man and woman to sit up with her, . . that one of the negroes called him about day-light . . that he . . found her dying, . . that he had been overseer-ing for fifteen years, and had been in the habit of administering medicine to sick slaves . . Defendant proposed to prove by Moore . . that prudent planters generally did not call in a physician to attend their negroes, unless in dangerous

[1] The plaintiff had also "an old and experienced cook, washer and ironer," for whom he asked $130 per year.

cases; . . [567] Plaintiff objected . . sustained . . dependant excepted." Mrs. Linn deposed: [568] " She had a violent fever . . and was in the family way, . . in great pain. . . I told Mr. Hughes that the girl was very sick. . . [569] Mr. Hughes was very sick at the time . . Dr. Ames attended on him. . . I do not know that the physician was at the house the day Adeline died. . . She was lying on the kitchen-floor, with nothing under her." [557] " For . . errors . . the judgment [in favor of Moseley was] . . reversed, and the cause remanded."

Gunter v. Lecky, 30 Ala. 591, June 1857. [592] " that, in . . 1853, the plaintiff was a negro-trader, and . . sold to defendant [without a license] . . Mary and Eliza, and, in payment therefor, received . . Addison and Harriet . . and $100 . . that plaintiff afterwards went . . in defendant's absence, and took . . the two negroes . . first mentioned . . and left . . the two negroes last . . named . . [593] because he thought himself defrauded " Held: [598] " not a sale . . within the meaning of the statute " [1]

Mason v. Hall, 30 Ala. 599, June 1857. [600] " 1st January, 1854, she hired a negro man to . . Hall, for . . one year, for $155,"

Harris v. Maury, 30 Ala. 679, June 1857. " action . . founded on a . . note for $175 . . for the hire of . . Gabe and Mary, for . . 1852. . . Gabe . . ran away . . [to] plaintiff, who refused to let him go back again . . [680] that the negroes were treated well " Held: " the plaintiff . . lost his right to recover any thing for the hire of the slaves."

Morton v. Bradley, 30 Ala. 683, June 1857. " This action was brought by . . Morton . . to recover damages for the killing of a slave;" [691] " The master of a dangerous runaway slave, who was armed with a deadly weapon, employed [Holbert] . . to capture him, and instructed [him] . . 'if the slave resisted being taken, to take him dead or alive, and to shoot and kill him, if he could not otherwise be taken.' The slave . . 'resisted being taken' . . and it was necessary . . [to] have the assistance of men and arms." [684] " Holbert . . requested defendant to aid . . and communicated . . the . . instructions " [683] " defendant joined with others in pursuit . . [684] came up with . . slave, who . . brandishing said weapon, refused to be taken, . . defendant shot him, to prevent his escape, and . . [685] killed him;"

Held: [694] " The killing of a runaway slave, merely for the purpose of preventing his escape, is not permitted. . . It may be that the flight of the slave, after brandishing the weapon . . was the reason why shooting was necessary to his apprehension. But . . [the] captor . . must have been brought into peril, before the killing could be permissible;" [A. J. Walker, J.]

Turner v. Roundtree, 30 Ala. 706, June 1857. " Plaintiff claims . . $300, for this: Defendant employed plaintiff as an overseer, for . . 1854,

[1] Code, sect. 399.

. . to take charge of his hands and stock, and to make a crop; . . agreed to give . . one-fifth of all . . crops"

Fail and Miles v. McArthur, 31 Ala. 26, June 1857. [27] "the plaintiff [McArthur] . . hired to [defendants] . . for the year 1854 . . the negro woman for whose conversion this suit is brought; . . removed from the defendants' brick-yard . . after the middle of January . . to the plantation of . . Fail; . . put to picking cotton on the low grounds, where there was . . [28] mud and water; . . on the third day . . she was taken sick, and, after a few days . . died. With a view of showing misconduct . . on the part of plaintiff, the defendants attempted to show that . . negro . . within one month before said hiring . . had given birth to a child, which had died. . . in rebuttal . . the plaintiff introduced a witness . . who testified, that about the last of November, 1853, his wife left home, to go to plaintiff's house, and told him that she had been sent for to see a negro woman there who was about to have a child;"

Henderson v. Renfro, 31 Ala. 101, June 1857. Dr. Watkins testified [103] "that the boy was afflicted with a diseased leg, ulcerated about the ancle-joint; . . chronic . . 'required absolute rest to be cured';" [102] "he usually worked with a hoe, or did some other light work, and did not plow any; . . services for that year were reasonably worth $50;"

Thorpe v. Burroughs, 31 Ala. 159, June 1857. "action . . brought by . . Burroughs . . to recover the statutory penalty for the arrest of an alleged runaway slave . . 'near the wharf . . near a swamp, under a shed, with some provisions in his possession'; . . [Plaintiff] . . was . . asked to state . . 'if he did not confess . . that he was a runaway.' The defendant objected . . overruled"

Judgment for Burroughs reversed and the cause remanded: [160] "it was improper to receive in evidence the declarations of the slave. . . The testimony of the defendant clearly showed that the slave was at . . the wharf with the . . permission of his owner,"

Gardner v. Boothe, 31 Ala. 186, June 1857. [187] "the slave Paralee was bought . . in Mississippi, . . 1848, . . removed to Mobile,"

Wittick v. Traun, 31 Ala. 203, June 1857. "At the instance of the appellant, Rachel Wittick, . . an emancipated negro, a citation was issued to . . Traun . . administrator of Frederick Wittick, . . requiring him to produce the will . . Traun produced a paper . . without signature, . . by which two slaves, an eighty-acre tract of land, and some personal property, were bequeathed to . . Rachel Wittick, and all the residue to . . [204] Traun, his nephew, who was . . appointed executor."

Scruggs v. Driver, 31 Ala. 274, June 1857. [285] "Two plantations, with slaves . . belonging to . . testator, were in different counties in . . Mississippi; and the residence of the testator . . was in Memphis, Tennessee."

Pinkston v. McLemore, 31 Ala. 308, June 1857. "Mrs. Pinkston made an agreement with her . . husband, in 1839 or 1840, that she would defray all their family expenses out of the earnings of herself and four domestic servants, if he would allow her to retain the surplus"

Godfrey (a slave) v. State, 31 Ala. 323, January 1858. [324] "indicted for the murder of . . Lawrence Gomez [four years and eleven months old], whose nurse he was; . . [a witness] 'testified . . that he was cut on . . the head, three cuts, and a bruise as if with the head of a hatchet; . . defendant had said an Indian had done it; . . they hunted for Indians, but could not find any; . . Godfrey . . on the day before [the child was killed] . . was flying a kite, . . the child tried to take the string; Godfrey threw brick-bats at him, and knocked him down; and witness . . made him go off. Godfrey said, he would kill him any way. . . [325] Defendant is . . "heap smarter than boys of twelve years generally are." . . On the day of the killing, in the evening, [that] Godfrey said, that he had killed Lawrence because he had broken his kite, and he would do it again if they did not hang him. . . [326] Mrs. Cox testified, that she . . sold him to . . the grandmother of the deceased, about one year ago; that he is ten or eleven years of age in July, 1857; that he was the nurse of her child; that she never saw anything unkind from him to the child; and that he did not seem to be very smart, but about as boys usually are.'" [329] "The judgment of the city court is affirmed, and its sentence must be executed."

Huey v. State, 31 Ala. 349, January 1858. "during Christmas week, 1856, he saw a slave . . going by night into the defendant's grocery, and into the back room . . had some article in his hand, which he supposed to be a handsaw; . . saw . . slave come out . . and found a bottle of whiskey in the pocket of his pantaloons." Judgment affirmed.

Brown v. State, 31 Ala. 353, January 1858. [354] "The stranger . . drank [whiskey] out of the bottle, and also a negro he had with him;"

McConeghy v. McCaw, 31 Ala. 447, January 1858. [448] "1850 . . McConeghy went to South Carolina . . recovered from . . executors . . four slaves, three of whom he brought with him to Alabama . . the fourth . . he did not bring, being of no value."

Governor v. Pearce, 31 Ala. 465, January 1858. "action . . against . . sheriff . . and the sureties on his official bond; . . [466] 'slave . . was apprehended by . . an acting justice of the peace . . on [Sunday] the 16th January, 1853, between . . 9 and 10 o'clock, P.M., . . and immediately taken by him to the . . jail . . and delivered to the jailor, in the presence of the sheriff, as a runaway; . . declared . . that he delivered him as a justice of the peace, and upon his decision, as such justice, that the slave was a runaway, . . that the sheriff and jailor . . kept him . . in one of the cells . . until the Tuesday morning following, when he was delivered to . . overseer [of his owner]; that the weather was very cold . . that the slave was only furnished with one blanket and part of another, both very much worn, very thin, and of an inferior quality, and, in conse-

quence . . was badly frost-bitten in his feet, . . and his value lessened by several hundred dollars. . . that said justice made no order in writing for the commitment' "

Held: [467] "There was no breach of the sheriff's bond, . . [468] The jurisdictional fact is the carrying of the slave before a justice . . as a runaway.[1] . . It . . can not be supplied by the intendment of the justice, that he, having apprehended the slave, had carried him before himself as a judicial officer." [A. J. Walker, J.]

Dargan v. Mayor, 31 Ala. 469, January 1858. [470] "The plaintiff claims . . damages . . for the . . destruction of . . Henry, of the value of $1,500, . . killed . . by the . . agents of the defendants, . . [He] was found by . . the city guard . . at about 12 o'clock [midnight] . . on the premises of . . Smith [[471] 'with three other slaves'] . . without any written permission . . was in fact liable to be seized . . by virtue of . . city ordinance, . . But . . guard did . . [471] so . . negligently conduct themselves, that . . slave . . was . . wounded, and . . died" Held: [474] "the corporation . . is irresponsible"

Intendant and Town Council v. Pippin, 31 Ala. 542, January 1858. [543] "This agreement . . witnessed, that . . corporation has this day hired of . . Pippin his negro boy Hardy, for the purpose of boring . . an artesian well; which said boy . . Pippin guaranties to be . . skilful in the prosecution of works of that kind. The . . corporation agrees to pay . . Pippin, for the services of said boy, . . $100 per month, payable monthly, and to furnish him with food and lodging only; reserving the right to dismiss said boy . . at the expiration of any month, and to make deduction for [his] sickness or absence . . Pippin . . agrees to furnish all the . . apparatus . . but the . . corporation agrees to keep [them] . . in . . repair . . 13th December, 1854." Pippin claimed $3,500 [544] "due on the 1st April, 1857, for the hire of negro man Hardy, . . with interest" [545] "defendants say, that . . plaintiff, during two months . . interfered with . . Hardy, . . took him under his . . own management; and so unskillfully prosecuted . . said work . . that no progress whatever was made" Judgment for Pippin affirmed.

Bloodgood v. Grasey, 31 Ala. 575, January 1858. "petition for freedom, under section 2049 of the Code, by Grasey and her children, . . claimed . . under a deed of manumission from Josias W. Dallam . . executed [March 13, 1787,] in Maryland . . 'I . . do hereby declare free . . Cromwell, to be free at the expiration of too [*sic*] years; Malborough [*sic*], at the expiration of four . . Orange, at the expiration of five . . [576] Lemon, at the expiration of eleven . . Hannah, at the expiration of thirteen . . Nance, at the expiration of fifteen . . Sook, at the expiration of seventeen years . . All the children, or children's children, which may descend from said negroes, and born in slavery from the date hereof, shall be free at twenty-three years of age. . . Attest: John Archer.' . . Grasey was the daughter of . . Matilda, . . the daughter of Hannah . .

[1] Clay's *Digest,* p. 541, sect. 14.

[578] the defendants objected . . 'that said deed was not evidenced by two witnesses, as required by . . Maryland statute of 1752;' and, 'to show the judicial construction of said act by the courts of Maryland,' read . . Negro James *v.* Gaither,[1] . . the court overruled the objection, . . The petitioners, having adduced evidence . . that Grasey . . was born about . . 1820, was run off from Kentucky by a son of Mrs. Molly Townsend, against whom Matilda had previously instituted a suit for her freedom, and that the defendants in this suit claimed by purchase under said Townsend,—offered in evidence a certified transcript of the Kentucky suit, . . 1831 . . decided in favor of the petitioner. The defendants objected . . overruled"

Judgment reversed and the cause remanded: I. [586] "The law [of 1752] . . was construed by the court of appeals . . of Maryland; in 1807, in the case of negro James *v.* Gaither, . . [587] The proposition that one subscribing witness was not sufficient . . must be regarded as decided by the court. . . [588] It is true, that the Maryland decision . . was made about twenty years after the execution of the deed, and about three years after Matilda . . had been carried to Kentucky; but these facts do not detract from the weight of the decision as evidence in the case. . . [II.] [591] As Grasey would not have been estopped by the judgment [of the Kentucky court] . . if adverse to her mother, so she cannot avail herself of the contrary judgment as an estoppel in her favor. . . It results . . that . . the petitioners are slaves."[2] [A. J. Walker, J.]

Reynolds v. Crook, 31 Ala. 634, January 1858. [636] "execution . . was levied on . . [637] four women and eight children"

Roberts v. Fleming, 31 Ala. 683, January 1858. [685] "Dr. Connor testified to his examination of the slave . . about six weeks after plaintiff's purchase of her [in 1853 for $1000], . . 'Were I not a medical man, I would not have her, as the medical bill for attention to her would exceed the profit she could render her owner.'"

Thompson v. Drake, 32 Ala. 99, January 1858. [101] "The plaintiff proved, that an agreement was made . . between his wife and defendant . . that the latter 'should pursue the plaintiff, and if he succeeded in obtaining the negroes, he should have one half of them for his trouble; . . [105] that the defendant went to Mississippi, took possession of the negroes by force, and then, in the night time, entered plaintiff's house . . and forced him, by cocking a pistol, and by threats of wounding, . . and of death, to go with defendant, who also had said negroes in

[1] 2 Har. and J. 176.

[2] But the Maryland act of 1810, to which James *v.* Gaither (2 Leigh 307) "probably gave occasion," cured such a defect in "any deed heretofore executed for . . manumission . . acknowledged and recorded" saving the rights of *bona fide* purchasers before the passage of the act. If this act had been invoked in favor of Grasey, one of the "children's children," emancipated by the "cured" deed, she might have secured her freedom, for she was not born till 1820, so that no rights of any bona fide purchaser could have been infringed. Ed.

company, to Florence, where the plaintiff signed the deed [conveying the negroes, in trust, for the separate use of his wife, during her life].' "

Hall v. Goodson, 32 Ala. 277, January 1858. Hall hired his slave to defendant [278] " for the year 1855, at the price of $120; and the injuries . . were inflicted . . in June . . There is no direct proof . . that the injuries were inflicted by the defendant; but . . on the slave being caught by . . Carpenter and others as a runaway, and delivered to the defendant bound, ' he took the slave away, saying that he intended to whip him with a cowhide (one of the largest kind) which he had in his hand;' that the slave again ran away, and returned to his master, some two weeks afterwards; . . bore on his back, arms and legs, the marks of a severe whipping; and that some of the scars and wales [[279] ' two or three inches long, and as large as his finger,'] were plainly visible . . for a year after . . that the plaintiff retained the possession . . for the remainder of the year . . ' that the market value . . was permanently injured, from $100 to $300, by reason of the scars . . though his capacity for labor was only impaired for a month or two;' . . before the commencement of this suit, the defendant paid in full . . the note . . for the year's hire; . . [279] The defendant introduced a witness [Carpenter] who testified, ' that he arrested said slave as a runaway, a short time before June, 1855, on a plantation where he was acting as overseer; . . that the slave ran away from him when arrested, and, when he was about to overtake him, seized a pine-knot, and attempted to strike witness with it.' The plaintiff objected . . overruled . . The bill of exceptions says, ' there was no evidence that this fact was communicated to the defendant.' "

Judgment in favor of the defendant reversed and the cause remanded: I. [284] " the receipt of the full hire cannot be regarded as a waiver of the owner's right to maintain the action of trespass. . . [II.] [287] an unknown offense by the slave could not justify excessive whipping, or mitigate the damages caused by it." [Stone, J.]

Ward v. Reynolds, 32 Ala. 384, January 1858. [385] " action . . founded on a . . note for $800, dated . . 1847, . . The defendants pleaded . . fraud . . It was proved . . that the note was given for . . a slave sold by plaintiff, through an agent, to . . Ward; that . . agent, ' both before the sale, and while negotiating . . informed . . Ward that . . slave was a negro of excellent character, . . giving as the only reason why he was sold that there had been a disturbance between him and another negro;' that the slave was, prior to the sale, in the habit of running away, and was sold on that account; and that, after remaining in Ward's possession about two months . . he ran away without cause, and had never been regained. . . [387] evidence . . that, if the character of . . slave as a runaway had been known at the time of the sale . . he would not have been worth . . the price for which he was sold, by from two to four hundred dollars." [390] " Bill . . was a good hand; . . [391] active, able, and willing; with this exception, that he would occasionally run away;" [387] " The court charged the jury . . they must find a

verdict for the plaintiff, for the real market value, his character . . considered," Affirmed.

Cox v. McKinney, 32 Ala. 461, January 1858. [463] "In 1833 . . [Cox] removed [from South Carolina] to . . Alabama, 'and brought . . slaves of . . father's estate,'"

McAllister's Executor v. Thompson, 32 Ala. 497, January 1858. "William McAllister . . died in . . 1853, leaving a will . . admitted to probate . . August, 1854, . . [He] bequeathed all his property . . to his wife for life; directed his executor, after the death of his wife, to transport all his slaves to Liberia, so soon as their labor had created a fund sufficient for that purpose; . . The widow dissented from the will, . . March, 1856, . . the testator's sister and sole heir-at-law . . filed her petition in . . [the probate] court 'for a distribution of the slaves' . . the court held—'1st, that the direction to the executor to remove the slaves to Liberia was void; . . [498] that the widow's dissent . . left an estate not disposed of . . to which the heir-at-law was entitled'" Held: "1st, that the probate court had no jurisdiction . . 2d, that the executor has no right to appeal . . until after a final settlement of the estate."

Bob (a slave) v. State, 32 Ala. 560, June 1858. "indicted for an assault with intent to kill . . a white person. . . March term, 1857, . . a mistrial . . A second trial was had at the March term, 1858, . . verdict of guilty, and consequent conviction and sentence of death." Bill of exceptions: "Curtis . . stated that . . January, 1857, . . he was . . acting as overseer for his father; . . informed his father's negroes that he was going to the house of Judge Joshua Morse, . . between 8 and 9 o'clock at night, . . he started for home . . some person . . concealed in the bushes, shot him with squirrel shot . . in . . face; . . two or three hours after . . negro dogs were carried to the place . . they immediately trailed off in the direction of . . [Curtis's] house, where . . tracks . . were plainly discoverable. On the following morning . . Bob and other negro men on the place were called up, and the size of their feet and shoes compared with the measure which had been taken. After nearly all . . had been called up, and a comparison . . made . . [562] Bob was called into his master's house, (it being now evening,) . . in the presence of his master and mistress, with several of the neighbors . . when the measure of the said tracks was applied to the shoes which he was . . wearing. . . it fit in every particular. Several . . exclaimed, that they were the shoes that made the tracks; . . the prisoner made no reply. . . the court permitted [these exclamations] . . to go to the jury in connection with the evidence that the prisoner made no reply, . . Soon after it was discovered that the shoes . . corresponded . . with the measurement . . Bob was taken out by Joshua Morse, a son-in-law of his master, and some of the other neighbors, and severely whipped, and afterwards salted, by pouring the salt upon the wounds made by the blows inflicted. On the next day, Bob was confined in the jail . . McGehee [the jailer] . . said, 'Bob, you are a fool; you had better confess your guilt; every body around here believes you are guilty; and you ought to know that it

would be better for you to confess, and for your master to have your value in his pocket [[567] "that his master would sell him"], than for you to have your neck broke, and he have no money for you.' . . [563] Bob made a confession of guilt, stating all the circumstances. A day or two after . . Joshua Morse and . . the sheriff, both of whom were present at the whipping . . on the day after . . Curtis was shot, and were active agents in all the proceedings . . entered the prison, and approached Bob, with a leather strap made for the purpose of whipping negroes; . . ordered Bob to pull off his shirt and lie down. Bob thereupon immediately confessed that he was guilty . . Morse told him he wanted to hear none of his confessions, and then whipped him severely, without giving him any explanation as to the cause. At the trial at the March term, 1857, which resulted in a mistrial, all the . . confessions . . were excluded from the jury by the court. . . [In September 1857] in the presence of Frisby, Steadham or Macdonald, when all . . were standing at the window of Bob's cell, asked him, 'What in the h—l are you doing in here?' to which Bob replied, 'I was put in here for shooting my young master.' He was then asked if he did it, and replied, 'I did;' . . On the next morning, the same three men . . on making inquiry of him as to his guilt, he denied that he was guilty . . [564] The court [in 1858] permitted the confessions made in Frisby's presence to go to the jury . . and his denial of his guilt"

Judgment reversed and the cause remanded: I. [566] "the court erred in the admission of the exclamation, and of the slave's silence." [565] "His social relation to his master and mistress, and to the other white persons present, forbidding the freedom of speech allowed among equals, and making a contradiction in most cases an insolence, rendered it unnatural, and, perhaps, improper . . for him to interpose a denial . . [II.] [568] the court erred in the admission of the confessions" [A. J. Walker, J.]

Hooper v. Hooper, 32 Ala. 669, June 1858. Will of John Hooper, who died in 1848: "3. It is my wish, that my executor [my brother, Zachariah,] . . take Harriet, a yellow woman, and her six children . . [670] to . . Ohio, and free them there; settle them comfortably in the country, (not in a city,) and . . my executor is requested to place in some solvent bank in Ohio . . ten thousand dollars, . . that Harriet and her six children are to be supported from the interest . . the principle [*sic*] is not to be used, unless Harriet marries—then she may draw her proportional part . . and the same may be done with each child's proportional part, as they become of age or marry. 4. It is my wish, that Harriet and her six children have all my beds and bed-clothing, and my set of knives and forks. 5. My executor is requested to pay all the expenses of conveying and settling . . before a division [of my estate] takes place; after which, I wish him to give to his oldest daughter . . a little girl, about three years old, named Alice. Leathy and Clary . . to my brother, Henry . . John is to be sold . . Dick is to be sold, if thirteen hundred dollars can be obtained for him, in order that he may remain in

. . Alabama. My property is to be equally divided between my brothers and sisters, with the exception of . . Zachariah . . I will him a double interest . . provided he carries my will into execution; and if not, he is to have but a fourth of one share." A bill was filed in 1853 by Harriet, "a free woman of color," and her six children, which [669] "sought the recovery of . . [the] pecuniary legacy . . and the specific performance . . of the trusts . . [670] alleged, that the complainants were 'resident citizens . . in . . Ohio;' . . that . . February, 1850, 'final settlement was made . . of the estate' . . that the . . brothers and sisters of the testator 'had consented in writing . . [671] that complainants . . should forever . . be free—that . . executor should retain for their use . . out of each of . . distributive shares . . three hundred dollars, which being deducted . . and . . twelve hundred dollars being allowed to the executor as his commissions, a balance of $22,301 59 was left in the hands of the executor,' . . distributed . . 'and . . executor . . discharged;' . . that . . eighteen hundred dollars . . was all that they had ever received . . The executor answered . . that . . [the brothers and sisters of the testator] all agreed, 'as a compromise of the whole matter, and as a gratuity on their part,' that . . three hundred dollars should be retained . . out of each of their legacies, to be expended in the removal and settlement . . in Ohio; that this was accepted by . . Hannah, in behalf of herself and her children, in full satisfaction of their claims . . if any they had; . . that respondent . . [672] carried the complainants to Ohio ['about . . March, 1850'], bought for them a house and lot . . and deposited the balance of the funds . . to their credit in a bank; . . The chancellor . . held . . that the complainants were entitled to recover the pecuniary legacy"

Decree reversed: [673] "the owner's executor . . will . . [not] be compelled by the court, *at the instance . . of the slave,* to carry him to the State to which the will directs him to be carried for . . emancipation. The court of chancery will recognize *the authority* of the executor to execute the trust, and, if by *his bill he submits the administration* to that court, it might possess the power to enforce its execution,[1] as a condition of giving its aid . . [674] the complainants . . did not obtain their freedom *under the will* . . [675] Their removal . . was . . by virtue of the . . agreement made between the free white legatees; and . . the former executor acted . . as the mere agent . . of the parties to that agreement. . . And the terms of that agreement do not give any support to the claim to the $10,000," [Rice, C. J.]

Deens v. Dunklin, 33 Ala. 47, June 1858. [48] "note for $300 . . for the hire of . . Abe and Jake, for the year 1855 . . to cut logs, and to work about a steam saw-mill . . About one month after . . Abe was killed by the machinery . . [49] The plaintiff brought an action . . to recover the value . . verdict for the defendants,"

[1] Judge Goldthwaite declared in 1855 that if an executor "was so regardless of . . [his] duties . . as to fail in the faithful execution [of such a will] . . the powers of the court of chancery . . are amply sufficient to enforce it;" Abercrombie's Executor *v.* Abercrombie's Heirs, p. 206, *supra.*

James v. County, 33 Ala. 51, June 1858. "seven slaves . . were apportioned to work on a public road,"

Myers v. Myers, 33 Ala. 85, June 1858. "he owned [in 1853] about one hundred and sixty slaves . . [86] which were distributed and worked on his three plantations;"

Pool's Heirs v. Pool's Executor, 33 Ala. 145, June 1858. [146] "The testator's will directed his executor to carry certain slaves (to-wit, Harriet, a mulatto woman, and several children of another woman, who were principally raised by her, and whose father the testator appears to have been) to Ohio, for . . emancipation, and to invest in a bank for their benefit the entire proceeds arising from the sale of all his [other] property. . . 'that Pool became jealous of a negro man who was running after one of his women, . . and declared his intention to shoot him; that Canty went to Harriet, and requested her to get Pool to abandon the idea; . . nothing more [heard] about the matter. . . that Harriet was the reputed daughter'" of another white man. See same *v.* same, p. 234, *infra.*

Gunn v. Samuel, 33 Ala. 201, June 1858. Dr. Gunn [202] "was called in to attend Mrs. Samuel, her children and slaves,"

Hassell v. Hamilton, 33 Ala. 280, June 1858. [281] "The plaintiff proved, that the girl . . [282] was born in 1842; that she . . was in the possession of [plaintiff's husband] . . in Tennessee in 1848, and, in . . that year, was run off by him to . . Alabama,"

Henderson v. Simmons, 33 Ala. 291, June 1858. [296] "sums paid . . to an agent, between . . 1852, and . . 1854. . . 'going to lower end of county, and bringing up negroes to hire out, $12.00; . . furnishing wagon, and hauling negroes . . $3.00;'"

Hatcher v. Clifton, 33 Ala. 301, June 1858. [302] "1848. Petition to sell slaves. . . 'that . . intestate departed this life, owning . . no real estate,—his estate consisting of seventeen negroes, with but little other effects; . . largely in debt . . six . . were sold by the sheriff, . . that there are large . . debts . . unpaid,'" Ordered that the administrator have leave to sell the slaves.

Matthews v. Robinson, 33 Ala. 320, June 1858. A slave was sold for $1600 in 1854.

Dupree v. State, 33 Ala. 380, January 1859. [381] "Dupree . . was convicted of manslaughter in the first degree, . . 'Witness . . heard the cries of a female slave of the prisoner's as if receiving severe punishment. . . heard the sound of blows, like that of a whip . . saw the prisoner coming . . with his gun, and running down towards the cabins ["on the prisoner's place"]from which the noise . . proceeded. . . [382] This negro woman [Clara] and her children lived in one of them.'" Dupree fired twice. [381] "Smith . . ran out from behind the cabin, . . fell . . dead . . [382] Smith . . that morning . . appeared to have been drinking; . . [A few days before,] deceased told [another witness] . . that

the prisoner's folks had been killing his chickens, and that he intended to kill the prisoner's chickens, and that, if the prisoner said a word about it, he would cut his throat; . . 'he would kill him anyhow;' . . [383] witness told [Dupree.] . . [Other] threats were communicated . . before the killing. . . excluded . . [384] The defendant offered three witnesses, aged nine, eleven, and thirteen years, . . the children of the woman Clara; and proposed to prove by them, that . . the killing . . was done in self-defense, . . The solicitor then stated . . that these boys . . were not competent witnesses, . . The children were produced, and appeared to be white. . . [Witnesses] testified, that . . Clara was the mother of the . . children by defendant, a white man; . . that her mother . . Anastasia . . was a dark griffe . . [385] her nose flat, and her hair kinky. . . that Jean Seymour [Clara's grandmother] was a griffe, and had white blood in her . . that Anastasia was the daughter of a white man, Simon Andre . . who always lived with Jean . . called man and wife in Spanish times, . . that Anastasia's only husband was a white man, named Chastang . . the father of Clara . . that these colored women were always free, and owned slaves and other property; and that they were treated as husbands and wives under the Spanish laws. . . the court decided that the witnesses were not competent, . . [386] Smith . . [was] an escaped convict"

Judgment reversed and the cause remanded: I. [387] "Such threats were admissible . . [II.] The children of Clara were incompetent witnesses."[1]

Henry (a slave) v. State, 33 Ala. 389, January 1859. Held: [403] "Under an indictment which charges 'a slave' with the murder of 'a white person,' the defendant may be convicted of voluntary manslaughter;" [402] "we are forced to the conclusion, that the ruling . . in . . [403] Bob *v.* The State[2] [[401] 'that under an indictment for the murder of a white person, a slave cannot be convicted of involuntary manslaughter' nor, consequently, of voluntary] . . is unsound in principle, and not reconcilable with the true . . meaning of section 3601 of the Code. . . [We adhere] to the rule as settled in the State *v.* Stephens,"[3] [R. W. Walker, J.] Judgment reversed and the cause remanded. See same *v.* same, p. 241, *infra.*

Molett v. State, 33 Ala. 408, January 1859. Indictment for failure to keep a white person on plantation. [409] "witnesses . . testified . . that between the 1st March and the 1st June, 1856, they were frequently on the plantation . . saw ten or fifteen slaves . . who worked and lived on the place; and that no white person resided on the place, . . [410] 'The defendant then proved, that the place . . was part of a continuous body of land belonging to him, . . that he had several negro-quarters, and five different plantations, . . on said lands at convenient distances from each other, and some of them within a mile of his resi-

[1] Code, sect. 2276.
[2] P. 210, *supra.*
[3] P. 169, *supra.*

dence; that he acted as ["a vigilant"] overseer . . that he was frequently on the place mentioned . . superintending . . in the day-time, and, at night, returning to his residence four miles distant; . . no . . other white agent . . that he was, during . . 1856 and 1857, at no time absent . . so much as a week at a time. . . proved, however, that . . he remained on each [plantation] but a short time'" Held: [412] "The fact that the intervening land belonged to the defendant, neither takes the case out of the letter of the statute,[1] nor tends to avoid the evils which the statute aims to prevent."

Oxford v. State, 33 Ala. 416, January 1859. [417] "the testimony tended to show, that the bacon was stolen . . by a negro boy, . . the property of . . Sellers, from whom the bacon was stolen; that it was delivered . . to the defendant, and concealed by her."

Evans v. Kittrell, 33 Ala. 449, January 1859. Bill for specific performance of a contract. [450] "This will certify, that I have . . bought of Dr. P. W. Kittrell ['about to remove to Texas'] his negro man Carney, a blacksmith . . for . . $1250. Now, for the protection of . . Carney, and in order to carry out the contract formerly existing between Dr. Kittrell . . and said boy, respecting his obtaining freedom, I do hereby obligate . . myself to the said boy, and to . . Kittrell, as soon as the . . boy may, by himself or his next friend, refund to me . . $1250, with ten per cent. interest . . I will release [him] . . from slavery; and . . in the event of my death before . . Kittrell, . . boy shall revert to . . Kittrell, on condition that he shall pay . . to my legal representatives the above . . sum . . or any part . . unpaid . . It is also . . agreed, that after deducting all . . proper charges against said boy, I am to allow him the proceeds of his labor in the shop, to go to his credit on the above sum. December 16, 1848." [451] "The master [in chancery] having reported . . that the defendant had been more than repaid . . the chancellor . . ordered the defendant, by . . September [1857] . . 'to remove . . Carney . . to some non-slaveholding State or country, and there emancipate . . him.'"

Decree reversed and the bill dismissed: [452] "The contract . . contains no term . . which looks beyond . . Alabama for its performance . . [454] void" [453] "We feel it our duty to overrule [Prater *v.* Darby][2] . . so far as it conflicts with our former decisions,[3] . . the error of the opinion in . . Prater *v.* Darby is shown by the decree which the chancellor was constrained to make in this case, . . To avoid the imputation of illegality in the contract of Mr. Evans, . . the chancellor was forced to engraft . . a term, not inserted by the parties, . . to carry the slave out of this State, to a place where he could enjoy freedom," [Stone, J.]

Holloway v. Cotten, 33 Ala. 529, January 1859. [530] "a witness . . testified . . 'In March, 1854, . . two months after the sale . . Maria

[1] Session Acts, 1855-1856, p. 18.
[2] P. 195, *supra.*
[3] Pp. 143, 155, 159, 166, 167, and 177, *supra.*

was engaged in working on the ditches, clearing [them] out . . with a weeding-hoe. . . her eyes were rolling about in her head, and her breath was very short. . . she said, " that she was sick; that it would soon wear off; and that she had been that way, off and on, for the last year or two." . . [531] about the middle of March, 1854, said slave was badly burned . . by her clothes catching fire; ten or fifteen days afterwards . . died from the effects ' " " evidence of physicians . . that her womb was greatly enlarged, and had a large tumor on it; that two of them made a post mortem examination . . if she had been sound, [she] would have been worth $400,"

Nesbitt v. Pearson, 33 Ala. 668, January 1859. [669] " On the 8th January, 1852, I [Watson] hired to . . Nesbitt . . my negro man . . Joseph, a hammer-man, for twelve months . . for which I hold his note for $265. Now . . I . . agree to sell [him] . . at the expiration of his time, for $1000, including his hire, should . . Nesbitt conclude to take the boy after trying him." During the year Watson sold Nesbitt's note and the negro to Pearson who [670] " 4th January, 1853, . . claimed the slave . . [but] agreed to release all right . . in consideration of a promise by . . Watson to pay him $50; that Nesbitt then proposed to pay . . Watson the [$1000] . . and $150 in iron, (or . . one ton of iron,) if . . Watson would agree to let him have the negro; . . agreed . . [to] meet . . five or six days thereafter, when . . Watson should receive . . $1000, should give up Nesbitt's . . note for the hire, and should execute . . bill of sale . . Watson failed to appear, . . [671] Pearson and . . Watson, a few days after said term of hiring expired, went upon the defendant's premises, in his absence, and . . took away said slave; . . in . . 1854 . . [Smith] was authorized by defendant [Nesbitt] to give $1100 . . including the note here sued on; . . Pearson refused . . and defendant then authorized him . . to buy the slave on such terms as he could, . . bought . . at . . $1100, . . immediately carried the slave to the iron-works where defendant was engaged in business," Stone, J.: [674] " Under strict rules, it may be that the agreement . . is but an offer by Watson to sell, and not a contract until accepted by Nesbitt."

Belcher v. Sanders, 34 Ala. 9, January 1859. [10] " Mrs. Belcher lost her mother in infancy, and was . . placed under the charge of a negro woman named Lizzy . . by whom she was nursed and tended with affectionate care. The two children of Lizzy . . thus became the playmates . . of their young mistress, who conceived a strong attachment towards them and their mother. Her father . . declared that the two negro girls should belong to his . . daughter, and should never be separated from her. . . bequeathed said negroes to her; . . [12] are [now] worth about $2500."

Bennett v. Bennett, 34 Ala. 53, January 1859. [54] " $300 overseer's wages for . . 1855, . . an account of . . Smith for medical services rendered by him to the . . slaves between February and December, 1855; . . also, an account of $126 50 to Clark and Longhorne, physicians, for medicines and medical services furnished and rendered by

them . . between January and November, 1855, for the negroes on . . plantation;"

Buckley v. Cunningham, 34 Ala. 69, January 1859. "I understood that it became necessary to favor him [the slave] from the most laborious parts of his duties, and that he was put under the care of a physician at Mobile;" "I understood he was sent to Dr. Nott's hospital."

Walthall v. Rives, 34 Ala. 91, January 1859. [92] "conveyed . . four hundred and ninety acres, together with about sixty negroes,"

Whitley v. Murray, 34 Ala. 155, January 1859. [156] "The defendant [Murray] proved . . the written contract . . by which . . [Whitley, the plaintiff,] . . agreed to serve him in the capacity of an overseer, from the 1st January, 1858, to the 1st January, 1859, 'for . . [157] $400 in cash, 300 lbs. of bacon, 50 lbs. of brown sugar, and 25 lbs. of coffee, under the following conditions: . . Whitley is never to leave . . plantation on business at any time during my absence from the State, and only with my consent when I am on the plantation; he is never to drink ardent spirits to intoxication, while in my employ; he is not to maltreat any of my slaves, . . and failing to comply fully . . Whitley is to leave my employ, at my discretion, without the least renumeration for the time he may have served me.'"

Thomason v. Dill, 34 Ala. 175, January 1859. See same *v.* same, p. 216, *supra.*

Lucas v. Daniels, 34 Ala. 188, January 1859. [189] "Caroline, . . the mother of Manuel and Perry, belonged to . . Gardner, in South Carolina, in 1820; and in 1821, on plaintiff's marriage with . . a daughter . . went into plaintiff's possession . . In 1825 . . [they] removed . . to . . Alabama, and brought . . negro woman . . 1830, . . Gardner . . conveyed . . Caroline . . to . . trustee . . 'for the . . benefit of [his daughter] . . and her heirs' . . [190] Caroline, with her two children, . . born after the execution of the deed . . on . . [plaintiff's] removal to Mississippi [in 1851] . . were carried with him, . . and in 1856, . . were taken from his possession . . by stealth or violence, and were in the defendant's possession . . he having . . married one of the plaintiff's daughters"

Heath v. State, 34 Ala. 250, June 1859. [251] "The indictment . . charged, that . . Heath 'did . . resist William Chavis, a constable . . in attempting to . . execute a . . writ of arrest,' . . the State . . offered . . Chavis as a witness . . The defendant objected to the competency . . and showed to the court, that the great-grandfather and great-grandmother of . . Chavis were . . each . . the progeny of a full-blooded negro and a white person; . . the court held . . Chavis to be a competent witness, . . [252] The defendant proved, that the ground of his resistance . . was that . . [Chavis,] being a mulatto, had no right to exercise the office of constable; . . 'some of the witnesses testifying, also, that the . . great-grandparents . . claimed to be of Indian, and not of negro blood.'"

Judgment reversed and the cause remanded: Chavis was not a competent witness against a white man. See same *v.* same, p. 241, *infra.*

Hudson v. State, 34 Ala. 253, June 1859. The indictment charged that Hudson and Carlisle "killed a negro man slave, the property of . . Fuller, by shooting him" The jury found "Carlisle not guilty, and . . Hudson guilty of manslaughter in the second degree, and assess a fine . . of $500, and that he be imprisoned in the county jail six months."

Judgment thereon affirmed: [254] "when a slave is unlawfully deprived of life, he is . . a reasonable creature in being, in whose homicide either a white person or a slave may commit the crime of murder or manslaughter." [Stone, J.]

Farrelly v. Maria Louisa (*woman of color*), 34 Ala. 284, June 1859. "a statutory suit for freedom,[1] . . [285] Mrs. Thompson . . testified . . that she became acquainted with the petitioner's mother, in New Orleans, . . a woman of yellow complexion, and . . always acted as a free person; that she died in 1839, leaving the petitioner an infant about one year old. . . her father, a white man, placed her in the care of a Miss Richards in New Orleans; that she was afterwards . . recognized in Mobile by several persons who had known her in New Orleans; that from 1844-5 to 1854-5, she was in the possession of . . Burns, who claimed her as a slave, . . that in 1855, or soon afterwards, . . Summer, of New Orleans, at the instance of some persons in Mobile, who had heard that the petitioner was free, came . . for her, and carried her . . to New Orleans. Some . . witnesses . . testified, that her mother seemed to be of Indian or Mexican descent, and had the characteristic features of an Indian Mexican or Mexican Indian . . [286] the defendant . . offered the deposition of . . Summer . . that the petitioner had belonged to Miss Richards, from whom he purchased her, and that he afterwards sold 'his interest' in her to the defendant. . . The court charged the jury . . 'that if . . the petitioner's mother was an Indian or Mexican, this would remove the presumption of slavery arising from color,'" Judgment for the petitioner reversed and the cause remanded: [287] "We cannot agree that the provisions of section 2049 of the Code are confined to persons of African blood."

Rand v. Oxford, 34 Ala. 474, June 1859. In 1854 a woman slave was sold to Rand for $999. He "tried to make her work in his plantation" "tendered her back [because of unsoundness.] . . refused . . [475] [He then] told the overseer to let her work or not, just as she pleased . . doing . . very little work—about equal to a half hand." The vendor [474] "brought suit . . on the note given for the purchase-money; . . the jury found in favor of the defendant, . . the plaintiff shortly after demanded the slave of the defendant, who gave her up to him." Held: [477] "When . . Rand . . allowed her to work at pleasure . . it cannot be deemed a conversion."

[1] Code, sect. 2049.

Burns v. Mayor, 34 Ala. 485, June 1859. Mrs. Burns [486] "was prosecuted . . for the violation of a municipal ordinance [of Mobile],[1] and was fined $50." Affirmed.

Pierce v. Wilson, 34 Ala. 596, June 1859. [597] "represented . . that an ordinary negro slave could, with said loom, weave good, substantial, plain cloth, one yard wide, at the rate of three yards per hour, or thirty yards per day; . . [599] [but] loom . . entirely failed to meet . . representations;"

Huckebee v. Andrews, 34 Ala. 646, June 1859. [649] "$4,900, the value of seven average working hands [in 1851]."

Walker v. McCoy, 34 Ala. 659, June 1859. [660] "that McGibbony pursued [McCoy] . . to Atlanta . . and there procured his arrest and the recapture of the negro [girl], and that . . [her owner] paid McGibbony $400 for said services."

Athey v. Olive, 34 Ala. 711, June 1859. Action founded on a note. Matilda was sold by plaintiff to defendant in 1857, "at . . $1,100; . . a physician . . testified, that said slave, while she was neither insane nor an idiot, wanted ordinary sense; . . not worth more than five or six hundred dollars. . . [713] Matilda was pregnant at the time of the sale, . . delivered of a child . . three or four weeks afterwards; . . child lived only three or four weeks; but the defendant . . stated . . that he would have been satisfied if the child had lived; . . that . . the woman had worked on the defendant's farm . . and had cooked and washed for his family" Held: [714] "not . . a breach of the warranty that she is of sound mind."

Pool's Heirs v. Pool's Executor, 35 Ala. 12, June 1859. See same *v.* same, p. 228, *supra.* [14] "The contestants requested the court . . to charge the jury . . 'I. That if they believe . . that the will was the result of Pool's attachment to . . Harriet as his mistress, then undue influence may be presumed . . from slight circumstances, . . 4. That if the jury believe . . that Pool made his will out of spite to his brothers and sisters, because they would not associate with him on account of his living in adulterous intercourse with negro women, . . this would be evidence for the jury to consider whether he was acting under such an insane delusion as to his brothers and sisters, as would render his will invalid. . . [17] 12. That if the entire will was made for the sole purpose of carrying out the bequest . . of freedom . . [it] is contrary to law and public policy in this State, and is void . . The refusal of these . . charges . . are . . assigned as error."

Judgment affirmed: [18] "We have not been able to find any statute or legislative policy, which prohibits the removal of slaves from Alabama. . . all attempts at testamentary emancipation, to take effect within . . Alabama, have been declared void. . . The attempt, however, which is manifest in Mr. Pool's will, rests on a very different principle." [Stone, J.]

[1] "That if . . any . . person shall sell, furnish, or give away, or permit any other person to sell, furnish, or give away, any spirituous . . liquors, to any slave . . without the written consent of the owner . . he . . shall . . incur a fine of fifty dollars."

Bell v. Troy, 35 Ala. 184, June 1859. [186] "action . . brought by . . [Dr.] Troy, . . ' claims . . damages sustained . . by the burning of his dwelling-house [February 1856] . . by Pleas . . the property of . . defendant. . . [187] grand jury did refuse to find a true bill against [Bell] . . [189] the plaintiff introduced . . Bird [his brother-in-law] as a witness . . [who] testified . . [190] that he knew an attempt was made to burn his [own] house in . . [March] 1856. . . that . . he said to Bell, "Your boy Pleas burned Dr. Troy's house, and he is the same damned rascal that set fire to mine; you know, when Lodor owned him, and he was charged with robbing, Lodor was allowed to carry him off, and now you must carry him out of the State;" that Bell replied, "The boy is a very valuable one, and pays me good wages regularly; but if I can sell him for a fair price, I am willing to do so;" . . that . . [Bird] obtained a warrant for the arrest of Pleas, . . [191] that he put an advertisement in a newspaper, about a week after . . "$100 is offered for the arrest of . . Pleas, . . charged with [setting fire to the premises of Dr. Troy and of Judge Bird] . . as well as . . robberies . . All persons harboring or secreting him, or assisting in carrying him beyond the reach of justice, will be prosecuted under the 3219th section of the . . [192] Code." (Signed by . . Troy and . . Bird.) . . that about two weeks after he had sued out the warrant . . Pleas was put in [jail by Bell;] . . and that, fearing the slave might be taken out . . without any legal authority . . [Bird] obtained a *mittimus* for . . [his] confinement . . that in April 1856, Pleas was brought before a justice of the peace . . charged with seven felonies, . . one for the burning of plaintiff's house; that he (witness) . . was . . prosecutor . . [193] witness . . stated, . . on cross-examination, that Dr. Troy's servants . . were careless, though not more so than slaves generally are; and that he had told plaintiff that the burning . . was the result of systematic carelessness. . . Taylor . . [194] once heard . . Bell say, when buying . . Lewis, . . "Some folks object to these smart negroes, but I would rather have one of them than three common field-hands. If I had one or two more like Lewis or Pleas, they would steal me rich in a short time." . . the remark was . . jestingly made . . [196] Haweth . . testified, that . . after Bird's house was set on fire . . he . . heard . . Bell saying, "That's right, damn 'em, burn 'em up." . . no one [near] . . except . . Bell and Pleas; . . [197] the defendant introduced . . as a witness . . housekeeper at . . hotel . . [She testified] that Pleas had a wife at the hotel, . . that she was awakened by the ringing of the bells, . . and heard the voice of a man whom she believed to be Pleas . . The defendant proposed to prove that, at the time this suit was commenced, . . Pleas had been indicted . . and the prosecution undetermined. . . objected . . as irrelevant. . . sustained ' " Reversed and remanded.

Barker v. Coleman, 35 Ala. 221, June 1859. "to recover damages for a breach of warranty of the soundness of . . Henry . . sold . . 1857, at . . $1000. . . [222] ' appraised as unsound; . . sold at the administrator's sale [in 1856] for $500.' . . ' Marson . . hired . . slave, in February or

March, 1858, to work on the grading of a railroad by digging dirt and rolling with a wheel-barrow; that the weather was wet and cold, and the slave was much exposed; . . slave . . [223] soon gave out . . and he returned him . . Dr. Ulmer . . attended the slave . . for about ten days . . " he was of very little value, though some dunces might give $500 for him." . . The defendant . . introduced . . a witness, who testified . . [224] that . . he . . one day [in 1856] rolled logs . . without complaining.' "

Sellers v. Sellers, 35 Ala. 235, June 1858. Will, 1852: [236] " that, in no event, except under very extraordinary circumstances, shall the principal, or capital stock of my property, my negroes, etc., be sold "

Blackman v. Johnson, 35 Ala. 252, June 1858. " action . . founded on the defendant's bill of exchange . . 1850 . . given . . for . . a slave . . sold [by Johnson] . . at . . $800; . . a warranty that the slave was ' sound . . venereal disease excepted.' . . ' that the first night Dr. Dunn was called in, they thought the boy would die; and that the boy called on Dr. Dunn to pray for him, and called on his master and mistress to pray for him, and prayed himself.' " " ' when again called in . . [Dr. Dunn told Blackman] that he could not cure the boy, and . . to carry him to Dr. Jones, of Tuskegee; that it was a bad case, and the knife would have to be used on him.' . . [254] the depositions of Drs. Jones and Howard . . who had performed a surgical operation on the slave for a stricture of the urethra, . . and stated . . ' that the boy told them the stricture was attempted to be burned out in Richmond.' . . excluded . . The defendants offered to prove . . ' that before the bill of sale . . was signed . . the plaintiff told . . Blackman, that the disease . . was an ordinary case of gonorrhœa; that the slave had just caught it, . . and that he then had medicine along with him that would cure it.' "

Ingersoll v. Robinson, 35 Ala. 292, June 1859. " The defendant . . says, that . . plaintiff was a silent partner of . . Horace King, a free negro; that said firm . . was indebted to defendant . . $1500 . . which he hereby offers to set off against the plaintiff's demand;"

Morgan v. Morgan, 35 Ala. 303, June 1859. [306] " $1350 . . the present value of . . negro,"

Glawson v. Wiley, 35 Ala. 328, June 1859. Glawson sold Phyllis in 1856. [329] " that Mrs. Glawson was sorry to part with her, and she and the children were crying in view of their separation; . . Mrs. Glawson told [witness] . . to ' take care of the girl, and not let her get wet, as she had been sick with scarlet fever;' " She died in 1857. " depositions of two . . physicians, who had made a post mortem examination . . and who testified to the chronic character of the disease which caused her death, and that scarlet fever was one of the exciting causes of said disease."

Lewis (a slave) v. State, 35 Ala. 380, January 1860. [381] " The indictment . . charged, that ' Lewis . . attempted to commit a rape on . . a white female;' . . ' proved that [after breakfast] she met . . Busby,

a young man who was living with Harless, . . that after going about three quarters of a mile beyond . . she saw a negro man . . thirty or forty yards from the road, who had no clothing except a shirt; . . [382] " Stop, gal, aint you going to stop? " that she then commenced running, and he ran . . after her for more than a mile, and then stopped; . . repeated [those words] . . many times, . . never nearer to her than ten steps; . . Harless . . testified, that he had hired the prisoner from his father, . . that . . [383] after ordinary breakfast, he directed . . Busby . . to take . . oxen to . . pasture . . after Busby had been gone long enough to have returned, he saw the prisoner at the house, watering horses . . Said witness was asked . . if he had not told . . Busby . . that he must swear . . that he saw the prisoner at the house after he . . returned; . . answered . . that he had not. . . asked . . if he had not said . . that he would acquit the prisoner, or would spend his father's estate; to which he answered, that he had not. . . Busby . . testified . . that he saw the prisoner, just after breakfast . . going . . in the direction of the road . . and he did not see him again until night; . . [384] The prisoner thereupon introduced the sworn testimony of this witness on the preliminary examination, . . " that he found the prisoner at Harless' house when he got back there." . . The prosecuting attorney . . asked . . why he had so sworn . . witness answered, " because . . Harless told him to swear it, and that he would whip him if he did not." . . a witness . . testified, that . . the general character of . . Harless . . for truth . . was good, and that . . he would believe him on oath . . excluded ' "

Judgment reversed and the cause remanded: I. the court erred in excluding [386] " testimony to sustain . . [Harless's] general credit as a truthful witness. . . [II.] [387] an attempt to commit a rape by a slave on a white female may be complete within the statute,[1] and yet no assault be actually committed. . . [388] To justify his conviction, however, the jury must be satisfied, beyond a reasonable doubt, that such was his purpose, . . An indecent advance, or importunity, however revolting, would not constitute the offense. . . [389] If the proof [on a new trial] shows that Lewis voluntarily desisted from the pursuit, when the accomplishment . . was . . possibly attainable, this is a circumstance which should weigh much against the truth of the charge contained in the indictment. . . [390] Let the prisoner remain in custody until discharged by due course of law." [Stone, J.]

Shuttleworth v. State, 35 Ala. 415, January 1860. [416] " proved . . that . . the defendant received from . . slave [of Wesley Shuttleworth] . . a black bottle filled with whiskey . . The defendant . . requested the court to instruct . . ' that if they believed the whiskey . . was the article most earnestly wanted by the defendant, then he could not be convicted ' . . [417] refused "

Affirmed: " The whiskey is a commodity for which this section [3285] makes no provision, and the defendant was convicted for receiving the bottle. . . [418] The act of receiving the bottle could not be rendered

[1] Code, sect. 3307.

harmless, by the fact that the commodity with which the bottle was filled was more earnestly wanted than the bottle," [Stone, J.]

Mose (a slave) v. State, 35 Ala. 421, January 1860. Oaks, the overseer, stated [423] "that there were two persons together when he was shot, . . that he was not certain who it was that shot him; that Mose was the only slave on the place at enmity with him, and that he was runaway. These statements . . [422] being offered in evidence as his dying declarations, the prisoner objected . . overruled" Verdict of guilty and sentence of death. Judgment reversed and cause remanded: [427] "the circumstances of the death [were not] the subject of the dying declarations." See same *v.* same, p. 239, *infra.*

Pickens v. Pickens, 35 Ala. 442, January 1860. [444] "a receipted account for $140, in favor of J. W. McCann [missionary], for services rendered by him in preaching to the slaves on two of the intestate's plantations, on two Sabbaths of each month during . . [445] 1857. . . disallowed . . the administratrix excepted."

Reversed and remanded: [452] "The master . . is morally bound to furnish to this . . subject class such moral and religious instruction as is adapted to its political status. Such instruction, properly directed, not only benefits the slave in his moral relations, but enhances his value as an honest, faithful servant and laborer." [Stone, J.]

Purcell v. Mather, 35 Ala. 570, January 1860. "hired . . a negro . . blacksmith, to work in my shop . . for the year 1858, for . . twenty-five dollars per month,"

Gandy v. Humphries, 35 Ala. 617, January 1860. In 1855 [621] "a preacher of the gospel" [620] "agreed to pay . . Gandy fifty dollars, besides expenses, for selling . . [two] negroes." [619] "one [was sold] at $900, and the other at $1,200;"

Kinnebrew v. Kinnebrew, 35 Ala. 628, January 1860. [631] "that he physicked and waited on all the sick negroes on . . [his father's] plantation;"

Goode v. Longmire, 35 Ala. 668, January 1860. [669] "In 1827, Mrs. Lyon married . . Longmire, and . . removed with him [from South Carolina] to this State, in company with her children and slaves."

Kelly v. Cunningham, 36 Ala. 78, January 1860. [79] "a witness testified, 'that he had known the slave . . up to the time of his death, . . 1857; . . had frequently seen [him] . . at church; and that said slave told him . . that he had the dropsy, that it . . had been on him a long time.'" Held inadmissible.

Striplin v. Ware, 36 Ala. 87, January 1860. [91] "the testimony tends to show, (though it is not, in our opinion, conclusive,) that at one time . . [he] was guilty of adulterous intercourse with slaves. The circumstances were . . so suspicious as to arouse the jealousy of [his wife] . . and create . . great domestic disturbance . . if this . . intercourse ever . .

existed, it has ceased—the wife has become satisfied that the charge was untrue"

Guilford v. Hicks, 36 Ala. 95, January 1860. "Mrs. Cassy Ann Hicks filed her petition in the office of the probate judge . . 1859, alleging that her daughter, Patience L. Hicks, and her grand-daughter, . . (both . . under . . twenty-one) . . were . . held as slaves, by . . Guilford; and praying that the writ of *habeas corpus* might issue . . Guilford . . filed an answer, alleging that he held . . Patience L. and her child as slaves under a purchase from . . Wilson. . . [96] On the trial . . the petitioner adduced evidence . . that . . Patience . . was a free white person, and was decoyed from her house, under promises of marriage, by . . Wilson; while the respondent offered testimony tending to show that . . Patience was a person of color . . and had belonged to . . Jones, in Florida, from whom she was purchased by Wilson." "The judge . . decided, in terms most emphatic, that Patience . . and her infant child are free white persons." Appeal of Guilford dismissed.

Clement v. Cureton, 36 Ala. 120, January 1860. Deposition of overseer: [121] "By my orders, when a negro got sick . . he had to come to me immediately, if I was about the place;"

U. S. v. Gould, 25 Fed. Cas. 1375 (8 Am. Law. Reg. 525), Spring 1860. Gould was "indicted [in the United States district court] under the 7th section of the act of Congress of April 20, 1818,[1] . . [1380] the indictment . . alleges that . . [he] knowingly held as a slave, in Alabama, a [female] negro, who had . . been unlawfully imported [in 1859], by some other unknown person."

Held: "This . . is not an indictable offence under the laws of the United States. . . Congress manifestly considered that the person who seized a negro in Africa, and brought him to the United States, was guilty of a much greater offence than one who, living in the United States, near the Florida or Mexican line, should buy a slave from his neighbor in Florida or Mexico, and bring him into the United States. . . My construction . . of the act of 1818 is . . [1381] The 7th section was intended to apply to those who brought them in from Florida or Mexico." [Wm. G. Jones, J.] See U. S. *v.* Haun, p. 244, *infra.*

Mose (*a slave*) *v. State,* 36 Ala. 211, June 1860. See same *v.* same, p. 238, *supra.* On the second trial [213] "Hardy, a slave . . of . . Walker . . testified, that on the night . . Oaks was killed, Mose . . told him that he had shot Oakes . . Jennings . . testified, that about one month after the death . . he went . . at the instance of . . Mose; . . found Mose confined in a little room back of a grocery, with a chain passing around his neck by one end, and the other end fastened to the house, handcuffed, and perhaps otherwise secured; . . [214] Mose [said] . . 'Mass Edmund, . . we are members of the same church. You examined me very closely on the other trial [[211] "an informal preliminary examination"]. I then told you a lie; I now want to talk to you as a church member.' . . The State

[1] 3 St. at L. 452.

then offered to prove, that the prisoner then made confessions of his guilt to . . Jennings. The prisoner objected . . overruled . . [The court] held said confessions, *prima facie,* voluntary . . To show that the confessions . . were not voluntarily made, the prisoner then proved . . the following facts . . When the prisoner . . [voluntarily] returned to his master on the eighth day [after Oaks was killed,] . . his master cursed him, struck him in the face with his fist, and made it bleed; told him that he believed he had shot Oaks, and that he was going to send him to the vigilance committee; that he hoped they would hang him, . . and then bound him securely with cords, and sent him . . Said committee . . discharged him, and he returned . . His master . . kept him chained the balance of the week; . . [215] stripped him while tied, cursed him, and told him that he would make him tell about the murder . . or kill him. The prisoner . . at length, so satisfied his master of his innocence, that, after striking him once or twice with a whip, . . he let him go, . . Afterwards . . his master . . told him, that if he would tell all . . he would run him off, and he should never be hurt for any part he took in it; but the prisoner again denied that he knew anything . . two or three weeks [later] . . Riggs went . . to arrest him . . on Sunday afternoon . . His master, being very much excited, on account of having heard that Hardy had confessed that the prisoner had killed . . Oaks, . . told him . . that he was going to send him again to the vigilance committee, and hoped they would hang or burn him; that he would give $200 to have him hung; . . and that he need not look for . . any further . . protection from him. While his master was . . talking . . the prisoner . . had his arms pinioned to his sides . . delivered to the vigilance committee, . . [216] fastened with a chain around his neck, had on handcuffs and was tied with a rope. Many persons . . that night . . asked him a great many questions; . . threats of violence were used . . [He was] told . . that there were men then engaged in trying to make up money to pay for him, and hang him right there, without judge or jury; . . Carson . . testified, that he and Mr. Rives, having been sent for by Mose, went . . on Monday morning; that Mose . . said . . 'that he felt badly, and was tired—please to fix a place for him to rest, that he wanted to sleep a little, so that he could compose his mind; and to return in about an hour,' . . When they returned . . Mose . . asked . . if there was any chance for a man who had committed murder to get to heaven; . . [217] one of them replied, that he did not know—there might be mercy, but he would have to repent. Mose then said, that he had done a great deal of hard praying, and did not want to miss heaven. Carson then told him . . not to tell anything against himself . . said . . 'Well, Mose, as you seem to have nothing to tell on anybody else, you must be the guilty one;' . . Mose said . . 'It is a certain matter that I shot Mr. Oaks;' . . that he got with . . [218] Hardy that night [after the killing] . . that when he came home to his master Hardy had the gun; that he . . got the gun [the next week] . . to prevent Hardy from killing his own overseer with it, as he said he intended to do, . . and that he killed the deceased because he was a hard down man on him, and said he was going to be harder. . .

Carson stated, that he, Rives and Mose were all members of the same church. . . the owner of Mose . . testified, that he was a very timid negro, and had been from childhood; . . that it was in fact agreed . . that both Mose and Hardy . . should be taken to the place where Oaks was killed, and there burned; and that Mose was so greatly alarmed that he could hear his heart beat seven or eight feet distant. . . [219] that on the same day, but subsequent to the time testified to by . . Carson, the prisoner made . . confession to . . Jennings." The court held all the confessions to be admissible evidence. [220] "The prisoner offered evidence of his own good character, and also evidence impeaching the general character of . . Hardy, . . The State then introduced . . Wiley as a witness . . [who] did not know Hardy's character in the neighborhood, but . . in the family in which he (Hardy) lived . . [consisting] of some eight or ten whites and about fifty blacks. . . that his character in said family was good. . . the prisoner objected, and excepted to . . allowance by the court."

Held: I. [228] "no error in admitting . . the confessions" "His confessions seem to have been prompted by a sense of religious duty, awakened by the apprehension of a speedy execution at the hands of lawless violence, . . [II.] [230] no error in admitting the evidence of . . Wiley." "A wholesome discipline requires that the slaves should be kept chiefly at home; . . His character in [such] a family . . is a general character" But the judgment was reversed and the cause remanded for error in admitting some other evidence and for refusing to give certain charges.

Harrington v. State, 36 Ala. 236, June 1860. [238] "The indictment . . charged, that . . Catherine Harrington . . 'did sell, give, or deliver, to a slave . . belonging to . . Lyon, . . spirituous liquors, without an order in writing, signed by the . . master' . . [239] 'Lyon supplied the slave with a bottle, and with money, and told him to go and see if he could get liquor from the defendant, . . stood behind a post, and watched said slave go into the house . . in the night-time . . came out in a short time . . crossed over to . . Lyon, and held his two hands together, forming a kind of cup, and let whiskey run out of his mouth into his hands; and that said slave, some ten minutes previously, had gone into another grocery, and brought out liquor in his mouth, and poured it out in his hands in the same way." Judgment affirmed: [243] "the consent, to be an available defense, must be a consent to a sale . . not merely to an experiment to detect a violation of the law."

Henry (a slave) v. State, 36 Ala. 268, June 1860. See same *v.* same, p. 229, *supra.* [269] "The charge of the court . . authorized a conviction without proof of the venue." Judgment reversed and the cause remanded.

Heath v. State, 36 Ala. 273, June 1860. See same *v.* same, p. 232, *supra.* On the second trial "the State introduced legal evidence, showing that . . Chavis had been elected a constable . . that he had attempted to arrest the defendant . . [274] and that the defendant . . resisted"

The defendant offered to prove "that the paternal grandmother of . . Chavis was the daughter of two mulattoes . . 'which proof was offered for the purpose of showing . . that the election of . . Chavis . . was an absolute nullity . . and that the defendant had the right . . to prevent himself from being arrested by a free negro.' The court excluded the evidence,"

No error: [276] "Chavis was . . an officer *de facto,* . . The mischief would be intolerable, if persons whose rights depend on the acts of officers *de facto* . . could be called on in every proceeding involving those rights, to enter into an inquiry into the pedigree of individuals holding the offices. . . It is fair to presume, that if any others ['not . . free white males'] should . . hold such offices, they would be persons whose antecedent history was unknown, and whose personal appearance would furnish no indication of . . impure blood . . The necessity of . . maintaining the supremacy of law, requires that the official acts of such persons should not be invalidated, nor their title to office annulled, in any proceeding to which they are not parties." [R. W. Walker, J.]

Withers v. Coyles, 36 Ala. 320, June 1860. [321] "the slave Battiste was tried . . before . . Withers [acting mayor of Mobile] . . 1856; . . judgment . . 'Stripes, and bond, $500, good behavior' . . 'The plaintiff [brought suit for damages and] . . proved, that [his] said slave . . was hired out . . to . . Hurtel . . in the business of storing and compressing cotton; . . worth $16.66 per month; that said slave was whipped under the orders entered on said docket, and, on the non-execution of the bond . . committed to the city guard-house [for more than two months.] . . The defendant . . offered evidence . . that . . various citizens of Mobile had frequently complained to the police that they lived in terror . . of said slave, and were afraid to leave their houses . . that he had been brought up . . in . . 1854, on a charge of burglary, and had been shot at therefor; that he stole fowls, and had been in the habit of having unlawful assemblies of slaves at his house, . . and of harboring runaway slaves, and had kept an assignation-house . . that it was difficult for police officers to find him, and difficult to arrest him when found; that he had gone greased, in order to facilitate his escape, and wore his clothes without buttons, in such a manner that he could and did readily divest himself . . [323] when seized; . . that he was found on the [Saturday] night preceding . . with some eighteen other negroes, in a cotton-press . . used by . . Hurtel, . . singing, dancing, and gambling; that when ordered by the officers to open the door . . they refused, . . had to be prized open . . One . . of the police officers . . testified, on cross-examination, that he had never heard of said slave . . using violence towards any white person; . . but the court would not permit him to prove the matters ["above set forth"] . . unless he proposed to further prove, that complaint was also made of threats or danger from said slave to the person or property of some particular individual, which . . defendant did not propose to do; . . The court ruled . . [324] that . . "An ordinance for the punishment of vagrants and disorderly persons,"

did not embrace slaves . . and that the defendant . . had no right to require a bond that said slave should . . be of good behavior . . That the defendant had no right under the statutes of the State . . to require . . bond . . unless . . proof were made of danger . . to the person or property of some particular individual.' "

Judgment affirmed: [329] " the mayor . . in committing Battiste to prison in default of such bond, . . acted beyond his jurisdiction." [Stone, J.]

Durden v. McWilliams, 36 Ala. 345, June 1860. [346] " The claimant . . let [her son] . . have the labor of . . slave, . . that the slave returned to her possession every Christmas "

Jeter v. Jeter, 36 Ala. 391, June 1860. Mrs. Jeter [393] " sought a divorce *a vinculo matrimonii,* on the grounds of cruelty and adultery. . . 1854, Mrs. Jeter gave birth to a son . . the defendant disowned the paternity . . and refused to have any further intercourse . . [394] testimony of . . overseer during . . 1856 and 1857 . . ' in the night, I saw a negro girl at his window. She disappeared through the window. On another night, at a late hour, I saw him coming from towards his negro-cabins. . . He went towards his room, and soon afterwards I saw a negro girl going after him.' . . the chancellor held . . [this and other] evidence sufficient to establish the charge of adultery, and granted a divorce . . [395] granted . . twenty thousand dollars . . as permanent alimony;"

Jones v. Fort, 36 Ala. 449, June 1860. [452] " Lowry . . the son-in-law of the plaintiff, hired from her the slave Orange . . for the year 1858, and gave his note . . ' general in its terms, not expressing the employment ' . . Said slave was employed . . as a field hand . . 24th December [when Lowry and his overseer were absent] . . the defendants . . sent a negro boy . . requesting the loan of four hands to assist in raising a gin-house; . . four . . including the boy Orange [were sent.] . . Orange . . [was] killed while assisting . . one of the timbers having . . fallen upon him. Lowry . . [453] ' had expressly ordered his overseer, prior to . . 22d December, not to send any of the negroes . . to aid in raising a gin-house or screw, unless said overseer . . accompanied them.' . . Lowry's overseer . . ' was asked, if the defendants' overseer did not, on the 22d December, apply . . for help to raise a gin-house the next day; and he answered, that he did, and that he . . did not send the negroes . . [because] a negro on the place . . was to be buried on the next day. . . told said overseer that he would send to help him . . if any of the negroes . . did not want to go to the funeral.' "

Held: [457] " A master may . . set his slave to blasting rock, immure him in an unhealthy mine, or put him before the mast on a distant voyage; but the hirer, under a general contract of hiring, has no right to do any of these things. . . [460] The legal effect of such a contract is, to deny to the hirer the right . . of lending . . the slave for the specific purpose of being engaged in any service which involves more danger than prudent masters would usually be willing to have their own slaves exposed to;"

Roundtree v. Turner, 36 Ala. 555, June 1860. [556] "1854 . . a contract . . to superintend the making of a crop . . for one-fifth part of said crop;"

Brooks v. Pollard, 36 Ala. 573, June 1860. Held: [576] "There is nothing in the Code, which deprives a broker or agent for the sale of slaves (not being a negro-trader) of the right to sell, at private sale, and without special license therefor, a slave belonging to himself."

Dillard v. Scruggs, 36 Ala. 670, June 1860. "action . . by . . Scruggs . . to recover $300 . . 'witness . . testified, that plaintiff was a negro-trader . . and had a house and yard in . . Mobile where negroes were exhibited for sale; that the defendant had several slaves for sale at said house . . that . . witness . . purchased from defendant his . . negroes . . and paid him eight or ten thousand dollars for them.'" Plaintiff was paid $200 for the board of the negroes; but said [671] "that he was also entitled to commissions, . . [672] that it was a custom . . among negro-traders in Mobile, if the owner effected a sale after they had been put at a sales-house, and while they were there, to . . receive half-commissions on the amount . . unless . . a special agreement to the contrary."

Fitzpatrick v. Hays, 36 Ala. 684, June 1860. "action . . for medical services . . amounting to $185. . . The defendant pleaded . . a special plea of set-off for the value of several slaves . . who were alleged to have died from . . [plaintiff's] negligent and unskillful treatment."

Howard v. Coleman, 36 Ala. 721, June 1860. [722] "George . . was hired . . to defendant, for . . 1857, . . [723] the defendant agreed to pay one hundred dollars . . 'and Mrs. Howard [plaintiff's mother] agreed to pay the doctor's bills.' . . the defendant contracted the small-pox . . his wife and two of his servants . . also . . it was afterwards communicated to . . George, who, after two weeks illness, died. . . [724] 'As soon as it was ascertained that Geroge had the small-pox, Mrs. Coleman (defendant's wife) . . requested [Todd] . . to . . ask [Mrs. Howard] if she would not have a physician sent . . Mrs. Howard . . told [him] . . that, as Mrs. Coleman had treated Mr. Coleman and his slaves . . she was . . willing for her to . . manage George's case, as she had her own, all of whom had recovered;'" Judgment for the defendant affirmed.

U. S. v. Haun, 26 Fed. Cas. 227 (8. Am. Law Reg. 663), June 1860. "This indictment [in the United States circuit court] . . charges that the defendant held, sold and disposed of . . negroes, as slaves, illegally imported into the United States in 1859, . . by some person unknown. . . The district attorney . . suggested that the opinion had been expressed upon a similar indictment [1] in this court, by my colleague, the judge of the district court, that the offence charged did not subject the defendant to a criminal prosecution, . . [I.] The indictment must be

[1] See U. S. *v.* Gould, p. 239, *supra.* But Gould was indicted under the *seventh* section of the act of 1818. Ed.

supported under the sixth section of the act of April 20, 1818,[1] . . [230] Regarding the language of the act . . alone, my opinion is, that the indictment charges an indictable offence" [228] "The sixth section . . provides . . for the punishment of those . . who hold, sell, or otherwise dispose of the African imported. . . corroborated by the eighth section . . Congress . . imposes upon all persons the obligation to make a diligent inquiry . . The African, legally imported prior to 1818, . . must be readily distinguished from the African imported in 1859. . . the most casual inquirer, must be able to say of the latter class, 'Surely thou art one of them; for thy speech betrayeth [*sic*] thee.' . . [229] The circumstances accompanying the enactment of the act of 1818 may be considered in ascertaining the policy of Congress . . Congress were informed that the slave trade was vigorously prosecuted by citizens of the United States, and particularly through the Spanish settlements of Florida and Texas, and that Africans, to the number of thousands, had been illegally imported into the United States. . . Congress . . employed committees, who carefully revised the act of 1807[2] . . amplified its scope, and increased its penal provisions, . . [230] [II.] But another rule is invoked . . It is said . . That Africans . . after they come within the jurisdiction . . of a state, cease to be under the dominion of the federal authority. . . [231] Among the powers delegated by [the Constitution] . . to Congress, was the power to define and punish offences against the law of nations. . . which unquestionably gave congress a full power over the subject, independently of that derived from their right to regulate commerce. . . [232] If there were not men who held, sold, or otherwise disposed of Africans, after the termination of the slave voyage, . . there would be no building . . of ships, no voyages to the African coast for slaves, no barracoons to supply American vessels, . . no confinements . . of Africans as slaves, no mortuary lists of the victims of such acts to . . shock humanity, no need of African squadrons, . . A complete prevention of the holding, selling or disposing of Africans . . would remove the stain which has fallen upon our country by the abuse of its flag. . . [233] Regarding this act as within the competency of congress, . . The order of the court is, that process issue to the marshals of the state of Mississippi, as well as to the marshal of this district, for the arrest of the accused." [John A. Campbell, J.]

Ben (a slave) v. State, 37 Ala. 103, January 1861. "indicted for the murder of another slave, . . [104] 'the deceased was conscious that he would die from his wounds, . . and directed his fellow-servants what to do with the little effects he had; . . declarations of the deceased to his master, . . "he was knocked down, but did not know who did it; that some time before he had met the prisoner, (who was a runaway,) near the premises of his master, and told him that he had better go home, and that he would tell his master if he did not; to which the prisoner replied, that he intended to do so the next day." To . . admission of

[1] 3 St. at L. 452.
[2] 2 St. at L. 426.

[this] evidence the prisoner excepted.'" Judgment reversed and the cause remanded: [105] "The court erred,"

Aaron (a slave) v. State, 37 Ala. 106, January 1861. [107] "The prisoner was indicted, jointly with another slave, . . for the murder of . . a white man. . . Drish . . being examined touching his qualifications as a juror, 'stated, that he was not a freeholder;' . . challenged . . overruled . . also . . Choate . . [108] The deceased was killed . . 1858. The prisoner was at that time a runaway, and did not return home for several days afterwards. . . suspicion having been aroused . . he was . . tied by his overseer, and delivered up to a magistrate, . . denied all participation . . during the night . . Nelson . . acting as constable, . . kept him bound with handcuffs and a chain. On the next morning . . [109] Nelson . . said to the prisoner, 'If you killed him, you had better confess; it would be best for you to tell the truth; truth is always the best policy. But, if you did not kill him, we don't want you to say so;' . . Aaron walked on a little way, . . and then made the confession" [108] "of his guilt; and immediately afterwards . . repeated the confession in the presence of the other persons [[111] 'an excited party of white men who were investigating the facts']. One of the handcuffs had swollen his wrist and Nelson took it off" [39 Ala. 80] "a short time . . before the [first] confession was made . . because the prisoner complained that the irons hurt him."

Held: [115] "The circuit court did not err in receiving evidence of the confessions." But [113] "Drish and Choate were not competent jurors; and for the error in putting them upon the prisoner, this case must be reversed" and remanded. See same *v.* same, p. 257, *infra.*

Scott (a slave) v. State, 37 Ala. 117, January 1861. [118] "January, 1860, the prisoner was caught by a patrolling party, of whom the deceased was one . . [119] about half a mile from his master's house, without a pass; and the deceased, under the direction of the captain of the patrol, inflicted . . a light whipping. On the next morning . . the prisoner . . accosted him in a rude . . manner, . . 'The deceased told him to go away . . and threw a chip at him, but did not hit him. The defendant continued to talk angrily . . saying, "I don't see what business school-boys have to patrol, any way;" and the deceased threw at him a piece of a wagon-felloe . . and then a piece of a buggy-shaft, with a [part] of the cross-bar attached, but did not hit him. . . Ratcliffe . . handed to the deceased a buggy-whip . . and told him to . . whip the defendant. The defendant seized upon the piece of buggy-shaft . . and the deceased . . struck the defendant around the body with the whip, and the defendant struck him on the left forehead with the buggy-shaft.' . . died, on the second day afterwards. . . [120] verdict of 'guilty of murder,' . . sentence of death" Affirmed: [122] "Under our code, murder, when committed by a slave, and the voluntary manslaughter of a white person by a slave, are subjected to the same punishment."[1]

[1] Sect. 3312.

Ward v. State, 37 Ala. 158, January 1861. "The indictment . . charged, 'that . . a white person, did play at cards with a slave'[1] . . 'a witness . . testified . . [159] that the defendant and the slave, as soon as they saw him, bunched all the cards together, and the defendant remarked, "that the slave was telling his fortune;" . . that the slave professed to be a fortune-teller, and was so reputed'" Held: [160] "Amusing one's self with cards, as with toys, will not make out the offense."

Jemison v. Smith, 37 Ala. 185, January 1861. Smith's will, executed in Georgia in 1798: [187] "the wench to be hired to support . . [my] children; . . that the children should be . . schooled upon the hire of the negroes, . . the hire to go to the support of all the children, both black and white."

Martin v. Reed, 37 Ala. 198, January 1861. [199] "note [for $58], which is the foundation of this suit, was given to Henry, a slave of Godwin, . . for money borrowed from . . Henry; that plaintiff obtained . . note from . . Henry by transfer . . that . . Henry acted and contracted for himself" Held: the note was void.

Creswell's Executor v. Walker, 37 Ala. 229, January 1861. Will of John T. Creswell, 1856: "that my [four] faithful slaves . . be liberated . . my executor will have them taken, at the expense of my estate, to some non-slaveholding State, or to . . Liberia, as the said slaves may prefer, there to be free, and will furnish each . . such an outfit . . as . . will render them comfortable. But, should . . any . . of them, prefer to remain in slavery, then I . . bequeath . . such . . to my sister . . requiring her to . . bequeath . . to such person or persons as she may believe will treat them with kindness and humanity." The executor "sought the . . instructions of the court, . . [230] asserted, that the slaves had frequently expressed . . their desire to be emancipated, and had designated the country to which they wished to be carried; and declared his readiness . . to execute the trusts . . if he could legally do so. . . the chancellor held, on the authority of Carroll . . *v.* Brumby,[2] that the trusts . . were void, and dismissed the bill, . . his decree is now assigned as error." "Webb, for the appellant. . . will creates a valid trust, . . What was said to the contrary in . . Carroll *v.* Brumby . . is not sustained by the authority cited from 6 Porter, 269;"[3]

Decree affirmed: [232] "the principle announced . . in Carroll *v.* Brumby . . is a sound one; . . [236] Because they are rational *human beings,* they are capable of committing crimes; and, in reference to acts which are crimes, are regarded as *persons.* Because they are *slaves,* they are . . incapable of performing civil acts; and, in reference to all such, they are *things,* not persons. . . [239] As their election of the place to which they shall be taken is a condition, the performance of which is essential to the execution of the trust in their favor, the making

[1] Code, sect. 3256.
[2] P. 166, *supra.*
[3] Mr. Webb is correct. Ed.

of that choice is as much a civil act as an election between freedom and slavery." [R. W. Walker, J.]

Williams v. Ivey, 37 Ala. 244, January 1861. The plaintiff [245] " and his son . . were stopped by the defendant, who was . . assisted by . . [another] white man and two negroes, . . [and] forcibly . . tied,"

Jack et al. (slaves) v. Doran's Executors, 37 Ala. 265, January 1861. [266] " The plaintiffs claimed their freedom under two special acts of the legislature of Alabama . . and under the will of . . Doran, . . admitted to probate . . 1840, as a will of personal property only, being attested by but two witnesses." Act of 1832: " that James Doran . . is hereby, authorized to (to take effect at his discretion) emancipate . . [twelve named] slaves . . provided, he shall previously convey to the judge of the county court . . and his successors, six hundred and forty acres of land, on which he now resides, or lands equal in value thereto, in trust forever, for the use of said slaves, as security that they shall not become chargeable " An act of 1833 " authorized . . Doran to emancipate two other slaves . . upon the condition mentioned in the previous act. . . [267] Doran's will . . ' At the death of my wife, . . I . . bequeath unto my negro slaves ' . . (specifying . . all the slaves mentioned in the two acts . . and their children,) ' and all future increase . . their freedom; provided, they be obedient servants to my wife . . And, as the law obliges the owners . . to give security . . so that they may not become a public charge, I leave to them, for that purpose, the whole of that tract . . on which I now live, to be divided in the following manner,' . . The petition [for freedom] alleged, that the widow . . died in 1851; that the plaintiffs were afterwards carried into Tennessee, . . The circuit court sustained a demurrer to their petition."

Judgment affirmed: [268] " No conveyance . . was ever made . . by Doran, to the judge of the county court . . The attempt to devise the . . land . . directly to the slaves, was, perhaps, made with the view of complying with this requirement . . But . . futile, if for no other reason, because . . not so executed as to pass real estate;" [R. W. Walker, J.]

Roney v. Winter, 37 Ala. 277, January 1861. " Jan. 1, 1855. Twelve months after date, we promise to pay . . three hundred and ninety dollars, for the hire of Jim and Jerry for the present year. We are to feed the . . negroes, and furnish them with the usual clothing; . . For the Montgomery Iron Works,"

Stone and Best v. Watson, 37 Ala. 279, January 1861. In March 1857 Stone and Best sold to Watson [283] " a seamstress woman, about twenty-four years old;" and warranted her sound and healthy. In May or June Dr. Jones [284] " found she ' had a slight disease of one of her lungs,' which, he thought, must have existed . . [in] March; . . some time after the sale . . agreed that, if . . negro was unsound at the time of the sale . . defendants would take her back, and would pay plaintiff $1250 . . and her stage fare . . afterwards, while she was in the plaintiff's negro-house in Montgomery, . . she received a burn

upon her left arm, by the explosion of a fluid lamp . . kept in . . negro-house by . . Ball [plaintiff's agent], . . and all the evidence tended to show, that her permanent value was thereby decreased one-half or more. . . [285] after she was . . burned, . . [she] was tendered to the defendants, who refused to receive her, . . Ball testified . . 'that the negro was not allowed, by a rule of the house, to use said lamp, . . that Dr. . . Jones . . treated the burn several days;"

Connor v. Trawick, 37 Ala. 289, January 1861. In 1851 Trawick, a resident of Mississippi, conveyed a slave to each of his three grandchildren, reserving the use for himself for life, and appointing a trustee to manage them after his death [290] "until said children become of age or marry; giving unto each negro, at the end of the year, . . five dollars, for the proceeds of their labor."

Tillman v. Chadwick, 37 Ala. 317, January 1861. "action . . brought by Tillman . . to recover damages for injuries inflicted on a slave [hired to defendant]. . . [318] court . . [refused] to give, at the instance of the plaintiff, the following charge:— 'If the jury believe . . that the punishment inflicted by the defendant . . was . . beyond what was . . proper under the circumstances, the *onus* is on him to prove that he was authorized by the slave's conduct to whip him thus severely, and beyond what would have been right and proper;'"

Judgment affirmed: [319] "Should the slave prove rebellious, . . legitimate punishment may sometimes be carried much beyond what the offense in the first instance would seem to render necessary. . . Under no state of case could . . [the slave's conduct] justify correction beyond what was right and proper. The charge . . [320] was calculated to confuse . . the jury,"

Webb v. Kelly, 37 Ala. 333, January 1861. [334] "action . . by . . Kelly . . to recover . . [his] slave named Wash, . . The slave . . was employed by him as a cab-driver in . . Mobile, but was permitted to retain . . about one-half of his wages. The defendant procured . . Williams to negotiate with plaintiff for the sale of the slave; the plaintiff sold him to Williams, . . [335] 1857, for one thousand dollars, . . the next day, Williams executed a similar bill of sale to . . Brooks, who . . paid over the purchase-money to the plaintiff. A part . . was paid by the draft of . . Landermilk for $500, which he had given to the slave for borrowed money; . . [defendant] had himself furnished a portion of the residue. The plaintiff contended, that the purchase . . was made at the instigation of the defendant, under an agreement between him and the slave that the purchase should enure to the benefit of the slave, and that the money was in fact furnished by the slave. . . Williams . . [had] represented, 'that he lived in Texas, where the slave had relatives, and intended to leave . . with the slave, so soon as the purchase was concluded.' A witness . . 'heard plaintiff say . . he would not have sold Wash, if he had known that he was not going to Texas, where he had kin.' . . [336] deposition . . 'Wash pretended to be lame, in order

that he might induce Mr. Kelly to sell him. . . He often talked of how he was trying to fool Mr. Kelly.' . . The defendant had proved, that the plaintiff . . permitted the slave . . to employ counsel to defend himself, when prosecuted for an infraction of the city laws, . . and, ' for the purpose of showing that the plaintiff . . permitted him to have, use and dispose of [money] . . as he pleased,' had read in evidence a receipt, signed by plaintiff, . . ' Received from . . Wash and his mother, Clarissa, four hundred dollars, for safe-keeping;' . . endorsed . . ' Paid on the within, two hundred dollars.' "

Held: [341] " if the purchase was in fact made with money furnished by the slave, without the knowledge of Mr. Kelly, and this change of title was procured . . in reality . . for the benefit of the slave himself, . . Mr. Kelly would have the right to retake the possession of his slave."

Sterrett v. Kaster, 37 Ala. 366, January 1861. [367] " Abb, the property of plaintiff's testator, was . . in . . [Tucker's] restaurant . . [as] a waiter . . had purchased . . and paid his own money " for " chattels, consisting principally . . of household furniture . . and they had been delivered to him;" Afterwards " Tucker . . had said goods in his possession, using them in . . his . . business, and claiming them as his own property." Kaster, " who had an execution against . . Tucker, had said goods levied on and sold . . brought forty dollars " An action was brought against him to recover damages.

Held: [370] " A slave cannot be the owner of property: . . the property becomes at once the property of the master; and no subsequent act or contract of the slave, without the master's . . consent, can divest the latter of his title."

Thomas v. Barker, 37 Ala. 392, January 1861. " the plaintiff sold a negro girl to the defendant at . . $1100, and the latter agreed to pay . . in addition . . ' one-half of what he might get . . on a re-sale, . . above $1100;' . . resold . . for $1400 "

Schwartz v. State, 37 Ala. 460, June 1861. " The indictment . . was founded upon the act of February 6, 1858, . . [462] evidence . . that gangs of negroes, from three to twenty in number, were frequently seen in front of his [grocery] store, . . witness testified, that he had twice seen the defendant try to drive the negroes away "

Patterson v. Flanagan, 37 Ala. 513, June 1861. [514] " she was . . drowned . . in attempting to walk across a foot-log over a creek, on returning with other negroes from the field in which they worked."

Manly v. Turnipseed, 37 Ala. 522, June 1861. [523] " In . . 1838, the widow . . removed [from Georgia] to . . Alabama, bringing the slaves "

Devaughn v. Heath, 37 Ala. 595, June 1861. Action brought by Heath to recover damages for a trespass on his land. " one of the Devaughns suspected the plaintiff of trading with one of his slaves, and laid a snare to catch him, by sending the slave to the plaintiff's house by

night, with a piece of meat to sell, while the defendants lay hidden . . The slave, however, sent information of the plot . . Hammond . . secreted himself . . near the path . . and recognized the defendants . . and when the slave knocked . . and said . . he had . . meat to sell, the plaintiff . . ordered him off. The plaintiff's dogs were aroused . . the defendants ran off; . . [596] The defendants proved, that the plaintiff . . or his wife had given two or three pairs of old pantaloons to Devaughn's slave, who had formerly belonged to Mrs. Heath's first husband. The court charged" [597] "that Mrs. Heath had the legal right to give . . the slave . . old pantaloons, without the knowledge" of his owner. Affirmed.

Jones v. Jones's Executor, 37 Ala. 646, June 1861. "will . . of Edward S. Jones . . 1858 . . made provision for the emancipation of several slaves, directing their removal to a non-slaveholding State, and the payment of a pecuniary legacy to each of them." Held: [651] "The act of 25th February, 1860, entitled 'an act to amend the law in relation to the emancipation of slaves,' does not affect the bequest"

McGehee v. Rump, 37 Ala. 651, June 1861. [652] "they had swapped negro girls, . . bills of sale . . executed at the same time," [653] "Received from . . McGehee ['a negro-trader, living in . . Georgia'] six hundred dollars for . . Myra, twelve years old." "Received from . . Rump . . Myra . . and two hundred dollars . . for . . Viney, thirteen years old." "The trade was made in . . Alabama; and . . [McGehee] had obtained no license to sell,"

Heath v. Devaughn, 37 Ala. 677, June 1861. Slander. "You [Heath] have been trading with my negroes, you old rascal," Held: the words are not actionable.

Gimon v. Baldwin, 38 Ala. 60, June 1861. "slave . . was drowned while working as a deck hand . . worth $1,500."

Foster v. Holly, 38 Ala. 76, June 1861. [77] "Sunday, the negro [slave] . . got into a skiff, with a white man, to whom the skiff belonged, and went out . . to fish; . . the skiff was fastened . . to a snag . . [78] a collision between . . schooner and the skiff occurred . . negro was drowned;"

Bragg v. Massie, 38 Ala. 89, June 1861. [92] "he bought Amy for [one of his daughters] . . in 1834, from a negro-trader, whose camp was near his house, and, at the same time, bought another girl for his [other] daughter . . that his daughters went to the camp, and each picked out for herself a negro girl, . . [93] Amy was only five or six years old . . 'too small to do anything, and just knocked about the house and yard like any of the other little negroes, and did anything that any of the family told her to do;'"

Hall's Heirs v. Hall's Executor, 38 Ala. 131, June 1861. The will of Adam Hall, providing [134] "for the emancipation of . . slaves" was [132] "admitted to probate . . 1858,"

Held: [134] "the act of January 25, 1860, 'to amend the law in relation to . . emancipation'[1] . . has no application,"

Davis v. Hubbard, 38 Ala. 185, June 1861. [186] "The bill of sale . . 1854 . . recited the payment of two hundred and fifty dollars[2] as the consideration, . . The defeasance . .: 'I have . . received from Mrs. Nancy Davis a bill of sale of . . Anna Sylvia, about four years of age, of yellow complexion; which girl I . . oblige myself to reconvey . . at the end of one year . . provided the . . girl should then be living, and provided also that . . Nancy Davis shall . . pay . . all that she now owes to me,'"

Humphries v. Dawson, 38 Ala. 199, June 1861. [202] "in 1841, she and her husband removed [from South Carolina] to this State, and brought the slaves with them;"

Isham (a slave) v. State, 38 Ala. 213, January 1862. [214] "on the night the deceased [George M. Hagood] . . was killed, . . [witness,] in company with the deceased and two other white men, went . . to watch Capt. Hanby's house . . by . . agreement with him" "(all the white family being absent,) for the purpose of catching a runaway slave, . . said to be lurking about . . and of detecting the prisoner in harboring [him] . . if guilty of so doing; . . disguised themselves, by blacking themselves, putting on old clothes, and having a budget tied up in a handkerchief; that they went near the negro house, and made a noise there, and then . . struck on it with a stick; that the dog barked fiercely . . and the prisoner hissed on the dog; . . asked, 'Who are you?' that the deceased replied, 'A partner,' . . the prisoner fired, and killed the deceased; that he (witness) then said, 'Don't shoot, you have killed Mansfield;' that the prisoner replied, 'Lord, Massa George, why didn't you speak?' and that the prisoner remained until morning, assisting to wash and lay out the deceased, and was arrested in the morning. . . testimony . . that some person had been seen by night . . while Capt. Hanby was absent in camp drilling his company; that on the night before the killing, the prisoner had taken the gun, in the presence of his mistress, . . [215] and shot (as he said) at some person. . . that the prisoner, on the morning before the killing, asked his mistress for the gun, to carry to the field; . . refused . . and that he took the gun . . on the night of the killing, without the knowledge . . of his master or mistress, . . The prisoner asked the court to charge . . 'If the jury believe . . that the prisoner . . believed that the deceased was a runaway . . slave, and, under that delusion, . . killed the deceased, . . he is neither guilty of murder, nor of the voluntary manslaughter of a white person, nor of the involuntary manslaughter of a white person in the commission of an unlawful act.' . . refused . . The verdict . . was, 'Guilty of voluntary manslaughter,'"

[222] "The judgment of the court below is affirmed, and its sentence must be executed," [221] "A slave, who kills a white man, intending

[1] Acts of 1859-1860, p. 28.
[2] "much less than the real value" Headnote.

to kill a negro, is guilty of a criminal homicide in the degree in which he would have been guilty if the person slain had been a negro; and he is subject to the punishment prescribed for the commission of the offense upon a white person." [A. J. Walker, C. J.]

Cheek v. State, 38 Ala. 227, January 1862. Indictment founded on sections 3297 and 3298 of the Code. Snelgrove testified that [229] " while he was overseer . . slaves were each allowed, by the direction of the defendant, only one quarter of a pound of bacon per day, and no other meat, and were not allowed any bacon at all on Sunday; . . also allowed as much corn-meal as they wanted, and, during the summer, a very few vegetables and roasting-ears, and about a pint of butter-milk per day, and sometimes a little butter. . . that less than three pounds, or three and a half, per week, was not . . sufficient . . for a plantation slave; . . that all the meat on the . . plantation was consumed by midsummer, 1859, and that meat was afterwards carried there from the defendant's house," The defendant offered to proved that, " in December, 1858, he had thirty-three hogs killed . . for the use of the plantation, and that the meat . . was kept on the place." The court rejected this evidence." [236] " For this error, the judgment . . must be reversed."

Lawson v. Hicks, 38 Ala. 279, January 1862. " action . . for defamatory words written . . [280] by the defendant [Lawson] . . in filing cross-interrogatories . . ' state fully . . anything about the Evans' having said that Hicks, about the time of his early settlement in . . [281] county, murdered one of his negroes, after taking him out of jail, before he got him home;' "

Williams v. Pearson, 38 Ala. 299, January 1862. Will of Zealous Taylor of Pickens County, who died in 1851: [301] " that her guardian hire out her negroes, publicly or privately, as he may see proper, and for them not to be hired out on the west side of the river, nor in the prairies any where, as I want good care taken of them, and want them well clothed, shod, and good bed-clothes procured for them."

Fowlkes v. Railroad Co., 38 Ala. 310, January 1862. " action . . for the loss of a slave . . killed by . . engine and cars."

Crockett (a slave) v. State, 38 Ala. 387, June 1862. Convicted of the murder of another slave. A. J. Walker, C. J.: " We are not informed, either by an argument,[1] or by an assignment of errors, of the points which those representing the appellant designed should be examined by us. After a most careful examination of the record, we have been able to find no error . . [388] Murder, committed by a slave, is not divided into degrees;"

Wilson v. State, 38 Ala. 411, January 1863. " The indictment . . charged that the prisoner ' persuaded a slave . . to leave the service of her

[1] "No counsel appeared for the prisoner."

mistress, with the intent to go . . where such slave might enjoy freedom.' [1] . . 'proved that the defendant . . had promised to make her his wife, and to take her to a free state . . [412] where should could not be cuffed and kicked by damned southerners, and where she would be treated as a white woman. . . But there was, also, evidence . . that . . the prisoner's object was to obtain an immediate gratification of his carnal appetite. . . The last interview, which was shortly before day, was made after an arrangement with the slave, by which the witness was allowed to get under her bed . . [to] hear the conversation when the defendant returned. . . defendant repeatedly begged the slave to allow him to go to bed with her then . . until at last both got into the bed; and the witness . . thereupon got up, and arrested the defendant. The slave was proved to be of wanton character, and had been kept by white men.' 'no proof of any preparation on the part of either to leave. . . the defendant represented himself to the slave as having just come from the Yankee fleet; . . false. . . The defendant asked the court to charge . . [413] That if the slave knew she was not going to be taken . . away, and if the defendant was not intending to take . . her away, he must be acquitted.' . . refused" [415] "for that error, the judgment . . is reversed, and the cause remanded,"

Joe (a slave) v. State, 38 Ala. 422, January 1863. [423] "The entrance into the house was effected by raising a plank in the floor. Mrs. Crawford testified, that . . it was so dark she could not see, . . discovered [him] to be a negro by putting her hand on his head; . . tracks were discovered . . leading in the direction of the plantation on which the prisoner lived. . . the only grown negro man on the plantation, and his tracks were found . . to correspond . . Pickett . . testified, that on Monday (the burglary having been committed on Saturday night) he, as constable, . . went into the field where the negroes were at work, and arrested the prisoner . . and told him he must go . . to jail; . . tied the prisoner; that as they went along, witness and the prisoner's master riding side by side, and the prisoner walking a little in front . . he asked the prisoner, 'what he went into the house for;' that the prisoner replied, 'to get or steal some clothes;' . . The prisoner objected to the admission of the confessions . . and, for the purpose of showing that they were not made voluntarily, . . 'Robertson testified, that on the morning after the burglary . . the men in the neighborhood collected at the house of Mr. Bush, the prisoner's master, to have an investigation as to what would be best to do with the prisoner; that Bush had him tied to a tree or post . . witness . . told him . . that the punishment would be much lighter if he would confess . . the prisoner replied, "Master, I am not guilty, and if they punish me it will be wrong;" that the crowd soon . . carried him some distance from the house, and tied him down across a log; that the prisoner, while in this condition, . . was told ["by one of the crowd"], that the punishment would be lighter if he would confess the truth; that the prisoner then said, that he went

[1] Code, sect. 3128.

in to get or steal some clothing; and that they then whipped him. Bush . . testified, that his invariable rule with his slaves was, if any of the grown negroes committed any offense, or disobeyed his orders, to tie them up, and whip them until he made them confess . . that he had frequently treated the prisoner in this way; that he seldom whipped his slaves, and never on suspicion only, but, when he knew them to be wrong, he whipped them severely. . . that the prisoner was turned loose after the whipping on Sunday.' On this evidence, the court refused to exclude . . the confessions made to . . Pickett;" Judgment reversed and the case remanded: [425] "The confessions . . were clearly inadmissible" [Stone, J.]

Foster v. State, 38 Ala. 425, January 1863. "The indictment . . charged, 'that Nancy Foster did sell, give, or deliver, to a slave . . vinous or spirituous liquor, without an order in writing," Judgment against her affirmed.

Ex parte Hill, in re Willis, v. Confederate States, 38 Ala. 429, January 1863. [430] "Three persons . . detained in custody under the conscript law . . petitioned the probate judge for writs of *habeas corpus,* predicating their prayers for a discharge upon the ground of exemption . . on account of physical disability; and the writs were awarded"

Held: the probate judge has no jurisdiction. Chief Justice A. J. Walker: [436] "The analogy . . between our government and that of the United States enables me to draw from the history of the past an illustration . . The fugitive-slave law was passed to protect . . a clear constitutional right of a class of citizens in the United States, whom the fluctuations of time had localized in less than a moiety of the States. In most of the other States, an antagonism of sentiment to that right gradually intensified into fanaticism, . . A right of subordinating the authority of the officers deputed to execute that law, to the control of local State tribunals, infected by the feeling prevalent in those States, was asserted and maintained . . In many localities, the execution of the law was . . prevented; . . The powers of the Confederate government are given to it for the benefit . . of all the people in all the States; and the historic lesson teaches us, that the execution of the laws, passed by virtue of those powers, can not be safely left to the control of local tribunals. . . The supreme court of the United States, faithful to the constitution, while every other branch of the government seemed to conspire its overthrow, through its venerable and illustrious chief-justice, announced an opinion upon the assumption by the court of Wisconsin of the authority to thwart the execution of the fugitive-slave law in that State.[1] . . [437] that a State court . . has no right of control over the

[1] Abelman *v.* Booth, 21 Howard (U. S.) 506 (1858).

conduct of the officers of the general government," [1] Judge Stone concurred: [450] "the acts of [the Confederate] congress give to the surgeon, and to the board of examination, the exclusive right to pass on the question of mental or bodily incapacity; and that takes from State courts all right to inquire into the question. . . [456] Chief-Justice Taney . . felt and expressed the necessity of preventing encroachments of one jurisdiction upon the other; but his counsels came when fanaticism had well nigh matured its parricidal plot, the culmination of which is now converting portions of our rich domain into a desolation. . . Let us not weaken or destroy our Confederate power, by embarrassing that government in the manly exercise of those functions with which the States themselves have clothed it. This will neither destroy nor impair the sovereignty of the several States. They are not despotisms. For certain general purposes, they have conferred on the Confederate government certain attributes of their sovereignty; . . They have thus become constitutional, instead of absolute sovereignties." Judge Stone declares, however, that he [454] "would not hesitate to exercise jurisdiction" in cases which "may arise under the regulations which permit the putting in of substitutes." Such a case was *Ex parte* Hill, *in re* Armistead *v.* Confederate States [2] decided at this same term, in which Judge R. W. Walker [3] concurred with Judge Stone. Chief Justice A. J. Walker dissented, in an opinion of twenty-eight pages. He contended that Ableman *v.* Booth "ought to have settled the question; and in all probability the point would never again have been agitated, if we had continued to occupy our former relation to the United States. *Tempora mutantur, nos et mutamur in illis.*"

Crutcher v. Railroad Co., 38 Ala. 579, January 1863. [580] "Defendant was anxious that the road should be speedily completed, . . [Its agent was] authorized . . to hire hands . . at any price less than thirty dollars per month, . . [582] 'Sept. 6, 1856. Hired of . . Crutcher . . John and Clem, to work on the . . railroad . . until the 25th December next; . . I agree to pay . . twenty-five dollars per month each, and . . also . . to feed, and pay all medical expenses, if any; and . . Crutcher loses all runaway time, if any.'" John was accidentally killed while working on the road.

[1] "It has been objected to the authority of this opinion [by Chief Justice Pearson of North Carolina, in Bryan's Case, 1 Winston 1 (33)], first, that the court and the great jurist who delivered it did not really mean what is said; and secondly, that it must at all events be treated as an *obiter dictum*—as the opinion of an able lawyer on a question not presented by the facts before the court. . . it is inconceivable that the language of so important an opinion should have obtained the unanimous sanction of such a tribunal, unless it afforded a true index of its opinions. . . [495] In order to cover both cases [Abelman *v.* Booth and U. S. *v.* Booth] . . the supreme court of the United States . . have laid down the only principle which could have controverted the State jurisdiction . . The great doctrine stated . . was applicable to the cases decided, and controlled their decision. It is, therefore, not an *obiter dictum.*" Chief Justice A. J. Walker, in *Ex parte* Hill, *in re* Armistead, 38 Ala. 458 (494, 495).

[2] 38 Ala. 458.

[3] Judge R. W. Walker did not sit in the former case, "being detained at home by providential causes." 1 Winston (N. C.) 33.

Bell v. Chambers, 38 Ala. 660, January 1863. [661] "action . . to recover damages for the loss of a slave . . transported on the defendants' . . steamboat without the written authority of the plaintiff;[1] . . [663] 'defendants . . offered evidence . . that the man . . was a white man in . . every appearance, . . had hired himself on board as such, slept in the white apartments with the white people,' . . [and] requested the court to instruct . . 'that if the boy was in fact a white man in . . every appearance, . . and the defendants . . had no . . suspicion of his being a slave, they must find for the defendants.' . . refused"

Reversed and remanded: [665] "To hold . . [the case] within the statute, might cast on railroads, owners of steamboats, etc., liabilities in cases where the greatest diligence, short of requiring proof of freedom in every case, could not bear them harmless." [Stone, J.]

Martin v. Foster, 38 Ala. 688, January 1863. Will, 1859: [689] "I . . devise to my husband . . all . . [my] interest . . in . . the plantation . . now occupied by our negroes, and cultivated by" him.

Aaron (a slave) v. State, 39 Ala. 75, June 1863. See same *v.* same, p. 246, *supra.* [76] "May term, 1863 . . he was put on his trial . . [77] The prisoner . . objected to the certified transcript of the record . . forwarded by the clerk of . . Baldwin [County, on change of venue], because it showed, in its caption, that the circuit court of Baldwin was held . . 'November, 1858,' . . two other transcripts . . stated . . October. . . [78] 'the court, without any correction . . of the record, other than that . . furnished by the two other transcripts . . ruled, that the prisoner should be tried on the indictment set out in the original transcript; . . excepted. . . [A witness] testified, . . that . . he . . asked the prisoner, how he came to tell about the murder; that the prisoner replied, "he had had a dream last night, and saw the old man (referring to the deceased) so visibly that he thought it best to tell; . . [85] I am convinced I am to be hung, because I dreamed last night that my . . hands were fastened together, and were on fire; . . there was a book suspended before them, and it caught fire, and burned all the leaves. The book had a leather cover, just like the one you swore me on yesterday." . . that all he had to do with it was, that he . . hit the old man in the head twice with a spade, after Ranty had cut him; that Ranty got some whiskey . . and some money . . [86] gave him eleven dollars,'" Verdict of guilty.

Judgment thereon reversed and the cause remanded: [87] "the confessions . . were competent evidence . . [89] [but] the conviction must be reversed. When the venue, in a criminal case, is changed, . . it [is] the duty of the clerk to make out a transcript, and forward it . . it may be . . rectified under the direction of the court to which the case is transferred," but not by producing other transcripts which show the mistake.

Broadhead v. Jones, 39 Ala. 96, June 1863. "action . . against . . Broadhead and . . Dunlap . . founded on a promissory note for two hundred and twenty dollars, . . payable . . 1855, to . . Davis, . . Dunlap

[1] Code, sect. 1010.

died pending the suit, . . Broadhead pleaded . . ' 3d, set-off; . . [97] 6th, that said note was [given] for the services of . . Dick, who . . was permitted by the plaintiff [his owner] . . to go at large, and hire himself out, contrary to the statute,' . . a witness . . testified, ' that . . Dick Herrington, commonly known as " Free Dick " . . had belonged to John Herrington, who died . . in 1850, or 1851; that said slave, since the death . . had . . hired himself out, made his own contracts, and received the money that he earned . . that he followed ditching for a considerable portion of the time, and made a good deal of money in that way; . . had a shoe shop . . during a part of the time, and had hands employed under him in making shoes, which he sold to the community at large; . . also . . a shop . . where he sold candy, cheese, tobacco, etc.; that he also purchased . . two negro boys; that . . Davis . . acted as a sort of agent or guardian for . . Dick in the transaction of his business . . and had a little wooden box, known as "Dick's box," in which he kept all of Dick's papers; . . and that . . Dick, during all the aforesaid period, was generally . . recognized as a free man ' . . Forshee [administrator of Davis] . . [98] ' saw the note sued on in said box, . . did not claim [it] . . as the property of said estate; . . the note was . . delivered up to Dick . . who offered to trade it to him, but witness declined . . until he could see . . Dunlap, . . Dunlap told him, that the note was given for money borrowed from . . Dick, that he had paid it, and that Dick was then owing him a balance.' . . a brother of . . Dunlap . . testified . . that Dick was indebted to . . Dunlap, at . . the death of the latter . . about one hundred and fifty dollars, for the board of his hands, the price of a rifle . . and other items. . . The court . . excluded the evidence;"

Held: [102] " This note . . is void, if the money was loaned by the slave. If, however, . . Davis . . loaned it out on his own account, . . the case is presented of one man's converting to his use the money of another [the owner of Dick.] . . [103] The matters of account against Dick, his *status* as a slave being established, were incompetent as evidence for any purpose " [A. J. Walker, C. J.]

Whitman v. Revels, 39 Ala. 121, June 1863. In 1855 a note for $1250 was given for a female slave. [122] " the two children of the girl . . only one of whom was then born, were expressly excluded from the sale;"

Twelves v. Neville, 39 Ala. 175, June 1863. [177] " carried the slave out of the State, with the consent of [the tenant for life] . . sold her in New Orleans, for less than her full value,"

Young v. State, 39 Ala. 357, June 1864. [358] " April 7, 1864. The defendant . . having been convicted, under an indictment for buying [1] . . wheat from a slave . . and a fine of one hundred and thirty-three 33-100 dollars assessed against him; it is considered by the court, that the defendant be imprisoned ten days in the common jail "

Dinah (a slave) v. State, 39 Ala. 359, June 1864. The indictment charged that [360] " slave of . . Murphree . . did administer to . .

[1] Code, sect. 3285.

Amanda [his daughter] . . a large quantity of the seed of the Jamestown weed, it being a deadly poison." The state proved " that the prisoner . . was the nurse of . . Amanda . . between five and six years old, and a younger [child] . . that she fed them . . in the presence of [their mother] . . that . . Amanda became very sick . . vomited . . more than a drachm of the seed . . that . . physician gave it as his opinion . . that the quantity was sufficient to kill. Mrs. Murphree . . told the prisoner . . that she would be whipped for it, and that she had poisoned the child. The prisoner ran away . . and was caught . . by . . Carr . . he asked what she ran away for; . . she replied, ' for her meanness;' . . he then slapped her on the face several times severely, and told her she should tell him . . she then said, ' for poisoning her mistress' child.' The court excluded this evidence . . [361] Garrett, whose mother was the jailor, testified, that he was in the habit of going to the jail to feed the defendant . . asked her [about three weeks after the charge of poisoning] . . ' what she was put there for;' that she replied, ' for poisoning her mistress' child; . . was put up to do so by an old negro woman,' and ' that she wanted to get rid of nursing the child and putting it to sleep.' . . The court . . allowed the . . testimony to go to the jury;"

Judgment reversed and the cause remanded: [364] " She seems to have been a young negro girl, . . A girl of this age, and a slave, having made the confession . . to Carr, would always be under the temptation to repeat the same substantially, from a fear that she would be punished for falsehood, if she should materially deviate from the statement she first made." [Phelan, J.]

State, ex rel. Dawson, in re Strawbridge and Mays, 39 Ala. 367, June 1864. Strawbridge and Mays were, on January 1, 1864, overseers on plantations where there were [368] " more than fifteen able-bodied field-hands, slaves, between the ages of sixteen and fifty years;" They were enrolled as conscripts in the Confederate army, and application was made in May 1864 for their exemption.[1] In July they [369] " were ordered out . . as a part of the second-class militia of the State, . . each . . is between eighteen and forty-five years of age. . . the chancellor . . ordered them to be discharged."

Reversed: they are [386] " liable to the lawful control of the State militia officer." [377] " The ' twenty-negro ' law,[2] as it was commonly called, caused great dissatisfaction, both with the country and army. . . At the same time that congress repealed those clauses, they framed . . the law of 1st May, 1863, which allowed ' overseers ' . . to be exempted, for the benefit of certain helpless and highly meritorious classes . . [378] the legislature [of Alabama], in passing its exemption law of August 29, 1863, meant only to respond to the recent action of the congress, . . they did not design . . to invite . . a return to that policy of general exemption for overseers (and others having the management of slaves) which congress and the country had just *repudiated*; . . [384] [Straw-

[1] Under the act of the Confederate congress of Feb. 17, 1864.
[2] Act of the Confederate congress, Oct. 11, 1862.

bridge and Mays] are *exempts proper* . . and as such liable to serve in the State militia." "There need be no such great alarm about the supervision of the labor of the country. If the holy cause of liberty requires it, many more farms or plantations can be pretty well managed, as thousands now are, . . without the supervision of able-bodied men. The heroic women, with their barefooted boys and girls, the old men, the convalescent or disabled soldiers, and though last, by no means least, the experienced and faithful negro, will do the business." [Phelan, J.]

Harrison v. Harrison, 39 Ala. 489, June 1864. [514] "the carpenter Jack . . was publicly hired out for that part of the year 1843 which remained after intestate's death [in March], for fifty-five dollars; . . In fixing the hires of the women, allowance is made for abatement of the price-value, caused by pregnancy, or the encumbrance of nursing infants;"

Martin v. State, 39 Ala. 523, January 1865. [524] "The indictment . . charged that the prisoner . . 'inveigled, stole, carried, or enticed away . . Fred, the property of . . Peasley, with intent to convert [him] . . to his own use, or to enable . . [him] to reach a State or country where he would enjoy freedom.'[1] Peasley testified, 'that on a Saturday night in September, 1864, about eleven o'clock, he was aroused from sleep by a negro woman who stated that "there was a white man trying to steal Fred;" . . Fred lived on an adjoining lot . . with the negro woman as his wife; that when he arrived . . he saw the defendant have Fred in the yard, standing over him, with a stick raised, . . and heard him say . . "Put on your shoes, and come quick, or I will drop you;" . . [that witness asked him what he was doing there; that the defendant replied, "he was an impressing officer, and was impressing negroes." Witness said, "You know that is not so; that will not do this time of night." . . [525] Defendant [said] . . that he "was going to take said slave to the front," and that there were eleven others engaged in the same business. . . that Fred always went to bed about nine o'clock; . . that . . [witness] took the defendant by the collar, and led him out of the yard; that Fred picked up two brick-bats, and perhaps threw one at the defendant; that the defendant appeared to be intoxicated,'" Judgment affirmed.

William (a slave) v. State, 39 Ala. 532, January 1865. Indictment for murder. "the owner of the prisoner . . stated . . on the day of the homicide [in 1863], before . . [he] had got out of bed, the prisoner . . sent word in to him that he desired to see him; and he sent back word, asking what he wanted. The prisoner did not say . . but again requested that witness should come out . . refused . . again repeated; and witness then . . dressed himself hastily, caught up a loaded whip, with which he usually whipped his slaves, went out . . where the prisoner was, and, in an angry . . manner, said . . 'What in the hell do you want with me?' . . The prisoner said, 'Master, I have killed Clarissa [another slave].' Witness exclaimed, 'What! where did you kill her?' The prisoner

[1] Code, sect. 3130.

answered, ' At the gin-house.' Witness then asked, ' How did you kill her? ' and the prisoner answered, ' I cut her throat.' . . [533] the prisoner . . was going on to make other statements . . when witness . . would not hear anything more from him, . . The court . . allowed the confession to go to the jury as evidence;"

Judgment reversed and the cause remanded: [535] " A partial and unfinished statement . . should not be received in evidence."

Smith v. State, 39 Ala. 554, January 1865. " The indictment . . 1864 . . charged that the defendant . . ' a white woman, did live in a state of adultery or fornication with a negro man ' . . testimony . . that the prisoner owned a negro man . . who was hired to . . Arant; that said negro came to the house of . . Hinson, with whom the defendant was boarding . . about a half-mile from . . Arant, ' frequently, perhaps two or three times in the week;' that . . [555] Hinson caught the slave in the defendant's room, at 9 o'clock at night, when the window . . was open, and the door locked; and that the bed . . showed the impressions of two persons "

Carter's Heirs v. Carter's Administrators, 39 Ala. 579, January 1865. Carter's will, dated 1853: " I give . . unto . . children of Robert D. James, all my estate . . on this condition . . that . . James . . immediately after my death, manumit . . [580] seven certain negro children owned by him, . . [three] yellow boys, and also Milly, Mary, and Alabama, (all . . children of Ellen, now dead,) and . . a child of . . Milly, and also all the children that any of the said negroes may hereafter have. And if . . James shall fail to give . . their freedom, as far as the laws of the State will permit, or so that they may enjoy their liberty, and the profits . . of their own work . . or should said slaves be kept at work, against their own will, . . or should they ever be . . in any way disposed of . . so that they are deprived of liberty of working for themselves, and of disposing as they please of their own time, under the laws of the State; or should they hereafter ever be taken for the debts . . and put into a state of slavery,—then this devise and bequest to be . . utterly void, . . The true intent of this will is, to give all my property for the . . freedom of the said negroes, so that they may enjoy the same as far as the law of the land will allow, and good conscience, honesty and right will protect." James died in 1860, leaving a will, dated 1858: " Whereas . . Carter . . by his will . . did provide that . . certain property . . should vest in [my children] . . upon certain conditions . . [583] I give . . unto my son, Francis . . the slaves . . John Carter, Albert Carter [and the rest] . . and their increase . . in trust . . that . . after the death of . . Carter, . . Francis . . his heirs, or assigns, shall, in no case, and upon no pretext . . whatever, . . require personal service or labor, or the hires . . thereof, . . from the said slaves; but that the said slaves shall be allowed their own time . . with . . free privilege . . to go, return, live and reside whithersoever they may desire . . and that they shall, under all circumstances, . . be allowed the rights, immunities and privileges of free white citizens, when . . not inconsistent with the laws of the State;"

[582] "Carter died about the 24th April, 1861, and left no widow, children, or descendants of children, so far as is known." Under order of the probate court his property was divided among the children of James, [581] "and a return of the division was made . . to the court . . December, 1861. . . 1863, a citation was ordered to . . [Carter's] administrators, requiring them to file their accounts . . for a final settlement; . . a petition was [later] filed . . by . . [Carter's] heirs-at-law and next of kin . . alleging that the provisions of the will were void, and praying that, on the final settlement, all the property of the estate might be divided among them. . . [582] On the trial, . . 'the trustees of these Carter negroes appeared in court, and insisted on their right to hold said negroes under the directions of . . will [of James]; and that said negroes had been treated with kindness, and given as much liberty as was permitted by law;' . . [583] the court dismissed the petition of the distributees and heirs-at-law;"

Held: I. [585] "the dispositions of . . Carter's will, in favor of the children of . . James, are inoperative, because they depend on a condition precedent which is illegal . . [586] The remedy of the heirs-at-law and next of kin . . is in chancery."

Burt v. State, 39 Ala. 617, January 1866. "The indictment . . 1863, averred that the prisoner, . . 'a slave, . . with malice aforethought, killed . . a white man [[618] "with the intention to rob the deceased"] by beating him with a stick,' or . . 'by . . stabbing him with a knife.' . . the trial . . took place on the 27th September, 1865, . . [618] The verdict . . was 'guilty . . of murder in the first degree, and sentence him to be hung.' The court . . ordered the execution to take place . . November . . but . . suspended, on account of the bill of exceptions reserved"

Judgment reversed, [626] "ordering that the sentence be not executed upon the prisoner, and that he be discharged from custody" [620] "When the ordinance of the convention abolishing slavery was adopted on the 22d September last, there remained not a slave in . . Alabama; . . [622] the statute providing for the punishment of *slaves* . . for murder, was repealed by the ordinance of the convention." Judge Judge concurred: [628] "It is to be regretted that, in cases like the present, offenders escape merited punishment. . . The discharge of the prisoner is one of the evils resulting from the war, and is not by any means the greatest that has been brought about by that calamity."

Jeffries and Jeffries v. State, 39 Ala. 655, January 1866. [656] "that the defendants . . carried away the mules . . August, 1865; . . were slaves . . up to the time of the general abolition of slavery in Alabama."

Held: [658] "The act approved October 7, 1864 [under the provisions of which the defendants were tried], was not in force between the 20th July, 1865, and the 21st day of September thereafter. . . [659] Under the provisions of [General Orders, No. 100, approved by the president of the United States on April 24, 1863] . . the act . . was

suspended by the occupation of the State by the United States army, and the surrender of General Taylor, in May, 1865. . . The president of the United States . . appointed . . provisional governor . . who, on the 20th day of July, 1865, issued a proclamation . . that, 'from . . this date . . the . . laws of Alabama, as they stood on the 11th January, 1861, except that portion which relates to slavery, are . . in full force' . . This declaration very clearly . . excludes the idea, that the laws enacted after the 11th January, 1861, . . were to be in force after the date of the proclamation; . . [662] The people looking at the proclamation, would very . . properly come to the conclusion, that the act of the 7th October, 1864, was not in force during the time indicated; and it would be . . illegal to visit the severe penalties of that law, upon an offense committed during that period; especially, when there was a law in force,[1] and put in force, too, by the proclamation, under which another . . [663] punishment can be inflicted, if the defendants shall be found guilty on another trial. We are of opinion, that the defendants were free persons of color at the time the offense was committed, . . We hold, that the ratification of the act of October 7th, 1864, on the 21st September, 1865, does not repeal section 3180 of the Code; and that both statutes are in force,—the first, as to offenses committed since the 21st September last, and the Code as to offenses committed prior to that time and subsequent to the proclamation." [Byrd, J.]

Nelson v. State, 39 Ala. 667, January 1866. "The indictment . . December, 1865, charged that . . 'Nelson . . formerly a slave, the property of . . Bethea, . . did [in February 1865], while he was a slave . . kill Annice, *alias* Annice Bethea, . . the property of . . Bethea, by strangling . . or by throwing her into a well;' . . circumstantial evidence which tended to show that the crime was committed by the prisoner. . . The jury . . found the defendant 'guilty of murder in the first degree,' and sentenced him to death; and judgment was rendered accordingly."

Judgment reversed, [671] "discharging the prisoner from custody," Judge, J.: [673] "section 3312 of the Code, which declares, that 'every slave, who is guilty of murder, shall, on conviction, suffer death' . . was abrogated with all the other statutes of the slave code. . . [675] he could be punished under no law, . . It is not pleasant to the Chief-Justice and myself to be forced to this conclusion;"

George v. State, 39 Ala. 675, January 1866. "The prisoner was indicted, in 1862, as a slave, under section 3311 of the Code, which provides, that every slave who robs, or commits an assault and battery with intent to rob, any white person, must, on conviction, suffer death. On the 27th day of September, 1865, he was tried and convicted; . . [676] sentenced by the court to imprisonment . . for . . twenty years. . . under section 3104 . . which . . had been made applicable to 'free persons of color,' by section 3505 of the Code."

[1] Code, sect. 3180.

Judgment [679] "must be reversed, and the appropriate order made in this court, for the discharge of the prisoner" [677] "the constitution of this State, as amended, [is] repugnant to the criminal statutes relating exclusively to slaves . . [678] there can be no judgment, in a case like the present, unless the law that was infringed is in force *at the time of the indictment, and of the judgment.*" [Judge, J.]

Eliza v. State, 39 Ala. 693, January 1866. Judge, J.: [696] "The fact that this class have not become free by their own seeking, but by a political convulsion, . . can not affect their amenability to the laws." [697] "A. J. Walker, C. J., dissents from any expression in the opinion, . . intimating that slavery was abolished in the State otherwise than by the action of the convention,"

Ferdinand [*Smith*] [1] *v. State,* 39 Ala. 706, January 1866. [707] "The indictment . . described the prisoner as a free negro, and charged him with obtaining goods under false pretenses . . evidence . . that the offense was committed . . 16th September, 1865; . . that, for twenty years or more, prior to the 12th April, 1865, when the military and naval forces of the United States took Mobile, the defendant had been . . the property of Rives, Battle and Co.; that he left their service on that day, without their consent, and never returned to them; and that they never . . admitted his right to freedom, until the adoption of the ordinance of the State convention on the 22d September, 1865, by which slavery was declared to have been abolished. . . the defendant requested the court to instruct . . that he was a slave at the time of the commission of the offense, . . refused"

No error: "It is not denied that slavery has had no existence in this State, since the 22d day of September, 1865, on which day the State convention . . [708] acted on the subject; but it is argued that it did exist in law, if not in fact, until that action was had. This position amounts to a denial of the legality of the destruction of slavery by the act of war, a question it would be utterly . . useless to discuss. It is a historical fact, that the consummation was effected by the act of war, anterior to the action of the State convention; and whether justly or unjustly, legally or illegally, are not now practical questions. This was the view, in effect, taken by the State convention, . . That body was not guilty of the absurdity of abolishing slavery, which did not then exist; but it gave a . . solemn sanction to the truth of the fact, before well known, that the institution of slavery had 'been destroyed in . . Alabama,' by expressly so declaring," [Judge, J.]

Frank v. State, 40 Ala. 9, June 1866. "the prosecutor . . was the owner of the prisoner . . up to the time of his emancipation; . . August, 1865, . . a little before sunrise . . [he] told him to 'go on to the brickyard, as he wanted a good day's work done there;' . . The prisoner appeared somewhat sullen. Witness . . returned in about fifteen minutes, . . said, 'If you don't go, I'll see if I can't make you go;' and catching

[1] 40 Ala. 733.

up a paling . . he struck the prisoner . . The prisoner . . stabbed him . . and left."

Fuller v. Fuller, 40 Ala. 301, June 1866. In 1855 [305] "some of the sons . . in the night-time . . carried off forty-one of his most valuable slaves, for the purpose of preventing . . the sale;"

Modawell v. Holmes, 40 Ala. 391, January 1867. [394] "a witness . . testified, that negro men, good field-hands, hired in 1858 and 1859, at from one hundred and fifty to two hundred dollars per annum, and women at from one hundred to one hundred and twenty-five dollars; that he hired a negro woman who was a fair field-hand, in 1864, for seventy-five dollars, payable in Confederate money; . . [395] a witness . . testified, that he hired a negro woman for the year 1863, for forty dollars; . . two women and a man, in 1864, for three hundred dollars, and a man, a woman, and girl, in 1865, for four hundred dollars; that these prices were payable in Confederate money; that said negroes were fair field-hands, . . and that negroes were worth, during the war, about what was necessary to feed, clothe, and support them, and pay their doctor's bills and taxes. . . another witness . . testified that, in 1863, he hired two women and a plow-boy, for two hundred and fifty dollars; that in 1864, he hired two women for one hundred and sixty dollars . . fair field-hands, and the prices . . were reasonable,"

Bates v. Vary, 40 Ala. 421, January 1867. [424] "that in 1864, and up to the time of the surrender, he owned upwards of one hundred slaves; . . [425] that [his brother] Robert had, at the time of his death [in October 1864], . . twenty-seven slaves, old and young, . . [426] that as negroes were selling in January, 1865, for Confederate money, the negroes alone of . . [Robert's] estate would have sold for, or were worth, about one hundred and fifty thousand dollars in Confederate money."

Neilson v. Cook, 40 Ala. 498, January 1867. [502] "note . . given for the hire of Lewis in 1862, . . collected on the 7th May, 1865, in Confederate notes, . . 'and interest, $103.25.' . . 'Cash received . . hire of Lewis, 1863, $100,' . . dated January 1, 1864. . . [503] The deposition of Harriet Barringer . . 'About the 1st January, 1865, . . Cook . . hired a negro woman to me for the year 1865, at two hundred and fifty dollars, clothing, and taxes. . . I had . . the Confederate money, and was ready to pay in advance,'"

Leslie v. Langham's Executors, 40 Ala. 524, January 1867. [525] "the plaintiffs, as executors, claimed . . three hundred and ninety dollars, 'due by promissory note made . . 2d day of January, 1865, . . for the hire of a . . slave . . for the year 1865.' . . 'slave . . remained in . . [defendant's] possession until the 1st day of May, 1865, when the military authorities of the United States took possession of the country; . . the negro then left . . of his own accord . . and returned to that service no more. . . [526] The defendant . . read in evidence President Lincoln's emancipation proclamation, . . offered parol evidence, tending

to show that . . it was understood . . that the [note] . . was to be paid . . in Confederate currency or treasury-notes; . . admitted;"

Held: I. [528] "the hirer must bear all the losses . . [II.] [529] slavery in this State was destroyed in May, 1865. Whether the State was in or out of the Union at the issuance of the proclamation of President Lincoln . . makes no . . difference. If in the Union, he had no constitutional authority . . to issue and enforce it at that time; and if out of the Union, *in either case,* it could have no force or validity until the Federal government was enabled by conquest, or the power of arms, to enforce it. . . [III.] A parol understanding to receive Confederate treasury-notes in payment . . is not a part of the contract, and . . not obligatory" [Bryd, J.]

Horton v. Pool, 40 Ala. 629, January 1867. [630] "This agreement, made . . November . . 1865 . . witnesseth, that whereas . . Horton, . . February . . 1863, sold nine negroes to . . Pool, for . . seven thousand dollars, . . and whereas, a difference of opinion exists . . as to the obligation . . to pay . . and the amount . . Horton and . . Pool agree each to select a man for the purpose of arbitrating . . and if the men . . selected . . cannot agree, they shall select a third man, as umpire" The two arbitrators, not being able to agree, [631] "selected . . umpire . . [who] decided, that . . Pool should pay . . Horton . . six thousand dollars in gold or silver," Held: [632] "not a statutory award."

Logan v. State, 40 Ala. 733, June 1867. "This action was brought by Mrs. Frances L. Logan, against the State of Alabama, to recover the value of . . slaves . . alleged to have been emancipated by the act of the defendant, without the consent of the plaintiff, and without an offer or tender of compensation.[1] . . The rulings of the court . . were adverse to the plaintiff's right of recovery;" Judgment affirmed: [734] "We decline to disturb the decision" in Ferdinand Smith *v.* State.[2]

Glover v. Taylor, 41 Ala. 124, June 1867. "action . . brought by . . Taylor and Co. . . to recover damages for the breach of a warranty of the soundness of a slave; . . commenced by original attachment, which was sued out . . 1859. The attachment was levied . . on two slaves . . of the defendant, which were replevied by him on the same day. The condition of the replevin bond . . [125] proceeded thus: 'Now, if . . Glover shall fail in the said action, he or his sureties shall . . return the . . negroes' . . On the trial . . 1866, . . the defendant . . offered . . as a witness, . . one of the sureties . . The plaintiffs objected . . sustained"

Held: [128] "We judicially know, that before the trial . . slavery ceased to exist in . . Alabama, and that a compliance with the bond had become, by the law of the land, alike impossible and illegal. . . the surety could not be liable for a failure to deliver the property, and was, therefore, not incompetent from interest." [A. J. Walker, C. J.]

[1] Alabama Constitution of 1819, art. VI.
[2] P. 264, *supra.*

Beasley v. Watson, 41 Ala. 234, June 1867. [237] "owned nine negroes, being a woman and her eight children, none of whom were able to work except the two oldest, and they could do but little;"

Hall v. Heydon, 41 Ala. 242, June 1867. "In 1855, or 1856, . . [Mary Keiffer] owed him . . a note for three hundred dollars, given for the hire of a slave, to work in a blacksmith-shop, which was carried on by [her] . . and he was surety for her on another note for about three hundred dollars . . for the hire of another slave to work in the same shop. He took possession of said blacksmith-shop . . in January or February of the same year, . . [243] and received the proceeds thereof; out of which, at the end of the year, said two notes were paid,"

Jones's Administrator v. Shaddock, 41 Ala. 262, June 1867. "The bill . . was filed . . 1859, by the five youngest children of Martha Shaddock, . . Dick . . was conveyed to . . Martha Shaddock, . . 1852 . . by . . Herndon . . [263] in trust for the use . . of the complainants, . . [Two weeks later, Dick] . . was sold . . by Martha . . to . . Jones; and the bill alleged, that Jones . . had notice of the trust . . The slave was allowed by Jones to . . act as a freeman; and . . by his earnings . . he bought . . Turner and Wash, and had the bills of sale . . taken in the name of Jones. . . 1857, Jones . . conveyed the three slaves to . . Thomason, by whom they were carried out of the county. . . Jones . . denied all knowledge of the alleged trust . . but asserted that he was told by . . Martha . . that she held the slave under an absolute deed of gift . . but had promised Herndon that, so soon as the slave paid her eight hundred dollars, she would emancipate him; and that he bought the slave from her at the slave's own request, and with the intention to emancipate him so soon as he had paid for himself. He admitted that Dick had . . paid for the boy Turner, and had also paid him five hundred dollars for Wash, who belonged to him; . . he . . had filed a petition in the probate court for the purpose of emancipating [Dick;] . . that Martha Shaddock having afterward instituted an action . . against him for said slave, he transferred all his interest in the slaves to Thomason . . to rid himself of all further trouble . . witnesses proved the parol trust . . communicated . . a few days afterwards, to . . Jones."

Held: I. [265] "Jones, having converted Dick to his use, in violation of the trust, was chargeable as a trustee . . [II.] We have had more trouble with the question as to . . Wash and Turner. . . The acquisitions of slaves, even though made with the owner's consent, belong to their owners, who may assert their rights thereto; but the owners can not assert their claims to such acquisitions after they have been disposed of by the slaves, . . [266] We do not think that Jones . . was bound to appropriate the acquisitions . . to the benefit of the trust . . Jones . . did not, until he sold the slaves, assert any title to the earnings of Dick, or title to Turner . . or to Turner's earnings. . . the court erred in charging the defendant on account of the earnings of any of the slaves, not claimed by him. In 1857, Jones . . not only asserted his title [to Dick and Turner] . . but transferred them . . His duty . . was to

hold the slaves, after he asserted his title, for the benefit of the trust . . he . . is chargeable with the value of these slaves . . [III.] the title to Wash did not pass out of Jones . . But the five hundred dollars, the fruit of Dick's earnings, received by Jones, must be clothed with the same trust as was . . Dick. . . [267] the chancellor correctly held the defendant liable for the five hundred dollars . . and refused to make him liable for the value of Wash." [A. J. Walker, C. J.]

Sowell v. Sowell, 41 Ala. 359, June 1867. [361] "in October, 1863, most of the slaves were bid off by the petitioner . . and went into the possession of his wife . . and remained under her control until the close of the war;"

Glenn v. Glenn, 41 Ala. 571, January 1868. [572] "the widow administered on . . estate, . . 1858, and kept it together . . cultivating the plantation, until the emancipation of the slaves in the spring of 1865,"

Kirksey v. Kirksey, 41 Ala. 626, January 1868. [632] "Kirksey, in 1861, . . offered to buy . . a negro man, who was then a runaway, . . [His owner] replied, that he would not sell . . as the balance of his negroes would run away if he did, just to be sold,"

Rose v. Pearson, 41 Ala. 687, January 1868. "This action . . was commenced on the 3d April, 1861. . . 'for the recovery of chattels in specie,' . . twenty-four slaves . . [688] October term, 1861, the defendant filed a plea of *non detinet*; . . October term, 1866, a trial was had . . the court . . rendered a judgment . . 'that the plaintiff recover . . the said property' . . (specifying the slaves by names,) 'or . . twenty thousand dollars, their alternative value,'" Held: [692] "The plaintiff . . has a right to the alternative value."

Railroad Co. v. Watson, 42 Ala. 74, January 1868. "action . . brought by . . Watson [who had hired to the defendant] . . from the 1st January, 1861, to the 1st January, 1862, certain slaves, . . among them . . Spencer, to work on defendant's road, . . [76] Spencer . . was taken sick, . . 'sent . . to the hospital at the depot at Montgomery,'" and died there.

Waller v. Taylor, 42 Ala. 297, January 1868. [298] "was possessed of a large estate in negroes . . but that in consequence of the war, etc., the estate has become insolvent; and the plantation is not now kept up,"

Madden v. Hooper, 42 Ala. 397, January 1868. "an execution . . against Wade Madden . . was levied . . March, 1860, on a slave . . [398] May following, John Madden made claim . . and gave the required bond. . . 1867, . . a trial . . was had, . . The plaintiff proved the negro . . worth, at the time of the levy, $1000."

Held: [399] "The quality of property in the slave having been destroyed before the trial by emancipation, . . it was competent for the plaintiff to prove the value at the time of the levy. . . The emancipation . . would not preclude a recovery by the plaintiff" [A. J. Walker, C. J.]

Ivey v. Coleman, 42 Ala. 409, January 1868. Will of Benjamin Ivey, who died in 1858: [411] "I direct my executors . . so soon after my death as practicable, to take charge of, and convey my slave Harriet and her [four] children . . from . . Alabama, to . . Indiana, or Illinois, or Ohio, . . and I hereby bequeath to my executors . . $5000, on trust, . . Out of the said sum is to be paid all expenses . . in conveying Harriet and her children . . the balance . . is to be . . safely invested for the benefit . . of . . Harriet and children, so that the interest . . may, and shall be, regularly paid over to [them.] . . Upon the faithful carrying out the provisions of this item . . I hereby discharge my executor . . from all responsibility . . for the slaves and money herein mentioned." The executor's account contained the following credit: [413] "By amount of extra compensation for carrying slaves to a free State, and carrying out the provisions of the will . . $500 00" It was not allowed. [417] "We hold, too, that the executor is required to show the execution of the trusts . . before he can claim exemption from liability to account for . . the . . five thousand dollars,"

Jones v. Howard, 42 Ala. 483, January 1868. "$130, for the hire of negro woman . . for the year 1864,"

Weaver v. Lapsley, 42 Ala. 601, June 1868. Action founded on a note. Eliza and Caroline were sold [604] "to the highest bidder at public outcry . . on the 1st day of February, 1865" for $2,172.00. It was announced "that the sale was for coin." [605] "The defendant . . proved . . facts tending to show that in . . 1864, the said slaves were worth in Confederate States treasury-notes, about $5,000, . . in gold, about $250; that after that time, slaves declined in value, and in February, 1865, it was difficult to sell slaves at any price; that there were no sales of slaves, so far as witness heard, in 1864 or 1865." [613] "it is contended that the effect of the act of congress of July 17th, 1862, and of the proclamation of President Lincoln, of September 22d, 1862, was to render the sale . . illegal and void."

Held: I. [614] "The record does not disclose that Eliza and Caroline . . were of either of the class of slaves designated by the act of congress; . . [II.] As to the proclamation . . it was manifestly nought but a war-measure, and of no operative effect, until carried into execution by force of arms." [Judge, J.]

Witter v. Dudley, 42 Ala. 616, June 1868. [619] "removed with his wife and the slaves . . to Mississippi, in . . 1849,"

Morgan v. Nelson, 43 Ala. 586, June 1869. [589] "they continued to work the . . negroes on the . . place . . from 1859 until they were lost by emancipation of the slaves, by the result of the war, except . . Jack, who died in 1862;" He [591] "was valued at . . $1300"

Held: [592] "The abolition of slavery in Alabama, and other rebel territory embraced in the president's proclamation of January 1, 1863, was . . authoritatively proclaimed as the will of the nation, and it was consummated by the final triumph of the national forces . . [593] the

intermediate lapse of time is not regarded, and the whole relates to the first moment, so as to make [the abolition of slavery] . . operative therefrom." [1] [Peters, J.]

McElvain v. Mudd, 44 Ala. 48, January 1870. Suit founded on a promissory note given on February 1, 1864, for three slaves. Held: I. [61] "that slaves, notwithstanding the proclamation, nevertheless, until the rebellion was suppressed, and the said proclamation became effectual to control the people of the rebel States, continued during the period between the date of the proclamation, and the end of the war, to have an *uncertain and contingent value in said rebel States,* and that contracts made *between citizens of said States,* in reference to that species of property, are sustained by a lawful . . consideration. . . [II.] the third section of the ordinance of the convention of 1867 . . [62] impairs the obligation of contracts, and is, therefore, unconstitutional and void." [Peck, C. J.] B. F. Saffold, J.: [63] "I concur . . Slavery in Alabama ceased, in fact, in the spring of 1865 . . If it should ever become important to decide the precise time when the abolition . . was effected by law in this State, I am satisfied it will be referred to the date of the adoption of the 13th amendment to the federal constitution." Peters, J., dissented.

Buford v. Tucker, 44 Ala. 89, January 1870. [90] "action on a promissory note, executed . . January, 1865, for the hire of a negro woman . . and several children, for the year 1865. . . said slave was taken . . by the presence of the Federal army, in the spring of . . 1865,"

Held: [91] "the plaintiff was only entitled to recover what, at the date of the note, the services . . were worth . . in the legal currency of the United States. He was, however, entitled to recover for the services for the entire year 1865." [Peck, C. J.]

Fitzpatrick v. Hearne, 44 Ala. 171, January 1870. [172] "note was made [in 1856] for the purchase-money of . . slaves, . . the title . . was warranted . . for the life of said slaves," Held: I. [173] "The third section of . . ordinance No. 38 [of the constitutional convention of Alabama, passed December 6, 1867], which refers to notes . . given . . in consideration of slaves, has been decided . . to be unconstitutional" [2] II. The warranty that the negroes were slaves for life did not protect [175] "the vendee against the abolition of slavery by the government. Such a contingency did not enter into the contemplation of either the vendor or vendee . . nor did it form any element in the contract of warranty." [Peck, C. J.]

Ex parte Vaughan, 44 Ala. 417, June 1870. Application for bail. "The killing occurred . . on the 2d of April, 1865. The prisoner is a white man, and the person slain was a colored man, occupying the status at that time of the colored people of the State, who were . . [418] slaves, . . The prisoner offered no evidence in his own behalf, while against him

[1] But see McElvain *v.* Mudd, *infra.*
[2] McElvain *v.* Mudd, *supra.*

were the findings of the grand jury, and his admission that he did the killing. . . The application is denied." [B. F. Saffold, J.]

Turner v. Turner, 44 Ala. 437, June 1870. In 1856 or 1857 [445] " she found him engaged in adulterous association with . . Sally, his slave, . . in the house in which oratrix and her husband resided. . . [446] she made up her mind that she could not, with self-respect, remain his wife, and so informed him. Thereupon, the defendant . . asserted that he had been overcome in a moment of weakness, and that it was his first departure from a virtuous life, and . . would be the last. . . oratrix thought it was her duty to forgive him, and did so. . . Sally, who was a house servant, was still retained . . about the house, notwithstanding oratrix requested her husband to have her removed; and she supposes, that the servant, finding herself supported by the authority of her master, became insolent to oratrix, whereupon she chastised her. Oratrix's husband complained at her . . and forbade her to do so. Oratrix told [him] . . that as long as he retained her about the house . . she would punish her for any insolence . . and the temper of her husband being roused, he threatened to whip oratrix, and made . . Sally, go out and get switches . . He forbore to strike her, however,"

Stikes, Administrator, v. Swanson, 44 Ala. 633, June 1870. [634] " Cassius Swanson was originally a slave in . . Florida; he was there emancipated . . under the laws of that State, and removed to . . Mobile . . shortly after his emancipation . . he died intestate [in 1860] . . leaving considerable estate, consisting of slaves and other property, . . Stikes became the administrator . . made final settlement [in 1868] . . when . . there remained . . unexpended . . $556 18 . . This fund was claimed by . . sons of Cassius Swanson, . . children by two mothers; . . the mother of Martin . . remained a slave till her death . . before 1859. After the death . . Cassius [before his emancipation] married a second wife . . also a slave, and by her he had . . Abraham and William . . all born slaves "

Held: [635] "The cohabitation . . with each of his two wives, was . . a *quasi* marriage. . . [637] the appellees are not bastards, and emancipation has restored their heritable blood." [Peters, J.]

Billingslea v. Glenn, 45 Ala. 540, January 1871. " Glenn died . . 1858 . . [541] the administratrix . . kept the slaves . . under her control . . and employed them in making crops . . up to the time the slaves were emancipated by the United States armies;"

Mosely v. Tuthill, 45 Ala. 621, January 1871. Micael Prieto's will, 1860: [624] " I request that my two servants, Margueritte and Babert, in consideration of their faithful services to me, may remain with and take care of my children, and that they may be treated with kindness and consideration, and their wants amply supplied." " The petition of . . administrator with the will annexed . . shows, that there has not come into his possession any personal property . . except slaves, and that there have been presented . . debts in amount to upwards of six thousand

dollars; . . states that . . the sale of the land . . will be more beneficial . . than the sale of the slaves, by reason of the fact that the slaves are family servants, and are needed for the use of the family, and because the servants constitute a family which it is not desirable to break up and separate."

Meadows v. Edwards, 46 Ala. 354, June 1871. [357] "firewood which he cut and hauled in 1864, with the slaves and wagon"

Dudley v. Witter, 46 Ala. 664, June 1871. [667] "About 1847 or 1848 . . husband . . removed her and the . . slaves . . to . . Mississippi."

Napier v. Jones, 47 Ala. 90, January 1872. Wallace's will, 1858: [91] "I request that my executor shall give my three boys, George, Ell, and Tom, the choosing of their own masters, and that he shall sell them to the one whom they may choose at a fair price, making the debt secure."

Jay v. Mosely, 47 Ala. 227, January 1872. [228] "Ben Dolphin, his favorite negro servant, waited upon him continually, and was with him when he died (in . . 1866). . . Ben Dolphin testified that the decedent kept his gold in a bag, and his paper money in a book, both of which he was accustomed to carry to him when he wanted them, and to put away ['locking and unlocking the bureau drawer for the purpose']. He is confident that he had not more than forty dollars in gold about the close of the war."

Gaines v. Shelton, 47 Ala. 413, January 1872. [414] "28th January, 1860. For the present year's hire of a negro man, . . we promise to pay . . on the 1st of January next, two hundred dollars, and to provide . . two suits of summer clothes, one suit of winter clothes, two pairs of shoes, a hat and blanket; also, to pay his taxes, and return him . . the 25th of December, 1860. This negro is hired to work on the plantation now occupied by . . Gaines, and not elsewhere."

Waller v. Ray, 48 Ala. 468, June 1872. [469] "The testator, at the time of his death [January 1864], was possessed . . of two large plantations and ninety-odd thousand dollars worth of negro slaves,"

Hill v. Smith, 48 Ala. 562, June 1872. A note for $2955, dated February 10, 1863, was given for two slaves sold under an order of court.

U. S. v. Huckabee, 16 Wallace (U. S.) 414, December 1872. "In . . 1862, . . Huckabee and three other persons, formed . . a corporation . . its object was the working in iron; its particular machinery being such as made it capable of manufacturing cannon, and other munitions of war. Rolling-mills were erected, and lands, slaves, and mules bought. . . [415] the rebel powers possessed an almost despotic power over the whole body of skilful laborers in the region."

McConico v. State, 49 Ala. 6, January 1873. Held: [7] "The Ordinance [No. 23] of the Convention adopted on the 30th day of November, 1867, entitled 'An ordinance relative to marriages between freed-

men and freedwomen,' . . [8] had only the effect to legalize the marriages existing between freedmen and freedwomen before emancipation. It was not designed to dissolve, nor to permit these marriages to be dissolved by the parties themselves."

Clark v. Hart, 49 Ala. 86, January 1873. In 1863 [87] "negro, mules, and dray were partnership property"

Marsh v. Richardson, 49 Ala. 430, June 1873. Will, dated 1857: [434] "I give to . . King the following . . servants, . . woman Henrietta, [three boys and two girls] . . also . . all the . . residue of my estate . . for the use . . of the six . . servants," Peters, C. J.: [435] "The learned counsel for the appellees insinuate . . that the 'woman Henrietta' was the wife of the testator, and that the other persons . . were his children, and that King . . had married 'the mulatto daughter' of this woman and the testator. If this be so . . the effort to aid her in her servitude, and to maintain her and her children . . can hardly be denounced as inhumane or unlawful, in one who had shared her bed . . The will was, therefore, not void,"

Brevard v. Jones, 50 Ala. 221, January 1874. [240] "In 1855, the appellee received from her mother . . Allen and Polly, which her husband sold for $2,100."

Millsap v. Stanley, 50 Ala. 319, January 1874. [320] "on December 18, 1861, . . representatives filed their petition . . asking an order for the sale of . . [321] Martha, Mary, Jack, and Dick . . granted . . On December 20, 1861, . . another petition . . praying for an order to sell . . children of . . Martha, . . and also girl Elvira, . . granted . . and they were sold . . on February 3, 1863, for . . $6,287.00,"

Fail v. Presley, 50 Ala. 342, January 1874. In 1867 Dr. Presley [343] "commenced suit against . . Fail . . in an action of trespass *vi et armis,* for damages for killing . . [his] slave . . by whipping . . 1862. . . [346] Dr. Presley . . sent the slave to the manager of his plantation, who was then . . Fail, . . for chastisement, for an offence which he was suspected to have committed." Held: "if Fail went beyond the infliction of a proper chastisement, he took the peril of his abuse of his power upon himself."

Hightower v. Maull, 50 Ala. 495, January 1874. "January 2, 1865. On the 25th day of December, 1865, we promise to pay . . guardian of . . a lunatic, two hundred dollars . . for the hire of a negro man, a slave, as a farm laborer." [496] "Evidence . . that in January, 1865, negroes were hired only for Confederate money, . . The court charged . . 'That the court would judicially know, unless the contrary was shown, that . . promise . . was made with reference to Confederate money;'"

Held: "This charge was erroneous. The intendment of such a note is, that it is payable in lawful money, and the contrary must be proved. . . not necessary that this presumption should be overcome by proof of an express agreement to receive payment in some other money. Proof that it was so understood . . is sufficient."

Raines v. Raines' Executors, 51 Ala. 237, June 1874. [240] "The complainants and their mother, who were the testator's slaves, were bequeathed to the executors, in trust, to provide for their remaining in Alabama free, if practicable; and, if not, to send them to one of the free States . . After such disposition . . a bequest in trust to the executors, of the whole estate, for the benefit of the children, was to take effect. The executors were empowered to appoint a trustee for these legatees, who should secure for them comfortable maintenance and education, and provide for the . . [241] proper management of their property, and its final settlement upon them, protected from the marital rights of husbands." [240] "The will was admitted to probate . . January, 1859, after a fierce contest by the heirs-at-law . . [241] The estate was sold in 1859, and about $75,000 was realized. No attempt was made to carry the beneficiaries beyond the State, or to procure permission for them to remain in Alabama, as free persons. The mother . . was sent on a visit to Ohio; but, on her return, she objected to being removed from this State. The war came on directly . . They became free . . with perfect right to remain here. . . May, 1860, an annual settlement was made by the executors . . there remained in their hands, subject to distribution, about $25,000. . . this settlement was assailed by the complainants only in respect to allowance of $20,000 paid to the heirs-at-law . . in compromise and abandonment of their contest. A credit of $16,000 for counsel fees was objected to . . but the objection is abandoned. The probate court allowed the executors $7,561, as commissions and extra compensation. This was in addition to $1,000 each, granted by the will. . . The above . . $25,000 was divided between themselves by the executors, they proposing . . to be responsible each for the share he received." [237] "The bill in this case was filed . . 1870, by the appellants . . and sought an account"

Held: I. [242] "The proof . . shows, that the appellant legatees were in imminent danger of losing the probate of the will, and, with it, their freedom. In addition to a strongly aggressive public sentiment against the provisions of the will, the testator was suffering from apoplexy, and the testimony was very contradictory in respect to his mental capacity. The facts and the authorities cited establish the correctness of the credits for the compromise and services of the counsel. . . [II.] [243] The executors . . had managed the property about two years when the allowance was made to them, . . we do not think the charge was excessive; . . [III.] [244] Let the $25,000 of balance be accounted for." [243] "The executors explain that . . in dividing the [$25,000] . . between themselves, they merely so disposed of the debts due from the purchasers of the property. . . a large portion . . were paid . . in Confederate money, . . [244] The commingling of the trust funds with their own is a strong point against the executors. Nevertheless, . . if they show clearly that the debts were adequately secured . . and that due diligence . . would not have availed to collect them, . . they should receive credit for such portions as would have been unavoidably lost." [B. F. Saffold, J.]

Trimble v. Isbell, 51 Ala. 356, June 1874. The jury "find that the girl Julia . . [357] was unsound and valueless at the day of the sale [1859] . . and that she was . . sold, at $1,100; and that the woman Mary . . was sold . . for . . $1,125; and that she was unsound . . and that said unsoundness amounted to one half of her estimated value."

Haden and Downing v. Ivey, 51 Ala. 381, June 1874. A witness testified: [383] "I have heard John J. Ivey [a free man of color] speak of Tempy as his wife, and my understanding has always been that he bought her for his wife ['about . . 1827'],"[382] "There was not any license, but there was a marriage ceremony, administered by a regularly ordained minister" He removed with her from South Carolina to Alabama about 1830, and "prior to July, 1838, [she] had acquired some money and other property; . . Downing [her former master's son], . . 'with her own means,' purchased the land in controversy . . but . . always recognized it as hers, . . [383] In the will of . . Ivey . . 1860, . . he speaks of Tempy Ivey as his wife, . . who has been a faithful helpmate . . and has helped him to accumulate his property; bequeaths and devises the whole of his estate, with some inconsiderable exceptions, to Mrs. . . Alford . . in trust, . . that, 'out of the proceeds . . or the principal if necessary,' she will support . . Tempy in comfort, and allow her to live wherever she may choose, free from labor or control;" Ivey's administrator sold the land to Haden.

Held: [384] "It was clearly such a marriage as would have been sufficient at common law. . . [385] And the public policy of the State since emancipation has been to give such marriages, as between the parties themselves, full validity. . . the husband might permit the wife to use her own earnings . . and invest . . in land. . . the title to the land . . never belonged to . . Ivey," [Peters, C. J.]

Du Bose v. Carlisle, 51 Ala. 590, June 1874. [592] "the father of Mrs. Du Bose, and . . a near relative . . independently . . executed two deeds, whereby they conveyed,—the first [in 1849], thirty-three slaves, and the other [in 1843], twenty-nine slaves,—in trust that the trustee . . would 'allow . . [593] Du Bose to possess the . . slaves . . for the maintenance of himself and family,' . . If Mrs. Du Bose survived . . she was to have the absolute estate. If he survived . . each child . . was to have a separable share . . Du Bose had about thirty slaves of his own. In 1850, he and his family emigrated [from South Carolina] to Alabama, and all of their property was brought with them. The *corpus* of the gifts was destroyed in 1865, by the emancipation of the slaves. . . [594] The annual expenses of the family are said to have been about four or five thousand dollars. The value of the net hire of the slaves is computed at about the same. The probability is, that the expenses were greater, and the profits less, than estimated."

Donovan v. Pitcher, 53 Ala. 411, December 1875. "The appellees are children of William Pitcher and his wife Pherady. William Pitcher . . had been a slave, permitted by his master to go at large, retain and dispose of his earnings, to acquire property, make contracts, and in all

respects to conduct himself as a free man. In 1851, with the knowledge of, and without dissent from his master, he . . went to Ohio, remaining there until 1854, . . returned to Alabama, remained until 1857, and then returned to Ohio, and died there in 1859. . . Pherady was . . born in North Carolina, . . purchased by her father, a free man of color, and brought to Alabama. She was permitted . . to accompany her husband to Ohio, where she has since lived. . . William, in 1854, purchased of . . [412] Cleveland the premises in controversy . . widow sold [in 1859] . . to . . Donovan, and subsequently a conveyance . . was made directly to appellant by . . Cleveland."

Held: [414] "The capacity of the appellees to take the premises . . by descent must be determined by the law as it existed in 1859. . . [416] The law[1] . . prohibited them from acquiring a residence here. . . It remained on the statute book for more than thirty years, was born of a necessity generated by the continued unconstitutional assault from abroad on the domestic institutions of the State, and contributed to preserve its peace and order. . . [417] it would have been an absurdity to cast on the appellees the descent . . and yet have said, if you come to hold . . it is at the peril of becoming felons" [Judge, J.]

Nelson v. Beck, 54 Ala. 329, December 1875. [330] "the slaves . . continued on the plantation . . until freed by the results of the war in 1865."

[1] Act of 1832, incorporated in the Code of 1852, sects. 1033-1044.

MISSISSIPPI

INTRODUCTION

I.

The Mississippi constitution of 1832 contained the following paragraph: "The introduction of slaves into this state as merchandise, or for sale, shall be prohibited . . after the first day of May, eighteen hundred and thirty-three: *Provided,* That the actual settler or settlers shall not be prohibited from purchasing slaves in any state . . and bringing them into this state for their own individual use, until . . eighteen hundred and forty-five." Various reasons were given for incorporating this prohibition in the constitution. According to Anderson, counsel for the appellees in Green *v.* Robinson,[1] Mississippi, "for some time immediately preceding the formation of the . . constitution [of 1832], had been peculiarly the theatre of the unfeeling cruelty [of slave traders] . . until all good men no doubt had become disgusted and possessed of a strong wish to exclude from the country this class of speculators, at least the spectacles which had offended their feelings, so often arising from this species of commerce." W. Yerger, counsel for the appellants in Glidewell *v.* Hite,[2] asserts that "the Southampton insurrection had just occurred, and negro traders had brought large numbers of the slaves concerned . . into the state, and it was thought that the prohibition [in the constitution] would prevent a recurrence of similar evils." Robert J. Walker of Mississippi, counsel for Groves in Groves *v.* Slaughter,[3] attributed the insertion of the prohibitory clause to the danger of permitting slave traders to introduce slaves from the border states "whom the doctrines . . of abolition have now reached," and also to the necessity of excluding "the wicked and abandoned slaves, the insurgents and malefactors, the sweepings of the jails of other states," with whom the slave traders had "inundated" Mississippi, "notwithstanding her previous restrictions, . . But even if they could repose for the character of the slaves upon the traders, there was that in the very mode . . of introduction ['transporting these slaves in chains from state to state'] which rendered nearly all . . dangerous to the tranquillity of the state. . . Such slaves would seek for vengeance, not only by their own deeds, but they would endeavour to inflame the passions of all other slaves in the state, who but for their contaminating influence would have remained useful and contented." Still another reason for the prohibition is given by Judge Harris in 1859:[4] [253] "about the period of the adoption of our new Constitution . . various causes combined to precipitate upon the Southern States, Georgia, Alabama, and Mississippi especially, a most unusual number of slaves from the border States. The idea had become prevalent that the abolition feeling . . was induc-

[1] P. 289, *infra.*
[2] *Ibid.*
[3] 15 Peters (U. S.) 449 (App. I.-LXXXVIII.).
[4] Mitchell *v.* Wells, p. 361, *infra.*

ing Virginia, Maryland, and other States, to dispose of their negroes, with a view to follow the example of some of their neighbors. . . Mississippi intended, by the prohibition . . to compel these border States to stand firm by the institution of slavery, by cutting off their market. . . It was feared that if these border States were permitted to sell us their slaves, . . *they too* would unite in the wild fanaticism of the day, and render the institution, thus reduced to a few Southern States, an easy prey to its wicked spirit. In addition . . high tariffs, and other measures of partial legislation, bearing on Southern industry; the low price of cotton, and the consequent depression in the value of slave labor, and reduction of their price, with other causes, alarmed the fears of the border States for the safety of the institution, and inclined them to sell, at tempting rates, to our people, who, by the extraordinary fertility of our soil, still found them profitable in producing cotton."

No legislative action was taken to enforce the prohibition till 1837. Meantime "slaves were imported for sale from every slave holding state in the Union." [5] Henry Clay declared, in his argument in Groves *v.* Slaughter, that "the questions to be decided in this case, involved more than three millions of dollars, due by citizens of . . Mississippi, to citizens of Virginia, Maryland, Kentucky, and other slave states." [6]

The question "whether the constitution be considered as merely directory, or as containing within itself an absolute prohibition" was held immaterial by the High Court of Errors and Appeals of Mississippi, in Green *v.* Robinson.[7] Judge Trotter declares: "In either case it fixes the policy of the state . . and renders illegal the practice designed to be suppressed." And in the later case of Glidewell *v.* Hite,[8] decided in December 1840, he asseverates: "I have seen no reason to change the opinion then expressed, but on the contrary, have been strongly confirmed in it by subsequent examination." In January 1841 [9] the same court declared that a contract to pay for negroes introduced for sale in 1836 was "absolutely void, as against public policy. It is not necessary again to go into the reasoning on the subject." But Mississippi was destined not to be the sole interpreter of her own constitution, for simultaneously with this last decision appeared that of the Supreme Court of the United States, which held the contrary. In Groves *v.* Slaughter, a suit brought by a resident of Virginia against a resident of Louisiana, founded on a note given for slaves introduced into Mississippi for sale in 1835 or 1836, the opinion of the court was, that "the construction of the constitution in [Mississippi] . . is not so fixed and settled as to exclude us from regarding it an open question. . . [500] Legislative provision is indispensable to carry into effect the object of this prohibition." [10]

[5] Holt, counsel for the appellees, in Glidewell *v.* Hite, p. 289, *infra.*

[6] P. 535, *infra.* Counsel for Rowan and Harris declared, in 1843: "Under the shelter [of the 'negro plea,'] . . the citizens of the State have been protected in the enjoyment of thousands of slaves, imported from different portions of the republic without paying for them." P. 296, *infra.*

[7] P. 289, *infra.* Reported in December 1840, but "decided at a former term."

[8] P. 289, *infra.*

[9] Cowen *v.* Boyce, p. 293, *infra.*

[10] 15 Peters (U. S.) 449 (499). Justices M'Kinley and Story dissented, [315] "both . . considering the notes sued on void."

However, the High Court of Errors and Appeals of Mississippi was not feezed by this pronouncement, but held in 1843 [11] "that the prohibitory provision in the constitution was not only binding and operative as such *per se,* but that it also established the policy of the state, and cannot be defeated either by legislative act or by contract." Like decisions were made by the High Court of Errors and Appeals in 1845 [12] and in 1846.[13] But the Supreme Court of the United States persisted in its own interpretation of the constitution of Mississippi and upheld, in 1847,[14] in 1848,[15] in 1849,[16] and in 1851,[17] its former decision in Groves *v.* Slaughter. By this time the question had become merely academic in Mississippi, so far as it concerned the introduction of slaves for sale; for the prohibitory clause in her constitution had been superseded by the amendment of 1844-1846: "The legislature shall have . . power to pass such laws regulating or prohibiting the introduction of slaves into this state, as may be deemed . . expedient." The legislature very promptly (on February 23, 1846) deemed it expedient to repeal the prohibitory act of May 13, 1837.

But in its broader implications as to the policy of Mississippi concerning emancipation in general the question of the prohibitory clause was revived in 1859,[18] in an impassioned opinion of Judge Harris, twenty-eight pages in length, from which Judge Handy dissented in twenty-four. One of the leading cases involved in the argument was that of Ross *v.* Vertner.[19] Isaac Ross, by his will made in 1834, had given his slaves the privilege of choosing [20] whether they would go to Africa, and had made the American Colonization Society his residuary legatee, [307] "provided they will agree . . to pay the expense of transporting my slaves to Africa; and . . to expend the remainder for the support . . of said slaves when there." In 1840 the High Court of Errors and Appeals upheld the decision of Chancellor Buckner, that "Mississippi has no concern with the question of manumitting slaves elsewhere than within her own limits." [21] Judge Trotter declared: "It is not the policy of Mississippi to augment her slave population. In her written constitution, she has spoken her will in unequivocal language, and the fiat there made of the future policy has been seconded by the sternest legislative sanctions." But, in spite of the fact that Ross's will was upheld,

[11] Brien *v.* Williamson, p. 295, *infra.*

[12] In the case of Hope *v.* Evans (p. 302, *infra*) the court declared: "This provision in itself amounted to a prohibition, without any legislative enactment."

[13] Collins *v.* McCargo, p. 306, and Wooten *v.* Miller, p. 308, *infra.*

[14] Rowan and Harris *v.* Runnels, p. 313, and Truly *v.* Wanzer, p. 314, *infra.*

[15] Sims *v.* Hundley, p. 317, *infra.*

[16] Sadler *v.* Hoover, p. 321, *infra,* Harris *v.* Wall, 7 Howard (U. S.) 693, and Hardeman *v.* Harris, *ibid.* 726.

[17] Justice Wayne declares, in Harris *v.* Runnels, 12 Howard (U. S.) 79: [87] "We . . now say again, that the clause in the constitution of 1832, prohibiting the introduction of slaves into the State as merchandise, was inoperative to prevent it until the legislature acted upon it. We have read all that has been officially written in opposition to that conclusion without having our confidence in its correctness at all shaken."

[18] Mitchell *v.* Wells, p. 360, *infra.*

[19] P. 290, *infra.*

[20] The question of their capacity to choose was not brought up.

[21] Ross *v.* Duncan, Fr. Miss. Ch. 587 (602).

his executor, Wade, to whom the other executors had resigned the superintendence of the estate, refused to carry out "the benevolent intention" of Ross. Accordingly, the American Colonization Society filed a bill in November 1842 praying for the appointment of a receiver and "that the court compel a full . . execution of the trusts created by the will." The prayer was granted by the chancellor, and his decree was affirmed by the High Court of Errors and Appeals in 1846,[22] though it was [697] "insisted that this society is prohibited by its charter from . . holding property except for one purpose, that 'of colonizing with their own consent upon the coast of Africa, the free people of color residing in the United States.'" The court held that, though the slaves "are not now free, . . they have an inchoate right to freedom. As soon as they are taken beyond the limits of this state that right is so far consummated that by the terms of the charter they may be transported and colonized." The will of James Leech, which also came up to the High Court of Errors and Appeals in 1846,[23] and which provided that "his negro woman . . and her four children . . should be set free, and sent to . . Indiana or Liberia, whichever they might choose," was also held valid on the ground of an inchoate right to freedom. Judge Clayton declares: [98] "The mere collocation of words,[24] if their meaning be the same, cannot vary their construction. . . [99] The right to freedom under the will is inchoate, and becomes complete, when the subjects of it are removed."

"At the earliest period, after the announcement of . . [the] opinion [in Ross *v.* Vertner], . . and in express reference to [it], . . the legislature declared *anew* the public policy," according to Judge Harris,[25] "by the Act of 26th February, 1842."[26] That act provided that thereafter it should not be lawful, "by last will . . to direct that any slave . . shall be removed from this state for the purpose of emancipation elsewhere;" Judge Harris, in delivering the opinion of the court in Mitchell *v.* Wells in 1859,[27] repudiates the conclusion drawn by the court in 1840, [255] "that our policy only looked to the prevention of the increase of free negroes in our State, and was not opposed to emancipation generally; . . [258] it *now is* and *ever has been,* the policy of Mississippi . . to prevent emancipation generally of Mississippi slaves. . . [261] The laws of other States cannot confer *rights* in this State in opposition to our policy. . . [263] comity is terminated by Ohio, in the very act of degrading herself . . by the offensive association" with free negroes. Accordingly Nancy Wells, a slave who had been taken by her white father to Ohio in 1846 and "domiciliated" there, was denied the right "to acquire, hold, [or] sue for" the watch, bed and money bequeathed to her

[22] Wade *v.* American Colonization Society, p. 309, *infra.*

[23] Leech *v.* Cooley, p. 305, *infra.*

[24] The "collocation" was held material in Georgia. See introduction to the Georgia cases. Judge Harris declared in 1859: "I should also differ with the court in the construction of the language . . by the *rule of inversion* applied to it, were that a question before me;" Mitchell *v.* Wells, 37 Miss. 235 (243).

[25] *Ibid.* 255.

[26] How. and Hutch. 539, sect. 11.

[27] P. 360, *infra.*

by her father in Mississippi,[28] Judge Handy "dissenting widely from the opinion of the majority of the court." He declares that [270] "the statute of 1842 prohibits emancipation only *by wills*, . . [271] The mischief plainly contemplated . . was the manumission of slaves held in this State, by will, to take effect out of the State. That was the extent of the policy of prohibiting emancipation, declared by the act, . . [285] according to the doctrine here asserted by the majority of the court, . . the inhabitant of one of the States has . . less means of redress of a wrong against a citizen of another of the States, than the subject of Great Britain, France, or Russia would have, . . such a theory . . proves the union . . to be a . . miserable failure. . . [286] Whilst the confederacy continues, we cannot justify ourselves . . in violating its . . principles, because other States have . . been false to their . . obligations. It may justify us in dissolving the compact, but not in violating our obligations whilst it continues." Judge Handy's views prevailed in 1871.[29]

The High Court of Errors and Appeals of Mississippi held in 1867[30] that the constitutional convention of August 1865 abolished slavery within the state; but this decision was overruled in 1870,[31] the court holding that "freedom is personal to each particular slave . . a question of fact in the individual case or as to localities." This decision was followed in 1872,[32] when the court held that, even though Cowan's plantation was, at his death in April 1864, "not inside the picket lines of either of the forces," freedom had "long before" come permanently to his slaves, for that locality "remained subject to the general control . . of the federal authorities." Consequently his slaves had the capacity at his death to take his entire residuary estate which he had bequeathed to them, and they were "discharged of the necessity of removing to Liberia," as provided in the will; for such removal was held to be merely "a mode of giving freedom, a pre-requisite imposed" "by a prior law since abrogated."

II.

Under the constitution of 1817 and the acts of 1818 and of 1822 a Supreme Court was organized, "composed of four judges, who are also circuit riders at *nisi prius*, and each . . holds annually from ten to twelve courts of law . . without chancery jurisdiction. . . two of them . . constitute a court of errors and appeals to revise . . the decrees of the superior court of chancery" which "is composed of but one judge . . Selected on account of his great experience and learning in practice and theory . . [who] is almost constantly conversant in matters to which the judges of the courts of law are practically strangers."[33] This was "a radical defect in the judicial system of the state," according to Judge

[28] Overruling the decision in Shaw *v.* Brown, p. 354, *infra.*
[29] See Berry *v.* Alsop, p. 385, *infra.*
[30] McMath *v.* Johnson, p. 381, *infra.*
[31] Whitfield *v.* Whitfield, p. 384, *infra.*
[32] Cowan *v.* Stamps, p. 385, *infra.*

Child's opinion in 1826,[33] and was remedied by the constitution of 1832, which provided for the establishment of a High Court of Errors and Appeals, consisting of three judges, having "no jurisdiction but such as properly belongs to a court of errors and appeals." The constitution of 1869 substituted a Supreme Court, consisting also of three judges.

[33] Walk. Miss. 224.

Harry et al. v. Decker and Hopkins, Walk. Miss. 36, June 1818. Petition for freedom. " the three negroes were slaves in Virginia; . . [in 1784] they were taken by John Decker to the neighborhood of Vincennes; . . remained there . . until . . July, 1816;"

Held: [43] " the petitioners are entitled to have the verdict [in their favor] confirmed, and the motion for a new trial overruled." [39] " according to the construction of the defendants' counsel, those who were slaves at the passing of the ordinance [of 1787], must continue in the same situation." I. [37] " the treaty of cession from Virginia . . provides, that the French and Canadian inhabitants, and other settlers who profess themselves citizens of Virginia, shall . . be protected in the enjoyment of their rights " " there has been exhibited no evidence to show that the laws of Virginia were ever extended to that country . . or that Great Britain . . ever changed the laws . . existing in the province, . . I think then that it is undeniable, that the laws as they existed while it was a province of France, were the municipal laws of the country. [Under those laws, slavery was permitted.] . . [II.] [38] is the clause in the ordinance prohibiting slavery . . a violation of the treaty of cession. . . Preceding the sixth article [containing that clause], it is . . declared, that the six articles shall be considered as articles of compact, between the original states, and the people . . in said territory, . . [39] the people of the territory were parties . . [and] their condition was changed from absolute subjection ['as a provincial appendage' of Virginia], to the condition of free men, . . a valuable consideration for the concession . . in the sixth article, the privileges . . of freemen, for the freedom of their slaves, . . [III.] But it is contended, that the treaty of cession is . . not to be altered not even by the people themselves. . . the provision guaranteeing their . . rights . . is . . merely a personal benefit, and as such they have a right to dispose of it. . . [IV.] [42] If old Decker was not a party to the articles of compact, it cannot be denied but what he was, or those who claim under him were parties to the constitution of Indiana [adopted June 29, 1816]; . . Does not the first article . . declare the condition of the people of Indiana free, . . and by the 7th section IX. article . . the sixth section of the ordinance is adopted, . . [V.] But it is contended that . . the constitution . . is prospective, and to give it the meaning its language imports, would violate vested rights. . . Slavery is condemned by reason and the laws of nature. It . . can only exist, through municipal regulations, and in matters of doubt, . . courts must lean '*in favorem vitae et libertatis.*' "

State v. Jones, Walk. Miss. 83, June 1820. Jones was convicted of the murder of a slave. Clarke, J.: " The question in this case arising on motion in arrest of judgment . . is, whether in this state, murder can be committed on a slave. . . [84] In this state, the Legislature have

considered slaves as reasonable and accountable beings and it would be a stigma upon the character of the state, and a reproach to the administration of justice, if the life of a slave could be taken with impunity, or if he could be murdered in cold blood, without subjecting the offender to the highest penalty . . in vain shall we look for any law passed by the . . philanthropic legislature of this state, giving even to the master, much less to a stranger, power over the life of a slave. . . [86] shall this court, in the nineteenth century, establish a principle, too sanguinary for the code even of the Goths and Vandals, and extend to the whole community, the right to murder slaves with impunity? The motion to arrest the judgment must be overruled." "The defendant was sentenced to be hung on the 27th July 1821."

Phebe et al v. Prince, Walk. Miss. 131, December 1822. Petition for freedom. "the plaintiff . . assigns for error . . The court erred in rejecting Mrs. Duggen as an incompetent witness, because she declared she felt interested; having exchanged one of the petitioners for another negro." Held: no error. Judgment affirmed.

Texada v. Camp, Walk. Miss. 150, June 1824. [151] "Texada sold a negro to Camp for 475 dollars, . . 1821, warranted her to be sound" "Camp . . sold the negro for 325 dollars to . . White, . . negro, soon after . . died with the venereal disease. . . According to the finding of the jury, she was worthless . . on the day of warranty,"

Connell v. Lewis, Walk. Miss. 251, December 1827. In 1823 the sheriff levied on [252] "Rebecca and child, which two, sold for $500."

Farrar v. Gaillard, Walk. Miss. 269, December 1827. "November . . 1818 . . Winter agrees . . to deliver to . . Gaillard, on or before the first of February next, ten negroes [mentioned by name] . . for each . . Gaillard agrees . . to pay fifteen hundred dollars,[1] at the expiration of four years from . . delivery . . Winter obliges himself to exchange negroes . . for June, July, Spencer and Hannah, or either of them, if . . Gaillard should wish it within . . one year . . Gaillard further binds himself to treat [them] . . [270] well—the negroes to be given in exchange . . shall be of the same sex, and between fifteen and thirty-five . . to be judged good field hands by . . Conner and . . Smith," On the first of February, 1819, "Gaillard went over to Mr. Winter's and made a demand of the negroes . . Winter replied . . that there were nine of them at the gin, . . but that the tenth was runaway, and was then in Baton Rouge jail, . . but . . he would either send for him, or pay the expenses of sending . . or . . Mr. Gaillard . . might choose in his place, any negro at the Natchez landing; or . . he would purchase for him . . [271] Joe, well known in the neighborhood, as a smart and very valuable young slave. . . Gaillard . . would not"

Held: Gaillard [280] "never contracted to receive nine slaves, and an equivalent for the tenth, and the court cannot enforce such terms upon him."

[1] [278] "This cannot be construed to signify that the slaves were of equal value, and that if any one was delivered . . he should be [so] valued"

Hutchins v. Lee, Walk. Miss. 293, December 1827. "action of detinue for a runaway slave, by the original owner against the vendee at sheriff's sale."

Held: [296] "by the expiration of six months, and due publication made, during that period of the apprehension, incarceration and description [1] . . the absolute title . . (analogously to the doctrine of estrays) vested in the county. . . [297] those provisions of the statute, (which prescribe the terms of sale . .) are purely directory . . and should any of the minutiae be omitted by the sheriff, it will not invalidate the sale, but, if it sell for a less amount, on account of such omission, indemnification may be obtained upon his official responsibility."

Miller and Nelder v. Doxey, Walk. Miss. 329, December 1829. [336] "1814, . . Daniel S. Swearingen, of the then territory of Missouri—sent his agent Mr. Bird, . . negro man . . Stephen, to New Orleans for sale. . . March 1814 . . sold to Pearse and Nelder, for . . 425 dollars, . . in the winter of 1814-15, the slave escaped . . and in attempting to reach the lines of the British army, then encamped below that city, was intercepted by the American troops under the command of general Jackson and confined to labor at the breastworks erecting by order of that officer, for the defence of the town. . . [Thence he] was taken by . . a deserter from the army . . and conveyed to the neighborhood of Natchez, who . . sold him to . . Miller . . for $367.50: shortly after . . Stephen, being found at the landing below . . Natchez, passing as a free man, by the name of William, was hired by . . Doxey . . as a boat hand . . to . . New Orleans—at this latter place he was reclaimed by . . Nelder, . . October 1815, an action of trover was instituted by . . Miller, against . . Doxey, for the conversion . . 1821, recovered a verdict and judgment for . . 1000 dollars. . . the supreme court . . on the law side . . affirmed. . . [Doxey] filed [a bill] in the superior court of chancery, praying relief against the judgment" [332] "The Chancellor decreed a perpetual injunction . . Miller appealed" Decree reversed and injunction dissolved. Child, J., dissented.

Fowler v. Austin, 1 How. Miss. 156, July 1834. On March 15, 1828, an agreement was made that Austin "would take charge of four good hands of [Fowler] . . and would make a fifth hand on . . [Fowler's] plantation . . [Fowler] promised . . to find him sufficient support for one hearty man during the year" [157] "a house for him to live in, and give . . [Austin] one-fifth part of everything that should be made on the plantation, during . . 1828, and also . . give the cotton free of toll." Austin also agreed that his two sons should help to make the crop.

Byrd v. State, 1 How. Miss. 163, July 1834. [164] "Byrd, a free person of color, was indicted . . as an accessory to a slave . . in the murder" of his master. [165] "Four of the jurors tendered . . declaring . . that they were neither householders nor freeholders, the counsel for the defendant objected to them . . overruled" Reversed. A change of *venue*

[1] Rev. Code 376-377.

was had and the new trial also resulted in a conviction. Judgment affirmed.[1]

Penrice v. Cocks, 1 How. Miss. 227, January 1835. "Levied [in 1832] . . on . . Maria, Eliza and her child, estimated at 580 dollars, 17 and a-half cents,"

Taylor v. Matchell, 1 How. Miss. 596, January 1837. "in 1827, he bought . . a negro man . . for . . 650 dollars,"

Fisher v. Allen, 2 How. Miss. 611,[2] January 1837. [615] "the claimant, and her mother, and the family are Indians of the Chickasaw tribe . . the property in question [a negro boy] was claimed by virtue of a deed of gift executed [in 1829] by the mother . . by which she gave separate property to ten of her children,"

Williams v. Harris, 2 How. Miss. 627, January 1837. "ten negroes . . purchased [in 1833] . . for 3580 dollars; . . That one . . was unsound . . though valued in said sale at 1100 dollars"

Hinds v. Brazealle, 2 How. Miss. 837, January 1838. [841] "Brazealle . . in . . 1826 . . took with him to . . Ohio, a negro woman and her son, John Munroe Brazealle, . . executed . . deed of emancipation . . and returned [immediately] with the negroes to his residence . . By his will executed after the deed, he . . declared his intention to ratify it, and devised his property to the said John Munroe, acknowledging him to be his son."

Held: [842] "No state is bound to recognize . . a contract made elsewhere, which would . . exhibit to the citizens an example pernicious and detestable. . . [843] the contract had its origin in an offence against morality, . . But above all, it seems to have been planned . . with a fixed design to evade the rigor of the laws of this state. . . As . . the validity of the deed must depend upon the laws of this state, . . John Munroe and his mother, are still slaves, . . They have not acquired a right to their freedom under the will; for, even if the clause in the will were sufficient . . their emancipation has not been consummated by an act of the legislature.[3] . . John Munroe being a slave, cannot take the property as devisee; and I apprehend, it is equally clear, that it cannot be held in trust for him." [Sharkey, C. J.]

Edwards v. Williams, 2 How. Miss. 846, January 1838. "action of trespass brought to recover . . 1200 dollars for shooting a negro man slave."

Ingraham and Baker v. Russell, 3 How. Miss. 304, January 1839. "The action was covenant for a false warranty in the sale of three negroes, the price of which was 2550 dollars, and the amount of the verdict, 2200 dollars. . . [305] that the small pox was in Vicksburg, at the time the negroes were purchased by Russell, . . 19th of December." "Hinson had ran away two or three days afterwards, and was out a day

[1] Same *v.* same, 1 How. Miss. 247.

[2] The first two volumes of Howard's Mississippi Reports are paged consecutively, as if two parts of one volume.

[3] Rev. Code 385, sect. 75.

or two. That he was taken sick a few days after he was bought, and that on the day he went off, he was a fine looking fellow worth nine hundred dollars." [304] " Doctor Smith . . on the 7th of January, 1836, . . was called in . . found him laboring under an attack of small pox, . . Doctor Barnett . . visited the same negro about the 12th or 13th . . [305] he could not say whether he had been infected . . more than eighteen or twenty days . . He also spoke of another boy named Anderson, and thought he was evidently idiotic. . . was subject to fits, though he had the appearance of being ordinarily healthy. . . no other case of small pox in the neighborhood, . . Anderson was exhibited to the jury." Held: " the damages assessed by the jury were certainly greater than justice demanded."

Vick's Executor v. M'Daniel, 3 How. Miss. 337, January 1839. "John Vick died without children . . by his will, he emancipated . . [three] slaves " [339] " the intention of the testator, as clearly and emphatically expressed, was to emancipate the slaves . . and have them transported, either to . . Ohio or Indiana." [337] " It was admitted, that the direction of the will with regard to the emancipation . . was invalid,"

Held: the testator's [341] " intention is defeated by the operation of our fundamental law, and the settled policy of the state, . . [The slaves are] thrown into the residue." [Trotter, J.]

Friar v. State, 3 How. Miss. 422, January 1839. Friar was charged with the crime of negro stealing and convicted. Judgment affirmed.

Peter (a slave) v. State, 3 How. Miss. 433, January 1839. "an indictment for murder, . . the prisoner, at the time of making the confessions, was in custody, and surrounded by an exasperated crowd, . . [434] The witness simply told him to tell all he knew . . He then, without any compulsion, or any promise, made his statements." It was held that the confessions were properly admitted; but the judgment of the court below was reversed because the name of a prosecutor was not endorsed upon the indictment, [434] " and, as the indictment is merely defective in point of form, and affords *prima facie* evidence of the guilt of the prisoner, he must be remanded for further proceedings." [Trotter, J.]

Kinley v. Fitzpatrick, 4 How. Miss. 59, December 1839. Bill of sale: " Received . . $2,200 in full payment of . . Sam . . about 27 . . James aged about thirteen, sound in mind and body, and slaves for life. And I . . warrant the title " The defendant's counsel objected to the reading of the bill of sale " on the ground, that the same did not contain a warranty of soundness in body, . . sustained " Reversed.

Tewksbury v. Tewksbury, 4 How. Miss. 109, December 1839. Bill for a divorce. A witness [110] " stated that he saw defendant in the company of a negro woman on one night."

McMurran v. Soria, 4 How. Miss. 154, December 1839. " January was the property of . . Ball . . [who] resided in . . Louisiana . . at . . his death," His widow married McKnight who sold the slave in Missis-

sippi. [155] "After the sale . . the negro ran away and returned to Louisiana, and was detained by the heirs of Ball."

Mitchell v. Sherman, Fr. Miss. Ch. 120, 1839-1842. "The bill . . charges that . . [121] three sections of land [were] located for Beckey Locklier . . of the Chickasaw tribe, as her reserve under the treaty; that . . [she] died, and . . Eli Locklier, a negro, who called . . himself . . [her] husband . . executed his deed, purporting to convey [the land] . . 1836, . . that . . Beckey . . left five children, three by Locklier and two by her former husband, an Indian . . that at the death of . . Beckey . . said lands descended, under the 6th article of the treaty of Dancing Rabbit creek, to the husband and children . . in case the husband was an Indian; and, by the 7th article . . if the husband was a white man, absolutely in the children; and in case the husband was a negro, no title rested in him; . . Respondent . . [122] does not admit . . Locklier to be a negro, but was a white man, resident in the nation"

Briscoe v. Thompson, Fr. Miss. Ch. 155, 1839-1842. "30th . . April, 1833, . . Fisher, of Virginia, sold to . . Hughes, of Mississippi, a lot of slaves; and on the following day Hughes sold a part to . . Thompson, and received a note . . dated April 30th, . . for . . eight thousand dollars."

Kent v. Allbritain, 4 How. Miss. 317, January 1840. [318] "Hire was allowed at the rate of $100 from . . 1830, to . . 1838."

McRea v. Walker, 4 How. Miss. 455, January 1840. [456] "the complainant has averred that this is a family slave, and that no compensation in damages merely would be an adequate relief." The chancellor dismissed his bill, praying for a specific delivery of the slave.

Decree reversed and the cause remanded: "This is an indulgence which has long been extended to the claims of attachment which may have grown up between the slave and his owner." [Trotter, J.]

Brock v. Luckett, 4 How. Miss. 459, January 1840. [466] "proposed to exchange with his son . . a negro he had owned, who had formed a connection with a free negro, on the ground that his son was young and could better keep off the free negro."

Cook v. Bay, 4 How. Miss. 485, January 1840. [500] "high price of slaves in 1836 . . compared to their price in 1827."

Rentfrow v. Shaw, 4 How. Miss. 651, January 1840. "Barber had sold . . Shaw a negro man, named Scott, on the 14th of November, 1836, for . . $1,100, . . [652] warranting said negro to be about 27 . . sensible, sound and healthy, . . physician . . was called in . . a short time after . . Scott . . was consumptive . . incurable . . that he would not have such a slave." "some time in the spring or summer of . . 1837, . . Shaw sold Scott for a tract of land . . worth about $400; . . [653] Moore . . said that . . Moseley [a negro trader] . . about . . October, 1836, offered to sell . . Scott to him, as an unsound negro; . . and informed witness that Scott was diseased with asthma. . . offered to sell . . for 800 dollars,

. . refused; . . then offered to take 700 dollars . . and permit witness to take him on trial, which witness refused, not wishing to purchase a diseased slave."

Daingerfield v. State, 4 How. Miss. 658, January 1840. "Jones was presented by the grand jury, for stealing a negro woman . . and her child . . of the value of $1200, . . admitted to bail, . . was called to appear . . but wholly failed to do so,"

Overaker v. State, 4 S. and M. 738, January 1840. [740] "a presentment . . charging that . . grocer . . 1837, did sell and give to . . slaves, naming their owners, spirituous liquors, without the permission of their master,"

Green v. Robinson, 5 How. Miss. 80, December 1840.[1] "the consideration of the note sued on, was slaves imported into the state, since 1st May, 1833, for the purpose of sale, and without the requisites required by the act of 1822." Anderson, counsel for the appellees: [90] "I do not attempt . . to prove the wide differences between a slave holder and a slave trader; such an attempt before this court, who are slave holders, I would consider insulting to their feelings. Mississippi, for some time immediately preceding the formation of the late constitution, had been peculiarly the theatre of the exhibitions of the unfeeling cruelty of the latter class . . until all good men no doubt had become disgusted and possessed of a strong wish to exclude from the country this class of speculators, at least the spectacles which had offended their feelings, so often arising from this species of commerce."

Held: [101] "immaterial . . whether the constitution be considered as merely directory, or as containing within itself an absolute prohibition. In either case it fixes the policy of the state . . and renders illegal the practice designed to be suppressed." [Trotter, J.]

Glidewell v. Hite, 5 How. Miss. 110, December 1840. "Hite and Fitzpatrick sold to Glidewell and Griffin . . land, together with a number of slaves, executed their bond, dated 20th March, 1837, . . An action of debt . . on the bond, . . verdict . . for Hite and Fitzpatrick, . . Complainants exhibited their bill in chancery praying for a perpetual injunction upon this judgment, . . That the slaves had been introduced . . as merchandize, since May, 1833, . . [111] granted by a circuit judge . . dissolved by the chancellor, . . the present appeal was prosecuted." W. Yerger, for the appellants: "the introduction and sale of slaves as merchandise, or in common language, 'negro-stealing' was intended to be prohibited by the . . constitution. . . the Southampton insurrection had just occurred, and negro traders had brought large numbers of the slaves concerned . . into the state, and it was thought that the prohibition would prevent a recurrence of similar evils. . . [112] Any person therefore, who did introduce slaves . . as merchandise, and . . did sell them, . . has made a contract . . forbidden by the laws and policy of the state, . . manifest from the constitution . . and also by the act of 1837, passed

[1] [109 n.] "decided at a former term, but omitted in the reported decisions."

a few days after this sale" Holt, for the appellees: [141] "That the legislature, courts, and people of Mississippi, considered the prohibition in the constitution as insufficient without further legislation, is well known, and under this construction, which every where obtained, slaves were imported for sale from every slave holding state in the Union."

Decree affirmed: [144] "This cause involves the same questions that were decided . . in . . Green *v.* . . . Robinson. . . I have seen no reason to change the opinion then expressed, but . . have been strongly confirmed in it by subsequent examination." [Trotter, J.]

Jane B. Ross et al. v. Vertner et al., 5 How. Miss. 305, December 1840. "The appellants, as heirs of Isaac Ross, and Margaret A. Reed, filed their bills [1] in chancery, to set aside certain bequests of the testator and testatrix," Will of Isaac Ross, dated August 26, 1834: "I give . . to my grand daughter, Adelaide Wade, . . ten thousand dollars . . and . . my . . cook, named Grace, and all her children . . unless . . Grace should elect, of her own free will . . to go to Africa, . . [306] I also . . desire that my grand daughter . . shall . . maintain comfortably during the remainder of their lives, . . Hannibal and his three sisters . . and I . . bequeath to Hannibal . . one hundred dollars annually during . . life, and to his . . sisters . . fifty dollars each . . annually . . and . . if . . Hannibal and his . . sisters . . should elect to go to Africa . . they shall be permitted to do so, . . [but] if they do . . the legacies . . to them, are to be . . void. . . I . . desire that . . Enoch and his wife Merrilla and her children be, within twelve months after my decease, conveyed to such free state as Enoch may elect, free of expense to them, and . . there legally manumitted, and . . five hundred silver dollars paid to . . Enoch, . . [but] if . . Enoch should elect to go to Africa, he with . . Merrilla and her children, shall be sent there . . and . . the . . five hundred silver dollars be paid him . . at the time of his departure. . . it is my will . . that . . within ten days after the complete finishing of the crop, or if at . . my decease the crop shall have just been gathered . . then within ten days thereafter, all my slaves of . . twenty-one years and upwards, except [those above mentioned] . . [307] be called together . . and the provisions of this will . . explained . . and the question put to them whether they will go to Africa . . If a majority . . shall elect to go . . it is my will . . that *all* of those thus called together, and all my other slaves, excepting always Grace [*et al.*] . . shall be sent to Africa, under the . . superintendence of the American Colonization Society. And . . in that event, that the entire balance of my estate . . excepting always Grace [*et al.*] . . be exposed to sale . . that the proceeds . . together with any money . . on hand . . and any . . owing to me, after deducting . . legacies . . and . . expenses . . be paid over to the American Colonization Society, provided they will agree . . to pay the expense of transporting my slaves to Africa; and . . to expend the remainder for the support . . when there, . . If, however, . . a majority . . should refuse

[1] Against Vertner *et al.*, executors of Isaac Ross, and against Butler and Duncan, executors of Margaret A. Reed.

to go . . all of my slaves, always excepting Grace [*et al.*] . . [308] shall be exposed to sale, at public auction, . . in such lots as . . to command the highest prices, and with this . . most express . . provision, that the families are not to be separated. . . in this event, it is my will . . that the proceeds . . together with any money . . on hand . . and any . . owing to me, after deducting . . legacies . . and . . expenses, be paid . . to the American Colonization Society, . . to bring in not less than six per cent. . . which interest is to be applied . . to the establishment and support of one single . . institution of learning in Liberia. . . for . . one hundred years . . at the expiration of which time I desire that all that remains may be given up to any government that may be in existence . . in Liberia, to be appropriated . . in the same manner . . But if . . there should be no government in Liberia, then . . to the government . . of Mississippi, to be . . appropriated to the establishment or support of some one institution of learning within the state," Codicil, dated October 17, 1834: [309] "if . . Grace shall elect to go to Africa with her children, it is my will . . that . . two thousand dollars be paid . . to my granddaughter . . in addition to the . . ten thousand" Codicil, dated February 24, 1835: "I now desire that those who wish to go to Africa, be allowed the privilege . . and those who elect to remain, be suffered to remain, and be sold . . [310] and the proceeds . . applied . . for the benefit of those who . . go to Africa. . . that the privilege of electing to go . . be withheld from . . [five] negroes I bought . . in 1833 and 1834. And from Jeffrey the son of Harry . . that if Hannibal elect to go . . he shall be paid at the time he starts, . . five hundred silver dollars. And . . if my man Dunke, elects to go . . he shall also receive at . . his departure, . . five hundred silver dollars." Codicil, dated March 16, 1835: "it is my will . . that my daughter, Margaret A. Reed, have the uncontrolled use . . of . . all the yard and house servants, for . . her . . life, or until she shall think proper . . to relinquish [them.] . . And . . that the sale of my estate . . be postponed until after the death or relinquishment" Codicil, dated June 17, 1835: [311] "I . . revoke . . that portion . . relating to . . Enoch and . . Merrilla and her children; and I do now will that . . Enoch, be absolutely sold . . that Merrilla and her children be . . allowed a choice between going to Liberia, or . . being sold" Statement signed January 27, 1836, and attested by three witnesses: "We [Margaret A. Reed and Isaac R. Wade] . . certify that during the last illness of captain Isaac Ross, . . about three or four days previous to his death [on January 19, 1836], he called us to his couch, and stated . . that in the event of . . Enoch, serving Mrs. Margaret A. Reed, faithfully . . during her life, . . that portion of the codicil . . which deprived Enoch . . should be . . void," [312] "Margaret A. Reed died before the commencement of this suit, . . [313] [Her] will . . [was] published on the 14th June, 1838, in which all her estate . . was devised and bequeathed to appellees [Butler and Duncan]. Also, a codicil thereto, published . . September, 1838, in which was devised to said appellees, all . . [her] interest . . in . . the estate of her father . . in case . . [his] will . . should be declared invalid." [312] "Appellants then filed their bill in the court

of chancery, as sole remaining heirs of Isaac Ross, to set aside the principal devises and bequests in his will, and to enjoin his executors from proceeding further . . [313] The bill . . avers . . that all the [one hundred and twenty-three] slaves have expressed their desire to be transported to Africa, . . a general demurrer . . By consent, a decree was entered below sustaining the demurrer, and the case now comes up upon appeal . . In the case of Mrs. Reed, the bill was filed by appellants, as [her] heirs at law . . to set aside . . [her] will . . [314] It was averred that the estate . . was given *in secret trust* that . . Butler and Duncan should convey all the . . slaves . . to Liberia, *there to remain free*. In support . . appellants exhibit . . a letter from testatrix to appellees, dated 14th June, 1838, which they say points out the secret and illegal trust. To the bill there was a general demurrer, which was sustained by the Chancellor [Robert H. Buckner], and a decree of dismissal entered,[1] from which an appeal was taken,"

Affirmed: [359] "The act of transporting them to Africa, *there to remain free,* does not seem to be an act of manumission within the meaning of the statute,[2] or its spirit or policy. . . [361] Since the opinion in this case was delivered, I have met with the case of Frazier *et al. v.* Frazier's executors,[3] . . [362] The importance of the [present] case to the parties and to the country, the zeal [4] with which the able counsel who argued it, resisted the conclusions of the court, as well as the agitation it has produced in the country, . . have induced me to adduce this superadded authority to support the judgment of the court." [Trotter, J.] See Wade *v.* American Colonization Society, p. 309, *infra.*

Martin v. Broadus, Fr. Miss. Ch. 35, 1840-1842. The complainant [38] "purchased from . . Broadus, a number of . . slaves, which were introduced by him into this state for sale, as an article of merchandise, since the first of May, 1833," Held: "If the contract in such a case is void, (and the Supreme Court [High Court of Errors and Appeals] have

[1] "Mississippi has no concern with the question of manumitting slaves elsewhere than within her own limits." Ross *v.* Duncan, Fr. Miss. Ch. 587 (602).

[2] Act of June 18, 1822, sect. 75.

[3] Vol. II. of this series, p. 359.

[4] J. B. Thrasher, counsel for appellants: [336] "So certain as the heavens afford indications of the coming storm, so certain will scenes of blood be the concomitants of such testamentary dispositions in this state. . . it is said that . . Liberia is an object worthy of all philanthropic encouragement. What! that germ whence spring the elements of discord and dissatisfaction among the slaves of the country—that nucleus that fosters insubordination and leads to insurrection—that institution from which *reverend agents,* thrust themselves among the slave population . . and proclaim the advantages . . of Liberia: for it is charged in the bill, that some such persons visited Mrs. Reed." D. Mays for appellants: [792] "Is it not part of the policy of Mississippi, to protect her citizens against fanaticism in religion, and a morbid sensibility on the subject of slave holding? And does it not war with this end to proclaim to the world, 'come here, all ye who seek the destruction of slavery, . . endeavor to disturb the consciences of our women, our old men, and others, whose sickly sensibilities are easily operated on. Impress on them . . the peril in which their souls stand if they do not disinherit their offspring by emancipating their slaves! Declare to them . . that there is no obstacle . . but may be readily removed by . . a provision, that the slaves be removed from the state; and you have virtually made that proclamation, and thrown open the doors to the abolitionists, and invited them to . . revel in the destruction of the slave property of the state."

so declared,) it would seem to follow . . that the title to the negroes at least remained in the seller." [Buckner, Ch.]

Moseby v. Williams, 5 How. Miss. 520, January 1841. "1836 . . Williams moved Tucker and his family and the negro [from Tennessee] to Marshall county, in this state,"

Davidson v. Moss, 5 How. Miss. 673, January 1841. [674] "Complainant averred, that . . Lewis and Rose . . were both unsound at the time of the sale, and . . were not worth their support. That Lewis died crazy,"

Cowen v. Boyce, 5 How. Miss. 769, January 1841. "the negroes were introduced . . for sale . . since the 1st day of May, 1833, one of them being above fifteen . . and . . sold in 1836" *Per curiam*: "The question . . was fully discussed in . . Green *v.* Robinson,[1] . . contract . . absolutely void, as against public policy. It is not necessary again to go into the reasoning on the subject."

Carter v. Graves, 6 How. Miss. 9, December 1841. [14] "brought all the negroes ['upwards of twenty'] . . from . . South Carolina, in . . February, 1836;"

Isham (a slave) v. State, 6 How. Miss. 35, December 1841. Indictment for the murder of Welford Hoggatt. "In the progress of the trial, . . the master of Isham, was offered as a witness [to prove an alibi] . . but he was excluded . . on the ground of interest." Counsel for the prisoner: [39] "the strongest circumstantial evidence against Isham was, that his shoes and pantaloons had blood on them, . . the investigation was . . progressing, and . . a proposition had been made in his presence to buy and hang him, and some of the company were actually punishing Dick with great severity to make him confess, and his groans and prayers were distinctly heard by all . . His [Isham's] shoe being a common size, and such as were usually worn by negroes and laboring white persons, it was natural he should deny they were at home, for fear they might fit the tracks . . where Hoggatt was hid. When the shoes and pants were found, with the marks of blood . . no opportunity was given Isham to explain . . but those slight circumstances were considered by the company sufficient evidence of his guilt to justify immediate punishment; and but for the moderation of Philip Hoggatt, equally creditable to his heart and his head, no doubt the defendant would have fallen a victim to the blind fury of this excited company. A part of this same company took him . . away from his comrades and his master, . . and continuing his shackles so severely as to cramp him, and cause great pain . . he made a confession. . . There is abundant evidence . . to show that the confessions were . . the result of fear that his punishment would . . perhaps end in his destruction, unless he could say . . something to direct the attention of the multitude to some other object. . . Dick . . by accusing him, had been relieved altogether, and the whole weight of public indignation had centered on him. . . what was more natural than for him

[1] P. 289, *supra.*

to suppose that if he could satisfy them that he had done the act under the orders of his master, he would be excused, . . [40] his words were, 'you know we must do whatever our masters tell us.' . . frequently subjected to unjust and severe punishment, upon slight suspicion, it is not to be expected they will show that firmness . . when accused . . which is usually displayed by the weakest . . freeman."

Held: [42] "In prosecutions for offences, negroes are to be treated as other persons; and although the master may have had an interest in his servant, yet the servant had such an interest in the testimony of his master as will outweigh mere pecuniary considerations; nor could he be deprived of the benefit . . by the mere circumstance that, in a civil point of view, he was regarded . . as property. . . As the judgment, for this reason, must be reversed, . . not . . necessary to examine the other grounds taken." [Sharkey, C. J.]

Philbrick v. Holloway, 6 How. Miss. 91, January 1842. "The bill of sale bears date . . September, 1837. . . a physician was called in . . November, 1837. He found her afflicted with a chronic sore leg, . . He was a second time called in . . opened the ulcer . . it was necessary that it should not be permitted to heal up suddenly, and that her value was thereby depreciated one third. . . Mayes . . testified that . . 1838, the plaintiffs had proposed to sell him the negro, . . sent her on trial. He soon discovered the affliction, and refused to buy. He thought her of no value."

Peter (a slave) v. State, 6 How. Miss. 326, January 1842. "convicted . . of the murder of Samuel Harvey. The presiding judge . . having formerly been . . counsel, . . McClure, Esq. was selected, under the statutes of 1840 and 1841," Judgment reversed and a *venire de novo* awarded: "in capital cases no such substitution can take place." See same *v.* same, p. 301, *infra.*

Freeman v. Finnall, S. and M. Ch. 623, June 1842. "The bill . . stated, that Finnall was a citizen of Virginia; that, in 1834, the complainant and Finnall commenced business . . in copartnership, for the period of three years, in the purchase and sale of negroes;"

Pulliam v. Pulliam, Fr. Miss. Ch. 348, 1842. [349] "1837 . . she found the place of her residence a low, swampy wilderness . . with a miserable log shanty, far less comfortable than the log cabins of her father's slaves; . . [352] 'In 1839 he kept a yellow girl at the same place' . . [353] In December, 1839, Pulliam told witness that he was one of the Murrell gang,"

Brien v. Williamson, 7 How. Miss. 14, January 1843. "an action of assumpsit on a promissory note for twelve hundred dollars, dated . . 1836, . . for a negro man slave . . introduced into . . Mississippi, as merchandise and for sale . . 1836, . . plaintiff not being at the time an actual settler . . [15] judgment . . for the defendant."

Affirmed: "We had regarded this question as entirely settled,[1] . . [16] Since [the decisions by the High Court of Errors and Appeals] . . the same question has been made before the Supreme Court of the United States,[2] . . the contract being there held to be valid, whilst we had held it . . void. . . amongst the dissenting members [of the Supreme Court] there were some who have established for themselves imperishable monuments of judicial fame.[3] We hold the contract void . . [30] the supreme court has said that our policy was unsettled. If a . . fundamental provision in our constitution does not settle our policy, it is difficult to imagine how public policy could be settled. . . [31] we conclude that the prohibitory provision . . was not only binding . . *per se,* but that it also established the policy of the state, and cannot be defeated either by legislative act or by contract." [Sharkey, C. J.]

Hamberlin v. Terry, 7 How. Miss. 143, January 1843. [144] "By his will, the testator [John Pickens] directed that three of his slaves should be emancipated, and that his executor should appropriate five hundred dollars for that purpose. . . that each of these slaves should be paid five hundred dollars, and sixty acres of land, to be laid out from the west end of the tract on which he then resided." [143] "The appellants . . charged fraud on the part of the executor; that he well knew the insanity of the testator, and concealed the same, and that he repaired to the probate court and secretly procured the probate . . [144] They . . prayed that the probate . . might be annulled . . demurrer . . sustained"[4] Affirmed: [149] "courts of equity cannot interfere to set aside a will . . Such questions . . belong to the probate courts"

Emanuel v. Norcum, 7 How. Miss. 150, January 1843. Sharkey, C. J.: [154] "an administrator would be bound to take care of the health of the negroes by procuring medicines and medical aid, if necessary, although the statute does not expressly authorize these things."

Peck v. Webber, 7 How. Miss. 658, January 1843. "ten slaves, now in the jail . . levied on"

Suzett v. Buckels, 7 How. Miss. 663, January 1843. "action . . in the circuit court of Franklin county, for unlawfully enticing away and harboring a . . slave, . . who had absconded . . in January, 1838, and was recovered . . in August of the same year, in Franklin county. . . seen . . on the defendant's plantation"

Rowan and Harris v. Adams, S. and M. Ch. 45, January 1843. Rowan and Harris introduced negroes after May 1, 1833, as merchandise, and sold them to Runnells, who assigned to them, in payment, the notes of Adams, payable to Runnells, secured by a mortgage on land.

[1] Green *v.* Robinson, and Glidewell *v.* Hite, p. 289, *supra.*
[2] Groves *v.* Slaughter, p. , *infra.*
[3] Story and M'Kinley.
[4] Chancellor Buckner: "There is one ground taken by the bill . . which demands notice. That provision . . which seeks to emancipate some slaves and gives them a pecuniary legacy, is clearly void, . . a residuary bequest to . . Gupton . . excludes the complainants from all claim whatever, under the void bequest." Same *v.* same, S. and M. Ch. 591.

[49] "Runnells resists the foreclosure of the mortgage, by answer and cross-bill," [46] "he protests against a decree in favor of complainants, on the ground . . that the consideration of the transfer . . of the notes was the sale of slaves . . introduced as merchandise, since 1st May, 1833. . . prays that his assignment of the notes may be vacated, and the notes . . redelivered to him." Counsel for complainants: [47] "Universal as is the 'negro plea,' and fondly as it is hugged to the heart of the moral code of Mississippi, it has never been regarded as broad enough to cover the ground assumed in this case. Under the shelter of that plea, the citizens of the State have been protected in the enjoyment of thousands of slaves, imported from different portions of the republic without paying for them. But . . it has never been supposed that it would enable the purchaser, who had paid for the slaves, to recover back the purchase-money, and hold the slaves, and the earnings of their labor also;"

Held: [49] "The illegality of the consideration for the transfer does not invalidate the mortgage, with which it has no connection." See Adams *v.* Rowan and Harris, p. 312, and Rowan and Harris *v.* Runnells, p. 313, *infra.*

Palmer v. Cross, 1 S. and M. 48, July 1843. [64] "In . . 1808, Ann Michie, of . . Virginia, . . settled upon her daughter . . certain slaves . . [65] 1835 . . [the daughter] removed [with the slaves] to Tennessee, and in 1836 to . . this State."

Mount v. Harris, 1 S. and M. 185, July 1843. [191] "On or before the first day of January next, I promise to pay . . Gallaway $900, or return him a negro girl, Matilda. March 17, 1840."

Baines v. McGee, 1 S. and M. 208, July 1843. [217] "a negro man . . May, 1838, . . [was] sold . . at public sale, and . . McGee, the administrator, became the purchaser at $1601, . . on a credit of twelve months. McGee afterwards sold . . to Matthews . . and Matthews sold to . . Ford."

Murphy v. Clark, 1 S. and M. 221, July 1843. [232] "The great objection, urged to the exercise of jurisdiction by the chancery court, is, that . . the *pretium affectionis* is not set forth." Held: [236] "from the peculiar character of slave property, a bill will, in all cases, lie to recover them in specie,[1] unless, perhaps, . . [236] [when] the owner has treated them as merchandise, and bought with a view to sell again." [Clayton, J.]

Rowley v. Cummings, 1 S. and M. 340, July 1843. [342] "the attachment was levied on a female slave, and her child, and they were put in jail."

Munn v. Perkins, 1 S. and M. 412, July 1843. [413] "Barr . . proved that in March, 1836, he was overseer for . . Meek, . . that Perkins . . brought an order . . from Meek, . . 'Mr. Little or Mr. Barr, will de-

[1] Following the Tennessee decisions.

liver to William P. Perkins or order, one of my two girls, giving him choice—either Lucinda or Charlotte.'" [416] "Perkins . . examined both the girls . . and was informed by the witness that they both had bad colds, and . . Lucinda had a difficulty of breathing; . . Perkins . . selected . . Lucinda;" "Meek . . had received . . in exchange . . a girl of the name of Mary, and . . had sold her [before his return home] for $1500, . . he had paid Perkins $200 boot, in the exchange" [414] "That some short time after this, the witness . . went to live with Perkins, as overseer. . . he found the girl engaged in scraping cotton in the field . . still afflicted with a bad cold and difficulty of breathing. Soon after this she was . . put to doing light work about the house; that the services . . were worth her board and clothes the first eighteen months; that, after that time, she was an expense . . that she continued to get worse . . until she died [[418] 'some two or three years after the . . exchange']. That . . a short time before the girl's death, Perkins . . wanted Meek to take her back; that Meek replied . . that he . . was not in a condition to take care of her, and that he would pay all expenses, and if the girl died, she should be his loss. Perkins' family physician . . [415] discovered that she was laboring under a confirmed case of consumption, . . That his bill . . was about $100; . . a witness for the defendant below, proved that the woman, Mary, was not very saleable, because she was too white;" [421] "There have been three concurring verdicts in favor" of Perkins, the plaintiff. Judgment affirmed.

Comstock v. Rayford, 1 S. and M. 423, July 1843. [424] "that . . Chilton, was the owner of the seven . . slaves . . that when the executions . . came to the hands of the sheriff . . Chilton 'secretly . . removed and run them off' [from Alabama] into . . this State,"

Luckey v. Dykes, 2 S. and M. 60, July 1843. [66] "William Johnson . . bequeaths 'to each . . of his . . heirs one dollar a-piece.' To his wife, he bequeaths 'all his negroes as long as she lives; at her death all . . to be . . set free.'" [62] "my executors to be paid for their trouble about my slaves. As I particularly charge my executors to have my slaves attended to, have their freedom, and settled on the land left to them, except they should wish to go to some other state; in that case, sell their land, and see them removed and settled;" [69] "Its understood, at my wife's death my negro woman Winny draws twenty-five dollars per year out of the sales of my property, to go to any person she should make choice of living with," Clayton, J.: [68] "It is admitted on all hands that this bequest ['that his slaves . . be emancipated'] is void, because in opposition to our state policy."

Pleasants v. Glasscock, S. and M. Ch. 17, December 1843. [21] "delivered . . six of the negroes . . to one of her husband's relatives, who carried them off to Texas."

Stacy v. Barker, S. and M. Ch. 112, December 1843. "Lee departed this life in Mississippi, in 1836, leaving a large estate . . in Louisiana, as also some estate in Mississippi. . . a sale of a certain portion . . was

made . . March, 1837, by virtue of an order of the Parish Court of Concordia [in Louisiana]; . . described as belonging to the succession of . . Lee, . . and to the community therefore existing between him and his wife . . residing in said parish; . . Barker [purchased] . . Ephraim, [at] $1500; Peter, $1960; Jim, $1625; David, $1125; Washington, $1785; Oscar, $1915; Charles, $1645; Jerry Kendrick, $625, . . [113] '7 per cent. . . cash on the day of sale—the balance in four equal annual instalments;' . . that Barker . . removed the slaves . . into . . Mississippi . . is insolvent, and has gone to parts unknown; . . [114] Complainant [Lee's administrator, appointed in 1840,] charges . . That said slaves would not now sell for half the sum due,"

Steger v. Bush, S. and M. Ch. 172, December 1843. [175] "Some four or five months after . . the judgment [[177] 'with a stay of six months'], the witness was at the house of Andrews; he then had some twenty-five negroes: some time after, he . . found no negroes: he understood they had been run off."

Speight v. Brock, Fr. Miss. Ch. 389, 1843. "one of the negroes became sick, and the testator nursed and furnished medicine . . for about one year, which together with the physician's bill was worth $100,"

Newman v. Meek, Fr. Miss. Ch. 441, 1843. "1835, . . Newman purchased of Meek forty . . slaves, for thirty eight thousand dollars, . . Newman was to pay . . in three instalments," They were sold at public sale in 1839. A witness testified [452] "that the negroes were in bad condition and badly clothed; that their condition was such as to endanger their health; . . Andy and Grace were sold as they run; that they afterwards came back, but run off again; . . [454] that good negro men were selling for about eight hundred dollars or a thousand, and women from six to eight hundred."

Sevier v. Ross, Fr. Miss. Ch. 519, 1843. Chancellor Buckner: [531] "as a general rule . . where the personal property of a third person is seized under an execution, he will be left to his remedy at law. But the importance which has been attached to slave property, in the slave-holding states, has induced the establishment of a different rule in regard to that species of personal property, even without any allegation of peculiar . . value;"

Swisher v. Fitch, 1 S. and M. 541, January 1844. "May, 1840, he employed . . Swisher to oversee for him at . . nine hundred dollars per year,"

Noonan v. State, 1 S. and M. 562, January 1844. [563] "the witness tasted the liquor and asked the negro where he got it, who replied that Noonan let him have it, which Noonan denied, looking down, however, and coloring in the face. . . Hoyle . . said that Noonan did let the negro . . have the whiskey."

McCoy v. Rives, 1 S. and M. 592, January 1844. "Levied on one negro boy . . about sixteen . . and one boy . . about nine . . and one girl . . about eight . . 1840."

Shattuck v. Young, 2 S. and M. 30, January 1844. Will of Frances Beazley: [31] "The very faithful and meritorious services of my negro boy Jim, I cannot consent to pass unrewarded; my will, therefore, is that . . Jim shall be forever set free, and I hereby charge my executor to set forth the said meritorious services . . with this part of my will, in a petition to the legislature . . and procure an act of emancipation . . with the least possible delay, and further that my executor take charge of . . Jim, give him the exclusive benefit of his own labor, until he can procure the passage of the said act." [34] "Seven years have elapsed since the death of the testatrix . . An application [to the legislature] . . has been made, and failed. See Journal of the House of Representatives, Session of 1839, p. 151."

Bank v. Barnes, 2 S. and M. 165, January 1844. "The . . Bank recovered judgment against . . Barnes, and . . Spencer, . . Execution issued . . 1841, which was levied on 'one pleasure carriage,' as the property of . . Spencer. Mrs. . . Spencer . . [166] states that she purchased the said carriage herself, . . that in 1840, her father . . conveyed to her, in her own right, ten negroes . . and the money paid by her . . was . . allowed her by her husband, for the hire . . and contends . . that the carriage is her separate property." J. H. Maury, counsel for appellants: [172] "to maintain . . some traces of the portraiture of an English family having a man at the head, seemingly engaged in the provinces of husband and father, the capacity of the wife to hold a separate property, is limited by the statute [1] to her property in such slaves as she may have at the time of her marriage, or may acquire afterward, together with their natural increase. . . [173] [In] the fourth section . . it is ordained, 'That the control . . and the receipt of the profits . . shall remain to the husband,'" Held: [186] "the productions of the slaves . . were the property . . of the husband."

Scott v. Peebles, 2 S. and M. 546, January 1844. "The declaration . . averred that . . the defendant . . [547] had, in . . 1840, . . said that the plaintiff 'had negro blood in him.' . . that the plaintiff's brother had mixed blood in him, and had been whipped for stealing, . . The defendant . . filed two special pleas of justification, that he had heard Buckner Lanier and Starlin Lanier . . of North Carolina, speak the words, . . and that when he repeated them, he stated his authority . . and that he did so without malice . . verdict in favor of the plaintiff for five hundred dollars." Judgment thereon affirmed.

Tunstall v. Walker, 2 S. and M. 638, January 1844. Senator Robert J. Walker [643] "went, with his family [in 1836], to Washington, leaving his slaves on . . plantation . . Mrs. Walker . . gave various directions . . particularly in regard to the comfort and supplies for the slaves, and their humane treatment, and to remove the overseer if they were otherwise treated, and procure a humane one."

[1] Act of 1839. How. and Hutch. 332, sect. 23.

Simmons v. North, 3 S. and M. 67, January 1844. "October, 1839, North purchased of . . Simmons and Co. a negro woman and child, for whom he executed his . . note for . . $1200, . . [68] The note was not paid . . and . . November, 1840, . . [they were] sold . . at public auction . . [for] $606,"

Young v. Thompson, 3 S. and M. 129, January 1844. "The declaration [averred] . . that the plaintiff [Thompson] hired to the defendant a slave, named Marsh, for . . one year, commencing . . first of April, 1837 ['at thirty-two dollars per month']; and that in consequence of the . . cruel treatment of the defendant, the slave ran off, and was lost . . On the trial, the plaintiff read the deposition of [a witness] . . that just before Christmas, in 1837, deponent heard . . defendant [say] . . he did not care to know where the negro was; . . that before the negro left, he had his knife into his breast a piece; and assigned as a reason for stabbing him, that the negro tried to keep out of his way; . . [130] that at the time the negro ran away, he would have sold for thirteen or fourteen hundred dollars in the then currency of the country; but he would not now (at the time of trial [in 1841]) sell for more than six or seven hundred dollars. . . The defendant then read . . the depositions of . . Everett . . [his] overseer . . and Chilson the superintendent . . of his mill; that . . defendant and Everett went out into the field where . . [Marsh] ought to have been at work; shortly after . . Marsh made his appearance . . defendant called him, and he attempted to run off, when the defendant drew a pistol, and told him if he did not stop he would shoot him. Marsh, however, continued to walk off until defendant . . overtook him," [Counsel for plaintiff:] [136] "seized the negro by the throat, [and struck] . . [137] Marsh on the side of his head with a cane;" Depositions of overseer and superintendent of defendant's mill: [130] "He was then tied and taken to the mill, and whipped by the defendant with a cowskin, in the presence of Everett, Chilson, and others. The whipping was not severer than is usual in such cases; no blood was drawn, nor was the boy at all injured. . . [131] when he was whipped, . . he was naked, and no wounds were visible on his person." "Deponents considered defendant a good master; he clothed and fed his negroes well, and never whipped them cruelly." About four weeks later, Marsh [133] "absconded in the night . . during Young's absence," and Edmund, Scott's slave, [131] "ran off at the same time; and they carried with them two guns" [130] "from . . Young's mill, one of which has since been found [[133] 'near one hundred miles . . from Young's residence'] . . where the negroes were . . shot at by some white persons; that Marsh had not been taken, . . [131] that a month or two afterwards, it was ascertained that . . Edmund . . was in jail in Alabama, . . brought . . home," [136] "verdict for $1000." New trial granted. *Per curiam*: [142] "The testimony shows no improper conduct on the part of Young."

Green v. Green, 3 S. and M. 256, January 1844. Will, 1826: [257] "To the 'infant his wife was then pregnant with' . . four negroes.—Lucy, Charles, Malinda, and Washington."

Hardy v. Smith, 3 S. and M. 316, November 1844. "a writ of *habeas corpus ad subjiciendum* issued upon a petition . . to recover the possession of a negro boy . . The petition alleges that . . [William and George W. Hardy] took the slave . . by force, one being armed with a gun, and the other with a knife."

Bank v. Walker, 3 S. and M. 409, November 1844. [411] "that the reason why all the negroes mentioned in the deed of mortgage were not sold on the day of sale was, that three . . [412] had run away, some . . had died, and the remainder not able to travel to . . the place of sale."

Kelly and Little v. State, 3 S. and M. 518, November 1844. [519] "indicted jointly, for the murder of . . 'a negro man, the slave of . . Kelly.' . . convicted . . of manslaughter in the first degree, and . . sentenced to confinement in the Penitentiary for seven years. . . The record . . does not show that the prisoners were present in Court pending the trial, or when the sentence was pronounced . . [521] It was proven . . that at the time of the acts charged . . both the prisoners were drunk." [528] "judgment . . reversed, without disturbing the verdict, and the cause remanded, with directions to the Court below to pronounce" a correct judgment.

Dowell v. Boyd, 3 S. and M. 592, November 1844. [603] "an action [of debt] against the defendant, to recover a large sum," [592] "The declaration . . alleged that . . 1840, the defendant was the owner . . [of] a slave . . which slave had . . stolen . . from the plaintiff $5390 . . that . . said slave was . . proceeded against, by a warrant . . issued by . . a Justice of the Peace . . on the charge of grand larceny, and . . convicted before said Justice;" Held: the master is liable for the value of the stolen property.[1]

Rankin v. Holloway, 3 S. and M. 614, November 1844. [617] "Ford . . asked him privately if he came to purchase . . he answered, that he had come for that purpose; whereupon . . Ford told him, that the slaves were not to go out of the family, but that the sale was made for the purpose of screening his son . . from the judgment of a certain debt,"

Hunter v. Talbot, 3 S. and M. 754, November 1844. "bill of sale or receipt . . 'Received of . . Chalmers, five thousand dollars . . for . . John Williams, blacksmith, aged about thirty years; also John Oliver, striker, aged about twenty-one' . . [755] the defendant [vendor] . . proved that the sale . . was made in Tennessee [in 1839], . . [756] that Chalmers . . could not pay . . that the defendant had always retained the possession of the slaves, and brought them with him to Mississippi when he moved to this State;"

Peter (a slave) v. State, 4 S. and M. 31, November 1844. "indicted for . . murder . . 1837, . . [32] Stewart testified, that he was an examining justice of the peace, when the prisoner, shortly after his arrest . . was brought before him; when the prisoner confessed that he and . . Tom, agreed to kill the overseer for Tom's master; that the deceased,

[1] How. and Hutch. 164, 165.

with a gun on his shoulder, passed through the woods . . Tom killed him, by beating him to death with his own gun; he, the prisoner, . . standing by, ready to assist . . that it was not necessary, Tom killing the deceased without difficulty. That he (the prisoner) did not know the overseer . . or . . the deceased, and did not know Tom had killed the wrong man, until informed by Tom. The witness . . informed him that he had a right to ask any questions . . but gave no other . . caution; . . that the slave was brought . . by several persons, who remained . . during the examination . . some of them armed with guns, . . part of a party who had gone to the master of the slave, had arrested the slave, and had in the prisoner's presence made preparations to hang him, if he did not confess; at which time . . [33] the prisoner had confessed to the same effect . . The prisoner was again sentenced to be hung" Judgment reversed and a *venire de novo* awarded: [39] "the confession was improperly admitted in evidence."

Bogard v. Gardley, 4 S. and M. 302, January 1845. [303] "For . . five hundred dollars, I [Blackwell] have . . sold to David S. Wyse . . Milly, thirteen years old; . . 1835." [308] "deposition of James Wyse . . that he bought the negro . . with his own money, and caused the conveyance to be made to his infant child, then some four or five years of age." [304] "that he had given to his older son one negro, and wished to do the same to the younger;" [310] "James Wyse . . was indebted . . three thousand dollars at . . the date of his purchase" He brought Milly [303] "to Marshall county, in the fall of 1840, . . and sold [her] . . in the spring of 1841, together with her infant child, born in Marshall county, . . that Milly was worth four hundred and fifty dollars, and the child one hundred and fifty, at that time; and that Milly's hire was worth forty dollars a year." Held: [310] "Such a gift [to his child] . . cannot . . be upheld to defeat a prior creditor,"

Hope v. Evans, 4 S. and M. 321, January 1845. [326] "bill filed . . by the appellant, alleging that in . . [327] November, 1836, he purchased of the appellee . . land and . . slaves, for . . $36,000. . . that the contract was entire, though . . the slaves [were estimated] at $17,000," [321] "he conveyed the same . . to the defendants, Pope and Hamer, in trust, to sell . . in case of his default," [327] "all of . . purchase-money has been paid except . . $9000, . . [The bill] charges that five of the slaves [1] were introduced . . by . . Evans in 1836, as merchandise, . . prays for an injunction to restrain the sale [by the trustees], and for a rescission . . prays that the money paid may be refunded. . . The answer positively denies that any of the slaves were introduced . . as merchandise, . . The defendant . . became a citizen of Mississippi in 1831, . . [328] Cusack states that in the spring of 1836, Evans informed him, that he had purchased of . . Edwards a plantation . . [and] a portion of the hands, that he would visit Tennessee . . and would purchase some additional negroes . . and place them on the plantation, when he thought he would be able to sell the plantation and negroes at a profit. . . Evans returned

[1] [322] "Abner, Patsy, Terry and Silsy, and her child Jane,"

from Tennessee . . October, 1836, placed the negroes . . upon the plantation with his other hands, . . After he took possession he applied to [Edwards] . . to release him from the contract, . . that he had not hands enough . . and [Edwards] . . sold him six more hands. . . [In the same month] he told [Edwards] . . that he had seen . . [329] [another] place . . which suited him better . . and that he wished [Edwards] . . to let him off the contract. . . refused, . . After he had sold the place to Hope, . . Evans moved up to the [other] place" [327] "injunction granted . . 1842."

[331] "The decree of the Chancellor, dissolving the injunction,[1] will be affirmed." [329] "This contract . . must . . be governed by the prohibition of the constitution alone. . . This provision in itself amounted to a prohibition, without any legislative enactment,[2] . . If . . [a settler] bring slaves into the state . . with the bona fide intention to apply them to his own use, and afterwards change his intention and sell them, it does not . . amount to an infraction of the law.[3] . . [330] there is no evidence that they were ever offered, except in connection with a large tract of land" [Clayton, J.]

Randal v. State, 4 S. and M. 349, January 1845. "indictment . . for stealing a negro man . . Sam ran away from his overseer in February or March, 1844, . . and was absent about five months, when . . [his owner] caught him in the woods, up in a tree." [351] "neither of the two witnesses who testify to . . seeing the plaintiff in error in company with a negro . . speak positively as to the identity . . judgment . . reversed, and a *venire de novo* awarded."

Thomas v. Phillips, 4 S. and M. 358, January 1845. "bill . . alleging that . . Siebe bought . . negroes, . . 1835, . . imported . . for sale, . . That notes were executed . . amounting to about fourteen thousand dollars, . . That . . [Phillips] sued at law and obtained a judgment, which . . [Thomas] prays may be enjoined." Held: [429] "the contract might have been avoided, by plea at law, but by his failure to make such defence, the complainant has placed it beyond the reach of the courts."

Goodwyn v. State, 4 S. and M. 520, January 1845. [532] "the deceased was a deputy sheriff . . and was in the act of executing a *fi. fa.* on defendant's slave at the time the killing took place." [521] "witness . . heard the report of two fire-arms; . . and heard . . the deceased, setting his dogs on some one. . . [522] Deceased owned a large pack of dogs, twelve or fifteen, and used to run negroes with them; they were very fierce. . . [526] he kept dogs to hunt negroes, and white persons also; . . [The sheriff] sent deceased to levy on the negro, because the negro knew him . . and his other deputies. . . He never knew the dogs to bite a white person, unless set on."

[1] Same *v.* same, S. and M. Ch. 195.

[2] See Green *v.* Robinson, p. 289, *supra,* Glidewell *v.* Hite *ibid.,* and Brien *v.* Williamson, p. 294, *supra.* The decision of the Supreme Court of the United States in Groves *v.* Slaughter (p. 533, *infra*) is disregarded.

[3] Brien *v.* Williamson, p. 294, *supra.*

Hill v. Anderson, 5 S. and M. 216, January 1845. [218] "Exum was armed, and carried off the negroes against her remonstrances."

Moore v. McKie, 5 S. and M. 238, January 1845. [242] "1838 . . they moved [from Tennessee] to Mississippi . . bringing with them these [four] slaves with others,"

Price v. Sessions, 3 Howard (U. S.) 624, January 1845. Smith's will, 1836: [633] "the property is to be kept together, and the force worked on the plantation, until my . . [634] daughter . . arrives at the age of eighteen" "The proceeds of the crops to be [in]vested in young slaves, in the mean time."

Nations v. Alvis, 5 S. and M. 338, November 1845. [339] "A mortgage upon the slaves, given by . . Alvis to . . Nations, in . . 1840, . . [340] Alvis . . moved . . to . . Tennessee . . taking . . negroes, . . 1843 . . Nations came, and by stratagem seduced the negroes . . by night, and run them off to Mississippi. That pursuit being made . . Nations . . refused to give them up, and threatened violence if they were taken"

Thornton v. Demoss, 5 S. and M. 609, January 1846. "Demoss, sheriff . . 1838 . . offered at public auction, . . a negro boy named Jim, to satisfy executions . . Thornton . . purchased . . for . . $730; . . [611] Some time afterwards, the negro obtained a writ of *habeas corpus* against [Thornton] . . and on the hearing, the judge decided that the negro was free, and ordered his discharge from the custody of [Thornton.] . . This action was instituted . . for the recovery of damages, on the averment . . that the defendant knew, at the time of the sale, that the negro was not . . property . . At the trial the plaintiff offered as evidence the proceedings in the *habeas corpus* case, . . ruled out"

Affirmed: [618] "the record was incomplete evidence for want of jurisdiction in the judge who tried the *habeas corpus,* . . The 48th section of the act in relation to slaves,[1] . . provides the mode by which any negro . . who claims to be free, shall establish his freedom. And it is the only remedy which he can pursue." [Sharkey, C. J.]

Dowling v. State, 5 S. and M. 664, January 1846. [665] "indictment charged . . 'that . . Dowling [the overseer] with both his hands and feet . . Dick Smith, negro man slave, . . against the ground . . did . . throw; and . . with a . . wooden paddle' inflicted . . mortal bruises and wounds upon the head, stomach, back, sides and legs . . of which . . he . . died [two months later] . . and so the grand jury pronounced him guilty of murder. . . [666] On the trial, . . a witness on the part of the state . . stated that the prisoner told him, his usual habit was to punish slaves with a paddle, . . a piece of white oak timber about two and a half inches thick, and as broad as his hand. . . verdict . . 'guilty of manslaughter in the second degree.' . . [667] The court . . sentenced Dowling to five years imprisonment" Judgment reversed and a new trial awarded: [686] "The customary manner of the prisoner's pun-

[1] How. and Hutch. 166.

ishing slaves . . was not the point in issue, nor . . any part of the transaction" The evidence should not have been admitted.

Falconer v. Holland, 5 S. and M. 689, January 1846. [691] "The negroes . . were obtained by Mrs. Newsom, as a legacy from a relative in Virginia. . . Mrs. Newsom lived . . in Tennessee. . . [One of her sons lived] on a plantation in Mississippi, where all her negroes were, except her family servants." He delivered the three negroes in controversy to his brother, who took them "in 1837 or 1838, to Tennessee. . . Two other negroes [who] were delivered to [him] . . [692] were sold . . to raise money . . to pay off debts . . She preferred to have these negroes sold, rather than dispose of her favorite family servants." [699] "In 1839, he removed with the slaves to Mississippi,"

Leech v. Cooley, 6 S. and M. 93, January 1846. Will of James Leech, 1836: "that his negro woman Delilah and her four children . . should be set free, and sent to . . Indiana or Liberia, whichever they might choose, and that the balance of his property, (except a lot . . [94] which was willed separately to Delila [*sic*]) should be sold, and the proceeds equally divided between Delila and . . three of her children;"

Held: [98] "The mere collocation of words,[1] if their meaning be the same, cannot vary their construction.[2] It is the policy of this state . . to prevent the increase of free persons of color therein. . . [99] if the executor, in good faith and with strictness, comply with the terms of the will, we see nothing in the law to prevent its execution. The right to freedom under the will is inchoate, and becomes complete, when the subjects of it are removed . . The bequest to the slaves is not void either, for want of capacity . . If they do not comply with the terms of the will, the whole bequest is void; if they do, it will be valid." [Clayton, J.]

Atchison v. Potter, 6 S. and M. 120, January 1846. "On the 28th day of June, A.D. 1842, . . Potter made oath before a justice of the peace, . . that Emma, the slave of . . Atchison, . . did steal . . one gold ring . . besides other articles . . the justice issued his warrant for the apprehension of the slave, to appear before him on the day following, . . Pulling and . . Patterson . . were sworn as jurors . . who, upon hearing the cause, returned the following verdict, and rendered the following judgment, . . [121] 'We . . find the prisoner guilty of petit larceny, . . and order the prisoner to receive fifteen lashes, well laid on, upon the bare back, at the common whipping-post.' . . Whereupon the following judgment was entered . . 'that . . Atchison, the master of . . Emma, be taxed with costs of prosecution.' . . The judgment of whipping was executed on the 29th June, . . on the 1st July, the justice issued an execution" against Atchison. [122] "it was admitted by Potter, that he

[1] Ross's will, p. 290, *supra,* "directed the slaves to be sent to Liberia, there to remain free. . . This will directs the slaves to be set free and then sent off;"

[2] But held otherwise in Georgia. See p. 2, *supra.*

was the employer of . . Emma, at the time of the commission of the offence charged."

Held: [126] "The act[1] evidently designs to annex the liability for costs to the master, employer or overseer, accordingly as either has the care of a slave at the time of his commission of the offence. The object of the law is to render the immediate controller of the slave watchful over his conduct,"

Collins v. McCargo, 6 S. and M. 128, January 1846. "McCargo sued . . on a writing obligatory, . . [129] bill of sale . . 'Natchez . . Dec'r 16, 1836. Received of . . Collins, thirteen thousand dollars . . for . . eight negroes,' . . note given . . [130] Holden testified that . . he rented to McCargo a house near the race track; that McCargo informed him that he had brought on a lot of negroes ['by land'] from Virginia for sale, and wanted a house to accommodate them in; . . that McCargo was a negro trader, and had for many years previous sold a lot of negroes in Natchez, and had returned to Virginia; . . that McCargo had tents, wagons, and other arrangements for travelling," Held: [134] "The . . contract was beyond all question void." [Sharkey, C. J.]

Grover v. Gaunt, 6 S. and M. 317, January 1846. A negro woman was hired, for the year 1841, for $144.

Hazlip v. Leggett, 6 S. and M. 326, January 1846. [327] "the plaintiff had attended on the family of Galtney as physician . . that Galtney's family, white and black, numbered near one hundred persons, and they were often sick;"

Buckels v. Cunningham, 6 S. and M. 358, January 1846. [362] "Maria and her . . infant . . sold [in 1840] for $825."

Anderson v. Burke, 6 S. and M. 475, January 1846. "Burke sued . . Anderson . . for . . four hundred and fifty dollars due to him as overseer" [477] "Anderson . . filed a special plea of set off . . a promise to pay him" [475] "by reason of the destruction of . . his . . slave Jim, done and caused by the . . plaintiff, . . what . . [476] Jim was reasonably worth; . . that . . Jim was reasonably worth one thousand dollars,"

Hariston v. Sale, 6 S. and M. 634, January 1846. "I am to give . . Sale $650 [as overseer] for the year 1840, and, if I am satisfied with him, to add $25 more." The "two following agreements . . were written on the same paper . . [635] 'I, . . Sale, . . have . . agreed to oversee for . . Hariston, for the year 1839, . . [who] binds himself to pay . . five hundred dollars . . and also to board . . Sale; and . . if . . Sale makes one hundred and eighty bales of cotton, . . to pay him . . one hundred dollars extra' . . 'if . . two hundred bales . . to pay him the further sum of twenty-five dollars extra'"

[1] How. and Hutch. 164, sect. 40.

Petrie v. Wright, 6 S. and M. 647, January 1846. [656] "1838. . . I make the following statement of . . money expended in the construction of the railroad . . For [about 140] slaves purchased, . . $159,000"

Benoit v. Brill, 7 S. and M. 32, January 1846. "Bernard Benoit, jr., averring himself to be a free man of color, filed his petition in the probate court . . setting forth that Bernard Benoit, sen., . . a free man of color, died intestate . . 1841, and without legal heirs. That . . he was possessed of a considerable estate, consisting of negroes and other personal property. That petitioner is the natural son . . and that in . . 1844, the legislature passed an act for his relief, by which the state relinquished to petitioner 'all claim to said estate, by escheat;' and provided that 'said estate should vest in petitioner . . as though inherited . . or bequeathed' . . [33] and prays for distribution, . . The administrator . . denied that the petitioner is a free man, . . The petitioner on the hearing, read an instrument in the French language, of which the following is a translation: . . '1808,[1] the widow of Antoine Bayard and Master Bernard Benoit, here appeared in my office of syndic and notary, attended by two witnesses . . of said woman, . . who sells to . . Master Bernard Benoit, a young mulatto, aged fourteen . . whom . . Benoit claims as his son, for . . 400 piasters, cash . . The said woman . . sells . . to . . Benoit, on the condition that on the moment of sale, he shall acknowledge him free.' . . duly signed . . The instrument of manumission by . . Benoit . . signed by two witnesses, provided . . that from that moment he acknowledges the freedom of his son, . . The petitioner then produced the certificate of registry of the petitioner, as a free mulatto, in the probate court of Hancock county, and proved that he was recognized by . . Benoit, sen., as free, and that the administrator had not attempted to restrain his liberty, . . The court dismissed the petition, on the ground that the rights of the state had not been ascertained,"

Judgment reversed, [37] "the petition directed to be reinstated . . and the prayer . . allowed, upon petitioner executing bond . . [38] unless the other party require an issue to the circuit court. . . the judgment . . is no bar to any proceedings . . instituted hereafter by the administrator . . to obtain possession of the appellant as a slave, . . and . . it is not conclusive of the freedom of the appellant in any issue that he may hereafter be called upon to make or cause upon that inquiry." [Thacher, J.]

Berry v. Bland, 7 S. and M. 77, January 1846. Counsel for appellee: [81] "The property levied upon . . consisted wholly of slaves, the separate property of Mrs. Bland. By our statute,[2] a married woman who is the owner of slaves, can only dispose of them by the joint deed of herself and husband, 'executed, proved, and recorded agreeably to the laws . . [82] in relation to the conveyance of the real estate of *femes covert,*' . .

[1] [35] "the Spanish law [was] then in force in the country comprising Hancock county. . . For the Spanish law, the court is referred to 1 Moreau and Carl. Partidas, 587-591."

[2] The Act of 1839, commonly known as "the woman's law." How. and Hutch. 332, sect. 26.

A private examination of the wife, previous to any conveyance of her slaves, is thus rendered necessary,"

Held: [84] "There is no more reason to decide that her personal estate can be subjected to the payment of debts under this act, than that her real estate may be, under the previous law. Both are now upon the same footing."

Brown v. Clarke, 4 Howard (U. S.) 4, January 1846. [11] "absconded, and carried off the remaining slaves" to Texas.

Murdock v. Hughes et al., 7 S. and M. 219, November 1846. [223] "he sold . . Julia to Mrs. Hughes [in Alabama] in 1818, for $600, . . Mrs. Hughes refused to buy . . unless . . complainants [her children] would assist in paying for her, . . which they did by picking out cotton."

Leggett v. Simmons, 7 S. and M. 348, November 1846. "an action of trespass, to recover the value of . . Solomon, the property of the plaintiff [Simmons], alleged to have been killed by . . Moses, the property of the defendant. . . the defendant . . [350] stated . . on the coroner's inquest, and before the committing magistrate, that on Saturday evening, about dark, . . 1843, . . Solomon came to his house and asked him for a drink of spirits; that he directed a dram to be given . . and also to his own boys; and afterwards another dram was given to them, and Solomon . . went to his, defendant's, negro-house; that . . he was aroused by a fuss in the negro-house, where the negroes were gambling; that he went out with his gun to stop it, and . . Solomon . . seized the gun, and fired it off in defendant's hands, and then ran off; but . . peace was restored, and Solomon was permitted to return; that defendant then returned to bed, and . . was again aroused by another fuss in the house of Moses; . . he saw Moses and Solomon coming out . . engaged in a struggle; that Moses broke loose . . and ran round an oak tree . . Solomon . . striking at him with a knife, and swearing he would kill Moses, if he was the last negro in the world. In that manner they ran round the tree several times, when suddenly the fuss ceased, and the defendant again returned to his bed; . . next morning . . he found Solomon dead, with a knife lying by his hands. . . Witnesses understood defendant to say his object was to make peace; but he did not say he commanded peace, or used any means to make peace. The defendant also stated . . that Solomon was a bad negro, and he had previously ordered him not to come to his house. . . Solomon was worth about one thousand dollars" [354] "The jury found a verdict for the plaintiff below, in $1180, of which . . the plaintiff remitted $180."

Judgment thereon reversed and a new trial granted: [355] "The defendant was doubtless censurable . . for want of care . . and resolute . . interference between the slaves at the outset . . but his conduct seems hardly to warrant the finding of the jury,"

Wooten v. Miller, 7 S. and M. 380, November 1846. "Miller . . of North Carolina . . in 1837 . . delivered to . . Wooten, then about to move into this state, his negro man . . to sell or hire here . . Wooten

brought the slave here and sold him . . for $1050, and took . . note therefor, . . The bill prays that the money might be decreed to be paid. . . [381] The vice-chancellor decreed that the defendants should pay" Reversed: the note was void as the transaction was in violation of the constitutional prohibition.

Pearson v. Moreland, 7 S. and M. 609, November 1846. [611] "When the first lot of negroes was offered, five in number, he bid one thousand dollars for the lot, which appeared to create much surprise among those present. Mary Seybourne [one of the family] then bid one dollar more, and became the purchaser; she cried, . . [612] That before another lot was offered . . Moore . . did hand him a . . note . . for the debt due his brother. . . he bid on the balance of the property very small prices, but he did not attempt to force it to bring its fair value;" [615] "Notwithstanding that the administrator had been informed that bidders were on the road, . . he hurried on the sale, and had twenty-two likely negroes sold, at an average of seventy-eight dollars per head, in fifteen or twenty minutes, being an average of about one minute to a negro, . . and all before the bidders could arrive." Sale set aside.

Wade et al., Executors of Isaac Ross, v. American Colonization Society, 7 S. and M. 663, November 1846. See Ross *v.* Vertner, p. 290, *supra.* [672] "the executors . . took immediate possession of the . . estate . . which consisted of a large and highly improved plantation containing about five thousand acres . . and . . [another] tract . . and negroes and other personal property . . appraised at $103,665; . . and agreed . . that Wade should superintend the plantation and negroes . . [674] instead of executing the benevolent intention of the testator, . . [he] converted [the property] . . to his own . . private gain, raising crops . . with the work . . of the slaves," [665] "November, 1842, the American Colonization Society filed a bill . . against . . executors . . alleging . . [674] that the defendants would not deliver up the slaves to be sent to Africa . . [675] that they had at different times sent an agent . . to take charge of the slaves, and they then had an agent residing in Adams county, who was fully authorized at any time to take charge of the slaves . . and to secure . . the residue of the estate . . Complainants further aver that on the 26th day of February, 1842, the legislature . . passed an act [1] which . . enacted, that 'in all cases of wills heretofore made . . whereby any slaves have been directed to be removed . . for the purposes of emancipation elsewhere, . . unless such slaves shall be removed . . within one year after the passage of this act, it shall not be lawful . . so to remove such . . slaves; but the same shall . . be distributed among the heirs . . as if . . testator had died intestate: *Provided, however,* that if such executor . . shall be prevented . . the time . . [of] such restraint . . shall not be . . computed' . . Complainants charge that the mother of . . Wade is an heir . . that . . Wade will endeavor to . . continue the

[1] Pamphlet Acts of 1842, pp. 69, 70.

slaves in bondage under the act of 1842, unless the chancery court should interpose . . [676] The bill prayed for an injunction, the appointment of receiver, and that the court compel a full . . execution of the trusts created by the will. . . an injunction was granted . . [677] [The other executors] averred their entire willingness . . to carry out to the fullest extent all the provisions of the will . . whenever it shall be legally decided that they were entitled to the control . . of the personal estate. . . The chancellor . . appointed a receiver " in June 1844.[4]

Order of the chancellor affirmed: [696] " The provisions of the will constitute both the executors and the colonization society trustees. . . If a part of the trustees . . interpose obstacles . . clearly a court of equity may enforce the performance. . . [697] It is . . insisted that this society is prohibited by its charter from . . holding property except for one purpose, that ' of colonizing with their own consent upon the coast of Africa, the free people of color residing in the United States.' . . these slaves are not now free, but they have an inchoate right to freedom. As soon as they are taken beyond the limits of this state that right is so far consummated that by the terms of the charter they may be transported and colonized. . . [698] The bill shows the use of every means in the power of the complainants . . to comply with . . law [of 1842]. . . These objects of the testator's . . bounty have been detained here against their will, against the will of the society, and that of all the executors except one. . . this was such a fraud . . that neither he nor anyone claiming in virtue of his acts acquired any right. . . How far . .[the act of 1842] is constitutional might be a grave question, but that we do not now touch." [Clayton, J.]

Whitney v. Whitney, 7 S. and M. 740, November 1846. [750] " 1838, the defendant delivered into the probate court his inventory of all the estate of complainants [his children], . . to wit; Chancy, aged twenty-seven . . valued at $1200; John, eleven years, valued at $600; Dorcas, six years, valued at $450; Malsa, four years, valued at $400; and Ann, nine months, valued at $250." The complainants charged [741] " that by . . [his] neglect . . four children, being the whole of the natural increase of their slaves, had died; . . that . . their father was . . [742] always cruel to his slaves; . . [743] prayed that . . [he] be . . compelled to account . . [He] denied that the hire . . was worth more than the taxes, physician's bills, and other . . expenses incurred in the support . . of the negro children and petitioners; and he denied . . cruelty . . [744] Ballard testified that he hired Chancy and Dorcas for . . 1842, . . worth . . about one hundred and forty dollars, . . having a child as Chancy did almost every year, he did not believe they would have hired during . . 1838, 1839, 1840 and 1841, for more than their taxes, clothing, medical bills and support. . . Moore testified . . that from 1835 to 1842 inclusive, . . Chancy, with her children, was worth forty or fifty dollars per year,

[1] Same *v.* same, 4 S. and M. 670 (671). See American Colonization Society *v.* Wade. p. 312, *infra.*

the hirer feeding and clothing her and her children, and paying their taxes and doctor's bills; that in 1835, John was worth about twelve dollars above ordinary expenses; in 1836 . . about twenty . . in 1837, thirty dollars; in 1838, forty dollars; in 1839, he hired for twelve dollars per month; in 1840, he was worth fifty dollars; in 1841, sixty dollars; and in 1842, he hired for eighty dollars; . . [745] Boatner testified that in 1836, he . . knew . . Chancy, and . . her children, and he did not believe they were then worth more than their support; he considered the expense of feeding and clothing and raising a negro child, from its birth till . . ten years of age, about twenty-five dollars a year; that a negro woman with a suckling child, during the years 1835, 1836, and 1837, would hire for forty or fifty dollars a year less than a woman without one; . . [746] he considered the slaves always suitably clothed . . did not think Chancy worth more annually than the support of her children; . . Anderson . . always thought the defendant treated his slaves as well as they deserved to be treated; they had plenty to eat and wear; . . the expense of clothing, feeding and raising a child under seven . . he thought was about thirty-five dollars a year. . . a practicing physician . . in 1841, visited and prescribed for Chancy and four of her children . . and was paid twenty-four dollars" [751] "Chancy was the principal cook in the hotel establishment of the defendant." Held: [752] "the probate court should have decreed an account against the defendant"

Jolly v. State, 8 S. and M. 145, January 1847. [148] "an indictment framed upon the act of 1842," [145] "Armstead . . suspecting the defendant of unlawful dealing with slaves, . . he and several others went at night to the house of the defendant . . [146] taking . . John, who belonged to one of the party, and some spun thread and other articles . . concealed themselves. The negro roused the defendant from his sleep, and proposed to trade . . for the liquor; but the defendant refused . . lest it should bring him into trouble with the neighbors; but . . would sell it . . John went off to get the money from one of the party in the presence of his master, and was told to take the jug and get some whiskey"

Held: [149] "It is a traffic which is hard to detect, and it would be singular, if a resort to almost the only means of detection should have the effect to legalize the transaction. . . [150] the consent must be to a sale of the liquors, not merely to an experiment to detect a violation of the law."

Stovall v. Bank, 8 S. and M. 305, January 1847. [308] "Jenkins . . stated, that at the sale he requested several persons not to bid, and that Quarles did the same . . that the negroes were worth about twenty-two hundred and fifty dollars, and sold for twelve hundred and eighty."

Harmon v. Short, 8 S. and M. 433, January 1847. [435] "before the execution of the bill of sale, nothing was said about redemption, . . about an hour afterward, Rutledge remarked to Short, the slave was a family servant, and he disliked parting with him; and Short replied, that he could redeem him;"

Brown v. Forbes, 8 S. and M. 498, January 1847. [499] "an execution . . 1839, levied on . . Aggy, aged forty-five years, . . 1840, the negro was . . purchased by . . Brown, at . . eighty-five dollars and fifty cents, . . Witness believed the negro, on account of her age, to be worth little or nothing."

Covey v. State, 8 S. and M. 573, January 1847. [574] "Covey was indicted for horse-stealing; . . it was proved that he had passed himself on the community for a free man of color. Prisoner excepted [*sic*] to this evidence . . overruled." [573] "found guilty . . brought to the bar to have sentence passed . . his counsel entered a motion in arrest of judgment . . 'Because the court, from inspection . . will find that he is a descendant from the African race, and therefore *prima facie* a slave. . . Because the [circuit] court cannot pronounce the judgment of the law upon a slave. . . overruled . . sentenced to two years imprisonment" Judgment affirmed: [575] "The grounds upon which the motion . . is made, have . . reference to matters *dehors* the record,"

American Colonization Society v. Wade, 8 S. and M. 610, January 1847. See Wade *v.* American Colonization Society, p. 309, *supra.* In July 1844 Wade "filed in the probate court . . a petition . . [611] stated, that from the decretal order [appointing a receiver] . . he had . . obtained an appeal . . still pending . . the probate court granted an injunction . . 1845, the American Colonization Society entered a motion in the probate court to dissolve the injunction . . overruled . . prayed an appeal" [612] "The order of the probate court is reversed, the injunction dissolved, and the . . petition dismissed." "Courts of probate have no power to grant injunctions."

Adams v. Rowan and Harris, 8 S. and M. 624, January 1847. See Rowan and Harris *v.* Adams, p. 295, *supra.* Decree reversed: [639] "The mortgage, being an incident of the notes, . . follows their fate. . . void, as well as the notes."

Lewis (*a slave*) *v. State,* 9 S. and M. 115, January 1847. [116] "Lewis was indicted for the murder of the slave David, and . . found guilty. . . On the trial . . Clark . . testified that he was the master . . of . . David . . that . . about ten o'clock at night, he was aroused . . by a cry of distress, and . . about a half of a mile from his house, he found his slave . . injured badly; that the deceased said 'O my people,' . . a practicing physician . . was called . . [that] night . . and saw him [again] . . the [next] morning . . then dead. . . found a ragged cut on the right jaw . . several small shallow stabs . . on the shoulders and back . . and one stab, the fatal wound, on the left side, . . [117] the district-attorney offered to prove by . . Clarke, what the deceased said . . as to the injury . . objected . . overruled"

Judgment reversed and new trial granted: [119] "The danger of impending death . . which justifies dispensing with the oath, will also

justify dispensing with the charge directed to be given by the statute.[1] . . [120] as to slaves, it is contended, the presumption ['of a sense of religious accountability'] does not arise ['as in regard to white persons'], because of a defect of religious education. . . We are not inclined to adopt the distinction." "The simple, elementary truths of christianity, the immortality of the soul, and a future accountability, are generally . . believed by this portion of our population. From the pulpit many, perhaps all who attain maturity, hear these doctrines announced . . and embrace them as articles of faith. . . It is lastly insisted that the preliminary showing of the declarant's . . sense of impending death, was not sufficient to justify the admission of his declarations. . . [121] For this reason a new trial will have to be granted." [Clayton, J.]

Quine v. Quine, 9 S. and M. 155, January 1847. [159] "In 1836, Mrs. Quine gave in one hundred and twenty-eight acres . . and six black polls, over five and under sixty. Henry Quine [her brother] gave in three hundred acres . . and twenty-eight slaves, and a town lot . . In 1837 . . five hundred acres . . thirty-one slaves, and the town lot, . . Mrs. Quine had a good weaver . . but that she would keep her in the field, and do the weaving herself; . . [160] Quine said he . . wished to settle in Texas, . . He would go there with a few hands he expected to buy in Virginia, and take nothing from the plantation [in Mississippi]."

Rowan and Harris v. Runnels [*sic*], 5 Howard (U. S.) 134, January 1847. [138] "This action was brought in the Circuit Court for the Southern District of Mississippi," [134] "Rowan and Harris were citizens of Virginia, and Runnels was a citizen of Mississippi. . . the defendant offered in evidence a transcript of the record of a suit pending in the Supreme [Superior] Court of Chancery of . . [135] Mississippi,[2] to show that the consideration for the notes was a sale of slaves by Rowan and Harris to Runnels" [138] "in Mississippi in . . 1836, . . imported into the State in [1836] . . as merchandise . . The Circuit Court held this contract to be illegal and void, under the . . constitution of Mississippi, adopted in 1832."[3] Judgment reversed and the cause remanded: "The question . . is precisely the same with that decided by this court in the case of Groves *v.* Slaughter,[4] . . And the court then held . . that the clause . . did not of itself prohibit . . and that contracts for the purchase and sale of slaves so introduced, made before the passage of the law of that State of May 13th, 1837, were valid and binding . .

[1] "if it be found . . that you . . give fake testimony . . you must . . have both your ears nailed to the pillory, and cut off, and receive thirty-nine lashes on your bare back" How. and Hutch. 165.

[2] See Rowan and Harris *v.* Adams, p. 295, *supra.*

[3] "The introduction of slaves into this State as merchandise, or for sale, shall be prohibited . . after the first day of May, eighteen hundred and thirty-three: *Provided,* That the actual . . settlers shall not be prohibited from purchasing slaves in any State . . and bringing them . . for their own individual use, until . . eighteen hundred and forty-five."

[4] P. 533, *infra.*

[139] It now appears . . that the question has since [1] been brought before the courts of the State [of Mississippi], and . . settled by its highest tribunals that the clause in the constitution . . did, of itself . . prohibit . . and rendered all contracts for the sale of such slaves, made after May 1st, 1833, illegal and void. . . as late as the beginning of . . 1841, when Groves *v.* Slaughter was decided, it did not appear, from anything before the court, that the construction of the clause . . had been settled either way, by judicial decision, in the courts of the State. . . we can hardly be required, by any comity or respect for the State courts, to surrender our judgment to decisions since made in the State, and declare contracts to be void which upon full consideration we have pronounced to be valid." [Taney, C. J.] Daniel, J., dissented: [140] " Since the decision in Groves *v.* Slaughter, decisions of the Supreme Court of Mississippi, giving an interpretation to the constitution of that State, have become generally known—they are familiar, unequivocal, uniform, numerous. That any or all . . may have been made posterior to . . Groves *v.* Slaughter, I hold to be perfectly immaterial, . . If these expositions establish the meaning of the constitution . . such meaning must have relation to the period of the consummation of that instrument."

Truly v. Wanzer, 5 Howard (U. S.) 141, January 1847. "the complainant . . asks the interposition of a court of equity, not only to protect him from the judgment and execution, but also to restore . . that portion of the consideration which has been recovered by due course of law . . because the negroes purchased by him [in 1836] were brought into the State of Mississippi for sale contrary to the provisions of the constitution of the State; . . And . . [142] because . . the vender . . held them as guardian . . ' and ran them off to . . Mississippi.' "

Held: the note " given for the purchase . . was not void,[2] . . But even if [so] . . it would be a strange abuse of the functions of a court of equity to grant an injunction against the recovery of a judgment at law, because a purchaser with a full knowledge of his defence had omitted or was ashamed to urge it. . . The complainant has had the undisturbed enjoyment . . for ten years; and it is with a bad grace that he now invokes the aid of a court of equity . . on the allegation that he had neglected to urge an unconscionable defence," [Grier, J.]

Mahorner v. Hooe, 9 S. and M. 247, January 1848. [248] " Nathaniel H. Hooe, late of . . Virginia, the father of the one, and the grandfather of the other complainant, died in the summer of . . 1844, . . [249] made his will . . May . . 1844, . . [254] ' I give to my man Willis and his son . . when they start for Africa, one hundred dollars each, besides a full share with the others of my slaves, for their better conduct. To old Lymous and his sister . . old Ambrose at Tetotum, and old Sally at the Neck, I give . . their freedom as far as I can, and the tenement

[1] Green *v.* Robinson (p. 289, *supra*) was decided in January 1840. It was followed, in December 1840, by Glidewell *v.* Hite (p. 289, *supra*); in January 1841, by Cowen *v.* Boyce (p. 293, *supra*); in January 1843, by Brien *v.* Williamson (p. 294, *supra*); in January, 1846, by Collins *v.* McCargo (p. 306, *supra*); and in November 1846, by Wooten *v.* Miller (p. 308, *supra*).

[2] Groves *v.* Slaughter, p. 533, *infra*; Rowan and Harris *v.* Runnels, p. 313, *supra.*

where Oliver now lives . . [255] to live on during their lives, and to be fed and clothed by my Ex'ors, and a cow to milk, Miller Joshua and his wife . . to remain at the mill until it is sold, and to receive ten dollars a year and clothed, and after the mill is sold to have the same privileges as . . Lymous, etc. . . I . . emancipate . . all my slaves in Virginia, . . excepting those designated by name in devises; . . to be sent to Africa by my Executors, and their expences paid . . and my Ex'ors may keep, at their discretion, as many slaves on the farms, until the farms are sold, to . . keep the farms from going to waste, and employ an overseer to keep order . . until they can be shipped to Africa. I do further emancipate . . all my slaves . . which I loaned [my son,] . . and when . . the slaves . . are sent to Africa, to each . . head of a family, on their landing and discharge, . . twenty five dollars, and to adults having no families ten dollars, and to each of my slaves . . decent clothing before they start . . I do also emancipate . . every one of my slaves in . . Mississippi, . . to be under the same restrictions of being retained for a short time, to be cloathed [*sic*], etc. . . before starting for Africa [[253] " which must be within three years next succeeding my death "], I also do emancipate . . all my slaves . . that I loaned to [my son-in-law] . . my Ex'ors to defray the expences of transporting . . to Africa, and paying them, . . [256] should there be a deficiency of money to carry out my design . . then the slaves . . under the care of . . Mahorner, may be retained on my cotton farms three or four years to make up the deficiency . . should Blacksmith Bill, Billy Monroe, and Bill Beverly, be unwilling to go . . they may be sold . . to the highest bidder, . . I . . appoint my friends . . Mahorner of . . Misspi. . . Hooe, Barnsfield, and . . Coakley of King Geo. City, my nephew . . Bernard, Mr. Gurley of the District of Columbia, executors . . My hand writing being so generally known I deem it unnecessary to call in witnesses to . . my . . will.' . . [257] 'recorded [November 1844] as the true last will' . . The bill . . avers that the complainants are the only heirs at law of the testator, who possessed . . [258] one hundred and fifty slaves . . in this state, . . [259] The prayer . . is for an injunction to restrain Mahorner . . also . . that the will may be declared void . . The answer of Mahorner . . [260] states . . That the testator had a deep-seated and growing aversion to the complainants, and did not intend they should inherit . . Depositions were taken to prove the validity of the emancipation clauses . . as to the slaves in Virginia; . . the vice-chancellor [in 1846] decreed the clauses . . emancipating the slaves in this state, void; perpetually enjoined Mahorner from executing those provisions "

Held: [282] " the testator died intestate as to the negroes in Mississippi, and they must go to the distributees." [272] " The disposition of the slaves is admitted to be valid by the laws of Virginia, but it is contrary to a statute of this state, passed in 1842,[1] . . [278] the law of 1842 is a valid prohibition, paramount to that rule of comity, which, in absence

[1] "Hereafter it shall not be lawful . . by last will . . to direct that any slave . . shall be removed from this state for the purpose of emancipation elsewhere;" How. and Hutch. 539, sect. 11.

of such prohibition, might sustain the bequest on the law of the testator's domicil." [Sharkey, C. J.]

Bodley v. McKinney, 9 S. and M. 339, January 1848. Will of William Pescod, who died in Cuba in 1837: [341] "I give the services of my servant Ben, to . . Benton, of the county of Warren, until he be twenty-one . . when it is my will that he be set free"

Arthur v. Railroad Bank, 9 S. and M. 394, January 1848. [400] "stipulated . . that all the slaves . . in possession of [the Railroad Bank] . . shall be . . retained . . for the purpose of finishing said road, . . after which time, said slaves . . shall be sold"

Torrey v. Grant, 10 S. and M. 89, January 1848. [96] "The [twenty-three] slaves were valued and purchased at $1,000 each," in 1838.

Lewis v. Starke, 10 S. and M. 120, January 1848. [127] "The sale took place [in April] in New Orleans, and the negroes were afterwards taken from Wilkinson county in this state, and delivered in Louisiana. . . In October . . the sheriff of Wilkinson county, by some stratagem, procured the negroes to be brought back . . and levied . . on them,"

Gilliam v. Moore, 10 S. and M. 130, January 1848. [133] "came [from Tennessee] . . to this state in 1840, with about eighteen slaves," [132] "to avoid certain debts"

Keithler v. State, 10 S. and M. 192, January 1848. [196] "Silas testified that . . Keithler was in the employ of . . Sims . . and employed Silas to oversee for Sims; . . [201] 'Sims fell out with me because he had been told that I was intimate with his girl Catharine. He said he would tell the planters, so that I could not get business in the country.'" [200] "'he told me to leave' . . [214] 'He said . . if he caught Silas prowling around his negro-quarters at night he would kill him. . . [215] Silas . . shot Sims,'"

Cameron v. Cameron, 10 S. and M. 394, January 1848. "the testator left about ninety slaves"

Otts v. Alderson, 10 S. and M. 476, January 1848. [477] "Alderson sued . . Otts in assumpsit on an open account for three hundred dollars, the price of a slave, . . Dr. Otts nursed the boy with great care, took him in his own room, and had become attached to him; the boy was twelve . . [478] and if sound, three hundred dollars would be a good price . . Dr. Monette . . testified that the boy was constitutionally diseased with scrofula, . . would not give anything for him; that one of the eyes . . was still diseased; . . the plaintiff introduced a letter from the defendant . . 'Enoch's belly is not quite as large as when he came from the swamp; he has passed some very large worms, and I do not think he is clear of them yet. If he only had size, I had rather have him than any body's boy; he has improved a great deal.'"

Held: the plaintiff is entitled to recover the full amount. [481] "the purchaser . . must charge his loss to a presumptuous reliance on his own

judgment, and his improvidence in failing to obtain a warranty against defects,"

Meek v. Howard, 10 S. and M. 502, January 1848. "February, 1837, . . executed . . note for . . $2,300, . . in consideration of a negro man"

Bradley v. State, 10 S. and M. 618, January 1848. "indicted for having, with a 'dirk knife, . . cut . . with intent, . . upon . . a slave of . . Cozart, . . to commit manslaughter.' . . McWilliam . . testified that he saw the prisoner run after the negro about ten steps behind him with an open dirk knife in his hand; witness called upon the slave to jump the fence; upon which the prisoner stopped the pursuit, stating that the slave might then escape, but he would catch him and have his blood;" "the jury found the prisoner guilty; and the court sentenced him to jail for . . two years." Judgment reversed and a new trial granted: [619] "The evidence is entirely insufficient"

Anderson v. Pryor, 10 S. and M. 620, January 1848. [621] "a brother . . was in a lawsuit and difficulty, from having shot a negro, for which he had been tried and acquitted; and had been sued also in a civil suit, for his value."

State v. Wofford, 10 S. and M. 626, January 1848. "to answer a charge of stealing a slave."

Sims v. Hundley, 6 Howard (U. S.) 1, January 1848. [5] "the notes [dated 1835 and amounting to $24,245.17] . . were . . in payment for slaves brought . . into . . Mississippi as merchandise, and there sold" Taney, C. J.: [6] "it is the settled law in this court, that contracts of this description, made at the time when these notes bear date, were valid, and not prohibited by the constitution of Mississippi." [1]

Whitehead v. Ducker, 11 S. and M. 98, November 1848. [102] "he bought the [ten] slaves in New Orleans" in 1841.

Garrett v. Hamblin, 11 S. and M. 219, November 1848. [221] "1840, Garrett obtained an attachment against . . Tinnin . . [222] deputy sheriff . . levied the attachment [on twelve negroes.] . . [225] at the instance of Tinnin he took the negroes out of jail;" [223] "as it was a bad and unsafe place to keep them; they would all die if kept there. Witness took them out and put them to work with his own . . believing it would be a year or two before the suit by attachment would be decided, . . [225] Witness lent Tom a month or two [to Tinnin], and getting uneasy, brought him home. The negro ran off [to Tinnin] the first night afterwards. . . [226] Hayman . . said plaintiff in May, 1841, hired him and . . Anderson to take care of the negroes, and they kept the negroes in the swamp several days. . . that plaintiff employed him and Anderson, because he had heard that Tinnin or his friends had threatened to take the negroes by force . . and plaintiff wanted able bodied men to prevent it."

[1] Groves *v.* Slaughter, p. 533, *infra*; Rowan and Harris *v.* Runnels. p. 213, *supra.*

Garland v. Chambers, 11 S. and M. 337, November 1848. [338] "he was keeping a public house; . . the negro woman . . was waiting about the house, and on the table."

Bank v. Douglass, 11 S. and M. 469, November 1848. Old testified: [513] "The quality of the negroes generally was very good. There were [in December 1839] one hundred and fifty-five effective working hands, including house servants, blacksmith and carpenter; seventy-four male working hands, eighty-one female, forty-five children; . . he estimated men at $700, women, $550, children, $150." Hill testified: [491] "The value of the negroes . . making Union Bank of Mississippi [money] the standard, was . . about $1200 to $1500 a pair for about such negroes. In the spring following, when bank notes of Mississippi banks ceased to pass, and Louisiana money became the standard of money, they would not have sold for more than $1000 per round, and if sold for cash, would have been difficult to sell." Prewitt testified: [510] "negro men . . [well worth] from $800 to $1000 in cash, and were selling at that price; negro women, from $500 to $700, on an average; and children, too small to work, from $150 to $200, on an average. . . [514] Perkins . . Thinks choice field hands, half men and half women, would have sold at that time (December, 1839) for $500 apiece under the hammer; and were intrinsically worth $600 apiece, on an average, in gold and silver. . . [515] Hoover . . does not remember seeing any sold in December, 1839, but in February, 1840, likely field-hands men were selling at an average of $800; women about $600; . . but little difference in the value of such property at that time, and in December, 1839; if any, it was worth more in the latter part of 1839. His estimate is based on Louisiana and Union Bank of Mississippi money, which . . with some Louisiana, Tennessee, Alabama, and Arkansas notes, constituted the chief circulation in Madison county; understood from inquiry that number one men were worth in New Orleans $1000. . . Witness has been engaged in selling several hundred negroes in Mississippi, and in 1839 and 1840 bought some twenty negroes." [506] "Slade, informed witness, . . in 1840, that from the best information he could get, Hudnall intended to run off the property, or at least he feared so; that he had a spy or spies there . . [507] told witness to hold himself in readiness" "in case any attempt was made." In 1841 Douglass [501] "moved his family and house servants [from Kentucky] to this state;"

Lloyd v. Goodwin, 12 S. and M. 223, January 1849. [225] "Goodwin has . . hired of . . James and Sarah Rowsey . . Mary, about sixteen . . for . . the lifetime of . . Sarah Rowsey, at . . one hundred dollars per annum, commencing the 1st of January, 1840."

Rucker v. Lambdin, 12 S. and M. 230, January 1849. Rucker's will, 1844: [232] "I wish ten of my negroes to be given to John Rucker Bisland, so divided as not to interfere with the family connections of the negroes;"

James v. Herring, 12 S. and M. 336, January 1849. [337] "Mary Herring sued John D. James for breach of warranty . . [339] Egerton . . in 1843 . . was sold with a warranty of soundness, in six months . . he was sold again with a warranty of soundness, . . employed . . as a farm hand, mauling rails, etc." "in Richmond, Va., in 1845, he was sold to Cochran and James . . with a warranty of soundness; . . the boy was entirely sound . . David D. James . . came out with the drove in which . . Egerton was; . . they left Richmond about the 21st of August . . and reached Natchez about the 3d or 4th of October following. Egerton was purchased about ten days before they left Richmond. . . The boy walked all the way" [337] "the sale [to Mary Herring] took place on the 5th day of February . . 1846; the bill of sale is dated at Vidalia, La.; the price . . was $650. . . [340] at the time he was sold he was examined thoroughly by plaintiff's agent, his coat was taken off, and his breast and back under his shirt were examined." [337] "he . . saw no sores or eruptions . . he selected this boy because he liked his countenance. . . the overseer . . put him to work for about three weeks at ploughing, then to mauling rails, afterwards to cutting timber for rails, at all of which he was awkward; about four or five weeks after the purchase, he was taken with the bowel complaint, . . he complained of not having enough to eat; his rations were doubled, and he still complained . . [338] On cross-examination, he stated that he whipped Egerton once, about three months after he came there, gave him about five or six cuts; he never whipped slaves when they were sick. Dr. . . Knapp . . examined Egerton the third day after his purchase . . He had . . a scar denoting a former scrofulous ulcer, . . was satisfied that the slave was unsound, . . He was called in [again] . . April . . found him emaciated; had diarrhoea . . he saw him again in about a week, and almost daily afterwards; the diarrhoea still continued; . . abdomen very much enlarged and hard, with enlargement of the mesenteric glands. . . a gradual decline until his death . . [in] June . . That Mrs. H. took him . . into her own or adjoining room, and showed him every necessary attention during his sickness. . . worth about thirty dollars a month to take care of the slave as Mrs. H. did. That his services . . were worth from seventy-five to one hundred dollars." Verdict for the plaintiff. [337] "the jury . . assessed her damages at $700."

Judgment reversed and new trial granted: [341] "The process of acclimation consequent upon a change . . to a southern latitude, sometimes gives rise to fatal diseases. . . But there is another point . . This sale took place in Natchez on the 5th of February, 1846. . . The law prohibiting transactions of this character, was then in full force,[1] . . By that law, the whole contract was void,[2] . . The date of the bill of sale in Louisiana, was an ineffectual effort to evade the laws," [Clayton, J.]

Parker v. McNeill, 12 S. and M. 355. January 1849. [358] "his slaves were carried off [in 1818], that they might not be subjected to

[1] Act of May 13, 1837, which was repealed Feb. 23, 1846.
[2] See introduction to the Mississippi cases.

the demands of his creditors. . . 1841 . . the defendant, and the slaves and their increase, came [from North Carolina] to . . Mississippi."

Comstock v. Rayford, 12 S. and M. 369, January 1849. [380] "Reizen R. said, 'We have a family of negroes [1] here [in Alabama], and there's an old debt owing against the negroes, and we want you to put them out of the way;' he wanted me to start in the morning [July 1, 1842]; after some hesitation, I consented;" "about four miles from Reizen R.'s house . . the negroes were brought through the woods by . . Baker, Reizen R.'s overseer, and Pelatiah Chilton [his father]; . . Baker told me to take them to . . Barbour county, 200 miles off, . . Pelatiah . . telling me to go 'pretty fast;' . . [381] returned . . 22d of July . . on the 24th Pelatiah . . told me . . he was afraid it would be found out where the negroes were . . wanted me to . . take them to Georgia and sell them; . . tried to sell them; failing . . left them" Reizen R. Chilton [375] "went to Georgia, . . and took them to Rayford in Mississippi," Asahel Chilton, son of Pelatiah, left with two other negroes on July 2, [384] "and went straight to Marshall county, Mississippi, distant 300 miles; . . eight days on the road; tried to sell them on the road; had power of attorney from Pelatiah," "placed the negroes with Rayford as the property of Pelatiah;"

Sam (a man of color) v. Fore, 12 S. and M. 413, January 1849. [414] "Sam . . filed his petition, charging that he is unlawfully held in servitude by . . Fore, and praying that he may be set at liberty. . . presented to Chief Justice Sharkey . . who . . ordered a writ of *habeas corpus* to issue against . . Fore, . . The petition . . sets forth the fact, that . . 1821, the . . petitioner was . . the . . property of . . Mary Kennedy . . of . . Kentucky. That, . . 1821 . . [she] executed . . her . . will . . by the provisions of which, petitioner was . . to be set at liberty, when he should arrive at the age of thirty-nine, . . until which time . . to remain in the possession of . . Beal. . . with the further provision, that . . Sam, should not be removed from . . Kentucky during the period of his servitude, on any pretence whatever." "That petitioner was sold to . . Lawrence sometime subsequently, and . . brought to . . Mississippi, . . sold under an execution as the property of . . Lawrence, and purchased . . by . . Fore, with full notice of the existence of the . . will, . . [415] To this petition Fore demurred, . . 1846, the demurrer was sustained, and the petition dismissed."

Judgment reversed and the cause remanded: "The proceeding was according to the statute [2] . . it is not easy to see upon what principle the decision . . by the court below, can be sustained." [Clayton, J.]

Keirn v. Carson, 12 S. and M. 431, January 1849. [433] "in Kentucky . . these two slaves were purchased by Carson and Griffin in the winter of 1833 and 1834;" [432] "March . . 1834, sold . . to . . Keirn, . . [433] Dr. Vallandingham . . saw them on April 29, 1834 [the day of

[1] "Old Letty, Eliza, Harriet, Newton, and Letty, a child,"
[2] Hutch. Code 523.

their death]; Harry was twenty-five or thirty, Ann about thirty; she was in a fit of mental derangement . . examined them after death; Harry was laboring under a pulmonary disease, . . supposed the boy diseased for several years; Ann presented traces of disease of long standing . . ventral hernia; . . [434] Harry was dead when witness arrived." [432] "In March, 1835, Keirn brought suit . . for breach of the warranty of soundness . . judgment . . recovered . . for $1650 damages, $56.12 costs;"

Bank v. Conger, 12 S. and M. 527, January 1849. [529] "Hughes had some negroes, nearly forty . . working on the railroad [in Mississippi] . . in 1837, . . part . . were removed . . to Arkansas" to the plantation of Hughes, were sold in 1838 to Conger and brought by him "from Arkansas, and landed at his plantation in [*sic*] the Mississippi river;"

Simmons v. Cutreer, 12 S. and M. 584, January 1849. [585] "Cutreer sued . . Simmons on his note for $300, . . given for a negro woman, . . evidence tended to establish the idiocy and worthlessness of the slave; . . bill of sale . . contained a warranty of title only. The court below . . excluded the proof of unsoundness." Held: [586] "there was no warranty [of soundness] . . But fraud may constitute a valid defence . . The testimony which the court ruled out was pertinent"

Boggan v. Walter, 12 S. and M. 666, January 1849. [668] "a son of the administrator . . had carried off the negro, and probably disposed of him, . . A reward was offered by the administrator . . but it does not appear that any further efforts were used" The slave [667] "was a stout, good looking boy, black, about twenty-five or twenty-six . . his upper front teeth decayed;"

Stuart v. Swanzy, 12 S. and M. 684, January 1849. [688] "removed with his . . family, and . . slaves, to Mississippi" from South Carolina.

Mahorner v. Harrison, 13 S. and M. 53, January 1849. [55] "Hooe . . of Virginia [[57] 'a man of great wealth'] . . furnished respondent [Harrison, his son-in-law,] with . . sixteen slaves, . . The defendant left Virginia . . and . . located in . . Alabama, . . [57] Hooe, in the meantime, had conceived the notion of having a place . . [58] in the vicinity of Harrison. . . He spoke frequently of Harrison's procuring a handsome estate, enough to work two hundred hands on; but . . evidently referred to the place in Alabama. . . he . . expressed his own desire to have a similar one [in Mississippi] on the Noxubee. . . [61] In November or December, 1833, he sent out twenty-three slaves, . . Harrison had . . commenced building on the Noxubee place, and placed the slaves there when they came. . . All the [forty-eight] hands subsequently sent . . were put on the same place."

Sadler v. Hoover, 7 Howard (U. S.) 646, January 1849. [647] "Hoover . . admits that . . [648] a few weeks previous to the sale [in 1836], he introduced into . . Mississippi, as merchandise, and for sale, a number of slaves, without any certificate of character,[1] . . Dinkins . .

[1] Miss. act of June 18, 1822. Hutch. Code 513, sect. 4.

rejects the offer of the bill to rescind the contract, as being manifestly unjust, since the great change in the value of this property, and because the complainants do not offer to account for the value of three slaves since dead. . . Chambers . . [649] insists that, as the contract was fairly entered into, without any wilful intent to violate the laws of Mississippi, should the court decree it to be void, he and his partners should be compensated also for the value of the three dead slaves, as there is no allegation of their unsoundness; and especially, as he charges, that they died from the cruel treatment of the complainants." The case went before the Supreme Court of the United States " on a certificate of division. . . the . . points upon which the justices of the Circuit Court differed . . are not distinctly stated; . . case . . dismissed for want of jurisdiction."

McIntyre v. Whitfield, 13 S. and M. 88, November 1849. [90] " admits his removal of the negroes to Texas [in 1842]; . . he has sold a part of them."

Sam (a slave) v. State, 13 S. and M. 189, November 1849. [190] " Sam . . was indicted . . for the murder of . . Barrow. . . the venue was changed . . found guilty, and condemned to be hung. On the trial . . [191] bills of exception were taken, . . To the action of the court overruling the challenge for cause to . . Rigby, tendered as a juror, who stated, ' that . . his mind was clearly made up from rumor; . . thinks it would require some testimony to remove the impression from his mind;' and . . McCombs . . who stated, that ' He had heard the argument of counsel in the case of Jack, who was tried on yesterday as an accomplice . . has formed and expressed an opinion; it will require testimony to remove his impression, but thinks he can give an impartial verdict ' " Judgment reversed and the prisoner remanded for further proceedings.

Steele v. Shirley, 13 S. and M. 196, November 1849. [197] " sheriff . . seized . . seven negroes and committed them to his jail, . . jail fees accrued to the amount of one hundred and forty dollars."

Cicely (a slave) v. State, 13 S. and M. 202, November 1849. " the grand jury indicted . . slave of . . administrators of . . Wells . . for the murder of Anne Longon. . . [203] Watts testified, that . . a messenger from Mr. Brown waked him . . that he, in company with . . [four] others . . entered the gate, . . discovered the body of Mrs. Anne Longon . . [and] footprints . . of a barefooted person, . . on entering the house, a large broad axe was discovered . . bloody . . [204] a bed upon the floor . . on which was found the body of Dr. Longon . . the body of an infant child . . [and] his girl child, about two or three years old, . . with a deep wound in her cheek, . . found what seemed to be similar footprints . . in the direction of Mr. Brown's; . . met the defendant and a negro boy belonging to Mr. Brown, and asked her who killed Dr. Longon and family; she replied . . five robbers, three white men and two negroes, . . that . . Mrs. Longon and herself ran . . that she . . escaped . . [205] the front part of her dress was spotted with blood, . . she . . [said] ' it came from the sore on her finger,' . . footprints corre-

sponded with those discovered . . [206] [Another] witness discovered something concealed in her dress . . a purse containing eleven half dollars, one Mexican dollar, one five franc piece, and two or three dimes. . . She [said] . . that Dr. Longon gave her the purse, and two dollars of the money, for a purpose which witness declined to explain from decency. . . that there was eleven dollars; that the balance had been given her by several persons . . for the same purpose . . defendant made contradictory statements . . [207] one of the pockets of [the pantaloons] . . was stained with blood, as by a bloody hand thrust into it, . . [208] that defendant may have had hold of some of the bloody clothes . . that the defendant was the servant of Dr. Longon, and slept in the same house with him and his family, . . but one room. . . the purse . . had no apparent signs of blood upon it; . . Perry, for the defence, testified, that . . about three o'clock on the morning of the murder . . she informed the inmates of Mr. Brown's house, that some robbers had murdered . . family; that she lingered about the negro quarters about fifteen minutes before she came to the house, . . [209] that he saw the defendant carry one of . . [the] children . . sent over to Mr. Watts; . . that the child was bloody; that he did not notice the blood on the defendant's dress until her return from Watts. . . Johnston . . testified, that . . the bloody footprints . . in the house . . resembled a stocking footprint," [207] " she [was] . . taken into custody, and was tied with a cord." Verdict of guilty; motion for a new trial overruled. Affirmed.

Jolly v. State, 13 S. and M. 223, November 1849. [224] " The prisoner was indicted for murder . . of . . Jim, the property of Downs. He was convicted of manslaughter in the fourth degree, and sentenced to two years imprisonment . . a witness for the prisoner . . [was] asked 'if . . Jim . . was insolent and impudent to white persons.' An objection was . . sustained "

Judgment affirmed: [225] " there was no effort to prove that the negro was dangerous . . there had been no previous threats or quarrels between the deceased and the accused. . . no ground . . [226] to draw an inference, that the deceased by insolence provoked . . the act." [Sharkey, C. J.]

Coon v. State, 13 S. and M. 246, November 1849. " indicted . . for the larceny of Caesar . . who ran away . . in February, . . Smith . . was employed [in June] . . to go to Mobile . . [247] after Caesar, . . went to the jail there, and found Caesar . . also went to the county jail near Mobile and found Coon " [251] " Coon . . said that the negro had been bought by him from a Kentucky horse-drover. . . [252] Prisoner desired to be taken back to [Mississippi] . . 'because he could not get a fair trial in Mobile; that they had arrested him upon the charge of stealing the negro' . . that he had sold the negro . . in Mobile for $350." Verdict of guilty and motion for a new trial overruled. Affirmed.

Anthony (a slave) v. State, 13 S. and M. 263, January 1850. [264] " an indictment under our statute,[1] . . for an assault and battery upon

[1] Hutch. Code 532.

a white person, with intent to kill. He was found guilty, and sentence of death pronounced . . It is objected in behalf of the prisoner, that sentence of death was improperly pronounced . . because the indictment did not charge the act . . done with express malice." [265] "We . . reverse the judgment, and . . give the judgment which the court below should have given." [1]

Bond v. State, 13 S. and M. 265, January 1850. [266] "convicted . . of selling . . liquor to a slave without the permission of the master . . Chew, the only witness for the prosecution, . . accompanied two of his negroes late at night, . . [267] the negroes taking . . peas and potatoes . . a person in the house [of the defendant] . . whom the witness, from his voice, believed to be the defendant . . said to the negroes, 'Leave your things . . and return in the morning or some other time, and I will settle with you.' Witness, with the negroes, returned . . between daylight and sunrise; he saw the negroes enter . . and come out . . bringing . . whiskey and tobacco,"

Judgment affirmed: [268] "the permission was to sell the articles which the slaves had . . and not to receive in payment whiskey, money, or any other specific commodity. . . we cannot say that . . [the verdict] was unauthorized by the evidence." [Smith, J.]

Kirk v. State, 13 S. and M. 406, January 1850. [407] "indictment . . for negro stealing . . found guilty, and sentenced to . . Penitentiary for ten years." Judgment reversed, indictment quashed and the prisoner remanded for a new indictment: "no prosecutor marked upon the indictment."

Prewett v. Dobbs, 13 S. and M. 431, January 1850. It was proved [439] "that this girl [about fourteen] . . was worth $550 [in 1845]; that her hire was worth $85 per annum, and that she was brought into this state in . . 1846."

Johnson v. White, 13 S. and M. 584, January 1850. [585] "came from Louisiana [about 1833] . . and brought . . the negroes"

Weathersby v. Weathersby, 13 S. and M. 685, January 1850. Will of Lewis Weathersby: [687] "I give . . to my son Ludovick, my servants Tom and Lucy, and their children, Matilda, Sylvester, Andrew, and Dicey, in trust and under the following conditions, *viz.*: I do . . enjoin it upon my . . son, to make the said slaves as comfortable in life as possible; . . furnish them . . with a house separate from others; . . a horse, farming utensils, and a small tract of land for their use; that he sell their crops, furnish them with a milch cow, and two hundred pounds of sugar, and one hundred pounds of coffee, yearly; and that, in consideration of these things, he require of them reasonable service, and should Tom and Lucy . . be able to raise . . say three hundred dollars for each of their daughters, Matilda and Dicey, then he shall give [them] up . . to . . Tom and Lucy, to serve and comfort them in their old age."

[1] "any number of lashes, not exceeding one hundred on each day, for three days in succession." 13 S. and M. 265.

Held: [688] "Ludovick Weathersby is invested with the absolute title . . discharged of all trust and condition. . . The slaves . . are not subject to distribution, as prayed for by the petition." [Clayton, J.]

White v. Trotter, 14 S. and M. 30, November 1850. [33] "Trotter . . of Tennessee . . held a plantation, containing [1760 acres] . . in . . Louisiana, on which he had near sixty slaves."

Bibb v. Martin, 14 S. and M. 87, November 1850. [89] "The slaves . . were removed to Louisiana, . . 1841, where . . the mortgagor, likewise removed."

Wash (a slave) v. State, 14 S. and M. 120, November 1850. [122] "an indictment which charged, first, the commission of a rape upon . . an infant under the age of ten years; and second, an attempt to commit a rape upon the same party, described as a 'free white female child under the age of twelve years.' . . a general verdict of guilty, and . . sentence of death"

Affirmed: [124] "we do not think that the evidence established an actual commission . . but only an attempt . . [126] The completion of the act . . necessarily includes an attempt . . but rape by a slave upon a free white woman . . or . . child . . is not made an offence by the statute law of this state. Hence the first count . . was bad. . . in this state . . in prosecutions for misdemeanors, where there is a general verdict of guilty, and there is any good count, it will be referred to that and supported. . . there can be no good reason why it should not be sanctioned as well in capital cases" [Smith, J.]

Endicott v. Penny, 14 S. and M. 144, November 1850. [145] "ran off with their [50 or 60] slaves to Texas," about 1836.

Hull v. Clark, 14 S. and M. 187, November 1850. [189] "took the negro . . to New Orleans, and sold him for cash."

Bank of England v. Tarleton, 23 Miss. 173, November 1851. [176] "to secure the payment of a debt due to the Bank of England, . . [he] executed a mortgage on the . . plantation and negroes,"

Kilpatrick v. Bush, 23 Miss. 199, November 1851. [202] "In 1826, the widow . . removed [from Tennessee] . . to Alabama, taking the negroes . . [Bush] purchased them . . in 1828 or 1829, and subsequently removed with them to this state,"

Harris v. Runnels, 12 Howard (U. S.) 79, December 1851. See Rowan and Harris *v.* Runnels, p. 313, *supra.* [80] "Rowan having died during the suit, it was prosecuted by Harris, the surviving partner. . . [81] Runnels plead . . 'that . . plaintiffs had not . . obtained a certificate signed by two respectable freeholders in the county of . . Virginia, from which . . slaves were brought, . . that the slaves . . had not been . . convicted of . . felony,'[1] . . The plaintiff . . demurred . overruled . . judgment for the defendant."

[1] Miss. act of June 18, 1822. Hutch. Code 513, sect. 4.

Judgment reversed and the cause remanded: [85] "The sixth section declares that both the seller and the buyer . . shall pay one hundred dollars for every slave so sold or purchased. The two sections, considered conjunctively, seem to imply that the penalty only, without any other loss to either the seller or the buyer, was to be inflicted. . . For aught that appears . . the defendant bargained for the negroes, knowing that they were brought . . as he says they were. . . he stands in *pari delicto* with the seller, with this difference . . [86] that he is now seeking to add to his breach of the law the injustice of retaining the negroes without paying for them. . . we do not think that public policy calls for the application [of the rule *pari delicto potior conditio est defendentis et possidentis*] . . in this case, . . [87] Our judgment . . is, that the contract is not void," [Wayne, J.]

McAfee v. Crofford, 13 Howard (U. S.) 447, December 1851. "an action of trespass brought by Crofford, who described himself as a citizen of Tennessee, but who had a plantation in Arkansas." A judgment had been [449] "rendered in one of the courts of Mississippi, . . against . . Crofford and . . McAfee [security for Crofford], for the sum of $4,143.93," [454] "an execution was issued, and levied on sundry slaves of Crofford, who owed the debt; McAfee, . . being his security, a delivery-bond for the property was executed," [449] "at the time of executing the delivery-bond . . Crofford promised not to remove his negroes from Tallahatchie county [Mississippi], until said debts should be paid." But he [454] "removed with his slaves across the Mississippi, and settled on a plantation on that river, in Arkansas, not far from his former residence in Mississippi." The delivery-bond "was forfeited . . 1841, by which forfeiture the bond had the effect of a judgment." [448] "About the last of October, . . 1846, the McAfees and Alford, assisted by several other persons, all armed, crossed the Mississippi River in skiffs, and forcibly carried off twenty-one slaves from Crofford's plantation [and wood-yard]. Crofford was absent. His overseer remonstrated, but the assailants replied that they intended to take all the negroes, and would kill any one who interfered. There were forty-two negroes, men, women, and children, on the plantation; but, as the assailants were engaged for several days in catching and transporting them to the opposite bank of the river, four women and seventeen men were so frightened that they ran off into the swamps and remained out five or six weeks. . . 1,800 or 2,000 cords of wood . . on account of the absence of the slaves, was either floated off or greatly injured by a subsequent rise in the river. . . the neighbor's hogs, cattle, horses, and mules broke into the plantation, and nearly destroyed 120 acres of growing corn; all of which was the consequence of the absence of the hands. . . [449] the slaves carried over the river, being twenty-one in number, were worth $12,580; wood worth $2.50 per cord, and corn 50 cents per bushel." "the slaves forcibly carried away . . were levied upon and most of them sold, producing the sum of $6,132," [455] "A verdict for $10,613 was rendered by the jury, on which a judgment was entered." Judgment affirmed.

Lambeth v. State, 23 Miss. 322, January 1852. [330] "I was staking for the negroes to put up the rails" of a fence.

State v. Borroum, 23 Miss. 477, January 1852. "bought of a slave seventy-five pounds of cotton, without the authority of the master . . in writing. See Acts December, 1850, p. 100, sect. 1."

Green (a slave) v. State, 23 Miss. 509, January 1852. [512] "indictment for an attempt . . to commit a rape upon a free white woman." [511] "Mrs. Conerly . . believes the assault was committed on her by Green, . . cannot unequivocally identify the defendant. Caroline Conerly . . swears that the person who assaulted her mother had on the same kind of clothes as the defendant, . . The proof of the two negroes shows, that it was Green's declared intention to make an assault on some white woman that night, and his own declarations show he could intend no one but Mrs. Conerly. . . proven to have dogs with him that evening; and Mrs. Conerly says there was a dog . . this is the second time a jury have found defendant guilty on this charge." Motion for new trial overruled.

Judgment reversed and a new trial awarded: [512] "It was tried in the circuit court of Pike county, . . [513] we find no proof that the offence . . was perpetrated within the county of Marion, as alleged in the indictment." [Smith, C. J.]

Ike (a slave) v. State, 23 Miss. 525, January 1852. "convicted of an assault with intent to kill . . [526] his overseer, while inflicting legal chastisement upon him, under the proviso to the 1st sect. [act of] 1829, Code 532. Sentence of death was pronounced upon him." Judgment affirmed: [529] "express malice is not an ingredient in the offence of which the prisoner was convicted."

Tifft v. State, 23 Miss. 567, January 1852. "convicted . . of a violation of the 8th section of the statute, passed February 26, 1842, . . [568] proved, that the defendant was the owner of the slave . . and that said slave did . . [569] reside on a lot which did not adjoin . . But . . for the defence, it is . . proved, that the slave . . was under the . . control of another person." Judgment reversed and new trial awarded.

Talbot v. Norager, 23 Miss. 572, January 1852. "action of assumpsit . . the defendant asked the court to instruct the jury, that if they believed from the evidence that the plaintiff was a negro, it was *prima facie* evidence that he was a slave, and therefore could not maintain the action; . . refused" Affirmed: "This . . should have been pleaded in abatement"

Lindsey v. Platner, 23 Miss. 576, January 1852. "Lindsey . . purchased at a sheriff's sale . . six slaves, at . . $800 or . . $1000 less than their value . . that the sheriff at . . [his] request . . instead of selling the slaves separately, sold them in a lot; that Lindsey stated to the persons present that he was purchasing for . . the widow . . and thus lulled competition."

Buckingham v. Levi, 23 Miss. 590, January 1852. "writ of *habeas corpus,* for the recovery of the possession of a slave, . . That the slave . . 'had gone illegally into the possession of . . Buckingham under a pretended contract for hire;'"

Held: [591] "The remedy by writ of *habeas corpus,* for the recovery of the possession of slaves, is confined to cases in which 'a slave has been taken . . by force, stratagem or fraud,'"[1]

Doughty v. Owen, 24 Miss. 404, October 1852. [405] "Owen owned a negro, charged with the commission of a rape in Jasper. To avoid arrest . . the negro was run to Kemper county, and sold to Doughty, who was cognizant . . and purchased him at a greatly reduced price, $400; $100 . . he paid, $100 he agreed to pay in cattle, and for the balance gave his note, on which this suit was brought." [406] "Owen . . cautioned the purchaser not to let the negro get back into Jasper county, as the sheriff . . had . . a warrant for the arrest . . Doughty replied, that he intended in two or three days 'to steal off and sell him.'" [405] "The negro . . escaped from Doughty, fled to Jasper, was apprehended . . put in jail, broke it, and Doughty has never heard of him since." Verdict for the plaintiff.

Judgment reversed and new trial granted: the note was void. [408] "It may be true that the owner was not so much influenced by considerations of mercy to the slave, or to defeat the administration of the criminal law, as by considerations of private gain. It is . . immaterial . . [409] The purchaser was but a new party added to those who originally set out to violate the law;"

Van Buren (a slave) v. State, 24 Miss. 512, October 1852. Indictment for burglary. [515] "Cooper . . proved that he had hired the defendant from Birdsong, . . [On Sunday night] he perceived that his horse had been ridden, . . Suspecting the prisoner . . he . . [on Monday] charged him with the fact, and also with having carried off a bag of potatoes. . . denied. He then whipped him, but obtained no confession. In the evening he . . threatened to whip him again, when he confessed . . he had . . two jugs of whiskey and two loaves of sugar, . . [516] and showed him the articles. . . without any threat, confessed that he had taken them . . from the store of Birdsong and Gary, which he entered by means of a false key. . . Tuesday, the witness informed Birdsong, . . the slave being called before them, witness said to him: 'Van, here is your master, who has come for the things you took;' and thereupon the prisoner . . voluntarily confirmed the confession . . This confession . . the court permitted to be given in evidence" [513] "He was . . convicted, and sentenced to be branded in the hand, and to receive twenty-five lashes each day, for four successive days. A writ of error was sued out, and . . the slave was brought before the Hon. C. P. Smith, chief justice . . by writ of *habeas corpus,* and admitted to bail in the sum of five hundred dollars."

[1] Hutch. Code 1002, sect. 19.

Judgment reversed and a new trial granted: [516] "So much . . of the confession made . . on Monday, as . . to the time and manner . . he had obtained the articles . . was properly excluded . . as it was manifestly obtained under the influence of fear, arising from . . whipping and the threat of further punishment. The confession . . next day . . the court permitted to go to the jury . . erroneously." [Yerger, J.] See Peter *v.* State, p. 301, *supra.*

Presley v. Rodgers, 24 Miss. 520, October 1852. [524] "in 1821 . . the widow, removed [from South Carolina] to Mississippi with the slaves"

John (a slave) v. State, 24 Miss. 569, October 1852. [570] "a physician . . examined the body of the negro killed by choking with a rope . . pocket had been rifled after death; . . He saw . . John . . after his arrest, and examined the wound in his head, and thought it was made by some sharp instrument, and defendant said it was inflicted by a blow from one of the wagon wheels in helping the negro that was killed to get his wagon out of the mud ['about supper time'] . . but witness did not think the wound could have been inflicted that way; . . one tooth had been knocked out, . . [571] Davy (a slave) stated, that he and John both worked on the railroad and slept in the same shanty, . . John . . came in, about an hour before day; . . said he was sick. John told witness a short time before . . that he thought he ought to kill somebody; but he thought this a mere foolish remark. . . when witness heard a man had been killed, he told Mr. T. that he had better examine John;" "Alfred (a slave) . . slept in the same shanty. . . at dinner time, he saw blood on the shirt collar and bosom of John's shirt, . . Willis (a slave) states, that about one o'clock on the night the murder was committed, John came to the shanty where they both slept, and . . called Nathan out to take a drink with him, and . . soon . . went off, . . that, on the day the inquest was held . . [572] he saw . . persons going toward the . . body, and John asked . . where . . he replied that they were going to have a jury and make all the railroad hands . . put their hands on the dead body, and that blood would follow the hand of the murderer; that John then took off his cap and asked Nathan to take care of it, took his hat . . and went off, running some at first; . . Austin, the negro killed, . . had been coming to the depot ever since the railroad was built, hauling cotton and other freight, . . The defence then introduced Jack (a slave) who stated, that . . about midnight, he, being then runaway from those to whom he was hired, met John . . one to two hundred yards from the wagon; . . he, the witness, was going towards the wagon to get something to eat, . . heard some noise in the direction of the wagon, and . . some one say, 'boys, my head is cut; I'll give up;' . . asked John . . he replied, they were quarrelling and fighting down there, he believed . . [573] convicted of murder; a new trial was moved for and overruled," [579] "reverse the judgment, remand the prisoner, and award a new trial" "all of the circumstances proved . . when united, were . . insufficient to . . warrant a conviction."

Murphy v. State, 24 Miss. 590, October 1852. " indictments . . for violations of the act . . of the 6th of March, 1850, ' to suppress trade and barter with slaves.' . . charged . . ' that . . Murphy . . [591] did . . unlawfully sell spirituous liquors to a slave, without the consent in writing of the master ' . . Vinson . . testified . . that . . he saw a negro man enter the storehouse of the defendant, . . defendant pointed to a barrel with a tumbler upon it, and the negro . . drew some liquid . . and having drank it, gave the defendant a half dime. . . did not know the name of the negro, or . . his master "

Held: [595] " indictments framed in the general manner indicated in the second section of the act, do not furnish to the accused ' the nature . . [596] of the accusation against him,' in the manner contemplated by the constitution."

Westmoreland v. Walker, 25 Miss. 76, October 1852. [77] " The evidence . . shows him to be unsound in body, and to possess a weak mind. The slave is represented in the bill of sale to be 27 . . The proof shows him to be 38 or 40 "

Steppacher v. Reneau, 25 Miss. 114, October 1852. " 1849 . . Reneau instituted an action of covenant . . [115] ' Received [in May 1847] of . . Reneau six hundred and fifty dollars . . for . . " Delia," about twenty or twenty-one . . I hereby warrant . . that she is perfectly sound,' . . she was a good seamstress and house servant; . . physician . . was called [in October] . . she had dropsical symptoms; thought her affected with ' amenorhea;' . . He had been applied to two or three months before . . to prescribe . . and did so according to plaintiff's description of symptoms; . . attended on her . . to April, 1849, when she died; . . [116] visited her some half dozen of times, (as often as he thought necessary,) and once a day or two before her death; . . that he (assisted by Dr. Harriford) made a ' post-mortem ' examination . . found the heart very much diseased and enlarged, the liver enlarged and adhered to the side; found the womb diseased. . . his medical bill was $25 or $30. . . her symptoms indicated the disease of longer standing than the bill of sale; . . [117] Reneau . . had the girl on trial a week or two before he purchased. . . [118] The jury found a verdict for Reneau for $827," Affirmed.

Harmon v. Fleming, 25 Miss. 135, October 1852. " the notes sued on were given for the hire of two slaves . . for one year, . . the slaves . . died during the year;" Held: [143] " as the defendant did not stipulate for an abatement of price in the event of . . death, we do not think he has any legal right to demand " it.

State v. Borroum, 25 Miss. 203, October 1852. [205] " unlawfully did buy . . from . . slave named Elleck . . seventy-five pounds of cotton,"

Brian v. Davidson, 25 Miss. 213, October 1852. Held: [221] " Under this act,[1] . . the officer is justifiable in levying on a slave, if he cannot

[1] Hutch. Code 701.

find other personal property . . If the defendant wish to exempt his slave he should point out other property."

May v. Rockett, 25 Miss. 233, October 1852. [235] " when . . Allen ran away, he . . told . . Rockett to sell . . Allen." " when Mrs. Rockett was about to depart, she observed to her mother, . . ' I wish you would let me have one of these little negroes,' pointing to . . Douglas and several other small ones. Mrs. May replied, ' Daughter, what do you want with it? ' Mrs. Rockett replied, ' Why, it can pick up chips and be company for me.' Mrs. May answered, ' well, you can take any one of them you please, and change them as often as you like.' "

Sample v. Barnes, 14 Howard (U. S.) 70, December 1852. [71] " 1836, . . Barnes . . introduced . . into . . Mississippi . . a number of negro slaves, for the purpose of being sold as merchandise. . . took, in payment, a bill of exchange, . . indorsed by . . Sample, . . not paid; . . [72] [Sample] prayed, that the original contract for the sale . . might be declared void as . . in violation of the constitution and laws of Mississippi; and . . the judgments and executions obtained for . . [Barnes's] benefit . . perpetually enjoined." Held: a court of equity will not grant relief, because he was *in pari delicto* with the other party.

Downey v. Hicks, 14 Howard (U. S.) 240, December 1852. [241] " The declaration . . contains eight counts. . . the second is *indebitatus assumpsit* for hire of forty slaves; the fourth a *quantum valebat* for the services of forty other slaves; . . [243] [Joseph T. Hicks] was, in 1836, the agent of plaintiff [Downey, a resident of North Carolina,] to receive the hires of certain slaves, owned by him in Mississippi; . . that he afterwards took the slaves into his own employment, as hirer, to execute a contract on the Mississippi Railroad; . . Dr. John R. Hicks, a neighbor of plaintiff's . . and a brother of [Joseph T. Hicks] . . visited Mississippi, in June, 1839, to collect hires due for his own negroes, and took with him a letter from plaintiff, desiring [Joseph T. Hicks] . . to send him whatever was due him, to the amount of $12,000, if possible. An account was then stated, showing a balance due plaintiff, 1st January, 1839, of nearly $10,000."

Perkins v. Fourniquet, 14 Howard (U. S.) 313, December 1852. [325] " Received . . in . . Louisiana [in 1828], . . Big Sarah Miambo, about 50 years;"

Barker v. Stacy, 25 Miss. 471, April 1853. " died in Mississippi, leaving a large estate in . . Louisiana, and some in Mississippi; . . in Louisiana, the parish judge . . ordered a sale of certain property . . 1837 . . purchased by . . Barker, . . [472] a special mortgage reserved upon the slaves until final payment; . . removed said negroes to Mississippi, . . [473] not more than ten miles below . . upon a large plantation,"

Abram (a slave) v. State, 25 Miss. 589, April 1853. " indicted for murder . . found guilty . . [590] new trial . . refused " Judgment re-

versed and the cause remanded: [591] "It does not appear by the record, that the grand jury were sworn."

Johnson v. Nations, 26 Miss. 147, December 1853. [149] "The [two] slaves . . were clandestinely taken from . . Tennessee, whither . . he had removed, . . brought . . within . . Mississippi."

Laura (a slave) v. State, 26 Miss. 174, December 1853. "indicted . . for conspiring and plotting with two other slaves the murder of John D. Watkins, was convicted . . and sentenced . . to capital punishment." Judgment reversed, indictment quashed, and the prisoner remanded: [176] "The record . . contains no statement . . that the indictment . . was found and returned into court."

Miller v. Pickens, 26 Miss. 182, December 1853. [183] "expenses incurred in removing . . slaves . . from . . South Carolina,"

Bacon v. Tyner, 26 Miss. 190, December 1853. [192] "About . . 1817 he removed [from South Carolina] to this State, and brought . . the slave and her increase."

Cowles v. Pointer, 26 Miss. 253, December 1853. [254] "extraordinary freshet . . [255] that defendants used every effort to get hands to assist in raising the cotton [in the warehouse] and in removing it, but that owners of negroes were unwilling to have them employed in such work, which was dangerous to health and life,"

Garrison v. Fisher, 26 Miss. 352, December 1853. In 1846 [353] "Rebecca, aged about seventeen," was sold for $450.

Trotter v. McCall, 26 Miss. 410, December 1853. [411] "a suit instituted by . . McCall, to recover damages from . . Trotter, for the detention of a slave hired by McCall, for the year 1850, from Trotter, . . McCall agreed to give $75" [412] "in . . May . . the slave threatened to run away . . for which he whipped her" [411] "in a very cruel manner;" "she ran away and went to Trotter. . . when McCall came . . to claim the slave, . . Trotter offered to restore her, if the plaintiff would agree to treat her better by not whipping her again, or, if necessary, to do so in a moderate manner, she being in a delicate situation incident to females, she having been injured by the whipping received; but McCall refused . . and threatened to give her a hundred lashes upon her return. Trotter refused to deliver the slave . . the detention of the slave was a material injury to McCall in the cultivation of his crop that year. The jury found a verdict for the plaintiff for $100, . . new trial . . refused"

Judgment reversed and the case remanded: [413] "the master would be justifiable in refusing to surrender the slave . . if . . already materially injured in value by the . . cruelty of the hirer, and there was just cause for believing that if given up, the same course of treatment would be continued" [Handy, J.]

Calhoun v. Rail, 26 Miss. 414, December 1853. [416] "when the division was made, on the 2d January, 1851, . . negro had run away, and was then out, but was recovered . . 31st January,"

Shelton v. Baldwin, 26 Miss. 439, December 1853. "The complainant . . was the owner of . . William, which slave had escaped from him in Louisiana, and run away to this State, and was committed to jail in the county of Claiborne. . . 1849, the negro, who had given his name as Edward, was . . sold out of the jail as a runaway by the sheriff . . for . . $680, . . By the act . . of 5th of February, 1838,[1] it was enacted, that . . Port Gibson Academy should be entitled to the proceeds arising from the sale of any runaway slave sold in that county, . . [440] sheriff . . after deducting the jail expenses, etc., paid over to . . agent of . . Academy, . . $420,"

Held: [443] "the act of 1822,[2] requiring the net proceeds of the sale of a runaway slave to be paid into the county treasury for the use of the county, but requiring the county to pay the money to the owner on his proving his property . . has [not] been repealed, so far as the county of Claiborne is concerned, by the 6th section of the act of 1838"

Jones v. Donald, 26 Miss. 461, December 1853. [462] "action . . to recover damages . . for harboring and secreting a slave . . and for removing [him] . . into . . Alabama. The damages sought . . consist mainly . . of money paid out . . in endeavoring to recapture the slave. . . The proof . . establishes about $120."

Newman v. Elam, 26 Miss. 474, December 1853. "Elam ['a negro trader'] filed his bill . . against . . tax collector of Adams county, to enjoin [him] . . from collecting a tax . . upon the amount of sales . . during . . 1852. The bill alleges that Elam is a citizen . . and is a regular and permanent . . vendor of slaves . . That he has a permanent depot ['near the city of Natchez'], and nowhere else makes sales of slaves;"

Held: [475] "the 16th section of the act of 1850 . . [476] was not intended to embrace a trader . . who had a permanent place of making his sales, and who sold only at that place."

McCoy v. McKowen, 26 Miss. 487, December 1853. "McKowen . . brought an action of trespass *vi et armis* . . against McCoy and Haywood, for beating a female slave hired of . . McKowen . . from the effects of which beating the slave died." [489] "McCoy had ordered the slave . . to get an early breakfast . . but she not having arisen in due time, he directed Haywood, his overseer, to go into the kitchen and arouse her. . . a noise was heard, . . It was between 4 and 6 o'clock . . McCoy . . went out into his gallery, when the woman ran to him for protection. He told her she must submit, which she did; and by his direction, the overseer whipped her with the lash of a whip, in a manner not cruel or unusual, or calculated to injure her seriously. . . she walked to the kitchen . . was seen to stumble once, but walked very well. Before

[1] McNutt's Code 812, sect. 6.
[2] Hutch. Code 518, sect. 34.

coming out of the kitchen, she had resisted the overseer. About 8 o'clock . . she died. She had two wounds . . one over the eye, and the other behind the ear, which might have been produced by a fall . . but were most probably inflicted by the overseer in the kitchen. On post mortem examination, they appeared to be contused wounds, made by a blunt instrument, and might have produced death. The scull was not fractured, but the bloodvessels of the brain were engorged with blood. The physician proved that the woman was of a habit predisposed to apoplexy, . . the wounds . . were not inflicted during the whipping ordered by McCoy, . . The suit was dismissed as to the overseer, and a verdict and judgment were rendered" for McKowen.

Judgment reversed and the case remanded: [490] "the jury . . must have concluded that the wounds . . were the cause of the death, . . There is no evidence whatever to show that these wounds were inflicted by the direction or sanction of McCoy,"

Van Winkle v. Smith, 26 Miss. 491, December 1853. [493] "the slaves . . were . . run off . . and sold in Louisiana;"

Lyon v. Knott, 26 Miss. 548, December 1853. In 1845 [555] "taking with them the slaves, [they] removed . . to . . Texas . . After the death of his wife, Lyon . . ['secretly'] removed the slaves into this State."

Archer v. Jones, 26 Miss. 583, December 1853. [587] "the slaves were brought . . from Virginia, she holding a life-estate in them,"

Leiper v. Hoffman, 26 Miss. 615, December 1853. "The complainant . . alleges . . that, in 1834, she purchased a vacant lot in . . Natchez . . for . . $175, . . and commenced improvements . . by erecting a dwelling-house, etc., at an expense of upwards of $1,500; . . that she paid the whole [[620] 'by her hand'] . . out of means of her own;" [621] "though not emancipated at that time, her former owner asserted no claim upon her, and expressly recognized her as a free person;" [616] "1836, when the deed . . was to be executed, . . her attorney . . advised her to have the deed made jointly to herself and some white person, as there was a great spirit at that time to remove from the State all free persons of color, so that, in the event she should be forced to remove, such white person could manage . . as a trustee for her. That, having great confidence in . . Winscott, then residing in New Orleans, . . she directed her counsel to draw the deed . . to . . Winscott and herself jointly, . . that . . Winscott . . never knew . . of the deed . . before complainant left Natchez," She [615] "paid all the taxes . . from 1834 to May, 1845, the time of her removal to Cincinnati, where she has since resided. . . [616] appointed . . her agent, to collect the rents . . That . . Malvina Hoffman, a next door neighbor . . procured . . Bemis to confederate with her, . . [617] procured . . Winscott . . September, 1845, to convey the lot to Malvina Hoffman for . . $100, . . defendant Hoffman . . sent word to her agent . . to send her the keys . . as she . . had purchased . . sent" The vice-chancellor dismissed the bill.

Decree reversed and the case remanded, [624] " with directions to have an account taken of the rent and profits . . since the delivery . . to . . Hoffman, and that she be decreed to pay the same to the complainant, that the deed . . to . . Hoffman be delivered up to be cancelled, and that . . Winscott convey . . to the complainant." [622] " Her right of present enjoyment might be prevented by her condition of slavery; but if the trust continued till that disability was removed . . [623] her rights as a *cestui que trust* would then immediately vest," [Handy, J.]

Hoover v. Pierce, 27 Miss. 13, April 1854. [15] " plaintiff came out [from South Carolina] . . fall [of 1833] with negroes, . . [Witness] thinks that this was the first trip plaintiff made to this State with negroes for sale." [14] " defendants acquired . . slaves from the plaintiff, worked them during . . 1835, and then sold them " [22] " for a sum greater than the price which they had agreed to pay for them."

Held: [26] " courts will not lend their aid to a party who has parted with his property on an illegal consideration [1] to regain possession of it. If then, the plaintiff was not entitled to invoke the aid of a court to recover back the slaves, . . he could maintain no action to recover the proceeds of the sale." [Smith, C. J.]

Funchess v. Seibe, 27 Miss. 26, April 1854. Will: [37] " it is my wish, when my negroes are divided, that the lot that Bordeau may be in shall not be drawn for while my wife remains a widow, or until my youngest child becomes of age or marries;"

Prichard v. Martin, 27 Miss. 305, April 1854. Action by overseer to recover wages. [308] " defendant requested [witness] . . to tell Martin [his overseer] that if he would abuse his negroes less and treat his teams better and show him more respect, he might remain, . . defendant stated to . . neighboring planters, that Martin was a good overseer, . . that he had been informed, before employing him, that he was a cruel man, but that he had been misrepresented, and was not as cruel as the defendant himself; . . [309] one witness . . thought the plaintiff severe on negroes, . . saw the plaintiff strike a negro with a stick."

Downey v. Barnett, 27 Miss. 409, April 1854. Barnett [410] " bound himself to remove [from North Carolina] to . . Mississippi . . and take charge of [a plantation] . . bring with him the negroes purchased [under execution] . . with the privilege . . of redeeming said negroes, . . [Barnett] was very reluctant to move . . that the sole . . inducement . . was to avail himself of the opportunity . . to redeem said negroes, who were family slaves . . to whom he was greatly attached;"

Dozier v. Lewis, 27 Miss. 679, October 1854. [680] " The slaves were run off in 1839. . . Lane . . purchased the slaves and . . sold them in Tennessee."

Hairston v. Hairston, 27 Miss. 704, October 1854. [717] " in 1836, the deceased removed a large number of his slaves [from Virginia], and

[1] See introduction to the Mississippi cases.

placed them upon lands which he had purchased in . . Mississippi, . . [718] that he frequently visited Mississippi . . but . . kept up his establishment in . . Virginia. In 1841, unpleasant relations sprung up between himself and Mrs. Hairston, and . . in a sudden fit of passion he left Virginia, . . [721] He had in operation in this State five plantations at the time of his death [in 1852]." [717] "devised his whole estate . . to one of his slaves, a child six years old, then in . . Mississippi." See same *v.* same, p. 339, *infra.*

Raby v. Batiste, 27 Miss. 731, October 1854. [732] "It is contended . . that [Augustine] . . was not the son of Antoine Krebs, but was a mulatto, and that his father was a negro, his mother after his birth having married Antoine Krebs, . . It is clearly proved that . . [Augustine] married a slave, that he did not claim . . the right to vote . . to act as a juror . . or to testify against white men . . and though several witnesses testify that he was considered to be a white man, yet from all the evidence we are satisfied he was a mulatto, and . . the subsequent recognition of him by Antoine as his son . . could not render him his legal heir."

Shirley v. Shattuck, 28 Miss. 13, October 1854. [21] "agreed . . that some reliable person was to be placed in charge of the slaves as a sentinel to guard against their removal; that therefore . . the alleged supernumerary overseer, was employed,"

Jesse (a slave) v. State, 28 Miss. 100, October 1854. [108] "indictment . . under the 55th section of the statute of 1822 [1] . . [109] charges that the plaintiff in error . . 'did . . feloniously set fire to . . barn' . . a verdict and judgment of conviction" Judgment reversed, the indictment quashed, and the prisoner ordered to be kept in custody for a new indictment: [110] "the statute does not dispense with the averment of malice,"

Roach v. Anderson, 28 Miss. 234, October 1854. [235] "1830 . . Presley Anderson . . of Missouri, sold to . . Duncan, of that State, the slave in controversy, to be a slave for fifteen years, and at the end of that time, to be set free; . . 1833, Duncan sold the slave to . . Chamberlain, of this State, to be a slave for thirteen years . . at the end of which time . . to be free. Both . . transactions took place in Missouri, . . evidenced by conveyances in writing . . not recorded . . the slave . . was removed by [Chamberlain] . . [236] to this State, and kept in his possession for more than three years; after which Chamberlain sold him" to Roach. [235] "1847, Presley . . conveyed all his right . . to John D. Anderson," who brought an action of replevin. Verdict for the plaintiff; motion for a new trial overruled.

Judgment reversed and the cause remanded: [236] "Such a case is clearly embraced by the statute of frauds.[2] The policy of that statute was . . to protect the rights of parties purchasing in good faith . . from

[1] Hutch. Code 521.
[2] *Ibid.* 638.

persons who had remained in possession . . apparently as owners, for the period limited by the statute." [Handy, J.]

Sarah (a slave) v. State, 28 Miss. 267, October 1854. [272] "The indictment[1] . . charges the . . 'malicious . . and felonious' administration, to certain persons . . of . . 'arsenic, . . by . . mixing . . in . . coffee' . . [273] after verdict the prisoner's counsel moved in arrest of judgment. . . overruled." Judgment reversed and the prisoner remanded: [277] "Neither count of the indictment charges the . . felony to have been committed with malice aforethought."

Hill v. McLaurin, 28 Miss. 288, October 1854. [289] "was, in his . . younger days, a liberal feeder of his negroes, . . but . . became so mentally and physically enfeebled . . as to cease making crops of any account, and so penurious and childish as not to feed his negroes, causing them to be a nuisance to his neighbors; . . that by way of convincing one . . of the family that something must be done . . [a son] took the pains to go . . to the old man's house, and attended at the meat house . . to see the food dealt out . . and reported . . that there were only thirteen pounds of newly killed beef, given out by the old man to seventy negroes,"

Wanzer v. Truly, 17 Howard (U. S.) 584, December 1854. [589] "guardian . . had run off with those slaves, from . . Alabama, and sold them" in Mississippi.

Murphy v. State, 28 Miss. 637, April 1855. [639] "prosecutor [the sole witness] . . proceeded to state that . . he saw a mule team-wagon . . loaded with cotton, stop near him, when its driver, . . Judge Love's Allen, . . took out of the wagon a bottle without a stopper, and that witness tried to take it from him, but . . [640] driver jerked away from him and went . . into the house of . . defendant's store, . . returned . . put a bottle from under his coat back into the wagon; prosecutor . . found whiskey in the bottle," Verdict of guilty.[2] Judgment thereon affirmed.

Wells v. Treadwell, 28 Miss. 717, April 1855. [718] "The bill shows . . That she and her husband . . removed [from North Carolina] to . . this State about . . 1835. That her . . husband sold a negro woman . . which she received from her father . . at the time of her marriage, to a negro trader . . Netherland. That . . 1845 . . Netherland brought said negro woman . . to . . this State, . . Netherland also owning two children of said woman, born after . . Netherland became the purchaser. Complainant being very anxious to purchase said negro woman and her children, bought them . . at the price of $1000, and to enable her to make . . payment, . . husband gave her $500 in cash, and she and her husband also gave . . Netherland another negro, which came by complainant from her father, valued at $500, . . and received a bill of sale . . in her own name. . . husband sold one of . . children . . to . . Wells."

[1] "under the provisions of the fifty-third section of the statute of 1822." Hutch. Code 521.

[2] Act of Mar. 6, 1850. Acts of 1850, p. 100.

Held: [727] "the act of 1839[1] . . recognizes the absolute property in the slaves in the wife, . . the legislature intended . . simply to give him the management of them, the direction of their labor, and the receipt of its proceeds,"

Richards v. Fuqua, 28 Miss. 792, April 1855. [793] "that the boy . . was drowned in very shallow water, and if April, the usual ferryman, had been there, or any other man of strength, the boy might have been saved. . . that the accident occurred by reason of the boy . . driving the loaded wagon down the banks of the river," [800] "the pin by which the boat was held to the landing was loose" [796] "judgment . . for the value of the negro . . and one of the mules." Affirmed.

Cameron v. Cameron, 29 Miss. 112, April 1855. Held: by the act of February 15, 1839,[2] the husband [113] "is entitled to the usufruct for life of the slave property of his wife, after her death, leaving issue of the marriage surviving."

James v. Kirk, 29 Miss. 206, April 1855. "suit brought by Kirk . . to recover . . the value of a negro slave sold by James . . [207] in Louisiana, warranted free from the redhibitory vices provided for by the law of Louisiana.[3] . . proved . . that the boy . . ran off the third or fourth day after the sale and was caught two days after, and again he ran off . . March, 1849 [[210] 'about fifteen months after the purchase'], and was never heard of afterwards, except that a boy answering his description was drowned from a skiff . . had received no unusual punishment, and . . had not been in Louisiana eight months before the sale. . . verdict for . . Kirk" Affirmed.

Thompson v. Young, 30 Miss. 17, December 1855. [18] "action of trespass, brought by . . Young . . for killing . . [his] slave . . the defendant pleaded . . that . . the slave . . was a runaway, prowling about the premises of the defendant in the night-time, and that defendant attempted to arrest him and restore him to his master; . . slave being armed with . . a large knife and club, . . resisted . . made it necessary for the defendant to shoot and wound . . The plaintiff filed a demurrer" Sustained.

Affirmed: [19] "The manner . . of the resistance . . is not stated . . Nor is it averred that . . [defendant's] person or life was thereby placed in the slightest danger. From aught that appears . . he was placed in no greater danger than . . if . . the runaway had attempted to avoid a capture by flying. . . homicide . . under such circumstances, cannot be justified by any principle of morality, of law, or of policy growing out of the institution of slavery." [Smith, C. J.]

George v. Bean, 30 Miss. 147, December 1855. Suit founded on a note for $1570, given for two slaves at administrator's sale. The auctioneer testified [148] "that the price of Mary was over $800;" The defendants proved that, previous to the sale, "Mary complained of debility, and had

[1] Hutch. Code 497.
[2] *Ibid.* 497, sect. 4.
[3] Civil Code, art. 2505, and act of 1834, sect. 3.

not strength to lift 'heavy vessels;' . . was of a delicate frame, but large enough to do house work. . . [149] Dr. Murdock . . [in May 1853] found her affected with some disease of the womb; . . thought her value reduced one half . . in 1854 . . Mary was several times sick, and confined at each time about a week; she was one of the house girls and seamstresses of Bean—he having two; . . She did washing once, but became sick shortly after; . . The plaintiff then proved by . . Davis, that he had . . Mary . . from January, 1853, to March, 1853, the date of the sale; that she complained once of being sick from over-work; . . that he had informed Bean that . . she . . could not stand exposure or heavy work. . . [150] Mrs. Oldshoe . . stated, . . that Mary was the most valuable servant she ever saw." [148] "verdict for plaintiff, for $1145; the jury allowing the defendants $435, for the unsoundness of . . Mary." New trial refused.

Judgment reversed and new trial granted: [151] "no proof of . . fraudulent representation . . As a general rule, an administrator warrants neither the title nor soundness"

Noel v. Wheatly, 30 Miss. 181, December 1855. [183] "that the boy was a runaway, and was only worth some $600. . . [190] that he ran away . . in Memphis, about twelve years ago." [183] "that Mrs. Bohannon . . brought the boy to this state for the purpose of selling him."

Hairston v. Hairston, 30 Miss. 276, December 1855. See same *v.* same, p. 336, *supra.* [298] "on the 6th of March, 1852, the testator . . [executed] a will, by which he devised to a negro girl, one of his slaves—having previously directed her to be manumitted—his whole property, with the exception of a landing on the . . river, his lands on the west side of the same, and a few slaves;" The plaintiffs, nephews of the testator, [279] "offered to prove by . . Brooks, that about two hours after . . he told . . testator that the said slave Chrimhiel . . could not be emancipated in the manner attempted in said will, under the laws of Mississippi, and . . testator replied . . 'Why, Major George says it can be done.' . . also offered to prove by . . Brown, that . . testator labored under a mistake . . as to his power to set her free, and as to the authority of the Probate Court to . . validate the devise . . by the appointment of a trustee." The next day he executed another will: [299] "I will Crimhiel to be made free, according to the laws of Mississippi. . . that she . . possess all my estate," "Crimhiel died in August, 1852;"

Reed v. Manning, 30 Miss. 308, December 1855. Zalmon Reed made his will in North Carolina in 1836. [309] "By the codicil, . . 1845, he says: 'N. B. I moved to Mississippi since I wrote this will. If my wife should marry, and have issue, then she can hold all my property; otherwise I will all my negroes to be free.'" "His wife . . married . . Manning, and died without issue."

Held: the act of 1842,[1] which provides that slaves emancipated by will, shall descend to the heirs at law [320] "has reference to wills made after

[1] Hutch. Code 539, sect. 11: "in all cases of wills heretofore made"

the passage . . as well as those existing and probated at the time of its passage."

Sims v. Sims, 30 Miss. 333, December 1855. [334] "$10, paid . . for catching a negro, and $43, paid to . . Marshall, for his cloak lost by . . Sims's negro boy. . . [355] 'boy . . was charged with stealing . . cloak, and was threatened with a criminal prosecution: . . Sims compromised . . by paying the amount claimed for the cloak.'"

Deans v. McLendon, 30 Miss. 343, December 1855. "Deans . . sued . . on two promissory notes, executed . . 1848, . . for $675 each. To which defendant filed . . pleas . . 1. That the notes were given . . [344] [for] 'Abram and Aberdeen,' over . . fifteen . . introduced . . as merchandise, from . . North Carolina . . without . . having first procured the certificate [1] . . 2. . . failed to have recorded [2] . . 3. . . that the slaves were brought into the state and sold, contrary to public policy. 4. . . that the plaintiff . . represented said slaves to be . . trustworthy servants, when, in truth, they both had been guilty of . . burglary; and one . . of an attempt to commit a rape; . . that . . plaintiff had run said negroes from North Carolina . . to avoid the infliction on them of the penalties of the law . . Plaintiff demurred . . [345] overruled."

Affirmed: [359] "There is . . not the slightest pretence for saying, that although the importation may be illegal, yet the subsequent sale is no violation of the law. . . [360] It is true . . that in . . Harris *v.* Reynolds [Runnels] [3] . . the Supreme Court of the United States have given a construction to the statute in direct opposition . . we . . will not yield our . . clear convictions, in reference to the construction of our domestic statutes, to the opinions of that tribunal." [Smith, C. J.]

Adams v. Guice, 30 Miss. 397, December 1855. The slaves [404] "had become unruly, and she could not manage them:"

Jenkins v. State, 30 Miss. 408, December 1855. "The prisoner was tried . . upon an indictment for the murder of a slave, and convicted of manslaughter in the first degree. . . the proceedings . . [409] had their inception in . . Jones county, . . change of venue . . to Jasper. . . sentenced to imprisonment . . [410] for twelve years." Judgment reversed: "Nothing appears in the record to show that the indictment was ever returned into court."

Newell v. Cowan and Wife, 30 Miss. 492, December 1855. "Cowan . . sued . . in trespass . . to recover damages for the loss of a slave . . [493] plaintiff proved . . by . . Marten, that . . he saw a number of negroes pursuing [plaintiffs' slave, Florence,] . . with much noise, toward the bayou . . That Florence jumped in . . That the slaves on shore, to the number of eight or nine, . . threw brickbats . . which fell near around him, but that he saw none strike him. . . that before the boy . . reached the opposite shore, he sunk and was drowned. . . defendant . . complained of plaintiff

[1] Hutch. Code 513, sect. 4.
[2] *Ibid.*
[3] P. 325, *supra.*

for having his . . negroes, put and kept in jail, for the accidental drowning . . that . . Florence had come to his quarter on Sunday, and got into a quarrel . . with his negroes, and that he had told his slaves to tie . . and bring him to him . . That the defendant then told the witness a long story about witchcraft, . . Watson, testified that . . defendant told him that . . he ordered his slaves to take and tie . . Florence, and bring him to him or kill him. McBean, testified that the defendant . . [494] said he intended to have him tied and sent home . . Overstreet, for defendant, testified . . That the defendant's standing orders to his slaves were, that when any disturbance was caused . . by other slaves, ' to bring such slaves to him.' " The court instructed the jury: [497] " That a master has no right to order his slaves to arrest other slaves when . . peaceable, in the absence of himself, or some other white person." [492] " verdict and judgment . . for the plaintiff for $1200."

Judgment reversed and new trial granted: [498] " It is immaterial whether the slave was peaceable or not;[1] . . The testimony of the plaintiffs, if credited to the full extent, might possibly uphold the verdict, . . If, on the other hand, the slaves acted merely under the general order, or under any order which the master might legally give . . [499] the master is not responsible."

Holloway v. Armstrong, 30 Miss. 504, December 1855. [505] " that in 1848, . . brother told her that if she would come to see him [in Louisiana], he would give her a little negro; . . that she would not have accepted her as a loan, she being small and weakly, and unfit for service; that she would not have consented to raise the negro, and be bound to give her up, when called for:" In 1852 " she was worth about $600, and was about ten years old."

Merrill v. Melchior, 30 Miss. 516, December 1855. " Melchior . . instituted suit . . against . . Merrill and . . Merrill, non-residents, for $1400, for damages occasioned by a breach of warranty of soundness in the sale of a slave . . [517] The defendants proved that the slave was introduced . . by them as merchandise, in . . 1853, . . and proved by [the probate clerk] . . that no certificate[2] in regard to the character . . was on record " Verdict and judgment for the plaintiff.

Affirmed: [531] " the purchaser . . can do no more than to require the seller to produce . . the certificate, and . . to rely upon the pledge of the seller, that after the sale . . he will have it registered, . . it should not lie in the mouth of the seller to deny . . [purchaser's] right to recover, by involving him in the disabilities incident to a transaction clearly illegal as to himself, but of doubtful illegality as to the purchaser. They could not . . be considered *in pari delicto.*" [Handy, J.]

Sharp v. Maxwell, 30 Miss. 589, April 1856. [590] " most of the money [for the purchase of a slave] . . was acquired by her . . as the price of services rendered by her in nursing a sick slave belonging to . . Dodd;"

[1] Hutch. Code 513, sect. 8.
[2] Act of 1822. *Ibid.* 513, sect. 4.

Dick, Aleck, and Henry (slaves) v. State, 30 Miss. 593, April 1856. The three slaves were indicted for the murder of their master. On the trial, Peter [599] "who, was jointly indicted with the prisoners and acquitted on a former trial," testified: [594] "That on the night his master was killed, he went with the prisoners to the house—they made him go with them. Henry went in first, Dick next, and Aleck stayed in the gallery. . . his master . . jumped out of bed: that Henry . . threw him on the floor and choked him till he got tired, then caught hold of him, (witness,) and pulled him down, and made him take hold of his master's neck. He, witness, choked his master, but the breath was nearly out of his body . . when he first took hold of him. They then took his master up and put him in the bed, laid his hands by his side, and covered him up. This was about two years ago." The next morning Aleck went to Johnson's house, [597] "and informed him that his master was dead;" [595] "the prisoners made no confessions until late in the evening, . . Nor did they confess until they were surrounded by eighteen or twenty white men, and after being arrested and chained," [597] "after the coroner arrived . . Dick [and Aleck] confessed to him . . [598] [Henry confessed when the] coroner and jury were . . in the other room . . No warning . . was given . . of their rights, . . The confession of each appears to have been perfectly voluntary. . . [599] The judge . . charged . . 'that the confessions of the prisoners, made while in custody of the coroner . . are not evidence unless they were first warned'" Verdict of guilty.

Judgment thereon affirmed: "Assuming that this instruction . . was obeyed . . other evidence . . fully sustains the verdict. The testimony of . . Peter . . establishes every material fact" [Smith, C. J.] Handy, J., concurred. Fisher, J.: [600] "I disagree to so much of the opinion as holds, that the judgment must be affirmed as to the slave Henry."

Dick (a slave) v. State, 30 Miss. 631, April 1856. "indictment for an attempt . . to commit a rape upon a free white woman, . . [632] Murphy . . testified, that when the accused was brought before him as a justice of the peace, . . he acknowledged that he was guilty. . . that he heard the accused afterwards . . make other confessions to other persons, . . The accused, by his counsel, proposed to cross-examine . . in regard to the confessions made to other persons; but the court refused to permit such examination; . . [633] the prisoner requested the court to charge, that if the jury believed . . that the prisoner was a mulatto slave, and not a negro . . slave, as charged in the indictment, they should acquit him." Refused. Verdict of guilty and new trial denied.

Judgment reversed and the cause remanded: I. [631] "it was clearly the right . . [of] the prisoner, to cross-examine in relation to those confessions,—an imperfect . . reference to which, had been made to the jury. . . [II.] [634] The averment that the prisoner was a negro . . having been inserted, . . it became a part of his identity;"

Barksdale v. Elam, 30 Miss. 694, April 1856. "heirs of . . Carter . . filed their petition . . against . . Barksdale, . . the executor . . in which they sought distribution of . . Jane, William, Harriet, and Fanny. Barks-

dale claimed Jane and [her child] William, by virtue of a purchase . . He relied upon a deed excuted by himself and . . Carter . . 1853, by which . . Jane and William, and some other property, were conveyed to . . Barksdale, (. . Carter retaining possession . . during his life,) upon the condition, ' that . . Barksdale is, at the death of . . Carter, to take charge of a yellow girl, nearly white, named Harriet, aged twelve years, born of the house-woman Fanny, . . [695] and to keep . . Harriet in his house, as a free white person, and in no way to be treated as a slave, but . . to be fed from his table, in his house; to sleep in his house, and be clothed from the store, both fine and common; and . . Harriet shall have the full benefit of her labor, and also the full . . privilege of making complaint to her guardian, . . Wilkes, and his wife . . at any and all times. Now, if . . Harriet shall marry any free white man . . during the life of . . Barksdale, . . Wilkes and wife, and . . Barksdale, shall consult together, and if they deem it proper . . they shall give . . Harriet a portion of the above specified property, . . which . . shall be managed . . by . . Wilkes and wife, for the . . benefit of . . Harriet and her offspring, and the remainder shall be the property of . . Barksdale ' . . The deed provided, that if Barksdale failed to comply . . he should forfeit his right . . and . . ' should any of . . Carter's heirs attempt to enslave . . Harriet, it shall in no wise affect this deed for . . Jane and William, . . provided he faithfully carries out the requisitions ' . . The Probate Court decreed that all the slaves should be sold for distribution, and Barksdale appealed." W. Brooke, for appellee: [696] " It is evident, from the tenor of the will of Carter, and of the contract, and the evasive statements in the answer to the petition, that . . Harriet is the offspring of . . Fanny, by testator, . . [697] No court certainly would lend its aid to enforce rights predicated upon immorality of the grossest and most dangerous kind—dangerous, because the example of a negress, or mulatto, brought up in the . . style specified . . would necessarily exert a most baleful influence upon the surrounding negro population."

Decree reversed and cause remanded: " It may be conceded, for the sake of the argument, that every duty which the deed attempts to impose, and every condition annexed thereto, must be treated as absolutely void, yet, under the authority of . . Weathersby *v.* Weathersby,[1] . . the donee's title is not affected . . He takes the property discharged from the conditions, supposing them to be void." [Fisher, J.]

Railroad Co. v. Patton, 31 Miss. 156, April 1856. [176] " the slaves of Patton had ridden the horses to the place where they were at work in the woods, . . The animals appeared to have been turned loose " [168] " They did not ride them there for the convenience of the negroes, but to afford pasturage for the horses." [177] " The train . . consisted of the locomotive and tender, a negro car, a passenger car and five freight cars; and the persons in charge . . were the engineer, the conductor, and a negro fireman. . . [179] that the engineer . . did nothing to stop the train until the locomotive struck the first of the animals, and then the

[1] P. 324, *supra.*

fireman sprang to the *brake* . . that no order was given . . the fireman acting of his own accord,"

Garland v. Stewart and Yerger, 31 Miss. 314, April 1856. Stewart and Yerger brought an action to recover $600, the price of a slave sold to Garland in 1852, [315] " to be paid by a draft . . ' that this proposition was fully assented to by the plaintiff [in error] and the defendants [in error];' that at the time . . the slave was sick . . known to the defendant [Garland]; the woman being in fact unsound, and worth, if sound, as much as $1500. ' That defendant . . said, that he would send his little wagon to Stewart's for the slave, when she got well enough to be removed.' " [315] " she died at the house of the vendor." Held: [317] " the loss must fall upon " Garland.

Cabaniss v. Clark, 31 Miss. 423, April 1856. [424] " the slave waited upon the office of " " co-partners in the practice of medicine,"

Greenwade v. Mills, 31 Miss. 464, April 1856. Action brought by Mills for a malicious prosecution " in causing him to be . . imprisoned upon a charge of stealing a negro slave . . He . . read a bill of sale, dated in November, 1849, . . from Burnett to the plaintiff, . . proved that . . the defendant assisted an officer in pursuing the plaintiff with dogs. On the part of the defendant, it was proved that . . while the slave was an infant, [Burnett] had made a verbal gift of her to . . Mrs. Elliott, who . . held her for more than a year, and sold her to . . Cain, by whom she was given [in 1844] to his daughter, the defendant's wife; that . . December, 1849, . . the plaintiff . . clandestinely took the slave from the defendant's negro cabins [[471] ' while the defendant was absent from home '], and placing her behind him on his horse, rapidly fled, . . [468] no evidence, that Greenwade knew that Mills had any valid title "

Scott v. State, 31 Miss. 473, April 1856. [476] " indicted . . for inflicting cruel punishment upon . . [477] Bob . . [and] other slaves of . . [Henderson]. The prisoner being . . the overseer " Verdict of guilty. Judgment thereon affirmed: [479] " to exempt overseers . . would, to a great extent, defeat the benign and salutary purposes of the law." [1]

Sam (a slave) v. State, 31 Miss. 480, April 1856. [481] " The prisoner was indicted for murder . . [He] pleaded in abatement . . that the . . term of the court . . was illegal in this, that . . judge . . died . . that the governor . . appointed . . Moore " without first having ordered a special election to fill the vacancy. [482] " demurrer to the replication . . being overruled, he pleaded not guilty. Upon the application of the prisoner, the venue was changed . . tried and convicted . . He then moved . . for a new trial, . . [483] On the trial of this motion, he read . . affidavits . . that on the day previous to the trial of the cause, one of the jurors . . stated . . ' That if the evidence . . should be the same as . . on a previous trial, which he had heard, that the defendant was guilty of murder, and ought to be hung.' The prisoner and his counsel . . deposed

[1] Hutch. Code 519, sect. 44.

that they knew nothing of the . . declarations . . until after the trial . . the court overruled the motion." Judgment reversed and new trial granted.

Jordan v. Thomas, 31 Miss. 557, October 1856. [558] "Thomas . . sued . . in detinue . . for the recovery of . . Hannah, and her son John, and her future increase; . . [560] since the suit was commenced, . . Hannah had given birth to another child . . [561] Verdict and judgment . . for the plaintiff, for the recovery of . . Hannah and John, and the child born pending the suit," Affirmed: [563] "Having a right to recover the mother, the plaintiff could recover that which the mother produced pending the suit,"

Joslin v. Caughlin, 32 Miss. 104, October 1856. [105] "The plaintiff . . replied . . that the slave was sold . . [to] Caughlin, who made the purchase at the sale for his wife . . one of the legatees, . . and that she came to her death by the ill-treatment, neglect and violence of Caughlin and his wife."

Hall v. Dickey, 32 Miss. 208, October 1856. [210] "about . . 1840, . . he removed [from North Carolina], bringing with him the . . slave, to . . Mississippi."

Lusk v. Lewis, Administrator, 32 Miss. 297, October 1856. [299] "the testator [Robert Lusk] gave all his slaves 'to John H. B. Latrobe, Rev. William McLean, and W. W. Seaton, in trust for the American Colonization Society;' also . . three thousand five hundred dollars, to be paid after the bequest of the slaves should take effect;" The appellant filed a petition in the probate court. "the object . . was to have a reprobate of the will, declaring it invalid as to these bequests, and valid in other respects. The appellees, the administrator with the will annexed, and the trustees . . filed a demurrer . . sustained and the petition dismissed;"

Affirmed: I. [300] "The court . . had no jurisdiction . . [II.] we might stop with a mere affirmance of the decree. But the question of the validity of the bequests . . is raised by the petition, . . By the Act of 1842,[1] . . any bequest of slaves for the purpose of emancipation, or in order to be removed . . for . . emancipation . . is made unlawful . . [302] We are . . of opinion, that the society had not power under the term '*chattel,*' in their charter, to hold slaves as they are held . . under our laws, . . And . . that the society must be regarded as having no further . . interest in them than for the purpose of emancipation and colonization, . . the bequests must, therefore, be declared . . void. . . [303] the trustees . . [can not] take in their individual capacity absolved of the trust. . . They appear to have been mere strangers, . . [304] But the trustees are not entitled . . for another reason. The Act of 1842 . . places the slaves . . in the same condition . . as if the will had never been made." [Handy, J.] See Lewis *v.* Lusk, p. 357, *infra.*

[1] *Ibid.* 539, sect. 11.

Jordan (a slave) v. State, 32 Miss. 382, October 1856. [388] "The prisoner was a runaway slave, and the slave Aaron, acting under the command of [Mallory] a person who was not his master or overseer, was at the time he was killed, attempting to arrest the prisoner." Mallory testified, [385] "that after the killing . . and . . arrest . . he . . and . . Williams, went to the prisoner, . . that the prisoner refusing to answer their questions, they told him that if he did not talk, they would kill him; the witness having a pistol then cocked in his hand, . . and the other a stick, with which he threatened to strike, and did strike the prisoner one blow. . . the prisoner proceeded to state . . where he lost his knife, . . The court admitted this evidence"

Judgment reversed, and *venire de novo* awarded: [386] "The rule which excludes the whole confession must . . exclude all its parts. . . [388] the statute has not conferred upon a slave the power to . . [389] arrest a runaway slave, except on the premises of the master. . . another, who has no right to control the slave, cannot . . command him to assist in apprehending a runaway slave." [Fisher, J.]

Brown v. State, 32 Miss. 433, October 1856. Dying declaration: [439] "calling back to a negro boy who had bin in company with him [[435] 'hunting oxen'], to come on for he had killed the damed old raskell,"

Jordan v. Roach, 32 Miss. 481, October 1856. Will, 1847: [485] "that his four plantations should be kept up . . and that the money arising from that source should be invested in slaves,"

Jones v. Smith, 33 Miss. 215, April 1857. Hill testified: [217] "Lewelling was embarrassed in the spring of 1850. . . He wrote to Cheairs to run the slaves to Alabama, . . The crop was small in consequence of the slaves being run off." Jones testified: [219] "Purchased a woman for $600 in Memphis, in 1850; . . worth $650 or $750 [cash value] in April, 1851. Negroes commenced rising in 1850, and have gone up ever since. . . Negroes acclimated are more valuable than those imported;" Four [221] "men of wealth, negro property, etc. . . [one having been] a negro trader in 1851" "prove that . . [in 1855] they valued thirty-six of the negroes as of 1851 at $18,400. Seven . . they did not value, three being children and four being dead." Parham testified: [222] "Had a lot of forty-six negroes in 1851 and 1852 for sale; offered them for $24,000; could not sell; sold them to . . Clayton, in December, 1852, for $25,000, in six annual instalments, . . They were large and small; had been in the country several years; were above an average lot; . . price fair; would not buy them himself at that price. In 1851 bought negroes in Richmond and this State; all field hands; about equal in sex; all except two . . were number one, at an average of little over $800. Negroes were low in June, 1851; commenced rising shortly after, and have kept rising" Mull: "made a large purchase of slaves in 1851 . . Men were valued at $800, women $600, and children in proportion. . . Property was dull . . till next winter . . Negroes were lower in the summer than when he

bought. . . Negroes raised in families and acclimated are more valuable than imported ones." Lancaster: "sold a good medium-sized girl, fifteen . . in May or June, 1851, for $550. Had her on the market some time. Same girl would now sell for $700 or $800." Rogers: [223] "Heard Gibbons say he would like to purchase the young negroes; did not want the old; did not want the whole lot;" Cook: "Has been a negro trader for ten or eleven years. Bought negroes in Kentucky and Tennessee in 1850 and 1851; paid for men from $550 to $700; . . sold in Louisiana, women about $750, men $850 to $900. Market for field hands in Louisiana, better than in North Mississippi, but for women and children less; . . Negroes have advanced $250 to $300 per head. Negroes sold in large lots command less than in small lots. Acclimated negroes worth more than unacclimated." [266] "she was anxious that the property, which consisted mostly of family slaves, should not be sold and separated." Counsel for the appellees: [242] "It was a most disastrous period for the South. The agitation of the Compromise measures had opened the flood-gates of sectional strife. . . Few were willing to invest money in a species of property which threatened the integrity of the Union. . . The answer of Smith shows, that in his purchase [in June 1851], men were estimated at $800 to $825; women, from $600 to $800; that eleven . . were under ten years of age; four, over fifty, and two or three diseased. Nine of the witnesses . . concur . . that . . $800 was a fair price for men; $600 to $700 for women. . . [253] Craddock . . witness of appellant's, estimates the value of negro men, . . June 14, 1851, at $1000, and women at $800. This is palpably an exaggerated estimate, and is not supported by any other witness. . . on account of Craddock's manner of treating slaves, no humane person would have had anything to do with him on any terms."

Sam (a slave) v. State, 33 Miss. 347, April 1857. Indicted for [350] "burning a gin and cotton-house, . . The master . . testified that the prisoner was taken up about sixty miles from . . where the burning took place, and two or three days thereafter. . . [351] he chained his legs together, and brought him home in the stage-coach, along with him. That witness then asked him why he burned the gin-house, and he replied, . . because he wished to be hung; . . The prisoner objected to the admission . . overruled," Affirmed.

Ned and Taylor (slaves) v. State, 33 Miss. 364, October 1857. [365] "indicted . . for the murder of Ely, a slave. . . Pickett . . [366] was the owner . . found a pair of pantaloons, in one of the negro cabins, which Ned . . acknowledged were his; on them, were spots of blood. . . Sam . . about fifteen . . belonging to . . Pickett, testified . . that on the Sunday . . he . . and Ely went to the lake . . fixing the fish-trap. . . heard the report of a pistol. . . saw Taylor . . [who] laughed and said he had scared Ely; to which Ely replied, 'No, he had n't.' Taylor then bantered Ely to wrestle with him; . . [367] threw Ely on his face and cried out, 'Come on boys, I've got him.' Ned then run up with an axe . . struck Ely with

the sharp edge . . reversed the axe, and . . broke his skull. . . cast the body out in the water, . . and told witness that if he ever looked as if he knew anything about it they would kill him. . . did not inform . . until . . Tuesday. His master . . struck him one 'lick' to compel him . . but he denied all knowledge . . but afterwards his master tied him, and he confessed all. . . that the sun was not more than one hour high when he and Ely left the negro quarter. . . [368] Annie . . for the defence, testified, that she is a sister of Taylor; . . observed Taylor . . scraping an axe-handle . . until about an hour by sun, when the horn blew for the ploughmen to . . feed their horses; . . after feeding, returned to her cabin, and remained . . until called up late at night to search for Ely. She knew . . Taylor went . . to feed, for if . . not . . he would have been whipped, and he had not been . . Pickett . . testified, . . that he told his negroes that . . whoever did it should be hung. . . [369] Dixon . . testified, that several years ago he had overseen a plantation, on which the accused were, and that they were both well-behaved, obedient, and humane negroes. . . convicted . . sentence of death pronounced" Affirmed.

Norris v. State, 33 Miss. 373, October 1857. [375] "he had stolen the slave in . . Arkansas, and had brought him to . . this State;"

Ogle v. State, 33 Miss. 383, October 1857. [384] "convicted of the murder of . . West. . . [386] The prisoner . . stated . . that he had been hired to oversee for West that year. . . That he had borrowed . . Griffin's watch, and that some of deceased's negroes had stolen it, and that deceased had protected them in it."

Garnett v. Kirkman, 33 Miss. 389, October 1857. [393] "A letter, written by S. Hurd . . 1846 . . in which he states, that he desires all his slaves sent to Africa; that they are now working to pay a debt; that Mrs. Hurd also 'willed her slaves to Liberia;[1] but if my life is cut short, her debts will take most of them.'"

Fox v. Matthews, 33 Miss. 433, October 1857. [438] "A few days before the levy . . the terms of the compromise were discussed, . . ten negroes and their offspring, to be selected by herself, were to be conveyed to her,"

Stamps v. Green, 33 Miss. 546, October 1857. "executor of Dr. Wilson, sued Seletha Stamps . . upon an open account for medical services rendered . . 1847 and 1848, to the defendant and her family, and slaves. . . the defendant was a *feme covert* . . and owned slaves as a separate estate, under the provisions of the Act of 1839." Held: "the husband . . would be alone liable"

Warner v. Warner, 33 Miss. 547, October 1857. [548] "1849 . . he deserted her, taking with him from Arkansas . . Eliza and Maria and a child of one of them, which he brought to this State and sold or delivered to . . Lum"

[1] [391] "in accordance with a long-cherished and favorite plan of hers of Christian benevolence."

Mount v. Brown, 33 Miss. 566, October 1857. " 1855, the plaintiff . . as administrator : . exposed to public sale . . a slave . . defendant became the highest bidder, for . . two hundred and ten dollars, . . afterwards refused to receive the slave, . . the plaintiff thereupon . . again exposed the slave for sale, when another person became the highest bidder, at . . eighty dollars," Held: the defendant must pay the difference.

Magee v. Catching, 33 Miss. 672, October 1857. " Magee, in May, . . 1840, was indebted to . . Bank on a note for about $6360, . . secured by a deed of trust on . . [eleven] slaves. . . Magee being unable to pay it, . . [674] Catching became the purchaser . . at public auction, . . but at what sum is not stated." " He gave his note to the bank for $6360, in discharge of Magee's debt, or in payment of the slaves. . . Magee, confiding in the promise of Catching to purchase the slaves for him, did not make any effort to induce other persons to bid . . sold in one lot. . . remained in the possession of Magee until September " Counsel for appellees: [687] " There were three children under twelve years of age, and two under fifteen; some old negroes, and some young ones. The average price was above five hundred dollars. The statistical tables of that period will show, that this is above the average value of such property at the time."

Clark v. Slaughter, 34 Miss. 65, October 1857. [66] "upon a division of the estate of . . the father of Mrs. Slaughter, this slave was allotted to her and her sister Malinda; . . Malinda married . . Lawrence, . . and sold the one-half interest to . . Alexander [once her guardian, who] . . had possession . . about ten years." [67] " in . . 1855, [Clark] purchased . . the slave soon thereafter absconded . . and . . went into the possession of . . [Mrs.] Slaughter, and . . Smith. . . she and her husband [had] sold her interest to Alexander . . The bill of sale . . is not acknowledged, as required by law," Held: Clark [68] " acquired the interest of Lawrence and wife . . entitling [him] . . to the relief prayed for,—a sale of the slave, and a division of the money."

Holman v. Murdock, 34 Miss. 275, October 1857. [284] " Mallory had, for some time, been engaged in the traffic of slaves, making Black Hawk, in Carroll county, the centre of his operations. . . in the autumn of 1854, he left . . with the intention of buying negroes in Virginia, or elsewhere, . . in the spring of 1855, he returned . . bringing with him " [277] " a drove of negroes " In the fall he sold one of them, Ellen, who was over fifteen, to Holman without a certificate of character.[1] Holman gave his note for $1001, [276] " payable to Mallory, or order, and indorsed by him to the plaintiff [Murdock], . . Holman . . resisted the collection of the bill . . [277] proved . . that Mallory, in the spring . . gave as a reason . . for not offering to sell the slaves included in the drove, that the market was dull, and that it would be better in the fall, and that the yellow fever was then all over the lower country. . . The plaintiff then proved . . that . . just on the eve of his departure for Vir-

[1] Act of 1822. Hutch. Code 513, sect. 4.

ginia, . . [witnesses] had heard Mallory declare . . that he was going to purchase negroes to settle on a plantation . . and that after his return . . he refused to sell . . The plaintiff then proved, by several members of the bar, residing in Holmes, Carroll, and Yallabusha counties, that they were not aware that the Act of 1822, in relation to the introduction of slaves, was in force, until the publication of the decision . . in . . Deans *v.* McLendon [1] . . in . . 1856, and that previous to that time it was generally considered . . in that section of the country, that it was not illegal to introduce slaves for sale without certificates of character."

Held: [287] "It is very clear that this testimony was incompetent." Also [285] "the statements of Mallory, made in 1854, . . that he intended to buy negroes . . for the purpose of cultivating a plantation" Judgment for the plaintiff reversed and the cause remanded. [288] "reconsidered, and a decree of reversal only as to Holman entered, and affirmance as to . . Mallory."

Bridges v. Maxwell, 34 Miss. 309, October 1857. The administrators removed slaves to Louisiana and sold them there.

Sprott v. Baldwin, 34 Miss. 327, October 1857. Will: [328] "Crops to be raised . . and the proceeds invested either in the purchase of slaves or loaned"

Newell v. Newell, 34 Miss. 385, October 1857. [392] "a symbolical delivery of the slaves . . the hand of one being placed in his hand . . Charles [Newell, who claimed an interest in the slaves,] had secreted the slaves in his crib; . . had good cause to do so; that the sheriff was accompanied by armed men, who spoke of running and selling the slaves; and that an attachment had, shortly before, been levied on them, and the sheriff had refused to Charles the privilege of bonding them, as he had the right to do. . . on this occasion, Charles produced the slaves so soon as he was informed that he could bond them."

Shewalter v. Ford, 34 Miss. 417, October 1857. [420] "September, 1855, . . she was purchased by the defendant [Shewalter], in Virginia." She was sold to the plaintiff on January 5, 1856, for $1050, of which $300 was paid in cash. [419] "A witness . . testified that the slave had a hacking cough . . and appeared . . unhealthy . . he asked [Ford] . . if he had had her examined by a physician, . . he had not, because he relied on the warranty . . on the first or second day after . . the slave . . was . . laboring under a coarse, deep-toned cough; . . About the 26th January . . in bed, and quite sick, but . . in comfortable quarters, and well nursed, being attended from that time by a regular physician, until 1st February, when she died . . [420] of pneumonia, . . which . . supervened an attack of chronic bronchitis,"

Held: [421] "it is sufficient to render a party liable upon his warranty, if the slave be at the time laboring under a disease which though not mortal . . conduces to, and results in a disease which proves mortal."

[1] P. 340, *supra.*

Patterson v. Kirkland, 34 Miss. 423, October 1857. "action brought by Kirkland . . to recover damages for a breach of warranty of soundness . . August, 1853, . . [424] [of] a negro woman and her infant child, . . represented to be sound in body and mind; . . the plaintiff . . paid . . $900. . . the plaintiff proved, by . . Grubb, . . that she sometimes had fits; and that, in the spring of 1853, she was taken, 'all of a sudden, in a strange way,' . . She was dangerous, and he put her in jail. . . sold her, soon afterwards, to Patterson, for $600 ($100 of which he afterwards remitted), and . . refused to warrant her soundness. . . [425] Patterson then refused to take a bill of sale, saying that it would injure the sale . . and that he did not believe she was crazy,[1] but that it was all deceit. . . Witness . . for defendant . . believed her sound; . . had seen her . . scraping cotton,—at Patterson's. She scraped one row by herself, and hurried up a small negro to beat a larger one, and would occasionally help the smaller one. . . [426] owned by Patterson about four months, and during the time was delivered of a child, . . worth about $150. . . Rankin, for the defendant, testified that, on the day after plaintiff bought . . he said, 'that if the people about there had any mean negroes to sell, that then was the time to sell them.' Witness asked . . if he did not think that Patterson had got his finger in his eye? Plaintiff said not; . . Plaintiff also stated, that he talked some with the negro, and that she talked with tolerably good judgment. . . the child died soon after" [429] "the woman soon became worthless, and died." [425] "the value of the woman, if sound, was $900. . . [426] The plaintiff had verdict and judgment for $884 50, and costs," Affirmed: [431] "The defects here were latent, and, if known to the vendor, he was bound to disclose them."

Lindsey v. Lindsey, 34 Miss. 432, October 1857. "The plaintiff . . sought to recover damages for . . fraudulent representations as to the soundness of the slave, . . January . . 1854, . . [the defendant as] administrator . . sold the slave at public auction . . for $895. . . Staples . . was authorized to bid $1100 for the boy[2] . . [433] but, upon examining him, he saw that he had an unhealthy appearance, and declined to bid more than $800. Witness asked auctioneer if Prince was sound, and he replied . . in a loud voice to the crowd . . 'Look, and judge for yourselves;' and that plaintiff immediately replied, 'that he was sound, for he had once owned him [about seven years before the sale].'" "The plaintiff was standing near by, and the defendant . . said to witness, that the boy was sound, and had not lost a day's work on the farm during the past year. . . The plaintiff was blind" [434] "Dr. Atkins . . a few weeks after . . found his lungs much diseased" He died about two months after the sale. Verdict for the defendant. Judgment thereon affirmed.

Exum v. Canty, 34 Miss. 533, October 1857. Deed of gift, made by John Williams in 1850: [535] "in consideration . . that . . [General and Mrs. Canty] will during my life support me . . one-half of . . [twen-

[1] Counsel for Kirkland: [430] "His declaration, that he believed her sound, was only intended to justify himself."

[2] Not necessarily a youth.

ty-five] negroes, and one-half of their future issue . . and Jacob and old Amy (from the last of whom no service . . shall be required by compulsion), . . for the use of . . [Mrs.] Canty . . and . . heirs . . forever." The heirs-at-law filed their bill, charging that [536] "Williams was *non compos mentis*; . . that . . he was wholly . . under the control . . of an old negress . . Amy; . . [538] For the complainants . . [539] one of [the witnesses] . . speaks of 'old Amy' interpreting for Williams ['partially paralyzed']. . . [541] Another witness [hired a negro from Williams.] . . A short time afterwards, the negro run away; and in a few days . . witness saw [him] . . cutting wood near J. W.'s house. When the negro saw witness, he ran into the house, where J. W. was lying in a bed. . . J. W. denied knowing anything about him. Witness . . found the negro hid under the bed . . unable to capture the negro, who ran out. Witness pursued . . about the premises . . he went into the house again; . . J. W. . . again denied any knowledge . . Witness . . found the negro concealed in the box under the bed . . Witness then said . . he would whip the negro in his presence; and J. W. told witness that if he would not do it, he would take the negro back and release witness from any liability for the services which the negro had rendered, to which witness assented. . . [542] J. W. . . would frequently commence talking, and call on 'old Amy to finish the conversation.' . . Williams said . . that he did not intend to give old Ben [his brother] and his boys anything. . . 'Old Amy,' . . said 'd—d old Ben.' . . 'He could only get [whiskey] . . when old Amy would let him.' . . His slaves, Jake and Elias, could also influence him. He carried these slaves with him to South Carolina. He did not start with Jake, but Jake followed him, . . He applied to witness to borrow $2000. Witness agreed . . if J. W. would give a lien on his property. . . He consulted with [old Amy] . . and finally agreed . . [544] The defendants took the depositions of . . [545] the Governor . . of South Carolina" and others. [544] "Believed him to be of sound mind, . . [550] Never saw . . any undue influence exerted . . [556] the vice-chancellor dismissed the bill," Affirmed.

Farr v. Farr, 34 Miss. 597, October 1857. "bill . . seeking a divorce . . upon the ground that the defendant . . [598] 'has been guilty of adultery with a servant-woman of complainant, and with other females,'"

Coppage v. Barnett, 34 Miss. 621, October 1857. [628] "in 1825 . . complainant was the owner of fourteen slaves [in South Carolina], of which seven were working hands, and also of a plantation," [623] "That in 1831 or 1832, complainant and his [father] . . had a settlement in . . Tennessee, . . That in part payment of . . [his] indebtedness, . . [his father] conveyed . . [thirteen] slaves [to him.] . . That in 1834 . . [they] settled the said slaves . . in this State; . . [626] three of the negroes and their offspring . . [were] sold . . and the proceeds applied to the payment of . . debts . . [630] His property consisted of negroes, stock, farming utensils, etc. . . [631] used the property for the support of his family and raising negroes. . . that Eliza and her children . . were pur-

chased [in 1838] with the proceeds of cotton raised on the plantation in Tennessee, . . [633] in 1844 . . [complainant] was speaking of the sickness among the negroes at home in Tennessee, and said to [his half sister] . . that she ought to go home and attend to them, . . [639] Clark, for complainant, proved that in 1849 negroes were low; men were worth from $650 to $700; women from $600 to $650; ploughboys about $525 to $550. . . Turner states, that men were worth from $700 to $800, . . Bradford stated, that . . women [were worth] from $500 to $600."

Bullitt v. Taylor, 34 Miss. 708, April 1858. Taylor was [710] "the owner of negro slaves worth about $10,000, and a plantation worth about $3500."

Lusk v. Swayze, 35 Miss. 155, April 1858. "his mother dying soon after his birth, Mrs. Swayze [the life tenant] . . gave the child to her daughter . . during her life, upon the condition that she would raise him."

Hoover v. Wells, 35 Miss. 159, April 1858. "sold the slave, alleging his vicious and dangerous habits as the reason"

Hamilton v. State, 35 Miss. 214, April 1858. [215] "indicted . . for stealing a slave. . . McGill testified that . . March, 1856 . . his overseer had given the slave a pass to go to St. Joseph, Louisiana, on the steamer . . witness being at St. Joseph at the time, but that the slave did not go there; that the accused . . was employed . . on his plantation as a clerk, . . that in April . . witness received a letter from Richmond, Virginia, giving a description of a slave then in jail there . . and stating . . that the accused had been arrested; that witness went to Richmond . . and found [them] . . in jail . . that the slave was a very smart and keen negro, and had a good deal of money about him when he left, belonging to witness. . . McAlister testified, that he went to Virginia with the governor's requisition to bring the accused . . to Natchez; that the accused told him that he had got into the skiff with the slave at Old River; that they went to New Orleans and to Mobile, where the accused had to pay something to the custom-house; that they proceeded through the States to Richmond . . [216] A verdict of guilty was returned," New trial refused.

Affirmed: [221] "It is not improbable that he held out hopes of freedom . . but if so, it is exceedingly improbable that he really intended to set him free, or to take him to a State where he would become free;" [219] "instead of taking him to such a State . . by the Mississippi River, . . [221] he took him in a directly contrary direction, to . . Richmond, well known as a large slave mart," But [220] "it makes no difference . . whether he was actuated by the motive of false philanthropy, or of private gain." [Handy, J.]

Magee v. Keegan, 35 Miss. 244, April 1858. In 1856 complainant's father-in-law and son-in-law [245] "came to complainant's plantation about daybreak, and clandestinely removed . . slaves,"

Shaw v. Brown, 35 Miss. 246, April 1858. [248] " bill filed by John Brown against . . Shaw, executor of . . James Brown . . The complainant alleged that he was a brother of . . James . . who died without any lawful issue, . . that he possessed, among other slaves, a mulatto woman, . . Harriet, who had . . two children, . . Francis and Jerome, whom the testator claimed to be his sons; . . that . . Brown, in . . 1856, . . died, leaving a . . will . . dated . . 1853; . . [249] provides, that . . executors shall sell the land and slaves . . and, after paying the debts . . deposit the surplus in the Bank of Louisiana, subject to the order of Francis M. Brown; and, in case of his death, subject to the order of Jerome B. Brown. . . prayer . . for an injunction against the executors, restraining them from executing . . and for a decree declaring said bequests void. . . Shaw . . answered . . states that in 1849 . . testator started to . . Ohio . . to emancipate them; but that, owing to the low stage of the river, he could not reach . . destination; . . that in the spring of 1850, . . testator did carry . . Francis and Jerome to Cincinnati, . . executed and delivered to them . . [250] deeds of emancipation; and that, without returning with them . . did . . settle them in . . Indiana, where they have ever since resided. . . that Brown, while on a visit to . . Francis and Jerome, and . . Harriet . . departed this life, . . The testimony for the complainant . . Francis and Jerome returned to . . Amite county . . in the fall of 1850,[1] and went back to Indiana in the spring of 1851; . . that the principal object of their absence was to acquire an education . . between April, 1850 and 1854, Francis was in Amite county four or five times,[2] and Jerome three times.[3] . . [251] Brown emancipated . . Tom, Malinda, and Sarah; the two last are now on Brown's plantation, as slaves, and Tom has gone to parts unknown. Brown said he had torn up the free papers of Sarah. . . Harriet had four children, which Brown acknowledged to be his, . . 1852, he had a will written in favor of Harriet and her four children. . . On the return of Francis and Jerome . . Brown . . considered them as slaves, with the exception that they lived in the same house with him, and eat at his table, in company with witness, and the neighbors, who chanced to be there. He said he had emancipated them, . . He paid taxes on them in 1851. . . Francis was born in 1833, and Jerome is about thirteen . . [252] that he had thought that he could emancipate . . through the agency of the Police Jury of Louisiana, but finding that the law in that respect had been changed, he had carried them to Ohio, . . [253] 'he intended this [state] to be their home until his death, as he did not enjoy his health in Indiana, and wished them to be with him.' . . Testimony for defendant: . . [254] In 1853, Brown stated . . that some of them . . had returned to Mississippi, contrary to his wishes. . . that his object in sending them out of the State was to prevent his relatives from forcing them into slavery. He referred to the

[1] Handy, J.: [306] "it is clearly established, by numerous witnesses . . that they did not come to this State until September, 1852,"

[2] "Francis first came back to this State about December, 1852, . . and returned with [Jerome] . . he was subsequently in this State, in . . 1854, but never since" 35 Miss. 246.

[3] "but once . . from September, 1852, until May or June, 1853," *Ibid.*

. . Weathersby case,[1] which originated in Amite county. . . [255] Brown had told Francis, that if he would come back, he would buy him a place in Louisiana, and remove his (Brown's) slaves to it, and that Francis could hire them. . . [256] that the control exercised by Brown over Francis was that of a father, but he exercised the same sort of control over other negroes on the place. . . Smith stated, that . . [Francis] came [in 1853] with a lot of flour, which he . . sold there as his own. . . Francis went, when and where, he pleased, hunted, fished, exercised authority on the place, as any young man would on his father's plantation, ordered the negroes to do what he considered necessary. . . [257] called Brown 'father.' . . After the death of Brown, Shaw, the executor, wrote to Francis, advising him not to come to Mississippi. The depositions of . . residents of . . Indiana, . . that Jerome went to school most of the time, . . Francis . . a part of the time . . worked as a carpenter; . . [258] that Francis owns a farm there. . . The will, . . 1852, . . disposes of all his property to Harriet and her four children, whom he describes as 'free persons of color, all of whom now reside in . . Indiana.' . . the chancellor granted a perpetual injunction against the payment of the legacies bequeathed in the will [of 1853] to Francis and Jerome" W. P. Harris, counsel for appellant: [264] "the leading cases in which the courts have undertaken to pronounce upon the question of condition . . of persons situated as these, are cases where the slaves had returned to, and were within the State, whose courts adjudicated the question. Such was the case of Dred Scott *v.* Emerson,[2] . . Strader *v.* Graham,[3] . . Lewis *v.* Fullerton,[4] . . [265] But it will be urged, doubtless, that . . [Francis's] going to Indiana, subsequent to 1851, could not have the effect legally, of constituting him an inhabitant . . because of a provision of the Constitution of that State, adopted in 1852, absolutely prohibiting negroes and mulattoes from coming . . to reside. . . [266] It seems to us that we do not dignify our policy, nor fortify our institutions, by prying with too much jealousy into the manner in which the difficulty was settled between the mulatto and the State of Indiana. . . he had resided for a time in that State in 1850, and every fair presumption is that that has been adjudged by Indiana to be sufficient. . . [268] The family of Brown was distinctly marked as mulattoes, for . . their color caused his rejection at a hotel in Cincinnati. . . [271] when he placed them at school for an indefinite time in . . Indiana . . he could not compel them to return to Mississippi to reside. . . They visited Mississippi afterwards at their own peril,"

Decree reversed and the bill dismissed: I. [311] "it was his intention . . to locate them permanently . . where they could be free, . . [312] Brown unquestionably had the right . . [313] The only restraint upon that right is, that he shall not emancipate them with the intent to bring

[1] P. 324, *supra.*
[2] 15 Mo. 577.
[3] Vol. I. of this series, p. 365.
[4] *Ibid.*, p. 135.

them back . . as free persons; which intent is carried out by their being brought back in connection with, and as a part of, the act of emancipation. . . [II.] [321] the bequest was not void," [320] " free negroes are only debarred, by our laws, of the rights secured to them by the laws of other States where they are domiciled, so far as the exercise of those rights may be positively prohibited, or may be directly dangerous to the conditions of our slaves, by exposing them to improper interference, or to . . mischievous example " [Handy, J.]

Crowder v. Shackelford, 35 Miss. 321, April 1858. [330] " that from 1835 to 1841, Crowder was a small planter, working from ten to fifteen hands, and owning from twenty to twenty-five slaves; . . that he was an unsuccessful farmer, generally buying his corn and meat, but that he succeeded very well in raising young negroes;"

Simon (a slave) v. State, 37 Miss. 288, April 1858. Handy, J.: [292] " the accused and the deceased were the slaves of Lot W. Ellis, . . early in the morning of the 23d of June, 1857, the deceased was found . . on the floor of the cabin . . having four severe wounds on the head . . of which he soon died; . . A boy, named Hiram, belonging to the same master, had been run away for several days, and another boy and the accused had also run away on the night previous, or early in the morning, on which the deceased was found wounded. Pursuit was immediately made with dogs . . Andy was caught about four miles from the place, and the accused . . two miles further, when he was found in the Bayou Pierre, up to his chin in the water, and having a scythe blade in his hand, which, by direction of the person in pursuit of him [[291] ' a negro hunter '], he threw from him . . and obeying the order of the same person, came out. . . he was struck upon the head a severe blow [[290] ' with the butt of a negro whip '], and was seized and bitten by the dogs. About the time the dogs were taken off from him, Willis Ellis, a brother of his master, came up . . and . . was told . . that Hiram was suspected . . Willis Ellis . . asked the accused why he had run away, . . not answering, he struck at the accused with his fist, and said . . he would knock him down if he did not talk . . asked him ' what he knew of Hiram's killing Norvell;' adding . . before he answered, ' It will be better for you to tell the whole truth about the matter,' . . and the accused thereupon said: ' Hiram did not kill Norvell; I killed him;' . . [293] with an axe helve . . soon after George Ellis came; and . . inquired . . why . . he replied . . because the deceased had told lies on him. . . then taken to his master's place, . . met by him and two other persons, and Hatley, who had pursued and taken him, told them that there was the murderer, . . he made substantially the same confession [[289] ' without . . any caution as to the consequences '] . . All these statements were made . . in the presence of Hatley, who was armed, and had with him his negro dogs. . . the Court . . permitted them to be given in evidence;" The prisoner was convicted of murder and sentenced to be hanged.

[295] "For the erroneous admission of the confessions, the judgment is reversed, and the cause remanded for a new trial." See same *v.* same, p. 359, *infra.*

Lewis, Administrator, v. Lusk, 35 Miss. 401, October 1858. Will of Robert Lusk, who died in 1855: [417] *Fifth.* . . The surplus proceeds of my estate . . or so much thereof as . . necessary . . I direct to be used in the purchase of any slaves who may have wives or husbands belonging to my estate, it being my object . . [418] to keep families together: . . my executors are to exercise a discretion, as it is not my wish that exorbitant prices should be paid. *Sixth.* I direct that provision be made . . for the comfortable support of any of my slaves who may be superannuated, who, from any cause, would be likely to prove a burden to those who might have them on their hands. *Seventh.* At the death of my wife and mother, . . I give . . to John H. B. Latrobe, Rev. Wm. McLean, and W. W. Seaton, Esq., in trust for the American Colonization Society, all the slaves . . except such as it may be necessary to have supported in pursuance of the sixth clause . . *Eighth.* All the property . . exclusive of slaves . . shall be sold . . I will [to the above trustees] . . three thousand five hundred dollars . . after the foregoing bequest of slaves to them . . shall take effect. The balance . . to be equally divided between the Board of Education, and the Board of Domestic Missions, of the Old School Presbyterian Church in the United States," The widow renounced the will and "was allowed one-half of the personal estate . . and her dower in the real estate;" Lusk's mother [419] "prays distribution . . of her share . . A decree was . . made . . ordering distribution to the petitioner, of the slaves in the hands of the administrator,"

Affirmed: I. "the holding of slaves, not for emancipation, is irreconcilable with the policy and true spirit of the society, and hence . . this bequest was not valid.[1] . . [II.] [421] the pecuniary bequest must fail, because the contingency, upon which it was to be paid, can never arise. . . [III.] [422] the Board of Education and the Board of Missions are the residuary legatees of the entire estate . . except the slaves, which were not to be sold. . . [423] these boards take the . . $3500, . . The slaves . . were subject to distribution . . both by force of the Statute of 1842,[2] in relation to illegal emancipations, and under the general rules of law applicable to the circumstances of the case," [Handy, J.]

Shewalter and Co. v. Brown, 35 Miss. 423, October 1858. [424] "the plaintiffs being engaged in the business of trading in horses, mules, and slaves . . during . . November and December, 1856, and January, February, and part of March, 1857, sold slaves to the amount of seventy thousand dollars, and on the 2d of February, 1857, the act . . taxing such property so sold, was passed; and . . the defendant, immediately . . required them to pay . . $511 87," Held: [425] "the collection . . was

[1] Lusk *v.* Lewis, p. 345, *supra.*
[2] Hutch. Code 539, sect. 11.

without legal authority. . . [426] there could not have been an assessment . . at the time"

Wallace v. Seales, 36 Miss. 53, October 1858. [57] "an attachment against . . steamboat . . to recover the value [$1500] of a slave, hired . . [58] to the proprietors . . to go on a special trip from Greenwood . . to Vicksburg, and to return to Greenwood, . . [but] the slave was taken . . to New Orleans, in consequence of which he contracted a disease of which he died." Verdict and judgment for plaintiff. Affirmed.

Beck v. Beck, 36 Miss. 72, October 1858. [73] "the appellant was indicted for stealing a slave, . . convicted . . 1853, . . sentenced to confinement in the . . penitentiary for . . five years"

Meek v. Perry, 36 Miss. 190, October 1858. In 1855 [200] "they were about the following ages and values . . Chaney . . about fifty . . worth $300; Cherrylane . . ten or twelve . . worth $700; Dina . . twenty-five or thirty . . worth $800; Letty Ann . . four . . worth $400; . . William . . twelve . . worth $850; and Sam . . eight . . worth $550."

Block v. Cross, 36 Miss. 549, October 1858. [559] "brought Mrs. Cross and her children to this State, in . . December, 1851. About the same time, or shortly thereafter, the slaves . . were brought . . [560] no means by which to support herself and family, except the income to accrue from the hire"

Watson v. State, 36 Miss. 593, April 1859. Indictment for the larceny of six slaves. [595] "Watson brought the slaves [from Alabama;] . . removed them from place to place clandestinely; . . when he offered them for sale, he stated that his title was not good, and the purchaser would have to risk it, but that he would sell so low that a speculation could be made out of them."

Emanuel and Giles (slaves) v. State, 36 Miss. 627, April 1859. [628] "the slaves were committed upon an indictment charging that 'they did . . conspire . . with other slaves . . to resist the . . authority of . . the overseer . . by arming themselves with . . clubs, sticks, axes, hatchets, scythe-blades, and rocks;'" "in the Circuit Court . . a demurrer was filed . . sustained, as to . . two counts, but overruled as to the third; and in that condition . . the indictment was pending" when they were brought before a circuit judge [627] "by writ of *habeas corpus* sued out by their owner. . . [628] the judge dismissed the writ . . and remanded the prisoners to custody," Affirmed.

Bob Minor (a slave) v. State, 36 Miss. 630, April 1859. [631] "This cause was . . commenced under the Act of February, 1854 (Session Acts, 126), and tried before the justices and slaveholders, . . The plaintiff in error was convicted . . of grand larceny, and an appeal was prosecuted . . to the Circuit Court, under the provisions of the eleventh section . . again found guilty . . new trial . . refused. . . a writ of error is now prosecuted *here*,"

Dismissed, for want of jurisdiction. [636] "otherwise, the whole . . object of our laws providing this new and inferior tribunal, would not only be defeated, but the very delay they were intended to prevent, would be thereby created."

Simon (a slave) v. State, 36 Miss. 636, April 1859. See same *v.* same, p. 357, *supra.* On the new trial a witness stated [637] "that the prisoner was brought to the jail on the 24th . . and was delivered to him as jailor, and that he . . chained him; 'that, on several occasions, when persons . . would go into the jail, they would ask the prisoner, "What he was there for?" His answers were, "that he was there for killing Norvall [*sic*] . . about some misunderstanding about molasses;"' "that no caution was given . . that witness was generally present . . [638] The prisoner was convicted, and he sued out this writ of error."

Judgment affirmed: [639] "The record showing that this testimony went to the jury after a preliminary examination as to the circumstances of the confessions, by direction of the court, there can be no pretence that *the court was not satisfied* that the confessions [made in jail] were perfectly voluntary. . . no *caution* is necessary when the confessions are made to persons having no judicial authority," [Harris, J.]

Allen v. Miles, 36 Miss. 640, April 1859. [641] "To labor of three slaves . . from April, 1854, to January, 1855, $300 00 . . To labor of three women and three boys, in making cotton . . $600 00"

Heirn, Executor, v. Bridault and Wife, 37 Miss. 209, April 1859. Petition against the appellant to set aside Hall's will, dated 1854, by which he gave all his estate to Marcelette Marceau, widow Chatteau, [220] "of Pass Christian, . . Mississippi," [211] "and to recover the property . . for Mrs. Bridault . . [212] Combe, a witness for petitioner, . . stated . . [213] Hall and wife both recognized her as their child; . . widow Chatteau . . was a bright mulatto, and witness understood her to be a free woman of color; her son is still darker; her hair is kinky. She acts as mistress of Hall's house, . . She wanted witness to call her Mrs. Hall, which he refused to do, and this made her very mad. . . [214] Hall told witness that he was obliged to pass Mrs. Chatteau off as a white woman, in order that she might be allowed to stay at Pass Christian; . . [217] The defendant read the deposition of the following witnesses, . . [219] parish priest . . [states that Hall] told him he had been married to a French woman, who was dead, and that he never had any children by her. . . perceived . . painting . . asked whose portrait it was, and Hall replied . . a scamp of an Irish orphan girl . . he adopted . . Hall told witness he had been married to Madame Chatteau by Father Moise of the St. Louis Cathedral, New Orleans. . . [220] [Witnesses] stated that 'Mrs. Bridault had a family resemblance of Hall which was rather remarkable.' . . decree in favor of the petitioners".

Affirmed: I. [221] "Does the proof show that the appellee is the child and heir of the decedent? . . a case of conflicting testimony, in which the preponderance of evidence cannot be said to be greatly in

favor of appellant. . . therefore . . settled, that petitioner is the child" II. "Is a 'free woman of color' capable of taking property by devise in this State? . . [224] the negro or African race have no *status,* civil or political, in this country, save such as each State may choose to confer . . because this race are *alien strangers,* of an inferior class, incapable of comity, . . [232] Under our statutes, they are divided into three classes: 1st. Slaves, . . 2d. Free negroes, . . 3d. Mulattoes, . . embraced in the 2d article of the 1st sect. of the [New] Code, chap. 33, or such as are descended from *free white mothers,* but have one-fourth or more of negro blood. . . It is . . the policy of this State to interdict all intercourse, commerce, and comity with [alien free negroes or mulattoes] . . and by law, expressly provided,[1] we enforce the strictest doctrines of the ancient law, as applicable to *alien enemies,* except as to life or limb, against them. We enslave them for life, if they dare to set foot on our soil, and omit to leave on notice in ten days. And this not upon the principle . . of . . inhumanity . . but on the great principles of self-preservation, . . the African can neither take nor hold property in this State . . except those free persons of color who are residing here *permissi.*" [Harris, J.] Smith, C. J., concurred. Handy, J., dissented: I. [233] "there is a . . very decided preponderance of evidence showing that she was not the daughter . . [II.] [234] It does not clearly appear whether Marcelette . . is now a resident of this State or of Louisiana. . . She is alleged to have been a citizen of Louisiana, and the presumption is, that her rights . . as such continue. The question, then, . . is the same as that decided in Shaw *v.* Brown;" [2]

Mitchell v. Wells, 37 Miss. 235, April 1859. [236] "The appellee filed her bill . . as a citizen and resident . . of Ohio, against the appellant, formerly executor of . . Wells, . . Appellee alleges that she is a free woman of color, and daughter of testator, who died in . . [237] Mississippi, in . . 1848. . . bequeathed to complainant a watch, bed, and three thousand dollars, . . That the defendant retains the legacy on the pretext that complainant is a slave. That in 1846 her father took her to Ohio, and domiciliated her there, and ever afterwards . . treated her as a free woman; . . The bill admits that Samuel Watts, her reputed husband, is a slave, and that she lived with him, but denies that she was legally married to him. . . The answer . . charges . . that complainant remained in Ohio only about eighteen months, and did . . return and reside . . with her former owner, and as a servant . . until September, 1848, when she married Watts, a barber, then residing in Jackson . . a free man, . . lived with him until . . 1851, when she went to Cincinnati; . . [238] the cause . . was determined in favor of complainant."

Decree reversed and bill dismissed, at the cost of defendant in error. Harris, J., delivered the opinion of the court: "while the policy of the State seems to me, especially since 1842, to have been declared . . with greatly increased stringency, the judicial department has adhered to the

[1] New Code, art. 80, sect. 12.
[2] P. 354, *supra.*

case of Ross *v.* Vertner,[1] . . which was virtually disapproved, as an exposition of the policy of this State, at the next succeeding legislature.[2] . . [244] The decision in [Wade *v.* American Colonization Society[3]] . . constitutes the crowning error of these misconceptions of our public policy, . . [245] In Lusk *v.* Lewis,[4] . . Wade *v.* The American Colonization Society, may . . be considered as expressly overruled. . . [252] Mississippi came into the Union . . *with this institution,* . . protected . . by the express provisions of . . ['our Federal'] Constitution . . Her climate, soil, and productions . . *require slave labor.* . . [253] Nor is it believed that the revised Constitution of 1832 . . can be regarded (as indicated in Ross *v.* Vertner) as evidence that our policy is limited *to the prevention of the increase of free negroes in this State,* . . about the period of the adoption . . various causes combined to precipitate upon . . Georgia, Alabama, and Mississippi especially, a most unusual number of slaves from the border States. The idea became prevalent that the abolition feeling, which had just before . . revolutionized the Old World, and had inaugurated its . . mad career in the Northern States . . was inducing Virginia, Maryland, and other States, to dispose of their negroes, with a view to follow the example of some of their neighbors. . . Mississippi intended . . to compel these border States to stand firm by the institution . . [254] by cutting off their market. . . It was feared that if these border States were permitted to sell us their slaves, . . *they too* would unite in the wild fanaticism of the day, and render the institution . . thus reduced to a few Southern States, an easy prey to its wicked spirit. In addition . . high tariffs, . . the low price of cotton, and the consequent depression in the value of slave labor . . inclined them to sell, at tempting rates, . . It . . passed only after a long struggle . . by a majority of nine votes. . . 1837 . . when speculation in land and negroes had covered the State with debt . . the legislature . . passed the act referred to in Ross *v.* Vertner,[5] and there relied on . . as evidence that it is not the policy of Mississippi to prevent emancipation. . . [255] At the earliest period, after the announcement of this opinion, . . and in express reference to [it,] . . the legislature declared *anew* the public policy, by the Act of 26th February, 1842, . . But to leave no misconception . . February, 1857, the legislature declared . . [256] 'Nor shall it be lawful for any . . person . . to remove any slave . . with the intent to emancipate'[6] . . [262] The State of Ohio . . afflicted with a *negro-mania,* which inclines her to *descend* . . [263] in the scale of humanity, chooses to take to her embrace, as citizens, the neglected race, who . . were regarded, at the formation of our government, as an inferior caste, . . comity is terminated by Ohio, in the very act of degrading herself . . by the offensive association, . . [264] Suppose that Ohio . . should . . claim to confer citizenship on the chimpanzee or the ourang-outang . .

[1] P. 290, *supra.*
[2] Act of 1842.
[4] P. 345, *supra.*
[5] The act of 1837.
[6] Code 236, art. 9.

are we to be told that 'comity' will require . . States not thus demented, to forget their own policy . . and lower their own citizens . . Ohio . . can neither confer freedom on a Mississippi slave, nor the right to acquire, hold, sue for, nor enjoy property in Mississippi."

Handy, J., delivered a dissenting opinion of twenty-four pages: [276] "*in every case in which the question has been presented to this court, emancipations by deed, or other legal act, made in other States, bona fide, and not for the purpose of evading our laws, by the return of the slave here, have been held to be valid, and not in contravention of our laws and policy*; and . . it has been invariably held, that free persons of color, so manumitted . . might sue . . in our courts. . . [285] according to the doctrine here asserted by the majority of the court, . . the inhabitant of one of the States has . . less means of redress of a wrong against a citizen of another of the States, than the subject of Great Britain, France or Russia would have, . . such a theory . . renders that which was designed 'to form a more perfect union,' . . the instrument of strife, . . It proves the union formed by the Constitution to be a short-sighted and miserable failure. . . [286] Whilst the confederacy continues, we cannot justify ourselves . . in violating its . . principles, because other States have . . been false to their . . obligations. It may justify us in dissolving the compact, but not in violating our obligations under it whilst it continues."

Alfred (a slave) v. State, 37 Miss. 296, October 1859. "indicted . . for the murder of . . Coleman, . . [297] Stubbs was tendered by the State . . as a juror. . . asked, 'Whether . . the rumors he had heard had made such an impression . . in his mind . . that it would require testimony . . different from the rumors . . to remove such impression?' . . he answered, 'That it would' . . the prisoner challenged . . for cause, . . disallowed . . [298] On the trial, Dr. James testified . . 'That . . February . . about dark, he, . . with two other gentlemen, . . attracted by a noise . . went from Fondren's house to his stable lot, . . saw the prisoner standing near the gate, . . asked him "What was the matter." The prisoner replied, "I have killed the overseer." ' . . [299] The prisoner introduced as a witness in his behalf a slave named Charlotte, who stated that she was the wife of prisoner, and [also] belonged to . . Fondren. Prisoner's counsel then proposed to prove, by Charlotte, that about nine or ten o'clock in the morning . . Coleman 'had forced her (witness) to submit to sexual intercourse with him; and that she had communicated that fact to the prisoner before the killing. The district attorney objected . . sustained' . . The prisoner was convicted, and sentenced to be hung, and therefore sued out this writ of error." Trimble, counsel for plaintiff in error: [307] "the humanity of our law . . regards with as much tenderness the excesses of outraged conjugal affections in the negro as in the white man. The servile condition . . has not deprived him of his social or moral instincts, and he is as much entitled to the protection of the laws, when acting under their influence, as if he were free . . and the white man degrades the species to which he belongs in denying them to him."

[316] "For the error in the rejection of the challenge of the juror Stubbs, let the judgment be reversed, cause remanded, and a *venire de novo* awarded." "there was no error . . in the rejection of the testimony of Charlotte." [Harris, J.]

George (a slave) v. State, 37 Miss. 316, October 1859. [317] "indicted . . for a rape on a female slave [under ten years of age]. He moved to quash the indictment, which was refused. . . convicted, and . . sentenced . . to be hung."

Judgment [320] "reversed, and indictment quashed, and defendant discharged." "This indictment cannot be sustained, either at common law or under our statutes. It charges no offence known to either system." "With the exception of [Fields *v.* State,[1] in Tennessee,] . . [two] cases [2] . . in our State, and one or two very early cases in North Carolina,[3] founded mainly on the unmeaning twaddle, in which some human judges and law writers have indulged, as to the influence of the 'natural law,' 'civilization and Christian enlightenment,' in amending, *proprio vigore,* the rigor of the common law, and on a supposed analogy between villanage . . and slavery . . the cases and text-writers are uniform in declaring that slavery, as it exists in this country, was unknown to the common law . . and hence its provisions are inapplicable . . there is no act ['of our legislation on this subject'] [4] which embraces either the attempted or actual commission of a rape by a slave on a female slave. . . Masters and slaves cannot be governed by the same common system of laws: so different are their positions, rights, and duties." [Harris, J.]

Jeff (a slave) v. State, 37 Miss. 321, October 1859. "indicted . . for an assault and battery on . . Ballentine, a free white person, with intent to kill, and in resistance of legal chastisement. . . Ballentine . . testified . . I had cause to correct the prisoner, . . told him I wanted to have some talk with him. He replied that he had done nothing to be whipped for. I caught him by the collar of the coat, and he scuffled with me, and I struck him on the shoulders with a walking cane . . a good sized stick, and I could probably have killed him with it by striking him on the head, if I had desired . . [322] The prisoner put his hand in his pocket and I drew a pistol, and told him I would kill him if he drew his knife. . . I told him I would whip him or die. . . my wife came running out . . and I asked her to tie him with a rope . . A moment after he had his [jack-knife] drawn and commenced cutting me. . . two slight wounds . . I then let him go, and he ran off. . . the blade was about three or three and one-half inches long, and about three-fourths of an inch wide. . . 'I am Dr. Laird's son-in-law; and the plantation . . belongs to [him.] . . Dr. Laird lives in Memphis, . . and I have full

[1] Vol. II. of this series, p. 494.
[2] State *v.* Jones, p. 283, and Kelly and Little *v.* State, p. 301, *supra.*
[3] State *v.* Tackett (vol. II. of this series, p. 39) and State *v.* Reed (*ibid.*, p. 44).
[4] "Note.—By Ch. 62, p. 102, of the Session Acts of 1860, the actual or attempted commission of a rape by a negro or mulatto on a female negro or mulatto, under twelve years of age, is punishable with death or whipping, as the jury may decide."

management . . over . . negroes which are near by to my house. . . The prisoner . . was sent from Memphis to dig a cistern, and paint a barn' " [325] " The first charge given for the State . . substantially instructs . . that if [the prisoner] . . 'made an assault . . [326] upon his master or employer, with a deadly weapon, and not in necessary self-defence, . . they will find him guilty,' . . whether he intended to kill him or not," He excepted, and on conviction a new trial was refused.

Judgment reversed, cause remanded, and a *venire de novo* awarded: the instruction excluded the plaintiff in error " from the benefit of all testimony tending to rebut the legal presumption arising from the use of a deadly weapon." [Harris, J.] See same *v.* same, p. 374, *infra.*

Wesley (a slave) v. State, 37 Miss. 327, October 1859. " indicted for the murder of . . [328] Ford. . . the widow . . proved that her husband had been overseeing for Walker, the owner of the prisoner, for about one month . . that about sunrise, on Sunday morning . . the deceased brought a negro man (who is admitted to be the prisoner) to the . . smoke-house, and called for the key, and for a strap with which he usually tied negroes. . . tied the prisoner and put him in . . locked the door, . . In a very short time, not exceeding five minutes, witness wanted to get out some meat . . deceased opened the door, and as it opened . . she heard deceased fall over some cotton baskets that were near the door. The prisoner sprang so rapidly past her . . that she could not identify him. . . She told some of the negroes to go for a doctor, but they said they did not know where the doctor lived. . . He had a very bad wound on . . his head, and died that day . . It was in proof that the prisoner . . ran to his owner's house . . and not finding his owner . . left, and soon afterwards, being hunted with dogs, he went again to the owner's house. . . The prisoner, soon after his arrest, stated that he did not know with what instrument he struck the blow, but thought it was a piece of timber 'like a hoe-helve.' It was also in proof . . [329] by three slaves, that just immediately preceding . . the deceased had conceived that the prisoner had not executed properly a command to curry a mule, had become very much enraged, and had beaten with his fist, and kicked the prisoner with great violence, and . . told [him] . . 'that he would know how to curry a mule when he had done with him.' The prisoner's character was proven to be that of an obedient and submissive slave. The general character of the deceased was also in evidence. He was proven to be cruel and violent in his treatment of slaves; and one witness, who . . had discharged him for cruelty to his slaves, stated that his violence to slaves seemed to be a constitutional infirmity." [337] " Walker . . proved . . that when he first applied to him for the situation, he declined to employ him, knowing him to be a violent, severe, and cruel man; being unable to find another to suit him, he afterwards sent for defendant [deceased], told him he should have to employ him, but was afraid of his violence and severity; defendant [deceased] said he thought he had now learned to govern himself measurably." [346] " the prisoner offered to prove the gen-

eral management of the deceased on the plantation where he was the overseer, 'with reference to violence and cruelty;' and (also) to prove 'specific acts of unmerciful severity' . . excluded" [329] "The prisoner was convicted, and upon his motion for a new trial being overruled, he excepted and sued out this writ of error." Counsel for the plaintiff in error: "That a knowledge of the violent . . character of the deceased may be adduced in behalf of a white man, by whom the death was occasioned, needs no authority. . . Why should it not apply to a negro? He is permitted to strike in defence . . in protection of his life or limb, . . [330] He knows he must yield to great personal suffering, ere he do aught but supplicate. He feels that, at some point, he may strike to save life or limb; and when . . he sees . . that . . preparations for deadlier assaults are made . . his fear . . fills his mind . . what more reasonable ground could exist for his believing that his life or limb was in danger, than a knowledge of the 'violence and cruelty' of the man by whom he was then threatened, 'in his management' of his fellow-slaves . . [331] The error was not cured by admitting testimony of the 'general character of the deceased as an overseer.' The prisoner may never have heard of his 'general character as an overseer.'" Wharton, attorney general: [338] "greater latitude was allowed than the law authorized, in permitting the witness to speak of the known cruelty . . before the question which was objected to was propounded; but as this . . was not controverted by the State, I do not stop to consider it. . . [340] general character . . upon a particular plantation . . it is paradoxical, in legal sense, to speak of . . as general character."

Judgment affirmed: [348] "that a slave . . may . . justify . . upon the ground that . . from the known . . cruel character of the deceased in the management of slaves, and from . . particular acts of great cruelty upon other slaves . . he . . did believe, that some great bodily harm would be inflicted upon him, or that his life would be taken . . is utterly untenable. . . [Such] a rule . . would produce the most disastrous consequences. . . [349] the slave population . . [would] be incited to insubordination and murder, . . But the principle . . when applied to homicides committed by white persons, is equally untenable." [Smith, C. J.]

Newcomb v. State, 37 Miss. 383, October 1859. [386] "witness started . . to tell the negroes cutting timber it was dinner-time, . . [388] the deceased . . had some conversation with the negro, about the negroes whipping his teams,"

Montague v. Gaddis, 37 Miss. 453, October 1859. [455] "that he had a valuable plantation in Louisiana, where he had removed some of his hands, and that he intended to remove all his field hands there, but did not remove himself nor his household servants; . . that he did not then intend to remove . . [456] seventeen slaves, valuable house-servants and mechanics,"

Dunlap v. Hearn, 37 Miss. 471, October 1859. [472] "a negro boy . . the property of the plaintiff [Mrs. Dunlap's father], was placed in her

possession, . . remained . . about three years, when he ran away, and upon being captured by the efforts of the plaintiff, the negro girl was sent . . and the boy was retained by plaintiff. . . his wife . . stated, that . . the plaintiff said . . ' They have ruined one, and I am willing to have another ruined.' . . and that the [son-in-law] . . was a cruel master, and had ruined the slave."

Cheairs v. Smith, 37 Miss. 646, October 1859. Will of William H. Cheairs: [662] " All the residue . . I give . . to my nephew Lucius . . on the . . trusts following, to wit: I will that my mulatto boy Pillow and girl Mary are to be free, and are to have five hundred dollars each when they arrive at the age of eighteen; . . to remain under the care of my brother Calvin until Lucius shall be of age; that they are never to leave the family, nor be subject to the control of overseers; and that Mary be made a seamstress, and Pillow a barber. . . that the offspring of . . Mary shall be free, and that . . Lucius shall take care of them during his lifetime. Now, if . . Lucius and his father shall do . . as herein willed . . the gift to him of my estate . . to be . . absolute; but should they fail . . the property . . shall be equally divided between the heirs of Lemuel Smith and David B. Cheairs, they paying to . . Pillow and Mary the five hundred dollars . . Believing my right to dispose of my property as best suits me, to be absolute, I affirm that no law or equity shall set aside this my last will and testament;" [646] " The testator made his will, and died, after the 1st of November, 1857, . . when the Revised Code [New Code] took effect; . . ' It shall not be lawful . . by will, deed, or other conveyance . . to make any disposition of any slave . . with the intent to emancipate . . [647] But all such wills . . intended to accomplish the emancipation of any slave . . after the death of the owner . . shall be . . held entirely . . void,' " [1] [662] " Mary . . is about thirteen . . and . . Pillow about eleven . . and . . Lucius, about fourteen . . the residuum of the estate consisted of seven hundred acres . . and thirty-two slaves, exclusive of Mary and Pillow, and horses, . . etc., . . [663] One of . . [testator's] brothers and the sister filed the petition . . alleging that the residuary clause . . is illegal . . the court sustained the petitioner[s] and decreed distribution of the slaves . . including . . Mary and Pillow;"

Held: [667] " the decree holding the entire residuary clause . . to be void, is erroneous, except so far as it emancipates . . Mary and Pillow." [663] " It is admitted . . that the bequest of emancipation . . is contrary to the statute . . [664] There is nothing in it indicating an intention . . to do more than to frustrate his attempt at emancipation. . . [665] their freedom did not depend on the act of Lucius, . . not . . a condition precedent to the vesting of the estate in him. . . [667] the legatee is something more than a mere trustee . . In such a case, the condition being void, . . the legatee . . takes the estate absolutely." [2] [Handy, J.]

Williams v. Brickell, 37 Miss. 682, October 1859. [683] " Dr. A. B. Cabaniss . . testified . . The yellow fever was then prevailing . . Moses

[1] New Code 236, sect. 3, art. 9.
[2] Lusk v. Lewis, p. 345, *supra.*

belonged to Mrs. Saunders, and he attended said negro at her request, and so did Dr. Hubbard."

Cason v. Hubbard, 38 Miss. 35, October 1859. [37] " 1855, he purchased . . Charles . . for . . $1100,"

Fairly v. Fairly, 38 Miss. 280, October 1859. [282] " Margaret . . resided in North Carolina, . . [283] gave . . money to Archibald Fairly, who went to Virginia to buy a negro with it, for her; . . after . . return . . he stated, that he had bought a negro for Margaret, and he had run away; he sold him and bought another, and he also ran away, and he therefore sold him, and with the proceeds he bought the girl Nancy."

Kelly v. Miller, 39 Miss. 17, February 1860. [19] " Miller . . principal legatee . . under the will [of Kelly] . . was at his house in the night, visiting as a physician some sick young negroes; Kelly said they were of much trouble, and would never be of much service to him, . . Kelly told witness . . that his boy Bill was so devilish he could not manage him, . . his influence was bad, and insisted on witness buying him. Witness asked . . what he would take. Kelly said $900. No trade was made, but . . Kelly sent Bill to witness. . . [20] A few days before Kelly died . . Kelly told him . . that he wanted to give witness his property; . . did not want his negroes scattered, and his relatives would scatter them. . . opposed to his brother having the negroes; that he was a hard master and a dissipated man. . . [21] Bill was worth . . $1,200, and he would not have bought him but for the fact he was a bargain. . . [28] Williams . . has often heard Kelly speak about witches and conjurers. Kelly said that the conjurers would not let him go to his bottom-land. . . would not let him go to his horse-lot. . . when he could not go into his bottom-fields the negroes managed it as they pleased. . . [29] had not seen the inside of his crib for four years; that he was conjured so he could not do it. . . his horses were conjured so they would not plow. . . [31] wanted to keep his negroes together. Said he would set them free if he could; . . [32] said his gun was conjured. . . [34] When the negroes cut up his cotton, or anything went wrong with him, he laid it to the conjurers. . . When his negroes stole any thing or ran away, he said it was the witches. . . When his negroes misbehaved, he said they were not to blame; that the conjurers made them do it." Letter written by Kelly in 1850: [35] " Them conjuring creatures have got me at such a pass that I can't go in my plantation. . . They make my hogs eat up my chickens and turkeys, and sometimes the sows eat up all their pigs, and they bewitch and conjur nearly everybody I have any thing to do with. They have conjured up such a condition for Douglas that I can't keep him at home. Right or rong, he could see no peace, and one of my neighbors was going to Texas, and I gave him his choice to go with him, and he went. Two fellows had whiped him nearly to death and he made a start to the North, and got in Oxford jail. . . One of the fellows who whiped him has since been shot, and the other broke jail and is in the Mississippi bottom. . . [37] Emma has eleven children, seven of them

in the field. The girls about a month before they had their first children, that conjuring devil gave them a fall, and each was about a month like to die . . The youngest has another about a year old as likely as I ever saw, and will have another in a few days. . . [38] I directed to put Douglas to blacksmithing or bricklaying, . . Douglas is strong, active and intelligent. . . I came back from Georgia . . and gat my head a little out of their conjur bag; . . [39] when I got home that night from Howelton. She ['the plague'] had her conjuration with the negroes. I had not heard one call another a liar in a year, and as good a boy as I ever saw was cursing and swearing. . . One of the tavern boys . . had just such a fit. . . I told [his master] . . he must break him or sell him. If it was to do over again I should tell him to give them conjuring devils their dues, and then the negroes would behave themselves. . . [40] We have a man in Granada teaching conjur school. They say he can make a man puke at his pleasure." Nulter testified: [45] "On one occasion a negro woman was plowing; she stopped and rolled up her eyes, and pretended to be bewitched. Witness . . punished the . . woman, and Kelly ran off, saying, the witches would kill us all. . . Kelly was frequently imposed on in this way. . . [48] witness saw . . a medical almanac and a New York paper, that witness supposed belonged to Kelly's negro man, Douglass [*sic*], as his name was on them. . . [51] Witness observed that he was always secretly watched and listened to, when visiting Kelly in his sickness, by Kelly's negroes." Kelly's will was sustained. Affirmed.

Garnett, Administrator, v. Cowles, 39 Miss. 60, February 1860. Petition [61] "filed by Mrs. Cowles, the heir of Samuel Hurd, for the purpose of procuring distribution to be made to her of all" Hurd's slaves. Letter from Hurd to R. S. Finley, dated April 28, 1846, and published by Finley in the *Liberia Advocate*: "I received the third number of your colonization paper. I enclose $1.00 for two copies of the first volume . . I wish my slaves (forty or fifty in number) to be sent to Africa in a few years. Now they are working to pay a debt, while I trust I am preparing them for liberty. By the law of Mississippi no slaves can be emancipated by will under any circumstances. This I presume is not generally known among the people, but ought to be widely published. In my will I direct my executor to sell all my slaves, as well as other property, and to pay the proceeds to the trustees of the American Colonization Society. I wish the trustees to be purchasers of all that are suitable to go to Liberia, and the money arising from the remainder and other property to go to their benefit. . . *in connection with the other trustees and the executor* do what seems best. My wife willed hers to Liberia . . [62] but if my life is cut short her debts will take most of them. Some of hers are more suitable for Liberia than some of mine. . . therefore . . buy such when sold, and let a corresponding number of mine be sold, such as are less fit for freedom. Most of mine came by my wife. They are married together in families, and I desire the families to remain together. . . I have long loved the cause of Africa, and may yet

live to promote it through those of her sons committed to my care. But my health seems exceedingly precarious, and for years I have been debarred by it from all active duties of the ministry. Your brother in Christ," Hurd's will, dated May 31, 1846: [65] "12. 'All my property . . not otherwise disposed of in my will, I direct my executor to sell, and to pay the proceeds to H. H. Means, Esq., Memphis, Rev. J. H. Gray, Memphis, and Rev. R. S. Finley, St. Louis, in trust, for the . . benefit of the American Colonization Society. . . The property which might fall to my heirs out of the separate estate of Mary Hurd, deceased, . . I . . direct my executor to dispose of according to this clause. 13. While my slaves remain unsold I wish them to have the benefit of religious instruction by catechism, and by intelligent and sound preaching—Presbyterian if practicable. For these purposes my executor is authorized to apply out of the proceeds of their labor annually . . two thousand dollars. 14. . . I desire him to purchase any negroes, that may be sold out of the estate of Mary Hurd, that he may think proper, so as to keep families together. 15. I earnestly request my executor to cause the administration of the government and discipline of my slaves to be conducted upon principles of humanity, discretion and Christianity; the virtuous to be encouraged, and the vicious corrected or removed from corrupting the rest. . . 18. I request T. N. Waul, Esq., to execute this my last will,' . . codicil [June 7, 1846] . . 'I desire my nephew . . to retain the management of my branch farm, to catechise all my negroes on the Sabbath, . . [66] I make my executor my residuary legatee, intending he shall take all my property . . that by invalid disposition, or in any other manner, shall come into the residuum'" [64] "last clause of his codicil, dated June 23, 1846, . . 'the $1,000 intended for my sister [Polly Cowles] is to draw interest at six per cent., but may not be paid till the negroes are sold.'" "The preamble to Hurd's will states that it 'was drawn up by himself the last week in April, and rewritten the last week in May, 1846.' The will and codicil were probated . . September, 1846." [62] "The answer of . . Waul . . 'Denies most positively that there was any secret agreement . . that he . . would emancipate the slaves and remove them to Africa. . . [63] believes . . that the . . testator . . fearing . . some obstacle . . resolved, as a secondary object, to place said slaves with one whom he believed would . . [be] a just and humane master. . . Admits his resignation of the office . . of executor;' . . On the trial . . the following admission was made . . 'that General T. N. Waul, about . . 1848, . . at a public sale made by him at the residence of the testator, made a public speech . . in which he said, "That any person who charged that he . . [64] had claimed or ever would claim any interest . . in opposition to the American Colonization Society or its trustees, was a scoundrel and a liar."' . . [66] The court below decreed the slaves to Mrs. Cowles, . . the American Colonization Society, Garnett, the administrator . . with the will . . annexed, and Waul appealed." Counsel for appellees: [83] "No directions are given as to the mode . . of sale; the trustees might sell them singly in the slave mart at

Richmond, Charleston, or New Orleans—thus separating husband and wife, mother and infant, and consigning them to such associations, corrupting or otherwise, as fortune or fate might provide. . . [91] African slavery . . is the bond which binds scarce less than half the States in a sisterhood more close and intimate than the compact of Union, for their mutual protection and preservation; and the remainder in a league of offensive war against the States which tolerate and sustain it. It is our policy—our interest—that not one State should emancipate its slaves, and that more slave States should be admitted into the Union. . . Would this court hold valid a . . bequest to the Massachusetts Emigrant Aid Society—a corporation organized to expel slavery from the Territories of the Union? And if not, will it sustain a bequest to a society which . . seeks to emancipate slaves . . in the States themselves"

Judgment reversed and the cause remanded: I. [104] "under the Act of 1842 this will, so far as it attempts to constitute the American Colonization Society a legatee, is void. . . [II.] [108] We think there is nothing in . . [Waul's] declaration [of 1848] tending to show the purpose of Hurd or . . of Waul, before Hurd's death, . . to violate or evade the Act of 1842, . . [109] There is not a particle of evidence showing that Waul ever knew . . of the testator's design to make him executor or residuary legatee, until after the testator's death, . . he is entitled to the property in dispute . . the heir at law can take nothing" [Harris, J.]

Cocke v. Board of Police, 38 Miss. 340, April 1860. [341] "action . . to recover of the plaintiff in error $172 50, for failure to work on the public road with [his] twenty-three slaves, . . subject to road duty, five days,[1] . . [342] the overseer of the road . . gave personal notice to . . [Cocke's] overseer" Held: [344] "the overseer, and not the owner . . was liable to the forfeiture,"

Otey v. McAfee, 38 Miss. 348, April 1860. [349] "in 1848, the defendant [Otey] came from North Carolina . . with a lot of negroes for sale;"

Still v. Corporation, 38 Miss. 646, April 1860. [647] "1856, the testator came [from Mississippi] to . . Louisiana, bringing . . some slaves; he had rooms fitted up at the house of Mr. Irvine, and asked witness to rent a house for his negroes in the town."

Matthews v. Sontheimer, 39 Miss. 174, October 1860. [177] "Sontheimer . . sought the aid of . . Milly—a confidential servant of said Hugh, and promised her her freedom if she would induce her master to bequeath to him his slaves."

Fondren v. Durfee, 39 Miss. 324, October 1860. [327] "evidence tending to show . . that the slave . . was, at the time of the sale, not free from the effects of an attack of the scarlet fever which he had recently had . . and that, by exposure in travelling before the sale, the incipient stage of consumption, of which he subsequently died, supervened." [326]

[1] Rev. Code 174, art. 18.

" The witness [plaintiff] was asked ' whether or not the slave complained to him (his master) of being sick, and what the slave said . . upon that subject;' . . defendant objected, . . overruled, and the witness stated that the slave ' told him he was sick and had a pain in his chest.' "

Held: " the declarations . . must be regarded as *verbal acts,* and are hence free alike from the objection of being hearsay and of being the testimony of a slave." [Handy, J.]

Mizell v. Sims, 39 Miss. 331, October 1860. The vendor [331, headnote] " represented that the slave was not a runaway, but of good character, and was an ' A. No. 1 boy.' " [333] " that the plaintiff purchased . . but that, shortly afterwards, the slave ran away . . and . . became wholly lost to the plaintiff; averring that the slave was a vicious and worthless slave, and a habitual and dangerous runaway,"

Lamar et al. v. Williams et al., 39 Miss. 342, October 1860. [343] "defendants, Lamar and Kersh, came to the house of . . Williams, plaintiffs' intestate, and stated . . that another slave had charged . . [Williams's] slave with harboring a runaway slave belonging to . . Lamar, and asked permission of Williams to carry his . . slave to a neighbor's house to confront the slave so charging . . Williams granted the permission . . and thereupon defendants carried the slave to a neighbor's and gave him a very severe whipping for the purpose of extorting . . information concerning the . . runaway . . in consequence of the whipping and of exposure he suffered in reaching home . . [he] was confined to his bed about seven weeks, and required the attendance of a nurse and medical assistance. No permanent injury was done to the slave. The physician's bill was one hundred and five dollars. . . verdict . . for two hundred and sixty-five dollars," Judgment thereon affirmed.

Cocke v. Hannum, 39 Miss. 423, October 1860. [432] " admitted, *when sober,* his carnal intercourse with slaves, and avowed his purpose to continue it, ' when he pleased.' "

Smith v. Allen, 39 Miss. 469, October 1860. [471] " Elijah was the property of . . Allen [[473] ' a preacher of the Methodist church '] . . when the conveyance was made by him to his wife . . he had raised him, owned him for years,"

Oliver v. State, 39 Miss. 526, October 1860. [527] " indicted . . for the murder of his slave John. . . It appears from the evidence that the deceased was a violent, turbulent, and rebellious slave, and that . . he with several other slaves was put to shelling corn . . that, in working . . corn-sheller, a stick, about five feet long, about two and a-half inches in diameter at the large end, and gradually tapering to the other, was used . . and that it was the business of . . Dick . . to use this stick, and that deceased was never allowed to use it on account of his awkwardness. . . [528] The witness [Bramel, the overseer,] . . heard . . [Oliver] say, in a quiet . . tone, ' Give up the stick;' and then in a short time . . violently, . . He saw deceased and accused struggling together for the posses-

sion . . The countenance of the deceased . . had a very vicious . . look. Very soon the accused succeeded in wresting the stick from . . deceased, and . . struck deceased . . on the head, and deceased . . almost immediately expired. . . The deceased had been guilty, on the day before, of an act of disobedience, which was usually punished . . by whipping. . . Testimony . . on behalf of the accused . . tended to show that he was subject to fits of mental derangement," [530] "In the first place the court allowed the State to prove by [two witnesses] . . that Bramel told them . . that Oliver had killed his negro; and when they asked why . . he replied, 'for nothing'—'that the negro . . did not seem to work fast enough, and Oliver told him to work faster and the negro didn't do it,' . . after . . argument to the jury . . [531] The court . . allowed the testimony . . to be withdrawn" The prisoner was convicted of manslaughter.

Judgment reversed, cause remanded, and a *venire de novo* awarded: [539] "If it is a case of resistance and rebellion, then the authority . . of the master is only to be limited by the *necessity* occasioned by *unlawful* resistance . . [540] the master may use just such force as may be requisite to reduce his slave to obedience, even to the death of the slave, if that become necessary to preserve the master's life, or to maintain his lawful authority." [Harris, J.]

Cothran v. State, 39 Miss. 541, October 1860. [542] "hired a . . negro boy . . for the year 1860 . . for . . one hundred and fifty-five dollars and twenty-five cents . . another person had offered one hundred and fifty-five dollars"

Munford (*a slave*) *v. State,* 39 Miss. 558, October 1860. [568] "indicted . . for the murder of . . Valentine Ashley, not alleging that he was a white man. . . verdict of guilty of *manslaughter* . . judgment was arrested, . . [569] indictment quashed, and the prisoner held to answer a new indictment. At the next term . . indicted for the manslaughter of Valentine Ashley, *a white man*; and in his defence . . relied on the plea of a former acquittal for the same offence, . . district attorney demurred, . . sustained, . . verdict of guilty, and judgment."

Affirmed: "no conviction of manslaughter could have been legal under the first indictment. . . the court could not know what judgment to pronounce. The manslaughter of a slave by a slave . . is not a capital offence, while the manslaughter of a white man by a slave is made capital by statute."

George (*a slave*) *v. State,* 39 Miss. 570, October 1860. [571] "The plaintiff in error . . and . . Josephine . . belonging to . . Jones, were jointly indicted for murdering, by poison, Lelia Virginia Jones, [[629] 'about twelve months old,'] . . a severance in the trial was granted; . . proven for the State, by . . Jones, that he had owned George about twelve years; that for the last two or three years he had been an invalid [[627] 'from rheumatism'] and had not worked in the field, but had done little jobs about the house and yard; that . . Sunday preceding the poisoning he had ordered his overseer to direct George to go to laying off corn-rows on

the next morning, but George, being sick next morning, was not put to work . . That . . 27th February, 1857, . . he . . and Mrs. Jones and Lelia Virginia Jones drank tea; . . taken violently ill . . [572] That Lelia Virginia . . died that night . . that George had always been a good and obedient and humane servant. That he had purchased . . Josephine but a few weeks previously, in New Orleans; that she seemed a good deal dissatisfied at the purchase." [627] " by crying and ' taking on considerably.' . . she said some of the negroes in the yard had stolen some of her jewelry. Witness and Josephine came from New Orleans on different boats. . . She did not move about at witness's house with the life and sprightliness she did in New Orleans. . . [628] Mrs. . . Jones, for the State, testified the breakfast was cooked badly . . [629] 27th February . . and she talked mildly to [Josephine] . . about it, who replied impudently . . She informed her husband . . and he whipped her. Shortly afterwards witness . . called [Josephine.] . . She did not reply, and turned her back . . and made a face at witness, and turned over a chair. Witness then procured the overseer to whip her. In an hour or two . . witness . . asked [her] . . to go with her to the smoke-house to get out dinner, which she did, and then seemed to be in a good humor." [572] " Rhodes . . testified that he was overseer . . George said . . that his master was tighter on him than ever before, and that witness was the cause of it. George did not refuse to lay off the corn-rows, but grumbled, not more than negroes who had been indulged a good deal usually do. . . [573] next morning—had fever . . never had been put to that work. George was a good negro for fidelity and obedience. . . Dixon . . testified that he was overseer . . in 1854 and 1855. In . . 1854 George told witness that he had found a vial with some white stuff in it, and asked witness what he should do with it. . . Dr. Mason . . had no doubt they had taken arsenic, . . The State then introduced Josephine, . . She . . testified . . That about a week before the poisoning she went, about nine or ten o'clock at night, to George's cabin to carry him his supper. George said . . that the overseer had ordered him to lay off corn-rows . . and that he could not do it; . . that it was master's day now, but it would be his after a while; that he was going to take care of number one. . . went to his chest, . . took out a vial . . and said it was ratsbane or strychnine . . and that he would have use for it after a while. Witness can read a little, and seeing a small part of a label . . thought she could make out ' arsenic.' George put it back . . [574] On the day of the poisoning George came into the kitchen a short time before dinner; . . reached up as if to put something on the . . joist of the kitchen, and said, ' Don't let anybody disturb this.' Witness had her back to George most of the time, . . After the poisoning, . . the overseer, arrested her and tied her to the bed in a room between the dining-room and parlor. . . George . . spoke to her through the broken pane [of the door], and asked her if she had removed the bottle . . She told him she . . knew nothing about it. She asked him if he had put anything into the dinner. He said, ' Not enough to hurt,' . . Shortly after he . . told her he had thrown the vial in the fire . . and said, ' For God's sake, say

nothing about it.' . . Before dinner . . she saw one of her handkerchiefs . . which seemed to have been used in straining starch. . . [575] washed it, and hung it . . to dry." [626] " when she was coming up from New Orleans on steamer . . she took from a girl on the boat some free-papers." [575] " Eliza,[1] a slave, testified for the defendant . . Josephine . . asked George for [the vial] . . and put it in her pocket. . . George and Josephine had been sleeping in the cabin about two weeks." [631] " were all that slept in the house." [576] " Maria, a slave, about eleven . . testified that on the day of the poisoning, shortly before dinner, she . . saw Josephine straining something through a handkerchief into the tea-pot;" On cross-examination her statements as to the time were contradictory. " Abram, a slave, . . stated . . [577] he . . heard two of the women . . asking her why she did it, and they kept on asking her . . she was crying. She said, ' For God's sake, people, hush. You keep more fuss about it than the white people. I'm not the first that's ever did a crime, by ten thousand.' . . Witness had been put there by the overseer to keep guard. Becky, a slave, . . testified: . . Josephine . . said, ' I did not tell uncle George to give me the strychnine; if you can all clear George by talking, do it.' Witness had been George's wife seven or eight years before; lived with him two or three years; had no children by him. Witness is the mother of witness Maria, who usually slept in the dwelling-house." [628] "George was without a wife at the time." [2] [577] " Dr. Mason . . found in the fire-place the fragments of a vial, . . [578] a little fused; . . [579] Professor . . Moore . . submitted the pieces [of Josephine's handkerchief] . . to chemical tests, . . found no . . trace of arsenic." Verdict of guilty. New trial refused. Judgment affirmed. See Josephine *v.* State, *infra.*

Jeff (a slave) v. State, 39 Miss. 593, October 1860. See same *v.* same, p. 363, *supra.* On the second trial, the prisoner was again found guilty. New trial refused. Judgment affirmed.

Josephine (a slave) v. State, 39 Miss. 613, October 1861. See George *v.* State p. 372, *supra.* [615] " At the May term, 1857, the plaintiff in error was indicted jointly with . . George . . At the November term, 1857, . . the plaintiff in error was tried separately, and the jury failing to agree were discharged, and a mistrial entered by the court five minutes before the expiration of the term . . [616] prescribed by law. At that term another indictment was found against both [[643] ' charging Josephine as principal '] . . upon which they were . . tried separately. A *nolle prosequi* was entered on the first indictment . . 1858. . . [625] At the April term, 1861, the defendant was put on her trial [3] . . [626] Jones . . testified . . [627] Witness whipped Josephine after breakfast . . She appeared vexed . . throwing her head around to her shoulder to see a cut made by the whipping. Witness don't know whether he whipped her with a cow-hide or switch. Cross-examined. . . Witness employed counsel to prose-

[1] See Josephine *v.* State, *infra.*
[2] Testimony of his owner.
[3] See evidence in George *v.* State, p. 372, *supra.*

cute defendant—*viz.,* Gov. F. and Messrs. B. and S. [Brooke and Smedes]— and to defend George. Witness's wife treated Josephine kindly. Defendant never disobeyed witness. . . [628] Witness . . owned . . Elsey . . since 1838. . . had been witness's cook, and had been turned out into the field but a short time before 27th February, 1857. Elsey was mother of witness's slave Lethe, who was mother of a mulatto child about eighteen months old on 27th February, 1857. . . the whipping was not severe. Witness was married to his present wife . . in 1855. Witness was asked . . 'Did you, shortly after . . have . . Elsey . . tied, and so kept for several days, upon a charge made by you that she had poisoned your first wife, and that Elsey had said . . "I have put my first mistress under the ground, and will soon put the new one there;" . . deliberating whether or not you should deliver [her] . . to the officers of the law for prosecution?' 'Have you . . for some years been in the habit of sexual intercourse with . . Lethe . . and are you the father of her mulatto child?' 'Have you . . for some time been in the habit of sexual intercourse with . . Eliza,' . . 'Did you, in New Orleans, and on the afternoon of the day before . . you whipped defendant . . have sexual intercourse with her?' . . To which . . questions the State objected. . . sustained . . defendant excepted. Mrs. . . Jones . . testified [1] . . [629] Cross-examined. Mary (a slave) was sick . . Witness waited on her; . . Elsey and Lethe were planting potatoes with the other negroes. Witness gave prisoner five new dresses—four of calico and one of lawn. . . [630] The admissions made by defendant to [Dr. Mason] . . were excluded because . . procured upon his assurance that, if she would tell all she knew . . witness would get her off on a steamboat; . . Eliza, (a slave,) for the State. . . George was looking in his chest for tobacco and took out a vial, . . He said it was ratsbane or strychnine, or something that would kill rats, and that he had no use for it. Prisoner . . put it in her pocket, . . [631] George . . jointly indicted with defendant and under sentence of death, testified for the State, . . Josephine took [the vial.] . . The night before the poisoning the witness . . heard Josephine and Charles talking . . outside of his house, about how they would get off. . . Charles said he did not know how to fix the papers, and Josephine said she would have them fixed, and they would get a skiff and go to Napoleon or go up the river. . . When the lamentation was going on . . [632] defendant . . said, 'Charles, now I have ruined myself;' and he said, 'Yonder's the overseer,' . . Raney, . . on cross-examination, . . stated that the remark made by prisoner [2] . . was . . [633] '*Even* if I had done it, I am not the first one' . . Witness . . was the wife of . . Abram, and on the day of the poisoning she was in the field ploughing, the trash-gang picking up corn-stalks. The field-hands were not allowed to go about the kitchen. . . Defendant . . proved by . . Rogers that he had been acquainted with her many years in Paducah, Kentucky; that she had been nurse in the families of witness's brother-in-law and father-in-law for some years,

[1] *Ibid.*
[2] P. 374, *supra.*

and that her character for kindness, humanity, and amiability was good. . . Charles . . denied the conversation testified to by George as having taken place . . [634] the night before . . and also on the day of the poisoning . . [635] the jury were charged . . that if they were satisfied . . that the said murder was committed by . . [636] George as principal and defendant as accessary before the fact, they should convict. . . [640] The verdict was, 'Guilty as charged in the indictment.' . . [641] The court . . pronounced judgment."

Judgment reversed and cause remanded for a new trial: I. [647] "By the law in force at the time . . she was not subject to conviction as an accessary before the fact, upon the indictment charging her only as principal, . . [II.] [649] With respect to question as to . . [Jones's] intercourse with the prisoner, . . it is insisted, in behalf of the plaintiff in error, that the testimony sought . . was relevant . . and tended to show that if the witness was in the habit of sexual intercourse with her . . she was not discontented with her condition and could have had no malice . . [650] we think that the question . . should have been allowed by the court," [Handy, J.]

Frank (*a slave*) *v. State,* 39 Miss. 705, October 1861. [706] "indicted for burglary. . . Morgan . . testified that . . a day or two after his house had been entered . . he found prisoner in the calaboose . . In the presence of the witness and several others prisoner confessed . . [707] that the confession was not obtained by any inducement . . 'but that they were whipping another negro in the calaboose-yard for matters connected with the offence of prisoner.' . . The tracks appeared to have been made by one shoe with a heel and another without . . one of [prisoner's] . . had a heel and one was without" Verdict of guilty.

Judgment thereon affirmed: [711] "to destroy the force of the prisoner's confession . . it would have to appear that the circumstances were such as to put the prisoner in such terror . . as plainly to destroy his free volition," [Handy, J.]

Caleb (*a slave*) *v. State,* 39 Miss. 721, October 1861. [722] "indictment . . for the murder of . . Moore . . overseer of . . William Kidd" "The prisoner had, on a former trial, been convicted, and a new trial had been granted . . On the second trial the proof was . . Moore . . resided on his employer's plantation . . there being no white person but him . . The residence and negro quarter . . were all in the same enclosure, and were distant from the residence and quarter of . . Vaughan about six hundred yards, and from the residence of A. Kidd, a son of William Kidd, about one-half mile. There were nine negro men . . besides women and children. Moore had, during his employment, had occasion to correct all . . except the prisoner and two others. . . [723] On Friday night . . Moore . . was last seen . . in his house smoking . . On the next morning . . the door [was] open, and the bed . . undisturbed, . . Moore kept . . the key to the crib and mule-lot, and hence it was impossible for the slaves to go to work . . (it being ploughing season) without getting

the key. . . many . . including the prisoner, commenced looking for tracks . . Not finding any, the prisoner [[733] 'foreman on the plantation'] went to A. Kidd's . . and said to him 'that the shepherd is gone and we are scattered.' . . On Sunday about thirty of the neighbors continued the search, and all the negroes about the place, and . . the body was discovered in a wood . . about two hundred and forty yards from the house. . . [724] his boots were pulled off, and the leg of one . . was under his face . . His clothes . . were smooth. His pistol . . recently discharged, lay near . . There were no tracks . . nor . . sign of a conflict . . a wound was discovered under the vest and shirt, . . No blood whatever . . on . . clothes. . . [725] a coroner's inquest was held, and all the negroes on William Kidd's plantation were arrested and confined, and examined separately; but no clue . . was discovered other than is herein stated. . . the prisoner had a wife at Vaughan's, and . . had permission to visit her on the nights of Sunday, Wednesday, and Saturday; but . . he frequently visited her on other nights . . about nine o'clock, prisoner was in a chair asleep in the cabin nearest to Moore's house. . . not . . usually occupied by prisoner. . . late in the night, prisoner came to the cabin which he usually occupied and said he was going over to see his wife. . . woke her up . . and stayed till daylight . . proven by her also that, on Wednesday, she had asked prisoner for a dollar to send to Columbus by her master on Saturday to buy a sifter and pot, and that he had promised to bring it on Friday night, and . . when he got up on Saturday . . gave it to her. . . prisoner reached home soon after light . . not . . as early as usual . . because he was afraid, he having heard from the cook that a man had travelled the road . . [726] late Friday evening, making a *great noise*. . . proven by . . slaves that the prisoner had said that, if Moore undertook to whip him, he would whip Moore. . . slave Eliza . . met prisoner on Sunday before . . and asked him 'how he was getting on;' he replied, 'Not at all.' Witness asked what was the matter; he replied, 'they had such a damned overseer.' Witness asked . . if the overseer had whipped him; and he said 'No; if he whipped him he would kill him.' . . contradicted . . by other witnesses. . . after midnight on Friday night . . some of the slaves . . heard a gun fire in the direction of the place where the body was found. . . Moore was a strict disciplinarian, and usually visited the quarters on at least two nights of the week, and sometimes twice a night, to ascertain if the slaves were all at home; . . He did not visit the quarters on Friday night. . . Caleb was of good character and obedient, and never had been whipped since he was sixteen" Neilson [731] "was asked . . whether the wound . . had the appearance of a gun-shot or pistol-shot wound, or of having been made with a knife . . objected to . . overruled . . The witness stated . . 'with a knife.'" Verdict of guilty. [727] "defendant moved for a new trial: 1. Because the verdict was contrary to law and evidence. 2. Because the court erred in permitting . . Neilson to give his opinion as to the character of the instrument with which the wound was inflicted. . . [728] The court overruled the motion,"

Judgment reversed, new trial awarded, and cause remanded: [732] " There was not a particle of evidence . . except the statements of . . [Neilson] himself, which tended to prove that he possessed the knowledge . . requisite . . to form an intelligent opinion on the subject . . [736] the proofs were insufficient to authorize a conviction." [Smith, C. J.]

Wells v. Mitchell, Executor, 39 Miss. 800, October 1861. [801] " That . . certain property and a considerable sum of money was bequeathed to certain negro slaves belonging to testator [who died in 1848], . . That . . executor was allowed to retain the possession of said slaves, together with the bequests to them, under the supposition that the testator had the power to make the dispositions . . in their favor; but that . . [802] executor has appropriated . . slaves and . . legacies . . to his own use, and refuses to account "

Moseley v. Anderson, 40 Miss. 49, January 1866. [51] " 1859 . . suit by attachment against Moseley, which was levied on . . slave, . . Moseley . . made an affidavit that she was . . ' allowed to him by law, exempt . . from execution [1] . . and that he held no other slave under such claim ' . . thereupon the officer had restored the said slave . . Final judgment was rendered against the defendant . . and . . the court . . dismissed the said claim, . . [52] and ordered the slave to be sold to satisfy the judgment. . . Anderson, the sheriff . . seized the . . slave . . and Moseley then brought this action of replevin. . . The defendant . . offered proof . . that . . two days before the attachment was issued, the plaintiff was the owner of twelve or fourteen other slaves, . . made a bill of sale . . to his son-in-law, who carried them in the night time to . . Alabama, and there sold them, and brought back the money . . to the plaintiff; . . that he had stated that his object . . was to avoid the payment of a debt to a bank, for which he was bound as surety." Held: [54] " The exemption is absolute and unqualified, . . granted without reference to the merit or demerit of the debtor,"

Vining v. Hall, 40 Miss. 83, January 1866. The two sisters of John L. Harris filed their petition for the probate of his will, which they allege was destroyed by his three brothers. [84] " A memorandum of the will is made an exhibit . . ' I, John L. Harris, . . of Virginia, . . set free my faithful servant Betsy and her seven children.' . . [85] testator . . said that Henry was at school in Philadelphia, to whom he bequeathed ten thousand dollars, and to the youngest child, Puss, ten thousand dollars, to Betsy, the mother, ten thousand dollars, and to each of the other five children . . seven thousand, five hundred dollars each. He also manumitted . . Susan and her two children, and gave them five thousand dollars each. . . That the proceeds from the sale of ' Snowden ' should go to the manumitted servants, and the sums bequeathed to them should first be paid. That James Harris . . should carry out his will and settle the servants on farms in Ohio; for which service he bequeathed him twenty-five hundred dollars. . . This memorandum was furnished by . .

[1] Rev. Code 528, art. 280.

Kenney, who wrote and witnessed the will. . . [89] made a memorandum . . the morning after" Verdict in favor of petitioners. [86] "An appeal was taken to the High Court of Errors and Appeals, the cause reversed on the ground, that the term at which it was tried was not a term of the Probate Court . . authorized by law; . . By agreement . . this cause was submitted to the probate judge for decision." Witnesses differed in their recollection of the sums bequeathed. The court decreed [91] "That said will, as far as the personal estate and choses in action [there being only two witnesses], . . be . . admitted to record as the last will . . an appeal was taken" Decree reversed: [103] "the testimony [as to the contents of the will] . . is most contradictory,"

Magee v. McNeil, 41 Miss. 17, January 1866. Letter, 1862: [18] "Your request respecting my being sent home if I die shall be complied with if possible. I will so instruct Dean, [Dr.] Bethea, and Cato,"

Malone v. Mooring, 40 Miss. 247, April 1866. Will, executed in 1857: [250] "I give to my son . . negroes to the amount of $3,350, negro men at $800, and women at $600, and smaller negroes in the same proportion. . . I give to my daughters . . [251] $3,000 [each] in negroes, . . It is my wish . . that the negroes given to my daughters be as much in families and as many of them females as circumstances will admit of."

Whitfield v. Whitfield, 40 Miss. 352, April 1866. [355] "in 1861, furnished shoes and clothing to the slaves"

Calhoun v. Burnett, 40 Miss. 599, October 1866. [601] "1859 . . ran off the slaves from Texas to . . Mississippi, . . and there sold four of them to defendants . . for an inadequate price; . . [602] They admit that the purchase was made in the night, and that the slaves were immediately carried to Carthage; and . . next morning . . to Neshoba, and thence to Winston county, and [that they] kept them concealed until they sold them"

Haughton v. Brandon, 40 Miss. 729, October 1866. Will of Thomas Brandon, made in 1857: [731] "I give . . to my . . friend . . a negro boy large enough to bear off brick, to be selected by my executors, so as not to separate the little boy from his mother if it conveniently can be avoided, . . [733] It is my will . . that Betsy Easley shall be free at my death, or so soon thereafter as she arrives at the age of forty-seven, . . All this is done for the great attention and kindness this servant has ever shown to me in the many severe spells of sickness I have heretofore passed through. I have a few other old servants, who having been faithful and kind, whom I would like to free; but on account of old age freedom to them would be a curse instead of a blessing. Therefore my will . . is, that my executors shall make ample provision for such out of my estate, or let each legatee pay so much annually for the comfortable support of these old servants so long as they may live." Codicil, 1859; [737] "my will is, that my . . wife shall have the right to select among all my negroes, with the exception of such as are mechanics, another one in place of" "Amanda, . . departed this life,"

McCormick v. McCormick, 40 Miss. 760, October 1866. [762] "on the 8th May, 1865, the ancestor died; his sons took possession of the . . [763] slaves (whom they hired for the remainder of the year)"

Garnett v. Kirkman, 41 Miss. 94, October 1866. [100] "If the plantation did not pay . . debt . . he designated which negroes should be sold to pay it, giving a list of the order in which they were to be sold,"

Lee v. Portwood, 41 Miss. 109, October 1866. [111] "plaintiff testified that . . 1857, he purchased a negro . . that afterwards . . Tindle . . alleged she had been stolen from him, and plaintiff . . gave her up to Tindle . . [who] afterwards sold her to him for $1000."

Young v. Power, 41 Miss. 197, October 1866. In 1860 [202] "he had sold her a negro woman at . . twelve hundred dollars,"

Barker v. Justice, 41 Miss. 240, October 1866. [242] "A plea . . that the bill of exchange was given . . for a slave . . which slave, being over fifteen . . was introduced into this State . . from Tennessee, as merchandise and for sale, . . without a compliance with the law of this State in regard to certificates of character,"

Wade v. Watt, 41 Miss. 248, October 1866. [250] "the slaves [three females] levied on in April, 1861, . . remained on the plantation . . one of them . . until the summer of 1865, when she left, . . the other two have ever since continued there."

Mullins v. Cottrell, 41 Miss. 291, October 1866. [293] "appellant presented the will of . . McQueen for probate, . . The will has date 3d September, 1863, . . Appellee . . filed her petition contesting the validity . . alleging that she was the only surviving child . . [294] The petition charges that, in reference to domestic relations, testator . . was insane . . That he . . killed a man . . and was killed [in 1865] in attempting to escape." [299] "all the property was left to . . [300] niece, and her . . children, . . [308] a subscribing witness . . testified . . that after attesting the will . . he told witness and others . . about his hanging the negro for going to the enemy during the late war; that it was the second time he had run away, and he had told him he would hang him if guilty a second time; and the witness states the particulars . . as detailed by the deceased, showing great cruelty; . . Coleman testified . . [309] that . . in 1863 . . he asked direction about the roads, and said he did not want to travel the public highway for fear of the enemy; he told . . about hanging the negro, and if the enemy caught him, they would hang him; . . that he had invited his neighbors to bring their negroes to see it for the sake of example, and to deter negroes from running away to the enemy; that he asked witness whether he had done right. . . The witness . . told him he did wrong;" [295] "The jury returned a verdict against the validity of the will." New trial refused. Reversed and the cause remanded: [322] "the testimony . . is not sufficient to show insanity."

Bradford v. Jenkins, 41 Miss. 328, June 1867. [329] "In . . 1857, Bradford purchased from Jenkins a plantation . . mules, corn, farming

implements, and one hundred and thirteen slaves, for . . $122,000; . . the slaves were estimated at $93,000, the land at $22,000, and the mules, etc., at $7000. . . the slaves . . [were] warranted to be slaves for life. Bradford paid $30,000 in cash, and gave his . . notes . . for the balance . . and to secure their payment executed a deed of trust . . In 1862, Bradford wrote to Jenkins, foreshadowing what would be the result if the South failed in the war, and pressed him to allow the negroes to be sold, which he refused. . . In 1866 . . Bradford filed his bill . . states . . that he had purchased the slaves, not for the purpose of sale, but as an investment; that most of them were young and their labor unproductive. The prayer is . . that Bradford be charged with the hire . . Jenkins, with the value of those set free" Bill dismissed.

Affirmed: [335] "By his covenant . . [Jenkins] only became liable for the condition of things as at the time of sale, and did not warrant that the policy of the government on the subject of negro slavery would never undergo a change." [Ellet, J.]

McMath v. Johnson, 41 Miss. 439, June 1867. [453] "on the 8th of January, 1863, . . [454] a negro . . [was] sold"

Held: the negro was not [459] "then a freeman by virtue of the acts of Congress and the proclamations of the President, . . [460] the [constitutional] convention of August, 1865 . . did not undertake to ratify . . the acts of President Lincoln, but . . by a new and original provision, . . abolished . . slavery within the State. That act had no retrospective operation, and it is from its date alone [1] that the emancipation . . took effect." [Ellet, J.]

Herndon v. Henderson, 41 Miss. 584, April 1868. [594] "The defendant in error . . stated . . The plaintiff [a negro trader] . . represented her . . as a good cook, seamstress and washerwoman, and ironer. She was not a good seamstress; . . not a very good cook—washed and ironed pretty well; . . a good, serviceable, likely servant, sound and healthy; . . She had two children while witness owned her, and is still with him. . . Witness contemplated paying the note at its maturity [December 28, 1862] in Confederate money. . . [595] Plaintiff at first asked witness $2000 for the girl; . . Witness made a good many objections to buying; . . said he was afraid the Confederacy would 'go up,' and witness would lose the negro; plaintiff told witness it would not, and if it did, witness . . should not pay a dollar for her. . . witness finally concluded to purchase. . . 'Bill of Sale. Received of . . Henderson, sixteen hundred dollars, in full payment of a negro girl . . about fifteen . . December 28, 1861.' . . The girl at the time of sale was worth one thousand dollars in gold. . . [596] Cook, testified . . 'The trade was made on Sunday. . . several overseers were at the camp, because it was an idle day. . . the parties . . walked apart from the persons assembled at the fire,'"

Lewis v. State, 41 Miss. 686, April 1868. [687] "at the October term, . . 1864, . . David (a slave) . . was indicted for an attempt to have carnal

[1] Overruled by Whitfield *v.* Whitfield, p. 384, *infra.*

intercourse with a female child, under . . fourteen . . At the April term, . . 1865, . . standing mute, the court directed the plea of ' not guilty ' to be entered for him. . . admitted to bail on the bond of his then owner, . . Lewis . . in the penalty of eight thousand dollars," [689] " after the surrender of the Confederate armies, . . [Lewis] had him at the court-house . . [690] David voluntarily appearing." [689] " being . . the October term, 1865; . . [but] there was no court held at that term, on account of the disturbed condition of the country; . . he surrendered . . David to the sheriff . . carried to the jail . . to await his trial . . forcibly released by the Federal soldiers quartered around . . jail;" Held: [691] " The responsibility of the plaintiff in error . . ceased when he surrendered David to the sheriff."

Pollock v. Williams, 42 Miss. 88, October 1868. [91] " this partnership . . was one of a limited nature, . . Calcote was to furnish the capital, to be invested in the purchase of negroes, for speculation. Hitchings furnished no capital, but was to do all the work [' at his own expense '] ; and the profits were to be equally divided " Deposition of Hitchings: [90] " October, 1858, they employed . . Williams to . . carry a lot of the firm negroes [from Nashville] to Natchez, . . Williams left with the negroes, and remained with them until the latter part of January, 1859. . . thinks $5 per day was enough . . ' The firm . . agreed to give him what was right.' "

Held: [92] " The presumption naturally arises . . that . . [Hitchings] was to buy, control, and forward to market the slaves he should purchase with the funds of Calcote."

Railroad Co. v. Green, 42 Miss. 436, April 1869. " action of assumpsit . . upon a written contract . . for the hire of negroes for the year 1863, dated . . [437] 21st day of January, 1863, . . [438] At the time the [emancipation] proclamation was to go into effect, the military forces of the United States did not occupy any portion . . of Mississippi, and had not occupied any portion . . permanently during . . 1863,"

Held: " the slaves in . . Mississippi, who were not within the lines of the United States army during . . 1863, were not emancipated by the proclamation . . on the first day of January, . . 1863." [Shackelford, C. J.]

R. and B. Shotwell v. Ellis and Co., 42 Miss. 439, April 1869. Contract: [440] " At Jackson, Miss., March 1st, 1863, . . Shotwells [of Mississippi] agree to let . . Ellis and Co. [of St. Louis] have the present growing crop [of cotton] . . Ellis and Co. . . are to have an agent ready to receive it. . . guarantee . . Shotwells are not to be disturbed in gathering . . crop, nor their property of mules, stock, and machinery for ginning and bailing [*sic*] . . interfered with by the authorities of the United States, or be deprived of their present negro laborers, . . Ellis and Co. are to procure for the said plantation, and laborers and property . . a protection from the United States authorities, should they . . fall under the dominion . . of the same."

Held: [442] " grossly violative of the public policy of the United States " " The Government of the United States was at the time . .

or very soon thereafter, enlisting and conscripting into its military service those very men whom . . Ellis and Co. were covenanting should remain unmolested . . on the plantations of the Shotwells." [Jeffords, J.]

Richardson v. Futrell, 42 Miss. 525, April 1869. [526] "Futrell . . testified that in January, 1863, defendant was indebted to him . . for . . overseer's wages, from . . 1858, to . . 1863, and for money lent . . that . . defendant paid him $1000 for his services as overseer in 1862, leaving a balance . . of $6850, of which $2800 was for borrowed money, . . due in gold, or its equivalent; that . . defendant . . proposed to pay . . in Confederate money, but plaintiff . . was unwilling . . defendant . . stated . . that it could be . . safely invested in slaves, plaintiff agreed to give up . . the note . . and to take the receipt ['Received of . . Futrell . . [$6850] dollars, to be invested for him in negroes as my judgment may direct,'] . . [527] Some time afterwards, defendant informed plaintiff that he had bought a woman and children from Mrs. Bradford, in Alabama, for $2500; that the woman would soon be confined, and as soon as she was able to travel, she and the children would be sent to Mississippi, . . [529] not long afterwards, the Federal army occupied North Alabama, after which it was impracticable to get them to plaintiff's possession."

Buchanan v. Smith, 43 Miss. 90, May 1870. [96] "The claim is for work . . done . . in 1861, in sawing lumber for . . and building a gin house, servants cabins, and overseer's house."

Herrod and Thigpen v. Davis, 43 Miss. 102, May 1870. [107] "This suit was brought upon a note, . . 'On . . the first day of January next, we . . [108] promise to pay . . Davis . . two hundred and fifty dollars, for hire of negro boy named Jake, for the year 1865.' The defendants pleaded . . that said negro boy became free by virtue of the surrender of the Confederate forces in May, 1865, and long before . . by virtue of the [emancipation] proclamation . . [110] it is presumable . . that the dispersion of the Confederate forces, and the presence of the Federal troops, caused the refusal of the boy longer to serve defendants, under the contract" [108] "he was in the act of leaving the defendant when, in order to retain the boy . . he entered into a contract with him, agreeing to pay for his work during the remainder of the year, . . [110] The constitutional convention of 1865, in prohibiting involuntary servitude . . premised the prohibition with the declaration that slavery had long before then ceased to exist. Precisely when, therefore, the slaves became free, is undetermined," [Tarbell, J.]

Jagers v. Griffin, 43 Miss. 134, May 1870. [135] "The slave ran away soon after the . . sale [in January 1861], . . and staid away until after the war,"

Storm v. Smith, 43 Miss. 497, October 1870. [499] "sold . . March, 1860, at public auction, . . Joe, . . for . . $1,335,"

Hoover v. Brem, Executor, 43 Miss. 603, October 1870. Will of Thomas B. Hoover, probated in June 1855: [609] "It is my will . . and I do so direct my executors . . if it can be done in accordance with the laws . . of Mississippi, or if not, to have a special act of the legislature . . passed for that purpose; if that cannot be done in either of said ways, and if he should choose to do so, beyond the limits of . . state, . . and there give unto my faithful man servant, Asa, and his daughter Violet, their freedom . . and I do further give . . unto my executors . . in trust . . $1,000 to be paid to . . Asa, at the time of his freedom," Held: [614] "require the payment of the bequest . . with interest from the 25th day of August, 1865, without a refunding bond."

Whitfield v. Whitfield, 44 Miss. 254, October 1870. Tarbell, J.: [271] "Notwithstanding the decision in . . McMath *v.* Johnson,[1] . . we think the better rule is, that freedom is personal to each particular slave, or perhaps to sections, and to that extent a question of fact in the individual case or as to localities. If portions of the state, prior to the surrender, fell within the federal lines, and freedom thus came permanently to any slave, . . the fact and date . . ought to be recognized by the courts upon satisfactory proof . . though this rule should not be applied to fugitives."

Jeffries v. Dancey, 44 Miss. 693, October 1870. [699] "The . . attachment was levied in 1860 upon [Emily and her two children] . . valued at two thousand dollars, to secure a debt less than two hundred dollars."

Mathews v. Springer, 16 Fed. Cas. 1096 (2 Abb. U. S. 283), January 1871. "Mathews . . was in . . 1858, the owner of . . Harriet, the mother of complainants, who were then his slaves, and whom he also claimed as his natural children, and whom he was anxious to . . set free, Isaiah being then about seven, and Caroline about five years of age." He took them to Ohio and there, in 1858, in the court of common pleas, "executed a writing by which he declared them free . . and procured a decree of said court declaring them free persons of color, and remained with them in Ohio for some weeks, when he returned with them to [Mississippi] . . where they remained until shortly after the death of . . Mathews . . early in 1859; when by the directions of Springer, one of the executors . . they returned to . . Ohio, . . The testator, leaving no widow or legitimate children . . directed that his executors should sell and convert the residue of his estate . . into cash, and deposit the same in the State Bank of Louisiana; that complainants should be maintained and educated out of said funds until they were twenty-one . . when the remainder should be divided between them, the said Isaiah Jefferson receiving two-thirds, and Caroline Josephine one-third;" The probate court declared the bequests void, and its decree was affirmed by the High Court of Errors and Appeals of Mississippi. The complainants in 1868 filed a bill in the federal court.

[1] P. 381, *supra.*

Held: the complainants [1098] "were free persons, from and after they were so taken to . . Ohio, . . [1099] it was the intention of the testator that complainants should be returned to Ohio to remain, and that they should enjoy his bounty there, . . complainants were not the slaves of the testator at his death, but were free persons of color, temporarily in this state, just as it was contended by the Southern states, that slaves might be taken to a non-slaveholding state, and remain temporarily without becoming free. . . they were entitled to hold all the rights and provisions made for them by the will, which they could have done had they always resided in Ohio;" [Hill, J.]

Berry v. Alsop, 45 Miss. 1, April 1871. Will of Jesse Alsop who, [2] "several years before his death [in 1856] . . removed to . . Kentucky": [3] "I . . have heretofore emancipated [Mary and her six children] . . in . . Ohio, and . . [they] now reside in . . Ohio. It is my will . . that after all my just debts are paid, . . all the estate I own in . . Mississippi, shall be converted into money, and the money invested in . . real estate in Ohio, to be conveyed to Mary and her six children, equally, . . And I do hope that my executor . . will carry out my wishes . . as it is the great desire of my heart."

Held: [10] "the bequests and devises . . are valid;" "The adjudications of our predecessors, from 1838 to 1858, are in accord . . with the decisions national and state. . . we cannot . . yield our . . acquiescence to either the reasoning or the judgment of a divided court, in . . Mitchell *v.* Wells,[1] . . and Heirn *v.* Bridault"[2] [Simrall, J.]

Cowan v. Stamps, 46 Miss. 435, April 1872. Will of Abner B. Cowan, which was executed in 1850: [442] "it is my will . . that all . . of my negro slaves, . . with their increase, shall be sent to Africa, under the . . superintendence of the American Colonization Society, there to become and remain a free people. . . it shall be the duty of my executors . . to take charge . . and, if necessary, hire them out . . until a sufficiency of assets may be collected to defray their expenses to Liberia . . as well as . . for their support for six months after their arrival . . My slaves now amount to sixteen . . I give . . to my esteemed man, Frank, all my books and maps, but, to be held . . by my executors, as trustees, for his use, until . . [443] Frank shall be legally competent . . it is my will . . that my executors shall proceed immediately . . to sell all my property (my . . slaves, books and maps being . . excepted) . . to convert all the . . residue of my estate into suitable funds to be remitted to Africa for the use . . of my . . negroes on their arrival . . And I hereby . . bequeath such residuary part . . to . . my . . negroes, after . . their manumission in foreign parts, to be equally divided among them." It is admitted that [438] "the testator, died April 28, 1864, in De Soto county . . some eight miles from Germantown, . . held at that time and for a long time previously, by the federal forces; that the Confederate lines were at Cold Water river, some fifteen or twenty miles further south; that, every day or two,

[1] P. 360, *supra.*
[2] P. 359, *supra.*

armed bodies of cavalry scouts came out from Germantown, as far as Cowan's residence, scouting that neighborhood, and that this state of things continued from a period many months previous to Cowan's death till the final surrender of the Confederate forces. . . that parties of Confederate soldiers were frequently scouting through the same neighborhood, and that this territory was not inside the picket lines of either of the forces." [437] "The devisees [in 1868] . . set up their claim under the will, asking that the lands be not sold, but that they be set over, undivided, to them, freed of the condition of departing . . the debts . . are all paid, and . . they claim the entire estate as sole legatees."

Held: [449] "that . . the devise be sustained, discharged of the necessity of removal to Africa," [443] "The rights of the respective parties were fixed at the moment of death of the testator, by the law in force at that time. . . [444] This locality, while not then wholly within the federal lines, . . remained subject to the general control . . of the federal authorities. The military power of the Confederacy gradually receded . . and never returned. . . it may be said that long before the death of the testator, freedom had come permanently to his slaves. They remained upon the place, and remain there still, but they were as free to go as to stay. . . The constitution of 1865 [1] does not fix the date of emancipation, but it declares slavery to have been before then destroyed.[2] Hence, we sometime since . . declared the better rule to be, that freedom was practical to individuals and localities.[3] . . In this view, we are of the opinion, that the policy of freedom . . prevailed over the parties . . [447] the conversion of the property . . into money may be dispensed with, at the election of the beneficiaries, . . [448] In Liberia, and in receipt of the bequest . . their right to return and enjoy their fortune would be unquestionable. To require these people to remove . . would seem . . an unnecessary hardship, and . . it would be against a wise public policy to impose . . a condition of emigration in order to accept a bequest, not imposed by the testator, but by a prior law since abrogated. . . removal . . was not a condition precedent in the mind of the donor, but a mode of giving freedom, a pre-requisite, imposed by law," [Tarbell, J.]

Jefferson v. Glover, 46 Miss. 510, April 1872. [515] "He moved his family here . . and their slaves [from Tennessee] in 1860;" [510] "the slaves . . remained . . [511] on his plantation [in Bolivar County], until June, 1862, when they were dispersed"

Dancey v. Sugg, 46 Miss. 606, April 1872. Bill of sale: [613] "Canton, Miss., May 1, 1860. We [[607] 'partners in selling negroes'] have this day sold . . Dancey, . . Rachel, of dark complexion, aged about twenty-five years. We warrant . . sound . . [614] sold for . . $1,200," [614] "the defendant's counsel . . were prepared to prove that the negro . . was unsound and worthless to . . Dancey."

[1] Constitution of 1832, "as amended by the Convention held in August, 1865," Art. VIII.
[2] *Journal of the Proceedings in the Constitutional Convention,* pp. 44-165.
[3] Whitfield *v.* Whitfield, p. 384, *supra.*

Clark v. Hornthal, 47 Miss. 434, October 1872. Will, dated September 1860: [480] "the annual surplus . . shall be invested . . in . . lands and negroes"

Dozier v. Freeman, 47 Miss. 647, April 1873. Harriet was sold in 1860 for $1600. [649] "The object, in selling her, it seems, was to rid the family of a nuisance; for . . she was 'bad after men,' . . had 'varicose veins,'" [659] "Freeman brought suit, in 1862, upon the covenant of warranty [of soundness], and recovered . . a judgment for $1,300, or thereabouts."

Allen v. Johnson, 48 Miss. 413, April 1873. [418] "When the law of 1857 was passed, to a very large extent the plantations of married women were cultivated by their slaves. If they were leased, they were generally rented in a body."

Aston v. Robinson, 49 Miss. 348, October 1873. [351] "contract of sale . . of land . . was dated the 30th of January, 1865. The consideration . . was certain negroes (slaves) delivered at the time, and . . cotton,"

Dickerson v. Brown, 49 Miss. 357, October 1873. [367] "Susan Dickerson and Oliver Dickerson . . filed their bill . . 1871 . . setting forth that . . [they] are the children and heirs at law of . . Dickerson, . . who departed this life . . 1871, . . that their father . . and mother [his slave] . . 'were never joined in the bonds of matrimony by any ministerial performance of any marriage ceremony, . . [368] cohabited together as husband and wife; that the complainants . . were always recognized by their father as his children, . . that the intercourse . . continued . . until his death; . . that after he had seen the provisions of the constitution [of December 1, 1869], . . he rejoiced that a public ceremony of marriage would be unnecessary; . . that a brother of their father and . . Brown, have obtained possession of all the personal property, and . . an order to work the plantation, . . [369] the bill prays . . that restitution . . be made'" [363] "from the time the intercourse . . commenced, in 1855, to 1st December, 1869, marriage between a white man and a colored woman was prohibited by law. . . [365] They occupied different rooms. She went to his . . bed, and slept with him two-thirds of her time,"

Held: [375] "The provision [of the constitution of December 1, 1869] [1] is plainly for all cases, black, white or mixed, . . [376] if these parties were 'cohabiting as husband and wife,' at the time of the adoption of the present constitution, and if, with a knowledge of its provisions, they mutually assented to the relation, . . their marriage was consummated and their children legitimated." [Tarbell, J.]

[1] "All persons who have not been married, but are now . . cohabiting as husband and wife, shall be . . held . . as married, and their children, whether born before or after the ratification of this constitution, shall be legitimate," Art. XII., sect. 22.

Irion v. Hume, 50 Miss. 419, October 1874. [420] "the attachment issued was, . . March, 1861, levied on thirty-seven slaves, valued at $30,800."

Still v. Davidson, 51 Miss. 153, October 1875. A slave was bought in 1860 or 1861 for $1,499.

Shacklett v. Polk, 51 Miss. 378, October 1875. In September 1864 [381] "the parties both resided in . . Tennessee," which [388] "state . . was in the complete control . . of the United States forces," [380] "Mrs. Polk, constituted . . Shacklett, her agent to take charge of her cotton crop in Mississippi, . . [381] the plantation . . was then in armed occupation of the confederate forces," [392] "food and clothing for the negroes . . were from time to time purchased by Shacklett, at Memphis, and brought by boats to the plantation."

Hall v. U. S., 2 Otto (U. S.) 27, October 1875. Findings of the Court of Claims: [28] "Hall is a man of color, of Indian and African descent, and claims to have been free born. His mother was of Indian extraction, residing at the time of his birth in . . Alexandria as a free woman. '8. Hall, with other slaves, was taken from a slave-market in Washington, D. C., . . to New Orleans, . . and . . was sold by a trader to the claimant Roach's father, who sent him [in 1844] up to the Bachelor's Bend plantation, in Mississippi. Hall . . remained there as . . slave . . until after the cotton in question [1] was seized in 1863 [by Lieutenant Barlow of the United States army]. He was treated all the time as a slave, . . [29] and worked . . sometimes as a field-hand, and at others as a stock-minder. 9. . . Hall now claims to have been a free man . . and that, as such, Roach was justly indebted to him on account of stock, hogs, pork, etc., which he had raised on Roach's plantation, and sold and delivered to him, and that the cotton now in suit was given him by Roach in discharge of his indebtedness. 10. Hall . . followed the cotton, after its seizure, to the river, and made affidavit that he was the lawful owner thereof. . . Hall afterward admitted to . . the overseer, that the cotton was not his, and that his oath . . was false. Afterward, however, Hall . . brought suit to recover the proceeds in this court.'" The court of claims held in 1873 [2] "that, under the laws . . of Mississippi, . . Hall, in his condition of servitude, could not lawfully contract with his master, or hold the property he claims to have given in consideration of the cotton, and that no title to it ever vested in Hall."

Affirmed: [30] "His color was presumptive proof of bondage. The law of the State provided a way in which he could establish his freedom. . . Until he had vindicated his right to freedom in the mode prescribed, the law regarded him as a slave; and it would not allow the question to be collaterally raised . . in any other proceeding. . . the slave was incapable of entering into any contract," [Swayne, J.]

[1] Seventy-four bales, which had "been secreted in a cane-thicket . . to prevent its destruction" 9 Ct. Cl. 171.

[2] *Ibid.* 170.

LOUISIANA

I.

INTRODUCTION

The soil of France had more efficacy in bestowing freedom than that of England, according to the opinion of the Supreme Court of Louisiana. Lord Mansfield had decided in 1772 [1] that Somerset, having been brought by his master to England, could not be forced to leave, and Lord Stowell, in 1827,[2] that the slave Grace, not having been *forced* to leave England but going back voluntarily to Antigua, resumed there her *status* of slave. Writing to Judge Story in 1828, he says:

> How the laws in respect of . . the [slave] trade made in England and enforced by our courts of law, the King's Privy Council, and the Court of Chancery, to their utmost extent, can consist with any notion of . . [the] entire abolition [of slavery] here, is, in my view of it, an utter impossibility.[3]

But as to France, her law of 1791 left no doubt: "Tout individu est libre aussitôt qu'il est en France." Accordingly Josephine, who had been taken there by her owners and "placed . . under the direction of a hair-dresser, to learn his art" and imprisoned by them on her return, was held by the Supreme Court of Louisiana in December 1835 to be entitled to her freedom. "Being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery." [4] Likewise Priscilla was adjudged free in 1839 after a sojourn in France with her owners, even though she returned to Louisiana "on her entreaty." [5] Her will was immaterial.

But the situation under the Constitution of the United States, before the adoption of the Thirteenth Amendment, was similar to that in England and her colonies before the final abolition of slavery in 1833. A mere sojourn in a non-slaveholding state could not *ipso facto* bestow freedom. Residence however in a state whose constitution prohibited slavery had that effect, provided the master had given his permission.[6] In the case of Elizabeth Thomas,[7] who had gone to Illinois at her own request to be "put under the care of an eminent physician" and had remained about five years in a house which her Kentucky master owned

[1] Somerset *v.* Stewart, vol. I. of this series, p. 14.
[2] The Slave Grace, *ibid.*, p. 34.
[3] *Ibid.*, p. 37.
[4] Marie Louise *v.* Marot, pp. 504, 509, *infra.*
[5] Priscilla Smith *v.* Smith, p. 520, *infra.*
[6] Lunsford *v.* Coquillon, p. 476; Louis *v.* Cabarrus, p. 502; and Frank *v.* Powell, p. 516, *infra.*
[7] Thomas *v.* Generis, p. 529, *infra.*

in Shawneetown, the defendant introduced as a witness Judge Scates, who, on being examined, "gave his opinion as a lawyer on the . . constitution of Illinois, says that 'in his opinion,' . . if the slave be held in *involuntary* servitude in Illinois, she becomes immediately free . . but that cannot be involuntary to which she *consents.*" The Supreme Court of Louisiana brushed this aside: [488] "It is . . perfectly clear to us, that . . she was under no obligation to serve him there; . . [489] The opinion of Judge Scates . . must yield to the principle so well recognized . . that a slave has no will, and cannot give any consent." They accordingly affirmed in 1840 the decision of the lower court, "that . . [she] became *ipso facto* free, by residing there with the consent [of her master] . . and being once free could not be made a slave." Thus the old maxim, "once free for an hour, free for ever," received full support in Louisiana;[8] but only until 1846. In that year an act was passed which spared Louisiana the possibility of any Dred Scott cataclysm. It provided that thereafter "no slave shall be entitled to . . freedom, under the pretence that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited."[9] However, the court held in 1847 that the act was not retroactive, so that Eugenie,[10] who was in France from 1830 to 1838, and Arsène,[11] who lived there from 1836 to 1838, were adjudged free though their suits were brought after the passage of the act. In these two suits however the *residence* of the master or mistress in France was stressed, a mere sojourn there, as in the cases of Josephine and Priscilla, evidently not sufficing by that time. Eugenie's mistress had married a French officer, who remained in France though his wife returned; but his residence established hers. Arsène's master contended that his two years' stay in France was a mere sojourn, but the court did not agree with him. Chief Justice Eustis declares:

> We cannot expect that foreign nations will consent to the suspension of the operation of their fundamental laws, as to persons voluntarily sojourning . . for such a length of time. As to those thrown on foreign coasts by shipwreck, taking refuge from pirates, driven by some overwhelming necessity, or perhaps those passing through . . their personal condition may remain unchanged; but this is the extent to which an immunity from the effect of a foreign law could be maintained under the law of nations.

He cites Marie Louise *v.* Marot, and declares the case of the slave Grace inapplicable as she "had not been taken out of the realm, but from one of the islands to England, within the same imperial jurisdiction." Five years later,[12] however, Judge Rost cites the case of the slave Grace as applicable, though France is again the place of sojourn, and Chief Justice

[8] See also Josephine *v.* Poultney, p. 578, *infra.*
[9] Acts of 1846, p. 163.
[10] Eugenie *v.* Préval, p. 580, *infra.*
[11] Arsène *v.* Pignéguy, p. 582, *infra.*
[12] Liza *v.* Puissant, p. 622, *infra.*

Eustis expressly dissents " from the opinion expressed in . . Marie Louise *v.* Marot " stressing the exceptions mentioned in Arsène's case. The " perhaps " of the last exception sinks into insignificance and Liza's stay of " two or three months " in France was held insufficient to set her free. In less vehement language than Judge Scott uses contemporaneously in Dred Scott *v.* Emerson,[13] he declares: [83] " A State may prohibit slavery within its limits, . . but this imposes no obligation on other States to hold the condition of persons domiciled there, as extinguished by reason of a presence in the State where the relation is not recognized."

Two suits for freedom evoked such sympathy from the judges of the Supreme Court of Louisiana that, *in favorem libertatis,* they seemed to stretch their discretionary power, in the one case by refusing to remand when, normally, they would have granted a new trial; in the other by remanding, though in so doing they had " to notice facts *dehors* the record." The former suit was that of Bernardine,[14] who swam from the shore of Santo Domingo to the vessel on which her mistress was fleeing when the negroes revolted. She accompanied Madame Goyffon to Cuba and later to Louisiana, where M. Goyffon, in compliance with his wife's dying request, made a will giving freedom to Bernardine and her two children; but his executor refused to liberate them, finally setting up a title in himself, in virtue of a purchase he had made from the collateral heirs of Madame Goyffon. The judgment of the lower court in favor of Bernardine was affirmed by the Supreme Court in 1827, because no proof had been given that " relations in the ascending line have ceased to exist." Judge Porter declares:

> If the case presented strong equitable claims on the part of the defendant . . we might . . send the cause back for proofs of heirship. But . . justice and equity . . are most emphatically with the plaintiff; and . . we cannot aid the defendant in making out a harsh demand, which has no foundation but in the strict rules of law.

In March 1835 the Supreme Court had been obliged to reverse the decision of the lower court in favor of the freedom of Josephine[15] as the ground sued on was untenable in law; but Judge Mathews, in giving the opinion of the court, declares:

> we do not consider ourselves bound to leave the wretched victim . . without hope. . . everything which may be done *in favorem libertatis,* should be done, even to notice facts *dehors* the record. It was stated at the bar . . that she was taken by her owners to France . . Did she not become free in France? Being brought . . into the United States, is she not free, according to . . laws enacted by Congress? . . questions which we will not solve; but . . remand the cause, in order that they may be put in a train for solution.

[13] 15 Mo. 576 (586).
[14] Bernardine *v.* L'Espinasse, p. 483, *infra.*
[15] Marie Louise *v.* Marot, p. 505, *infra.*

They were solved in favor of Josephine at the following term,[16] as we have already shown. Also in Fanchonette *v.* Grangé,[17] in 1843, the court refused to allow "technical objections, and the omissions of public officers," to defeat a suit for freedom.[18]

A vital distinction was made in Louisiana between a negro and a person of color, the former being presumed to be a slave, the latter to be free. The court declared in 1810 in Adelle *v.* Beauregard:[19]

> Persons of color may be descended from Indians on both sides, from a white parent, or mulatto parents in possession of their freedom. Considering how much probability there is in favor of the liberty of these persons, they ought not to be deprived of it upon mere presumption.

And in the case of Sally Miller, decided in 1845, Judge Bullard declares, "except as to Africans . . the presumption is in favor of freedom, and the burden of proof is on him who claims the colored person as a slave." [20]

The fifty-seventh article of the Code Noir of Louisiana, promulgated in 1724, declares "les esclaves affranchis n'avoir besoin de nos lettres de naturalité, pour jouir des avantages de nos sujets naturels . . encore qu'ils soient nés dans les pays étrangers." This liberal provision may account for the surprising lack of discrimination against them, both as witnesses [21] and as parties to suits which involved the rights of white persons. Moreover, the Spanish governors of provinces were forbidden, by an express law of the Partidas, to marry, "and as there were . . in the colony but few women of the white race, . . the inevitable consequence was . . connections with women of color. This custom, coming as it did from the ruling class, soon spread throughout the colony, and was persevered in long after there ceased to be any excuse for its continuance." [22] Such concubines and their descendants, free or freed as they appear generally to have been, formed a class of free colored persons, in many cases of superior ability and education. Macarty's concubine, who lived with him from 1796 till his death in 1845 in a state which "was the nearest approach to marriage which the law recognized" ("It received the consent of her family, which was one of the most distinguished in Louisiana"),[23] amassed a fortune of more than $155,000 from a dry goods business in New Orleans, with branches elsewhere. "Two of the sons are in business in this city, and one is living on his income. The daughters are married and established in Cuba;" Therefore it is not surprising that the "legislation and jurisprudence [of Louisiana] upon . . [the] subject [of free colored persons differed] . .

[16] Same *v.* same, p. 509, *infra.*
[17] P. 555, *infra.*
[18] See also Virginie *v.* Himel, p. 635, *infra.*
[19] P. 447, *infra.*
[20] Miller *v.* Belmonti, p. 571, *infra.*
[21] C. C. 2260, 2261.
[22] Badillo *v.* Tio, p. 612, *infra.*
[23] Macarty *v.* Mandeville, p. 589, *infra.*

materially from those of the slave States generally," and that her courts were "in the daily habit of permitting them to testify in prosecutions where the defendants are white persons."[24] Consequently the Supreme Court of Louisiana held in 1850[24] that the judge of the lower court did not err in permitting a free person of color to testify against white persons. In 1856 Judge Buchanan thus sums up the situation:

> in the eye of the Louisiana law, there is, (with the exception of political rights, of certain social privileges, and of the obligations of jury and militia service,) all the difference between a free man of color and a slave, that there is between a white man and a slave. The free man of color is capable of contracting. He can acquire by inheritance and transmit property by will. He is a competent witness in all civil suits. If he commits an offence against the laws, he is to be tried with the same formalities, and by the same tribunal, as the white man.[25]

There is an amazing number of cases in which the plaintiff or the defendant is a free person of color, and that status is attributed indiscriminately by the initials in the headings of the cases (f. m. c., f. w. c., f. p. c.),[26] as a sort of courtesy title, even to petitioners in suits for freedom which result in a judgment that the petitioner is a slave.[27] The adversary is usually a white person, but not infrequently both parties are "of color". In three cases freedom was denied by colored relatives—a brother in the first,[28] an aunt and cousins in the second,[29] a mother in the third.[30] The demand of the first plaintiff, that his father's legacy to his brother's master of "six cents piastres, . . un acompte à valoir sur le prix qu'il pourra exiger de . . Narcisse, pour lui donner sa liberté" be pronounced illegal, was refused in 1827, and characterised by Judge Porter as "one of the harshest . . and the most revolting to every principle of equity and justice, that has, as yet, fallen under our consideration." The last case was that of a free woman of color who claimed the property of her deceased son (whom she had purchased in 1807), although his widow averred that he "had been in the constant . . enjoyment of his freedom, for . . twenty-seven years." Judgment was rendered in favor of the widow, Judge Bullard denouncing the action of the mother as "novel and repulsive."

There is an interesting series of cases, in which Benjamin Poydras de Lalande sought to prevent the evasion of the provisions of the will of his uncle, Julien Poydras, who died in 1824, leaving an estate of more

[24] State *v.* Levy and Dreyfous, p. 601, *infra.*
[25] State *v.* Harrison, pp. 649-650, *infra.*
[26] Free man, woman, person or people of color. See act of Mar. 31, 1808. B. and C. 159.
[27] In 1838 "c. p." was substituted in a case where freedom was postponed. Poulard (c. p.) *v.* Delamare, p. 518, *infra.*
[28] Mathurin *v.* Livaudais, p. 482, *infra.*
[29] Berard *v.* Berard, p. 506, *infra.*
[30] Montreuil *v.* Pierre, p. 508, *infra.*

than a million dollars.[31] In his holographic will,[32] "after a number of special legacies, he bequeaths the residue of his property . . to his nephews and nieces . . [and] directed all his landed estate and slaves, not specially bequeathed, to be sold within three months after closing the inventory of his succession," [33]

with the obligation imposed on the purchaser . . [to free] all the slaves [thereon] . . even the children . . to be born, at the expiration of twenty-five years from the date of the sale: . . Likewise, the purchasers . . are to be bound . . to . . treat with humanity, and keep on said plantations . . without requiring any labor . . all . . who may evidently have attained . . sixty years, and pay them annually . . twenty-five dollars, as a relief against the infirmities of age.[34]

Three of the sales became the subject of decisions by the Supreme Court of Louisiana off and on for the next forty-eight years.

The slave Moosa was attached to a plantation which was bought by "B. Poydras" in 1825 and sold by him "with the conditions mentioned in the will . . inserted in the *procès verbal.*" The new master took Moosa to West Baton Rouge, whereupon the latter brought suit, praying for the rescission of the sale and that he might be restored to the plantation, and that the purchaser "be enjoined from removing him therefrom." The court held that the right to remain was given only to those who had attained sixty years; that the purchaser had the right to the labor of the [other] slaves for twenty-five years from the date of the original sale, "wherever he chooses . . unless, perhaps, the slave may be allowed the aid of the magistrate, in case of an evident attempt to transport him out . . of the state, . . to frustrate his hope of emancipation, . . by compelling the purchaser to give security for . . [his] forthcoming," but that there was no evidence of any such intention in this case.

Another of Julien Poydras's plantations was sold in 1825 to Steward who sold it to Barrow who sold it to Taylor [35] in 1831, "subject to all the . . conditions imposed by the will, . . In May, 1835, Taylor sold a number" [36] of the slaves to six different purchasers, "separately and apart from the plantation to which they were attached." [35] Thereupon Benjamin Poydras de Lalande, as an heir of Julien Poydras, brought suit to compel a compliance with the will. The trial judge dismissed the action, "being of opinion the plaintiff had not shown such an interest in the matter as would entitle him to maintain the action," but the judg-

[31] Garnier *v.* Poydras, 13 La. 177 (178).

[32] For the French text of the contested provisions, see Poydras *v.* Mourain, 9 La. 492 (493); for the English translation see Moosa *v.* Allain, p. 480, *infra.* As the English version is constantly quoted, it has seemed advisable to give it in the excerpts rather than the French.

[33] Bonneau *v.* Poydras, 2 Rob. La. 1 (4).

[34] Moosa *v.* Allain, p. 480, *infra.*

[35] Poydras *v.* Taylor, p. 509, *infra.*

[36] Same *v.* same, 18 La. 12 (13).

ment was reversed by the Supreme Court in December 1835. Judge Martin declares, [491] "The plaintiff, as heir, possesses this right, which is not impaired by the avowal that the object . . is to . . carry into effect the benevolent intentions of his ancestor." Meanwhile Taylor, rendered more cautious, had agreed in July 1835 [37] to sell Noe a plantation with 69 slaves on Jan. 1, 1836, for $130,000: [554] "The slaves [are] not to be warranted such for life, nor the titles to be warranted otherwise than comformably to such decree as has been, or may be rendered by the supreme court . . in regard to the will of Julien Poydras." But the decisions of the Supreme Court in Poydras *v.* Taylor and in Poydras *v.* Mourain [38] caused Noe to back out of his contract, proving the correctness of Judge Martin's assertion in 1835 [39] that "the value of the succession . . has been much . . diminished by the conditions." [40] In 1841 [41] the suit of Poydras *v.* Taylor and his six vendees, which had been tried on its merits and had resulted in a judgment for the defendants, was reversed by the Supreme Court and the sales of the slaves rescinded. "As he has made the contract he must abide by it."

Also at the sale in 1825 "a plantation, with 143 slaves," [42] "situated . . on the river Mississippi, where . . Julien Poydras died," [43] was sold for $128,000 [42] to two of his nieces, Madame Mourain and Madame Bonneau, "both residing at Nantz, . . in . . France." [44] In January 1835, after a partition between the sisters, Madame Mourain [495] "advertised . . for sale at public auction, the one half of the said plantation . . and forty-one or forty-two of the slaves . . to be sold individually," [493] "except children, who were to be sold with their mothers," [495] "and separated from the said plantation." [43] Benjamin Poydras de Lalande, "styling himself . . [their] protector . . filed a petition and order for injunction." He obtained "a provisional injunction . . to stay the sale", which was made perpetual, the Supreme Court affirming the judgment in December 1835. Thereupon twelve of the slaves "appear and institute suit by Benjamin Poydras de Lalande," claiming emancipation and the stipend provided by the will. The court held in 1838 [44] that they were entitled to neither until twenty-five years after the sale in 1825. Again their protector brought suit [45] "for himself, and as attorney in fact for the other heirs," alleging that the "stipend formed a part of the price of the slaves sold, and that . . [being] unpaid, . . [it] is due to the estate." Judge Bullard declared that the

[316] argument, that the annuity . . is a [lapsed] legacy . . in consequence of the incapacity of the legatees, and that therefore the plaintiffs have a right

[37] Noe *v.* Taylor, p. 516, *infra.*
[38] P. 510, *infra.*
[39] Poydras *v.* Taylor, 9 La. 488 (491).
[40] Mazureau, counsel for the plaintiff in Poydras *v.* Mourain, declared that, "being sold under the conditions of the will, the succession . . brought a much less price than it otherwise would." 9 La. 491 (496).
[41] P. 531, *infra.*
[42] Bonneau *v.* Poydras, 2 Rob. La. 1 (5).
[43] Poydras *v.* Mourain, p. 510, *infra.*
[44] Poulard *v.* Delamare, p. 517, *infra.*
[45] Poydras *v.* Bormeau [*sic*], p. 542, *infra.*

to recover it, has not much weight with us. . . The plaintiffs have no capacity to represent the *statu liberi,* and *non constat* but that their mistress will pay at a proper time [in 1850], or that the *statu liberi* will coerce the payment as soon as they shall have acquired a legal capacity to act.

But their mistress, or other purchasers, far from paying the stipend when the "proper time" arrived, refused even to emancipate slaves. Accordingly Maranthe, Genie, *et al.* brought suit for their freedom and for compensation for their services, alleging "that they were the slaves of . . Julien Poydras, . . that the period fixed for their continuance in slavery has long since elapsed, and that the defendants nevertheless refuse to cause them to be emancipated." There was judgment in favor of the defendants, and the plaintiffs appealed. The judgment was reversed in December 1856 [46] and the cause remanded, two exceptions taken by the defendants, based on the unconstitutional act of 1855, being overruled, one relating to the claim for wages being "maintained." "The plaintiffs' action must be restricted to a claim for freedom." As the act of March 6, 1857, prohibited any emancipation of slaves in the state thereafter, and as the court consistently held it applicable even to rights which had accrued before its passage, the "benevolent intentions" of Julien Poydras were finally defeated, unless a speedy new trial took place between the Supreme Court's decision and the passage of the act.

Other noteworthy cases are the *Josefa Segunda,*[47] Groves *v.* Slaughter,[48] and the *Creole* case.[49]

II.

The Superior Council of Louisiana [50] was first established in 1712, and was authorized to decide all cases whether civil or criminal.[51] There was no appeal from its judgments, at least "in the time of the Western Company;" [52] "but during the whole French era, a remedy of review in the nature of *certiorari* was permitted by the Council of State at Paris." [53] In 1724 the Superior Council "promulgated the Crown's famous Code Noir of Louisiana, established to meet the enormous increase of negro slaves under the Western Company's rule." [54] "There were some substantive differences between the French and Spanish systems, but the procedure of the latter followed lines not wholly variant from the French. . . and as the years went by there emerged a Louisiana

[46] P. 650, *infra.*
[47] P. 478, *infra.*
[48] P. 533, *infra.*
[49] McCargo *v.* New Orleans Insurance Co., p. 565, *infra.*
[50] See "The Legal Institutions of Louisiana," by Henry Plauché Dart, 2 La. Hist. Q., No. 1, p. 72 (74), and "Courts and Law in Colonial Louisiana," by the same author, 4 *id.* 255. See also 13 *id.* 367.
[51] Abstracts of its decisions and, in some instances, the cases in full are printed in the *Louisiana Historical Quarterly,* from which the excerpts of cases dealing with negroes have been taken.
[52] 2 La. Hist. Q., No. 1, p. 101.
[53] Added by Mr. Dart. See his monograph, "The Place of the Civil Law in Louisiana," *Tulane Law Review,* vol. IV., pp. 163-177.
[54] 2 La. Hist. Q., No. 1, 94.

system, partly French, partly Spanish, but not wholly either one or the other.[55]

After the United States took over the Louisiana Territory Governor Claiborne exercised in "the Supreme Court, as Claiborne called it, or Governor's Court of the Territory of Orleans, as it is known in history, . . the judicial powers of his predecessors and the usual authority of an American law court, and he added thereto the equitable jurisdiction of the English chancellor."[56] In November 1804 the superior court was organized, and [23] "under [Jefferson's] . . suggestion Governor Claiborne exerted himself to impress the common law in all its features upon the new judiciary. . . [25] The common law was not distinctly repudiated until the constitutional convention of 1812 settled the question. . . [28] The civil law had obtained legislative recognition in the Digest or first Civil Code of 1808, but the question was still acute when the convention disposed of it" by a clause in the constitution which prohibited the legislature "from adopting any system of laws by general reference." Under this constitution a Supreme Court composed of three judges was established in 1813. The number was increased to five in 1839, reduced to four by the constitution of 1845, and restored to five by the constitution of 1852. This number was continued by the constitutions of 1864 and 1868.

[55] "The Place of the Civil Law in Louisiana," *Tulane Law Review,* vol. IV., pp. 166-168.
[56] "History of the Supreme Court of Louisiana," by Henry Pláuché Dart, 4 La. Hist. Q. 14 (18).

Re Negro Laroze, 7 La. Hist. Q. 678, September 1722. "Conviction and sentence of flogging and incarceration, during six years, of a free negro . . for theft committed in the Company's stores."

Re Negro, 1 La. Hist. Q. No. 1, p. 110, May 1723. "The stolen goods were found in a boat . . and the negro in charge of it . . professes to have received the goods from a negro of the Company."

Re Negro, 1 La. Hist. Q. No. 1, p. 115, October 1723. "A negro belonging to M. Delery is condemned to be strangled for murder of his wife. He shall first be baptized. M. Delery is entitled to compensation."

Re Negro Songot, 1 La. Hist. Q. No. 3, p. 226, December 1723. "Examination of negro Songot, belonging to Mr. Cantillon, on charge of robbery. Inquiry conducted through interpreter Jacques, a negro belonging to the Company. Songot came from Martinique, but is not at home in French. Disclaims robbery and lays it to other hands. Attorney General orders dismissal of Songot."

Re Negro Guaissecamant, 1 La. Hist. Q. No. 3, p. 226, December 1723. "Examination . . on charge of robbery. Answers by interpreter Jacques. Name corresponds to Langlois (Englishman.) Prisoner belongs to Mr. Manade. Admits robbery in complicity with negro Petit Jean, and this repeatedly. Examination of negro Petit Jean, . . Lays the robbery to . . Langlois, but admits receiving the goods and knowing that they were stolen." The next day, "Councillor Fazende and Clerk of Court visit sites of the robberies . . being accompanied by prisoners Langlois and Petit Jean, together with armed escort and . . Jacques, to ascertain just how the premises were entered. Namely by removal of mud plaster from window sills."

Ceard v. Chauvin, 5 La. Hist. Q. 154, March 1724. Memorandum annexed to judgment: [167] "Quota of negroes ordered by the Council to be furnished . . to work under . . Captain engineer on the levees . . Ste. Reyne Concession . . 35; Plantation of Sr La Freniere . . 45; . . of Sr de Beaulieu . . 25; . . of Sr de Lery . . 25; . . of Sr Dubreuil . . 20."

Re Negro Raphael, 1 La. Hist. Q. No. 3, p. 238, May 9, 1724. Petition of recovery: "Raphael, a negro belonging to Mr. Dumanoir,[1] lent 200 francs (copper) to [a white man] . . on a month's note dated March 16." Restitution desired. Judgment, May 10: "the defendant is ordered to pay the stated debt . . plus interest and costs." [2]

[1] See p. 399, *infra.*
[2] "In this document Raphael is described as a *free* negro."

Re Negro Raphael Bernard, 1 La. Hist. Q. No. 3, p. 242, July 1724. "Raphael Bernard, free negro, hired himself in France about five years ago to Mr. Dumanoir at 200 francs yearly in silver, plus outfit of clothing. He has served Mr. D. 'with fidelity and affection,' but latterly Mr. D. has 'treated him with rigor,' and stinted him of clothing and hire." Restitution desired, "and Raphael would also fain return to France. Moreover, Mr. D. should restore the trunk now detained *aux Chauouachas.*" September 1724, [246] "Mr. Dumanoir shall first turn his accounts with Raphael, restore the detained trunk, allow Raphael to change his service, and advance him 100 francs: all this, pending final adjudication."

Lasonde v. Coupart, 1 La. Hist. Q. No. 3, p. 242, August 1724. "Mr. Lasondé lodges complaint over breach of contract . . on the part of . . Coupart, who sold him a little Indian slave 'sauvagess,' represented as ailing with a slight fever, nothing worse." Surgeon's report: "had been badly flogged and bears visible injuries therefrom. . . [He] forebodes fatal sequel." Another surgeon "likewise anticipates death as inevitably impending." [243] "Defendant denies the charge of beating and ill treating . . also states that he did not accept responsibility for the outcome of her fever." September 1724, [244] "Plaintiff nonsuited and bears costs."

Debourdieu v. Plaisence, 1 La. Hist. Q. No. 3, p. 247, October 1724. "Debourdieu shows that he was deceived in a slave trade" In January 1725 [2 La. Hist. Q. 105] "Sheriff Vincent notifies . . Plaisance [*sic*] to appear for giving [to give] back a negress and a little 'pickaninny,' and to take back his negro."

De Nolan v. Durand, 1 La. Hist. Q. No. 3, p. 249, October 1724. "de Nolan tells a distressing tale of the famine year, 1722, during which he cared for two injured slaves, the one with a burnt foot, the next one bitten by a snake: victuals then costing 'their weight in gold.' After all this burden, Mr. Durand now claims (and has been allowed) the second slave, whom plaintiff received in exchange for first one. Restitution desired." December 1724, [256] "Defendant argues that there was no question of a bargain . . nor could slaves be transferred without the consent of official authority, not here invoked. If Mr. De Nolan victualed the slaves . . he also had the benefit of their labor (lent him for putting up a forge). . . Plaintiff sustained."

Bonhomm v. De Gauvry [*De Gauvrit*], 2 La. Hist. Q. 113, March 1725. "Bonhomm, Canadian, moves to collect . . 2300 francs due . . for the labor of five slaves during two years and four months in the service of Captain De Gauvry." [114] "Plaintiff nonsuited and subject to costs."

De Chavannes v. De Gauvrit, 2 La. Hist. Q. 194, April 1725. Petition of recovery: "De Chavannes . . [bought] a negress from Captain DeGauvrit, nearly three years ago, whereas the vendor had no right to sell her, nor had he paid for her to the Company, whose property she

was. Petitioner would not run risk of paying [660 francs] twice; . . Meanwhile, the slave went mad, and subsequently ran off to the bush, never to come again." Judgment: [195] "Defendant shall pay 660 francs due to Company's cashier and then discharge plaintiff's account. Costs divided."

Re Negro, 2 La. Hist. Q. 463, August 1725. "see to it that a certain negro who had deserted but was recovered at Mobile, be delivered to Mr. Debrosses. Payment will be made at Fort Louis, July 21, 1722." The foregoing was "attested correct . . And the same negro was taken from Mr. Debrosses and turned over to Captain Pradel when he left for Missouris. Terms, 1500 francs, charged to Mr. Pradel. . . Recorder Rossard . . asks credit of 1500 francs on Mr. Debrosses' account with the Company. Mr. D. was unwilling to sell the slave . . Council accedes."

Re imported French Workmen, 2 La. Hist. Q. 468, August 1725. "They made attempt to quit the ship at the cape, when on their way over;" They "justify their action . . on the plea of seeking some refreshment after 'slavish' treatment"

Massy v. St. Martin, 2 La. Hist. Q. 476, October 1725. "St. M. demands payment of draft [given for a slave] in gold and silver specie, whereas Company puts *copper* on same footing." Massy petitions that St. Martin be "required to accept the contested amount (6140 francs), in copper specie." Judgment, May 1726: [3 *id.* 406] "Massy shall pay interest on 6140 francs at . . 5% . . from date of protest until past April 12, when . . [St. Martin] took back the negroes"

Bureau v. D'Hauterive, 3 La. Hist. Q. 415, August 1726. "Summons delivered to 'Catherine, his savagess,'"

De Verteuil v. Sanson, 3 La. Hist. Q. 419, October 1726. "Dr. S. denies the charge of seditious behavior, and shows that De V. threatened him with irons and punishment at the hands of negroes, all because Dr. S. remained away too long on an errand of treating a negro for rattlesnake bite. Let Mr. De V. be cited to pay the surgeon's salary and grant his discharge." Approved. [420] "Mr. De V. . . parries the sheriff's writ on the ground that the surgeon has no case: he broke his formal contract, expiring only in March, 1728, by deserting his hospital patients on past October 5th." December 1726, [426] "Mr. de Verteuil asks to be discharged from the proceedings moved by surgeon . . The latter . . left the sick slaves in the lurch at a critical juncture." Judgment, March 1727: "De Verteuil shall pay surgeon's salary of 600 francs a year, from . . January 18, 1725 . . until past October . . contract . . will then be dissolved."

Aufrère v. Melik, 3 La. Hist. Q. 420, October 1726. "Aufrère bought of Mr. Melik . . a negro for 600 francs, not knowing that the negro was epileptic." Petition that "Mr. M. be cited to take back the negro, and to meet costs and other charges (board and medical attention.)" "Plaintiff nonsuited and subject to costs."

Terret [*Verret*] *v. La Fresnière,* 3 La. Hist. Q. 423, December 2, 1726. " Terret, about two months ago, exchanged a negro . . for a negress of Mr. LaFresnière's. Mr. LaFresnière now tries to retract . . by sending back the negro on the ground of age and disability, and by taking away the negress. The original trade was explicit and well understood." Petition that " Mr. LaF. be held to the closed terms of it." Judgment, December 7: [424] " Defendant to pay 394 francs, 6 sous." December 11, " Defence of LaFresnière, to the intent that Verret deceived him . . V. pretended that the negro had no fault but a disposition to run away; whereas LaF. was willing to waive that weakness provided no other (physical) defect was in question. But the like defect soon came to light."

Re Negro, 3 La. Hist. Q. 435, February 1727. " Droy . . moves to obtain possession of a negro . . included in Abbé D'Arquevaux's legacy to late widow "

Re Indian Sansoucy, 3 La. Hist. Q. 443, March 1727. " Examination of Sansoucy, runaway Indian slave (unbaptized) of Mr. La Vigne's, aged about twenty. ' Marooned,' because he was afraid to return after failing to find an ox that had gone astray. Took refuge in a village called *des Natanapallé,* where there were fifteen other fugitive slaves. . . These runaways had eleven guns and some ammunition, and meant to defend themselves if molested for capture. Answers through Company's interpreter, St. Domengue."

Re Indian Godin, 3 La. Hist. Q. 444, April 1727. " Attorney General . . reports that an Indian slave who ran away two years ago has been caught and is now in prison. Slave belonged to . . Duval, and is accused of having enticed a slave ' savagess ' of Mr. Saint Amand's to rob her mistress and runaway with said fugitive." " Examination . . through interpreter St. Domengue. Name . . Godin of the Oquelonex tribe. Unbaptized; about 22 . . (in appearance). Ran away by mad impulse with slaves of Mr. Tisserant. Joined a party of other fugitives, beyond the lake, but left them afterwards. No victuals left but potatoes and fish. The runaway slaves' chief is the slave of Mr. Tisserant."

St. Martin v. Marlot, 3 La. Hist. Q. 445, April 1727. St. Martin de J'Aurequyberry . . received a draft of 650 francs from Mr. Marlot, drawn by Mr. Raquet . . for value of a negro lad Cupidon. Draft was protested, and Mr. Raquet answers that he is ready to surrender Cupidon for 650 francs, due on a note of Marlot's. Not so, St. Martin objects, he can not accept Cupidon *in kind*: slave market is likely to depreciate from new importations, and besides, Cupidon is now marked by branding."

Pouyadon v. Bourbeau, 4 La. Hist. Q. 225, August 2, 1727. " Pouyadon de la Tour sold a negress to Mr. Bourbeau for 1600 francs, and received 1100 francs, but is continually put off with [as to] the residue," August 21, [226] " Bourbeau promises to pay . . Dausseville . . 380 francs which he lent . . to pay for negress and her baby boy, obtained

from Mr. Pouydan [*sic*]." Judgment, August 30: "B. shall pay net residue claim, 400 francs, on previous residue of 500 francs."

De Merveilleux v. Gaulaz, 4 La. Hist. Q. 227, September 4, 1727. "Lasonde, surgeon at Naquechez, certifies that he was called to attend a negro [Choucoura] belonging to Mr. Merveilleux, and found both hands . . mutilated (by gangrene, apparently). Two fingers had dropped from his right hand; two finger tips from his left hand, in sequel to strangulation by tight cords." September 20, [228] "Madame Lambermond . . declares that she heard a negro at Mr. Merveilleux's provoke Mr. Gaullas with abusive language," September 24, [229] "Captain de Merveilleux, commander at Natchez, had to leave his post, 1 May, in order to obtain medical treatment at N. O. He strictly enjoined his substitute Gaulas to commit all discipline of unruly slaves to Mr. de Cazeneuve, and not to punish them himself: 'not knowing him to be apt and fit in this matter.' Contrary to this injunction, Gaulas ruined one of the most valuable negroes . . Hands were bound five hours while more than 600 rawhide lashes were inflicted." October 21, [231] "Pierre Gaulaz, sometime Swiss officer, and former steward of Mr. de Merveilleux . . declares that he had instruction to punish slaves, and that . . Choucoura lost his fingers by thrusting them into boiling water after wounding his hands by struggling while bound. . . [232] De M. has . . extorted from him a note of 200 piastres, to pay for slave." Contract of restitution, January 1, 1728: [239] "Pierre Gaulaz agrees [voluntarily] to pay whatever balance . . shall be required above auction figure, in order to realize 200 piastres gold to Mr. de Merveilleux for his (crippled) slave, . . since the above sum had been stipulated between Mr. de M. and Sieur de Beaulieux, settler at Chapitolas. Further, P. G. will satisfy Surgeon Lasonde for all costs on account of said slave." January 10, [241] "Surgeon Lasonde certifies that Sieur Gaulaz came to arrange with him . . concerning the dressing of the wounds . . and that Mr. G. was not constrained by Mr. de Merveilleux to pay the surgeon's account, but acted on his own free will."

Re Dumanoir, 4 La. Hist. Q. 232, October 1727. Petition "that Mr. Dumanoir be ordered to turn in the account of his management; . . the negress and the Indian at present in his charge." "Indian in question is the plantation hunter, and a white hunter must be hired while the Indian is absent."

Rossard v. de Noyan, 4 La. Hist. Q. 245, February 1728. Petition that "slaves and cattle be returned, and hire paid for slaves since Feb. 1, 1727, at 4 francs a day for each slave, until date of restitution. Action allowed."

Re Indian Bontemps, 7 La. Hist. Q. 686, May 1728. "Inquiry into a plot to desert to the English. Interrogation of Bontemps, aged about 18 . . who said that he spent the money he should have remitted to buy brandy. . . Interrogation of Guillory, runaway slave . . about 15 . . who accompanied Bontemps, Sr. Pellerin's Indian slave. . . [687] Interro-

gation of Baptiste, an Indian slave of the Capuchin fathers, a native of Natchez, aged fifteen years. . . [688] Judgment . . against . . Guillory and Bontemps and sentence passed."

Re Indians Guillory et al., 4 La. Hist. Q. 489, June 5, 1728. "On the testimony of Indian slaves Guillory, Jean Baptiste and Bontemps, the Attorney General recommends further procedure to ascertain precise facts . . Fine of 20 francs in favor of Hospital, if accused retailers [of intoxicants] [1] . . are found guilty. Council . . imposes the said fine on each delinquent"

Re Indians Guillory et al., 4 La. Hist. Q. 489, June 14, 1728. "In review of criminal procedure against Indian slave prisoners Guillory, Bontemps and Jean Baptiste, Attorney General . . finds Bontemps convicted of aggravated desertion and robbery, and condemns him to be hanged and strangled: being first appraised by two reputable inhabitants. Guillory, for twice deserting, shall be publicly flogged, and shall attend Bontemps to the gallows."

Re Negro Biron, 8 La. Hist. Q. 23, July 1728. "Soubagné, planter, . . declared . . that he has a [Bambara] negro named Biron, coming from the cargo of the ship *L'Aurore,* who has run away several times, . . yesterday . . the declarer, having been notified of his absence by his other negroes, started in pursuit and met him . . aimed at him and told him that if he moved he was a dead man, which compelled the negro to go with him to the house. . . the declarer called a negro to put the runaway in irons. He jumped on his gun and made himself master of it, the declarer . . seized the gun and the negro whilst awaiting help from the other negroes," Biron was brought before Councillor Bruslé to be interrogated. [24] "Considering that he does not speak French, we . . appointed Samba, a Bambara negro, a Christian, after he had sworn to report faithfully . . the answers . . [25] [Biron] said that he had seized the gun only because he feared that his master might fire at him," Judgment: "to be whipped by the public executioner at the foot of the gallows, warning him . . not to run away in future under penalty of much greater penalties."

Re Negroes, 7 La. Hist. Q. 688, July 1728. "Council confirms freedom granted by Cazeneuve to the two negroes . . on condition of their serving Roussin and his wife as servants during two years."

Morrisset v. Gilbert, 4 La. Hist. Q. 335, May 1729. "Morrisset . . seeks to collect . . three months and 25 days of hire, at 600 francs a year, of two negroes." July 1729, [336] "Net settlement ordered."

Re Negroes Changereau et al., 4 La. Hist. Q. 347, September 1729. "Attorney General . . moves for the trial of some negroes accused of robbing and killing heifers for fresh meat." Approved. [348] "Examination of negro Changereau, Bambara by nation, aged about 20 years, belonging to . . Gilbert. Ran away because underfed. Had three ac-

[1] "Law forbids the sale of alcoholics to slaves, except on order from owners."

complices (fellow slaves). . . Manadé's negro [1] . . killed the heifer . . but Changereau ate of the meat. . . Examination of negro Francois, unbaptized, a slave of St. Julien's. Aged about 25 years. Had no part in robbing and killing cattle, but stole some bacon and sold it to another negro for tobacco. . . Examination of negro Pierot, Bambara by nation, aged apparently 27 or 28. Slave of Mr. Dalby's ran away because too sick to work and afraid of punishment. Admits complicity in killing a 'young beast.' Stole some corn, but no hens. . . Examination of negro Sabany, Bambara by nation, aged apparently 30 years, a slave of officer Villamille. Some comrades gave him fresh meat . . They were marooning, but Sabany was not."

Re Bambara Negro, 4 La. Hist. Q. 352, September 1729. "Attorney General . . moves for the trial of a Bambara negro belonging to Mr. Tredeau, and accused of persistent violent threats." Approved.

Lowe [*Lowre*] *v. Alexandre,* 4 La. Hist. Q. 353, September 1729. Petition: "Antoine Lowe exchanged a negro boy with Mr. Alexandre for a negress. Negro boy was in good condition then, but is now in a decline and liable to die. Mr. A. would give back the impaired slave and cancel the bargain. Let him be held to his word." Action allowed. Judgment, October 8: [354] "A. L. shall take his negro, A. his negress. Fine on both parties in favor of Hospital. Costs divided."

Re Negro Petit, 4 La. Hist. Q. 354, October 21, 1729. "Bonnaud reports that his negro Crusquet died from poisoning, as indicated by post mortem examination. Petit, another negro of B.'s is suspected, and should be brought to trial." October 25, [355] "Attorney General reviews the case . . Among the plantation negroes, witchcraft is supposed to be the weapon of Crusquet's poisoner's tribe; the law followed by [Superior] Council does not admit witchery, but it does punish poisoners. Institute formal trial of Petit." Approved.

Re Indian, 4 La. Hist. Q. 355, October 1729. Petition for emancipation: "Duplessis, settler at Natchitoches, holds 'a kind of will' . . by late François Viard, who freed an Osage woman slave and reserved 100 pistoles in behalf of her Catholic instruction." He asks that these terms be carried out.

"Attorney General approves emancipation . . but the Black Code forbids cash legacy to a slave. Money shall go to the Hospital, and said Osage will be trained by the Ursuline ladies, who are to take quarters in Hospital."

St. Amand v. Desche, 4 La. Hist. Q. 356, November 1729. "St. Amand moves for the citation of Surgeon Darclon Desche, to pay for a negro who died, as here contended, by reason of the Surgeon's neglect. Case of injured feet." "Notice to said Surgeon *aux Allemands,* ten leagues away." [358] "St. A. nonsuited."

[1] *Re* Negro David, p. 405, *infra.*

Re Negro David, 4 La. Hist. Q. 357, November 1729. See *Re* Changereau, p. 403, *supra.* " Examination of a Bambara negro, David, who admits running away (from his master de Manadé) and complicity in killing a heifer. Ran away because his master broke a finger for him "

La Boullaye v. Pouiladon, 4 La. Hist. Q. 359, December 24, 1729. Petition: " La Boullaye was allotted a certain slave [1] who proved incorrigibly lazy, or obstinate, when set to work. . . has since died, and petitioner seeks to obtain a slave in compensation, from estate of the late Latour Pouiladon, owner of deceased slave." Action of inquiry allowed. December 29, " Attorney General . . relates the case of . . slave, supposed to have been wittingly palmed off . . through the late Surgeon De La Tour's easy knowledge of slaves' fitness or unfitness. Let executor . . [360] be cited, together with all persons likely to have knowledge "

D'Auseville v. Charpentier, 4 La. Hist. Q. 510, January 1730. " Jacques Charpentier, *alias* Le Roy, steward [and tenant] of . . [Councillor] D'Auseville, is overhauled before Councillor Prat on charges of . . cruelty to slaves, and the suspicious death of one or more of them." April 1730: [521] " A main charge is that of causing frequent abortion among the slave women by corporeal punishment in pregnancy. . . insinuation that Roy is especially vindictive to those women slaves who repel his lust in the open field. . . Roy slights the Black Code in his prohibition of Sunday taskwork, and he stints the slaves of necessary provisions." August 7, 1730, surgeon's report: [5 *id.* 87] " post mortem examination of a negro named Brunet, belonging to . . D'Auseville. Marks of gangrene about . . the ventricle. . . (Gangrene seems to have ensued from a bruise and confined blood clot.) " August 30, petition that [89] " Charpentier retract his lease, quit the plantation, be sentenced to [pay] 20 000 francs by way of damages." " Immediate action ordered," September 5, supplementary charges: [91] " cruelty . . in . . exhausting the slaves by long hours and vile fare (one meal of rotten beans a day), and causing continual abortions. But the overseer . . manages to conceal most of his crimes from white witnesses." Petition that " negroes also be admitted in the trial proceedings." " Approved: Prat." September 7, [92] " D'Auseville reports that Charpentier has taken revenge on . . Brunet's account by beating . . Brunet's wife on the head and breast with closed fists. The overseer feels himself the more immune because in his contract of lease there was no proviso holding him for damages as regards injured slaves." Asks that " the petitioner's negroes be heard as witnesses." Approved. September 18, [94] " evidence . . the surgeon felt obliged to report the overseer to . . D'Auseville for striking a negro with an axe handle."

De Chavannes v. Blanpin, 4 La. Hist. Q. 518, April 1730. " Blanpin . . employs four negroes and a Frenchman."

[1] " The slave was imported . . March, 1728." " Allotted to him in May, 1728." 5 La. Hist. Q. 97.

Re Negro Alphonse, 4 La. Hist. Q. 519, April 1730. Petition "to obtain indemnity for a negro . . the slaves . . were put to work, all in good condition, on the town rampart. Alphonse . . fell ill and was taken to the Hospital, where he died . . [520] Since this happened in the Company's service, restitution is reasonably in order."

Buquoy v. D'Auseville, 4 La. Hist. Q. 520, April 1730. Buquoy "bought a negro at auction for 1000 francs, payable in six months to Mr. D'Auseville. . . the negro is always ill and unfit for service." Petition for cancellation of the contract. [521] "B. has offered him 20 quarters of rice if he would take back the negro." Judgment: "B. to pay his note."

Re Negro André, 4 La. Hist. Q. 520, April 1730. "Attorney General . . reports that . . André, free negro employed by Mr. Bellair, was trying to arrest a fugitive negro belonging to Mr. Pasquier, and shot into the water, . . has not appeared since. Let André, now in prison, be brought to trial." "No note by Court."

Meuillion v. Du Buisson, 5 La. Hist. Q. 81, July 1730. "Drugs used inappropriately for the negroes, like manna and rhubarb."

Macmahon v. Baldic, 5 La. Hist. Q. 578, September 1730. Judgment: Baldic to pay "3,200 livres for a negro . . his wife and two small negro girls,"

Pasquier v. Rossard, 5 La. Hist. Q. 97, October 7, 1730. "Pasquier paid for a certain negro . . recently brought back by the Chactas. . . Attorney General orders negro sold and Pasquier . . paid 700 francs from the proceeds." October 14, [98] "Modified . . Slave shall be sold, and P. 'lined up' with other creditors."

Lionnois v. de Coustillas, 3 La. Hist. Q. 79, October 13, 1730. "petition of Marie Barbe Edelmaire, wife of Lionnois . . That their negro having run away and having been captured by the Bayou Goulas savages, the latter took him to the guard house to get payment for their capture. . . Lionnois went along . . Mr. de Coustillas, being . . on guard, proposed to him to make an exchange . . Lionnois being under the influence of liquor accepted . . Petitioner, having seen her husband return with a negro of such bad condition, said that she would never consent to the exchange . . and that she was not willing to render herself liable to the payment of a fine of Five hundred livres, as is provided by your ordinances. . . may it please you to order Mr. de Coustillas to give back the negro . . made over to him, and to take back his own" October 19 [5 *id.* 98] "De Lionnois certifies . . negro, [taken in exchange, is] satisfactory" to him. November 25, [103] "Mr. de Coustillas . . [is] satisfied with exchange . . [asks] Council . . to confirm the same. No note by Court."

D'Auseville v. Buquoy, 5 La. Hist. Q. 98, October 1730. "D'Auseville claims 916 francs . . due on a slave." See Buquoy *v.* D'Auseville, *supra.*

Meuillion v. Aufrère, 5 La. Hist. Q. 99, November 1730. "Surgeon Antoine Meuillion bought . . a negro who proves to be epileptic, though represented to be free from disabilities. . . [asks that] Aufrère be cited to pay 1000 francs, or else furnish another negro." [101] "nonsuited."

Mingo v. Darby, 5 La. Hist. Q. 102, November 1730. "Free negro Jean Mingo refers to his agreement with Sieur Darby, Nov. 28, 1727,[1] whereby Jean should marry Thérèse and buy her freedom for 1500 francs. Marriage ensued, but Mr. Darby 'makes difficulties' . . on the score of allowing for supplies . . Jean offers reasonable concessions" Judgment: [103] "Thérèse shall be restored to Jean Mingo, her husband; but Darby stays entitled to payment."

Bousquerat v. Rousseau, 5 La. Hist. Q. 108, February 1731. Bousquerat "sold to late Sieur Soubaignie . . three negroes, only two being delivered, for 1000 francs each, payable in tobacco at . . 6 sous a lb.; and if not paid by October 15, 1729, Soubaignie was to pay hire for each negro at . . 300 francs a year. . . [asks that] Rousseau, guardian of Soubaignie minors, be cited to pay . . or else return . . negroes, and pay the hire agreed." Action allowed.

Pieron v. Rousseau, 5 La. Hist. Q. 109, February 1731. "Disputed negro is now among the Chaquetas;"

Chanfret v. Mesplets, 5 La. Hist. Q. 113, March 1731. "four mares . . exchanged . . for a negro."

Michel v. D'Auseville, 5 La. Hist. Q. 113, March 1731. Sieur Michel "sold a negress [Angélique] in December, 1729; delivery to take effect . . in the spring of 1730 and on the day when vendor should sail for France. Terms, 1200 francs . . but if M. did not sail . . bargain should be . . void. Buyer . . paid 300 francs on account July, 1730, and now tries to hold M. bound . . although M. has not sailed . . M. will refund the 300 francs, but insists on retracting the contract," April 1731, [240] "Louise Phelipeaux, femme Michel," is the owner of Angélique. "Madame signed no receipt, and her husband has no voice in the matter without Madame's consent, which is not given." She asks that the contract be declared void. "No note by Court."

Lazuyer v. de Chavannes, 5 La. Hist. Q. 115, March 1731. "bought a negro at auction for 1000 francs, from ship"

De Morand v. Boissière, 5 La. Hist. Q. 245, October 1731. "Poussard . . witnessed shooting of Mr. De Morand's negro by Sieur Boissière." "The negro was wounded, but not killed."

Re Negroes, 5 La. Hist. Q. 246, November 1731. "Velart . . reports the robbery, from Le Blanc warehouse, of 25 quarters of rice. Deed was

[1] Darby, director of . . Cautillon grant, authorizes marriage of John Mingo, English free negro, to Thérèse, a slave negress of said grant, . . John is to pay as much as he clearly can each year to redeem 1500 francs, price of Thérèse. Darby meanwhile will allow so much rice, corn, beans, and so many sweet potatoes, to feed Thérèse; item, her clothing. When price is paid, Thérèse shall have her liberty. Children, if any be born meanwhile, shall also be free." 4 La. Hist. Q. 236.

trailed by dropped rice to cabins of Mr. Prat's negroes." [247] "Judix reports that when the cabins . . were searched, a kettle of the petitioner's was also discovered . . he missed 10 barrels of rice and a lot of sweet oil on the same day when the kettle disappeared," "he further complains of the loss of a heifer three weeks later."

De Blanc v. Bellair, 5 La. Hist. Q. 249, December 1731. "complaint against Sieur Bellair, whose free negro Thomas violently assaulted one of petitioner's negroes who had been trying to drive the petitioner's cows home, from straying with Bellair's cattle. Thomas also shot and grievously wounded the said slave in the left eye."

D'Asfeld[1] *v. Company of the Indies,* 8 La. Hist. Q. 389, 1731 or 1732. [391] "that the Natchez nation, on whose territory was the plantation of the petitioners, . . was so ill treated by a new Commandant . . that it was determined . . November, 1729, to attack the French . . all the whites were massacred and the negroes numbering eighty-six, carried away"

Re Negress Marie, 5 La. Hist. Q. 265, June 1735. "Marie, free negress, wife of 'George,' deceased, asks the Councillors to confirm . . her freedom, granted by Monsieur de Bienville . . 1733."[2] Filed. "Only the Governor and the acting governor have the right."

Baldit [*sic*] *v. Goupillon,* 5 La. Hist. Q. 266, June 1735. Surgeon Baldit "files complaint against Madame . . Goupillon for cruelty to her child, . . the baby was thrust nearly nude into the Surgeon's care, by a negress of Madame . . with the remark: 'There is thy child, sent thee by my mistress.'"

Re Negro, 8 La. Hist. Q. 299. July 1736. "Report . . of assault and stabbing . . on him [Sr. Wig] and on his son-in-law by one of his negro slaves, whom they have had incarcerated . . with request to inform the Procureur Général"[3]

Re Negro, 5 La. Hist. Q. 383, August 1736. "testimony in a runaway slave case, to show that the slave had not been illtreated."

Dumas v. de Pontalba, 8 La. Hist. Q. 491, August 1736. "hired a negro . . Pierrot to Mr. de Pontalba ['for a month'] . . to help him move . . and to cook for him. Later Pontalba asked Dumas if he would sell him the negro, whom he would . . [take] to France. Dumas consented . . for 1500 livres . . and a quarter of brandy. Mr. de Pontalba offered 1200 livres and the brandy. . . his slave had drowned while in Pontalba's service, . . he expects Mr. de Pontalba to pay 1500 livres for him . . The slave's work brought the owner 400 livres per year." Declaration of de Pontalba, September 1736: "he had left . . the 19th . . August to go to Pointe Coupée with Pierrot . . hired . . since the 19th . . July at 20 livres per month. That in the night . . whilst tied up . . he left the

[1] Marshal of France and governor of Strasbourg. 8 La. Hist. Q. 504.
[2] [250] "in recognition of their good and faithful service . . during 26 years."
[3] Translated "Attorney General" in previous volumes of the *Quarterly.*

pirogue and the negro also wished to retire. Early on the morrow the master (patron) of the boat called for help . . the negro had fallen overboard without trying to swim, for Pierrot was a good swimmer, and the 'Patron' said . . 'That negro must have had an epileptic fit to which he was subject.' . . every effort was made to rescue him without avail."

Prat v. Douville, 8 La. Hist. Q. 493, August 1736. "Report filed . . by Sr. Jean Prat, Physician of the King, of theft of a gun and . . other effects . . by a runaway negro owned by Madam Douville, . . The thief was stopped by Mr. Morand's negro and brought to jail. Sr. Prat asks that he be punished and that Madam Douville pay for what he stole."

Re Negro, 8 La. Hist. Q. 493, August 1736. "Report . . by Sr. François Livet . . that one of his slaves who ran away nine months ago was captured by one of Mr. Fillart's slaves . . who at . . Pierrot's request loosened the cord around his elbows, whereupon Pierrot ran away again, and since then has been continually stealing from . . Livet's plantation, wherefore he denounces him to the Procureur Général"

Larchevesque v. Chaperon, 8 La. Hist. Q. 497, September 1736. "reports arrival at his plantation . . of a negress owned by his deceased brother . . given to Sr. Chaperon to care for his widow and child. The negress said that she could not return to Sr. Chaperon as she would die, . . she did nothing but cook for the negroes, that she was cruelly treated without cause. Before coming to . . Larchevesque she went to the RR. Jesuit fathers who hired the slaves of . . her [late] master, but they would not take her without telling Sr. Chaperon, and fearing . . Chaperon's fury she came to her master's brother who could hire her to another . . on his own place he had an example of the treatment of slaves by those . . not their real masters in the case of the negress dying of the treatment she was subjected to at Sr. St. Julien's tar factory." Declaration of Madame Chaperon: "Maria . . left her house . . in care of two small negroes, . . she found that she had gone to Sieur . . Larche [*sic*], who, to all appearances, influenced her to desert her post."

Re St. Julien Succession, 8 La. Hist. Q. 496, October 1736. "Protest . . by . . Surgeon at the Hospital of the King . . against . . delivery of returns of succession . . until payment of 96 livres, 12 sols, for medicine furnished to his slaves in July and September last,"

Re Negro Guela, 5 La. Hist. Q. 386, January 4, 1737. "Attorney General reports the case of a negro named Guela, whom Sieur Lange, manager of Mr. Perrier's plantation, has sent 'to our prisons,' under charge of frequent marooning. Let this negro be examined" Approved. January 10, [387] "Councillor . . hears . . Guela, aged about 30 . . not baptized; 'speaks good French.' Ran away for fear of flogging, and complains of much beating, little food. Marooned in the cypress tract. Carried with him some sweet potatoes, and found . . 'grains de bois.' A negro of Monsieur de Bienville's took him to town and Mr.

Lange had him promptly imprisoned." January 12, [388] "Attorney General . . orders that he shall have both ears cut by the public executioner, and be marked with a fleur de lys on the right shoulder."

Re Negro Congo, 8 La. Hist. Q. 694, January 1737. "Complaint . . by . . Congo, public executioner, accompanied by the Attorney General, that he was assaulted by two negroes yesterday, . . One . . was a runaway negro owned by . . Langlois.[1] They left behind them a torn blanket and an old coat,"

Alexandre v. de Chavannes, 9 La. Hist. Q. 128, April 1737. "to compel him to pay . . Alexandre . . 700 livres . . for rent of seven negroes since six months, at 200 livres per year for each"

Re Negro, 9 La. Hist. Q. 138, May 1737. "Report . . by . . Coussine, of theft . . during his absence, . . His gun was taken, his powder horn . . 10 livres in gold, a fine blanket which cost 40 livres, four towels, two tableclothes, about a half barrel of rice and two turkeys. . . his negress has warned him that one of Mr. Labro's negroes bought a blanket, a stew pan and half of a table cloth; . . Labro told him that one of Mr. Fleurie's negroes had sold these things. Coussine asks . . Attorney General . . [to] investigate . . the value to be paid by the master if the negro is guilty."

Negro Diocou [*Tiocou*] *v. D'Auseville,*[2] 5 La. Hist. Q. 401, June 1737. "Free negro Diocou, emancipated for his toils in the Natchez war, claims credit of 450 francs against St. Julien estate: his arreared wage account, which he asks to have deducted from the price of his wife, partly bought by himself." Asks that she be not "sold outside, but hired by said estate until he can redeem her completely." Action allowed, and notice served on Councillor D'Auseville. Judgment, July 6: [402] "Estate shall pay Diocou 450 francs; negress to be sold forthwith."[3]

De Morand v. Pairoc, 9 La. Hist. Q. 290, June 1737. "a young negro . . his cook . . went to the butcher shop of Pairoc, and began a quarrel with the butcher, who cut him on the finger of his right hand, giving the negro a vulgar message for . . his master. . . asks . . satisfaction given for the time the negro will be unable to work."

D'Auseville v. Aufrère, 5 La. Hist. Q. 402, July 1737. "Attorney General . . orders the hearing of negro Janot, [slave of the late St.

[1] [689] "Langlois on leaving for Illinois, left [Giscard] . . the care of searching for a runaway negro, who was brought to . . Giscard by Mr. Morand's negroes and led to prison. . . hired to Sr. Jaffre . . who sent him to his plantation . . never reached there but ran away without any cause."

[2] Attorney for vacant estates.

[3] She was Marie Aram, owned by the Charity Hospital on July 10, 1737, on which date the directors of the hospital contracted with François Tiocou, a free negro (4 La. Hist. Q. 366) "of the Senegal nation" to grant freedom to Marie Aram, his wife, on his serving them "Environ" seven years without salary. In 1744 the directors petitioned "Mssrs. de Vaudreuil, Governor . . and de Salmon, Intendant-Commissary, . . whereas . . [they] have . . served the hospital well . . during the time laid down . . to . . grant freedom to the said Marie Aram . . the intention of the husband and wife being to serve the hospital . . as long as they give satisfaction." 3 *id.* 551, 552. The petition was granted. See also 9 *id.* 303, 304, and 12 *id.* 669, 671.

Julien] and his wife Calais, as regards the disappearance of a certain receipt from the hands of Calais," Calais declares that Aufrère, [401] " charged with preparing inventories of late St. Julien's estate, . . [403] took charge of the receipt . . and she imputes to him the removal of sundry goods that should have been listed in the inventory."

Dumanoir v. Brulé, 9 La. Hist. Q. 305, July 1737. Dumanoir, agent of the Company of the Indies, states that Brulé, the former agent, " owes the Company . . 10,453 livres, 11 sols, 6 deniers, . . prays . . to permit petitioner to have seized one of his negroes, his wife and their two children, to be sold to the highest bidder," Granted. [306] " Five slaves found together in the kitchen were seized " They were released [307] " in view of mortgage of movables and inmovables given to said Company, and on condition that these slaves cannot be hired nor sold."

Ursuline Nuns v. D'Auseville, 9 La. Hist. Q. 310, July 1737. " Petition for payment of board of a mulattress placed under their care [by Sr. St. Julien] in June, 1735, . . Her board amounts to . . 449 livres, 10 sols. The Attorney of Vacant Estates [D'Auseville] claims [her] . . as carried in the inventory of goods of . . St. Julien," He paid the bill.

De La Pommerais v. Moriset, 5 La. Hist. Q. August 1737. " claims 360 francs . . due on a savagess "

De Benac v. D'Artagnan, 5 La. Hist. Q. 410, September 1737. " act of settlement formulated . . in Paris . . 1732, conceding twelve slaves to . . de Benac, in discharge of all dues to him by proprietors of D'Artagnan land tract; the said slaves to be selected and conveyed in Louisiana." [413] " Council orders proprietors of the grant to pay plaintiff 8400 francs in compensation for the twelve negroes."

Prat v. Dautir, 5 La. Hist. Q. 412, September 1737. " Declaration . . by Sr. Jean Prat, surgeon of the King, that one of his negroes, hired on a plantation . . was dangerously wounded [' by sharp instruments '], that notwithstanding the close attendance and care given him, this negro, an indigo maker, is still in imminent danger," See 9 *id.* 511.

Chaperon v. Jesuit Fathers, 5 La. Hist. Q. 418, October 30, 1737. " Chaperon, guardian . . hired . . slaves . . to the Jesuit fathers, who are unwilling to release them, now that the contract has expired." Asks that " the slaves be let out at auction," Approved. November 6, [420] " five negroes, five negresses and three little negroes are let out . . for . . 18 months . . Accepted bid, 1000 francs."

Re Negress, 5 La. Hist. Q. 420, November 1737. " Sheriff . . notifies Dame Bousquera and a negress, Marie Louise, belonging to Mr. Roujeau, to appear . . before Councillor . . for the sake of giving testimony in regard to a case of slave abortion, caused by violence."

Dumanoir v. Louve, 5 La. Hist. Q. 584, February 1738. " Dumanoir, Company's agent, claims 100 pistoles from . . Louve, who sold a negress . . [without] Company's permission."

Vigeau v. de Coustilhas, 5 La. Hist. Q. 587, February 1738. " Surgeon . . Vigeau de Grandmaison presents . . charges against Mr. de Coustilhas, proprietor of the vessel . . The Surgeon contracted to go to Martinique and then to Guinea for slaves; but the latter expedition fell through."

Renaud v. Bossière, 5 La. Hist. Q. 589, March 1738. " Surgeon . . Renaud of the ship . . claims . . 8 francs from Dame Bossière, on behalf of her negress;" Judgment for the plaintiff.

Re Negro La Fleur, 5 La. Hist. Q. 593, April 1738. " Attorney General . . reports the case of a runaway negro, La Fleur, . . [594] caught by the savages whom Monsieur de Bienville had sent in pursuit of marooning negroes." Examination of Prisoner: " aged about 25 . . and unbaptized. Ran away for something to eat, after unjust punishment, as he states it, for alleged complicity in . . [stealing] meat."

Re Negroes, 10 La. Hist. Q. 98, April 1738. " quarrel between a free negro and one belonging to Sr. de Chavannes . . one of the men and a negress owned by de Chavannes were wounded."

Re Negro Pierrot, 5 La. Hist. Q. 595, April 1738. " Attorney General . . reports the case of a negro prisoner . . under charge of . . [stealing] clothes." Examination: " belongs to Mr. . . Dupart, and is not baptized; age, about 35. He had been drinking rum, bought with his own earnings . . and can give no reasonable account of his actions in the matter of the stolen goods. Was not accustomed to steal."

Vicar General v. Treasurer General, 3 La. Hist. Q. 292, June 14, 1738. " Rev. P. Mathias, Curé of New Orleans and Vicar General . . has the honor to report that M. de Lapommeray, Treasurer General . . caused to be interred by his negroes the body of a negress of twelve or thirteen years, out of the cemetery, contrary to the ordinance of the King in the Black Code, by which His Majesty wills . . that the masters be obliged to inter the bodies of their baptized slaves in the cemetery, with the ceremonies of the Church. . . Father Mathias demands that the body . . be exhumed to be reinterred in the cemetery according to the rites of the Church, and that . . Monsieur de Lapommeray be cited before the Council " [293] " Let the party be cited . . and in the meanwhile we order that the body . . be exhumed [in order] to be transported to the cemetery " Motion of the Attorney General, July 5: " I demand . . that Sieur Loquet de la pommeraye be sentenced to pay a fine of thirty livres to be applied to fencing in the cemetery . . and that he be prohibited to relapse into a like infraction."

Dumanoir v. Crespe, 5 La. Hist. Q. 599, June 1738. "Dumanoir, Company's agent, has learned . . that . . Crespe, debtor to Company for 1199 francs, has sold a negro to Aufrère without leave; nay more, even contrary to the ruling of . . 1722." Judgment: [600] " Crespe and Aufrère shall pay jointly to the Company, 1199 francs." [601] " Crespe pleads that Aufrère has the negro . . [asks that] Aufrère be bound to undo the sale and to give back the negro."

Boyer v. Senet, 6 La. Hist. Q. 127, October 1738. "claims that . . Senet was taking Boyer's slave, an Indian woman, away from her work. That he ordered him to desist, whereupon Senet clubbed . . him" [131] "Sheriff . . summons ['to appear . . and give evidence'] . . the negroes Boucary and Diaucour, belonging to Sieur Blanpin"

Mathieu v. Pradel, 6 La. Hist. Q. 138, October 1738. "Mathieu bargained with Mr. Pradel for a savagess named Marianne. The contract was closed yesterday, but Mr. Pradel now tries to evade it on the ground that he intends to emancipate Marianne." [139] "Mr. Pradel [states] . . that . . [he] never seriously bargained with M[athieu] . . If they broached the subject at all, it was by way of idle banter."

Re Negro Titus, 6 La. Hist. Q. 285, December 1738. "stole from a sailor and ran away."

Re Negro Argus, 6 La. Hist. Q. 304, March 1739. "soldier of the garrison at Natchitoches, bought a slave at auction, for 1000 francs, and although the crier disclosed the fact that the slave had a sore foot, the purchaser was not aware of the . . incurable nature of said ailment." "Dr. Prat has inspected . . negro is badly ulcerated, and unfit for ordinary service." Sale annulled.

Re Negro Louis Connard, 6 La. Hist. Q. 304, March 1739. "Petition to M. de Bienville by Louis Connard and his wife . . asking that freedom granted them and their four children by will of M. de Coustillas . . be confirmed." Granted.

Dreux v. Mathieu, 6 La. Hist. Q. 485, April 1739. Court summons "to sundry slaves of the late Mr. de Coustillas to appear . . for testifying in the action moved by Mr. Dreux against Mr. Capraise Mathieu [manager of the plantation of de Coustillas]." [488] "Examination of seven slave witnesses, who concur with but slight variation . . that Mr. Mathieu fired the shots that killed the cow belonging to Mr. Dreux. Several of the slaves are Senegal negroes." [491] "Mathieu . . objects to Louis and his family,[1] and to the slaves Cesard and Nicolas Hipolite, as prejudiced witnesses;"

Caron v. Mathieu, 6 La. Hist. Q. 486, April 1739. "Jean Caron, butcher, lodges complaint against Sieur Mathieu for ordering his negroes to kill the petitioner's horse without . . warning." "Sheriff . . serves notice . . to sundry negroes of the late Mr. de Coustillas to appear and give evidence" [488] "Nine witnesses are heard: Mr. . . Darby and . . [eight] slaves" [491] "Mr. Capraise Mathieu says in reproach of . . witnesses . . that the negro Louis is addicted to strong drink and that he made an attempt at suicide; that Sieur Darby . . had long been inciting the negroes against C. M."

La Branche v. Widow Petit, 6 La. Hist. Q. 494, April 1739. Widow Petit declares: "Some months ago he crippled . . [her] negro cowherd;"

[1] See *Re* Negro Louis Connard, *supra.*

Gonzalez v. Chaperon, 6 La. Hist. Q. 661, June 1739. " the runaway Pierre is harbored by Chaperon, who pretends to have Monsieur de Bienville's permission to keep Pierre for a cowherd. . . no such permission was given." " Judgment reserved until presumed owner arrives to show whether the mulatto . . is a slave or not."

De Lapommerais v. Dalcour, 7 La. Hist. Q. 505, November 1739. " charges Mr. Dalcour with disregarding an implicit condition of the lease . . by working the slaves on alien property." Judgment: "Lease is canceled from date of expiration of the first year. . . (Four of the plantation slaves did service in the Chicachas war.) "

Pierre v. Marsilly, 7 La. Hist. Q. 513, November 1739. " R. P. Pierre, Capuchin Superior, was formerly partner with Mr. Marsilly, in . . improving a plantation . . The petitioner's negroes worked in putting up several buildings and other tasks; . . petitioner now claims half right therein,"

De Lorme v. Chenier, 10 La. Hist. Q. 277, April 1740. " that he hired a negro from [to?] . . Chenier . . that . . Chenier abandoned his barge . . negroes on it . . from fright drowned themselves," Judgment: [411] " That negro be appraised and that his value . . be returned to Sr. De Lorme." " Dreux and St. Martin appraise negro at 1300 livres, Colonial currency."

Re Jaffre Succession, 10 La. Hist. Q. 426, August 1740. Will of Jaffre, called La Liberté, " freed Jeanneton and . . her daughter. Widow objects. . . Appraisement . . followed by judgment maintaining the clause for their manumission on condition that one-half of the sum of their appraisement be raised on the succession for account of Widow Jaffre."

Re Negro Pierrot, 10 La. Hist. Q. 567, January 1741. " Pierrot, of Biefada nation, aged about 30 . . baptized. Charged with marooning. He ran away because he was put in irons and wrongly accused of stealing. He and his fellow marooner lived on wild cats and rats of the wood. He ran away once before, discontented with his wife."

Claveau v. Broutin, 10 La. Hist. Q. 568, February 1741. " plantation slaves and servants found the sick negro perishing like a dog,"

Boissière v. Bienvenu, 10 La. Hist. Q. 578, April 1741. " decree . . rendered sentencing Boissière to pay an indemnity of 1000 livres . . for a negro hired to him who was taken . . by the Chickassaws."

De Pontalba v. Prat, 11 La. Hist. Q. 123, July 1741. " he bought a mulatto . . Jacob . . for 1000 livres."

D'Auseville v. Louis Cezard (a free negro), 11 La. Hist. Q. 128, July 1741. " Claim by Procureur D'Auseville of 11 livres from negro Louis for Ferchaud estate and 7½ livres for himself." Judgment [129] " for D'A."

Widow Barbier v. Dupare, 11 La. Hist. Q. 131, August 1741. " sues to recover . . her young negro slave . . left in Mr. Dupare's charge and

. . would have the Council decide if Dupare shall keep the slave as an apprentice, whereas he has completely neglected to do his part of the contract."

Noyon v. Girard, 11 La. Hist. Q. 131, August 14, 1741. Noyon "bought a negro girl of Mr. Girard, about three weeks ago, and some days later learned that she was crazy. Girard refused to take her back but advised Noyon to leave her with the Dames Religieuses and if they noticed some lunacies . . [132] G. would . . [remit] 1750 livres in restitution. On report of the said Religious [1] the negress was returned to Mr. Girard. . . [asks that he] be cited to refund."

Widow Barbier v. Mrs. Dandin, 11 La. Hist. Q. 134, September 1741. "Council orders defendant to remit to plaintiff the . . negress . . and to pay defendant . . 400 livres for apprenticeship."

De Viel v. Pery, 11 La. Hist. Q. 141, October 1741. "Surgeon of the King . . leased 15 of his slaves to Mr. Pery with the understanding that de V. should incur no risks but that of natural death. François, carpenter, has cut his throat in despair, whether for ill treatment or other causes; . . [asks that] Mr. Pery be cited with reference to paying 2500 livres"

Gauvain v. Durantois, 11 La. Hist. Q. 142, October 1741. "served notice of citation . . handing notice to his negress servant"

Re Negro Pierrot, 11 La. Hist. Q. 288, January 1742. "The Procureur Général alleges that they have brought to our prisons, a runaway negro, for an assault on a soldier . . almost killed him, having broken his jaw, his teeth and almost blinded him, . . [289] Interrogation of Pierre called Jasmin . . owned first by Brunet [[291] 'living at the Balise'] and later by Madame L'Epine [[288] 'living in Arkansas'], of Sango nation, aged twenty-five . . baptized and speaks French well. . . He struck a soldier in the face because he ill-treated him . . [291] he found an iron bar under his hand and . . the misfortune happened." [289] "He knew that a slave that raised his hand on a white man deserved death. . . his mistress had let him come to Natchez and . . the Surgeon at Natchez told him that his mistress had exchanged him. . . he kept on the river bank about a month and began the next one, but he had nothing more to eat, though he had a gun loaded with lead, powder and balls given to him by Mr. Fabry. . . had been arrested by Rougeot's negro slave driver when he went for food. He kept in the woods and the negroes gave him corn when he came at night to their cabins." Testimony of Mangois: [290] "Jasmin pressed by hunger had gone into the cabin of some Indians. Madame L'Epine had offered 50 livres to arrest him. He could hardly stand when he went to the cabin; they brought him to the Fort. The soldiers fed him, he had no trouble with any one and they left him at liberty. . . [292] convicted . . condemned . . to be flogged every

[1] Letter, Aug. 11, of Mother St. Pierre, Superior of the Ursulines, to Mr. Noyon, . . asking him "to send for his negro girl, . . who does not need to stay any longer to furnish evidence of her insanity, and the Revd. Mother fears responsibility."

day and on Sundays at the crossings of the City by the public Executioner of High Justice, his right ear to be cut off, and to carry a chain on his foot of the weight of six pounds for the remainder of his days and Madame L'Epine . . to [pay] one hundred livres of indemnity towards the soldier . . if she does not prefer to abandon the . . negro,"

Re Mégret, 11 La. Hist. Q. 295, March 1742. " shot at some negroes or mulattoes whom he claims to have discovered fishing in closed waters. . . some . . are dangerously wounded. . . Mégret, steward on the plantation . . leased to Mr. Pery; pleads that he shot in obeying Mr. Pery's orders to the end of abating continual mischief by negroes on the premises . . He was not intoxicated "

Fossier v. Gauvin, 11 La. Hist. Q. 306, October 1742. " claims 53 francs . . on account of tar labor, or so much tar allowed negro workman."

De Gauvrit v. Herbert, 11 La. Hist. Q. 477, February 1743. " sold a pair of negroes and their children . . for 3500 livres. Only about 1100 livres have been paid. . . [asks that] the negroes be seized and sold." [480] " Judgment . . against defendant, his obligation to be paid in eight days, in default of which the negro [*sic*] shall be seized and sold at auction."

LeRoy v. Bouchard, 11 La. Hist. Q. 485, March 1743. " Bouchard was a resident of Point Coupée and therefore the notice [of citation] was delivered at domicile of the Procureur Général, to Pierrot, the Procureur's slave."

Re Pompey (a slave), 12 La. Hist. Q. 144, June 1743 " Petition of . . Procureur Général, showing that Sieur Corbin . . went to hunt . . and has not been seen since; . . The mother . . denounces a slave against whom she has ' violent ' suspicions, among other reasons that said slave runs away often and that Corbin . . had him . . whipped, and once told his brother . . to shoot him if he made an attempt at evasion; he tried to run away and the . . brother . . fired his gun at him . . loaded with . . salt. . . Order to arrest Pompey and imprison him, for interrogation "

Des Islets v. Mme. de St. Aignet, 11 La. Hist. Q. 624, July 1743. " agreement . . to deliver to him . . utensils for making commercial indigo . . he would furnish four negroes during two months to work thereon."

De Chanfret v. Messager, 11 La. Hist. Q. 647, August 1743. In August 1742 " he hired a negro named Sans Quartier to Mr. Messager to make the journey to Illinois, and to bring in the convoy in which the slave was to descend 2000 lbs. of Illinois flour. . . He has heard no news of Messager, the negro or the flour. He prays that he be cited to be condemned to pay hire of slave and the price of the flour " " citation served on Mr. Messager, a resident of Illinois "

Re Jean Baptiste (a free negro), 11 La. Hist. Q. 649, August 19, 1743. " accused by his employer of theft of fine clothes. . . 20 years old . . he denies the theft of which he accuses another negro, named Pantalon. Procureur Général orders detention of Jean Baptiste " August 22, " Jean Baptiste insists that he bought the shirts from Pantalon." September 10, [12 La. Hist. Q. 145] " Interrogation of Pantalon, a free Senegal negro, aged 35 years, . . He denies complicity . . [146] Confrontation . . Pantalon . . said that he knew him to be a liar, that it was not natural that he would sell him shirts that cost 50 or 60 livres apiece for 30 livres, . . He lent him two trade shirts and one trimmed one which his master had given him," The Procureur Général " concludes that Baptiste shall be again reduced to slavery for the benefit of the Hospital of the City, . . his debts to be paid by preference. Pantalon to be exonerated " Judgment rendered accordingly.

Meuillion v. Faussier, 11 La. Hist. Q. 651, August 1743. " his former tenant Faussier . . has abandoned . . [plaintiff's] plantation . . and left it in the care of small negresses."

Re Jeannot (a slave), 12 La. Hist. Q. 143, September 9, 1743. " Petition . . by the Procureur Général stating that he has information that Jeannot, slave of Leonard, . . has mutinied against his master, threatened to set fire to his cabin and said that he knew who killed Sr. Corbin, . . [144] A service was sung in negro style and language two months before . . his disappearance " September 10: " Demand of the Procureur Général . . that Jeannot be flogged until acknowledgment of what he said to his master."

Roman v. Herbert, 12 La. Hist. Q. 314, October 1743. " three years ago he sold a savagess to Sr. Herbert for 1000 livres. Herbert gave him a first note for 368 ls., . . and since then he has not been able to collect another cent,"

Carrière v. Tixerant, 12 La. Hist. Q. 480, November 1743. Inventory: [481] " twenty-four black slaves at the plantation, . . likewise three Indians and two savagesses," [482] " The Council orders . . that the defendants will pay . . 1080 livres for the value of Cotica, savage slave " [491] " account . . for the hire of the negroes . . five slaves, pièces d'Inde,[1] . . 200 livres [each] per year, . . a nursing negress and her child, also at 200 livres per year,"

Re Negress Marie Charlotte, 12 La. Hist. Q. 486, November 1743. " Petition . . by . . Procureur Général, stating that Marie Charlotte . . has addressed herself several times to him verbally and presenting peti-

[1] " The term *pieza de India* is not synonymous with negro. While a black of unusual quality might be considered a *pieza,* it usually required two and sometimes three negroes to constitute one. Age, height, and details of physical condition were considered and careful instructions given as to the circumstances under which three negroes constituted two *piezas de India,* or two, one," Elizabeth Donnan, *Documents illustrative of the History of the Slave Trade to America,* vol. I, p. 106 n. On p. 302 Miss Donnan quotes from Churchill's *Voyages and Travels:* " Note, That the French imitate the Spaniards in valuing slaves by . . the Indian piece."

tion to have approved by the Council her freedom which St. Julien gave her [in 1735] long before his death in writing under private seal . . before witnesses, and which she never enjoyed . . because . . Dausseville, Attorney of Vacant Estates, . . had her sold and bought her for himself, for 1500 livres, under . . pretext that his estate did not cover his debts to the Company, and that this freedom was given her without the consent of the Governor and Ordonnateur. . . [Procureur Général] asks that this freedom be approved on returning to Dausseville's succession the 1500 livres" Approved. See Marion *v.* Aufrère, *infra.*

Re Jupiter (a slave), 12 La. Hist. Q. 663, February 1744. "prosecution . . for . . burglary in the King's store" Declaration by Pradel, March 1744, [668] "that one of his negroes, . . Jupiter, aged about 25 . . stole . . that he did all in his power to find him and have him imprisoned, which he has now been able to do as he was brought to him by the Commander of his slaves. He had him sent to the City where he was placed in a cell in irons; and he abandons the culprit . . to public justice, . . requesting . . that he be appraised so that the amount of the theft be raised" [13 La. Hist. Q. 122] "convicted . . sentenced to be hung and strangled . . after having been submitted to ordinary torture to compel him to name his accomplices, and other thefts. . . Dusigne and his wife condemned to pay 50 livres as fine . . prohibition to sell [rum] to . . negroes without permit," [123] "arbitrators . . went to the prison . . certify . . that he is worth 2000 livres in Colonial money,"

De Louboey v. Melizan, 13 La. Hist. Q. 310, October 1744. "suit . . to rescind his purchase . . of a negress named Manon on the ground that the slave is an epileptic. . . received the negress . . in exchange for Junon . . together with a note . . for 38 piastres and 12 piastres in coin. . . prays that Manon be placed in the King's Hospital; . . that . . Junon and her two children be returned . . because he feared that Madame Melizan will ill-treat [them] . . one . . is two or three years and the youngest born since the transaction. . . [311] Notices to witnesses served on . . chief surgeon of the King" and on three negroes.

Lemoine v. Raphael, 13 La. Hist. Q. 506, January 1745. "Complaint . . by . . Lemoine . . against a negro named Raphael and his wife . . who attacked him and insulted him without cause, and had him followed and pelted by their children, the eldest of whom is sixteen"

Le Bretton v. Couturier, 13 La. Hist. Q. 512, February 1745. "that they were associated in purchase of negroes and plantations, that the partnership having been dissolved . . the negroes were ceded to [Couturier] . . for . . 41000 livres,"

Marion (a free mulattress) v. Aufrère, 13 La. Hist. Q. 517, February 1745. See *Re* Marie Charlotte, p. 417, *supra.* "she applied to the Procureur Général . . following Art. 20th of the Black Code and he obtained her freedom from MM. de Vaudreuil and Salmon, who re-

ferred her to the Council for payment of wages or indemnity for the time she served . . all the more as she is held to reimburse . . 1500 livres, price of her sale for which Sr. Barbin now prosecutes her. . . she prays for citation of Sr. Aufrère, holding procuration of Sr. d'Ausseville's heirs and creditors to compel him to pay her wages at 20 livres per month from the day he bought her until his death," " Notice served on Sr. Aufrère . . to appear before Council "

Jaureguibery v. Livet, 13 La. Hist. Q. 664, February 1745. " agreement . . to build a house . . [665] in payment . . a negro "

De Membrede v. De Membrede, 13 La. Hist. Q. 680, February 1745. " Petition . . for separation from bed and board " [681] " witnesses cited . . Charlot, negro owned by . . Brosset, aged 20 years."

Re Chaperon's Slave, 14 La. Hist. Q. 97, March 1745. Chaperon declares " that a slave owned by him, Commander of his slaves, . . was so brutally treated by another negro that his teeth were loosened . . in danger of death, he invokes the aid of the Procureur Général "

Re Brosset's Slave, 14 La. Hist. Q. 99, April 1745. Brosset declares " that . . one of his negro slaves . . killed his wife, that the declarer found her the next morning . . expiring from a blow with an axe, on her head, by her husband, who has not been heard of since. . . he makes the . . declaration in order that this slave be apprehended and punished according to law."

Louboey v. Melisan, 14 La. Hist. Q. 104, April 1745. " For Manon Mr. de Louboey gave a negress called Junon, about to have a child, with a small negro of two years." [106] " Chief Surgeon . . declared . . Mr. de Louboey . . told him that . . Manon had announced to him that she had epilepsy . . he met Manon . . questioned her . . and she answered that to force her to say this Madam de Ste Hermine . . threatened to sell her in a place where she would be unhappy for the remainder of her life. . . Manon when questioned by Surgeon before magistrates declared that she is not subject to epilepsy, that a few years ago she fell into fainting fits and that her master, Sr. Melisan, thinking it might come from worms, gave her medicine and she has never fainted since except once . . at Mr. Louboey's house," [108] " May 19. Complaint by . . Melisan and . . his wife, that . . Junon, . . having been sent to his desert . . for the sowing . . was no longer there, having left with an officer, a soldier and a negro sent by Mr. de Louboey . . he demands indemnity and moreover that justice be rendered in the case of one of Mr. de Louboey's slaves . . who came twice after the night call for the negroes to retire, broke through the fence to carry off . . son of . . Junon. . . May 20. Defense of Mr. de Louboey, stating that . . he sent for her as the child was wounded in the foot, from ill treatment by Mrs. Melisan, . . Junon had threatened to drown herself and her child if . . [they] were to remain subject to his [*sic*] ill treatments. Mr. de Louboey re-

turns the slaves warning Melisan that he will have to answer for all accidents . . until decision of case." See same *v.* same, *infra.*

Gros v. Matha, 14 La. Hist. Q. 113, May 1745. "Declaration . . by one Gros, a free negro, that Matha, another free negro is seeking a quarrel with him; he cannot live with his wife and imagines that Gros advises her . . Matha lately killed one of his turkey-cocks, and every day threatens him"

Prevost v. Perier, 14 La. Hist. Q. 252, June 1745. "Complaint . . [that] Perier . . last night sent two soldiers to a lot owned by Prevost. . . one [armed] with the same sword which . . Perier used on the negro Cosse the eve that the soldiers examined the cabin of the negro, ill treated him and his wife . . This morning the negro passing . . Perier's house was . . beaten until the broom handle was broken on him,"

Louboey v. Melisan, 14 La. Hist. Q. 259, June 1745. See same *v.* same p. 419, *supra.* [260] "Council orders that . . Manon be sequestered . . three months in the house of a surgeon, who is to give his report after that . . time, and . . Junon to remain with Sr. Melisan until judgment rendered."

Henry v. Descloseaux, 14 La. Hist. Q. 586, October 1745. "suit . . for payment of 29260 livres, for negroes bought at auction . . Sept., 1743, due in Jan., 1744, non-payment due to discredit of specie which increased the price of the negroes considerably."

Re Marie Louise, 14 La. Hist. Q. 598, November 1745. "Le Porche files a statement . . that . . Marie Louise is not a slave but should enjoy complete liberty, being the daughter of a Frenchman."

Tixerant v. Chamilly, 15 La. Hist. Q. 136, February 1746. "Petition . . by . . Tixerant . . stating that when he leased the negroes . . Chamilly . . informed him that . . Morieux was attacked with sciatica . . which prevents [him] from standing . . He was formerly hired to Mr. de Noyan, where he remained in bed six months with the same malady. He was treated by Dr. Prat at the hospital during six months and . . [137] Chamilly assured him he was perfectly cured. On leaving the hospital he was sold [leased ?] at auction and adjudicated to the petitioner. However the negro relapsed . . and has not gotten any better . . wherefore . . he prays that . . Chamilly be cited in order that his hire be reduced . . or that he take back said negro, petitioner being willing to return him immediately." "Permit to cite" [139] "Council . . rejected the demands of plaintiff"

Prevost v. Dubreuil, 15 La. Hist. Q. 141, February 1746. "Petition . . stating that . . Dubreuil owes . . thirty thousand livres for thirteen negroes, six negresses and seven children following the obligation . . passed . . 1739, . . payable in three years, . . wherefore petitioner prays that obligation . . be executed by seizure of these . . negroes . . to be judicially sold until full payment" [142] "citation . . served"

Re Negro, 15 La. Hist. Q. 142, February 1746. "Declaration by . . Lange . . that one of the negroes of the coast assaulted him and attempted to kill him, . . and he named Nicolas, negro of M. Prat, whom he suspects"

Re La Rue (a free mulatto), 13 La. Hist. Q. 367, May 1747. Soldier's testimony: [379] "having come out of the hospital . . with two comrades, . . he met La Rue [[382] who 'bowed to them with his hat'] . . to whom he . . said goodnight . . and his comrade said: 'Goodnight, Lord Little Negro'[1] to which . . La Rue answered: 'Goodnight, Lord Jean Foutre.'[2] . . all three . . told him: 'You are insolent, . . we are not insulting you,' . . La Rue . . said . . 'I have pity on you and if you were not ill I would cudgel you;' whereupon his companion . . gave him a slap; . . [380] they fought . . Mr. Tixerant appeared . . [381] the three patients [complained.] . . Mr. Tixerant answered: 'Why do you not cudgel him well? However, . . have him put in prison' . . called [a passing corporal.] . . La Rue [[380] 'very drunk'] . . drew forth a pistol [which he was taking to have mended] and . . fired it between their arms." La Rue testified, it was [383] "without any intention to hurt him, whereupon intervened Mr. Tixerant who . . with the scabbard struck him all over his body, had him tied and brought to prison, . . put irons on his feet and hands and put him in the dungeon." [382] "he is . . a [free-born] native of Senegal, of the Catholic . . religion, aged about twenty-two . . a pilot on the boat *L'Unique* [[389] 'and now pilot and captain of a prize'] . . natural son of Sr. La Rue, a free negro, commanding the vessels of the Company of the Indies, of St. Louis Coast of Santo Domingo."

[390] "the Council orders that he be summoned to appear in the Council Chamber, there to be censured . . for having carried prohibited arms, . . condemning him to a fine of one hundred livres . . for the poor, and ten . . for the King and confiscation of said arms for benefit of the destitute and to costs of the suit."

Zeringue v. Terrebonne, 3 La. Hist. Q. 94, May 1763. "The petition of . . Zeringue . . appearing for the widow La Croix, his mother-in-law, . . shows: That Saturday last, . . about seven . . in the evening, . . Jean and . . Jean Louis, negroes belonging to . . Widow Le Croix, while going to the plantation of the Widow Liequery were stopped by . . Terrebonne, Junior, . . [who] shot at [them.] . . One was killed and the other was wounded in the arm, the side and the thigh. . . Terrebonne . . seeing that he was in the wrong . . brought them here [New Orleans.] . . they were doing no wrong . . nor were they on his land, . . petitioner prays: That . . Terrebonne be condemned to pay upon the finding of experts, for the . . negro . . killed, and for all the costs of the surgeon, of treatment, of medicines, and damages for the negro . . wounded"

[1] "Bonsoir, Seigneur Négritte."
[2] "Bonsoir, Seigneur Jack Fool."

Father Dagobert v. Loquet, 5 La. Hist. Q. 59, June 11, 1764. " Father Dagobert, Superior of the Capuchins, has the honor to represent that . . [April 16] Sr. Loquet attacked in the . . street a negro wagoner to them belonging, mutilating him with blows from a stick . . [so] as to prevent him from working during forty-seven days, . . on account of a prohibition to pass in the street with his wagon, made to him two days before by Sr. Loquet who threatened to maltreat him if he did so again." Surgeons' report, April 1764: [60] " we found . . a fracture of the inferior part of the cubitus of the left arm, without displacement of the bones, . . The patient's advanced age cannot but cause a long case " Surgeon's bill, June 7: " Reported by me, Chief Surgeon for the King, . . One hundred livres . . for dressing and for treatment . . To Sr. Roussilon for visit and report, 10 lvs." Order, June 11: " Sr. Loquet to pay to the Rev. Père Dagobert . . ninety-four livres for the forty-seven days during which he was unable to work and one hundred and ten livres for the dressing and treatment "

Re Degout, 3 La. Hist. Q. 294, January 1766. Degout was charged with murder. " Also appeared Jeanne, negress belonging to Sr. Darbanne, . . who, after being sworn . . Testifies . . [304] Degout passed an arm between the witness and her mistress, who stood one on each side of the window folding clothes,"

Clermont v. Roquigny, 6 La. Hist. Q. 687, January 1770. [693] " general receiver, declares that Mr. Roquigny's seized negroes were in his charge for 194 days . . Two were too old to work, and two were unable to work, so he was put to the expense of 3½ sols a day for each one "

Pictel v. Dubois Succession, 6 La. Hist. Q. 703, February 1770. " sale . . transfers . . a negro family consisting of six persons."

Teisseire v. Lesassier, 6 La. Hist. Q. 704, February 1770. " the slave Samson was sold for 1250 livres "

Malline v. Boisclair, 7 La. Hist. Q. 144, March 1770. " deputy sheriff . . served copy of the petition and order on defendant at her home . . speaking to a negro servant "

Pictet v. Raguet, 7 La. Hist. Q. 145, March 1770. " deputy sheriff . . certifies . . to the service of the petition and order on a negro servant in the defendant's house with instructions [for defendant] to appear."

Populus v. Kerrourette (his wife), 7 La. Hist. Q. 525, May 1770. " he voluntarily surrendered to her 7 negroes, the best from his factory (*atelier*) from whose labors his wife has received a revenue of 900 piastres during 18 months. Besides she holds 2 negresses and 1 mulattress from whom she also draws an income."

Moricio v. Beller, 7 La. Hist. Q. 539, June 1770. Order: " as the debt is due, . . ' let a slave be seized and put in the public prison until the same is paid with costs,' "

Dauphin v. Aubert, 7 La. Hist. Q. 545, July 1770. "plaintiff prays execution on the acknowledged debt . . defendant . . disobeyed [order to pay within three days.] . . the Court orders one of defendant's slaves . . put in the public prison, but the defendant's person must not be held."

Neau v. Raguet, 7 La. Hist. Q. 726, September 1770. "an obligation of 2000 livres from the Marquis de Vaudreuil of July 26, 1763, belonging to a [free] negress" of Louisiana.

Dupuy v. Veillon, 8 La. Hist. Q. 154, October 1770. Order: "if he has not [paid] . . apprehend one of his slaves or his person,"

Roussillon v. D'Estrehan, 8 La. Hist. Q. 179, January 1771. Dr. . . Roussillon, surgeon, . . claims . . 282 livres, 10 sols, from . . D'Estrehan, . . Ruby, surgeon . . reports: 'Considering the treatment given and the nature of the negro's illness, the bill is just.' . . compromised their case"

Roussillon v. Deville, 8 La. Hist. Q. 179, January 1771. [180] "a negress . . belonging to Deville . . [was ordered to be] seized and put in the public prison [to be 'sold to pay her owner's debt']. . . Deputy Sheriff . . could not carry out the Court's decree because . . the owner had made the negress hide herself."

Re Rocheblave, 8 La. Hist. Q. 372, March 1771. [373] "they found several negroes wearing shirts . . identified [as Blanchard's property]. . . they said that they had bought them from Mr. Rocheblave. . . [380] Joseph Fich, white, Juan Felix, a free mulatto, Jacobo Raphael, a free negro, Juan Bautiste Raphael [his brother-in-law], free mulatto, Juan Grot (Legros), a free negro, Antonio Croizet, white, all give . . testimony . . that on the night of the robbery they were summoned by the firing of a gun . . a pre-arranged signal to repair to Mr. de Rocheblave's plantation . . and to go in search of some fugitive slaves" [374] "and some whites who were with them."

Schiloc v. Chouteau, 8 La. Hist. Q. 324, April 1771. Slander. [326] "Chouteau . . said that he had heard a negress on the levee ['employed by [Schiloc] . . to sell his pastries'] say that Schiloc put poison in his pastries."

Reboul v. Reboul, 8 La. Hist. Q. 331, May 1771. "he leased from his brother ['agent for . . de Rochfort'], eight negroes or negresses. . . Mariana . . has been continually running away . . Lately she has received a shot in the leg from a fugitive negro which has laid her up for some time." The defendant "asks that all damages be charged to the account of the owner . . absent in France." So ruled.

Re Negro Temba, 8 La. Hist. Q. 6, June 1771. June 1, [9] "Pedro, the [negro] overseer . . under oath declared that at twelve o'clock the night before the big shed . . took fire . . and that his master [Mr. Lebreton] was on the gallery calling to the negroes to save the chickens . . In about four or five minutes they heard a gun fired. . . They found

their master dead, . . [10] he called the neighbors . . [who] assembled the negroes to examine them; . . His master treated his slaves well. . . There were six guns in all among the negroes of the plantation. . . Juana, . . house slave, said . . under oath . . In the first part of the night her master had scolded the hunter, called Temba, because he had been sleeping away from the plantation. He fell on his knees and asked his master's pardon, . . [11] granted . . 'For this time, and that he must be careful for another time or he would pay for all.' Temba was not at the fire and came about half an hour later . . The next witness was . . Temba, . . He was ordered [the night before] to call the overseer to whip him. . . pardon . . granted . . [13] June 2, Pedro [a hunter], Mrs. de Villemont's slave, . . about two or three in the morning . . went to Mr. Robert's . . to find [Temba] . . in a cabin where he went to sleep with a negress called Mariana. . . he had heard that . . [Temba] passed for a bad negro, and that his own master feared him . . [14] Pedro was called for the third time, from prison, . . Then Papa Cipion, a free negro; Francisco, the blacksmith, Mr. Lebreton's slave; the other Francisco (called Mirliton) [a blacksmith], also Mr. Lebreton's slave, who was ordered arrested and separated from the others; Paya, also belonging to the deceased, and Liceta, a free negress, who had been his wet-nurse and had merited the confidence of Mr. Lebreton's father who had given her her freedom . . [16] Francisco Mirliton . . alone of all the slaves can sign his own name. . . June 7, [Governor] Unzaga decrees . . that the accused prisoners must name an attorney . . further orders that Temba be tortured to make him confess who were his accomplices. . . June 9, Unzaga orders the Assessor, the Escribano and the two interpreters to go to Mariana's cabin, . . They . . found . . a piece of white handkerchief . . stained as were the wads" "taken from the gun which killed Mr. Lebreton. . . [18] Governor Unzaga . . ordered Temba put on the rack and fastened to it and the punishment . . carried into effect. The executioner fulfilled his office. Temba . . repeated several times, 'There is Jesus.' Then he said Mirliton . . set fire to the shed and . . fired his gun at the same time as he did. . . He was asked what motive . . He said because he . . did not give them time off. . . [19] While Unzaga was still in the hall of torture it was reported to him . . that . . Mirliton was hanging himself with his girdle . . He . . denied the attempted hanging, . . was playing with his girdle, . . Mirliton is taken to the hall of torture, . . [20] the executioner fulfills his office. . . it would seem from the few words remaining that he confesses that he fired at his master . . Unzaga condemns [them] . . to death by hanging. . . dragged [to the gallows] from the tail of a pack-horse with an esparto grass halter tied to the neck, feet and hands, . . Temba, is to remain on the gibbet and to have his hands cut off and nailed up on the public roads . . Pedro is to receive 200, and Mariana 100, lashes at the foot of the gallows, and their ears cut off close; Carlos [[16] 'born in Guinea, . . a carpenter'] to be tarred and feathered and mounted on a pack-beast. . . June 19 . . attorney for the criminals, sets forth that . . Pedro is very ill; . . surgeon

. . [21] finds he has a malignant fever. . . to inflict the punishment decreed would cause him to lose his life. . . Unzaga . . rules . . punishment . . be suspended . . June 20 . . the executioner carried out the orders . . upon all . . with the exception of Pedro, . . June 26, . . widow de Villemont prays that he be . . examined . . Unzaga orders the slave returned to [her] . . under juratory security to be returned to prison when convalescent."

Re Rillieux, 8 La. Hist. Q. 518, July 1771.[519]" Elena, a free negress born in Guinea, is called and . . a negro slave . . [A white man] testifies, and then the little slave girl, Maria, aged 13, who openly accuses Vincent Rillieux. . . [He] makes his declaration, giving . . account of all his movements . . [520] then confronted by . . Maria, who under oath declares that he is the same man who came to Mrs. Maison's house and tried to choke her. . . Rillieux said that her statesment is false" Judgment, October 1772: [525] "absolve him of the crime"

Re Fugitive Negroes, 8 La. Hist. Q. 527, July 1771. "interrogatorios [in French] put by . . Lieutenant Governor of the Post of Natchitoches, . . Mariana, belonging to Mr. Tixerant, arrested in Mr. de Saint Denis' dairy. . . had been a fugitive for about eight months from New Orleans. She had with her . . a negress, a negro and a small child. She had been at Mr. . . Harang's house where she remained a short while. When she met Mr. de la Gautrais's negro, Louis, he took her to the woods where she and the other woman have lived. . . Charlot, Mr. D'Inguimbert's fugitive slave, . . has been absent from New Orleans for about 14 or 15 months and has spent the time with various persons. . . Gil La Rose, Mr. Cantrelle's . . slave, absent from New Orleans for about two years and has spent his time with various persons. . . Miguel La Rose, Mr. Bayon's . . slave, absent from New Orleans for about three months and has spent the time in different places but mostly in the woods. Jean Baptiste Raoul, Mr. Dubard's . . slave, resident of New Orleans, and absent . . seven months. He has spent the time with other fugitive negroes . . mostly in the woods. The last called was Louis . . absent for about two years. . . finally captured when their passports are demanded at 'Attakapas.'" Judgment: [528] "200 lashes at the foot of the gallows. . . Louis, because of his repeated flights, which . . took place . . in the time of the French domination, will be treated with the full rigor of the laws . . Notify their masters that when they return they will be held in prison for a space of time not determined."

Chataubaudau v. La Chapelle, 8 La. Hist. Q. 714, October 1771. "was obliged to sell his negress and to mortgage another . . the only one remaining to him in order to buy for the negroes he had hired the provisions to feed them. The first year of his lease he had the promise of a very good crop of indigo but he trusted its manufacture to one of the negroes turned over to him in the lease as an expert in that line, who caused him to lose all his first cut. . . [715] also delivered to him . . as good laborers many negroes who were incapable . . because of their ages and infirmities. They were an expense . . for food and medi-

cine. . . a negress, Combá, . . died of an incurable malady which she had before the lease." Ordered: "that she be deducted from the . . rent for two years at the rate of 1½ reales a day. . . easier to have made the claim for Combá's illness at the time so that she be deducted from the number contained in the lease or . . returned to her master to have him take charge of her cure."

Re Negress Angelica, 11 La. Hist. Q. 37, March 1772. "the negress presented herself . . aged eighty years, who during this same proceeding [auction] had collected an alms of twelve pesos which she offered for her liberty, but it was not admitted unless it should first be preceded by the publication of her sale as there might be some one who would give more . . No . . bid . . [38] His Honor ordered on the petition of . . Angelica, and with the consent of the interested parties, that she must exhibit, at once, the twelve pesos . . and that the guardian of the estate . . must draw up the suitable written document and that in the act of adjudication, . . it (this sale) be executed with the greatest clearness in the obligation that the . . guardian must give"

Blaquet v. Maney, 9 La. Hist. Q. 149, January 1773. "Blaquet [of Pointe Coupée] petitions to give freedom to a negress . . and her son, slaves of . . Maney. . . they saved his life. In remuneration . . he asks that the Commander of the Post be ordered to make a valuation of them, appointing appraisers for each interested party. When this is done, pass the act of emancipation and he will then pay in cash all costs occasioned. . . [150] Maney . . fails to answer,"

Re Negro Luis, 9 La. Hist. Q. 324, March 1773. A gun stolen from Mallines was found in a gunsmith's shop. "Manon . . [325] leased to . . Dutertre . . declared [under oath] that Mr. Dutertre bought the gun from Luis, a free negro, and that he took it to the gunsmith to have it repaired. . . Dutertre . . testifies that . . negro told him he had it from an Acadian or a Canadian traveler. . . Luis [[326] 'native of Curaçoa'] . . now a prisoner, . . testifies that the gun . . was given him by a negress . . Mr. Labarre's slave, . . Unzaga . . rules . . sequester his property . . deputy sheriff . . reports he went to make the seizure, but . . Luis did not have a house or anything." February 1774, Unzaga [328] "absolves . . Luis . . warning [him] . . that if within . . eight . . days he does not give an honest reputable resident who answers for his application in some employment he will be expelled . . to one of the penitentiaries . . condemns . . him to pay the costs"

Re Negro Bambara, 9 La. Hist. Q. 337, April 1773. "Criminal prosecution . . for killing a negro named Augustin, both slaves of Antonio Thomassin."

Flotte v. Leiveille, 9 La. Hist. Q. 538, May 1773. [541] "About five years before she sold a negress . . for 250 pesos, and the other negress . . with her little mulatto son, she sold to . . the tavern-keeper, about 15 months before for 250 pesos . . to pay her debts."

Dubreuil v. Bouligny, 9 La. Hist. Q. 546, May 1773. Bouligny's answer: [549] "Alexander [Dubreuil] has disturbed him in the possession of the plantation and has placed a negress there of whom it is said that [his uncle] Joseph Villars [Dubreuil, former owner of the plantation,] gave her her freedom and who is maintained there against Bouligny's will solely to annoy him by selling spirituous liquor to his negroes and seducing and sheltering them within his own possessions. From this place he sees others exposed to robberies and the like disorders which the existence of this negress occasions." [550] "July 20, Unzaga rules . . within one day . . [the Dubreuil brothers] must leave . . Bouligny in . . peaceful possession . . destroying the hut or cabin in which they have lodged the negress . . with a warning that if this is not done she will be evicted and her cabin destroyed at their expense."

Re Negroes Bernardo et al., 9 La. Hist. Q. 552, June 1773. "Criminal proceedings . . against . . Bernardo, Mrs. Trepanier's slave, and Cipion, Carlos and Francisco, belonging to . . de Bellile, for having wished to poison him and his overseer."

Catalina (a mulattress) v. Fazende and Boré, 9 La. Hist. Q. 556, June 1773. "slave of . . Destrehan's estate, sets forth that for having done well, some persons in recompense for her services, have promised her the money to the extent of the value of her freedom and that of her child, . . Felicité, aged five years. She prays that . . Fazende and . . Boré who administer the said estate, name an appraiser . . Fazende . . answers . . that he is informed that . . [she] is usually sick from a certain accident . . He consents . . [On] September 18 . . she asks that . . Boré . . be ordered to draw up . . instrument for her emancipation at the price of her valuation; . . He answers that in no manner will he consent . . considering her bad conduct . . and what she had done to herself to become infirm so as to be valued more cheaply, . . [557] October 2, she answers, asking that experts be called to put a value on her, and that her act of emancipation be drawn up . . The law permits this benefit to any charitable person who may have promised her the money. She has merited the right to buy her freedom for cash as she has been a slave of this estate all of her life [36 years] and was a servant to all her master's children, . . has served with fidelity up to her illness, which has become habitual. It will be of greater interest to the estate to sell her to herself . . [and] invest the money in a young negro boy . . Unzaga . . rules: That within three days, . . Boré must determine the price of the mulattress . . and her daughter, . . if he does not . . it will be given to her at the valuation . . in the inventories taken at . . Mr. Destrehan's death. . . Boré sets forth . . If she has any indisposition it comes from her great libertinism in this city. In consideration that she is a mulattress who knows how to sew and wash very well, he can not consent to give her her freedom and that of her child for less than 600 pesos. Unzaga rules: Let the . . escribano certify the price at which . . Catalina and her child, were estimated . . certified copy taken from the inventory . . March, 1771, . . Cathalina, aged 33 . . with her three mulat-

tress children, . . Carlota, aged 10, Manon, 6, and a baby of 2 years, called Felicité, . . all estimated at 500 pesos. . . [558] Unzaga rules: Considering that the valuation was made in union with her other children, make now a separate one of the two, . . Boré names . . Thomassin . . appraises the mulattresses at 450 pesos. . . Catherina [Catalina] sets forth . . This price is excessive . . She asks that some one be ordered to make the appraisement who knows the state of her health, . . Unzaga . . rules . . that the price be estimated . . by . . Beauregard . . appraises the two . . at 320. November 6, . . Boré . . grants the act of emancipation . . for 320 pesos."

Arragon v. Count de Guimbert, 9 La. Hist. Q. 748, July 1773. " Count . . sold to him . . April . . a negress called Franchonet, as . . without blemish. . . turned out to be entirely useless . . because of an old chronic disease for which she has been treated by various physicians for five years. . . scirrhous tumor and hemorrhages . . [749] Unzaga . . rules: Let Drs. . . examine . . also let the negress . . swear and declare " " for how long a time she has had this disease, what the infirmity is, what physicians have attended her, . . Derneville, empowered by Count de Guimbert, . . agrees to take back the slave and return the money "

Chateau v. Degout, 9 La. Hist. Q. 750, July 1773. " 1764 . . sale of the mulattress . . for 2700 livres "

Chateau v. Saint Pé, 10 La. Hist. Q. 129, September 1773. [130] " lease by which Chateau hires out his negress . . from January 11, 1770, to July 11, 1773, . . at 5 piastres gourdes per month " Later he sold her to the hirer for 180 pesos.

Baure v. Naneta, 10 La. Hist. Q. 133, October 1773. " suit . . brought by plaintiff in answer to one brought against him by Naneta, a free mulattress, demanding that he free his negress, called Maturine.[1] . . he asks that . . Dapremont . . be summoned . . [The latter] answers that it was at the request of Mr. Baure that he gave Naneta her freedom, that she had never done anything to merit it, . . granted . . at the wish of Mr. Baure's daughter on the occasion of her marriage. He has heard it said that there was a theft of Mr. Baure's private papers at a time when Maturine was alone in the room. . . Mr. Baure calls for other witnesses "

Saint Pé v. de Palacios, 10 La. Hist. Q. 148, November 1773. Witness says [150] " there is a mulatto . . belonging to de Palacios in the prison [' gathered up for running away '] . . he has seen him in Mobile guarding the herd of cattle for his master. This mulatto brought the witness, on board of his ship, a sack of coffee that he had been charged to deliver to him,"

Richard v. Roth, 10 La. Hist. Q. 288, January 1774. " Plaintiff presents an act of sale dated . . October 30, 1773, by which he acquired . . a slave woman called Marie, with a crippled infant daughter . . for 1750 livres . . cash, . . he purchased the negresses for 350 pesos, supposing that they were on the vendor's plantation . . that the mother was sold to him as having no bad habits nor defects, the seller claiming that he had

[1] See Broutin *v.* Naneta, p. 442, *infra.*

the order to sell them as belonging to Widow Pery who needed the money . . not true because Mr. Roth bought the slave from Mrs. Pery while she was in the prison in this city when she was caught with some fugitive negroes, . . Mr. Roth bought her for 250 pesos . . Mrs. Pery gave her at this price to be rid of her. The petitioner . . took her as a good subject for both house and field work. Marie continues to run away and is today in the public prison"

Antonio v. Deshotels, 10 La. Hist. Q. 300, March 1774. Antonio, a mulatto, "presents a . . 'simple piece of paper,' dated . . 1773, which is a dying request of the Widow . . of Deshotels, . . wherein she says she has forgotten in her will to free . . Antoine. She obtained [bought] this slave from her brother-in-law on condition that she liberate him after he has served her for four years. She is now *in extremis* and declares that this is her last will which she signs in the presence" of six witnesses. A seventh, Stephen, "signs in a postscript. . . [301] He says he is extremely deaf and did not understand anything . . Unzaga . . June . . 1775 . . does declare . . that the paper . . is of no value, . . condemned . . [Antonio] to perpetual silence and orders that the costs be paid by the heirs."

Broutin v. Desprez, 10 La. Hist. Q. 306, March 1774. [307] "Slaves [of estate] lost by flight: Alexandro . . 200 pesos; Colas . . 140; Francisco . . 300; Honorato . . 240; Raphael . . 300; Antonio . . 260; Langulo . . 260; Naneta . . 240; Juan Luis . . 300; an Indian, Cupidon . . 100. Thirteen slaves have died, valued at 240 pesos each."

Loppinot v. Villeneuve, 12 La. Hist. Q. 48, April 1774. Report of arbitrators: [50] "the mulatto, named Mulet, belonging to Mr. Loppinot, had worked on Sunday . . to build a chimney on Mr. Jean Villeneuve's plantation, and . . had his supper there, since then he has not been seen. . . found drowned . . we do fix . . the price of . . Mulet at . . nine hundred livres [[53] 'one hundred and eighty pesos']. We condemn . . Villeneuve to pay" Answer of Villeneuve: [53] "I made his mulatto work one Sunday . . but as these days belong to the negroes, as is well known in this Colony, having paid him what was coming to him for his labor, I do not have to answer for his death." Loppinot's reply: [54] "Feast Days and Sundays are consecrated to the service of God . . all Canonical laws . . forbid the faithful, whites as well as blacks, to do any servile work on those days . . said mulatto went to work at Villeneuve's house without my permission, he was given his supper . . with a drink of brandy, and was kept there till ten o'clock . . At this hour . . Villeneuve sent his negro overseer to propose to me to leave my mulatto with him until the next day and . . he would send one of his negroes to replace him. I consented . . neither his negro nor my mulatto have come to me." Villeneuve's answer: [56] "In this Colony it is known that a negro may, at his free will, dispose of all day Sunday so as to make provisions for himself . . and to gain the wherewith to clothe himself. It is an illusion to believe that negroes living ten leagues from the city must go to the Parish Church . . It would be . .

dangerous to public welfare if a slave should be left . . without any work . . God, Himself, said to his Apostles: 'He who labors, prays.' . . the plaintiff not only consented to let Mulet work . . on Sunday but the day after as well" Answer of Loppinot: [82] "he had no knowledge of the whereabouts of the . . mulatto . . on the Sunday night that Villeneuve sent to ask . . to let him have Mulet for the Monday following" Certificate concerning Mulet: "We the [four] undersigned certify . . to have known the mulatto or grif, named Mulet, . . as a good mulatto aged at what appeared to us from forty-four to forty-seven years. We have known him to have skill particularly as a black-smith, mason, cooper, roofer, strong long sawyer, mixing with these a little of the rough carpentry with the rough joinery . . having employed him on many little occasions" Brief of Villeneuve's attorney: [89] "Loppinot . . tacitly consented . . by having permitted him to continue his labors the morning following . . [90] the place where the mulatto was found dead . . is . . on the other side of the river" Sentence: [91] "His Lordship . . does absolve . . Villeneuve. He condemned . . Loppinot to pay all the costs" Loppinot appealed to the tribunal of appeals of the Cabildo, quoting, in his argument, the ordinance of October 8, 1769, article 5: [100] "It is expressly forbidden to all private parties . . to sell or give drinks to savages, mulattoes, . . unless they have a written permit from their masters." Villeneuve argues: [107] "let us suppose, which I deny, that I did give the slave a drink . . could this be the cause for the mulatto to go from one side of the river to the other. . . our plantations are next to each other." [106] "they are left free of all work on Sunday, . . on such days some of them go to the neighbors' plantations who hire them to cut moss and to gather provisions, this is done with the tacit consent of their masters who do not know the whereabouts of their slaves on the said day, . . and are always satisfied that the negroes will appear again on . . Monday . . The opposing party confuses the necessity of a permit with what is given to a slave when he wishes to go to the city or when he is there and wishes to go to the country because the soldiers at the gate ask for it" [111] "In consideration that the gentlemen commissaries are not in accord with the Senior Judge . . and not having an Assessor with whom to consult they . . transmit the suit . . to . . de Urrutia" in Havana. He advises [115] "that the sentence . . must be confirmed . . there is no law nor reason that obligates anyone to answer for a purely accidental and involuntary case . . It can not . . be presumed that Villanueba proceeded with malice . . to make him drunk, he must be judged as only conforming to a kind of courtesy common in such cases. . . Lepinot . . must pay the costs"

Angelica (a free negress) v. Marmillon, Executor, 10 La. Hist. Q. 445, May 1774. "petitions, saying that in . . Juan Perret's will he left her all his clothes, linen, furniture and movables in the house . . asks that . . executor . . deliver the effects . . [One heir] contests . . claim declaring that the clause . . is null as . . Governor O'Reilly has set down in his Code, Article 52: . . 'notwithstanding . . negroes have been set free . . jointly with their freedom it incapacitates them to receive from

the whites any donation *inter vivos,* by cause of death or other motive. . . in case this should have been done . . let it become null and applied to the nearest hospital.' Forstall . . notwithstanding . . opposition . . orders . . executor . . to . . turn over to Angelica her legacy within three days."

Re Negro Pedro, 10 La. Hist. Q. 455, July 1774. "Governor Unzaga . . was notified by . . Livaudais, lessee, of the Dorville plantation that the [negro] overseer Gonzalo had died . . after two days illness . . A short while before he died he received the Holy Sacraments and in the presence of the surgeon and . . the negroes . . said that it was Pedro who had poisoned him . . with water he had been given to drink while they were working. From that moment he became ill . . The Governor orders the body examined by . . [two] surgeons . . They think . . some drug or drink . . caused . . death. . . [456] wife of the decedent, testifies . . That about a year ago Peter had quarrelled with them and had poisoned their daughter. . . The negroes wished to tie him up and carry him to the master, but he begged them for the love of God . . not to speak a word about it and he would . . cure her daughter . . which he did . . [457] Pedro [[459] 'born in Guinea'] . . was asked . . if he had any quarrel with [Gonzalo.] . . He answered . . no . . although he had punished him by order of the master and sometimes through caprice . . Gonzalo had punished him . . about four days before he fell ill, because he was found eating a melon that Francisco, who works in the melon patch, had given him. He did not poison Gonzalo, he was sick before and had fever caused by a piece of timber that fell across his chest and afterwards he got wet in the rain. . . he did not give Gonzalo a drink. He was not working in the field because he was sick from a whipping, so he only took a walk in the court yard . . [459] Theresa, called Venus, . . declares that she is not Pedro's wife, but his concubine, and he had told her the year before that he would make Catarina suffer . . because she had injured him in the field. . . [460] He said he had said no such thing . . prosecuting attorney . . accuses Pedro . . of being guilty of murder . . executor of the Dorville estate . . leaves the prosecution to the justice of the Court. . . Pedro . . appoints . . attorney. . . [461] [Three] medical experts . . declare that the infirmity from which Gonzalo died could have proceeded from other . . ailments" Judgment, September 14, 1777: "I [Galvez] . . do acquit . . In order to clear him of the violent suspicions . . and to avoid the scandal that the memory of such a crime would occasion to the public, I sentence him to ten years labor, with shackles on his feet, on the public works . . and . . because of . . abandonment [by the executor] . . when the ten years . . have passed he shall have the right to be free. This is not a recompense for the crime which would be a pernicious example. I declare that the . . ten years having passed, (he) . . will enter the dominion of His Majesty *(entrará al dominio de S. M.)*"

Beauregard v. Plauché, 10 La. Hist. Q. 614, October 1774. [615] "carts going by . . loaded with planks for ships, conducted by a negro

. . whom I had rented . . at the rate of 8 pesos a month; . . at that time the . . negro was a fugitive;"

Chaperon v. Mrs. Dupard, 11 La. Hist. Q. 156, February 1775. "alleges that for two years Mrs. . . Dupard has had in her possession his negress . . a fugitive, who has been working on the Dupard plantation . . Whereas the Black Code ordered to be observed by . . Count O'Reilly provides that . . the hirers of slaves are obliged to pay two pesos daily for the . . [157] work of the negroes . . it is his intention to exact four reales, only." Attorney for the defense "answers that the negress was on his client's plantation in the house of . . a free negro where she made her home with a written permit from her master so as to be cured of an illness by this negro . . she was cured and . . conducted to her owner, who said she was well and did not need anything more than good regulation to live and not to have to work for some time to come. . . asks that this claim be excluded and the plaintiff ordered to pay costs" So ordered.

De Clouet v. de la Houssaye, 11 La. Hist. Q. 333, February 1776. "sets forth that a negro belonging to . . de la Houssaye . . has killed his negress . . who had cost him 300 pesos . . He asks to be indemnified . . or have her replaced by another just as valuable."

Maria Juana (a slave) v. Suriray, 11 La. Hist. Q. 338, February 28, 1776. "sets forth that she presented herself verbally in His Lordship's Court demanding that her master [Suriray] give her her freedom at the price at which she would be estimated and the Governor Unzaga ordered it . . This freedom has been denied to her and her master has . . confined her with prisoners . . she escaped and has come to entreat . . justice . . may it please the Court to order her master to give her an act of emancipation . . and . . she be appraised . . and . . she will deliver the sum . . This money has been advanced to her by a person who wishes to take her out of the captivity . . Suriray . . fails to answer . . Maria Juana engages . . Cowley to represent her and in a second petition tells . . [339] Her master bought her when he was a bachelor and . . she served him as his only household slave . . Her master having married he wished to give satisfaction to the public and to her mistress . . both . . punishing her with extreme cruelty. They denied her the recourse that for charity is conceded to all slaves, namely . . to look for masters more to their liking. Her master does not wish to accept 250 pesos, the price at which he bought her. . . Suriray . . answers . . she wishes . . to enter [the possession] . . of an Englishman . . In the laws of Spain there is no obligation for the master to free . . a slave . . March 26, Unzaga . . rules: Let the decree on page 1 [338] be revoked . . it appears that . . Maria Juana has persisted in running away." See Suriray *v.* Jenkins, *infra.*

Suriray v. Jenkins, 11 La. Hist. Q. 340, February 28, 1776. See Maria Juana *v.* Suriray, *supra.* Suriray's petition: "Petitioner questioned her as to who had provided the money . . She answered, it was . .

Jenkins . . and that this money was delivered to a free mulattress named Mariana Deslattes . . He went to interview [him] . . asking . . if he wished to free . . negress. He answered no, but to buy her for a servant . . and that he would not give more than 450 pesos . . to secure her person he put her in prison, but she escaped . . asks that the Englishman and the free mulattress be . . detained . . [341] until they produce his negress . . Unzaga . . rules: issue a writ of arrest . . They succeed in apprehending the mulattress, but Jenkins . . takes refuge on his ship . . through . . his attorney files an answer . . the negress came to him full of fear . . 'Sir, you see me so unhappy with my master . . because a cat had carried off a turkey that had died he wished to have me given one hundred lashes each day. . . I . . have come to see if you will have the charity to buy me.' . . [344] he . . commissioned [the mulattress] . . to attend to the transaction . . Mr. Suriray . . demanded 600 pesos . . he refused to pay more than the 450 he had given Mariana . . Without . . [his] knowledge . . the mulattress and the slave went to Governor Unzaga's house to petition him . . [345] testimony shows up the lowest dregs of the passions of two white men over a worthless colored woman. . . [346] evidence that the negress was her master's concubine before his marriage when he dressed her well and took the best of care of her but after this event . . when she refused to further consort with him out of respect to his wife he began to abuse . . her, even to deprive her of her shoes and stockings and to force her to wear dirty rags . . While she was Suriray's mistress she never ran away . . [347] Jenkins . . denies having had carnal relations . . [349] Unzaga rules that because his Assessor General is absent . . there is no other legal counsellor . . so he sends this cause to Havana . . [350] On May 23, 1777, Governor . . de Galvez cites the parties to appear and to hear the definitive sentence rendered in Havana . . Veranes ['Attorney of the Royal Audiences of Mexico and Santo Domingo'] counsels the Governor General of Louisiana to . . declare that . . Jenkins . . must be absolved . . As to . . the petition of the negress, let her letter of liberty . . be drawn up and issued to her at the price of her acquisition, by her master, as is customary in this Island, in like cases, in conformity to the Royal Cedula granted in Aranjuez . . 1768. . . de Galvez adds . . I conform . . but not as to the request of the . . negress. . . that . . Royal Order is intended for . . Cuba and can not influence the rest of His Majesty's Dominions . . this Province . . must be governed by the general laws of the Kingdom . . [352] this suit . . is 630 pages long."

Negresses Rose and Maria Isabel v. Chouteau, 11 La. Hist. Q. 513. April 1776. Will of Reynaldo or Renato Chouteau: " declares he owns two negresses [Rosa and Lizeta], one of them has two children, . . He has already given them [1] their freedom before the present escribano. This emancipation he . . ratifies." The inventory includes [514] " Rosa, aged 24 . . with her two children, Maria Juana, aged 3, and the other an infant at the breast, six weeks old, named Reynaldo, all estimated at 500 pesos,

[1] Reynaldo was born after the act of emancipation.

and . . Maria Isabel, aged 20, valued at 340 pesos. . . disregards the emancipation" The Alcalde approves. "curator asks for the sale of the estate at public auction . . [515] Rosa . . appoints . . Mazange her attorney . . presents a certified copy of the act of emancipation, dated May 20, 1775, in which her . . master grants freedom to her and her child, on condition that she serve him as long as he lived, but in all other respects she is entirely free . . Maria Isabel, known as Lucita . . presents her act of emancipation, dated May 26, 1775. . . [The executor] avers that . . [the emancipation] would affect the debts . . and also reduce the dowry . . Alcalde . . rules . . he does declare the emancipation granted as null . . as is likewise the clause in the will . . [516] Rosa appeals . . to Governor Unzaga . . avers that the Alcalde has rendered his decree without the advice of . . Odoardo, . . who is absent and there is no other 'Letrado' (legal counsellor) in the Province" The executor and curator "answer the appeal opposing the granting of freedom . . the negresses . . answer . . ask that their cause be sent to the Tribunal established by his Majesty in . . Havana . . [Alcalde] rules to transmit . . to de Urrutia, lawyer of the Royal Audiences of Santo Domingo and a resident . . of Havana, . . [517] the adviser rules: . . the little mulatto, Reynaldo, was not mentioned in his mother's act of emancipation, because he was conceived and born in the interim between the making of the same and Chouteau's will. Since he is mentioned in this last document, . . the judge . . must consider him as free-born . . That Rosa and her daughter . . and Maria Isabel are likewise free from the date of the authorization of their . . letters of freedom. . . However the three slaves, excluding the boy, must be held as responsible for a part of the debts . . to the extent of their appraised value. Rosa and Maria Juana must . . be re-appraised, taking into consideration the ages of both at the time they were given their freedom, . . [518] the Court . . with the consent of the parties . . conforms and . . revokes . . [its former] decision . . Rosa and her daughter [are valued] at 450 pesos, . . [519] Rosa and Maria [Juana] must remain responsible for . . 325 pesos, 2 reales and Maria Isabel (Lucita) for 340 pesos, which amounts must be satisfied by them with the receipts from their wages. This amount must be earned before they may enjoy the full use of their freedom."

Succession of Juana (a free negress), 11 La. Hist. Q. 519, April 1776. "Juana's notarial will presented by her universal heir and . . executor, Pedro Viejo . . the testator is a native of Guinea, legitimate daughter of a negro . . and a negress . . She declares that she has never contracted marriage . . She entered into a business partnership with Old Peter, they had no capital and what they have to-day they made together. . . In her house there is a sum of 800 pesos in silver one half of which belongs to her, and her own slave, Francisca, aged 30 years, and some merchandise in their little shop. . . [520] She asks that her . . executor give the one third of her estate to a free negress named Victoria because of the great love she bears her as she has raised her as a daughter in her house. She further orders her executor to buy Joseph, aged about

25, and Juana, aged about 20 (according to what she has been told they belong at present to . . Pelagie) for the price of their appraisement and . . liberate them . . because of the great love she bears for them having raised them as her own children . . The inventory is begun . . They found in all 120 pesos . . They enumerated the stock in trade of the little shop consisting of goods by the yard, . . thread, buttons, . . garments made up, such as shirts, smocks, etc., . . [521] The executor asks to have this inventory approved . . Broutin, Victoria's defender and also representing the interests of the other two beneficiaries . . answers there is a strong suspicion that Old Peter . . has hidden the greater part of the money and goods. . . interrogatory . . put to the free negress, Magdalena Fatin or Tatin, . . She answers . . that the negress . . showed her a letter that she had written to her (adopted) daughter and to Joseph and Juana telling them that she had made her will and that she had about 1000 pesos including her slave negress, that she wished all she had distributed among them after her death. . . [522] Francisca answers . . After Juana's death the armoire was opened by Old Peter who asked her for the keys . . Old Peter put her out of the house, . . [523] Alcalde . . approves the account . . presented by Pedro Viejo"

Tounoir v. Peyroux, 11 La. Hist. Q. 654, May 1776. "Action . . to recover 146 livres, 17 sols, 6 deniers, alleged . . to have been paid . . for expenses incurred through the illness, death and burial of a mulatto belonging to . . Peyroux . . [655] he had died in Tounoir's house, he being a partner of Tarascon who had leased the slave for many years" Interrogatories propounded by defendant: [657] "Was the mulatto sick when he arrived at Pointe Coupée . . and also ill when he left for Rapides . . A. He knew that the mulatto was a little indisposed . . for this reason the conductor of the pirogue . . did not let him work. . . It is not true that . . Dr. Bertonville, Surgeon, having entered Tounoir's house, by chance saw the sick mulatto and said . . it was indispensable to remove the tumor and the mulatto had begged most urgently to have it taken out . . [658] A. He had had a consultation of three [other] surgeons . . who . . were not of the same opinion as was Dr. Bertonville." [660] "On August 7, 1779, Galvez . . renders final judgment, that . . Tounoir has proven his . . demand . . completely"

Re Succession of Gauvin, 11 La. Hist. Q. 663, June 1776. Will of Francisco Gauvin: "He says that his estate consists of one slave woman [aged 22] and some dry goods, . . provisions and personal effects, . . He instructs . . executor to . . sell . . He excepts . . his slave . . whom he requires to contribute each month to his heirs 16 reales from her hire for ten years, . . and . . [then] be freed"

Boisdore v. Favre, 11 La. Hist. Q. 668, July 1776. "a negress belonging to defendant has come to the city, he asks that she be arrested and put in the public prison . . until sold to satisfy his debt. . . granted"

Baure v. de Lalande, 11 La. Hist. Q. 676, October 1776. In 1774 "Baure lent Lalande . . 3000 livres . . the latter gave as security, his

negro, Pistolet. . . agreement that if the defendant should fail to pay [in one year] . . Pistolet will be transferred to Baure for 2500 pesos, . . [677] Baure alleges that . . a judicial act of sale should be drawn up in his favor as the sum . . has never been returned." Granted.

Maria (a free negress) v. Macnemara, 12 La. Hist. Q. 181, December 1776. " Marie Pechon and her son, François, both free, . . having left this city [on October 15] . . to go to her plantation on the lower river . . were obliged to stop at Mr. Tixerrant's plantation to sleep . . [182] Pedro, free negro, . . declares that . . at about ten o'clock . . Patricio Macnemara arrived . . walked to the negroes' cabins where he found Maria and her son . . sleeping there with the consent of Mr. Tixerrant's sons, . . to Francisco, he said: ' Where is your pass? ' and he answered: ' I am free and have no need of a pass.' Macnemara answered: ' You lie, where is your act of emancipation? ' ' I am on a voyage and can not bring it in my pocket,' Francisco answered. Then Don Patricio raising his hand . . Francisco escaping from his reach was stabbed with a hunting knife . . while attempting to give him another blow his mother tried to protect him; she received the blows. Macnemara . . took Francisco . . to his plantation, as he said, to punish him further for running away. . . he made his slaves guard him until the following day, then let him go " Testimony corroborated by Tixerrant. [183] " she was obliged to rent a house in the city, and a negress, and to have themselves treated medically . . unable to work . . obliged to abandon her slaves and plantation. . . they have had to pay the surgeon . . 33 pesos and 4 reales . . she prays for 250 pesos . . to indemnify them . . Macnemara answers . . that Francisco did not prove his freedom, so he took him to his house so as to turn him over to the Governor General. . . Maria sets forth . . It is not the custom for free negroes . . to carry with them . . their acts of emancipation when they go for a walk, because the fact that they are free is well known to every one. . . she did try to defend her son which is only natural . . not only among the free, but among slaves as well. . . [184] Galvez on Odoardo's advice sends this petition to Mr. Macnemara which ends the proceeding." " We know from other records that the defendant belonged to the group that supported . . O'Reilly . . and this enhances the temerity of the plaintiff and her counsel in pressing this suit."

Magdalena Canella (a free mulattress) v. Beaurepos, 12 La. Hist. Q. 341, January 1777. " for seven years she has had . . a negress, named Adelaide, who was given to her by Mr. Beaurepos . . yesterday [he] . . took her away . . [342] Odoardo orders Adelaide restored . . with the wages . . at the rate of 2 reales a day, . . Beaurepos made restitution . . answers . . he bought the slave at public auction. He voluntarily lent her . . to Magdalena . . Magdalena's only proof of ownership rests on the sworn word of some mulattoes, libertines like herself, . . he asks that his slave be returned to him . . Magdalena . . answers by presenting an interrogatorio . . 1. Q. Is it not true that he has consorted with Magdalena . . from . . 1767 until '75? A. When he has committed any sin and

confessed it, he did not think about it any more. 2. Q. Is it not true that he has had two children by her, . . A. . . he has forgotten all. 3. Q. Let him declare if he has not given her the slave to support her and his children . . A. He has forgotten all of this . . [344] two sheriffs . . went to her house [in July] . . and obliged her to return the negress." Sentence, in December: [345] " Adelaide to remain in Mr. Beaurepos's possession " Appeal denied. " she manages somehow to get an appeal through to Havana." Decree: [347] " remit a certified copy of the records "

Re Negroes Cezario et al., 12 La. Hist. Q. 498, March 1777. [499] " Francisco's declaration . . he belongs to . . Baure, he was taken prisoner in Christoval's cabin . . night of the 14th, as a runaway slave, which he really was from the 8th. Saturday night he slept in the city with . . Maxent's Cezario . . then he went to the woods. He slept another night with Christoval and on the night of the 12th . . came to the city with Cezario . . to steal some money. . . That night [after the burglary] he . . slept on the banks of the river and in the morning . . went to see Cezario about the division of the money [97 pesos]. . . [500] Marguerita [Cezario's wife] . . told him that Cezario had left 4 pesos for him." Cezario, Marguerita, and Christoval were arrested. Cezario denied all knowledge of the burglary. [502] " Marguerita . . answers: that she is . . a creole and belongs to Mr. Montreuil and that she was hired to herself, giving her master 4 pesos a month as wages, and that she is twenty-three years of age. . . She pays three pesos a month rent for her room. Cezario pays it when he has the money, . . For food she eats as she can and for clothes she works out by the day. . . [504] Christoval . . says he is . . creole, . . saw Marguerita take the money from a box . . heard Francisco say . . he would come back . . to get the rest . . [506] Mr. Montreuil's Rozeta . . says that her sister, Marguerita, had given her some pesos tied up in a handkerchief, . . [509] Cezario asks to have his master . . defend him. . . he abandons him to the justice of the Court. . . Baure . . acting for his slave claims that Cezario seduced his Francisco, . . and that his slave should be declared free of the crime imputed . . [510] Montreuil declares there is nothing . . to implicate his negress . . Alcalde . . orders . . let Cezario name another defender. He . . names . . Cowley who presents a petition in his defense. . . September 16, 1777, . . [Alcalde] on . . Odoardo's advice passes final sentence. . . does absolve . . Christoval . . does declare as criminals and accomplices Cezario, Francisco, Marguerita and Rosa . . condemns . . them to two hundred lashes in the public streets mounted on beasts of burden, the crime to be called as is customary, with four years labor on the Royal Works for Cezario and Francisco, the two women returned to their master . . who must supervise more carefully his slaves' conduct . . and that all . . jointly must pay costs."

Re Clement and Jacobo, 12 La. Hist. Q. 682, October 1777. " Pierre, belonging to Mr. Cabaret . . [being] his overseer, returned from the city in a . . pirogue . . with . . Guiaca . . [683] they heard a loud cry . . Pierre

disembarked . . to see who called . . has not been seen again. . . [684] Guiaca . . said . . Pierre . . had money . . because he sold some pigs in the city and had not spent all the money. . . it is well known that Pierre did not drink. . . his brother, Clement, . . was a fugitive . . after robbing Mr. Braquette in the city . . Janeton . . declares . . that Clement . . had often been taken for stealing and that his brother, the overseer, had told him that the first time he stole again he would be killed with the beating he would receive. She thinks, because of this threat, Clement killed Pierre. . . [687] a purse . . had some blood stains . . found . . in Clement's sheaf of rice . . When . . shown to [Pierre's wife] . . she said . . it was Pierre's, . . [688] Clement feared Pierre more than he did his master. . . [689] Messrs. Hazeur . . and Trepagnier who had accompanied Clement to the place where he had hidden his gun . . said: 'Thou canst not any longer deny that it was thou who hath killed thy brother, lead us to where his body is so that we may give him burial.' He answered . . he did not know . . the gentlemen threatened him with the punishment he merited . . [690] he finally led them to the body, . . [692] prisoner's confession . . creole . . about twenty-five, . . [693] he had . . made known his intention . . only to Jacob" [691] "who had said many times that with Mr. Cabaret we will be very happy, Pierre must be killed, . . [694] Jacob influenced his determination . . had said besides: 'If he has to die one day, it will be the same to die to-day as to-morrow.'" "Luis [Mrs. de Macarty's mulatto, a runaway] . . was present at the killing . . No one feared Mr. Laveau who managed the [Macarty] place, and that the whereabouts of Luis was known to all the negroes who hide and protect him and that because of this luck he has been able to live during the ten months that he has been away from his Madame. . . Jacob's confession. He says he is . . a creole, of Mobile, aged twenty years. . . Odoardo ordered the proceedings suspended, because Jacob is a minor, to be continued when a curator will have been appointed for him. Galvez orders Jacob to name a curator . . Jacob names . . Mazange . . says he is . . [695] a coachman, . . and that he works both in the field and in the house. . . confronted by Clement . . said . . he had no wish to kill Pedro . . [696] Clement said that Jacob had also committed murder, he had killed, with . . an axe, Augusto, . . a Canadian merchant . . because of a debt he . . did not wish to pay. . . they were accustomed to do such things together as . . the stealing of a basket of indigo . . Leveille . . [697] says that it was Jacob . . with his master that bound Clement until shackles were placed upon him. . . Antonio . . put the irons on . . Mr. Cabaret . . had asked his master for . . his services because he is a blacksmith. . . Cabaret . . abandons his two slaves to the justice of the Court. . . Luis' confession. . . born in Illinois, does not know his age, but seems to be about twenty-six, a bachelor and a field laborer . . he had not seen Clement in all the time he was a fugitive which was from the first cutting of the indigo. . . [698] maintained himself . . stealing potatoes and fruit, also a handkerchief and a pair of trousers . . Clement names . . Cowley [as his defender] . . Mazange is named . . for Jacob and empowered by Mrs.

Macarty to defend . . Luis, . . [700] prosecuting attorney asks to have Jacob put to torture . . [701] having reiterated his denial, the application of torture was ordered. He was placed on a gun carriage at a distance from the fire, . . and having applied it in a manner that he felt the heat, he cried out denying . . The second torture proceedings took place [the next day.] . . continued to deny . . The third application was like the first two. Jacob maintained his innocence "

Sentence pronounced in 1778 by Galvez, on the advice of Odoardo, his assessor: that [701] " Clement, convicted . . I . . do condemn . . to the penalty of death and . . order . . that he be mounted on a beast of burden with a halter around his neck, bound feet and hands, with the voice of the town crier who will make known his crime, . . [702] thus carried through the public . . streets to the gallows where he will be whipped and afterwards hanged . . his body will be put into a leather sack with a dog, a viper, a monkey and a cock, the mouth of the sack sewed up, . . pitched into the river. I . . absolve . . of the crime of homicide . . Jacob and . . Luis, but I find Jacob convicted of robbery and Luis of running away and committing petty thefts, I . . condemn them to two hundred lashes at the foot of the gallows . . Jacob . . will be delivered to his master who will keep him in chains for three years, with the charge to watch particularly over his conduct. . . I order that the Reverend Father Vicar be notified . . so as to provide the criminal with the spiritual help " " The sentence is carried into execution . . [703] by Miguel, the negro executioner "

Beauregard v. Ximenes, 13 La. Hist. Q. 176, January 1778. " mortgaged . . Adelaide, aged 16 years, with her daughter, aged 4 months,"

Re La Cabanne, 13 La. Hist. Q. 339, March 1778. " the mulattress . . Magdalena . . was seated on the steps of her master's house when Titon [La Cabanne], the carpenter, . . begged her to concede him favors as she had been accustomed to do before. . . She answered . . that she did not wish to have anything more to do with him and . . went into the house . . [340] she heard Titon throwing stones on top of her cabin, then she . . went to tell her master, . . He . . told Titon to . . go away and if he did not . . he would make a complaint of him. . . In about an hour Titon . . forced open the door. She was then in bed with . . captain of a boat, . . she felt the wound from a blow with a sword or knife, . . leaving Titon attacking Chabote . . she went in to complain to her master " La Cabanne denied all.

Chapron v. Mollere, 13 La. Hist. Q. 351, July 1778. " claims . . 260 pieces of wood, 12 feet long, of good quality, promised to be given in exchange for a negro."

Bustamente v. Josset, 13 La. Hist. Q. 355, October 1778. [356] " Naneta, native of Congo . . [357] given in payment . . for professional [medical] services to . . other negroes "

Blache v. Loreins, 13 La. Hist. Q. 361, October 1778. " The plaintiff presents a medical certificate, signed by Drs. Montegut and Vincent,

. . stating that they have visited . . slave belonging to . . Blache . . found him with a bubo [1] . . and a venereal canker such as characterizes syphilis. He declared . . he had acquired this illness on going up to Pointe Coupée. . . Blache sets forth that . . Loreins . . persuaded his negro, aged thirty-five . . a creole . . knowing the trade of a brick mason, a roofer and . . gardener, to absent himself . . [362] asks that he be ordered to indemnify him . . 2 pesos a day . . and also to pay the doctor's bill" The alcalde condemns defendant to pay 36 pesos and costs.

Janeta (a free mulattress) v. Darby, 13 La. Hist. Q. 525, December 1778. [526] "she says the amount [200 hard pesos] . . is . . due her for . . her services for five years when she lived with him serving him as wife and servant . . He [lieutenant of militia] made her . . go live with him. . . she . . had by him a little . . girl that has died . . [and] a little . . boy . . When he married . . he made her a note for 200 pesos," Darby says "the note . . was given for . . her daughter, and in case he should take possession of her, this . . paper had to be null as this sum was for her support, . . when she fell ill he took her into his house but on the request of the mulattress she took her to hers . . this paper becomes null because the child's death ends its conditions, besides he paid the surgeon and [8 pesos] for the funeral" The suit was settled out of court.

De Villiers v. Marie Luisa, called Trisa (a free negress), 13 La. Hist. Q. 540, March 1779. "Chevalier . . de Villiers presents . . note and claims a debt of 590 hard pesos and asks to have her verify her mark and acknowledge the debt. Trisa or Iris denies . . [541] the two witnesses to the note . . declare . . they have seen Iris . . make the sign of the cross at the bottom . . writ of execution . . ordered issued."

Baure v. Soubadon, 13 La. Hist. Q. 547, April 1779. "he notified Mrs. Soubadon that she must pay 103 piastres that she owes for the [103] days' labor of the negroes who worked to stop the crevasse on her plantation."

Morgan v. Bienvenu, 13 La. Hist. Q. 686, May 1779. [690] "sold to Mr. LaPointe [his brother-in-law] . . a mulattress, aged about 30 years, with her two daughters for 1200 piastres and a third child, a boy, was sold to Mr. LaPointe ten years after for 400 piastres."

De Villiers v. Le Breton, 13 La. Hist. Q. 694, May 1779. [696] "6½ reales [a day] is the most just price to pay [slave] labor for repairing the levees."

Re Angelica, 3 La. Hist. Q. 700, July 1779 "Angelica, a negress, quartered at Antonio Ramis' place, to whom she has paid the price for her freedom with the exception of a small amount, petitions saying that for the great love she bears her grand-child, . . a slave of Santiago Porta she has begged an alms from various charitable people to buy her freedom and . . names . . appraiser . . and prays that . . owner, be ordered to appoint his and [that having been] done that she may be permitted

[1] "inflammatory swelling in the groin or armpit."

to buy . . and that an act of emancipation be issued to her. . . [Alcalde] grants her petition . . orders . . Porta to name his [appraiser] within three days . . [or] the Court will proceed with the naming of one for him." Her appraiser puts [701] " a value of 175 pesos on Maria Antonia, aged four . . [his] 200 pesos."

Succession of Marie Eva La Branche, 14 La. Hist. Q. 119, September 1779. [120] " the Alcalde appoints Baure [her husband] guardian of the estate . . Broutin, defender of the absent heirs . . [123] Joseph Casenave . . a free mulatto . . offers to pay cash for " " Magdalena . . and also the little mulatto son of petitioner and of Magdalena, . . prays that [they] . . be not put up for sale at public auction but . . be given letters of emancipation . . Alcalde . . orders the act of emancipation executed . . and this being done, Casenave pays in cash . . the prices at which they were valued in the inventory." [127] " Broutin [in March 1780] . . petitions for the cancellation of the adjudication made to him at the auction [in December 1779] . . of a thirteen year old . . boy . . he has discovered . . [he] is suffering with ring-worm of the scalp and Baure did not disclose this, . . asks that the boy be examined by . . surgeon of the Charity Hospital and that he be required to declare under oath the nature of the malady and if the slave has not had it . . a year, . . three doctors examine . . and each . . says . . for the present on account of his youth it cannot be cured, but he may get well in time. . . they cannot assure the court of the result of any attempted cure as he might die under treatment. . . The Alcalde . . orders the mulatto reappraised . . his value [was fixed] at 300 pesos. . . sold at auction . . to . . Macarty for 305 pesos." [129] " Broutin . . claims that Baure did not have his wife's consent to the emancipation " " on November 4, 1778, . . [of] his ' creole negress Marion, age forty-five,' . . Louisa or Louison, . . [and] Andres, . . an overseer of the plantation . . he asks that one-half of their value be included in the estate . . after they have been appraised and sold at public auction thereby giving Baure the opportunity to buy them and give them their liberty from his own money. . . [130] Alcalde . . condemns Baure to pay one-half . . since they were community property . . [The appraisers] report . . Louison and Andres, both aged 62, . . useless for work because of their advanced age. Marion . . is languid, is sickly, has a bad color and an infirmity of the chest and they value her at 200 pesos."

Succession of Marie Rose de Verges, 14 La. Hist. Q. 132, November 1779. [134] " To meet the testimony . . that Prevost has lost many slaves, Broutin [curator] asks that he be ordered to produce their burial certificates as is customary according to law."

Succession of Poupar, 14 La. Hist. Q. 144, November 1779. [145] " A run away negress . . has returned, and Broutin [curator] asks for an appraisement . . to be sold with the rest of the estate. She is appraised at 400 pesos."

De Lanzos v. Santilly, 14 La. Hist. Q. 150, December 1779. " Manuel Lanzos, Lieutenant of Infantry . . sets forth that . . he . . wishes to give "

" Mr. Santilly's brown slave, Maria, . . her liberty first of all in recompense for her services and secondly to fulfill the will of our Sovereign to redeem from captivity all who are so held, and as the law provides. . . He . . alleges a fear that Santilly moved by passion, or cruelty has inflicted [may inflict ?] this poor unfortunate woman with some frightful punishment or torture. To prevent such . . he asks that the escribano take the slave from her master's house . . that she be deposited in the Charity Hospital, or wherever the Governor may suggest. That she be granted her freedom, and the escribano be authorized to execute the proper act of emancipation according to the Royal Ordinance of Alcavala. That whatever is . . necessary to purchase the liberty . . will be promptly paid by him . . [151] Santilly, Chevalier of the Royal and Military Order of St. Louis, testifies that his slave, Maria, was born in his house, daughter of a savage, (Indian) his slave . . Mazange . . testifies that . . he removed Marie [*sic*] Santilly . . and placed her with Manuel Armesto as is customary, . . Santilly names . . appraiser . . accepted . . but before anything further is done . . Santilly and . . Lanzos, in a joint petition, say they have come to an agreement by the former selling the slave to the latter "

Broutin v. Naneta Chebart (a free mulattress), 14 La. Hist. Q. 275, January 1780. [276] " Broutin's petition alleging that at a public auction of . . Baure's effects [1] he bought a negress, Maturina.[2] In 1773 Baure had promised, verbally, to sell [her] . . to Naneta Chabert . . for 250 pesos . . Naneta [agreeing] . . to free Maturina when the latter had paid her this amount. . . that Maturina has already paid Naneta 192 pesos . . four exhibits . . 55 pesos delivered to Enriqueta [Arieta], a free mulattress, then a slave . . to deliver to her daughter, Naneta. . . in the presence of . . Beloty, late sergeant . . who delivered to Maturina a receipt from Mariana Dela [a free mulattress], which she accepted thinking it . . from Naneta. . . that at the same time Maturina delivered 100 pesos to Jacinto Panis which he also gave to Naneta. . . also the 23 pesos that Maturina turned over to Naneta, receipted for by Arieta, and 14 pesos . . as appears from Naneta's receipt, . . that Naneta . . in place of buying Maturina . . bought with this . . money the freedom of her own mother, Enriqueta, . . interrogatorios . . answered . . by Iris [a free negress] . . [277] Arieta, the grifa, . . Mariana Dela . . [278] Panis . . Broutin presents . . petition [that] . . 192 pesos . . be returned to Maturina . . [279] Alcalde . . renders judgment [in 1782] condemning Naneta Chabert to pay . . Broutin, Maturina's master, 100 pesos which by her declaration she owes; . . Maturina . . now . . petitions for a writ of execution against Naneta Chabert . . who has not paid . . [Alcalde] orders the writ . . issued."

Re Mary Glass, 6 La. Hist. Q. 589, February 1780. The prisoner [592] " was a free quadroon from ' the North of the Carolinas,' . . In the charge it is stated that . . she . . had tortured and slowly done to death

[1] Alexandro Baure, jr., died in 1779. 14 La. Hist. Q. 122.
[2] See Baure *v.* Naneta, p. 428, *supra.*

. . Emilia, a fifteen-year-old white girl," at [591] "English Point Coupée in the District of Baton Rouge [1] in [December] 1779." The witnesses included whites, free negroes, slaves and three Choctaw Indians. The last [640] "through their interpreter . . testify . . that they saw Marie Glase [*sic*] cruelly whip the young white girl . . that they told [her] . . that a white woman was not whipped, that it was done only to slaves, that . . [she] answered that this young girl was her slave, and also a young grif who is at Mr. Alexandre's and is mutilated [by her]. . . that they were Red men, but that seeing this young girl so badly whipped made their hearts ache." [635] "A runaway negro . . declares that whilst a fugitive he lived at Marie Glase's house . . had often seen . . [her] tie Emilia up and whip her as one would a negro." "he helped to bury [her] . . assisted by two negroes," The prisoner was found guilty and sentenced [642] "to have her right hand cutt off under the Gallous, then immediately to be hanged . . And when cutt down, her head to be severed . . and stuck up upon a pole at her former place of residence . . and her right hand to be nailed to the same Post." Sentence confirmed by the military commandant of the fort of Baton Rouge. The papers were sent to New Orleans, and the sentence was confirmed [649] "by Don Pedro Piernas, governor *ad interim* . . together with his general assessor, . . January 19, 1781." She was executed on July 26.

Succession of La Frenière, 14 La. Hist. Q. 283, March 1780. [284] "Le Bougere [overseer] enters . . claim . . for the labor of his negro who . . worked with twenty-three others to make the crop . . agreement . . [for] one twenty-fourth part of all produced . . [in] 1778 and 1779. . . [285] Alcalde . . rules that Le Bougere be paid 200 pesos for the use of his slave. . . [286] Surgeon presents a bill for 193 livres 15 sols, or 43 pesos 6 reales for medical services for Mr. de La Frenière and his slaves. . . Alcalde . . orders it paid"

Pollock v. Shakespeare, 14 La. Hist. Q. 475, April 1780. [476] "witness . . says . . that . . the negro Guy . . was captured by Captain [James] Willing a little above Natchez in a canoe with Mr. Easton, with the rest of the negroes and that they were brought to the city by him. It appears . to have been a fair capture.[2] . . Guy under oath taken on the Holy Evangelists because he is a Protestant declares . . Mr. Shakespeare [his former owner] asked him one day if he wished to go with him to Pensacola and . . witness . . answered yes and . . embarked on

[1] Baton Rouge had been captured by the Spanish in September. "Under the terms of the capitulation the English magistrates . . were permitted to continue for the time being in the exercise of their functions, . . the culprits [Mary Glass and her husband] were duly investigated according to the French method, . . contemporaneously the English judges conducted a similar inquiry . . The Spanish commander stood by . . and thereafter approved their verdict and confirmed the sentence. These papers were then forwarded to Governor Galvez at New Orleans, and . . approved by Acting Gov. Pedro Piernas and Judge Postigo, his Assessor. . . [Thus] there is preserved . . this very interesting illustration of the three legal systems that prevailed at that moment in Baton Rouge." Henry P. Dart's introduction to the case.

[2] [476] "the negro . . [therefore] belongs, as it is supposed, to the American Congress."

an English frigate that was anchored at the Point . . Pollack [agent of the American colonies] . . asks that . . Davies" [475] "in whose possession the negro is now held be ordered to deliver him to the petitioner. He has been told that the slave is really in prison and he asks that he be held there until this suit is finished." Judgment: [476] "Davies must restore Guy . . Shakespeare . . to pay costs."

Elena v. Desprez, 14 La. Hist. Q. 619, August 1780. "Elena, a free negress, sets forth that while she was a slave she had a son . . who now belongs to . . Desprez. A free negro, . . his father, has sent her the money to buy his freedom and . . [620] she names . . her appraiser . . Piernas [alcalde] rules: . . Let Desprez be notified to name his . . the two appraisers . . cannot come to an agreement. Piernas names . . mediator. He . . qualifies, placing the value at 600 pesos. . . The mother asks . . that Desprez be ordered . . to have a letter of emancipation drawn up for him at this price. . . a new ruling . . let another [appraiser] . . in discord . . be appointed. . . qualifies, estimating Magloir at 800 pesos. . . The petitioner . . asks to have the decree naming a fourth appraiser . . revoked as it is contrary to law . . [claims] that she is being overcharged. He . . only cost 500 pesos at public auction to be paid for within one year and if . . [621] sold for cash he would have been bought for 400 pesos . . the present legitimate value of a slave who knows no trade. . . a joiner ['a mulatto of 25, who is a master carpenter,'] . . was freed for 750 pesos, . . an expert blacksmith . . was valued . . at 800 pesos. . . Desprez puts too high a value on her son, a negro without a trade, a drunkard and a thief. . . a carpenter . . a master of his trade, belonging to the Capuchins, . . was valued at 800 pesos. . . Petition denied, let the parties appoint new appraisers . . a new appraisement . . that the negro is worth 800 pesos."

Re Espinosa, 14 La. Hist. Q. 622, August 1780. [623] "makes voyages to the Coast about twenty leagues away . . with the merchandise that he finds appropriate . . [624] an iron collar for negroes, that was bought from a sailor . . from Mobile,"

Mallines v. Bonne, 14 La. Hist. Q. 634, September 1780. "a negro named Francisco, aged 25, a creole, adjudicated to . . Bonne for 850 pesos."

Re Nicholas, 15 La. Hist. Q. 164, October 1780. Petition for freedom "sets forth that . . For the last four years it has been the intention of his owners to sell him for 400 pesos, but they could find no purchaser to give that price for a man without any trade . . and suffering much from stomach troubles. He has . . earned 400 pesos which he offers for his redemption. He prays that his owner, or the guardian of her property [Mercier] receive the 400 pesos, or that each party name . . persons experienced in appraising slaves . . [165] The two appraisers differ . . Cheval [for Mercier] fixes 1200 pesos and Picou [for Nicholas] 800 . . Nicholas asks for a third in discord. . . He . . values Nicholas at 800 . . which the slave agrees to pay . . Piernas [acting governor] . . orders the act of emancipation to be issued."

Maria v. Methode, 15 La. Hist. Q. 165, November 1780. "Maria, called Mariquina, presents a declaration, dated . . April 1, 1779, and signed by Methode . . that he permits her to go with her son . . where she pleases, to live, because he has given her her freedom, since July, last, . . which she has enjoyed . . until now when he proposes to sell her . . Methode's declaration . . 1780 . . declares the paper is not to give her freedom, or even a promise of it. It is only . . a permit that he wrote . . [166] so that she might travel honorably as he is accustomed to do with all his slaves. She had asked him various times for her liberty, claiming illness. . . Galvez . . Governor, rules: . . that Maria and her son are free and . . Methode must grant her letter of emancipation . . with a warning that if he does not . . another suit will be brought"

De Kernion v. Paquet, 15 La. Hist. Q. 174, December 1780. "1777 . . act of sale before . . Commander and Judge of the German Coast . . by which Huchet de Kernion sells to Jean Paquet, . . [175] a free mulatto, . . land, measuring 16 arpents front, . . for 13,000 livres . . payable . . 800 in piastres gourdes in . . 1778; and the 1800 piastres remaining in . . 1779. . . Kernion has received 500 piastres on account . . [but] petitions for a writ of execution" for 2600 pesos. Granted.

Dewees v. Morgan, 1 Mart. La. 1, Fall 1809. "an action brought to recover the price of a negro man, sold with his wife and children to the plaintiff, at public auction, by the defendant, consignee of a cargo of negroes. . . man . . died ten or twelve days after the sale, . . evidence that the slave had been slightly unwell a few days before the sale, though the physician who attended him did not consider him, at the time, as dangerously ill; but the doctor, under whose care he was placed by his new master, testified that the negro died of the yellow fever, . . incurable in its stage at the time of the sale. The defendant proved that, before the sale began, notice was given . . [2] that if any objection lay to any of the negroes, it should be communicated . . the following day—that the plaintiff . . had forborne . . until the third day. No fraud was suggested, nor was it pretended that the defendant was aware of the dangerous situation of the slave." Held: [7] "that the plaintiff do recover the consideration paid."

Brown v. Fort and Giraud, 1 Mart. La. 34, Fall 1809. "Action upon a note . . The ship *Clara,* owned by Foster and Giraud of New York, being libelled in the district court of the United States . . under the act of Congress, prohibiting the importation of slaves,[1] . . the defendants were desired by the owners to act for them, and consequently, the ship being afterwards condemned and sold, they brought her in and gave their note . . to the plaintiff, collector of the port . . The forfeiture being remitted by law, the defendants refused payment. . . [36] the plaintiff voluntarily suffered a Non Suit."

[1] Act of Feb. 28, 1803. 2 St. at L. 205.

Debora v. Coffin and Wife, 1 Mart. La. 40, Fall 1809. In 1809 "the defendants [[56] 'French emigrants'] were banished from Cuba, and all their property, (excepting the negroes . . who followed their master) had . . been . . confiscated"

The Amiable Lucy v. U. S., 6 Cranch (U. S.) 330, February 1810. The district court of the United States, for the district of Orleans, had "condemned the brigantine *Lucy,* for importing a slave from the West Indies, contrary to the act of congress of the 28th of February, 1803,[1] . . [331] the territorial legislature [of Orleans] had never passed any law prohibiting the importation of slaves." Held: the act of February 28, 1803, does not apply.

Dormenon's Case, 1 Mart. La. 129, Spring 1810. In June 1809 "the following rule was obtained against . . Dormenon. . . 'that . . Dormenon show cause . . why his name as . . counsellor at law, should not be stricken off the rolls . . for having . . headed . . and assisted the negroes of St. Domingo, in their horrible massacres, and other outrages against the whites, in and about 1793.' . . [130] Mr. Dormenon . . denied the charge. . . [131] It is proved that Mr. Dormenon was a municipal officer under the commissaries Polverell and Santhonax, in . . 1793, when the general freedom of the slaves [in St. Domingo] was proclaimed. . . that in that character, wearing a scarf, his badge of office, he marched at the head of the brigands, acting in concert with their leaders, whose sole purpose . . was the indiscriminate . . massacre of the whites who refused to conform to the orders of the commissaries;"

Rule made absolute: [132] "Had the same evidence . . accompanied Mr. Dormenon's application for admission to the bar, I have no doubt he would have been refused. The court now being possessed of it, it is equally their duty to exclude him. . . no person who has acted in concert with the negroes and mulattoes of St. Domingo, in destroying the whites, ought to hold any kind of office here, however fair their conduct may since have been." [Lewis, J.] Order rescinded in 1812: [2 Mart. La. 305] "he has lately been elected a member of the house of representatives, . . The house have unanimously come to a resolution, that the charges . . are unfounded," [Lewis, J.]

Mitchell v. Comyns, 1 Mart. La. 133, Spring 1810. "the plaintiff was the owner of a negro girl, who left his plantation, in . . Maryland, without his . . knowledge, and came to . . New Orleans, where she lived with the defendant, . . [134] The answer . . set up a claim . . grounded on a contract of sale . . entered into, before a notary public, in . . New Orleans, . . the vendor was a dealer in negroes." Judgment for the plaintiff.

Macarty v. Bagnieres, 1 Mart. La. 149, Fall 1810. "On the sale of a negro it was stipulated that the vendor would be liable to a warranty, in the sole case of one of the maladies specified in the Civil Code, and the plaintiff states that the negro was, in the knowledge of the defendant,

[1] 2 St. at L. 205.

addicted to the habit of running away, . . not communicated to him. . . the negro was kept in jail for five months preceding the day of sale, for running away; but the defendant contends that . . *one act* . . [150] does not constitute *a habit*. But . . soon after the sale the negro ran away again,"

Judgment for plaintiff: " We . . conclude from . . the unwillingness of the defendant to trust him out of jail, that the negro was addicted to running away, . . This is a redhibitory defect in the Civil Code, 359, 367. . . In order that a redhibitory defect may be excluded from among those which give a right of action to the vendee, it must have been excluded *in good faith* by a particular clause. . . [151] if the vendor has knowledge of the defect and instead of declaring it, . . stipulates he shall not be liable on account of it, his dissimulation is a fraud which will render him liable to the warranty, notwithstanding the clause derogating to the plaintiff's right."

Adelle v. Beauregard, 1 Mart. La. 183, Fall 1810. " The plaintiff, a woman of color, claimed her freedom." Attorney for the defendant: " The plaintiff must prove that she was born free or has been emancipated." Attorney for the plaintiff: " Even if the defendant could prove his possession of the plaintiff as his slave, still the Spanish law would require him to produce some written title, or at least that he acquired possession of her without fraud. Partida 3, tit. 14, l. 5." By the Court: " Although it is in general correct, to require the plaintiff to produce his proof before the defendant . . it is otherwise, when the question is slavery or freedom. The law cited by the plaintiff is certainly applicable . . We do not say that it would be so, if the plaintiff were a negro, who perhaps would be required to establish his right by such evidence, as would destroy the force of the presumption arising from color; . . [184] Persons of color [on the other hand] may have descended from Indians on both sides, from a white parent, or mulatto parents in possession of their freedom. Considering how much probability there is in favor of the liberty of those persons, they ought not to be deprived of it upon mere presumption," " The defendant then proved he had brought the plaintiff from the West Indies—had placed her in a boarding school in New York, and in a few years after, sent for her to New Orleans, where she resided a few months with him, and left his house, and in a few days after brought the present suit." Judgment for plaintiff. " The plaintiff claimed wages for the time she had resided with the defendant, but the court, inclining to view her services as the return of gratitude, for the trouble and expense attending her education, withdrew her claim therefor."

Daublin v. Mayor etc. of New Orleans, 1 Mart. La. 185, Fall 1810. " The plaintiff . . had built a house ['eighteen feet in the street'], and defendants sent the *forçats* or galley slaves, who . . destroyed the house and drove off the plaintiff " Judgment for the defendants.

Graham v. Forker and Elan, 1 Mart. La. 197, Spring 1811. " One of the defendants having left the territory . . and the process being left

at the house in which he last dwelt, there being no white person in the family." Martin, J.: " the service was bad."

Navigation Co. v. Mayor etc. of New Orleans, 1 Mart. La. 269, Spring 1811. *Moniteur de la Louisiane,* May 26, 1794: [270] " The intention of the government is . . to request from the inhabitants of the city [and neighborhood] . . negroes . . to clear the ground through which the [Carondelet] canal was to pass; promising that this being done, the [King's] chain negroes [1] would dig the canal. . . [272] the inhabitants . . freely sent their slaves " [2 Mart. La. 13] " such individuals as had none, working themselves, or furnishing an equivalent in money. The number of negroes [furnished by their owners] . . was , on an average, after the first year, from 160 to 175. The *presidios,* or convicts, were about the same number; but working only when . . [14] not at work on the fortifications," [13] " The negroes dug and the convicts carried away the dirt. . . The negroes were fed by government, and went to their masters at night."

Tonnelier v. Maurin, 2 Mart. La. 206, Spring 1812. " The plaintiff [' a person of color '] lived with the defendant's testator as his *ménagère.* She had with her . . several grown daughters . . he hired out some of the plaintiff's slaves, and received their wages. . . for several years, in Hispaniola, St. Yago de Cuba and New Orleans."

Judgment for defendant: " There being no evidence . . of any claim of hers in the lifetime of the testator . . it must be presumed that the parties had joined their stock for their mutual support. The plaintiff might as well claim wages for her services in the house, or might be sued for her board and that of her children."

State v. Cecil, 2 Mart. La. 208, Spring 1812. " A woman of color was offered as a witness . . and a gentleman swore that she was once his slave, but he had liberated her. She had a copy of the act of liberation; the original of which was in New York."

Witness sworn: " The woman being of color, the presumption is that she was born free. . . But this presumption is destroyed by the declaration of her former master. . . however, . . it establishes her emancipation in the same breath. Neither are we ready to say that when . . a fact comes . . collaterally to be proved, the rules of evidence are as strictly to be insisted on, as when the facts in issue are to be made out."

Jacob et al. v. Ursuline Nuns, 2 Mart. La. 269, Fall 1812. " The petition stated that the plaintiffs' father, a free black man, acted as overseer on the plantation of the defendants, since 1796, till his death in 1811—that in 1801, the superior of the convent made a donation to him of two arpents of land fronting the river . . for his services; . . 1804, the superior, and nuns . . confirmed the donation—that he remained in possession . . till his death, devising it to the plaintiffs—and that the nuns have since sold the premises, and the purchaser has drove off the plaintiffs.

[1] "the convicts (who were about to be sent to Pensacola)" were allowed "to remain." 2 Mart. La. 10.

. . [270] produced a writing, subscribed by the superior . . by which she makes a donation . . Next . . an instrument, by which the superior and vocal nuns give to Jacob the usufruct . . [271] By the Court. These instruments do not bind the community, being made without the requisite license. . . [272] a notary attended, with a proper deed of emancipation, executed [in 1796] with the license of the bishop of Louisiana. . . He was 60 years of age when liberated, . . The will of the deceased contained a clause that he owed nothing to anybody, neither did any person owe him any thing: and the defendants proved that a number of muskets being seized on their plantation, as they had no free person on it, they were advised to free him . . [273] that with a very fine gang of negroes, the plantation made nothing to sell, supplying the convent with milk, vegetables, rice, corn and fuel; the number of negroes thereon . . varied from 18 to 42. The wages of overseers were . . from five to one hundred dollars a month."

Charge to the jury: [275] "If it be believed that no wages were promised . . for his services before the donation, it is for the jury to determine whether there is room to believe that any were expected, or promised, for the posterior services—whether they were not rendered . . on the expectation that the nuns would provide for his support." The jury could not agree on a verdict.

Macarty's Case, 2 Mart. La. 279, Fall 1812. "*Habeas corpus.* The goaler [*sic*] produced . . a warrant from a parish judge stating that from . . depositions . . there was strong suspicion that the prisoner was concerned in an insurrection of the slaves, commanding . . the goaler to . . keep him till . . discharged in due course of law. The depositions . . charged him with conversations, from which . . a disposition to inimity [*sic*] against the whites, were manifest; . . and on hearsay, with expressions directly tending to raise an insurrection. . . the attorney general, informed the Court, he had lately sent to the grand jury a bill against the prisoner, and . . witnesses were now before them" By the Court: "The prisoner must . . be committed . . until the morning, when, if the bill be found not a true bill, he will be discharged."

Meunier v. Duperron, 3 Mart. La. 285, April 1814. "The plaintiff [a constable] having, at the instigation of the defendant, arrested a free negro woman,[1] and shipped her off, was prosecuted, found guilty, fined, imprisoned [for five months], and condemned to heavy damages. . . he brought the present action to compel the [defendant] . . to indemnify him, . . defendant demurred, . . judgment for him," Affirmed: [288] "The verdict of the jury . . settles this"

Ogden v. Blackman, 3 Mart. La. 305, June 1814. "a trial and condemnation of his slave was had before . . a justice of the peace, assisted by three freeholders, on a charge of larceny, according to an act of the territorial legislature, . . called the Black Code, . . [306] the slave was

[1] [286] "the defendant represented the wench as his runaway slave."

sentenced to corporeal punishment, and the master adjudged to pay five hundred dollars,"

St. Maxent's Syndic v. Sigur, 3 Mart. La. 371, June 1814. " in 1789. . . [he] purchased . . five negroes, for $6,000;"

Vernot v. Yocum, 3 Mart. La. 406, August 1814. [407] " The bill of sale for the negro . . was placed in the hands of Johnston . . who held it as a stake against another negro and $200 . . to be delivered as a forfeit by either party who should . . fail to run the race."

The Brig Alerta v. Moran, 9 Cranch (U. S.) 359, March 1815. " Blas Moran, . . a native and resident of . . Cuba, . . is the owner of the brig *Alerta* and cargo consisting of 170 slaves, which, on a voyage from the coast of Africa to the Havanna, was, sometime in . . June, 1810, when within a few leagues of Havanna, captured on the high seas by the *L'Epine,* bearing French colors; that a prize master was put on board the *Alerta,* and 17 of the slaves taken out, after which the prize was ordered to steer for the Balize," near [367] " to which she is found by Captain Allen in distress in consequence of a severe gale, to which she had been exposed, and of the want of provisions. . . he conducted her in safety to New Orleans." The *L'Epine* was manned with a crew [360] " composed partly of persons obtained at New Orleans," [366] " Some . . are proved to be native citizens; others were residents domiciled in New Orleans, . . and others again were slaves belonging to the citizens of that place, who appear to have been seduced from the service of their masters."

Held: the sentence of restitution to Moran of the ship and of the slaves left on board [367] " ought ot be affirmed with costs." " Nothing could be more remote from the intentions of the captain of the privateer than to render a service to this ship and her cargo. So far from it, he committed an unwarrantable spoliation of the cargo by selling fourteen [*sic*] of the slaves, part thereof, to an American whom he met at sea; and he most certainly intended to have smuggled the residue of the slaves into Grand Terre or some other part of the coast, and there to have disposed of them." [Washington, J.]

Bayon v. Prevot, 4 Mart. La. 58, December 1815. " the plaintiff was owner of a mulatto slave, who ran away, and was arrested and confined in the jail . . of New Orleans; . . the defendant, a neighbor . . [60] went to see him, . . the slave had the dysentery; . . [offered,] as he had a boat, . . [to] take him up to his master," " if the deponent [to whom Bayon had written concerning the slave] would deliver the slave to him, . . on delivering the slave, the deponent informed the defendant the slave was a bad one, and would, if not properly attended to, make his escape; . . the slave . . was so enfeebled . . that he fell down in going on board, and once into the water. . . On the second . . night, he ran away."

Held: [65] " The taking the slave . . from the . . unwholesome air of a prison, was . . well intended . . [66] his state of sickness would not allow him to be confined. His . . escape is the misfortune of the owner, . . agent . . not . . responsible." [Mathews, J.]

Bayon v. Mollere et al., 4 Mart. La. 66, December 1815. "The petition stated, that the defendants forcibly took . . a negro woman slave and her four children; that, in consequence of the . . ill-treatment of the defendants, the woman died,"

Baron v. Phelan, 4 Mart. La. 88, February 1816. [90] "the statement of facts . . attributes to them skill in the particular manufacture in which they were employed by their master, . . they were worth two or three dollars a-day each,"

St. Maxent's Syndics v. Puche, 4 Mart. La. 193, March 1816. Proclamation, November 17, 1758, of the sale of a plantation "with the . . dwelling-house . . saw-mill . . rice-mill . . sugar-mill, and brick-yard . . a negro camp,"

Guillot v. Dossat, 4 Mart. La. 203, March 1816. "The parties were joint owners of a slave, the plaintiff for nineteen, the defendant for one-twentieth. During the contest for the ownership, he was kept . . by the defendant, . . ordered by the Court to deliver him to the sheriff, that a division might take place by a licitation, failed to produce him . . [as] the slave ran away, without any fault on the part of the defendant . . [who] did not take any step for the capture . . neither did he apprise the plaintiff . . [206] It is true, he had the name . . registered with the clerk of the Parish Court, under a provision of an act"[1] Judgment: [208] "that the plaintiff do recover . . seven hundred and sixty dollars, being the nineteen-twentieths of . . the agreed value"

Morgan v. M'Gowan, 4 Mart. La. 209, March 1816. "the negro woman . . was affected with a disease of the liver . . [210] useless . . until her death,"

Victoire v. Dussuau, 4 Mart. La. 212, March 1816. "the plaintiff, here the appellant, offered parol testimony to prove a contract between the defendant . . and herself, whereby the latter, who holds her in slavery, agreed to emancipate her on . . reimbursement of the price which she had paid . . testimony rejected by the parish judge,"

Affirmed: "The right . . to maintain an action for her . . freedom, on this contract, is unequivocally declared (3 Part., 2, 8), and according to the general provisions of the Spanish law, such a contract may be . . proven by oral testimony . . . virtually repealed by the Civil Code. . . [213] between free persons no valid . . [214] contract can be made, so as to alter the title to slaves, unless it be in writing;" "Slaves are incapable of making any contract . . except for their freedom . . and as, in this respect, they assume, in some degree, the standing . . of free persons, the rules of law which . . govern the contracts of the latter must be applicable to those of the former, where the object of the agreement is the same." [Mathews, J.]

Pigeau v. Duvenay, 4 Mart. La. 265, April 1816. "The plaintiff [a white man] sues for the estate of his natural daughter, a free woman

[1] Martin's *Digest,* Black Code, n. 26.

of color, who died intestate, without a mother or issue. The defendant claims . . in his own right, and that of other persons of color . . the natural brothers and sisters of the deceased. . . [266] [In] the registry of baptism of the deceased, . . the plaintiff is mentioned as her natural father, and . . a record of the Court of Probates . . shows that the plaintiff was, on the application of the deceased, appointed her curator, *ad bono,* as her natural father."

Judgment for the defendant: " proof of *paternity* does not suffice; the *acknowledgment* must have been proved.[1] . . [268] there has been no such acknowledgment." [Martin, J.]

Beard v. Poydras, 4 Mart. La. 348, May 1816. " action . . for the recovery of a tract of land . . [349] The defendant . . claimed title . . under a deed from the heirs of B. Farrar," Will of Christopher Beard, 1789: [350] " that my negroes shall be put on my land . . to make tobacco, indigo, or whatever . . most advantageous; and that, in . . two or three years, if my friends should apply, my executors . . may divide the estate between them, and a mulatto wench, hereafter mentioned; . . and that a little mulatto girl, named Venus, now on the plantation of B. Farrar, esq., receive a good education, and an equal dividend of my estate." [351] " Beard had fifteen negroes on the plantation of B. Farrar. Before, as well as after his death [in 1789], Farrar had possession of his land," Will of Farrar who died in 1790: " I desire my executors to make free . . Venus, a daughter of my negro woman Nancy, supposed to be a bastard child of C. Beard, . . I . . bequeath to . . Venus six negroes, men and women, that is, three of each, to be delivered when she arrives at the age of eighteen; . . [352] condition I . . make, . . that the above freedom and donation are in consideration of . . every claim, whatever she may have, to any estate left by . . Beard; . . I desire that . . Venus be properly educated in the christian religion, and taught to read and write; and when of proper age, that she may be put to a mantua-maker, and learn the business; and my executors to see that she is well used, and all this at the expense of my estate." Venus was " born about . . 1785, . . [353] has been considered as free since . . [Farrar's] death," In 1801 she gave an order [352] " on the executors of Farrar . . in favor of . . Mulzach, for a part of the legacy . . accepted by the executors, as an evidence of her having commuted her rights, under the will of Beard, for the said legacy;" [349] " the plaintiff offered several witnesses, to prove, that she was born free, was so reputed, and had been acknowledged as such, by Farrar, before Beard's death. The district judge refused to receive their testimony "

Judgment reversed and the case remanded: [365] " The mere reading of [Farrar's will] . . is no evidence that the plaintiff intended to use it as a title to freedom, . . [368] The witnesses . . ought . . to have been heard, even upon the fact of emancipation, supposing the testimony tendered such as the law 1, tit. 22, Partida 4, does admit. . . [369] The plaintiff, notwithstanding the rejection of that evidence, had judg-

[1] Civil Code of 1808, p. 156, art. 48.

ment in her favor . . and did we agree with the district judge on the merits of the case, it would be unnecessary to send it back;" [Derbigny, J.]

Johnson v. Boon, 4 Mart. La. 380, May 1816. "brought these slaves, with his family, from North Carolina to Georgia and Florida. . . the latter place . . was under the Spanish government, and it continued so long afterwards;"

Forsyth et al. v. Nash,[1] 4 Mart. La. 385, June 1816. "The plaintiffs . . claim the defendant, a negro man, as their slave. . . The evidence . . is—1. A bill of sale . . 5th of September, 1803, . . executed at Detroit, . . 2. The deposition . . that there was at Detroit a mercantile house . . Kinsey and Forsyth, . . 4. The deposition . . the plaintiffs lived at Peoria, in the Illinois territory; . . employed [deponent] . . in 1813, to stop the defendant; that he took him up in New Orleans, and brought him before the mayor, where he confessed he had ran away from the plaintiffs ['who had promised him his freedom'], and did not like to return to them, on account of a wife and children he had in New Orleans. . . he ran away from Peoria about six years ago: . . [387] The defendant's counsel shows that in the territories of Michigan and the Illinois, . . *slavery* . . is *forbidden by law.*"

Held: [391] "The Parish court erred in sustaining the plaintiff's claim: its judgment is therefore . . reversed; . . judgment for the defendant, with costs." [389] "as the case affords no evidence of any residence of the defendant in any country in which slavery is lawful, this case must be determined by the laws of the country in which the defendant dwelt when he came to the hands of the plaintiff;" [Martin, J.]

Labranche v. Watkins, 4 Mart. La. 391, June 1816. [392] "The [runaway] slave was brought to jail . . 29th of July, 1813, and . . 16th of August the defendant [jailer] wrote to a person in New Orleans, to advertise the negro three times, . . no other evidence of any compliance . . except a newspaper . . 3d of September, . . The plaintiff [owner of the slave] . . [393] sent his son [in 1814] to claim the negro, with a letter to the parish judge, complaining that, from the defendant's neglect to advertise . . he had not till then any knowledge of his confinement. Eighty dollars was offered to the defendant for his charges; but he claimed one hundred and eighty. On the acknowledgment of the defendant's deputy, that the negro had been advertised in one paper only,[2] the parish judge made an order for his delivery, on payment of two months' expenses, and the fees of arrest; but the defendant refused to deliver [him.] . . It is admitted that the negro was sick; that, at the

[1] See "An Historical Detective Story," by Jacob P. Dunn, in *Proceedings* of the Mississippi Valley Historical Association, 1919-1920, p. 230.

[2] [394] "The 28th section of the first part of the Black Code provides that runaway slaves shall be advertised, in at least two newspapers, in French and English, during three months successively, and after that time, once a month during the remainder of the year. . . The next section provides, that, if the owner do not reclaim the negro within two years from the date of the advertisement . . he shall be sold by the sheriff, with the permission of the judge, after *three* advertisements,"

time of the plaintiff's application, the doctor's bill amounted to eight dollars, and afterwards rose to forty-one; that he was not confined . . attended the . . deputy as a servant." On August 29, 1815, the defendant sold the slave and bought him back the same day for the price at which he had sold him. " the District Court gave judgment that the plaintiff recover the negro . . and one hundred and eighty-five dollars and twenty-five cents for his damages, and the defendant appealed."

[396] " It is . . decreed, that the judgment . . be affirmed, with costs; and, the appeal being a frivolous one, that the plaintiff do further recover 10 per cent. on the amount of the judgment." [Martin, J.]

Dussuau v. Bredeaux, 4 Mart. La. 450, June 1816. " syndics of L. Dussuau, a free man of color, claim . . a female slave, . . [sold] at public auction . . for . . $885, payable . . 1815,"

Crocker v. Watkins, 4 Mart. La. 540, December 1816. [544] " negroes were worth more in 1816 than in 1812;"

Bore's Executor v. Quierry's Executor, 4 Mart. La. 545, December 1816. " Mary Bore, a free woman of color, . . is alleged to have been for a number of years in an universal partnership with . . Quierry, . . the object of . . suit is the recovery of one half of the property left by Quierry. The answer states that [she] . . [546] acknowledged herself his servant; . . rewarded by a legacy of $1500; . . lived in public concubinage with the defendant's testator, . . about thirty years . . she possessed, at that time, 400 dollars in cash and ten or twelve head of cattle, and both exerted their industry in common: he disposed of the proceeds of her property, and was heard . . to say . . [they] were partners and one half of the property belonged to her. . . when she came to live with him, he was settled on . . [547] land which he owned, and he held property distinct from hers . . she also held other property, in her own right, *viz.* a negro woman . . whom he had bought and conveyed to her. . . two suits instituted . . to recover her wages as a servant, during all the time . . and those of two female slaves of hers." Held: no universal partnership.

Stockdale v. Escaut, 4 Mart. La. 564, January 1817. Held: an authority to sell a slave must be written.

Duncan v. Cevallos's Executors, 4 Mart. La. 571, January 1817. " the plaintiff purchased from the defendants, a negro slave, for nine hundred dollars, . . [572] The defendants . . [in the bill of sale] warrant the negro . . free from redhibitory *diseases only,* . . but not as to any redhibitory *vice,* declaring that they do not know the slave. . . he is stated to be 25 . . *bon domestique, cocher et briquetier.* . . the slave was . . immediately after the sale, a worthless, idle, drunken fellow, and knew nothing of the business of a coachman. A witness introduced by the defendants, deposed . . the slave . . was the deceased's coachman and bore a good character. . . [573] the deceased's overseer, deposed . . that he was at first employed as a brickmaker, was next . . coachman, and afterwards the driver of his other slaves . . a very faithful servant, and had

the confidence of his master, who was very severe to his slaves; that he saw him drunk but once, and he never attempted to runaway, that the deceased gave 1800 dollars for him and his wife. . . the district judge gave judgment for the plaintiff,"

Reversed: [575] " the adjective *bon,* does not necessarily attach to any [substantive] but . . *domestique,* . . the rule of the common law of England is in opposition to that which we are to follow. The common law says, *verba fortius accipiuntur contra proferentem*: the civil, requires the construction to be *in favorem solutionis.*" [1] [Martin, J.]

Trudeau's Executor v. Robinette, 4 Mart. La. 577, January 1817. " The plaintiff claims the defendant as a slave, . . a mulatto woman born from a negro woman the slave of his testator: . . she . . is about to sail for . . Cuba. . . the plaintiff introduced a bill of sale from his testator to Gardette, and a reconveyance . . 1809 . . The defendant first introduced a letter of the plaintiff's testator . . 1808 . . 'Robinette, a child of my house, having always acted in a manner different from that of girls of her color, I am happy that she finds the opportunity of securing her happiness, especially at the eve of the stay, when her young mistress is under the necessity of calling her back near her, or of replacing her.' The testator then offers her to Gardette for 1000 dollars. 2. A bill of sale of Robinette, from . . Mather and . . [578] wife . . one of the testator's daughters, . . 1810, to . . Abat. 3. Another, from the latter to . . Tureau [*sic*] . . the same year. 4. One from the latter to the defendant's mother, now, and then, a free negro woman, . . 1811. 5. A deed of emancipation of the defendant . . 1812. . . [579] Lozano . . deposed that the defendant had been in the enjoyment of her freedom for some years past —that Gardette . . lives with her and has three or four children by her. The plaintiff proved that he had taken up and confined the defendant, but that she was liberated on an *habeas corpus.* To the introduction of the deed of emancipation, as evidence, the plaintiff objected, . . illegal, on its face. The defendant was stated in it to be . . *twenty four,* . . while the law forbids the emancipation . . under . . *thirty.*" [2] Objection overruled. Judgment for her reversed: 1. the deed was illegal; 2. she cannot contest the claimant's title.

Gale v. Davis, 4 Mart. La. 645, March 1817. [646] " married in North Carolina . . possessed of a negro slave . . emigrated . . to . . West Florida, . . 1778 . . came to settle in the island of Orleans,"

Fortier v. M'Donogh, 4 Mart. La. 718, May 1817. In 1815 [739] " a crevasse in the plaintiff's levee had inundated . . He had been ordered . . August . . to put two hundred negroes on his levee, . . September, the work was so little advanced, that a requisition of every working hand in the district became necessary . . [740] the police jury . . ordered that three dollars per cubic *toise* should be paid, instead of two dollars per day, as fixed by . . the resolution of the 15th of July. . . at the usual price . . women or old men would have been sent, . . a surveyor . . deposes

[1] "to lessen rather than to increase the obligation."
[2] Acts of 1807, p. 82, sect. 2.

that a stout negro can complete a cubic *toise* . . per day, only when the levee is but three feet high, and the dirt is at hand;"

Foster v. Dupre, 5 Mart. La. 6, June 1817. [8] "the plaintiffs, in . . 1809, were owners of the ship *Clara,* which sailed from . . New-York . . 8th of January . . the defendant was a passenger . . [Near] Governor's Island, . . a boat came along side, from which two negro women, the property of the defendant, were received on board. . . immediately put under the hatches . . till the ship got to sea, . . When the ship arrived at the mouth of the Mississippi, they were again put under the hatches until they were landed. . . Information was lodged with the collector, . . the ship . . was . . libelled . . and condemned as forfeited to the United States. The plaintiff spent in defending the suit $1449 75 and $150 in sending an express to . . Washington, to obtain a remission of the forfeiture, . . [9] about the time the ship was seized, several others, were so, for the same cause, having come . . from Baltimore and Charleston."

Petit v. Gillet, 5 Mart. La. 19, June 1817. [21] "The defendant . . claims title to the slaves . . by prescription. . . [22] bringing the mother from St. Domingo, when the fortune of all the inhabitants . . had been destroyed by the revolution."

Seville v. Chretien, 5 Mart. La. 275, September 1817. "The plaintiff and appellant sues, *in forma pauperis,* to recover his liberty, . . [276] In the year 1765 or 1766, Duchene, an Indian trader, brought an Indian woman to Opelousas, whom he sold to Chretien, the father of the defendant . . she died not long after, leaving a female child, who remained peaceably with Chretien, as his slave, until some time during the period in which the Baron de Carondelet was governor of the province of Louisiana; when she went to New-Orleans, with her master, for the purpose of claiming her freedom before the proper tribunal. . . a suit was commenced, but no record . . can be found, of the manner in which it terminated. She returned with Chretien, and remained with him as his slave, until his death, which happened after the United States took possession of the country, . . [277] 1803: she was called Agnes, and brought [bore?] several children, while held in . . slavery by Chretien, . . After . . [his] death . . Agnes and some of her children [one of whom was Seville] . . brought suit in the parish court . . From a judgment by default, which afterwards became final, an appeal was taken to the superior court of the late territory of Orleans, where the cause was tried by a jury, and a verdict rendered in favor of the . . appellees [Agnes and her children], . . set aside . . on account of some misconduct in the jury, and a new trial ordered. . . [278] the then appellee [Seville] . . the original plaintiff, not appearing to prosecute . . was declared . . nonsuited, and judgment was accordingly entered." Seville's claim to freedom is based on two grounds: I. the [279] "judgment of the parish court . . as being *res judicata,* by a competent tribunal." He insists that [282] "the judgment of nonsuit rendered in the district court . . is a

dereliction of the appeal from the judgment originally given in his favor, in the parish court; this court is of a different opinion. . . [283] the judgment of the district court was the consequence of the *laches* of the appellee, who . . was bound to prosecute and make out his case, as upon a new trial." II. [279] "But, if it be . . not . . established by the judgment, it is contended that the plaintiff and appellant is free by birth, being the lineal descendant of an Indian woman. . . [283] His counsel contends, that the decision of the cause must be according to the rules of the Spanish system of laws. According to these laws, it is clear that, since the famous regulations of Charles V., made about the middle of the fifteenth century, Indians could not be reduced to slavery, . . But on the other side, it is contended that this court ought to be governed . . by the municipal laws and usages of France, by which her American colonies were ruled. . . our opinion is in favor of the defendant and appellee [Chretien]." [278] "The fact that a considerable number of Indians and their descendants were held in slavery [here]" "at the time the Spanish government took possession . . in 1769 . . is clearly proven ['from the depositions of a number of witnesses']. . . [288] we have [also] historical facts, establishing . . the holding of Indians as slaves in one of the French colonies [Santo Domingo] [1] . . [289] taxed as slaves [there] . . a circumstance which creates . . a very violent presumption, that the municipal regulations of the French colonies did not prohibit the slavery of the Indians. This appears to have been the opinion of the Spanish government, which . . succeeded . . Governor O'Reilly, in 1769, on taking possession of the colony, discovered that a considerable number of Indians were held in slavery by the French colonists. This he declared, by a proclamation, to be contrary to the wise and pious laws of Spain; but, by the same instrument, he confirmed the inhabitants in their possession of such Indian slaves, until the pleasure of the king in this respect could be known. . . This never did happen. In conformity with this opinion, is a decree of the Baron de Carondelet, . . [290] in 1794, by which he orders two Indians . . to return to, and abide with, their owners, until the royal will was expressed to the contrary. . . It never was declared. The colony, without any change in the condition of the original population, is receded to the French nation, and by it transferred to the United States, under a treaty securing to the inhabitants, their rights to property, as they stood under the former government. . . [291] neither from a view of the political changes in the country, nor a fair examination of the subject, is the plaintiff and appellant entitled to his freedom." [Mathews, J.]

Zanico v. Habine, 5 Mart. La. 372, March 1818. "The plaintiff, as executrix . . caused the property . . to be sold at public auction, under the . . directions of the court of probates, when the defendant, through an agent, bid for a negro man, who was adjudged her, and . . said agent . . directed him to go to the defendant's. The negro, on his way, made

[1] *History of St. Domingo,* by Moreau de St. Méry, vol. I., p. 67.

his escape, and, being pursued, committed an assault, with intent to murder, for which he was tried and condemned to death, but . . pardoned . . The defendant . . [373] refused to receive him," [376] " the conduct of the slave is proven by uncontradicted witnesses to have been irreproachable."

Judgment for plaintiff affirmed: I. [384] " the *procès verbal* of sale, which the register writes . . is evidence of its contents, without the written acceptance of the purchaser. . . [II.] [385] Shall a slave who changes master, and runs off, to avoid going with him, to be presumed to be in the habit of running away? Surely no such presumption " [Derbigny, J.]

Langlish v. Schons, 5 Mart. La. 405, March 1818. " The plaintiff . . instituted this suit, in order to have a notarial act declared . . void, as forged . . The act purports to be a donation of liberty, from the plaintiff to his slave, . . the slave . . not to enjoy his liberty until after the death of his master;" Held: [407] " the evidence . . is insufficient to support the plaintiff's allegation " See Julien *v.* Langlish, p. 466, *infra.*

Maurin v. Martinez, 5 Mart. La. 432, March 1818. [434] " The negro was . . troubled with the asthma, which rendered him useless as a plantation negro: he was estimated at $400. . . the sale took place . . 1815, and the disease was discovered by the plaintiff eight or ten days after."

Judgment: [437] " that the sale . . be . . cancelled;" " The absence of a warranty cannot avail the defendant . . because the disease was such as to give rise of itself to the redhibitory action." [Martin, J.]

Augustin et al. v. Cailleau, 5 Mart. La. 464, April 1818. " The plaintiffs are persons of color, who have been seized under execution . . as slaves belonging to the estate left by . . widow Letourneur, . . [467] the emancipation . . under the will of their mistress, is . . acknowledged by the appellees themselves." Held: " The appellants must . . be left in possession of their freedom."

State v. Edward, 5 Mart. La. 474, April 1818. " The Attorney General has filed a libel against . . Edward, on account of his having been [il]legally imported. . . Since the appeal . . the act of the territorial legislature [1] has been repealed " Libel dismissed: " According to . . the existing laws of the state, independently of the law of the United States, . . forfeiture is not a consequence of the introduction of slaves into this state, and their introduction is no longer a violation of the laws of the state;" [Mathews, J.]

Cuffy v. Castillon, 5 Mart. La. 494, May 1818. " The plaintiff . . claims her freedom, and that of her children, under a contract between her former master and Cuffy, a freedman, her father. . . [495] on the condition of receiving 3400 dollars, . . 316 dollars . . were imputed on the price of John Baptist, one of the four slaves . . by the judgment of the

[1] Of Mar. 16, 1810, respecting slaves imported in violation of the act of Congress of Mar. 2, 1807. Martin's *Digest,* vol. I., p. 664, n. 72.

Spanish tribunal," Judgment for defendant affirmed: [497] "without payment, or an offer to pay [the full amount], they . . can claim no benefit under the contract" [Mathews, J.]

Delacroix v. Navigation Co., 5 Mart. La. 507, May 1818. [509] "he was bound to keep constantly employed, at the canal, eighty good negroes, until the completion . . the overseer . . [510] states that there were always some of the negroes, sometimes as many as twenty-five or thirty, sick,"

Metayer v. Noret, 5 Mart. La. 566, June 1818. Derbigny, J.: "The plaintiff . . is a woman of color, who complains of having been arrested and imprisoned as a slave by the appellant, and sues him for damages. . . the plaintiff once was a slave of . . the father of the person in whose behalf the defendant caused her to be arrested. But the plaintiff maintains that she has been enfranchised by him. . . [567] ever since she left Cape François, in 1803, [she] has lived as a free person, first at Baracoa, in the island of Cuba, and from . . 1809 at New-Orleans. A creditor of her late master caused her to be seized in 1810, . . but a civil interruption of possession can take place only at the suit of the owner; and . . interruption by the owner did not happen until . . 1816, . . By the laws of Spain, a slave can acquire his freedom by a possession [of it] of ten years, in the presence of his master, or of twenty years in his absence. . . in this case . . her master was absent. Thus . . the possession of the plaintiff falls far short of the time required to prescribe. . . [568] she cannot recover any damages . . decreed, that the judgment of the parish court be reversed," See Metayer *v.* Metayer, *infra.*

Jourdan v. Patton, 5 Mart. La. 615, July 1818. [616] "The plaintiff claims damages, for an injury done to one of her slaves, . . his only eye having been put out. The parish court decreed that the plaintiff should recover twelve hundred dollars, the supposed value . . and . . twenty-five dollars a month from the time he was deprived of his sight; and that the defendant should pay the physician's bill, and two hundred dollars for the sustenance . . during his life, and that he should remain for ever in the possession of the plaintiff."

Judgment reversed: [617] "complete indemnity has been given, for a total loss. When the defendant shall have paid . . the slave ought to be placed in his possession, . . that part of the judgment . . which orders [him] . . to pay two hundred dollars, is evidently erroneous. The principle of humanity, which would lead us to suppose that the mistress, whom he had long served, would treat her miserable, blind slave with more kindness than the defendant, . . cannot be taken into consideration, . . Cruelty . . ought not to be presumed . . A remedy . . can only be applied, when . . proven. . . [618] she shall further recover the amount of all expenses . . for the attendance and treatment . . with costs of suit in the inferior court." [Mathews, J.]

Metayer v. Metayer, 6 Mart. La. 16, January 1819. "son . . of . . Metayer, of Cape François, who was the master of the defendant when

the revolution of Hispaniola broke out" "sues to make her return to a state of slavery. . . She . . failed in a former suit, . . [17] for false imprisonment,[1] . . to prove her freedom by emancipation under her master's hand; but the evidence, in the present case, shows that she was in Hispaniola when the general emancipation was proclaimed by the commissioners of the French government, and remained . . until after the evacuation . . in 1803, . . about ten years. . . continued in the enjoyment of her freedom . . until 1816. . . three years more than the time required by law for a slave to acquire his freedom by prescription in the absence of his master. . . the government of Hispaniola, during its divers revolutions, continued to countenance the general emancipation;" Judgment in her favor affirmed.

Maurin v. Toustin, 6 Mart. La. 496, April 1819. "The petitioner . . 1809 . . purchased from the defendant a negro girl, for . . one hundred and sixty dollars, . . while in the possession of the plaintiff, had two children, . . [497] in a suit . . the wages were fixed at six dollars per month only, in consideration of the sums expended in her maintenance and that of her children. . . Planté deposed that he hired the slave, for about three years, at four dollars per month: she left him, about three years ago, being pregnant of her first child, . . She was attended, in her lying-in, and other indispositions, by Dr. Dufour, the plaintiff's agent: while she was at the deponent's, she was clothed at the plaintiff's expense. . . [498] was severely sick at Dr. Dufour's. As soon as the deponent discovered her pregnancy, he sent her back, as she was very delicate, of but little service in that situation, and required great care. She rendered no service at the doctor's during her pregnancy, nor while she suckled her children. He values the expenses of her clothing at $18 per year, and those of her lying-in at from $10 to 15 each time.—That the expenses of a child's food, while the mother is very weak, are from three to four dollars per month. Madeleine Marren deposed that she hired the slave for four years . . at . . four dollars per month: . . The charges of lying-in of slaves are from $12 to 14, in ordinary cases. . . Touron deposed . . that the defendant hired her for $15 per month; and she came home twice a day to suckle her child."

Saulet v. Loiseau, 6 Mart. La. 512, April 1819. "The defendant, . . February 5, . . sold to the plaintiff . . Jacob, for $714," [517] "It is agreed . . that, whereas the . . slave is now in bad health, this sale shall be rescinded, in case he shall not be perfectly recovered in one month . . and . . Loiseau shall . . repay the price" [512] "The parties placed the slave under the care of a free negro . . who undertook to cure him, and to whom each of the parties promised . . ten dollars . . [513] He deposed that . . Jacob . . labored under a complaint of the chest—that he was weekly, supplied with meat and biscuit by the defendant; the plaintiff never furnishing anything. At the request of the former he put Jacob in irons, to prevent his going abroad and eating improper food." He died March 6. Judgment for plaintiff affirmed.

[1] Metayer *v.* Noret, *supra.*

Girod v. Lewis, 6 Mart. La. 559, May 1819. Held: "With the consent of their masters they may marry, . . it cannot produce any civil effect, . . Emancipation gives to the slave his civil rights, and a contract of marriage, legal and valid by the consent of the master and moral assent of the slave, from the moment of freedom, although dormant during the slavery, produces all the effects which result from such contract among free persons." [Mathews, J.]

Gomez v. Bonneval, 6 Mart. La. 656, June 1819. "The petitioner [for freedom] is a negro in actual state of slavery . . imported since" "the laws prohibiting the introduction of slaves in the United States."

Held: [657] "The plaintiff . . has nothing to claim as a freeman;" [656] "Formerly, while the act dividing Louisiana into two territories was in force . . slaves, introduced here in contravention to it, were freed by operation of law; . . Under the now existing laws, the individuals thus imported, acquire no personal rights: . . are disposed of according to the will of the different state legislatures. In this country they are to remain slaves, and to be sold for the benefit of the state." [Derbigny, J.]

Andry et al. v. Foy, 6 Mart. La. 689, June 1819. "The plaintiffs bought from the defendant nine slaves [field hands], for $10,500, payable in . . one year. . . [691] some of the slaves having manifested some reluctance to go with the plaintiffs, they stipulated that they should keep these for a fortnight on trial, and that should any of them run away during that time, the defendant should support the loss." [689] "Six [youngest] . . having successively ran away,[1] . . suit [was brought] for the rescission of the sale, alleging that the slaves were addicted to running away, in the knowledge of the defendant," Lindor had been sold to him [691] "without any warranty for moral defects, . . [692] Horace, Anthony and Sandy . . as runaway slaves. . . these four . . were confined [in jail] for running away, as well as John and Isaac, while . . in the possession of the defendant." [7 Mart. La. 41] "Horace [[37] 'about 14 years old at the time of the sale'] was purchased by the defendant . . 1818, and his vendor . . expressly excluded the legal warranty against . . redhibitory [vices] . . [42] *viz.,* capital crimes, robbery, and the habit of running away. . . did declare that Horace ran away . . and was absent seven consecutive months, during which he went to New-York, Liverpool, and Charleston, where he was arrested and brought to New-Orleans, where five weeks after he sold him to . . defendant, informing him . . Boucaud was brought to jail as a runaway, before the sale to the plaintiff, . . [43] ran away twice, within a very few days after the plaintiffs purchased him,"

Judgment: [6 Mart. La. 699] "that the sale of . . Lindor, Tony, Sunday [Sandy], Isaac, Horace, and Boucaud [John ?] be rescinded . . and that the plaintiffs do recover . . six thousand five hundred dollars."

Marie v. Avart, 6 Mart. La. 731, June 1819. "The petition stated that the plaintiff [a mulatto woman] is a slave of . . Lauve; that . .

[1] The time is not stated.

Avart made his last will, . . directed that, immediately after his decease, . . executor (the present defendant) should purchase the plaintiff and her child, and . . emancipate them according to law" [8 *id.* 514] "acknowledges for his natural child, Gaston, the son of the plaintiff, . . bequeaths freedom to her and the usufruct during her life of two houses . . with a sum of money; and to . . Gaston, at the death of his mother, the [same] property" [6 *id.* 731] "Lauve is willing to sell . . for a reasonable price; wherefore the plaintiff . . prays that the defendant be cited to declare whether he accepts the . . executorship, and in case he does, . . [732] compelled to fulfil the will" Held: [733] "As she is not opposed by her acknowledged master, . . she has a right to maintain her action." See Marie *v.* Avart's heirs, p. 466, *infra.*

Palfrey v. Rivas, 7 Mart. La. 371, January 1820. "the defendant arrested the plaintiff's [runaway] slave on a Sunday, secured him in ['very'] strong iron fetters and informed the plaintiff [by letter] . . proposing to purchase the slave. . . [372] the plaintiff . . [wrote] immediately . . inclosing a small sum to defray the expenses of the capture, and [stating] . . that he might have the negro for a price . . then fixed. . . that, if the offer was not accepted, the slave might be taken to a blacksmith, put in strong irons, and kept till an opportunity to send him to New-Orleans presented itself; but, if none could be had shortly, that he might be sent to jail." "In the mean time, during the night . . he effected his escape. . . The plaintiff . . [373] contends that, as the defendant did not comply with . . the law,[1] he must be liable" Judgment for the defendant affirmed.

Steel v. Cazeau, 8 Mart. La. 318, January 1820. [319] "the plaintiff resides in Kentucky, and came down in a keel boat with several slaves, as oarsmen, . . there was a frolic [at Mr. Fortin's house], in which the [plaintiff's] slave was killed" by [318] "a severe blow on the head, with some heavy weapon, supposed to be a laden whip. . . Although the utmost attention was paid to the boy, and a third doctor was called in, he died about three days after." "the defendant's slave was tried . . and found guilty. Wherefore the plaintiff claimed . . 1200 dollars, the value of . . [his] slave. . . [319] The record of the conviction . . was introduced, notwithstanding . . defendant's counsel . . objected" Judgment for the plaintiff reversed.

The Josefa Segunda. Carricabura et al. (claimants), 5 Wheaton (U. S.) 338, February 1820. [341] "the capture of the brig *Josefa Segunda,* with a cargo of slaves, was made off Cape Tiberon, in the Island of St. Domingo, on the 11th of February, 1818, on a voyage to the Havanna, from the coast of Africa, which she had left in the preceding . . December or January. The capture was made by a Venezuelan brig [privateer], the *General Arismendi.* . . At the time of capture, there were from two to three hundred slaves on board; some of these . . afterwards died; others . . were sold at the Jardins de la Reine, on the

[1] Act of 1816. Martin's *Digest,* vol. II., p. 514, n. 6.

south side . . of Cuba, in order to purchase provisions. Toward the end . . of February, the prize master of the brig received written orders from the Captain [Beluche] of the privateer to conduct the prize to the Island of Marguerita; . . The prize master had no log book on board; he wrote every day's occurrences on a slate, effacing what had been written the day before. On the 18th of April, 1818, . . [342] the brig was boarded by a pilot, about 40 miles from the Balize, and arrived there at 4 o'clock P.M." [10 *id.* 315] "Roberts . . an inspector in a revenue boat . . [316] boarded the vessel, and declared that he had seized her. . . 21st of April . . soldiers went from Fort St. Philip . . and brought her up under the guns of the fort. . . On the 21st [24th] . . Mr. Chew, the Collector at New-Orleans, acting on independent information . . sent an armed revenue boat, . . [317] the vessel and negroes . . [were] brought . . up to . . New-Orleans." [5 *id.* 342] "On the 27th . . the agent of Beluche at New-Orleans, wrote a letter to the prize master of the brig, . . 'Maintain always your declaration of being forced into port.'" [340] "This libel [1] was filed on the 29th of April, and on the 5th of May . . a claim was interposed by . . owners . . [343] the District Court condemned the brig and effects found on board, to the United States,"

Decree affirmed: [354] "we look in vain for testimony of any serious disaster having befallen this vessel in her voyage from . . Cuba, . . the Island of Marguerita, which is now pretended to have been her real port of destination . . could afford but a wretched, if any market at all for slaves; while at New-Orleans, each of them would produce the extravagant and tempting sum of one thousand dollars. . . [There remains] [356] no reasonable doubt of the whole story being a fiction; or that the want of provisions, if real, at the time of seizure, was produced by a voluntary protraction of the voyage for the purpose, and with the intent of violating the law on which the present libel is founded." [Livingston, J.] See the *Josefa Segunda.* Roberts *et al.* (claimants), p. 478, *infra.*

Bazzi v. Rose and her Child, 8 Mart. La. 149, May 1820. "The petition states that these defendants are the plaintiff's slaves, and obtained a writ of *habeas corpus* from the president of the criminal court, on which they were discharged, that the proceedings therein are erroneous . . The answer avers the freedom of the defendants, . . [150] act of emancipation . . St. Jago de Cuba . . 1805 . . 'desirous of acknowledging the signal services of Gertrude, a Congo negro woman, aged 44 years, on several occasions, [the plaintiff] gives freedom to her and her child Rose, aged 16 1-2 years, to be fully enjoyed without any trouble: promising in due time and place, to comply with the formalities which the law requires.' The parish court, 'considering that the plaintiff, by sending the act of freedom . . [to] be deposited here with a notary public, . . as well by his long silence . . afterwards, as by his subsequent conduct with regard to . . Rose, and her free baptized children, until

[1] Under the act of Congress of Mar. 2, 1807, ch. 22, sect. 7. 2 St. at L. 428.

lately, when he thought he had good reason to complain of her, had thereby completed . . his act' . . gave judgment for the defendants."

Reversed: [151] "The Partida 4, 22, 1, requires that, where emancipation takes place in writing, it be done before five witnesses. . . Nothing shows that any thing did happen in Cuba, by which the defect of the deed was cured. . . Here, the law requires certain formalities for the acquisition of freedom, none of which are pretended to have been fulfilled. . . [154] The judge, who issued the writ, was without jurisdiction in a civil case." [Martin, J.]

Ulzere et al. v. Poeyfarre, 8 Mart. La. 155, May, 1820. "The petition charges that Mary Ann, a Chickasaw squaw, was . . entrapped and conveyed to M. Songy, a planter, of the parish of St. James, then under the dominion of Spain . . shortly after she had two children, Ulzere and Frances . . who were duly baptized . . Frances bore Marie Therese and Casimer . . also duly baptized . . that Mary Ann . . was considered . . an Indian . . whom it was unlawful . . to hold in slavery. That an attempt having been made to restrain her, she left M. Songy's plantation and came to New-Orleans, where she made application to the Baron de Carondelet, then governor . . who gave her a letter to the commandant of the parish of St. James, who produced her liberation from all restraint, and she died a free pauper, in the hospital of New-Orleans. . . [156] she left Ulzere and Frances, under the care . . of M. Songy, on whose death the defendant as heir . . detains them in slavery. . . The plaintiffs submitted the following issues to the jury, who found them to be true. . . 4. Reducing Indians to slavery has been prohibited by the French, as well as the Spanish government. 5. The color of the plaintiffs shows them to be of Indian origin. 6. The defendant has shown no title . . judgment for the plaintiffs, . . defendant appealed . . [157] bills of exceptions . . 1. . . to the opinion in overruling . . objections to the facts thus . . submitted . . 2. . . to the opinion of the court in overruling the objection . . to the reading of . . a judgment in favor of an Indian woman of the Natchez tribe. 3. . . to the examination of . . Dreux, upon the fact of the Baron de Carondelet, liberating by a decree all Indians in slavery. 4. Another to the examination . . [as] to the . . decrees of Governors O'Reilly and Carondelet. 5. . . examination of witnesses to prove certain ordinances of the king of France."

[160] "decreed, that the judgment . . be . . reversed, and the case remanded . . with directions to the judge to strike out the fourth and sixth facts." [158] "The abstract proposition, that the French and Spanish governments prohibited the reduction of Indians to slavery, is considered by this court as a question of law; . . The principal issue . . was *liberi vel non*; the title, therefore, of the defendant . . was erroneously submitted to the jury.[1] . . if free . . no title could exist . . If . . slaves . . they had no right to contest . . title. . . [160] We further direct the parish judge not to admit the record of the suit in favor of the

[1] The court was of a different opinion in 1824.

Indian woman of the Natchez tribe in evidence, nor allow any parol evidence . . if any decree or ordinance . . unless the destruction of the original be proven." [Martin, J.] See same *v.* same, p. 476, *infra.*

Livaudais' Heirs v. Fon et al., 8 Mart. La. 161, May 1820. "suit brought by the . . plaintiffs . . to recover the amount of a note given by the defendants to Frosina, a slave of the plaintiffs, by which they promised to pay to her four hundred dollars. Payment is resisted on the ground of the promise having been made in error, . . a contract without . . consideration . . production of a testament made by . . Durand, in which he instituted Pedro, his bastard child by Frosina, . . his heir, and appointed Fon . . executor; . . the child died in 1812, . . note given . . to . . Frosina . . being, as the appellants [Fon *et al.*] insist, a liquidation of Pedro's succession to his mother, which she could not take in consequence of her state of slavery."

Held: [163] "Frosina could not succeed to the estate of her son; but the owners had a right to claim it from the . . executor of Durand; . . it cannot properly be said that no . . consideration exists for the note . . Considering the note as a liquidation of this succession," [Mathews, J.]

Catin v. D'Orgenoy's Heirs, 8 Mart. La. 218, June 1820. "The plaintiff claimed the freedom of her children, . . The defendants' ancestor, in the deed of emancipation produced by the plaintiff, says, 'I hold, as my slave, a creole negro girl named Catin, aged 18 . . born in my service, from . . Martha, to whom I gave her freedom, according to . . deed, which I executed before . . notary, last year, 1801, and I have offered . . Catin her freedom, on certain conditions . . in consideration of the good services of her mother, . . In consideration whereof . . I emancipate . . Catin . . with the . . condition that she shall . . enjoy freedom immediately after my death.' The children were born after the deed, but before the death of the grantor."

Held: the mother was [219] "of that class of persons, known to the Roman law, by the appellation of *statu liberi,* . . children born from her, while in such a state, are not entitled to freedom." [Mathews, J.]

Blondeau v. Gales, 8 Mart. La. 313, June 1820. "The plaintiff's object is the rescission of the sale of a negro woman . . Celeste deposed that the defendant brought Caroline to her house with an iron collar and her hands tied, . . she had stolen some handsome dresses, and he wished to know whether, as she said, they belonged to the deponent . . [314] had run away several times. The deponent came on . . same vessel from Baltimore . . with Caroline, . . Dr. Martin deposed that . . he was called by the defendant . . found [her] . . quite senseless . . Desiree Leblanc deposed that Caroline was placed under her to learn how to plait, the defendant put an iron collar on her, because she ran away for eight days. She remained five months with the witness. Dr. Lacroix deposed that during the last 18 months, the plaintiff called him four or five times to Caroline . . attacked by hysteric fits, which rendered

her senseless for several hours. . . incurable, . . [315] Dr. Goiffon . . defendant's physician" disagreed.

Judgment for the plaintiff affirmed: [316] "in the language of the code, the slave's 'services are so inconvenient . . and interrupted, that it is presumed that the buyer would not have bought her . . if . . acquainted with the defect.'" [1] [Martin, J.]

Marie v. Avart's Heirs, 8 Mart. La. 512, July 1820. See Marie *v.* Avart, p. 462, *supra.* "the heirs were made parties. They pleaded the insanity of the testator, . . submitted to the jury, . . [513] The jury found the issue for the defendants. A new trial was moved . . stating the discovery of new . . evidence, . . Risteau was present, when A. Choppin [the testator's brother-in-law] . . came to the testator's house (after he had given himself the stroke with a sword, which occasioned his death, and before he made his will) and took out from a desk a check which he . . had given to Avart the day before, to purchase and emancipate the plaintiff. The new trial was refused, and the plaintiff appealed." [10 Mart. La. 29] "affirmed"

Martineau v. Hooper, 8 Mart. La. 699, September 1820. [700] "Harry . . was considered by his own master [the plaintiff] as ungovernable; for . . [he] told the defendant [his overseer] that he would not go to his plantation, until that negro was subdued; . . evidence that the negro had even gone so far as to lay his hands on his master. The defendant, being dissatisfied with his work, resolved to have him chastised, and foreseeing that the negro would make resistance, loaded his gun, which he left in the house, . . He then went to have the negro whipped, and ordered another slave to tie him. Harry . . refused to submit, and the defendant, having advanced . . with a hoe to strike him, was met by Harry . . also [with] a hoe . . scuffle . . The defendant then threatened to shoot . . and both . . began to run towards the house, the negro . . foremost; when, being overtaken . . he turned aside, and . . endeavored to . . escape. The defendant came out of the house with his gun, calling on Harry to stop, . . and as he did not . . shot [and killed] him, at . . eighty-five yards, himself . . walking." [699] "The present action is brought to recover from him the value . . two juries have already pronounced in his favor:" Judgment affirmed.

Julien v. Langlish, 9 Mart. La. 205, January 1821. [208] "The deed of emancipation [in 1814] purports, that Peter Langlish . . 'gives freedom to . . Julien, 46 years of age, gratuitously, and to remunerate him for his fidelity and former services, and those he is to render him until his death; . . under the express condition, that he shall serve his present master as before till he die;'" [209] "the plaintiff worked in town, and paid . . [his master] eighteen dollars per month." In 1818 Langlish [206] "instituted a suit . . to have the . . deed . . annulled; . . failed,[2] . . [207] on the 8th [18th ?] day of the following month, . . [Langlish]

[1] Civ. Code of 1808, p. 358, art. 80.
[2] See Langlish *v.* Schons, p. 458, *supra.*

executed . . a deed of revocation . . and on the 23d the plaintiff was . . dragged to jail, and . . whipt: whereupon . . he . . instituted a suit . . which he was afterwards advised to, and did discontinue. . . [210] Dutillet saw the plaintiff when he was going to jail, and asked what was the matter: he replied that his master, who was an old rogue, sent him to jail and wanted to deprive him of his liberty."

Held: [211] "the plaintiff has not proved that he fulfilled the condition on which he was to be free . . he insisted on enjoying his freedom before the death of his master," [Martin, J.]

Allain v. Young, 9 Mart. La. 221, January 1821. "That the slave was in the habit of going at large, without a written permission from his master; that he was of a bad character, and was killed in the defendant's attempt to arrest him, on a suspicion of his having committed a felony, whilst . . endeavoring to . . escape, having attempted to seize a gun." "the plaintiff seeks to recover damages to the value" Judgment for defendant affirmed.

Broh v. Jenkins, 9 Mart. La. 526, April 1821. [537] "Madame Broh . . left St. Domingo, on account of the revolution, and came to Baracoa, in the island of Cuba, bringing . . Lazare . . and another [slave]. In 1803, she sent [them] . . to Charleston, . . to be kept until she should send for them; male negroes from St. Domingo not being permitted at that time to remain at Baracoa. She died . . 1808, or . . 1809. Her son, the . . plaintiff, was born in 1793, . . arrived here in 1809; . . Lazare was brought here by the defendant . . 1819, . . The defendant sets up the title of prescription" [527] "Lazare was in possession of Mr. Placide, in Charleston, . . sold . . to Dastras . . 1806, who possessed him . . until . . 1817, . . sold to Lazarus; . . [who] sold him to defendant, . . 1819, in Charleston,"

Held: [561] "that laws limiting the time within which actions ought to be commenced, for the recovery of property, may operate in such a manner, as to vest a title in a bona fide possessor, and that the law of South Carolina has produced this effect in the present case." [557] "The period of limitation is there four years for persons present, . . five" for those absent. [Mathews, J.]

Lazare v. Peytavin, 9 Mart. La. 566, April 1821. [567] "proved . . that Lazare had . . served . . as . . overseer . . for upwards of two years, and that these services were well worth eight hundred dollars per annum." Letter: [581] "as soon as all the cane would be up, he would put all the hands in the field; . . he had many sick negroes."

Dufour v. Camfranc, 11 Mart. La. 607, April 1821. [612] "On his death ['in St. Jago-de-Cuba'] . . Turgeau . . brought the slaves . . to Louisiana."

St. Romes v. Pore, 10 Mart. La. 30, May 1821. "action for the rescission of the sale of a negro woman [for $500],[1] . . The plaintiff,

[1] [209] "who one month before, had been sold [to defendant] for $900."

after the auction [May 2], . . told the defendant he would not take the wench, as he had discovered that she was sick: . . that defendant replied, he did not know whether she was, but that, at all events, he meant to sell, and had . . sold her . . with a warranty of all redhibitory diseases. . . in consequence . . the parties . . executed the bill of sale. . . Dr. Dow . . saw her at the defendant's ['just after the defendant bought her'], he found her weak, her legs swollen, and told him a generous diet and proper medicines would effect her cure; . . Dr. Dupuy . . was called . . by the plaintiff, to the woman, . . supposed her incurable. He attended her . . 17th of May . . till the 13th of June, when she died; . . disease of seven or eight months standing,"

Judgment for plaintiff affirmed: [33] "Ailments . . constitute redhibitory defects, when they are incurable . . the disease existed before the sale, and though curable in its origin, had now become incurable. . . It appears . . the parties contemplated that the vendee's claim would depend on the issue of the disease." [Martin, J.]

Mitchell v. Armitage, 10 Mart. La. 38, May 1821. [39] "the plaintiff's son quarrelled at . . shop, where four apprentices were at work by a candle, with a black boy, a slave of their master, the defendant. . . [41] The latter was wounded with scissors, . . the plaintiff's son was wounded in his fingers. The quarrel arose about coming nearer the light," [40] "The plaintiff's son was reproached with not having referred his quarrel . . to the defendant, and answered he had not the patience; . . [41] the defendant gave him about twenty or thirty strokes of a cow-skin; . . the black boy was not punished;" [40] "defendant's partner, deposed . . He has seen, on other occasions, the defendant whip the black boy and others on complaint."

Held: [46] "the case is not of so black a die [*sic*] as to deserve an absolute forfeiture of the defendant's right to the boy's services, during the rest of his apprenticeship." [Martin, J.]

Bayon v. Vavasseur, 10 Mart. La. 61, June 1821. "The plaintiff demands the rescission of the sale of a slave, . . epileptic, and in the habit of running away; circumstances which, he alleges, were . . concealed from him. . . a special clause in the bill of sale . . that the seller does not guarantee that the slave is free from any disease, habit of running away, or other defect. . . [64] the slave was sold [for $600] . . [65] in jail. The defendant sold him as he was, and declared him to be a . . *mauvais sujet.*" "he had a sore leg." A witness deposed, [62] "He gave his word of honor, that the slave had no epileptic fits. . . [64] During the fits [in 1818], the slave foamed at the mouth, . . Fifteen or twenty days after [the sale in 1819], the slave fell into epileptic fits, and has fallen since, many times. . . [65] defendant's overseer during seven or eight months preceding the sale [deposed] . . During that time . . no fits . . He would have been worth, if . . not . . afflicted with a sore leg and addicted to run away, $2000. Bourgeois deposed . . he was a fine-looking fellow, a creole, and something of a carpenter. Had he not been addicted to run away, and had his leg not been sore, he would have sold

for $3000." Judgment for the defendant reversed and the case remanded. [11 Mart. 640] " judgment against him, and he appealed." Judgment affirmed.

Dunbar v. Nichols, 10 Mart. La. 184, July 1821. [186] " the plaintiff . . bought [from the defendant] a negro man, whose wife was desirous of going with him. She was sick in the house when her husband was bought. The plaintiff afterwards [in April] bought her, when she was working in the field. The witness . . [187] thinks she was well cured " [186] " Dr. Smith . . in the summer . . examined the slave, and told the plaintiff he could neither cure nor relieve her. . . The plaintiff desired him to attend her as well as he could, and if she died, to open and examine her. She died soon after, and . . he found the mesenteric gland in a scirrhous state, and very much enlarged; . . From his own view, and the declarations of the slave, he thinks it must have existed two years."

Fleming and Wife v. Lockart, 10 Mart. La. 308, September 1821. " The plaintiffs seek to recover damages, on account of a negro (sold as a runaway by the defendant, as sheriff) having been recovered from Mrs. Fleming, by his former owner. . . the advertisement was not continued as long as the law requires." Held: [309] " sheriff . . ought to indemnify " his vendee.

Wyche v. Wyche, 10 Mart. La. 408, September 1821. [413] " moved [from Georgia] into the territory of Orleans, with her husband [and negroes], in . . 1809."

Brown v. Compton, 10 Mart. La. 425, September 1821. [426] " plaintiff's witnesses . . established that he was for several years in possession of the wench . . that she was taken up in a neighboring parish, but released on producing a pass given her [in 1819] by the defendant " " whereby she effected her escape. . . M'Micken deposed, that in . . 1812 . . he hired [her] from [the plaintiff] . . that one day she . . fell on her knees, in tears, saying that if she had her right she would be free, and handed him . . her deed of manumission, . . [427] executed by Joshua Barnes . . of Kentucky, manumitting . . Minthy . . at the age of 35, *viz.* in . . 1817, bearing date . . 1805." [426] " she said [it] was handed to her by . . Henderson, whose name . . [was] subscribed thereto; she requested [McMicken] . . to keep it, till she could make a trusty friend . . take care of it for her, in case she was . . sold in a distant country; for she was afraid her master would get it from her, as he had frequently demanded it . . [427] and she had always denied having it. He threatened to whip her. On examining the paper, the witness found [it not] . . properly authenticated; and he informed her he would procure one properly authenticated, by the time she was to be free, which was done, and the woman has since [1817] . . been reputed a free woman of color, in . . Mississippi," Verdict for the plaintiff.

Judgment thereon reversed: [428] " At the time of the alleged injury . . the woman had been free for about twenty months." " the defendant

has a right to establish this fact in the present suit, . . It is said she was *de facto* the plaintiff's slave, and the defendant had no right to aid her in shaking off the yoke of slavery. I apprehend any man may very conscientiously assist a person, unlawfully held in slavery, to regain his freedom. The attempt is, indeed, made at the peril of the party . . [429] who is liable in damages . . [if] the . . slavery is finally established." [Martin, J.]

Delery v. Mornet, 11 Mart. La. 4, February 1822. [6] "witness . . embarked . . in a pirogue, with the slave Jasmin, and some other negroes . . sober . . when they came opposite the defendant's residence, they put to shore, . . purchased liquor, drank it, . . began to . . fight as soon as they re-embarked; . . [7] one of them fell twice into the river: . . deponent . . called for help . . Mr. Lartigue . . brought the pirogue to land. . . [He] observed that he would . . [8] correct them" [7] "and then they would behave themselves. On hearing this, Jasmin jumped into the river, the witness jumped after him, but was unable to save his life. Another of the negroes . . [8] also drunk, immediately endeavored to drown himself, but was prevented." Held: the defendant [10] "must . . abide the consequence." [1]

Chretien v. Theard, 11 Mart. La. 11, February 1822. "action . . to obtain rescission of the sale of . . slave [in 1819] . . sold as a carpenter and joiner, for . . $1,500. . . alleged that he is neither; and . . afflicted with redhibitory defects of disposition, a drunkard, runaway and thief."

Copelly v. Deverges, 11 Mart. La. 641, June 1822. "the plaintiff . . claims [the house and lot] by virtue of . . donation . . by . . his godfather . . 1787; who, on the same day, had purchased the same from . . [his] natural father" [667] "he and a free negro woman, called Rose Grondil, the mother of the plaintiff, and concubine of his father, remained in possession of said house and lot . . up to . . 1817, the date of the sale to Defaucheur [a free man of color]; . . Rose paid taxes on the property, as her own, for several years; and the plaintiff . . used a small house thereon as a blacksmith shop"

Bank v. Lanusse, 12 Mart. La. 158, July 1822. [173] "130 negroes are sold [to Macarty, a brother of Madame Lanusse,] . . they descend partly from the father" [163] "thirty-four [of them] . . were purchased by Lanusse and Macarty, during the partnership, and placed on the plantation."

Moore v. King, 12 Mart. La. 261, August 1822. [263] "Dr. Elmor . . about eighteen months after the sale . . found she had a pendulous wen, of the size of a duck's egg, attached by a short neck to the inside of her thigh, . . must have had it from her infancy. . . ought to be amputated . . would cost about thirty dollars. . . would estimate the diminution in the price . . at one hundred dollars. Dr. Dixon . . would think the diminution . . two hundred dollars." [262] "The jury found . . the plaintiff ought to suffer a diminution of $150 from the price."

[1] Martin's *Digest*, vol. I., p. 622.

Cavenagh v. Crummin, 12 Mart. La. 306, September 1822. "a sound and likely negro boy . . between twenty and twenty-five . . [307] valued [in 1821] at $1,200."

Johnston v. Sprigg, 12 Mart. La. 328, September 1822. [329] "employed . . as overseer for the year 1819, . . to be paid $600 . . in case he made a good crop, and $500 at all events;"

Surgat v. Potter, 12 Mart. La. 365, September 1822. "sold a negro woman and her two children . . [367] in New-Orleans, for $1,250 . . payable in goods"

Mayes v. Calvit, 12 Mart. La. 373, September 1822. [376] "His impression is, that a negro of the defendant had her mother for a wife, . . in 1809 the defendant came . . to procure . . the mother of Grace and Isham, by exchange. He was to return two children of the same size. He sent a girl in exchange for the mother . . has never sent any thing in return for the children."

Lafariere v. Sanglair, 12 Mart. La. 399, September 1822. "The defendants . . prayed a rescission of the sale on account of redhibitory defects. . . the slave was proven to be addicted to robbery and running away before the sale [for $1500], and soon after . . made his escape." Judgment for the defendants.

State v. Judge Pitot, 12 Mart. 485, December 1822. "Seghers made oath that C. André, a free woman of color, died . . and . . her executor, procured the probate of her will . . and possessed himself of her estate, amounting . . to $2,090 99 cents, and the deponent, on the application of a creditor . . was appointed to represent the absent heirs, and instituted a suit to have the will set aside . . his appointment . . [was] set aside, on the ground that the deceased had no relations, . . [486] he filed a petition of appeal . . but the judge refused to allow the appeal . . On this affidavit, a rule was . . obtained, on the judge . . to show cause why a mandamus should not issue, . . He accordingly showed for cause . . that soon after [appointing deponent], having . . been positively informed that the deceased was brought a great many years ago, when . . a child, from the coast of Guinea, as a slave—that neither her African name, nor the name of the tribe to which she belonged, could be ascertained . . the respondent, on motion, revoked the appointment."

Rule made absolute: were [487] "the case before us, [the facts detailed] might induce us to affirm . . we are not, however, apprized of the nature of the information . . and its legality and sufficiency are proper subjects of inquiry on the appeal." [Martin, J.] See Seghers *v.* Executor, p. 472, *infra.*

M'Guire v. Amelung, 12 Mart. La. 649, January 1823. [650] "lieutenant . . 1814 . . gave unto Miss . . M'Guire . . a mulatto girl . . about nine . . in consequence of . . services as housekeeper,"

The Mary Ann, 8 Wheaton (U. S.) 380, February 1823. "the brig . . 1818, sailing coastwise from . . New-York and Perth Amboy to . .

[381] New-Orleans, and having on board . . [thirty-six] negroes . . for the purpose of transporting them to be sold . . as slaves . . did . . depart . . without the captain . . having first made out . . duplicate manifests of every negro . . and without having previously delivered the same to the collectors or surveyors of the ports of New-York and Perth Amboy, and obtained a permit . . as required by the act of Congress,[1] . . [382] The Court below condemned the vessel,"

Decree reversed for [390] " defects in the libel; but as there is much reason to believe, that the offence for which the forfeiture is claimed has been committed, the cause is remanded to the District Court of Louisiana, with directions to permit the libel to be amended."

Seghers v. Executor of C. André, 1 Mart. N. S. 73, March 1823. Judgment upholding the will affirmed.

Seghers v. Executor of C. André, 1 Mart. N. S. 84, March 1823. See State *v.* Judge Pitot, p. 471, *supra.* [86] " judgment of the court of probates, revoking the authority conferred on the appellant as attorney for the absent heirs . . affirmed " " we have expressed our opinion on the validity of the will [*supra*] . . Considering the testament good in law, the judge did not err in revoking the power, for the heirs were present." [Porter, J.]

Reynaud and Sucko v. Guillotte and Boisfontaine, 1 Mart. N. S. 227, May 1823. " Feb., 1821, the defendants sold . . a negro boy . . about 23 . . for . . $900, and warranted him free from all redhibitory vices and diseases; . . [228] Dr. Ker, a witness on the part of the plaintiff, swears that he went to visit the negro . . [229] March, and left off attendance . . May; . . the disease [ulcers on the leg] appeared of long standing, which, if healed speedily, would soon break out again, . . [230] up to the 31st July the negro was not prevented, by sickness, from working." [229] " Dr. Chabert . . went to visit [him] . . October, and . . ceased . . December . . [231] declaring . . *Peu d'espoir de guérison.* . . [232] Dr. Thomas deposes that, about five months before . . sale, he attended the slave for a venereal affection, and cured him perfectly."[228]" The action was commenced nine months and twenty-four days after the date of the sale." " a jury . . found for the defendants. A new trial was granted, and the parties consented to waive the jury . . The judge decided . . sale should be rescinded, . . plaintiffs pay . . $20 a month for the time they used the slave not knowing of his defects."

Judgment affirmed: [229] " It is the duty of the buyer, who brings his action after six months . . to prove when the knowledge of the defects . . was acquired by him. . . the prescription runs . . from the time . . [the disease] was ascertained to be such as would form the ground of redhibition." [Porter, J.] [234] " I cannot conclude that the parish judge drew an illogical conclusion . . when he held . . the incurability . . satisfactorily proven." [Martin, J.]

[1] Act of Mar. 2, 1807, sect. 9. 2 St. at L. 429.

Porter v. Richardson, 1 Mart. N. S. 276, May 1823. [277] "in 1819, he purchased . . a slave for $1,500, payable . . 1821, . . refused payment, having discovered . . he was 40, instead of 37 . . as . . represented, and ignorant of the trade of a mason or bricklayer, although . . expressly sold as such."

Thompson v. Milburn, 1 Mart. N. S. 468, August 1823. "The sale took place . . August, 1819, . . [469] Two gentlemen of the faculty, who were called . . five weeks after . . and a short time previous to his death, . . found him laboring under a chronic dysentery of long standing;" "this action [to obtain the price] was commenced . . November, 1820." Held: "The article [2512] of our code, which directs that the action of redhibition must be brought in one year . . can only receive an application . . where the vendee . . *brings an action.*"

Campbell v. Henderson, 1 Mart. N. S. 510, September 1823. [511] "five slaves ran away [from Campbell] [1] . . on the 12th [of March 1822] or 13th in the morning:—Maria, a jet black negro, about 17 . . [512] with a downcast countenance, was one of them. In November . . [the overseer] went with the plaintiff to the defendant. The plaintiff claimed Maria and asked to see her. The defendant said he had a girl of that . . description, but declined showing her, . . [513] The defendant introduced . . bill of sale for Maria, from . . Collier, dated March 28," Verdict for defendant. New trial refused.

Reversed and the cause remanded: [514] "The defendant . . was under no legal obligation [to produce the slave] . . but . . his refusal, and the whole circumstances . . demand that there should be a new trial." [Martin, J.] See same *v.* same, p. 478, *infra.*

Campbell v. Miller, 1 Mart. N. S. 514, September 1823. [516] "The plaintiff had a farm of about 80 negroes . . in . . Mississippi" [515] "in 1818 . . [his] overseer . . went to Natchez and brought . . hence" "Paul . . about 25 or 30 . . Brandon . . 35 or 40 . . black, inclining to yellow; he had a heavy beard, and complained of rheumatism. . . [516] Collier was the plaintiff's overseer in the fall and winter of 1821 . . [to] 1822, . . discharged at the end of the winter." "These negroes, with three others,[1] disappeared" in March 1822. In the fall [515] "plaintiff's overseer . . [516] went with the plaintiff to the defendant's. The latter said he had two negroes answering . . description, but refused to let the plaintiff see them, . . [517] The defendant gave in evidence his note for $950 to Collier" "Henderson [2] deposed . . They were purchased in good faith. The witness gave a draft for $250, as part of the purchase money." Verdict for the defendant. New trial refused. Reversed and all the case remanded. See same *v.* same, p. 478, *infra.*

Campbell v. Armstrong, 1 Mart. N. S. 574, September 1823. "The plaintiff stated . . the defendant wrongfully possessed himself of [two of his slaves,] . . prayed for the restitution . . and damages. . . [575]

[1] See Campbell *v.* Miller, and same *v.* Armstrong, *infra.*
[2] See Campbell *v.* Henderson, *supra.*

This case differs little from . . Campbell *v.* Miller [*supra*] . . The facts, however, are found against the defendant," [574] " There was . . judgment in favor of the plaintiff, for the restitution of the slaves, but no damages were given, . . [575] It is sworn they are worth $10 per month for each slave."

" decreed, that the judgment . . be . . reversed, and that the plaintiff do recover . . Edward and Mamdee, and . . [$349.33] for their services, with costs in both courts."

Mulhollan v. Johnson, 1 Mart. N. S. 579, September 1823. [581] " at the sale of . . estate, a family of negroes [woman and her four children] were put up "

Herriman v. Mulhollan, 1 Mart. N. S. 605, September 1823. " three or four [negroes] were hired; . . worth 12 dollars a month, . . two . . remained for a year."

M'Neely v. M'Neely, 1 Mart. N. S. 646, September 1823. " the plaintiff . . told the witness that the negro child was not worth the raising, and that she had given it to her daughter, on condition she would rear it; . . [647] its mother being compelled to leave it every day to work on the other side of the river."

Desdunes v. Miller, 2 Mart. N. S. 53, January 1824. " the slave . . had the consumption . . before . . the sale . . and . . she died of that disease."

Doubrere v. Grillier's Syndic, 2 Mart. N. S. 171, February 1824. " The petitioner states that previous to . . 1819, he was a slave . . of Louis Doubrere, . . that by the indulgence of his master, the assistance of some friends, and his own industry, he acquired . . means to purchase his freedom. That . . Grillier . . voluntarily undertook to effect this object, and purchased the petitioner . . for . . one thousand eight hundred dollars, . . [of which $1700 was] paid to Grillier . . for that purpose by the petitioner; that he was emancipated . . [but] on the failure of his last master [Griller], he had been sequestrated as making a part of his property, and thrown into prison. . . [172] written [evidence] . . on the trial . . receipts . . by which it appears that seventeen hundred dollars were paid by the plaintiff [through Grillier] to his former master. . . Also a license . . 1821; in which the plaintiff was authorized to carry on trade in a coasting vessel . . and the books of the custom-house, showing that Grillier signed, as a surety, the bonds . . furnished by the petitioner, as a freeman, to obtain this license. The oral evidence . . went strongly . . that a contract had existed between the master and slave, for the freedom of the latter,"

[181] " decreed, that on the payment by the plaintiff of . . one hundred dollars, . . the balance . . due by him to his former master, he be released from the sequestration . . and discharged from confinement, and that the creditors of Grillier be perpetually enjoined from claiming the petitioner as a slave." [Porter, J.]

Wall v. Hampton et al., 2 Mart. N. S. 361, April 1824. "The plaintiff states that she was sold [by Neville] . . in . . Pennsylvania, to Turner, at whose death she passed into the hands of the defendants, who hold her in slavery, although her right to freedom has long ago attached . . The defendants pleaded . . that the plaintiff is a slave, and was sold as such for life . . they called their vendors in warranty. These warrantors pleaded the same pleas . . The plaintiff . . filed an amended petition, stating that . . bill of sale . . was not executed by . . Neville, but was obtained through error, or fraud. . . [363] Mrs. Neville . . deposed that . . [in] 1802 . . her husband sold to Turner, a slave, named Sally Wall, . . It was specially agreed between the parties to the sale and . . the subject of it, that provided the latter consented [1] to go with the vendee [to Natchitoches], she should be a servant for a term of years not exceeding nine. . . the vendee paid for the woman and her child a price proportioned to this time of service. . . the son of . . Neville, deposes . . [364] she was no longer a slave after entering Turner's family. His father, at the time a considerable slaveholder, disposed of several of them in this manner.[2] He kept none as slaves for life who accepted freedom. . . To the best of his recollection Sally Wall was to remain as house or kitchen servant during her time of servitude. The feelings of witness's father revolted at the idea of a woman's being compelled to perform field services, particularly in . . sugar and cotton countries. In . . 1807, he saw Sally on Turner's plantation, on the Mississippi, and talked with her of the time when her service was to end, and she looked up to it with impatience. . . Maurice deposed, she is now from 50 to 55. In 1802 she was worth from $800 to $1,000; now $400." The jury found that Sally was now "45 or 50." It was admitted that the bill of sale is in Turner's handwriting, and the blanks filled up by some other person." [362] "judgment for the plaintiff, and for the defendants against the warrantors."

Judgment reversed and the case remanded, [368] "with directions to the judge, not to allow parol evidence to be given . . to disprove the contents of the deed," [367] "It is true the amended petition contains an allegation of error or fraud—but neither . . were put in issue to the jury," [Martin, J.] See same *v.* same, p. 481, *infra.*

Harper v. Destrehan, 2 Mart. N. S. 389, April 1824. "The plaintiff sued to recover a . . slave . . illegally . . taken out of his possession. The judge below decreed he should recover, but condemned him to pay the price . . because she had been stolen, and purchased by the defendant at public auction."

[391] "decreed, that the judgment . . be . . reversed; and . . that the plaintiff do recover . . the slave . . with costs in both courts." [390] "Slaves, by the law of this country, are considered as immovable: therefore" "the provision in the code [3] . . that . . the owner [of things

[1] Pa. act of Mar. 29, 1788.
[2] Perhaps influenced by the Pennsylvania act of Mar. 1, 1780. Ed.
[3] Civ. Code of 1808, p. 488, arts. 74 and 75.

movable] cannot recover them without paying the possessor the price, provided he bought them at . . public auction" does not apply to them. [Porter, J.]

Lunsford v. Coquillon, 2 Mart. N. S. 401, May 1824. "The plaintiff alleges she is a free woman, . . that some years ago, her then owner removed from Kentucky into Ohio, with the intention of residing there, taking her . . that she resided for several years in . . [his] family . . continuing to serve him . . that, having made an attempt to assert her freedom, he defeated it by her forcible removal into Kentucky, from whence she was brought back into Ohio, and afterwards into Louisiana."

Judgment for the plaintiff affirmed: [403] "The right of a state to pass laws dissolving the relation of master and servant, is recognized in the constitution of the United States, by a very forcible implication. . . [404] that such persons who do not escape, but whose owners voluntarily bring, may be discharged by the laws . . of the state in which they are so brought. . . [408] the constitution . . of Ohio emancipates, *ipso facto,* such slaves whose owners remove them into that state, with the intention of residing there;" [Martin, J.]

Castellano v. Peillon, 2 Mart. N. S. 466, May 1824. "The petitioner states that he purchased a negro man . . [467] who had at the time of sale, the habit of running away; and . . shortly after . . absconded, and has not since been heard of, . . The defendant . . prayed that *his* vendor, . . Leslie, should be cited in warranty. . . Leslie did not warrant . . against redhibitory vices and defects. . . [468] From the silence . . as to any other defect but that of title, it is argued that it must be *presumed* it was the intention of the parties that the vendor should not be responsible for redhibitory vices." Held: "this presumption is not strong enough to release the seller from the warranty which the law rises"[1] [Porter, J.]

Ulzire et al. v. Poeyfarre, 2 Mart. N. S. 504, May 1824. See same *v.* same, p. 463, *supra.* [505] "jury . . found that the petitioners are descended from an Indian woman . . and that the defendant has shown no title" Judgment for the plaintiffs affirmed: "if the defendant hold the plaintiffs in slavery, without any title, he does so illegally," [Porter, J.]

Ford v. Ford, 2 Mart. N. S. 574, June 1824. [575] "the slaves were her property . . in . . Mississippi . . having brought them there from . . Alabama, . . The negroes came to Louisiana . . after the marriage [in 1818]."

Sikes v. Allen et al., 2 Mart. N. S. 622, June 1824. "Guerlain . . purchased the slave . . in February, and in March . . he ran away, . . was apprehended and put in jail . . six months, . . [then] sold . . to O'Conway . . [623] O'Conway's deed to the defendants . . did not warrant against any vice, or defect of disposition . . declaring he was at the

[1] "that the buyer may have the sale cancelled, 'unless the seller has stipulated that he should be under no kind of warranty.' Civ. Code, 356, art. 68."

time of the sale in the jail . . as a runaway. . . [624] Shortly after . . the defendants sell to the plaintiff, without mentioning [this.] . . within less than a month . . the slave disappears," [625] "decreed . . that the sale . . be rescinded; and that the plaintiff recover . . five hundred dollars, with interest from the inception of the suit, and costs in both courts."

Dressen v. Cox, 2 Mart. N. S. 631, June 1824. [637] "a few days after the plaintiff's imprisonment, Scholastique, his [free colored] servant [and housekeeper], claimed . . part of the property ['almost every thing'] in the house [and shop] then shut up. The defendant . . gave her thirty-five . . dresses, and . . other articles of man's, woman's or boy's apparel, claimed by her, which appeared to have been worn. . . Scholastique sued the defendant for the . . apparel, which did not appear to be worn." She obtained judgment against him.

Delphine v. Deveze, 2 Mart. N. S. 650, June 1824. "The plaintiff . . is descended from . . Marie Catherine . . the slave of . . Marie Durse . . [who] emancipated . . [her] and her children Florence, Luce, and Caroline, the mother of the petitioner. . . prays that she may be decreed free, and recover damages . . [651] The defendant pleaded the general issue, and prescription." Judgment for the plaintiff.

Affirmed: I. "the third Partida, title 29, law 24, . . provided that if a man be free, no matter how long he may be held . . as a slave, his . . condition cannot be thereby changed; . . [II.] We have examined the evidence . . the jury were fully justified in inferring . . right of the plaintiff to her freedom." [Porter, J.]

State v. Bell, 2 Mart. N. S. 683, August 1824. "deposition . . of a colored woman, who received from the defendant [clerk of the district court], and carried to the deluded female an instrument, by the use of which her premature delivery was to be obtained."

English v. Latham, 3 Mart. N. S. 88, September 1824. "The plaintiff claims . . $800, which the defendant bound himself to pay, if he did not return after one month . . an indented mulatto man, . . The defendant pleaded . . the presumed freedom of the servant, he being a mulatto. . . judgment for the defendant,"

Judgment reversed and the case remanded: [90] "the presumption of freedom . . was destroyed by the proof of his being a bondsman, as is acknowledged in the instrument [executed by the defendant]." [Martin, J.]

Crawford v. Cheney, 3 Mart. N. S. 142, September 1824. "action brought to recover the price of a negro whom the plaintiff charges the defendant with having shot and killed." Judgment for the plaintiff.

Affirmed: [143] "The testimony, it has been argued, is weak, and it is perhaps so, but the act . . is one rarely committed in presence of witnesses, and the most that can be expected . . is the presumptions that result from circumstances. . . We believe justice has been done," [Porter, J.]

Campbell v. Miller, 3 Mart. N. S. 149, September 1824. "This is the second appeal.[1] . . On the last trial a witness was offered to prove the confession of the appellant, that he had authorized the person who sold to the defendant . . objection . . on the part of the plaintiff . . overruled" [152] "judgment . . avoided, and . . the cause . . remanded" [150] "The judge erred . . [151] this is the second time which we have so widely differed with the jury in their conclusions on the facts"

Campbell v. Henderson, 3 Mart. N. S. 152, September 1824. See same *v.* same, p. 473, *supra.* "same judgment" as in the preceding case.

Dreux v. Dreux's Syndics, 3 Mart. N. S. 239, January 1825. "the price of a slave, her property, which she had consented to liberate on the payment of seven hundred dollars, . . [was] received by her husband"

The Josefa Segunda. Roberts et al. (claimants), 10 Wheaton (U. S.) 312, February 1825. See the *Josefa Segunda.* Carricabura *et al.* (claimants), p. 462, *supra.* [313] "After the condemnation of the vessel . . the negroes . . were, (under the 4th section of the act of Congress,[2] and under an act . . of Louisiana, passed . . 13th of March, 1818, in pursuance of the act of Congress,) delivered by [Mr. Chew] the Collector of the Customs . . to the Sheriff of the parish of New-Orleans, for sale according to law. . . the negroes were sold [for $68,000][3] . . and the proceeds lodged in the Bank of the United States, subject to the order of the Court . . Mr. Roberts . . claimed a moiety of the proceeds . . similar claims . . [by others who alleged that they had made the] subsequent military seizures . . [314] and Mr. Chew . . conjointly with [Lorrain] the Naval Officer and [Emerson] Surveyor of the port, filed a like claim as the . . actual captors . . who made the . . only effectual seizure, and prosecuted the same to a final sentence of condemnation." The court below allowed only the last claim, dismissing the others.

Decree reversed [332] "so far as it sustains the claim of Mr. Chew and the Naval Officer and Surveyor of the port" [331] "all the beneficial interest [in the first moiety] rests in the United States." [321] "The fourth section of the act of 1807 provides, that . . 'any negro . . imported . . shall remain subject to any regulations . . which the Legislatures of the several States or territories . . may make, for disposing of any such negro,' . . the Legislature of Louisiana, . . 1818, passed an act . . [322] that the Sheriff . . receive any [such] negro . . and after . . condemnation . . sell . . that 'the proceeds . . be paid . . one moiety for *the use of the commanding officer of the capturing vessel,* and the other moiety to . . the Charity Hospital of New-Orleans,' . . [332] The case . . is . . a *casus omissus* in the act of Louisiana. That act had a direct reference to the act of Congress, and 'the commanding officer of the capturing vessel' . . must mean . . of such an armed vessel or revenue cutter, as is entitled to share . . by the latter [act]." "But as the [latter] act has made no provision for . . compensation [to Mr. Chew], he must be left, in

[1] See same *v.* same, p. 473, *supra.*
[2] Of Mar. 2, 1807. 2 St. at L. 426.
[3] 3 Peters (U. S.) 59.

common with those who made the military seizure, to the liberality of the government." [1] [Story, J.] See U. S. *v.* Preston, p. , *infra.*

Aubert v. Buhler, 3 Mart. N. S. 489, April 1825. [490] "purchaser of . . Phillis, for . . $599 87,"

Oldham v. Croghan, 3 Mart. N. S. 517, April 1825. " in consideration of the labor [for one year] of a gang of slaves placed on the plantation of Croghan, he would pay . . four thousand and eighty dollars."

Morgan v. Mitchell, 3 Mart. N. S. 576, May 1825. " The petitioner [sheriff] claims $432 87 cents, which . . the defendant owes him for clothing, sustenance and medical aid, furnished two . . negroes [of the defendant], from . . May, 1820, until . . March, 1822, being the time they were confined in the jail . . and also moneys paid for taking up . . and for advertising . . [579] The slaves were committed . . as felons and runaways. . . want of evidence to establish they were the former . . [580] he did not advertise the negroes, . . But . . the defendant . . had personal knowledge of their being . . thrown into prison; and . . declared he had no claim to them. . . [581] one of the negroes was let out for some time, and placed on . . plantation . . he was sick. . . the person at whose house he was . . told the deputy sheriff he would feed and clothe him as his own negroes, and set him to work when able." [580] " The court . . did charge that the plaintiff could not recover as sheriff; but . . on a *quantum meruit.*" Judgment affirmed.

Ritchie v. Wilson, 3 Mart. N. S. 585, May 1825. " action . . on a . . note [for $628], given to the plaintiff for his wages, as overseer . . 1822. . . plea that the defendant was not bound to pay . . because the plaintiff . . did, in violation of his duty, and by improper and cruel treatment to a negro girl . . of the defendant, cause her to drown herself, whereby he sustained loss to the amount of one thousand dollars." Judgment for the plaintiff affirmed: [586] " The wrong complained of had been committed more than one year before filing the demand in reconvention." [Porter, J.]

Spraggins v. White, 3 Mart. N. S. 661, June 1825. " The plaintiff . . 1821 . . entered into . . partnership with the defendant, the object of which was, the purchase of slaves in the Atlantic states [2] . . to be transported to this state for sale. . . 82 slaves had been purchased, of which 73 have been sold by the defendant . . [for] $41,237," [4 *id.* 299] " Ellen and child " " are yet in his possession. . . [301] We have allowed the defendant nearly all the demands . . except that of freight on the first shipment of negroes, . . paid by the plaintiff. The matters most disputed . . were the large sums charged by both plaintiff and defendant for expenses; the one in buying, the other in selling the slaves."

Lafon's Heirs v. Executors, 3 Mart N. S. 707, June 1825. [714] " paid to . . one of the defendants . . $850, for wages as overseer of the tes-

[1] "Thereupon, the said collector, and surveyor, and naval officer, applied for relief to Congress," See Heirs of Emerson *v.* Hall, p. 519, *infra.*

[2] " in the northern states " Same *v.* same, 4 Mart. N. S. 297.

tator's plantation, from . . April, 1804, to . . September, 1805, and $828, for the hire of three negroes of his, employed on . . plantation, from May 1st, 1804, till February 28th, 1806."

Lewis v. Petayvin, 4 Mart. N. S. 3, June 1825. "action on a note . . alleged to be lost, the plaintiff having been robbed of it. . . At the trial, the . . judge . . received in evidence, the record of the conviction of a slave charged with robbing the plaintiff;" Held: "the record ought not to have been read."

Moosa v. Allain, 4 Mart. N. S. 99, December 1825. Will of Julien Poydras, dated 1822:[1] [100] "The sales of any of my plantations, as to the slaves which are attached to them, (and all my slaves are to be considered as attached to them,) is [*sic*] to be made with the obligation imposed on the purchaser . . [101] [to free] all the slaves . . sold with said plantations respectively, even the children born or to be born, at the expiration of twenty-five . . years from the date of the sale: and the slaves, who at this epoch may not have the legal age for emancipation, shall be bound to work . . till they reach that age, when they are to be emancipated . . Likewise, the purchasers of my . . plantations, are to be bound . . to . . treat with humanity, and keep on said plantations . . without requiring any labor from them, all . . who may evidently have attained . . sixty years, and pay them annually . . twenty-five dollars, as a relief against the infirmities of age. These terms are to be rigorously executed, and all persons, in the name of humanity, and particularly the officers of the state, are . . [102] requested by me, to cause them to be executed" [99] "The plaintiff states . . [100] That B. Poydras purchased one of said plantations . . with . . slaves attached . . of which the plaintiff was one, and afterwards sold it to one of the defendants, with the conditions mentioned in the will . . inserted in the *proces verbal.* But that the said defendant . . sold him to . . Leblanc, the other defendant, who has brought the plaintiff to . . West Baton Rouge, against his will . . and intends to remove him out of the state. . . prayer for the rescission of the sale of [to] Leblanc; that he may be ordered . . to restore the plaintiff . . [to] the plantation with which he was sold, and be enjoined from removing him therefrom. . . judgment for the defendant,"

Affirmed: [102] "The right to remain on the plantation . . is only given to those who may have attained . . sixty . . the right of the purchaser to the labor of the [other] slaves [for twenty-five years from the date of the original sale], wherever he chooses . . is perfect—unless, perhaps, the slave may be allowed the aid of the magistrate, in case of an evident attempt to transport him out . . of the state, . . to frustrate his hope of emancipation, . . by compelling the purchaser to give security for the forthcoming . . or otherwise. . . there is no evidence of even an intention of . . Leblanc, to transport the plaintiff." [Martin, J.]

Simmons (f. m. c.) v. Parker, 4 Mart. N. S. 200, January 1826. "The plaintiff sues for his freedom in virtue of an act of emancipation

[1] Poydras *v.* Taylor, 9 La. 488.

of his former owners, Levi Rose and Mary Rose, made in . . Kentucky in . . 1804, to take effect . . 1823. The defendant pleaded that he had purchased the petitioner from W. and N. Wyer as a slave for life; . . had bought of his vendors their right of warranty against . . Hewlitt, from whom they had purchased, and prayed that he might be cited . . and condemned to pay . . $1,000, the price given Wyer . . Hewlitt appeared . . prayed, that . . Greene, from whom he had bought, and . . Holland, who had joined . . in the sale, should be cited . . [201] and in case they failed to sustain their title . . condemned to pay the respondent . . $1,000, . . Holland . . averred . . that Parker, . . at the time he purchased the plaintiff, knew of his claim for freedom, . . [206] N. Wyer . . was dead at the time the conveyance was made from the other [partner] "

Decreed: [211] " that the . . plaintiff enjoy his freedom . . as if born free. And . . that . . Parker do recover of Hewlitt . . $500 [as [207] 'only half the right of warranty of W. and N. Wyer was transferred to Parker '] ; and that Hewlitt do recover of . . Holland . . $1,000, with costs in the court below, the appellee paying those of appeal."

Wall v. Hampton et al., 4 Mart. N. S. 310, March 1826. See same *v.* same, p. 475, *supra.* " The plaintiff had a verdict [on the new trial] and judgment . . [311] The jury found on a special issue, to show that the bill of sale . . was obtained through error *or* fraud." [312] " verdict set aside, and the case remanded," [311] " this finding . . is void for uncertainty," [Martin, J.]

Bayon v. Towles, 5 Mart. N. S. 1, August 1826. [2] " the bill of sale was executed for the vendor . . by an agent of his, in New-Orleans, and expressly states the slave to be sold as 'a runaway and drunkard.' But the defendant [who resists payment of his note] shows that the plaintiff [in an 'anterior' conversation] . . represented . . that the slave was only in the habit of absenting himself for a short period, and . . returning of his own accord, and never wandered to any great distance [[3] '*petit marronage*'] ; while said slave, during the time he was in the vendor's possession, . . wandered as far as the Choctaw nation . . and did not return of his own accord, but was seized " [1] " judgment against the plaintiff;" Decreed [4] " that the judgment . . be . . reversed, and that the plaintiff recover . . fifteen hundred dollars, with interest " from March 23, 1822.

Skillman v. Lacy, 5 Mart. N. S. 50, August 1826. [52] " After the sale [by the mortgagor] . . the . . slave had several children, who, by order of the court . . have been seized, with the mother, and directed to be sold to satisfy the plaintiffs' demand." Judgment reversed: [53] " the children . . became . . property [of the vendee] . . unencumbered by the tacit mortgage of the appellees [plaintiffs] ;"

Stafford v. Stafford, 5 Mart. N. S. 162, October 1826. [163] " in 1803 . . she had five slaves, now increased to fifteen or sixteen . . removing the whole, and [herself] . . from South Carolina to the territory of Mississippi and this state "

White v. Cumming, 5 Mart. N. S. 199, October 1826. [200] " Dr. Sebly deposed the slave was brought in four or five weeks ago considerably swollen, in the belly, face and eyes. He bears old marks of frequent bleedings. . . thinks it an incipient dropsy. . . cure easier in young than in old persons." Held: [201] " The defendant has failed in establishing a redhibitory defect,"

Wright v. Harman, 5 Mart. N. S. 235, October 1826. [236] " these slaves were placed in the possession of the . . sheriff . . never committed to jail, but submitted to the keeping of a citizen . . who made no charge for the food . . [The sheriff] did pay for clothing said slaves $59, which was absolutely necessary."

Bray v. Cumming, 5 Mart. N. S. 252, October 1826. " came to Louisiana [in 1816], bringing the two slaves,"

Mathurin v. Livaudais, 5 Mart. N. S. 301, January 1827. Will of a free man of color: " Comme mon fils Narcisse est encore esclave, et que je désire contribuer a lui assurer sa liberté, je . . legue a son maitre . . six cents piastres, à la charge par lui de considérer ladite somme un acompte à valoir sur le prix qu'il pourra exiger de . . Narcisse, pour lui donner sa liberté " [302] " This disposition is attacked by a son of the testator's and brother of the slave . . on the ground that it is a *fidei commissum,* and prohibited by law."

Held: [303] " this legacy cannot be considered as a *fidei commissum.* It is not a charge to one to receive for, and render to another; because that other has not . . a legal existence; until the slave is emancipated, he cannot demand the thing bequeathed." [302] " This [demand by the brother of Narcisse] is one of the harshest . . and the most revolting to every principle of equity and justice, that has, as yet, fallen under our consideration." [Porter, J.]

Duncan v. Poydras, 5 Mart. N. S. 492, March 1827. [493] " the claim of the petitioner grows out of a seizure . . by the collector of the port of Orleans of a quantity of slaves shipped from one of the northern states . . Three libels . . were filed against the vessel . . and two actions were brought . . against the collector—one to obtain a sequestration of the slaves, and the other for damages consequent on the illegal seizure."

Held: [494] " The man who ships goods on board a vessel which is illegally seized, suffers enough in the detention . . and the expense . . without being obliged to defend the ship and master " [Porter, J.]

Thatcher v. Walden, 5 Mart. N. S. 495, March 1827. " The sale [of the negro] took place in New-Orleans, to relieve the [steam]boat [' on board of which the negro was hired '] from some embarrassments "

Johnson v. Field, 5 Mart. N. S. 635, April 1827. Mathews, J.: [636] " Slaves, being men, are to be identified by their proper names . . and where there are two or more of the same name, by some other, which distinguishes them in relation to physical, or, perhaps, moral qualities."

Perrie v. Williams, 5 Mart. N. S. 694, May 1827. " the plaintiff claims damages for the loss of a slave . . killed by the defendants. . . judgments . . against them: Williams . . appealed. . . [695] The second exception is, to the refusal of the court . . to allow appellant's counsel to interrogate Doctor Bedford . . introduced by the plaintiff, as to a consultation . . Williams, had . . wherein he . . palliated his neglect, in not having sooner called in surgical aid to the slave, while laboring under the wounds inflicted . . This testimony was rejected, on the ground, that no one can make evidence for himself." Affirmed.

Bore v. Bush et al., 6 Mart. N. S. 1, May 1827. " action [brought by a free person of color] against a justice of the peace, and his constable, for false imprisonment. . . [2] On the trial . . one of the defendants moved the court that . . a judgment of non-suit might be rendered against the plaintiff. The court, notwithstanding the opposition of the plaintiff, granted this motion."

Reversed and the case remanded: " Free persons of color are . . bound to treat . . citizens . . with respect; and if they do not, they are subject to fine and imprisonment. But . . [3] they are entitled to a trial by jury. . . justices of the peace have no right to summon juries, it is a necessary consequence . . that the defendant was without power to try "

Bernardine v. L'Espinasse, 6 Mart. N. S. 94, June 1827. " The plaintiff claims her freedom from the defendant, who asserts title . . in virtue of a purchase from the heirs of Galez, whom he has cited in warranty. . . The plaintiff was born in . . 1781, in St. Domingo, the slave of Galez. She fell . . to one of the daughters, who intermarried with . . Goyffon. At the period the negroes revolted . . Goyffon and his wife fled. The plaintiff . . swam after them and got on board the vessel . . accompanied them to . . Cuba, and served them . . until . . 1809. When forced to leave that country, she again followed them and came to Louisiana. Shortly after . . her mistress died without making a will, but recommending to her husband not to forget the . . faithful services . . and requested him to set her free. . . Sometime before his decease, he made his testament, in which he gave the plaintiff and her two children their freedom, and appointed the defendant his executor and residuary legatee. The defendant . . took an oath that he would . . faithfully perform the duties . . he neglected to perform that . . imposed . . in relation to the plaintiff. When requested to comply . . by persons taking an interest in her situation, he promised . . but evaded an immediate compliance, on the ground that it was necessary the plaintiff should work for some time . . [to] reimburse him for moneys . . advanced to her. After . . [96] several years . . he finally refused to liberate her, and set up a title in himself, in virtue of a purchase he had made since he was appointed executor, from . . the collateral heirs of . . wife of Goyffon "

Judgment for the plaintiff affirmed: " where collateral relations set up a claim . . they must show that the relations in the ascending line have ceased to exist. . . [97] No such proof . . If the case presented strong equitable claims on the part of the defendant, and the warrantors, we

might . . send the cause back for proofs of heirship. But . . justice and equity . . are most emphatically with the plaintiff: and . . we cannot aid the defendant in making out a harsh demand, which has no foundation but in the strict rules of law." [Porter, J.]

Coleman v. Breaud, 6 Mart. N. S. 207, September 1827. [209] " negroes in . . Arkansas . . delivered . . to be brought to . . Louisiana,"

Erwin v. Fenwick, 6 Mart. N. S. 229, September 1827. " promised . . to deliver at the principal plantation of the [plaintiff] . . twenty slaves, ten of whom were to be males, . . for . . ten thousand dollars,"

Hawkins v. Vanwickle, 6 Mart. N. S. 418, January 1828. " The plaintiff claims from the defendant a slave and other property, and prays that he may be enjoined from selling them . . The defendant . . in his answer to the demand of the petitioner, pleaded, that she was black and a slave . . incapable of bringing suit. On the trial . . the plaintiff offered a deed of emancipation, passed in Cincinnati . . [419] objected to on the ground that previous to reading it, it was incumbent . . to prove the formalities (if any there were) required by the laws of Ohio in emancipating slaves. The court . . rejected the instrument . . judgment against the plaintiff,"

Reversed and the cause remanded, [420] " with directions . . not to reject the act of emancipation . . because the plaintiff does not prove a compliance with the formalities " " the whole proceeding was . . irregular. This was not the case of a woman suing for her freedom, but of a woman in the enjoyment of it, suing . . for property . . the burthen of proving the fact of slavery, was on the party making the allegation. By a law of the Partidas [1] where a man claims another who is in the actual possession of liberty as his slave, the necessity of proving him such, is thrown on the claimant—*a fortiori,* where the question arises collaterally with a third party;"

Volant v. Lambert, 6 Mart. N. S. 555, March 1828. [560] " The appellant's next position is, that the last vendee . . lost the slave by his own neglect; that he should have reclaimed him as a fugitive [to Mississippi],"

Held: " The article in the constitution of the United States does not apply to a case where the citizens of another state, whose laws recognize slavery, set up a title to a slave found within its limits." [Porter, J.]

Donaldson et al. v. Hull, 7 Mart. N. S. 112, June 1828. [114] " services [of a woman thirty-two years old] . . would not have averaged ten dollars a month . . [115] Her taxes, clothing, medical attendance, and medicines, may be valued at $20 a year,"

Hewes v. Barron, 7 Mart. N. S. 134, June 1828. " action to rescind a contract for slaves, on the ground that the mother was afflicted with . . large tumor on the leg."

[1] Partid. 3, tit. 15, law 5.

Sterling v. Luckett, 7 Mart. N. S. 198, September 1828. "The plaintiff claims the value of his slave, killed by a slave of the defendant. The evidence . . fully authorizes the verdict . . in favor of the latter."

Noble v. Martin, 7 Mart. N. S. 282, October 1828. "The plaintiff claims $1,000 for his wages as overseer . . for the year 1827, and a part of the crop for the labor of three slaves of his, . . [283] the parties to the suit were partners,"

Dorothee v. Coquillon et al., 7 Mart. N. S. 350, January 1829. "The plaintiff, a free woman of color, complains that her child was directed to be emancipated at . . twenty-one, by the will of her mistress, who bequeathed her services in the mean while to the defendants' daughter, who is still a minor—that the will requires that the child be educated in such a manner as may enable her to earn her livelihood, when free—that no care of her education is taken and she is treated cruelly. The prayer . . is, that the child be declared free at twenty-one, and in the mean time hired out by the sheriff. . . The petition was dismissed"

Affirmed: [351] "The daughter is a *statu liber,* and as such, a slave till . . her twenty-first year. . . the object of the suit, as far as it concerns her, is relief from ill-treatment, which a slave cannot sue for." Consequently, the plaintiff cannot sue for her. [Martin, J.]

Morgan v. Fiveash, 7 Mart. N. S. 410, February 1829. "The defendant is sued for the value of a slave, drowned in cordelling a vessel of which the former was master, . . [412] Fisher swears that sometimes the slaves were permitted to cordel vessels through the turn" to make some money for themselves, [8 *id.* 589] "during the low-water . . especially on Sunday afternoon, and then in case of fine weather only." "They had been at all times forbid . . during the season of high-water, and they have been punished for doing it then. . . overseer . . deposed . . [590] They were frequently engaged in tracking vessels through at night, as the wind was not so high . . and he has frequently heard the cries of the negroes tracking vessels while he was in bed. . . Fisher was under him." [588] "this was the second slave lost in that manner." Judgment for the defendant.

Heirs of Cole et al. v. Cole's Executors, 7 Mart. N. S. 414, February 1829. The testator gave [417] "the mass of his property to his brother, . . [422] The executors resist the payment of a note of the deceased, in . . favor [of Sarah Lee, a free woman of color], dated . . 1826, for $3,000, and payable on his return from Europe. . . On the trial below, the defendants asked several witnesses whether the plaintiff was not the concubine of the deceased. . . [423] The court admitted the evidence, . . [424] She was the testator's slave in 1818; . . that year, she was emancipated. In eight years after, we find her owning seven slaves. . . In addition . . $100 is given her by the will."

Held: "If her services were given in the house . . the money by which seven slaves were acquired, shows that she must have been paid for these services. . . The note can be considered in no other light than

an attempt to disguise . . a liberality to the plaintiff, and is null for want of the formalities prescribed by law for donations *inter vivos.*" [Porter, J.]

Lawrence v. McFarlane, 7 Mart. N. S. 558, March 1829. "a redhibitory action on the sale of a slave, . . Bein . . sold the slave to the defendant for $250 (the price paid by the plaintiff for her)—she was sick at the time for about a week, and the defendant attended her. She complained of rheumatism, but he thought she was more lazy than sick. He owned her . . two or there years. . . [559] thinks she had the venereal. . . went to market daily, washed for the children and cooked. . . he had paid $350 for her. . . auctioneer . . deposed, he sold the slave [in February 1828] for the defendant. She appeared old and decrepit, and walked badly. . . thinks that, for a woman of her age, she brought as much as if . . healthy. . . Dr. Davidson deposed he owned [her] . . during 1819 and 1820. He sold her because she smoked a great deal, and was dirty in her kitchen, . . She drank freely, but was not a drunkard: . . Dr. Debow . . in April or May [1828] . . was called by the plaintiff . . found her affected with a chronic rheumatism, . . [561] told the plaintiff she might be cured by a course of medicine, which might take a month." Held: not a redhibitory case.

Pilie v. Lalande, 7 Mart. N. S. 648, April 1829. [649] "The defendant objected to [witness] . . on the ground that she was a slave. The court considered the actual enjoyment of freedom . . as *prima facie* evidence of her competency. The bill of exceptions does not state whether she was a negro or a mulatto. If the latter, the presumption was in favor of her being free, . . judgment . . affirmed," [Porter, J.]

Xenes v. Taquino, 7 Mart. N. S. 678, April 1829. [679] "The vice, to which the slave is charged . . to be subject, is habitual drunkeness. The purchase was made since the enactment of the late amendments to our code, . . [680] vices of character . . *are confined* to cases where the slave has committed a capital crime, . . is convicted of theft, or . . is in the habit of running away. . . [681] drunkenness [is] a vice . . of character" [Porter, J.]

Gardela v. Abat, 8 Mart. N. S. 126, May 1829. "action . . to settle the right of property to a . . slave and her two children, inventoried as the property of the deceased, and claimed by the plaintiff, his natural daughter, . . [127] a person of color," Held: [128] "gift void, as not made before a notary and in the presence of two witnesses."

Meilleur et al. v. Coupry, 8 Mart. N. S. 128, May 1829. "The heirs . . obtained a rule against Coupry, who had obtained letters testamentary . . to show cause why they should not be revoked, on a suggestion that he was a slave, . . [129] he was born of a slave mother, . . he is twenty-seven or twenty-eight . . has enjoyed his freedom for fourteen years and been married as a free man."

Held: " as he is under thirty . . and the lawful emancipation . . cannot take place before that age, the presumption of a legal emancipation . . is repelled," [Martin, J.]

Livaudais v. Steamboat America, 8 Mart. N. S. 166, June 1829. " action . . to recover the value of . . slave, drowned in consequence of a pirogue, in which he was descending . . being run against "

Jackson v. Porter, 8 Mart. N. S. 200, September 1829. [202] " in partnership as attorneys at law, and for the sale of land, slaves, etc."

Miles v. Oden, 8 Mart. N. S. 214, September 1829. [224] " the slaves . . were sent down the river and sold . . with the intention of applying the proceeds to the payment of the creditors in Kentucky."

Wells v. Wells, 8 Mart. N. S. 307, October 1829. " The plaintiff states he was in peaceable possession of five slaves . . and that the defendant took forcible possession . . [308] the defendant had possession . . for one year prior . . was absent . . when the plaintiff took the slaves; . . applied to the latter to give them up, and on his refusal . . called out to the slaves, who were at work in the field, to return to his house." Held: [311] " Nothing in our law prevents a man, who has the right of possession, from taking . . the object "

Hepp v. Parker, 8 Mart. N. S. 473, January 1830. [476] " the slave died of an abscess in his lungs. When the physician was first called in, . . seven or eight days after the date of the bill of sale, the negro was found to be afflicted with a cough, and difficulty of breathing. This cough existed at the time the contract was made . . the defendant . . said it was the remains of dysentery."

Held: [477] " this knowledge did not defeat his recourse in warranty, for there must not only be knowledge of a disease, but knowledge of one that is incurable " [Porter, J.]

Landreaux et al. v. Campbell, 8 Mart. N. S. 478, January 1830. " redhibitory action, in which the plaintiffs . . allege . . [that Ned] was affected with the absolute vice of madness . . at the time they purchased . . [479] no evidence that shows the existence . . previous to the sale; . . overseer of the plaintiffs . . [480] remained on the plantation from the arrival of the slaves [bought at Natchez], . . in January, until the 6th of February, . . did not perceive . . any infirmity: he only appeared to be of a feeble constitution, was lazy, and would not work without being constantly watched; and when out of sight of the overseer, he would . . wander . . gesticulating . . *tout seul.*"

Held: " not . . madness; at all events of its appearance within three days from . . purchase;[1] . . Considering the many frauds . . practiced on purchasers, by professed dealers in this species of property, we have reluctantly come to a conclusion on the facts, different from that at which the judge *a quo* arrived:" [Mathews, J.]

[1] C. C. 2508.

Hebert v. Esnard, 8 Mart. N. S. 498, January 1830. " the present defendant lately instituted a suit against the present plaintiff, complaining that he had so grievously wounded a slave of hers . . that he was absolutely incurable, . . She recovered $600,"

Palfrey v. Kerr et al., 8 Mart. N. S. 503, January 1830. " The . . owners of a steamboat, resisted the plaintiff's claim for damages, resulting from the master having hired . . a slave of the plaintiff and carried him out of the state," Held: [505] " the plaintiff cannot recover, because he has not shown that the defendant could have prevented the acts," [Martin, J.]

U. S. v. Preston, 3 Peters (U. S.) 57, January 1830. See the *Josefa Segunda,* pp. 462, 478, *supra.* [60] " Mr. Preston, as attorney general [of Louisiana] . . filed a claim on behalf of that state, setting forth . . that the proceeds of the sale [of the negroes], $68,000, were brought into the district court by the order of the court, and that part of the same remains deposited in court. He insisted that the money belongs to the state,"

Held: I. [67] " The decision in the second cause [1] . . was not final as to the rights of the United States . . as against this party." II. " this claim of the state cannot be sustained." [66] " The final condemnation in this court took place . . 1820; but previous to that time was passed the act of March 3d, 1819, . . by which . . persons of colour seized and brought in under any of the acts prohibiting the traffic in slaves . . are deliverable to the orders of the president; not of the states. And . . repeals all acts . . repugnant to this act. . . in admiralty causes a decree is not final while it is depending here. . . [67] We would not be understood to intimate, that the United States are entitled to this money; for they had no power to sell. Nor do we feel ourselves bound to remove the difficulties which grow out of this state of things." [Johnson, J.] See Heirs of Emerson *v.* Hall, p. 519, *infra.*

Bailly and Son (f. p. c.)[2] *v. Percy (f. w. c.),* 14 La. 14, March 1830. " The plaintiffs claim title . . under a sheriff's deed " in 1810. [15] " The defendant . . purchased No. 5 [in 1822] from the heirs of Heloise Trudeau, f. w. c., and No. 6 from Nanette Leduff, f. w. c." [14] " who purchased them from their brother Jacques Leduff, in . . 1807." Nonsuit. Affirmed. [20] " The action was renewed, . . additional evidence . . In 1813 . . Jacques Leduff mortgaged his property to the plaintiff and his father, to secure indorsements given, . . Heloise . . and Nanette . . joined . . and mortgaged the lots . . Marie Therese Leduff [another sister], also joined . . In 1814, Jacques . . failed, . . Bailly and Son transferred their mortgage to the syndics " In 1816 judgment was entered in favor of the syndics for $17,652.92 and [18] " a *fi. fa.* issued . . The sheriff's deed . . recites that the sheriff did . . seize lots . . 5, 6 . . Bailly and Son became the purchasers . . Now, therefore, . . the sheriff grants [them] . . all the right . . which Marie Therese Leduff . . had " Judgment for

[1] The *Josefa Segunda,* p. 478, *supra.*
[2] Free persons (or people) of color.

defendant affirmed in 1839: [21] " Marie Therese . . never had any right . . in the lots "

Merry v. Chexnaider, 8 Mart. N. S. 699, March 1830. " The plaintiff sues . . to recover his freedom, and . . is clearly entitled to it. He was born in the north-western territory, since the enactment of Congress, in 1787, of the ordinance . . according to the 6th article of which, there could be therein neither slavery nor involuntary servitude. . . The act of cession by Virginia, did not deprive Congress of the power to make such a regulation." [Porter, J.]

Prudence v. Bermodi et al., 1 La. 234, April 1830. [239] " The plaintiff . . claims her freedom . . she was once the property of the defendant's mother in Hispaniola, whom she followed to New Orleans. . . her then owner married Batifol, who [in 1814] . . sold . . to Malocher; and [in 1828] . . Batifol being dead, Malocher sold her to her former owner . . stipulating she should be free on the vendee's death. . . [240] The slave always remained with the defendant's mother," [235] " she left no property but the slave Prudence, . . Malocher . . stated that both acts were fraudulent, simulated, and entered into without any consideration."

Judgment for the defendants affirmed: [241] " If there were other articles of property, it behooved the plaintiff to show it, that it might appear that the value of the slave does not exceed the part of her estate of which the mother might dispose. The emancipation of a slave is a donation of her value to her." [Martin, J.]

Back v. Meeks, 1 La. 309, May 1830. [310] " This slave was sold as a runaway and a thief, to the person who sold him to the defendant. And in the sale to the latter, his vendor refused to warrant . . defendant . . sold . . to the plaintiff, with full warranty. . . The testimony of the keeper of the police jail, shows this slave was frequently confined as a runaway, whilst in the possession of two distinct proprietors, who owned him previous to the defendant, and that he was confined by the plaintiff amongst the slaves who work in chains." Held: [311] " the defendant is answerable "

Hitchcock v. Harris, 1 La. 311, May 1830. [313] " Defendant . . warranted the negroes . . to be sound," " two . . were . . laboring under a pulmonary disease, from which they since died. . . [315] the doctor said he made no particular charge . . having attended them with others of the plaintiff—but he added, had he made a particular charge, he would have asked forty dollars for them."

Desfarge et al. v. Desfarge et al., 1 La. 365, May 1830. [366] " The will of . . [367] the brother of the petitioners, and natural father of the defendants, free persons of color, appointed one of the latter testamentary executor, and contains a bequest of all the testator's property in Louisiana to his said children, and all his property in France to the petitioners; and . . avers, that the latter is much more considerable than the former."

Dugat v. Markham, 2 La. 29, September 1830. [30] " while the crop was in cultivation (the husband . . superintending the hands and working with them) the negroes rebelled against his authority, and were . . instigated to do so, by the wife's children " by a former marriage.

Montgomery v. Russel, 2 La. 67, October 1830. [68] " The security bond . . was . . given in Alabama for the hire of African slaves . . illicitly brought into the country."

Carlin v. Stewart, 2 La. 73, October 1830. [74] " Dr. Stewart had given medical attendance to a negro woman, a nurse, . . His bill amounted to $56. . . she had a very severe attack,"

Williams v. Hagan, 2 La. 122, December 1830. " the plaintiff sold the slaves to Kimball in . . Mississippi . . 1828 . . who brought them to New Orleans, and . . [123] 1829, sold them "

Preston v. Zabrisky, 2 La. 226, December 1830. [227] " the defendant had sent the [two] slaves to the plaintiff, and . . received . . three others. . . the defendant . . a few weeks after, sent orders by a black boy to them to return home, which they did. . . [His] counsel has urged, an exchange was contemplated, and the slaves reciprocally sent on trial. . . The defendant . . is a free colored person, and may have been deterred from going . . by the apprehension of giving rise to some altercation." [Martin, J.]

Ails v. Bowman, 2 La. 251, December 1830. " The plaintiff alleges . . that . . [252] slave . . soon after [the exchange] ran away, was frostbitten, and died, although the plaintiff . . was at great expense to have him cured."

Kemp v. Wamack, 2 La. 272, December 1830. Mathews, J.: [274] " The defendants . . estimate the costs of raising young slaves, up to the time at which they become useful . . at ten dollars per annum. One of the witnesses thought . . fifteen dollars would suffice . . and to his opinion we are disposed to give the greatest weight . . as the negroes . . were nurtured on a plantation, and required, in this climate, little clothing; and were probably fed on bread and other cheap . . food."

McMaster v. Beckwith, 2 La. 329, December 1830. " The defendant, master of a steamboat, without permission from the plaintiff, employed his slave on a voyage from New Orleans to Louisville, Kentucky. At the latter place, the slave left the boat and became lost to the owner. . . the plaintiff bought the slave without guaranty, for . . four hundred dollars, . . a runaway at the time . . His services were . . worth from twenty-five to thirty dollars per month." [330] " the plaintiff, at times, hired his slave to masters of boats; and gave him, at other times, a written permission to look for employ that way " Held: " his recovery ought not to exceed what he paid for the negro." [Martin, J.]

Bocod v. Jacobs, 2 La. 408, December 1830. [409] " the slave ran away once while he was owned by the vendor, and was absent a few

days only. When he was arrested he gave to himself and his owner many names. Soon after the sale he ran away a second time."

Held: [410] "we do not think that the *mere* fact of running away immediately after the sale, added to a single instance before, may be received as evidence of an anterior habit. It may be the consequence of the displeasure of being sold—of his dislike of the new owner." [Martin, J.]

Halpen v. Franklin, 2 La. 465, December 1830. "physician's bill, for . . services to the deceased . . and slaves."

Beale v. DeGruy, 2 La. 468, December 1830. "1830 . . at public auction . . mother and daughter . . were struck off . . for . . $1160, . . a physician . . stated: that the [mother] . . was affected with . . [470] an enlargement of the veins in one of her legs." [468] "the value . . was diminished by one-third."

Labbé v. Abat, 2 La. 553, September 1831. "married . . 1781. . . 1805 . . they entered into a voluntary agreement to separate, . . [557] She said she separated from her husband because he lived with his domestic Josephine, and had more regard for the mulatress [*sic*] than for her: . . Josephine . . had a son by him, called Charles. Descuirs acknowledged this child to be his son, and the latter called him father. He also boasted that Charles would figure in the society of Paris, to which he sent him to be educated. . . [558] Josephine continued to live with Descuirs on the plantation until his departure for France [in 1825], when he took her with him. She returned from France with him. . . Josephine, since his death, continues to live in a fine house in New Orleans, which is also well furnished."

Borel v. Fusillier, 2 La. 570, September 1831. "the defendant told him he knew the wench . . had the asthma . . and for that reason he gave only $200 for her."

Markham v. Close, 2 La. 581, September 1831. "This is an anomalous action, instituted in a *civil* form, to punish a *criminal* offence. D. K. Markham . . 1830, presented his petition to the district judge at chambers, alleging that the defendant had cruelly beat . . one of his slaves . . and prayed that . . slave be taken out of his master's possession and sold, . . The answer alleges that the slave . . when he received the chastisement . . had just been brought back from the Mississippi, after absconding for a considerable time. . . [582] testimony of several witnesses . . He was severely whipped, and his back and hips very much cut and skinned. The weather being warm, the wounds smelled badly; the negro was obliged to lie on his belly, being unable to sit or lie in any other position. . . Negat, a neighbor . . by order of the master, when first landed . . gave him twenty-five or thirty lashes, with a whip. . . on the way to his master's he became sullen, and refused to go, when he gave him ten or twelve lashes more over the shoulders. The master came, and the negro still refusing . . had him whipped again. . . verdict for the plaintiff. . . new trial . . refused. Judgment . . decreeing the slave to be

sold, . . and the balance . . after paying the costs of the prosecution, be paid over to the defendant; he . . not being allowed to purchase . . having refused . . to purge himself, on oath, of the charge of cruel treatment"

Reversed. [587] "And . . ordered, that the cause be dismissed, the petitioner paying costs in both courts." [584] "It is greatly to be deplored, that owners of slaves should . . violate the duties of humanity. But the punishment . . can only reach them in the mode . . which . . law has prescribed. . . the court had no jurisdiction . . [586] The conviction . . spoken of [in the Code,] [1] which must precede the order to sell, . . means condemnation, or a criminal prosecution. . . [587] The individual who interfered in this instance may, we believe was, actuated by feelings which we cannot but respect. But what in this instance was the suggestion of humanity, might, in the next, be the promptings of envy, malice, and all uncharitableness." [Porter, J.]

Taylor v. Swett, 3 La. 33, September 1831. [36] "in the commencement, the parties were prevented from contracting any valid marriage . . But the death of her first husband . . not many years after ['the defendant took [her] to his bed and board'] . . left them free to contract marriage." [34] "The parties removed [from South Carolina] to Louisiana about twenty-five years ago, . . They are colored people."

Bronaugh v. Bowles, 3 La. 120, October 1831. "appointed . . to go to Tennessee and North Carolina and sell the property of the decedent for cash or negroes,"

Valsain et al. v. Cloutier, 3 La. 170, October 1831. "1810 . . Dupré made his nuncupative will . . bequeathed six thousand four hundred dollars to . . Cloutier, his half brother . . and the remainder, consisting of lands, slaves, etc., . . to a mulatto woman named Adelaide, and his natural children by her, . . the present plaintiffs. . . Adelaide renounced her share . . in favor of the petitioners, . . In 1811 . . Cloutier . . instituted suit and recovered the whole . . The probate court set aside so much of the will as bequeathes . . property to Adelaide and her children. . . [It is alleged] that the present plaintiffs were no parties to [the suit] . . not bound by the judgment. . . [171] The petitioners pray the judgment . . be annulled . . Cloutier . . says he . . had the whole of Dupré's estate . . by a final judgment of the supreme court [in 1814].[2] . . [172] children . . had already received five thousand dollars from the executor of Dupré. . . 'they were slaves when . . the testator died.' At this stage . . Adelaide . . intervened . . alleges that if the plaintiffs could not inherit . . the legacies enured to the benefit of [her mother] Marie Louise Mariotte, f. w. c.[3] their common mistress, . . who was no party to the suit annulling the . . legacies." [176] "She had [in 1796] . . purchased her daughter [Adelaide], and in . . act [dated December 28, 1797] she declared that from maternal love . . she thereby gave freedom to her daughter from the moment of her, the donor's death." [173]

[1] C. C. 192.
[2] Cloutier *v.* Lecomte, 3 Mart. La. 481.
[3] Free woman of color.

" In 1815, Marie Mariotte died, and Adelaide became free " She [172] " prays, that . . she be decreed to inherit " Rost for the plaintiffs: [172] " Two of the plaintiffs are the natural children of . . Dupré, verbally acknowledged by him, before the promulgation of the Civil Code, in 1808. The other was born, or in his mother's womb, at the time of the promulgation, and was acknowledged by the father, from the beginning of his mother's pregnancy."

Judgment [177] " in favor of the grandchildren . . must be reversed, and ours be for the mother." I. The plaintiffs were not free at the " opening of the succession." [176] " manumission did not *necessarily* result from . . declaration [of Marie Mariotte]." " she made her daughter a *statu liber.*" II. As Adelaide [177] " and her children were slaves to her mother at the time the legacy was given [in 1810], . . the property . . became that of her mother; . . at the time this testament was opened, in . . 1810, the laws of Spain were in force in Louisiana; . . although we find . . the same general provision . . [as] in our Code . . that a legacy to a person incapable of receiving is null . . we find an exception . . that a legacy given to a slave, shall belong to the master [1] . . the enactment in our Code of a general provision existing in the Spanish law, [does not] repeal the exception which accompanied it . . [III.] as the freedom of the mother took place the instant the grandmother died, there was capacity to inherit. . . decreed, that . . Adelaide . . do recover [$6,686] . . with interest . . from . . April, 1830," [Porter, J.]

Cauchoix v. Dupuy, 3 La. 206, December 1831. " action for slander, in which it was charged, that the defendant had asserted the plaintiff to be a man of color." [207] " The damages were laid at six thousand dollars. . . He has traced his descent through unmixed blood, for upwards of a century." " verdict in favor of the petitioner, for two hundred and fifty dollars;" New trial refused. Affirmed.

Cowand et al. v. Reynolds, 3 La. 378, December 1831. " The defendant guaranteed to the plaintiffs the title to a mulatto boy [man], which they had purchased as a slave . . in . . Mississippi . . [380] the seller not knowing " [378] " that the boy was free " [379] " This is a suit against the surety, in warranty, . . to recover damages . . [381] the buyer was obliged to incur expenses in consequence of repeated absconding by the person held as slave; . . those paid to the physician, and also the charges of the counsel . . for the plaintiffs in . . the suit concerning the right of holding in slavery the subject of the . . sale." [379] " verdict . . for two hundred and sixty-six dollars and ninety cents, on which judgment was rendered," Affirmed.

Daquin v. Coiron, 3 La. 387, December 1831. [389] " entitled to the hire of . . 31 negroes, for 2 years, 2 months; and 21 (ten having died or disappeared) for 3 years and five months [beginning 1826], at . . $100 per annum, . . [401] the slaves had so many *sobriquets,* and were known

[1] Partid. 4, tit. 21, law 7.

by so many names, that . . embarrassment remains, from the designation in the . . deeds, not corresponding."

Roquet v. Richardson, 3 La. 452, December 1831. "Damages were claimed from the defendant [a justice of the peace], on the ground of having concealed and employed a runaway slave[1] . . testimony, that a female slave, . . about twelve . . was brought to the defendant's house by a carman, to whom she had stated she was free; she remained . . nearly a year, during which time every publicity was given . . no paper published in the parish . . nor did it contain a jail . . The plaintiff proved . . that he had advertised her in the papers of New Orleans . . and expended one hundred dollars . . judgment for the defendant" Reversed; [454] "decreed, that the plaintiff . . do recover . . one hundred dollars, with costs in both courts."

Strawbridge v. Warfield, 4 La. 20, December 1831. [21] "the defendant was employed in the capacity of a broker, by . . Mercer, of Maryland, to aid him in the sale of several servants; . . repeatedly offered at private sale, and finally advertised,"

Verdier v. Leprete, 4 La. 41, December 1831. [42] "1828, he purchased, in the territory of Florida, five slaves"

Hynes v. Kirkman, 4 La. 47, December 1831. [49] "on her last trip from New Orleans to St. Louis, . . a sum of money having been stolen . . and suspicion lighting on a free negro, one of the hands, he was taken . . over the Tennessee River, and flogged, in order to obtain his confession. But he did not admit any thing, and was flogged a second time on board. All this was done by the directions of J. Kirkman [part owner of the boat], who encouraged those he employed for that purpose, by the assertion that they incurred no liability . . but the whole responsibility rested on the boat. She proceeded to St. Louis, where the negro brought suit, and J. Kirkman advised the plaintiff [captain] to cross over to the Illinois side, to avoid being taken by the sheriff,"

Hopkins v. Lacouture, 4 La. 64, December 1831. "removed from . . Alabama . . and brought the slave with him."

Gourjon v. Cucullu, 4 La. 115, December 1831. Martin, J.: [117] "the whole cargo [of slaves] was placed under the . . management of the plaintiff. . . those who thus take charge . . and attend to the sales, receive a commission of five per centum, and those who attend to the sales only; two per centum. . . The petition states an agreement for a commission for the care and sale . . of two per centum on the aggregate amount of the sales. He therefore cannot claim any commission on the value of unsold slaves. The defendant is consequently entitled to a deduction of ninety dollars, the commission on nine thousand dollars, the supposed value of the slaves returned. . . [118] judgment for the plaintiff for four hundred and fifty-one dollars, with costs"

Chew et al. v. Keene, 4 La. 144, December 1831. "suit . . on a . . note made by the defendant . . in 1808, . . he . . claimed in reconvention . . from

[1] Moreau's *Digest,* vol. I., pp. 119-121.

the plaintiffs, a large sum . . [146] on account of their . . mismanagement in relation to a cargo of [two hundred and twenty] slaves . . put on board a ship . . at . . Savannah . . consigned to the plaintiffs;"

Reed (f. m. c.) [1] *v. Palfrey et al.,* 4 La. 161, December 1831. [162] "the plaintiff, who was held as a slave by . . Palfrey, brought suit to recover his liberty. Palfrey cited Florance in warranty, and the latter, Beckman. Judgment . . declaring the plaintiff to be free, and a certain amount of damages [[163] 'fruits or profits produced'] . . against the defendant, who recovered from Florance . . the price . . with interest . . and . . the . . damages . . Judgment was also rendered in favor of Florance against Beckman, for . . price paid to the latter, from whom the former bought the plaintiff, as being the slave of Thomas, and also the damages" Affirmed.

Jung et al. v. Doriocourt et al., 4 La. 175, December 1831. "Bernoudy, by his last will, . . gave to the plaintiff, f. w. c., and her four children, . . one thousand dollars each. . . suit was brought by the mother and . . children . . to recover from the defendants (heirs of the testator), the legacies . . Two of the defendants, in a separate answer, alleged . . that the . . mother . . was the adulterous offspring of the testator, . . incapacitated, as well as her children, from recovering a legacy under the will of her natural father."

Held: I. no error [180] "in admitting evidence of the plaintiff . . being . . adulterous bastard." [179] "She is under a double incapacity, as an illegitimate child of color. She cannot successfully claim any thing from her natural father or his heirs, if her descent be denied, because the law has said she cannot prove it;[2] as an adulterous child, she cannot inherit.[3] . . the tribunals of France gave to the article 908 of the Napoleon Code, a construction . . allowing [illegitimate children] . . to resist, in certain cases, the introduction of evidence of their illegitimacy. . . [180] A part of the population of this State has been placed by law under certain disabilities . . Cases of bastardy, of very rare occurrence in France, are unfortunately, much more frequent among us. . . these . . important considerations . . impose on our courts a stricter observance of the laws relating to illegitimate children, especially those of color. . . [II.] [181] the three defendants who have neglected to plead the incapacity, cannot claim any advantage from it. . . [III.] balance to be recovered by the . . plaintiffs . . two thousand five hundred dollars," [Martin, J.]

Coquet v. Creditors, 4 La. 198, December 1831. [200] "Maria . . was . . sold to a free man of color . . [her] brother . . [201] he was properly admitted to testify,"

Devine v. Kelly, 4 La. 206, December 1831. "The defendant is sued for having been an accomplice with . . slaves in a robbery, and having received a portion of the property stolen. . . judgment against him" Affirmed.

[1] Free man of color.
[2] C. C. 226.
[3] *Ibid.* 914.

Monday v. Wilson, 4 La. 338, August 1832. Mathews, J.: [341] " Although slaves by our laws are placed in some respects on the footing of immovable property, yet being in their nature movable, considered as things, and being *se moventes,* considered as men, they cannot (strictly speaking) be held to be immovables situated in any particular parish . . the act " of 1810, which provides that " no notarial act concerning immovable property shall have any effect against third persons until . . recorded in the . . parish where . . situated " does not apply to them.

Fuselier (f. m. c.) v. Masse et al. (f. p. c.), 4 La. 423, September 1832. [425] " In . . 1782, two people of color, Etienne Sam and Jeannette, entered into a contract of marriage before the commandant of Attakapas and Opelousas; and by the same act agreed, that in case . . [of] no issue . . the survivor should take all . . There were no children . . but the husband had a natural son . . slave of . . Soileau. In May, 1797, Soileau promised to sell . . to the husband, on condition that he was to give him his freedom; . . August . . [426] the father, by public act, emancipates . . the plaintiff in this present action, and he claims all the property . . in virtue of an . . act . . before the commandant . . 1799. The parties declare, that not having children . . they are desirous of nominating an universal heir . . that for this purpose, they adopt the father's natural son . . only requiring in return, that he will assist them . . for the remainder of their lives. . . The husband died first, without any act of revocation; the wife . . executed her . . will, by which other dispositions were made . . although . . a considerable portion . . was bequeathed to the plaintiff. . . pronounced null, for want of the formalities . . required."

Held: [429] " dispositions in a . . will . . invalid as such, which are irreconcilable with . . a previous donation, . . revoke it. . . the donee of the husband by whom the donation was not revoked, must receive one-half . . and the heirs of the wife the other half." [Porter, J.] [19 La. 330] " the two tracts of land, granted by the Spanish government to Etienne Sam Fuselier . . should not be included in the partition as community property. . . [331] The plaintiffs had . . an exclusive right "

Thompson v. Bell, 4 La. 447, September 1832. In December 1819 a negro man was sold for $1510.

Stewart v. Berard, 4 La. 454, September 1832. In 1812 a woman and her child were sold for $800.

Prevost et al. (f. p. c.) v. Simeon et al. (f. p. c.), 4 La. 472, September 1832. " The plaintiffs claim, as heirs [$2,616.28] . . which . . came into the hands of George Simeon, as curator *ad bona.* J. Prevost, the ancestor . . died in 1804, leaving considerable property in lands, slaves, and stock."

Fulton v. Curtis, 4 La. 515, October 1832. In 1819 a negro woman was sold for $1505.

McPherson (f. m. c.) v. Robinson et al., 4 La. 563, October 1832. " The plaintiff sues for his freedom, alleging that he is a free man of color, born free in . . St. Domingo, from whence he removed to the United States with his mother, a free woman, and settled in Alexandria, District of Columbia. From thence he was taken and held as a slave, and sold in New Orleans to . . Robinson, and now claimed by M. and T. J. Wells. The Wellses . . call Robinson in warranty. Robinson made default. About eighteen months after the suit was filed, it came on for final trial. . . counsel for Robinson, made affidavit for further time to answer; . . moved to continue . . overruled, . . verdict and judgment, giving the plaintiff his freedom and two hundred dollars for his services; allowing M. and T. J. Wells one thousand two hundred and fifty dollars on their warranty against . . Robinson." Affirmed: [564] " Robinson . . does not appear to have taken the least trouble as to any preparations for his defence." [Martin, J.]

Bruce v. Stone et al., 5 La. 1, December 1832. " the plaintiff sought to recover . . five hundred dollars . . price of . . Charles, . . [2] died [of dysentery] four days after the sale; . . was a runaway at the time of sale. . . keeper of the police jail in . . New Orleans . . knew a negro belonging to the plaintiff, named Charles; . . repeatedly in said . . jail, . . once or twice among the chain negroes, fell sick the last time . . and was removed by plaintiff," Judgment for defendants affirmed.

Coote v. Cotton, 5 La. 12, December 1832. [14] " The plaintiff claimed compensation for services . . during nine years, in buying and selling slaves, and ['chiefly'] in collecting and superintending others purchased by the defendant. . . the defendant supplied him with . . money to buy slaves, and other sums to carry to his other agents. . . the plaintiff, before he came to his service, was in the humble situation of a boatman, a sawyer and a weaver, . . afterwards he dressed so genteel, and lived in such a style that he was thought to be the defendant's partner."

Myers v. Slack, 5 La. 53, December 1832. [54] " The plaintiff alleges the slave [Joe] was hired on an agreement . . that he should be engaged at the whip saw " [56] " once every two weeks, . . have permission to come . . to Plaquemine, to visit his wife. . . A week [after such visit] . . defendant . . sent the slave in a skiff, accompanied by [two white men, Lambremont and Ross] . . to bring " " some articles from Plaquemine, . . On descending the Plaquemine, the white [men] . . slept in the house [of Placide]. . . endeavored to induce the slave to leave the skiff, but could not persuade him to do so. In the morning . . missing, and a few days after, his body was found in the bayou." [6 La. 136] " On the sixth . . trial . . Lambremont . . testified . . No jug was given to Joe by the plaintiff . . nor did they stop there . . Ross . . was intoxicated . . Joe likewise . . The jury found for the plaintiff for five hundred and fifty dollars." New trial refused. Affirmed.

Borie (f. w. c.) v. Borie (f. m. c.) et al., 5 La. 87, December 1832. " suit . . brought by the wife of . . Borie . . to recover of him . . seven

thousand one hundred and seventy-two dollars . . [89] of which her father had made a donation to her."

Deslonde (f. m. c.) v. Le Breret, 5 La. 96, December 1832. "The plaintiff sues the defendant to recover . . value of a slave, which he is alleged to have killed. The answer denies that the defendant is indebted . . justifiable . . as the negro was in the habit of stealing . . defendant's property in the night. . . plaintiff offered his natural father as a witness;"

Hurst v. Wallace, 5 La. 98, December 1832. "claims damages . . by [defendant's] receiving on board and carrying to Louisville . . two slaves,[1] . . [99] put on board . . by a person who assumed to be their owner, and who went with them" Held: the master of the vessel is not responsible.

McDonough v. Zacharie, 5 La. 247, December 1832. [248] "the plantation and slaves were sold at public auction by order of the parish judge, in order to effect a partition"

Adams v. Ryder, 5 La. 261, December 1832. "action for . . rescission of the sale of a slave, attacked with the scrofula; . . incurable . . [262] decreed . . that the plaintiff recover . . six hundred dollars [the price], with legal interest"

Armistead v. Bowden, 5 La. 263, December 1832. [264] "The slaves were within this State when the contract [for their sale] . . took place" in Virginia.

Brabo v. Martin, 5 La. 275, December 1832. "physician who had seen the slave just after she had recovered from a fit, . . pronounced that she had been affected with epilepsy."

Versailles (f. w. c.) v. Hall, 5 La. 281, December 1832. Porter, J.: [282] "Pierre Avariste, . . originally bound to Hall and Adams, agreed with the consent of his mother, and the approbation of the mayor, that the indenture should be transferred to the defendant. As the original indenture . . was made previous to the promulgation of the Louisiana Code [of 1825], . . the right to annul the indenture must be denied. The question whether the master, under the provisions of the Louisiana Code, can correct the indented servant with a whip, need not be decided in this case. John Baptiste's indentures, however, have not been transferred with the approbation of the mayor, and the defendant's right to his services depends on the validity of the transfer made to him by his partner, Adams. The contract of indenture appears to us to be personal, and not susceptible of alienation."

Moffat v. Vion, 5 La. 346, December 1832. "The defendant's slaves had stolen from the store of the plaintiff a quantity of dry goods," Held: the latter [348] "may . . obtain a judgment in a civil suit to ascertain the amount of damages without a previous criminal prosecution," [Mathews, J.]

[1] Act of 1816, sects. 3 and 4. Acts of 1816, p. 8.

Deslondes v. Wilson, 5 La. 397, December 1832. "The petition states a negro slave broke open a press in the plaintiff's house, and stole . . about three thousand dollars, with . . valuable papers; . . arrested on board of a boat, and jumped into the river and was drowned,"

Carter v. Cooper, 5 La. 446, December 1832. [447] "the slave died shortly after the sale, of a diarrhoea;"

Executors of Hart v. Boni (f. w. c.), 6 La. 97, December 1833. "The petition alleged that the defendant had lived in concubinage with the testator; that she had in her possession and claimed to own, certain notes belonging to the succession, amounting to [$123,451.50] . . It further averred that a certain pretended donation, *inter vivos,* was illegal"

Cavelier (f. w. c.) v. Germain, 6 La. 215, December 1833. "The plaintiff is the grandmother and tutrix of three minor children . . a family meeting was convened, which determined . . that a house . . should be sold . . 1833 . . adjudicated to the defendant" for $2,925.

Gottschalk v. De la Rosa, 6 La. 219, December 1833. "The plaintiff sold to the defendant for five hundred and sixty dollars a female [mulatto] slave with a child, by public auction, . . 1832. . . note, payable in six months, . . The slaves were delivered . . The defendant averred, that he had learned the mother was free, and that she had been kidnapped in Alabama; that she and her child were voluntarily remaining under his protection. He prayed that the sale be annulled, and the mother and child be decreed free. . . he alleged that suit . . [220] against him . . for their freedom . . was then pending."

[221] "decreed, that the plaintiff . . do recover [$560] . . with interest . . with costs . . But . . no execution shall issue . . until the plaintiff give . . security . . to save [defendant] . . free from all injury . . in the event of the slaves establishing their claim to freedom," [Mathews, J.]

Hilligsberg v. Canal Co., 6 La. 228, December 1833. The slave [229] "ran away twice before the sale." "after the purchase, . . three or four times, . . not been found since he ran away in . . 1832. . . five years before the sale, the slave ran away once, and was taken in about two days afterwards." Held: "the plaintiff has not made out his case" that the slave was "addicted to the vice of running away," "one witness . . does not state the length of time he was absent . . Another . . does not specify an absence . . sufficient to satisfy the provisions . . of the Code,"[1] [Mathews, J.]

Stetson v. LeBlanc, 6 La. 266, December 1833. [270] "a mulatto man . . had been employed . . to discharge staves from flatboats," [268] "and also to purchase staves for him."

Compton v. Woolfolk, 6 La. 272, December 1833. [273] "Fanny, aged twenty years, and her child" were sold in 1831 for $600. She died soon after.

[1] "Twice for several days, or once for more than a month." C. C. 2505.

Joyce v. Poydras de la Lande, 6 La. 277, December 1833. [283] "the slave died of the cholera,"

Salnave v. McDonough, 6 La. 357, December 1833. "hire of two negro men slaves, from . . 1828, to . . 1832, at twenty dollars per month for each, . . [358] the hire . . was usually paid weekly, to a mulatress [*sic*], in the name of . . her mistress."

Psyche v. Paradol, 6 La. 366, December 1833. [367] "1812, Marie Elizabeth Heloise Delahage, a free woman of color, made a nuncupative testament . . by which she bequeathed some slaves to the plaintiff, . . about four years old, of father and mother unknown; other slaves to her niece, Isis Bujac, residing in Philadelphia . . one hundred dollars, to . . Lola Brémont, and ordered . . surplus . . of her other property . . divided between . . plaintiff and . . Isis"

Lewis v. Casenave, 6 La. 437, December 1833. [438] "at public auction [in 1832] . . Cazenave bought a negro man . . for . . eight hundred dollars, . . the second day afterwards" "he . . [gave] the negro permission . . to go and bring his clothes, . . had not returned;" Held: the habit of running away was not established. [442] "presumption created by law,[1] regards solely vices of body;" [Mathews, J.]

Lange et al. v. Richoux et al., 6 La. 560, December 1833. [561] "The plaintiffs, Eleanor, Mary Ann and Valérien Lange, f. p. c., allege that they are the only collateral heirs of . . Française [*sic*] Gabrielle Lorio, f. w. c., who died intestate . . 1830, . . an inventory of the property . . amounting to three thousand one hundred and twenty-three dollars, . . there are three lots . . owned jointly by the deceased . . and . . Marie Jeanne, f. w. c., . . [562] admitted by defendants, . . that plaintiffs are the only legitimate children of Charles Lange, f. m. c., by Française Pain, f. w. c.; that Charles . . was only child of Joseph Lange and Marie Jeanne, people of color; that Marie Jeanne was purchased by Joseph Lange from Hydel, and . . afterwards married to him; that Marie Jeanne was daughter of Catharine and Gorr, negro slaves . . who were afterwards sold to Gabrielle [*sic*] Lorio, who emancipated Catharine in 1803, and sold Gorr to Marie Jeanne in 1804, who immediately emancipated him calling him in the act father; that Française Gabrielle Lorio was the daughter of Catherine, born while the slave of Hydel, . . The plaintiffs admit that Française Gabrielle Lorio while the slave of Hydel had a son Martin, her only child; that she was purchased by Gabrielle [*sic*] Lorio, and by him emancipated in 1794, and in 1799 he bought Martin . . and in 1807, made a donation of him to his mother . . that Martin died before his mother, leaving an illegitimate daughter [Française Richoud, born in 1802,] by the sister of Gabrielle Lorio, . . [564] Française has furnished no evidence of her emancipation except the will of Gabriello Lorio, . . [who] died in 1822, . . so

[1] C. C. 2508.

that she continued to be a slave or at most *statu libera,* not having attained . . thirty," [1] Judgment for the plaintiffs.

Affirmed: [571] " While . . [Française] continued a *statu liber,* she was capable of receiving by donation or testament, but not by inheritance." [2] [Bullard, J.]

Flower v. Millaudon, 6 La. 697, December 1833. [699] " he broke up his establishment in Feliciana [in 1827], and brought twenty-six slaves, which had previously been mortgaged to defendant, to [New Orleans] . . for the purpose of being sold to pay off . . balance." [19 La. 191] " Millaudon finally agreed to take the gang at $11,600 [[6 La. 699] ' as a cash price '] ; . . sent up to his plantation."

Grounx et al. (f. p. c.) v. Abat, 7 La. 17, June 1834. [21] " 1818 . . their natural father . . conveys [house and lot sold later for $4,900] . . to Marie Adelaide, f. w. c., . . mother of the plaintiffs, who was present, accepting said sale for her children, . . all minors. Grounx, in the same act, acknowledges the said minors to be his natural children by . . Adelaide. . . [23] their mother was emancipated in 1804, long before their birth; they were . . baptized as free-born." [31] " In 1821, Grounx, and Marie Adelaide, went before a notary and . . formally annul . . the contract. . . same year, Grounx made . . will . . acknowledges these same natural children . . and declares, that, in order to provide for them the means of subsistence, according to the dictates of humanity, he bequeathes to them a moiety of all the property . . which he shall leave . . in case his two sisters . . should survive him; but [if not] . . he gives them three fourths, . . [32] the net proceeds of the estate amounted to four thousand eight hundred dollars " [27] " the executors transfer in payment [of one half] of that sum [due the children] a family of slaves [valued at $2,400]." [25] " The . . slaves . . belonged to Adelaide Grounx . . before her failure, and were surrendered by her to her creditors."

Vidal's Heirs v. Duplentier, 7 La. 37, August 1834. " The plaintiffs, . . f. p. c., the natural daughters of . . Vidal, late auditor of war," [43] " sue to recover the title papers of . . sixteen thousand arpents," [39] " In 1798 he made his will by notarial act, before . . notary public, and three persons named as witnesses," [45] " directs the residue of the estate, if anything should remain to be inherited, to be delivered in equal portions to four natural colored children, of whom the plaintiffs are two." [44] " the signature of the testator does not appear, nor that of either of the witnesses." The testator died in 1806. Held: [40] " the will was not properly admitted to probate;"

Hewit v. Wilson, 7 La. 71, August 1834. [74] " the store had been forcibly entered, . . no direct . . proof that the theft was committed by the defendant's slave. Some articles were found in his possession . . were restored . . and the slave was [' severely '] whipped by the husband

[1] C. C. 185.
[2] *Ibid.* 176, 193.

of one of the plaintiffs [[72] 'until he was satisfied'], by permission of the overseer."

Mary (f. w. c.) [1] *v. Morris et al.*, 7 La. 135, August 1834. "the plaintiff claims her freedom." Will of John Marshall, a resident of Georgia: [136] "Conscientiously believing that civil and religious liberty is the natural right of all men, it is my will that Jude and her two children, Mary and Ellender, with all she may have, and William, be put into the possession of my daughter Miriam Morris, on the first day of January next (1810), to serve . . *only five years*: then . . be set free, and they are hereby declared free after serving *said term of time.*" The plaintiff "alleges that . . Miriam Morris never informed her . . but she and her husband brought her to . . Louisiana . . [137] The district judge was of opinion . . it was the duty of the executor to see the will executed agreeably to the intention of the testator, which he viewed in the light of a contract for freedom; that there could be no doubt under the laws of this State where she now seeks to enforce it, she is entitled to freedom: . . Judgment was rendered, declaring Mary and her five children free"

Reversed: [138] "This bequest was made in contravention of a prohibitory law;[2] . . [139] Being from color and actual possession of the defendant, presumed to be a slave, the burden of proving her freedom devolved on her; in which we are of opinion she has failed." [Mathews, J.]

Keys v. Powell, 7 La. 143, August 1834. [144] "purchased . . Dinah [about 22 years old] by public act . . 1819, for . . one thousand dollars;"

Louis (f. m. c.) v. Cabarrus et al., 7 La. 170, August 1834. "The plaintiff claims to be a free man, . . witness for plaintiff . . first saw Louis Richardson . . about twelve or thirteen years ago, in Cincinnati, . . knew him to reside there two or three years. . . witness for defendants, states, that in 1833 plaintiff told him . . he was entitled to his freedom; that he had worked in Cincinnati, with his master; . . was taken back to Kentucky, where his master resided, and continued to serve him as a slave, until . . brought to Louisiana, and sold to defendants. . . [171] The counsel of the defendant, moved the court to charge . . that proof of residence . . in . . Ohio, unconnected with other proof, is not sufficient . . to establish his freedom, . . the court refused, but instructed . . [172] that if the plaintiff resided in . . Ohio, by the consent of his master, he did thereby become a *freeman*; that the consent of the owner, that the slave should go into . . Ohio and perform labor, was sufficient to entitle him to his freedom." Verdict: [171] "that the plaintiff was a free man."

Judgment thereon reversed and the cause remanded: [172] "the judge *a quo*, ought to have charged . . in the manner required in . . the request of the defendant's counsel. . . The latter part of the . . charge . . is too loosely expressed, . . The consent of the master, that the slave should go . . does not, of itself free the slave, though this may be effected by the slave's going . . under this permission." [Martin, J.]

[1] Actually a slave, according to the decision of the court.
[2] Georgia act of Dec. 5, 1801.

McDaniel v. Insall, 7 La. 241, September 1834. The plaintiff "hired a negro girl, about eighteen . . to the defendant for a year, . . about nine months afterwards the girl became sick . . [242] of a bilious fever, and was put in a cabin about one hundred yards from the dwelling-house. . . Singleton . . states the girl took sick on Monday, . . she kept about, worked some, but still complained; she cooked, washed and worked out. He bled her on Tuesday, by defendant's direction. Heard defendant tell the servants to ask her what she wanted. . . [243] Defendant . . paid little attention to his own slaves when sick. On Saturday she got worse. She was pregnant. On Sunday sent for Mr. O'Bannon to see her, and notified plaintiff, sent for no physician, and no medicine was given to her. He gave medicine to his own slaves when sick. . . the plaintiff did not call a physician for four or five days after he took the slave home. The doctor testifies, he was called in about ten hours before she died;"

Niblett v. White, 7 La. 253, September 1834. "February, 1832, the plaintiff loaned a negro boy . . about sixteen . . to . . White . . [254] on White's agreeing [on Saturday] to pay the negroes for their Sunday work [hauling]. . . The weather, which had been warm on Saturday, . . (the negroes being thinly clad), suddenly changed, and blew a storm of rain and sleet. . . [255] [White] was warned by a person near whose house he passed, of the danger . . and the offer was made to him of a shelter for himself and the negroes . . but he persisted in continuing to travel." [254] "The negroes and carts had a bad morass . . to cross . . night came on, and by the time they got across . . the negro boy . . was frozen to death." Judgment for the plaintiff for $600 and costs. Affirmed.

Dunlap v. Bailey, 7 La. 368, October 1834. Will of Jules Belot, dated 1832: "I give unto my father for his lifetime, my negro girl . . [369] who is to be free at his death;" "any balance . . he bequeathes to the foundling hospital in Paris,"

Hall v. Mulhollan, 7 La. 383, October 1834. [385] "Hall . . bequeathes . . Peter and his wife to a free woman of color and her daughter."

Stoker v. Leavenworth et al., 7 La. 390, October 1834. [391] "He alleges that his slave . . was killed . . by three soldiers . . acting as a patrol . . under the orders of Gen. Henry Leavenworth and Captain Andrew Lewis, . . He charges that the slave was worth fifteen hundred dollars,"

Hawkins v. Brown, 7 La. 417, October 1834. [418] "The negro himself told Brown [the vendee], he had a bad cough and discharged blood. The other negro is crippled, . . 'a runaway and great thief.' The proof supported this allegation." "One of them sold for [$711] . . and the other for [$400.]"

Boree (f. m. c.) v. Kellar, 7 La. 500, December 1834. "An action to recover . . a slave, alleged to be worth eight hundred dollars, and his hire, amounting to one hundred and fifty dollars . . The plaintiff . . took judgment by default"

Icar v. Suares, 7 La. 517, December 1834. " The plaintiff alleges he purchased . . Kate [[519] 'a recently imported slave'], from the defendant, . . paid five hundred dollars in cash; . . showed that the slave was very stupid; that on being told to do one thing she would do another; that she was unsafe to be trusted about the house, on account of the danger of setting fire to it; that she wandered off, and was finally put in the parish jail of an adjoining parish, as a runaway. The defendant's testimony went to show that the plaintiff took one or two slaves on trial, and finally concluded to buy Kate;" Judgment for the plaintiff affirmed.

Guilliet v. Erwin, 7 La. 580, December 1834. " that in February and March, 1829, he purchased two slaves from the defendant, for six hundred dollars each. That soon afterwards, one was discovered to be crazy . . and ran away, and the other had a consumption, of which he died shortly afterwards."

Hart and Co. v. St. Romes et al., 7 La. 586, December 1834. [587] " The plaintiff alleges that his store . . was broken open by several slaves belonging to the defendants, and goods, jewelry and merchandise, to the value [of $2,556.79] . . stolen . . Debuys . . abandoned his slave to be sold . . in case of liability " [588] " The district court was satisfied . . that the thefts were committed by . . a slave of . . Debuys; by [three] . . belonging to . . St. Romes; and . . a slave of . . Baylé, and condemned the masters to pay *in solido,"* St. Romes appealed.

Held: " the judge erred in condemning the masters, *in solido*. . . [589] Where offenses are committed by slaves belonging to several masters, by their order, . . the masters would be liable as direct trespassers, *in solido*. . . the liability of the master is . . measured by the value of the slave, if he chooses to surrender him . . . [592] masters should be condemned to pay in proportion to the number of their slaves respectively, who were accomplices . . St. Romes . . is liable to pay three fifths . . provided that this judgment shall be without effect, if, within three days after it shall have become final, the defendant shall abandon the [two] surviving slaves," [Bullard, J.]

Slocomb v. Breedlove, 8 La. 143, March 1835. " decreed to her . . in Mississippi, in 1833, and sent down to New Orleans . . to be sent to her . . in Texas; . . attached . . on their passage hither."

Marie Louise (f. w. c.) v. Marot et al., 8 La. 475, March 1835. " action by the plaintiff, claiming the emancipation of her daughter, a mulattress aged twenty years, a *statu libera*. . . [476] The testimony shows that Jean Mornay made a donation of Josephine, . . about two . . to . . [his grandchild] daughter of . . Marot, then about the same age, by public act . . 1816, on condition that she should be emancipated at the age of thirty . . the father signing . . and accepting for his daughter. . . [[478] 'Some days after'] Marot . . executed a private act before two witnesses, . . 'la vérité est que l' intention du donateur est que . . Joséphine soit affranchie aussitôt qu 'elle aura vingt ans. En consequence j'oblige ma . . fille . . à se conformer aux désirs de son grand père' " [475]

" The petition alleges . . that the donee . . and her husband, have imprisoned Josephine, and refuse to emancipate her: . . [477] verdict for the plaintiff, and judgment . . that Josephine be set free, provided, the consent of the civil authorities can be obtained, and that she remain in the service of the defendants until then,"

Reversed and the cause remanded: [478] " the acceptor . . was *functus officio,* and by himself could do no acts prejudicial to . . [his daughter's] interest. It is really painful, in applying rules of law . . to be obliged to violate . . feelings of humanity: but this pain is sometimes felt by judges . . Yet . . we do not consider ourselves bound to leave the wretched victim of present affliction without hope. . . the facts . . have convinced us that it is a case in which we ought to exercise the general power granted by law to remand causes . . whenever justice, in our opinion, requires such a proceeding. It is, perhaps, true, as a general rule, that the supreme court . . should be influenced alone by . . the record; . . but it is an action brought to redeem a helpless female from slavery; and every thing which may properly be done *in favorem liberatis,* should be done, even to notice facts *dehors* the record. It was stated at the bar, and not denied, that . . [Josephine] was taken by her owners to France . . and was placed by them under the direction of a hair-dresser, to learn his art. Did she not become free in France? Being brought . . into the United States, is she not free, according to . . laws enacted by Congress? . . questions which we will not solve; but . . remand the cause, in order that they may be put in a train for solution." [Mathews, J.] See same *v.* same, p. 509, *infra.*

Strawbridge v. Turner and Woodruff, 8 La. 537, March 1835. " The petitioner alleges, that the commander of the steamboat employed by the defendants, took on board . . [his] slave . . without his knowledge . . and employed him as a hand . . he had the slave arrested . . but in endeavoring to escape the latter fell or jumped overboard and was drowned. . . [538] the defendants' counsel moved the court to instruct . . that ' the owners of the boat were not liable, unless they knew of the illegal acts . . and could have prevented them.' [1] . . refused . . verdict of eight hundred dollars "

Judgment reversed and the cause remanded. [9 *id.* 215] " before the second trial, the plaintiff amended his petition, by . . an averment, that the defendants, by due diligence, might have prevented the slave being employed . . evidence . . shows . . owners [suffered] . . the slave . . to be engaged for several days, in unloading and loading her in . . New Orleans, where they resided. . . It does not appear that they made any inquiry, whether . . with . . [216] knowledge . . of . . his master." Second verdict and judgment for the plaintiff. Affirmed.

Harris v. Denison, 8 La. 543, March 1835. [544] " Denison . . foreman in a foundry . . had [the slave] . . at work with him, . . could not spare him then, on account of his valuable services, and was willing to allow [his owner] . . liberal wages [for his labor]."

[1] Civ. Code of 1808, art. 20, pp. 320, 322; C. C. 2299.

Gaillard v. Labat, 9 La. 17, December 1835. [18] " The plaintiff alleges . . that he had purchased . . a slave . . and her daughter . . for . . one thousand dollars . . That the defendant . . knew . . that he wished . . a confidential house servant, . . But . . she was . . an habitual drunkard. . [19] The defendant . . admits that she represented [her] . . as a good servant," Verdict, rescinding the sale. New trial refused. Affirmed: " The term *good servant* is very vague; but a house servant, addicted to . . drunkenness, hardly deserves the epithet." [Bullard, J.]

Ory's Syndics v. David, 9 La. 59, December 1835. [60] " The sale took place . . 22d January, 1834, at which a woman . . Madeleine, for [$960,] . . Eulalie and her child . . for [$1010,] . . were adjudicated to the defendant: . . Madeleine fell sick of cholera on the 24th . . the day after she was delivered . . and regular medical aid immediately afforded. She died on the day following." The defendant paid $53 for medical attendance and funeral charges.

Ordered: that the plaintiffs recover $957, [63] " as the balance of the price of . . Eulalie and her child . . that the sale of . . Madeleine be rescinded " " It has been contended in argument . . that cholera [1] . . is not an incurable disease in its first stages. The court is of a different opinion; it considers a malady incurable, so far as to authorize the redhibitory action, when it baffles the efforts of regular medical aid, and death ensues, notwithstanding this aid is promptly administered." [Martin, J.]

Berard (f. w. c.) v. Berard et al. (f. p. c.), 9 La. 156, December 1835. " the plaintiff claims her freedom and that of her [five] children. She alleges she was born free, in . . St. Domingo, which place she left under the care of Marie Jeane [*sic*] Berard, her aunt, and came to New Orleans, with whom and Marie Louise Berard, her sister, she lived for a long time, and until the death of the former, in 1814 . . . gave . . her services as one of the family. . . The defendant, Marie Louise, avers . . that they were the . . slaves of . . [157] Marie Jeane, and have descended to her natural children . . Celina and Antoine Garidel, . . C. and A. Garidel, f. p. c., intervened and claimed the plaintiffs as their slaves . . The judge charged that it was incumbent on the plaintiffs to prove that they were entitled to their freedom," [158] " that the intervenors were not bound to show their title." Verdict in favor of the intervenors.

Judgment thereon affirmed: " A slave cannot stand in judgment for any other purpose than to assert his freedom. He is not even allowed to contest the title of the person holding or claiming him as a slave." [Martin, J.]

Noirette (f. w. c.) v. Diggs, 9 La. 172, December 1835. " The plaintiff . . purchased [of Diggs] a negress . . who . . died of scrofula . . three or four months afterwards." " She claims a rescission . . with a return of the price [$425]," Judgment for the plaintiff affirmed.

[1] [61] "the new and rapid disease of Asiatic cholera" made its "appearance amongst us, since the passage of the Code,"

Phillis (f. w. c.) v. Gentin, 9 La. 208, December 1835. " alleges she was born free in . . Pennsylvania, . . prays that she and her [two] children be adjudged free, and allowed five hundred dollars as damages . . ' The evidence . . appears . . to establish that the plaintiff, a black woman, was, in . . 1814, . . when she was . . fifteen . . bound as an indented servant at Philadelphia, to . . Page, to serve till she was twenty-eight . . after . . a year and a half . . she was taken to Pittsburgh, . . 1816, Page transferred the time of service . . to . . Bakewell, who . . [209] married his daughter. Bakewell took the plaintiff to Louisville, and . . about 1819, transferred her time of service to . . Zuma, who lived at Cincinnati; she remained [there] . . some time, when Zuma took her to St. Louis, where, after some time, he sold her term of service to . . Sutton. She disappeared . . 1822, and the next trace we have . . is, that she is sold . . 1823, by . . Herring to . . Rhodus; from Rhodus, in 1824, she passed to . . Rowell, at the sale of whose succession, in 1830, Bonnecaze became her owner, who, in 1831, sold her to Gentin,' "

Held: [210] " She is . . clearly now free " having been " a *statu libera* in . . Pennsylvania, . . now past the age at which she was to become free . . and . . [having] resided . . in . . Ohio, with or by consent of her owner, . . Damages . . [211] ought not to be allowed against . . any . . except the vendor who first violated her rights by selling her as a slave for life; he would be liable to vindictive damages in a suit regularly brought for that purpose." [Mathews, J.]

Adams v. Hurst, 9 La. 243, December 1835. [244] " suit . . to obtain a divorce, *a vinculo matrimonii* . . . ample proof . . that he has lived in concubinage and open adultery with a free woman of color . . making the house of his concubine his home." Decreed, [245] " that the bonds of matrimony . . be dissolved,"

Dufour v. Morse, 9 La. 333, December 1835. [334] " He . . left the notice with the black man, requesting him to deliver it " " The plaintiff's counsel has not contended that this was a legal notice,"

Guerier v. Lambeth, 9 La. 339, December 1835. " the defendant [owner of the premises] . . ordered one of his slaves to nail up the door and windows, who, in executing this order . . upset a bottle of ink," [341] " which was suspended in . . shop [of plaintiff, lessee], . . fell upon a trunk of goods, and stained them. . . [342] the court charged, that the master was responsible, if the damage had been caused . . either by or without the master's order." No error.[1]

Chase v. Mayor et al., 9 La. 343, December 1835. " Callender and Deblois sold the slave to . . Chase . . for six hundred dollars . . 1833. . . allowed to remain at the store of Callender and Deblois, but having run away and engaged himself on board a steamboat, as a cook, Deblois sent him . . with an order " [346] " to the *calaboso* [*calabozo*] or city jail . . Three days afterwards this slave was . . sent out . . to work on the public streets,[2] . . properly secured by a chain and ball " " with fifty-seven

[1] C. C. 180.

[2] " according to the city ordinance of 1817, (Digest of City Laws, p. 127)."

others [the chain gang], similarly situated, attended by six of the city guards as keepers, . . when the guard was returned in the evening he was missing."

Judgment for the defendants: [347] " no evidence was required of the defendants to show the particular manner in which this slave . . effected his escape." " the city ordinances . . had more in view the convenience of the owners . . than the increase of the revenues of the city." [Martin, J.]

Montreuil et al. (f. p. c.) v. Pierre (f. m. c.), 9 La. 356, December 1835. " Bazile Montreuil alias . . Dédé . . and Jeanne Dédé, f. p. c., . . allege that they are the only legitimate brother and sister of the deceased . . but that Charles Pierre . . claims the estate, in virtue of a nuncupative will, . . 1834, in which he . . is instituted sole . . legatee, and . . executor of said will, which has been ordered to be executed . . by the court of probates. . . allege, that . . Charles Pierre . . has never been . . emancipated. . . [358] The defendant died soon afterwards, and the suit was carried on against his . . widow . . a free woman of color. . . Shortly after . . Rosette Devillier, a [free] woman of color, presented her petition . . alleging that she was originally a slave . . [of] Madame Jumonville Devillier, . . while a slave . . 1797, she had a son . . baptized . . Charles, and called Charles Pierre, . . she . . 1807, purchased him . . for . . five hundred dollars, and that he remained her slave . . to his death, by reason of which, his . . property . . belonged to her, . . The widow . . averred he . . had been in the constant . . enjoyment of his freedom, for . . twenty-seven years . . a document was offered in evidence, . . [361] purporting to be a copy of a notarial act, . . 1807, by which the . . executors of Madame Jumonville Devillier, emancipated Charles Pierre, in consideration of [$500] . . paid by his mother . . . without date, and not certified a true copy. . . It was admitted by the court, and the plaintiffs took a bill of exceptions." [360] " judgment sustaining the will . . and also that he was free, and in favor of the claim of his widow . . the plaintiffs in both suits appealed."

Affirmed. Bullard, J.: [368] " The two cases . . present a novel and repulsive spectacle. A mother . . comes forward, after his death, to claim the fruits of his industry, on the allegation that her son lived and died her slave; that he was a mere thing, . . Such pretensions must be rigorously scrutinized;"

Winn v. Twogood, 9 La. 422, December 1835. [424] " the defendant himself had purchased the same slave as a notorious runaway."

Chardon's Heirs v. Bongue, 9 La. 458, December 1835. "Chardon . . 1830 . . executed his testament . . by [which] . . he emancipates all his slaves, bequeathes to . . Jenny and . . Eugene, formerly his slaves, . . three thousand dollars each, . . Jenny, a witness, states that ' Chardon . . told deponent, the reason of his not leaving any thing to his relations was, that they had attempted to assassinate him ' " The will was upheld.

Marie Louise (f. w. c.) v. Marot et al., 9 La. 473, December 1835. See same *v.* same, p. 504, *supra.* [474] "On the return of the cause . . the plaintiff filed a supplemental petition, in which she alleges, that . . Josephine . . was taken to France by the defendants, . . that the defendants, since their return . . have . . imprisoned her . . daughter, for which she claims five hundred dollars in damages." Verdict: [475] "that Josephine is entitled to her freedom, but not . . to damages."

Judgment thereon affirmed: [476] "The main question . . is whether the fact of her having been taken to [France] . . by her owners, operated . . so as to produce an immediate emancipation. That such is the benign and liberal effect of the laws and customs of that State, is proven by two witnesses of unimpeached credibility. . . Being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery." [Mathews, J.]

Poydras v. Taylor, 9 La. 488, December 1835. "The plaintiff alleges . . that Julien Poydras died in 1824; that his plantations and slaves were sold under the conditions of his will,[1] in 1825, and that one . . with the slaves attached . . was sold . . to . . Steward, who sold it to Barrow, . . [who] 1831, sold it to . . Taylor . . with the conditions . . and the purchaser bound himself to comply . . but . . has sold several of said slaves . . to [six] different purchasers, separate and apart from the plantations to which they were attached. He therefore alleges, that as one of the heirs of . . J. Poydras, he is a party concerned under a clause . . which . . solicits the assistance of all humane persons, in behalf of said *statu liberi,* . . wherefore he prays . . that said sales be rescinded, the *statu liberi* restored . . and the defendant . . enjoined from selling . . except according to . . the will,"

Held: [491] "neither any of the slaves . . nor any other person as a *prochain ami,* could institute a suit for their sole . . benefit. But the executors of the deceased . . and his heir since the expiration of the office of the executors, have the undoubted right to interpose and prevent a violation of the testator's intentions, . . and to demand a specific performance of the conditions of the sale . . this right . . is not impaired by the avowal that the object . . is to . . carry into effect the benevolent intentions of his ancestor." [Martin, J.] See same *v.* same, p. 531, *infra.*

Poydras v. Mourain, 9 La. 492, December 1835. [494] "Benjamin Poydras de Lalande, styling himself the protector of a number of slaves, filed a petition and order for injunction, in which he states: 'That, as one of the heirs of . . Julien Poydras,[2] . . his uncle, . . your petitioner finds himself in duty bound, since the executors . . have been duly discharged, to see certain clauses of the last will [3] . . faithfully executed. . . [495] shows, that in . . 1825, Madame . . Mourain [another heir], residing . . now in . . France . . became the purchaser [4] of the plantation

[1] See Moosa *v.* Allain, p. 480, *supra.*

[2] "his executors . . had received to the credit of the estate" $1,297,045. Garnier *v.* Poydras, 13 La. 177 (178).

[3] For the English text see Moosa *v.* Allain, p. 480, *supra.*

[4] "for herself and [sister] . . jointly" Bonneau *v.* Poydras, 2 Rob. La. 1 (3). The plantation was partitioned in 1834. *Ibid.* 10.

and slaves . . on the . . Mississippi, where . . Julien Poydras died,' " [502] " and . . subscribed to the conditions imposed by the will." In January 1835 she [495] " advertised . . for sale at public auction, the one half of the said plantation . . and forty-one or forty-two of the slaves . . to be sold individually," [493] " except children, who were to be sold with their mothers," [495] " and separated from the said plantation." [502] " He obtained a provisional injunction . . [503] to stay the sale" [495] " The defendant pleaded an exception to the plaintiff's . . right to sue . . avers, that she had a right to sell . . [496] that the will of . . Poydras . . has been already decided upon . . in . . Moosa *v.* Allain, . . and that the decision is in favor of the right . . to sell them separately from the plantation." Exception overruled. Judgment in favor of the plaintiff and the injunction made perpetual.

Affirmed: [503] " An exception to the present plaintiff's capacity to institute a suit of this kind, was pleaded in another case, relating to a number of these slaves,[1] . . this court . . maintained the plaintiff's right of action . . . [504] The right of the purchaser in [Moosa *v.* Allain] . . was considered merely in regard to the then plaintiff . . a slave . . . [505] Justice requires that the defendant should not be permitted to disregard the obligation she has solemnly contracted." [Martin, J.]

Boisdere and Goule (f. p. c.) v. Bank, 9 La. 506, December 1835. " the Citizens' Bank of Louisiana, was incorporated by legislative act, . . [507] 1833. The third section describes who may become subscribers, . . 'all persons who shall be . . owners . . of real property within this State.' " [509] " The plaintiffs . . allege that they were original subscribers and stockholders " [507] " one for two hundred shares or twenty thousand dollars, and the other for one hundred and fifty shares, or fifteen thousand dollars," An amendatory act, passed in 1836, provided [506] " that no person or persons who are not free white citizens of the United States, and domiciliated in . . Louisiana, shall be . . owner of any part of the capital stock"

Held: [511] " the legislature only intended to provide, that hereafter none but free white citizens shall become stockholders . . for we cannot consider the legislature as having . . [512] imposed a condition constitutionally . . impossible, that of annihilating the . . vested rights of the plaintiffs, without their consent." [Bullard, J.]

Tagiasco et al. v. Molinari's Heirs, 9 La. 512, December 1835. [513] " action . . by the executor and brother of Marie Louise Tagiasco, f. w. c., . . to recover a lot . . with its improvements, . . which . . Marie Louise and Jean Tagiasco, f. p. c., inherited from their . . mother, Louise Baptiste Roux. . . which they allege were sold . . 1816, by . . Molinari to . . Marie Louise Roux, for . . three thousand dollars cash, he . . reserving to himself the usufruct . . during his lifetime; . . Molinari died . . 1833," [517] " The facts . . are . . Molinari, late husband of the defendant, previous to his marriage . . lived in a state of concubinage with

[1] Poydras *v.* Taylor, p. 509, *supra.*

the testatrix, Roux, . . during the period of the concubinage, . . the paramour conveyed to his concubine the property . . in opposition to the title set up . . a counter letter [[514] ' bearing the same date as the deed '], signed with the ordinary mark of the pretended purchaser, . . attested by two [[515] ' perfectly honest '] witnesses, was admitted in evidence on the part of defendant. In this instrument, the concubine acknowledges that the deed to her was fictitious " [514] " that the three thousand dollars . . Molinari himself had the very same day lent to Marie Louise Roux, in order that . . an appearance of truth . . might be given to the sale,"

Judgment for the defendants affirmed: [522] " the act of sale . . was fictitious, and intended to disguise a donation made to her, which could not legally be done." [Mathews, J.]

Anderson's Executors v. Anderson's Heirs, 10 La. 29, March 1836. Will of John Anderson: [31] " I leave to Phebe [[34] ' emancipated by the will '] one hundred acres, known by the name of Taguinos Place, with all the improvements . . and four negroes, *viz.*: Phil, Jeanny, Big Louisa and Long Frank, and one thousand dollars in cash, to be invested in bank stock. At the death of Phebe, the said land and negroes, and increase, to become the property of a yellow boy . . son of Jeanny; and in case of his death, to revert back to my . . heirs. This I do for Phebe, for her long and faithful services to me." The testator estimated his estate at $117,100. [34] " The executors surrendered the estate [before paying or investing Phebe's legacy.] . . They . . demand of the heirs to pay [it] . . They further demand . . the child of [Louisa] . . born after the will was made."

Held: [35] " the will being as obligatory on the heirs to deliver the legacy as upon the executors, the legatee who is not joined in the present suit, has a direct action against the heirs, for this purpose." [Bullard, J.]

Saul v. Magee, 10 La. 39, March 1836. [40] " The redhibitory disease is alleged to have been pulmonary consumption of which the slave died . . after the commencement of the suit." [39] " The plaintiff alleges he purchased [her] . . for seven hundred dollars, about nine or ten months ago; . . sick . . ever since, . . cost him in nursing and medical attendance, upwards of one hundred and fifty dollars. . . a supplemental petition . . claiming one hundred dollars for funeral charges. . . Judgment . . rescinding the sale, and decreeing the return of the price with interest, and seventeen dollars for funeral expenses, and costs." Affirmed.

Banks v. Botts, 10 La. 42, March 1836. [43] " The plaintiff . . purchased . . William . . 23d of June, 1835, for six hundred dollars, warranted free from all redhibitory defects " [45] " the slave remained at the house of Mr. Jacobs until the 25th, when he was put on board a steamboat, . . during the time he remained at Jacob's, he exhibited none of the symptoms of small pox, and no cases . . had occurred at his establishment for two months. . . the disease made its appearance . . during the voyage to Lafourche, and he died on the 10th July." [43] " The

plaintiff . . prays for the rescission of the sale, the return of the price, . . with seventy-five dollars, expended for medical attendance," Verdict for the defendant. Judgment thereon affirmed.

Ditch v. Wilkinson, 10 La. 201, September 1836. [202] "keeping house, making clothes for the negroes, and taking care of the young negroes"

Cooper v. Cooper, 10 La. 245, September 1836. [251] "she cursed . . her husband for threatening a negro girl for having told lies about . . [her] daughter."

Turnbull v. Towles, 10 La. 254, September 1836. [256] "Dr. . . Towles received of the estate [of his father-in-law] . . Family of negroes . . (Bob, Riner and three children,) . . . $1,625."

Rice v. Cade et al., 10 La. 288, September 1836. "action against . . owners of the steamboat . . to render them liable for the loss of a negro . . [289] Sunday morning . . the steamboat . . stopped at Mr. Cade's landing, . . [290] Witness [overseer], with the negroes and Mr. Cade, all went down to the wood yard, . . three or four of the plaintiff's negroes . . also helped . . to wood the boat. . . Did not . . see . . Arthur, before he was brought out, wounded [[289] 'by the engine or fly-wheel,'] . . [291] Rice lives near . . Cade; is very indulgent to his slaves, and not so strict as Cade in keeping his negroes at home on Sundays; . . Petrie . . saw two of Rice's negroes carrying in wood; is not sure he saw Arthur; . . saw a bottle, out of which the negroes drank; . . [292] Capt. Curry . . states . . After landing at the wood pile, [he] saw . . a great number of negroes, men, women and children, on the bank, looking at the boat. Neither himself, Mr. Cade, nor any other owner of the boat, he is satisfied, knew that any strange negro was on board. . . made it a rule, for . . seven or eight years, . . never to employ . . any slave . . without the consent of the owner, . . and when found on board . . without such consent, to commit . . to the first prison on his route." Judgment against Cade for $850.

Reversed: [294] "The permission to slaves . . may be often implied from the minuteness of the services, . . On the arrival of a stage or steamboat, a number of black boys crowd near it, . . The passengers . . cannot be expected to lose time in inquiring whether . . a slave or a free person, and, in the former case, whether he has his owner's permission. . . many times, the most correct of our citizens buy a melon, or other trifling article, without the production of . . permit [from the master]. . . the act is considered as justified by the maxim, *de minimis non curat lex,* or the proverb, *lo poco por nada se reputa.* The *day* on which the services . . are rendered is thought to authorize . . According to . . law, slaves are entitled to the produce of their labor on Sunday; even the master is bound to remunerate them, if he employs them. He, therefore, who . . on that day . . does not retain them on his plantation, impliedly permits them to earn money by their labor, . . [295] the evidence authorizes us to conclude, that the loss . . was . . purely accidental," [Martin, J.]

Nichols v. Alsop, 10 La. 407, October 1836. [408] " the slave . . was affected with epilepsy, at the time of the sale, and never rendered any services. . . the medical bill . . amounted to seventy-five dollars, and the other attendance . . worth fifteen dollars per month. The price paid for him " was $350.

U. S. v. Ship Garonne; U. S. v. Ship Fortune, 11 Peters (U. S.) 73, January 1837. " The French ship *Garonne,* from Havre, and the ship *Fortune,* also from Havre, were libelled . . at New Orleans . . 1836, under the provisions of the first section of the act of congress, passed April 20, 1818,[1] . . The ship *Garonne* had arrived in New Orleans . . 1835; having on board . . Priscilla, who had been born a slave in Louisiana, the property of the widow Smith, . . a resident . . Mrs. Smith . . went . . in 1835, to Havre, taking with her, as a servant, Priscilla; having previously obtained from the mayor of the city a passport for the slave, to prove that she had been carried out of the state, and that she should again be admitted . . Priscilla, being desirous of returning to New Orleans, from Paris, was sent back on board the *Garonne,* under a passport . . [74] in which she was described as a woman of colour, the servant of a citizen of the United States. On the arrival of the ship, the baggage of the girl was regularly returned as that of the slave of Mrs. Smith. The facts of the case of the ship *Fortune* . . Mr. Pecquet, a citizen of New Orleans, went to France in 1831, taking with him two servants, who were his slaves; as was alleged in the testimony, with an intention to emancipate them. They . . returned to New Orleans at their own instance, in the ship *Fortune,* in 1835, as was asserted, as free persons. The passport . . represented these females as domestics of Mr. Pecquet, . . After their return . . it did not appear that they were . . held . . by any person, as slaves; but no deed of emancipation for either of them had been executed. . . in the list of passengers which was certified under the oath of the captain, these persons . . were stated to be the slaves of Mr. Pecquet. The declarations of Mr. Pecquet that these persons were brought back as free . . were in evidence. The district court . . dismissed both the libels,"

Decrees affirmed: [76] " In the case of the . . *Garonne,* . . [77] even assuming that by the French law . . [Priscilla] was entitled to freedom, the Court is of opinion that there is nothing in the act of congress . . to prevent her mistress from . . sending her back to her place of residence; and continuing to hold her as before, in her service. The object of the law in question was to put an end to the slave trade; . . The language of the law . . cannot properly be applied to persons of colour who are domiciled in the United States, and who are brought back . . after a temporary absence. . . [78] The principles above stated decide also the case of . . the ship *Fortune.*" [Taney, C. J.]

Morton v. Pollard (f. w. c.), 10 La. 552, February 1837. Action to recover $675 " which the defendant agreed to pay . . for building a sugar mill."

[1] " an act, in addition to an act, to prohibit the introduction of slaves into any . . place, within . . the United States . . after the first day of January, 1808."

Hall v. Emerson's Curator and Heirs, 11 La. 1, March 1837. See Heirs of Emerson *v.* Hall, p. 519, *infra.*

Thomassin (f. m. c.) v. Raphael's Executor (f. m. c.), 11 La. 128, March 1837. " The plaintiff alleges that he is the sole . . heir of Charlotte Geneviève Raphael," [131] " The facts . . are . . The testatrix . . had a natural son called Jean Baptiste Thomassin, jr., [[129] 'a griffe,'] who intermarried, in 1806, with Charlotte Montreuil. From this marriage were born two children, of whom François, the plaintiff, is the survivor . . At . . the birth of Thomassin, jr., his putative father, Thomassin, sr., was a slave, and being afterwards emancipated, was married to Charlotte Raphael, in . . 1826, by the curate of St. Louis church, in . . New Orleans." [130] " The certificate of the celebration of the marriage . . contains an acknowledgment [of Thomassin, jr.] . . by his mother " but it was [129] " only signed . . by the priest, who celebrated it."

Held: [132] " where the parties are persons of color, . . the law expressly declares, that the only mode in which the acknowledgment can be made, shall be 'by declaration executed before a notary public, . . whenever it shall not have been made in the registering of the birth or baptism of such child.' [1] " [Carleton, J.]

Hendricks' Curator v. Mon, 11 La. 137, March 1837. " deceased, f. m. c., . . [138] occupied the premises . . and kept a grocery store in a part of them;" [137] " owed . . five hundred dollars for rent,"

Rodriguez v. Vassant, 11 La. 165, March 1837. [166] " The plaintiff's slave having absconded, was found, as he alleges, in the possession of the defendant, who refusing to restore him, suit was brought therefor, the slave sequestered [in February] and detained in jail, *pendente lite.* . . [167] Doctor Ker . . declares, 'that last summer he attended a black boy in prison, . . that he died [in September] of a pulmonic complaint following the measles; . . that the measles are not a dangerous disease, but become so when in a damp place; . . believes there was at that time, or shortly before, a negro belonging to . . Pandelly, affected with the measles.' "

" We think, with the parish judge, that the plaintiff was in error as to the identity . . But . . testimony . . does not show with sufficient certainty, that the death . . was caused by any disease arising from his detention in jail. . . [168] decreed, that the defendant . . plaintiff in reconvention, recover from Rodriguez," $146.50 [167] " for his services from . . the date of the sequestration, until . . he died," [Carleton, J.]

Laclotte's Heirs v. Labarre, Tutor, 11 La. 179, March 1837. [180] " Mlle. Jeanne Laclotte " [181] " was the illegitimate child of a white man by a colored woman, a native of St. Domingo, . . the plaintiffs are the natural brothers and sisters " [180] " Margaritte Laclotte, styling herself the natural child of the deceased . . has instituted proceedings to obtain . . the estate;" " The petitioners aver . . that she . . is, in truth,

[1] C. C. 221.

the child of her slave. . . [181] The court . . recognized the heirship of the petitioners;" Affirmed.

Burke (f. w. c.) v. Clarke, 11 La. 206, March 1837. [207] " Fortescue, a colored man, employed on board . . says, the plaintiff came on board . . and said she was going to Nashville to see her child; that she had a servant girl which she wanted to hire to the captain, as chambermaid, until she returned. . . Witness heard the captain [and owner] agree to give twelve dollars per month " " the plaintiff's agent . . on her return . . called on Captain Clarke for the slave, but he refused to deliver her up, saying he would keep her all the summer, and take her to Cincinnati, where she would be safe, as he would not let her go ashore without some one accompanying her. . . Clarke returned . . and told . . that the girl left him on the second trip up at Louisville." [209] " she made her escape or was drowned." Held: [210] " The plaintiff is entitled to one thousand dollars, the value of the slave, and her wages . . we allow one month."

Sarcé v. Dunoyer's Executor, 11 La. 220, March 1837. " Dunoyer . . 1833 . . made a nuncupative will . . emancipated and instituted several colored people his universal legatees." [222] " In 1835 he made another testament . . by which he also emancipates his slaves, and leaves them each a small legacy;"

Madison (f. m. c.) v. Zabriskie (f. m. c.), 11 La. 247, March 1837. " The plaintiff claims an improved lot of ground in . . New Orleans, . . [250] The parties to the act . . of sale . . were ignorant colored men, neither of whom knew how to write."

Gravier v. Cullion, 11 La. 269, March 1837. [270] " his succession being divided among his three natural children, this lot and the improvements became the share of Elizabeth [f. w. c.], . . who was one of them."

Mulhollan v. Eaton, 11 La. 291, March 1837. " in March, 1834, he agreed . . to advance, and did advance fifteen thousand dollars . . [292] to purchase slaves to be sold or used in Louisiana, for which he was to have a share of the profits, or take out such slaves as he might want for his plantation. That in the fall of 1834, the defendant made four shipments of slaves to Louisiana which he had the entire control of, both in buying and selling. This . . partnership was limited to . . 1834."

Thompson v. Thompson, 11 La. 324, September 1837. [325] " August, 1815, . . he sells . . Becky, and her two infant children . . for . . one thousand dollars." Some years later the vendor proposed that if the vendees [326] " would let him have Becky's two children . . he would give them two other likely young negroes of equal value "

Youngblood v. Flagg, 11 La. 337, September 1837. [339] " General Youngblood . . [340] came [from South Carolina] to Louisiana . . 1829, with the [twenty-three] slaves . . and settled in Attakapas as a sugar planter,"

Foster v. Foster, 11 La. 401, September 1837. [403] "induced his brother . . to leave his family in Mississippi [in 1830], and come with his [eighteen or nineteen] slaves to . . Louisiana," Later on [407] "merchants, residing in New-York, . . held a mortgage on several of the . . slaves" [405] "for goods sold"

Frank (f. m. c.) v. Powell, 11 La. 499, January 1838. [500] "The plaintiff was born in Pittsburg . . of a slave accompanying her owner [from Maryland to Kentucky] . . during a stay he made in that town while . . detained by sickness, and the inclemency of the weather. He was afterwards, while a lad, brought by a person who had purchased him on the death of the owner, . . to Cincinnati, where he . . [502] resided a considerable time in the family of . . [the new owner's] son-in-law" He was later [501] "hired [by his owner] to an innkeeper, on an understanding, that as soon as his wages would produce [$150 to the hirer,] . . he should be free. He remained but a few weeks . . and eloped; he was afterwards taken," [499] "and delivered to . . Harris, and carried into . . Kentucky; and after much cruel treatment [as he alleges], he was passed into the hands of . . Powell, who brought him to this State, . . and offers to sell him for [$1500.] . . The district judge . . concluded, that even if . . a slave when . . taken to . . Ohio, . . he became free from . . residing there with the consent . . [500] of his then owner." Affirmed.

Noe v. Taylor, 11 La. 551, January 1838. [554] "July, 1835 . . Taylor agreed to sell . . Noe, a tract . . with sixty-nine slaves, . . not to be warranted such for life, nor the titles to be warranted otherwise than conformably to such decree as has been, or may be rendered by the supreme court of Louisiana, in regard to the will of Julien Poydras, in relation to said slaves." [1]

Tournoir v. Tournoir, 12 La. 19, February 1838. Nuncupative will made in 1831 "in which the testator bequeathed . . a tract of land, six slaves and four thousand dollars . . to . . Fanny Richér, f. w. c.,"

Langley's Heirs v. Langley's Executors, 12 La. 114, February 1838. "George Langley made a nuncupative will . . 1836 . . [115] directed, that fifteen of his slaves be emancipated immediately on his death, and that they receive all his personal property." One of the three subscribing witnesses [117] "was not present when the will was dictated . . all present when . . the notary public read the will to Mr. Langley, and when Mr. Langley and the notary, and . . witnesses, signed" The probate court sustained the will. Reversed.

Taylor v. Penrose, 12 La. 137, February 1838. "a conditional sale of . . [more than one hundred] slaves for five years, at a stipulated price per annum, which plaintiff reserved the right of receiving in sugar at four cents per pound." "suit was instituted, on the ground, that the defendants had failed to comply . . The plaintiff prayed that the slaves be sequestered . . Penrose . . made application . . to bond twenty-one . .

[1] See Poydras *v.* Mourain, p. 509, *supra.*

refused" Affirmed: [138] "he might have selected the most effective, and left the young and old a burden and expense upon the plaintiff."

Lopez's Heirs v. Mary Bergel (f. w. c.), 12 La. 197, February 1838. [198] "The plaintiffs obtained a judgment against Gregorio Bergel, for the amount of a note . . Bergel sold all his property [a house and lot] to a negro woman, formerly his slave, but then kept as a mistress, and when execution issued no property could be found." [15 La. 44] "the subscribing witness was the son of the defendant, and the reputed son of the maker of the note, . . [45] The note was signed by an ordinary mark," Two verdicts for the plaintiffs, followed by a verdict for the defendant. On the fourth trial there was a verdict for the plaintiffs. Judgment thereon affirmed, January 1841.

Behan v. Faures, 12 La. 211, February 1838. "The plaintiffs . . purchased a negro man . . for one thousand dollars, . . soon after . . they discovered the slave was addicted to drunkenness, and was so vicious . . when intoxicated, as to be unsafe" Held: [213] "in vices of the mind, the redhibitory action is limited to three, of which drunkenness is not one."

Patterson v. Behan et al., 12 La. 227, February 1838. "The plaintiff alleges, that on Sunday night . . two slaves belonging to the defendants, broke into his store . . and stole [guns and pistols.]" Verdict and judgment for $494.

Mulhollan v. Huie, 12 La. 241, February 1838. [242] "the slave . . arrived in this State . . January, 1834," [241] "The plaintiff purchased . . 11th March . . for seven hundred dollars, payable in twelve months, with ten per cent. interest, from the date of his note until paid. . . [242] delivery took place . . 20th . . shortly after the boat had left New Orleans, the . . slave . . was discovered to be very sick ['with inflammation of the brain'], and . . notwithstanding the attendance of two physicians who happened to be on board, he died on the next day," Decreed that the sale be rescinded and that the defendant pay the plaintiff $770.[1]

Poulard (c. p.) et al. v. Delamare, 12 La. 267, February 1838. "Joseph Pollard and eleven others . . claim to be in the condition of *statu liberi,* and according to . . the last will . . of their late master,[2] entitled to be emancipated, and allowed an annual stipend of twenty-five dollars. These plaintiffs . . [268] institute suit by Benjamin Poydras de Lalande . . allege, . . That a plantation . . having one hundred and forty[3] slaves thereon, was sold . . 1825, to widow . . Mourain, for the joint account of herself and sister, . . both residing at Nantz, in . . France, and represented by . . Delamare and P. G. Mourain. The petitioners allege, that they are all more than sixty . . and the defendants refuse to emancipate them, and to pay them their annuity"

[1] Act of Jan. 2, 1834, sect. 3.
[2] See Moosa *v.* Allain, p. 480, *supra.*
[3] "143 slaves" 2 Rob. La. 5.

Held: [270] " They are not entitled [to emancipation] . . until after . . twenty-five years from the sale . . the slaves, which the will requires to be kept . . after their sixtieth year, free from labor . . are those which have been emancipated. . . The yearly stipend . . is clearly given in lieu of food and raiment, which masters are compelled to give . . and to which freedom destroys the right." [Martin, J.]

Conolly et al. v. Bertrand (f. m. c.), 12 La. 313, February 1838. " The plaintiffs . . 1836 . . procured a negro woman . . at auction, sold as the property of the defendant, [for $745;] . . is an idiot and incapable of performing any service whatever, . . The defendant . . purchased . . from . . Bienvenu [for $760] . . prays that . . [he] be cited in warranty . . Bienvenu . . [314] purchased her from . . Petitpain [for $725] . . calls [him] in warranty to defend. . . verdict . . rescinding the sale, and requiring the price to be returned with costs; and that the several vendees have judgment against their vendors," Affirmed.

Cuny v. Robert, 12 La. 474, February 1838. " the plaintiff . . purchased ['a female slave and her child'] from . . Russell . . 1832 [for $700] . . The defendant averred that he purchased . . from . . Franklin, in New Orleans . . who . . purchased from . . Nichols, of . . Tennessee, who bought from . . Armstrong, of Tennessee, who avers that . . Russell, put the slave . . and others, into his . . hands to sell "

Hood v. McCorkle, 12 La. 573, February 1838. [574] " plaintiff's slave [valued at $1700] came in at twelve o'clock, and weighed his cotton and went off. In about two hours the overseer missed him, and went to . . neighbors . . and desired them (and among others the defendant . . overseeing for . . Chambliss, adjoining) to accompany him the next day in search . . The same evening the slave was discovered quarrelling with the slaves of Chambliss, and had a butcher knife in his hand. The defendant was sent for . . the slave ran, and on getting over into plaintiff's field and on refusing to stop . . the defendant shot him down on the spot. . . verdict for the defendant." Judgment thereon reversed and the case remanded. [16 La. 241] " On the second trial . . additional evidence " " The negro had the butcher knife in his hand, when shot. . . had run away once before." [242] " the jury came again to the same conclusion," New trial refused. Affirmed.

George v. Fitzgerald, 12 La. 604, February 1838. " 1835, at New Orleans, he purchased from . . Fitzgerald, of . . Virginia, . . Daniel [for $850] . . Winney [for $650] . . and Billy [for $875] . . guaranteed against all redhibitory . . defects . . That Daniel was afflicted with diarrhoea . . of which he died; Winney had the same disease of which she died; and that Bill was afflicted with a scrofulous and other incurable diseases, which has occasioned him to . . become wholly useless;"

Zimmer v. Thompson, 13 La. 22, December 1838. " he became the purchaser of . . Betsy, at auction, for [$1070] . . warranted to be a good house-servant, cook, washer and ironer, and fully guaranteed against all redhibitory vices. . . did not possess the qualifications . . and was con-

sumptive . . The defendants . . purchased this slave with others, from . . Taylor, residing in Tennessee . . The plaintiff . . had judgment," Affirmed.

Mathews v. Pascal, 13 La. 47, December 1838. [48] "a redhibitory action, under the Act of 1834, . . [49] the slave . . remained a few days after the sale, on his plantation, in bad health, . . ran away and has not been since found." [54] "decreed . . that the sale be rescinded . . and that the plaintiff recover . . eight hundred dollars," the price paid.

Heirs of Emerson v. Hall, 13 Peters (U. S.) 409, January 1839. "In 1829 . . Hall . . presented a petition . . that the estate of William Emerson . . was indebted to him, . . prayed . . that . . the tutor and curator of the children . . should . . pay . . 1830, a decree was given . . against the estate . . Afterwards a case was submitted . . [410] by which it appeared, that . . Emerson died . . 1828; . . he, as surveyor, Chew . . and . . Lorrain . . had, at their sole expense, the . . *Josepha* [*sic*] *Secunda* [*sic*] condemned [in 1820] [1] . . Congress had made no provision for their compensation, . . applied for relief . . and obtained . . an act" [411] "3d March, 1831, . . 'whereas, the one-half of the proceeds . . are now deposited . . which half would have been payable to [them] . . but for an omission in the laws . . be it enacted . . [412] order [it] . . to be paid over to . . Chew, and the legal representatives of . . Emerson and . . Lorrain,'"

Held: [413] "the heirs were intended" "they receive . . gift . . [414] the fund cannot be considered as assets . . for the payment of debts."

Nott v. Botts, 13 La. 202, March 1839. "The alleged redhibitory vice is that of the habit of running away. The sale took place . . November, 1835. The slave was hired to the cotton press, and left the press . . May, 1836—the plaintiff says by reason of sickness, . . returned to the cotton press . . June, 1836, staid one day, and has not since been seen. . . broker . . to sell the slave . . testifies that after the sale . . [203] witness asked [the slave] . . how he liked his situation? The slave answered, very well. That defendant then observed, he feared he might have some trouble about him; . . afraid he would run away, as he had given him the slip up the country." The district judge considered the "story . . not very probable." "The witness is at enmity with the defendant—is a negro broker. . . There is nothing extraordinary in the fact of a negro coming from Kentucky, where they are treated almost on an equality with their master, running away in Louisiana." Judgment for defendant affirmed.

Baptiste (f. w. c.) v. Soulie (f. w. c.), 13 La. 269, March 1839. [270] "a redhibitory action, for the rescission of the sale of a mulatto woman and her child [for $900], . . affected with a pulmonary disease, of which they both died. . . verdict for the defendant,"

Gallier v. Jonau (f. m. c.), 13 La. 309, March 1839. "The plaintiff . . entered into a written contract with the defendant to build a block of brick stores and dwelling houses in . . New Orleans. . . [310]

[1] See the *Josefa Segunda,* pp. 462, 478, and U. S. *v.* Preston, p. 488, *supra.*

'binds himself to deliver . . finished . . three months after the granite, . . to be furnished by . . Jonau, shall have been put up;' . . The granite . . consisted of posts . . for the first floor . . together with sills for the . . [seventy-five] windows in front, . . The defendant . . contends that the demurrage should count from the erection of the pillars in the first story. . . that the setting of the . . sills depended upon the progress . . in building the walls, by which he might retard the placing of these pieces . . at his pleasure." Buchanan, J.: "This . . consideration . . should have presented itself to Mr. Jonau before signing the contract."

Lobdell v. Bullitt, 13 La. 348, March 1839. [349] "The plaintiff . . embarked with his family, servants . . the officers in the night induced . . Job, a good carpenter, . . to work as a fireman; . . fell . . overboard, and was drowned. . . the steamboat was unprovided with a yawl . . and . . ropes . . The slave was proved to be worth one thousand five hundred dollars, for which judgment was rendered." Affirmed.

Pavageau (f. m. c.) v. his Creditors, 13 La. 354, March 1839. "The plaintiff having made a surrender of his property . . Crocker presented a note of $787, . . secured by a special mortgage on one of the slaves surrendered"

Goldenbow v. Wright, 13 La. 371, March 1839. [373] "the boy [slave] about thirteen . . went on board . . unperceived by the defendant [master of the boat] . . in company with a sister . . a connection of the wife of the cook, who, discovering the boy . . employed him as an assistant . . not concealed . . supposed . . drowned . . A boat was sent . . in vain." Verdict of $600 for the plaintiff. "bill of exceptions taken to the admission of the deposition of William Black, a black man, on the ground that he must be presumed to be a slave; . . no evidence of his freedom, except . . he avers he was free, and had free papers. . . was examined twice, and cross-examined on the part of the defendant," Held: he "ought not to be permitted to repudiate testimony of which he had sought to avail himself."

Lalanne's Heirs v. Moreau, 13 La. 431, April 1839. "allege that they are the sole heirs of their . . mother, . . f. w. c., and inherited . . a house and lot"

Priscilla Smith (f. w. c.) v. Smith, 13 La. 441, April 1839. See U. S. *v.* the *Garonne,* p. 513, *supra.* "suit for freedom. The plaintiff was the slave of the defendant . . when . . the latter went to France, taking Priscilla . . [442] but, on her entreaty, she was sent back . . and hired out in New Orleans" Judgment for defendant.

[447] "decreed, that the judgment . . be . . reversed; and that the plaintiff be declared a free woman, and that the defendant be for ever enjoined . . from disturbing her in the enjoyment of her freedom, the latter paying costs in both courts." [445] "there have been three decisions of this court [1] . . in which all the members . . concurred, and

[1] Lunsford *v.* Coquillon, p. 476, Louis *v.* Cabarrus, p. 502, and Marie Louise *v.* Marot, pp. 504, 509, *supra.*

which were in accordance with three judgments of the district courts; nevertheless, we have attended to the new considerations . . submitted . . that the legislature has provided two modes of emancipation . . [446] but the legislature has recognized the right of owners to emancipate their slaves in other States.[1] . . further urged, that owners cannot evade the laws of this State . . by taking them out . . To this the answer is, that if . . [such] emancipation . . is to be declared . . void, it cannot be so on the application of a party to the . . fraud. It has been said that the plaintiff cannot be heard, because the law requires emancipated slaves to withdraw from the State. To this it may be answered, that the object of the suit is to procure the means of complying . . and that the Act of 1830 . . authorizes slaves . . emancipated in another State . . to return. . . she comes within the spirit; for the reason why . . permitted . . is, that they have their relations . . and friends here, whom it would be cruel to prevent them from rejoining." [Martin, J.]

Peyroux v. Chasal, 13 La. 459, April 1839. Action to rescind sale and recover back the price. " before the sale, the slave was sick all the time with the rheumatism, . . often so sick that he could not use his limbs, or feed himself. . . has continued . . and entirely disables him." Judgment for plaintiff affirmed.

Adams v. Bell, 13 La. 555, April 1839. " twenty-three negroes . . hired from Governor Lynch, of Mississippi,"

Barelli v. Hagan, 13 La. 580, April 1839. " action . . for contribution to a general average, occasioned by a jettison, for the preservation . . of . . vessel . . on the rocks . . in her voyage from Charleston to New Orleans, . . the defendant had twelve slaves on board," [581] " shipped under a bill of lading." Held: he must contribute.

Painpaie v. Martin, 14 Ala. 59, May 1839. " The plaintiff had paid six hundred dollars in cash . . and gave his note for six hundred dollars. The slave fell sick the next day of some incurable disease, . . lingered for a time and died." Held: [61] " he is entitled to recover the whole price "

Scott's Executrix v. Gorton, 14 La. 111, October 1839. [112] " At the sale . . Gorton became the purchaser of a negro woman . . and her child, for [$1,165.] . . On examining the woman . . Gorton refused to comply . . on account of . . defects . . These slaves . . were readvertised . . the husband and agent of the executrix purchased them in," [for $560.]

Gibson v. Huie, 14 La. 124, October 1839. Gibson [125] " purchased from . . Huie . . of North Carolina, four slaves [for $2450] . . afflicted . . with redhibitory maladies, . . incurable, . . He prays judgment for the return of the price, and [$700] . . in damages, for medical attendance, and other expenses," Verdict for $3,150. On appeal counsel for defendant contended: [127] " the evidence does not show that all . . died of redhibitory defects. Two . . had diarrhoea and a disease of the lungs; were taken sick after the sale, and on receiving medical attendance, be-

[1] Session Acts of 1830, sect. 16, p. 94.

came convalescent, and died . . six or seven weeks afterwards, of a relapse. . . There is only [$255] . . of medical expense proved," Judgment affirmed.

Cecile (f. m. c.) v. St. Denis (f. w. c.), 14 La. 184, October 1839. " plaintiff . . alleges, he was induced . . 1838, to execute an act of sale of . . Henry and Mary, to the defendant, while in a state of intoxication, [for $1100] . . worth [$2000] . . and that . . sale was fraudulently obtained . . by the defendant and her husband (a *statu liber*) ; that, at the time, she executed . . an instrument purporting to be her will, . . in which she . . left the two slaves to him . . and . . took a lease . . by which he was to pay her ten and twelve dollars per month each for hire."

Patterson v. Bonner, 14 La. 214, October 1839. " The plaintiff . . 1825 . . sold to . . Mrs. . . Bonner, twenty-four slaves, by notarial act, for [$7922] . . for which he received her notes, . . [215] memorandum appended . . ' agreed, that . . Patterson shall have the privilege of redeeming . . within three years after the last instalment . . paid, by repaying the price . . with interest ' . . [217] The last note was paid . . in 1832," [215] " 1834, he made the defendant a tender of the amount due . . she refused . . He prays that . . [she] be condemned to deliver up all . . [216] and their increase, or their value,"

Decreed: [235] " that the plaintiff recover . . the slaves *named* in the petition, or such . . as survive, on paying . . [236] $7922," [Strawbridge, J.] Order on an application for a rehearing: " granted, so far as relates to the plaintiff's claim to the children born during the time the slaves were in . . [defendant's] possession . . but this order shall not prevent the execution of the judgment . . and that in the delivery of said slaves, children under ten years of age shall not be separated from their mothers. But the plaintiff shall give security . . to produce [them] . . to answer the final decree;" The court held in 1841 [19 La. 509] " that the plaintiff has a right to recover the children born during the possession of the defendant. This was our opinion, when we gave the judgment; but . . [Judge Strawbridge] used the expression, ' the slaves *named* ' . . instead of . . *claimed* " " the present case is to be tested by the provisions of the former Code, under which this sale *à réméré* was made. That Code does not expressly state, like the present, that the children of slaves are natural fruits, but it places those children on a quite different footing from the young of animals, which both Codes consider as natural fruits." Neither " the usufructuary . . [nor] the vendee in a sale *à réméré* . . could, nor can make the children born during their possession their own." [1] [Martin, J.]

Miller v. Holstein, 16 La. 389, October 1839. [390] " is in moderate circumstances, but owns several slaves."

Brosnaham v. Turner, 16 La. 433, October 1839. [437] " Villaverde's title to the land commenced in 1801, . . he died . . 1821, having the day before made a will," [435] " devises all his rights . . to lands . . within

[1] Civ. Code of 1808, p. 118, art. 42; C. C. 536, 537.

. . Mississippi, Louisiana, or the territory of Florida, . . one half . . to the . . children of Dr. Brosnaham, and the other half equally divided between" "the two mulatto children" [437] "Manuel and Francisco Villaverde, free people of color, residing in Florida, . . his natural children, by a slave belonging to him, to whom he gives freedom; and states that the emancipation of the children had been established before. . . no probate . . was . . attempted till . . 1836. The legislative council of Florida, then passed an act . . 'to authorize the county court . . to admit to probate the will.'"

Armor v. Huie, 14 La. 346, January 1840. "judgment . . to pay back [$1500] . . the price of a slave . . who died of a pulmonary complaint shortly after the sale."

McDonough v. Fost (f. m. c.), 14 La. 350, January 1840. "application for mandamus to the judge . . to grant to the defendant an appeal from his order" Held: "the defendant is entitled to . . appeal."

Watkinson v. Black, 14 La. 351, January 1840. "taken from . . Tennessee . . several slaves" to Louisiana.

Barnett v. Macoin, 14 La. 428, January 1840. "charges that a negro woman purchased by plaintiff . . was . . afflicted with . . the dropsy, . . [429] died . . about eleven months after" the sale, [428] "and . . that while in defendant's possession the slave had been guilty of . . an attempt to poison her mistress, . . [429] total failure of proof as to the second ground . . some suspicions . . but . . unfounded." Judgment for defendant affirmed.

Herries v. Botts, 14 La. 432, January 1840. "The plaintiff alleges that he purchased a slave woman . . with full guaranty, for [$700] . . in cash, and that . . she was afflicted . . with" [434] "an irreducible umbilical hernia" [433] "submitted to two juries, and each time . . verdict for the plaintiff," Morphy, J.: "A new trial . . had been granted . . on the ground that . . the defect . . [was] an apparent one, for which no action lies. On the second trial, the defendant gave in evidence . . that . . she appeared . . a strong, healthy girl. . . the jury . . gave their verdict for the plaintiff, this time, without leaving their seats. They, no doubt, concluded . . apparent . . healthiness . . deterred [him] from making such a close examination . . as he might otherwise have done. . . [434] To discover this malady . . required . . a peculiar kind of examination which is not generally resorted to in relation to female slaves, unless some suspicion is raised by their . . appearance. . . the physicians declare . . that she cannot even perform the household work, . . We must, then, consider this disease as . . redhibitory . . for it is not to be supposed that the plaintiff would have purchased her, had he known it." [1] Judgment for plaintiff affirmed.

Robinett et al. v. Verdun's Vendees (f. p. c.), 14 La. 542, January 1840. "action . . by the heirs . . of . . Verdun . . to cancel . . sales . . of

[1] C. C. 2496.

land . . to Jean Baptiste Gregoire, and six or seven other colored persons, alleged to be his illegitimate children. . . [543] Evidence was offered to prove . . illegitimate . . their counsel objected . . received, . . verdict . . against all the defendants, except J. B. Gregoire;"

Affirmed: [545] "although children of color (from a white person) are not allowed to prove their natural paternal descent, when they have not been legally acknowledged, . . their natural paternal filiation can . . be proved against them.[1] . . [546] particularly when in opposition to the true object of the law, it is pretended that the absence of a legal acknowledgment ought to afford them a greater advantage . . than if . . acknowledged. . . it will not be amiss to remark again . . 'very important considerations . . impose on our courts a stricter observance of the laws [than in France] relative to illegitimate children, especially to those of color.'[2] . . It appears to us, also, very clear, that the object of the law[3] . . is to exclude illegitimate colored children from any right in the estate of their white natural father, by whom they have not been duly [legally?] acknowledged, and that they can only set up such a right when . . father is a man of color." [Simon, J.]

Verdun's Heirs v. Verdun's Executor and Legatees, 15 La. 28, March 1840. "action by the collateral heirs of . . Verdun . . to annul his last will . . drawn up by the parish judge, in the form of a nuncupative will, by public act, in the presence of and signed by three witnesses." [30] "Ce testament en a été dicté à moi dit juge en presence des témoins . . et l'ayant lu au testateur . . il a declaré parfaitement comprendre et y perseverer." [29] "The legatees were illegitimate colored children of the testator, together with their mother. . . judgment annulling the will,"

Affirmed: [30] "it contains no mention of its having been dictated by the testator to and written by the notary, and written by the notary as dictated by the testator. . . [31] also void as a nuncupative will under private signature," which requires five witnesses "unless, . . being made in the country, a greater number than three cannot be procured. . . not even shown that any attempt was made to get more . . than . . required . . by public act." [Simon, J.]

Bob and Milly et al. v. Nugent's Syndics, 15 La. 63, March 1840. Will of Timothy O'Hara of Mississippi, dated 1824: "It is my will, that . . Bob, and Milly his wife, and her seven children . . be set at liberty, . . [64] Bob and Milly at my death, and the . . children when the youngest of them . . shall have attained . . ten years; and in case the laws . . of Mississippi should not admit them to be emancipated, I . . enjoin it on my executors . . to carry or send them all into . . Ohio . . and afterwards to bring them again into this State (Mississippi), in case the laws . . will admit them, and they . . desire it . . that . . one hundred dollars be paid . . to each . . after their freedom is established . . that the necessary

[1] See Jung *v.* Doriocourt, p. 495, *supra.*

[2] Same *v.* same, [180] "Cases of bastardy, . . rare . . in France, are unfortunately, much more frequent among us."

[3] C. C. 226.

expenses . . be paid out of . . my estate, . . I give . . to . . Nugent . . all the . . residue of my estate: Provided, he shall take or send the negroes . . into . . Ohio," If Nugent " should fail to emancipate . . the residue . . to . . Bowles . . and on his failure . . to . . Chew," [65] " The executor made no attempt to obtain the consent of the legislature,[1] but removed with the slaves to this State, where he procured money on a mortgage upon them." [64] " The district judge decreed the plaintiffs their freedom,"

[66] " decreed . . that the judgment . . be . . reversed, and that there be judgment for the defendants as in case of nonsuit." The plaintiffs [65] " have a right to stand in judgment for the purpose of compelling the executor to emancipate them, . . but this must be done contradictorily to the executor. . . The syndics have an interest adverse . . but they cannot be listened to in the absence " of the executor. [Martin, J.]

Mix v. Mix, 15 La. 66, March 1840. " He . . gave a legacy [in 1839] in slaves to his sister . . [67] and her daughter, of New Haven, in Connecticut,"

Bernard v. Pyburn, 15 La. 126, March 1840. [127] " This suit was instituted . . to recover the value of a negro [[126] ' worth fifteen hundred dollars '], alleged to have been shot and killed by one of defendant's slaves, through the order of his master, . . The defendant pleaded . . that the death was . . whilst . . killing . . defendant's hogs, at ten o'clock at night; . . merely accidental, . . tried three times; there was a mistrial; two verdicts . . in favor of the defendants," Judgment affirmed.

Ware (f. m. c.) v. Canal Co., 15 La. 169, March 1840. " the plaintiff claims . . two thousand dollars damages . . he was returning . . with his skiff . . with oysters, . . and in passing through the locks, . . he was " [170] " by the . . lock-keeper cruelly beaten, stripped of his clothes, and put in the stocks, on a plantation near the canal, and kept in confinement several hours; . . under the pretext that he had not paid the toll, although . . not . . demanded . . The plaintiff obtained judgment " for $150. [173] " ordered, that the judgment . . be reversed; and that ours be for the defendants, with costs in both courts." [172] " he clearly stepped out of the line of his duty " [Morphy, J.]

State v. Judge of the Commercial Court, 15 La. 192, March 1840. [194] " John N. Stiles, a free man of color, imprisoned under the ' act to prevent free persons of color from entering . . this State, . . approved March 16, 1830,' applied for a writ of *habeas corpus,* . . denied him, on the ground ' that the subject of the colored population . . is, by the Constitution of the United States, referred to the legislation of each separate State, and that the law under which the party is arrested, is not opposed to the Constitution of the United States,' . . The applicant prayed an appeal . . refused, and he has filed his petition . . for a mandamus to the judge, commanding him to allow the appeal." Refused: not a civil case.[2]

[1] Miss. Rev. Code, pp. 385, 386, sect. 75.

[2] Not till 1845 was appellate jurisdiction in criminal cases given to the Supreme Court of Louisiana by the constitution of that year, and "on questions of law alone."

Forsyth v. Despierris, 15 La. 215, March 1840. [216] "the slave . . was purchased . . 12th September . . and . . eighteen days afterwards, was admitted into Dr. Luzenberg's hospital, . . died on the 18th October . . On a post mortem examination, Dr. Luzenberg gave . . his decided opinion, that the disease . . existed before the sale, . . incurable. Another physician, who had attended . . about fifteen days before the sale, stated that he had had an attack of the pleurisy, and was sick eight days; . . left him . . '*bien portant*;' . . not afflicted with the disease stated by Dr. Luzenberg. . . judgment rescinding" Affirmed: [217] "more weight must be given to the opinion of the physician who . . made a post mortem inspection"

Emmerling v. Beebe, 15 La. 251, March 1840. [252] "averring . . that the slave was . . under the control of . . Moussier, who permitted him to hire himself out, and with whom they had settled for his wages. . . that when the slave was hired on board [[251] 'their steam towboat'] . . he exhibited free papers."

Maloney v. Doane, 15 La. 278, March 1840. "The plaintiff charges the defendant with having . . maliciously . . caused him to be imprisoned [on a charge of harboring his slave] . . five months, at the expiration of which . . acquitted" [281] "The defendant . . avers that he had sufficient probable cause." [279] "anonymous letter purported to be addressed to . . Jones, . . charging him with cruelly whipping and maltreating the servant girl . . charged with being harbored by the plaintiff. This letter was found under the defendant's door, who . . was owner . . The letter states that she was out of his reach and he had better sell her as she was; that there were friends who would buy her, to get her clear of bad treatment, . . in . . [plaintiff's] handwriting,"

Freeman (f. m. c.) v. Sheriff, 15 La. 476, March 1840. [478] "a judgment was obtained for twenty-five dollars and costs, against the present plaintiff. An appeal was taken to the parish court, and dismissed by consent." [477] "Execution, however, issued . . in virtue of which the lot . . was seized." "Plaintiff . . prays for an injunction, . . The district court dissolved the injunction, gave judgment against plaintiff for costs;"

Decreed, that the judgment be [479] "reversed, and that the injunction be made perpetual, with costs in both courts." [478] "According to articles 1140, 1144, 1145, of the Code of Practice, a judgment rendered by a justice of the peace . . cannot be made out of the sale of . . real property" [Simon, J.]

Goule and Lambert (f. p. c.) v. Vidal et al. (f. p. c.), 15 La. 479, March 1840. "action against Merced Vidal, f. w. c. as principal, and M. Debergue, f. m. c. as surety on a merchant's account" for $366.29. Judgment for the plaintiffs affirmed.

Serapurn v. Bousquet et al., 15 La. 509, March 1840. "The testimony of two physicians . . One deposed, that three days after the sale he was

called in, and the negro boy was affected with a *gastro autérite,* . . [510] not incurable . . The other states, it was through the . . neglect of the defendants, and the want of regular medical aid for nearly a month, that caused the boy's death. . . at the time of sale, it was proclaimed . . that the boy . . was sick of a fever . . The price . . was [$430] . . which was included in the note sued on. The district judge was of opinion . . that the defendants should be allowed the price, and have it deducted "

Reversed: [511] " Had it been proven . . [512] that the slave had received . . all the necessary care . . there would have been no doubt . . of their being entitled to the reimbursement " [Simon, J.]

Taylor v. Andrus, 16 La. 15, September 1840. " The plaintiff alleges, that he hired, for one year, . . Henry, of the value of [$1500] . . to the defendant, as an ostler . . [16] The evidence . . showed, that the defendant employed . . Henry to drive a wagon and team in hauling wood to his hotel . . some of the horses took fright . . The boy was thrown off . . died. . . One witness . . declared that when the boy started, he heard the defendant forbid . . Henry from putting the vicious horse in the wagon. . . disobeyed," " when he was about using him, on a former occasion, to drive a hack, he asked the consent of . . the owner; but . . in the present case, he had not done so. . . [17] verdict of seven hundred dollars for the plaintiff;"

Decreed, [20] " that the judgment . . be . . reversed, the verdict set aside, and that there be judgment for the defendant, with costs in both courts." [18] " An intelligent being like a slave cannot be assimilated to a horse or an inanimate object, the particular uses . . of which are limited, . . A slave, although hired as possessing a particular talent, is expected to render numberless other services," [Morphy, J.]

Loussade v. Hartman et al. 16 La. 117, September 1840. " The plaintiff shows that his slave Sandy, was on his way to . . the house of a neighbor . . where he had written permission to go every evening to see his wife and children; . . about . . 10 . . he was arrested . . by the [four] defendants . . [118] Hartman and Theriot, two of the defendants, . . averred that they were doing the duties of patrol . . demanded his pass, which after much insolence the negro produced, and it was pronounced by the patrol not to be legal; he was ordered to be whipped, when he broke away . . One of the party went . . after him, when the captain called to him to stop and not further trouble the negro, when the person replied no damned negro should run over him." [117] " The defendants [according to the plaintiff] pursued him to the bayou, threatening to kill him, when . . he threw himself into the bayou, to avoid being taken, and was drowned. The plaintiff further alleges, that . . [118] slave . . was a good mechanic and carpenter . . worth three thousand dollars. . . two of the defendants . . averred that . . one . . took a pirogue, and attempted to save him from drowning, . . Hartman, did not pursue . . verdict for the plaintiff, in the sum of one thousand dollars, . . judgment thereon, against Hartman and Theriot,"

Decreed, [120] " that the judgment . . be . . reversed, and that there be judgment against the plaintiff, as in case of nonsuit, with costs in both courts." " because . . [the judgment] is not against each . . for his proportion of . . damages, and because their co-trespassers are not included " [Martin, J.]

Cuny v. Robert, 16 La. 175, October 1840. Letter [179] " by Russell to F. W. Armstrong, . . Alabama, dated in the parish of Rapides, . . 1827." [177] " I came out . . and found Edmond and Terry [slaves] in deep distress " [179] " by ' the separation of Vincent and Lavinia.' He directs Armstrong to deliver Vincent to his mother-in-law, and take a receipt from her, stating that when he should refund . . five to eight hundred dollars, Vincent should be returned. He speaks of . . a runaway . . who he expects to come in that day, and says if he gets [him] . . ' you will receive [him] . . by the first conveyance. . . Do the best with George, Lavinia and Nelson, and apply . . proceeds to your own debts ' . . [180] Armstrong . . delivered . . Lavinia to Robert Armstrong [in 1827], who sent her to New Orleans, in the early part of . . 1829, and gave F. W. Armstrong credit for five hundred dollars on a debt " [177] " 4th March, 1829, R. Armstrong sold to Nichols [in Tennessee], for . . five hundred dollars." [175] " Franklin . . purchased . . of . . Nichols," Defendant [178] " purchased . . from . . Franklin, in New Orleans, . . 10th March, 1829," [175] " the plaintiff alleges he purchased [Lavinia and her child] from . . Russell, . . 1832, for . . seven hundred dollars," Held: [179] " The alleged power to sell, . . contained in . . letter [is] . . [181] too indefinite "

Nelson v. Lilliard, 16 La. 336, October 1840. [339] " The sale [in March 1837] of the five slaves, made in a lump for five thousand dollars, states that the vendor warrants them sound *in body* except the boy Solomon, and sound in mind, except the boy Willis," [338] " Willis was an idiot, and since the sale the vendors have taken him back; . . [339] Several physicians were examined, . . proven that . . Solomon had the seeds of consumption perhaps eight months, previous to the physicians having first seen him . . latter part of the summer of 1837; . . That Moses died . . June, of epilepsy, or of a stroke of the sun; . . had had an attack . . April, . . found once . . foaming at the mouth, . . That Cynthia died in September, complained of her hip, and was lame from a week or ten days after Nelson bought her . . that Frank is alive, able to work moderately, but has been sick four months in the summer, . . that plaintiff was in the habit of treating his slaves kindly, that they were generally well clothed and well fed, and that . . Lilliard, admitted at one time, that ' the slaves . . were an old, *no account* set of negroes, and if he had known . . they never should have come out from Virginia.' " [340] " judgment . . in favor of the plaintiff, only for the reimbursement of the prices of Moses and Cynthia,"

Miller v. Holstein, 16 La. 395, October 1840. Strawbridge's brief: [398] " Take another case [of slander], a man is called an abolitionist;

if the words were uttered in London, they would be complimentary instead of libellous, yet here they would as certainly exclude him from society as calling him a colored man;"

Elizabeth Thomas (f. w. c.) v. Generis et al., 16 La. 483, December 1840. [484] "The plaintiff alleges she was born free," [486] "The evidence shows that the warrantor [Vanlandingham] purchased the plaintiff . . in . . Virginia . . about 1814; . . brought her to his farm in Kentucky, where she remained . . until about . . 1832 or 1833; that the plaintiff being then sick, . . requested to be transported to Shawneetown, in . . Illinois, to be there put under the care of an eminent physician . . that during the warrantor's absence, she was taken . . with the consent of his overseer; . . [487] resided in Illinois until . . 1837, when she was brought down to Louisiana, and sold to the defendant by the warrantor. . . that the warrantor had a house and store in Shawneetown, that his family resided there for some time, that plaintiff lived in her master's house in that place, and that the warrantor was there at various times. A respectable witness also swears that Vanlandingham told him that plaintiff went . . with his . . consent. The constitution . . of Illinois . . declared that . . 'involuntary servitude shall not be thereafter (after 1819) introduced' . . Judge Scates, who was examined and gave his opinion as a lawyer on the . . constitution of Illinois, says . . that the consent . . of the owner is immaterial; if the slave be held in *involuntary* servitude in Illinois, she becomes immediately free . . but that cannot be involuntary to which she *consents,*" [485] "The district judge decided, that . . the plaintiff became *ipso facto* free, by residing there with the consent of those who held her in slavery, and being once free could not be made a slave. . . judgment declaring the slave a free woman, and decreeing the warrantor to return the price,"

Affirmed: [488] "It is . . perfectly clear to us, that . . she was under no obligation to serve him there; . . [489] The opinion of Judge Scates . . must yield to the principle so well recognized . . that a slave has no will, and cannot give any consent;" [Simon, J.]

Nelson v. Botts, 16 La. 596, December 1840. "action for overseer's wages. The plaintiff alleges, he entered into a verbal agreement with the agent of . . Bell . . to be employed . . for one year from the first of January, 1839, at . . one thousand dollars . . to be found his sugar and coffee, and allowed the hire of . . [his] negro woman as a field hand, worth ten dollars per month. . . October . . discharged without cause, and without pay [by Botts who] . . came . . as owner, . . It was in proof that plaintiff took with him . . to the plantation, a negro woman, a strong able-bodied field hand, . . but was a part of the time not in a situation to do much work. The plaintiff required of Bell a cook, who told him if he chose to turn his woman into the field, he would furnish him a cook. Witness says, in all cases overseers are entitled to a cook."

[600] "decreed, that the plaintiff do recover . . one thousand dollars" [599] "The right to . . additional sum [for the hire of his negro woman] does not appear . . to be sufficiently proved."

Robert (f. w. c.) v. Allier, 17 La. 4, January 1841. Appeal from the commercial court. [5] " The plaintiff, Geneviève Robert, f. w. c., (*dite* Aubertine) claims the notes . . or 6,000 dollars of them, as a legacy made to her natural and acknowledged daughter, Maria Josepha Robert, . . [6] f. w. c., . . born in New Orleans . . 1816 . . Her father unknown; [she [10] 'had never been acknowledged by her father'] but she was acknowledged by her mother by an act of procuration passed before a notary public, . . 1835, in which she gave her consent to her daughter's marriage with Gustave Allier, (the defendant) and appointed Pierre Dupuis to represent her as mother; she residing in Louisiana; her daughter and the other parties in France. The daughter had left New Orleans with her mother's consent, in 1822; . . remained until her death, . . 1837, prior to her intended marriage. . . By the will of Louis . . Dupuis, who died . . in France, . . 1828, a legacy of 6,000 dollars was bequeathed to Maria and the naked property of one third . . [6] of 2,000 dollars was given her, and the usufruct to her mother. . . The defendant claimed the legacies and all the property of Maria . . under her olographic will [made in 1837], . . 'Je donne et legue à . . Allier, que je dois épouser, tout ce dont la loi me permet de disposer.' . . not accompanied by any proof." " 1839, the notes in controversy were given by the heirs of Dupuis in payment of the legacy of 6,000 dollars; said notes remaining in the hands of the notary " [11] " until a competent judicial tribunal should decide whether they should be delivered to the plaintiff or to . . Allier."

Held: [16] " This competent tribunal . . was necessarily the court of probates, . . [18] we . . instruct the judge of probates that he ought not to order the . . will . . to be carried into effect, without its being *first* proved before him according to law; unless satisfactory evidence is produced to show that it has been duly proved in France. . . decreed, that the judgment of the commercial court be annulled, . . and . . that there be judgment against the plaintiff as in case of nonsuit, and that she pay costs in both courts." [Simon, J.] See Succession of Robert, p. 546, *infra.*

Barriere (f. w. c.) v. Gladding's Curator, 17 La. 144, January 1841. " The testimony of a notary showed that the deceased sent for him . . the day he died . . told him he wished to give all his property to a free colored illegitimate child he had living with one of his sisters in Albany, and to a free colored woman (the plaintiff) with whom he had been living [for fourteen years],[1] calling her his housekeeper. On being told . . [145] he could not . . disinherit his brothers and sisters, he then desired to pass a sale of the house and lot he lived in to the woman, but the notary refused, . . About four o'clock he made the note [for $4000] . . in place " of them. [147] " estate . . worth $22,600, . . plaintiff had received before Gladding's death . . a slave and some furniture, and . . a check for $700 " Held: [149] " the amount of . . note, . . virtually nothing but a mere disposition *mortis causa,* cannot be recovered;"

[1] [146] "in a state of notorious concubinage"

Canty v. Beal, 17 La. 282, January 1841. "that in . . 1837, he put in six able bodied negroes, . . and the defendant was to furnish five . . and his own services in carrying on a brickyard; . . That these negroes were employed under the . . superintendence of defendant about seven months, and their services were worth $216 a month,"

Lesseps v. Railroad Co., 17 La. 361, January 1841. [362] "the negro was told not to drive across until the engine passed, but gave no heed, cracked his whip, and in the affright the mules halted on the road, and all were struck down."

Canal Co. v. Field, 17 La. 421, January 1841. [422] "canal, then digging through, was overflowed, the company's hands became sick," [423] "they had employed . . about sixty slaves, and two dredging machines;"

Buel v. Steamer et al., 17 La. 541, January 1841. "action against the captain and steamer *New-York,* to recover . . $1500 as the value . . of the slave Prince," and [543] "damages by the absence . . and expenses in endeavoring to recover the same, to the amount of $200." [542] "the boy . . came on board . . under a false name, stating he was free, and had just come off the steamer *Farmer* from Cincinnati. He was employed by the engineer without the knowledge of Captain . . who had given directions not to employ any negro without first seeing that he had free papers; but . . no free papers were demanded." [546] "nothing shows that he concealed himself . . so as not to be discovered before being out of the State; . . he was seen on board by several . . who knew him;" [542] "By the time the boat reached the . . Cumberland River it was ascertained that the boy was a slave, and Captain . . had him handcuffed, put on board the *Black Hawk* with directions to bring him to New Orleans and lodge him in jail. His passage was paid, but on the way . . he made his escape. . . never found . . verdict and judgment for the plaintiff in the sum claimed," Affirmed.

Poydras v. Taylor et al., 18 La. 12, January 1841. "action against . . Taylor, and his [six] vendees . . to compel a compliance with the terms . . of the will of . . Julien Poydras,[1] . . the district judge . . came to the conclusion that the plaintiff ought not to succeed."

Judgment reversed. Decreed, [16] "that each of the sales [in May 1835] . . of . . Genevieve, Harry, Congo, Clarisse, Hibou, Charles, Robin and Hannah, be annulled," [15] "The public, the heirs and the slaves will have a deep stake in the questions that will arise some years hence; until then we shall only use our conservatory powers to keep the slaves . . in the situation intended by the testator. . . Taylor . . seems desirous of escaping from the performance of . . obligations [imposed], and interposes . . questions of public policy, . . which it would, perhaps, have been more prudent for him to have considered before making the purchase. The zeal now manifested for the peace, happiness and pros-

[1] See Moosa *v.* Allain, p. 480, Poydras *v.* Taylor, and Poydras *v.* Mourain, p. 509, *supra.*

perity of the country is so nearly and obviously allied with private interest, as to deprive it of the charm or merit of disinterested patriotism." [Garland, J.]

Turner and Renshaw v. Wheaton et al., 18 La. 37, January 1841. Action on a note. " slave . . purchased . . for $610. . . a thief and runaway," [39] " plaintiffs' vendor . . informed them that the slave was a runaway, . . told them . . where she would probably go, . . whenever she ran away from plaintiffs she did not come directly to his house; . . two or three days [after.] " [38] " concealed from the purchaser. . . judgment . . in favor of the defendants," Affirmed.

Fleytas v. Railroad Co., 18 La. 339, January 1841. " The defendants are appellants from a judgment by which the plaintiff recovered [$1500,] . . the value of a slave, crushed by one of their locomotive engines, while he was lying across their railroad, asleep, intoxicated, or in a fit of epilepsy or other disease. . . the engineer . . discovered the slave about two minutes before . . The testimony . . preponderates in favor of the defendants. . . judgment . . reversed; . . ours . . for the defendants,"

Roasenda v. Zabriske (f. m. c.), 18 La. 346, January 1841. " The plaintiff obtained an order of seizure against two lots . . on a note of the defendant for $7905, payable one year after date, . . secured by mortgage . . stipulating . . ten per cent. interest from maturity, if not then paid." [348] " injunction . . made perpetual for the *excess* of interest;"

Penalta v. Borges' Executor, 18 La. 348, January 1841. " The plaintiff alleges the succession of . . Borges is indebted to him . . $63, 634," [350] " for the hire and value of nine slaves " [348] " that in 1820 he left [them] with . . Borges . . to hire out . . and remit to him the proceeds at Rio Janeiro; but . . had never received anything . . [349] offered a witness to prove that Borges . . had acknowledged that he held . . as the plaintiff's agent. . . objection [to parol proof] was sustained . . The plaintiff offered the record of a proceeding against him in the United States district court . . showed that a Portuguese vessel with slaves (including the nine now claimed) had been captured . . by pirates, and recaptured by an American vessel and brought into Charleston, where the vessel and the cargo with the slaves were libelled. The slaves were claimed by the vice consul of Portugal and given up as belonging to Portuguese subjects," [350] " This officer finding no vessel destined to a Portuguese port, in Charleston, the plaintiff was employed to seek . . elsewhere, and . . brought the slaves to New Orleans, where he delivered them to . . Borges, and soon after left . . no evidence of the probable value . . The judge of probates . . dismissed the case for want of this evidence." Judgment reversed and the case remanded [351] " with directions . . to admit testimonial proof of the agency "

Hermann v. Hootsell, 18 La. 419, January 1841. [420] " 1836, Cotton sold . . a negro woman . . and child, for . . $1300,"

Olivier v. Cannon, 18 La. 474, January 1841. " action to recover an old slave, horse and dray, valued in the inventory at $331,"

Gaillardet v. Demaries, 18 La. 490, January 1841. "a slave hired by the defendant, in his employment driving a dray, and being in full trot, ran against the plaintiff's gig and broke it;" Held: [492] "the plaintiff had . . an action against both the owner and employer" [1]

Duncan v. Hawks et al., 18 La. 548, January 1841. "The plaintiff alleges, . . [his] slave . . absconded, and that . . master of the schooner . . while lying in port [[549] 'about to sail for Tampa Bay or New-York'], employed [him] . . as a cook on board for several days, without his . . knowledge" [550] "the slave . . was recovered"

Held: "The statute of 1837 [1835],[2] which is relied on as giving plaintiff a privilege on the schooner, and as establishing the absolute liability of her owners, cannot . . be made to apply . . the legislature intended to render absolute . . the liability of owners . . when a slave is carried out of the State, or . . from one part of the State to another, . . the master was undoubtedly liable"

Russell v. Favier et al., 18 La. 585, January 1841. [588] "the girl Lydia was born on the plantation of the plaintiff in . . Virginia, of a female slave that belonged to him. . . 1836, he brought this girl with a number of other slaves to Vicksburg, . . He refused to sell them, though offered a high price. The slaves were hired out at the commencement of each year, and the plaintiff annually visited the State for the purpose of receiving their hire. . . In January, 1838, the girl was hired [by his agent] to . . Bruner, who in . . April . . took her to Natchez, and after offering her for sale privately at different times, finally had her sold at auction, . . Veill became the purchaser, brought her to New Orleans, and sold her to the defendant, with a full guarantee, without notice of any fraud."

Held: [589] "bad faith of the lessee does not deprive the owner of his right of property. . . [590] ordered that . . [defendant] recover of [Veill] five hundred and thirty dollars [the price paid], with interest . . and the costs of this suit and the costs of this appeal." [Garland, J.]

Bowman v. Ware, 18 La. 597, January 1841. "The plaintiff, Mrs. Bowman, alleges she purchased ['negro woman and her two small children'] . . for . . $1800, shortly after they had been brought from Mississippi by the defendant, . . discovered that the woman is afflicted with chronic rheumatism in the ankles and wrists . . [598] perfectly useless; . . tendered . . back again . . verdict and judgment rescinding . . and for the return of the price" Affirmed.

Groves v. Slaughter, 15 Peters (U. S.) 449, January 1841. [455] "Slaughter [a non-resident], in . . 1836, and in . . Mississippi, sold to Brown slaves introduced by him, as merchandise, and for sale, into that state, in . . 1835, or 1836; and . . received . . these notes,[3] endorsed by

[1] C. C. 2299.
[2] Act of Mar. 27, 1835, sects. 1 and 2.
[3] Amounting to $14,875.

Groves and Graham," " When the notes became due, the endorsers refused to pay them," [451] " because the contracts on which they were founded are in direct violation of the constitution . . of Mississippi,"[1] [455] " suits were instituted against them in the Circuit Court of Louisiana. . . decided that they [the slaves] were a valid consideration," The judgment was brought up to the Supreme Court of the United States, [497] " by writ of error, for revision." Mr. Gilpin, for the plaintiffs in error: [457] " No legislative action is necessary to complete the prohibition;" [Appendix I] " Argument of Mr. Walker, of Mississippi, on the opening and concluding of the Case, . . he appeared only for . . Groves, of Louisiana,"

"the clause is not directed to the legislature, and is not a mandate . . but an absolute prohibition, operating *proprio vigore*. . . [xviii] the inter-state slave trade, as carried on by traders in slaves as merchandise, was the thing designed to be prohibited. . . [lv] great mistake, maintained in the north by [the Abolitionists] . . is . . that by the law of the slave-holding States, slaves are merely chattels . . and therefore are subjected to the power of congress to regulate commerce among the states. . . No, they are, in every thing essential to their real welfare, regarded as *persons*; as such they are responsible and punishable for crimes; as such to kill them in cold blood is murder; to treat them with cruelty or refuse them comfortable clothing and food, is a highly penal offense; as such they are nursed in sickness and infancy, and even in old age, with care and tenderness, when the season of labor is past. To call them chattels or real estate, no more makes them in reality land, or merely inanimate matter, than to call the blacks of the north freemen, makes them so in fact. . . [lvi] are not the slaves whom the doctrines and principles of abolition have now reached, upon those counties of Maryland, Virginia and Kentucky, bordering for more than a thousand miles upon the adjacent states of Pennsylvania, Ohio, Indiana and Illinois, unfit for a residence as slaves in Mississippi; and would it not be most dangerous to permit slave traders to drive them also in any number within our limit? Would they not contaminate our slave population, and diffuse among them the same doctrines and principles, which from these bordering counties, have already peopled Canada with a colony of thousands of runaway slaves. . . [lxix] Engaged as these traders were in this inhuman traffic; transporting these slaves in chains from state to state, for the sole purpose of a sale for profit; desirous of increasing this profit by purchasing the cheapest slaves, which would always be the most wicked and dangerous, reckless of the moral qualities and character of the slaves whom they bought, not for their own use, but to sell for speculation; tempted to buy the most wicked slaves, because always to be purchased at the lowest price, and sold in a distant state at the highest price, to those who would be ignorant of their dangerous character; inured as these traders were to scenes of wretchedness and cruelty, and entirely regardless of the means by which they reaped a profit from this traffic, why might we not, as a means of self-protection, arrest this traffic by forbidding the introduction of slaves as merchandise? Especially, when a state had tried all other means to arrest the introduction of dangerous slaves, and had found the state, notwithstanding her previous restrictions, inundated, by these traders with the wicked and abandoned slaves, the

[1] Adopted Oct. 26, 1832: "The introduction of slaves into this State as merchandise, or for sale, shall be prohibited from and after the first day of May," 1833.

insurgents and malefactors, the sweeping of the jails of other states, might they not wholly exclude the traffic, as the only effectual means of self-preservation? . . But even if they could repose for the character of the slaves upon the traders, there was that in the very mode and purpose of introduction which rendered nearly all such slaves most dangerous to the tranquility of the state. The very manner in which these slaves were forced from one state and driven into another, would introduce them with hearts overflowing with bitterness, and stimulated to revenge the most deadly, against the seller and the purchaser. Such slaves would seek for vengeance, not only by their own deeds, but they would endeavour to inflame the passions of all other slaves in the state, who but for their contaminating influence would have remained useful and contented. Who can deny that there was danger arising from such transactions? *The legislation of all the slave-holding states demonstrates that it is so*; . . [lxxix] Kentucky . . 1794, . . [lxxx] Virginia . . Act of 1778 [and acts of 1785, 1788, 1789, 1790, 1792, etc.] . . Tennessee . . 1812, . . Georgia [1798] . . Delaware [1789] . . Pennsylvania . . [1780 and] 1788 . . [lxxxii] Maryland, . . 1796, . . New York . . 1788, . .[lxxxiv] North Carolina . . 1794, . . South Carolina, . . 1800, . . 1801, . . 1802, . . Missouri, . . 1835, . . Arkansas . . 1838, . . Mississippi . . 1837, . . Louisiana . . 1826; . . Rhode Island, . . 1784, . . Connecticut . . 1774 and . . 1784, . . [lxxxv] New Jersey . . 1798,. . Indiana,. . Nor in Ohio, Maine, Massachusetts, New Hampshire, or Vermont, under their constitutions. . . [lxxxvii] ten of the twelve states which framed the constitution, have passed laws . . [lxxxviii] prohibiting the introduction from other states, of slaves for sale, . . at least six of the new states have affirmed in their constitutions the power to pass those laws, and . . congress . . have on all these occasions, commencing in 1792, and terminating in 1836, conceded that these constitutions . . were 'not repugnant to the constitution of the United States.' . . [If] this court, having annulled all the state laws on this subject, shall announce that it is a question over which the power of congress is supreme and exclusive . . [could] the Union stand the mighty shock, and if it fell, shall we look upon the victims of anarchy and civil war, resting wearied for the night from the work of death and desolation, to renew in the morning the dreadful conflict? . . No, this court will now prove, that . . here the rights of every section of this Union are secure. And when. as I doubt not, all shall now be informed, that over the subject of slavery, congress possesses no jurisdiction; the power of agitators will expire, and this decree will be regarded as a re-signing and re-sealing of the constitution."

[481] " Mr. Clay,[1] for the defendant in error, said the questions to be decided in this case, involved more than three millions of dollars, due by citizens . . of Mississippi, to citizens of Virginia, Maryland, Kentucky, and other slave states. The magnitude of the cause is shown by the increase of slaves in . . [482] Mississippi, from 1830 to 1840. In 1830 the slave population was about sixty-five thousand. In 1840 it had increased to upwards of one hundred and ninety-five thousand. . . from 1830 to 1837 the increase had been more than seventy-four thousand. A large portion . . had been introduced . . by non-residents. The universal habit of all the planting states, has been to buy slaves on credit, leaving the product of planting to pay for them. . . From 1832 until 1837, no one questioned the right to introduce slaves for sale; all concurred in the

[1] See Clay *v.* Ballard, p. 563, *infra.*

opinion, that the constitution did not, *proprio vigore,* prohibit their introduction."

Mr. Webster, on the same side, contended that [490] "The contract was made, in the belief of all parties to it, that it was valid and legal. The attempt to avoid it, is to give a retroactive effect to new views of the provision [in the constitution of Mississippi]. . . [493] In 1837 the Governor . . submitted to the legislature the propriety of prohibiting the sale of slaves by non-residents. In his message he expresses doubts of the operation of the constitutional prohibition, and suggests that a law should be passed to give it affect. The law was passed in 1837. . . No opinion was expressed, that the legislature thought the constitution had made the prohibition effectual."

Judgment affirmed: [499] "the construction of the constitution in [Mississippi [1]] . . is not so fixed and settled as to preclude us from regarding it an open question. . . [500] Legislative provision is indispensable to carry into effect the object of this prohibition. . . [503] this view of the case makes it unnecessary to inquire whether this article . . is repugnant to the constitution of the United States;" [Thompson, J.] M'Lean, J.: "As one view of this case involves the construction of the Constitution of the United States in a most important part, . . I will state . . my own views . . [504] although the question . . is not necessary to a decision of the case; . . the question is, whether" the provision in the Mississippi constitution of 1832, "that the introduction of slaves into that state, as merchandise, or for sale, shall be prohibited . . is in conflict with that part of the Constitution of the United States, which declares that Congress shall have power 'to regulate commerce . . among the several states.' . . [506] Can the transfer and sale of slaves from one state to another, be regulated by Congress, under the commercial power? . . [508] The power over slavery belongs to the states respectively . . and the transfer or sale of slaves cannot be separated from this power. . . Each state has a right to protect itself against the avarice and intrusion of the slave dealer; . . The right to exercise this power, by a state, is higher and deeper than the Constitution. . . rests upon the law of self-preservation;" Taney, C. J.: "In my judgment, the power over this subject is exclusively with the several states; . . [509] Another question of constitutional law has also been brought into discussion, . . whether the grant of power to the general government, to regulate commerce, does not carry with it an implied prohibition to the states to make any regulations upon the subject, . . I decline expressing my opinion" [510] "Mr. Justice Story, Mr. Justice Thompson, Mr. Justice Wayne, and Mr. Justice M'Kinley concurred with the majority . . in opinion that the provision . . [to regulate] commerce . . did not interfere with the provision of the constitution . . of Mississippi," Baldwin, J.: [514] "Slaves . . being articles of commerce with foreign nations, up to 1808, . . were also articles of commerce among the several states, which recognized them as property . . [515] Whether they should be so held . . is a matter of internal police,

[1] See introduction to the Mississippi cases.

over which the states have reserved the entire control; . . if they recognise slaves as . . property . . they become the subjects of commerce between the states which so recognise them, and the traffic in them may be regulated by Congress, . . as part of its purely internal commerce, any state may regulate it . . but when such regulation purports to extend to other states or their citizens, it is limited by the Constitution, putting the citizens of all on the same footing as their own. . . [517] my opinion is that had the contract in question been invalid by the constitution of Mississippi, it would be valid by the Constitution of the United States. . . wherever slavery exists by the laws of a state, slaves are property in every constitutional sense, and for every purpose," " Mr. Justice M'Kinley dissented from the opinion of the Court, as delivered by Mr. Justice Thompson;[1] and Mr. Justice Story also dissented; both . . considering the notes sued on void."

Slatter v. Holton, 19 La. 39, June 1841. [40] " Plaintiff [[41] ' S. F. Slatter, of New Orleans '] seeks to recover the value of a slave named Shadrack," [39] " had the steamer *Henry Clay* sequestered, and claims a privilege thereon for the . . value of his slave." [40] " testimony . . that the *Henry Clay* [' whereof the defendant was master '] left New Orleans . . January, 1837, . . while she was lying below the Cumberland bar, . . stopped by the low stage of the waters, . . the *Wave,* . . passing from the . . Cumberland into the Ohio, came alongside the *Henry Clay* to take off her passengers; that plaintiff's boy . . aided in carrying the baggage . . on board the *Wave*; . . the boy . . together with three other servants were received on board . . [41] at the instance of the defendant, who requested the captain . . to allow such of these cabin boys as might be wanted to work their passage, . . that the others would pay, but expressing a wish that he would be moderate in his charges; that . . Shadrack, or Jim Thornton, being remarkably active about the table, was permitted to work his passage . . that at some distance further up . . the Ohio, the *Wave* fell in with the . . *Tuscarora,* from which other passengers were taken, and among them a Mr. Peterson, who instantly recognized Jim Thornton as . . Shadrack; . . told the captain . . that he had been present when H. H. Slatter, the plaintiff's brother, bargained for . . Shadrack with Mr. Tate, in . . Baltimore; . . afterwards saw him put on board of a brig at Alexandria (District of Columbia), to be sent to the plaintiff at New Orleans." " urged the captain of the *Wave* to arrest him as a runaway, but the latter declined . . saying that the boy had been put on board . . by defendant, who would not have done it without authority, and that moreover defendant was responsible . . in case . . a slave;" " above Flint Island . . he was discharged and never afterwards heard of; . . admitted on the trial . . ' that Slatter had returned to Armstrong [his vendee] the purchase money ($1600)' " Judgment for the plaintiff for $1600.

[1] But see Charles Warren, *Supreme Court in United States History,* vol. II., p. 345, n. 2.

Affirmed: [42] " The good character . . which the testimony establishes for the defendant . . entirely acquits him of any improper motives; but cannot relieve him from the consequences of his neglect to comply with the formalities required by our laws in relation to persons of color." [1]

Barrett v. Bullard, 19 La. 281, September 1841. " The plaintiff alleges that . . 1835, he purchased . . Titus from [Judge Bullard] . . for . . $650, . . [282] That shortly after . . he discovered the slave was afflicted with a severe chronic disease of the kidneys, . . That he has placed said slave in a hospital, where his medical attendance and nursing have cost $300; . . two physicians . . were called in . . cannot say it was incurable. . . appeared to have been of long standing. . . The defendant's witnesses . . His general good health and robust, athletic constitution was proved by two overseers and two other persons who had charge of him, and some of them up to the time of sale; . . [283] No evidence of a tender . . to the defendant . . judgment annulling the sale and decreeing the return of the . . price " reversed; " and that ours be for the defendant . . [284] as in case of a non-suit,"

Edwards et al. (f. p. c.) v. Martin's Heirs et al., 19 La. 284, September 1841. " action for personal liberty and freedom. The plaintiffs are . . [six] children of a colored woman named Polly Edwards, who was sold as a slave . . 1802 [when she [291] ' was . . about nineteen '], by . . Andrus . . to . . Martin . . for $625. The plaintiffs were all born . . while their mother was held . . [285] by Martin. He . . sold her to . . Foreman, against whom she asserted her freedom, alleging she was free born. She had judgment . . 1834, declaring her free, and that she was born free." [291] " Andrus was decreed, as warrantor, to return to the heirs of Martin the money paid . . together with the costs;" [285] " Andrus . . had also judgment against the widow and heirs of . . King, from whom he had purchased. . . Martin being now sued by the children . . called Andrus, in warranty . . The warrantor . . denied, that he was liable . . for the . . value of the children, . . verdict and judgment, declaring them free: assessing their value as slaves at the time to be $4,800, . . which the heirs of Martin . . were entitled to recover from . . Andrus . . [and] Andrus . . from King's heirs."

[295] " judgment . . so amended as to allow to the defendants against the estate of . . Andrus, instead of $4,800, . . $625 with costs below; those of this appeal to be borne by the appellees." [292] " must be settled according to . . the laws of Spain, . . [294] Justinian . . ordered that . . where the agreement had for its object a certain . . amount, as in sales, . . the damages . . should not exceed the value of the subject matter [2] . . From . . references of . . Lopez, we cannot but believe that the principle was adopted . . in Spain . . [295] This indemnity appears . . liberal, when it is considered that the vendees have been reimbursed the whole amount . . paid . . After they had enjoyed her services during 27 years,

[1] Bullard and Curry's *Digest,* vol. I., p. 253.
[2] Code of Justinian, Book 7, t. 47, l. 1.

nearly the whole of the ordinary time of service of a slave, they were perhaps entitled to recover only a portion of the price . . because in the sale of a slave the warranty . . does not contemplate the perpetual enjoyment . . as in the case . . of land;" [Morphy, J.]

Miller v. Lelen, 19 La. 331, September 1841. [333] " the plaintiff caused his overseer to have . . [defendant's cattle] driven off by his slaves, with dogs,"

Blanchard v. Castille, 19 La. 362, September 1841. [363] " husband . . threatened to abandon her and kill the slaves, if she did not consent to sell them;"

Benoit v. Broussard, 19 La. 387, September 1841. [388] " entitled to one fourth of the slaves Carmelite and her children, . . ordered to be sold, to effect a partition."

Briant v. Marsh, 19 La. 391, September 1841. [392] " These [two] slaves, he alleges, are in the habit of running away, and one of them is so deficient in intellect as to be nearly useless." Garland, J.: " It is very difficult, if not nearly impossible, to fix a standard of intellect by which slaves are to be judged; hence, we must . . not extend the cases of relative vices too far. Madness is an absolute redhibitory vice, and actual idiocy may perhaps be so considered, although not specially named; . . But such a defect . . would, we think, be . . apparent "

Riggs v. Duperrier, 19 La. 418, September 1841. " negress . . sold at public auction [in February 1838] . . at . . $600." [419] " About two weeks after . . very ill and almost useless, . . March . . the plaintiff placed [her] . . under the care of a physician, . . until . . May, without any improvement . . During this time, another physician was called in, . . [420] both . . concur in saying, she had a cancer in the womb . . incurable. The woman died in a short time after she was taken from under . . [their] care . . In behalf of the defendants . . witnesses . . did not know of . . disease. She worked . . as the other slaves, and in the swamp the year previous to the sale."

Judgment rescinding the sale, affirmed: [420] " from the character of the disease, it is not probable that she would disclose it to white men, as long as she could help it, unless it was to her owners." [Garland, J.]

Brownson v. Fenwick, 19 La. 431, September 1841. Allegations of the plaintiff: [433] " That, in 1835, he employed the defendant as his agent, to purchase . . in Maryland a certain number of slaves, and furnished him funds . . [434] That the defendant . . on his return . . delivered them . . informing him . . that . . Dennis, whom he said he had purchased for the plaintiff of the estate of Leo Fenwick [his brother], had made his escape [in Cincinnati,] . . and that he had cost $800, . . settled with the plaintiff for the price and expenses, . . $829 95. . . that he has ascertained that the defendant never made any such purchase . . was appointed executor . . proceeded to bring [slaves of the estate] . . to this State . . for the benefit of the legatees, and that, before the escape . .

it never was . . [his] intention . . that [Dennis] . . should be the property of the plaintiff." Judgment for the plaintiff affirmed: the amount retained must be [436] " refunded . . together with five per cent. interest . . on . . $829 95 from judicial demand."

Lecomte v. Smart, 19 La. 484, October 1841. [488] " A *vacherie* has been kept there for many years; . . some persons white or black were always there . . and a large stock of cattle . . grazed on the [Lannacoco] Prairie."

Rowley v. Rowley, 19 La. 557, October 1841. [578] " When the plaintiff left for New-York in 1833, she left [Dinah] . . with her sister in Natchez." She married Rowley, a resident of Troy. " Some time after their return [in 1834], . . [he] sold this slave for $800."

Heirs of Grubb v. Henderson, 1 Rob. La. 4, October 1841. [5] " Jane Gordon, otherwise called Jenny Grubb, lived with the testator . . many years . . as his concubine; . . [6] Manuel Gordon Grubb and George Gordon Grubb were universally regarded as her children, the former by . . Grubb, and the latter by a mulatto slave of . . Grubb named Chance. . . *both* the children were raised by him and claimed as his own." [7] " made a will in their favor, and afterwards being apprehensive that the will might not be carried into effect, sold . . land to the defendant [his executor] . . and took his notes . . payable to . . children. The plaintiffs . . instituted suit . . donation [in the will] . . was revoked, and they . . obtained possession of the notes " Judgment for the plaintiffs for $6720 with interest.

Bronaugh v. Neal, 1 Rob. La. 23, October 1841. " instead of completing . . payment [for two slaves], Price clandestinely got possession . . and removed with them to . . Mississippi. . . Goodwin . . was employed . . to pursue . . and regain possession . . which was obtained after a lawsuit,"

Klady v. McGuire, 1 Rob. La. 25, October 1841. " three hundred dollars . . received . . from the treasurer of the State, as the compensation allowed . . for . . [his] slave . . executed for a criminal offence,"

Knight v. Murchison, 1 Rob. La. 31, October 1841. [32] " she purchased . . [three] slaves . . in . . Mississippi . .1839, . . husband . . sent them into " Louisiana.

Wafer v. Pratt, 1 Rob. La. 41, October 1841. [42] "1819 or 1820 . . Wafer brought this slave [from Louisiana] to Arkansas "

Kiper v. Nuttall, 1 Rob. La. 46, October 1841. Suit on a note " given in part payment of . . negroes . . testimony . . that . . Charlotte was unhealthy . . before the sale to the knowledge of some of the heirs, . . One of the witnesses calls it a female complaint brought upon her by an attempt to produce an abortion; but . . it clearly appears that Charlotte died of a congestive fever . . taken sick . . four to six days before she died; no physician was called in . . except about three hours before her

death, . . Such a neglect of the . . duties prescribed by humanity should . . preclude a purchaser from recovering the value . . he is bound towards the vendor to take such care of the thing sold which he intends to return, as might be expected from a prudent father of a family." [Morphy, J.]

Cawthorn v. McDonald, 1 Rob. La. 55, October 1841. [56] " judgment recovered by Lake and Petty against Fisher in . . Mississippi, . . the sheriff levied upon the slave together with others, . . all the slaves were brought from Mississippi by Petty . . who stated that being . . apprehensive that Fisher would run the slaves off, he had taken the start of him and run them off himself,"

Hooper v. Hyams, 1 Rob. La. 90, October 1841. " one of the slaves . . purchased, was . . afflicted with . . the dropsy, of which he . . died."

Duncan v. Elam, 1 Rob. La. 135, October 1841. " 1837, sold . . a plantation and slaves . . for sixty thousand dollars,"

Griffin v. Waters, 1 Rob. La. 149, October 1841. [152] " 1828 . . the defendant had several slaves; but . . all of them died but one, who ran away; . . [153] lost several slaves by the boat remaining in New Orleans for some time, when the yellow fever was prevailing. . . [154] The inventory shows . . eighteen as belonging to the community, and two had died in 1834, before the inventory was made. . . $1500 allowed . . for their hire for . . eleven months [1834-35]. During that time one valuable slave was accidentally killed, another died,"

Armstrong v. Mooney, 1 Rob. La. 167, November 1841. " a physician, testified that the slave had been afflicted with a chronic inflammation of the neck of the uterus, . . that the treatment requires complete repose, in most cases for a year; . . remain the whole time on her back. . . that the cure . . was very difficult in slaves, owing to their neglect or inability to submit to the necessary treatment. Out of a great number whom he had visited, . . but one . . cure well established. . . that the expense . . would be from one hundred and fifty to two hundred dollars; . . that the disease diminished her value at least one third. . . judgment in favor of the plaintiff, for two hundred dollars, as one third of her value." Affirmed.

Jackson v. Bridges, 1 Rob. La. 172, November 1841. " The petitioner . . alleges that he is a free man of color, about twenty nine . . born in the District of Columbia; that at the age of eight or ten . . he was by his sister put under the protection and in the service of lieutenant Delany, . . that he served as an ordinary seaman . . on board the frigate *Constitution,* from September, 1825, till July, 1828, when he was discharged at Boston, . . returned to his native place, whence shortly after he was clandestinely, forcibly and fraudulently sent to New Orleans by . . Delany, as he believes, and sold as a slave. . . several successive calls in warranty are to be found in the record, whereby the divers vendors . . have been made parties. . . The petitioner has failed to show that he was born free, or . . emancipated; . . witnesses [testify that] . . [173] plaintiff was with them on board of the . . *Constitution,* . . was considered

by every one there as a free boy, and that none but free persons, or persons believed to be such, were engaged . . on board of vessels belonging to the United States Navy. Some . . say that the plaintiff, who was then very young, waited on . . Delany, as a servant, while others represent him as having been one of the crew;" Verdict for the defendants. Judgment thereon affirmed.

Dussin v. Charles et al., 1 Rob. La. 195, December 1841. Defendants "allege that . . note [for $600] was given in part payment for . . a *quarteronne* girl named Myrthée, with her child, . . that Myrthée is the daughter of . . Ismene Bedeau, a free woman of color, and has brought suit to recover her freedom . . and that they . . have already paid . . six hundred dollars . . the first instalment . . prayer that this suit may not be tried until the final decision" Judgment for the plaintiffs affirmed: defendants have not [196] "placed before us . . a transcript of the record of the suit"

Gallier v. Walsh, 1 Rob. La. 226, January 1842. [227] "a saw mill, and a number of negroes were put into the partnership,"

Poydras et al. v. Bormeau [*Bonneau*], 1 Rob. La. 315, February 1842. "Action by Benjamin P. de Lalande for himself, and as attorney in fact for the other heirs of . . Julien Poydras,"[1] "allege . . That one of the plantations was sold to Madame Bormeau and Madame Mourain, . . afterwards partitioned . . and that six of the *statu liberi* fell to the [former's] share . . and that they were above . . sixty on the 1st of January, 1833, and were entitled to the . . benefit of . . stipulations in the contract of sale, in conformity with the testament. . . that Madame Bormeau . . had refused . . and that the *statu liberi,* aided by one of the plaintiffs, had failed in an action to recover the . . stipend[2] . . allege, that . . stipend formed a part of the price . . unpaid, and is due to the estate . . pray judgment . . for the arrearages . . nine hundred dollars, and the further annual sum of [$25] . . for each of the *statu liberi,* from the 1st of January, 1839."

Judgment against the plaintiffs affirmed: "the petition does not disclose a right of action in the plaintiffs. Admitting their construction of the will . . [316] it by no means follows, that the vendors . . have a right to recover a part of the consideration in this form of action. The argument, that the annuity . . for such slaves as shall have attained . . sixty, is a legacy . . lapsed in consequence of the incapacity of the legatees, and that therefore the plaintiffs have a right to recover it, has not much weight with us. . . The plaintiffs have no capacity to represent the *statu liberi,* and *non constat* but that their mistress will pay at a proper time [in 1850], or that the *statu liberi* will coerce the payment as soon as they shall have acquired a legal capacity to act." [Bullard, J.]

Shea v. Schlatre, 1 Rob. La. 319, February 1842. "The petitioner represents that . . in April, 1839, an agreement was entered into between him and his servant Frances, a free person of color, under his . . pro-

[1] See his will quoted in Moosa *v.* Allain, p. 480, *supra.*
[2] Poulard *v.* Delamare, p. 517, *supra.*

tection, and . . Schlatre. . . his services were engaged for one year . . [320] to give his attention . . concerning a warehouse . . and . . the services of Frances . . to manage and carry on a tavern . . at the same place, for one hundred dollars. . . [both] to be found with boarding, lodging, and washing, . . as well as with the necessary servants. . . July . . peremptorily discharged . . Frances has transferred to him her claim . . The evidence shows that sometime after . . he was engaged . . in the same capacity by [another.]" Held: [321] "could not affect this vested right."

Nolan v. Danks et al., 1 Rob. La. 332, February 1842. [333] "that previous to the written contract [in April 1839] . . the defendants had employed the plaintiff as an overseer, but . . finding him disposed to become intoxicated, they discharged him; but that afterwards, at his urgent request, they again employed him, giving him an increase of one hundred dollars on his wages [$750], upon the express condition that he should [[332] 'not taste any kind of spirits, or wine'] . . for the balance of the year. . . he . . became repeatedly so intoxicated as to be entirely unable to fulfill his duties," and was discharged in October.

Solet v. Solet, 1 Rob. La. 339, February 1842. "action of slander, by his daughter, who charges him with having said that 'she was a thief,' and . . 'the most base and infamous person that ever lived.' . . persons of color. The plaintiff left the defendant to live in concubinage. The words . . [were] spoken . . on the departure" "verdict for five dollars, and judgment accordingly."

[340] "reversed; and . . ours . . for the defendant with costs in both courts." [339] "probable that in rebuking . . the father was under the influence of a sense of duty, rather than prompted by malice to injure her."

Maria and another v. Edwards, 1 Rob. La. 359, February 1842. "The petitioners sue for their freedom under the last will of . . James Goodbee. . . [360] dated . . 1838, and signed . . in the presence of four witnesses. . . [361] several fruitless attempts were made to obtain the necessary . . [five] witnesses. . . the testator died the following day."

"ordered . . that the slaves . . be declared to be entitled to their freedom . . and that the executor take the necessary steps to have them emancipated according to law; the appellees to pay the costs of this appeal." [360] "this case comes within the exception [1] . . in relation to . . nuncupative wills . . when made in the country" [Morphy, J.]

Porche v. L'Admirault, 1 Rob. La. 365, February 1842. "seek the rescission . . on account of a malady pronounced by physicians to be a pulmonary consumption."

Terrell v. Cutrer, 1 Rob. La. 367, February 1842. "one of the slaves . . was purchased by her agent in Kentucky, in . . 1833;"

[1] C. C. 1576.

Palmer v. Taylor, 1 Rob. La. 412, March 1842. " The plaintiff seeks the rescission . . on the ground of a malady existing at the time of the sale, from which the slave . . died. . . resisted on the plea of the general issue, and on an averment of gross negligence, cruelty, and illtreatment . . A post mortem examination was made, and the opinion . . was in favor of the existence of the disease at the time of the sale. . . [413] The testimony does not show that any doctor was ever sent for . . but . . he was accidentally seen by a doctor who had been sent for to another slave. . . expressed his opinion . . dangerously ill." [413 n.] " after prescribing, 'he returned . . the next day, and saw the negro, who seemed . . better.' " [413] " Two or three days afterwards, the slave died in the field, and it does not appear that in the meanwhile he had received the attention . . due to a sick slave. The impression upon our minds is strong, that this last circumstance had on the jury, the effect which it deserved to have. . . we are unable to say that the verdict [against the plaintiff] is incorrect." [Martin, J.] Judgment affirmed.

Thomas v. Selser, 1 Rob. La. 425, March 1842. " the note sued on was given for . . five slaves, bought by the defendant of . . Clark, . . one of whom, . . Caleb, is alleged to have been in the habit of running away previous to the sale, . . and to be still out . . [426] son-in-law [of the defendant heard] . . Clark [say] . . that he did not consider the negro a runaway; that, to be sure, he had run away four or five times, but . . generally from the fear of being whipped, and . . did not stay away over five or six days at a time. . . But . . Dr. Atchinson, informs us, that . . Caleb belonged to . . Dr. . . Campbell, of Mississippi, who becoming embarrassed . . a very short time before the sale to the defendant, had placed this boy, together with other slaves . . in the hands of Clark, to be brought to Louisiana for sale. That he . . was intimately acquainted with . . Dr. Campbell, for four or five years previous . . Caleb was his wagoner; . . entrusted with the transportation of his produce to market, and of his family stores at home; . . always held in high estimation by his master, . . that he never heard of Caleb's absenting himself . . but once, when, in consequence of a quarrel with his wife, he stayed out one night " Judgment for the plaintiff affirmed.

Bertie v. Walker, 1 Rob. La. 431, March 1842. " 1839, she bought . . Matilda " for $1150.

Jordan v. Black, 1 Rob. La. 575, March 1842. " The plaintiff alleges that he has the legal . . title to a number of slaves, . . based upon a conveyance made by Elizabeth Morgan, the wife of the defendant, previous to her marriage, . . specified that the slaves shall remain in . . [grantor's] possession . . during her life, and be emancipated by the plaintiff after her death." " and that the defendant has illegally removed them from . . Tennessee . . [576] in violation of injunction " granted in 1838 " perpetually enjoining [him;] [1] . . they were sequestered, and taken into the

[1] Same *v.* same, vol. II. of this series, p. 511 n., and Underwoods Case, *ibid.*, p. 511.

custody of the sheriff. . . verdict for the plaintiff," Judgment thereon affirmed.

Lyons v. Kenner, 2 Rob. La. 50, April 1842. Suit on a note given for [51] "negroes lately introduced into the state, . . [52] appeared . . to be . . free from any disease. . . On the day after the sale, when, at the defendant's request, they were taken to the depôt . . to be transported to his plantation, . . a young girl named Martha Ann, complained of pain . . had some fever, and a running from the eyes . . the first symptoms of measles. . . a witness who had charge . . informed the defendant, who nevertheless had her sent . . with the other negroes, . . not been shown that on reaching the plantation, she was kept apart . . and a physician was only called in . . four days afterwards. . . he found . . Martha Ann, and . . Isaac, sick with the measles, and . . a great number of the other negroes caught the disease within fifteen days after the sale." Martha Ann, Isaac, and two others died.

Judgment for the plaintiff affirmed: [53] "defendant did not act as a man of ordinary prudence" "he cannot avail himself of" [52] "the presumption, created by section 3 of the statute of 1834,"

Bank v. Merle, 2 Rob. La. 117, April 1842. [118] "notice [of protest] . . was handed to a black female servant, in the office of . . Caldwell," Held sufficient: [119] "We cannot see the force of an argument which admits that if a notice be left on an inanimate object, it will be good, but if left with a human being . . it is bad, merely because that being cannot exercise all the civil rights of a white person." [Garland, J.]

Succession of Senac, 2 Rob. La. 258, May 1842. "G. D. Senac, a native of France, who had long resided in this country, made his olographic will in this State . . 1836, whereby he bequeathed their freedom to two of his slaves under certain restrictions. . . departed for France [two days later] . . expressed . . his intention of passing the remainder of his life" there. His child was born there in 1837, and he died there in 1838. The will was held void: [261] "no good reason why our law should be superseded by that of France." [Morphy, J.] On a rehearing, [264] "ordered that the judgment . . remain undisturbed." [263] "a will . . in order to have its effect here as a French will, must have been made in France,"

Menefee v. Johnson, 2 Rob. La. 274, May 1842. In 1837 "the plaintiff agreed to give the defendant fourteen negroes, in exchange for two leagues and one labor [1] of land . . in the Republic of Texas, . . defendant . . proceeded with them to Texas, accompanied by . . Browning . . agent of the plaintiff, . .[275] tracts . . found occupied. . . Browning then called upon him . . to re-deliver . . the negroes. . . Johnson refused . . Browning . . accepted a bond . . in the penal sum of $13,597.50 . . [276] Several of the slaves have died"

Jourdain v. Boissière, 2 Rob. La. 289, May 1842. "petitioner claims four hundred dollars, the price of a negro woman . . under a warranty

[1] 177 1/7 acres.

against all redhibitory vices and maladies, except . . running away. . . that, from the moment of the purchase, the slave had been constantly suffering . . particularly from ulcers in her legs and knees, . . that for drugs and medical attendance . . [he] has expended $125, and has . . been compelled to return her " Judgment " annulling the sale, and allowing the plaintiff $450."

Affirmed: [290] " The declaration of the broker, at . . the sale, that the girl had a wound on her knee, and had hurt herself in scrubbing . . did not apprize the plaintiff that she had a disease . . not to be radically cured."

Saulet v. Trepagnier, 2 Rob. La. 357, June 1842. [358] " agreed [in 1829] to pay for the plantation and slaves . . $130,000,"

Boullemet v. Philips, 2 Rob. La. 365, June 1842. " The defendant is appellant from a judgment on a verdict for [$4000] . . in an action of slander. The words charged . . are, that the plaintiff's family are not white, . . and . . that his mother was a colored woman and of mixed negro blood. The plaintiff avers that his mother and all his family are . . white persons. The words . . were [not] spoken with the least degree of malice. A crowd of witnesses . . Those of the plaintiff uniting in . . opinion that the . . mother was white, or at least of Indian descent, and . . kept company with white ladies. The [defendant's] witnesses . . equally unite in the opinion that she was . . colored . . the *ménagère* for several years of the plaintiff's father, who afterwards married her; that her brother and some other children were considered . . colored . . that she never associated with white ladies. . . that her children were excluded from a school . . on the ground that they were not white boys, and that some of them were hired out at ten dollars per month as colored people." Judgment reversed, verdict set aside and the cause remanded.

Drouet v. Rice, 2 Rob. La. 374, June 1842. " 1814, George Moreau, a free man of color, obtained a judgment for $434 . . four lots and a half . . were levied upon,"

Succession of Maria Josepha Robert, 2 Rob. La. 427, June 1842. See Robert *v.* Allier, p. 530, *supra.* [428] " the testimony of three witnesses was taken, under a commission, in France, by whom the genuineness of the will was established." Held: [437] " her domicil . . was in Louisiana, . . her disposition must prevail as a legacy of her entire moveable estate."

Gay v. Kendig, 2 Rob. La. 472, June 1842. " On the back of the note . . ' If the negro boy . . for whom this note is given, shall died of diarrhea [*sic*] within six months . . this note shall be null.' . . [473] he died within six months " of " a complication of diseases,"

Hollander v. Nicholas, 3 Rob. La. 7, September 1842. " The defendant . . was sued . . by his overseer on a [' large '] plantation . . to recover $1500, his wages for the year 1841."

Levesque v. Bonin, 3 Rob. La. 12, September 1842. " the plaintiff . . knew of the disorder . . bought at the solicitation of his wife, the defendant's sister, who was well acquainted with the disorder, and was extremely desirous of having the slave as a cook, as the plaintiff owned her sister, whom he had purchased although she labored under hernia, for nearly the same price "

State v. Linton, 3 Rob. La. 55, September 1842. " that . . Linton was the owner of a plantation . . [56] on which he had kept . . ten slaves . . without having any white or free colored person as manager or overseer" [1]

Galpin v. Jessup, 3 Rob. La. 90, October 1842. [91] " disorder of the viscera, creating a morbid appetite, and occasional swellings . . and benumbing at times his physical and mental faculties. Most of the witnesses agree that the negro was entirely useless," Sale rescinded.

Womack v. Nicholson, 3 Rob. La. 248, October 1842. " suit . . to recover the value of . . Nancy, hired as a field hand [in March] . . to the defendant, with damages. . . The evidence shows that . . Nancy was an insolent and intractable slave, addicted to running away, . . was stubborn, and required more whipping than ordinary negroes; . . Shortly after . . she was discovered to be . . [249] sickly. About the beginning of August, a physician was called in . . labored under dropsy. . . Some time after, the girl growing worse . . A pass was given her, and the overseer . . was instructed to dismiss her. . . met on her way home by . . Metcalf, lying in a very helpless condition, on the side of the road, . . taken in a wagon [to the house of Eppes]. She appeared to have been badly beaten, and her head was bruised and swollen. . . A midwife was procured, and . . in the night, she was prematurely [[248] ' a month or more '] delivered of a child. Eppes . . examined her body, which bore marks of the whip—some old, and others new . . she got better . . While at his house she was visited by three physicians. . . [Two] concur . . that she had dropsy in an advanced stage." " Hardwick . . differed . . thought . . that her ailment resulted from the treatment she had received, and from her pregnancy and the premature birth . . When she left . . her wounds were nearly cured. . . after the girl was taken to the plaintiff's plantation, where she remained about two months before she died, no physician was called to attend on her. . . all the appearances . . [250] [of] dropsy."

Held: " even adopting, as we do, the finding of the jury, that [the whipping] . . was inflicted by . . the overseer, it is clearly made out . . though it . . probably did cause, the premature birth . . that the death of the girl . . must be attributed to the disease she had before . . especially when we take into view the little care . . extended to her at . . [her master's] plantation. . . [He is] entitled to recover only the expenses [$158.50] incurred . . during the time she was at Eppes' house," [Morphy, J.]

Hivert v. Lacaze, 3 Rob. La. 357, December 1842. [358] " 8th of August, 1838, the plaintiff purchased at public auction a young negro-

[1] Act of June 7, 1806, sect. 18. Moreau's *Digest,* vol. I., p. 118.

woman [[357] 'fully guarantied against the vices and maladies prescribed by law'] . . for . . $470;" [357] "on the very day the slave was delivered . . [358] she showed the most decided proof of madness or idiocy. . . [359] On the 12th and 13th, she was examined by two physicians, who . . [had] examined [her] . . June preceding . . certify that . . struck with the strange expression of her countenance, and the incoherence of her answers, their attention was called to her intellectual faculties . . she was, and is yet, totally unfit to perform any act which may require a combination of the simplest ideas." The defendant's agent offered [358] "to annul the sale if . . [plaintiff] would give one hundred dollars, as the person who had purchased the slave before the plaintiff . . had done," Judgment cancelling the sale affirmed and the case remanded [360] "for the purpose only of assessing . . expenses and damages due to the plaintiff,"

Hazard v. Lambeth, 3 Rob. La. 378, January 1843. "drafts . . amounting to $6229 97 . . are founded on orders for negro clothing, which the petitioner, . . a manufacturer residing in Rhode Island, was in the practice of obtaining from a number of planters [[382]'fourteen'] living on Red River, and in other parts of the State. The orders are all as follows, . . 'ship for me yearly . . [379] Winter clothing . . by 1st of August, and summer clothing by 10th of March, each year.' . . On the arrival of the goods, the defendants [[380] 'the commission merchants of the planters'] were in the habit of forwarding them . . [381] plaintiff . . had an agent in New Orleans, . . [382] the planters . . sent their crops [to defendants] to pay their debts"

Gros v. Bienvenu, 3 Rob. La. 396, January 1843. In September 1841 the defendant bought "Maria [[399] 'a good washer-woman'], and her two children, François aged six . . and Joseph about two" for $1250. [397] "while she was in the possession of the plaintiff, who employed her at times in selling milk and ice cream in the evening, she did not, one night, return . . at his request, she was arrested by the city guard a day or two after, and lodged in the jail of the . . Municipality, out of which she was taken by the plaintiff, who paid for her apprehension. . . a number of witnesses, some of whom have owned the girl, testify that she has always borne an excellent character. . . [398] the price . . cannot be considered in any way extraordinary. . . As relates to . . Joseph, who died shortly after the sale, . . a physician . . was called to see him at the defendant's house . . the very month in which the sale took place. . . found the boy in a state of marasmus. . . so low that he could not tell . . the cause . . must have been sick at least two or three months . . We cannot say that the judge erred, in fixing fifty dollars as a fair allowance for the child,"

Smith v. McDowell, 3 Rob. La. 430, January 1843. [431] "The sale took place . . March, 1840; and the slave ran away early in April . . was caught, but ran away again . . within . . six weeks . . No evidence . . of his having run away before the sale . . The defendant contended that . .

act [of January 2, 1834,] ought not to govern . . as the slave had been more than eight months in this State before the sale. McClay deposes that he lived with . . McDowell, in Vicksburg, . . who had a plantation on the opposite side of the river, . . That . . McDowell was the owner of . . Bob, whom he sent for sale to . . his brother, in New Orleans. That the slave had a wife on his master's plantation, and was a plantation hand. . . that in . . 1838, 1839, and up to February or March, 1840, the most of the slave's time was spent on the plantation. Sands, a witness for the plaintiff, deposes that . . [432] the defendant said that the slave had been [in Vicksburg] . . about four years." Judgment cancelling the sale and condemning defendant [431] "to the reimbursement of the price," affirmed.

Nolé v. de St. Romes and Wife, 3 Rob. La. 484, January 1843. "The plaintiff, for herself and her two children, claims emancipation under the will of their former owner, . . The answer resists . . on the ground, that in order to obtain the consent of the police jury to her emancipation, they (defendants ['executor and heir']) must allege that she has behaved well during the four preceding years,[1] and that she is able to provide for her maintenance, which they cannot do. . . that the children are not thirty years of age. . . judgment for the defendants, but the rights of the children to emancipation were reserved to them, the court being of opinion that the plaintiff, especially during the four years preceding . . had been of a bad reputation, thievish and insolent."

Affirmed: [485] "As to the children, the record does not inform us whether their emancipation is claimed under the act of 1807 and the Code, as being thirty . . or under the act of [January 31,] 1827,[2] as being natives of this State. The District Court reserved their rights, . . all they could expect. . . the mother's behavior . . would alone have prevented her emancipation." [Martin, J.]

Bissell v. Leftwich, 4 Rob. La. 102, February 1843. "proved that a sick negro was sent to the plaintiff's ['tavern or boarding house'] . . in . . 1839 ['for two months']; and that the charge of $60 for board and attention to him is correct."

White v. Guyot, 4 Rob. La. 108, March 1843. [109] "The evidence leaves it doubtful whether the disease . . was venereal or *fluor albus.*"

Ogden v. Michel, 4 Rob. La. 154, March 1843. [156] "More than four years after the sale [in 1837] to the plaintiff, he ran away. It appears that for four or five years before the death of his former master, he had not run away, although previously he had done so repeatedly. He seems to have been a faithful servant for many years, until he finally made his escape from his new master." Judgment for defendant affirmed.

Penny v. Weston, 4 Rob. La. 165, March 1843. [166] "the grandfather had certain property consisting principally of slaves, which he

[1] Act of Mar. 9, 1807; C. C. 185.
[2] B. and C. 429.

brought with him from South Carolina, . . [169] Not only had the taxes to be paid on the young slaves; but it is well known that they are in reality an expense to the owner for food, clothing, and medical attention." [Bullard, J.]

Nimmo v. Bonney and Bird, Executors, 4 Rob. La. 176, March 1843. [177] " In his will, executed in the olographic form in 1835, . . [Langley, a bachelor,] bequeathed to each of the defendants a portion of his slaves, to serve them, and their heirs, until they should severally arrive at the age of thirty, at which time . . [to be] emancipated . . ' It is my desire that the following . . be emancipated immediately at my decease, . . Comfort, aged 33 . . Nancy, 33 . . Katy, 21 . . Henry, 18 . . Elena, 12 . . and James, 2 years; and, after all my debts are paid . . that all my personal property be equally divided between . . Nancy, Katy, Henry, Elena and James, and that they be under the special care and protection of both my executors, . . and finally that both . . see the above . . dispositions strictly complied with.' . . it does not appear that they took any steps, to carry into effect the will . . in favor of those . . whose immediate emancipation was ordered; but they have always kept them . . [178] As the plaintiffs have averred . . that these slaves were not born in the state, . . it may account for their inaction, at least as to such . . [179] under thirty years." [1]

Held: " these negroes did not become absolutely free by the homologation of the will [in 1838] . . they can become so, only by a compliance with the formality required by law for the emancipation . . until this be done, they continue to be slaves, and owe their . . labor to the estate . . surrender [to the heirs] will not impair the right of the slaves to obtain their emancipation whenever it can legally take place; nor can it prevent the executors from executing their trust," [Morphy, J.]

Succesion of Ducloslange, 4 Rob. La. 409, May 1843. Will of Ducloslange: [411] " En reconnaissance et pour salaire des soins et bons services qui m'ont été . . rendus par la négresse libre . . Eulalie Bacchus,[2] je lui lègue, pour en jouir sa vie durant les trois terrains . . avec les bâtisses . . le tout reversible après elle à mes enfans naturels . . En outre je lui donne . . les bêtes à cornes "

Bertholi v. Deverges, 4 Rob. La. 431, May 1843. The plaintiff bought a female slave in November 1838 for $855. [434] " she died [in July 1839] with a *well confirmed phthisis,* in the opinion of the physicians who examined her lungs after her death; . . the malady made its appearance within a very few days after the sale, . . treated *for a cough,* which lasted a *long while,* when . . in the possession of the defendants," Verdict in favor of the plaintiff for $855. Judgment thereon affirmed.

Reynaud v. Creditors, 4 Rob. La. 514, May 1843. [515] " December, 1836, at the sale of the property of the estate . . Reynaud purchased . . Joseph for $1379, and Celeste and her children for $2205, payable, one-

[1] Act of Jan. 31, 1827. B. and C. 429.
[2] Mother of his natural children.

half on the 15th of January, 1837, and one-half on the 15th of January, 1838,"

Feltus v. Anders, 5 Rob. La. 7, May 1843. Judgment condemning " master and owners of the steamboat . . to pay a fine of $500, under the act of [March 25,] 1840, . . the plaintiff is a resident of Mississippi, . . the boy . . was found . . on board . . at Natchez, without the written consent of his master, . . [He was] received on board . . within the limits of this State." Held: the residence of the plaintiff is immaterial.

Bell v. Dowly and Wife, 5 Rob. La. 18, May 1843. " Marie Canaller, . . a colored woman, had been living in open concubinage with the plaintiff, for several years previous to her death . . in . . 1840." " a sale under private signature, . . May, 1839, . . written at the foot of a list of the articles in the [grocery] shop which . . she had purchased from the estate of her father . . ' I hereby transfer to . . Bell . . [who] agrees to pay [$500] . . December, 1839,' . . [19] Marie Canaller continued in possession . . her name . . at the door . . was . . replaced by that of Bell only a few days before her death, . . from the time when Bell went to live with the deceased, he occupied himself about the house, went to market, and attended the shop . . absolutely destitute . . having failed . . and being then in the prison limits. One of the witnesses says that Bell was considered as a *loafer,* kept and entertained by Marie Canaller." [18] " the defendants . . claim ownership under a probate sale " Judgment in their favor affirmed.

Lobdell v. Burke, 5 Rob. La. 93, June 1843. " suit . . to obtain a diminution of the price paid for a gang of thirty negroes, . . the adults in general being much older, and the children much younger than . . represented. . . [94] Jefferson . . was never delivered . . had either run away, or was kept out of view by Offutt," who owed $25,000 to the defendant who received the negroes in payment " without his ever having seen " them, as they were " then on his debtor's plantation in Arkansas, . . A few days after, the plaintiff agreed to purchase of defendant . . for the same price, the defendant told him . . he would prefer to delay until he (the plaintiff,) had seen the negroes, . . but the plaintiff . . did not like the trouble of returning to the city. . . [95] The witnesses [neighbors of the plaintiff] . . formed an opinion of their ages only from their general appearance, a most unsafe . . rule, according to the witnesses themselves, who say that negroes appear generally much younger than they actually are, and that, in judging . . only by inspection, mistakes may be committed of from five to fifteen years. . . the jury correctly allowed to the plaintiff only the value of . . Jefferson," [Morphy, J.]

Winston v. Foster, 5 Rob. La. 113, June 1843. " The defendants, owners of the ship . . appeal from a judgment decreeing them to pay a fine of $500, under . . the act, approved March 25th, 1840, . . on the evening of the 24th of May, 1840, the ship *St. Mary,* Captain Foster, was towed down the river by the *Tiger,* . . next morning . . Foster discovered a negro . . [who] stated himself to be the second cook; the

Captain replied, that he was not . . the cook . . being called . . asserted that he was . . the Captain . . replied, that he had never seen the man before, and . . called upon [him] . . to produce his free papers; . . [114] finding he had none, . . had the boy secured, and sent him on board the *Tiger,* . . the commander of the tow-boat, on his return . . lodged the negro in the jail . . Captain Foster at the same time addressed to the Mayor a note . . 'I discovered . . a negro man who calls himself Thomas Taylor, says he is free, and was born in Richmond, Virginia. . . no documents' . . The evidence further shows, that the boy . . was a confirmed and incorrigible runaway, and was advertised in the *Picayune,* as having left . . 23d of May, 1840. . . [115] the plaintiff's slave has been returned to her; and the only question is, whether the defendants have incurred the fine which the Legislature have imposed from motives of public policy. We think they have not," [Morphy, J.]

Petit v. Laville, 5 Rob. La. 117, June 1843. [118] "In January, 1841, the defendant became the purchaser, at public auction, of a negro woman [for $1310] . . payable at 6, 12, 18, and 24 months credit, . . The defendant did not comply . . by furnishing the notes . . in March following, the slave was resold at public auction . . for . . $1040. The plaintiff sues to recover the difference . . and . . expenses . . forming together . . $345. . . also . . damages. . . resisted . . that the slave was adjudicated to the defendant as a good washer and a good subject, but that she is neither . . ran away . . and was in the habit . . at the time of the sale . . defendant . . offered to return and did return the slave" Held: [119] "it was the duty of the plaintiff to put the defendant *in mora,* previous to proceeding to the sale . . at the defendant's *folle enchère,*"

Ricard v. Kimball, 5 Rob. La. 142, June 1843. "judgment for the value of a slave, drowned through the want of skill and negligence of the persons who navigated"

Soubie v. Sougeron, 5 Rob. La. 148, June 1843. "action . . brought . . April, 1839, to annul the sale, and recover the price of a negro girl . . bought . . February, 1839, . . The evidence shows, that . . seventeen months after the sale, the girl . . was sent to the Charity Hospital, where she died [in] six or seven days . . [from] pulmonary consumption, . . A witness living at the plaintiff's house . . testifies that the slave had been sick about six months . . never saw any physician called in . . [150] Dr. P. F. Thomas, . . defendant's family physician . . was called upon [in 1838] to see this girl who was troubled with worms, . . not long sick; that after she was sold . . plaintiff, whose physician he had also been for some time . . asked him whether he would deliver . . certificate . . which would enable her to return the slave . . and that she would pay him well for it. He replied, that he was not in the habit of making such bargains, and begged her to leave his office, remarking . . that he . . never knew her to be subject to any redhibitory disease." In March 1839 she obtained a certificate [149] "from two . . 'docteurs en médicine de la faculté de Paris,' . . [150] that she had the *Chloris,*"

[149] " Que l'état morbide général . . remonte â une epoque . . qui nous semble excéder un an: Que sa toux . . est d'un fâcheux augure, en tant que développée dans les circonstances actuelles, elle nous paraît tendre vers une maladie dont le résultat serait pour la négresse . . une mort inévitable."

[151] " ordered, that the judgment [in favor of the plaintiff] . . be . . reversed, and that ours be for the defendant, with costs in both courts." [150] " the purchaser is bound to take such care of the thing sold . . [151] as might be expected from a prudent father of a family. The plaintiff is the less excusable, as she was cautioned by the physicians of the necessity of care . . to avert the disease " [Morphy, J.]

Rosine and others v. Bonnabel, 5 Rob. La. 163, June 1843. [164] " Rosine, the original plaintiff, who died *pendente lite,* had sued for her liberty, and that of her minor children, alleging that her former mistress manumitted her in St. Jago de Cuba, in . . 1806, . . in consideration of three hundred dollars . . paid her . . and promised to cause the deed . . to be executed before the proper authority when called upon. After the death of Rosine, her children continued to prosecute . . one of them bringing her own children as co-plaintiffs, assisted by a *curator ad hoc.* Ultimately, after a delay of more than ten years, the case was submitted to a jury, . . the plantiffs offered in evidence a document in Spanish, purporting to be a transcript of certain judicial proceedings before a tribunal in St. Jago de Cuba, instituted by Rosine against her former mistress; and offered . . [165] to prove by . . the Spanish Consul in New Orleans, that the manner in which said document is certified . . is the legal manner in the Spanish dominions, . . also offered to prove the genuineness of the signatures of the notaries who signed . . or . . some of them . . The counsel for the defendants objected . . sustained " Verdict for the defendants.

[167] " ordered . . that the judgment . . be reversed, the verdict set aside, and the cause remanded . . with directions to the judge not to exclude parol evidence to prove the law of Spain . . and, if satisfied . . that the document . . is admissible, not to exclude it on the ground of its wanting any other attestation, or proof of authenticity; and . . that the costs of the appeal be paid by the defendants." [Bullard, J.]

Fox v. Walsh, 5 Rob. La. 222, June 1843. " she died [of consumption] about ten months after the sale [to the plaintiff]. . . Dr. Stone . . was called [about eight months after the sale] . . found her . . [223] suffering from a violent cough, . . thought, that medical aid should have been procured . . earlier . . but the plaintiff stated, as a reason . . that they thought it a mere cold. He attended on her afterwards at the defendant's house, two or three weeks before her death."

Forsyth v. Wilkinson, 5 Rob. La. 263, June 1843. " The defendant having purchased at auction . . Fanny . . for . . $825, took her . . but when required to sign the sale, refused . . on the ground, that the girl did not suit him, . . took the slave to the auctioneer . . who had sold her,

. . brought only $600, . . [264] Beard put the girl up several times, and bid her in, finding that she did not bring the price he thought she was worth;"

Hitchcock v. North, 5 Rob. La. 328, July 1843. Bullard, J.: "he was . . confined . . in a loathsome jail." "put into a *cachot,* or dungeon, and there watched with other persons, among others, a negro fastened in the stocks."

State v. Seaborne alias Moore, 8 Rob. La. 518, July 1843. [520] "Moore, was indicted . . for the murder of Hardy Ellis. . . The court . . charged the jury: 'That the condition of the deceased, whether slave or free, did not affect the character of the offence; that manslaughter was a crime which could be committed by a free white man on the body of a slave; . . and that, if the prisoner treated the deceased as free, he could not set up his slavery as a defence, even if it were a defence in law.'" The prisoner was "convicted . . of manslaughter, and sentenced . . to seven years imprisonment at hard labor." Affirmed.

Succession of Key, 5 Rob. La. 482, September 1843. "This suit is brought by the curator of the estate of Allen J. Key, for the purpose of being authorized to sell several slaves, whom the deceased, in . . a nuncupative testament . . directs to be emancipated. . . The inferior court declared the will valid," Affirmed.

Carson v. Dwight, 5 Rob. La. 484, September 1843. "The defendants are appellants from a judgment condemning them to pay . . balance due upon the price of . . Isabella, purchased . . for . . $700. The negro woman having been . . sold to satisfy the second instalment . . $350, brought only $290, . . The defendants resist the claim . . by plaintiff, on the ground, that . . Isabella is entitled to her freedom, as she was brought from Texas . . where slavery was not, at that time, tolerated" "into the United States, contrary to the laws . . that a suit has been brought by Isabella . . They oppose the amount by them paid on the first instalment, as a reconventional demand . . and pray, that the sale may be declared . . [485] void, . . and that judgment may be rendered in their favor . . for $350."

Held: "the reconventional demand . . is premature, . . ordered, that the judgment appealed from be affirmed, with stay of execution, till the plaintiff gives to the defendant good security to protect him from injury . . from the slave succeeding in her suit;" [Simon, J.] See Isabella *v.* Pecot, p. 581, *infra.*

Re Kershaw, 5 Rob. La. 488, September 1843. "witnesses . . said that Kershaw keeps a female slave belonging to his child, as a concubine; . . [no] reasons . . but their own suspicions, except one . . who testified, with an evident bias . . and said that Kershaw once told him, when drunk, that he was the father of a child by the girl."

Hudson v. Grout, 5 Rob. La. 499, September 1843. "slave . . employed . . in taking to pieces a steamboat sunk in the river, . . drowned. . . the witnesses generally agree, that the work . . was not . . dangerous"

Marie Fanchonette v. Louis Grangé, 5 Rob. La. 510, September 1843. " The plaintiff . . a free woman of color, avers, that since her emancipation by Laurent Grangé, she has had a child . . [now] about four . . that the defendant . . forcibly detains him. . . prays, that he be declared free, and that the defendant be condemned to pay her $1000 damages. . . [511] To prove her own freedom, she offered as evidence, a copy of an act. . by . . her former master . . 1836 . . certified . . also . . an advertisement, made by the Sheriff . . of the application to emancipate her . . also . . the record book . . of the Police Jury . . showing the assent . . judgment in favor of the plaintiff, . . defendant has appealed. . . bill of exceptions . . that the record . . [512] of that particular meeting is not signed by the president and secretary of the jury. . . [513] that the copy of the . . act [of emancipation] . . is false, there being no original in existence."

Judgment affirmed: [512] " their omissions of duty cannot prejudice persons incapable of controling [*sic*] . . them. . . [513] the defendant . . has wrested from the possession of a mother her young child. He sets up no title in himself . . but relies, in a question of personal liberty, upon technical objections, and the omissions of public officers, to defeat the action . . against a trespasser without right, a plaintiff need only show a *prime facie* . . right; . . we think the duly certified copy of the act of emancipation . . enables the plaintiff to maintain the judgment " [Garland, J.] See same *v.* Grangé *et al.,* p. 561, *infra.*

Rudy v. Harding, 6 Rob. La. 70, October 1843. [71] " negro man, purchased . . in Kentucky [in 1835], for . . $800 . . for the use of . . [their] plantation,"

Cotton v. Brien, 6 Rob. La. 115, October 1843. Action upon a note which [116] " was given for the purchase of slaves in . . Mississippi, which had been introduced into that State as merchandize, and for sale, after the 1st day of May, 1833, . . constitution [of Mississippi] declares, that . . [such] introduction . . shall be prohibited " after that date.

Held: [118] " The prohibitory clause . . carried within itself . . the paramount authority of the popular will." [116] " the Supreme Court of the United States, . . held, that the prohibition . . did not invalidate the contract, but that an act of the Legislature of the State was required to carry it into effect,[1] . . [117] The authority of the Supreme Court of the United States is . . deserving of the greatest respect. But upon questions which concern our own citizens, although growing out of the constitutional . . provisions of a sister State, when there is a conflict between the Federal and State tribunals, . . we feel authorized to look upon the question as a new one, and to decide for ourselves." [Bullard, J.]

Lowry v. Erwin, 6 Rob. La. 192, October 1843. [202] " The overseers who were on the plantation say, that . . McNeil never lived on it; . . he lived with his family . . in . . Mississippi,"

[1] Groves *v.* Slaughter, p. 533, *supra.* See introduction to the Mississippi cases.

Gordon v. Creditors, 6 Rob. La. 328, January 1844. "agreement that . . [he] should furnish the land, buildings, slaves," for a saw-mill.

Caldwell v. Mayes, 6 Rob. La. 376, January 1844. "Hazard, a manufacturer of negro clothing in Rhode Island, shipped to . . the factors of . . a planter in Mississippi, several bales of negro clothing, . . to be forwarded . . only on the acceptance by [the factors] . . of Hazard's draft on them for . . $600."

Gaines v. Chew, 2 Howard (U. S.) 619, January 1844. The holographic will of Daniel Clark, written in 1813, [626] "provided for the freedom and maintenance of his slave Lubin;" [6 *id.* 570] "About two hours before his death, . . [571] Mr. Clark told Lubin, his confidential servant, to be sure, as soon as he died, to carry his little black case [containing his will] to Chevalier de la Croix."

Gardiner v. Cross, 6 Rob. La. 454, February 1844. "action for assault and battery, and slander. The defendant attempted to justify . . his conduct, by averring that the plaintiff . . frequently went into the cabins of his slaves . . exciting them to insubordination, . . verdict for $800 in favor of the plaintiff," New trial refused.

Judgment affirmed: "The case is a very aggravated one. The plaintiff was compelled to submit to being tied and whipped. . . [455] Two bills of exception were taken . . The first, to the refusal of the court to permit the defendant to prove, that he had been told that a slave had been heard to say, that the plaintiff was endeavoring to induce some of defendant's slaves to run off. The second, to the court's refusal to admit evidence of the plaintiff's character. . . The evidence was inadmissible . . the attempt to excite slaves to insubordination, ought to be promptly . . suppressed; but . . without planters being permitted . . to chastise, in the manner in which they punished their slaves, persons against whom suspicion may exist." "Whatever may be the character of a white man, it cannot follow, that any one has the right of inflicting . . such a chastisement" [Martin, J.]

Arbonneaux v. Letorey, 6 Rob. La. 456, February 1844. "$41 for the special [medical] treatment . . of two slaves"

State v. Bill, 8 Rob. La. 527, February 1844. "The accused was tried and convicted before the judge of the parish . . and six freeholders, on an accusation of an attempt to commit a rape[1] upon the person of a [white] child aged about six years;"

Judgment affirmed, [528] "subject . . to a modification, which originates in the impossibility of carrying the judgment into execution, on the day designated therein for the execution of the culprit."

State v. George, 8 Rob. La. 535, February 1844. [536] "The accused . . the slave of . . Covington, has been charged with wilfully and maliciously striking . . the overseer of his owner, causing a contusion and shedding of blood. . . he was tried by the parish judge and six free-

[1] B. and C. 59.

holders of the parish of Tensas, where the crime is alleged to have been committed, convicted and sentenced to suffer death. Covington . . has appealed . . [537] The first ground of complaint is, that the court erred in refusing to permit the defendant to challenge a juror, ' who had formed his opinion . . upon vague rumor ;' and had stated further, ' that his mind was made up as to the punishment which should be inflicted ' . . this class of persons . . [has no] right to peremptory challenges. They are nevertheless entitled to a trial by an impartial jury; and . . their right of challenging for cause in many respects, cannot differ materially, if at all, from those of free persons. . . [538] we are not prepared to say, that the judge erred in overruling the first objection to the juror, . . The second objection . . was well taken." Since the passage of the act of April 6, 1843, sect. 7, " it now rests with the jury in such cases . . to determine . . [539] within prescribed limits, the punishment . . The second ground of alleged error is, that the judge refused to instruct the jury, that they ought to acquit . . if the prosecution failed in making proof of the venue as charged. The acts of 1806 and 1825 . . of which the act of 1843 is amendatory, require that the judge and freeholders shall be of the parish where the offence was committed. . . The venue . . must be specially proved. . . after the jury had retired . . the parish judge remained with them in order to read to them the testimony, which . . they were unable to decipher . . [540] decreed, that the judgment . . be . . reversed; that a new trial be granted " [King, J.]

State v. Lennon, 8 Rob. La. 543, February 1844. " convicted of inveigling slaves, and sentenced to imprisonment at hard labor for six years," Affirmed.

Verdun v. Splane, 6 Rob. La. 530, March 1844. " Simeon was born . . 1827, . . the plaintiff, his mother, . . [531] had been a meritorious slave, and had been rewarded [in 1828] by her emancipation." [530] " he was not baptized until about a year after his birth, . . His mother . . was permitted to raise him during the life of her former owner, on whose death, Simeon was sold . . and purchased by his mother, [who [531] ' gave notes, with the required security,'] . . he then being about 12 or 13 "

Held: Simeon did not acquire his freedom by prescription. [531] " the circumstance of the child being permitted to remain . . with his mother [' a proper indulgence '] . . was . . [no] evidence of a sufferance of the enjoyment of his liberty, so as to destroy the right of the heirs " [Martin, J.]

Sheriff v. Boyle, 7 Rob. La. 82, March 1844. " action . . brought on an account for fees and expenses amounting to $1157, alleged to be due . . Sheriff . . for having kept about one year, eleven slaves, under a writ of sequestration [1] . . and for clothing and medical attendance . . [83] One [witness] said, that he . . would not think $30 a year, a fair compensation for keeping a grown negro. Another testified, that the expense

[1] See Jordan *v.* Black, p. 544, *supra.*

of his negroes . . is not more than $25 per year, each. Another . . that he would not charge more than a bit per head for weighing out the allowance of the negroes per week, and two bits per head for the meat per week; he would consider two bits per day unreasonable, as he boards white men at that, and makes money at it. Another said, that for keeping slaves as sheriff, he always charged two bits per day per head, which included clothing and feeding;" Judgment condemning the defendants to pay $420, in discharge of the claim. Affirmed.

Mishon v. Bein, 7 Rob. La. 146, March 1844. Will of Jacob Manumishon, a free man of color: " I give . . to Aimée, my faithful and beloved friend, whom I emancipated twenty years ago, the premises on which I now reside in . . New Orleans, for . . life, . . Then I give . . to Maria, her daughter, wife of Francis Lockwood, . . [147] a stevedore, on the levee . . the . . premises . . in fee simple, . . All my other effects, real and personal, moneys, bonds, notes and obligations . . to Maria . . and to . . Lockwood, in equal proportions . . after the decease of . . Aimée,"

Lewis v. Cartwright, 7 Rob. La. 186, April 1844. " The plaintiff claims his freedom, on the ground that he was carried by his master from the United States into Texas, at that time one of the States of the Mexican confederation, . . constitution of the State of Coahuila y Tejas, . . adopted . . March, 1827. The 13th article . . [187] provides . . [that] children born of slave mothers, after the publication of the constitution, . . [shall] be absolutely free, and . . [prohibits] the further introduction of slaves from abroad six months thereafter. . . the evidence . . is quite vague, as to the time . . the plaintiff was carried to Texas. The only witness . . upon that point says, . . that he . . recollects having hired him of Prior to aid him in clearing some land . . about . . 1826;" [186] " judgment . . rejecting his pretensions." Affirmed. See Cartwright *v.* McMillen, p. 593, *infra.*

Villeré v. Graeter, 7 Rob. La. 203, April 1844. " judgment against [the defendants] . . for causing the death of one of the plaintiff's slaves, by drowning, while engaged in a prohibited traffic with him and others, and encouraging them to steal sugar from their master to sell to them."

Drummond v. Commissioners, 7 Rob. La. 234, April 1844. [236] " that . . Lewis is worth $1500 [in 1842]; . . Moses . . $400, and Peter $750; that Lewis is a blacksmith, and his services worth $50 per month; and . . the services of the other two . . each $15 per month."

State v. Williams, 7 Rob. La. 252, April 1844. [253] " 1841, a prosecution was instituted in . . Criminal Court . . against [Williams] . . for an alleged violation of the statute of January 29th, 1817, . . [255] The indictment . . represents, ' that . . Williams, late . . of New Orleans, in . . 1840, . . did . . bring into this State . . twenty-four slaves, named . . which slaves . . had been convicted . . of murder, burglary, rape, arson, manslaughter, attempt at murder, and of having raised and attempted to raise an insurrection among the slaves in . . Virginia; he . . well know-

ing' . . [256] A statement of facts agreed to by the Attorney General and the counsel for the defendant represents: 'That the slaves mentioned . . and now confined in prison, . . were all sentenced to death for said crimes . . but were reprieved by the Governor of Virginia, for sale and transportation beyond the limits of the United States, . . that Williams entered into bond to [so] transport . . that the said slaves were the property . . of Williams when they arrived . . and that he came to this State with them from Virginia, by way of Mobile.' . . verdict of guilty, . . the court pronounced a judgment . . that as there was no informer the whole amount of the fines and forfeitures accrued to the State, . . declared the . . slaves forfeited to the State, and condemned Williams to pay a fine of . . $500 for each of the twenty-four slaves . . and ordered him to stand committed until the fine and costs are paid. . . an appeal was . . prayed for" [254] "the Judge of the Criminal Court . . refused . . A rule having been granted on the Judge . . to show cause why a *mandamus* should not be issued commanding him to allow an appeal . . Canonge, J., showed for cause, that the Supreme Court is without jurisdiction in criminal cases; . . The rule was made absolute, and the Judge ordered to grant an appeal, reserving . . the right to move for its dismissal on the ground of want of jurisdiction. The Judge . . having refused . . the Sheriff was directed to commit him to prison, . . Upon being informed . . the Judge granted the appeal, protesting . . [257] Attorney General . . moved to dismiss the appeal for want of jurisdiction."

Appeal sustained. [270] "as the obligation of the defendant to pay the fine was merely a civil one . . on which, on his failure to pay, he might have been prosecuted in courts destitute of criminal jurisdiction, . . it was not in the power of the Attorney General, by indicting the defendant, . . to deprive him of the right of appeal. . . [271] On the merits, . . the proceeding by indictment . . is contrary to law; . . The judgment ought to be reversed." [Martin, J.] Garland, Morphy, and Simon, Judges, concurred. Bullard, J., dissented: [272] "Is there any man of unsophisticated sense who would not exclaim at once, that it is a crime . . to bring in knowingly . . convicted ravishers, murderers, and incendiaries?" [309] "A re-hearing having been granted, Martin and Garland, Judges, adhered to the opinions originally pronounced" "further reflection . . brought [Judge Morphy] . . to a different conclusion, . . [314] The act of 1817 is [a] criminal law." [315] "a further attentive consideration . . brought [Judge Simon also] . . to a different conclusion from that which . . [he] had heretofore adopted." As Judge Bullard's opinion remained unchanged, the appeal was dismissed.[1] See Gil *v.* Williams and Davis, p. 653, *infra.*

Penny v. Christmas, 7 Rob. La. 481, May 1844. Weston and his wife Sarah [482] "came [from South Carolina in 1818] to this State . . with certain slaves" "and settled in the parish of East Feliciana: . . [488]

[1] The constitution of 1845 removed the ambiguity of the disputed clause in the constitution of 1812 by extending the appellate jurisdiction of the Supreme Court to "criminal cases on questions of law alone, whenever the punishment of death or hard labor may be inflicted, or when a fine exceeding three hundred dollars is actually imposed."—Ed.

Scott died in South Carolina . . 1822, or . . 1823," His will empowered his executors " to lay out five thousand dollars in the purchase of young and valuable negroes for the use of my sister, Sarah Weston,"

Brown v. Railroad Co., 8 Rob. La. 45, June 1844. [48] " orders had been given to . . secure the cars every night, by placing . . blocks under the wheels. This duty . . was sometimes entrusted to a black man "

Macarty v. Canal Co., 8 Rob. La. 102, June 1844. " a gang of negroes were employed in clearing and opening the road."

Rist v. Hagan, 8 Rob. La. 106, June 1844. The plaintiff purchased John in 1839 for $1100. [107] " he ran away twice at least within the first two months . . was absent about ten days the first time, and about two weeks the second time. He was taken, on one of these occasions, ten miles from home; . . the slave's general habits were those of a great runaway, and great drunkard and thief. . . he was whipped once after having run away . . Another swears, that the negro . . was absent weeks at a time; was in the woods nearly all the time when not sick; and is *a practical runaway negro.* . . [108] at the date of the sale, the slave had been less than eight months in the State;" The plaintiff stated that he had been [106] " obliged to pay . . $100 for apprehending him . . also . . $300 for physicians' services and medicines, . . [107] Judgment . . annulling the sale, and condemning the defendant to pay $1100, with interest, etc.;" Affirmed.

Lemos v. Daubert et al., 8 Rob. La. 224, June 1844. [225] " the plaintiff discovered . . the unsoundness . . gave notice of it to the auctioneer, and of his declining to complete the purchase. . . lodged the slave in jail, at the risk and charge of the owner. . . The disease appeared to be . . a grave swelling on one of her thighs, on which a scar showed that a surgical operation had been performed; . . the jury came to the conclusion . . redhibitory . . The court came to the same " [224] " the sale to the plaintiff was rescinded; . . his vendor, had judgment against Durapau [her vendor], who had judgment against Montz, and this last against Destez," Affirmed. [225] " application . . by the defendants' warrantors for a re-hearing [granted] . . as it is admitted in . . answer, that the defect . . [226] was such as to be discovered by simple inspection.[1] . . All the sucessive warrantors, except Destez, who denies all knowledge, seem to admit also that the defect was . . apparent . . testimony of . . Dr. Dupierris, that Durapau . . had called upon him to examine her, . . advised . . not to purchase . . as she had every indication of a scrofulous disease and a swelling in the abdomen. . . notwithstanding . . Durapau told him that he intended purchasing . . as he could get her very cheap." Held: [227] " the parties successively called in warranty should be discharged from all liability."

Fink v. Martin, 8 Rob. La. 256, June 1844. " December, 1842, an execution was issued . . David, a valuable mechanic, . . was seized.

[1] C. C. 2497.

He was not offered for sale until April, when . . no adjudication could take place for want of bids . . sufficient to pay the mortgages having priority over that of the plaintiff. A rule on the latter and the sheriff was then taken by the defendant, calling upon them to show cause why . . David should not be returned" Ordered [258] "that the rule . . be made absolute, and that he do recover the possession"

Irish v. Wright, 8 Rob. La. 428, July 1844. [431] "action against . . master of the steamship . . to recover . . damages for having . . abetted . . the plaintiff's debtor, in conveying a large number of slaves belonging to the latter, from the mouth of the Mississippi to Texas, . . [432] with a full knowledge of the rights of the plaintiff, and against the earnest remonstrances of his agent, the slaves were taken by Wright and towed in a small vessel to Galveston," Verdict against Wright for $13,330, the amount of the debt. Judgment theron affirmed.

Commissioners v. Hodge, 8 Rob. La. 450, July 1844. [452] "Saul always acted as Hodge's overseer, . . His salary was $1200 a year, . . Hodge . . also hired nine negroes from him to work in the field."

Guérin v. Rivarde, 8 Rob. La. 457, July 1844. In 1813 "Gertrude . . [was] estimated at . . $800, and Lucie and her three children, Marie, Hedy and Obadiah . . at $1500. . . 1833 . . Marie with her two children, Hedy and her two children, and Obadiah [were sold] . . for . . $2550 cash."

Jenkins v. Thenet, 9 Rob. La. 34, September 1844. "The slaves were brought into this State, in 1835, by . . Fenwick, . . administrator of the estate of his deceased brother . . in Maryland," "and fraudulently sold"

Marie Fanchonette v. Grangé et al., 9 Rob. La. 86, September 1844. "The plaintiff sues for $10,000 damages . . [88] proved, that a short time after the decision of this court, in her suit against Louis Grangé,[1] that individual, together with one of his co-heirs, forcibly took her and her [two] children into possession, still alleging a claim to them. On the part of the defendants, it was shown, that the plaintiff always resided with Laurent Grangé after her emancipation, until . . his decease, . . and one witness says, that she was his concubine. . . The present parish judge says that he cannot find . . any original of the act of which a copy is produced; produces an [incomplete] act . . judgment in favor of the plaintiff, declaring her and her children free, and giving $100 damages against Louis Grangé,"

Judgment affirmed [90] "with costs, and ten per cent damages against Louis Grangé, on the . . one hundred dollars, for a frivolous appeal." [89] "there is no . . excuse for him, in aiding to reduce the plaintiff to a state of slavery, after she had been declared free by a competent tribunal. . . The counsel for the defendants . . calls on us . . to say, that the judge [who certified the copy] committed a forgery,

[1] Same *v.* Grangé, p. 555, *supra.*

. . [90] and that a clerk in his office [who recorded it] aided . . This is asking us to presume against what we think is the weight of the testimony, and the presumption of law that public officers do their duty until the contrary is shown, in a case involving the personal liberty of the plaintiff and her children." [Garland, J.]

Milo v. Lynch, 9 Rob. La. 98, September 1844. " The petitioner seeks to recover [$700] . . the price of a mulatto boy named Edmund [about 16], . . purchased . . 1841. . . [99] evidence . . that some time after the sale, the plaintiff returned the boy . . and received . . another . . but that [he] . . having been bitten by a dog, was sent for by his master to be taken care of, and . . died . . that Edmund ran away twice from the plaintiff, and three times from the defendant, after he was returned . . The first time . . he was found in the jail . . in the parish of Iberville, to which . . he had escaped on board of a steamboat. When . . apprehended for the third time by the defendant, he was lodged in jail, where he has remained ever since." Verdict in favor of the plaintiff. New trial refused. Affirmed.

Lewis v. Gibson, 9 Rob. La. 146, October 1844. Action to annul a sale. [147] " The evidence shows that the slave [Lige] had runaway from the defendant several times in . . Arkansas, and that he had been guilty of the brutal act of knocking out one of his teeth for doing so. . . 1841, he brought this and another slave to this State for sale, and kept them . . at the residence of . . Grayson, . . plaintiff . . went several times into the field to . . converse with them. The defendant told the plaintiff that . . Lige had run away once; . . why he made such a difference in price [was] . . ' that . . Andrew was one in whom he placed a great deal of confidence, . . no confidence at all in [Lige.'] . . The plaintiff said he wanted to purchase . . cheap. . . not proved the slave has ever run away . . since . . Grayson . . stated ' that Lewis told him, that . . Andrew told him, that Lige had run away two or three times.' . . objected to . . sustained "

Held: " the judge erred . . [148] The matter intended to be proved was the admission of the plaintiff, not the statement of the slave; . . judgment . . for the defendant as in case of a non-suit, the plaintiff paying the costs in both courts." " Sufficient was told him previous to the sale, to put a prudent man on his guard." [Garland, J.]

Bailey v. Stevens, 9 Rob. La. 158, October 1844. " action . . by the proprietor of a plantation . . against an overseer . . charged with brutal treatment of the slaves, during the absence of the plaintiff, and other gross violations of duty, . . verdict and judgment for the defendant " Reversed and the case remanded: " A perusal of the evidence . . is far from reconciling our minds to the finding of the jury. . . justice requires . . a new trial." [Bullard, J.]

Routh v. Routh, 9 Rob. La. 224, October 1844. [225] " In 1814, he was his father's overseer . . [226] [at] $500 a year "

Cecile v. St. Denis, 9 Rob. La. 231, October 1844. [235] "The defendant is a free woman of color, . . she had to be furnished with money . . to pay for a favorite slave . . his mother having advanced it."

Gas Light Co. v. Botts, 9 Rob. La. 305, December 1844. "action . . to recover $1050, the price of . . Davy, sold . . 1838, . . evidence . . that . . the superintendent of the gas works, having met the defendant . . the latter told him he had heard that the company wished to buy slaves; that he had not then on hand any that would suit them, but that a friend . . had gone to Mississippi to purchase prime slaves, . . that, some time after, . . defendant asked him to . . examine . . Davy, . . stating . . that the boy had been in town but a few days . . bought, and ran away [twice] . . further shown, that the defendant had purchased . . about a month before he sold him . . from . . Smith, with a restricted warranty against the redhibitory maladies only; that the slave was then in the chain gang, to the knowledge of the defendant; was sold to him for $500, clear of all expenses; and was represented as a subject very hard to manage." Verdict and judgment in favor of the plaintiffs. Affirmed.

Fazende v. Hagan, 9 Rob. La. 306, December 1844. Action to rescind a sale. "Fortier testified that the slave, a boy of about ten . . ran away about twenty days after the sale; . . was found at the negro-yard of the defendant, a slave trader; that the plaintiff, on finding the boy there, told defendant that he did not want him . . that defendant replied, that the plaintiff . . must keep him; that plaintiff took the boy, who, in about ten or fifteen days . . again ran away, and was drowned. . . [307] Judgment by default was confirmed" "in the absence of the defendant."

Reversed and the case remanded: "The habit of running away in a boy of ten . . is supposed to be extremely rare. The boy's absenting himself from his new master, and going to his former, is perhaps not conclusive evidence of an intention to run away," [Buchanan, J.]

Clay v. Ballard, 9 Rob. La. 308, December 1844. "action against Ballard, for . . $4,000, with interest, . . on the following obligation . . 'New-Orleans, January 9, 1841. We, . . Ballard and . . Slaughter, promise to pay to Henry Clay, Esq., [$5,000] . . Ballard paying [$4,000] . . thereof . . in addition to his fee already . . agreed upon, in . . Groves *v.* . . Slaughter,[1] now in the Supreme Court of the United States, provided that the decision . . fully settle the question' . . a letter [to Clay, of the same date,] . . [329] 'we are represented by able counsel . . but relying on your ability . . more particularly, we feel justified in enclosing you the above obligation,' . . The respondent . . avers, that . . the tribunals . . of Mississippi . . have disregarded the judgment of the Supreme Court of the United States,[2] . . so that the decision is of no value, legally or morally, to him;" [332] "The testimony of judge Montgomery shows, that Ballard had, at the time the . . suit was pending

[1] P. 533, *supra.*
[2] See introduction to the Mississippi cases.

. . claims to the amount of nearly $200,000, against citizens . . of Mississippi and Louisiana, which were liable to the same defence made by Groves; that in one . . against Gen. Brandon, for about $16,000, the defence had been abandoned after the decision of the Supreme Court. The same is shown in the deposition of Chancellor Quitman, who gives the particulars of a compromise of one claim, amounting to upwards of $100,000."

Judgment against the plaintiff reversed; " and ours is, that the plaintiff recover of the defendant [$4000] . . with interest . . from judicial demand (January 9th, 1843), with costs in both courts." " the plaintiff was far from warranting that . . [the judgment] would, in all other cases, and in other courts, be adopted as the unerring guide of decision;" [Bullard, J.]

Farmer v. Fisk, 9 Rob. La. 351, December 1844. [352] " the record shows that . . Kitty was a confirmed runaway, while she belonged to Proctor, defendant's vendor; . . away from her master for several years, when she was arrested, and put into the jail of the . . Municipality, in June, 1841; . . remained there until November . . and was then sold out of the jail to the defendant, through one Hite, a broker, for $350; . . [353] jail fees were paid either by defendant, or by Hite. Proctor . . believing the latter was the purchaser, . . informed him that . . [she] was a runaway, and that he sold her as such. . . Hite . . did not communicate these facts to the defendant, who, a month afterwards, sold the slave to the plaintiff for $600." [351] " verdict and judgment . . in favor of the plaintiff for . . the purchase money, and for $100 damages." Affirmed.

Knight v. Heinnes, 9 Rob. La. 377, December 1844. [378] " the slave ran away from the [new masters] . . shortly after she was in their possession, and is in the parish jail . . where she has been for a long time."

McDonogh v. Millaudon, 3 Howard (U. S.) 693, January 1845. [695] " on the 3d of April, 1769, the French governor of Louisiana granted . . a tract of land . . on the Mississippi river . . to Lake Maurepas, . . to . . join that of a free mulatto named Joseph Lacomb. . . [697] on the face of the sketch [made by Trudeau in 1790] . . a note which says that the land . . passed . . in favour of . . Alexandre Lange, mulatto,"

Mazerolle et al. v. Françoise et al., 9 Rob. La. 528, February 1845. " The plaintiffs sought a judgment declaring the defendants to be their slaves. . . [529] The record proves that Françoise was the slave of Anne Mazerolle, the wife of . . Daigle; that, at her death, Françoise was sold by the Court of Probates, and purchased by . . Daigle, who, . . by a notarial act, emancipated her, and by his will recognized her emancipation, and bequeathed to her . . her [two] children, to be liberated at the age of majority." Judgment for the defendants affirmed.

Succession of Duplessis, 10 Rob. La. 193, March 1845. [194] "Martin Duplessis, a free man of color, died . . 1833, leaving a nuncupative will under private signature, in which he . . ordered the emancipation of . . Sophie and her children. . . executor . . died, in . . 1834, without having executed . . The heirs . . sold all the property except Sophie and her children, whom they kept until . . 1842, when they proceeded to a partition . . and caused these slaves to be sold under an order of . . court. . . 1844, . . Lombard petitioned . . for letters of dative executorship, . . the heirs . . deny that . . Duplessis ever made any valid will; . . [195] the application . . was rejected,"

Affirmed: "If Sophie and her children were yet in the possession of the heirs . . [there would be] no good ground for rejecting the application . . The right . . to their freedom has not been lessened . . by the course pursued by the heirs . . but it must be asserted contradictorily with the person who bought them." [Morphy, J.]

McCargo v. New Orleans Insurance Co. ("The *Creole* Case"), 10 Rob. La. 202, March 1845. [312] "This case . . with six others, growing out of the loss of the slaves on board the brig *Creole,* . . are actions upon several policies of insurance," McCargo's proposal for insurance states that: [204] "Insurance is wanted against all risks, and chiefly against foreign interference on twenty-six negroes, at $800 each, on board the brig *Creole,* . . from Norfolk to New Orleans—warranted by the assured free from elopement, insurrection, or natural death." These provisions were incorporated in the policy. [314] "The cargo . . consisted of one hundred and thirty-five slaves,[1] besides some tobacco." [260] "two-thirds of the slaves . . were males; there were ten whites, . . comprising the crew . . and four white passengers, T. J. D. McCargo, Hewell, Merritt [agents of McCargo] and Leidner." [314] "She left Richmond on the 25th of October," 1841. Gifford, chief mate, testified: [217] "When the negroes came on board no examination was made to see if they had any arms in their packs; never examined the packs of negroes, nor has ever known it to be done to see if they had any arms" [206] "On looking at the bill of lading he recognizes the names . . Madison Washington, Elijah Morris, Pompey Garrison and Andrew Jackson as the slaves of the plaintiff . . After putting to sea the negro women were put in the after hold . . the men in the fore hold; . . Hewell and Merritt [agents of McCargo] . . attended to the negroes. . . The men were allowed to come on deck night and day if they wished. . . Between nine and half-past [on November 7], Elijah Morris came . . on deck, and told him that one of the negro men had gone . . where the women were. . . [207] Merritt, by lighting the lamp, enabled us to see Madison Washington, . . It was the rule to whip the negro men if they

[1] [260] "The tonnage of the *Creole* was 157-25/95ths tons. . . The act of Congress of 2 March, 1819, (which does not indeed apply to the very same subject matter, . .) forbids the carrying of more than two passengers for every five tons; . . Will any reasonable man say that 135 negroes would be as . . indisposed to insurrection, under such circumstances of discomfort, as . . in a . . more commodious vessel?" [Counsel for Insurance Company.]

went into the hold with the women, . . he pushed deponent off, . . a pistol was fired at deponent, . . Madison called to the rest, to come on; as they had commenced, they must go through with it. . . [208] deponent retreated to the main top, and Captain Ensor followed . . badly stabbed . . Heard Madison Washington tell the rest to kill every white man, . . Three or four . . went aft to kill the Frenchman at the wheel. Madison Washington told them not to hurt him, he was a Frenchman, and could not speak . . English. . . they brought Mr. Hewell on deck [[207] 'stabbed in a number of places'], they cut his head off as near as they could . . (he was then dead); . . threw him overboard . . [209] told deponent to bring the captain down . . put him in the fore hold . . nineteen kept strict orders over the rest . . threatening to whip them if they disobeyed . . They appointed another cook for the negroes, Madison having been the former cook. . . [219] On the night of the insurrection the vessel had been hove to, and she remained so all night . . but the next morning . . course for Nassau . . was pursued because D. Ruffin and George Portlock [slaves], who both understood the compass, relieved each other in watching . . [220] threatening instant death if the course was changed." [210] "we arrived at Nassau . . the 9th November. . . a black pilot [[233] 'and his black crew'] came on board . . the quarantine officer came along side . . Deponent jumped into his boat, . . [went] to the American Consul. . . [They] went to see the Governor . . asked protection . . The Governor sent a company of Africans with a white officer . . together with a black corporal and sergeant. . . These soldiers . . tied Ben Blacksmith, Madison Washington, D. Ruffin and Elijah Morris, and confined them in the long boat on deck, . . [213] When witness walked in the streets, the inhabitants, both whites and negroes, would say: 'There goes one of the damned pirates and slavers.'" "Captain Woodside, master of the [American] barque *Louisa* . . came on board with the American Consul" The former deposed, [240] "soon after . . [two] Episcopal clergymen [came on board], who were for some time in familiar conversation with the slaves, and appeared to be giving them directions . . as he noticed the female slaves to be putting on their bonnets, and making preparations to leave . . [247] the Attorney General of the colony of New Providence . . deposed, . . [248] an inquiry . . had been carried on, on board for several days, . . That on getting on board . . he had pointed out to him by the police magistrate . . eighteen persons . . identified . . as . . concerned in the murder . . Leitener [*sic*] . . identified one other . . witness requested . . the officer in command . . to take charge of the accused . . and . . informed [them] . . that they would . . be conveyed on shore, and there imprisoned until . . the British government . . decided whether they should be delivered up to the American government for trial,[1] . . and

[1] [250] "George Grundy and Adam Carnay have . . since died, and the remaining seventeen were, on the sixteenth of [April 1842] . . liberated by an order of the judges of the Court of Admiralty Sessions of this colony."

requested the mate to cause every person on board [1] . . to appear on deck . . [249] They appeared to consist principally of black and colored persons . . witness . . told them . . that . . [no] criminatory evidence having been adduced against any of [them] . . he had to inform them that as far as the authorities of the island were concerned all restrictions on their movements were removed." [325] " all the other English witnesses . . testify that he did not tell the slaves they were free . . They all swear that Merritt, at the same time, told them . . that they might . . go, or stay, as they pleased. This is flatly contradicted by the American witnesses, . . Merritt, however, admits . . he . . said to them: . . ' all of you who think proper to proceed . . to New Orleans, have the privilege of doing so on . . the *Creole.*' . . Woodside said to Gifford, that he ought to protest . . Gifford expressed . . his entire willingness that the people should go on shore." [249] " A shout . . rose from among the colored persons, who appeared . . with one voice to express their determination to quit the vessel, . . [250] getting into the boats . . alongside " [230] " Captain Ensor sent [the American consul] . . a letter . . from . . Attorney at Law, demanding . . the baggage of fifty-four slaves . . principally . . old blankets and some old clothes, the slaves having taken on shore their . . best clothing . . [He] [231] advised Mr. Gifford to give up the articles . . [232] a schooner . . 18th of November . . sailed for Jamaica, with between forty and fifty . . slaves from the *Creole*. . . [258] There was a verdict and judgment below in favor of the plaintiff for $18,400," [2]

[332] " decreed that the judgment . . be reversed . . and ours is for the defendants, with costs in both courts." "the insurrection . . was the cause of breaking up the voyage," [Bullard, J.]

Andrews v. Ocean Insurance Co., 10 Rob. La. 332, March 1845. " action to recover $3,300, the insurance upon eight slaves . . on the . . *Creole,* . . The same facts . . were presented . . but the verdict and judgment below, were in favor of the defendants." Affirmed.

Lockett v. Firemen's Insurance Co., 10 Rob. La. 332, March 1845. " action to recover $20,000, the insurance on twenty-six slaves . . on the . . *Creole,* . . [333] this written clause was inserted: ' The assurers are not liable for suicide, mutiny, natural death, or desertion; but to take the risk of interference by foreign governments, or their agents.' . . verdict for the defendants," Judgment for the defendants affirmed.

Hagan v. Ocean Insurance Co., 10 Rob. La. 333, March 1845. " action to recover $6,500, the insurance on nine slaves, . . The policy was

[1] [218] " They thought they had all the slaves up." But [217] "five slaves . . came with us to New Orleans," "Two had remained in the cabin, on the voyage from Richmond . . appeared to be crying, and did not know what to do. One was . . a woman, perhaps thirty . . named Rachel Glover; the other, Mary, a mulatto girl, about thirteen . . the other two women had been in the hold all the voyage, . . preferred coming to their masters. The [little] boy was the son of one . . in the cabin."

[2] Note: " The jury deducted $800 for one of the slaves who reached New Orleans. . . $1,600 appears to have been deducted as half the value of four . . who [took] . . part in the insurrection, the jury being of opinion that their loss should be divided between the insurers and the plaintiff."

similar to that . . in . . McCargo *v.* The New Orleans Insurance Company, . . on the same voyage, . . verdict and judgment in favor of the defendants," Affirmed.

Johnson v. Ocean Insurance Co., 10 Rob. La. 334, March 1845. "action to recover $15,000, the insurance on twenty-three slaves, . . policy . . similar . . on the same voyage, . . judgment in favor of the defendants." Affirmed.

McCargo v. Merchants Insurance Co., 10 Rob. La. 334, March 1845. [335] "action to recover $15,200, the insurance upon nineteen slaves . . on the same voyage . . The policy stipulates that the defendants take upon themselves . . 'all . . perils, losses, or misfortunes' . . Appended . . is a memorandum, 'that the Company are not liable for suicide, desertion or natural death, but . . chiefly for the risk of detention, capture, seizure of foreign powers.' . . verdict in favor of the plaintiff for $14,400, a deduction of $800 having been made for one of the slaves [Rachel Glover] [1] who had reached New Orleans on the brig. . . verdict and judgment in favor of the plaintiff,"

Affirmed: [337] "we have adopted the English law, according to which an insurance on slaves protects the assured against losses . . from mutiny . . unless . . expressly excepted . . Estrangin gives it as his opinion that . . revolt . . ought in general to be at the risk of the insured; . . Bulay Paty . . seems to countenance the same doctrine. . . [338] losses . . springing from . . the desire inherent in the subject to escape from a state of slavery. These doctrines . . in relation to the African slave trade, would seem not unreasonable; . . But the commerce between the States . . is very different from that trade which is now reprobated by the common voice of Christendom, by which the natives of Africa were reduced for the first time to a servile condition, and when their resistance might be regarded as any thing but criminal." [Bullard, J.]

Lockett v. Merchants Insurance Co., 10 Rob. La. 339, March 1845. "action to recover $10,000, the insurance upon fifteen slaves . . on the same voyage" [348] "the only [ground of defence] . . peculiar to the present case is an alleged deviation in descending the James River, and coming to anchor in Hampton Roads." [340] "verdict and judgment for the plaintiff for $9,333 33, the sum of $666 66 being deducted as the value of one . . [341] admitted to have reached New Orleans" Affirmed. Petition for a re-hearing of the last two cases. Counsel for the insurance company: [351] "The passionate desire for liberty exists in the bosom of *every* slave—whether the recent captive, or him to whom bondage has become a habit, . . [353] two of McCargo's slaves . . Rachel Glover and Mary [2] arrived . . Allowance was made . . for one slave only."

[1] Same *v.* N. O. Insurance Co., p. 567, n. 1, *supra.*
[2] *Ibid.*

Re-hearing refused: [353] "The counsel have not correctly understood us, if they suppose we meant to make the difference between the African slave trade . . and the commerce between the States . . [354] to consist in the desire, in a greater or less degree inherent . . to escape . . there was a great difference . . The natives of Africa were guilty of no crime, when they resisted the attempt of the slaver to subject them to a servile condition. . . If . . Mary . . arrived safe, the title to her vested in the defendants by the abandonment;" [Bullard, J.] [1]

Casimir v. Blanc, 10 Rob. La. 448, April 1845. "Jean Casimir and Ursule, *alias* Sulet, free persons of color . . [449] lived together in St. Domingo, and at St. Jago de Cuba, where the plaintiff was born [in 1805]; . . the plaintiff lived with his father, who called him his son, after they came to New Orleans; . . [but] Casimir never admitted his marriage to a witness, who . . was living with his sister as his concubine; and . . Casimir was . . married to Félicité D'Abat, in this city, and . . Ursule made no complaint, although she lived . . in the same *faubourg* . . in concubinage with one Jean, who appears to have accompanied them from St. Jago de Cuba." [448] "judgment of the Court of Probates, repelling his pretensions" affirmed.

François v. Lobrano, 10 Rob. La. 450, April 1845. "The petitioner, formerly a slave of . . Pilié, was sold by [him] . . to . . Sauvinet . . July, 1835, for . . [451] $300, . . on the express condition that as soon as . . reimbursed . . he should be entitled to his freedom, the formalities . . at . . (petitioner's) expense. . . January, 1839, Sauvinet sold . . to . . Saliba, for the same price, and on the same condition; and . . October, 1839, Saliba sold . . to the present defendant, for the same . . The petitioner . . [alleges] that, previous to July, 1835, he had paid . . Pilié $500, on account of his freedom, and that he has long since paid to his subsequent masters more than the $300 . . that . . the defendant . . has put him in the chain gang of the city. The defendant . . averred that . . slave . . had not even paid his monthly wages; . . often deprived of the services . . by his running away during several weeks; . . coupled with the still worse habit of drinking . . he has been obliged to lodge [him] . . in jail, . . The previous vendors . . answered to the same effect; . . judgment in favor of the defendant."

Affirmed: [452] "Until [the $300] . . is paid, he must remain the absolute slave of the defendant." To the argument of François's counsel, "that from the moment he paid $500 to . . Pilié, he became a co-proprietor of himself with his master, for five-eighths of his value . . therefore, owed . . only three-eighths of his labor . . we cannot assent. A slave cannot . . until legally . . emancipated, own any property, without the consent of his master." [2] [Morphy, J.]

Prevost v. Martel, 10 Rob. La. 512, May 1845. [513] "Prevost, who died in . . 1843, leaving an olographic will, . . bequeathed a . . [514]

[1] The *Creole* case was arbitrated in 1853 and the claimants were awarded $110,330. J. B. Moore, *International Arbitrations,* IV. 4378.

[2] Was not the consent of his master implied?—Ed.

portion of his immovable property to . . Florestine Cécile, a free woman of color, and all his moveable estate to . . Clarisse, also a free woman of color, and that these legacies, together with the emancipation of several of his slaves, being duly executed, he instituted his . . sister . . the universal legatee of the remainder" The plaintiffs allege that they, with the sister, [513] "are the only legitimate heirs . . [514] that . . Clarisse was his concubine, . . and . . Florestine . . the bastard daughter . . [515] Florestine Cécile . . alleges that, being born a slave, she was, at the age of three years, emancipated by . . Constant, who considered her as his daughter," Petition dismissed: the plaintiffs have no interest.

McFarlane v. Richardson, 11 Rob. La. 13, 1845. [15] "1833 . . purchased . . 'a mulattress, named Biddy, or Kitty, *alias* Estelle, aged twenty-seven years.' It is recited in the act [of sale] that this slave had a child, who was not sold with her, being a *statu-liber.*"

Milliken v. Andrews, 11 Rob. La. 241, June 1845. [242] "a physician . . attests . . 'that the disease was a dropsy of the chest; . . not probable he could recover so as to become a healthy slave.' . . the slave was not put to any hard work, was properly clothed and fed, and . . due medical aid was given to him."

Lagrange v. Barré, 11 Rob. La. 302, July 1845. [303] "sold the land to . . Valbuzi Cavelier, a free man of color, for . . $800;"

Sally Miller v. Belmonti,[1] 11 Rob. La. 339, July 1845. "The plaintiff sues for her freedom, on the ground that she was born free . . that her father . . and her mother . . emigrated from Germany in 1817 or 1818, with herself, and two [three] other children; that her mother [and baby] died upon the passage," [12 La. Hist. Q. 451] "Müller with his three children, a boy of eight . . and Dorothea and Salome, aged about six and four" "were . . sold as redemptioners . . to go to Attakapas, . . [452] news was brought to the city of the death of the father from fever and the drowning of the brother, but where Salome and Dorothea were, none could say, except that they were in Attakapas. . . [453] [In] 1842 . . cousin of Salome . . who had been her playmate on the ship . . went down to . . the lower section of New Orleans, . . Passing the cabaret of Louis Belmonti, she noticed . . a woman . . It was as if her aunt . . stood face to face with her, . . her black hair and eyes, her olive skin . . 'You are Sally Müller, my cousin!' The stranger . . said: 'You must be mistaken. My name is Mary Bridget. I am a yellow girl . . Mr. Belmonti . . bought me from Mr. John Fitz Miller[2] of Attakapas. I have no relatives except my [negro] husband and children.' . . [455] Belmonti refused to let her go. . . When the slave went to live with [her god-mother, who later testified, [454] 'I could recognize her among a hundred thousand'] . . and . . decided to gain free-

[1] See "Salome Müller," by George W. Cable, in the *Century Magazine,* vol. XVI., n. s., p. 56; see also "Sally Mueller, the German Slave," by Louis Voss, in 12 La. Hist. Q. 447. The latter is based on Cable's article and on a pamphlet by J. Hanno Deiler.

[2] "The similarity in the surnames of Salome and her master . . is accidental and without significance." *Cent. Mag.,* vol. XVI., p. 62 n.

dom by an appeal to the law, Belmonti replied with threats of imprisonment, the chain-gang and the auctioneer's block." [11 Rob. La. 339] "Belmonti calls in [Miller] as warrantor. The warrantor pleads that, in . . [340] 1822 . . Williams . . left with him . . mulatto girl, then named Bridget, and about twelve . . whom he . . represented to be a mulattress and slave for life. That having made an advance of one hundred dollars, to be reimbursed on the sale of said girl, he . . sold her to his mother . . who retained her until 1834, when she, with her children, were sold back to him; . . in 1838 . . sold to Belmonti, . . [342] Numerous witnesses swore positively to their undoubting conviction of her identity. . . evidence . . that the lost child had . . moles, on the inside of her thighs. The plaintiff was examined by eminent members of the medical profession, who certify to the existence" [340] "The District Court . . dismissed her petition and she appealed."

[344] " judgment . . reversed; and ours is, that the plaintiff be released from the bonds of slavery, that the defendant pay the costs of the appeal, and that the case be remanded for further proceedings, as between the defendant and his warrantor." [340] "The first inquiry . . is, what is the color of the plaintiff? . . Ever since the case of Adelle *v.* Beauregard,[1] . . it has been the settled doctrine here, that persons of color are presumed to be free. . . except as to Africans in the slave-holding States, the presumption is in favor of freedom, and the burden of proof is on him who claims the colored person as a slave. . . [341] no evidence of her having descended from a slave mother, or . . a mother of the African race; . . Gen. Lewis . . says she is as white as most persons; . . presumption . . fortified . . by the testimony, . . [343] if there be . . two persons about the same age, bearing a strong resemblance to the family of Miller, and having the same identical marks from their birth, and the plaintiff is not the real lost child, . . [344] it is certainly one of the most extraordinary things in history. . . we are of opinion that the plaintiff is free," [2] [Bullard, J.] [12 La. Hist. Q. 460] "According to Cable, corroborated by Deiler, she went to California with a white husband,"

Thomson v. Mylne, 11 Rob. La. 349, July 1845. [374] " was to give the services of ten slaves, and six negroes in *statu liberi*;"

Sandoz v. Gary, 11 Rob. La. 529, September 1845. In 1809 Décuir [530] " emancipated a mulatto girl named Josephine, who was his concubine, and who continued to live with him up to . . his death [about 1826]. . . 1818, Josephine purchased . . Betcy at a probate sale . . for $1100, and . . Décuir became her surety, . . About . . 1825, Josephine and Décuir left [the plantation] . . to go . . to France,"

Held: if [533] " the adjudication made to Josephine, in 1818, . . disguised a donation of this slave by Décuir to his concubine, . . such . . was not prohibited by the law in force at the time it was made." [3]

[1] See p. 447, *supra.*
[2] See Miller *v.* Miller, p. 598, *infra.*
[3] Civ. Code of 1808, p. 210, art. 10.

Smith v. Berwick, 12 Rob. La. 20, September 1845. In 1841 [21] "a levy [was] made by the Sheriff on upwards of twenty slaves [belonging to Mayes], . . agreed that [they] . . should remain in the possession of Mayes until the day of sale, . . Some twelve or fifteen days before . . Berwick [a friend of Mayes] . . told [Keiffer] . . that . . Mayes . . wanted to carry some slaves to Texas, and that . . Keiffer . . could get a negro man for it. . . Keiffer and . . Fry, came with two boats and took the negroes on board . . between midnight and morning. The negroes were carried into the Sabine River, and landed on the Texas side. Mayes went with them. . . It was very dark."

State v. Neal, 12 Rob. La. 48, October 1845. [49] "Bills of indictment were found . . against . . Neal, the manager of the plantation . . of Linton, and against . . executors . . who had the management of a plantation belonging to . . [another] estate, for neglecting to comply with the requisitions of the statute,[1] . . found guilty . . Judgment . . against each . . for $100," Affirmed.

Heirs of Compton v. Executors, 12 Rob. La. 56, October 1845. Compton died in 1841, [67] "leaving no ascendants, or legitimate descendants. His olographic will, dated 1st March, 1840," [60] "I . . give . . to my two children, Scipio and Loretta, who have been duly acknowledged by me, my plantation . . on which I . . reside; . . containing about 545 acres; all the slaves . . and . . to each of my said children . . ten thousand dollars, it being my intention . . that they shall have one-fourth in value of my estate, . . I give . . to the free woman of color Fanchon, all my household and kitchen furniture . . also one saddle horse, and my carriage, pair of horses, two patent gold watches, stock of cattle, . . to . . Aaron Prescott . . $20,000; . . all the remainder of my estate" to four nieces. [61] "He appoints . . Prescott tutor[2] to the two children, . . orders that . . [he] be furnished with funds sufficient for their support and education, . . and appoints his nephew . . and . . Prescott, his . . executors, . . [67] the inventory of his estate [amounted] . . to $184,640, . . his debts not . . more than $4000. . . The testimony establishes that the deceased was living in open and notorious concubinage with a mulattress named Fanchon, who . . was emancipated in . . 1825; Fanchon had several children, two of whom, Scipio and Loretta, are named in the will as being the testator's children; he always treated them as such, and acknowledged them . . [68] by regular notarial acts . . 1830, and . . 1837. The deceased caused one of them to be educated in Ohio . . and always showed him the affection of a father. . . Loretta is dead. . . the legacy . . to . . Prescott was intended as a *fidei-commissum,* . . according to the instructions of the testator, in a letter . . 5th of March, 1840. to be divided equally between Scipio and Loretta. . . land . . on Red River, apparently sold . . to Kelso, on the 25th of April, 1838, was re-sold by the latter to Fanchon on the 27th . . a mere disguised donation. . . January, 1840 . . a disguised donation [of land] . . to . . children.

[1] "a white person for every thirty slaves . . to oversee" Act of Dec. 21, 1814.
[2] According to the civil law.

. . June, 1840, a similar donation . . to [them] . . 1830, an act of direct donation . . to Elizabeth [1] and Loretta, of a tract . . which . . was . . 1835, given by Fanchon to Scipio by notarial act . . Fanchon claims to be the owner of a note of hand, due by [a brother of the testator] . . for $5000 . . gift . . to her by the deceased."

[75] " decreed, that the legacy . . to . . Scipio and Loretta, be reduced to the one-fourth [2] in value of his estate; . . that the legacy . . to Fanchon [3] . . be annulled . . that the bequest . . to . . Prescott [3] . . be also cancelled . . that the different donations . . of . . tracts of land . . and of a note of hand . . to . . Fanchon and her children, be all annulled" [72] " Scipio and Loretta could be acknowledged . . and as they have been . . they should be entitled to the rights allowed them by law" [4] as natural children.

Fanchon Morres v. Compton, 12 Rob. La. 76, October 1845. " The plaintiff sues for the amount of a promissory note, made by the defendant payable . . 1840, to the order of . . Compton [deceased], for $5000,[5] . . endorsed by [him] . . delivered to the plaintiff. . . [77] no evidence that the donation had been made by an act . . as required by art. 1523, of the Civil Code. . . The plaintiff died before the trial, and Scipio [5] qualified as administrator" Held: [79] " The note . . should . . be considered as a part of the estate of the deceased,"

Offutt v. Morancy, 12 Rob. La. 92, October 1845. " suit . . instituted on the following . . 'I have bought of Mr. W. Offutt ["trader in slaves"] a boy named Cyrus, for which I promise to pay [$750] . . by acceptance and note. December 14th, 1834.' . . the defendant ['a planter'] . . says, that at or about the [same] date . . he made a contract [in Mississippi] with the plaintiff . . to purchase of him twenty slaves, for . . twenty thousand dollars, . . Ten . . were delivered . . [93] the other ten were to be delivered whenever defendant called for them. . . In January, 1836, an agent for the defendant called . . for [them.] . . The plaintiff . . said, that he then did not have the slaves to deliver, . . never has delivered [them.] . . slaves were rising in price rapidly; . . in the course of that year, such slaves as the plaintiff was to deliver . . were sold at from $200 to $500 the pair, more than the price stipulated. . . [94] [not] shown that the plaintiff had at any time such slaves as he had engaged to deliver . . and sold them at a higher price to some other person. . . a witness . . testifies that Cyrus was to be taken at a reduced price, he not answering the description, and was to be paid for with the remaining ten" Held: plaintiff " cannot be permitted to separate the agreement relative to Cyrus, from the entire contract"

[1] [68 n.] " Another child of Fanchon's."
[2] C. C. 1473.
[3] *Ibid.* 1474.
[4] *Ibid.* 1743.
[5] See Heirs of Compton *v.* Executors, p. 572, *supra.*

Graves v. Hemken, 12 Rob. La. 103, October 1845. "She claims [Jennie and her children] under the will of her father . . [104] probated in South Carolina, . . she was brought to the State when the family moved here in 1836. They lived formerly in Mississippi. . . Interrogatories were propounded . . whether she had not resided in Alabama in 1813, 1814 and 1815." Note: "the plaintiff objected to the interrogatories being taken for confessed, . . that at the time they were propounded, plaintiff lived in Arkansas, and . . no copy of them . . was ever served"

Succession of Stafford, 12 Rob. La. 178, October 1845. In 1843 Tom was sold for $1100, cash.

Andat, Curatrix, v. Gilly, Curator, 12 Rob. La. 323, December 1845. "The petitioner . . alleges . . that, in . . 1829, Lagarde purchased Amelia with her mother . . for the purpose of emancipating them, as he repeatedly declared . . and that since this purchase he had, by the same mother, . . [324] Cidalyse; that a short time after, the mother . . died in New Orleans, since which time, up to . . his death, in 1840, . . Lagarde suffered these children to remain in the full enjoyment of their freedom, and placed them under the care of various persons of trust, uniformly declaring them to be free persons;" [323] "that . . Legarde, several years ago, placed in her hands these girls, declaring . . [them] free, and . . his natural children; that according to his wishes she raised them in the best manner she could, and acted towards them as a mother; . . [324] that by these acts . . and by their enjoyment of their liberty . . more than ten years, these children have acquired their freedom; and that she purchased them at auction [at the probate sale of the succession], for the purpose of testing their right to be set free. . . verdict in favor of the plaintiffs. . . judgment . . declaring them to be free, . . [325] more than three years have elapsed . . The judgment . . has become final against the estate," Appeal of the tutrix of the minor heirs dismissed.

Gas Light Co. v. Paulding, 12 Rob. La. 378, December 1845. [379] "Allen had an order to cut off the gas, and a black boy in attendance to carry it into effect."

Michoud v. Girod, 4 Howard (U. S.) 503, January 1846. Will of Claude François Girod, dated 1812: [505] "I declare that the property I am now possessed of are . . one main plantation, whereon I reside, . . and one hundred and odd slaves . . [506] I give and bequeath to the mulatress [*sic*] Françoise Vils, for the faithful services she has rendered to me at my house, during a long space of time, . . six thousand dollars, . . . I give and bequeath to my god-daughter Françoise, a free colored woman, the daughter of Rosette, a negro woman, . . fifteen hundred dollars, . . I give . . to the mulatress Belanie, wife of Colas Meillen, . . two hundred dollars, . . I give likewise to her younger sister Polline . . two hundred dollars, . . I give . . to my mulatto slave Dominic, who is a blacksmith and rum-distiller, his freedom, which he shall be put in pos-

session of six months after my death, for his good and faithful services to me." [509] " A certain lot of ground . . has not been sold, because it does not belong to the succession, but to one F'se Wiltz, a free woman of color." [510] " 18th of February, 1814. . . ' Corvaisier, judge . . of the Court of Probates, did repair to the sugar-plantation of said deceased, where . . I proceeded . . to sell at auction, and for cash, . . one hundred and seventeen slaves, employed on said sugar-plantation, . . of different ages and sexes, in good health, sick, infirm, crippled, and such as they are or may be, and no warranty being given to the purchaser against the redhibitory vices and maladies prescribed by law, ' "

Webb v. Goodby, 12 Rob. La. 539, February 1846. " James Goodby . . ordered [in a codicil to his will] . . the emancipation of two of his slaves, . . appraised in the inventory . . at $600."

Executors of Henderson v. Heirs, 12 Rob. La. 549, February 1846. Will of Stephen Henderson who died in 1838: [550 n.] " At the end of five years . . there may be drawn by lot, out of all the slaves, . . five females and five males, who will be furnished with a free passage to our settlement in Africa, and one hundred dollars each; but they must go of their own free will, and to return back to slavery if ever they return back to this country." [550] " In the meanwhile, the heirs made a partition of all the slaves of the estate . . [551] bound themselves, in case that portion of the will which relates to the transportation . . should be declared valid . . [552] to comply . . and to support all the charges " [550] " The defendants are the heirs who . . own part of the slaves designated by the draft . . [551] [One] is in possession of . . Martha, Sylvia, Giff, Old Leon and Jim Jackson, the youngest of whom . . was twelve . . at the time of the inventory, . . The two others are in possession of . . Daniel and Milly, the first of whom was four years old only at the time of the inventory . . The other . . slaves drafted are Judy and Betsey, who are in the possession of a person not a party . . and John Mulatto, who is in the possession of . . one of the executors and plaintiffs." [550] " The petition concludes with the prayer, that the defendants may be decreed to manumit the slaves . . to transport them . . and to furnish them with one hundred dollars each,"

[552] " decreed . . that, on the demand of the executors, the [defendants] . . deliver to them for transportation " all but Daniel who [551] " was improperly drafted, as he could not give his consent thereto. . . [552] and that for each . . one hundred dollars be paid . . with the expenses of the transportation, . . with the costs in both courts." " manumission unnecessary." [Martin, J.] See Heirs of Henderson *v.* Executors, p. 605, *infra.*

Baudoin v. Nicholas, 12 Rob. La. 594, February 1846. [595] " the plaintiff . . was to have one-fourth of each crop of rice, for his services as overseer,"

Keller v. McCalop, 12 Rob. La. 639, February 1846. Will of Mary Keller: [645] "I give to my [two] slaves . . their freedom, to take effect at the death of my husband," Will sustained.

Fuentes v. Caballero, 1 La. An. 27, April 1846. [28] "the slave was in the [Charity] hospital sixty-three days, at one dollar a day." Held: "The costs of suit, fees of counsel, and funeral expenses, are not included among the charges to which the seller ['ignorant of the vices of the thing sold'[1]] is . . subjected."

Fernandez v. Bein, 1 La. An. 32, April 1846. "1842, Eulalie Cheval, a free person of color, sold to the defendant . . Sarah, then about nineteen . . for . . $420, . . [33] 'under the express condition . . that, in case during . . ten years from this day, the father of . . Sarah, Francis Lockwood, should be willing to purchase . . or, in case of . . [his] death, . . Sarah should be willing to [purchase] . . herself, . . Mrs. J. D. Bein . . obligates herself, her heirs and assigns . . to desist of the possession . . provided he or her [*sic*] should reimburse'" Mrs. Bein gave a note secured by [32] "a mortgage on . . Sarah, which . . was . . assigned to the plaintiff. The plaintiff prayed for an order of seizure and sale . . she was advertised, unconditionally as a slave." "adjudicated to . . Jandot, for $600 . . [who] refused to pay . . because . . Sarah is . . a *statu-liber*," Held: [33] "the plaintiff is estopped by his own act from treating her as a slave for life . . by the contract of which he claims the benefit by assignment," [Eustis, C. J.]

Bernard v. Auguste, 1 La. An. 69, May 1846. "The parties are all persons of color. . . a contest between the adulterous concubine of a fraudulent bankrupt and his confidential friend, for property which he has so far succeeded in withholding from his creditors. . . We leave [it] . . where the dishonest acts of the parties have placed it." [Rost, J.]

Stevens v. Wellington, 1 La. An. 72, May 1846. "In November, 1840, Cook authorized Wilson . . to sell the slave . . then a runaway . . Early in the spring of 1841, the slave being still absent, Cook contracted . . to convey him, when recovered, to Stevens for $500. . . April, 1841, Cook obtained possession . . and . . sold him to Stevens . . [73] remained in possession of Stevens until the autumn of 1841, when he again ranaway, was taken up and lodged in the parish prison . . whence he was withdrawn by Wilson and Palmer," to whom Wilson had sold him in March 1841.

Musson v. Clayton, 1 La. An. 122, May 1846. "redhibitory action . . to rescind . . sale . . a theft . . of money was committed in the plaintiff's house. Strong circumstances concurred to fix suspicion upon the slave . . a police officer was called in, the apartment of the slave searched, the slave sent before an examining court, and thence to prison." "judgment rescinding . . and condemning [defendant] . . on the delivery of the

[1] C. C. 2509.

slave, to repay the price, with interest . . and one hundred dollars as damages." Affirmed.

Holmes v. Steamer Chieftain and Owners, 1 La. An. 136, June 1846. " action . . to recover $600 damages, and . . $500 the penalty of the statute of 1840, for . . transportation of a slave out of the State, . . one of the witnesses . . embarked at Bayou Sara late in the evening, and saw the slave on board the first or second day after, and . . he continued on board until the witness landed in . . Kentucky. . . time . . in running from Bayou Sara to the northeastern limit of the State was nearly forty-eight hours. The overseer . . states that the slave had absconded . . [138] several weeks previous " [136] " verdict . . for $300 damages, and for $500, the fine prescribed " Affirmed.

Bertin v. Phillips, 1 La. An. 173, June 1846. " the slave . . who belonged to . . succession . . was prosecuted under a criminal charge, and, upon his conviction, the [district] court ordered the costs to be paid by the owner. A *fi. fa.* was issued " Held: " the slave . . [174] could only have been sold under the authority of the Court of Probates."

Spalding v. Taylor et al., 1 La. An. 195, June 1846. " The plaintiff, . . of St. Louis, . . sued out a writ of attachment against the steamer *Missouri,* for damages sustained by the loss of . . Felix, . . Felix, from his complexion, says one of the witnesses, might have some Indian blood or be of Spanish descent, but no one could suppose he had any African blood; . . a great many white creoles have a darker complexion . . dressed like a gentleman . . no attempt to conceal himself . . and, if he had taken passage in the cabin, witness would have allowed him to sit at table as any other passenger. . . has never seen [a slave] . . whose appearance was any thing like that of Felix. . . Chouteau, in whose family Felix was born [in St. Louis], . . says . . he has blue eyes and straight hair; . . [196] In the winter of 1842-3, Felix, being then at St. Louis, . . hired himself for several months on board of the . . *Chippewa,* trading between St. Louis and Galena. . . received his wages from the clerk of the *Chippewa,* at a public tavern [in St. Louis], where he was often seen . . to all appearance free and at leisure. . . From about that time, till . . May . . in New Orleans, . . engaged his services on . . the *Missouri* . . and went up in her to St. Louis, . . Chouteau . . saw him almost daily in the streets; . . plaintiff . . was informed . . at the very time he was looking out for testimony . . for the purpose of attaching the boat here . . Felix was there enjoying his freedom openly . . until he saw fit to hire himself on board of the . . *Brazil,* to go to Galena, where he remained. . . plaintiff was informed by the officers of the *Brazil,* that he could get Felix by sending for him . . his answer was that he cared nothing about him, and preferred looking for him to the steamer *Missouri.*" [195] " verdict in favor of the plaintiff for $1,000."

Judgment thereon reversed, [197] " the attachment set aside, and . . judgment in favor of the defendants for costs in both courts." [196] " If he had . . attached the *Brazil* . . assent on his part would have been

presumed, . . [197] The enjoyment of his liberty was a *status* under which he could prescribe against the plaintiff's title.[1] . . on account of his color and of his vices, the slave was of very little value at any time . . After he had been suffered . . to remain as long as he pleased in States where slavery is prohibited, he must have been utterly worthless, . . if there were no other reasons operating against his claim, it would be contrary to public policy to entertain it. The legislature of this State have repeatedly passed laws to prevent free persons of color from coming . . he was here without a master, . . those laws, are clearly applicable to him." [Rost, J.]

Camfrancq v. Pilié, 1 La. An. 197, June 1846. "the plaintiff, . . a free woman of color, claims . . [198] wages for services as a nurse, and the reimbursement of monies . . for a period covering several months antecedent to Hiligsberg's death, the nurse was sent for, at his request, when he was suffering, . . she was obliged to furnish the means of conveyance . . from the city to his country residence." "We think the amount of $200, allowed by the court below, too small; and give judgment . . for . . four hundred dollars."

Josephine v. Poultney, 1 La. An. 329, November 1846. Held: "the operation of the laws of Pennsylvania upon the personal condition of the plaintiff and the rights of the defendant, by a residence acquired in that State by both of them, released the plaintiff from the dominion, which the defendant had over the person of the plaintiff as a slave, in Louisiana. Her condition being once fixed, under the decisions of the late Supreme Court,[2] she cannot be reduced to the condition of the slave of the defendant." [Eustis, C. J.]

Lacoste v. Sellick, 1 La. An. 336, November 1846. [337] "The *Rainbow* came in collision . . from the steam which escaped, the [hired] slave . . received a scald, of which he . . died. . . verdict for the plaintiff," Judgment thereon affirmed.

Bornet v. Davis, 1 La. An. 339, November 1846. "J. B. Lafleur . . recovered in the Circuit Court of the United States for this district, a judgment against the plaintiff for his freedom, and for $860 as damages for the value of his services."

Richardson v. Johnson, 1 La. An. 389, November 1846. "The plaintiff alleges that he is a citizen of the republic of Texas; that he purchased from the defendant, a resident of New Orleans, a slave, about fourteen years of age, for . . $400, . . warranted . . 'against the vices and maladies prescribed by law,' . . that the boy was, at the time . . affected by a disease of the eyes, . . a permanent defect . . that he would return the slave . . but . . is prevented . . by the laws of Congress;" Petition dismissed. Affirmed.

[1] C. C. 3510.
[2] Lunsford *v.* Coquillon, p. 476, Louis *v.* Cabarrus, p. 502, and Smith *v.* Smith, p. 520, *supra.* See introduction to the Louisiana cases.

Downey v. Stacey et al., 1 La. An. 426, December 1846. " slave, hired . . as fireman on a steamer . . the evidence . . convinced [the judge of the lower court] . . ' that . . [he] must have fallen overboard . . without . . the knowledge of any one on board.' " Judgment for the defendants affirmed.

Weld v. Peters, 1 La. An. 432, December 1846. [433] " Hunt and Howard were . . partners, the former . . resided in Boston and the latter in New Orleans. Howard purchased the slave . . in the name of the partnership . . A notarial transfer . . was made [in 1839] to Weld by Howard, acting in the name of his firm, . . the price is stated to be $1800. . . [434] Hunt . . was in the city some time after " " and ratified the act."

Michel v. Dolliole, 1 La. An. 459, December 1846. Will of Joseph Prieto, probated in 1838: " Je donne . . $500, qui devra être employée par mon exécuteur . . à obtenir la liberté de mon neveu Louis," " The will . . provides that this, and other sums bequeathed . . for the purchase and emancipation of his slave relations, shall be placed at interest, to accumulate until the executor can succeed in accomplishing the object of the legacy. The plaintiff . . is the owner of . . Louis; . . executor, offered her . . $500, which she refused; and subsequently . . she agreed . . for $550; . . executor . . refused . . [460] the slave was lying dangerously ill," " judgment in favor of the defendant, for costs in both courts." " till he was restored to health . . he was not worth the price demanded "

Beaulieu et al. v. Furst, 2 La. An. 46, January 1847. [47] " In a small tenement . . on the Metairie road . . have dwelt . . a black woman, at the time [of] the transactions . . over eighty . . her two sons and her daughter . . Not one of them can . . read or write, . . They cultivate, for marketing, a small field of vegetables," In April 1837 they affixed their marks " to some notes . . and . . a deed, . . a conveyance of real estate by the defendant to the plaintiffs, in consideration of . . $13,400, . . secured by mortgage on the property sold, and also on the homestead . . The first note was protested . . for non-payment, and the defendant caused the property sold by him . . to be seized . . It was adjudicated to a third person for $7,000. The second note was also protested . . and the defendant obtained against the property of the plaintiffs another order of seizure . . subsequently converted into an ordinary suit. The plaintiffs, alleging error, fraud . . obtained an injunction. . . the defendant . . averred the transaction . . unsullied . . Six juries have been sworn to try that issue. The first four were unable to agree; the fifth found a verdict for the defendant. . . on appeal, it was reversed, and the case remanded . . On the last trial, the jury again gave a verdict in favor of the defendant " [46] " for $6,559 87, with interest . . from . . 1838,"

Judgment thereon affirmed, the judges being equally divided. Slidell, J.: [57] " The question is, were they so ignorant as to believe they were selling, when in reality they were buying?" [56] " they visited the ground before the completion of the sale; . . [57] They went . . all over the

house . . and seemed to be well pleased. . . The plaintiffs have executed other acts, both of sale and of mortgage, and have executed other notes. . . [58] [They] have had the benefit . . of the services of counsel of great eminence. While no jury has ever found for them, two have found against them. The costs and other expenses of this litigation must have been enormous, and it has occupied . . more than eight years. . . *Interest reipublicae ut sit finis litium.*"

Johnson v. Johnson, 2 La. An. 67, January 1847. [68] " The plaintiff . . purchased . . with full warranty, for . . $400, Winney, about eighteen . . A short time before [the sale] she had a miscarriage on board of a vessel on her way to Louisiana. . . her disease is proved to have rendered the use of her so inconvenient and imperfect,[1] that it must be supposed that the plaintiff would not have purchased . . if he had been apprized " [67] " judgment . . that the sale be rescinded, and that the plaintiff recover . . $400, with . . interest from the date of . . sale, and . . $21, expenses incurred in medical treatment . . and that the plaintiff restore the slave " Affirmed.

Robert v. De St. Romes, 2 La. An. 135, January 1847. " The slave was sold ' comme cuisinière, blanchisseuse et bonne domestique de maison; . . pleinement garantie . . à l'exception qu'elle est un peu oppressée.' " " the slave . . has the asthma . . this disease is aggravated by the labours of the kitchen; . . its nature is such as to render the use . . inconvenient and imperfect,[2] . . not curable. Oppression is its dominant symptom. But . . may proceed from other causes . . The seller is bound to explain . . clearly " Sale rescinded. Affirmed.

Waring v. Clarke, 5 Howard (46 U. S.) 441, January 1847. [443] " so sudden did she fill with water and sink, that two of the crew, a white man and negro, were drowned, or are missing "

Brinegar v. Griffin, 2 La. An. 154, February 1847. [155] " in . . 1845, and in Kentucky, where the parties both reside, they entered into a partnership for the purchase of a gang of slaves, to be brought to this State and here sold, . . they arrived . . in the fall . . and closed the sale . . in the following spring; . . Most of the sales are stated to have been on credit, . . In one instance, a . . barter . . for sugar "

Eugenie v. Préval et al., 2 La. An. 180, February 1847. " The plaintiff, who was the slave of . . Préval, sues for her liberty, and makes Préval, Mrs. Faure, his daughter, and Miss Raynal, defendants. Miss Raynal and Préval disclaimed any ownership . . Mrs. Faure . . left Louisiana, in . . 1830, for France, and the plaintiff was sent with her. She married [' an officer in the French army '] in France, and returned, after several years, . . her husband remaining . . in France." " the plaintiff . . returned in 1838." Judgment of nonsuit.

[181] " decreed that the judgment . . be reversed, and that the plaintiff recover her freedom, and that . . Mrs. Faure, pay . . $146, for wages

[1] C. C. 2496.
[2] *Ibid.*

from the institution of this suit . . [and] the costs of this appeal; those of the court below . . against the two other defendants, to be borne by the plaintiff; the rest . . by Mrs. Faure." [180] "The domicil of the servant and her mistress was in France, . . We did not consider the statute of [May 30,] 1846,[1] . . [181] as retrospective . . It settles the law on this subject, on the principle laid down by Lord Stowell, in the case of the slave Grace,[2] . . it must be understood, that the judgment is confined to the right of ownership . . asserted over her by the defendant," [Eustis, C. J.]

Dunlap v. Hundly, 2 La. An. 212, February 1847. "1837, the petitioner purchased a negro man . . from Thomas Hundly, a negro trader, who had brought [him] . . [213] to Mississippi, with many others, for sale . . a few weeks before the sale to Dunlap." [212] "avers . . that he purchased said slave for a house servant, the vendor representing him as sober and honest, when he knew him to be an inveterate drunkard, . . that he made to David Hundly his note for $1,800, payable four months after date, . . [213] That plaintiff returned him to Hundly, who said he would take him back, and sue the man he got him from, for damages." [212] "only crediting the note with $1,400:" "The plaintiff enjoined an order of seizure and sale obtained by . . Hundly, . . [213] The injunction was perpetuated". Affirmed.

State v. Gilbert, 2 La. An. 244, March 1847. [245] "The defendant, . . a slave, was tried by a court composed of two justices of the peace and ten owners of slaves, under the provisions of the act of [June 1,] 1846, for an attempt to commit a rape on . . a white woman, a crime punishable by death. The court failed to agree . . on the first trial, and a second trial was had, . . [246] a witness was offered on the part of the prosecution, to prove confessions of the accused while undergoing corporal punishment. . . objections . . overruled . . excepted"

Judgment reversed, verdict set aside and the cause remanded "with instructions to the inferior court not to receive the confessions . . given under the influence of threats or violence."

Isabella v. Pecot, 2 La. An. 387, April 1847. [390] "The petitioner alleges that, in 1836, she resided in Mexico, in the province or State of Texas, where she had resided for some years . . held . . as a slave . . by . . Gates: . . [391] In . . 1836, when a hostile army had entered . . Texas to renew the attempts . . to reduce the people . . to subjection, a portion . . fled for refuge to the Sabine, seeking safety . . within . . the United States." Isabella [390] "was brought by . . Gates . . afterwards . . sold to pay . . [his] debts . . eventually conveyed to . . Pecot, against whom she claims her freedom. . . At the trial . . the plaintiff offered to prove by . . a witness that . . slavery was prohibited by the laws of

[1] "That from the passage of this act, no slave shall be entitled to . . freedom, under the pretence that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited." Acts of 1846, p. 163.

[2] Vol. I. of this series, p. 34.

Mexico. . . objected . . [391] sustained by the court, which refused to permit . . parol proof . . unless it was first shown that there was no written law,"

" the court did not err. . . The ruling . . derives . . additional force from the acts of the plaintiff. On a previous calling for trial, the plaintiff had applied for a continuance . . for the purpose of ' procuring from the city of Mexico a copy, duly authenticated, of the law . . abolishing slavery in the Republic.' . . by the laws of Spain . . slavery was recognized. If that law has been changed since Mexico passed from the dominion of Spain, it could scarcely have been otherwise than by written law. . . Her principal witness declares that, before the plaintiff was brought from Texas, he had seen many . . slaves there, and that the cotton plantations there were cultivated by slave labor. It is also a matter of public history with regard to this member of our confederacy, that Texas formally announced her independence before . . the plaintiff . . was brought . . into Louisiana, and that . . slavery . . was recognized . . it remains to consider the effect of her importation . . from Texas, then a foreign country. . . [392] If the laws of the United States would affect the rights of the owner of a slave imported under such circumstances, can the commission of the offence be enquired into by a State tribunal, at the suit of the slave . . We think not." [Slidell, J.]

Collingsworth v. Covington, 2 La. An. 406, April 1847. [407] " The evidence establishes fully that the plaintiff, while in the employment of defendant as an overseer, received from a slave belonging to the latter a painful and dangerous wound, which disabled him for some time, and subjected him to charges for medical treatment. . . that the plaintiff was a good manager, attentive to the health, discipline, and good government, of the slaves . . and exercised no unnecessary severity; that Covington had rendered his slaves unmanageable by over indulgence; and that the loose discipline which he maintained on his plantation, was a source of complaint . . among his neighbors."

Held: " Masters are expressly made answerable for the damage occasioned by the offences or quasi-offences committed by their slaves, but with the right reserved . . of liberating themselves from that responsibility, by abandoning the slave. No exception . . which precludes an overseer . . from obtaining reparation " [King, J.]

Cavelier et al. v. Moss, 2 La. An. 584, May 1847. " the slave . . was in the possession of Sparks in 1834, . . he sold him to Elliott, in 1836; Elliott sold to Fox, Fox to Gray, Gray to Knox, in 1837, . . in 1837, the slave ran away from Knox, who advertised him, and offered a reward " " The plaintiffs purchased [him] . . in . . Mississippi, in 1838. . . 1844 . . he ran away, . . he was apprehended in Mississippi, and delivered by the jailor to Knox, who paid the reward, and sold him to Porterfield, under whom the defendant claims." Judgment for the defendant.

Arsène v. Pignéguy, 2 La. An. 620, June 1847. [621] " The plaintiff claims her freedom on the ground that, being the slave of . . Pignéguy, she was taken from New Orleans to France, where she remained in the

service of his family for . . two years, in 1836, 1837, and 1838, and afterwards returned"

"judgment . . releasing the plaintiff from the dominion of the defendant . . affirmed;" "It is contended that . . the defendant acquired no domicil in France, . . We cannot expect that foreign nations will consent to the suspension of the operation of their fundamental laws, as to persons voluntarily sojourning . . for such a length of time. As to those thrown on foreign coasts by shipwreck, taking refuge from pirates, driven by some overwhelming necessity, or perhaps those passing through a foreign territory on a lawful journey, their personal condition may remain unchanged; but this is the extent to which an immunity from the effect of a foreign law could be maintained under the laws of nations. Marie Louise *v.* Marot,[1] . . Priscilla *v.* Smith,[2] . . In the case of the slave Grace,[3] . . she had not been taken out of the realm, but from one of the islands to England, within the same imperial jurisdiction. . . it is further ordered, that the plaintiff recover . . $8 per month from . . November, 1846, with costs in both courts." [Eustis, C. J.]

Sophie v. Duplessis, 2 La. An. 724, June 1847. [725] "The plaintiff claims her liberty in virtue of a nuncupative testament . . made [in 1833] by her former owner, Martin Duplessis, a free person of color. . . [727] The evidence . . has not established the execution of the testament with the forms required . . The plaintiff may still be able to supply the present defects of proof, . . judgment . . of non-suit." [King, J.] See Henriette *v.* Duplessis, p. 593, *infra.*

State v. Dubord, 2 La. An. 732, June 1847. [741] "The defendant was prosecuted under the 3d section of the act of 1819 . . 'every person . . who shall inveigle, steal, or carry away any . . slave' [etc.] . . convicted . . ineffectual motions for a new trial, and in arrest of judgment," Affirmed.

Harvey v. Kendall, 2 La. An. 748, June 1847. "the slave . . remained . . seventy-one days after the sale, apparently in perfect health, . . he [then] reported himself sick. The symptoms . . were so slight, that . . [it was] considered . . doubtful whether . . [he] was really sick, and [it was] concluded . . unnecessary to call in medical aid. The slave was placed in the plantation hospital under the care of a nurse, and within less than forty-eighty hours . . died, . . A post mortem examination . . by two physicians, who discovered . . a chronic affection of the liver, . . [749] the defendant must have been ignorant, at the time of the sale, of the disease . . only bound to restore the price, and reimburse the expenses occasioned by the sale and . . for the preservation . . $60, the amount disbursed for the examination after death, and for expenses of interment . . are not among the charges for which the defendant is liable." [King, J.]

[1] P. 509, *supra.*
[2] P. 520, *supra.*
[3] See vol. I. of this series, p. 34.

Hynson v. Meuillon, 2 La. An. 798, September 1847. " The defendant recovered from the plaintiff $500 damages, for an outrage committed upon her person by a slave belonging to him, who was sentenced therefor to fifteen years imprisonment at hard labor. On the day that the verdict allowing the damages was rendered . . the plaintiff, Hynson, abandoned the slave to her in open court, by a notarial act, . . The defendant having caused execution to issue . . notwithstanding . . [the plaintiff] enjoined the proceedings . . The injunction was perpetuated, and the defendant appealed . . on the ground that, the abandonment contemplated by art. 181 of the Civil Code implies a corporeal delivery "

Judgment affirmed: " The dispositions of the Code . . make no exception in relation to those [abandoned] who are undergoing the punishment of their offences. . . The confinement of the slave for fifteen years operates . . a hardship in this case; but . . all fixed rules of damages, . . at times, fall short of the actual damage sustained."

Morrill v. Carr, 2 La. An. 807, September 1847. " brought the slaves [from Arkansas] to Louisiana, in 1830 or 1831."

State v. Fant, 2 La. An. 837, September 1847. " The defendant was indicted under the act of 1832, (Acts, p. 162,) for selling . . intoxicating liquors to a slave, without the consent . . of the owner, . . Upon conviction, the maximum punishment . . was awarded " Affirmed.

Sullivan v. Williams et al., 2 La. An. 876, September 1847. [877] " the defendants entered into a partnership for the purchase of slaves in Virginia, for re-sale, . . two lots or gangs were purchased and sold. Of . . [the] first . . several were re-sold in . . Mississippi, and the residue in New Orleans. The second lot appear to have been all disposed of in New Orleans. The plaintiff was employed in Virginia, as the agent . . in making purchases . . of the second lot; $30,000 were placed in his hands . . and upon that sum it was agreed that he should receive a commission of five per cent. . . [878] a receipt, signed by Getting . . ' Received, 3d January, 1834, of . . Sullivan . . five thousand dollars, to be accounted for in negroes ' . . [879] no allegation that the plaintiff was not authorized to employ Getting as a sub-agent . . he had previously been employed by the defendants themselves as an agent;"

Girard v. New Orleans, 2 La. An. 897, October 1847. Will of Stephen Girard of Philadelphia who died in 1831: [899] " I give . . to . . the city of New Orleans . . the settlement formed on my behalf by my particular friend, Judge Henry Bree, of Ouachita, consisting of upwards of one thousand . . acres . . including upwards of thirty slaves now on said settlement, and their increase, in trust, . . subject to the following reservations: . . settlement shall be kept up by . . Bree, for . . twenty years, as if it was his own; . . at the expiration of the said term . . or on the decease of . . Bree, . . the land . . the slaves . . and all . . shall be sold . . and the proceeds . . applied by said corporation . . to promote the health and general prosperity of the inhabitants " [900] " The slaves had all been purchased and held in the name of Bry [*sic*], because the latter very judiciously refused to have anything to do with their management unless

as their absolute owner. He was for many years the agent of the testator, . . The slaves became insubordinate, and Bry, believing that they had set fire to their cabins, which had been destroyed, and that the establishment could not safely be continued, removed the hands from the place."

Held: [901] " The will . . presupposed their employment on a certain estate, but did not impose it as a condition . . If the usufruct . . is therefore to be considered separate . . from . . the land, what is there to prevent the city . . from taking the legacy of the ownership of the slaves? The [first section] . . of the act of [February 17,] 1805, . . [restricting] the right of the city to hold property [to such as is situated within its limits], has no reference whatever to slaves. . . Slaves are in no sense real estate; they are considered as *immovables* by a positive article [1] to that effect; but neither in common parlance, nor in law, are they designated by the term *real estate*." [Eustis, C. J.]

Sandridge v. Jones, 2 La. An. 933, October 1847. " When the writ was placed in the hands of [Watson, ' one of . . Jones' deputies,'] . . he was notified by the plaintiffs' attorney, that despatch and the utmost caution were necessary . . [He] gave it to another deputy, who retained it for a day, and then returned it . . Watson then . . repaired to the neighborhood . . The weather being inclement, he waited until about four . . in the evening for the slaves to return from their work, . . and, after having effected his seizure, the slaves were not . . secured . . but were suffered to retire to their cabins for the night, with no guard placed over them. The slaves . . were . . six or eight miles from the boundary line between Texas and Louisiana, and the defendant in attachment resided in Texas. On the morning following . . the slaves were missing. The sheriff returned on the writ . . that they were removed to Texas," Held: [934] " His negligence has rendered him liable "

Cole v. Lucas, 2 La. An. 946, October 1847. [947] " In [May] 1843 . . [Miller] sold his plantation . . with the slaves, to Lucas." " originally nine [notes] . . for $3,000 each, . . The first [due in March 1844] . . was paid; . . [948] Kirk . . says: ' I saw Miller myself endorse these notes. . . Miller handed them to me, telling me to keep them for [the mulattress] Patsy's benefit,' . . [949] August, 1843, Miller gave a power of attorney authorising Kirk to have Patsy emancipated, by taking her to . . Ohio, Indiana, or Illinois." [947] " Being in feeble health . . [Miller] left . . for St. Louis, in April, 1844, . . [949] taking . . the remainder of his slaves unsold," [948] " Patsy accompanied her master and her protector [Kirk ?] . . [951] The deceased . . hired a house," Kirk states: [949] " He talked of it as his home; said he had left Louisiana permanently." [951] " his physician swears that he advised him to go on account of his health, and that Miller told him he intended to return," Kirk says: [948] " After Miller . . arrived there, I gave him back the notes," Patsy [947] " was emancipated on the 13th or 14th of May, 1844, at Madison city, . . Indiana, . . [Kirk says:] [948] ' Miller . . gave [the

[1] C. C. 461.

notes] . . to Patsy [[947] " transferred by blank endorsements "] after her emancipation, on her return from Madison, as he himself told me, and I saw the notes in her possession.' " [947] " These notes, after his death [in St. Louis, on May 21,] . . were found in the possession of . . Patsy, . . [Cole, a former neighbor of Miller,] went to Missouri in the fall of 1844, or early in 1845, and procured the notes from Patsy." Cole brought suit. " Judgment by default . . against . . Lucas, . . Griffin, curator of the vacant estate of . . Miller . . intervenes . . and claims the notes . . verdict . . against the intervenor, and in favor of the plaintiff,"

Reversed; and decreed [953] " that the intervenor . . recover of . . Lucas " I. [947] " the plaintiff is not . . a bonâ fide holder . . without notice; . . [II.] concubinage [of Miller and Patsy] was open and notorious. . .The concubine can only receive in moveables one-tenth . . and the slave . . nothing by donation [' under . . our laws ']. . . [948] no evidence [but ' hearsay '] of the time when . . [the notes] were delivered to her. . . [III.] [949] That when Miller sold his estate . . the motive . . was to convert his property into such a disposable form as would enable him to evade the laws of this State, and secure the proceeds for . . Patsy, may be considered as established. . . [952] it is not proved that a domicil was acquired . . in . . Missouri," [Eustis, C. J.]

Bach v. Barrett, 2 La. An. 955, November 1847. " action to recover the price of a slave, . . the slave reported himself as being sick [about a week after plaintiff purchased him]. . . diarrhoea, for which he was treated. A short time after, recovered . . for several weeks, when . . again found . . unfit for service, . . [956] removed to an infirmary, where the disease . . was pronounced by the attending physician to be dysentery, accompanied by incipient consumption, . . he died several months later. . . no offer . . to return the slave " Judgment for defendant affirmed.

Roebuck v. Curry, 2 La. An. 998, December 1847. " action . . to recover damages for injuries alleged by the plaintiff to have been inflicted on her slave, by a slave . . [of] the defendant. . . the plaintiff offered Thomas Burns, a person of color, as a witness, . . objected to . . until evidence could be adduced of his freedom, and time was allowed . . A certificate was next offered, stating that Burns had been emancipated by an act passed before . . Caire, a notary public in this city, . . excluded . . A witness . . then . . deposed . . that he had liberated [Burns] . . about three years previously. . . [Burns] was permitted to testify "

" the judge erred. Burns had been held in slavery, and, except in the criminal cases specially provided for by law, could only be heard as a witness on producing evidence that he had been liberated; [1] . . The failure to produce the act of emancipation, which was stated to be within the immediate reach of the plaintiff, . . leaves room to suspect . . In the absence of the testimony of this witness, there is no proof that . . injuries were inflicted by the slave of the defendant." [King, J.]

Bank v. Hagan, 2 La. An. 999, December 1847. [1001] " The residence of the defendant was in New Orleans, where he was engaged in the

[1] C. C. 2260, 2261.

business of selling slaves. He spent two or three weeks in Charleston every summer, on his way to Virginia, and passed through there on his return,"

Stachlin v. Destrehan, 2 La. An. 1019, December 1847. "The defendant is sued for damages for having caused his slave to inflict personal chastisement with a whip upon the plaintiff. . . the defendant has a canal . . which the public are prohibited from navigating, without . . consent . . Mrs. Ohler employed the plaintiff to assist her in removing . . discovered that . . [her] boat . . had been taken away . . and, without applying for permission, embarked in a skiff . . defendant, recognizing his boat, . . ordered them to stop, . . Mrs. Ohler asserted that the defendant had lent her boat to some other person, . . The plaintiff, who was towing the boat . . refused to return it, . . defendant ordered his driver, a negro man slave, to chastise the plaintiff, and the slave . . inflicted several severe blows with a heavy lash which drew blood," "verdict in favor of the plaintiff for one thousand dollars," New trial refused. Affirmed: [1021] "The outrage upon the plaintiff was not only without . . excuse, but . . was the most ignominious to which a free man can be subjected." [King, J.]

Kellar v. Fink et al., 3 La. An. 17, January 1848. "June, 1841, Nichols, to whom the mother and child belonged, sold the latter to Emily Bowyer ['a free woman of color']. In the act of sale she was described as an orphan . . aged about five . . daughter of . . Aimée, who had runaway, and gone to Canada." "The plaintiff [after the sale of the child] purchased at sheriff's sale . . the mother . . she claims the child as her property. . . Nichols testified . . that . . Aimée had runaway in 1841, and that when he sold the child he never expected to recover the mother. He acted, in so doing, in the interest of the child, as the person to whom she was sold was a good mistress and took good care of her." Judgment for the defendants. The plaintiff appealed. Her counsel "contended that, under the statutes of 6 [7] June, 1806, and 31 January, 1839 [1829], s. 16, children under ten . . cannot be sold separately from their mother; that . . such sale is null; and that the child is the accessory of the mother, and becomes the property of any purchaser of the latter."

Judgment affirmed: [18] "We are at a loss to conceive what right of property the plaintiff ever acquired in the subject of this suit." [Eustis, C. J.]

Taylor v. Rostrop, 3 La. An. 100, January 1848. "The plaintiff is the holder of a judgment . . against . . Marotte, who was . . in possession of certain slaves, upon whom . . Fagot held a special mortgage . . Marotte, subsequently sold Louise and her child, two of those slaves, for . . $1300, on condition that they should be emancipated . . within three years. Fagot intervened . . received the price, and raised his mortgage on those two slaves. . . Maindrault, the purchaser . . sold them on the same condition to the defendant, who emancipated them under a decree of court . . The plaintiff now proceeds against this defendant as a third

possessor, and prays that the slaves be sold . . [101] no fraud is alleged" Judgment for the defendant affirmed.

Bibb v. Hebert, 3 La. An. 132, January 1848. "The plaintiffs sued to recover . . the value of a slave . . killed by one of the slaves of the defendant." [Note:] "The slave was shot while within the enclosures of the defendant, in the act of stealing hogs from a pen, which he had forced open." Held: "the killing . . was not justifiable, . . [The defendant] is bound to pay the owner"

Gaudet v. Gourdain et al., 3 La. An. 136, February 1848. "The plaintiff . . sues for her freedom, . . Gourdain, purchased her mother and the two children she then had, under an agreement made with her . . mother, that he would emancipate her, and retain only her two children . . provided she paid one half of the purchase money; . . The promise is not only proved, but it is also in evidence that it was known to some of the bidders . . that they abstained in consequence . . and that [the defendant] . . purchased the . . mother and her two children for little more than half . . he was prepared to give . . The payment [of $220, 'half of the amount of the adjudication'] was made by the plaintiff's mother before the plaintiff was born," "in November, 1831, . . [who] enjoyed her liberty with her mother from that time,"

[138] "judgment in favor of the plaintiff, and that she be forever quieted in the . . enjoyment of her liberty, against all claims . . of the defendants, . . Gourdain paying the costs in both courts." [137] "It is undoubtedly necessary that the act of emancipation should be in writing" but the "rule found in art. 1783 of the Civil Code, which authorizes slaves to contract . . for their emancipation, subjects those contracts to no particular formality. It is derived from the spanish laws,[1] into which it had been introduced from the civil law," [Rost, J.]

State v. Lyons, 3 La. An. 154, February 1848. [155] "The defendant was convicted of selling . . liquor to a slave [hired to her] in contravention of the act of 1832, . . judgment rendered against her"

Affirmed: "Persons who *give* liquor to slaves, under their control by a contract of hiring, are expressly exempted . . a sufficient guaranty for their prudent . . use. But the prohibition of *selling* extends to the lessee of a slave."

Succession of Sinnott, 3 La. An. 175, February 1848. Sinnott's will: [176] "I . . authorize . . my executor . . to emancipate according to law, and as soon as may be after my decease, my mulatto boy named Thomas; and I give [him] . . all my estate, real and personal, . . including my house and lot . . It is my will . . that my wife . . shall have the use of my house and lot . . and of the rents to arise therefrom, during her life. I institute . . Thomas my universal heir." "Thomas, who was the natural son of the testator, and who was acquired upon the express condition that he should be liberated as soon as it could be legally done, was emancipated in conformity . . and the executor was

[1] "Partida 3, tit. 2, law 8. D. [5. 1.] l. 53, de Judiciis."

appointed his tutor. The only remaining property . . was the house and lot . . encumbered with a mortgage . . to secure a debt of about $400, . . the only one now due . . The family meeting of the minor advised the sale . . whereupon Phillips, in his capacity both of executor and tutor, took a rule upon . . the widow . . to show cause why . . not . . The rule was made absolute, and a decree rendered for the sale"

Affirmed: [177] "the appellant may advance the sum necessary to discharge the debts . . to be returned without interest at the expiration of the usufruct.[1] Failing to so the heir may cause the property to be sold"

Macarty et al. v. Mandeville, 3 La. An. 239, March 1848. Eustis, C. J.: [240] "This case arises under article 1468 of the Code,[2] . . The plaintiffs are the collateral heirs of . . Eugene Macarty, who died . . 1845 . . . The deceased, from . . 1796 until his death, lived in concubinage with the defendant, who is a person of color. She is in the possession of a fortune which . . exceeds . . $155,000. The property left by the deceased . . amounted to about $12,000. The defence is that all the property in the possession of the defendant belongs exclusively to her, . . the result of her industry and economy during half a century; . . the plaintiffs have not attempted to deny that the defendant has been *une femme extrêmement laborieuse et économe.* . . she had, in all respects, rendered her condition as reputable . . as it could be made. Five children have been the fruits . . all well educated. Two of the sons are in business in this city, and one is living on his income. The daughters were married and established in Cuba; . . The state in which she lived was the nearest approach to marriage which the law recognized, and in the days in which their union commenced it imposed serious moral obligations. It received the consent of her family, which was one of the most distinguished in Louisiana, . . She received, in 1799, a tract . . three acres front and forty in depth on each side of the bayou . . and we think it clear that her family gave her money, . . [241] The defendant was for several years engaged in the dry goods business . . She purchased from the importers, and retailed her goods by her slaves and persons who sold for her. . . She had a dépôt in the parish of Plaquemines, and her trade extended . . even to Attakapas. . . [242] Witness says . . [she] had an unlimited credit . . she afterwards employed her means in discounting notes, in which she was aided by the experience of Macarty, . . the property claimed by the plaintiffs appears to us to be in the bonâ fide possession of the defendant and exclusively so, without any established connection with the interests of the deceased. . . [245] we find no warrant . . for disturbing her in the enjoyment of the fruits of the labor and thrift of a long life."

Oates v. Caffin, 3 La. An. 339, March 1848. [340] "This is a possessory action; . . In 1833 . . Isaac ran away from the defendant, who . .

[1] C. C. 579.

[2] "Those who have lived together in open concubinage are . . incapable of making to each other . . any donation of immovables; and . . a donation of movables . . cannot exceed one-tenth . . of the whole value of their estate."

advertized . . and offered a reward . . Nothing was heard from him till . . 1846, when the jailor . . in . . Mississippi, advertized him . . The defendant . . took the slave out of jail, and brought him to New Orleans, where he resides. The plaintiff . . has proved, that he was in possession . . in . . Mississippi, for eight or nine years, and until . . 1845, when . . slave ran away . . has appealed from the judgment rendered against him"

Affirmed, "the judges being equally divided in opinion," Rost, J.: [341] "Isaac, was held to labor under our laws, and the authorities . . of Mississippi were at all times bound to deliver him to the party to whom the labor is due. . . U. S. Constitution, art. 4, sect. 2. . . Our laws regulating the condition of slavery are derived, through those of Spain, from the roman jurisprudence. The rule of that jurisprudence was that, the slave who absconds . . steals himself, and that he stands as other stolen things, and neither possession nor title can be acquired to him." Eustis, C. J., concurred. Slidell, J., dissented: [344] "clause of the constitution should not be interpreted as interfering with the police power belonging to the other slave-holding States, in virtue of their general sovereignty. In virtue of that power Mississippi has full jurisdiction to arrest a fugitive slave in order to secure her own citizens against his depredations or evil example, and to sell him to pay the expenses" King, J., also dissented. See Landry *v.* Klopman, p. 662, *infra,* overruling the decision in Oates *v.* Caffin.

State v. Isaac, 3 La. An. 359, April 1848. King, J.: "The defendant has appealed from a judgment . . upon a conviction for . . murder . . [360] upon a previous occasion, the accused was tried upon the same written accusation . . and found guilty. . . One of the justices refused absolutely to sign the sentence [of death.] . . The effect . . was, to produce a mis-trial, . . [361] The confessions . . to his master were objected to, on the ground that they were made under the influence of fear, and that he was not permitted to complete his statement. The witness testified: 'That the accused came to him the morning after the affray, and told him that he had killed the slave . . and commenced justifying . . when the witness stopped him, and told him that he intended to deliver him over to be punished.' . . justice requires that his incomplete disclosure . . should not go to the jury." Judgment reversed and new trial granted.

State v. Lewis, 3 La. An. 398, April 1848. "The slave, Lewis, was convicted of murder by a court organized under the act of 1846, (Acts, p. 114,) and sentenced to imprisonment at hard labor in the penitentiary for twenty years. After an ineffectual effort to obtain a new trial, an application was made . . for a *habeas corpus,* on the ground that the prisoner was detained in virtue of an illegal sentence. The writ was refused"

Judgment affirmed: "the 7th section of the act of 1843, (Acts, p. 92,) which authorizes the jury . . to pronounce sentence of . . imprisonment . . for life, or for a shorter term . . [399] stands in conflict with no provisions of the act of 1846."

Ducloslange v. Ross, 3 La. An. 432, May 1848. " in 1819 . . Beaulieu, a free man of color, made a donation . . of a . . lot . . in this city [New Orleans], to . . sister,"

Coby v. Kock, 3 La. An. 439, May 1848. " action to recover . . damages for illegally holding the plaintiff as a slave. The petition was filed . . April, 1846. The defendant answered that . . June, 1844, he purchased, by a notarial act, from . . Miesegaes, . . [who] reserved . . the right of redeeming . . and the use of him, which he enjoyed . . ten or twelve months, . . immediately after entering respondent's house, plaintiff ran away, . . taken up . . 27 November, 1845 " " but a short time previous to his instituting . . a suit for his freedom in the District Court of the United States. . . was declared free . . March 1846: . . services . . were worth $15 a month. . . a witness . . stated that . . plaintiff . . was a long time in the employment of Miesegaes, as a porter; that, after he had been discharged, he told witness that he had never informed his former owners that he was free. . . [440] ordered that, the plaintiff recover . . $73 50, and costs of suit." [439] " This claim for wages . . covers a period of three months and seven days, . . [440] $25 in addition [is] a fair allowance, as damages for the two or three months . . he was . . in jail, considering that his own silence as to his freedom . . contributed in some degree to the belief that he was a slave; and that, in point of actual hardship, there is not much difference between imprisonment and idleness . . and hard labor as a slave " Affirmed.

Stewart v. Sowles et al., 3 La. An. 464, May 1848. " the defendants [partner] . . knew the slave was an habitual runaway, and deceived the plaintiff . . as to his place of birth and former ownership;"

Ex parte Lewis, 3 La. An. 467, May 1848. " Antoine Général, by his . . will, directed . . Louis to be liberated at . . twenty-one . . Until that age he was left under the care of his executor, . . Cousin, with an injunction . . to cause the slave to be taught a trade. Louis lately presented a petition . . representing that the period for his emancipation had arrived; that he was entitled to wages . . and to damages for ill treatment; and prayed for the appointment of a curator . . An order was granted . . set aside."

Affirmed: " The *statu-liber* is authorized to appear in court unaided " " to maintain an action for his liberty. . . [468] right either to the damages or wages . . is . . at issue in another action now pending "

State v. Nelson et al., 3 La. An. 497, May 1848. Nelson and Edwin were convicted of murder, and from the judgment pronounced, they appealed. [499] " the confession of Nelson was made to the overseer . . who was also the son of his owner. The witness stated that the accused was in the stocks . . and that he ' told Nelson previously, that it would be better for him to tell what he had done.' . . [500] As regards . . Edwin, his confessions were repeated and voluntary. . . no other constraint than that necessary for his safe custody. But . . objected that, his confessions are the only evidence against him; that they are im-

perfect, stating only . . that [he] . . ' aided in killing two white men;' . . unsupported by any other proof of the *corpus delicti,*"

Judgment reversed as to Nelson and the cause remanded " with instructions . . to receive no confessions . . not voluntarily made. As regards . . Edwin, the judgment is affirmed." " Our jurisdiction is limited . . by the constitution . . ' to questions of law alone,' . . the question of the insufficiency of the proof . . can only be presented in bills of exception to the charge of the inferior judge." " constituted as the tribunal is, before which slaves are . . tried for criminal offences, in which the justices and freeholders have equal authority, there being no judge to preside . . the question of the insufficiency of proof . . can never be presented to the appellate tribunal, unless . . [it] be permitted to examine the evidence; . . The difficulty . . can only be remedied by legislative interference." [King, J.]

Angelina v. Whitehead et al., 3 La. An. 556, August 1848. " action for liberty, instituted by the plaintiff for herself and her three children. She was born a slave in . . Mississippi, in . . 1812, . . This is the second action . . The instrument [dated 1820] under which she claims . . ' I, . . Holliday, of . . Louisiana, . . in consideration of a solemn promise made to me by . . Campbell, of the [same] State . . that he would manumit . . mulatto girl named Angelina, and the further consideration of [$150] . . to me . . paid, . . sell . . unto . . Campbell, with full . . authority to manumit ' . . [557] brought [to Louisiana.] " [556] " On the trial she was non-suited,"

[558] " decreed that, the judgment . . be reversed, and that . . Angelina, and her three children, to wit, Melinda . . about seventeen . . Felix . . about fifteen . . and . . Maria . . about two . . be slaves for years or *statu-liberi,* and not slaves for life. And . . that the defendants proceed without delay to emancipate the . . plaintiff . . and . . pay the costs in both courts." [557] " the plaintiff's having attained the age of thirty . . We have been referred to no authority which impugns the validity of [such] contracts . . under the Code of 1808, . . It was a common mode of securing the freedom of the slave for a friend, or patron, to purchase him for his liberty; [558] The Code of 1825, expressly recognizing the right of the slave to make a contract for his emancipation, . . seems to us to render clear the right of the plaintiff" [Eustis, C. J.]

State v. Jerry, 3 La. An. 576, September 1848. A slave was tried for murder. " No counsel having been previously provided . . he was defended by an advocate appointed by the court. . . [577] convicted after an impartial trial " and sentenced to death. Affirmed.

Waters v. Grayson, 3 La. An. 595, October 1848. [596] " ' in . . 1836 . . Caldwell got possession of . . Nancy, in . . Missouri . . was to return [her to his sister] . . whenever she repaid him ' . . brought [her] to Louisiana," " he spoke of the little profit . . [her slaves] were to his sister, . . and that she would do well to let him take them all to . . Louisiana and hire them out or work them."

Hendricks v. Phillips, 3 La. An. 618, October 1848. Slidell, J.: " action for the plaintiff's salary, as overseer . . The defendant's answer . . avers ' that the plaintiff treated the slaves . . with such cruelty, that . . he has been greatly damaged ' . . he prays for judgment in reconvention. The parties, before the institution of this suit, referred their difficulties to arbitration. . . awarded . . $350, as damages sustained . . from the maltreatment of one . . and also that the plaintiff should pay the bills of the physicians . . This award was not, however, carried out. . . testimony, while it establishes that the plaintiff . . made a good crop . . is extremely unfavorable to him with regard to the cruel treatment . . The details are of a most revolting character, and exhibit conduct on the part of the overseer utterly indefensible. . . [619] the value of the slave was permanently impaired " [618] " The verdict . . made a deduction from his salary. But . . we consider it our duty . . to assess the damages . . at a higher rate. . . [619] decreed that, there be judgment in favor of the defendant, and that he recover from the plaintiff . . $100, with costs in both courts."

Henriette v, Duplessis, 3 La. An. 658, November 1848. " The plaintiff claims her freedom under a nuncupative will, executed by her former master, Martin Duplessis,[1] under private signature, in the country, . . the testator . . was laboring . . under an attack of the cholera. . . Cornen . . ' took the persons present for witnesses . . because the state of the deceased admitted of no delay; . . he died an hour, or half an hour after ' " " four of the witnesses were residents of the parish . . The testimony in relation to the residence of the fifth, was contradictory . . The district judge, however, considered . . that a greater number . . could not . . have been obtained;[2] sustained the validity of the will; and decreed the plaintiff to be entitled to her liberty."

Affirmed: [658] " The evidence has not satisfied us that [the fifth witness] . . was . . a resident of the parish . . [but] sufficient cause has been shown to excuse the failure to procure a greater number " [King, J.]

De Pontalba v. New Orleans, 3 La. An. 660, November 1848. [661] " On the 20th of April, 1785, Don André Almonaster y Roxas . . made to the Ayuntamiento . . a donation . . ' un hospital para lazarinos con cuarto separaciones [*sic*] capaz de aloxar otras [ocho ?] familias blancas, y separamente, otro con el mismo aloxamiento para la gente de color."

Cartwright v. McMillen et al., 3 La. An. 685, December 1848. " The plaintiff alleges that, in 1841, a judgment was rendered in his favor, in a suit brought by his slave Lewis . . for his freedom; that Lewis took a suspensive appeal, giving bond with McMillen and Nichols, as his sureties, in the sum of $1200; . . [686] ' Whereas . . Lewis, a free negro man, has . . filed a petition of appeal . . the condition of the above obligation is such, that . . Lewis, f. m. c. shall . . satisfy whatever judgment may be rendered . . otherwise that the . . sureties, shall be liable ' " [685]

[1] See Sophie *v.* Duplessis, p. 583, *supra.*

[2] In the country it suffices . . if the testament be passed in the presence of three witnesses residing in the place . . provided . . a greater number . . cannot be had." C. C. 1576.

" in 1844, the judgment was affirmed by the Supreme Court;[1] . . [but] the slave . . [686] could not be found until 1846, when he was . . delivered to the petitioner; . . Cartwright took the matter into his own hands before the final action of the Supreme Court. He actually regained possession of the slave, who subsequently escaped . . without the fault of the sureties." Held: the sureties are not liable for " the amount of the loss of the slave's services from 1841 to 1846,"

Davis v. Janin, 3 La. An. 712, December 1848. " action to recover the amount of a note . . for the price of a slave . . the defendants . . resist the claim on the grounds that . . the slave was addicted to running away . . was unsound, and has died . . The plaintiff . . avers . . that . . defendants were bound to take such care of the slave, which they intended to return, as a prudent father of a family would have taken of him; and that they have failed to show that a physician had been called during his last illness, which endured six weeks."

Ordered that the judgment for defendant be reversed, [713] " and that there be judgment in favor of the plaintiff for . . $525" with interest and costs in both courts.

State v. Banton, 4 La. An. 31, January 1849. [32] " The . . [second] count charges . . that, he ' did inveigle, steal, and carry away a slave ' . . verdict of guilty. . . Sentence was pronounced " Judgment affirmed.

Botts v. Cochrane, 4 La. An. 35, January 1849. " A slave belonging to the plaintiff . . secreted himself on . . defendant's steamer, . . The boat left . . in the afternoon, and sometime in the evening the slave was discovered . . Early the next morning the boat arrived at Baton Rouge, when the slave, who had been confined during the whole night, was placed in charge of the wharf-master, who had him put in jail . . and advertized as a runaway. All the intermediate jails were passed in the night time. The plaintiff recovered his slave about four months afterwards . . from the jailor . . and brought this action to recover . . the expenses . . in searching . . and the value of the slave's time at two dollars per day. . . By the fifth section [of the act of 1816] . . if a master [of a vessel] should discover a slave . . it should be his duty . . to land the slave at the nearest place " Held: [36] " The injunction . . is . . substantially obeyed by landing him at the nearest place where it can be done with reasonable facility,"

Arnoult v. Deschapelles, 4 La. An. 41, January 1849. " action . . to recover the value of . . Henry, formerly belonging to the plaintiff, . . proved that the defendant asked his slave Lewis, after Henry had received the wounds of which he died, ' Why did you stab that boy? ' and that Lewis answered: ' Because I found him in my cabin, with my wife.' The district judge was of opinion that the question put by the defendant presupposes the knowledge in him that the act was committed by Lewis, and gave judgment against him, . . [42] But the defendant contends that he is not liable in damages, and is dispensed from making

[1] See Lewis *v.* Cartwright, p. 558, *supra.*

the abandonment authorized by art. 181 of the Civil Code, because . . Lewis has been convicted . . on his own declarations and those of Henry, and sentenced to hard-labor for life, in consequence of which he has ceased to belong to the defendant, who has received from the State $300 for him." Held: " slave is represented by the sum received . . the defendant may exonerate himself by paying over this sum to the plaintiff, within three days "

Blanchard v. Dixon, 4 La. An. 57, January 1849. " action . . to recover damages for injuries done to a slave of the plaintiff, . . The defendant is the overseer of . . Stewart. On sunday, . . 1847, he met the slave . . in the high road, opposite to Stewart's plantation, . . in sight of the plaintiff's residence, and asked if he had a pass. The answer of the slave was in french, and was not understood by the defendant, but the latter, judging from the tone . . conceived it to be disrespectful. The slave was ordered to stop; but . . he fled and passed into the field of Stewart. The defendant returned into his house, armed himself . . mounted a horse, pursued and shot the slave . . at a distance of about six acres, fracturing his knee. Witnesses who have known [him] . . several years, stated that he is of good character, . . and submissive . . [58]The slave was confined for a year . . His knee has become stiff. . . The physician says he may be able, in a year or two, to walk without the aid of a crutch; . . The witnesses all concur . . that the slave was worth $1,000 . . and . . value has been lessened by at least two-thirds. . . also . . charge of $50 for medical services." [57] " The defendant . . relies upon sections 30 and 32 of the act of the 7th June, 1806." [1]

[58] " decreed that the plaintiff recover . . $700 [' a fair estimate of the damages '] . . with interest from the date of this decree, and that the defendant pay the costs of both courts." " Freeholders alone are authorized . . The defendant . . has neither alleged nor proved " himself such. " unnecessary to enquire whether a *freeholder,* under the circumstances . . would have been justified " [King, J.]

Erwin v. Lowry, 7 Howard (U. S.) 172, January 1849. [177] " forty-four negroes [[178] ' employed in . . growing cotton '] were appraised [in 1840] separately and in families, and the amount . . was $15,525, making the aggregate amount for the land and negroes $23,845. . . after repeatedly crying the said property, . . Erwin . . bid . . $16,000, . . the highest and last bid, and . . land and negroes were adjudged to him,"

Gaulden v. McPhaul, 4 La. An. 79, February 1849. [82] " deed of trust was executed [in Mississippi] . . ' in case . . Gaulden shall not pay . . note when . . due, . . Cooley is hereby authorized . . to . . sell . . slaves,' . . The defendant held a power of attorney from the trustee, . . ' empowered to take . . slaves wherever . . found,' . . the defendant, . . under the advice of counsel . . that the right to seize . . in Louisiana was identical with the right [in Mississippi] " went in March with two other men to

[1] B. and C. 53, 54.

Gaulden's [80] " wood-yard near Port Hudson, . . during . . absence [of the manager] . . The slaves ran off . . and were next heard of at the residence of the plaintiff ['thirty miles distant, in . . Mississippi'], with the exception of . . Albert, who was found dead on the roadside . . [81] three other slaves . . were injured from fatigue, . . unable to work for several days. . . Albert was worth $800, . . young, healthy, . . the jury . . [assessed] the damages sustained by the plaintiff . . at $800." Judgment accordingly.

Reversed: " The mere fatigue . . at that season . . to a slave of the . . constitution of Albert, is not a reasonable cause . . for his death. Nor does the alarm produced . . rest on anything . . but mere conjecture. . . [no] post mortem examination . . the cause of this journey may have been in the sense the slaves had of acting in the interest of their master, probably at his prompting, to save his property from the grasp of a determined . . creditor. . . But the plaintiff also claims damages for the interruption . . of the labor . . [82] No court in Louisiana would permit the defendant to take the slaves . . until after the default [in payment] should have been established. . . defendant . . has not made out . . a justification of his attempt to take . . Confining . . our estimate of the injury . . to the interruption . . we do not feel . . authorized to assess the damages . . higher . . than $100." [Eustis, C. J.]

Louis et al. v. Ricard, 4 La. An. 87, February 1849. " action for the freedom of Jean Louis the son of Dauphine, both . . plaintiffs . . who sue *in formâ pauperis.* Dauphine is a mere nominal party. . . [They] offered in evidence a judgment . . 1847, by which it was decided that Edward, a younger brother of . . Dauphine, was free, on the proof that the mother as well as the grand-mother of Edward were free in . . St. Domingo and Cuba long before the birth of either of the sons. . . Edward and the present defendants were parties," " They were non-suited " Affirmed: " The judgment in that case was not admissible in evidence in this; . . The testimony . . is far from establishing the freedom of the plaintiff." [Eustis, C. J.]

Landry v. Peterson, 4 La. An. 96, February 1849. " The slave was bought on the 5th . . found to be sick on the afternoon of the 7th. A physician who was immediately called in, pronounced . . typhus fever. The slave died on the morning of the 8th. The district judge decreed the restoration of the price," Affirmed.

Brown v. Glathary, 4 La. An. 124, February 1849. " In 1842, Craig [a resident of Kentucky] sold . . [Fanny] and her child Ellen to the plaintiff [his brother-in-law] . . [for] $450. . . [125] 1846, Brown hired to Craig, Fanny, and her two children born after the purchase. Craig . . took . . Fanny [to Louisiana] with him as a cook, . . Ellen, remained with the plaintiff. Craig . . held himself out as the owner of Fanny and her children. . . The Louisiana creditors . . seized the slaves." Held: " the proprietor would not lose his rights "

Anderson v. Dacosta, 4 La. An. 136, February 1849. Action to rescind sale. " Matilda, whilst in the possession of the warrantor . . absented

herself from Smith, to whom she was hired, from the 2d to 5th of July, and was brought back by her master, who declared she had runaway before. . . further in proof that she was taken up and lodged in prison . . September, being within three days after her sale to the plaintiff." Judgment for the plaintiff affirmed.

Solomon v. Cavelier, 4 La. An. 136, February 1849. [137] " action to recover the value of the services of a slave . . confined [' for nearly a year '] by the order of the defendant in one of the public prisons "

Cox v. Myers, 4 La. An. 144, February 1849. " The plaintiff . . obtained a provisional seizure, under which a slave . . found on the leased premises, was seized, and confined in the [[145] ' damp and unhealthy '] common jail, where he contracted a disease of which he died. . . judgment in favor of the defendant in reconvention "

Affirmed: " slaves are not subject to provisional seizure to secure the rent . . even when the tenant has no other property. This right . . can only be exercised on the moveable effects found on the premises." [1]

State v. Morris, 4 La. An. 177, March 1849. " The appellant was prosecuted for the cruel treatment of his slave, under the act of 7th June, 1806.[2] No person having been present . . the defendant tendered . . his own affidavit in exculpation, which was received. The judge, however, instructed . . that it was not conclusive of the appellant's innocence, but . . might be rebutted. . . The accused was convicted and sentenced " Judgment affirmed.

State v. Dick, 4 La. An. 182, March 1849. " The defendant was convicted . . of murder . . committed upon the person of a slave, and has appealed from the sentence . . After the court, composed of two justices and ten owners of slaves, had been sworn and organized, the defendant excepted to its jurisdiction, on the ground that the law [3] creating the tribunal violated the constitution of the State, which guaranties to all persons an impartial trial by a jury . . in the selection of whom the accused is entitled to the right of peremptory challenges. . . overruled . . [183] The next position assumed is, that slaves are not treated as persons by our laws."

Judgment affirmed: I. " The act of 1846 . . stands in no conflict with the constitution. Under its provisions slaves are not entitled to peremptory challenges. . . [II.] The first section of the Black Code, speaks of slaves as persons. They are classed as persons in the Civil Code, in the title treating ' Of the Distinction of Persons,' and were so classed in the Code of 1808, p. 10, art. 13. . . also held to be persons . . in the case of the State *v.* Moore,[4] . . there are at least two statutes under which the offence . . may be punished." [5]

[1] C. C. 2675.
[2] B. and C. 61, sects. 16, 17.
[3] Act of June 1, 1846.
[4] See State *v.* Seaborne *alias* Moore, p. 554, *supra.*
[5] B. and C. 59, 251.

State v. Jerry, 4 La. An. 190, March 1849. [191] "The accused was convicted of the murder of a slave, and from the sentence of the court [to be executed in February 1849] has appealed. The grounds . . 1st. That no statute . . makes the killing of a slave by another slave, murder. 2d. That the accused was not arrested in virtue of a writ issued upon a previous affidavit. 3d. That the district attorney did not assist at the trial, . . 4th. That . . proceedings [were] void, because the assisting justice was not notified to attend until the day of trial, and was not present to assist in selecting the slave owners who served as jurors. 5th. That the accused was not proved on the trial to be a slave. And 6th. That the sentence was signed by but one of the justices."

Judgment affirmed: "I. The first point has been determined in . . State *v.* Dick, p. 597, *supra,* . . II. . . no importance now to inquire by what authority he was arrested. . . III. . . presence [of the district attorney] is not made indispensable . . IV. . . If he permit [jurors] . . to be sworn without objection, his silence must be considered as a waiver of the irregularity. . . V. The defendant . . having submitted to a trial as [a slave] . . without objection, so far admitted his condition as to dispense . . proving . . VI. The signatures of both . . are not required" [King, J.] See Mc Dowell *v.* Couch, p. 615, *infra.*

John F. Miller v. Sally Miller et al., 4 La. An. 354, May 1849. [355] "In the case of Sally Miller *v.* Louis Belmonti, . . the plaintiff was released from the bonds of slavery, and the cause was remanded for further proceedings as between the defendant and his warrantor, John F. Miller. No further proceedings have been had under this judgment, and . . the warrantor, Miller, has instituted the present action of nullity to set it aside, on the ground that it was obtained through fraud . . on the part of Sally Miller and her witnesses. The defendant excepted to the petition . . 1st. That it presents no sufficient ground to sustain an action of nullity. . . Belmonti . . intervened, and joined with the plaintiff in the prayer of his petition. The defendant's exception having been overruled, she answered on the merits. . . judgment in . . [her] favor . . John F. Miller has appealed. But Belmonti . . appears to have acquiesced"

Appeal dismissed: "the first exception should have been sustained. It is not shown that any further proceedings have been had under the former decree of the Supreme Court; nor has the plaintiff alleged or proved that he has refunded the price to Belmonti, . . He had no interest in contesting the former decree, and therefore no capacity to do so. To the observations of the counsel that the only object of the plaintiff in bringing this suit was to vindicate his character, . . We may . . state . . that we have carefully perused the new evidence discovered by him; that it stands in the record unimpeached, and is in direct conflict with that adduced . . in the former suit" "by the defendant [in this suit] . . to prove her birth and condition. If it can be true that the defendant

is of German extraction, we consider the plaintiff as exonerated from all knowledge of that fact." [Rost, J.]

Bank v. Conner, 4 La. An. 365, May 1849. [366] "in . . 1844, Freeman became insolvent, and . . ceded his property to his creditors" [365] "May, 1846, a judgment was rendered . . in the case of Sarah Conner, a free woman of color, against . . Freeman, . . decreed that the plaintiff was entitled to her freedom, and that the defendant emancipate [her.] . . The president, directors and company of the Bank . . creditors of . . Freeman, by virtue of a judgment obtained . . November, 1846, brought their suit against both Sarah Conner and . . Freeman, for the purpose of annulling this judgment . . and subjecting her . . to execution . . They obtained a judgment by default, . . confirmed. . . After an ineffectual attempt to obtain a new trial in the district court, Sarah Conner has appealed." Judgment reversed and petition dismissed, with costs: [366] "The syndic . . of the creditors . . is the party competent to institute an action of this kind."

State v. Monasterio, 4 La. An. 380, June 1849. "The defendant . . was . . sentenced, for the offence of selling liquors to slaves,[1] to forfeit any license . . to be forever deprived of the right of obtaining any . . to pay a fine of three hundred dollars, and the costs of prosecution," Appeal dismissed.

Bertrand v. Arcueil, 4 La. An. 430, June 1849. "1847, the plaintiff became the purchaser at auction of . . Harry, a field hand, Hannah, his wife, and their child, Huldah" "for a total price of $1100, payable at [*sic*] one year. . . 'tous . . sont garanties des vices et maladies prévus par la loi,' . . The mother and child became seriously ill two or three days after their delivery . . and died within three weeks after the sale. . . the disease . . existed in both anterior to the sale; . . probably accelerated, in the case of the mother, by a miscarriage . . after the sale." [433] "Harry, died of a disease contracted several months subsequent to the sale." The lower court rescinded the entire sale.

Affirmed: [431] "article 2518 of the Code . . declares that 'the redhibitory vice of one of several things sold together gives rise to the redhibition of all, if the things were matched, as a pair of horses' . . The principle . . is found in the roman law, Digest, Lib. 21, title 1; . . We are there told . . that, if four unmatched horses are sold at a single price, the defects of one would not be a cause of a *rescision* of the entire sale; . . the same if slaves be sold . . for an entire price, unless they could not be reasonably separated, as . . a company of tragedians, . . it may be true . . that the death of . . Hannah and Huldah did not affect the value of . . Harry . . to as great an extent as in the case of . . a company of tragedians, . . But the spirit of the rule is applicable. Slaves constituting a family would probably labor more cheerfully . . together, . . be more useful than those not so related; and besides . . humanity would dictate that they should be sold together." [Slidell, J.]

[1] Act of Apr. 2, 1832.

[432] " Pilié, for the appellant, for a rehearing. . . Is it not a fact of daily occurrence in this State, that slaves situated as these were, are sold separately?" " The judgment of the court (concurred in by three judges,) was finally pronounced by King, J. . . [433] We are of opinion that the rule does not embrace slaves sold together in families, as field hands, . . the loss of . . Hannah and Hulda, must be borne by the defendant, and that of . . Harry by the plaintiff." Slidell, J., dissenting: " I feel assured that any one desiring to purchase servants, if he had an offer of three . . bearing . . the relation . . as in this case, and of three others . . equal . . but not so related, would give a higher price for the former "

Edmonds v. her Husband, 4 La. An. 489, September 1849. " The plaintiff sued her husband for a separation from bed and board, on the ground that he kept his concubine in the common dwelling. . . The defendant introduced witnesses to prove adultery on the part of the plaintiff; but the judge of the District Court . . attached no weight whatever to their testimony."

Judgment for the plaintiff affirmed: " The virtuous indignation which he cannot conceal in redressing the wrongs of a poor colored woman, shows a proper sense of his duties as a guardian of public morals." [Rost, J.]

Hill v. Spangenberg, 4 La. An. 554, November 1849. " proprietor of a large sugar plantation . . and of one hundred and fifty slaves employed in its cultivation;"

Walker v. Duverger, 4 La. An. 569, November 1849. In 1835 " she owned several slaves, some of whom were in . . Tennessee, and others were hired on board of steamboats navigating the Mississippi river."

U. S. v. the Ohio, 27 Fed. Cas. 218 (Newberry 409), November 1849. " This action is brought against the vessel to have her declared forfeited in consequence . . of her having brought into this port [New Orleans] a colored person from a foreign port or place.[1] It is shown by two officers of the custom-house . . that the master [of the vessel] declared that the negro boy . . was his slave. . . But . . Two of the crew . . testified that the boy came on board . . at Baltimore as a servant, and had continued . . in that capacity during the voyage to several foreign ports . . Another witness testifies that . . [in] 1842 . . he was . . employed as a servant in the family of the master [in New York City.] . . that he was the son of a free woman in Rio Janeiro, . . [219] the master, at the earliest opportunity, gave bond to take this negro boy away with the vessel according to the requisitions of the state law."

Held: " no decree of forfeiture can be given against this vessel." " The fair presumption . . notwithstanding the declaration of the custom-house officer, . . is, that he was free before he ever sailed "

Succession of Dupuy, 4 La. An. 570, December 1849. [571] " On the next day [after making his will] he made a codicil, ordering his executor to emancipate his slave Betty."

[1] Act of Congress of Apr. 20, 1818. 3 st. at L. 450.

Succession of Lee, 4 La. An. 578, December 1849. "Lee died in . . 1847, leaving . . land . . and . . about twenty slaves. . . [580] The highest rate fixed by the evidence, for the services of a competent . . manager, is from $400 to $500 a year."

White v. Slatter, 5 La. An. 29, January 1850. "The plaintiff . . claims the price paid . . [30] the slave was extremely delicate in her appearance; was small for her years; and had . . a bad cough . . The defendant offered the slave for six hundred dollars, without warranty; but . . asked $800, if required to warrant her health." [29] "The act of sale . . 'The girl is now and has been, so far as known to me, of good health, and also her parents . . but . . White takes her and runs the risk of her health.' A few days after . . the slave sickened, . . and finally died of . . consumption" Judgment for the defendant affirmed.

State v. Levy and Dreyfous, 5 La. An. 64, January 1850. The judge of the lower court permitted "a free person of color to testify against . . white persons."

Held: [65] "The judge did not . . err" [64] "Our legislation and jurisprudence upon this subject . . differ materially from those of the slave States generally, . . This difference . . has no doubt arisen from the different condition of that class . . At the date of our earliest legislation, as well as at the present day, free persons of color constituted a numerous class. In some districts they are respectable from their intelligence, industry and habits of good order. Many . . are enlightened by education, and the instances are by no means rare in which they are large property holders. . . such persons as courts and juries would not hesitate to believe under oath. Moreover . . entitled to the protection of our laws; . . the gravest offences against their persons and property might be committed with impunity, by white persons, if the rule for exclusion contended for were recognized. . . [65] No incompetency has been declared by our laws with reference to free persons of color. . . The provision of our code [article 2260], which makes [them] . . competent witnesses in civil matters . . is a recognition that they are *prima facie* worthy of credit, . . No reason has been suggested why a distinction should exist in respect to their competency in civil and criminal cases to which white persons are parties; . . The testimony of manumitted slaves was legal evidence under the Spanish and Roman laws. . . the opinion which we express in relation to the competency of this class . . is in accordance, so far as our experience has gone, with the uniform practice of our courts, which are in the daily habit of permitting them to testify in prosecutions where the defendants are white persons. . . It is further objected, that parol testimony was improperly received to establish the freedom of the witness. The testimony was, that the witness was born free, and had always been considered free. No higher evidence, therefore, than parol could have been adduced." [King, J.]

Moore v. Lambeth, 5 La. An. 66, January 1850. [72] "the slaves . . were employed on an estate of the plaintiff in North Carolina, under the supervision of . . her connexion . . In . . 1835, he, with her consent,

brought these slaves and others belonging to her brother, to Louisiana, under an agreement that they should be worked for their benefit."

State v. Hackett, 5 La. An. 91, January 1850. [92] " The petition . . is in the name of . . the sheriff . . averring, that he . . is entitled . . to the custody of all slaves, runaway and apprehended within . . parish, and of all free persons of color who may come . . to reside . . contrary to the statutes, and also of all free persons of color coming as mariners . . and to receive the fees . . that the defendant [' gaoler of the . . municipality '] takes upon himself to exercise the office of keeper . . He prays for a writ of mandamus, . . judgment . . that the prisoners named in the list annexed . . and all others, runaways and free persons of color residing without permission . . or . . coming by sea, be delivered to the sheriff, and that the defendant . . be perpetually prohibited from receiving such persons "

Held: [93] " the custody of [runaway slaves] . . belongs . . to the Second Municipality, the real party defendant . . It is admitted . . that by the act of 1806, slaves arrested within the city were to be disposed of as directed by the mayor and city council; . . But it is contended, that by an act of . . [March 16,] 1848, this right . . has been . . vested in the sheriff . . Previous to this act, the statutes . . provided fully for the . . custody . . depots were established at different points in the State, and certain municipal corporations were authorized to employ the . . slaves at labor, on their public works. They formed a system of police . . The law, which it is contended changes this system . . is entitled an act ' To regulate . . the fees to be paid by owners of runaway slaves ' . . this act is unconstitutional . . [94] [as to] those portions of the statute which are [not] covered by the title," [93] " 118th article of the Constitution . . provides that ' every law . . shall embrace but one object, . . expressed in the title.' " [Eustis, C. J.]

Dolliole (f. m. c.) v. White, 5 La. An. 98, January 1850. " The plaintiff claims his freedom . . He, at the time of instituting this suit, . . 1848, is declared to be under twenty-one . . The defendant is alleged . . to hold his right . . from a sale of his service for the term of five years from . . 1847, which expires long before the plaintiff can exercise his right of being emancipated, to wit, at . . thirty."[1] Judgment for the defendant.

Affirmed: " There is nothing before us which affects the right of the defendant . . for the term . . nor is he the proper party with whom the plaintiff's right to be emancipated must be litigated "

Johnson v. Muncipality No. One, 5 La. An. 100, January 1850. Judgment of the district court: " The law [2] makes it ' the duty of the keepers of the police jails . . to advertise in French and English in the State paper, and in the official gazette of the municipality . . once a week during three consecutive months, such . . slaves whose owners are unknown, or reside out of the State . . as . . may be detained ' . . This duty was not performed . . It is also in proof that the plaintiff's agent called

[1] C. C. 185.
[2] Act of Mar. 10, 1845. Acts of 1845, p. 77.

at the jail and made enquiries for the negro, . . reply, that 'he was not there;' . . the second time . . it . . occurred to him to ask leave to . . examine all the slaves confined . . found the negro in a very cold room, without a bed, couch, or chair, with nothing but a single blanket to lie upon, and so emaciated and feeble as then to be unable to get up on his knees without the assistance of another man. . . he died a few days after he was removed to his master's house, notwithstanding he received good nursing and medical aid. The defendant's witness declares that he was indisposed when he entered the jail, . . [101] 15th of August; . . It could have been nothing serious, for the doctor ['of the jail'] was not called in to him, until the 29th October, . . he was but slightly indisposed, and . . on the second visit, he could perceive no progress in the disease. Now, taking into consideration the prison fare, and the prison treatment and accommodation, and the proneness of negroes in general to diarrhoea, . . it seems fair to infer, that if the boy had entered . . with disordered bowels, the disease would have made considerable progress, by . . October, . . since . . we find him reduced, about twenty-one days after, to a state of *incurability;* . . My opinion . . is, that the disease was contracted in the prison; . . aggravated by the prison fare; and that the circumstances in which the patient was found . . far from favoring a cure, were neither fit nor decent for a human being of any color. . . The plaintiff estimates his slave at nine hundred dollars; his witnesses adopt a higher figure. . . no doubt that his value was seriously diminished by his having absconded, . . the defendant's witness states, that he has seen runaway negroes sold for three hundred dollars. There is no evidence that this negro was a runaway in the sense of the law. C. C. art. 2505. . . decreed, that judgment be entered in favor of the plaintiff . . for . . six hundred dollars, and costs of suit." [Kennedy, J.] Affirmed with costs.

Campbell v. Botts, 5 La. An. 106, January 1850. "it was perfectly understood between the parties at the time of the sale that the slave was an habitual runaway;"

McCarthy v. Sheriff, 5 La. An. 115, February 1850. "The plaintiff claims the value of a slave . . received in the parish prison, and after a detention of ten days without any commitment . . taken ill, and shortly after being delivered to her owner died of the malady . . the attack took place . . the 17th . . and she was delivered to her owner . . the 19th . . during her illness in prison she was well attended, and . . her treatment in common with the other prisoners had . . been good. She had been received . . evidently under a mistake of the police officers." Judgment for defendant affirmed.

Arnandez v. Lawes, 5 La. An. 127, February 1850. [129] "Lawes, . . a freeholder, . . after nine o'clock at night, in front of his plantation, discovered two of the plaintiff's slaves in a skiff . . made them come ashore; demanded their passes; received a paper . . and when . . getting a light to read its contents, . . William broke away and fled, when the defendant, calling upon him several times to stop without being obeyed.

fired . . at . . thirty to thirty-two yards. . . believed . . gun . . loaded with little bird-shot, . . overseer . . had . . charged it with buck-shot, for . . shooting a crane." Counsel for plaintiff: [128] "This cause, after a full investigation before a jury, in which the plaintiff had to contend against the prejudices of many planters, about the necessity of extreme measures in the police of slaves, and the right of any one to shoot down a slave who does not instantly submit, terminated in . . a verdict for $1000 for the value of the slave, and . . interest from the . . death. . . proved that he lost not less than $1 per diem." Held: [131] "plaintiff is entitled to have the judgment amended so as to be for . . $1200 including damages."

LeDuff (f. m. c.) v. Porche and Carmouche, 5 La. An. 148, February 1850. [149] "action for . . labor done according to three distinct building contracts . . no controversy . . about two . . The other was for putting up a set of sugar kettles and a chimney." [148] "plaintiff would not assume the work; he alleged his inexperience . . yet defendants insisted . . because it was easier to get along with him, a man of color and well known, than with white men (Americans) who, . . [Carmouche] said, 'did not behave well;' . . defendants pointed out to him his brother . . who . . they said, was a very competent workman; then . . plaintiff agreed on condition that his brother should help him," [150] "jury . . deducted $200 on account of the defective work . . judgment was entered accordingly; . . ordered . . amended, so as to be in favor of the plaintiff" for $920.

Mary (f. w. c.) et al. v. Brown, 5 La. An. 269, April 1850. [270] "the plaintiff . . sues for her freedom and that of her four children. . . Read took them [in 1846] from his domicil in Mississippi to Ohio . . and, after having executed the act of emancipation . . returned with them" Counsel for the defendant: [269] "neither the act of emancipation passed in . . Mississippi nor that in Cincinnati . . recites any meritorious act done by the slave for the owner, nor any distinguished service rendered to the State." [1] [270] "administrator . . hired [them] out . . in this State." Judgment in favor of the plaintiffs reversed: "the status . . can be determined under no other laws than those of Mississippi." [Eustis, C. J.]

Childers v. Johnson, 6 La. An. 633, April 1850. Held: [639] "the child of a paraphernal female slave is paraphernal." "the issue of slaves . . were not considered fruits in the Roman law, from which our jurisprudence is so largely derived; . . it is proper also to bear in mind, the declared policy of our State, . . The statute of 1806 has humanely enacted, that 'every person is expressly prohibited from selling, separate from their mothers, the children who shall not have attained the full age of ten years.' Would we not violate the policy of this statute, by giving the mothers to the plaintiff, and the issue to the community?" [Slidell, J.]

[1] How. and Hutch. 166.

State v. Fuentes, 5 La. An. 427, May 1850. [428] "The counsel of the prisoner requested the court to charge . . 'that the use of grossly . . indecent language by a free man of color to a white man, naturally must excite the passions of a white man, and if immediately succeeded by a mortal stab, it may well be imputed to the weakness . . of human nature, and a jury may render a verdict of manslaughter,' . . The court declined . . and we think properly. It is one of the first . . principles in trials for homicide 'that no affront by words or gestures only is a sufficient provocation'[1] . . The law has made no distinction whether the affront proceeds from a white, or a free man of color. Indeed, as was well observed by the attorney general, since the law makes a distinction . . and punishes free persons of color, who, even by words, insult white persons, their situation imposes upon us, perhaps, a higher obligation to suppress our passions, and resort to the laws to punish their insolence, than in the case of white persons, against whose . . [429] verbal outrage there is no redress by prosecution. It is truly a painful duty to perform when the life of a fellow-creature is involved, but we are obliged to affirm the judgment" [Preston, J.]

Heirs of Henderson v. Rost and Montgomery, Executors, 5 La. An. 441, May 1850. See Executors of Henderson *v.* Heirs, p. 575, *supra.* Will of Stephen Henderson: [458 n.] "This is my last olographic will . . made . . 1837 . . Art. 3. . . every thing . . is to be continued . . as . . at my death. The executors . . to keep on each plantation a good planter and a man of humanity. He must not, under no circumstances, treat the blacks with cruelty, but . . with kindness; and they must allow for every grown person that labors, three pounds of good beef or pork per week, and in that proportion for all the young ones. There must be strict discipline . . I have always considered this allowance, with what they made upon their own patch of ground, which must be allowed to all . . that labor, an abundance; more particularly . . if they get as much good fresh corn-meal as they stand in need of. This treatment, in my humble opinion, places the black in a much . . happier situation than many of the lower order who has to labor in Europe, or even in the Eastern States. I have always treated my blacks with much indulgence, and even personal kindness. Art. 4. I have always been opposed to slavery, but as it is a property recognized by the Constitution of the United States, to take that away, you would at once destroy the greatest . . [459 n.] government now in the . . World. Therefore, all attempts made by the fanatics . . preaching, like evil spirits, against slavery, turns the heads of the unfortunate negroes, and prepares them for the commission of every kind of crime, which compels their masters to limit the very liberty . . formerly awarded . . a good master ought to be as careful of his slaves as he is of his own family. . . but I am decidedly opposed to the people of any other State or country, interfering . . Art. 5. There must be written rules for the government of all my slaves . . They are not to be taken out to work until nearly sunrise, nor . . kept in the field longer

[1] 4 Black. Com. 200.

than half an hour after sundown . . Sunday is to be a day of rest . . except the people who may choose to work upon their own piece of ground, or to be paid for their labor by their overseer, but under no circumstances . . to leave their respective camps without permission . . Art. 6. All the children . . born five years after my death, if females, are to be free at the age of twenty . . and male children . . at twenty-five; and at the end of the five years . . there may be drawn by lot . . five females and five males who will be furnished a free passage to our settlement in Africa, and one hundred dollars each; but they must go of their own free will, and . . return to slavery, if ever they return to this country. At the end of ten years twenty may be emancipated in the same manner . . and in twenty-five years all the first born free may be sent off with the entire remainder of the old stock that is willing to go, so . . that . . there will not be upon any of my estates any other slaves but the apprentice children. And if the other slaves did not wish to go . . they will remain . . as apprentices . . as well as all their offspring, . . Art. 7. It must be clearly understood, that the benefit . . is not to extend to a murderer or thief, or a confirmed runaway, or for any other high crime . . legally proved before the executors . . but I wish . . a fair . . trial . . as if . . before a judicial tribunal. Art. 8. . . [460 n.] the negroes upon the Houmas estate to be emancipated upon the same conditions . . one-half of them being already my property, Mr. Doyal ['one-half owner'] would, no doubt, make an agreement . . for those belonging to him. . . [461 n.] Art. 13. When funds can be spared after twenty years, I wish a large manufactory of negro shoes and coarse clothes to be erected at Destrehan . . [462 n.] plantation when it is incorporated as a city," Henderson made a second will on March 5, 1838, confirming the former one and making some additions: "In remuneration of their faithful services I give their freedom to my house servants Lucy and Agnes . . next fall," [462] "The court, not being prepared . . to express an opinion upon the . . provisions as regards the slaves generally, has . . retained that portion of the cause for further consideration. . . [466] Doyal binds himself to carry into effect a judgment, if such be rendered, recognizing the validity of the testator's disposition for the liberation of his half . . but . . expressly refuses, to sell his own half so as to enable the parties to carry out Henderson's desire to emancipate the whole. . . [467] If such validity should be adjudged, the moiety upon which the will . . will operate can be ascertained by a proceeding in the nature of a judicial partition." [Slidell, J.] See same *v.* same, p. 647, *infra;* see also Rost and Montgomery *v.* Heirs of Doyal, p. 679, *infra.*

Beaulieu (*f. m. c.*) *v. Ternoir* (*f. m. c.*), 5 La. An. 476, May 1850. "Baptiste Beaulieu, homme de couleur et libre, . . voulant donner des preuves de son amitié à Eulalie Ducloslange (mulatresse libre,) fille naturelle de Philippe Ducloslange, lui a . . fait donation [1819] . . d' un demi terrain"

Frierson v. Irwin, 5 La. An. 525, June 1850. Eustis, C. J.: [530] "We have always discountenanced the practice, upon which we have

been frequently called to act, of bringing slaves to this State for the purpose of defeating the rights of property in them, existing under the laws of the State from which they were taken;"

Dugas v. Estiletts, 5 La. An. 559, September 1850. "suit for the rescission of the sale of a slave, on the ground that he was in the habit of running away . . manifested . . by . . running away within three days after his delivery . . [560] None of plaintiff's witnesses show that the slave was a runaway before the sale. Some of them prove that he was a good slave and not a runaway. The defendant has introduced several witnesses who give him the same character. . . the slave was killed while a runaway, in attempting to make his escape." Judgment for the defendant affirmed.

Dupré et al. v. Desmaret, 5 La. An. 591, September 1850. "The payment of the price of John Bull is resisted . . [592] died more than fourteen months after the sale. The physicians who made the post mortem examination, state . . disease of the heart accompanied by a general dropsy. . . think . . brought on by dirt eating. . . that the disease must have existed two years. . . many witnesses who knew the slave, and had him under their charge during the eight years which preceded . . state . . that he was one of the stoutest men on the plantation; . . had none of the signs of a dirt eater" Ordered that there be judgment in favor of the plaintiffs for $875 with interest.

Dupré et al. v. Prescott, 5 La. An. 592, September 1850. [593] "The testimony of the defendant's overseer shows that although the health of the slave was very bad for more than two months before his death, and that he always complained of his breast, no physician was called . . until two days before his death." "Two days after his burial, he was disinterred and a post mortem examination was made by two physicians; . . chronic disease of the heart . . right lung . . diseased . . the affection of the lungs was the immediate cause of the death," Judgment in favor of the plaintiffs for $427.50 with interest.

Young v. Young, 5 La. An. 611, September 1850. "his agent . . purchased for him at Washington [D. C.] . . Rachel, and her two children" for $600, between 1814 and 1821.

Adle v. Anty (f. w. c.), 5 La. An. 622, September 1850. "The succession of Susanne Metoyer, a free woman of color, was opened . . 1838. . . appraisement amounting to . . $35,904. . . a family meeting . . recommended . . that the property . . be sold . . partition among the heirs of the estate amounting to upwards of sixty thousand dollars . . showing the sales . . extremely favorable"

Bartlett v. Peck, 5 La. An. 669, October 1850. Letter: [670] "January 5th, 1845. . . I never thought of selling the boy that is run away; . . nor would not sell him for any price, even run off. I did propose to swop him . . for a certain boy,"

Matthews v. Wilson, 5 La. An. 691, October 1850. "1846 . . made a clandestine departure from Arkansas and came to Louisiana, bringing the slave with him"

Conant, Tutor of Mary (a negro woman), v. Guesnard and Wife, 5 La. An. 696, November 1850. Suit for freedom. "The plaintiff was taken to France [in 1847] for the purpose of her services in attending on her mistress, who was in ill health." "She sent the plaintiff back to Louisiana . . [after] three months;" Judgment for the defendant affirmed.[1]

Julia Arbuckle (f. w. c.) v. Bonny et al., 5 La. An. 699, November 1850. "1849 . . the plaintiff was adjudged to be a free person. . . [700] Talbot had purchased her as a slave in good faith;" [699] "sold . . to . . Mrs. Bonny, previous to the suit for freedom. The present suit appears to be for personal injury from violence and damages for loss of time in her imprisonment during the pending of the suit,"

Held: "the plaintiff's petition, though very inartificially drawn, is not without a cause of action." "We have in three cases [2] allowed a compensation in the way of damages to persons who have established their right to freedom . . dating from the pendency of the suit."

Roca v. Slawson, 5 La. An. 708, November 1850. [709] "the slave was purchased by the plaintiff [in October 1847] as an habitual drunkard;" [708] "A witness who had the slave in charge during several years testifies that . . he was . . always healthy, excepting once, when he . . had the *delirium tremens*. . . [709] A few weeks after the sale . . symptoms . . were first discovered . . plaintiff . . kept him at hard work all the time, and no physician saw him until" [708] "1st of March, 1848, . . two . . attended the slave until he died [March 31], and made a post mortem examination, . . ascertain the existence of" "pulmonary consumption," "The plaintiff claims the rescission of the sale"

Judgment in his favor reversed: [709] "when the symptoms were first discovered, it was the duty of the plaintiff to call in a physician . . negligence and want of humanity on his part, would, under all circumstances, prevent his recovery." [Rost, J.]

Villars v. Kennedy, 5 La. An. 724, December 1850. [727] "the Commandant General of Louisiana in 1730, repaired [the fortifications of New Orleans] . . and surrounded the city with a wide ditch to protect it, as well from . . hostile tribes of Indians as from an apprehended insurrection of the slaves,"

Kock and McCall v. Slatter, 5 La. An. 739, December 1850. "proved that the slave is rendered entirely worthless by a disease . . incurable. . . that the disease manifested itself within fifteen days after the sale;" "judgment rescinding the sale . . affirmed, with costs." "as the defendant has not proved that the slave had been more than eight months in

[1] Act of May 30, 1846. "The statute merely . . establishes as law the rule laid down by Lord Stowell, in the case of the slave Grace." See vol. I. of this series, p. 34.

[2] Eugenie *v.* Préval, p. 580, Arsène *v.* Pignéguy, p. 582, Coby *v.* Kock, p. 591, *supra.*

the State at that time,[1] the legal presumption is, that he was unsound when sold. . . cannot be overthrown by the testimony of the defendant's witnesses. The slave may have appeared healthy during the limited time they knew him in the defendant's slave yard, although affected with ailments which would soon be made apparent by labor and exposure." [Preston, J.]

Allen v. Campbell, 5 La. An. 754, December 1850. [755] "suit to rescind the sale of a slave . . brought into the State within less than eight months before the sale" "on the 15th February, 1849, . . He died six weeks afterwards. . . alleged that he died of diarrhoea, . . Mr. Archer and Vaught . . testify that the slave was severely afflicted with the disease in . . February. The latter . . having hired him a few days, he was sent home in a cart, being unable to work, or probably to walk; after a week he was sent back; but being unable to do the work of a hand, was again sent home. . . he was sick at the plaintiff's house for some time; . . attended . . by Dr. Preston; . . The defence is, that the slave . . died of the cholera. . . Dr. Bensadon saw him the day before he died in the collapsed state of the cholera, . . All proper attendance and medical aid was furnished by the plaintiff . . a physician set [*sic*] up with him a whole night." Held: [754] "there is nothing in the law which authorizes the warranty to be . . extended from one disease to another,"

Frelson v. Tiner, 6 La. An. 18, January 1851. Tobin of Arkansas sold to Frelson of New Orleans in 1848 [19] "five negro men, . . Jacob . . about twenty-eight . . Joseph . . about twenty-six . . Charles . . about twenty-one . . Lewis . . about twenty . . and Columbus . . about twenty [for $3500] . . 'under the express condition, that . . vendor shall have the right of redeeming' . . The district judge decided: . . 'The slaves at that time were in Arkansas, where the common law prevails. . . this contract would avail as a mortgage. But . . a mortgage of slaves . . out of this State, will not attach to the slaves when brought here, except from the time . . it is duly registered here. When slaves are brought into this State, they become immovables . . [20] There was no registry to interfere with the defendants' attachment. Judgment for the defendants,'" Affirmed.

Romer v. Jane Woods (f. w. c.), 6 La. An. 29, January 1851. "rescission of the sale of a female slave . . addicted to running away"

Buddy v. Steamer Vanleer et al., 6 La. An. 34, January 1851. "The plaintiff claims from the master, mate and owners of the *Steamship* . . [$1300] . . for the value of . . Ned, and damages caused by his employment . . without his permission. . . the mate hired the boy . . 14th of March, 1849; . . he went with her . . to Attakapas and back to New Orleans, where she arrived about the 20th . . The cholera was then prevailing . . Ned, being at work on the levee, probably still in the service of the boat, took the cholera. He was requested by the clerk of the boat to go home to his master; . . but returned in half an hour, and was taken on board, where he had a brother in . . employment . . The brother was

[1] B. and C. 792.

sent to let his master know . . [35] From the time he was taken on board . . much exertion was made to save him, by rubbing him with brandy, cayenne pepper, and by administering Dr. Cannon's anti-cholera preparations: two persons having attended on him all night." " next morning . . son of the master . . took him away in a cab, and he died in his master's house the same day."

Held: [36] " The . . death had no connection whatever with his employment . . The plaintiff is entitled to recover the damage he has suffered by the loss of the time of his slave, because hired out without his permission, and without due precaution on behalf of the officers . . to ascertain that he was a slave,"

Sargent v. Slatter, 6 La. An. *72,* February 1851. " The plaintiff claims the return of the price of a slave . . [who] died of an incurable disease, . . also . . damages. . . It is urged that four months elapsed after the purchase before the plaintiff called in a physician. But the slave was employed as a house servant. She was never exposed to the weather; . . was able to do house work, . . the plaintiff [' a humane master '] had no reason to believe that she was in a dangerous situation. . . the title of the plaintiff was executed in . . Maryland," Judgment for plaintiff affirmed.

Carmouche v. Francis P. and L. Bouis, 6 La. An. 95, February 1851. [96] " suit to recover from the defendants *in solido* the value of . . slave . . killed by . . Leon Bouis, while in the service of his father, the other defendant. . . the slave was . . crossing the fence of . . Bouis . . probably for the purpose of taking sugar cane, . . one or more negroes with him. . . the son, with the overseer, were keeping watch with firearms, by direction of the father, . . Leon . . fired, and the slave . . was severely wounded in the leg, . . died, notwithstanding all proper care . . and medical aid . . The overseer and son were instructed . . not to shoot the negroes . . but to frighten them by firing; and . . the son did not take aim when he fired the fatal shot. Nevertheless, he called to the negroes to stop, and they not doing so, he did take aim, . . but the gun snapped. . . [97] Believing with the jury, that the slave . . was either carelessly or unlawfully killed, we think they came to the correct conclusion in holding both defendants responsible . . Besides, the jury may have inferred the previous assent of the father . . from his subsequent declaration . . that the sole reproach he had to make to his son was, for having fired upon one alone, instead of firing upon the gang. . . judgment . . affirmed, with costs." [Preston, J.]

Rosette Aubert (*f. w. c.*) *v. Aubert et al.,* 6 La. An. 104, February 1851. " Rosette Aubert . . asks that the heirs . . be compelled to execute his will and to pay over to her the legacies . . in her favor and in favor of her . . [105] children. . . defendants have . . averred: . . 2. That . . Aubert was not of sound mind . . 4. That Rosette Aubert was the concubine of the testator, and her children are his adulterous bastards; . . Aubert died . . 1839. . . [106] Rosette . . assisted him in ascertaining the names of such of the slaves as he did not remember. . . [107] he made [his legitimate daughter] . . then about thirteen . . the depositary of $5000 for the

use of the plaintiff and her children," Held: [109] " the testator was not of sound mind "

Badillo et al. v. Francisco Tio, 6 La. An. 129, February 1851. Preston, J.: [136] " Augustin Macarty departed this life . . October, 1844, leaving an estate appraised at $58,610. He left an olographic will, dated . . 1844, . . probated . . October, 1844. He declared himself to be without forced heirs, and instituted . . Tio his universal legatee, and . . executor, . . He gave freedom to three of his slaves, being minors . . appointed Celeste Perrault their tutrix, and bound them to serve her until they attained the age . . to be emancipated, . . emancipated at her expense, if worthy . . if not, . . belong to . . Tio. He gave to Patrice Macarty his clothes and the furniture of his bed-chamber. He declared that the rest of the furniture and movables in his house belonged to Celeste Perrault, to whom he gave for six months after his death the use of the property on which he resided. . . [137] 1847, the plaintiffs instituted the present suit . . they are his sole legal heirs. They claim from . . Tio the whole succession . . on the ground that he was made universal legatee . . as a person interposed for the purpose of transmitting . . to persons incapable [1] . . 1. Josephine Macarty, a free woman of color, . . natural daughter of . . Macarty [[130] 'by Victoria Wiltz, his first concubine, and herself the concubine of the defendant'], with whom [Josephine] . . Tio has lived in concubinage for many years, and with whom he has contracted a religious marriage. 2. The natural children of Josephine, the issue of her concubinage with . . Tio. 3. Patrice Macarty, the natural child of Augustin Macarty by Celeste Perrault, a free woman of color. And 4. Celeste Perrault, . . and . . Philonise Macarty, another natural colored daughter of Macarty. . . [139] The testimony fully satisfies me that Josephine Macarty is the natural daughter . . Sanite Riviére [2] [who] . . had a child by him herself . . says . . Juan Macarty, an uncle of the child, and cadet in the same regiment, and Maria Chauvin, her aunt, were her god-father and god-mother. Bridgette Macarty " [130] " who represents herself as being also a natural child of Macarty by another mother . . testifies that Macarty always treated her and Joséphine as his daughters," Rost, J.; " we [3] cannot agree with [Judge Preston] . . that the evidence in the record proves her paternal descent. . . Victoria Wiltz, the mother of Josephine, did not reside in his house [4] when the latter was conceived, . . she was reared in the house of Marcos Tio, and as his child. . . Brigitte . . from her condition is not entitled to full credit, . . [131] an extract from the register of baptisms of free persons of color . . contains a statement that . . [Josephine's] father was a Mr. Macarty. . . he did not sign . . In the certificate of baptism of one of the children of the defendant by Josephine, . . in 1825, it is stated that his maternal grand-father is Augustin Macarty. . . signed by the defendant; . . could not affect Macarty " " Mr. Bacas . . says, that he had in succession several

[1] C. C. 221, 1473.
[2] The French accents are not used by Judge Preston except incorrectly here.
[3] Eustis, C. J., and Slidell, J., concurring.
[4] C. C. 227, sect. 3.

mistresses who had children whom he refused to recognize. . . Macarty ceased all intercourse with Victoria Wiltz at about the time of Josephine's birth; and we are satisfied that he had not the conviction that Josephine was his child, . . He must, at the same time, have thought it probable . . Céleste Perrault was the concubine of Macarty from 1799 to his death; . . lived as such in his house when her son Patrice was born." " proved to be his natural son," " in his correspondence with Patrice . . he . . invariably addresses him as *mon ami.* That correspondence is full of affection; and although he knew . . he was Patrice's father, he never could bring himself to speak or to write that humiliating truth. . . [132] It is probable, that . . unequal marriages [' conventions by which a woman of inferior condition gave herself or was given by her relatives in presence of witnesses to a single man, to live . . in . . concubinage '] were of common occurrence in Spain, while . . part of the Roman Empire; . . By an express law of the *Partidas,* the governors of the provinces were forbidden to marry, and authorized to have concubines. . . Such was the law of Louisiana . . under the dominion of Spain, and as there were . . in the colony but few women of the white race, and hardly any of equal condition with the officers of Government and of the troops . . the inevitable consequence was . . connections with women of color. This custom, coming as it did from the ruling class, soon spread throughout the colony, . . to remedy this . . the framers of the Code of 1808 first created the incapacities of which the plaintiffs claim the benefit. Macarty was a nobleman and an officer in the Spanish army. At the age of seventeen he dwelt with one of his uncles, also a Spanish officer, who lived with a woman of color. Augustin . . had in succession several *liaisons* with women of that class, until in 1799, he took Céleste Perrault, with whom he lived nearly fifty years, and until death parted them. . . [133] the correspondence between [Patrice] . . and his father clearly shows, that he and his mother were . . all that a legitimate wife and son could have been. In the latter part of his life he had no other society but that of Céleste, and no occupation save that of purchasing and sending goods and produce to Patrice, who kept a shop in Pensacola. His letters to his relations show that he was completely estranged from them, . . The defendant is not shown to have had any social or business relations with him. Their position in life, education and habits of thought were too dissimilar . . no apparent motive for making the bequest, except that the defendant lived with a woman whom Macarty had some reason to believe was his daughter, and that he was besides the confidential friend and agent of Céleste Perrault. . . nothing prevented him from making a donation to Josephine. But he was not, probably, aware of this, and may have been induced to select the defendant as the instrument . . for the transmission of his property *in fraudem legis.* . . the defendant suffered Céleste to retain possession of a portion of the property long after she ceased to have a right . . she contracted . . as if it had been hers; and . . the slaves on the Carrolton property were sold by her orders . . These facts, taken in connection with her sudden increase of wealth after the death of Macarty, by which she was enabled to travel in Europe during eight-

een months, raise an almost irresistible presumption, that the proceeds of the property sold were paid over to her. . . When . . it is further shown that the defendant has conveyed to her five of the slaves which he received from Macarty, there is no room left for doubt. . . [134] we are forced to conclude that the slaves were returned . . in execution of the *fidei commissum*. . . The defendant must restore to the plaintiffs all the real property and slaves . . he must account to them "

Dupré v. Caruthers et al., 6 La. An. 156, February 1851. Dupré, a colored man, departed this life . . without legal ascendants or descendants. . . Caruthers and others claim his succession, . . natural brothers; . . In opposition . . claimed by Marie Lorenza Dupré, who alleges that she is the natural daughter . . offered to prove . . by . . testimony not amounting to a formal acknowledgment." [158] "excluded"

Vail v. Bird, 6 La. An. 223, March 1851. " The plaintiffs . . heirs of . . Vail . . allege, that the testator emancipated, by his will, . . Jane, and gave her two promissory notes of one hundred dollars each, and that these legacies should be annulled, because the testator lived in open concubinage with Jane; that the donation of freedom . . is a disposition of his immovable property in her favor, which is prohibited [1] . . that the testator could only give her a tenth part . . in movable property, . . pray that Jane may be made a party, and . . donations . . annulled . . Bird, the executor excepted . . that the plaintiffs could not make Jane a party. . . that the allegation of concubinage between master and slave, was . . not . . admissible, because the slave was entirely subject . . [224] sustained "

" reversed, and the cause remanded " I. [223] " Our code . . enables a slave to become a party to a civil action when he has to claim or prove his freedom.[2] . . [II.] [224] The slave is undoubtedly subject to the power of his master; but that means a lawful power, such as is consistent with good morals. The laws do not subject the female slave to an involuntary and illicit connexion with her master, but would protect her against that misfortune. It is true, the female slave is peculiarly exposed . . to the seductions of an unprincipled master. That is a misfortune; but it is so rare in the case of concubinage that the seduction and temptation are not mutual, that exceptions to the general rule cannot be founded upon it. . . [III.] The donation of freedom to a slave deprives the heirs of . . an immovable." [Preston, J.]

State v. Read, 6 La. An. 227, March 1851. " The indictment charges: That . . Read, . . of Louisiana, yeoman, . . did [in 1850] in public discourse . . utter the following language in substance . . ' The negroes . . are as free as the white men. This is a free country , and that the negroes have no right to call any man master; ' which . . [228] did . . have a tendency to produce discontent among the free colored population . . and to excite insubordination among the slaves . . contrary to the form of the

[1] C. C. 1468.
[2] C. C. 177.

statute [1] . . The jury found the accused guilty . . and recommended him to the mercy of the court." [227] " he was sentenced to be confined at hard labor in the penitentiary for . . five years, and to pay the costs of prosecution. . . [228] The motion to arrest the judgment was overruled,"

Judgment arrested: " The indictment contains no charge of any criminal intent, and the word *feloniously* . . is omitted, . . Nor is it charged that the words were uttered in the presence . . of slaves or persons of color. . . [229] When a man's life is put in jeopardy for language made use of, we think the language itself ought to be charged in the indictment . . with the same particularity as a libel." [Eustis, C. J.]

State v. Capers, 6 La. An. 267, March 1851. [268] " indicted and found guilty of stealing a slave."

Walker v. Ferriere, 6 La. An. 278, March 1851. Rost, J.: " It is clear to us that the slave was not affected with leprosy, unless that word is understood in the extended signification which one of the physicians . . states it formerly had, when it was considered as including all diseases of the skin. It is not used in that sense in the articles of the Codes of 1808 and 1825, . . The form of leprosy known by the name of *elephantiasis* is an African disease, which was common in Louisiana before the suppression of the slave trade, as it is at this day in . . Cuba, where that trade is still carried on. This is the form of leprosy which the lawgiver had principally in view. We do not mean to say that the general expression used in the code [2] might not be extended in cases of *lepra vulgaris*; but it is inapplicable to any other cutaneous disease. It is not shown satisfactorily that the disease in this case existed at the time of the sale, and that it is incurable, or that the value of the slave is materially diminished by it."

Dupré, Administrator, v. Uzée, 6 La. An. 280, March 1851. [281] " This is a suit by the administrator of Anna Sinnet, a free woman of color, with whom . . Uzée lived in open concubinage before his marriage [in 1843], against the minor heirs of Uzée, represented by their mother . . to recover from them a house and lot and a female slave, together with rents and profits, on the ground that in 1838 Anna Sinnet acquired . . slave from . . Hite, for . . $700 paid by her in cash, and that in 1841 she acquired the house and lot from . . Uzée for . . $3500, which he acknowledged in the act of sale to have received. The answer is . . that they are donations in disguise, prohibited by law,[3] . . That Uzée retained . . the possession . . The defendant prays . . that the house and lot and slave . . be decreed to be the property of her minor children. . . proved that Uzée himself bought the slave, and . . caused the sale to be passed to his concubine to evade the prohibition of the law." Judgment for the defendant affirmed.

Dobard v. Nunez, 6 La. An. 294, April 1851. " The slanderous words are alleged to be ' that the families of Martin and Lafrance are colored

[1] Act of Mar. 16, 1830.
[2] " The absolute vices of slaves are leprosy, madness, and epilepsy." C. C. 2502.
[3] C. C. 1468.

people.' The defendant . . avers that he persists therein, because they were founded upon probable cause, and uttered without malice. . . judgment against him for $500,"

" ordered, that the judgment . . be amended, and that there be judgment in favor of the plaintiffs for fifty dollars damages," " On the merits, the evidence is conflicting; . . There is nothing in the record to show that the plaintiffs were in any manner injured by what he said."

Hyams v. Smith, 6 La. An. 362, April 1851. [363] " The plaintiff who keeps a slave-yard in New Orelans, claims the amount of a bill for boarding, clothing and medical attendance furnished certain slaves, and also a privilege upon said slaves for the amount due her. . . the defendant, who resides in . . Alabama, had a life estate in the slaves attached; . . her husband was in possession . . as trustee. The slaves were brought by him to New Orleans and placed in the slave-yard . . to be sold. . . the slaves were to perform no labor, but to be boarded, cared for and safely kept." " he died soon after, and before a sale was effected. A curator . . left them . . in the plaintiff's slave-yard." Held: " the plaintiff has a privilege upon the slaves "

McDowell v. Couch, 6 La. An. 365, April 1851. [369] " The plaintiff brings this suit against the sheriff . . to recover . . a slave named Jerry. The State, by the district attorney, intervened. He alleges . . That . . Jerry . . was sentenced to be executed . . February, 1849. . . Supreme Court, . . in March, 1849, affirmed the judgment [1] . . At the session of the Legislature in 1850, a petition on behalf of the slave, in which he, and many of the inhabitants of the parish . . united, was presented to the Governor and Senate . . for the commutation of his punishment. . . commuted . . to imprisonment for life . . the sheriff was notified, . . The court . . rejected the claim of the plaintiff, and directed the sheriff to deliver the slave to the keeper of the penitentiary; the plaintiff, the owner of the slave, has appealed."

Judgment affirmed: I. " The property in a slave is such that . . the owner may lose it by the crimes . . of the slave; . . and yet the State generously accords . . an indemnification of $300, . . the full value of any slave convicted of a capital crime. . . [II.] the convicted slave was subject to execution, notwithstanding the day . . appointed . . had passed. . . [III.] an act . . approved the 5th of March, 1823, expressly gives power to the Governor and Senate to commute the punishment of death into a lesser punishment in favor of slaves ' whenever the circumstances . . are such as to entitle the offender ' . . [IV.] [371] counsel of the plaintiff [say] . . ' We have found nothing . . to warrant the commutation of the sentence of a convict without his . . assent; and a slave is incapable of giving . . assent without the authority of his master, which was not accorded in this instance.' The answer of the attorney general . . we . . quote and adopt . . as our opinion . . ' if the plaintiff . . did not intercede, either from indifference, prudential motives, or from a desire to have the slave executed, it is perfectly immaterial; . . When slaves commit

[1] State *v.* Jerry, p. 598, *supra.*

crimes and are prosecuted . . they are regarded as accountable beings, and not as things; and may be punished as the law directs, irrespective of the wishes of the master, who . . is only entitled to notice. C. C. 178.' " [Preston, J.]

Jeter v. Deslondes, 6 La. An. 379, April 1851. [381] " She removed to this State from Virginia . . bringing . . the slaves "

Lombard v. Jacobs, 6 La. An. 396, April 1851. " suit . . for the rescission of the sale of a slave . . and for the reimbursement of the price [$675], . . sold as a good axeman, and sound; . . not a good axeman, . . feeble . . and somewhat idiotic, at least at intervals. . . The evidence . . convinced [the district judge] . . that the slave was . . long anterior . . afflicted with a chronic nervous malady . . affecting both mind and body to such an extent as to render him utterly worthless; . . produced great bodily weakness and periodical imbecility;" Judgment for the plaintiff affirmed.

Stackhouse v. Kendall, 7 La. An. 670, April 1851. " No post mortem examination of the slave was made, . . [671] According to the opinion of Dr. Stillette, the disease [consumption] is not proved. . . the family physician of the plaintiff . . states it as his opinion, that the slave died of consumption, . . the consequence of his constitutional conformation. . . The physician who last saw the slave states, that the day before he died he was suffering from diarrhea and hectic fever, but . . showed no sign of approaching dissolution. . . the cholera was among the plaintiff's slaves . . and the rapidity and manner of the death point to that disease as the cause. The evidence induces us to believe . . that the diarrhea may have been, as it usually is, caused by a change of food and water on a subject lately come to Louisiana; . . aggravated by the damp and impure atmosphere of the pork warehouse in which the slave was employed, and . . terminated in cholera. . . defendant is entitled to a final judgment." [Rost, J.]

State v. Powell, 6 La. An. 449, May 1851. " The defendant . . convicted of larceny, moved for a new trial, . . proved on the trial that he was a negro of unmixed blood, from which the presumption arose that he was a slave; . . no evidence was given to rebut . . Consequently, it is said the court had no jurisdiction " New trial denied.

Judgment affirmed: " In civil suits . . fact [that he was a negro of unmixed blood] raises a presumption of slavery, which must be rebutted by testimony to establish freedom, or to admit the negro as a witness. But slight testimony . . is required . . as that the negro was in the actual enjoyment of his liberty. The bare fact of the prosecution of the accused as a free man, without plea to the jurisdiction . . without a question being raised . . on the trial . . was sufficient to rebut . . in the present case. It is true, he was not described in the indictment as a free man of color. This is required [1] from notaries and other public officers, in passing acts with regard to free persons of color; and also from auction-

[1] Act of Mar. 31, 1808. B. and C. 159.

eers and printers, in publishing advertisements of the sale of their property. It is not expressly required . . so to describe them in criminal proceedings, though it is usual . . and to be recommended in all cases."

Benjamin v. Davis and Matt, 6 La. An. 472, May 1851. "action brought . . for the value [$800] of . . Ned . . [473] This boy ['old negro . . of forty-five'] . . had given some offence; Davis [Benjamin's overseer] attempted to flog the boy, and Ned run;" [472] "the defendants came to the house of [Perkins] . . early . . the [next] morning with their negro dogs, and said they were going to hunt runaway negroes;" [474] "such means being customary among the planters of the parish, and the same means having been previously used by plaintiff to capture the same negro." [472] "the defendants . . were not long gone before . . [Perkins] saw them returning . . Ned lying across one of the horses, shot. . . also proved by Perkins, that they brought in with Ned a large carving knife that had been stolen or taken from his quarter, . . used . . for cutting up meat, when they issued out allowances to the negroes. . . [474] that the negro had a wife on the plantation of Dr. Perkins, and that the knife had been stolen from the house in which the negro was in the habit of staying when in the quarter of witness; that the dogs . . were bleeding and appeared to have been cut . . also in evidence that the plaintiff, when informed that the negro had been shot, replied, that he wished he had been killed." [473] "defendants . . borrowed a cart and sent him to the residence of plaintiff," [472] "next day he died of his wounds. . . [473] Benjamin all the while was absent from home. . . there has been one mistrial, and the last time the case was submitted, without argument . . the jury gave a verdict for the defendants."

[474] "The verdict is clearly erroneous, and the judgment must be reversed." "Armed, and prepared as they were, the shooting with ball or buck-shot was totally unjustifiable. . . It is further ordered, that the plaintiff recover from the defendants, *in solido,* $350, with . . interest, from . . October, 1847, till paid, and costs in both courts." [Rost, J.]

Vinot v. Celeste Bertrand (f. w. c.), 6 La. An. 474, May 1851. [475] "the record does not establish such criminal concealment or illegal hiring . . as will subject . . defendant to the penalties of the acts of 1807 and 1809.[1] . . The petition contains a claim for the sums expended in the recovery of the slave, and also a prayer for general relief. We are of opinion that the forged pass which the slave showed the defendant, when she hired a room from her, is not sufficient to protect her against this portion of the claim. She should have made inquiry . . the slave . . cost $500, and we cannot err in allowing as damages legal interest on that sum during the time she occupied a room in the defendant's house. The plaintiff is also entitled to recover three dollars for the taking up of the slave, under the act of 1848." [2] [Rost, J.]

Sarah A. Leigh (f. w. c.) v. Meurice, 6 La. An. 476, May 1851. "The plaintiff is the owner of . . Ellen; the defendant owns her mother,

[1] Moreau's *Digest,* pp. 119, 120.
[2] Sess. Acts, p. 166.

. . Phoebe. Ellen ran away . . and was arrested in a room occupied by Phoebe, in the house of Mr. Davis, to whom she had been hired. . . circumstances were proved which induced the district court to conclude she had been there a month. . . Mr. Davis searched twice . . Being also a girl of fifteen or sixteen . . she was as likely to run away from the service of her mistress as to be enticed away by her mother. Phoebe was . . convicted of harboring and concealing her . . penalty of two dollars a day . . cannot be recovered from the master, who is not answerable for penalties . . imposed for the acts of his slave. He is answerable, however, for the damages caused [1] . . the law allows but three" "dollars . . on account of . . arresting . . The court allowed a months' [*sic*] wages and five dollars for advertisements, . . [477] The fact that the mother harbored and concealed the slave . . no doubt injured her character and qualities as a servant; and the depreciation is sufficiently proved . . to require us to allow something on that account." [Preston, J.]

Nicholson v. Ogden, 6 La. An. 486, May 1851. "By an olographic will . . 1833, he distributed his property . . among his children . . except for the support of a family servant, who he declared had acted the part of a mother to his motherless children."

Murphy v. Insurance Co., 6 La. An. 518, May 1851. Preston, J.: "The defendants insured the life of a slave . . for one year, from . . June, 1850. He died . . October, . . The policy contained a condition, that he should have had no chronic disease at the time of the insurance. By a post mortem examination, made fifteen hours after his death, physicians came to the conclusion that he died of chronic inflammation of the intestines, and ulceration. One . . attended on him in July, for diarrhea and fever. He became convalescent. He attended him again . . during his last illness. . . strong evidence to counteract the presumption [of the existence of chronic disease at the time of the insurance]. The slave was examined . . by the physician of the defendants, who was satisfied with his health. He had just been purchased from a negro trader, in whose depot Dr. Carr was the attending physician. The doctor saw him daily for some months before and on the very day he was sold, when he appeared to be in perfect health;" Held: the insurance company is liable.

Haggerty v. Powell, 6 La. An. 533, June 1851. "The plaintiff . . of Texas, instituted this action, to rescind the sale of a slave sold to him by the defendant, who is a trader in slaves, on the ground, that . . the . . slave . . ran away within sixty days . . and has never been heard of since. . . the slave had not been eight months in the State when he was sold;" Judgment for the plaintiff. Affirmed: "The case comes strictly within the provisions of the act of 1834. . . The ground, that the persons having charge . . were negligent . . is not a legal defence."

Heres v. Powell, 6 La. An. 586, June 1851. "suit, by a collector of State taxes, to recover . . from the defendant, who . . keeps a slave-yard

[1] C. C. 180, 2300.

in this city, five dollars a head on one hundred and fourteen slaves, placed and kept in his yard for sale, during . . 1848." [1] Held: " this tax . . is a license tax . . nothing . . which conflicts with the Constitution of the United States;"

State v. Jackson (a slave), 6 La. An. 593, June 1851. [594] " Jackson, . . belonging to Mrs. Newcomb, was accused of having . . set fire to the dwelling-house of Mrs. Shaw; . . convicted . . and sentenced to imprisonment for life in the penitentiary." [593] " This case was appealed . . agent for the owner of, and attorney and counsel for, the accused, . . doth depose . . that since the trial . . [he] has discovered evidence . . that the slave Eliza, the principal witness against the accused, had been previously . . convicted for an assault upon . . [594] a white woman. . . had been severely threatened and whipped until she made the disclosure, that the accused had committed the crime . . had made threats against the accused; . . character . . so bad . . as to have compelled her mistress to have her tried [tied ?] and confined for days at a time."

Judgment affirmed: [596] " The reasons given by the magistrates for refusing [a new trial] . . are satisfactory, even if this court could revise the exercise of their discretion on this subject, by a writ of error . . it has no power to do so."

Rawls v. Rawls, 6 La. An. 665, September 1851. [666] " By a decree of the court of probates . . made upon the petition of the defendant [tutor of his nephews], and the advice of a family meeting . . he was directed to keep the slaves in kind, and hire them out at public auction in families, or together,"

State v. Jonas and Sam (slaves), 6 La. An. 695, October 1851. [696] " Boseman . . was found dead . . the friends of the deceased . . the next day . . started in pursuit of the murderers with dogs; . . heard that two runaway slaves had . . been apprehended . . went to the jailor's house, . . the slaves were in a field at work: . . one of them walked with one of his feet turned out . . corresponded with the [track] . . which they had been pursuing . . [697] After they were . . separated, witness . . questioned Sam . . nothing was said about the murder . . Witness . . went back to Jonas, and said . . Sam 'says you are the rascal' . . Jonas . . said . . I will tell you all about it. Dr. Turner . . said . . you had better . . he made the following confession . . he and Sam had stopt . . to camp for the night, . . and were preparing to beat up some corn to eat, when they saw a white man riding towards them . . Sam told . . Jonas, to get the guns, . . The man asked . . why they did not go to some house and grind their corn, . . told them that they might grind . . on his mill, . . they refused to go with him, . . The man then accused them of being runaways, and said they must go . . primed his gun, . . hallooed, . . Sam . . shot him. . . [698] Sam was then brought to where Jonas was, . . refused to answer . . Barton took out his pocket knife . . and said, I can make him talk. Witness . . told him not to do so, that it was not right, . . Barton then

[1] Act of May 3, 1847, art. 3, par. 6.

put up his knife, . . Sam did not appear . . alarmed, and was given to understand that he was not in any danger by what was said; he . . still refused to answer . . the jailor, spoke of using a hand saw and sending for a rope, and something was said by some one of the company about their ability to pay for him; . . arrested as felons . . On the next day . . Jonas . . told the same story . . Sam said . . you snapt your gun at the man. . . Jonas denied it," [695] " They were tried by a tribunal, composed of two justices of the peace and ten slave owners, . . found guilty and sentenced to death."

Judgment affirmed: [699] " we cannot say that the confessions should not have been received " [698] "*in favorem vitae,* too much strictness has been observed on this subject as to free persons. . . We are not prepared to say the same strictness should be observed, so as to exclude the confessions of slaves . . [699] humanity and charity ought to be extended to them; but if their confessions are obtained without a violation of either, and under such circumstances as to force the belief that the confessions are true, they should be received . . we would recommend, that the day for the execution of Jonas, be fixed at a period sufficiently remote, to enable his owner or friends, if he has any, to lay his case before the Executive and Senate, as possibly . . it might be deemed advisable to commute his punishment." [Preston, J.]

Dwyer v. Cane, 6 La. An. 707, October 1851. " The plaintiff sues for his wages as overseer . . dismissed before the expiration of the year for which he had been employed. . . evidence . . shows, that he inflicted cruel and unusual punishments upon the male slaves, and that his conduct with the women of the plantation was grossly and openly immoral." Judgment against him affirmed: " Cruelty to slaves is a sufficient cause of dismissal, and *honeste vivere* forms part of the duties of an overseer." [Rost, J.]

Hough v. Vickers, 6 La. An. 724. October 1851. [725] " The defendant . . before . . the sale . . declared . . that the slave had been a runaway, and would be likely to run away, under certain treatment;" Judgment for defendant affirmed.

Nachtrib v. Prague, 6 La. An. 759, November 1851. " a sawmill . . and . . the slaves attached thereto;"

Rhinehart v. Doswell, 6 La. An. 766, December 1851. [767] " April, 1840, Fisher purchased her . . in . . Mississippi. Her son was born afterwards. In December, 1840, he found them in the possession of . . Deroll . . in the Republic of Texas, and instituted a suit . . Finding the slaves in this city in 1849, this suit . . has been instituted . . [768] defendant . . condemned to deliver the slaves . . to the plaintiff " Affirmed. " It is further decreed, that the defendant recover from his warrantor " $750.

Bacon et al. v. Leeds, 6 La. An. 804, December 1851. [805] " two of the [hired] slaves were sick, and . . two others runaway and continued absent during the greater part of the time the lease lasted. . . the first

slave who runaway was sent by his former master, to the plaintiffs' agent, who restored him . . and the agent has testified, that if he had received the notice which the code requires [1] . . he would immediately have attended to the sick, and caused the runaways to be apprehended and restored . . A reward, sufficient to insure the apprehension . . would, no doubt, have been offered, and the sick might have been brought back to the city and restored to health by means of appliances and skill not to be had on a remote and secluded plantation." "It is usual . . to stipulate that the lessee shall clothe them and furnish . . medical attendance . . but the contract . . in this case does not contain that stipulation,"

Held: "the right of the defendant to be indemnified on those accounts, cannot be doubted. . . [806] But . . [not] for the loss of the services" "where the disease or the unauthorized absence continues for any length of time, notice to the owner must be shown before the lessee can claim indemnity" [Rost, J.]

Huntington v. Ricard, 6 La. An. 806, December 1851. In 1846 [807] "witness . . had applied to Mrs. Huntington to hire the slave, at higher wages, for sea voyages, . . she refused, declaring her unwillingness to let him go to sea, because the slave disliked it," [806] "1847 . . the slave was hired [to Ricard] . . at . . $18 per month . . on board . . schooner . . between Mobile and New Orleans, . . [807] Her views may have changed" "1848 . . [Ricard] made a voyage from Mobile to Brazos St. Jago; and, without the petitioner's consent, took the slave with him . . the vessel never returned. . . full knowledge on the part of the husband, whom the wife permitted to administer her property," [806] "The slave had once been hired . . as cook, on . . a vessel employed in the Mobile and Pensacola trade, . . no agreement that . . vessel should confine itself to that particular trade. . . [807] final judgment in favor of the defendant;"

Demoruelle v. Sugg, 7 La. An. 42, February 1852. Two physicians [43] "express the opinion that he must have been in the habit of eating dirt for years; that he had the dropsy, of which . . he died," "The disease caused by the habit, is dropsy."

State v. Benjamin, 7 La. An. 47, February 1852. "indicted for inveigling, stealing and carrying away . . Maria . . a further count for aiding the slave in running away . . [48] the slave ran away from her mistress . . in July, 1849, and was arrested in the quarter of the accused, in February, 1850 . . the same day that he purchased her, as a runaway," [47] "The accused . . was found guilty, sentenced to two years' imprisonment" Affirmed.

Terrebonne v. Walsh, 7 La. An. 61, February 1852. "the plaintiff claims . . the ownership of a young child . . born of Polly before the sale."

Held: [62] "the defendant has not lost the ownership of the child, it being not an accessory of the mother, in an unqualified sense. But

[1] C. C. 2695.

until the child has attained . . ten years, or the death of the mother prior . . it cannot lawfully be separated from the mother; . . If . . the rearing . . be onerous, the burden is the result of the purchaser's own fault."

Liza (c. w.) v. Dr. Puissant et al., 7 La. An. 80, February 1852. "The plaintiff was born the slave of . . Boisblanc. In 1821, Boisblanc went to Bordeaux, where his family were . . sojourning, for the purpose of bringing them back . . took with him . . for their education, Mrs. Puissant and her sister . . who were under ten . . and the plaintiff, then twelve . . went with them as a servant. Mr. Boisblanc remained two or three months . . and then sailed for Louisiana with his family and the plaintiff, . . She was given to . . Mrs. Puissant, at the time of her marriage, about twenty years ago, . . She has had seven children . . She alleges that she became free by putting her foot on French soil, . . judgment against her,"

Affirmed. Eustis, C. J.: [81] "I feel it to be my duty to state my reasons for dissenting from the opinion expressed in . . Marie Louise *v.* Marot [1] . . decided in May, 1836. . . [82] In all the cases of this kind which have been decided in this court, we have avoided anything which could be considered as an affirmance of the principle laid down in the case of Marot. . . In the case of Arsène *v.* Pignéguy,[2] . . we distinctly stated what we considered as exceptions to the rule in Marot's case, which we thought was too general in its terms. . . [83] A State may prohibit slavery within its limits . . but this imposes no obligation on other States [3] to hold the condition of persons domiciled there, as extinguished by reason of a presence in the State where the relation is not recognized. This court has held the *status* of a slave to be changed by a residence in a country in which slavery did not exist, when the residence, with the consent of the master, had a character of permanency, but not that the *status* was affected by a transit for a temporary purpose."

Hooper v. Owens, 7 La. An. 206, April 1852. Lea, J.: "Plaintiff sues for a rescision of a sale . . The evidence . . appears to establish . . that the slave is affected with abdominal dropsy, . . It is highly probable that the disease existed at the time of the sale [in February 1850], but it is not shown that she received medical treatment before . . August, . . This fact alone is, in my opinion, an insuperable barrier to a recovery." Affirmed.

Cornelson v. Insurance Co., 7 La. An. 345, June 1852. [346] "Office of Board of Underwriters: 'One thousand dollars reward will be paid by this board, for the conviction . . of any free person, of mature age, and three hundred dollars for the conviction of any slave . . concerned . . in setting fire to any building . . in this city'"

[1] P. 509, *supra.*
[2] P. 582, *supra.*
[3] See Judge Scott's stronger language in March 1852, in Dred Scott *v.* Emerson, 15 Mo. 576.

Coulter v. Cresswell, 7 La. An. 367, June 1852. [10 *id.* 396] "On the 6th of March, 1851, . . Mrs. Tabary, sold to . . Creswell . . Clarissa and her two children, with the usual warranties, for . . $500. On the 17th, Cresswell sold . . to . . Coulter, for . . $600." [7 *id.* 367] "Immediately . . she was taken on board a steamboat, and conveyed to . . Arkansas, where the plaintiff resided. . . The slave became so unwell as to require medical aid within three days after the sale. . . the plaintiff . . engaged medical aid while it was yet supposed the disease might be but a cold, gave up his own state-room . . to her, and took the same care . . as if she had been a white person of his family. He took her . . from the landing . . to his plantation, in his wagon; but he made her as comfortable, with mattresses, and otherwise, as possible. . . no proof that she was jolted," "She died eleven days after the sale of . . *augina pictores* [*sic*], . . It was evident, on a post mortem examination . . that the disease was of long standing, . . [368] judgment [for the plaintiff] affirmed . . without prejudice to the defendant's right of action against . . [his] warrantor." [10 *id.* 396] "1852 . . action was instituted . . against the warrantor, . . [397] no evidence to show that Mrs. Tabary was aware of the malady . . The District Judge [fixed] . . the plaintiff's indemnity at . . $300, with interest, from judicial demand." Affirmed.

Williamson v. Norton, 7 La. An. 393, June 1852. Preston, J.: [394] "The slave of the plaintiff, being well dressed and of a genteel deportment, took a cabin passage, on the steamboat . . from New Orleans to the western country, . . His color was a shade lighter than a new saddle, his hair dark, but straight. He sat at the first table . . near the ladies. His appearance did not indicate African extraction, but that of a person born in the South, and exposed to the sun, a Mexican or Spaniard. No person suspected his negro blood, until, near Memphis, the steward expressed his suspicion. An *éclaircissement* was had, and the master of the boat took the responsibility of delivering him to the civil authorities at Memphis as, probably, a runaway slave. He was brought to New Orleans, and sold at auction. . . one of [the passengers] . . says, he had the appearance of a modest unassuming gentleman; another represents him as freely mingling with society. Even after the discovery, many thought the master [of the boat] to blame in acting without more indications of color, or proof. We think he boldly incurred risks, for the benefit of an unknown owner. . . judgment for the defendants [captain, etc.], with costs in both courts."

Succession of Franklin, 7 La. An. 395, June 1852. [422] "For a quarter of a century, Franklin was known in this city and State as a trader in slaves, and laid the foundation of his vast fortune in this State by that business." [409] "Franklin was born in [Tennessee] . . after he became of age . . he . . engaged in business, spending the summer months in the district of Columbia, and the remainder of the year in New Orleans and Natchez. He soon became wealthy, purchased the Fairview estate . . and erected . . the finest country residence in Tennessee. . . here he had . . picked servants," [409] "one hundred and thirty slaves," Let-

ter of Franklin, January 1846, "in which, after attending to the misconduct of his slaves on the Fairview plantation, he says: 'I will be compelled to break up that whole establishment, if I do not change my mind. I will take the greater part of the hands off next fall, and put them on some of my lands in Louisiana; they give me more trouble than all my other property.'" He died in April 1846. [422] "In . . 1847, the state of Tennessee incorporated the literary institution founded by Franklin . . under the name of 'Isaac Franklin Institute,' and gave it full powers to receive . . the bequest for the purposes prescribed by the will."

Badillo v. Tio, 7 La. An. 487, June 1852. Held: [489] "the charge of $100, paid for the mourning dresses given to the slaves . . should not have been opposed."

Sherrod v. Calleghan, 9 La. An. 510, June 1852. [511] "In 1847, the parties moved with the slaves [from Alabama] to . . Texas, . . Shortly after . . [the husband] clandestinely left . . took the slaves . . and . . sold them" in Louisiana.

Winfield v. Little, 7 La. An. 536, September 1852. "The plaintiff seeks to recover . . the price of a female slave, who died about nine months after he had purchased her . . affected with pulmonary consumption, . . The plaintiff has stated that he became aware of the nature of her disease three weeks after the sale, and yet no physician was sent for until the day which preceded her death. Under the settled jurisprudence of this court, this omission would be sufficient to defeat the plaintiff's action, even if the existence of the disease, at the time of sale, had been shown, which is not the case." [Rost, J.]

Beebe v. Robbins, 8 La. An. 470, September 1852. "Before the day of sale, Debaume caused the slaves to be run off [from Arkansas] to Louisiana."

Baker (f. m. c.) v. Tabor, 7 La. An. 556, October 1852. Rost, J.: "The defendant excepted to the action . . on the ground, that the plaintiff was born a slave; . . has never been emancipated in conformity with the laws . . without capacity to stand in judgment. . . sustained in the court below, . . We are . . under the painful necessity of affirming the judgment." "Although the plaintiff's master may have lost his right of dominion . . by receiving from him . . money for his emancipation, and by permitting him to enjoy his liberty for more than ten years, the act of emancipation . . according to the forms of law, can alone give him the *status* of a free man, which he must have before he can prosecute a claim, such as this, in a court . . Before emancipation, he can only appear in court to claim his freedom. . . We deem it our duty to state, the cause of the plaintiff appears . . just . . and, that he is not without a remedy. His master may claim . . the benefit of the contract . . and the damages resulting from the breach of it by the defendant, and he will, no doubt, deem it his duty . . The right of the master to claim the services of his slaves may cease, but his duty to protect them, terminates only with their

life. Even after emancipation, he is bound, not only to protect, but also to maintain them, when they are no longer able to maintain themselves. . . judgment . . affirmed, . . without prejudice to a future action."

Temple v. Smith, 7 La. An. 562, October 1852. [564] " The petition alleges . . that the defendant enticed, harbored, and carried away a slave . . and claims damages to the amount of the value . . When the negro was apprehended . . by the officers of a steamboat . . a paper purporting to be a pass, signed Moses Smith, . . was produced by him."

Succession of Pipkin, 7 La. An. 617, November 1852. " Pipkin, who was the owner . . of slaves, valued . . at near thirty thousand dollars, died . . in . . 1850, . . ' It is my will . . that my slave Julia Ann Crenshaw, and her child . . have their freedom, . . I beg my wife and daughter . . to offer no impediment . . and I beseech my wife and daughter . . to let them have their liberty . . and grant this, my last will and request.' . . He directs, that his slaves shall be hired out for two years, . . the deceased, for a number of years previous to his death, lived in New Orleans, and his wife and daughter, in Virginia; . . his business . . was the hiring of his slaves as laborers, on the levee, in loading and discharging vessels "

Carmelite (a slave) v. Lacaze, 7 La. An. 629, November 1852. " This suit was commenced for the purpose of effecting the emancipation of the plaintiff, . . sold . . to Lacaze " in 1844 for $800 by a free woman of color, Françoise E. Denbrere. " Lacaze bound himself to emancipate her after seven years service . . to reward the faithful services . . [630] received from the slave who had nursed one of her children; . . Lacaze . . alleged, that he could not comply with the condition of emancipating her, in consequence of her having been guilty of such offences as prevented [1] . . true." [629] " judgment . . dismissing the plaintiff's petition . . no appeal . . taken. On this suit was engrafted another . . Françoise . . [630] prays that, inasmuch as Lacaze cannot emancipate the slave, she be restored . . and that judgment be rendered against Lacaze for her wages. The district judge decreed the delivery of the slave to the intervening petitioner, and allowed her wages from the date of the decree, at $25 per month."

Judgment reversed, " and judgment rendered for defendant, with costs in both courts, without prejudice." " the misconduct of the slave, which was the obstacle to emancipation, was the necessary result of the vile and profligate employment and associations to which Lacaze subjected her, and it is strongly pressed upon us, that we cannot permit a man to falsify his title by his own infamy. It is matter of regret that we are not permitted to act upon this suggestion, and to visit upon the party the consequences of his iniquity. But the question before us [now] is one exclusively of property, and must be determined according to the rules of law. . . the present action cannot be sustained." [Eustis, C. J.]

[1] C. C. 185. " No one can emancipate his slave, unless the slave . . has behaved well at least for four years preceding."

Sarah Haynes, alias Mielkie, v. Forno, 8 La. An. 35, January 1853. [36] "Mielkie, whose domicil and residence were in Vicksburg, . . died there in . . 1846. . . the plaintiff, . . the slave of Mielkie, left his service in April, 1843, for Cincinnati . . under the following permit: 'My negro woman, Sarah Haynes, about thirty . . has permission to pass unmolested to Cincinnati and the State of Ohio generally, or any other free State she may choose. [Signed] Edward C. Mielkie.' Her passage was provided for by her master, and she was sent . . for the purpose of being made free. . . she remained . . several days . . and came to New Orleans in the same spring. . . has remained here since, with this exception, that in 1844 or 1845, she went to Vicksburg. We infer that she remained there but a short time."

Judgment of the district court in favor of the defendant, guardian of Mielkie's child, affirmed: "As the plaintiff has violated the law by coming into and remaining in this State,[1] . . she cannot be considered as having acquired any rights dependent on . . residence here. . . Her status must be determined according to the laws of the domicil of her master.[2] . . On the principles recognized . . in Liza *v.* Puissant,[3] . . the plaintiff would not be considered as having acquired her freedom by her presence in Cincinnati." [Eustis, C. J.]

State v. Geze, 8 La. An. 52, February 1853. "prosecution . . for unlawfully selling . . intoxicating liquors to a slave, without the consent . . of his master[4] . . counsel for the defendant moved the Court to instruct the Jury, if they should be of opinion, from the testimony . . that the owner . . sent the slave to buy . . for the purpose of entrapping . . the material ingredient of the offence would be wanting, . . refused" "The defendant was . . found guilty . . and condemned . . to a fine of five hundred dollars, with the costs of prosecution, and imprisonment for thirty days, unless the fine and costs were paid." Judgment reversed and a new trial awarded.

Lucy Brown (f. w. c.) v. Smith, 8 La. An. 59, February 1853. Eustis, C. J.: "the plaintiff . . was born a slave, and in . . 1823, belonged to Elijah Mix . . in the District of Columbia; . . [60] An instrument of writing was produced at the trial, . . acknowledged before the Mayor of Georgetown, . . May, 1823. It purports to be an indenture of apprenticeship of Lucy Brown, in favor of Elijah Mix, . . as his servant . . until she shall attain . . twenty-one years. It is signed with the mark of Lucy Brown and her father . . and Elijah Mix. . . witnessed by . . an officer in the Army . . an act of emancipation of Mr. Mix, in her favor, dated in 1823 ['entrusted [by the plaintiff] to a gentleman of the bar of this city' in 1849] . . has been lost. . . these instruments . . point to the conclusion that the plaintiff was to have her liberty so far as the intention of her master could give it . . and are explained by the fact of his projected removal . . to New York. She could not remain in servi-

[1] Rev. St. 285.
[2] See Hinds *v.* Brazealle, p. 286, *supra.*
[3] P. 622, *supra.*
[4] Act of 1832. Rev. St. 555.

tude for more than nine months after her arrival . . and the purpose of the indenture was to secure her services until she was twenty-one. She was, at the time, fifteen," [59] " in 1825, he removed back to Georgetown, and in 1829, . . back to New York, . . she was . . in 1832, in the service of Capt. Wells . . in this city, as a slave, who sold. her to . . Taylor, from whom General Smith, her present owner, purchased her. . . [62] Mr. Mix resided in New Orleans from 1838 till his death, . . the judgment in favor of the plaintiff must be maintained."

Audige (f. w. c.) v. Gaillard (f. m. c.), 8 La. An. 71, February 1853. " The servant of the defendant, a boy about fourteen . . had gone into the yard of the plaintiff, at the request of the plaintiff's servant, and picked up from the ground where it lay [' for months '], what . . seemed a walking cane, . . it went off and killed the plaintiff's slave." Held: " her negligence . . is sufficient to prevent her recovery."

Simon and Brother v. Burnett, 8 La. An. 84, March 1853. Rost, J.: " Weil . . took charge of the slave . . for the plaintiffs, on the day they purchased her . . two days after the sale she was sick and unable to work; . . After ten or twelve days . . she was sent to the plaintiffs, in this city, and placed . . under the care of a skilful physician . . until she died. . . the disease was of long standing; . . incurable . . the defendant, besides refunding the price of $650, must re-imburse the expenses incurred during the prolonged illness, which we assess at $100. . . pay costs in both Courts."

Adams v. Routh, 8 La. An. 121, April 1853. The plaintiff " is the forced heir of the one undivided fourth of his son's estate, . . the testator had lived in open concubinage with . . Nancy . . valued in the inventory at $1000, and the property . . without including her, at $4750." " Judgment . . declares void the provision in the will . . emancipating . . Nancy, and bequeathing her . . money, the watch and furniture . . The plaintiff . . has prayed that the judgment be amended in his favor, by setting aside two legacies of $1000 each to two bastard children of the testator, which the District Court has allowed, on the ground, that the legatees had not been legally emancipated, and if they had been, that the acknowledgment of the father in the will is insufficient to give them capacity to take the legacy."

Held: I. " The right . . to oppose the emancipation of . . Nancy is undeniable. . . under . . [C.C.] Article 1468, . . [the testator] could only give her movables equal in value to one tenth . . of his estate. Admitting that the emancipating . . should, in favor of liberty, be considered . . as a donation to the slave of his own value, yet that value must not exceed the disposable portion. . . The disposition is . . excessive, as it cannot be reduced, . . properly set . . aside. . . [II.] as after . . [plaintiff] has received his share sufficient assets will remain to pay the legacy of $1000 to each of the children, he has no interest or standing in Court to contest " [Rost, J.]

Succession of Cresswell, 8 La. An. 122, April 1853. Elihu Cresswell's will, 1848: " I . . will the freedom of my man servant Gabriel . .

acquired by inheritance . . and . . fifty dollars to him for long and faithful services, that he may acquire his freedom in the slave States, or be sent to the free United States of America, as he may desire. . . I . . will . . the freedom of all slaves that . . belong to me . . and that the slaves shall be sent to one of the free States . . and there liberated: and . . registered in the Court as free . . expense of such removal to be paid . . out of any . . assets . . and in case there is no assets, that the slaves shall work at wages until a sufficiency is obtained . . My executors shall appoint some trustworthy man to attend the removal" "claim, made in behalf of the slaves . . for the wages earned . . since his death, . . waived."

Cecile (f. w. c.) v. Lacoste, 8. La. An. 142, April 1853. [144] "will . . of . . widow Simon Porche [dated 1846]. . . 'I give . . in consideration of her good and faithful services, to the free *griffe* woman Cecile, three arpents front of my land . . with the whole depth, to be enjoyed by her during her life in usufruct, . . after her death, to belong to her children.' . . the plaintiff had eight children living" [7 La. An. 53] "The testatrix . . gave their liberty to certain slaves," Held: [144] "The succession is rich, and . . the plaintiff is not bound to discharge the debts for which the property bequeathed is mortgaged."

State v. Executors of McDonogh, 8 La. An. 171, April 1853. Will, executed in 1838: [174] "I, John McDonogh, a native . . of Baltimore, . . now an inhabitant of the Town of MacDonogh in . . Louisiana, . . do make this, my Olographic Will, . . I have never been married, . . I . . bequeath, their freedom, (as a reward for their long and faithful services,) to my [ten] old servants, Gabriel [*et al.*] . . I direct my executors, . . immediately after my death, to correspond with the American Colonization Society, at . . Washington, . . for the purpose of ascertaining, when said Society, intends sending a vessel to Liberia . . with emigrants, from New Orleans, and by the first vessel . . to send all the rest . . of my black people, . . (with the exception of the black man Philip [*et al.*] . . all of whom I have lately purchased, as it is my will, that they . . [175] with any other black, or colored people, whom I may acquire . . subsequent to the date of this . . Will, . . shall serve those, (by being hired out . . or kept employed on my plantations, . .) to whom I have . . willed the . . residue . . of my Estate . . fifteen years from . . my death; when . . my Executors . . will deliver [them] . . up to the American Colonization Society . . to be also sent to Liberia, . .) And to pay a proportionate part of the Charter of . . Vessel . . furnishing them with provisions, stores, medicines, etc., . . for the Voyage.—I also direct my Executors . . to . . expend for the use of those, my people, who are to go immediately after my death, . . *One thousand dollars* in such Articles as ploughs, hoes, spades, axes, nails, common locks, hinges, clothing, garden and other seeds, etc., . . and divide . . among them in equal proportions, and see them put on board . . My Executors will also . . give letters of recommendation to those my people, directed to the inhabitants of that Colony, setting forth . . the morality of their lives, . . and purchase and place in the hands of each . . at the moment of sailing

. . the Old and New Testament, as the most precious of all the gifts we have it in our power to give . . I Give . . all the rest . . (subject to the payment of . . several annuities . . hereinafter directed . .) Unto the Mayor, Aldermen and inhabitants of New Orleans, . . and the Mayor, Aldermen and inhabitants of Baltimore and their Successors, (. . one-half to each, of said Cities . .) . . for the establishment and support of Free Schools . . wherein the poor, (and the poor only) of both sexes of all Classes and Castes of Color, shall have admittance, free of expense . . provided . . that the Holy Bible . . shall be . . forever made use of . . as one, (and the principal one) of the reading or class books, . . [176] annuities . . Firstly, I give . . to the American Colonization Society . . an Annuity for . . Forty Years . . of the one eighth part . . of the net yearly revenue of rents of the whole of the Estate [1] . . but [it] shall not entitle the . . Society . . to receive . . in any one year [more than $25,000] . . Trusting . . that the inhabitants of this free and happy land . . from Maine to Louisiana, will sustain this institution, (one of the greatest glories of our country,) . . Secondly, I give . . to the Mayor, Aldermen and inhabitants, . . of New Orleans . . and their successors . . for the . . purpose of establishing an *Asylum* for the *poor,* of both Sexes and of all ages, and castes of Color, . . [177] an annuity of the one eighth part, . . until . . [it] shall amount, to [$600,000.] . . [178] Fourthly, I give . . to the Mayor, Aldermen, and Inhabitants of . . Baltimore . . and their successors, . . for the . . purpose of establishing a *School Farm,* . . for . . the *Poorest* of the *poor,* male children . . of Maryland . . and . . of *all* the great maritime Cities of the United States . . [179] of all castes of color, . . An annuity of the One Eighth part . . until . . [it] shall amount to . . *Three Millions of Dollars*; . . [182] the . . Commissioners . . of my General Estate . . are . . Authorized by me, (if they should see fit . . so to do,) at such time, as the Fifteen years, are near expiring, during which the Slaves are to labor for my General Estate, . . to take the nett amount of two or three crops . . and purchase therewith, an equal number of Slaves, (if there are still Slaves in our Country for sale.) . . which Slaves . . shall labor . . for fifteen years . . and . . be also in their turn, sent to Africa; and their number may be again renewed . . and so on, . . [185] in case there should be a Lapse of both the Legacies to . . New Orleans . . and Baltimore . . or either of them . . Then, both, or either . . *shall Inure* . . to the State of Louisiana, and . . [186] to the State of Maryland, that the Legislatures of those States, respectively, may carry my intentions . . into effect, . . [188] I nominate [as executors] . . Eight . . of New-Orleans, . . six . . of Baltimore, . . Henry Clay, . . the present President of the American Colonization Society of Washington, . . R. R. Gurly, Secretary" Memoranda of instructions to the executors, undated: [190] "whereas, Mr. Andrew Durnford, a free man of color, is . . indebted to me in a large sum . . by mortgage on his sugar estate, . . I . . request my Executors, (he being a worthy and an honest man, and my friend,) . . to give him time to pay it off, . . And whereas, in my

[1] See New Orleans *v.* Baltimore, p. 661, *infra.*

. . Will . . I did not, in relation to my old servants, . . provide any support, (as I did not wish to . . add to its length,) I . . now add a request . . that should any . . from age or weakness, (as they are now all hearty and strong,) stand in need of support, that fifty cents a week may be paid to such . . [191] and that such be permitted to occupy one of the houses they have been accustomed to live in with me, until their decease. . . [193] Whereas, eight or ten more bricklayers, carpenters, painters, etc., . . will be constantly wanted to . . keep in repair . . I recommend . . to the Commissioners . . to employ Black mechanics, which shall . . be owned by . . General Estate, (so long as there are slaves in the country,) for said purposes, (letting them go out Free to Africa every fifteen years, and replacing them . .) as a means of great economy, . . [203] The slaves mentioned in my . . Will . . to be sent to Africa, are already sent . . [204] I recommend that great care be taken in selecting . . overseers and managers . . pious and christian men, . . That application be made to the Legislature . . for permission to educate the black people . . (a good English education,) as they are to be sent to Africa. . . See that the overseers, every morning and evening, assemble the people in prayer . . have them taught . . (little children and all,) the Ten Commandments, the Lord's prayer, and the Creed, and (if permitted by law,) hold Sunday Schools. . . for . . old and young, and they made to attend it the whole day. Let there be a house erected on each plantation for a Church, . . slaves and cattle . . shall cease work at sundown on Saturday evening and commence again . . at sundown on Sabbath evening. . . Having been the friend of the black and colored man through . . my long life, I will now . . give to them, (the free black and colored man, wherever he may be throughout our . . country,) a parting counsel . . that they separate themselves from the white man. . . and depart to the land of their fathers, . . where they and their posterity . . may be safe—may be happy . . having none to make them afraid." [216] " McDonogh died in . . 1850. . . [222] The will . . was sustained; but the States [1] took an appeal," Affirmed.

Rountree v. Steamboat Co., 8 La. An. 289, May 1853. [290] " the plaintiff had given her consent to the employment of the slave on another steamboat; but . . she was ignorant of his discharge . . as soon as he was discharged, he applied for service on . . defendant's vessel. The officer . . knew who his owner was, and his previous employment . . asked him for no . . authorization " [289] " the boilers . . exploded; . . the slave was badly scalded . . and . . died." " he was worth the amount awarded by the judgment below;" Affirmed.

State v. John Kentuck (a slave), 8 La. An. 308, June 1853. " charged with having . . made . . assault with a knife on . . a white man, . . beating and cutting him," " sentence of death pronounced " Affirmed.

Trahan v. Trahan, 8 La. An. 455, September 1853. " The act [of emancipation] was executed by Michel Trahan jointly with his wife . .

[1] [252] " The heirs at law . . have elected to exercise their legal rights in the Federal Courts," See McDonogh *v.* Murdoch, p. 631, *infra.*

the money of two notes . . each of one hundred dollars." " executor . . sues for the possession of . . Jane, . . The defendant . . claims . . he is entitled to her services . . until her emancipation shall legally take place. Judgment . . in favor of defendant," Affirmed.

State v. Lethe, Biner, Hal, and Chloe (slaves), 9 La. An. 182, March 1854. " a capital prosecution . . before a tribunal, composed of two Justices of the Peace and ten slaveholders, organized under the Act of the 1st June, 1846. After the conviction, a motion was made before the two Justices who presided, for a new trial; . . granted. . . rescinded,"

Reversed: [183] " The Supreme Court, in . . State *v.* Jackson,[1] . . recognized the power of granting . . new trials, as resting in the discretion of the justices who preside over the trials of slaves. . . [Moreover] the conviction . . cannot produce effect until the sentence is signed . . by the Justices . . who presided . . thus recognizing . . a position . . similar to . . Judge in relation to the jury, . . in consequence of the abolition of the office of Parish Judge, by the . . Constitution . . [of] 1845, it became necessary to create a tribunal for the trial of slaves accused of capital crimes, . . In practice under . . old organization,[2] it is believed that motions for new trials were always addressed to the Parish Judge alone." [Buchanan, J.]

Buhler v. McHatton, 9 La. An. 192, March 1854. " a redhibitory action . . to annul the sale of a slave and for the return of the price. The vice alleged is madness. . . further . . the slave . . was, by a verbal contract, warranted a good cook, . . [but] had no acquaintance whatever with cooking. . . [193] witness, states that the slave was a servant for five years . . [in] Kentucky, (which . . [she left] a short time before the purchase by plaintiff,) . . sound in mind and body and considered a very valuable servant." [192] " Dr. Devall . . hired the slave from plaintiff some ten days after the sale and retained her eight months, . . [193] though she acted . . ' oddly ' . . it . . was not noticed for a month or more. That she refused, from religious scruples, to eat or take medicines on Fridays, and later, on Saturdays, saying that God had appeared to her and forbidden it. This, and the fact of her having on one occasion burnt her clothes, . . induced the belief . . that the girl labored under an aberation [*sic*] of mind, which they ascribed to religious enthusiasm and grief at being separated from her children." Judgment for defendant affirmed.

Taylor v. Paterson, 9 La. An. 251, April 1854. " suit for . . three hundred dollars . . for his wages as overseer for the year 1850, . . defence . . that plaintiff . . wantonly and without any just cause shot one of the slaves . . value . . greatly diminished . . verdict in favor of the plaintiff, for . . $231 91, . . wages due for the term that he acted as overseer, . . after deducting . . $55 75, . . allowed defendant for loss of the services of his slave, and for medical care and attention. Judgment

[1] P. 619, *supra.*
[2] Act of 1825. Sess. Acts 206.

. . in conformity . . defendant . . appealed" Reversed and the case remanded [253] " with directions . . not to receive in evidence . . [certain] depositions"

Wooten (f. w. c.) v. Harrison et al., 9 La. An. 234, April 1834. [235] " claim . . upon a note signed by Morris . . 1846, for $2000, payable on demand . . The defendants contended that this note . . was . . a disguised donation . . to the plaintiff . . who had once been his concubine;" Judgment in favor of defendants affirmed. See Nolasco *v.* Lurty, p. 661, *infra.*

Lusk v. Swon, 9 La. An. 367, June 1854. " suit to recover . . the value of a negro hired by the defendant . . and taken to St. Louis as a waiter on a steamboat . . the negro having absconded at St. Louis [[13 *id.* 360] ' and escaped into . . Illinois '] . . the defendant relied on a special plea that the negro . . was free, as . . [he] had discovered after hiring him. . . judgment . . discharging him from all responsibility" See Lusk *v.* Church, p. 663, *infra.*

Stewart v. New Orleans, 9 La. An. 461, June 1854. " 1852, a detachment of police officers, was ordered . . to suppress unlawful assemblages of slaves in cabarets; . . they entered a dram-shop, . . the slave was neither drunk nor disorderly; . . [462] seated by the fire warming himself, and made no resistance;" [461] " attempted to escape, . . in capturing him, wounds [with clubs] were inflicted of which he died." Held: [463] " the municipal government is not liable"

Compton (f. w. c.) v. Compton (f. m. c.), 9 La. An. 499, September 1854. " sues . . for separation of bed and board, on the ground of ill-treatment, by beating . . turning . . out of doors, and neglecting to provide; also . . habitual intemperance. Defendant pleads ' that plaintiff . . has committed acts of adultery ' . . He demands a divorce." Held: " these allegations of adultery are . . too vague to allow the introduction of evidence"

State v. Raymond and José Martinez, 9 La. An. 530, November 1854. " Convicted . . for selling spirituous liquor to a slave . . sentenced to pay a fine of [$350] . . each. Affirmed.

Dowty v. Templeton, 9 La. An. 549, December 1854. " The slave of plaintiff went on board of a steamship moored . . to sell milk to the steward . . and on his return . . fell into the river . . by the slipping of the planks, . . staging, and was drowned." Held: the master or owner of the ship is not liable.

Berret v. Adams, 10 La. An. 77, January 1855. " The plaintiff sues . . upon . . note: ' One year after date . . I promise to pay [$500] . . for a negro boy . . Nelson,' . . subject to fits of insanity previously to the sale, and subsequently . . But . . the purchaser . . served upon a jury of freeholders before whom Nelson was tried, about six months before the sale, upon a capital charge of having assaulted his master with an axe, and bitten him, drawing blood. The defence urged . . by the counsel who

defended the slave, was insanity; . . There was a miss-trial [*sic*]; and subsequently the slave was discharged . . proved by many witnesses, that the price . . was less than one-half of what the negro might have been sold for in cash, had he been of perfectly sound mind." Judgment for plaintiff affirmed.

Roussel v. Phipps, 10 La. An. 119, February 1855. "At a probate sale . . 24th February, 1853, . . Adeline, aged 23 . . and her three children were adjudicated to . . Roussel, for [$1800] . . 1854, Roussel brought an action . . alleging that . . Adeline had died . . of a disease of the lungs, with which she had been affected at the time of the sale; and claiming to have [$800] . . deducted . . The evidence shows that some days, or perhaps some weeks, after the purchase, . . Adeline complained of being sick—her symptoms, shortness of breath and tumors. Her belly also appeared swollen. A physician was called in on the 19th March, . . found her laboring under a pulmonary disease which in his opinion had existed at least six months. . . a cavity in the upper lobe, . . told Mr. Roussel that he thought she was too far gone to do anything . . except . . temporary relief. . . health . . continued declining. She was occasionally employed in cooking and in field work, but was the greater part of the time confined to her bed. On the 16th July . . the physician paid her a second visit, and two more on the 30th and 31st August. She died on the 14th September." Held: "Having failed" "either to [place] . . the slave under continued medical treatment after the first visit . . or [to offer] at once . . to return her . . he must support the loss."

State v. Thompson, 10 La. An. 122, February 1855. "information against . . Thompson, for employing a large number of slaves on his plantation . . without having permanently . . a white person for . . every thirty slaves working thereon, to oversee"[1] Held: [123] "the Act of 21st December, 1814,[1] . . did not create an indictable offence,"

Rider v. Wright and Marshall, 10 La. An. 127, February 1855. "The sale was made . . December, 1851, the vendors being residents of Kentucky. . . [128] The plaintiff declares . . that in a few days . . he discovered that the slave was afflicted with most serious redhibitory vices and defects, both of body and mind." "The main defect . . imbecility of mind." [127] "The boy died . . September, 1852. No offer to return the slave . . the last illness . . was the result of an acute disease and lasted but a few days." Judgment for defendants.

State v. Hannah (a slave), 10 La. An. 131, February 1855. "convicted of the crime of manslaughter [of a slave], by a tribunal composed of two Justices of the Peace and ten freeholders. She was sentenced to imprisonment in the penitentiary at hard labor for life, . . her counsel relies for reversal . . on three bills of exception . . first . . Constitution . . requires . . Judges shall be elected . . The freeholders [however] do not act as judges, but as jurors . . Were it otherwise . . slaves . . have no rights guaranteed to them by the Constitution. The next objection

[1] B. and C. 65.

was taken to the admission . . of the confessions . . [132] to her master's son, under whose charge . . [she] was, during the absence of her master. . . no inducements . . [or] threats . . as it is alike the interest and the duty of the master to protect . . [such] confessions . . ought to have the highest moral weight as evidence. . . last . . the dying declarations . . were admissible. . . judgment . . affirmed," [Ogden, J.]

Lebeau v. Trudeau, 10 La. An. 164, February 1855. Lebeau's will, 1853: "je donne la liberté à mon petit nègre . . il restera sous la surveillance d'Elizabeth Wilson, f. d. c. l.,[1] jusqu'à l'âge de vingt-un ans," Elizabeth Wilson, free woman of color, is made one of his eight residuary legatees. She was [166] " the concubine of the testator,"

Virginie and Celesie (f. p. c.) v. Himel, 10 La. An. 185, March 1855. [186] " In one suit Celesie, a *quateroon* [*sic*], and her children . . and in the other Virginie, a sister of Celesie and her child claim their freedom. Celesie and Virginie were the children of a mulatress slave . . Melite, who belonged to . . Bernard. They were born in . . Louisiana . . In 1835, Bernard left . . with the petitioners and their mother and carried them to . . Ohio. From Ohio . . to . . Missouri, and subsequently they returned . . to . . Louisiana, where Bernard died about . . 1842. . . heirs . . took possession of . . Celesie and Virginie . . Celesie was bought . . by Claivelle, and Virginie by . . Himel. . . The plaintiffs claim their freedom by virtue of an act of emancipation executed by . . Bernard . . 1835, in . . Cincinnati, and acknowledged, first, before the Mayor of that city, and afterwards before the Circuit Court . . of St. Louis . . They also claim . . by virtue of the removal . . to a free State, with the intention of residing there . . and furthermore set up a title . . by prescription."

Held: [188] " the plaintiffs are entitled to their freedom." [187] " The principal difficulty . . arises out of our system of forced heirships. . . the property he left . . including Melite and her children, only amounted to $1368. . . [188] The plaintiffs offered in evidence to prove the property owned . . at the date of the emancipation, and the defendants objected . . To sustain the charge of fraud [toward his heirs], proof was necessary of what property Bernard then owned. . . It is in vain [now] for the defendant's counsel to argue . . that the plaintiffs were bound to establish what property Bernard then had, . . Another ground of defence is, that Melite was the concubine . . and that the emancipation was a gift of so much of his estate, which . . is prohibited . . The law has declared what causes shall be sufficient to render the enfranchisement of a slave null and void,[2] and this is not one of them." [Ogden, J.]

White v. Hill, 10 La. An. 189, March 1855. " at the time of the sale . . the boy's knee was exhibited; . . the plaintiff [vendee] . . examined it; . . swollen, but the injury was thought to be temporary, and was so stated by Dr. Skipwith . . and that it was occasioned by a fall a few days

[1] Femme de coleur libre.
[2] Rev. St. 548.

previous. . . required rest and attention. Instead . . the boy was put to the plough, 'the worst work to which he could have been put.' No attempt to return the slave . . [190] until more than a year . . the slave appears to have been attacked with scrofula, which aggravated the lameness, . . now . . worthless. But the circumstances . . do not require the loss to be thrown on the vendor." [Spofford, J.]

Gentile v. Plasencia, 10 La. An. 203, March 1855. "Plasencia by his . . will emancipated certain slaves, to whom he also bequeathed a legacy . . 'Je donne . . à . . mulâtresse agee d'environ six ans, enfant de Louise, émancipée par acte . . ainsi qu' à chacun des [3] enfans [*sic*] sus-nommés, . . cinq cent piastres, . . Je prie mes . . fils . . de se charger de l'execution' . . [204] Judgment . . maintaining the will; declaring the legatees to be *statu liberi*; ordering . . executor to retain [$2000] . . to be used for the purposes expressed . . and to take the necessary steps to procure the freedom of the legatees," Held: the attorney's fee of the contesting heirs "cannot be paid out of the . . $2,000,"

Robertson v. Wallis, 10 La. An. 214, March 1855. "The negroes were sold as a family, consisting of the mother and her three children . . at auction . . for . . $1376, . . the mother and the oldest child, about eight . . had been . . injured by burns on the body . . The fact . . was made known at the sale, but it was stated that they had recovered, . . As to the boy . . and the infant, it is not shown that they died of any disease which existed at the time of the sale"

Held: [215] "a deduction of [$300] . . would be a sufficient allowance for the diminution in value of the other two" [214] "the purchaser could not judge by a superficial examination whether the injury was a serious one. . . we are satisfied that the injury . . very materially impaired their value."

Hardesty v. Sukey Wormley, 10 La. An. 239, April 1855. "The heirs of . . Hardesty seek to reduce Sukey Wormley to slavery, and to deprive her of all her property, upon the alleged grounds that she was the public concubine of Hardesty, that her enfranchisement and the sale to her of her daughter and grandchildren are disguised donations . . and that . . her acquisitions belonged to his heirs. . . verdicts in favor of Sukey, and a new trial was refused,"

Affirmed: "a non-suit . . would involve a monstrous injustice, . . The evidence . . does not prove [concubinage.] . . But suppose there was . . the woman would still be entitled to judgment. As far back as 1834, Hardesty presented to the Police Jury . . petitions in which he prayed leave to enfranchise Sukey and her child . . declaring that when he bought them, Sukey had advanced about half of the money, and, besides paying [him] her wages, had also paid the balance . . [240] that the price was reduced by . . the vendor, in consideration of the long and faithful services . . to himself and his deceased father, and the promise of Hardesty to emancipate her and her child as soon as she should refund . . decree of emancipation. . . by the indulgence of her former owner, she had amassed a considerable *peculium*; . . by unusual industry, econ-

omy, and good character, she afterwards made a great deal of money, laboring day and night for the purpose of purchasing her offspring; . . even if concubinage were proved, there is nothing in the fact that the master had degraded himself by debauching the slave under his dominion, which could discharge him . . from the fulfilment of his promise of emancipation . . This suit is a cruel experiment upon the liberty and hard earnings of an humble and deserving woman," [Slidell, C. J.]

Stoppenhagen v. Verdelet, 10 La. An. 263, April 1855. Buchanan, J.: " The plaintiff purchased at auction . . July . . a slave man . . The bill of sale was not passed until . . August . . in his possession on trial for a week or two previous to the sale. . . 13th December . . sent to Dr. Stone's Hospital. . . [264] known to be ailing for some time previous . . But no attention was paid . . until . . he was compelled to . . take to his bed," [263] " He died . . on the 26th . . Dr. McIlhenny . . says ' he was afflicted with urinary abscess, with mortification of the tissues of the perineum and surrounding parts. . . produced by stricture of the urethra, which must have existed for several months ' . . easily cured, if taken in time. . . [264] judgment for the defendant, with costs in both courts."

Fellowes and Co. v. Young, 10 La. An. 267, April 1855. " suit upon a . . note. The defence is . . that the note was given for . . a slave, who was affected with a redhibitory malady, . . sale of the slave . . 2d January, 1852. . . sick two days after . . but no physician . . called . . until . . April . . was found . . to be affected with scrofulous ulcers. . . continued to increase in number until the slave took a diarrhoea, and wasted away until he died [in September]."

Decreed, " that plaintiffs recover [$690] . . with eight per cent. . . interest from January 2d, 1852, until paid, and costs in both courts." " The neglect of defendant to call in medical advice for so long a time . . constitutes, under the established jurisprudence of this court, a bar to his action of redhibition. Neither is there any proof that any tender was made of the slave to the vendor " [Buchanan, J.]

Bloodgood v. Wilson, 10 La. An. 302, April 1855. [303] " The slave was purchased . . 2d June . . then examined by a physician called . . by the plaintiff [vendee], and pronounced . . sound. . . 11th June . . examined by another physician, with a view to effecting a life insurance . . after auscultating her lungs, pronounced them diseased, and advised that the application be withdrawn. . . She was set to work in the reeling-room of a cotton factory, . . does not appear to have complained or to have labored under any suffering while . . at work " " no physician . . called . . until . . August. . . The same physician who reported her unsound to the insurance company, attended her in her last illness, and testifies that she died [in October] of *phthisis pulmonalis,* . . No post mortem examination " Held: the vendor is not liable.

Dupré v. Executor of Boulard (f. w. c.), 10 La. An. 411, May 1855. Spofford, J.: " We prefer to pass the details of this record in silence. . . [412] they illustrate the wisdom of [C.C. 95] . . which strikes with

nullity the marriage of a free white person with a person of color. . . Whatever validity might be attached in France to the singular marriage contract, and subsequent unnatural alliance there celebrated . . the Courts of Louisiana cannot give effect to these acts,"

Young (f. m. c.) v. Egan, 10 La. An. 415, June 1855. [416] " Francis Gay . . of Alabama, made his will on the 22d November, 1850, . . probated on the 2d December, . . ' I give . . Albert, to my friend . . Charpentier, (barber in Mobile,) . . to hold in his own right. Hereby requesting him, . . however, as soon as he can with convenience, to have [him] . . taken to some State or country, where slavery . . is not known, there to be . . free . . I . . bequeath unto [him $100] . . for the purpose ' . . names . . Charpentier his universal heir and executor. . . Charpentier sold the slave . . to McRae, Coffman, and Co., at New Orleans, . . April, 1851; and he passed by several mesne conveyances, into the hands of . . Egan, whom he has sued . . for his freedom . . and also for [$500] . . damages for illegal detention." The district court adjudged him free.

[418] " decreed, that the judgment . . be reversed, and that there be judgment for defendant and warrantors, with costs in both Courts." [417] " The law of Alabama prohibits emancipation . . by last will. . . The trust, if voluntarily executed, has nothing illegal in it; . . [418] It does not seem to be carrying out the intentions of this will, to set the plaintiff free in Louisiana," [Buchanan, J.]

State v. Dick (a slave), 10 La. An. 461, June 1855. " A jury, organized under the Act of June 1st, 1846, to try . . Dick, accused of a felonious assault upon a white woman, found . . verdict: ' Guilty, without capital punishment; to be sentenced to perpetual imprisonment.' Whereupon the presiding Justice sentenced the accused ' to be . . lodged in the State Penitentiary for life.' " Affirmed.

Lewis v. Peets, 10 La. An. 489, July 1855. [490] " The plaintiff remarked . . that he did not care about the negro running away; that if he did . . he had dogs to catch him," He paid $737.50 for him. The slave " died while a runaway;" Judgment for defendant affirmed.

Kemp v. Hutchinson, 10 La. An. 494, July 1855. " plaintiff was overseer on defendant's plantation from May to November, 1853; . . September, plaintiff caused defendant's slave to be whipped twice on the same day, on suspicion of having committed a theft, and threatened her with further chastisement, unless she produced the stolen articles; . . she denied the theft, but said she would try and find the articles; went to the river, into which she threw herself, and was drowned. Immediately . . plaintiff wrote to the defendant . . Defendant appears to have answered . . expressing dissatisfaction " About six weeks later, he gave the note sued on [495] " which was a settlement of account," [494] " Defendant reconvenes, claiming damages . . for the value of . . [the] slave . . who had drowned herself, as the answer alleges, ' to avoid the plaintiff and his excessive cruelty.' . . [495] The verdict and judgment [for the plaintiff] are silent as to the reconventional demand;"

" Judgment . . amended, by dismissing the reconventional demand;" " were there not . . implied waiver . . we should hesitate much before making plaintiff responsible for the suicide . . positive proof that the death was not the physical result of ill treatment, . . the owner . . or his delegate, is only . . responsible for the immediate and necessary consequences of his acts." [Buchanan, J.]

Kennedy v. Mason, 10 La. An. 519, July 1855. C. Voorhies, J.: [520] " The slave Jim Crack had runaway and been absent some time . . captured and brought back . . January, 1852, about seven in the evening, the weather being extremely cold. He was shortly afterwards stripped of his clothes, tied down with his belly to the cold ground, and beaten with a hand-saw and whip; . . at least an hour and a half, during which the beating continued with short intermissions. . . then rubbed with a mixture called No. 6, and . . castor oil was administered . . Mr. Butler, whose testimony stands unimpeached, says: ' I saw the boy standing up with a negro on each side, holding him up; when they turned him loose, he staggered and fell. . . helped him up,' . . conducted to his cabin, and about four hours later, found dead in his bed. Dr. Roane, who made a post mortem examination . . says; . . ' That amount of whipping under ordinary circumstances, would not produce death. I thought it imprudent to whip the boy at that time . . more likely that death was caused by a congestive chill, than by the whipping; but more likely . . by a combination of all the circumstances.' . . [521] Had the plaintiff taken proper care of him after he retired to his cabin, he might have averted the unfortunate consequence: but he did not. This was gross negligence . . Conceding to the plaintiff the fair reputation which he seems to enjoy as a good and humane overseer, and the approbation of the defendant during the long period he was employed by her . . yet, we think in this instance, he permitted his passions to mislead him . . The punishment . . notwithstanding the opinion of some . . witnesses to the contrary, was excessive and cruel; . . plaintiff is liable to the defendant for the value of the slave . . as provided for in the reservation [1] made between him and the defendant in their settlement."

Talbert v. Stone, 10 La. An. 537, July 1855. [538] " wages as overseer . . for the year 1847, under a special contract, . . ' to receive . . one-fifth of the corn, fodder and crop of cotton made . . during said period.' "

Matilda (f. w. c.) v. Autrey et ux., 10 La. An. 555, July 1855. Spofford, J.: " The plaintiff alleges that she is a free woman of color . . the defendants . . plead the prescription of fifteen years' possession as owners. . . [556] She belonged originally to Richard Baker of Kentucky. By his last will, admitted to probate . . in 1826, he bequeathed her to his wife . . for . . life, and at her death, ' to be free . . as if she were free born.' . . Shortly after . . [his] death . . Mrs. Baker removed . . to

[1] " When he was discharged . . he . . asked for . . the payment of the amount due him." [520] " Sharp, agent for the estate . . refused to pay the balance, $600, until it shall be ascertained judicially, whether the death . . was caused by any improper treatment . . [by] Kennedy."

Alabama, with Matilda, . . then a *statu libera,*" " dying request of [Mrs. Baker in 1835 that defendants] . . would take charge of her until she was eighteen . . and then take her back to Kentucky to be free, . . The conduct of the defendants in hurrying [her] away . . from Alabama immediately . . and detaining her for so many years in Louisiana in violation of the trust . . indicates a desire . . to avoid the tribunals of those states. . . [557] the burden was upon them to show . . some legal obstacle to . . freedom. This they have failed to do. . . error in allowing the plaintiff . . $1000, for services . . judgment proper . . was one, not for damages, but for 'wages,' and, under the pleadings and evidence the prescription of one year, seems to apply . . reduce . . to $100."

Murphy v. Cook, 10 La. An. 572, July 1855. " I, Sarah Murphy, . . of Alabama, . . for [$600] . . sell . . to . . Cook . . Cotta, and her two children, . . under . . condition that, after the death of . . Cook, . . negroes shall revert to Duncan W. Murphy . . but should . . Duncan . . die [first] . . Cook shall . . appoint . . any other person . . to take charge . . and should . . Cook desire it at his death, and it should become practicable, their freedom shall be obtained. . . 1848." " The slaves . . were brought [by Cook] in . . 1849 to Louisiana. Cook died in possession "

Buie v. Doyal, 10 La. An. 575, July 1855. [576] " Received [$1100] . . for . . a man . . about 28 . . and . . his wife . , about 19 or 20 . . The right and title . . I warrant . . and furthermore, I warrant the said negroes to be sound both in body and mind to the best of my knowledge . . April 1834." The sale took place in Natchez.

McCall v. White, 10 La. An. 577, July 1855. [578] "1836 . . removed [from Mississippi] into Louisiana, with his slaves,"

O'Hara v. Conrad, 10 La. An. 638, September 1855. " William Weeks, by act before the parish Judge . . 1817, gave to his son David [$16,000] . . as an . . extra portion in his inheritance, being the disposable portion . . On the same day . . David executed his bond . . for [$16,000] . . payable in four installments . . 1829, 1831, 1833 and 1836, . . And the obligees . . promised to pay the interest annually for the boarding, clothing and schooling of . . [four] free persons of color [639] 'the offspring of . . [William Week's] illicit connexion with his slave']. and the installments of the principal to [them] . . severally, at . . maturity." Held: the notes were void. C.C. 1478.

Leonora (f. w. c.) v. Scott, Executor, 10 La. An. 651, September 1855 " the testator, died . . 1847, and his succession . . was inventoried at . . $62,725 28." " After acknowledging in his will that Joseph Douglas and Charles Dudley are his natural children by the plaintiff, a mulattress, and providing that the manumission of mother and children should be perfected . . 'I . . give to . . Leonora an annuity of [$150] . . a year during . . life, . . I give . . Joseph [$3,000] . . and . . Charles [$2,000] . . to be paid to them respectively on their attaining . . twenty-one years. . . further . . as soon as they shall be old enough to be separated from

their mother, my executors shall send them to some State . . where slavery is not tolerated, to be instructed in reading, writing and arithmetic, and in some mechanical art or trade. . . further . . that interest at . . 8 per cent. . . on the said sums . . from . . my death, shall be appropriated for the maintenance and instruction . . to be equally divided between [them.]' . . The emancipation . . was effected, . . Joseph . . died [in 1849]; the plaintiff is tutrix of . . Charles" Held: [652] "The gift [to Joseph] is absolute;" Leonora, his heir, is entitled to the interest also.

Overton v. Simon, 10 La. An. 685, September 1855. "the defendant avers that the plaintiff was employed by his overseer . . to superintend the moulding and burning [of bricks] . . on his plantation . . 20 slaves . . were employed"

Semeré v. Semeré (f. m. c.), 10 La. An. 704, September 1855. "suit . . instituted by Julien Semeré, as universal legatee . . to annul an authentic act of sale . . The plaintiff annexes . . interrogatories . . 1st. Was the sale to you of . . Joseph, by Miss Marie Marthe Semeré . . 1849, a sale by which Miss Semeré intended to transfer . . any title . . [705] 4th. Was not the sale . . made for the sole object that the proceedings for his emancipation should be conducted in your name? . . The petition expressly negatives any fraudulent intent" [12 *id.* 681] "Defendant says . . 'Marie Marthe Sémère [*sic*], passed a sale of . . Joseph . . for the purpose of having him emancipated. As I could not succeed to do so, I went to Miss Sémère (about a year before her death) to give her back the slave, she abandoned the slave to me.' . . 'I did not pay any price' . . [682] 'When I went . . to tender . . Joseph, . . [he] was not with me, he being runaway' . . 'the slave went over to Julien Sémère, who, when requested by me to deliver [him] back . . refused' . . In December [1849] . . the testatrix made her [nuncupative] will . . by which she made provision for the emancipation of five other . . slaves, but she took no notice of [Joseph.] . . [683] during the lifetime of the testatrix, the defendant applied to the proper authority for the emancipation of the slave, but, owing to his bad conduct, in vain, . . proceedings . . are still pending [in August 1856] . . but are opposed by sundry planters"

Held: "we believe her intention is more likely to be carried out, by leaving the title to the slave, where she placed it, and with a person who has shown a disposition to perform the trust . . than . . with the plaintiff who does not appear to have such object in view." [Merrick, C. J.]

Barry v. Kimball et al., 10 La. An. 787, December 1855. "action for the value of a slave . . taken on board a steamboat . . lost [by drowning.] . . [788] The defendants answered that the slave . . with the . . consent of . . plaintiff, hired himself as fireman . . for a voyage up Red River and back," [12 *id.* 372] "The plaintiff relies entirely on the rigorous provisions of the Act of 1840 . . We have . . the testimony of two competent witnesses, and corroborating circumstances, establishing . . facts . . irreconcilable with the hypothesis that the defendants carried

[him] away . . without his master's consent . . judgment for the defendants," [Spofford, J.]

Succession of Fletcher (f. m. c.), 11 La. An. 59, January 1856. "Fletcher . . died in New Orleans, leaving a succession inventoried at about $10,000. . . [60] in an act of manumission passed before a notary and two witnesses, [he] described Marie Louise . . as his 'natural daughter slave.' . . both the executor and the State . . were permitted to show that . . she must have been the offspring of an adulterous connection." Held: [62] "the succession will belong to the State." C.C. 222, 914. See same, p. 660, *infra.*

Peyton v. Richards, 11 La. An. 62, January 1856. [63] "Richards made . . special contract with . . Thompson ['to put up the iron front'] . . no control . . over Thompson." [62] "The plaintiff's slave . . walking along the sidewalk . . was killed by the falling of . . columns" Held: Richards is not liable.

Manette and Virginie Duplessis (f. w. c.) v. Young (f. w. c.), 11 La. An. 120, February 1856. "The defendant, widow of . . Duplessis, a free colored man, was put in possession of his estate by order of court. Five years afterwards the . . natural sisters . . brought this suit," Held: "the defendant is entitled to this inheritance."

Griffing v. Routh, 11 La. An. 135, February 1855. "The defendant was absent at the north. One of his slaves ran away. A runaway was . . lurking about the premises. The . . overseer, supposing him to be the runaway slave of the defendant, sent the driver with another of the hands to the fodder-house, with orders to capture him. They found . . [136] fugitive . . concealed under the fodder. With a view to frighten or force him out, one . . began thrusting a broadsword (used for pruning hedges) down into the fodder. . . wounded him so severely that he died in a few hours, notwithstanding surgical aid was procured as soon as possible. It turned out that he was the slave of the plaintiff. . . verdict in favor of the plaintiff for the value . . $1200,"

Judgment thereon affirmed: "The master is liable for the damage done by their inexcusable negligence and barbarity, to the extent of being compelled to pay . . or to abandon his own guilty slaves to the person injured." C.C. 180, 181, 2300.

Hunter, Murphy, and Talbot v. Insurance Co., 11 La. An. 139, February 1856. "The plaintiffs shipped . . from Richmond to New Orleans, fourteen slaves, . . insured to the extent of $70 75 . . 'solely against loss by drowning in consequence of the stranding or shipwreck . . the assurers being warranted against all other risks, and especially against mutiny, elopement, natural death, and the interference of foreign governments on these subjects.' The vessel . . stranded near Abaco, and to save the crew and the remainder of the cargo, including the slaves, a jettison of a portion of the cargo became necessary. The plaintiffs . . seek to recover . . [what] they were obliged to pay as their apportionment of a general average contribution." Judgment for plaintiffs affirmed.

Hill v. White, 11 La. An. 170, March 1856. "The plaintiff, residing in Nashville, . . through her agents consigned to the defendant, a dealer in slaves in New Orleans, a bright mulatto boy . . [171] The plaintiff had owned [him] but about a month . . [Her] agent, who accompanied [him] . . as far as Vicksburg, . . was in constant apprehension that the boy would run away . . kept the most scrupulous watch . . when he left the boat at Vicksburg, . . he pretended to have hired him . . as a cabin-boy, and the deceit was carried out until he was landed at the slave mart. . . nothing of this was communicated to the defendant. . . a letter was placed in his hands . . authorizing him to sell, with full warranty, representing the boy as honest, humble and obedient; . . raised on a plantation, being a good ploughman, etc." [170] "After the arrival of the boy . . he informed the defendant that he had forgotten his clothes . . He asked leave to go to the boat for them, and the defendant sent him, accompanied by one of his own slaves . . whom he kept for such purposes, and whose fidelity is not brought in question. The plaintiff's boy went on board, and thence made his escape." Judgment for the defendant, with costs in both courts.

State v. Bob (a slave), 11 La. An. 192, March 1856. " a Jury empannelled under the law for the trial of slaves . . [193] found the prisoner guilty, (of administering poison,)" [192] "sentenced [him] to death" Appeal dismissed: "Our appellate jurisdiction in criminal cases is limited to questions of law. . . presented by bills of exception or assignments of errors. . . no bill of exceptions in the record. The counsel of appellant states . . that the Justices presiding . . were of the erroneous opinion [1] that they had no power to sign bills of exceptions. . . no assignment of errors filed in this court. . . one . . appears to have been filed in the inferior tribunal . . [193] The first point . . refers to the admissibility of the prisoner's confession, which . . should have been presented by a bill of exceptions . . or by something in the record equivalent to a bill of exceptions." [Spofford, J.]

McCall v. Henderson, 11 La. An. 209, March 1856. [210] "parol proof . . that the slaves were sold with the express understanding that they were not to be removed [from Mississippi] to the swamps of Louisiana; that the purchaser knew . . that they were unsound,"

Dixon v. Chadwick, 11 La. An. 215, March 1856. "The defendant . . avers that the slaves were sold as unsound; . . both . . died of incurable maladies, although they received careful treatment under proper medical advice." Held: "He is . . liable in damages caused by the trouble and expense . . incurred during the sickness . . $100 will be . . sufficient"

George v. Greenwood and Co., 11 La. An. 299, April 1856. "slave runaway a short time after the sale [to plaintiff], . . appears to be in the Indian territory, and beyond the reach of any civil process." "suit brought for the price, and for expenses incurred in pursuit" Judgment for plaintiff affirmed.

[1] But see State *v.* Nelson, p. 591, *supra*; see also State *v.* Henderson, p. 667, *infra.*

Fitzgerald v. Ferguson and Brunet, 11 La. An. 396, May 1856. "Brunet held the slave for the benefit of some person in England, and hired [him] out . . as agent [to Ferguson.] . . While driving . . [he] drove against the plaintiff . . [397] judgment against the defendants . . for $1000 . . [399] amended . . [it] shall be discharged . . by the . . surrender of the slave . . or his proceeds to the sheriff within three days after . . [this] judgment . . shall be ordered to be executed by the lower court,"

Delphine (f. w. c.) v. Widow Guillet, 11 La. An. 424, May 1856. "In 1839, Aimé Guillet made his . . will . . among the bequests to his wife: . . 'trois de nos domestiques à son choix, à l'exception d'une jeune enfant nommée Delphine, âgée de six à sept ans, et née de notre domestique . . Mimi, à qui je donne par le présent la liberté et qui sera emancipée par ma femme le plutôt que faire se pourra.' In 1847, the testator having died, the will was . . proved. In 1854, Delphine brought this suit . . alleges that she has often applied to the Widow . . to emancipate her . . but has met with a refusal, . . The answer . . averred that the plaintiff was not then twenty-one . . nor could they . . declare that . . [she] had behaved well any four years since . . the date of the will. . . [425] the plaintiff offered to prove . . that she was of good character . . and had always . . conducted herself respectfully towards white persons, . . the defendant objected . . that said facts were not alleged in the petition, . . sustained" Verdict: [424] "We . . find that the plaintiff is not free, but . . entitled to her freedom, and require that the defendant be instructed to institute such proceedings as will ensure the emancipation"

Judgment thereon reversed and the cause remanded: [425] "Were this an ordinary case of private right, we might perhaps have presumed that the plaintiff was able to establish the facts which the defendants improperly objected to as inadmissible . . but as it concerns the public that none but worthy persons should be admitted to the *status* of freemen, it is our duty to exact the proof." See same *v.* same, p. 661, *infra.*

State v. Taylor, 11 La. An. 430, May 1856. "a free man of color, indicted for the murder of a slave, . . A mulatto, named Charles Robinson, was offered by the State as a witness, . . In cross-examining . . the prisoner's counsel asked . . if he had ever been a slave, . . he replied that he was once the slave of Mrs. Robinson, and since her death, had become free, . . The Attorney General was then called upon by counsel to produce evidence . . declined . . whereupon the defendant moved to exclude his testimony . . refused." "convicted of manslaughter and sentenced to imprisonment at hard labor for seven years." Affirmed: [431] "his whole statement . . shows that he was competent."

Henrietta, alias Mary, v. Heirs of Barnes, 11 La. An. 453, June 1856. Barnes's will, 1847: [454] "I . . bequeath to my servant girls, . . Henrietta, *alias* Mary, and her child, Mary, *alias* Marietta, their . . emancipation, according to law, from . . my decease, and . . one thousand dollars, and all my house furniture, to . . Henrietta . . and . . five hundred dollars to be invested in a lot . . is hereby given to my little servant girl Mary,

. . If possible, my executors will purchase for Henrietta . . a lot and dwelling with said one thousand dollars," " Barnes, [two years] after making his will, took her and her child . . to California . . with the avowed intention that she should be free; in which State . . she still resides." In 1852 the plaintiff sued, for herself and for her minor daughter, for the legacies.

Judgment of the lower court in her favor reversed and the suit dismissed: " Emancipation . . concerns the State, inasmuch as its tendency is to substitute a free colored population for the system of compulsory labor, which involves to such a vast extent the fortunes of our citizens and the production of our agricultural staples. . . 1842 masters were forbidden . . to take their slaves into free States.[1] . . 1846 it was enacted that no slave should thenceforward be entitled to . . freedom, under the pretence that he . . has been . . where slavery does not exist,[2] " [Buchanan, J.] [455] " Although, by the law of California, . . she possesses the status of a free person, and . . cannot . . be reclaimed . . because she is not a fugitive . . still the policy of our local statutes forbids that she should stand in judgment in the courts of Louisiana for any other cause than to sue for her freedom. . . As, if she returned hither, she would be a slave until . . enfranchised according to our laws," [Spofford, J.]

Eulalie and her Descendants v. Long and Mabry, 11 La. An. 463, June 1856. See same *v.* same, p. 631, *supra.* Buchanan, J.: [464] " Some years before . . Porche's death [about 1821], Eulalie, with his permission, married a free colored man, an illegitimate brother of Porche's wife, who had a farm in Porche's neighborhood; and lived with her husband in the full enjoyment of her freedom . . being more than thirty years, . . Mrs. Widow Porche frequently spoke of formally emancipating Eulalie and her children, . . After . . [her] death [in 1852] . . Eulalie and her children and grandchildren appear to have been taken by force . . notwithstanding an ineffectual resistance on the part of her aged husband, and brought to a slave mart in New Orleans, where they were conveyed as slaves for life to the defendants. There is no doubt that the heirs of Mrs. Porche were privy to this abduction . . yet they do not figure in the conveyance . . neither, although the defendants ostensibly paid [$12,000] . . in cash . . do they make any call in warranty. . . their vendor is declared . . to be dead and insolvent. . . circumstances calculated to inspire a suspicion that the true parties in interest are keeping out of sight. And if so, the reason may be easily imagined. Judgment [for plaintiffs] affirmed, with costs."

State v. Bass, 11 La. An. 478, June 1856. Spofford, J.: " The prisoner complains that the court erroneously admitted evidence touching the general character of the slave whom he was accused of killing. It is true . . [such] evidence . . is inadmissible. . . But, in this case, the defendant's counsel opened the subject by . . eliciting answers . . which had a tendency to cause the jury to form an unfavorable estimate . . cannot

[1] Acts of 1842, p. 314.
[2] Acts of 1846, p. 163.

complain that the State . . sought from the same witness evidence, of a general character, calculated to rebut this . . impression. . . Judgment affirmed "

Bush (*f. w. c.*) *v. Decuir,* 11 La. An. 503, June 1856. Spofford, J.: " the defendant's ancestor once lived in concubinage with the plaintiff. . . that fact did not incapacitate him from making a donation *inter vivos* to her of movables not exceeding one-tenth . . of his estate. C. C., 1468. The act of donation was most formal . . of a specific sum . . the note . . was given . . merely to facilitate the donee in disposing of the amount donated, should she wish . . the heir is bound . . decreed that the plaintiff recover [$2,000] . . with eight per cent. interest . . from . . March, 1849, . . and costs in both courts."

Brack v. Wood, 11 La. An. 512, June 1856. [513] " The plaintiff's testimony proves that, in 1839, a negro boy, answering to the description of the one in controversy, was lodged in jail in . . Arkansas, . . Ervart presented himself, with a written title from . . Weymouth, dated . . 1838, identified . . and sold him the same day to . . Irvine for $810. In 1844, Irvine sold to . . Polk . . 1846, Polk sold to . . Trigg. . . 1848, the slave absconded. In October, 1851, Trigg regained a negro, which plaintiff's witnesses identify as the one runaway, having taken him out of the jail in . . Mississippi, . . lodged as a runaway. The slave absconded again in January, 1852, . . recaptured the same month, . . sent to New Orleans, and sold . . at auction, . . bought by the plaintiff . . [who] hired the slave on the steamboat . . from which the defendant took [him.] " " The defendant's testimony establishes these facts . . that the identical negro . . was in the possession of . . McDonald as owner from 1836 to 1840 and 1841, when McDonald left Natchez; . . 1848 . . lodged in jail as a runaway; . . seized under an execution . . and bought by the defendant . . for $475; . . remained . . on his plantation in Louisiana, up to October, 1851, when he ran away, . . recovered . . in August, 1852, by taking him from the steamboat " Judgment in favor of the defendant: [514] " *In pari casu potior est conditio possidentis.*"

Dorwin v. Wiltz, 11 La. An. 514, June 1856. [517] " Plaintiff and defendant were married in . . 1825 . . In 1831, plaintiff abandoned his wife and his children, without any . . cause, and lived with a woman who had been his mother's slave; . . never seeing his family or contributing . . defendant . . had no resources save her labor and that of a slave girl Anaïs, purchased in 1828, for [$350] . . cash " [515] " Anaïs had nine children, five of whom died quite young;"

Person v. Rutherford, 11 La. An. 527, June 1856. Spofford, J.: " on an order given by the plaintiff's factors in favor of Rutherford [' notice that he returned the slave on account of a redhibitory vice '] " Rutherford's "agents, whom he left in charge of his slave-mart in New Orleans . . took the slave . . from the steamboat and again put her on the market for sale. . . it was the manifest duty of the defendant to have notified the plaintiff's agents, residing in New Orleans, of her serious illness, to have given her all requisite medical attention and as it could so readily

have been procured to have had a post mortem examination. . . [528] The girl was sold at $750, and the plaintiff's expenses were $25." Judgment in his favor for $775.

Heirs of Henderson v. Executors, 11 La. An. 541, June 1856. See same *v.* same, p. 605, *supra.* Buchanan, J.: [542] " Judge Martin . . says: ' The draft and transportation . . were legitimate ' [1] . . Under this dictum, we consider the legality . . as no longer an open question. . . At the moment of his death . . the condition of his slaves were [*sic*] fixed. They were *statu liberi* . . Every child . . became free when its mother became free. . . even if its mother should die before that time. C. C., Art. 196. . . But . . only . . on condition of going to Liberia with their own consent. . . they return to slavery, if ever they return . . to this country. Upon this clause Judge Martin seems to have based his conclusion that . . a formal emancipation [was] . . [543] unnecessary. In fact [it] . . would, perhaps, have rendered their subsequent reduction to slavery, in case of their return . . impracticable, as the law stood at the date of the will. . . decreed, that all the slaves of which . . Henderson was the undivided proprietor . . and all . . which, by partition . . may fall . . to . . [his] succession, shall be sent to Liberia . . at the expiration of twenty-five years from . . [his] death, . . But if any . . refuse to go . . forfeited all claim . . further decreed, that the transportation . . shall not bar the heirs . . in case . . thereafter . . found within . . Louisiana."

Bryan v. Day, 11 La. An. 601, July 1856. [602] " a receipt . . 1843, for [$150] . . price of a mulatto child . . four years of age, sold [in Georgia?] "

Wilson v. Bossier, 11 La. An. 640, July 1856. Lea. J.: " The defendant avers that the discharge of the plaintiff [overseer] was justified . . he having shot at one of the negroes who was endeavoring to escape punishment. This fact is not disputed, and we concur with the District Judge . . that . . such an abuse of the authority delegated . . justified his discharge. . . wholly inadmissible and cannot be justified under the pretence that it was . . merely for . . intimidation. . . no error in allowing . . wages up to . . his discharge."

Wood v. Hardy, 11 La. An. 760, July 1856. " Martin Wood . . left a will, made in 1849, . . ' I give . . unto my wife . . all the negroes and their increase, say about fifty negroes in number, . . during her . . life; then, if it can be done by my executors, all . . to be set free, and carried to the near part of Mexico, beyond the river Rio Grande. I also set aside [$3-000] . . to accomplish the same.' "

Figuras v. Benoist, 11 La. An. 683, August 1856. Merrick, C. J.: " suit . . to recover . . for services rendered by the plaintiff and his wife as nurses during the prevalence of the yellow fever in 1853 . . in attendance on the family and negroes thirty-five days. . . we think ten dollars per day . . ample "

[1] Executors' of Henderson *v.* Heirs, p. 575, *supra.*

Phoebe (f. w. c.) v. Sheriff et al., 11 La. An. 688, August 1856. " The plaintiff sues for the recovery of . . lots . . [689] The defendants . . allege that the purchases in her name were . . made with funds furnished by Shultz . . with whom she had been living in concubinage for many years, . . judgment . . decreeing the lots . . to be the property of the plaintiff,"

Templet v. Baker, 12 La. An. 658, August 1856. " One John Saunders, sold in 1841, in Kentucky, the slave . . to Bayles . . vendor of defendant and his partner." They had " possession . . in Louisiana, until 1844, when the slave ran away. . . The plaintiff . . presents an act of sale . . bearing date May . . 1845 . . wherein one John Saunders of . . Missouri, professes to sell to . . Johnson . . Carter, about twenty-seven . . for $400. . . [659] July, 1845, the slave having been for some time in the jail . . as a runaway, . . Johnson . . sold [him] . . to the plaintiff for $400. . . ' without any kind of warranty ' . . and the vendee ' further declared, that he is fully acquainted of the manner in which . . Johnson became possessor . . and the . . vices of said slave ' . . 1850 . . he sold . . to . . Gaudin, with warranty, both as to title and redhibitory vices. The slave ran away . . and was lodged in jail . . about . . December, 1851. The defendant having been informed by the jailor . . obtained possession . . Gaudin retroceded . . to the plaintiff," Judgment for defendant affirmed.

Lambert v. King, 12 La. An. 662, August 1856. " The defendant was employed . . as overseer . . in November, 1853. . . he was to receive ' ten dollars for every 1,100 pounds of sugar ' he should make . . and ' should there not be seed cane enough, . . plant cotton, and receive one-fourth of the nett proceeds ' . . The plaintiff . . agreed to furnish . . nine slaves, and . . first of January, 1854, to add two . . August, 1854, the plaintiff considering [him] . . guilty of mis-conduct in the management of the plantation, and the treatment of the slaves, as well as in his personal demeanor towards herself, . . discharged him . . brought suit . . that the defendant be enjoined not to interfere further . . The defendant . . claims compensation " [663] " judgment in favor of the plaintiff . . decreeing the injunction herein issued . . perpetual, and that the defendant . . recover [$350.] "

Duperrier v. Dautrive et al., 12 La. An. 664, August 1856. [665] " Recent disorders among the slaves in . . New Iberia, had made it a matter of importance that the laws relative to the police of slaves, should be strictly enforced." " established that the plaintiff's . . valuable and confidential slave . . was going on horseback with the . . standing permission of his master, to the residence of Mrs. Dubuclet, with whom his wife resided, . . [on August 1, 1855,] at about 11 o'clock at night, when about entering the town, he was ordered to stop by the patrol. That the slave did stop . . but, either for the purpose of escaping because of his apprehension of the consequences of an arrest, or in consequence of the shyness of an unbroken horse, he started back in a gallop, when the defendants . . fired . . three times . . at . . about thirty-five yards, after having . . called upon him to stop. The negro . . returned home and died the next

day." Held: " they were protected by the terms of the 65th section of the Act of 1855, . . The ' use of *arms* ' . . necessarily implies at least a risk of killing,"

Collins v. Administrator, 12 La. An. 678, August 1856. " alimony claimed on behalf of two illegitimate colored children of the deceased. . . who are destitute . . unless the title to a lot . . with improvements, of which a donation was made to one of the children, be recognized as valid, which is disputed by the appellant [defendant]. . . wholly overlooked in the judgment . . the position of the appellee precludes an objection," Judgment allowing alimony affirmed.

J. B. J. Louis (f. m. c.) v. Richard, 12 La. An. 684, August 1856. " Plaintiff purchased of . . Landry in 1849, by public Act . . a negress . . for [$400] . . the seller reserving . . the usufruct . . during his life, and . . should the slave die before her delivery . . her loss should be for the purchaser, . . In 1856, . . Landry having died, leaving five children [' forced heirs '], the plaintiff sues for possession . . The children . . defend . . that no consideration was given . . that the slave . . was all the property of their father . . judgment annulling the sale . . founded in part on testimony . . seller had said . . that he had given back . . the [$400.] " Held: the plaintiff has established the validity of the sale; but the [685] " forced heirs . . [must] be declared owners of two undivided thirds of said slave and her increase."

Succession of Emilie Peyran (f. w. c.), 11 La. An. 694, November 1856. " The evidence is clear that . . avowed father [of the intervenors] was, at the time of their conception, the husband of another woman, . . the District Judge did not err in repelling their claim " C. C. 201.

McLellan v. Williams, 11 La. An. 721, December 1856. " The slave was purchased . . 15th . . November . . and died suddenly on the 22d . . not ascertained of what disease . . medical assistance could not be obtained " Judgment for defendant, vendor, affirmed: " The vendor . . does not warrant that the slave . . will resist the disease without the aid . . of medical art."

State v. Harrison (a slave), 11 La. An. 722, December 1856. " Harrison was tried by a tribunal composed of two Justices of the Peace and ten owners of slaves . . for killing another slave, on the 2d July, 1855. . . found guilty . . and sentenced to imprisonment at hard labor for life. . . contended, that . . Act [of March 15, 1855, ' relative to slaves and free colored persons,'] " " under which the tribunal was organized . . is in violation of the Article 115 of the Constitution . . ' Every law . . shall embrace but one object,' "

Judgment affirmed: I. [724] " the whole [act] must . . be declared void for unconstitutionality." " in the eye of the Louisiana law, there is, (with the exception of political rights, of certain social privileges, and of the obligations of jury and militia service,) all the difference between a free man of color and a slave, that there is between a white man and a slave. . . The free man of color is capable of contracting . . can acquire by in-

heritance and transmit property by will. He is a competent witness in all civil suits. . . he is . . tried with the same formalities, and by the same tribunal, as the white man. . . [II.] [725] the conclusion at which we have arrived . . will not relieve the prisoner . . For those sections . . which relate to . . tribunals for the trial of slaves . . are copied from an Act of June 1st, 1846,[1] . . still in force." [Buchanan, J.]

Reynolds v. Batson; same v. Brenford, 11 La. An. 729, December 1856. "The slave in the possession of Brenford disappeared from the plantation of the plaintiff . . in . . Alabama, in the spring or beginning of summer, 1845, and the other two . . in August . . Batson bought . . two . . at public auction, at the Arcade, in this city . . September . . title was made by a person representing himself to be . . Teral, of . . Alabama, and the act of sale was passed before . . Marks, Notary Public. . . employed them [since] on the levee and as stevedores. . . George was sold by . . Bach . . 1846, to . . Gardere, the act reciting that Bach had purchased . . from . . Teral . . the same day that Batson purchased. Gardere sold . . 1849, to . . Brenford. The suits were commenced . . 1856. The good faith of . . the defendants, has not been questioned. The plea of prescription of five years was interposed by the defendants and sustained" Affirmed. Rehearing refused: [731] "we consider our reasoning equally applicable . . if it be conceded that the slaves were stolen,"

Maranthe, Genie et al. v. Hunter et al., 11 La. An. 734, December 1856. "The plaintiffs allege that they were the slaves of the late Julien Poydras, who died in . . 1825; . . that they have . . complied with the conditions of . . will;[2] . . have attained the legal age to be emancipated; . . that the defendants . . refuse . . Wherefore, they pray that they may be declared free. They further claim remuneration for their services" Judgment for defendants. Plaintiffs appealed. [735] "the defendants have excepted . . 1st. That . . they can maintain an action only for their freedom. 2d. That by the Act . . of the 15th of March, 1855, . . all suits for the emancipation of slaves must be prosecuted by citation directed to the State . . 3d. That said Act . . so far as . . defendants are concerned, is . . void, as imposing charges . . not assumed by them . . and as all other statutes on the . . subject have been repealed, that they are not bound to emancipate them at all."

Judgment reversed and the cause remanded, the defendants paying the costs of this appeal: "the first exception . . is well taken. The plaintiffs' action must be restricted to a claim for freedom, . . upon the second . . the defense is untenable. . . the statute of 1855 . . has been declared . . unconstitutional.[3] . . [As to] the third exception, . . [736] An obligation to emancipate . . twenty-five years hence, . . and to incur all necessary charges . . has reference . . to such legislation . . as might be in force when the contract is to be carried into execution. We cannot suppose that it was contemplated . . that a change in the form, or even the

[1] Sess. Acts, p. 114.
[2] See introduction to the Louisiana cases, pp. 393-396.
[3] See State *v.* Harrison, p. 649, *supra.*

legal charges . . might deprive the plaintiffs of . . freedom. . . As, however, . . the statute of 1855 . . [is] unconstitutional, it . . [is] unnecessary to consider the effect of the repealing clause." [Lea, J.]

State v. Adeline (a slave), 11 La. An. 736, December 1856. " The accused was tried by a special jury, organized under the Act [of March 9, 1855,[for the murder of . . John Blakely. . . [737] Without being interrogated, or even called, she went to the officers and told them that she knew . . they had come . . to take her to the calaboose; that . . if she had it to do over, she would do it again. . . had killed . . with a sword-cane . . said she had thrown it into the well. . . corroborated by the discovery " [736] " The jury found the accused guilty of manslaughter, and condemned her to the penitentiary for twenty-five years." Affirmed.

Nixon v. Bozeman and Mrs. Bushy, 11 La. An. 750, December 1856. [752] " Macmurdo expressly refused fully to guarantee the slave . . as . . he suspected that the slave had stolen money, and that he pretended to be sickly, . . it does not appear that Macmurdo knew that the slave was subject to fits," He sold the slave to the defendants [751] " partners in buying and selling slaves." They sold the slave in 1853 to the plaintiff for $950. " the slave was tendered the defendants [by him] . . and he disappeared on the following morning." "verdict in favor of plaintiff rescinding the sale, and awarding [him] $950 . . and $250 damages," Affirmed.

Farwell v. Harris and Morgan, 12 La. An. 50, January 1857. " 1853, a slave . . was shipped . . at . . New Orleans . . to Galveston . . a clearance . . was granted . . upon oath . . made . . by the shipper and by the master of the ship, that, to the best of their knowledge . . [he] was not imported . . since the 1st of January, 1808,[1] and that, under the laws of this State, he was held to service "

Barrow v. McDonald, 12 La. An. 110, February 1857. " A claim for damages for the malicious killing of a slave . . owned by the plaintiff and the defendant [manager of their sugar plantation] . . three-fourths by the former . . These damages the plaintiff has assessed at $1500."

Phipps v. Berger, 12 La. An. 111, February 1857. " Defendant being sued on . . notes, given for the price of a slave purchased at probate sale, pleads that the slave was affected . . with a chronic disease . . which he was informed was brought on by eating dirt, . . rendered entirely useless by the . . disease, which caused his death about six months after the sale. . . proved . . that he was proclaimed . . unsound from the stand," Judgment for plaintiff affirmed.

Miller v. Stewart, 12 La. An. 170, March 1857. C. Voorhies, J.: " The plaintiff sues to recover . . $800 for services . . as overseer . . at . . $400 per annum, from . . March, 1853. He alleges that he was discharged . . without any good cause . . June, 1854, . . [171] The defendant . . pleads . . that he had urgent cause . . because . . plaintiff . . in total disregard of

[1] Act of Congress Mar. 2, 1807.

his duties . . most wantonly and cruelly whipped to death . . Tom, of the value of $1250, which he claims as damages in reconvention; . . All the witnesses concur . . as to the extreme severity . . one . . says . . that from his neck to his heels, there were stripes . . so close together, that the witness could not put his finger between them; . . had never before seen one whipped so badly . . There is not a scintilla of evidence showing . . that Tom was vicious or that his character was bad; nor . . any attempt to show the nature of . . [his] offence . . The plaintiff in his letter to the defendant merely states that it was for abusing his [Tom's ?] wife. . . two physicians at the post mortem examination. One . . thinks that the death . . was produced by over exertion and exhaustion, and the other by the whipping or treatment of the overseer; . . that, in some cases, excessive whipping will produce death by exhaustion. . . If he died of exhaustion, the plaintiff was . . certainly guilty of gross negligence in not taking proper care of him when he retired to his cabin. . . the defendant is entitled to recover . . $1200 . . proved to be the value of his slave, deducting . . $344 . . balance due the plaintiff on his salary"

Owen v. Brown et al., 12 La. An. 172, March 1857. "sued . . Brown, for damages for harboring three runaway negroes, and for . . permitting one of them, by collusion, to go aboard of a flatboat descending . . to New Orleans, from whence, he escaped to Cairo, and thence to Pittsburg . . verdict in favor of the plaintiff for $1300, the value of . . Tom, and $160, the value of the services of the other two whilst in . . [defendant's] possession . . After the rendition of the verdict, the defendant, having discovered that the plaintiff had received from the owners of the steamboat [$600] . . compromise in full for the . . value of the slave . . carried away by said boat, moved . . for a new trial, and thereupon the plaintiff entered a *remittitur* of $600 upon the price, and the motion . . was overruled."

Judgment reversed and new trial awarded: "If the plaintiff had already . . received the value . . this *litis aestimatio* . . has transferred the property . . to the persons so paying." Final judgment was in favor of the defendants, "and that they recover costs in both courts." 13 *id.* 202.

Montan v. Whitley, 12 La. An. 175, March 1857. [176] "The plaintiff seeks the redhibition of the sale of a slave man and his three children, . . sold together [in 1855 for $2300.] . . The death of [the youngest] . . within a year after the sale, of a disease of which the symptoms showed themselves prior . . notwithstanding proper medical attention, makes out a *prima facie* case . . which has not been rebutted. . . value . . $375 had she been sound. . . Twenty-five dollars were expended by plaintiff upon her in medical and burial expenses." Decreed, that the plaintiff recover $400.

Lewis v. New Orleans, 12 La. An. 190, March 1857. "The plaintiff alleges . . that . . January, 1855, he placed Jesse . . in the parish jail . . for safe keeping and correction; that . . defendant . . derived . . a pecuniary profit by receiving a per diem compensation; that . . he was employed in . . labor incident to the daily routine . . in the course of which

he was unnecessarily exposed to cold and wet, . . became dangerously ill, and no care was taken of him; that the jailkeeper . . failed to notify . . that . . three or four months after . . he heard by accident . . [191] took him away . . he died a few days thereafter;" Held: " the city cannot be made liable . . for the . . misfeasance "

Mahier (f. w. c.) v. Le Blanc et al., 12 La. An. 207, March 1857. [208] " The defendants . . pleaded . . that the . . draft [for $5533.92] held by plaintiff was a disguised donation to a concubine,"

Gil v. Williams and Davis, 12 La. An. 219, March 1857. " Williams having been convicted of importing slaves . . in violation of the first section of the statute of the 29th January, 1817,[1] the slaves were judicially declared forfeited to the State . . [220] Subsequently . . Davis executed the following obligation . . ' 1850. . . I promise to pay to . . Dunn, . . Gil and . . Patterson [$1500] . . on condition that the State . . shall pay indemnity for . . slaves . . seized . . as the property of . . Williams, indemnity for which is now claimed by . . Davis and . . Williams.' . . The plaintiff has appealed from a judgment dismissing his claim for [$500] . . on this agreement. . . The plaintiff alleges that the consideration . . was his professional services as a lawyer, in presenting . . the claim . . before the Legislature . . indemnity granted " Affirmed: " law, public order and good morals strike all such contracts with nullity."

Molaison v. Hébert, 12 La. An. 232, March 1857. " judgment setting aside that portion only of the will which purported to manumit the slaves. The curator *ad hoc* [who had been appointed to represent the slaves] alone has appealed," Appeal dismissed: " no law authorizing [him] . . to stand in judgment "

McGowan v. Laughlan, 12 La. An. 242, March 1857. " plaintiff alleges that he acquired [Jerry] . . from his father, prior to . . 1839. . . enticed [in 1839 or 1840] . . from . . Tennessee . . Defendant avers that her title is derived from . . Stotts . . of Arkansas, who sold . . to . . Laughlan, at Vicksburg, . . 1841, for . . $740 " Judgment for defendant affirmed.

Barclay (f. w. c.) v. Sewell, 12 La. An. 262, April 1857. " the plaintiff . . paid for the property claimed . . the only question . . is, whether the plaintiff has the legal capacity of holding property. . . was absent for two months [in 1839] in . . Ohio, where she was emancipated, and . . ever since . . has been residing here as a free person of color, . . Botts (her former master) has been residing in this city "

Judgment in her favor affirmed: [263] " the general policy of the Louisiana Legislature . . was undoubtedly always adverse to the indiscriminate manumission . . and now it has become altogether prohibitive of emancipations in the State,[2] probably in consequence of injudicious and impertinent assaults from without upon an institution thoroughly interwoven with our interior lives. But . . in 1830, the Legislature recog-

[1] See State *v.* Williams, p. 558, *supra.*
[2] Act of Mar. 6, 1857.

nized the validity of such emancipations as the one under consideration.[1] . . upon her return hither she subjected herself to all the penalties imposed on free persons of color for entering the State. But we do not find one . . to have been a forfeiture of her freedom . . The Act of March 16th, 1842,[2] . . prohibited, for the first time, the carrying of slaves . . into free States;" [Spofford, J.]

Whann v. Hufty, 12 La. An. 280, April 1857. [281] "The night before Mrs. Christian left [New Orleans] . . Mary ran away, and . . when found, [said] that she was willing to stay with any one who would purchase her in the city, but would not return to the country. Whereupon . . negotiations were set on foot for the sale . . [to] a resident of New Orleans. . . left . . on trial, for a month . . sold . . 1855, for nine hundred dollars cash."

Daret v. Captain Gray, 12 La. An. 394, May 1857. "The plaintiff was . . the owner of a mulatto man, a mulatto woman and their two children. These slaves being in possession of forged papers [[395] 'well calculated to deceive'], obtained tickets from the Pacific Mail Steamship Company . . to Aspinwall . . March, 1854, and proceeded . . to the Balize, where they were discovered through the agency of a telegraphic dispatch . . and returned with the pilot . . The plaintiff alleges that . . [395] the defendant caused him damages to the amount of [$400] . . for depreciating the value . . and [$45.25] . . for telegraphic dispatches, public notices in several papers, jail fees, etc."

[396] "decreed, that the plaintiff recover [$34] . . and that the defendant pay the costs of both courts." I. [395] "it is true, . . that the plaintiff sold . . and . . suffered large deductions from their apparent value, on account of their having runaway. The habit . . is a vice inherent in the slave. . . had developed . . before the slaves went on board . . [II.] by the third section of the Act of 1816,[3] masters of ships . . are prohibited under any pretence whatsoever from transporting . . any negro, mulatto or other person of color from New Orleans, without taking . . before the Mayor . . and having obtained . . a written certificate. . . [396] This precaution . . was not observed . . and the defendant is liable for the reasonable expenses of the plaintiff in recovering his property,"

Williams v. Talbot, 12 La. An. 407, May 1857. Jack was sold to plaintiff January 1, 1853. [408] "two or three weeks afterwards . . [the overseer] discovered he was affected with a bad cough, . . in July or August . . expectorated blood . . and complained of fever and night sweats. He was employed at chopping wood up to the middle of October, . . Dr. Favrot was first called . . in July or August . . afterwards in October . . Dr. Vaughan . . examined Jack in December, . . found him in an advanced state of tubercular consumption. Drs. McKelvey and Picton examined him in the spring of 1854," He died in June. Held: "The neglect . . to send for medical aid for so many months after the first manifestation . . constitutes . . a bar to . . action of redhibition."

[1] Acts of 1830, p. 94, sect. 16.
[2] Acts of 1842, p. 314.
[3] B. and C. 253, 254.

McCay v. Chambliss, 12 La. An. 412, June 1857. "sued on . . note . . in payment of . . Riley, sold . . with full warranty. . . [413] about a week or two before he died, he seemed to be in bad health . . attributed to his exposure while runaway. . . 'Riley had so little mind or sense as to render him utterly worthless.' . . nothing showing the nature of the disease of which . . [he] died, . . No physician appears to have been called in." Judgment for plaintiff affirmed: Riley's mental deficiency "must have been apparent to an ordinary observer at the date of the sale."

Cornish (f. w. c.) v. Shelton, 12 La. An. 415, June 1857. "suit . . for the recovery of the price . . the slave . . died of yellow fever within three days after the sale. . . her attending physician was employed by defendant. and at one time he considered her out of danger. . . plaintiff rendered good attention to the deceased, . . slave died of a *relapse*" Judgment in favor of plaintiff affirmed.

Turner, Curator, v. Smith et al., 12 La. An. 417, June 1857. Buchanan, J.:" Turnbull . . made . . declaration in writing before a notary public and two witnesses . . 1855: 'That he does . . acknowledge Mary, . . of mulatto color, aged about seven . . Eliza, . . of mulatto color, . . about six . . Dudley, . . of mulatto color, . . about four . . Charles, . . of mulatto color, . . about two . . and Minerva, . . of mulatto color, aged about five months, to be his children, . . begotten of . . Rachel, a mulattress or griffe, aged about twenty-three years; said children and their mother being now his slaves.' On the same day . . he . . made his olographic testament . . 'I give . . to my natural children . . their freedom, and direct my executor to take the steps necessary to obtain their emancipation according to the laws of this State, or to send them to some country or State, to be by them selected, where slavery is not recognized, if their emancipation with leave to remain [here] . . cannot be . . obtained; . . expenses . . to be borne by the mass of my estate. I also give . . her freedom to . . Rachel . . I also give . . to my natural children, duly acknowledged by me by public act . . and to their mother . . one-third of my entire estate,' . . [418] died . . 1856 . . the plaintiff, was appointed by the court curator . . and has brought this suit [in September 1856] against the executor, who is also universal legatee, as well as against the next of kin and heirs at law . . No steps had been taken by the executor . . towards manumitting . . In the meantime, the Act . . of the 6th March, 1857, . . has been promulgated. . . 'That from . . [its] passage . . no slave shall be emancipated in this State.' . . The enfranchisement of Rachel and her children having thus become legally impossible, the legacy . . has lapsed." "the so called act of acknowledgment . . besides being offensive to morality, is without any . . effect in law." "The object of an acknowledgment . . is to confer certain rights . . But a slave can neither sue for alimony nor inherit."

State v. Clay (f. w. c.), 12 La. An. 431, June 1857. "The prosecution is based upon the second section of the Act of February 21st, 1828, which makes it a crime to prepare combustible materials, and to put them

in any place with an intention to set fire . . repealed by the Act of 1855" "judgment . . quashing the indictment." Affirmed.

Reed v. Crocker, 12 La. An. 436, June 1857. "By his will [made in 1854] . . [Crocker] appointed H. H. Crocker, one of his natural children, his executor, and distributed his property ['a large estate'] between his housekeeper ['Sofa'], who is a colored woman and was once his slave, and his children whom he had by her, and who were legally acknowledged by him previous to his death. . . [437] certain assignments . . were made [in 1855] by some of the heirs [residing in the state of New York] to . . H. H. Crocker. . . [439] 'whereas, any legal proceedings to defeat the benevolent intentions of the . . testator . . is [*sic*] entirely contrary to our wishes . . and whereas, [testator] in his lifetime, . . did advance [us] . . property of considerable value . . Now in consideration of the premises, . . and from regard to the children of . . deceased, and of their mother . . and . . five dollars . . paid . . by . . [H. H.] Crocker, . . we . . [quit-claim] in [his] favor . . all . . rights'"

Held: [442] "the portions of the assignors . . must be given to . . [H. H.] Crocker. . . the dispositions of the will in favor of 'Sofa,' the concubine . . [are] null and void;[1] . . the dispositions . . in favor of the natural children . . H. H. Crocker, Mary Bosworth and Susan Crocker, [must] be reduced to one-fourth[2] of the testator's estate;"

Riggin v. Kendig, 12 La. An. 451, June 1857. Cole, J.: "suit . . to recover the price of a slave and damages, . . Dick was a notorious runaway . . Kendig . . bought Dick of . . Loupe . . who knew him to be a runaway. . . They were both negro traders of the city, and that class of society is not easily imposed upon." "We think that Kendig was cognizant of this vice . . when he sold him, fully guaranteed to plaintiff. . . Plaintiff . . avers that . . [Kendig] bought . . from Loupe without warranty . . notified Kendig to bring . . his bill of sale . . produced [another] . . made an affidavit . . that when his counsel pointed out the error he . . could not find it. . . did not cause Loupe to be cited to defend the warranty, which he pretends to have received . . [453] The evidence establishes that Dick was absent . . from March to July, 1855" [452] "'had been laying [*sic*] exposed in a shanty ["back"] in the woods for three or four weeks . . sick' . . [453] was brought in a dying condition to the house . . Dr. Browning was sent for, and he died in about three days of inflammation of the bowels. Dr. Browning testifies that 'inflammation of the bowels is caused from exposure to dampness, . . eating indigestible food,' . . [454] We think that whenever the death is . . a direct sequence of the vice of character, it can . . be no more regarded as a fortuitous event than a death . . from a vice of body. . . a slave like Dick, having . . no defects, was worth one thousand dollars and upwards in July, 1855. . . plaintiff is entitled to recover [that amount] . . with legal interest from judicial demand,"

[1] C. C. 1474.
[2] C. C. 1473.

State v. Judge, 12 La. An. 455, June 1857. " ' Perkins instituted . . 1st of May, 1857, his redhibitory action against Shelton to recover the price of . . Jane, . . purchased . . March . . he charges that the slave was afflicted with a chronic disease of the heart and lungs, and the disease called Tonsils, . . On the 16th May, . . agent of Perkins . . addressed a letter to Shelton,' notifying . . that the slave was left with . . Screnes, in this city, . . at a charge of 40 cents per day; that the plaintiff looked to him for the return of the price, interest . . expenses and damages, and that the slave was at his disposal whenever the same should be refunded. . . On the 20th of May . . Shelton took a rule on Perkins to show cause why he should not be allowed to bond said slave, . . ' Several witnesses testified to the danger the slave would incur by remaining in the slave-yard, and the bad condition and structure of the place.' The Judge permitted the defendant to bond the slave, but ' required a bond with good security in the sum of [$2000] . . [456] for the forthcoming ' . . declined to allow " Perkins an appeal.

[457] " ordered . . that a peremptory mandamus issue . . commanding . . Judge to . . allow an appeal " [456] " the defendant will be fully protected by the appeal bond and the unfavorable effect which the conduct of the plaintiff [if proved] will produce upon his cause, and the slave herself by the penal laws made for her protection." B. and C. 56, sect. 39.

State v. King (a slave), 12 La. An. 593, July 1857. " found guilty of stabbing . . a white man, with intent to kill, . . sentenced to be hung," Reversed, [595] " and it is further ordered . . that the prosecution be dismissed, and the prisoner . . discharged." [596] " The laws upon this subject, in force at the time of the alleged offence . . were the Acts of 1816 and 1843 [re-enacted in 1855 and in 1857]. . . Sections two and four, of the Act of 1857 . . repealed [' all laws on the same subject-matter '] without any saving clause,"

Johnson v. Bloodworth, 12 La. An. 699, August 1857. [703] " agreed [in 1853] . . that . . Bloodworth . . shall receive . . Henry . . about thirty-eight . . for [$1400] . . and . . Ephraim . . about nine " for $500.

State v. Populus (f. m. c.), 12 La. An. 710, August 1857. " indicted for wounding, with a dangerous weapon, with intent to kill. . . [711] convicted and sentenced to the penitentiary for twelve months."

Reversed and new trial granted: the jury " were permitted to separate from the adjournment of the court [' after they had received the charge of the court '], . . until the next morning, when they rendered their verdict."

State v. Morgan, 12 La. An. 712, August 1857. " indicted . . for buying . . from a slave [in 1856], one bag of corn . . without the owner's consent. . . found guilty and sentenced " Reversed, and [713] " ordered . . that the prisoner . . be discharged from custody." " the Act of 18th March, 1852, was repealed by the Act of 19th March, 1857 [' on the same subject-matter ']."

Carmouche, Administrator, v. Carmouche et al., 12 La. An. 721, August 1857. "In 1831 . . Carmouche . . made a donation *inter vivos,* to his daughter Cydalise . . of . . Hélène . . about thirty . . with the reservation of the . . usufruct . . for . . his life. Four or five years after . . Hélène gave birth to . . Claire . . [who] grew up in the same cabin with her mother, . . She did light work about the house. . . Some of the witnesses speak of her as Carmouche's slave, although indulged as a house servant; whilst others say, she was treated as a free person, and spoken of in the family as free. . . In . . January [1853] . . Carmouche . . applied to the Police Jury . . for permission to emancipate Claire, . . refused." "Cydalise . . attempted to do [so] by selling her to herself . . October, 1853." Carmouche died in 1854. Held: "The donation of her mother . . was radically null. . . her freedom . . has never been lawfully accomplished."

Déjol v. Johnson, 12 La. An. 853, August 1857. "Déjol and his wife . . were free people of color . . [He] died, leaving a small estate, . . [854] plaintiffs, alleging themselves to be the only legitimate children . . opposed the distribution suggested by the administrator, upon the ground that three of the alleged heirs, . . Patrick Déjol (*alias* Johnson), Murvin Déjol (*alias* Gay), and Matilda Déjol (*alias* Gay) , , were adulterous bastards . . offered to show that [they were] . . alleged to be such by their father and openly acknowledged to be such by their mother" who "had abandoned her husband . . and lived . . remote from him . . evidence was rejected" No error.

Oreline v. Heirs of Haggerty, 12 La. An. 880, August 1857. [881] "The petition sets forth, that . . John Haggerty . . made his . . will . . 1851 . . and thereby bequeathed to his slaves, petitioner and her children, their freedom . . to take effect from the day of the testator's death. . . [882] makes no disposition . . of any [other] . . property" [881] "The heirs . . opposed the probate . . on the grounds: 1. That the will . . is contained in . . the same act [1] with the will of . . Haggerty's wife. . . 2. That . . emancipation . . in this State is prohibited.[2] 3. That the will is contrary to law and good morals, the petitioner and her children, being the concubine and the adulterous bastards of the testator. The District Court decided . . exclusively upon the 1st" Judgment for defendants.

Affirmed: [882] "he must have deemed it important to secure the coöperation of his wife . . and her will, as dictated, is but a repetition of his own" "The preamble of each . . has blended both together"

Trowbridge v. Carlin, 12 La. An. 882, August 1857. [883] "favorite servants of the master were found disrespectful to their [new] mistress, and had to be chastised or sold."

Bair v. Abrams, 12 La. An. 753, November 1857. [754] "the slave . . was brought hither by him from Texas, . . In his letter . . [he] declares: . . 'I sold a light colored girl . . I was to have [her] back at the

[1] C. C. 1565.
[2] Act of Mar. 6, 1857.

same price [$600] . . when I returned from California, or at the expiration of twelve months.' "

Maples et al. v. Mitty and Sarah (f. w. c.), 12 La. An. 759, November 1857. Buchanan, J.: " suit instituted by the children . . of Nathan Maples, deceased, to set aside sales, made by [him] . . of the defendants . . to . . Jenny Broxton, their mother, . . the plaintiffs moreover pray that the emancipation of . . Jenny . . and of her husband, Phillip Broxton, made many years before the sales . . be also revoked . . The question of the validity of the emancipation . . cannot be considered by us. . . Both . . were dead at the time of the institution of the suit; . . Mitty and her child . . [were sold in] 1831; . . [760] a witness . . testifies that . . [they were worth from $800 to $1000.] . . Nathan Maples . . possessed, at the time of his death [in 1841], . . property to the amount of [$3,128.] . . the value of Mitty and her child did not equal the disposable portion . . plaintiffs cannot revoke the sale . . As to the sale of Sarah and her [three] children [in 1840] . . The consideration . . was ' eight hundred dollars, all cash ' . . On the same day . . Jenny Broxton, made a sale to Mrs. . . Nathan Maples . . of two lots . . for [$800] . . cash . . they . . originally cost Jenny only [$120] . . subsequently adjudicated . . for [$100.] . . But these variations . . do not avail to make out the case of plaintiffs."

Girod v. Belknap, 12 La. An. 791, December 1857. " suit for the rescission of the sale of a slave . . afflicted with stricture of the rectum . . plaintiff . . caused, under the advice of physicians, a surgical operation to be performed, . . a perfect cure cannot be attained. . . [792] incapable of rendering any services . . a previous owner . . sold her to . . Kendig, the vendor to defendant, and only warranted her in title;" Judgment for plaintiff affirmed.

State v. Kitty (a slave), 12 La. An. 805, December 1857. [808] " Kitty was tried before the Judge of the First District Court of New Orleans and a jury of six slaveholders, pursuant to the Act of March 9th, 1855, . . two counts, one for administering poison to . . Smelzer, and the other for the murder . . [809] ' witness said: " the accused came to my yard . . she said she came . . because . . I was the friend of her master; she said that she had been hand-cuffed; she had the manacles on her hands; that she was afraid she was going to be carried . . to Texas. . . [810] she said, . . ' I have something to reveal . . about Mr. Smelzer's death. He was a poisoned man.' . . I . . said . . ' she must now tell all . . that it would be better for her ' " . . the court refused ' ' to instruct the jury to disregard the confessions ' " [808] " The prisoner was [on March 14, 1857] found ' guilty without capital punishment,' . . sentenced to hard labor in the penitentiary for life "

Affirmed: [809] " The first count . . could not now . . sustain a judgment of conviction." " the law of March 19, 1857, ' relative to slaves,' . . repeals all laws on the same subject-matter . . the offences of slaves, specially made such by statutes relative to slaves alone, . . But the second count contains a formal charge of murder. And the Act of March 14th,

1855, . . declares, that '*whoever* shall commit . . murder, on conviction thereof, shall suffer death.' . . 'whoever' comprehends slaves" The circumstances were [810] "sufficient to justify the refusal . . to instruct . . to disregard entirely the confessions" [Spofford, J.] Buchanan, J., concurred. Cole, J., and Merrick, C. J., dissented: [811] "the Act of [March 9,] 1855 . . under which the prisoner was tried, has been repealed" by the act of March 19, 1857. Merrick, C. J.: [813] "The first section of the Act of [March 14,] 1855, relative to crimes and offences, is . . [also] repealed, so far as it affects slaves,"

Marciacq v. Steamer, Captain, and Owners, 13 La. An. 27, January 1858. [28] "Jacko was absent (runaway) . . from the last of January until . . September . . all of which time . . employed on board the steamboat [as understeward] . . at $20 per month, . . paid to himself." [27] "had a pass . . filed amongst the ship's papers; but . . cannot be found, . . plaintiff was offering a reward in the newspapers . . When he was found on board . . by persons sent by plaintiff, the slave had no written permission . . [29] evidence . . appears sufficient to establish that Captain . . did not receive the boy . . with intent to deprive his owner"[1] [28] "The defendants are liable . . for [$140] . . wages"

Succession of Fletcher (f. m. c.), 13 La. An. 29, January 1858. See same, p. 642, *supra.* "the State . . assigned its rights . . to . . Aspasie and Catiche Bohan, free women of color, . . by a legislative Act, approved March 19th, 1857. (Sess. Acts, 202). . . [They] obtained an order of appeal from . . judgment of the 14th January previous, sustaining the opposition ['to the amount of $5141 24'] of Duquesnay . . [31] successor in office of the Rev'd Curé Maenhaut." [30] "founded upon the allegation that . . Fletcher was accountable . . for the rents of certain real estate . . as . . executor of the Widow Bernard Couvent, from . . 1837, to . . 1847. . . In her . . will, the Widow Couvent, f. w. c., left . . bequest: . . 'que mon terrain . . soit . . employé à l'établissement d'une école gratuite pour les orphelins de couleur du faubourg Marigny. . . sous la surveillance du révérend Père Maenhaut, et . . de ses successeurs en office. Mes dettes et mes legs . . payés, dans le cas qu'il resterait quelque chose, je . . institu . . Fletcher ['previously appointed executor . . *with seizin* of her property'], mon légataire universel, pour par lui en disposer . . [31] suivant les instructions que je lui donnerai de vive voix.' . . [She] died . . 1837. . . In April [1847] . . a number of free colored persons formed themselves into a voluntary corporation . . 'La Société Catholique pour l'instruction des Orphelais [*sic*] dans l'indigence.' . . May following, by an authentic act, to which . . Fletcher was a party, Maenhaut ceded to this society the property . . bequeathed . . No judicial demand was made . . for an account of . . rents ['from the death of the testatrix up to the date of the cession'], until . . 1856, . . nearly three years after . . [Fletcher's] death."

Judgment, [32] "so far as it respects the opposition of . . Duquesnay . . reversed, and . . opposition . . dismissed, the said opponent paying

[1] Act of Mar. 25, 1840. Acts, p. 87.

the costs thereof in the District Court, and the costs of this appeal." [31] "the will gives [Duquesnay] . . no right of action for those rents."

Nolasco v. Lurty, 12 La. An. 100, February 1858. [101] "Nolasco died testate, bequeathing to . . his [three] acknowledged natural children, born of Ellen Wooten,[1] a free woman of color, . . $1,000, and [one half] the residue of his estate . . to his brother, James . . James . . also died testate, bequeathing one-half of his estate . . to . . [said] children . . [Two] died at the age of minority without issue," Held: "Ellen Wooten inherited both [of their] estates"

McClure v. King, 13 La. An. 141, March 1858. "undertook to build ten double negro quarters . . for . . $5000"

New Orleans v. Baltimore, 13 La. An. 162, March 1858. See State *v.* Executors of McDonogh, p. 629, *supra.* [165] "experts . . reported the present value of the [legacy] . . to the American Colonization Society . . at $84,230 27, . . and the court decreed, that on the payment . . said [annuity or legacy] . . be extinguished." Affirmed: [163] "the Legislature has so far assimilated bequests of this character to usufructs, as to limit their duration to thirty years from the testator's death."

Delphine (f. w. c.) v. Mrs. Guillet et al., 13 La. An. 248, April 1858. See same *v.* same, p. 644, *supra.* "Upon the new trial there was again a verdict . . that the plaintiff was 'entitled to her freedom as soon as practicable,' and a judgment was rendered . . February, 1857, decreeing that 'the defendants proceed without delay to emancipate . . under the law of this State,' . . Thereupon a suspensive appeal was taken by the defendants."

Judgment reversed and plaintiff's petition "dismissed, as in case of nonsuit, she paying costs in the District Court, and the costs of this appeal." "The judgment was probably correct, at the date of its rendition. . . Since then the Act of March 6, 1857 . . has been passed, declaring that . . after the passage . . no slave shall be emancipated *in this State.* . . It is now impossible to affirm . . If the law should be changed, her remedy might be revived." [Spofford, J.]

Dickason v. Bell, 13 La. An. 249, April 1858. "May, 1853, sold at public auction to . . Richardson, a negro man for $1265 and a negro woman and child for $1325. The one-third . . was paid in cash, . . April, 1854, Richardson brought an action of redhibition to rescind the sale of the negro man," [12 *id.* 296] "The testimony . . established . . that the slave died of a redhibitory disease, which existed prior to the sale, to the knowledge of the defendant." Judgment for plaintiff affirmed.

Clague et al. v. New Orleans, 13 La. An. 275, May 1858. "plaintiffs' slave was put into the police jail . . *for safe keeping,* in the summer of 1855; . . in October, 1856, plaintiffs demanded delivery . . answered by the jailor, that the slave had runaway from the custody of the driver, while out at work in the chain-gang, . . August preceding," Suit dis-

[1] See E. Wooten *v.* Harrison, p. 633, *supra.*

missed. Reversed and the cause remanded: " timely notice " should have been given.

Nesom v. D'Armond, 13 La. An. 294, May 1858. " At a probate sale . . 1836, . . Nesom became the purchaser of . . Julia and her child [for $1800,] . . payable in three . . annual installments,"

State v. Oscar (a slave), 13 La. An. 297, May 1858. " Convicted and sentenced for a capital offence . . a single bill of exceptions . . On the day fixed for his trial, of which his master had previous notice, the prisoner appeared by counsel, and objected to going to trial, contending that the case should go on only as a preliminary examination." Held: " no error in overruling the objection." [1]

Alexander v. Hundley, 13 La. An. 327, May 1858. Buchanan, J.: " the disease of which . . Lewis is proved to have died (chronic diarrhoea), does not come within the definition of apparent defects contained in . . Article [2497 C.C.] . . The boy was apparently ill at the time of the sale; but no declaration is proved to have been made by defendant . . in relation to the nature . . which might have exonerated [him] . . from liability to restore the price, under Article 2498."

Harper v. Price, 13 La. An. 340, June 1858. In 1850 Kinney sold a mulatto boy, aged about twelve, for $600 " cash paid."

Landry v. Klopman, 13 La. An. 345, June 1858. " the slave . . ran away from plaintiff's plantation in May, 1854. . . July . . committed to jail in Vicksburg . . as a runaway . . advertised for six months . . and not being called for . . he was then advertised for sale for thirty days and sold [in March 1855] to Mizel, a dealer in slaves, for $809. The purchaser brought the slave to New Orleans and sold him to . . Klopman, for $1100, on the 20th of March, 1855, and this suit was brought on the 27th " Judgment for plaintiff.

Reversed: [349] " the judgment . . should have been in favor of defendant, and the plaintiff left to obtain the proceeds of the sale to his credit in . . Mississippi. . . and . . pay the costs of both courts." [345] " The question was before the court in 1848,[2] when the court was equally divided . . But . . a single decision is not . . conclusive . . [346] the Article of the [U. S.] Constitution [3] is not to be taken literally " " cannot . . be applied to controversies arising between two persons claiming the ownership . . depending upon the laws of different States although the slave was a fugitive from labor; for the slave is not discharged from labor . . but the right to his . . labor is the subject-matter of a controversy . . If we hold the contrary . . a slave, the moment he becomes a fugitive, acquires a sacred character under the Constitution and is above the laws and *extra commercium.* . . the provisions of law which are common to . . nearly all, of the slave States on the subject of arrest of fugitive slaves partake of a two-fold character, the one being a matter of

[1] Act " relative to slaves," approved Mar. 19, 1857.
[2] Oates *v.* Caffin, p. 589, *supra.*
[3] Art. 4, sect. 2.

police essential . . against the depredations of this class . . the other, a municipal regulation . . for the protection of the owner . . they are no violations of the [U. S.] Constitution . . and if not essential to the existence of the institution of slavery itself, still of the last importance to the internal peace and quiet of these States. . . [348] After a bona fide effort . . to find the owner, . . the State may presume that the owner prefers to abandon the slave" [Merrick, C. J.] [349] "Spofford, J., took no part in the decision of this cause."

Louisa Marshall v. Mrs. Charles Watrigant et al., 13 La. An. 619, June 1858. [621] "the plaintiff was born about . . 1822 the slave of George Belcher, of . . Kentucky; . . [he] died in 1824, leaving a will . . that the plaintiff was to have her freedom at the age of thirty; . . when she was about thirteen . . she was removed to . . Missouri, by . . Wood, who had married . . [Belcher's] grand-daughter, . . probably the legatee of Louisa, . . she was subsequently removed to New Orleans, . . sold as a slave for life, . . passed through several hands, . . finally purchased by . . Mrs. Watrigant, in good faith . . 1854. Not long after . . 'She fled . . to . . Kentucky,' where she instituted suit . . obtained a judgment decreeing her to be free, and awarding her execution against the defendants, for costs, although . . [not] notified of the proceedings . . She then returned to Louisiana, armed with her Kentucky judgment." [620] "brings suit for her freedom . . and calls upon the court for a writ of sequestration, and causes herself to be placed in the . . custody of the Sheriff." She appeared "before a magistrate, two months afterwards, to make an affidavit for the purpose of obtaining a commission to take the testimony of witnesses residing out of the State. . . [621] The judgment of the lower court was in favor of the plaintiff; . . The defendant . . appealed." There were two motions to dismiss the appeal. "ordered . . that the rule [taken to dismiss] be dismissed, at the costs of the mover." "As . . [plaintiff] has removed from the jurisdiction of the court [to the town of Franklin] in violation of law, appellant is not obliged to search for her beyond that pale, and service upon her counsel must be considered . . good"

Judgment on the merits reversed, and "ordered . . that there be judgment in favor of the defendant, as in case of nonsuit, the plaintiff paying the costs of both courts." [622] "when Woods [*sic*] removed with her to Missouri, that became her domicil. When he . . removed her to Louisiana, . . Louisiana became her domicil; . . The decree of the [Kentucky] court . . could not then bind the defendants, . . [623] [The act of 1857] is a bar . . to her emancipation." [Merrick, C. J.] Spofford, J., dissented: "This is not the suit of a slave to procure an emancipation; it is a suit brought by a person alleging herself . . free . . but tortiously restrained . . [624] The wrongful act of a usurper in . . selling her as a slave for life, could not destroy her vested rights."

Lusk v. Church, 13 La. An. 360, June 1858. "The plaintiff purchased of . . Dougherty, in June, 1846, . . Dennis, who had been purchased by Dougherty in March, 1846, from the defendant. . . the seller, besides his

own warranty, assigned . . all his rights . . of warranty against the defendant. The slave ran away in . . 1847;[1] and plaintiff . . seeks to recover his value . . upon the warranty of title; . . alleging . . that . . Dennis was free. . . No fraudulent practice is charged upon the defendant. . . Dennis himself has never claimed his freedom in any legal proceeding."

Judgment in favor of defendant, as in case of nonsuit: [361] "the present suit . . is an action for freedom of a slave, instituted . . by . . purchaser . . the state of facts . . is identical with that . . of Louisa Marshall *v.* Watrigant [*supra*], . . upon which we held that, in the present legislation of the State, an action could not be maintained for freedom." [Buchanan, J.] "Spofford, J., took no part in this case."

State v. Whetstone, 13 La. An. 376, July 1858. "the defendant owns two tracts . . separated . . by a forty acre lot . . house is on one . . and his principal negro quarters and gin on the other, . . he works fifteen or twenty hands, . . all . . getting their daily rations at the house; . . he has about 200 acres . . in corn and cotton at the house place, and about 180 acres at the other; . . no white or free colored person slept at the quarter on the other place, although the overseer was usually there until after dark, and before day in the morning." "judgment condemning him to pay the State . . fifty dollars per month for sixteen months, during which he is alleged to have violated the 18th section of the Act of 7th June, 1806, (Sess. Acts, p. 209,)" Reversed, and judgment for defendant: "His two tracts . . are cultivated *as one plantation,*"

Ford v. Simmons, 13 La. An. 397, July 1858. "suit . . to recover . . the value of . . Lewis, hired to [defendant,] . . on the ground that the slave was illegally and by violence killed on the premises of defendant who refuses to account for his death, and to pay the petitioner his value. . . 'the defendant for answer denies all . . and especially . . the ownership of . . Dennis, charged with killing' . . judgment in favor of plaintiff" Affirmed: [398] "defendant . . was obligated . . to explain"

Jones v. State, 13 La. An. 406, July 1858. [Merrick, C. J.]: "suit . . instituted under the Act of 15th March, 1855, relative to slaves and free people of color, . . to procure the emancipation of . . Maria" [407] "with leave to remain in the State." [406] "judgment in favor of the emancipation, the State has appealed. . . The slave . . has so far intervened . . as to file a brief by counsel, and a motion to dismiss the appeal, on the ground that the State is without interest, . . Maria does not appear to have any *legal interest* in the suit. The proceedings instituted by her master appear to have been conducted gratuitously on his part, . . Her motion . . cannot be considered. . . the statute was decided . . unconstitutional,[2] and . . the Legislature has . . declared that slaves shall no longer be emancipated in Louisiana.[3] . . judgment in favor of the defendant."

[1] See Lusk *v.* Swon, p. 633, *supra.*
[2] State *v.* Harrison, p. 649, *supra.*
[3] Acts 1857, pp. 55, 229.

Chaffe v. Steamboat and Owners, 13 La. An. 415, July 1858. " Plaintiff alleges that . . Dave, left [Shreveport] . . was seen . . in . . New Orleans, carrying boxes, etc., on . . boat " " The plaintiff recovered the slave during the pendency of the suit " Held: [416] " The proof is sufficient to entitle the plaintiff to recover . . $78 90, the value . . while absent and the costs of his recovery."

Wilkins v. Bobo, 13 La. An. 430, July 1858. " executions issued . . Wilkins, the surety, pointed out . . Edy, worth over eight hundred dollars, belonging to Daniels, upon which the Sheriff, Bobo . . undertook . . to levy. . . [His deputies] followed her from the field . . into the house . . when Daniels . . menaced them with violence . . they desisted . . Immediately thereafter, Daniels ran the slave . . out of the State and sold her." Judgment for plaintiff for $728.10.

Boulard v. Calhoun, 13 La. An. 446, August 1858. " action sounding in damages for a tort committed by defendant's slaves. The petition charges, that by the . . procurement of the defendant, certain white men, . . together with about twenty-nine slaves, all belonging to defendant, . . in the night . . ejected her . . removed her stock of goods, . . which, . . with [her] . . person . . [they] placed in a flatboat . . adrift in the Red River. . . did set fire to plaintiff's house, . . The plaintiff lays her damages at twenty thousand dollars. . . The evidence shows that plaintiff resided . . in a shanty . . of the meanest description . . The defendant is a planter, having four cotton plantations . . on the opposite side of the Red River . . Although . . [he] resided on one . . they were all under the superintendence of a general manager, Mr. Benjamin; and each . . was provided with a separate overseer. . . Dr. Murray, a planter, living immediately contiguous . . and Mr. Benjamin . . determined to remove the plaintiff . . The parties present and aiding . . were . . Dr. Murray, Johnson and Swim, two of the defendant's overseers, and . . a herdsman . . in . . [his] employ . . The two overseers brought . . by [Benjamin's] directions . . a force of ten each of the slaves . . under their charge, to do the laboring work of the removal . . the defendant was not present . . distinctly refused to give . . his sanction, . . [447] said . . that he had prosecuted her in Natchitoches, and would probably get her off in that way. . . ' but did not peremptorily forbid any others from proceeding ' . . [448] fifteen days after this event, the plaintiff was re-established at her old stand," " None . . estimate the actual loss . . at more than one thousand dollars;" [446] " The case has been before two juries. The first time there was a mis-trial; and the second jury has returned a verdict of five thousand dollars; from which defendant appeals. . . [448] bill of exceptions . . to the refusal of the district court to permit . . in mitigation of damages, proof of the nature . . of the business carried on by the plaintiff; . . chiefly of illegal trafficking with slaves . . habitually and notoriously "

" decreed, that the judgment . . be reversed, and that the plaintiff recover . . one thousand dollars, with costs of the court below;" " The mischiefs to our agricultural population, arising from shops . . where whiskey is furnished to slaves in exchange for articles pilfered from

their masters, have been frequently the object of legislative attention. . . The nature of the traffic, almost exclusively nocturnal, with parties incompetent as witnesses, makes it peculiarly hard of detection. . . this excluded testimony . . should have been admitted" [Buchanan, J.]

Mackie v. Davis, 13 La. An. 475, August 1858. "a physician . . says, that 'it could not be ascertained from the appearance after death' (there was an autopsy) 'whether the death was caused by a rupture produced by sudden exertion, or from the natural course of the disease of aneurism.'" Judgment for vendor sustained.

Laparouse v. Rice, 13 La. An. 567, August 1858. "suit to recover the value of . . slave . . [568] in the habit of running away. . . defendant is a planter and slave-holder, and lives" "about 45 or 50 miles distant from the [plaintiff.] . . defendant and . . Merriman were hunting for some runaway negroes. Merriman testifies thus: 'When we came across this boy he was in a thick palmetto swamp—he had a camp; there was a large quantity of provisions there. He ran, but picked up a belt, before running, to which was attached a scabbard. I ordered him to stop three times . . not more than twenty or twenty-five steps from him. So did defendant order him to stop. We were both afoot and had no dogs. If he had gone ten feet further he would have been out of sight. He was shot in the butt.' The left arm . . was also struck . . and broken."

Held: "the defendant is . . justified by the law.[1] . . the policy of the law, humanity, and a just regard to the interests of slave-holders require that the gun should not be aimed at him; but . . discharged for the purpose of inducing him to stop. When this is ineffectual . . the pursuer ought not to try to give him a mortal wound, . . If, however, the slave be killed, the homicide is a consequence of the permission to fire upon him."[2] [Cole, J.]

State v. White and Ward, 13 La. An. 573, August 1858. "The defendants were indicted for inflicting inhuman and cruel treatment on a slave, the property of one of them" "A fine of $400 was imposed upon . . White,"

Judgment affirmed: "the offence charged . . was not repealed by the Act of 1855 . . (Acts 1855, p. 131,) nor by the Act . . of 1857, p. 229. No section in either . . treats of the subject-matter of the sections No. 16 and 17 of sec. 41 of the Act of 1806,"[3]

Julienne (f. w. c.) v. Touriac, 13 La. An. 599, August 1858. "brought . . suit . . April, 1857, for her freedom and that of her children. She avers, that . . 1837, her former mistress, Mrs. Cydalise . . Thompson, sold her to the defendant's ancestor upon condition . . 'que la . . veuve Don Louis Touriac donnera la liberté à la . . négritte Julienne, sitôt que faire se pourra.'" The condition was not fulfilled.

[1] [567] "The Act of 1855 . . having been declared unconstitutional; and the Act of 1857 . . not having been in force at the time of the killing . . the decision . . must depend upon the effect of the Act of 1806." B. and C. 49.

[2] Duperrier *v.* Dautrive, p. 648, *supra.*

[3] B. and C. 61.

" Judgment against the plaintiff's claim, as in a case of nonsuit," " The Act of March 6th, 1857 . . is a bar to the action. . . If it should hereafter become possible, the plaintiff will have a remedy." See *infra.*

Cydalise Thompson v. Touriac, 13 La. An. 605, August 1858. Spofford, J.: " The day after Julienne brought . . suit [*supra*] . . Mrs. Thompson instituted the present action against the . . heirs of . . widow . . Touriac, to dissolve the sale made . . 1837. . . The sale was made for $600. . . The performance of the condition was not limited to any specific time. . . [606] it is urged that there *was* . . eight months between the time when Julienne attained . . thirty and the passage of the Act of March 6th, 1857, . . But they were not put in default. The plaintiff neither demanded a specific performance nor a dissolution, . . Nor is it proved that a specific performance was possible . . Act [of March 15, 1855] having been declared void, the Act of March 18th, 1852, p. 214, must be considered . . in force. . . it does not appear that . . Julienne was willing, or that . . Cydalise Thompson, desired that she and her children should be banished to Liberia; . . [607] as we cannot say that it never will be possible at a future day for [defendants] . . to give Julienne her liberty, the plaintiff has no ground at present for demanding a resolution of the sale. . . if it should become legally possible hereafter . . they would be bound under their contract, . . judgment . . against the plaintiff, as in a case of nonsuit,"

State v. Thompson and Baer, 13 La. An. 515, November 1858. " indicted under the third section of the Act of 6th March, 1819. . . the first [count] charges the defendants with having inveigled, . . stolen and carried away . . John; and the second . . with having aided said slave in running away . . Thompson was found guilty of the first, and acquitted of the second . . Baer was acquitted of the first, and found guilty of the second. . . both sentenced to five years imprisonment, at hard labor," Baer appealed.

Affirmed: [516] " one may steal a slave and at the same time may aid him in departing . . When a slave is stolen he is not always carried away by force, perhaps, as a general rule, the slave is induced to run away under the promise of liberty in a free State, whilst the real object of the criminal is to induce him to leave, so that he may sell him."

State v. Henderson (a slave), 13 La. An. 489, December 1858. Merrick, C. J.: [493] " the accused was charged with . . having, . . January, 1857, . . stabbed his master . . with a large pocket knife . . inflicting several . . dangerous wounds . . with the intent to kill . . convicted and sentenced . . March . . 1857." [489] " He has appealed; but the transcript of appeal was filed by the District Attorney. . . it is suggested that there are no bills of exception and no assignments of error, and that the accused has not appeared by counsel, and, therefore, it must be inferred that he has abandoned the appeal. This by no means follows. It is possible that the accused, shut up in prison, . . does look to this court to see that his life shall not be forfeited except upon sufficient ground, . . [494] The forty-third section of the Act approved 19th of March, 1857,

has repealed the offence . . There being no saving clause, it operates a general pardon to the accused, and he is entitled to the benefit of the statute, although passed subsequent to his conviction."

Summers v. Insurance Co., 13 La. An. 504, December 1858. " suit . . brought . . to recover the amount insured, on one of three slaves . . as laborers in a tobacco warehouse, . . the policy declares that they are not to be employed in a more hazardous occupation. . . could not be taken to more southern localities." " at Lobdell's landing [north of New Orleans], whilst walking on the plank from the steamer . . to the shore . . [505] a strong wind . . caused . . him to lose his balance " [504] " he was . . being sent by plaintiff to be employed upon a sugar plantation, which defendant avers is a more dangerous occupation " Judgment for plaintiff affirmed: " the slave was not lost while working thereupon."

Wright v. Railey, 13 La. An. 536, December 1858. " suit . . upon a . . note . . [537] The defence . . is . . that the consideration . . has failed, . . slave having been sold [in 1857 for $1318.50] as a cook, and being affected with . . drunkenness and inflammatory rheumatism . . with epilepsy and addicted to theft."

Pope v. Anderson, 13 La. An. 538, December 1858. Long of Tennessee sold [544] " Absolom [*sic*], aged about fourteen, of a copper color, or griffe," for $350 cash.

Jamison v. Bridge, 14 La. An. 31, January 1859. " Petitioner avers . . that in 1855 Berry died, leaving an olographic will, . . donated to petitioner his freedom;" Nonsuit, " for the plaintiff may hereafter have a right of action for his freedom . . in the event of a change of the law " [1]

McCutcheon v. Angelo, 14 La. An. 34, January 1859. " The plaintiff is the owner of a . . slave, whose eyesight was utterly destroyed by shot fired . . by the defendant. . . [35] seeing some one going from his chicken-house, he called three times . . to stop, which not being done, he fired; . . Judgment in favor of plaintiff for $1500," Affirmed: " the proof does not enable us to say that . . [defendant] was a freeholder," [2]

Brown (f. w. c.) v. Raby, 14 La. An. 41, January 1859. " defendant . . of Mississippi . . came to New Orleans with plaintiff in his possession, and a short time afterwards he was obliged to leave . . without [her] . . she having run away." " lodged in jail as a runaway . . she presented a petition, averring that she was purchased from . . her former mistress, by . . Walden, . . of Mobile, with the special condition of emancipating her; that she . . is entitled to be emancipated; that . . [he] will emancipate her, as soon as he will come . . prays for a writ of sequestration . . she was sequestered. . . The suit was dismissed " Affirmed: " she . . ought to resort to the courts of Mississippi,"

Roquest v. Boutin, 14 La. An. 44, January 1859. " action of redhibition . . to annul a sale of a female slave sold . . to plaintiff for $1000, and alleged to be afflicted with an incurable disease of a scrofulous

[1] Sess. Acts of 1857, p. 55.
[2] Rev. St. 59, sect. 71.

character, and addicted to drink. The slave was sold in March, and no physician was called until August, although . . witnesses swear the slave had a swollen foot and leg immediately after the sale. . . one [physician] called . . in August, calls it ' Edême,' (an edemetous tumor). One of the two called . . in November, terms the disease ' Elephantiasis,' and says it is incurable. The other says it was a tertiary syphilis, and if it had been attended to three or four months previously, he presumes . . might have been cured long ago. . . the plaintiff had several conversations with a broker . . previous to August, in regard to . . sale, giving as a reason that his family was about to move away, and fixing her price at $1200; . . no mention of her being sickly, . . finally . . changed his mind . . judgment . . in favor of the defendant."

Affirmed: "If it be even conceded that the disease, as a syphilitic tumor, lessens her value one half, still . . he did not procure . . medical assistance which . . her situation required, until four months after the sale."

Kessee v. Mayfield and Cage, 14 La. An. 90, February 1859. "proved that the instructions of defendants to plaintiff, as their overseer [in 1856 on a sugar plantation], were, that he was not to chastise the slaves himself; but, in case they merited chastisement, that the same was to be inflicted by the driver, with the assistance, if necessary, of other slaves, under the direction of the overseer; that all personal collision between the overseer and the slaves . . was strictly prohibited. . . proved, that the plaintiff told witnesses that he would not obey . . and that he actually flogged slaves with his own hand." Held: "a sufficient cause for his discharge."

George v. Demouy, 14 La. An. 145, March 1859. "The plaintiff sues to recover his freedom. Since bringing the suit he has become a fugitive . . Leon George, the plaintiff, and his mother were the slaves of . . Richard.[1] . . In 1834 . . Richard desired to place the plaintiff under the charge of [Mrs. Willis] the wife of the overseer of Benjamin Poydras, the plaintiff . . being about twelve months old, the reason given was the bad behavior of the mother . . Richard died the next day of the cholera, and the child, with a servant to take care of him, was sent to the house of the overseer by Poydras. . . Poydras acted for the heirs (who resided in France) . . In 1838 he sold the mother . . and her other children to the defendant . . Leon George . . was expressly exempted from sale, though then but about five"[2] [147] "condition sans laquelle la présente vente . . serait . . annullée si les . . acquéreurs venaient à l'exiger. . . [In 1843] defendant, who is the god-father of plaintiff, asked Mrs. Willis to send plaintiff to see his mother . . [148] saying that he desired to make him some presents, and that he would not keep him but a week. . . kept him at his house up to about the time of the institution of this suit in 1857." [145] "much testimony . . that . . Richard and

[1] Purchaser of the share of one of Julien Poydras's legatees. 2 Rob. La. 1 (6).

[2] "Every person is expressly prohibited from selling separately from their mothers, the children who shall not have attained the full age of ten years." Act of 1806. Rev. St. 523.

his heirs intended that Leon George should be free, and some conversations are testified to in which the defendant promised to procure the freedom . . and one or two in which he said he was free. . . shown by [other] witnesses . . that defendant treated Leon George as he did his other slaves." Judgment in favor of plaintiff.

[146] " decreed . . that the judgment . . be . . reversed, and that there be judgment . . in favor of the defendant, and that the plaintiff pay the costs of both courts." " the plaintiff had [not] acquired the *status* of a free person of color prior to the promulgation of the Act of 1857," Cole, J., dissented.

Pauline (f. w. c.) v. Hubert, 14 La. An. 161, March 1859. " The plaintiff and her mother, Arsène, were the slaves of . . Bourgeat. Arsène contracted, in 1850 or 1851, with [him] . . for the emancipation of herself and Pauline. The condition (it seems) being the payment of $1,500. Arsène . . paid $600, . . and received an act of emancipation for herself alone. . . [In 1852] a friend advanced [$900] . . In the mean time Pauline, had given birth to . . Julie, . . Bourgeat insisted on [$100] . . more as the price of Julie. This was paid, also, . . Bourgeat passed the act of emancipation of Pauline. Mention of the child was omitted . . After the death of . . Bourgeat, Julie was inventoried as the property of his succession, and an order obtained for her sale. This suit is brought . . to restrain [the administrator and the auctioneer] . . from selling, and to have the freedom of Julie recognized."

[163] " decreed . . that the injunction granted . . be perpetuated; that . . Julie be delivered to the plaintiff," " The judgment of the lower court . . so far as it decrees the freedom of Julie, must be reversed;" [162] " Julie has never been emancipated . . [163] the child of the *statu libera,* like the *statu libera* herself could only become free by the consent of the public authorities." [Merrick, C. J.] Cole, J., dissented: " Article 196 of the Civil Code . . plainly declares, that at the moment the mother is entitled to be enfranchised, the child becomes free. . . no ratification . . by a court of justice is necessary. . . If my interpretation . . be incorrect . . Why . . should slaves [' vested with the same right of contracting as to their emancipation [C.C. 174], as freemen are as to any other species of contract '] be deprived of the benefit of Article 105 of the Constitution of 1852, which prohibits the passage of any law impairing the obligation of contracts, or the divestiture of vested rights. . . [164] it becomes a serious question as to the power of the State to practically annul [by the act of 1857] . . the anterior contract."

Underwood v. Lacapère, 14 La. An. 276, April 1859. " the boy . . six weeks old . . was sold . . with his mother . . for [$800.] . . the child . . really diminished the then value of the mother. . . Between four and five years afterwards, . . the boy . . and his mother [were sold] . . [277] for one thousand dollars. At this time, the boy is estimated to have been worth [$250] . . and the mother [$750.] "

Succession of Woodruff, 14 La. An. 295, April 1859. " Baker Woodruff died . . May, 1857, leaving . . will . . dated . . 1855. . . ' As soon as

possible after my decease, I wish all my negroes freed that I will name ['a large number'] . . and sent to Pennsylvania, and bread and meat found them for one year, all at the expense of my estate.' . . [296] executor applied for an order of court authorizing him to remove the slaves to . . Pennsylvania, to be there emancipated, . . rejected"

Affirmed: "the intention of the will was, they should be liberated in this State. The statute approved March 6th, 1857, prevents . . the sending . . to Pennsylvania, which was to be the consequence of their freedom, cannot then be effected." [Cole, J.]

Logan (f. w. c.) v. Hickman, 14 La. An. 300, April 1859. "The plaintiff sues . . for . . her freedom, and caused herself to be sequestered . . *without giving bond.* . . the defendant . . excepts . . having his domicil in the parish of Rapides . . not subject to the jurisdiction of this . . court [of New Orleans]; . . The exception was overruled, and the defendant took a rule to show cause why the writ of sequestration . . should not be set aside . . neither bond nor affidavit as required by law. The rule was discharged . . judgment for the plaintiff,"

[301] "decreed, that the judgment be reversed; the verdict . . be set aside, and . . suit be dismissed . . without prejudice to the plaintiff's right of action at the domicil of defendant." See Hickman *v.* Judge, p. 673, *infra.*

McDermott v. Cannon, 14 La. An. 313, April 1859. "The contract sought to be rescinded is the sale of a slave alleged to be affected with scrofula and addicted to running away. . . the merchants of the plaintiff, addressed a note to the defendant, . . that the negro was unsound and a runaway, and in jail . . at defendant's expense, . . delivered to a negro boy . . in front of the door" Held: "not sufficient proof of an offer to return"

Dohan v. Wilson, 14 La. An. 353, May 1859. "action . . to recover the price of two slaves . . The negro women were delivered . . 21st of January, 1854, to the plaintiff, and taken to his plantation in the Parish of Tensas, where they were received on the 23d, apparently in good health. On the 25th, they were employed in picking cotton, and on the 26th, . . taken violently ill with the cholera, and subsequently died. On the 30th, . . among the other negroes . . the first one attacked died the next day . . Eight or nine other cases . . followed, and the disease disappeared . . after the negroes had been made to abandon their houses, and disperse and encamp . . no cholera in the Parish . . since 1851," "The disease having made its appearance in fifteen days after the sale, is presumed to have existed on the day of sale, the slaves not having been eight months in the State.[1] . . defendant has attempted to rebut by proving . . that they walked the day of sale a mile to the steamboat landing . . in fine spirits . . no cholera in the slaveyard of defendant from the 28th November, 1853, to the 28th February, 1854; . . defendant's physician, who visited the establishment almost every day, . . will not . . state ['positively'] as to January," Held: [355] "the loss must fall upon defendant"

[1] B. and C. 792.

Vienne v. Harris, 14 La. An. 382, May 1859. "January, 1857, the plaintiff purchased . . a negro man [for $1000] . . in cash. . . [383] hired the slave to . . master of the steamboat . . at the rate of thirty dollars per month"

State v. Jack (a slave), 14 La. An. 385, May 1859. "prosecuted for the murder of the slave Joe, was found guilty of manslaughter by the jury, who . . decreed his punishment by five years imprisonment with hard labor, and the infliction of the whip at stated periods during the incarceration. The verdict . . was set aside, and judgment arrested by the District Judge, on the ground that a slave cannot . . be found guilty . . of manslaughter, and because the commutation of punishment . . apart from the cruelty of the substituted penalty, is unwarranted in law." [386] "decreed . . that the verdict . . be reinstated, and that the District Judge pass sentence in accordance" [I.] [385] "the 11th section of the Act of 1806 . . embraced every species of criminal homicide known at common law. . . [II.] [386] we think, that the infliction of both [punishments] . . was a lesser punishment [1] in comparison with the death penalty,"

Lewis v. Morgan, 14 La. An. 401, May 1859. [403] "the defendant . . a practicing physician [sold two women slaves to plaintiff] . . carried . . [one] in a carriage to the house of the plaintiff . . six miles . . represented her a strong, healthy, field hand, capable of doing as much work as a negro man belonging to plaintiff, . . within three or four days after the delivery of the slave . . discovered . . afflicted with some disease, and a physician was called . . the disease proved to be . . *procedentia uteri,* and is of a character to render the slave utterly valueless." Both slaves died of pulmonary consumption. [401] "no tender appears to have been made, . . [403] judgment for defendant, as in case of nonsuit,"

Gaiennie v. Freret, 14 La. An. 488, May 1859. Merrick, C. J.: "action . . to rescind . . and recover back the price . . The negress was sold to the plaintiff on the third day of February . . and immediately removed to the parish of Natchitoches . . About the 15th or 20th . . plaintiff . . discovered [her] . . unsound. . . it is but reasonable to suppose that it was not without delay and reluctance that . . [489] [she] communicated to her new master, a disease [[488] 'ulceration of the uterus'] which she had carefully concealed from her former one." [488] "A physician . . visited her four times. . . advised she should be returned" "the defendant verbally consented . . was notified of her arrival . . had her treated at the hospital by skillful physicians, but . . the slave died." Judgment for plaintiff affirmed.

Poree v. Captain Cannon et al., 14 La. An. 501, May 1859. "suit . . to recover . . damages for the loss of a slave killed by the . . explosion of the steamboat *Louisiana,* in . . 1849. . . The negro was . . employed at the scales of another steamboat, about thirty feet distant, weighing freight. He received an injury in his side, and his nostrils were filled with

[1] Acts of 1857, p. 233, sect. 35.

. . some substance carried by the steam. . . taken to the hospital . . died the next day." Judgment in favor of plaintiff for $900. Affirmed.

Hickman v. Judge, 14 La. An. 504, June 1859. See Logan *v.* Hickman, p. 671, *supra.* " the Judge of a District Court in New Orleans has granted an order of sequestration of a slave who intends to bring suit at the domicil of her master for her freedom—as a conservatory measure, to insure the jurisdiction of the court (that of Rapides,) in which the action is to be instituted." Writ of prohibition prayed for by Hickman, master of the slave, was refused: " Should the suit not be brought within a reasonable time, in Rapides, it will be the duty of the court in New Orleans to quash the sequestration."

State v. Peter (a slave), 14 La. An. 521, June 1859. Cole, J.: " tried and convicted, under the Act of 19th March, 1857, for attempting to commit a rape on the person of a free white female, . . sentenced to capital punishment. . . [522] The counsel for the accused asked the Justices to charge the jury, that the testimony of Samford . . should not be considered . . because he stated . . that the confessions . . were made in answers to questions put directly . . to Peter, . . handcuffed. . . The Justices . . refused . . on the ground that there was no law authorizing them to give any charges. . . The laws . . do not appear to contemplate that the presiding Justices of the Peace should charge . . [523] upon points of law, although, perhaps, it would not be illegal, if they thought proper . . The counsel of defendant offered to prove an alibi by . . the owners . . of . . Peter. . . objected to, on the ground of interest in the witnesses, . . excluded . . This testimony ought to have been admitted. . . subject to the credibility which the jury may attach to it." " The point at issue is not . . [the] value, but . . guilt . . decreed, that the . . judgment . . be . . reversed, and . . case be remanded "

Bowman v. McKleroy, 14 La. An. 587, June 1859. " the owner of fifty-eight slaves . . heavily mortgaged in . . Mississippi . . [in] the night . . 1855 . . without the knowledge . . of his creditors, placed all . . on a passing steamer, landed them . . on the Louisiana side . . at the plantation of his brother-in-law . . made a pretended sale . . to . . the overseer " Held: fraudulent.

State v. Charles (a slave), 14 La. An. 649, July 1859. " Charles was tried before a jury of two Justices of the Peace and ten slaveholders . . charged with having . . maliciously struck his overseer, a white man, . . so as to cause a shedding of blood . . [650] verdict . . ' We, the court and jury, . . acquit him of any capital offence, and from motives of policy and not from justice of the case, sentence him to receive one hundred and fifty-four lashes by the Sheriff, but not so as to break the skin . . on the first Monday of September, A. D. 1859.' "

[651] " decreed . . that Charles be discharged." [650] " As . . the jury acquitted the prisoner of an offence punishable with death, it had not the right to inflict corporal punishment." Sess. Acts, 1857, p. 232.

Faulk v. Hough, 14 La. An. 659, July 1859. " The plaintiff sues for the price of a slave . . sold . . with an exclusion of warranty. . . [660]

The defendant expects to prove . . the plaintiff's statement, that the slave had no other disease but chills, at the time of the sale; and . . that she died of the dropsy . . contracted previously"

State v. Marion Fuller, 14 La. An. 667, July 1859. "The indictment charges that the prisoner 'did . . incite . . aid, hire and counsel . . Robert Fuller [1] and . . Holmes . . to inveigle, steal and carry away'" a slave. Held: the act of 1819 (Acts, pp. 62, 63) was not repealed by the act of 1855.

State v. Davis, 14 La. An. 678, July 1859. "indicted . . for having . . made an assault upon a slave, by willfully shooting at him . . The motion to quash the indictment, was sustained,"

[679] "order . . set aside . . and the case . . remanded" "Slaves are treated in our law as property, and, also, as persons;" "The ninth section of the Act of 1855 [2] . . applies to an assault upon a slave or upon a free person." [Cole, J.]

Price, Guardian, v. Executor, 14 La. An. 697, July 1859. "Hyde . . left two wills, directing the manumission of . . Minnie and of her eight children, making them his universal legatees. The plaintiffs, as heirs-at-law . . claim . . on the ground that the legatees cannot be manumitted under our laws, and . . that the testator lived in concubinage with . . Minnie. The defendants set up the plea of . . prescription"

Held: "It is no objection to the slave's right to manumission . . that she was the concubine . . With regard to the children . . the petition does not allege that they were the natural children of the deceased; . . that [he] . . had stated, in conversation, that such was the case, . . [is] of no legal . . effect. . . At the time of the death of . . Hyde, it was lawful for him to emancipate . . their inchoate right of freedom was subject to be defeated by subsequent legislation, . . [698] Unless . . law [of 1857 [3]] he repealed . . the slaves . . cannot stand in court for any purpose. . . the question . . is one of State policy; and the mere lapse of five years since the probate . . could not have the effect to defeat the intervening provisions of the Act of 1857," [A. Voorhies, J.]

McLean v. Fulford, 14 La. An. 711, July 1859. "Plaintiff sold . . a slave, warranted sound in mind and body, in March, 1857, for eight hundred dollars, . . [712] This suit was instituted upon . . note . . a physician, who attended the slave for dysentery . . says, . . 'if she was not imbecile, she was not far removed from it.'"

Held: "the mental weakness . . is to be classed among those apparent defects which . . do not give rise to the action of redhibition." C. C. 2297.

State v. Robert Fuller, 14 La. An. 720, July 1859. See State *v.* Marion Fuller, *supra.* "The prisoner is charged with the offence of . . 'concealing . . a runaway slave . . knowing'" The sureties "ask the reversal of the judgment of forfeiture of the bond signed by them . . on the ground that

[1] See State *v.* Robert Fuller, *infra.*
[2] Acts of 1855, p. 131.
[3] Acts of 1857, p. 55.

there is no offence charged" Affirmed: "The statute punishing the offence [1] . . is not repealed by the Act of 1855,"

Dyson v. Phelps, 14 La. An. 722, July 1859. "1850 . . Vanhook . . conveyed to . . Green . . Vina and her two children, for . . $980; . . surety . . transferred . . 1852 . . Vina and her four children, to . . Phelps, for . . $1,150."

Satterfield v. Keller, 14 La. An. 606, August 1859. "obligate themselves [in 1858] to sell . . eighty-three head of slaves (names omitted);"

Gardiner v. Thibodeau, 14 La. An. 732, August 1859. [733] "Simms . . asked defendant who had killed the negro? . . 'Defendant stated that he had. . . that he had found the negro on his premises, stealing chickens; that he would kill any negro or any white man. . . that he had hallooed to the boy to stop; that the boy continued to run,' . . a butcher knife, six or seven inches long" "was found in the pocket of his coat"

Judgment for defendant reversed, and judgment for the plaintiff for $1150 and costs of both courts. "The proof shows, that he was addicted to theft; but . . none . . that he was a runaway.[2] . . the defendant is left without sufficient justification." [Merrick, C. J.]

Deshotels et al. v. Soileau, 14 La. An. 745, August 1859. Will of André Deshotels, who died in 1855: [755] "I will . . unto my nephew . . and to his wife . . all the residue . . including slaves, . . with the following conditions, . . that they, . . immediately after my death, take such steps as shall be necessary, under the . . laws of the State . . to emancipate . . [fourteen] slaves . . upon such terms as will permit them to remain in the State . . and should this not be permitted . . they shall have them emancipated, and furnish each one . . with one hundred and fifty dollars, to remove them from the State . . And . . from the date of my death and the emancipation . . furnish them all necessary food and clothing, and treat them with kindness and humanity: and on their failure to comply . . this legacy is to become . . void, so far as [my nephew and his wife] . . are concerned. And in order fully to carry out this provision . . I give . . unto my said slaves their liberty, with the right to claim the same from my said legatees immediately after my death. . . however, in the event [of] my said slaves refusing to leave the State, should the laws . . require this as a consideration of their emancipation, . . I will them to my said nephew and niece, and discharge them from the conditions . . and only require them to have said slaves emancipated, whenever the law . . will permit them to remain" The nephew testified: [749] "He has never taken any steps to have these slaves emancipated; . . desired that [they] . . should be retained in slavery."

Decreed that [757] "the said slaves . . [are] the property of . . heirs-at-law" [756] "the right of a slave to freedom under the will of his master . . [is] not vested, until the formalities required by law . . [have] been complied with. . . by the Act of the 6th of March, 1857, the right . . has been annihilated. Dating from the passage . . we understand

[1] Acts of 1819, p. 64.
[2] Acts of 1857, p. 233, sect. 41.

the policy of this State to be, that the slaves within her borders shall remain slaves. In this, there is nothing unconstitutional. . . [757] The *residuary legatees* are directed . . to remove [them] . . *after having had them emancipated.* . . . a very different thing from authorizing *the executor* to remove [them] . . *without being emancipated.*" [Buchanan, J.]

Hardy v. Voorhies, Sheriff, 14 La. An. 776, August 1859. "Modeste . . was tried for the murder of her mistress, found guilty by a special tribunal organized under the statute of the 19th of March, 1857, and ordered to be executed, . . 'Whereas . . Modeste and Joseph, have been . . May, 1858, . . adjudged guilty . . that . . Joseph, . . June, 1858, . . be hanged . . Modeste . . also . . fifteen days after she has brought forth her child, she being now pregnant.' . . Over a year having elapsed since . . the warrant [was] placed in the hands of the Sheriff, the District Attorney called upon [him] . . to execute the culprit. This request not being complied with, the former instituted proceedings before the District Court . . [777] contended on behalf of the prisoner, that . . condition [of giving birth to a child] has never been fulfilled." "the District Judge decreed that the Sheriff should proceed"

Reversed: "The District Court was . . without jurisdiction . . The remedy of the State might possibly be, to apply either to the Governor, or to the Justices who had presided . . for the purpose of having a day fixed for the execution."

Adams v. Preston, 22 Howard (U. S.) 473, December 1859. In 1830 Pope mortgaged [481] "seventy working hands and thirty-one children to Hampton."

In the Matter of the Interdiction of Rosette Rochon (f. c. w.), 15 La. An. 6, January 1860. "The appellant has been appointed curator . . bond [fixed] at $8,000. . . The slaves, eight in number, were inventoried at $5,000. Houses and lots in New Orleans . . at $12,700." Judgment affirmed.

Levy v. Wise et al., 15 La. An. 38, January 1860. [39] "The appellants are the sureties of . . Mary Wise, to whom certain premises ['a house in . . New Orleans'] were leased by the plaintiff. They urged . . that [Mary Wise] . . was a slave . . and that the contract . . is null" Case remanded "for the purpose of allowing the appellants to prove their allegations"

Tom v. Ernest (a slave), 15 La. An. 44, January 1860. "The petition represents that . . Marchesseau left . . to go to California about . . 1849, and . . deposited in the hands of Marie Louise Duseau . . Ernest, a mulatto boy . . slave . . born about . . 1848, from . . [45] Mary, the property of . . Peters . . That the expenses . . amounted to $570 . . [in] 1857, when . . Peters took possession . . until he should be ten . . Marchesseau has never returned . . writ of provisional seizure issued, but . . was set aside," Affirmed: "A slave is not a thing, in the sense of . . 4th section of Art. 245 of the Code of Practice."

Isaac Bateman v. Frisby and Kendig, 15 La. An. 58, January 1860. " The testator [a resident of Arkansas] . . declared that . . [on] death [of his wife] . . two of [his slaves] . . should be liberated . . and that his other slaves, with their increase . . should be appraised and hired out, after her death, until their hire should amount to two-thirds of their appraised value; then . . set free . . codicil . . that . . Isaac . . should, after his own death, be hired out, . . The testator died in 1850, and his widow in 1851, and after her death, Isaac was appraised at [$600] . . and his hire in . . Arkansas was worth [$150] . . per annum. Some four years after the death of . . widow, the plaintiff was removed [to Louisiana] . . by the administrator, with the will annexed . . and sold as a slave for life to . . Kendig. The defence . . is, that . . the plaintiff is not entitled to his emancipation . . until the hire of all . . amounted to two-thirds of their appraised value . . [59] verdict . . awarding damages in the sum of [$300] . . to the plaintiff." Judgment thereon in favor of plaintiff affirmed: [58] " the plaintiff was not bound to prove more than . . that his own hire exceeded two-thirds of his appraised value, before his sale "

Carreta v. Lopez, 15 La. An. 64, February 1860. " suit to have the sale of a slave rescinded, on account of . . insanity. . . the evidence . . and the defendant's answer . . show . . the vendor's knowledge. . . infirmity was not apparent at the date of the transfer;" Judgment in favor of plaintiff affirmed.

Bloom v. Beebe, 15 La. An. 65, February 1860. " the slave was affected before, and at the time of the sale, with a chronic cold in the head . . apparent" Held: " the plaintiff [vendee] has no right of action to avoid the sale and to recover back the price,"

State v. Gore, 15 La. An. 79, February 1860. " convicted of stealing a slave and sentenced to five years imprisonment in the penitentiary." Affirmed: " Slaves are not classed under our law as . . personal chattels. The Act of 1819, was not, therefore, repealed by the Act of 14th of March, 1855."

Pousargues v. Steamer Natchez et al., 15 La. An. 80, February 1860. " The slave of plaintiff, while rowing a skiff . . was run over and drowned by the steamer . . Judgment . . against the captain and owners " for $1400, affirmed.

Maille v. Blas, 15 La. An. 100, February 1860. [101] " the death of plaintiff's slave was the result of a combat, which he had . . provoked, . . continued with billets of wood, and finally with knives " Judgment for plaintiff affirmed: [100] " The use of deadly weapons in combat by slaves should be discountenanced." Merrick, C. J., dissented: [102] " as the conduct of plaintiff's negro cannot be justified . . it seems that the loss must fall on the owner."

State v. Bill (a slave), 15 La. An. 114, February 1860. " The appellant asks the reversal of the judgment . . because he was not allowed to challenge for cause the two justices, who sat in the case, and two jurors."

Judgment reversed and the cause remanded: I. " The Justices do not act as jurors only, but as judges, . . they are competent, after a mis-trial, to sit again . . [II.] jurors who have made up their mind as to the punishment . . in case of a verdict of guilt . . [are not] incompetent. . . [115] when the jury has the discretionary right of commuting the punishment . . the competency of each juror, whether in the trial of slaves or of freemen, is to be determined in the same way. . . But, in overruling . . State *v.* George,[1] upon the authority of which the prisoner has rested his case . . the court must . . grant him relief. . . Justice, as well as humanity, dictates this course;" [A. Voorhies, J.]

State v. Joshua (a slave), 15 La. An. 118, February 1860. " found guilty of the crime of committing a rape on the person of a white woman, and sentenced to be hung " Affirmed.

Perrine v. Planchard, 15 La. An. 133, March 1860. [134] " The plaintiff . . a free woman of color . . was arrested . . for disturbing the peace and being drunk; at the same time, Anaïse, a slave of Mr. Rousseau, was arrested as a runaway, and both were put together in the lock-up . . On the following morning . . Anaïse was called out; she sent plaintiff in her place, . . lodged in jail under the name of the *slave* Anaïse; . . Mr. Rousseau called . . with an order from the Recorder for the release . . and being satisfied of the identity . . from the description . . in the entry book . . requested the jailer [Planchard] to inflict ten lashes . . before bringing her out; but the deputy . . informed Mr. Rousseau that the woman claimed to be free, . . Mr. Rousseau replied, . . she has the habit of saying so, but she is not yet free; thereupon, the deputy executed the order." " stretched [her] on a platform where slaves only are whipped," She claimed " as special and exemplary damages," $2000, as, " in consequence of said ill-treatment, and her state of pregnancy, she was prostrated . . Dr. Vionet who attended upon [her] . . says he believes she remained in her room 25 or 26 days, and that the whole costs . . exclusive of nurses, are about one hundred dollars. . . another witness, says that he had [her] in his employ, as a cook and washer, . . very industrious . . supposes . . [she] suffered between four or five hundred dollars damages for doctors, nurses, time lost, etc."

Held: " the defendant was not actuated by malicious designs, . . we think that plaintiff is only entitled to one hundred dollars for the entire expenses of her sickness, and . . [135] fifty dollars . . for her lost time."

State v. George (a slave), 15 La. An. 145, March 1860. " The prisoner is appellant from a judgment sentencing him to death. . . [146] two counts . . arson, and . . larceny. . . the witnesses, who procured the confessions [' made under the influence of promises and threats '], were not public officers, nor . . the owners or overseers . . they arrested the accused, however, . . ' following the confessions, the things stolen were found.' " Judgment reversed and the case remanded.

[1] P. 556, *supra.*

State v. Gutierrez, 15 La. An. 190, April 1860. " found guilty and sentenced, under the provisions of ' an Act for the prevention and punishment of selling liquor to slaves, in the parish of Orleans,' approved March 17, 1859. . . [191] This case was tried before one of the Recorders . . assisted by a jury of three slave-holders, in conformity with the 3d section " Affirmed: the act is not unconstitutional. Merrick, C. J., dissented.

Foster v. Mish, 15 La. An. 199, April 1860. " To establish the alleged freedom of his mother, the plaintiff offered a deed of manumission, signed, sealed and delivered by John Foster . . 1838, and duly recorded . . in . . Kentucky, . . anterior to . . [plaintiff's] birth. . . He further proved that, *his acknowledged status* in . . Kentucky was that of a free person of color, from . . birth up to . . removal from that State, . . some fifteen years."

Judgment in favor of defendant reversed; [200] " decreed, that there be judgment in favor of the plaintiff, and that he be declared a free person of color, . . and . . recover the costs . . in both courts." [199] " If no right of action existed in such cases, then free negroes might be kidnapped . . and sold into slavery in this State with impunity—a species of slave-trade, which our Legislature never intended to legalize by the Act of 1857, prohibiting emancipation." [Land, J.]

Folse v. Kittridge, 15 La. An. 222, April 1860. Suit for the price of " Adam . . sold by plaintiff . . April, 1857. . . He died . . February, 1858. A post mortem examination, by dissection, was made by a physician, who proves that the heart and kidneys were . . in a diseased condition. . . may have existed for several months . . not proved that the slave received any medical treatment . . until . . eight months after the sale." Judgment for plaintiff affirmed.

Palmes v. Kendig, 15 La. An. 264, April 1860. " The existence of the redhibitory malady at the time of the sale, to the knowledge of defendant is proved." Letter from plaintiff: " Mr. B. Kendig: Sir—I now hereby tender to you . . Clara, or Hager [*sic*], purchased by me from . . Rhodes, to whom you sold her . . December, 1856, fully guaranteed, and who subrogated me to all his rights . . Said slave is now at Dr. Stone's hospital, subject to your order," " It is proved . . that the slave was . . so sick as to render a bodily tender of her . . out of the question, consistently with prudence or humanity." Judgment for plaintiff affirmed: " The proof of tender is sufficient."

Rost and Montgomery v. Heirs of Doyal, 15 La. An. 265, April 1860. See Executors of Henderson *v.* Heirs, p. 575, Heirs of Henderson *v.* Executors, p. 647, and same *v.* same, p. 605, *supra.* " notarial act . . 1839 . . ' Doyal . . declares, that he does hereby expressly refuse his assent . . [266] and that as owner of the undivided half of the . . slaves [" attached to the Mount Houmas plantation "], he objects to their emancipation,' . . By the same notarial act . . the heirs at law and residuary legatees of . . Henderson . . sold to . . Doyal the undivided half-interest of their ancestor . . [for $125,000] in ten promissory notes, .

Three . . are the subject of the present suit. . . [267] judgment . . 'that the Houmas plantation and slaves be . . sold . . to satisfy the amount due,' . . affirmed,"

Syndic v. Bollinger, 15 La. An. 293, April 1860. "He alleges, that he bought the mother of Susan at Sheriff's sale when . . Susan was but three . . and avers that the child became his in virtue of that sale."

Held: [294] "The child . . having neither been seized, advertised or sold with her mother, did not pass by the Sheriff's sale. Perhaps this might have been a ground for annulling the sale of the mother, . . as the child is now over ten . . it is idle to inquire whether he could . . have compelled [her transfer] . . to him also."

State v. Henry (a slave), 15 La. An. 297, May 1860. "convicted of murder, and condemned to be executed." Affirmed: the act of March 19, 1857, relative to slaves, does not contravene Article 115 of the constitution, that "every law . . shall embrace but one object, . . expressed in the title."

England v. Gripon, 15 La. An. 304, May 1860. "Plaintiff sues for the value of a slave . . hired to the boat as a fireman. He fell overboard . . might have been saved, had the *Cora* been provided with a yawl." Decreed that plaintiff recover $1250 from the owner of the steamboat.

Succession of John Taylor (f. m. c.) and Mary Jane Taylor (f. w. c.) v. Clara Taylor (f. w. c.), 15 La. An. 313, May 1860. "Taylor [who died in 1853] . . made, . . 1847, his . . will, wherein he acknowledged, as his natural children, Célestine, Martha, Charles and Georgiana, whom he instituted his universal heirs . . born of an illicit union between [him] . . and Clara, a slave, . . Clara and her . . children were . . emancipated . . 1845. . . [314] The license and certificate of marriage prove that . . Taylor and . . the plaintiff, f. p. c., were married . . in . . Indiana, . . 1843, by . . an Episcopalian minister, . . Taylor filed, in . . New Orleans . . 1848 . . petition for a divorce . . divorced . . 1851. . . [Their] child . . was born in 1846, . . [315] will . . annulled"

Howes v. Steamer, Captain, and Owners, 15 La. An. 321, May 1860. "Tom, the property of the plaintiff, was drowned while under the employ . . of the defendants. . . a stage was made, . . two planks . . about two feet apart . . not made fast; . . [322] Tom . . was . . engaged in carrying sacks of corn from the *Touro* to the *Chief,*"

[325] "decreed that the plaintiff have judgment" for $1500. The fellow-servant rule does not apply to slaves, [323] "in as much as the slave . . [324] cannot decline any service, still less leave the service," [1]

Succession of Minvielle: Domec v. Executor and Lalande (f. w. c.), 15 La. An. 342, May 1860. "Cora Lalande . . obtained judgment against the succession . . Domec [a Gascon], took a rule upon the executor . . to show cause why he should not pay the money . . to him as the husband . . Cora . . denied that she was the wife of Domec, because . . [he] is a white man and she is . . colored . . and such a marriage is prohibited by

[1] See Railroad Co. *v.* Yandell, vol. I. of this series, p. 427.

Article 95 of the Code. . . have for a long time ceased to live together, and that he has publicly . . denied that she was his wife. . . the plaintiff offered in evidence the certificate of the marriage, . . 1847, by . . Curate of Annunciation Church, by virtue of a license from . . Justice of the Peace." Held: [343] " the defendant was at liberty to show the absolute nullity of the pretended marriage . . without . . having . . brought an action to annul "

State, ex rel. Cook, v. Keeper of Prison, 15 La. An. 347, May 1860. " John Cook and George Logan, free men of color, being incarcerated . . under . . the Act of 1859, entitled ' An Act relative to free persons of color coming into the State from other States or foreign countries,' applied to the . . District Court for the writ of *habeas corpus.* The rule . . was dismissed, and the applicants remanded " Appeal dismissed: " we have no jurisdiction "

State, ex rel. Micieses, v. Recorder, 15 La. An. 406, June 1860. " conviction in the Recorder's Court, for selling liquor to a slave without the consent of his owner. Fine of $500 imposed." Held: " The relator is . . entitled to the appeal prayed for;"

Simons and Co. v. Jacobs, 15 La. An. 425, June 1860. " The defendant is an Englishman. . . In . . 1858 . . he sold out . . with the exception of a negro boy, for whom he left verbal instructions with his agent for the collection of debts, to give him his freedom . . 1st of January, 1859. He left no agent on whom service of citation could be made, . . Defendant not having returned, . . plaintiffs [to whom he owed $952.37] sued out the attachment, and obtained judgment in February, . . 1859, . . executed by the sale of the [slave] . . attached. . . [426] if he returned at all, it was after the second season abroad, and after the attachment suit had been carried forward to final judgment, and the money made by the sale of the slave . . Judgment [for plaintiffs] affirmed."

Beverley v. Captain and Owners, 15 La. An. 432, June 1860. " The plaintiff, who resides in . . Ky., was the owner of a slave which he hired to the defendants on board their steamboat . . as a fireman. . . the boat was running . . between Louisville and this city. . . After the slave was hired the boat made one trip to Cincinnati, where he disappeared. It is in proof that it is customary to leave slaves at Louisville or to land them at Covington, Ky., where boats are about to land at Cincinnati. . . there is great risk in taking slaves to Cincinnati. The witness says: ' It is a matter of almost absolute impossibility to prevent them from being run off.' . . judgment . . in favor of the plaintiff for $1200,"

Affirmed: " The fact, that the boat was in the habit of landing . . in [Madison,] Indiana . . does not change . . the case, so long as it is not shown that there was equal risk with Cincinnati."

Buie v. Kendig, 15 La. An. 440, June 1860. [441] " the slave was purchased in New Orleans . . February, 1857 . . He left home several times without permission, and ranaway first . . [in] May, and after staying out some time came in and surrendered himself . . ran away again [in June], and while in the woods was pursued by plaintiff—his

overseer Mr. Fluett and neighbor Isaac Doyal—in trying to escape from them he jumped into the river, probably to try to swim across, and was drowned. The judgment . . condemned the defendant [vendor] to refund . . the price . . $1225, with legal interest " from the time of drowning.

Affirmed: " We are satisfied, from the evidence, that . . [he] is the identical one sold to the defendant by Tobin of Arkansas, as a confirmed runaway and a vicious negro, on the very day, or the day before the sale to the plaintiff, which latter . . was made with a full legal warranty."

African M. E. Church v. New Orleans, 15 La. An. 441, June 1860. " October, 1848, ten free men of color organized themselves into a private corporation having a religious object, under the Act of 30th April, 1847," [444] " own three churches . . of the alleged value of $21,000. . . their meetings were orderly, . . In 1850 an Act . . was passed,[1] amending . . ' Provided, that in no case shall the provisions of this Act . . apply to free persons of color . . incorporated for religious purposes, or secret associations;' . . April, 1858, an ordinance was passed by the Common Council . . reciting the dangerous tendency of frequent and numerous assemblages of free persons of color. It ordains that [such] . . ' shall be under the supervision . . of some . . white congregation ' . . prohibits any slave, or free person of color, from holding meetings and delivering discourses, unless permission . . [is] obtained from the Mayor by the . . white congregation . . renewed annually. . . The corporators, . . under the advice of counsel, closed their places of worship. . . brought suit . . Judgment . . declaring the Act of 1850 and the ordinance null and void as to the . . plaintiffs, and condemned the city to pay $110 per month, from . . April, 1858, in the nature of rent, until plaintiffs obtain possession "

Reversed, [443] " and decreed . . that there be judgment for defendant," " ordinance . . is general . . and does not seem to overstep the legitimate bounds of the police administration . . Act [of 1850] is . . a legislative interpretation of the word ' persons ' in the Act of 1847. Had the question been submitted . . in the absence of this Act of 1850, whether the Legislature intended to sanction . . the formation of corporations composed entirely of colored persons, a majority of this court is of opinion . . negative. The African race are strangers to our Constitution, and are the subject of special and exceptional legislation. . . We are not . . denying the members . . as individuals, the right of property in what they may have acquired in a social name; a right as fully acknowledged by our laws, in the case of colored persons, as of white persons. C. C. 437." [Buchanan, J.] Merrick, C. J., concurred in the decree, but for different reasons.

State v. Solomon (a slave), 15 La. An. 463, July 1860. " tried for . . murder, and, although acquitted . . [464] sentenced to receive corporal punishment." " decreed, that the judgment . . in so much as it acquits . . be affirmed; and . . in other respects . . annulled." " The course pursued by the special tribunal . . is unwarranted in law."

[1] Acts of 1850, p. 179.

Callaway v. Sheriff, 15 La. An. 467, July 1860. [468] "Three runaway slaves of the plaintiff . . were lodged in the Parish Jail, . . [He] paid the costs incurred for the woman and took her away. He left the men . . with the request that they should be kept in close confinement. Subsequently, one . . being sick, was, upon the advice of a physician, removed . . The Sheriff went further: he took them both upon his farm. . . no charges were preferred for keeping the negroes during that time ['several months']." Held: the plaintiff has not been injured.

Brainard v. Sheriff, 15 La. An. 489, July 1860. "the defendant seized a slave . . under a writ of *fieri facias* . . and placed [him] . . for safe keeping in the Parish Jail . . [He] escaped . . in consequence of its defective construction, or its want of . . repairs" "not retaken" Held: defendant is not responsible.

Atkinson v. Atkinson, 15 La. An. 491, July 1860. "The negroes . . were taken from . . Alabama to Texas"

Burnham v. Hart, 15 La. An. 517, July 1860. "The slave was a boy . . ten or eleven . . affected with . . blindness, resulting from an organic disease of the optic nerve (which is shown to be incurable) at the time he was sold by the defendant . . and also . . by the warrantor to the defendant."

Judgment in favor of the plaintiff for the price ($1000), with interest at five per cent from the date of sale, and for the expenses incurred, excluding attorney's fees; [518] "and that the defendant recover of his warrantor . . the price [he] paid, . . $800," with interest from judicial demand.

Virgin v. Dawson, 15 La. An. 532, July 1860. Suit on a note. [533] "the defendant, . . a physician, was requested by the vendor and . . other persons who were in treaty for the slave previous to his own purchase, to examine her . . and he reported her . . diseased. After he purchased her, he treated [her] . . as a physician," and she died. Judgment for plaintiff affirmed.

Estate of Maillon (f. w. c.) v. Lynch, 15 La. An. 547, August 1860. "the land . . was acquired by M. Maillon at a Sheriff's sale . . 1842 . . at the date . . Maillon was a slave, . . she was emancipated according to the forms of law . . 1843, by her . . owner, Luke Valentine, f. m. c." Held: [548] "a purchase made by a slave cannot be inquired into . . by one who is not affected by it; . . the master . . alone is at liberty, at any time, to claim the object;"

Louisiana (f. w. c.) v. Estate of Baillio, 15 La. An. 555, August 1860. "The plaintiff . . sues by injunction to arrest the sale, and to establish the freedom of herself and her two minor children. . . relies . . [on] a notarial act of sale by . . Grant, her former owner, . . January, 1856. This act . . purports to have been made in consideration of [$1350] . . paid in cash . . by the plaintiff . . duly recorded . . The administrator avers . . That Baillio purchased the plaintiff and her eldest child from Grant . . in . . 1855 . . [556] That Baillio, who lived in concubinage with

the plaintiff, returned his act of sale to Grant, and induced him to pass the act of . . 1856, . . the sister of the deceased . . intervened . . and claimed title to the plaintiff and her children . . by virtue of a notarial act of sale from . . Baillio . . 1857 . . consideration . . purports to have been [$2000.] . . the plaintiff and her children . . remained in the possession of the vendor (F. Baillio) until his death," [557] " decreed, that the plaintiff and her children be declared . . the property of the succession of F. Baillio,"

Hyman v. Bailey, 15 La. An. 560, August 1860. Duffel, J.: [562] " M. Maillon [f. w. c.] was the concubine of . . Bailey . . up to the date of . . [his] marriage . . 1852 (M. Maillon died in November, 1853)." [560] " The property [a plantation] . . was sold by . . Bailey to . . Hughes . . 1840, who sold . . 1847, to . . Waters . . who . . May, 1853, sold to Merrick Maillon, through her special attorney in fact, . . Bailey; . . for $5000 . . in two notes of $2500 each, made by the agent, . . The power of attorney . . was executed . . 1851, and it authorizes the agent to sell all her property, real and personal, lands and slaves, but is silent as to . . acquiring property and signing notes. . . [562] Maillon moved on the land . . and took her slaves with her; . . no evidence of an acceptance by Merrick Maillon of the sale made without authority to her agent;" [561] "The testimony of Waters . . is such as to convince us that he never considered himself as the owner . . but simply as holding [it] . . for . . Bailey. . . [562] we conclude that Maillon never acquired a title to the land, and that it was legally seized . . as the property of . . Bailey."

Decuir v. Lejeune, 15 La. An. 569, August 1860. [570] " The spouses, although living under the same roof, had ceased to cohabit . . Lejune kept a colored concubine in the neighborhood . . publicly and notoriously. . . sued his wife for a divorce . . dismissed. After . . three years, . . sued his wife . . for a separation . . on the ground of abandonment. An answer . . admitted that she had withdrawn herself from the common dwelling . . because . . [he] there kept his concubine. . . [571] marriage . . dissolved;"

Lazare, Wife, et al. v. Jacques (f. w. c.), 15 La. An. 599, August 1860. " The plaintiffs . . sue the defendant for the purpose of annulling an act of sale made to her by the deceased, . . she was . . his concubine," Held: [600] " an absolute nullity." C. C. 1468.

Ney v. Richard, 15 La. An. 603, August 1860. " The plaintiff's wife . . was arrested under a charge of cruel treatment of their slave, . . . Frozine. . . the magistrate . . ordered the slave . . to jail during the pendency of the prosecution; . . Ney . . applied to the District Court for a mandamus . . The . . Judge . . decided that the decree was valid,"

Reversed: " no law which authorizes a magistrate in such cases to place a slave beyond the . . control of the master. The right . . is conferred upon the Judge and jury who try the prosecution for the cruel treatment."

Cahn v. Costa, 15 La. An. 612, November 1860. "the slave was, at the date of the sale [in 1858], affected with . . consumption . . [613] of which she died shortly afterwards; . . the plaintiff took the very best care of the patient." Judgment against the vendor for $1020, "and the further sum of sixty-two dollars with . . interest;"

Mitty Broxton v. Bloom, 15 La. 618, November 1860. Land, J.: [619] "The mere sequestration of the plaintiff and her children . . claimed as slaves,[1] did not, *per se,* entitle her to damages . . but . . her right of recovery depends on proof of actual damage. The evidence shows, that [they] . . had been in the enjoyment of their liberty for several years prior to . . the sequestration suit, . . were indolent, lazy and thriftless, . . made but a meagre support. . . that during the sequestration suit, . . [they] were well fed, well clothed, and well treated, with little or no restraint upon their personal liberty, and that the hire . . was insufficient to defray their expenses, or . . did not exceed the same. . . [620] It cannot . . be said, that the sequestration suit was . . malicious,"[2] Judgment rejecting the plaintiff's claim for damages on the sequestration bond, affirmed.

Paty v. Martin, 15 La. An. 620, November 1860. "Plaintiff purchased, in July, 1858, . . Nancy, guaranteed against redhibitory maladies. . . [621] a tumor on the neck . . was made known to the purchaser; who assumed the risk of the same." [620] "October, 1858, the slave was sent to Mercier's hospital . . examined by Drs. Mercier and Alpuente, who pronounced her affected with chronic inflammation of the womb, which they *conjecture* to have been . . of six month's standing. . . in opposition . . the testimony of Drs. Martin and Turpin, . . the physicians . . of defendant, . . also . . of . . an intimate . . visitor in defendant's family; of . . a white servant in that family; and . . of Dr. Rancé . . employed, on behalf of the plaintiff, to examine the slave . . at the time of . . purchase. . . Dr. Martin proves that an inflammation of the womb may assume the *chronic* form in . . three months from its commencement; . . [621] Dr. Mercier alone declares it incurable;" Judgment for defendant: [620] "The conjectures of medical men as to the probable duration of a disease, have not, *per se,* the weight of proof of the fact of duration."

Walker v. Hays, 15 La. An. 640, December 1860. "suit . . brought upon a draft for $1375. . . On the 12th of November, 1857, the defendant took from the plaintiff a bill of sale of a negro woman and her child about eighteen months old. . . delivered . . the draft . . The slaves were suffered to remain in the plaintiff's possession, . . On the 23d . . she drowned herself and child."

Judgment in favor of plaintiff affirmed: I. [641] "The contract of sale was . . complete, and the property was at the risk of the buyer. . . [II.] the only evidence of insanity . . was the unnatural act of drowning . . The inference . . sought to be drawn . . is, to some extent, rebutted by the proof . . that the . . woman was endowed with 'good sense.' . .

[1] Maples *v.* Mitty, p. 659, *supra.*
[2] *Ibid.*

very proper to be submitted to a jury, and their finding . . must be held conclusive."

Courcelle's Syndic v. Vitry (f. w. c.), 15 La. An. 653, December 1860. " Courcelle and the defendant had been, for . . nineteen years, living together in concubinage. Upon breaking up . . connection, the former instituted . . a suit for the purpose of recovering a large amount of real estate and slaves, which, he averred, had been purchased . . with his own funds, but the title . . made in the name of the defendant. . . Vitry . . obtained a judgment rejecting the plaintiff's pretensions. Subsequently, Courcelle made a surrender of his property to his creditors, and . . syndic . . instituted this suit," Judgment for defendant affirmed.

Boulin v. Maynard, 15 La. An. 658, December 1860. " The defendant bought the slave without warranty, and sold him with full warranty to the plaintiff. The habit of running away is sufficiently proved; but . . at the time the slave absconded, he was permitted to hire his own time, and was not required even to sleep at the residence or place of business of his owner. . . The slave was present at the trial, . . The defendant . . was aware that the slave was in the habit of running away. This knowledge was not communicated to the plaintiff."

[659] " decree, that . . sale . . be rescinded, and . . slave be restored to the defendant; and . . that the plaintiff do recover . . the price paid [$700] . . and . . interest . . from the judicial demand, and . . $6.50 costs of the act of sale, $6 for advertising . . slave as a runaway, and $25 paid for lodging him in jail."

Blair v. Collins, 15 La. An. 683, December 1860. " evidence . . that the defendant, . . a negro-trader in New Orleans, sold, . . December, 1857, under full warranty, to the plaintiff, a slave . . imported into this State a month or two prior thereto; . . that in July or August . . the plaintiff wrote to the defendant that he was compelled to throw the negro back on his hands, as he had run away four or five times; but . . as the slave was then at large, he desired to know if he could be sent to him when caught; that the defendant requested the factor of the plaintiff to write . . asking him not to send [him] . . back before the fall, as the fever was then raging . . but that he would make it all right by giving him another negro, or returning the price; that the slave was arrested, and a few days after, . . [684] November, 1858, he died of a chronic *peritonitis,* brought on by exposure when out in the woods as a runaway; that the slave had been well treated, and had received, when sick, medical aid." [683] " judgment against the defendant, for the return of the price . . with costs and expenses." Affirmed.

Girault v. Zuntz, 15 La. An. 684, December 1860. " The plaintiff . . 1843 . . through her agent, . . Kendall, purchased at Sheriff's sale, in . . Mississippi, in the suit of . . Hickey *v.* . . her husband, . . Eliza, and her child Joe, . . 1846, . . Kendall obtained possession of . . Joe, from her husband, . . [685] executed and delivered to him . . writing . . ' I . . have this day advanced to Mrs. . . Girault . . $300, upon . . Joe, five years old, and black complexion, . . son of Old Billy, formerly belonging

to . . Girault, which . . money, if returned . . with ten per cent., within five years, the . . boy is to be delivered to . . Mrs. . . Girault. . . I also bind myself to clothe, feed and pay all doctor's bills' " *Zuntz* purchased the boy from Kendall in 1856. Judgment for plaintiff affirmed.

Mehle v. Lapeyrollerie, 16 La. An. 4, January 1861. " The evidence shows that . . [her husband] has committed adultery with a negro woman . . Indeed, he appears to have kept her as his concubine. . . bonds of matrimony . . dissolved;"

Pelham v. Steamboat, Captain, and Owners, 16 La. An. 99, February 1861. " suit . . brought to recover $1300, the value, and $500, the penalty, under the Act of 1840, for the loss of a slave . . drowned, . . The proof . . is ample, that the slave with another was hired by the plaintiff himself to the steamboat. . . two of the witnesses who prove the hiring were employed on the boat . . but left . . before he was lost overboard, and were engaged in business elsewhere when their depositions were taken." Judgment for defendants affirmed.

Morrison v. White, 16 La. An. 100, February 1861. Buchanan, J.: " Plaintiff alleges . . that she was born free . . of white parents; . . kidnapped, and . . brought . . to . . New Orleans, where she is held . . as a slave. . . [102] she has not made the faintest approach toward establishing these allegations . . by proof." [100] " relies altogether upon speculative opinions of physicians and others, as to indications of a Caucasian extraction . . [102] is proved to be of fair complexion, blue eyes, and flaxen hair." [101] " Defendant gave in evidence . . act of sale from . . Haliburton . . of Arkansas. . . offered . . depositions . . as to the origin of plaintiff; . . rejected," Verdict for plaintiff.

Judgment thereon reversed and the cause remanded: [102] " evidence . . was improperly rejected. . . We . . find full proof therein that the plaintiff was born a slave, the offspring of a mulatto woman slave, and that she passed, by a . . chain of conveyances, from . . the owner of her mother, to the defendant. . . the presumption of freedom, arising from her color, is not a presumption *juris et de jure.* It must yield to proof of a servile origin. . . as it is possible she may have evidence which her counsel deemed it unnecessary to introduce, all the evidence of origin [offered by defendant] . . having been ruled out, we will remand "

Gause v. Bullard, 16 La. An. 107, February 1861. " The evidence shows . . that the disease which caused the death of the slave [purchased in Georgia for sale in New Orleans] nine days after the sale, pneumonia, had manifested itself two days after the sale;" Judgment for plaintiff affirmed.

Ford v. Danks, 16 La. An. 119, February 1861. " overseer . . having . . wantonly broken to pieces a pair of stocks which belonged to the place, and which he had made with the assistance of one of the negroes."

Ranson v. Labranche, 16 La. An. 121, February 1861. " as the river rose, the plantation hands were kept working on the levee all the time, keeping a watch during the night;"

State v. Karn, 16 La. An. 183, March 1861. "convicted of the offence of selling . . liquor to a slave without the written consent of the owner [1] . . judgment imposing a fine of $301, and one month's imprisonment." Affirmed.

McCaleb v. Douglass et al., 16 La. An. 327, May 1861. [328] "Dorsey [a lawyer] . . says: . . Douglass died in 1856. . . On the day before . . he . . wanted me to write his will. . . His chief object was to dispose of his property to his two nephews . . and to provide for a negro woman, who had been very attentive to him whilst sick, and for some time. . . the daughter of a Mr. Cammack, residing some six miles off. . . asked me if he could make her a present of . . five or six thousand dollars, I do not recollect which. My reply was . . that I supposed she was the slave of Mr. Cammack, and a donation . . would not invest the proceeds . . in her. His reply was, that she was either manumitted, or that she was about to be sent out of the State to be manumitted." Bland's deposition: [332] "That portion of the will which gave Cornelia Cammack $5,000 was modified . . with the condition that she should be maunmitted by her master . . [333] A few moments before Dorsey and I went out to make the will, . . [five] slaves . . or most of them, came into Douglass' room, and called his attention to a previous promise to emancipate them, when he said, 'I did,' and made some remark to the effect that he would free them. When the will was read, Keziah's name had been left out, and she . . burst out weeping, when Douglass exclaimed, 'and Keziah!' and her name was then inserted." Judgment upholding the will reversed, as it did not comply with the requirements of C. C. 1574.

Jones and Daugharty v. Goza, 16 La. An. 428, February 1862. "The plaintiffs, attorneys-at-law, sue to recover a fee of six hundred dollars for assisting in the defence of a slave charged with . . murder. The evidence shows that in the absence of the owner . . the Justice of the Peace before whom the accusation had been made, appointed . . Lawrence, Esq. to act as counsel . . that . . Daugharty . . with the assent of the Justice . . assisted . . that the trial resulted in the acquittal . . that the magistrate considered Daugharty as . . jointly interested with Lawrence in the fee to be paid by the defendant; and that a fee of fifty dollars has been . . paid to Lawrence."

"decreed, that the plaintiffs' demand be rejected," "The first assignment of counsel exhausted the magistrate's authority under the 17th section of the Act of 1855. See Acts of 1855, p. 152."

Hall v. McLauren, 17 La. An. 35, May 1865. "The plaintiff, . . of Alabama, states that he is the . . owner of . . Adeline, aged about fifteen . . worth $1,200. . . That . . he placed [her] . . in the possession of his agent . . in . . New Orleans, and that . . McLauren, . . of Georgia, . . went to the dwelling house . . and forcibly seized [her.] . . The testimony shows that the plaintiff's possession was . . held . . for the defendant;" Judgment for defendant affirmed.

[1] Act of Mar. 19, 1857.

Huntington v. Brown, 17 La. An. 48, May 1865. Suit to rescind the sale of a slave [49] "guaranteed . . in title only," and to recover his price. [50] "he was taken by Brown, to be sold, out of the Touro Infirmary, wherein he had been from August, 1859, till . . February, under medical treatment for a progressive disease. The fact that Dr. Bensadon offered only $300 for the slave, for hospital purposes, shows that defendant was aware that he was physically unsound;" Judgment for plaintiff affirmed. C. C. 2480.

Mouras v. Schooner, Captain, and Owners, 17 La. An. 82, May 1865. "the plaintiff claims [$2,000] . . the value of his slave . . transported out of the State . . in June, 1859, . . [$200] damages . . in consequence of the loss of . . services, . . and [$500] . . penal fine" [83] "vessel was . . chartered . . to transport . . emigrants to . . St. Domingo," Judgment in favor of plaintiff for $2000, the value of the slave, and for $400 for loss of his services; "the statute imposing the fine . . has been repealed," Howell, J., dissented: "If it be true that the man . . was a passenger . . no one witness establishes any . . negligence . . calculated to make [defendants] . . responsible, independently of . . repealed legislation."

Succession of Chappel: Ida Hannah (f. w. c.) v. Eggleston, 17 La. An. 174, June 1865. "Chappel made his will . . 1853, by which he emancipated . . Ida Hannah and Clementine her daughter . . [175] and appointed them his heirs and universal legatees. . . probated . . 1854. It is admitted that Ida Hannah was . . fully emancipated . . before his death, but Clementine remained a *statu liber* under the will. . . 1861 . . Ida Hannah filed her petition, stating . . that the testamentary dispositions concerning . . Clementine . . falls [*sic*], she . . being incapable . . the actual laws of the State . . prohibiting the emancipation of slaves. . . Clementine being a minor, . . the court appointed . . curator *ad hoc,* to defend this suit. . . judgment of nonsuit against . . plaintiff,"

Reversed and plaintiff's demand dismissed; "decreed that . . Clementine be recognized as universal legatee with her . . mother, each for one undivided half" "In the actual state of things, . . Clementine has been put in the full enjoyment of absolute freedom"

Dejona (f. w. c.) v. Steamboat, Captain, and Owners, 17 La. An. 277, December 1865. [279] "suit . . to recover . . $510, alleged to be due for the wages of her minor son, as cook on the steamboat . . at . . thirty dollars per month, for two months from . . February, 1859, and fifty . . for nine months thereafter. . . the boat was provisionally seized." Judgment for plaintiff for $56.90: [281] "the wages for the last [month] . . were forfeited . . by abandonment before the end of the month; and the privilege is limited . . to six months. . . deduct . . the payments made on account"

Gatlin v. Kendig, 18 La. An. 118, February 1866. "The sale was made . . February, 1858, and the slave ran away in May . . Suit was instituted . . March, 1860. . . shown that the defendant was aware at the date of the sale of the existence of the . . vice, . . plaintiff became aware

in the fall of 1859, . . that the slave was a runaway when he bought him;" Sale rescinded.

Chapman v. Matthews, 18 La. An. 118, February 1866. [119] "The sale was made . . June, 1860, and the slave died . . October . . of the same disease with which he was affected at the time of the sale. . . [120] The petition was filed . . December," Held: "the want of tender cannot be invoked against the plaintiff to defeat his action,"

Morphy v. Blanchin, 18 La. An. 133, February 1866. "action to annul the sale of a female slave, bought . . 28th March, 1861, for . . $800 cash. . . at the time she was to have been delivered, the 15th May, . . she was already sick, and the plaintiff refused to receive her. Dr. Fagot . . examined the slave, about 22d May . . [134] discovered the tubercles in the lungs by auscultation, . . says . . The disease existed . . probably several months before . . The slave died in November," Judgment for plaintiff affirmed.

Henderson v. Montgomery, 18 La. An. 211, March 1866. "appeal from an order . . obtained . . 1861, 'commanding the Sheriff . . to seize and sell . . the slaves' . , Counsel for the appellee . . ask the affirmance of the judgment . . and suggest that, if it cannot be affirmed because of the . . abolition of slavery, this is a clear case for allowing damages . . [as] but for the appeal, the slaves would have been sold, and the debt paid."

Held: "we cannot affirm . . because there are no slaves . . We cannot reverse the judgment, because, *at its date,* it was authorized by the law and evidence. . . the parties must be left as they were"

Walker v. Cucullu, 18 La. An. 246, March 1866. [249] "September, 1857, plaintiff purchased a plantation . . with about fifty-seven slaves [[248] 'without seeing the slaves'] . . March, 1858, plaintiff instituted suit . . claiming a reduction of $16,000 . . on account of . . vices and diseases existing in some . . and others being of greater ages than represented; . . recovered $2,300, . . 1859, the present suit was commenced . . for the same causes . . the District Judge allowed plaintiff . . further . . $2,000, and he . . appealed." Counsel for plaintiff: [248] "the evidence shows that when slaves pass the age of thirty . . they look much younger than they really are," Affirmed.

Cutliff v. Battle, 18 La. An. 570, August 1866. [571] "lived in Alabama, until 1833, when they removed to Louisiana, bringing . . the negro woman . . and children."

Estate of Marie Olivier, 18 La. An. 594, September 1866. [595] "The slaves . . being mostly young, and women, made no crops,"

Lynch and Wieman v. McRee, 18 La. An. 640, November 1866. "The plaintiffs sue . . to annul the sale . . and for a return of the price, $950, . . [641] The boy had been lately brought . . from Texas, and was sold . . 24th December, 1858, in New Orleans. . . overseer on Bethel's plantation . . says the boy came there sick about 1st of January . . and grew worse . . spit blood nearly all the time . . two doctors . . examined the

boy thoroughly, in May, and pronounced him consumptive. The boy was offered back . . refused . . died in July . . of the disease of the lungs." Judgment for plaintiffs affirmed.

Succession of Poindexter, 19 La. An. 22, January 1867. [23] " The slaves were emancipated in January, 1863; . . and a large portion of the plantation movables taken off by the emancipated negroes, and other parties."

Whitehead v. Watson et al., 19 La. An. 68, February 1867. " The defendants have appealed from a judgment annulling . . a clause in the will . . made in 1859, . . bequeathed . . slaves, in trust, . . pay over to his mother annually . . the net income " Held: " this Court can render no decree recognizing property in man." [Howell, J.]

Roth and Deblieux v. Moore, 19 La. An. 86, February 1867. " allege that the defendant and . . Combs, . . of Kentucky, were . . partners, trading in slaves, horses and mules, in . . 1857 and 1858."

Nancy Fenn v. Carr, 19 La. An. 106, March 1867. " 1st day of January, 1865, the defendant sold to the plaintiff a negro woman, with full warranty, for . . five bales of cotton and a note . . for $200. . . The defendant . . says that he did not warrant the . . negro a slave for life," Judgment for defendant reversed: " this sale was an absolute nullity, the negro . . being a free person . . See the Constitution of 1864."

Folse et al. v. Transportation Co., 19 La. An. 199, April 1867. " The defendants are sued as common carriers for the value of a slave . . which [they] . . undertook to convey . . to the plaintiffs' plantation, . . The slave was a runaway, and was received . . by the captain, who promised to have an eye on him, and he was fastened by handcuffs to the hog-chain of the boat on the boiler deck. . . [200] ' asked to go to the privy, . . the porter [" a colored man "] . . accompanied him, both his hands being in the handcuffs, of which the porter had the key.' . . officer accompanied him a part of the way . . the porter . . holding him by the tail of his coat; that as the slave went round by the barber's shop, the officer lost sight of him, . . almost instantly afterwards the porter turned back with the boy's coat tail in his hand; . . said that the slave had jumped overboard." " the porter . . perfectly trustworthy." Judgment in favor of plaintiffs reversed.

Wainwright v. Bridges, 19 La. An. 234, May 1867. [241] " The plaintiff's action . . was to recover the price of slaves, sold with full legal warranty . . 1860," [235] " a mortgage was retained upon the slaves to secure the payment . . [236] The plaintiff avers the loss of his mortgage right by the emancipation of the slaves, and asks against the defendants a personal judgment."

Judgment in favor of plaintiff reversed; [240] " judgment . . rendered in favor of the defendants, releasing them from the obligations . . the plaintiff . . paying costs in both courts." " The fiat of the sovereign is potent to release the contracting parties, as well as potent to set the bondman free. . . With the ownership perished the obligation to pay the price "

[Taliaferro, J.] Ilsley, J., dissenting: [241] "as no question of graver import has ever been presented for solution to any tribunal, I deem it proper to state the reasons which have brought me to a conclusion, differing *toto coelo* from the one reached by three of the other judges. . . [244] one thing is certain, that but for the rebellion, the day was distant when the change [in the status of slaves in Louisiana] would have been wrought; and, indeed, the change . . was, even with that cause, more attributable to policy and expediency than to any consideration of philanthropy" [243] "The question . . is purely one of warranty . . [249] A slave, by the abolition of slavery, has perished as *property* as completely . . as . . by death." [248] "the abolition . . had no retroactive bearing whatever on contracts which had been entered into," Labauve, J., concurred. See Boyce *v.* Tabb, p. 701, *infra.*

Austin v. Sandel, 19 La. An. 309, June 1867. [321] "the consideration of the note was the price of an African slave" [320] "The defence is: . . Failure of consideration, arising from the emancipation . . by the sovereign authority." [321] "judgment . . in favor of the defendant, releasing her from the obligation" "For the reasons assigned in . . Wainwright *v.* Bridges," *supra.* Judges Labauve and Ilsley dissented.

Tate v. Fletcher, 19 La. An. 371, June 1867. Suit to "recover the purchase price of the 'slave Dick,' [bought in 1860.] "This suit . . was filed . . 1862, but was not tried until . . 1866." [372] "The judgment . . below, released the defendants from the obligation of paying the notes . . but allowed the plaintiff [$600] . . for hire of the slave during the time . . [defendant] had him in possession." "judgment . . releasing the defendants from all obligation to pay the notes . . affirmed, . . that part of the judgment allowing hire . . reversed," Judges Labauve and Ilsley dissented.

Gremillon v. Crousillac, 19 La. An. 377, June 1867. [379] "The notes . . given for the price of slaves" "are dated 17th January, 1863," Judgment in favor of defendant affirmed.

Martin v. Kelly et al., 19 La. An. 444, August 1867. "action . . to compel payment . . [445] no doubt that the slave had been continuously afflicted, at intervals . . for two or three years previous to the sale [in 1859], with a serious infirmity incident to females . . of which she . . died a short time after she was purchased by one of the defendants." Judgment for defendants affirmed.

Halley v. Hoeffner, 19 La. An. 518, December 1867. [519] "June 1861, the plaintiff sold a negro woman . . and her three children . . for . . $1,800, payable $800 in cash and balance at twelve months, for note . . secured by mortgage . . This suit is brought . . on that . . note . . The case was submitted to a jury, with a strong charge . . in favor of the plaintiff's right . . notwithstanding this, a verdict was rendered in favor of defendant . . May, 1866," Judgment thereon affirmed, following Wainwright *v.* Bridges, *supra.*

Armstrong v. Bach, 20 La. An. 190, March 1868. "April, 1862, . . for his personal safety he was forced to leave the city . . [191] taking with him all of his family and servants, except an old slave woman too infirm to be moved, with whom he left the keys"

Posey v. Driggs, 20 La. An. 199, March 1868. Howell, J.: "Driggs, has appealed from a judgment condemning him to pay the amount of . . notes, given on 7th January, 1863, for . . a negro . . As contended by the appellant, the slaves . . having been emancipated . . by the operation of the Emancipation Proclamation . . the binding force of which was one of the effects of peace, he acquired no title . . In addition . . the doctrine in the case of Wainwright *v.* Bridges [*supra*] relieves him from any obligation to pay."

Levee Commissioners v. Harris, 20 La. An. 201, March 1868. "action to recover the penalties imposed by law [1] on the defendant for not sending his male slaves, above . . fifteen . . and under sixty, at the call of the inspector, to work during high-water in 1858, on the levee . . [202] The work done by defendant . . was . . without the consent . . of the inspector" Judgment against defendant affirmed.

McAllister v. Burton and Co., 20 La. An. 205, March 1868. "Defendants sold the slave . . December, 1859. . . May, 1860, the slave came in from the field complaining of sickness, and Doctor Miller was immediately sent for . . had chronic pleurisy . . overseer . . testified that . . from the time plaintiff bought him, . . he was unable to do a hand's labor" He died in July. "decreed that the plaintiff recover [$1800] . . with . . interest . . from . . June, 1860," Howell, J., dissented: [206] "If the price cannot be recovered of the vendee,[2] the vendor cannot be compelled to return the price"

Jennings v. Gosselin, 20 La. An. 214, March 1868. "The petition alleges that the girl was, with her mother, hired to the defendant, . . and accidentally was severely burned . . prior to the 15th January, 1859," "became a helpless cripple, owing to the . . mismanagement of the defendant in the treatment . . petition and citation were served . . March, 1860." "The defendant pleaded prescription . . C. C. 2294, 2295, 3501." Judgment in his favor affirmed.

Fisk v. Bergerot et al., 21 La. An. 111, February 1869. "In April, 1854, a female slave, alleged to have been owned by Fisk, . . escaped from a negro trader's yard in New Orleans, and concealed herself in the city until December, . . when, disguised in male attire, she sailed . . to Havre on a ship owned by defendants. . . 1858, this action was instituted . . dismissed . . barred by the prescription of one year." Affirmed.

Kleinpeter, Administrator, v. Harrigan et al., 21 La. An. 196, March 1869. "Know . . that I have this day [December 31, 1866] sold to Nancy Trim, my colored servant, and a good and faithful one she has proved to me. I gave her her freedom about ten years ago, yet she holds fast, and . . cares for me in the most tender manner, and for her

[1] Acts of 1852, p. 237, sect. 23.
[2] Wainwright *v.* Bridges, p. 691, *supra.*

good conduct, I have this day sold her fifty acres . . as a payment for her services to me, as I have paid her nothing for a number of years past." [197] " witness . . testifies . . the services . . he thinks . . were worth from one hundred and fifty to two hundred dollars a year. . . no attempt at obtaining possession seems to have been made for twelve months or more " Held: [198] " the act . . is evidence of no contract known to our law."

Casanave v. Bingaman, 21 La. An. 435, May 1869. " James Adam Williams, or . . Bingaman, was one of three natural children who survived their mother, Mary Ellen Williams, a free woman of color who died . . 1861. She bequeathed a considerable amount of property . . [436] 1862 . . Bingaman ['a free white man'] . . was appointed their tutor. . . the son, perished . . 1866. . . His succession was appraised to $25,196 12. . . defendant filed his petition . . setting out his claim to the succession . . had by notarial act, . . July, 1865, formally acknowledged the decedent as his natural son; . . 1867, an order was rendered recognizing the defendant as sole heir "

V. W. Porter v. Brown, 21 La. An. 532, August 1869. " action to recover the amount of a . . legacy with interest. In . . 1846 . . Porter died, leaving a will . . ' that my executors shall purchase from . . Metoyer a . . child, the son of a girl they call Meme, provided the same can be purchased at a reasonable sum, and in [that] case . . I give . . unto it its freedom, with [$1000] . . to be put at interest . . the proceeds . . to go to the support and schooling . . and when the boy arrives at . . eighteen . . that the [$1000] . . be paid over to him, and in case of the death . . to my brothers and sisters.' . . [533] receipt . . ' I, Victorin [W. Porter], the child of Meme, a legatee under the will of . . Porter, and eighteen . . do hereby acknowledge to have received of . . Brown, executor [$1000] . . March 4, 1863.' . . it was shown that the . . payment . . was made in Confederate notes and while the plaintiff was a minor." Judgment for plaintiff affirmed: " He cannot be held to have given a legal consent to the payment and thereby bound as equally participating in the circulation of an illicit currency." [Howell, J.]

Dranguet v. Rost, 21 La. An. 538, August 1869. " It is urged that, as the defendant promised to pay the note [given for a slave] after the emancipation of slavery, he became legally liable for the debt, for which he was already bound, *in foro conscientiae.*"

Judgment for defendant affirmed: " The decision in the Wainwright case [1] is predicated upon the theory that the sovereign power had abrogated slavery, and all contracts based on slavery. If this be true (and we have reaffirmed it too often to question its correctness now), the State Constitution [of 1868] did not affect the obligation of these contracts by prohibiting courts from enforcing them, or by declaring, that they were null." [Ludeling, C. J.]

Succession of Rice, 21 La. An. 614, September 1869. " 1860, John M. Rice, . . being temporarily in . . Ohio . . made his will . . he gave . .

[1] P. 691, *supra.*

ten thousand dollars to the American Colonization Society. . . [615] ordered [in 1867] to be executed" Affirmed.

Succession of Patin, 21 La. An. 661, September 1869. [662] "died in 1861, . . December, of that year, a sale . . certain slaves were purchased by the heirs—one . . for $2040; one . . for $2430, and two . . for $3660. . . 1867 . . the administrator, presented an account . . ordered . . that the items . . be stricken out . . from the list of debts due" "To recognize them as such would be, practically, to enforce them. 19 An. 234; Constitution, article 128;"

Lefevre v. Haydel, 21 La. An. 663, September 1869. [664] "1850 . . Lefevre sold to . . Haydel twenty-four slaves for . . six hundred dollars, to be paid annually during . . life of the vendor, with the reservation of a mortgage" Held: "the contract cannot be enforced. Wainwright *v.* Bridges [p. 691, *supra,*] . . State Constitution, article 128."

Sandidge v. Sanderson, 21 La. An. 757, December 1869. "In 1858 Sandidge sold . . land, personal property and slaves for . . $18,000, estimating . . the slaves . . at $9000. . . All . . notes were . . paid . . except the last . . due . . 1862."

Held: [760] "We can only refuse to enforce the slave part of the debt." [759] "Eviction by emancipation is not such a failure of consideration as the vendor was bound to warrant against. . . the doctrine of immorality is also inapplicable. . . The slave part of the consideration was then no more immoral that the other part" [Wyly, J.] Ludeling, C. J., dissented: [765] "a contract which is tainted, in part, with an *immoral* consideration, is void *in toto,*" Howell, J., concurred in the opinion of the Chief Justice.

Satterfield v. Spurlock, 21 La. An. 771, December 1869. "October, 1857, Satterfield sold to Spurlock . . sixty slaves . . [772] Satterfield, in April, 1865, urged . . Spurlock, to reconvey to him [thirty-nine] . . desiring to remove to Texas and still to cling to the desperate fortunes of the Confederacy. . . Spurlock replied . . [773] 'if the negroes run off on account of your making an effort to remove them, it must be at your loss . . At present, they are all satisfied and doing well, and I am fearful that an effort to remove them will cause trouble' . . The terms . . were accepted . . 'All I ask, that they be put in line, named and delivered;' . . he moved them to Texas in vain; they were emancipated, . . He now contends that the act of retrocession . . was unlawful" Held: "He cannot expect this court to relieve him from the consequences of his own immoral transaction." [Wyly, J.] Ludeling, C. J., and Howell, J., absent.

Rodriquez v. Bienvenu, 22 La. An. 300, May 1870. [303] "When the note sued on was given [March 1, 1864], the services [of the slaves] had been rendered under the contract of hire,"

Held: [301] "The existence . . of slavery . . [302] lay at the foundation of the contract of hire . . The laws, which authorized and enforced the contract, were necessarily abolished by the subversion of slavery." [Taliaferro, J.] Wyly, J., dissented: [303] "the framers of our con-

stitution . . deemed it necessary only to prohibit the enforcement of contracts for the sale of persons; . . [304] Immorality is the only ground . . not a substantial one. . . We cannot say that our illustrious predecessors degraded this tribunal by encouraging immorality . . by . . enforcing contracts reprobated by law. . . if [the contract] . . was . . moral [when made] . . which it was, the contract ever afterwards remained moral"

Succession of Woodward, 22 La. An. 305, May 1870. Held: [307] "no claim . . whether for the price or hire of slaves, can be . . enforced."

Barrow et al. v. Heirs of Bird, 22 La. An. 407, May 1870. "Bird departed this life in 1860, leaving a large estate, . . executed his . . will . . wherein . . he donated to each of the two petitioners [$8000] . . [408] provided for the emancipation . . and enjoined on the executor to cause their enfranchisement, with the right of remaining in the State, as soon as it could be done under the laws thereof. . . his heirs renounced all their right . . and acquiesced in . . legacies . . but . . left the legacies . . unpaid. The prayer of the petition is for judgment . . for the amount . . The defendants pleaded . . that the plaintiffs are the issue of an adulterous concubinage . . the mother . . was his slave . . and, under a prohibitory law . . could not be emancipated . . incapable of inheriting" Held: [409] "however barbarous the statute of 1857 may appear, we cannot give the plaintiffs the relief which they seek" [Wyly, J.]

Barre v. New Orleans, 22 La. An. 612, December 1870. "The plaintiff, as agent of . . the heirs at law of their grandmother, Marie St. Jean, a free woman of color, institutes this suit to recover a portion of the batture . . alleging that their ancestor was the owner of a lot . . measuring two hundred and forty feet front on the river, . . numbered . . on Trudeau's plat . . and marked . . 'Marie, negresse,' . . testimony, that Marie St. Jean bought the lot . . 1789; . . resided upon it for several years with . . Ternoir, . . in a state of concubinage; that upon the death of Ternoir, . . 1792, his creditors . . seized [it.] . . [613] Marie St. Jean persisted in remaining . . for a considerable . . time . . occupying a shed in the rear . . complained . . 'See, they have sacrificed my property to pay the debts of my husband!' Her occupation . . was that of a nurse and a midwife of much reputation and large practice in respectable families . . and . . she accumulated a considerable amount of property and purchased several slaves. But notwithstanding the intelligence and facilities which these facts imply, it does not appear that any legal measures were ever taken . . to . . rectify the injustice" [615] "plaintiffs . . admit, they had lost [title to the lot] by prescription." Held: "If it be true that alluvion had been formed . . it belonged to the [purchaser] . . of lot"

Generes v. Campbell, 11 Wallace (U. S.) 193, December 1870. "Campbell sued Generes, . . 1868, . . as indorser of a promissory note, given as the price of certain slaves, and executed at New Orleans April 4, 1861," Campbell [196] "was a regular slave-dealer, and had his depot on Baronne Street, in New Orleans, and was engaged in that business for several years." [194] "in the fall of 1861, the city of New

Orleans being then besieged by the Federal fleet, the plaintiff closed his business and went to his summer residence" " judgment in favor of the plaintiff for . . $6300." Affirmed: [199] " the propositions upon which the plaintiff in error insists are not so presented that we can take cognizance of them."

Handlin v. Wickliffe, 12 Wallace (U. S.) 173, December 1870. [174] " During the late civil war, . . Brigadier-General G. F. Shepley, . . military governor . . commissioned W. W. Handlin as judge of the Third District Court of New Orleans. . . Subsequently, while the war was yet flagrant, . . Hahn was elected governor, and was also appointed military governor in place of Shepley . . Handlin . . was removed from office by him on account . . of a decision to the effect that slavery still existed in the parish of New Orleans, which had been exempted by President Lincoln from the operation of the Proclamation of Emancipation." A writ of mandamus sued out by Handlin to compel payment of his salary was dismissed. Judgment against him affirmed: [175] " We are unable to approve the reason assigned for removal, but we cannot doubt the power." [Chase, C. J.]

Powell v. Daniel, 23 La. An. 289, March 1871. " The plaintiff sued the defendant for services rendered in carrying her slaves and other property to Texas, . . and taking care of the same . . under a written contract. The defense is . . that the contract ' is illegal . . and is reprobated as immoral and opposed to all laws human and divine,' " Judgment for defendant reversed, " and that there be judgment in favor of the plaintiff " " the contract was lawful at the time it was entered into." [Ludeling, C. J.]

Osborn v. Osborn, 23 La. An. 496, May 1871. " in 1854 . . Hubbard . . purchased the undivided half of a plantation, and sixty-five slaves, . . the value of . . the slaves [was] $15,000,"

Smith v. Henderson, 23 La. An. 649, July 1871. [652] " The plaintiff, a judgment creditor of . . Temple, of date . . 1869, enjoins the execution of the other judgment creditor, . . of date . . 1866, on the ground that the property . . will not be sufficient to pay both . . but that . . [the earlier] judgment is based upon a debt for the price of a slave " [651] " judgment in favor of the plaintiff perpetuating the injunction," Wyly, J., dissented: [655] " article 128 . . applies to contracts to be enforced subsequent to the adoption of the Constitution [of 1868]."

Palmer v. Marston, 14 Wallace (U. S.) 10, December 1871. " Motion . . to dismiss a writ of error " " Palmer sued Marston . . [11] upon a . . note . . dated October 1st, 1863, . . The defendant answered . . that $949 of it was a part of the purchase price of an African negro claimed to be a slave, and . . freed by sovereign authority, . . The court held that ' whilst the law remains as . . in . . Wainwright *v.* Bridges,[1] . . the plaintiff must fail ' ' by this plea of failure of consideration.' " Writ dismissed for want of jurisdiction: [12] " the provision of the State constitution

[1] P. 691, *supra.*

upon the subject of slave contracts was in no wise drawn in question." [Swayne, J.]

Heirs of Hoover v. York et al., 24 La. An. 375, May 1872. [376] "In August, 1859, . . Hoover died . . and having no forced heirs he instituted . . York and E. J. Hoover his universal legatees . . The estate consisted mainly of the White Hall, the Home and the Marengo plantations . . together with some five hundred slaves . . [380] The value of the property . . exceeded a million of dollars." [378] "after York and Hoover . . had mortgaged White Hall and Home plantations . . and finally surrendered them in bankruptcy, . . Hoover informed the attorney of plaintiffs that he and York had never had a valid title . . because there was a counter letter . . [379] York gives . . the substance of the missing counter letter . . 'I . . wish that the proceeds . . from the annual sales of my cotton crops shall be disposed of: *First*—In purchasing servants, slaves and mules, to cultivate all the vacant land . . and further, to build houses for said servants, . . *Third*—My boy Jimmy, or James Hoover [[378] 'son of the deceased by his . . concubine and slave, Lydia, . . about two years old at the death of . . Hoover'], I wish . . to have sent to school, and no . . expenses spared in having him thoroughly educated. And when he shall arrive at . . twenty-one . . I desire . . York and E. J. Hoover shall . . put him in possession, of his own right, [of] White Hall and Home Place; . . should he be capable of protecting and not squandering the same. Should he . . be a reckless man or an imbecile, I request that none of my property be put in his possession; but . . York and . . Hoover shall amply provide for his . . maintenance. In case of the death of my son, . . and my woman Lydia shall be the mother of no more children during my lifetime, all my property shall belong absolutely to . . York and E. J. Hoover. . . signed . . January, 1859.'" Held: [380] "The lapse of the particular legacy in favor of the boy . . by reason of his incapacity, inured . . to the advantage of York and Hoover,"

Succession of Caballero (Mrs. Conté) v. Executor, 24 La. An. 573, November 1872. "The plaintiff . . claiming to be the sole heir . . sues to set aside his will, . . Her claims are opposed by the universal legatee and by the particular legatees. . . [574] Caballero, a native of Spain, came to New Orleans in . . 1832, became a citizen . . lived in intimacy with a colored woman, by whom . . he had several children, the plaintiff . . being the only one . . now living. She was born in . . 1840. Caballero made . . will . . 1852, and ratified it in January, 1856 . . making various legacies for charitable purposes . . In March, 1856, Caballero left . . for Cadiz . . and at Havana, in April . . he was married to . . the plaintiff's mother. . . He was a man of ample fortune. He sold his family tomb in New Orleans for a large price and carried with him the remains of his children and placed them in a tomb . he had built in Cadiz at . . [575] $25,000. He purchased there a costly dwelling house . . and resided in it with his family. It is fully proved that such a marriage . . is legal by the laws of Spain. A judicial order was rendered by a competent judge legitimating the daughter, and upon that occasion the record

of her birth and baptism in New Orleans was transcribed in the record of baptisms in Havana. . . Mrs. Conté . . never returned to Louisiana to live, . . is a subject . . of Spain." [583] "After an absence of three years . . [her parents] returned . . [her mother] dying in 1860 and Caballero in 1866." Held: [581] "It is not against the policy of the laws of Louisiana . . to permit the plaintiff, a legitimated child, to take by inheritance the property of her father. Neither has it ever been the policy of Louisiana to attempt to regulate marriages beyond her territorial jurisdiction." Wyly, J., dissented: [585] "the law of the domicile of birth fixes the status of the child." [583] "the contract of marriage . . was utterly without effect in this State, being at the time in contravention of its policy."

Slaughterhouse Cases, 16 Wallace (U. S.) 36, December term, 1872. [57] "Mr. Justice Miller, . . April 14th, 1873, delivered the opinion of the court. . . [68] whatever auxiliary causes may have contributed to bring about this war ['of the rebellion'], undoubtedly the overshadowing and efficient cause was African slavery. . . When the armies of freedom found themselves upon the soil of slavery they could do nothing less than free the poor victims . . these men . . offered their services and were accepted by thousands to aid in suppressing the unlawful rebellion, . . The proclamation of President Lincoln expressed an accomplished fact as to a large portion of the insurrectionary districts, . . But the war being over, those who had succeeded in re-establishing the authority of the Federal government were not content to permit this great act of emancipation to rest on the actual results of the contest or the proclamation . . Hence the thirteenth article of amendment . . [69] To withdraw the mind from the contemplation of this grand . . declaration of . . personal freedom . . and with a microscopic search endeavor to find in it a reference to servitudes, which may have been attached to property in certain localities, requires an effort, to say the least of it. . . [70] circumstances, whatever of falsehood or misconception may have mingled with their presentation, forced . . the conviction that something more was necessary . . the fourteenth amendment, . . [71] A few years' experience satisfied . . the authors of the other two . . that . . these were inadequate . . Hence the fifteenth amendment, . . [73] the first clause of the first section [of the fourteenth amendment] . . overturns the Dred Scott decision by making *all persons* born within the United States and subject to its jurisdiction citizens of the United States."

Spencer v. U. S., 8 Ct. Cl. 288, December 1872. [290] "the overseer, left . . in February, 1863, . . foreman . . and the colored men on the place compressed the remaining ginned cotton into forty bales . . and hauled [them] . . out to Mrs. Blackburn's . . 'to save it for their old master, who had been kind to them.' . . she promised to take care of it. But . . shipped it to Memphis . . where it fell into the hands of . . a special agent of the Treasury Department. . . sold . . by [his] order . . the colored men . . followed the cotton . . claimed it . . 'said . . they were forced to sell . . to Mrs. Blackburn at a price quite below the market value. . . [291] settled by Mrs. Blackburn agreeing to pay the further sum of $2,000.' . . 1864, paid under the direction of . . Treasury agent, to nineteen colored men be-

longing to the claimant's [plantation, less $184 paid to other persons.] . . $4,628.49 were paid . . to Mrs. Blackburn's attorneys,"

Petition dismissed: [294] "the Government of the United States is not answerable . . for the proceeds . . which never reached the Treasury," Affirmed in 1875 by the Supreme Court of the United States. 1 Otto (U. S.) 577.

Walsh v. Lallande, 25 La. An. 188, March 1873. Ludeling, C. J.: "The defendant claims under an entry made . . 1844. . . in an *ex parte* proceeding the commissioner of the general land office ordered the cancellation of Lallande's entry . . 1860, on the ground that he was a *free negro,* and the plaintiff was permitted to locate . . statement of facts . . shows that . . Lallande was born of free parents, in this State, . . His grandfather was a white man, a Spaniard; his grandmother was an Indian. Their issue was the father . . the defendant's mother was a mulattress. . . By the laws of Louisiana native born free persons of color were in the full enjoyment of . . [private] rights in 1844. . . By the treaty whereby Louisiana was acquired, the free colored inhabitants . . were admitted to citizenship of the United States. . . [190] judgment in favor of the defendant, decreeing him to be the owner"

Bruin v. Sasser, 25 La. An. 224, March 1873. [225] "The slave was a mechanic, and defendant paid $1600 cash, and gave besides the note . . sued upon . . set free by the Government, in 1864 or 1865." Held: "no authority for the judgment . . against the defendant."

Widow of Benjamin Poydras de La Lande et al. v. Poydras, 25 La. An. 405, May 1873. "At a probate sale . . 1854 the defendant purchased from the estate of Benjamin Poydras a plantation . . with twenty-four slaves upon it, who were among the slaves entitled to their freedom by . . the will of Julien Poydras,[1] . . [406] 'The said slaves have been detached' from 'the plantation on which he resided'" [405] "Three other . . slaves . . were sold with this lot . . The plaintiffs sue on the last note . . The judge *a quo* ordered an appraisement to ascertain the relative value [of the land and slaves.] . . judgment in favor of the plaintiff for two-thirds the amount of the note . . The defense is that the twenty-four . . were free at the time of the sale . . and that the sale of free persons being *contra bonos mores* . . violates the entire contract. . . [406] It is in evidence that the twenty-four . . were not emancipated by the defendant, . . whatever the obstacles in the way, the defendant made no effort to surmount them." Judgment affirmed.

Succession of Taylor, 25 La. An. 446, May 1873. [447] "The petitioner alleges . . that these pretended heirs were adulterous bastards . . and that their mothers were slaves; and by the laws of Kentucky ['the domicile of the deceased'] and Louisiana . . incapable of inheriting" [24 La. An. 327] "a statement . . to his executors, that . . [they] are not his children . . appears to have been written under the influence of displeasure, and to be outweighed by abundant evidence." Suit dismissed. Reversed and cause remanded.

[1] See introduction to the Louisiana cases, pp. 393-396.

Boyce v. Tabb, 18 Wallace (U. S.) 546, October 1873. "Boyce, . . February, 1861, gave to Tabb a . . note, as the consideration for the sale of certain slaves. . . [547] in 1867 the Supreme Court of Louisiana adjudged . . that contracts for the sale of persons were void,[1] . . 1868, Tabb sued Boyce . . The court . . charged: 'It is not a legal defence . . that such note was given as the price . . of slaves . . the obligation cannot be impaired by laws of a State passed subsequently' . . Verdict and judgment . . for the plaintiff,"

Affirmed: [548] "This subject received the careful attention of this court in White *v.* Hart,[2] and we are satisfied of the soundness of the views there presented. The case of Osborne *v.* Nicholson[3] is also decisive . . It is urged . . as the highest court in Louisiana has, on grounds of public policy, refused to enforce contracts like this since the abolition of slavery, that the thirty-fourth section of the Judiciary Act of 1789 obliges this court to follow that rule of decision. This is an erroneous view" [Davis, J.]

August and Joseph Pierre v. Fontenette et al., 25 La. An. 617, November 1873. [618] "The father of these plaintiffs was a slave, who . . [[617] 'purchased'] his freedom and died before the abolishment of slavery . . possessed of a small amount of property. Their mother died a slave; her death preceding" [617] "lived together as husband and wife, with the consent of their masters." [620] "the general custom among the slave population in the matter of marriage . . The formality of a marriage ceremony by a priest or other person authorized to solemnize marriage was sometimes resorted to, but this was by no means a general usage." [619] "Magdeline Vincent was the sister of . . the father . . during the existence of slavery became free, . . succeeded as heir . . She died in 1869, . . constituted . . Fontenette her universal legatee. The status of the plaintiffs was that of slaves up to . . the general emancipation." They [617] "ask to be recognized as her heirs,"

Held: [618] "The legitimation . . of these plaintiffs became impossible as a result of marriage, by the death" of their mother "before emancipation. The parties' rights . . were dead; and the subsequent emancipation . . could not resuscitate the marriage," [Morgan, J.] Taliaferro, J., dissented: [619] "all the requisites necessary to constitute marriage were complied with." C. C. 182.

Hart v. Administrators, 26 La. An. 90, February 1874. [100] "From . . 1854 to . . his death . . in 1869, . . Hart lived in concubinage with the plaintiff . . his slave. . . 1867, he married her. None of the children were born after the marriage. . . Subsequent to their marriage the children were baptized . . as the children of Hart." [96] "The Catholic priest testifies that prior to his marriage . . Hart desired him to take a conveyance of all his [[90] 'large'] property in trust for his children." [100] "the priest . . advised him that marriage would legitimate them." [96] "He called the children his own, caused them to be educated as such,

[1] Wainwright *v.* Bridges, p. 691, *supra.*
[2] P. 103, *supra.*
[3] 13 Wallace 655.

and as his children employed physicians to attend them . . the mother . . testified that . . in 1857, [he] made a will in which he acknowledged as his own her two children then born, and provided for them and herself, . . [97] destroyed the will after their marriage."

Held: "the children . . are his legal heirs," [93] "The constitution of 1864 made [them] . . free persons. The act of Congress of April, 1866 ['Civil Rights Bill'], made them citizens of the United States, and relieved them of all previous disabilities . . [95] By the former laws of this State the children . . could not have been legitimated . . [because] at the time of their conception, their parents could not have entered into marriage; but . . in 1867, the incapacity . . had been obliterated." [Taliaferro, J.] Morgan and Wyly, JJ., dissented.

Succession of Randall, 26 La. An. 163, March 1874. Held: [164] "His having lived in Mississippi with another woman as his wife, while a slave, did not prevent his marriage in Louisiana, where he resided, after his emancipation." [Ludeling, C. J.]

Boedicker v. East, 26 La. An. 209, March 1874. [211] "Jim Moore, a freedman who was owned by Carter, was on Carter's place from 1833 until 1863,"

McLean v. Elliot, 26 La. An. 385, May 1874. Suit on a note. [386] "Plaintiff presses upon us that what we now call the slave consideration in contracts should not be entertained; but the jurisprudence of the State, we think, is settled . . reduce the amount allowed to plaintiff" [Morgan, J.]

Heirs of E. A. Johnson v. Bradish Johnson, 26 La. An. 570, May 1874. "George W. Johnson died in September, 1856. He owned large estates in New York and in Louisiana. . . He . . owned twenty-five slaves in his own right, twelve slaves in common with his brother Bradish, and the eleven-sixteenths of one hundred and sixty-one others. . . To Bradish he gave . . plantation . . imposed a charge . . that after enjoying the fruits and revenues . . with the result of the labor of all the slaves thereon, for five years, he was to liberate them all, send them to Liberia, and give them each fifty dollars. His will was accepted by his heirs . . [571] In 1857, the Legislature . . passed a law prohibiting the emancipation of slaves. In 1858, J. D. Johnson and E. A. Johnson (father of the present plaintiffs) instituted suit . . prayed that all the provisions . . relating to . . the negroes . . might be declared null . . decided by the Supreme Court to be premature. . . Subsequently, John Johnson instituted another suit . . declared that Bradish . . contemplated the emancipation . . and, averring that he feared they would be removed out of the State, . . obtained an injunction . . prohibiting him . . This suit . . November, 1861, . . was dismissed. . . Plaintiffs contend [in the present suit] that . . as the terms of the will were not complied with, . . the legacy lapses"

Held: [573] "the heirs can not . . be heard, when they seek to annul the will in any of its parts." [571] "Every one who was in Louisiana at the time knows, that it would have been impossible for any one to have emancipated a slave in September, 1861, and . . equally impossible to

have sent one, much less one hundred and ninety-eight to Liberia. Late in April, 1862, the United States forces took possession . . By a military order, issued in May, 1863, the statute of 1857 was declared never to have been in force during the occupancy . . by the federal troops, and owners of slaves were authorized to manumit them on presenting a petition to that effect, to any court of record. In March, 1864, Bradish Johnson filed a petition . . [572] prayed leave to emancipate . . granted. The slaves were freed. It is contended that this proceeding was unnecessary . . as two months before, General Banks . . had declared all slavery laws null . . They were not sent to Liberia . . but this was not the fault of the legatee. . . he tendered to those who wished to go, the means . . which they declined. . . The first privilege of freedom is the right to choose a home . . whether they went or staid was not a matter in which the heirs . . had any say." [Morgan, J.]

Succession of Hebert, 27 La. An. 300, April 1875. "He claims a deduction . . on the ground that the note was given, in part, for the price of slaves." Held: the deduction cannot be allowed. "Slavery had not been abolished when this note fell due [in February, 1862], and as it was in his hands when he was appointed tutor, it must be considered as so much cash belonging to the minors." [Morgan, J.]

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concerning
American Slavery and the Negro

EDITED BY THE LATE
HELEN TUNNICLIFF CATTERALL
(MRS. RALPH C. H. CATTERALL)
WITH ADDITIONS BY
JAMES J. HAYDEN
Law School, Catholic University of America

VOLUME IV

Cases from the Courts of
New England, the Middle States, and the District of Columbia

WASHINGTON, D. C.
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PAPERS OF THE DIVISION OF HISTORICAL RESEARCH

MARGARET W. HARRISON, Editor

The Lord Baltimore Press
BALTIMORE, MD., U. S. A.

PREFACE

The plan and purpose of the series of volumes in which the present volume stands fourth, have been fully explained in the preface to the first volume—to furnish an unbiassed picture of American slavery as an actual institution, social and economic, by drawing off from the printed reports of cases in the highest state courts and those of the United States, all factual statements and quotations illustrating slavery and the life of the negro, and accompanying these by compressed versions of the law as pronounced by the respective courts. The first of these volumes printed, with severe omission of all that is irrelevant, the important cases in the courts of England, Virginia, West Virginia, and Kentucky—for in America the law respecting slavery has usually progressed westward along parallels of latitude. The second volume exhibited in similar fashion the cases adjudged in the highest courts of North Carolina, South Carolina, and Tennessee. The third volume included the cases reported in Georgia, Florida, Alabama, Mississippi, and Louisiana. Thus, the volumes hitherto published have carried out the intentions of the series in respect to all the states south of the Potomac and east of the Mississippi, constituting, with the inclusion of Louisiana, by far the greater part, almost the whole, of the area in which slavery long flourished as a relatively permanent institution.

The present volume presents, on the same plan as that of its predecessor, the cases concerning slavery and the negro in the states north of the Potomac and east of the Ohio, beginning with Maryland, the District of Columbia, and Delaware, which would have been included in the first volume with Virginia if its dimensions had permitted, and proceeding northward through those Middle States and states of New England which are customarily classed as "free states". The fifth volume will contain similar materials for the states west of Pennsylvania, north of the Ohio, or west of the Mississippi, together with reported cases from Canada and Jamaica.

At the time of Mrs. Catterall's lamented death, November 10, 1933, she had finished, among states included in the present volume, the introduction to the Maryland material and the Maryland cases, excepting such as are in volumes published since that date—to wit, *Maryland Archives,* XLIX.-LI., and Judge Bond's *Records of the Maryland Court of Appeals,* 1695-1729, recently published by the American Historical Association. She had prepared introductions and cases for the District of Columbia, Delaware, Pennsylvania, Massachusetts (to 1840), and Vermont. The recently published Maryland cases, those reported from New Jersey and New York, with their introductions, and the Massachusetts cases since 1840, have been dealt with by Dr. James J. Hayden of the Law School of the Catholic University of America. Mr. George W. Dalzell of the

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bar of the District of Columbia has contributed the introduction respecting Connecticut and partially prepared the Connecticut cases. It has fallen to the undersigned to make the remaining preparations respecting Connecticut and all those respecting Rhode Island, and to contribute, in the case of all the states represented in this volume except New Jersey and Vermont, the brief second section of the introductions, which gives in outline the history of the judicial courts whose reports are dealt with in the volume.

It was to be expected that some unevenness of treatment might result from the attempt to complete through other hands the work for this volume which Mrs. Catterall had carried out with such remarkable ability and exactness, but the effort has been made to reduce such unevenness to a minimum by following the same procedures which she had followed. It may be well to repeat, from the preface to the first volume of the series, some sentences explanatory of her practices.

"Under each state, the cases are set in chronological order, cases in the federal courts arising in that state being incorporated in the places where their dates would bring them. The compilation has been brought to a close, in each state, at the end of the year 1875, ten years after the ending of slavery in the United States. . . In quoted passages the spelling and capitalization of the books quoted has been followed, except that, in quotations from early records, the use of *u* and *v* and of *i* and *j* has been modernized, *and* has been printed instead of the manuscript symbol &, the abbreviations for *which* and *with* and a few similar abbreviations have been expanded, and, as a matter of course, *th* in *the* and *that* and *then* has been printed *th,* and not *y*!"

Mrs. Catterall was the daughter of a judge in middle Illinois, who, having no sons, desired that one of his daughters should study law. She was admitted to the Illinois bar, and at the age of twenty-three drew up the municipal code of their small city. After her marriage to a young assistant professor of history in the University of Chicago, afterwards a brilliant and noted professor in Cornell University, she devoted herself to linguistic and other studies that might be helpful to his work, but after his death in 1915 she resumed her legal studies, was graduated from the Law School of Boston University, and was admitted to the Massachusetts bar. The last ten years of her life were devoted, as largely as her health permitted, to the important contribution to the history of American slavery and the American negro which is represented by the present series of volumes. The faithfulness and accuracy with which she worked, the acuteness of her perceptions in legal matters, and the varied learning which she bore so lightly and modestly, deserve most grateful commemoration in this place.

The index has been prepared by Mr. David M. Matteson.

J. Franklin Jameson.

May 7, 1936.

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LIST OF ABBREVIATIONS

Abb. Adm. = Benjamin V. and Austin Abbott, *Reports of Cases in Admiralty, argued and determined in the District Court of the United States for the Southern District of New York.*

Abbott U. S. = Benjamin V. Abbott, *Reports of Decisions rendered in the Circuit and District Courts of the United States.*

Acorn Club Publications = Acorn Club of Connecticut, *Reports of Cases adjudged in the Superior Court of the State of Connecticut, from the Year 1785 to January 1789.*

Acts and Resolves = [Acts and Resolves of the General Assembly of Rhode Island (no title-page).]

Acts of the Prov. = *Acts and Resolves, public and private, of the Province of Massachusetts Bay.*

Addison = Alexander Addison, *Reports of Cases in the County Courts of the Fifth Circuit, and in the High Court of Errors and Appeals, of the State of Pennsylvania.*

Allen = Charles Allen, *Reports of Cases argued and determined in the Supreme Judicial Court of Massachusetts.*

Am. Law J. = *American Law Journal.*

Am. Law Reg. = *American Law Register* (Philadelphia).

American Legal Records = Carroll T. Bond, *Proceedings of the Maryland Court of Appeals, 1695-1729* (American Legal Records, I.).

Ancient Charters = *Charters and General Laws of the Colony and Province of Massachusetts Bay.*

Ashmead = John W. Ashmead, *Reports of Cases adjudged in the Courts of Common Pleas, Quarter Sessions, Oyer and Terminer, and Orphans' Court of the First Judicial District of Pennsylvania with Notes and References.*

Bailey = Henry Bailey, *Reports of Cases adjudged and determined in the Court of Appeals of South-Carolina, on Appeal from the Courts of Law.*

Baldwin = Henry Baldwin, *Reports of Cases determined in the Circuit Court of the United States, in and for the Third Circuit, comprising the Eastern District of Pennsylvania, and the State of New Jersey.*

Barb. Ch. = Oliver L. Barbour, *Reports of Cases argued and determined in the Court of Chancery of the State of New-York.*

Bay = Elihu H. Bay, *Reports of Cases argued and determined in the Superior Courts of Law in the State of South-Carolina, since the Revolution.*

Betts' Scr. Bk. = *Betts' Scrap Book* (cases in the United States Circuit and District Courts for the Southern District of New York, from 1839 to 1862, with a few cases from the other districts. Collected by Samuel R. Betts).

Binney = Horace Binney, *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*

Black = Jeremiah S. Black, *Reports of Cases argued and determined in the Supreme Court of the United States.*

Black Code = An Act prescribing the Rules and Conduct to be observed with respect to Negroes and other Slaves of this Territory (Orleans).

Bland = Theodore Bland, *Reports of Cases decided in the High Court of Chancery of Maryland.*

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Brightly Dig. = Frederick C. Brightly, *Digest of the Decisions of the Courts of Pennsylvania.*

Browne = Peter A. Browne, *Reports of Cases adjudged in the Court of Common Pleas of the First Judicial District of Pennsylvania.*

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Compilation = Josiah Harrison, *A Compilation of the Public Laws of the State of New Jersey passed since the Revision in the Year 1833.*

Conn. = *Reports, containing Cases argued and determined in the Supreme Court of Errors of the State of Connecticut.*

Conn. Col. Recs. = *Colonial Records of Connecticut.*

Council Records = *Council for New England, Records.*

Cowen = Esek Cowen, *Reports of Cases argued and determined in the Supreme Court; and in the Court for the Trial of Impeachments and the Correction of Errors, of the State of New-York.*

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Dane = Nathan Dane, *Abridgment and Digest of American Law.*

Davis's Col. = William A. Davis, *The Acts of Congress in relation to the District of Columbia.*

Day = Thomas Day, *Reports of Cases, argued and determined in the Supreme Court of Errors, of the State of Connecticut.*

Del. Ch. = *Reports, Delaware Chancery.*

Denio = Hiram Denio, *Reports of Cases argued and determined in the Supreme Court and in the Court for the Correction of Errors of the State of New-York.*

Digest = Lucius Q. C. Elmer, *A Digest of the Laws of New Jersey, 1838.*

Douglas = Sylvester Douglas, baron Glenbervie, *Reports of Cases argued and determined in the Court of King's Bench.*

Dutcher = Andrew Dutcher, *Reports of Cases argued and determined in the Supreme Court and the Court of Errors and Appeals of the State of New Jersey.*

Fed. Cas. = *The Federal Cases comprising Cases argued and determined in the Circuit and District Courts of the United States from the earliest Times to the Beginning of the Federal Reporter.*

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Green Bag = A legal journal, monthly, Boston.
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Law Rep. = *Monthly Law Reporter.*
Leg. Int. = *Legal Intelligencer*, Philadelphia.
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Mass. Hist. Soc. Coll. = *Massachusetts Historical Society Collections.*
Mass. Recs. = *Records of the Governor and Company of the Massachusetts Bay in New England.*
Maxcy's Laws = Virgil Maxcy, *Laws of Maryland.*
Md. = *Reports, containing Cases argued and determined in the Court of Appeals of Maryland.*
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Plym. Col. Recs. = *Records of the Colony of New Plymouth in New England.*
P. P. = *Parliamentary Papers.*
Proc. Mass. Hist. Soc. = *Proceedings of the Massachusetts Historical Society.*
Public Recs. = *Public Records of the Colony of Connecticut.*
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Rawle = William Rawle, jr., *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
Records of Court of Assistants = *Records of the Court of Assistants of the Colony of the Massachusetts Bay.*
Rev. Laws = *Laws of the State of New Jersey revised and published under the Authority of the Legislature, 1821.*
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R. I. = *Reports of Cases argued and determined in the Supreme Court of Rhode Island.*
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Rothwell's Laws = Andrew Rothwell, *Laws of the Corporation of the City of Washington.*
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Whart. St. Tr. = Francis Wharton, *State Trials of the United States during the Administrations of Washington and Adams.*
Wheaton = Henry Wheaton, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
Wilson's notes = James P. Wilson, *Wilson's Red Book.*
Wkly. Law Gaz. = *Weekly Law Gazette,* 1858-1860.
Woodb. and M. = Charles L. Woodbury and George Minot, *Reports of Cases argued and determined in the Circuit Court of the United States for the First Circuit.*
Yeates = Jasper Yeates, *Reports of Cases adjudged in the Supreme Court of Pennsylvania.*
Zabriskie = Abraham O. Zabriskie, *Reports of Cases argued and determined in the Supreme Court, and in the Court of Errors and Appeals of the State of New Jersey.*

JUDICIAL CASES CONCERNING SLAVERY

MARYLAND

INTRODUCTION

I.

In 1772 England's lack of a positive law to support slavery justified Lord Mansfield in discharging Somerset.[1] Maryland took precaution a century earlier against such a dénouement. On "Munday 19th Sept. 1664 . . came a member from the lower howse with this following paper (vizt). Itt is desired by the lower howse that the upper howse would be pleased to drawe up an Act obligeing negros to serve *durante vita* they thinking itt very necessary for the prevencion of the dammage Masters of such Slaves may susteyne by such Slaves pretending to be Christned And soe pleade the lawe of England." [2] Before the adjournment that day, "An Act concerning Negroes and other Slaves" [3] had been drawn up, had been sent to the Lower House where it received some amendments, was returned to the Upper House, assented to, and sent again to the Lower House. The following day it was "assented to by the lower howse and after readeing itt was Ordered to be ingrosed."

The act of 1664 itself does not mention the danger of enfranchisement of slaves through baptism,[4] as a reason for its passage, though it sets

[1] Somerset *v.* Stewart, vol. I., p. 14, of this series.

[2] 1 Md. Arch. 526. This was thirteen years before the first reported English case regarding negro slaves, Butts *v.* Penny (3 Keble 785), which declares that "they are by usage *tanquam bona,* and go to Administrator untill they become Christians; and thereby they are Infranchised;" vol. I., p. 9, of this series.

[3] 1 Md. Arch. 533.

[4] The Maryland act of Apr. 19, 1671, "for the Encourageing the Importacion of Negros and slaves into this Province," deals explicitly with the question of their baptism. After declaring that "Severall of the good people of this Province have been discouraged to import into or purchase within this Province any Negroes or other Slaves and such as have Imported or purchased . . have to the great displeasure of Almighty God and the prejudice of the Soules of those poore people Neglected to instruct them in the Christian faith or to Endure . . them to Receive the holy Sacrament of Baptisme . . upon a mistake and ungrounded apprehension that by becomeing Christians they . . are actually manumited," it enacts "That where any Negro or Negroes Slave or Slaves being in Servitude . . is are or shall become Christian or Christians and hath or have Received or shall att any time Receive the Holy Sacrament of Babtizme before or after his or her or their Importacion into this Province the same is not . . taken to . . amount unto a manumicion." 2 Md. Arch. 272.

Nevertheless, in December 1684 (seven years after the case of Butts *v.* Penny had given a concrete example of the working of "the lawe of England"), a complaint was brought "At the Court at Whitehall," which shows that baptism was still withheld in Maryland, if the master of a slave anticipated taking him to England; for though the Maryland act of 1671 insured his slavery in Maryland in spite of baptism, the decision in Butts *v.* Penny insured his freedom in England, because of it. A Mrs. Beale charged Captain Eaton with selling her brother William Goodwin, Eaton's apprentice, "as a Slave" at "Captain Slyes

out in full why the latter part of the act was enacted. Maryland had a slavery problem in the first years of her existence as a colony, which probably troubled the other colonies,[5] but in regard to which their law reports [6] are silent. The problem was that of the marriage of indentured white servants, "freeborne English women," with slaves.[7] "For deterring such free borne women from such shamefull Matches," the act of 1664 provided "That whatsoever free borne woman shall inter marry with any slave . . shall Serve the master of such slave dureing the life of her husband And that all the Issue of such freeborne woemen soe marryed shall be Slaves as their fathers were." [8]

In 1681 Lord Baltimore returned to the province after a four years' sojourn in England, bringing with him as a domestic servant "a free white woman, named Eleanor, commonly called Irish Nell," [9] who proceeded that very year to marry [10] a negro slave. The law of 1664 was repealed "in the month of August, immediately after the marriage, and his Lordship interested himself in procuring the repeal with a view to this particular case. The act of 1663 [1664] was repealed also, to prevent persons from purchasing white women and marrying them to their slaves for the purpose of making slaves of them." [11] After this act was repealed, Nell had children in consequence of this marriage, and in 1770 her grandchildren, William and Mary Butler (first cousins), petitioned for freedom "as being descended from a free white woman," the civil law doctrine, *partus sequitur ventrem,* then prevailing in Maryland,[3] as it did in all the other American colonies and in the West Indies. The Provincial Court adjudged that the petitioners were free, but the Court of Appeals in 1771 reversed the judgment, agreeing with the counsel for the defendant: "There is no circumstance appearing, to shew that the Legislature meant to discriminate or distinguish between the issue born before the act and those born after."

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house in Maryland . . so can be testified by one Peter Harris, a Servant to Captain Sly of London merchant," and "the complainants . . the more to strengthen their alligations . . tempered" with the "Negro boy belonging to . . Slye . . which boy was never in England till within this three or foure months. and consequently can truly testify nothing in this matter," for "understanding the black to be no cristian and by that means incapable of being evidence in their behalfe, . . [they] caused him contrary to the knowledge of his master in some unknown place to be christianed." 5 Md. Arch. 420.

[5] See Virginia act of April 1691, ch. 16. 3 Hening 87.

[6] So far as they are printed.

[7] The gulf between indentured white servants and slaves is shown by the petition of the father of a girl apprentice in 1661, in which "he Craves that his daughter may not be made a Slave a terme soe Scandalous that if admitted to be the Condicion or tytle the Apprentices in this Province will be soe distructive as noe free borne Christians will ever be induced to come over servants." 1 Md. Arch. 464.

[8] This is the common law doctrine.

[9] Butler *v.* Boarman, p. 49, *infra.*

[10] Later, marriages of slaves were not recognized; but in 1681 the Upper House made it a condition of their assent to the act, that the Lower House "rase out the Clause for Dissolution of any Such Marriage if any shall (Notwithstanding all the Care and industry that may be used) happen to be, which Lyes not without either or both the two houses to Dissolve," 7 Md. Arch. 177.

[11] Butler *v.* Boarman, p. 49, *infra.*

Sixteen years later, Mary Butler, the daughter of William and Mary Butler, and great-granddaughter of Irish Nell, petitioned for freedom and was successful in obtaining it.[12] The General Court held " That without a conviction in a Court of Record of Irish Nell's having intermarried with a slave, she could not become a slave, nor could her issue become slaves by virtue of such intermarriage. That no presumption of such conviction arises from the petitioner and her ancestors having been always held in slavery." Also that the record, proceedings, and judgment on the petition of William and Mary Butler (her father and mother) against Boarman " were no bar to prevent the petitioner from claiming and having her freedom." The defendant appealed to the Court of Appeals. In that court, the counsel for the appellee argued convincingly that " Irish Nell was an English subject, and as such entitled to all the privileges of an English subject in an equal degree with any other English subject, however possessed with wealth, and exalted in station or rank. If she committed the crime of marrying a negro slave, she would by law be subject to no punishment before conviction in some mode, and she was entitled to the common law mode of trial by jury, as no other mode was prescribed by law. . . Parol evidence is not admissible, to prove that Irish Nell married a negro slave during the existence of the act of 1663 [1664]. Hearsay or tradition is not sufficient to prove any crime." The judgment of the General Court in favor of Mary Butler's freedom, was affirmed in 1791.

In like manner Eleanor Toogood [13] gained her freedom in 1783, when the Court of Appeals affirmed the judgment of the General Court: that the judgment of the County Court in 1734, that her mother, Ann Fisher, was a slave for life (by virtue of the Act of 1664), was not conclusive against Eleanor. Ann's mother, Mary Fisher, was the daughter of a free white indentured servant, " by an East-India Indian." Mary Fisher " became a free mulatto after serving some time [14] to Major Beale " and " was lawfully married [15] by a priest of the Romish Church . . to a negro man named Dick, a slave." The Court of Appeals " were also unanimously of opinion, that the act of 1664 does not extend to Mary Fisher, . . a free mulatto woman."

In 1793 the court discharged Anthony Boston " from all further servitude," as they were of the opinion that his great-grandmother " Maria, or Marea, was not a slave, but free," being " a Spanish woman," whose " daughter Linah [Anthony's grandmother] was born before she came into Maryland, and was of yellow colour or complexion, with long black hair."

[12] Butler *v.* Craig, p. 50, *infra.*
[13] Toogood *v.* Scott, p. 49, *infra.*
[14] Act of 1664: "all the Issues of English or other freeborne woemen that have already marryed Negroes shall serve the Masters of their Parents till they be Thirty years of age and noe longer."
[15] Evidently before the repealing act of 1681. See Toogood *v.* Scott, p. 49, note 5, *infra.*

In 1794 Basil Shorter was adjudged free, being a lineal descendant (great-grandson) in the female line of Elizabeth Shorter, a free white woman, whom "in the year 1681, or near about that time . . Nicholas Geulick, priest . . did join . . in the holy estate of matrimony, according to the then law" with "a negro man named . . Little Robin . . both servants unto Mr. William Roswell."[16] In 1795 another descendant of Elizabeth Shorter "recovered his freedom;"[17] and in 1808 the great-great-great-granddaughter of Elizabeth Shorter was adjudged to be entitled to her freedom.[18]

In 1794 Robert Thomas recovered his freedom from the Reverend Henry Pile, on the ground of descent from a free white woman.

In 1796 Nathaniel Allen, great-grandson of Hannah Allen, "a white Scotch woman," petitioned for freedom. Hannah Allen "had, by a negro, a daughter named Hannah Allen" who "had, by a negro, a daughter named Jane Allen" who "had the petitioner by a negro, and she was adjudged . . 1772, to serve seven years for having the petitioner, and the petitioner, being then five months old, was sold till he arrive to the age of thirty-one years."[19] Nathaniel was only 22 years old when he petitioned for freedom, and was remanded to servitude to finish his term.

But the laws of evidence had to be stretched in all these cases.[20] The fact that the ancestress was free could be proved only by hearsay, and while hearsay evidence or the reputation of the neighborhood is admitted to prove pedigree, it is not received to prove other facts concerning individuals on the genealogical tree—that they were white or free or came from England. Such was the decision of the Supreme Court of the United States in the case of Mima Queen and child[21]—a case arising in that part of the District of Columbia—Washington County—which had belonged to Maryland and in which the laws of Maryland were still in force.[22] Mr. Justice Duvall, formerly on the bench of Maryland, dissented: "In Maryland the law has been for many years settled that on a petition for freedom where the petitioner claims from an ancestor who has been dead for a great length of time, the issue may be proved by hearsay evidence, if the fact is of such antiquity that living testimony

[16] Paper, dated June 15, 1702, p. 52, *infra*.

[17] Sprigg *v.* Negro Mary, p. 62, *infra*. One or more members of a family would bring a test case, and if successful, court proceedings would not be necessary in case of the rest.

[18] Shorter *v.* Boswell, p. 61, *infra*.

[19] Act of 1715, ch. 44, sects. 26, 27; 1728, ch. 4.

[20] "In the cases of . . the Shorters, the Thomas's, the Queens, the Bostons, and the Toogoods, . . the reputation of the neighborhood, as to the fact of freedom [of the ancestress], was admitted in evidence" (Counsel for the petitioner in Mahoney *v.* Ashton, p. 53, *infra*). Attorney General Martin scornfully replied: "In all these, and in many other similar cases, hundreds of negroes have been let loose upon community by the hearsay testimony of an obscure illiterate individual."

[21] Opinion of Chief Justice Marshall, 7 Cranch 290 (1813), followed in Maryland thereafter. Walls *v.* Hemsley, p. 64, *infra*; Walkup *v.* Pratt, p. 68, *infra*.

[22] Act of Congress, Feb. 27, 1801. 2 Stat. at L. 103.

cannot be procured. . . The reason for admitting hearsay evidence upon a question of freedom is much stronger than in cases of pedigree or in controversies relative to the boundaries of land. . . The right to freedom is more important than the right of property."

Though hearsay was admitted in 1797 in the lower court and in 1802 in the Court of Appeals, the petition of Mahoney [23] for freedom was not granted. The petitioner, who was the son of Nelly, who was the daughter of "Carroll's Sue," who was the daughter of "Digges's Sue," who was the daughter of Ann Joice, offered evidence "that it was the report of the neighbourhood that if she (meaning Joice) had justice done her, she ought to have been free," for "Joice, the ancestor of the petitioner, was a negro woman carried with her owner, claiming her as a slave, from the island of Barbadoes to England, and afterwards brought into this country by Lord Baltimore, claiming her as a slave, between the years 1678 and 1681." Even admitting the hearsay evidence that Joice had set her foot on English soil, she did not become free [24] and Somerset did, because there were two vital differences in their cases: Somerset was brought before an English court and was judicially discharged from servitude; Joice was not. Somerset remained in England; Joice, like the slave Grace 140 years later, returned to a slave country. And the Court of Appeals of Maryland decided in 1802, as Lord Stowell did in 1827.[25] "By a positive law in this state in 1715,[26] then the province of Maryland, the relation of master and slave is recognized as then existing. . . Upon the bringing Ann Joice into this state, . . the relation of master and slave continued in its extent as authorized by the laws of this state."

It remains to mention a few peculiarities in the Maryland law of slavery. As early as 1749 [27] the Court of Appeals held that the legatee for life of a female slave is entitled to her issue born during the continuance of the life estate. "The two principal reasons which governed the Court of Appeals [in Scott *v.* Dobson] were, 1. That the issue ought to go to the person to whom the use was limited; otherwise, having no interest worth regarding, he might not take care of the issue. That it would only be a reasonable satisfaction for the expenses of maintenance, and for the time lost by the parent. 2. That when the use is given, a bounty at all events is intended; but instead of a benefit, if the issue should go over there might be a loss." [28] This doctrine was followed by Delaware, but the other slaveholding states reasoned differently.

The early reports are full of cases involving the famous "rule against perpetuities," the courts having to decide whether wills bequeathing prop-

[23] Mahoney *v.* Ashton, vol. I., p. 2n., of this series; also p. 53, *infra.*

[24] Attorney General Martin sarcastically attacks the English maxim: "The British air is supposed to electrify the flesh—putting a foot on the island, the nature is instantly changed, and if a slave before, becomes thereby free."

[25] P. 53, *infra.*

[26] Also in 1664 (ch. 30) and in 1681 (ch. 4).

[27] Scott *v.* Dobson, p. 38, *infra.*

[28] Opinion of Daniel Dulany, 1 Har. and McH. 348 (353).

erty to A, and, if A died without issue, then to B, contained any restrictive words, words restricting the taking of the gift within a life in being and twenty-one years and ten months thereafter. For if the question of A's dying without issue had to be suspended till the crack of doom for solution—to discover if all A's descendants to the nth degree had perished off the face of the earth—it would obviously be very inconvenient. Therefore the courts held that if a will contained no restrictive words, the testator intended to give to B, after "an indefinite failure of issue" of A; and to carry out such an intention was against the policy of the law. B could never take; the property belonged absolutely to A and his heirs forever. In Biscoe *v.* Biscoe [29] the court decided that the gift of a negro man to B after the death of A and the failure of A's issue, was not too remote: "the subject of the bequest . . is a negro man, a life in being, and the limitation over could never by possibility take effect, but in his life-time," distinguishing it from the case of a similar bequest of a negro woman "and all her increase," [30] "which looks to an indefinite failure of issue, as the issue of the negro woman might continue as long as the issue of the first taker."

A decided novelty in the law of slavery is the doctrine of emancipation by implication, enunciated in 1821, in the case of Hall *v.* Mullin.[31] Henry L. Hall, by his will, in 1817, had bequeathed "to Dolly Mullin one hundred and forty-one acres of land" and "two young negroes, one called Joan and the other Aaron." After bequeathing other negroes by name to other persons, he bequeathed "all the remainder part of my negroes free." He had supposed that Dolly was already free, for he had sold her in 1810 to her father, Basil, who a month later had executed a deed of manumission to her. Hall also supposed Basil to be free and therefore capable of contracting; for his owner, Benjamin Hall (Henry's father) had in his will (executed in 1803) declared: "I hereby manumit and set free from the time of my decease, my carpenter, called old Basil." But Basil was more than forty-five years old when Benjamin Hall died, and no slave could be set free in Maryland when above that age.[32] Therefore Basil, being a slave, could not buy his daughter Dolly; nor could he emancipate her. The Maryland Court of Appeals held that the will of Henry L. Hall set Dolly free "by implication; . . it was the intention of the testator that none of his slaves should remain slaves after his death, other than those he named and bequeathed as slaves; . . without the aid of the residuary clause she would have a right to freedom, under those parts of the will by which property was given to her; her freedom by implication is indispensably necessary to give efficacy to those clauses of the will." (Johnson, J.) "The testator imagined Dolly was free; she was not free, but

[29] P. 81, *infra.*
[30] Johnson *v.* Negro Lish, p. 66, *infra.*
[31] P. 69, *infra.*
[32] Act of 1796, ch. 67.

a slave, at the time the will was made, and being a slave, the will operated to give her freedom, and the lands devised to her." [33] (Chase, C. J.)

II.

In 1642, the date of the first of the cases noted in the following pages, there was already established a Provincial Court which, besides being a court of first instance for all matters civil, criminal, and testamentary for the city and county of St. Mary's, had also appellate jurisdiction over the county courts which were one by one instituted in the province. It consisted of the governor as presiding judge, and one or more members of his council as associate judges. Appeals were heard by the council, often the same men, until, in 1694, a Court of Appeals was created, in which the governor presided ordinarily, and of which the membership differed little from that of the Provincial Court. A High Court of Chancery existed as a separate entity from 1661, presided over by the chancellor or by the governor sitting as chancellor, with, as a rule, some judges of the Provincial Court. This court continued in existence till 1854. The Provincial Court also sat as a court of admiralty. From 1776 on the name Provincial was dropped, and the tribunal previously so called was known as the General Court.

The constitution of 1776 established a Court of Appeals distinct from the governor and council, to hear appeals from the General Court, the Court of Chancery, and the Admiralty Court. Presently a statute provided that it should consist of five judges, three of them judges of this higher court exclusively, the other two to be taken from the chief judges of the three courts just named, with elimination of that one of the three from whose court the appeal had been brought. An amendment of 1805 abolished the General Court, and constituted the Court of Appeals of the six chief judges of the six district courts then instituted. Its sessions were held on the Eastern Shore and on the Western Shore. The constitution of 1851 provided one appeal court of four judges, sitting at Annapolis. That of 1864 gave it a chief judge and four associate judges. That of 1868 gave it a membership of eight, namely, the chief judges of the eight circuit courts among which the judicial functions were then partitioned geographically.

[33] This was a far cry from Maryland's attitude in 1752, when a statute (ch. 1, sect. 3) was passed which made a manumission void that was executed in the last illness. See Negroes Peter and others *v.* Elliott, p. 51, *infra*. The act of 1752 was repealed in 1796.

Calvert's Covenant, 4 Md. Arch. 189, March 1642. "Leonard Calvert Esq. etc. acknowledged that he hath conveyed and sold unto John Skinner mariner, all those his 3. Mannors of St Michael, St Gabriel, and Trinity Mannor, . . And that he hath further covenanted to finish the dwelling house at Pinie neck, . . In consideration whereof the said John Skinner covenanted and bargained to deliver unto the said Leonard Calvert, fourteene negro men-slaves, and three women slaves, of between 16. and 26. yeare old able and sound in body and limbs, at some time before the first of march come twelve-month, at St Maries, if he bring so many within the Capes, . . betweene this and the said first of march, or afterward within the said yeare, . . And in case he shall not so doe, then he willeth and granteth that foure and twenty thousand weight of tobacco, be leavied upon any the lands goods or chattells of . . Skinner: . . to the use of . . Calvert and his assignes." [1]

Cornwaleys' Purchase,[2] 4 Md. Arch. 304, July 1644. "Received of Capt. Tho: Cornwaleys by the hands of S'r Wm. Berkeley Knt. nine pounds sterl: and by the hands of Mr. Cutbert Fennick ninety seven pounds and halfe of beaver, and is for or towards satisfaction of a debt of fifty pounds sterl: for two negroes d'd [3] the aforesaid Capt. Cornwaleys."

Duke's Deposition, 4 Md. Arch. 392, June 1648. "Mr Sowth [4] . . desyred him to sell him an Indian. This Dep't answered him, he had none to sell. And then he desyred this Dep't to goe with him up to Wicocomoco, and gett him an Indian [girl], and hee would give him content. And upon these speeches they went with the Sloope." "And for what truck they had aboard the sloope . . they had shooes, and one peice of Broadcloath." [5]

Indian Slaves, 4 Md. Arch. 399, July 1648. Bond of Tompson: "The condicion of this obligacion is such, that if Leift Will'm Sowth of Kecoughtan in Virginia, and Rich: Torney of Virg: and eyther of them, shall not within these five next ensuing yeares after date hereof, attempt to take, or carry away any Indian or Indians, out of the precincts of this province, without leave of the Govr. thereof, . . that then this obligacion to bee voyd,"

[1] Note by Dr. W. H. Browne, editor of *Archives of Maryland*: [vii] "This seems to be the first reference to the importation of negroes into the Province. In this particular case it seems that the slaves were not furnished."

[2] "First instance noted of a sale of negroes into the Province." Note by Dr. Browne, p. viii.

[3] Delivered.

[4] Probably "Leift Will'm Sowth of Kecoughtan in Virginia," p. 399.

[5] Lancelett's deposition. *Ibid.*

Paul Simpson v. Hill, 4 Md. Arch. 444, December 1648. "Capt. Edw. Hill covenanted with the compl't to deliver unto him 2 Indian boys . . which he . . hath not delivered, whereby the Compl't is damnifyed to the valew of 2000 *l.* Tob. and cask"

Mrs. Jane Fenwick's Joynture, 41 Md. Arch. 261, August 1649. [262] "Three negro servants (*Viz.*) Two negro men, and One negro woman, to say, William Allington and Tom: Payne: and Nan: and all their issue both male and Female, . . And for the true and reall performance of this Deed . . I the sd. Cuthbert Fenwick doe bind over . . The sayd Three Negros, and Three other Negros:"

Simpson's Purchase, 4 Md. Arch. 512, October 1649. "Paul Simpson Marriner maketh oath that hee having a Bill from Capt. Edward Hill for the paym't and delivery of two Indians to this depon't . . hee this depon't . . sould the said Bill to George Manners for 500 *l.* of Tob. in Caske"

Meredith v. Daynes, 10 Md. Arch. 114, December 1651. "an action of Defamacion, for that the Def'd reported here that he had heard one Thomas Gutridge in Virginia Say, that the pl't had got one of his Negroes with Child and that he had a black bastard in Virginia, which Report the Complayn't Saith tends much to his disgrace and defamacion which he values at twenty thousand pounds Sterling."

Deposition of Mary Clocker, 10 Md. Arch. 171, June 1652. "about a fortnight before her delivery She . . Said, that her Child was dead within her, and that She did believe It was by the means of a Fright taken by Mr. Fenwick's Negroes"

Re John Babtist, 41 Md. Arch. 499, March 1653.[1] "Whereas John Babtista a moore of Barbary hath pet. for his freedome and hath made it appeare by sufficient proofe that Mr. Overzee that brought him in did not sell him for his life tyme and having already served Major Thomas Lumbert five yeares The Cort doth order that he shall yett serve two yeares more and then be free or otherwise produce two thousand pounds of tobacco and Caske is to be forthwith payd at the Buck river at Kequotan or Newport News"

Lord Proprietary v. Skigh-tam-Mongh, 10 Md. Arch. 293, September 1653. [294] "two piscataway Indian prisoners" were indicted for the murder of "one Jacob Warrowe a Negro Servant of . . Capt. Gookins and a Child of the Said Negroes about Seven Yeares of age, and alsoe . . Grievously wounded the Said Negroes wife Leaving her for Dead, . . and Stole . . divers Gunns . . [295] the prisoners were Arraigned . . by Interpreters being confronted by Mary Warrow the Negro woman that escaped, . . Sentence passed upon the prisoners; . . to be hanged by the Neck till they were Dead, . . which Execucion was performed the Same Evening accordingly."

Bill of Colonel Yardley, 41 Md. Arch. 254, December 1653. "the Bill of Coll. Francis Yardley and Nathaniell Batts for 5000 *l.* Tob. or Two Indian Slaves"[2]

[1] See same, p. 10, *infra*, and John Babtist *v.* Colclough, p. 13, *infra*.
[2] See Cornewalleys *v.* Chandler, p. 10, *infra*.

Deposition of Cuthbert Fenwick, 10 Md. Arch. 372, April 1654. "during the time of the Said plundering [1] he had not in the house of the Said Tho: Cornwallis any of his Servants Except Negros and one Richard Harvy a Taylor all the rest being either prisoners with Ingle, fled to the Governour or in Armes as Associates to the Said Ingle,"

Re John Babtist, 41 Md. Arch. 499, March 1655.[2] "This bill bindeth me John Babtista my heirs Ex'rs or Adm'rs to pay or cause to be payd unto Symon Overzee or his Assigns the Sume of Eighteene hund'd pounds of tobacco and Caske this tobacco to be payd at Portoback Creek in the Province of Maryland as Wittnes my hand this 5th March 1655. The m'ke of John Babtista"

Cornwaleys v. Chandler, 41 Md. Arch. 82, May 1655.[3] "whereas Coll. Francis Yardley and Nathaniel Batt both of Virginia for a good and valuable consideracion to them in hand payd . . became bownd unto . . Cornwaleys . . in the penalty of five thousand weight of Tob., with cask, for the delivery of Two Indian yowths,"

Deposition of Richard Garford, 10 Md. Arch. 484, March 1656. "that first he was Imployed by John Little to fetch home his Servant Billsberry, and his Indian from the Indian Cabbin, and they would not Come Saying that they had rather live with the Pagans then Come home to be Starved for want of food, Cloathing and have their Brains beaten out,"

Deposition of Elizabeth Potter, 10 Md. Arch. 461, September 1656. "Six yeares ago or thereabouts Mrs. Eltonhead and Mr. Scarbrough made a bargaine for Six Oxen . . and Mr. Scarbrough was to give Mrs. Eltonhead three Servants for the Said Oxen, two of the Said Servants to be about the age of fifteen or Sixteen yeares and the other a boy the age of him not nominated and her [*sic*] negro"

Testimony of Jacobson, 10 Md. Arch. 560, November 1657. Action of slander. "he heard John Little Say . . that if Mr. Fran: Stockley were alive he would Justifie that . . was dishonest with him the Said Littles Indian Boy, . . And . . heard Mrs. Little . . Say, that if the Indian could be Sufferred to take his Oath, he could Say more then any one hath Spoken, and would Justifie"

Attorney General v. Naughnongis, 41 Md. Arch. 186, December 1658. "Naughnongis charged with fellonious taking away of One shirt, . . halfe a Matchcoate, a new payre of Irish stockins, and breaking the Locke of Edmund Phillpotts doare. . . his owne confession evidenced to the Board That hee was Guilty of the fact, Therefore Ordered that the sd. naughnongis be sold, And that out of the price the Country and Edmund Phillpott be satisfyed:" [191] "It is ordered by the Board that Henry Moore have the Indian Naughnongis (he paying for him One Thousand pownds of Tob.) to him the sd. Henry Moore his heyres of assignes for ever,"

Cornewalleys v. Chandler, 41 Md. Arch. 186, December 1658. "whereas Coll. Francis Yardley of Virginia came into this Province and tooke

[1] February 1644.
[2] See p. 9, *supra,* and John Babtist *v.* Colclough, p. 13, *infra.*
[3] See p. 8, *supra.*

up a great Tract of Land att Portoback, whereon he seated divers Negro's to plant: . . yo'r Pet'r dealt with him, and one Nathaniel Batt for Two Indian Slaves for a valuable consideration in hand payd, to be delivered to yo'r Pet'r in Aprill or May 1654 under the penalty of 5000 *l.* weight of Tob: . . yo'r Pet'r sent att the day appoynted a Boate and Three men as far as James River to receive the sd. Indians, . . But received none, . . [187] my Attorney fearing the exportacion of the sd. negro's, which was then all the visible Estate of the sd. Yardley within this province, who was then allso Deceased in Virginia, Tooke out a new Attatchm't from that power:" The widow of Yardley exported part of the negroes to Virginia.[1]

Attorney General v. Overzee, 41 Md. Arch. 190, December 1658. "The Examination of Hannah Littleworth . . before Philip Calvert Esqr. . . That sometime . . in September was two yeares, Mr. Overzee commanded a negro (commonly called Tony) formerly chayned up for some misdeamenors by the command of Mrs. Overzee (Mr. Overzee himselfe being then abroad) to be lett loose, and ordered him to goe to worke, But instead of goeing to worke the sd. negro layd himselfe downe and would not stirre, Whereuppon Mr. Overzee beate him with some Peare Tree wands . . And uppon the stubbernes of the negro caused his Dublett to bee taken of, and whip'd him uppon his bare back, And the negro still remayned in his stubbernes and feyned himselfe in fitts, as hee used att former times to doe, Whereuppon Mr. Overzee commanded this Exam'r to heate a fyre shovel, and bring him some Lard, which shee did, And sayth that the sd. fyre shovel was hott enough to melt the Lard, but not soe hott as to blister any one, and that it did not blister the negro, on whom Mr. Overzee powr'd it. Immediately thereuppon the negro rose up, and Mr. Overzee commanded him to be tyed to a Ladder standing on the foreside of the dwelling howse, which was accordingly done by an Indian Slave, who tyed him by the wrists, with a peice of a dryed hide, And (as shee remembers but cannot justly say) That hee did stand uppon the grownd. And still the negro remayned mute or stubborne, and made noe signes of conforming himselfe to his Masters will or command. And about a quarter of an howre after, or lesse, Mr. Overzee and Mrs. Overzee went from home, . . there was nobody by, save only Mr. Mathew Stone, and Mrs. Overzee now deceased. And that from the time of Mr. Overzees and his Wifes goeing from home, till the negro was dead, there was nobody about the howse but only the sd. Mr. Mathew Stone, Will'm Hewes, and this Exam'r, and a negro woman in the quartering howse, who never stird out. And that after Mr. Overzee was gone, uppon the relacion of Mr. Mathew Stone, in the presence of Will'm Hewes that the negro was dying, this Examin't desyred Mr. Mathew Stone to cutt the negro downe, and hee refused to doe it, Will'm Hewes allso bidding him lett him alone and within lesse than halfe a howre after the negro dyed, the wind comming up att northwest soone after hee was soe tyed up, And hee was tyed up betweene three and fowre o'Clock in the afternoone, and dyed about six or seaven, and was kept till next morning

[1] See pp. 9, 10, *supra.*

before he was buried." Hewes "saw noe blood drawne of the negro, And . . being willing to help the negro from the grownd, Mr. Overzee having his knife in his hand, cutting the twiggs, threatned him to runne his knife in him (or words to that effect) if he molested him, And that the negro (as he thinks but cannot justly say) stood uppon the grownd, And sayth further That the negro did commonly use to runne away, and absent himselfe from his Mr. Overzees service. . . It is agread by the Board, And Ordered that Mr. Overzee putt in Bond of One hund'd Thowsand pownds of Tob, to the Ld. Proprietary for his appearance att the next Provinciall Court, and there to attend the finall determinacion of the same."

Testimony of Job Chandler, February 1659: [205] "the sd. negro runne away, and they complayned to mee that hee lay lurking about the Plantacion, and tooke his opportunity when they were in the feild att worke, or when they were att the Cow pen milking, then would he gett into the howse and into the loft, and steale soe much bread and meate as he thought good and begone. After hee had run this course about three weeks or a month, one of my mayd servants fownd him in an inward roome in my quartering howse Eating hominy out of a Pott, and came running in to acquaint mee with it: But he perceiving that he was discovered, sought to make an Escape, and was got amongst high weeds creeping on his hands and knees But the dogs finding him out, I brought him into my howse, and fownd one of his hands extreame sore, and that one of his fingers was mortifyed, that it must be cutt of to save his hand and arm from a Gangreene. I examined him how it came, but could not with all the words and signes I could imagine understand from him how it came, For of all humane Creatures that ever I saw, I never knew such a Brute: for I could not perceive any speech or language hee had, only an ugly yelling Brute beast like. I drest his hand with the best meanes I had, And gave him Victualls to eate, which hee eate as Ravenous as an hungry starved Dog, and after hee had eaten good part of what I gave him hee made signes that hee would begone, But I made signes to him to sitt downe againe. Att length hee gott to the doore, with an intent to be running; but I took a Dog-whip and gave him one lash with it, after which hee came in and sate downe and did not make more profers to be gone. But fearing he might make an escape I sent for a Roape, and tyed one end to the barre of a window and the other end close up under his armes with the knott behind, soe sure and fast, that I did not thinke with both my hands I could sodenly undoe it, and left one of my mayd servants to looke after him having sent for my Brothers Overseer to fetch him home, for I was very unwilling hee should gett away againe, fearing least hee might take some fitt opportunity to doe mee, or mine, a mischeife, for I lookd uppon [him] as a dangerous Rogue, But my mayd not well looking after him, hee with the hand hee could use (or the Divell for him) undid the knott, and hee gott away, which did seeme very strange to mee, having but one hand to doe it; for the other hee could not stirre one finger of it. Some time after, a Pangayò Indian came to my Brother Oversee's Overseer and told him that the Negro was there, and uppon his infor-

macion he went and fetcht him, and brought him to my howse, asking my advice what he should doe with him. I tould him it would bee best to carry him downe to St. Maries, that his finger might bee cutt of, or else hee might loose his arme, or his life, and lent him my wherry to carry him downe advising the Overseer, if hee putt to any shoare, to bind him least hee made an escape. After some time spent, The Jury returned their Verdict Endorsed on the writt, Ignoramus. . . The Prisoner acquitted by Proclamacion."

Re Bateman, 41 Md. Arch. 269, December 1658. Letter of William Backhouse to "Mr. John Bateman Mercht. in Patux't River:" "You will find by writings and letters to you of the Sale of the Negros. Pray doe what you can in itt. Mr. Lees Agents if you and they can agree for what Negros are lyving as they were appraysed."

Cornwaleys v. Fereira, 41 Md. Arch. 223, February 1659. "Some fowle that were shott by an Indian belonging to the sd. Packer,"

Overzee v. Lewis's Estate, 41 Md. Arch. 230, February 1659. "Capt. Will'm Lewis . . was indebted to yo'r Pet'r by bill one Indian Slave 2d Novemb'r 1653," Chandler testified [231] "that the sd. Slave was never delivered or received:"

Freeman v. Meares, 41 Md. Arch. 317, August 1659. Meares, step-father of the plaintiff, "keepeth her Brother as a Servant or slave,"

Burdett v. Morris, 41 Md. Arch. 433, February 1661. "I . . did see the said bottle of sack in the said Burdetts pockett . . but not being able to gett it from him I went to accquaynte the Master and in that tyme he had given it to a negro, whoe called the said Burdett Master, and then I gott it from him the said negro"

Receipt, 41 Md. Arch. 580, May 1661. "Recd. of Capt. William Batting foure thousand pounds of Tobacco . . for Mr. Augustine Herman and for all debts or demands Concerning his Negros bought by the sd. Batting"

John Babtist v. Colclough, 41 Md. Arch. 499, July 1661. "The humble peticion of John Babtista Showeth That whereas yo'r pet'r hath been dayly troubled by the Attorneys of Mr. Symon Overzee deceased . . prayes . . that at length he may have some Redress"

Deposition of Thomas Prichard, June 17, 1661: "when this depon't was Mr. Overzees Overseer at Portoback Mr. Overzee brought one John Babtist up to him in or about the moneth of May 1651 And tould this depon't whether he would take him in for a Share and he replyed noe, his Crop was pitcht And the said Mr. Overzee sayd that John Babtist was his Servant for two yeares or to pay him two thousand pounds of tobacco for his Freedom whereupon . . Mr. Overzee left him with this depon't at all Commands as Servant" [1]

[500] "Archball Wayhope sworne in open Cort Sayth That he doth Knowe John Babtist to be Symon Overzees servant and that he served him two yeares within a Fortnight

[1] See *Re* John Babtist, pp. 9, 10, *supra.*

" Ordered that the pl't have his freedome Bill of 1800 *l.* tobacco together with Corne and Cloaths and the def't Costs of Suite "

Moore v. Fendall, 41 Md. Arch. 471, October 1661. " The pl't demands an Indian of the def't promist him in Sattisfaccion of another Indian belonging to the pl't sould by order of the def't unto the Queene of Portoback,"

Mackane v. Gerrard, 41 Md. Arch. 476, October 1661. " Served Mr. Gerrard Six yeares and a halfe and is now one and twenty yeares of age by the aforesaid Indenture hath Eight yeares and a half more to serve which is contrary to the lawes of God and man that a Christian Subject should be made a Slave "

Nicholls v. Nuttall, 41 Md. Arch. 515, February 1662. Nicholls " humbly craves an order of this hono'ble Cort for her [1] freedome soe that yo'r poore pet'rs daughter may not be made a slave "

Fendall v. Haggett, 49 Md. Arch. 57, February 1662. " Know all men by these presents that I . . Haggett . . do hereby bind my selfe, . . to deliver unto . . Fendall . . Bills of Exchange for the sum of Twenty pownds . . Being in Consideration for a Servant and other things allready in hand received."

Bill of Exchange, 49 Md. Arch. 136, April 1662. " This Bill bindeth mee Richard Wraith . . to deliver . . unto Mr. George Bradshaw or his order one man servant betweene seventeen and Thirty yeares of age . . Uppon condition that the said George Bradshaws Bills of Exchange bee payd unto the said Richard Wraith . . Contayning Twenty five pounds sterling."

Young v. Slye, 41 Md. Arch. 586, October 1662. " Ordered that the def't as Adm'r to Samuell Smith pay two thousand foure hundred and forty pounds of tobacco, and that Nicholas Young doe give unto Mr. Robert Slye a bill of Sale for a Negro which was in Consideracion for the aforesd. deb't."

Abington v. Whyte, 49 Md. Arch. 98, January 1663. " Jerome Whyte . . is indebted and hath obliged himselfe to deliver to your Petitioner one able man Servant, and one that your Petitioner shall like of, and doth acknowledge to have received a valuable Consideration for such a Servant, to bee delivered by or before the last day of November . . [99] Therefore your Petitioner humbly craveth an order of this . . Court for his servant . . with the damages . . susteyned . . for want of the said servant "

Abington v. Whyte,[2] 49 Md. Arch. 142, February 1663. " The plaintiff, sueth as in his Petition for a Servant as hee shall like of according to the words in his Bill . . To which the defendant answeres that hee hath allready tendred him an able man servant, . . The vote of the Councell is required Whither or noe it bee thought fitt to Leave the plaintiff to that

[1] " his daughter Easter Nicholls."
[2] See preceding case.

unlimited power . . to deliver a servant as the plaintiff shall like . . The major Vote of the Board is, noe. Then the defendant Craves a Jury, to Enquire Whither the man by him tendered bee an able servant, . . Which was granted. . . John Nutthall . . sayth that . . Abington requested him . . to receive a servant from . . Whyte . . And Whyte did send a servant to him by Mr. Powick. And . . after the servant was in his house, hee enquired of him, what hee was? and how he came into the Country? And the man replyed and sayd that he came into this Country to wayte on some Gentlemen . . And thereupon . . he told Mr. Powick . . that he would not accept . . and give a discharge for him, . . because he . . had noe power of Attorney from Mr. Abington to that purpose. . . [143] Then the Jury delivered in their Verdict . . Wee find the man tendred by the defendant, for the use of the plaintiff, a Likelye man servant to outward appearance. Ordered . . that the plaintiff bee nonsuited, and pay Costs of suite and Dammages susteyned."

Deed, 49 Md. Arch. 162, February 1663. "I William Greene . . doe bind my selfe . . to pay . . unto John Biskoe and Henry Pennington, . . Three hundred pownds of good sownd . . Tob and cask . . uppon the Tenth of November next ensuing . . And . . I the said Greene doe bind . . the whole Estate . . All cattle, all servants, . . I the said William Greene have hereunto sett my hand and Seale"

James v. Woolchurch, 49 Md. Arch. 164, April 1663. "The plaintiff declares against the defendant in an action of the Case, for that whereas the defendant by condition dated the 18th day of March . . was . . obliged to bee accountable unto the plaintiff for the one halfe part of the profitt, which one man servant of the plaintiffs, . . left . . in the defendant's hands . . for a certaine tearme, . . should at his calling gett. . . defendant . . the said servant att other worke . . than the usuall . . Trade . . did . . the said servant constraine to work att . . of purpose . . to defraude . . his servant without all question, att his owne profession might have far more advantaged his time. . . the plaintiff sayth . . he is damnifyed, for his servants being . . otherwise employed . . and prayeth Judgment."

Hasley v. Wilde, 49 Md. Arch. 173, April 1663. "plaintiff Sues the defendant . . the plaintiffe . . bought of James Eluer a certaine man Servant named Samuell Griffin which Servant the defendant Clandestinely inticed away from the Plaintiffe and the said Servant unjustly does detayne from the plaintiffe though the plaintiffe hath . . demanded . . his said Servant . . plaintiff sayeth . . he is dampnifyed . . and . . Craves . . to have his said Servant with damages and Costs of suite."

Chysick v. Beckwith, 49 Md. Arch. 174, April 1663. "whereas George Bickwith did Condition with your petitioner for three men Servants and One woman Servant to make a Cropp and . . Bickwith to finde howsing and dyet . . For the Servants . . your petitioner hath performed his Conditions . . Beckwith hath disposed of your petitioners Crop of tobacco and Seventy barrills of Corne that was wholy due to your peti-

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Oath— . . That he was in the howse of Coll Nathaniell Utie and told him it would doe better for hime to deliver this deponant his tobacco againe, which he had disposed off, after hee this depon't had received and marked it wth his owne proper marke, which was Contrary to the law of this Country, . . he answered laughing . . what he had done was by Order from the King and that he had past his bill of sale to Abraham Morgan for the Negro in the name of his Ma'tie and as his Ma'ties Attorney he was forct to looke after his Interest and that he knew the Nigro was stole . . I answered him that it would never be prov'd this negro was in the Forte, but that he was a Negro properly belonging to mee the Depon't "

Hawkins v. Jolley, 49 Md. Arch. 97, February 1664. [98] " The humble Petition of John Hawkins Sheweth That . . Jolley is indebted to your Petitioner in the sume of forty five Thousand four hundred Thirty and six pounds of Tobacco and Cask, . . That the said Jolley may bee ordered . . to pay . . or uppon default that this honorable Court bee pleased to . . order . . that your Petitioner may bee possessed and enter uppon all his Estate both moveables and immovables, cattle and servants and all other goods . . with Costs of suite."

Wade and Johnson v. Bachiler, 49 Md. Arch. 128, February 1664. " whereas Francis Bachiler . . did confesse Judgment . . against one Thousand Acres of Land, . . Twelve head of Cattle, one man servant,"

Deposition of Elizabeth Freeman, 49 Md. Arch. 379, February 1664. " Elizabeth Freeman . . Saith—That when Mr. Bayley was at St Marys Mr Stapleford being in his Bed in the morning and hearing . . a tap dropt in Mr. Bayleys room hee called one of his servants named Humphery Jones and bid him goe in at the window and open the door . . and further she saith that the night before her mistris Calling her to come in she did not goe presently but when she did goe the doore was shutt and endeavouring to open the doore her mistris held the doore "

Williams v. Dunch, 49 Md. Arch. 352, February 1664. " The humble pet'n of Rob't Williams Sheweth That yo'r pet'n hath had Six Servants One Chest . . shipped on board the *Baltemore* John Dunch Command'r which Servants and Goodes were shipped in England by Mr. Rob't Townesend and Consigned to yo'r pet'r and the passages for the Servants and the freight for the Goodes there paid, Wherefore yo'r pet'r humbly Craves Order of this hono'ble Court for the said Goodes and Servants amounting unto two hundred poundes Sterling with damages and Cost of suite "

Affidavit of Richard Pettybone, 49 Md. Arch. 374, February 1664. " That concerning Charles Hodges then servt. to John Holmwood who was at the landing of the said Holmwood drowned doth declare that goeing to the meeting and coming to John Holmwoods landing for a passage the abovesaid Serv't sott under the banck with his shirte and his drawers and this depon't desired him to shuffe of the Connue the w'ch hee did and this deponant heard before he came to John Holmwoods howse by a

mile and a halfe that the said servant . . was drowned . . this depon't . . did Chide the rest of the servants to let this servant be drowned"

Halfhead v. Nicculgutt, 49 Md. Arch. 380, March 1664. "This Cause being last Court respited . . then being demanded of James Thompson the defend'ts Attorney what he had to say . . that the said Jone Nicculgutt should not serve the pl't one yeare's service more as . . is Claimed, . . his Answere . . is as followeth . . Wee affirme that we have Served twelve yeares And are able to prove it by Evidence. John Boage Sworne in Open Court saith All that I cann say . . is that Come May or June next will be 13 yeares agoe since I say . . Jone at the howse of Phillip Lands doeing the worke of a servant att St Marys being that yeare after the Genny Frygott Came in Andrew Robinson sworne in Open Court saith I was a servant in the howse with this wench . . and my Mr. Fox bought her and there was Mast'r Cowrsey Capt. Gwyther and others att Mr. Hattons howse upon the appraysm't of Mr Lands Estate and there was some dispute about me and this wenches service and she was ordered to live w'th Philip Land . . and this wench came over in a new England vessell [381] and last Candlemas day past was 13 yeares since this depon't came into this province and that she came in that same yeare"

Inquest on Ann Beetle, 49 Md. Arch. 215, March 1664. "We the Jurors of Inquest being impannel'd by Samuel Chew high Sheriffe . . to view the body of Ann Beetle Servant to Will'm Hunt of the aforesaid County doe find a wound upon her left eye browe and having had it Searched by a Chirurgeon doe find it not mortall but doe . . Judge that she drowned her selfe wherefore wee the Jurors of Inquest Doe indite the said Ann Beetle she not having the feare of God before her eyes of willfully murthering her selfe and soe give up Our Verdict with One Consent by Our Foreman"

Robbins v. Dodd, 49 Md. Arch. 196, April 1664. [198] "This Deponant sayth that about 2 yeares and a halfe agoe hee Came to Mr Gerrards plantacion att West Wood to looke after a Mare that went away from Mr Fowkes and the Servants and Overseere there told Deponant that they saw this Deponants Mare"

Hawkins v. Jolly, 49 Md. Arch. 205, April 1664. "Executed by Vertue of an Ord'r of Court . . execution granted . . Executed and appraysed . . One negro Serv't man One ditto woman two ditto Children . . 4 negroes . . 12000 lb. tob:"

Testimony of Richard Wroth, 49 Md. Arch. 210, April 1664. "about January 1662, Jno Sheppard Marriner did sell unto Thomas Bennitt One maide Servant by name Sarah Jones for which he past his bill for 1700 lb tob:"

Testimony of William Bretton, 49 Md. Arch. 274, October 1664. "William Bretton being called to the Board . . to answere to the Attorney of Robert Ellison of Virgenia, and being demanded by what power hee received a man servant in sattisfaccion of a runaway Servant (by

name James Courtney) belonging to the said Ellison, hee replyed he had a power formerly by letter of Attorney from the said Ellison but since lost it, . . [275] Whereupon Ordered that James Courtney alias Mudge be forthwith sent down to Mr Robert Ellisons in Virgenia, the said Courtney being now resident att the house of Capt Thomas Mannings "

Re Stephen Cannon, 49 Md. Arch. 275, October 1664. " Stephen Cannon servant to Mr John Pate apprehended by Wm Nodin att Francis Barnes upon Kent and afterwards run away from Nodin and entertained by the said Barnes, as Mr Richards can testifye one of the Comm'rs of Kent— . . Whereupon Ordered that an Ord'r be sent up to Kent to Francis Barnes for the apprehending the said Stephen Cannon serv't to Mr Jno Pate "

Appraysment of Goods of Thomas Gerrard, 49 Md. Arch. 517, November 1664. [518] " One serv't *viz* John Dyatt . . [£] 14."

D'hynyosa v. Utye, 49 Md. Arch. 342, December 1664. " The humble pet'n of Alexander D'hynyosa sheweth That yo'r pet'r for a valuable sume of Tobacco sold Abra: Morgan One Negro to be paid upon the sd Morgans plantacion,"

Grand Jury Actions, 49 Md. Arch. 481, October 1665. " The Grand Jury came into Court, being agreed upon severall Bills, . . [485] The other now brought are Whetstons negro, not pr'sentable. . . [486] Jacob Negro Inditem't for murther, Billa Vera . . [489] Jacob, negro, presentm't."

Trial of Jacob, the Negro, 49 Md. Arch. 489, October 1665. " Called to the Bar Jacob the negro. The pr'sentm't Read, wch is as followeth/ The Jury for the Rt hon'ble the Ld Proprietary doe present That Jacob a negro slave and servant to Nathaniel Utye of Spesutia in Baltemore County and to Mary his Wife the 30th of Septembr 1665 in the howse of the sd Nathaniel Utye . . wth a drawne knife . . Uppon the aforenamed Mary, . . [490] of his malice . . an assault did make, . . wth the sd knife felloniously . . uppon her right arme strongely did strike and stabb, Gyving her a mortall wound Fowre fingers broad, in the upper part of her right arme, Of wch . . shee . . did dye, . . Anthony Brispo aged 20 years . . sayth That hee see Jacob the negro stab Mrs Mary Utye uppon Saturday the 30th of Septembr last, about Ten of the Clock in the night, That hee stabbed her wth a knife here produced in Court, That in outward appearance shee was in p'rfect health before hee wounded her, That hee the sd Jacob gave her Two wounds in the Right arme, One whereof was Fowre fingers wide, and tht shee dyed uppon the Wednesday att night following, And further that hee doth beleive that she dyed of those wounds having bled a day and a night. . . Francis Stockett aged 31 yeares or thereabouts sworne and examined this 11th of Octobr 1665 sayth That hee dressed the wounds gyven by Jacob the negro to Mrs Mary Utye . . Two wounds in her arme, whereof one was fowre fingers wide, And that hee doth verily beleive shee dyed of those wounds . . The names of the Jury men . . sworne to view the Corps of Mrs Mary Utye . . as

is here . . gyven in their verdict of the cause of her Death . . That the wounds wch shee received in her arme was the cause of her Death. . . The foregoing Oaths being Read, and that Verdict of the Jury shewen in Court, and Demanded whether Guilty or not Guilty, Hee stands in a manner mute. . . Uppon this matter, . . the Court fully understood it was Considered That the sd Jacob is Guilty of Petite Treason. [491] Then the Governor gave sentence in these words, You shall bee drawne to the Gallowes att St Maries and there bee hanged by the neck 'till yow are dead."

Calvert v. Wynne et al., 49 Md. Arch. 495, October 1665. "Philip Calvert exhibitts Bill agst Thomas Wynne and Elizabeth his wife . . Philip Calvert . . gives the Court . . to understand . . That . . It stands enacted . . that noe person . . shall trade barter, commerce, or game, wth any servant, except hyred servants, wthin this Province without Lycence first had and obteyned from his or her Master, Mistresse, Dame, or Overseers, under the Penalty of Two Thows'd pownds of Tob. To bee payd The one halfe to the Ld Prop'r and the other halfe unto the master of such servants or true owners of such goods soe purloyned, gamed, and bartered for, when proved by sufficient wittness, or Confession of the party, To bee recovered by Accion of Debt, bill, . . Wherein Noe Essoyne Protection or Wager of Law to bee allowed, Yett the aforesd Thomas Wyn and Elizabeth his Wife very little weighing the Act . . nor in any way fearing the punishm't . . and before the day of exhibiting this Information . . wth Frank Indian and dyvers others of the slaves of Philip Calvert . . bartered traded commerced for Ten poultry or Henns, agst the forme of the sd Act in that Case made and provided, By wch the sd Thomas Wyn and Elizabeth his wife forfeited and lost Two Thows'd pownds of Tob. whereuppon the aforesd Philip Calvert, who followes as well for the Ld Prop'r as for himselfe prays the advizem't of the Court in the premises, And that hee the sd Philip Calvert may have the moiety of the forfeiture aforesd according to the . . Act . . As allso that the foresd Thomas Wyn and Elizabeth his wife may come here into Court to answere in and uppon the premises . . Writt issued to the sheriffe to have the sd Thomas Wyn, and Elizabeth his wife to the Court tomorrow morning."

Complaint of Balley v. Staplefort,[1] 49 Md. Arch. 498, October 1665. "whillst John Balley was att S't Maries to assist att a Jury, Raymond Staplefort att night caused a Boy his servant called Humphrey Jones to enter att a window, . . where the sd Boy having entered, opened the Doore, . . unto the s'd Staplefort, who . . tooke out . . goods belonging unto the s'd Balley . . John Balleys . . sworne sayth, That himselfe and Raymond Staplefort bought . . their Plantacion together, That They were to pay equally for it, That the howse was divided, that . . this Depon't had one Chamber and Two shedds, and Staplefort the other part of the howse/ . . [501] Elizabeth Freeman . . sworne sayth, . . when Mr Balley was att St Maries, Mr Staplefort . . called one of his servants

[1] See deposition of Elizabeth Freeman, p. 17, *supra*.

named Humphrey Jones and bid him goe in att the window and open the Doore w'ch hee did. Then Mr Staplefort went in . . Mr Staplefort in Mr Balley's Clossett th't shutts w'th a key . . att night she did see Mr Staplefort rip up and breake open the packs of goods w'ch were in the s'd Balleys Hall, shee then looking in att the window of the s'd Hall; . . Thomas Sprigg . . sworne sayth . . Mr Balley come to mee with a warr't . . to make search for . . Balleys goods, . . [503] The Jury went out, . . Not guilty of the Felony whereof hee stands indited."

Woodbury v. Warner, 51 Md. Arch. 338, January 1669. "A writt of Error issued . . directed . . in the plaint between Andrew Woodbury on the behalf of Cap't George Carwen pl't Thomas Warner def't after Judgm't obtained . . and Execution issued and one Jacob a man Servant of . . Warner taken in Execution towards Satisfaction of the debt and damages in the writt . . Thereupon a Writt of Supersedeas the Same day issued . . to Supersede . . Execution and to Restore the said Jacob to . . Warner"

Writ of Ne Exeat, 51 Md. Arch. 329, May 1669. " To the Sheriff . . Compl't is made . . that John Stokes, John Hunt and John Mott do keep and detain divers Servants belonging to John Runnings by him Shipped on the Shipp *W'm and Ann* . . to be transported into this Province and them doth refuse to deliver according to Agreem't by them made wch the sd John Runnings . . hath Exhibited his Bill . . and they . . being strangers and foreigners . . These are therefore to Re[330]-quire . . that you take the Bodys of them . . if found within your Bailywick and them safely keep till they Enter into a Recognizance . . not to depart . . till they . . have Answered perfectly . . to the Said Bill and . . to perform what our . . Court Shall determine . ."

Willson v. Cook, et al., 51 Md. Arch. 22, April 1670. [23] " it appearing . . the defend'ts were ordered not to deliver their Servants or goods to the said Steele but to the said Willson . . that contrary to the said order . . Cooke and Hughes had Sent them away out of the Jurisdiction of this province It is . . decreed that . . Willson do pay . . the full freight due for the said Servants and goods . . with what other Charges is due . . for Necessaries and Cloaths for . . said Servant And . . decreed that . . Cooke and . . Hughes do pay . . Willson . . for the said Servants and goods . . the Ballance . . the sume of Twenty Six Thousand nine hundred and twelve pounds of . . Tobacco and Cask . ."

Order to the Sheriff of Charles County, 51 Md. Arch. 81, June 1672. " Whereas Verlinda Stone widd'w hath come . . in our Cort of Chan'ry . . to p'secute as for her servant to witt Henry Dorman wch Edmund Lindsey took and unJustly detains . . to be returned if the return of him be adjudged Therefore We Charge and Com'd you that y'e Serv't af'd to the sd Velinda Stone Replevyed to be and delivered you Cause and put by Surety . . to answ'r . . Velinda Stone of a plea of . . unjustly detaining of her Serv't . ."

Order to the Sheriff of St maries County, 51 Md. Arch. 103, September 1673. "Whereas John Wahob . . hath . . sufficient Security . . to p'secute as for his Servant George Mills w'ch Abell James . . unjustly detains . . we . . Command you that the Servant afores'd to the Said John Wahob Replevyed . . [104] to answ'r . . John Wahob of a plea of . . unjustly detaining of his Servant . ."

Beedle v. Wells, 51 Md. Arch. 427, November 1673. "That your Pett'rs did . . bring their accion against the defend't to have him come to an account as receiv'r of . . [428] Richard Wells in his life time for . . goods . . and for sev'rall servents sent in also at the same time, which . . goods and servants were . . Delivered by Dunch to the Defend't or his order . . defend't . . pleaded he was never receiv'r of . . Rich'd . . But for want of the Testimony of . . Dunch . . to prove the bills of Lading . . and receipts given for the servants shipped . . and to prove the Deliv'ry of . . goods and servants . . your pett'rs durst not goe to tryall . . Dunch is now arrived and will goe out of this Country before the Tryall . . yo'r pett'rs . . pray . . a spa against . . Dunch to appeare . . to Testefy . . in the said Accion . ."

Penry v. Wells et al., 51 Md. Arch. 438, April 1674. "Chew and . . Taylor . . being appointed Auditors . . of the estate of Francis Wright deceased . . The Said Samuel Chew and Thomas Taillor made their report as follows . . We . . thought fitt . . to meete at the house of John Larkin . . and did give timely notice . . unto the said Compl't and the said def'ts that Wee should be then and there ready to audite their said accompts. . . Thomas Howell did appeare . . with One Wittnesse named John Claver who being examined by Us did take his Corporall Oath that two Negro Servants to the said Wright that is to say One man named Robert and One woman called Mary did dye upon the plantation in the year 1669. . . [440] The Court adjourned until the 12th of May next"

Hatton v. Dent et al., 51 Md. Arch. 445, December 1674. "This cause Standing in the paper of causes ready for heareing upon bill and answer . . This Court . . Doe . . Order . . That . . defendants . . pay . . to . . Richard [446] and Ann Hatton . . twenty thousand five hundred and fifty pounds of tobacco . . and upon payment . . the said bond . . to be cancelled . . This Indenture . . in Consideracion of . . One hundred pounds . . doth grant . . Resurreccion Mannor . . [447] And also all and every the Servants Negroes and all Merchandize Stocks howsehold goods . . and all her estate . . in or to the Said Mannor . . or to all or any the Servants Negroes . . goods . . Rents . . and every part thereof . . [448] to the only use and behoofe of the Said Richard Perry . . And to have hold and enjoy the Servants Negroes . . Stocks and . . goods . . aforesaid . ."

Wells v. Wright, 51 Md. Arch. 165, August 1675. "Whereas by a decree . . in a cause . . Between Tobias Wells . . and John Wright and Mary his wife . . the Co'rt was Clearly Satisfied . . the Court did thereby . . decree that . . Wright and mary his wife do pay . . the

sum of Eight thousand Six hundred Sixty Six pounds of Tobacco . . Yet . . Wright and mary his wife had refused to pay . . whereupon Severall process of Contempt issued . . [166] But before the said John Wright could be taken . . he dyed after whose death an attachm't iss'd . . ag't . . Mary . . Whereupon the Justices . . did order that a Sequestracion Sho'd issue ag't the Estate . . of . . Glevin and . . Wright . . as also the Goods and Chattells merchandizes Sums of money or Tob'o Servants Slaves Cattle hogs . . in the possession of her the said mary . . [167] And that you return Such . . Certificate to us in our Court of Chan'ry . . and hereof fail not . . at our City of St. maries the 29th day of December . . 1675."

Peighin v. Fulford, 51 Md. Arch. 465, December 1675. [472] "that on the tenth instant Mr Thomas Dade . . doe goe . . to the late dwelling house of . . Fulford, . . did demand the Freight . . and there being a man Servant in Fulfords . . house answered . . Dade . . that Fulford and his whole family were gone from thence,"

Edward v. Athey, 51 Md. Arch. 176, March 1676. "Edward writt of Replevin for a man Servant by name of Jno Tosse Calvert ag't Jno Athey"

Parker v. Tilly, 51 Md. Arch. 212, February 1677. "George Parker Replevin . . ag't Joseph Tilly for one man Servant named Thomas Norris one Woman Servant named Eliza moore all the horses . . upon the plantacion of the S'd Joseph . . Came Charles Boteler and Thomas Clegatt who undertooke for George Parker in the Sume of Eighty pounds Sterl . . the s'd Geo: Parker p'secute his Replevin ag't Joseph Tilly for the unjust detaining of one man Servant named Thomas Norris one Woman Servant named Eliza moore . . upon the plantacion of the sd Joseph . . and to make restitution to the sd Tilly if to him Shall be adjudged with damages"

Bowdle v. Boteler, 51 Md. Arch. 204, April 1677. "Thomas Bowdle writt of Replevin ad vic Com Cal ag't Charles Boteler . . one man Servant by name Jno Tassell"

Wells v. Wright,[1] 51 Md. Arch. 215, May 1677. "To the Sheriff . . Whereas by a Decree . . in our Court of [216] Chancery in a Cause . . between Tobias Wells . . and John Wright and mary his wife . . The Court did thereby order . . John Wright and mary his wife do pay . . Eight thousand Six hundred Sixty and Six pounds of Tobacco . . Whereupon the Justices . . did order that a Sequestracion Should issue ag't the Estate . . in the possession of the Said mary . . as all the Goods and Chattells merchandizes Sums of money or Tobacco Servants Slaves . . [217] and . . the Said Mary Wright is also Dead and the Said Tobias Wells is Likewise Since dead having left Mary his relict his full and Sole Executrix who is Since Marryed to Lewis Blangy . . And the Said Lewis Blangy and mary . . haveing humbly Supplicated us . . to Receive the . . Benefit of the . . Sequestracion . . And we being Informed that . .

[1] See Wells *v.* Wright, p. 22, *supra*.

Mary Wright . . to defeat the Said Decree hath Devised or Given . . the . . Estate to Thomas Francis and Phillip Conner . . We . . appoint you to Enter into Seize and . . Sequester . . also the Goods and Chattels merchandizes Sums of money or Tobacco Servants or Slaves . . or other . . Estate . . [218] And hereof fail not at your peril . ."

Sprigg v. Trueman, 51 Md. Arch. 488, October 1677. [489] "the Compl't . . shewed that . . he was . . put into the possession of . . lands . . and was att great Charges an Expences in Removeing of his goods Stock of hogs Cattle and servants thither to Seat the same, . . [492] the Compl't Repayred to . . Def't . . and earnestly importuned him . . to accomodate the Compl't wth a seate of Land whereon to employ his Servants . . [495] this Court doth . . order that a writt of Inquiry of Damages doe Issue . ."

Waghob v. Loton, 51 Md. Arch. 213, March 1678. "Tho: Waghob Replevin . . ag't Jacobus Loton . . one man Servant named Wm. Simpson . . Came William Williams . . who undertook for Tho: Waghob in the sume of 8000 lb. . . the sd Thomas Waghob prosecute his Replevin ag't Jacob Loton for unjust detaining of one man Servant named Wm. Sympson . . and to make Restitution to the Said Jacob Loton if to him Shall be adjudged with damages"

Sprigg v. Trueman,[1] 51 Md. Arch. 484, April 1678. [486] "the Compl't Relyeing did not reduce the Articles into writeing but tooke a . . letter from the Defend't . . whereupon the Compl't was put into possession by . . Dep't . . and was att great Charge in building Cleering and Removeing Cattle and Servants thither . . [487] this Court . . Thought not fitt to receede from their former order . . [488] and that the Compl't proceed . . as . . is directed"

Bland v. Dorsey, 51 Md. Arch. 225, July 1678. "Came Michael Offley . . who became surety for Tho: Bland in the Sume of Six thousand pounds of Tob'o y't the s'd Tho: Bland prosecute his Replevin ag't Edwd. Dorsey for the unjust detaining of one man Servant Called Joseph Fletcher . . and to make Restitution to the sd Dorsey if to him Shall be adjudged with damages"

Blomfield v. Vansweringen, 51 Md. Arch. 226, July 1678. "Came Henry Exon . . who undertook for Jno Blomfield in the Sume of four thousand pounds of Tobacco . . the sd Jno Blomfield prosecute his Replevin ag't Garrett Vansweringen for the unjust detaining of one Servant named James Wilkins . . and to make Restitution to the Sd. Vansweringen if to him Shall be adjudged with damages . . John Blomfield Replevin . . ag't Garrett Vansweringen for one Serv't named James Wilkin . ."

Davenport v. Hothud, 51 Md. Arch. 224, August 1678. "Humphrey Davenport Replevin . . ag't Thos. Hothud for one Woman Servant Called Sheely Donnoughway . . Came Richard Royston . . who undertooke for Humphrey Davenport in the Sume of four thousand pounds

[1] See *supra*.

Tob: that the Sd Humphrey Davenport Should prosecute his Replevin ag't Thomas Hothud for the unjust detaining of one woman Serv't [225] named Sheely . . and to make Restitution to the Sd Hothud if to him Shall be adjudged wth Damages"

Estate of John Deery, 51 Md. Arch. 510, October 1678. "Interrogatoryes . . First: Did you know John Deery deceased, how long did you know him, what time did he dye, were you a servant to him at the time of his death, or did you live in the house with him."

Haslewood v. Granger, 51 Md. Arch. 526, October 1678. [527] "the Substance of the Compl'ts Bill . . That . . John Avery the former husband . . intending a voyage for England about his then urgent affairs there . . his intencions . . Knowne to . . Benja: Granger who had married the daughter of . . Avery . . Granger became an earneast . . Solicit'r to . . Avery that he and his wife might accompany . . Avery . . And that . . Granger and his wife . . would be very Serviceable to him in assisting him . . aboard the Shipp as alsoe in England . . And that . . Avery . . lent him money to buy himselfe and wife and Serv't and Clothes and for the paying of his passage for him and his wife and two servants and entrusted him with . . Goods of a Considerable value . . [528]Avery dyed before he came on shore Leaving all his money and Goods in the possession of . . Granger . . [529] Said John Avery . . paid Attorneys Fees had remaining Sixty pounds . . and paid for the passage of himself and one serv't maid . . [530] Def't . . agreed with Capt. Walter Dunch for the passage of himself wife and one woeman serv't And . . Avery for himself and one woeman serv't . . Def't Denies . . Avery Lent him money to buy Cloths for himselfe wife and Serv't or for the paying of his owne his wifes and two Serv'ts passages . . [531] this Court . . doth . . decree that . . Granger . . pay . . Twenty and foure pounds . . together with . . Tobacco"

Re Burdett, 15 Md. Arch. 227, March 1679. "his Lspps [Lordships] Negro Boy Peter was sent away in all haste to St. Maries who was seene to ride very hard being sent as was supposed for his Honor the Chancellor that the Chancellor was seene to goe back with the said negro" [230] "the Lord Prop'ry had thereupon taken his Negro Peter and was gone up to the Governor's house,"

Haselwood v. Granger,[1] 51 Md. Arch. 235, March 1679. [236] "John Haselwood maketh oath that . . he . . did . . deliver unto Mary Granger wife of the defend't Benjamin Granger . . a Writt of Execution . . directed to . . defend't . . that . . about three Weeks after the . . decree . . the sd . . Granger did privately . . to defeat the p'lt of the benefit of the Said Decree by Some Deed . . Sell unto Jo[hn Pol]lard . . all his . . cattle . . household Stuff Land and Tenements . . and the Sd John Pollard is now in possession . . and Carryed away the Corn and Tobacco privately by night . . And . . the Said Pollard Long before he bought either Land or Goods was privy to a maid acquainted with the

[1] See *supra*.

Said decree and when he heard thereof . . he Sent for Granger and his wife to Lye in thereat his house and . . they made their bargain and Granger . . did not Stay . . but made Phineas Blackwood a person Servant or Retainer to Pollard his Attorney to acknowledge the Deed and went [237] his way for Virginia,"

Bland v. Dorsey, 51 Md. Arch. 544, October 1679. " Bland and . . his wife exhitted their bill . . [545] against . . Dorsey and . . his wife and others . . That Dorsey and his wife Entered upon the plantacion awarded to the plaintiffs and there possessed themselves of the proper personall Estate of the said Thomas [Bland] of the Value of one hundred pounds sterling with Two servants, . . [546] That the Defendant Edward [Dorsey] and Compl't Thomas did submit all differences to the award of the Chancellor who not onely as Arbitrator but as Judge Testamentary declared the Will void . . That . . Edward was attorney to the Compl'ts . . that . . Edward was ordered to pay unto . . Thomas Tenn Thousand pounds of tobacco . . That . . Defend'ts and the plaintiffes entered into bonds of arbitracion . . That the arbitrators made such award as in the said bill, . . That these Defendants allowe of Eighteene thousand . . pounds of tobacco for goods delivered and for a servant named Fletcher Eight hundred pounds of tobacco . . [547] That the Defendant gave her bond for sixty thousand pounds of tobacco . . and denye they possessed themselves of any the p'sonall Estate of . . Thomas or carryed away servants belonging to the said Thomas, But confesse the arbitrators delivered . . bonds . . That these Defend'ts entered upon the plantacion . . and upon the servants stock and Cropp, . . And denye . . That the Compl'ts Wanting a Woman servant did Exchange a man servant named Booth to work for these Defendants soe long as the Woman servant should stay and work with Compl'ts, and the said Woman servant belonging to . . Thomas, . . [548] and denye that they deliver the servant named Fletcher in Lieu of the Servant named Wallet . . and denye . . that the Defendants have Cutt down the Timber from of the plantacion awarded burned up the fencing . . and the Defendants with Two Children and foure servants were main[549]tained . . and denyes that he . . Thomas detained anything . . That the Cropp upon the Plantacion . . By award belongs to . . Thomas hee haveing built and fitted the houses found the sarvants Cloths and p'vission for that yeare, . . And deny they Exchange Booth for a woman servant but that the Defend'ts Kept the said servant with the sarvant named Spize against the will of this Compl't, as also one other servant named Fletcher for wch this Compl't brought a replevin . . and . . said Cause . . comeing to a hearing . . This Court . . doe . . Decree, . . [550] that . . Thomas bee possessed of all and singular the pr'mises . . and that the accompt of . . Thomas and all other matters betweene . . Bland and Dorsey . . hereby referred . . to . . Darnall and . . Jowles to . . state the same, and to . . report to this hono'ble Court . . att Saint Maryes the Tenth day of February next, . . And that Commission Issue out of this Court to impower them accordingly."

Re Barree, 15 Md. Arch. 271, February 1680. Barree "called to Capt. Coodes Negro for the Knife which they had caused to be taken from him over night,"

Re Indians, 15 Md. Arch. 400, August 1681. Letter of Rand. Brandt: "The Forreigne Indians hath a Fort above the Eastern branch neere the Falls of Pottomock, and that four of Mr. George Brents negros Runnaways was taken by them and gives relation thereof haveing made their Escape."

Re Indians, 17 Md. Arch. 23, September 1681. Letter of Francis and Gassaway: "at a Plantation of Major Welch's the Indians have killed a negro and wounded with Tomohawkes two English men," Letter of Francis: "five Indians appeared and . . runn after a negro man and killed him and wounded another,"

Trial of Capt. Josias Fendall, 5 Md. Arch. 312, November 1681. Deposition of Gard: [324] "Why said I if a man Killed a Negro he will be hanged."

Petition of Edward English, 17 Md. Arch. 96, May 1682. Petition for freedom. "Came Edward English negro and exhibited this his *foll* petition . . Mr. Henry Johnson after the decease of Coll. Nathaniel Uty did marry with the widow of the Sd. Uty, and haveing the Estate of the sd. Uty in his possession at disposeing, your poore Petitioner being still a Servant to the Estate of Coll. Uty and under servitude to Henry Johnson; the said Johnson did voluntarily give your Petitioner from under his hand in writeing . . on the Tenth of Aprill 1677: which sd. writeing . . did specifye the tyme which was five yeares from the tenth day of Aprill 1677: to the tenth Day of Aprill 1682: which your Petitioner hath fully Compleated, and duely served to the Tenor of his writeing which he gave me freely in token of his love he bore me, for which your poore Petitioner being borne and baptized in your Province in the feare of God and doe learne to read the Gospell hopeth your honor will be pleased to consider your poore Petitioner and that he may have his freedome according to his Masters will."

"Ordered that the Commissioners of Baltemore County Court, in Court sitting take the petition into their Consideration, and doe therein as to Justice appertaineth with due regard had to the Orphan to whom the Pet'r (as this Board is informed) of right belongeth."

Re Makeele, 17 Md. Arch. 350, January 1685. "in the close of Evening came 4 men (*viz.*) One Roger Makeele, one called Mr. Smith, one other white man, and One negro came to the boate, . . all the 4 men being visibly well armed with gunns and swords," [351] "Roger Makeele late an Inhabitant of the Collony of Virginia with severall others his confederates and Accomplices . . infest this Province as Pirates and Robbers,"

Cassock's Petition, 17 Md. Arch. 459, March 1686. "That whereas your Honors humble pet'r at a Court held . . 1685: was presented by the grand Inquest for the body of the County . . for dealeing with some

negros (belonging to the hon'ble Coll. William Digges Esqr.) for two bushells of Indian pease, for which your pet'r did honestly satisfie and pay the said negros, And whereas . . Digges . . did remit and discharge your pet'r yett your Honors humble Pet'r was prosecuted in the said Court . . and . . was Fined one thousand pounds of tobacco," [460] " The fine . . wholly remitted as to his Lsps [Lordship's] part thereof,"

Order of Council, 8 Md. Arch. 48, October 1688. " That the severall Negroes this last provinciall Court tryed and condemned and (upon the happy news of the birth of the young prince) lately pardoned be returned to their severall masters, Their masters paying and dischargeing their just Fees, and the said Negroes to serve their said masters as slaves and as if they had never beene condemned and pardoned as aforesaid." [49] " That the two Negroe men lately condemned have their pardon in due forme as others have had."

Lewis's Case, 8 Md. Arch. 306, April 1692. " as to one other Prisoner named Lewis a Mulatto convict for breaking open a House Chest etc. and stealing from thence several Goods etc. for which he also lyes under a Sentence of Death, Resolved also that his Execution be at present suspended and referred to further Consideration, with such Time as the Attorney General may have thoroughly perused and considered the Indictments and other Process against him," [310] " The Attorney General . . finds the Charge to be mean, and but for a very small Matter whereupon . . It is . . ordered that the said Mulatto remain in Custody of the Sheriff of St. Marys County until the first safe convenient Opportunity shall present for his Transportation, and then to be transported to some Other of their Majestys Plantations as an Exile and there to be sold and disposed off [*sic*] to the most Advantage, and Returns Thereof to be made to the said Sheriff for the Satisfaction and Discharge of the Charges accruing by his Imprisonment "

[314] " Ordered that Lewis the Mulatto Convict be safely conveyed . . into the hands and Possession of Captain Robert Mansell bound for Barbardoes by him to be sold and disposed of there to the most advantage "

Darnall's Petition, 8 Md. Arch. 311, April 1692. " as to his Complaint concerning his Negro woman set free by the County Court of St. Marys County, . . this Board does not think it proper to intermeddle therewith, but leave him to this Remedy at Law if he have been aggrieved: "

Plummer's Petition, 8 Md. Arch. 352, August 1692. " whereas your Petitioner almost two Years since hath had one Daughter, who unfortunately having too much Familiarity and Commerce with a Certain Negro Man was supposed by him to have a Child, . . now since her supposed delivery the Justices . . have laid on him [your petitioner] a Fine of six thousand pound of Tobacco the like President was never known of before," [356] " The Petitioners fine is remitted to five hundred Pounds of Tobacco,"

Re Kemble, 8 Md. Arch. 366, September 1692. " Luffman carried away of Robert Kembles Estate . . three Slaves." Letter to the Governor of

Virginia: [367] "a horrid murder some time since committed upon the Body of one Robt Kemble . . by Abigall his wife, one William Luffman (who hath since intermarried the said Abigall) and Jack a Negro Man slave belonging to the said Kemble with other confederates, . . and being . . informed that the said Luffman, his wife and the Negro aforesaid the principal Actors therein, together with a Negro woman named Sue and a Negro Child, . . are apprehended . . in the custody of . . high Sheriff of Princes Anns County in Virginia . . I have sent thither a Boat and four able Hands . . under the conduct of John Kemble . . to receive and convey hither the said Criminalls"

Re Collins, 8 Md. Arch. 382, October 1692. "A Servant Boy . . accused for the murder of two Negroes but cleared"

Carse's Petition, 8 Md. Arch. 427, November 1692. "Carse Gent. late high Sheriff . . having . . seized and taken in Execution a Negro Man of Madam Elizabeth Calverts upon a Judgment obtained by Mr. John Rogers Merchant in Plymouth against the said Elizabeth Calvert, the said Negro by instigation and Advice of some Persons made his Escape . . and is harboured and lyeth lurking about the plantation of the said Calvert . . Ordered that Robert Mason Gent. now high Sheriff . . do with such Force . . as he shall think most fit . . forthwith . . take into his custody the said Negro"

Re Blackiston, 20 Md. Arch. 184, November 1694. "The said Accountant chargeth herself with . . the third part of the condemnation of the ship *Margaret* . . Parcell of Negro's Appraised at 103 *lb.*"

Willy's Petition, 20 Md. Arch. 227, March 1695. "one Thomas Jones had knowingly bought of Capt. Thomas Hill Commander of the Ketch *Adventure,* a couple of Negro's which the said Hill had brought clandestinely away from Barbado's contrary to Law, therefore prayed that the same might be again restored to the Right owner, . . Jones in Answer to the said Peticion . . signifyed that he did purchase of the said Hill two Negro's one for 7600 l. of tob. and the other for tenn Thousand p'ds of tob: which was by him duely paid, withall Setting forth that after his purchase of the same made, he understood the said Negro's did belong to a Plantacion in Barbado's and had a hand in the Plot, therefore were sent on Board the said Hills Vessel to be hid by two of the Seamen and were Accordingly hid, Unknown to the said Hill untill two days after his departure from Barbado's, as the said Hill told the said Jones, And further said that to secure himself of the hazard of their Lives, he would dispose of them, And that if the said Jones would not keep them he the said Hill had Chapmen enough for to take them off his hands."

Tench v. Chew, garnishee of Chappell, 1 American Legal Records (Md.) 4, May 1695. "Command was given the Sheireffe of Ann Arrundell County that he Should attach any the Goods Chattels or Creditts of Alexander Chappell if they should be found in his Balewick to the Value of Nine thousand Four Hundred and Ninety pounds of Tobacco . . to satisf[i]e Unto Thomas Tench . . a certaine Debt . . the said Shriffe

. . made Returne of his Said Writt Endorsed *Vizt* Attached [5] in the hands of Joseph Chew Two Negroes Per me. . . Thereupon the Same day the Said Joseph Chew being called to Shew cause why the Said Negroes attached in his hands as afore Said ought not to be condemned for Satisfaction of the Judgment afore Said according to Law. And the said Joseph Chew . . ma[de] his appearance and by Kenelme Cheseldyne his Attorney Saith that the said Thomas Tench his attachment afore Said, nor any Condemnation ther[e] upon not to have for that he Saith that the Said two Negroes are the proper Negroes of him the Said Joseph and by him Bought for a Valuable consideration and *Bonâfide* paid For—and this he is ready to Verifie and thereupon Prays Judgment. And the said Thomas . . Saith that the goods . . were the proper Estate [of] the said . . Chappell and were not bonâfide and without fraud bought and paid for by the Said Joseph and this he prays may be enquired of by the Court. And the Said Joseph Saith that the Said Negroes ought not to be condemned as afore Said for that they are the proper negroes of . . Joseph an[d] bought for a Valuable consideration and *bonâfide* paid For—and of this he p[uts] himself upon the Country:—And the Plaintiff also. . . and the Jurors impannelled being called likewise Came . . who being elected tryed an[d] Sworne to Say the truth in the premises upon their Oath's doe Say Wee . . doe find for the Plaintiffe. . . [6] It is therefore Considered by the Justices here the Same day and Year . . that . . Said Negroes . . be condemned for and in Satisfaction of the Debt and Cost in the Attachment aforse Said Specified according to the Act of Assembly . . And the Said Joseph Chew . . cometh into Court here and Saith that . . in the rendring of the Judgment . . it is . . Erred . . That . . the Said Thomas Tench . . Sued out an Attachment . . to the Value of Nine thousand Four hundred and Ninety pounds of Tobacco which is 2372 lb. of Tobacco more then the Summ recovered on the Judgment . . [7] For if an Execution doe issue out for more then the Judgment the Same is Void and Erronio[us] in Law . . Command was given . . to argue . . the Same . . and . . it is the Judgment of this Cour[t] . . that the Said Error . . is a Sufficient Error in Law: . . that the Judgment of the Provinciall Court . . be Set a Side and Reversed, and that the Said Joseph Chew Garnishee . . be unto all things . . restored; And . . that . . Chew recover against . . Tench . . Seaven Thousand Nine hundred and Twenty Four pounds of Tobacco by the Court here adjudge[d] for his Costs and Charges in this behalfe laid out and Expended, and tha[t] the said Joseph Chew may have thereof Execution."

Hawkins v. Lynes, 1 American Legal Records (Md.) 17, August 1695. [20] " Henry Hawkins . . levyed . . his plaint against Philip Lynes . . That he render unto him . . Thirteene Thousand two hundred Eighty and one pounds of good Sound Merchantable leafe Tobacco and Cash . . And the Sheriffe now returneth that . . Philip Lynes is not to be found . . [21] It is Commanded the Sheriffe that of the goods . . of . . Philip Lynes he Attach the Summe of Fifteen thousand five hundred thirty and four pounds of Tobacco . . for . . Henry Hawkins . . And the

Sheriffe now returneth that he . . attached . . one Negro Woman appraised at Six Thousand five hundred pounds of Tobacco . . [22] Whereupon . . Henry Hawkins prayeth Condemnation and Execution against . . Henry Thompson of the Said Negro Woman . . Therefore it is Considered that the Said Negro Woman . . be condemned . . And that the Said Henry Hawkins have Execution against . . Hen: Thompson [23] of the Said Negro Woman . . And Whereupon . . Henry Hawkins . . under take to make restitution to . . Philip Lynes of the Said Negro Woman . . [24] Soe . . Attached and Condemned If he . . Philip Lynes Shall . . within one year and a day Come here . . and make it appear that . . Henry Hawkins . . is Satisfied his Demand . . or Shall otherwise . . barr . . Henry Hawkins of the Same . . Upon a writt of Error brought by the Def't to correct Errors . . Upon an Attachm't . . [25] Which Attachm't illegally . . issued . . for these reasons. The Act of Assembly . . Did Enact that . . no attachment Should issue . . before a Writt . . be first made out . . and in case any Writt . . shall issue . . against any person . . absent out of this Province in Such Case . . then the pltt: leaving a Coppy of the Said declaration . . at the house where the Defend't absent did last reside . . [26] The Said Plantiffe hath failed in his Duty . . The Judgm't is only for . . 13281 lb of Tobacco . . and the Attachm't is for 15534 lb of Tobacco . . and So . . Void in Law. . . [28] the Errors . . being fully argued . . it is . . Considered that . . Philip Lynes Recover ag't . . Henry Hawkins . . two thousand and twenty pounds of Tob'o . . for his Costs and Charges."

Re Abington, 20 Md. Arch. 355, December 1695. Abington's administrator had "in his hands, Effects in Debts, Mortgages Negros', Servants and Cattle etca. to the Value of above 2000 *l.* sterl."

Reprieve of Ann Smith, 20 Md. Arch. 461, July 1696. "Ann Smith Spinster . . who was lately Indicted tryed and Convicted for murthering a Negro Boy;" [460] "Reprieved, but that the thing be kept private . . untill She has made her Speach at the place of Execution, understanding She has Something which burthens her Conscience to discover, which she deferrs till then."

Blockiston v. Jeoffrey a Malatta, 1 American Legal Records (Md.) 43, November 1696. "It being signifyed that the Defendant is Run away, therefore this Cause is dismissed;"

Re Indians, 23 Md. Arch. 145, June 1697. "the Emperor [of the Piscataway Indians] . . Signifyed that tho they were not Guilty of the murder of the Negro,[1] yet for peace and out of their affection to the English they would give reasonable Satisfaction, . . Eighty Buck Skins, . . induced us . . to abate them Twenty Skins. they paying Sixty in two Years,"

Blakiston's Administrator v. Copley's Administrator, 1 American Legal Records (Md.) 82, October 1697. [84] "Thomas Tench Esqr. Adm'r

[1] Perhaps "Mr. Stodarts Negro boye." *Ibid.* 261.

of all the goods and Chattells of Lyonel Copy Esqr. dec'd was Attached to Answer unto Elizabeth Blakiston Adm'r . . of Nehemiah Blackiston Esqr. . . [85] The Estate of Lyonel Copley Esqr. deceased to the Estate of Col Nehemiah Blackiston Dec'd is Dr . . [86] To the Kings 3d of Negroes and 25 Per Cent Advance 42 *ll* 15 *s* . . [87] By 2 Negroes of Coll Copleys Estate 45 *ll* . . The Estate is Dr in Tobb'a . . To paid for Lancaster Betty 4000 *ll*"

Denton v. Mason, 23 Md. Arch. 508, August 1698. "Mason had sold her late husband . . one Negro man slave a white Woman and Mulatto Child which said Child by the Law of this Province then was and now is a Servant belonging to the Ministry of King William and Queen Mary parish . . until it should arrive at the Age of thirty one years and that she the said Mrs. Denton was threatned by the principal Vestryman of that Parish to be Sued for the same"

Re Panquas, 25 Md. Arch. 150, May 1703. "Came Panquas an Eastern Shore Indian at Nanticoke and Commander there and Complained that his Cabbin had been broken open by a certain Negro . . from whence the said Negro had Stolen divers goods of a considerable value which the said Panquass mentioned part whereof were found upon him and were restored the other having been made away by the said Negro for which he demands sixty nine Drest deer Skins but . . [151] he being Offered Sixty Doe Skins says if they be good ones he will be Satisfied."

It was ordered that the owner of the negro "pay the said Sixty drest Doe Skins to the said Panquass . . and is hereby Ordered to punish the Negro by whipping or otherwise in case of Refusal he is to Commit the Negroe to Goal to be prosecuted in the Provs. Court for that Offence"

Round v. Macklure, 1 American Legal Records (Md.) 115, March 1709. "Command was given the Sheriff . . that he should take William Mackelure . . so that he have his body before the . . Court . . to answer unto William Round of Somerset County . . William Round . . complains that . . William Macklure . . stood indebted unto him . . in the full Sume of Two hundred Fifty three pounds one Shilling and three pence sterling . . and other dues as by A perticular Account . . [116] To overcharged for his two Negroes that we had no occasion for but thirty days and desired by the Master to take them on shoar for which he charges Sixty five days at 1 *s*: 3 *d* per day each . . 04 £ 01 *s* 3 *d* To the dyet of those two negroes We having no business for them 35 days . . 02 £ 6 *s* 8 *d* . . [117] To the dyet of Six Negroes 3 Months and Eight days as per the Masters oath at 20 each per Month is . . 22 £ 10 *s* 0 *d* To the freight of his Negroes Rum Sugar Mollasses and Salt he forceing the Ma'r to his own prizes which power ought to be paid there according to the custom and usage of the place comes to 71 £ 14 *s* 2 *d* which if laid out there according to my possitive orders to him and the risqs being equally mine and if so done I reasonably charge double but referr to better Judgments . . 143 £ 08 *s* 04 *d* . . [118] Command was given to the Sheriff . . that he should attach . . the goods . . of Will'm Macklure . . the Sheriff . . makes returne that he has Attached . . to

the Vallue . . [119] It is therefore Considered by the Court . . that there be condemned . . the Summe of Two hundred And twelve pounds Nineteen Shillings and One half penny Sterling . . Afterwards . . came . . Will'm Macklure . . and files his Reasons for Reversall of the Judgment . . No Security . . appears to be given for restitution Adjudging the Condemnation . . [120] And now . . the whole proceedings . . being read and heard . . It is . . considered that the Judgment . . be . . set aside . . And that Writt for Restitution Issue."

Re Greenfield, 25 Md. Arch. 382, February 1722. "your Declarator serv'd a writt of *Retorno habendo* . . upon six Negroes . . which Negroes were appraised . . at one hundred fifty nine Pounds"

Re Andrews, 25 Md. Arch. 390, July 1722. "a Complaint made against him for having sold or otherwise disposed of an Indian Boy a Son of one of our Friend Indians . . confesses that an Indian Boy named James did in Consideration of five Pounds in hand paid a Horse Bridle and Saddle and two Suits of Cloaths, indent to live with him the said Andrews as a Servant for the term of thirty years and that he sold the said James to a Gentleman in Philadelphia . . for the sum of fifteen pounds, the said Andrews further says that it is a Customary thing in Ackamack . . in Virginia for the Indians to work among the Inhabitants and to indent with them for a Time or Term of years, and that he had indented with the said James in Virginia not in Maryland, . . And it appearing . . that . . Andrews since his Commitment had not only Satisfied the said Indian Congee but also the King and chief men of the nation to whom the said Indian Boy did Belong and also that he had already suffered upwards of three Months Imprisonment . . Resolved . . that the said Marcus Andrews be fined . . five hundred pounds of Tobacco . . and imprisoned in the publick prison at Annapolis for the space of one day"

Parker v. Mackall, 2 Bland 62 n., January 1734. [63 n.] "Got into his possession . . slaves, one of whom was an expert carpenter and cooper," Defendant's answer: [64 n.] "that the mulatto fellow Ned . . was an ordinary carpenter and cooper, from whom the defendant received no other benefit then from an ordinary slave;" Report of the master in chancery: [66 n.] "I likewise find that the value of the profits which might have been made of the mulatto man called Ned, . . for five years and one quarter, which time the defendant had the said Ned in his possession, did amount unto the sum of £105 gold currency, . . which I have estimated at the rate of twenty pound, gold currency, per annum; . . I have allowed the defendant for maintaining a negro girl . . at the rate of 300 pounds of tobacco per annum; which, for the first five years therein mentioned, does amount unto the sum of 1500 pounds of tobacco; the said girl not being able then to work for her maintenance."

Young v. Williamson, 1 Har. and McH. 145, May 1738. "Elizabeth Bourne, by her deed-poll dated the 28th March, 1707, gave to the plaintiff the negro in question. . . [146] the defendant purchased him for . . forty pounds, on the 3d of November, 1727,"

Re Negro Bess, 28 Md. Arch. 137, May 1738. "a Certain Negro named Bess the Slave of . . John Beale" was convicted "for feloniously attempting to murder with poyson . . her Master" and was sentenced to death.

Re Negro Sampson, 28 Md. Arch. 137, May 1738. The council advise that "Negro Sampson a Slave . . now under sentence of Death" be pardoned.

Re Chew, 28 Md. Arch. 156, January 1739. "Norris made a Complaint to your Complainant as a Magistrate against a Negro of Mr. Samuel Chews . . that the said Negro did in a most violent inhumane and barbarous Manner assault wound and beat, a Negro Woman of his the said Norris's so that of her Life it was despaired: Upon which Complaint your Compl't issued his Warrant against the said Negro, notwithstanding which the said Chew stood in Contempt and skreened his Negro from Justice until the said Norris applyed himself unto Mr. Dulany, . . [157] In some short Time after . . Plummer made another Complaint . . agt. three of the said Chews Negroes, . . that they had stolen a Parcel of Turkeys from him, whereupon Your Complainant issued his Warrant against the said Negroes," but Chew "demanded a Sight" of the warrant, "and immediately he put it in his Pockett, and would not . . suffer the Constable to apprehend his Negro's." Chew answered that he told the constable: [158] "I would take Care they should appear before Mr. Smith the Ensuing Tuesday at the Church . . and accordingly I caused the Negroes to go thither, but Mr. Smith happened not to be there, and it was almost night and very cold and One of the Negroes barefoot, and the rest very thinly clad, and therefore I ordered them home; . . the same Constable afterwards apprehended the Slaves and carryed them before Mr. Smith, who ordered them to be corrected according to Law."

Re Jones and Negro Isaac, 28 Md. Arch. 155, February 1739. "a special Commission of Oyer and Terminer . . had passed Sentence of Death upon . . Jones and Negro Isaac the Slave of . . Mouall for a Burglary and Robbery by them committed; and that they also passed Sentence of Death upon Negro Jack the slave of . . Norris for a Murder by him committed; and it appearing . . that the said Negro Isaac had bore a good Character and was a real Object of Compassion . . It is therefore the humble Advice of this Board to his Excellency, that he would be pleased to grant a Pardon to the said Negro Isaac; . . which Pardon . . his Excell'y ordered accordingly."

Re Negro Pompey, 28 Md. Arch. 161, March 1739. "Negro Pompey and Negro Indey two Slaves belonging to . . Plater" had been convicted "for conspiring to poyson the Overseer Clerk and Gardiner of the said Mr. Plater;" The Board advises "his Excellency that he be pleased to order Warrants to issue for their Execution"

Re Negro Robin, 28 Md. Arch. 181, August 1739. "a Report . . by the Justices . . of their having passed Sentence of Death upon a Negro Man named Robin the slave of Mrs. Eliz. Beale Widow, convicted of

Burglary, and also of their having passed Sentence of Death upon a Negro Man named Robin the Slave of Mr. John Walmesley convicted for ravishing a White Woman;" The Board advises "His Excellency that he be pleased to order Warrants to issue for their Execution . . and forasmuch as the Slave of Mr. Walmesley has been a most notorious Offender that he be hung in Chains 60 yards from the Gallows to the Westward of the Old Orchard."

Re Negro Conspiracy, 28 Md. Arch. 188, January 1740. "Depositions of several Negroes in Prince Georges County relating to a most wicked and dangerous Conspiracy having been formed by them to destroy his Majestys Subjects within this Province, and to possess themselves of the whole Country;" The Board advises "his Excellency that he be pleased to issue a special Commission of Oyer and Terminer for the speedy Tryal of the said Offenders; and he would be pleased likewise to order the Colonel of the said County to keep a Guard of 12 Men, . . at the Prison . . until the Time of their Tryal, and if any of them should be convicted, until the Day of their Execution,"

Re Negroes, 28 Md. Arch. 257, April 1742. "a Report made . . by the Justices . . of their having passed Sentence of Death . . upon Negroes Seamore, Cesar, Charles, Ben, Cooper, Mol and Marlborough on clear Evidence for the Murder of Jeremiah Pattison their Master, It is the humble Advice of this Board to his Excellency that he be pleased to order Warrants to issue for their Execution"

Re Negro James, 28 Md. Arch. 283, August 1742. "a Report . . by the Justices . . of their having passed Sentence of Death upon two Negro Men, named James and Zeno belonging to Mr. Henry Hawkins for Felony, and also a Recommendation . . that the abovementioned Negroes are Objects of Mercy, they not having before this Instance been charged with any Felony; . . Pardons . . issued accordingly"

Woodward v. Chapman, 2 Bland 68 n., December 1742. [69 n.] "the administratrix did sell . . several negroes . . Sarah and her sucking child, Jacob, Boson, Betty, Boson [*sic*], ailing, and Beck, for £162 sterling; which were appraised to £140 current paper money."

Re Negro Jack, 28 Md. Arch. 302, June 29, 1743. Sentence of death had been passed "on two Negroes One named Jack, the Other Harry convicted . . upon very clear Evidence of wilfully murdering an Indian Man; . . Advice of this Board to his Excellency . . that they be hung in Chains, . . ordered accordingly. . . Sentence of Death . . upon a Mulatto Boy named Jack the slave of Mr. Daniel Carrol for breaking a Stable and Stealing a Mare; . . Advice . . to grant a Pardon to Mulatto Jack . . ordered accordingly."

Re Negro Ishmael, 28 Md. Arch. 386, April 1747. "Record . . of the Conviction of a Certain Negro Ishmael and Negro Benjamin . . for Horse stealing, . . Pardons issued"

Re Lamb, 28 Md. Arch. 388, April 1747. "Report . . by the Justices . . of their having passed Sentence of Death . . on Lamb a Servant to

Dr. Andrew Scott . . for the murder of a mulatto Slave called Nacey, and that It appeared . . to be a murder of a very barbarous Nature, without any Provocation being given by the unhappy Slave who lost his Life; . . Advice of the Board to his Excellency that he be pleased to order a Warrant to issue for the Execution"

Re Negro York, 28 Md. Arch. 399, December 1747. "Report . . by the Justices . . of their having passed Sentence of Death . . on a certain Negro Man name York for Horse stealing and It appearing . . that the sd. Negro bears a very ill Character, . . Advice . . to order a Warrant to issue for the Execution"

Re Negro Tom, 28 Md. Arch. 431, October 1748. "Report . . by the Judges . . that They had passed Sentence of Death upon Negro Tom a Boy belonging to Col. Thomas Lee, and on Negro Cheshire a Boy belonging to John Lee, and on Mullato James a Slave belonging to . . Smallwood, for House breaking and Felony . . [432] And It also appearing . . that the Negro Boys Tom and Cheshire were not above Twelve or fourteen years old and were Objects of Mercy, but that Mullato James bore a very ill Character and had been a notorious Rogue for some years; . . Advice . . Pardon to . . Negro Tom and Negro Cheshire, . . Execution of the said Mulatto James; which Pardons and Warrant issued accordingly"

Re Ignatius, 28 Md. Arch. 447, May 1749. The justices "had passed Sentence of Death upon three white men . . and on One Negro man called Ignatius the Slave of the Reverend Mr. Hugh Deans . . for breaking open the Store house . . stealing Goods . . and also . . upon Negro Phill the Slave of Mr. Thomas Baldwyn . . for breaking open the Storehouse . . and stealing . . and . . on Benjamin Tucker and a Negro Man named Roger for breaking the Storehouse . . and taking . . And it also appearing . . that Negro Ignatius was an Object of Mercy, . . Advice . . to grant a pardon . . to Negro Ignatius . . And It appearing that . . upon Application of Mr. Thomas Baldwyn to spare the Life of his Negro called Phill upon Condition of his being immediately transported out of the Province It is ordered . . that a Pardon issue . . And . . that a Pardon issue for Negro Roger,"

Re Davison, 28 Md. Arch. 453, June 1749. "The Examination of Thomas Davison Master of the Ship *Mary* now at Anchor in Patuxent River . . he went to the Island of St. Jago [1] to water where he staid two days . . Lope a Black Man and his son made an Offer of Selling to him Six Negroes or Blacks which he understood to be Slaves . . And in the Evening . . Lope brought three Negroes . . and this Examinants Doctor returned with the said Lope in his Boat and fetched the other three Negroes for which . . this Examinant Paid the said Lope . . in Money and Goods"

Robert Lusk, mate: [454] "the said Ship . . proved very leaky on her Voyage, and that the Six Negroes worked willingly at the Pump untill

[1] Cape Verde Islands.

the Ship Came within One hundred Leagues of the Capes of Virginia, and that then they were not so forward to worke as before"

Charles Menzies, surgeon: "That on the 5th [of March last] . . this Examinant went with the said Captain on Shoar . . and was entertained by . . Captain More being the Commanding Officer of that Port, and . . Captain Davison seeing two young Negro boy Slaves waiting or serving wine asked Captain More if he would sell either one or both of the boys to which Captain More by his Interpreter answered that he would not sell any to the English, That after . . the said Interpreter took Captain Davison aside and had some discourse . . that the said Interpreter had some Negroes . . there was some Law . . of the Church as well at the Isle of May as St. Iago against selling any Slave to Hereticks . . [456] the said Interpreter . . by repeated Solemn asseverations assured Captain Davison they [the six negroes] did belong to him, after which Capt. Davison Proceeded to Value each Negro . . saw the Money paid and Goods delivered . . for the Purchase And this Examinant . . Observing One of the said Negroes was better Cloathed than the Others the Interpreter said He could sound a Trumpet Play on the Fiddle and was a Weaver"

William Ahier, [457] "Master of the Ship *two Brothers* . . about the 22d Day of April last past he was with the Commanding Officer of Port of Pra [1] whose Title was Captain More Overall and was acquainted by . . his Interpreter that a Certain Captain Davison . . had stole five Negro Slaves and One free Man from the said Islands Two of which belonged to the said Captain More Overall, and that one of the said Negroes was a Trumpeter and the other a Fiddler and also at the same time two Letters were delivered to this Examinant, One . . to the Governor of Maryland and the Other to the Governor of Virginia."

William Cook, apprentice: "heard Lope and the Captain make a Bargain for the said Negroes that he saw the Captain turn them about and examine them that the Captain gave Lope a Cheese and a Shirt for one of the Negroes being an old Man, and that he gave Money and Goods for the Rest of them, . . and that he saw the said Lope shake hands with all the Negroes when he went a Shoar . . that he did not see one of the Negroes handcuffed nor tyed when they were brought on board nor at any time during their Voyage."

[459] "Ordered that Warrant issue directed to the Sheriff . . to bring . . the . . five Negroes and one freeman" "they were by the best Interpreter that could be got here Examined, . . Ordered . . that . . Davison enter into Bond . . in the Sum of two hundred Pounds Sterling" that the negroes shall be transported back to Santiago at his expense.

Re Negro Sharper, 28 Md. Arch. 501, February 1751. "the Commissioners [of Oyer and Terminer] had passed Sentence of Death . . on Negro Sharper the Slave of . . Potter for ravishing a white Woman" The Board advised that a warrant issue for his execution, but Governor Ogle did not send down the "Dead" warrant as [502] "all the Proceed-

[1] Porto Praya.

ings under the said Commission are erroneous" because the commissioners had adjourned for ten days instead of from day to day. He ordered a new trial.

Re Negro Tangio, 28 Md. Arch. 504, April 1751. "Justices . . had passed Sentence of Death . . upon Negro Tangio the Slave of . . Heighe . . for a Felony and Burglary by him committed . . ordered . . that Warrant issue for his Execution . . also . . Sentence of Death upon Negro Jenny and Negro Grace the Slaves of . . Galloway . . for wilfully burning a Tobacco House belonging to the said Galloway; It is ordered . . that Warrants issue for their Execution"

Scott v. Dobson, 1 Har. and McH. 160, February 1752. "action of replevin for two negro boys named Lewis and Sampson, and two negro girls named Kate and Phoebe." Will of Benjamin Parrott, 1724: "I leave unto my wife four negroes during her natural life; that is to say, Kate, Alice, Moreah and Rose, and after her death to be divided between my seven children," Scott "intermarried with Jane, the widow . . and lived married to her till . . 1746, when she died. That negroes Sampson and Phoebe . . are the issues of negro Moreah, . . and were born after the death of the said Benjamin and in the life-time of Jane, widow of said Benjamin, and during the marriage of the plaintiff and said Jane. That negro Lewis . . is the issue of negro Alice . . and negro Kate . . is the issue of negro Rose, . . and both Lewis and Kate were born after the death of the said Benjamin, and during the life-time of the said Jane, his widow, and during the marriage of the plaintiff with her. . . The Provincial Court gave judgment for the defendant [a child of Benjamin Parrott]. . . The Court of Appeals . . reversed the judgment of the Provincial Court."

Opinion of Daniel Dulany: "The two principal reasons which governed the Court of Appeals [in Scott *v.* Dobson] were, 1. That the issue ought to go to the person to whom the use was limited; otherwise, having no interest worth regarding, he might not take care of the issue. That it would only be a reasonable satisfaction for the expenses of maintenance, and for the time lost by the parent. 2. That when the use is given, a bounty at all events is intended; but instead of a benefit, if the issue should go over there might be a loss," [1]

Re Mulatto Jones, 28 Md. Arch. 565, July 1752. Detailed account of burglaries by "John Jones a Mulatto man," with white men and negroes, pp. 565-572. Jones seems to have been the leading spirit and shows much intelligence in carrying out his designs.

Re Negro Joe, 28 Md. Arch. 576, September 1752. "Sentence of Death . . on Negro Joe a Slave of . . Perkins for Burglary and Felony, . . Ordered . . that Dead" warrant issue for the execution.

Re Negro Harry, 28 Md. Arch. 577, November 1752. "Justices . . having passed Sentence of Death upon a Certain Negro Harry the Slave

[1] 1 Har. and McH. 348 (353). Dulany "was a member of the Proprietary's Council, and no doubt was universally consulted by the Governor in all important cases coming before the Governor, who acted as Chancellor." *Ibid.* 352n.

of . . Ridgeley . . for ravishing . . a Widow Woman . . and It appearing . . that the Negro had been always an orderly Fellow, . . and that in their Judgment the Evidence was not sufficient to convict him, . . Pardon . . to the said Negro Harry . . issued"

Re Mulatto James, 31 Md. Arch. 30, April 1754. "Justices . . having passed Sentence of Death . . on Mulatto James the Slave of . . Millard for a Rape committed on the Body of . . and also for the wilful Murder of the said . . Ordered that Dead Warrant issue for the said Mulatto James to be hung in Chains . . upon the publick Road as near as conveniently can be to the Place where the fact was committed."

Re Yellow Dick, 31 Md. Arch. 32, May 1754. "Justices . . having passed Sentence of Death . . on . . Yellow Dick (the Slave of William Dent) for Store braking and Stealing . . Ordered that Dead Warrant issue" Pardoned because [33] "very Young and that this is the first Offence . . (signed by Sundry Gentlemen)"

Re Negro Cesar, 31 Md. Arch. 34, June 1754. "Justices . . having passed Sentence of Death against Negro Cesar the Slave of Walter Dulany and Tom the Slave of Margaret Gaither for assaulting Duncan Robertson and Mary Suttor . . in the Night . . and . . Carrying away . . Sundry Effects . . Ordered that Death Warrants issue"

Re Mulatto Toney, 31 Md. Arch. 46, August 1754. "A Report . . by the Justices especially appointed for the Tryals of John Wright and Mulatto Toney for the Murder of Captain William Curtis . . Sentence of Death . . Ordered that Dead Warrants be made out . . to be hung in Chains"

Re Three Negroes, 31 Md. Arch. 49, September 1754. "having passed Sentence of Death upon Three Negroes named Pompey Sambo and Jack for feloniously breaking and entering an Outhouse . . and stealing from thence fifty Pounds of Bacon and Ten Gallons of Rum, and It appearing . . that Negro Sambo is a youth and the Son of Negro Pompey and might be influenced by the Authority of his Father . . Advice . . that a Pardon should issue for Negro Sambo and Negro Jack, and that Dead Warrant should issue for the Execution of Negro Pompey"

Re Negro Anthony, 31 Md. Arch. 69, June 1755. "Sentence of Death upon Negro Anthony and Negro Jenny for Consulting, Conspiring and advising to Poison their late Master Jeremiah Chase and also one William Stretton for Poisoning his said Master Jeremiah Chase. Ordered that Death Warrant issue . . and also . . Sentence of Death on Negro Jack for Attempting to Poison his Master Francis Clements. Ordered that Dead Warrant issue . . and likewise upon Negro Dick the Slave of . . Courts for breaking and Entering the Out house . . and Stealing therefrom Thirty pounds of Bacon, and it appearing . . that he had been a Notorious offender and lately Pardoned for an offence of the same kind Ordered that Dead Warrant issue for his Execution"

Re Negro Harry, 31 Md. Arch. 79, October 1755. "having passed Sentence of Death . . upon Negro Harry the Slave of Philip Key the

younger and Negro Cork, the Slave of Philip Key Esqr. for Feloniously consulting, advising, conspiring and Attempting to Poison . . John Key, and also . . upon Negro Thomas the Slave of John Prather for Feloniously consulting, . . [80] and Attempting to Poison . . Richard Duckett . . Ordered that Negro Harry . . be hung at Choptico . . and afterwards to be hung in Chains at the same Place And that Negro Cork . . be hung at Choptico . . and afterwards to be hung in Chains at Budds Creek . . and that Pardon issue to Negro Thomas"

Re Negro Joe, 31 Md. Arch. 90, December 1755. "the Justices appointed by Special Commission for the Tryal of some Negroes . . for breaking open Mr. Edens Store house and Stealing from thence Sundry Goods, . . had passed Sentence of Death upon Negro Joe . . ordered that Dead Warrant issue . . the Justices . . having Passed Sentence of Death on a Certain Negroe Harry a boy about Twelve years old . . for Burglary . . Pardon issued"

Re Negro Simon, 31 Md. Arch. 115, April 1756. A death warrant had been ordered for the execution of negro Simon, who had been convicted "for the Offence of store breaking. . . he had been guilty of some little pilferings, but never accused of any Offence like to that for which he is now condemned: he is very young I believe not more than twenty years of Age," A pardon issued.

Re Mulatto Charles,[1] 31 Md. Arch. 119, May 1756. "the Justices . . had passed Sentence of Death upon Mulatto Charles, late of Prince Georges County Labourer, the Slave of . . Campbell, otherwise called young Charles Butler, for feloniously taking and leading away one black Mare of the Price of five Pounds, . . and also . . Sentence of Death, upon one Negro Jack, Slave . . for breaking the Store House of . . in the night, and . . taking a Piece of corded Dimothy:" Ordered that a warrant issue for the execution of negro Jack, "but forasmuch as it appears by the Representations of several Persons in favour of Mulatto Charles, and . . that they are Objects of Mercy, . . Advice . . to order Pardons . . which issued accordingly."

Re Negro Ben, 31 Md. Arch. 157, August 1756. "the Justices . . having passed Sentence of Death upon Negro Ben the Slave . . for a certain Felony by him committed, and no favourable Circumstance appearing for him, it is ordered that Dead Warrant accordingly issue."

Re Negro Forester, 31 Md. Arch. 160, October 1756. "Sentence of Death upon Negroes Forester and Sambo, the Slaves of . . for Felony, and it appearing to this Board they are Objects of Mercy advise . . to grant them . . pardons."

Re Negro Tida, 31 Md. Arch. 182, March 1757. "sentence of Death, upon Negro Tida the Slave of Ephraim Gover, for feloniously attempting to poison her said Master, ordered that dead Warrant issue . . Sentence of death upon three Negroes for Felony and House breaking (to wit)

[1] See *Re* Charles Butler, p. 41, *infra.*

Negro Sampson the Slave of Denwood Hicks, Negro Booze the Slave of the said Hicks, and Negro Siladdy the Slave of Elizabeth Trippe Widow, but forasmuch as it appears by the Representation of several persons in favour of . . Sampson and Siladdy that they are Objects of Mercy, . . Advice . . to order pardons for the said Negroes, . . and dead Warrant was ordered to issue for the Execution of Negro Booz "

Re Charles Butler, 31 Md. Arch. 291, July 1758. Letter from Governor Sharpe to Tasker: " if you and the other Gentlemen [of the council] approve thereof I would have Mr. Ross make out a Warrant for the Execution of Charles Butler the Slave and Criminal " [292] " Upon reading and considering the Indictment against Charles Butler junior [1] of Charles County whereon he was convicted of a Felony of Death, it is the opinion of this Board that the Indictment is such a one, as they cannot advise a Warrant for his Execution."

[298] " Ordered [October 1758] with the Advice of this Board that Pardon with Transportation issue for Charles Butler of Charles County, the Slave of Mr. Campbell . . who was convicted of a Felony of Death "

Re Molatto, 31 Md. Arch. 398, February 1760. " Ordered that Pardon issue for Molatto . . the Slave of "

Re Cousins, 31 Md. Arch. 409, September 1760. Letter to Weems, " Chief Justice of Calvert County: " " It having been . . represented to the Governor and Council, that a Negroe called Capt. Gray and three or four more of the Negroes who were lately imported into Patuxent River in the Brigantine *Edward* of which one John Cousins is Master have declared that they are not Slaves but Freemen, that the Negro called Capt. Gray in particular is the son of a person of some Consequence and Power on the African Coast, and that the said Cousins Treacherously stole and brought them away, I am Ordered by his Excellency and their Honours . . to Desire that . . you will send for, and examine the Surgeon Mates and Boatswain "

[411] " Deposition of Elias Glover Chief Mate . . as to the Negro called Capt. Gray he was taken in a Theft on board . . and for that detained, that he afterwards was principally concerned in cutting the Cable and endangering the Loss of the Vessel; that as to the negroe called Capt. Buck, and the eleven other Negroes they were brought on board the Vessel by the Traders, and there left as Pledges, and that . . there was as much Goods given for them as for the other Slaves, that they had been on board of the Vessel for seven or eight weeks before the Vessel Sailed, and that the Traders never offered to redeem them "

" The Deposition of Eneas Loughrig . . that he Sailed from Liverpool along with . . Cousins before the Mast on a Voyage to the Coast of Guinea to purchase Slaves, . . [412] and never heard to the Contrary but that all the negroes brought in by Captain Cousins were Slaves; unless a negroe who calls himself Capt. Gray should be Free . . he Gray was a Servant to a Freeman upon the Coast of Guinea and that he used to be employed by his Master to go in a Cannoo to carry Slaves on Board of

[1] See *Re* Mulatto Charles, p. 40, *supra*.

Trading Vessels and as a Plavvrer [Palaverer] that he carried some on board of the Brigantine *Edward* whilst he was in that Vessell he stole a Scarlet Jacket from Capt. Cousins who never permitted him (Gray) to go on Shore afterwards, but offered to return him if he could get another Slave for him which was refused by those to whom the Offer was made they said he was a Scandal to his Country and they would not give a Slave of four feet high for him, and this Deponent has heard that it was usual to punish Thieves after than [that] manner in that Country."

"Advised by this Board that the Captain be Discharged It being their Opinion that the Complaint is groundless. . . Discharged accordingly."

Re Negro Tom, 31 Md. Arch. 424, January 1761. "Read the conviction of Negro Tom and Negro Nace . . Slaves of . . Mitchell . . whereby it appears Sentence of Death had been passed upon them for breaking open the Meat-House of . . Catharine Price and stealing . . and also the Petition of the Reverend Theophilus Swift and some of the Justices . . recommending the said Negroes as Objects of Mercy. Ordered . . that Pardon issue"

Re Negro Bett Pone, 31 Md. Arch. 438, March 1761. "Read the Conviction of Negro Bett Pone Slave of Mrs. Goldsborough . . for attempting to poyson a certain David Robinson her Overseer; and the Justices Report thereon recommending her the said Slave as a proper Object of his Excellency's Mercy, and ordered Pardon"

Re Negro Peter, 32 Md. Arch. 3, April 1761. "the Justices of a special Court . . had passed Sentence of Death upon Negro Peter Slave of John Booth for the Murder of —— Booth Wife of the said John and a Child of him . . and it appearing . . that it was a barbarous and cruel Murder, ordered he be hanged in Chains on the main Road as near the Place where the Fact was committed as possible"

Re Mulatto Roger, 32 Md. Arch. 15, July 1761. "Read the Conviction of Mulatto Roger for a Burglary . . in breaking open the Store-House . . and stealing . . Ordered Dead Warrant"

Re Negro Samuel, 32 Md. Arch. 16, September 1761. "Read the Report of the Convictions of Negroes Samuel, Abigail, and Rachel . . for attempting to poyson Mrs. Smith, . . Ordered that Dead Warrant issue" [17] "Ordered [October 1761] Pardon to be made out for Negro Abigail . . for attempting to poyson Mrs. Smith,"

Re Negro Tony, 32 Md. Arch. 17, October 1761. "Conviction of Negro Tony . . Slave . . for feloniously breaking and entering the Store House . . and stealing . . Ordered Dead Warrant"

Re Negro Ben, 32 Md. Arch. 18, December 1761. "Read the Conviction of Negro Ben Slave of Elizabeth Oldham . . for . . Burglary . . in breaking open the Store House . . and stealing therefrom one stock, and Stock-Buckle, . . Object of Mercy; Ordered that a Pardon be made out"

Re Negro James, 32 Md. Arch. 36, April 1762. "sentence of Death against Negro James the Slave of Thomas Howell . . for Felony, and

also Read the Petition of . . Howell on behalf of the said Negro James whereby It appears by a Recommendation of the . . Justices that the said Negro James is an Object of His Excellency's Mercy. . . Pardon . . Ordered" "Sentence of Death against Negro Coffee the Slave . . for murder Ordered Death Warrant"

Re Negro Jonathan, 32 Md. Arch. 41, August 1762. "Sentence of Death against Negro Jonathan Slave . . for a Felony Ordered Reprieve for a Month . . and the Clerk is directed to write to the Sheriff to set him at Liberty and acquaint him that unless he behaves well he will be called to his former Sentence."

Re Negro Abraham, 32 Md. Arch. 47, December 1762. "Sentence of Death upon Negro Abraham Slave . . for Felony in attempting to burn the Kitchen . . Ordered Pardon issue . . Sentence of Death upon Negro George Slave . . for feloniously breaking and entering the Storehouse . . and stealing . . Sentence of Death upon Negro Stephen the Slave . . for feloniously breaking and entering the Dwelling House . . and Stealing therefrom four Gallons of Brandy . . Sentence of Death upon Negro Coffee the Slave . . for breaking and entering the Meathouse . . and Stealing therefrom twenty five pounds of Bacon. Ordered Reprieve for the said Negro Coffee"

Re Negro Adam, 32 Md. Arch. 55, March 1763. "Sentence of Death upon Negro Adam Slave of Captain Robert Chesley upon two Indictments One for advising and Consulting to Murder his Master . . the Other for advising consulting and attempting to burn his Storehouse Ordered Dead Warrant"

Re Negro Charles, 32 Md. Arch. 62, July 1763. "the Justices . . had passed sentence of Death upon Negro Charles Slave of One Margaret Brown . . for a Felony, . . a Letter from the Justices recommending him . . for Mercy, Ordered pardon issue"

Re Negro Hannah, 32 Md. Arch. 90, December 1763. "Conviction of Negro Hannah Slave . . for feloniously breaking open the House . . and stealing . . Report of the Justices . . that this was the first Crime she has ever Committed, worth notice, was very sorry for her Offence, and Promises if she can be pardoned she will be truly honest and faithful for the future, . . and is a very young wench, . . recommend her to your Excellency's Mercy. Ordered Pardon issue"

Re Negro Toe, 32 Md. Arch. 91, April 1764. "Conviction of three Negroes . . *Vizt.* Toe, Sambo, and Betty for attempting to poison Mr. Smith and his wife . . Ordered to be Returned to the Clerk to procure a Report from the Justices of their Behaviour." Two days later "The Report of the Justices . . being laid before this Board whereby it appears that the said Negroes were condemned upon the Evidence of several others, And likewise an Answer of . . one of the Justices . . to a Letter sent him by the Governor's Order desiring him to enquire of the Owners . . if they will chuse to export them out of this Province . . [92] say they are desirous the afsd. Negroes may be executed agreeable to their Sentence Ordered Dead Warrant"

Re Negro Toby, 32 Md. Arch. 91, April 1764. "Conviction of Negro Toby Slave . . for the Murder of Ely Lynthicumb and that the Negro was a Boy of nine years Old and . . an Object of Mercy. Ordered Pardon issue" "Sentence of Death upon Negro Jacob the Slave . . for feloniously breaking and entring the Store House . . and Stealing . . Ordered Dead Warrant"

Re Negro Ned, 32 Md. Arch. 96, July 1764. "Conviction of Negro Ned Slave of The Reverend John Urquahrt [*sic*] . . Sentence of Death . . for a . . Burglary . . in breaking and entering the House of the said John Urquahrt and Stealing therefrom a considerable Sum of Money, . . that the said Negro Ned was by the advice and Pursuasion of some white Persons prevailed on to commit the said Fact and [the Justices] therefore recommend the said Slave as a proper object of his Excellency's Mercy." "Ordered Dead Warrant for the Execution" of "Negro Stephen Slave" convicted of breaking and entering the house of his master and stealing two barrels of gunpowder; and also one for the execution of "Negro Davy Slave," convicted of murder.

Re Negro Jack, 32 Md. Arch. 101, December 1764. "Conviction of Negro Jack Slave of Jno. Selby . . Sentence of Death . . for Poisoning Negro Clair Slave of Thomas Holliday and likewise the Petitions of John Selby Master of the said Negro Jack. Ordered Reprieve issue . . on Condition of his not continuing in Prince Georges County for the space of five days from the date"

Re Ireland, 32 Md. Arch. 106, August 1765. "His Excellency having Read the Letters and Depositions relating to Capt. John Ireland's Shooting of Negro Frank Slave of Charles Carroll Esqr. was pleased to Order a *Nolle Prosequi* and Pardon"

Re Negro Charles, 32 Md. Arch. 107, September 1765. Sentence of death had been passed on Negroes Charles and James, slaves, "for feloniously breaking open the Meat House . . and Stealing . . a large Quantity of Bacon . . [108] Ordered that Pardons issue . . recommending . . to bind the said Negroes to their Good Behaviour it appearing from their Conviction that they are Persons of ill Fame."

Soaper v. Negro Tom, 1 Har. and McH. 227, October 1765. An appeal of murder. "Negro Tom, late of Frederick County, labourer, formerly the slave of John Gantt, of Prince George's County, gentleman, but now the slave of Samuel Swearingen, of Frederick County, inn-holder, was attached by his body to answer unto Sarah Soaper, widow, who was the wife of Thomas Soaper, of the death of the aforesaid Thomas Soaper, formerly her husband, whereof she appeals him, the said Negro Tom; and John Cooke and Joseph Sim, of Prince George's County, are pledges of prosecuting." Negro Tom was found guilty by a jury and sentenced to be hanged. [229] "In case the public should pay for the said Negro Tom, the Court value him at 53 *l.* 6 *s.* 8 *d.* Maryland currency."

Re Negro Cesar, 32 Md. Arch. 144, December 1765. "Conviction of Negro Cesar, Slave . . Sentence of Death . . for setting fire to the Barn . . [145] Ordered Dead Warrant"

Re Negro Beck, 32 Md. Arch. 125, March 1766. "Conviction of Negro Beck . . Sentence of Death . . for setting fire to and burning the Tobacco House and Tobacco . . belonging to . . Joseph Smith [her master] . . [126] The Consideration of this Matter is postponed until some further Information can be had of her Character." May 1766, letter from Charles Grahame, Esq.: [141] "her youth, and Confession of the Fact appearing to be the only Circumstances in her favour. . . the negro drew some Cyder out of a Cask . . and left it runing, . . her Mistress threatened to tell her Master and have her whipped, The Wench . . applied several times to her Mistress begging forgiveness . . and praying she would conceal it . . but she refused. . . the Negro went into the Kitchen took a live Coal from the fire, carried it between two Chips to The Tobacco House, . . and the Wind . . blew up the Coal . . the Tobacco together with the House, the Dwelling House and some other Out-houses were entirely consumed. . . Mrs. Smith came to my House and begged I would apply . . for his Excellency's Pardon for the Wench, telling me if the Negro is Executed she can never forgive herself for obstinately Persisting in her Threats of having her punished . . that she has heretofore behaved herself as well as negroes in Common do, Mr. Smith too is willing that His Excellency shew her Mercy. . . I must not Omitt to mention that there have been two other Tobacco Houses full of Tobacco burnt in this County this Winter. One of them . . there is great Reason to Suspect was set on fire by her Negro Man Jack now in Prince George's County Goal, he lately escaped out of the Prison of this County to which he had been committed for a Theft,"

At the next meeting of the council, [144] "Ordered . . that Dead Warrant issue for the Execution of Negro Beck,"

Re Negro Jack, 32 Md. Arch. 126, March 1766. "Conviction of Negroes Jack and Sue Condemned for the Murder of . . Garner . . [127] Ordered that Pardon issue for Negro Sue" as the evidence against her "was too Vague and uncertain to Convict her" At the next meeting of the council [130] "Ordered Dead Warrant issue for the Execution of Negro Jack Slave"

Re Negro Robin, 32 Md. Arch. 130, April 1766. Recommendation of the Justices: "Negro Robin the Slave . . stands Convicted for the Aiding . . a certain Negro David in the Murder of . . Selby, . . it appeared in Evidence . . that he was only present but disavowed the Act, and endeavoured to Stop the other Negro from entering the House before he Shot the Gun, yet the Jury found him Guilty, . . recommend him to your Mercy." A pardon was issued.

Re Negro Jack, 32 Md. Arch. 157, August 1766. Letter of Jack's master: "a Man Slave named Jack Now under Sentence of Death . . for making use of a false Key, and thereby Stealing Goods from my Store to the value of £2 . 10 . 0 Current Money, he was Convicted on his own Confession of the Act to me . . and is the first Crime he has been guilty of" [158] "Ordered that a Pardon issue"

Re Negro Jonathan, 32 Md. Arch. 158, August 1766. Negro Jonathan and negro George had been convicted of robbing houses. Further information was sought. The justices replied: [163] "we sincerely wish it was in Our Power to say any thing in favour of these unhappy People, they have broke Goal" "Ordered that Death Warrants issue"

Rench v. Hile, 4 Har. and McH. 495, October 1766. "Action on the case for a deceit in the sale of a negro woman, slave, warranting her to be sound."

Re Negro Nero, 32 Md. Arch. 178, December 1766. "Sentence of Death . . passed upon Nero . . for Burglary . . Negro David was Indicted . . for attempting to Poison and Murder his Master, and found Guilty upon the clearest Evidence *Vizt.* his Confession . . and the Testimony of a female Slave who was Privy to his preparing a Dose Composed of Ground Puppies and other Ingredients which he supposed Poisonous with intent to give it to his Master." [179] "Ordered . . that Death Warrants issue"

Re Negro Toby, 32 Md. Arch. 188, April 1767. "Conviction of Negro Toby[1] . . for a certain Burglary . . Conviction of Negro Glasgow . . for attempting to Poison a certain Negro Man . . Order that Death Warrants issue"

Re Negro George, 32 Md. Arch. 197, April 1767. Negro George was found guilty of breaking open a meat house and stealing bacon therefrom. "The Negro by his Master's Account is valuable and it Seems has Supported a Tolerable good Character till this matter happened" The master applied for a pardon, and the owner of the meat house writes: [198] "If your Excellency is inclinable to extend your Mercy unto the poor wretch I humbly submit" "Ordered . . that Pardon issue"

Re Thompson, 32 Md. Arch. 200, June 1767. Thompson was "Condemned . . for the Murder of . . Aires and Negro Scipio . . Death Warrant . . issued"

Opinion of Daniel Dulany, 1 Har. and McH. 559, December 1767. "A, mulatto slave, born of a negro slave B. after having arrived at the state of manhood, obtained his freedom, and thereafter purchased certain lands in fee-simple, of which he died seised, intestate and without issue. C. another mulatto slave, the eldest brother of the aforesaid A. afterwards obtained his freedom. C. is also dead, leaving several children, begotten on a woman slave, whose freedom he purchased. Some of these children were born whilst the woman was a slave, and some after she became free; but the father obtained the freedom of the children born in slavery. It is not stated whether the father and mother of A. and C. were joined together before the birth of A. and C. according to the formal celebration of the marriage rites, and though it has been represented that A. and C. were mulattoes, it is not stated whether their parents were both negroes or not. . . [563] I adopt the rule of the civil law . . that slaves are incapable of marriage, . . slaves are bound by our criminal laws generally,

[1] Toby received a reprieve but was later ordered executed. *Ibid.* 200.

yet we do not consider them as the objects of such laws as relate to the commerce between the sexes. A slave has never maintained an action against the violator of his bed. A slave is not admonished for incontinence, or punished for fornication or adultery; never prosecuted for bigamy or petty treason, for killing a husband being a slave, . . In consequence of my opinion, that slaves are incapable of civil marriage, I consider A. and C. in the light of bastards, and therefore conclude that the lands of A. are escheatable: . . A. and C. had no civil capacities to take by purchase, or to take or transmit by descent, whilst in their original state of slavery. Their capacity sprung from the manumission: it cannot be pretended that the manumission could have a retrospect to their births;"

Re Negro Lem, 32 Md. Arch. 246, August 1768. Petition for the pardon of "Negro Lad Lem . . under Sentence of Death for a Burglary . . being not quite eighteen years of Age." His master "would be a great sufferer at this Time, if his Negro must suffer Death." [247] "Order that a Pardon should issue" Death warrants issued for the execution of negro Daniel, convicted of burglary, and of negro Sam.

Re Negro Scipio, 32 Md. Arch. 268. March 1769. "Negro Scipio . . Condemned . . for breaking open and Robbing the Meat House" [272] "Pardon was issued"

Re Negro Ben, 32 Md. Arch. 270, April 1769. "Sentence of Death . . passed upon Negro Ben . . for assaulting with Intent to Ravish . . As the Evidence . . [271] had such uncertainty in it, that it was neither clear the said Ben was the Felon, (the attempt having been made in the Night and in an House without Light, where Objects could not well be discovered,) nor (if he was the Person) that his Intention was to Ravish" the justices recommend him for pardon. Pardon issued. Pardon issued also for negroes George and Sam, "Condemned . . for breaking open and Robbing the Meat House"

Proprietary v. Lee, 32 Md. Arch. 342, June 1769. Lee, sheriff, was fined "the Sum of Forty Pounds Current Money" "for a Breach of the Peace on the Body of William Wright ['a Languishing Prisoner'] by causing Negro Roger Slave ['belonging to the Family'] to tye up and Whip the said Wright" Lee [340] "threatned me that he would have me in Irons and sent a Negro and took Measure of my Wrists"

Re Negro David, 32 Md. Arch. 306, July 1769. "Negro David . . Condemned . . for having Committed a Rape . . Ordered . . that a Death Warrant issue"

Re Mulatto Jack, 32 Md. Arch. 312, August 1769. "Conviction . . for a Burglary, and . . for a Rape," [313] "Ordered . . that a Death Warrant issue"

Re Negro Pompey, 32 Md. Arch. 313, September 1769. "Negro Pompey . . Condemned . . for having attempted to Poison . . Ordered . . that a Death Warrant Issue"

Re Negro George, 32 Md. Arch. 331, November 1769. "Condemned . . for breaking into the House . . and Stealing" The justices wrote

that he had been " found Guilty of Burglary at two different Times and Sentence of Death has been passed. . . The Evidence against him on his Tryal was clear and full and coroborated by his own Confession." [332] " Ordered that a Pardon issue "

Somerville v. Johnson, 1 Har. and McH. 348, February 1770. Will of William Deacon: " reserving to Mrs. Mary Johnson, during her natural life, . . the use of four negroes, . . Ben, Priscilla, Jem, and Ignatius; after her death the Said negroes . . to be my said nephew's, and to his heirs for ever." After Deacon's death, " the said negro wench Priscilla . . had two children called Rachel and Catharine."

Held: the life tenant, Mary Johnson, has absolute property in the issue proceeding, or that have proceeded or shall proceed from the negro woman called Priscilla."

Re Negro Tom, 32 Md. Arch. 333, February 1770. A death warrant issued for the execution of negro Tom " Condemned . . for the Murder of Negro Job." The next day a reprieve was petitioned for, by sixteen petitioners including the owner of Tom, [334] " forasmuch as . . Negro Tom . . was much Intoxicated with Liquor and that the aforesaid Act was done immediately after the said Tom's being thrown into a Bunch of Briers by the Slain in the Heat of Passion," " Ordered . . that a Reprieve issue during Pleasure." Three days later, eighty-three other petitioners " humbly hope that your Excellency will not extend your Clemency to said Negro Tom as it is Notorious his Character has always been that of a Villain of the blackest dye." " the Granting a Pardon to said Negro will have a bad Tendency and Endanger in future the Lives and Properties of the said Inhabitants." " Ordered . . that a Death Warrant Issue "

Re Negro Abraham, 32 Md. Arch. 368, June 1770. Negro Abraham had been convicted " of having broke open the House " of E. S. and stealing; and " of having attempted to Ravish " E. B. The latter petitioned in his behalf for a pardon " upon his Master's Transporting him out of the Province," as he was [369] " Convicted upon . . a Confession extorted from him upon a Whipping inflicted on him by his said Master as I could not Swear to the Identity . . and as I am not willing said Negro should be Executed " E. S. and Abraham's master also petitioned for his pardon, which issued [370] " Conditioned that he shall leave the Province within ten days . . and never return again,"

Re Negro Jack Wood, 32 Md. Arch. 370, July 1770. "Negroes Jack Wood, Davy and Jack Crane, Condemned . . for having Murdered . . Ellson " [371] " Order a Death Warrant to issue for the Execution of Negro Jack Wood . . pursuant to his Sentence . . and also . . for . . Negroes Davy and Jack Crain . . pursuant to the Sentence passed on them except that part thereof which directs their Right Hands to be Cut off," [377] " Ordered . . that a Pardon issue for Negro James "

Re Negro Jacob, 32 Md. Arch. 377, August 1770. Pardons issued for negroes Jacob and Nacey, " and also . . for Negro David on Condition of

his leaving the Province within Ten Days . . and never to return again," and for Negro Dick, " Condemned . . for feloniously Breaking and Entering the Meat House . . and Stealing . . Bacon."

William and Mary Butler v. Boarman, 1 Har. and McH. 371, September 1770. " The petitioners [1] claimed their freedom as being descended from a free white woman, named Eleanor, Commonly called Irish Nell, who had been brought into Maryland, by Lord Baltimore, as a domestic servant," when [376] " in 1681 he returned to this Province, . . In 1681 she married " a negro slave. The act of 1663 (1664), then in force, " for deterring such free-born women from such shameful matches," provided " that whatsoever free-born woman shall intermarry with any slave . . shall serve the master of such slave, during the life of her husband; and that all the issue of such free-born women, so married, shall be slaves as their fathers were." [2] " the repealing law [3] was passed in the month of August, immediately after the marriage, and his Lordship interested himself in procuring the repeal with a view to this particular case. The act of 1663 [1664] was repealed also, to prevent persons from purchasing white women and marrying them to their slaves for the purpose of making slaves of them." The children of Irish Nell were born after the repealing act. Counsel for the defendant argued: " There is no circumstance appearing, to shew that the Legislature meant to discriminate or distinguish between the issue born before the act and those born after." The Provincial Court adjudged that the petitioners were free, but the Court of Appeals in 1771 reversed the judgment.

Johnson v. Howard, 1 Har. and McH. 281, May 1771. [283] " during the time that he [Howard] so possessed the land, in the month of February, 1748, Thomas Johnson's negroes cut logs on Howard's Range."

Toogood v. Scott, 2 Har. and McH. 26, May 1783. Eleanor Toogood " claimed her freedom by reason of her being a descendant from a free white woman." Her great-grandmother " was a white woman, who served her time in Saint Mary's County, who had " a daughter, Mary Fisher, " by an East-India Indian, who became a free mulatto after serving some time to Major Beale " [4] Mary " was lawfully married [5] by a priest of the Romish Church . . to a negro man named Dick, a slave " [38] " Mary Fisher was free during the life of Dick." Their child, Ann Fisher, petitioned for freedom in 1734 (when she was about twenty-two

[1] They were first cousins and the parents of Mary Butler. Butler *v.* Craig, p. 50, *infra*.

[2] This is the common law doctrine, *partus sequitur patrem*. The act of 1715 " restored the maxim of the civil law, *partus sequitur ventrem*," which prevailed in all the other slaveholding states and in the West Indies. Wheeler, *Law of Slavery*, p. 3n.

[3] Act of 1681, ch. 4.

[4] Act of 1664.

[5] Evidently before the act of 1681; otherwise the act of 1664 could not have been invoked against her daughter Ann. Furthermore, the act of 1681 provides that " any priest, . . that shall, from and after the publication hereof, join in marriage any negro . . slave, to any . . white woman servant, free-born as aforesaid, shall forfeit and pay the sum of ten thousand pounds of tobacco," and although Mary Fisher [38] " appeared, by the proof, to have been a free mulatto woman," a priest might have been reluctant to marry her to a slave after the passage of that act.

years old), but was adjudged a slave during life, by virtue of the act of 1664. In the case of Ann's daughter Eleanor [27] "the Court (Hanson, J.) was of opinion, and so determined, that the said judgment was only conclusive against the said Ann Fisher, and was not conclusive evidence against the said Eleanor Toogood:" and "gave judgment for the petitioner for freedom;" [37] "1783, the Court of Appeals affirmed the judgment of the General Court. . . [38] The Court were also unanimously of opinion, that the act of 1664 does not extend to Mary Fisher, who appeared, by the proof, to have been a free mulatto woman."

Negro Jack v. Hopewell, 6 Har. and John. 20 n., May 1784. Will of William Cole, dated 1732: "I . . bequeath unto my dear beloved wife, Elizabeth Cole, all my negroes, *viz.* Sam, Moll, Tom, Sarah, Job, and their increase, during her natural life; . . and after her decease, I leave all my above negroes free and for themselves; and also my lands, after her death, I leave to be equally divided amongst them." "negroes Nan and Frank or Frances, petitioners for freedom in another case, were the children of negro Moll, . . and that they were born in the life-time of Elizabeth Cole, . . and after the death of the testator, . . and that negro Jack, the petitioner in this case, was the descendant of said negro Nan or Frank, and had been held in slavery from the time of his birth." On November 2, 1732, Cole executed an instrument in writing whereby he gave his wife the "negroes, *viz.* Sam, Moll, Tom and Sarah, . . to have to the said Elizabeth, her heirs and assigns forever, and . . did deliver the negro woman, named Moll, in the name of the whole. . . It was recorded . . The county court gave judgment against the petitioner." [21 n.] "The General Court reversed the judgment of the County Court. . . 1784, the judgment of reversal was affirmed in the Court of Appeals."

Pue v. Dorsey, 1 Bland 139 n., June 1784. Will, dated 1772: "I give to my two sons . . and their heirs forever . . all . . negroes, white servants, horses, cattle, . . and all . . negroes, white servants, horses, cattle, . . which I have lately purchased"

Butler v. Craig, 2 Har. and McH. 214, June 1791. "Petition for freedom by Mary Butler, claiming her freedom as a descendant from a free white woman," Irish Nell, her great-grandmother.[1]

Held: I. "That without a conviction in a Court of Record of Irish Nell's having intermarried with a slave, she could not become a slave, nor could her issue become slaves by virtue of such intermarriage. That no presumption of such conviction arises from the petitioner and her ancestors having been always held in slavery." II. "that the . . record, proceedings and judgment [in Butler *v.* Boarman], were no bar to prevent the petitioner from claiming and having her freedom."

Negro Adam v. Leverton, 2 Har. and McH. 382, June 1792. The widow and executrix of the slave's master, who had bequeathed to her and to two of his daughters the whole of his personal estate, after the

[1] Butler *v.* Boarman, p. 49, *supra.* Mary Butler was the daughter of the petitioners in that case.

payment of his just debts, etc., removed to Delaware in 1785, taking the slave with her and keeping him there for one year and nine months. She then brought him back to Maryland to reside. The estate of her husband was not yet settled and his personal property was not sufficient to pay his debts. "The General Court dismissed the petition [of negro Adam for freedom] and ordered the said negro Adam to service," Affirmed.

Rawlings v. Boston, 3 Har. and McH. 139, May 1793. "The petitioner claimed his freedom as being a descendant from a yellow woman, being a Portuguese, named Catharine Boston."

Held: "It being admitted that the said Anthony Boston is a descendant of Violet, the daughter of Linah, the daughter of Maria, or Marea, and it appearing to the court . . that Maria, or Marea, was a Spanish woman, and that her daughter Linah was born before she came into Maryland, and was of yellow colour or complexion, with long black hair, the court are of opinion that the said Maria, or Marea, was not a slave, but free; therefore, it is considered by the court, that the said Anthony Boston be free and discharged from all further servitude,"

Mulatto Joan v. Shield, 3 Har. and McH. 7, June 1793. "Ejectment for a tract of land . . 1786, a verdict was found for the plaintiff, and judgment for possession. . . a writ of inquiry of damages was ordered, which was . . returned March, 1787, awarding damages to the plaintiff 125 *l.* current money." [8] "the jury . . were so well satisfied that the entry and ouster was so violent as to deserve exemplary damages, that they gave such as should deter others from such proceedings;"

Negroes Peter and others v. Elliott, 2 Har. and McH. 199, November 1793. "a petition for freedom, founded on a deed of manumission . . bearing date on the 23d of October, 1784, . . the several negro-slaves . . were to have their liberty, freedom and manumission on the ensuing 25th of December." Their master executed "the said deed of manumission . . in his last sickness of which he died, on the 8th November, 1784." It was his "opinion for the last five years of his life, that his negroes ought to be set free, but he declined doing it because it was against the interest of the public. . . That a fortnight before he executed the deed, he said if all the negroes could be sent away he would very cheerfully set his own free, but thought it could not be done without prejudicing the public. When he sent for the magistrate, he informed him he wanted to manumit his slaves, and had sent for him to have it done. The magistrate observed to him, that it was a matter of consequence and deserved consideration, and asked the testator if he had considered it well. He informed the magistrate he had, gave him a list of the negroes, and the deed was drawn and approved of by the testator. That upon application being made to Mr. Erickson, to witness the deed, he at first refused, saying that he could not think Mr. Elliott to be in his senses, as he had expressed great abhorrence to the measure a few days before, and conceived it to be highly injurious to the country. Upon this being communicated to Elliott, he in a fretful manner answered, that such changes could be done in an instant, signifying, that it was an act of divine providence. That his

conscience was extremely uneasy, and that he could not rest until he had set his negroes free. That in the opinion of the magistrate Mr. Elliott, from his conduct and conversation, appeared to be perfectly in his senses at the time of the execution of the deed, and did not discover any symptoms of a speedy death. . . The deed of manumission was objected to, as being contrary to the act of assembly of June 1752, c. 1. s. 3.[1] . . The Court dismissed the petition," Judgment affirmed by the Court of Appeals.

Shorter v. Rozier, 3 Har. and McH. 238, October 1794. " the petitioner claimed his freedom as being lineally descended in the female line from Elizabeth Shorter, a free white woman." He offered in evidence the following papers, dated June 15, 1702: " These are to certify, that in the year 1681, or near about that time, I Nicholas Geulick, priest, . . did join together in the holy estate of matrimony, according to the then law, a negro man named . . Little Robin, to a white woman, whose name was Elizabeth Shorter, which couple all that time were both servants unto Mr. William Roswell, deceased," " Emma Roswell . . declareth upon her oath, that she . . was present at the marriage of the above said couple, . . and that after the marriage of the said negro man and white woman, the said white woman had three mulatto girl children, named Mary, Jane and Martha," [2] The petitioner " was the son of a mulatto woman named Linda," who was the daughter of Mary. " Verdict for the petitioner, and judgment for freedom."

Robert Thomas v. the Reverend Henry Pile, 3 Har. and McH. 241, October 1794. " the petitioner claimed his freedom as being descended in the female line, from a free white woman, whose name was Elizabeth Thomas." He " offered in evidence the declarations of a certain Mrs. Smith, to prove the petitioner was descended from a free white woman; and the defendant . . offered to impeach the credit of the said Mrs. Smith, by proving to the jury that the said Mrs. Smith . . associated and kept company with negroes. To which evidence the petitioner, by his counsel, objected; and the court . . refused to allow the same to be offered to the jury. . . Verdict for the petitioner, and judgment for freedom."

Porter v. Butler, 3 Har. and McH. 168, November 1795. " James Brook[s], of Frederick county, in June 1781, (being then under age,) hired Butler, the petitioner, for one year, to one Patrick Rogers, who then resided in the state of Pennsylvania; that the petitioner continued with the said Rogers, in Pennsylvania, until August, 1781; that Rogers paid Brooks for the hire of the petitioner, and that Brooks, at the time of hiring the petitioner, knew that Rogers resided in Pennsylvania."

Held: the petitioner is not free because his master, being an infant at the time of hiring, " can do no act to his prejudice, during his minority."

De Kerlegand v. Negro Hector, 3 Har. and McH. 185, June 1796. Hector, on his petition to the county court, " obtained judgment of freedom, in November, 1793." He " was a slave to the appellant in the island

[1] This act, which made void a manumission executed by a person during his last sickness, was later repealed.

[2] See Shorter *v.* Boswell, p. 61, *infra.*

of Saint Domingo, and as such was brought into the United States, by the appellant, after the disturbances in France and the islands, *viz.* in or about the year 1791. That the appellant came to Frederick Town, in this state, to reside, in . . 1791, . . and has always since resided there with the petitioner in his service. . . That the appellant was duly naturalized . . September, 1792.[1] The general court reversed the judgment of the county court," In 1796, " the court of appeals affirmed the judgment of the general court."

Negro Mary v. Vestry of William and Mary's Parish, 3 Har. and McH. 501, October 1796. Petitioner for freedom " was descended from Negro Mary, imported many years ago into this country from Madagascar."

Petition dismissed: " Madagascar being a country where the slave trade is practised, and this being a country where slavery is tolerated, it is incumbent on the petitioner to show her ancestor was free in her own country to entitle her to freedom."

Negro Peter v. State, 4 Har. and McH. 3, May 1797. The indictment charged, " that negro Peter . . labourer, the slave of Lucy James, . . one game cock of the value of fifty pounds of tobacco, of the goods and chattels of a certain Daniel Burkhart, . . feloniously did steal." The judgment of the County Court was: " that negro Peter be whipped on his bare back with ten stripes, and stand in the pillory five minutes; and also ' that Lucy James, to whom negro Peter is a slave, pay unto Daniel Burkhart . . the quantity of forty-eight pounds of tobacco, and the costs.' " The General Court reversed the judgment of the County Court.

Mahoney v. Ashton, 4 Har. and McH. 63, October 1797; *ibid.* 295, June 1802. Petitioner claimed " to be descended from a free woman named Ann Joice. . . [64] It was admitted at the trial by the parties, . . that William Digges's Sue, a mulatto woman, David, a carpenter, Frank Herbert, Jack Wood, and Tom Crane, all four mulatto men, were the children of Joice, who died at the Wood Yard, and who, together with her children above named, were in the possession of Henry Darnall, of Anne-Arundel county. That the above named Sue was the mother of Warren's Polly, Hill's Nelly and Carroll's Sue. That Carroll's Sue was the mother of Nelly, who was the mother of Charles and Patrick Mahoney." [305] " Joice, the ancestor of the petitioner, was a negro woman carried with her owner, claiming her as a slave, from the island of Barbadoes to England, and afterwards brought into this country by Lord Baltimore, claiming her as a slave, between the years 1678 and 1681, and that she during her life was held, used and treated, as a slave, and that her issue have been held as slaves ever since," Henry Davis deposed: [64] " he has heard his uncle David Davis (who is deceased) say, that it was the report of the neighbourhood that if she (meaning Joice) had justice done her, she ought to have been free;" The defendant objected to the reading of the deposition, but the court overruled the objection. The defendant objected to the following part of Ann Hurdle's deposition: that her mother-in-law [295] " said just so they served Ann Joice's

[1] Acts of 1783, ch. 23, and 1792, ch. 56.

family; that by all accounts they are in confinement now, and they ought to have been free long ago;" as "containing the declaration of opinions as to a right, and not a declaration as to any fact; and therefore improper . . to go to the jury." [296] "The Court are of opinion that the part . . is admissible to be read in evidence to the jury, the same being general reputation of the fact that Ann Joice's family were free." [306] "The verdict and judgment being for the petitioner, the defendant appealed to the court of appeals. The case was argued in that court . . 1802."

Counsel for the petitioner: [309] "Whether or not the petitioner is entitled to his freedom, is a fact; and in all cases of petitions for freedom hearsay evidence has been admitted in evidence to prove the petitioner entitled to freedom; for instance, in the cases of the Savoys, the Shorters, the Thomas's, the Queens, the Bostons, and the Toogoods, (all tried and determined in the general court, and most of them decided on in this court;) the reputation of the neighbourhood, as to the fact of freedom, was admitted in evidence." Attorney General Martin replied: [312] "Our courts have determined that general reputation, that such persons are descended from white women, or that they have exercised the right of freedom, is evidence to the jury. It is giving the power to ignorant persons to judge of rights. In the case of the Butler's, reputation was given in evidence that they were descended from a white woman; so also in the case of the Toogood's. In the case of the Queen's, that they were descended from a native Indian of South America. In all these, and in many other similar cases, hundreds of negroes have been let loose upon community by the hearsay testimony of an obscure illiterate individual." He reviews the English statutes and cases concerning slaves. [320] "The common law, at the time Joice was in England, was that trover would lie for a negro slave; and the case of Somerset [1] was afterwards, and therefore is not applicable. Lord Mansfield may be charged with bending to the policy of the times—Wilks and Liberty; of which the young heated brain of Hargraves, who argued the case, was full; . . [321] The British air is supposed to electrify the flesh—putting a foot on the island, the nature is instantly changed, and if a slave before, becomes thereby free."

The Court of Appeals concurred [2] with the General Court in admitting the hearsay evidence that Ann Joice's family was free; but disagreed with the General Court [3] on its refusal [4] to direct the jury to find a verdict for the defendant, because Joice had been in England: [323] "It is not stated that her case was ever before a British or any other tribunal, or had received a judicial decision. . . [324] Lord Mansfield, in Somerset's case, says, that the state of slavery is so odious that nothing can be suffered to support it but positive law. . . [325] By a positive law of this state in 1715,[5] then the province of Maryland, the relation of master and slave is recognized as then existing, and all negro and other slaves, . . imported . . and all children . . of such negroes or slaves, are declared to be slaves

[1] Somerset *v.* Stewart, vol. I., p. 14, of this series.
[2] P. 325.
[3] P. 323.
[4] P. 306.
[5] Also in 1664 and in 1681.

during their natural lives. This case, being brought before the court by original proceeding, we are of opinion that it must be governed by the law of this state; and that in this case, however the laws of Great Britain in such instances operating upon such persons there, might interpose so as to prevent the exercise of certain acts by the master, not permitted, as in the case of Somerset; yet upon the bringing Ann Joice into this state, then the Province of Maryland, the relation of master and slave continued in its extent as authorized by the laws of this state; . . Judgment [in favor of the petitioner for freedom] reversed, and *procedendo* awarded."

Higgins v. Allen, 3 Har. and McH. 504, June 1798. In January 1794 Allen, then about twenty-two years old, filed a petition for freedom in the county court, on the ground that he was descended from a free white woman. His great-grandmother was Hannah Allen, "a white Scotch woman, . . and she had, by a negro, a daughter named Hannah Allen, . . The last-mentioned Hannah had, by a negro, a daughter named Jane Allen, . . Jane had the petitioner by a negro, and she was adjudged . . 1772, to serve seven years for having the petitioner,[1] and the petitioner, being then five months old, was sold till he arrive to the age of thirty-one years, unto Richard Higgins. The record of conviction for having a mulatto bastard is stated in the record,"

A judgment was "rendered for freedom, at September term, 1794." [510] "The general court reversed the judgment of the county court, and remanded the petitioner to servitude," Affirmed in 1798.

Lowe v. Boteler, 4 Har. and McH. 346, May 1799. "at the time the bill was executed, the plaintiff . . agreed, that if the negro man, who was then runaway, should not be taken by the said Boteler, that the bill aforesaid should be void."

Whetcroft v. Christie, 4 Har. and McH. 385, June 1799. [387] "On the 5th of May 1775, [defendant] sold 31 servants to the complainant . . at 9 *l.* 10 *s.* 0 *d.* sterling Each. . . That one of the servants, a doctor, was not delivered, for which he abated fourteen guineas."

Davidge v. Chaney, 4 Har. and McH. 393, September 1799. Will, 1769: "I give . . unto Joshua Yates, . . during his natural life, one negro woman named Moll, and her daughter Fanny; but in case the said Joshua Yates should die without lawful issue, my will is that the said two negroes with all their issue, shall be the property of my son, John Davidge, and his heirs."

Held: the bequest over to John Davidge is void, as there are no restrictive [398] "expressions . . in the will indicative of an intention that the first estate should cease on the first taker's dying without leaving issue at the time of his death."

Boisneuf v. Lewis, 4 Har. and McH. 414, October 1799. Boisneuf, who [415] "was [in 1789] a deputy from the province of Touraine to the . . constituent assembly," left France in 1793 to go to Saint Domingo

[1] Act of 1715, ch. 44, sects. 26, 27; act of 1728, ch. 4.

by way of America. On landing in America he heard of the disturbances in the island, and decided to take up his residence in Maryland. He "caused the petitioner [the slave of his deceased brother], to be brought from Saint Domingo to George-Town, . . where he was landed on the 4th of November 1793," Boisneuf delivered to the clerk of the county court "a list of the slaves by him so imported, . . 'I . . an inhabitant of the French part of the island of Saint Domingo, at this time a resident of Frederick-Town in Maryland, and in conformity to the law of this state of the 23d of December 1792,[1] declare, that three negro slaves, sent from Saint Domingo, arrived the 4th of November last . . to wit: Pierre Lewis, aged about thirty-five; Lambert, aged about five years; and the negro girl Fillette, aged about eight years; which domestics I keep in my service, conformable to the authorization granted me by the aforesaid law. Done at Frederick-Town, . . 24th of December, 1793.' . . Pierre Lewis never was used as a domestic or house slave by the defendant, before he was brought to America. . . [416] The County Court [Potts, C. J.] . . directed the jury, that if they believed the evidence . . the petitioner was entitled to his freedom." Affirmed by the General Court.

Negro Plato v. Bainbridge, 4 Har. and McH. 416, October 1799. "Peter Bainbridge, . . a resident of . . South Carolina, long before, and until . . April 1791, . . removed . . into this state, with a *bona fide* intention of settling here; and . . brought with him" "his own proper slave, negro Plato, the petitioner, now of the age of sixteen years," In November 1791 Bainbridge sold Plato to the defendant. In 1795 he [417] "did by his own oath, fully prove to the satisfaction of . . collector and naval officer . . the residence of the said negro Plato in some one of the United States for the space of three whole years . . antecedent to his coming into this state."[2] In 1796 Peter Bainbridge proved the same to the tax collector of Frederick County, where he had resided "for two whole years after his . . removal into this state . . The County Court . . gave judgment that the petitioner was not entitled to his freedom," Affirmed by the General Court.

Negro David v. Porter, 4 Har. and McH. 418, October 1799. "the petitioner stated his claim to freedom to arise under the laws of . . Pennsylvania for the abolition of slavery." He had been the property of Coate, a resident of Maryland, who "hired the petitioner to one McLean, who resided in . . Pennsylvania. . . petitioner was seen in the possession of . . McLean, in . . Pennsylvania, in . . 1788. . . The General Court gave judgment that the petitioner is free,"

Confute v. Dale, 1 Har. and John. 4, April 1800. "action of trespass for an assault and battery committed by the defendant on the plaintiff's slave." Held: [5] "without an injury or wrong to the master, no action could be sustained."

Claggett v. Speake, 4 Har. and McH. 162, June 1800. "the plaintiff, with four of his negro slaves, had been at work on a ship in Alexandria.

[1] Ch. 56.
[2] Act of 1783. ch. 23.

of which the defendant was captain; . . the plaintiff was about to quit the ship before she was done, . . the defendant . . requested the plaintiff to suffer his negroes to stay and finish the work; and . . promised . . to carry up the said negroes . . to George-Town, in the ship's yawl, on the Saturday following, and deliver them safe to the plaintiff. . . on the Saturday, the mate . . having asked the captain if they had any thing more to do, and being answered no, discharged the . . negroes [who] . . went off in a pilot boat, which was going . . to George-Town; . . the pilot boat overset in her passage, and the two negro slaves . . were drowned. . . the defendant offered in evidence, that the plaintiff, as he was leaving the ship . . [163] when the defendant was not present, ordered the said negroes, that on Saturday they must leave the said ship, the work done or not, and make the best of their way home, and take care of their tools. . . Verdict and judgment for the plaintiff." Affirmed.

Negro Harry v. Lyles, 4 Har. and McH. 215, June 1800. Petition for freedom. "The petitioner . . in 1790 . . was brought into . . Maryland by the defendant, from . . Virginia. . . the defendant . . hath even since resided in . . Maryland;" Certificate signed at the time of the importation of the petitioner: [216] "This day came William Lyles, before me, Robert Bowie, one of the collectors of the tax for . . Maryland, and made oath upon the Holy Evangely of Almighty God, that he . . is about to remove from . . Virginia, and to become a resident of . . Maryland, for at least one year; and that the said Lyle did not bring . . with him any slave . . other than was conformable to the act of assembly made to prevent the further importation of slaves into this state; and in every respect fully complied with the said act."[1] "petitioner had been an inhabitant . . of Virginia, for . . three whole years next preceding his importation into Maryland . . defendant did not reside in Maryland for one year antecedent to his importing the petitioner . . [217] judgment for the defendant . . affirmed"

State v. Negro Ben, 1 Har. and John. 99, September 1800. Ben was found guilty of murder, and it was "adjudged, that he should labour on the public roads of Baltimore county for the term of fourteen years."

McDonough v. Templeman, 1 Har. and John. 156, October 1801. Contract of hire: "It is agreed this 10th day of January 1797, between Edward Burrows of the city of Washington, in behalf of Maurice James M'Donough of Charles county, of the one part, and John Templeman in behalf of the George Town Bridge Company, of the other part, that the said Edward Burrows doth hire unto the said John Templeman, for the use [157] of the said Bridge Company, seven slaves, . . belonging to the said M'Donough, from the date hereof until the 25th of December next ensuing; and the said John Templeman doth agree to pay for each of the said slaves, from the date hereof until the said 25th of December next ensuing, sixty dollars, together with giving them sufficient board, lodging, clothing, and necessary medicine, and other attendance during sickness. The said John Templeman doth further agree to send off the

[1] Act of 1783, ch. 23.

said slaves at the expiration of the said term, in good clothing, and to allow Bob two and a half days four times in the year, to go to see his wife; the said sum of 420 dollars to be paid by the said John Templeman unto the said Maurice James M'Donough, or his order, on the said 25th of December next, without any deduction for board or other articles, or for lost time, etc."

Jenings v. Higgins, 1 Har. and John. 344, October 1802. Higgins brought an action of *assumpsit* for work performed by his " servant man . . Nathan Allen," who " left his service in December 1794, and went into the service of " Jenings, after a judgment had been rendered in September 1794 by the County Court, " that the said Nathan Allen was entitled to his freedom, and that he be discharged from the service of the said Higgins." [1] Higgins appealed and the judgment was reversed by the General Court, at its October term 1796. In November Higgins's manager [345] " claimed and took possession of the said negro "

Verdict and judgment for the plaintiff in the County Court: [346] " The General Court reversed the judgment . . observing, that: upon the appearance of the master to a petition for freedom by his slave, in order to retain the services of the petitioner, he must enter into a recognizance in the usual form, for suffering the petitioner to prosecute his petition, to use him well, etc., and that if judgment be given for the petitioner, and the master appeals, he must, to retain the service of the petitioner, enter into bond with security, to prosecute the appeal—neither of which in this case was done,"

Berry v. Berry, 1 Har. and John. 417, May 1803. Will of Thomas Berry, dated 1778: [419] " I . . give unto the said Samuel Berry Atchison the following negroes, etc. them and their increase . .; and if he should die without issue, it is my will that my said negroes should be sold at public vendue, and the money or tobacco arising therefrom to be distributed amongst the poor "

United States v. Vickery, 1 Har. and John. 427, May 1803. " Vickery voluntarily served on board a certain schooner belonging to a citizen of the United States, as master, which schooner was employed in transporting nine negro slaves from one foreign place to another," from Nevis to Cumaná in South America. [429] " the jury found a verdict of guilty without retiring. The court were satisfied, from all the circumstances of the case, that the prisoner was ignorant that he was committing a violation of any law, and therefore fined him only ten dollars, and imprisoned him 24 hours. The court were disposed only to have imposed the fine, but upon looking at the law they were of opinion that they were obliged to inflict Cost." [2]

Mason v. Ship Blaireau, 2 Cranch 240, February 1804. Salvage of the ship *Blaireau*. She was " found and boarded by the ship *Firm*, bound on a voyage from Lisbon to Baltimore. . . [242] The persons who went on board the *Blaireau* from the *Firm* were, . . and Negro Tom." [241]

[1] Higgins *v.* Allen, p. 55, *supra*.
[2] Act of Congress, May 10, 1800.

"a slave of the Rev. Mr. Ireland." It appeared to the court [243] "that the apprentices, cook, and negro slave should not be classed with seamen," Decreed [244] "that there be retained a like sum of eleven hundred and thirty-four dollars and fifty-four and three quarter cents in this court, to and for the benefit of such person or persons as may hereafter make title to the same as owner or owners of the said Negro Tom."

On appeal to the circuit court, it was decreed: [247] "That the salvage money adjudged . . to be retained for the owner of Negro Tom, be paid to the Rev. John Ireland, (late of this state, but now of the United Kingdom of Great Britain and Ireland) who appears to this court to be the owner of the said Negro Tom," or to his attorneys in fact "who have expressed in writing to this court, that they, being duly authorized by the said John Ireland, will immediately on the receipt of the said salvage money, manumit the said Negro Tom, according to the law of the state of Maryland, and will pay the said Negro Tom one fifth part of the said salvage money, and have consented that the same may be retained by the clerk of this court for the use of the said Negro Tom."

Standiford v. Amoss, 1 Har. and John. 526, October 1804. Will of William Standiford, dated 1775: "I give . . unto my beloved wife Elizabeth, one negro woman named Rachel, . . during her natural life, and at her decease to be equally divided between her children, and which are now alive." The widow married Amoss, and she is now dead. Held: Rachel's children, "born during the life of the legatee for life, and after her marriage with the defendant," are the property of the defendant.

U. S. v. Schooner Sally, 2 Cranch 406, February 1805. The collector of the port of Nottingham seized the schooner "as forfeited under the act of congress prohibiting the slave trade.[1] In the district court the vessel and cargo were acquitted on the merits," Affirmed: the cause is "of admiralty and maritime jurisdiction."

Scrivener v. Scrivener, 1 Har. and John. 743, June 1805. [744] "the said Francis, taking advantage of his brother's weakness and imbecility of mind, kept him in an out-house, clothed, fed, and worked him as a negro, and with his negroes, . . [746] That since the death of the said William and Francis, the said negro Hagar has been permitted to go at large . . That the said two negroes are about 60 years of age, and of course rather an expense than profit." The appellant was [749] "allowed ten years hire of the following negroes, from the 4th of April 1772, to the 4th of April 1782, and at the following prices, to wit: Tim at £15 per annum; Jim at £15 per annum; and Hagar at 7 *l.* 10 *s.* 0 *d.* per annum;"

Boarman's Case, 2 Bland 89, June 1805. [90] "negro James, the property of the lunatic, had frequently absconded from service, and had several times nearly effected his escape; and by so doing had become of little use, and was in great danger of being totally lost." Ordered: that the slave be sold.

State v. Fisher, 1 Har. and John. 750, July 1805. "Rebecca Syntha, a mulatto woman, born free of a manumitted negro mother, was offered

[1] Act of Mar. 22, 1794.

as a witness—but who was objected to by the counsel of the prisoner as incompetent to testify against him, he being a free born white christian man." The question of the witness's competency[1] " was laid before the court of appeals . . But . . the court could not agree in opinion upon the question."

Negro James v. Gaither, 2 Har. and John. 176, December 1807. "A deed of manumission, dated the 13th of September 1784, was executed by B. Gaither, deceased, . . giving freedom, after his death, to sundry of his negro slaves, among whom was the petitioner, Negro James. The deed was signed and sealed by him in the presence of . . Boyd, one of the justices of the peace . . and recorded . . November 1784. . . [177] Gaither asked Boyd if it was necessary that any one else should sign it, and Boyd replied it was not. . . Gaither requested the persons who were present . . all to take notice that he had signed an instrument of writing to set all his negroes free." Will of Gaither, dated 1791: [176] " My will and desire is, that all my young negroes, born since my negroes were recorded, shall be absolutely free at my death." [177] " Gaither died about the year 1793, and the negroes mentioned in the deed have been at large ever since. . . The County Court . . 1802, gave judgment for the petitioner. . . 1804, the General Court Reversed the judgment of the county court, and gave judgment that the . . petitioner, was a slave."[2] Judgment affirmed.

Chaplin v. Cruikshanks, 2 Har. and John. 247, June 1808. Action of slander. The words charged were: " My horse is poisoned, and will die, and Robert Cruikshanks had done it, and that he had furnished a certain negro Charles with oil of vitriol, which the said negro Charles had rubbed upon him,"

Negro Cato v. Howard, 2 Har. and John. 323, June 1808. Petition for freedom. In January 1793 Nathan Harris sold his slave Cato to Jesse Harris, for seven years, for £65, it being agreed by parol and as a part of the bargain " that Jesse should at the end of seven years, from the time of the sale, or sooner if he pleased to do so, manumit and set the petitioner free." Cato served Jesse until about January 1799. " In February 1799 Nathan, without the consent of Jesse, sold the petitioner as a slave to Howard, who soon after took the petitioner into his custody as a slave, and still holds him as such. On the 2d of March 1799, Jesse executed a deed of manumission of the petitioner, which was duly acknowledged and recorded. . . [324] the verdict and judgment being against . . [the petitioner], he appealed. . . Judgment reversed, and *procedendo* awarded."

Hay v. Conner, 2 Har. and John. 347, December 1808. Action of trover. Martha Hay hired the mulatto slave James Perry to Captain Conner [348] " for the wages of 20 dollars per month," to perform a voyage from Baltimore to Hamburg, and thence back to Baltimore, on board his ship *Mary*. " The slave's name was signed under the ship's

[1] Act of May 1717, ch. 8, sect. 1.
[2] Act of 1752, ch. 1, sect. 5.

articles . . as a cook;" Conner promising "that he would bring back the negro, or pay her a generous price for him, in case he should not." The ship *Mary* was sold at Hamburg, and the slave was put by Captain Conner on board the *Fidelity* bound for Baltimore, Conner furnishing the slave with provisions for the voyage. [349] "by the act of God the vessel was driven out of her course, and compelled to go to one of the Islands." The slave escaped. Judgment for the defendant, reversed, and *procedendo* awarded.

Drury v. Negro Grace, 2 Har. and John. 356, December 1808. Will of Lebedee Wood, dated 1788: "the whole of my property . . to . . Mary Ann Wood, to her and her heirs for ever, and in case she dies without lawful issue, then" to "my dear wife Ann, during her widowhood, and no longer, and at her death or marriage" to *X*. Mary Ann obtained possession of negro Grace, and the widow Ann married again. In 1800 Mary Ann made her last will: [357] "My will and desire is, that all my negroes shall be free." She died a few months later in the seventeenth year of her age, unmarried, and survived by her mother. Grace petitioned for her freedom, and the county court gave judgment for her.

Judgment reversed by the Court of Appeals: [359] "The limitation over to Ann, during her widowhood, constitutes a good executory devise, . . the remainder over [to *X*], after the death or marriage of Ann, did take effect immediately on the death of Mary Ann,"

Shorter v. Boswell, 2 Har. and John. 359, December 1808. Petition for freedom. Mary Lancaster deposed "that she knew [Martha or] Patt [the ancestress of the petitioner], and always understood she came from Raphael Neale, but did not know it of her own knowledge, and heard that she went by the name of Patt Shorter." The county court [360] "were of opinion that the same was not . . admissible evidence, and refused to let it go to the jury. The petitioner excepted. The petitioner then . . gave in evidence, that she was the daughter of a woman named Betty, who was the daughter of a woman named Sarah, who was the daughter of a woman named Betty, who was the daughter of a woman named Martha, or Patt, who was held in servitude by John Lancaster, . . and that Patt was called Patt Shorter, and had two sisters, namely Mary, . . and Jane, who belonged to . . the sons of Anthony Neale . . who died about the year 1723. . . Lancaster married . . the daughter of Raphael Neale, who was also the son of Anthony Neale, and that Martha, or Patt, was given to John Lancaster by Raphael Neale; that John Lancaster gave Sarah . . to Henry Digges," his son-in-law; "that Digges sold Betty, the daughter of Sarah, to . . Boswell; and that the petitioner was born of Betty, after the sale of her mother to the defendant. The petitioner then produced one of the record books of Charles county court, and offered to read in evidence an entry[1] . . [361] to prove the existence of a free white woman Elizabeth Shorter, in the family of a certain William Roswell, . . and that she married a black man named Little Robin, the servant of Roswell, and had by him three daughters, namely Mary, Jane

[1] This entry is given in Shorter *v.* Rozier, p. 52, *supra*.

and Martha, and that Elizabeth Shorter, and her husband, were given by Roswell to Anthony Neale," his son-in-law. [362] " verdict and judgment for the defendant; and the petitioner appealed " Judgment reversed: the hearsay evidence (in the deposition of Mary Lancaster) is admissible.

Negro George v. Dennis, 2 Har. and John. 454, December 1809. Petitioner was sold in 1792 by the administrator of a resident of Maryland to another resident of Maryland, " who immedately afterwards removed to the state of Virginia, and took the petitioner with him." Held: the petitioner is not entitled to freedom.

Rusk v. Sowerwine, 3 Har. and John. 97, June 1810. " the plaintiff offered as a witness . . a black woman named Minta; and on the defendant's objecting to her, as an incompetent witness, the plaintiff offered evidence that the witness, and the late Benjamin Bannaker, a black man of Baltimore county, were born of the same parents, and that the witness and Bannaker were always reputed to be free; and that their mother was also reputed to be free, and to be descended of free parentage, and did actually enjoy freedom. That Bannaker exercised in his life the rights of a free man in holding real property, in voting at elections, and being allowed and permitted to give evidence in courts of justice in cases in which free white citizens were concerned;" Held: Minta is " an incompetent witness, the plaintiff and defendant being free white christian persons."

Queen v. Neale, 3 Har. and John. 158, December 1810. Petitioner for freedom exhibited her affidavit under the act of 1804, ch. 55, sect. 2, " stating that she believed she could not have a fair and impartial trial in that court," Held: " a negro, petitioning for his freedom, is not competent to make such an affidavit—his slavery or freedom being then *sub judice*, and if a slave, he is excluded by the act of 1717, ch. 13."

Stewart v. Oakes, 5 Har. and John. 107 n. December 1813. Defendant, a citizen of Maryland, " owns a stone quarry in . . Virginia, where he has been in the habit of taking the petitioner, for the purpose of working in the quarry, for a number of years past, four or five weeks in the spring of every year, making the time of the petitioner's being in Virginia, in the whole, upwards of one year." Held: petitioner is entitled to his freedom under the laws of Virginia.[1]

Sprigg v. Negro Mary, 3 Har. and John. 491, December 1814. I. The petitioner " produced a mulatto man named R. Shorter as a witness, whose mother was a black woman." It was proved " that Shorter was sworn as a witness . . in a cause of Nelly Shorter against Jason Phillips, a white christian man. . . the mother of R. Shorter was a black woman, but that she was free, having been one of the Shorter family who had claimed their freedom, and obtained it, on the ground of their being descended from a white woman.[2] . . [492] The petitioner also produced to the court a certificate given by the clerk of Frederick county to the said R. Shorter, certifying that he had recovered his freedom, in that court, of

[1] Act of Va., Dec. 17, 1792, ch. 103, sect. 2.
[2] See Shorter *v.* Rozier, p. 52, and Shorter *v.* Boswell, p. 61, *supra*.

T. Sprigg, . . 1795. . . The defendant still objected to the competency, as a witness, of R. Shorter. The defendant was a free white christian man. But the court overruled the objection, and R. Shorter was examined as a witness." The Court of Appeals concurred in the opinion of the county court.

II. In 1804 " T. Sprigg [a resident of Maryland] came to the house of C. Herstons in Frederick town, and said to him, I have given Esther and her children, to M. Herstons,[1] who was then an infant of about five years of age. That Esther, and her Children, were then at the house of the said C. Herstons, the father . . of the said M. Herstons,[2] and were then left in his possession by the said Sprigg as the property of M. Herstons. That C. Herstons held and possessed the said negro woman, and her children, for M. Herstons, as her guardian, from the time of said gift, and as her guardian carried the said Esther, and her children, to George town, in the district of Columbia, and continued to hold her there . . for about two years, when he returned her, and her child, the petitioner [who was born in the District of Columbia], to the said Sprigg," in Maryland. " M. Herstons is still an infant under the age of 16 years." Judgment for the petitioner reversed, and *procedendo* awarded.

Sprigg v. Negro Presly, 3 Har. and John. 493, December 1814. Presley was the child of Esther [3] and [494] " was about three years old " when he was carried to the District of Columbia in 1804. In 1807 C. Herstons,[4] [495] " finding Esther troublesome and disagreeable [*sic*] to him, . . sent her and her children " back to Maryland to his father-in-law, Sprigg. " That Sprigg kept her and her children at his house until 1810, when he hired her out " to Mrs. Hall. When Mrs. Hall advised him [494] " to hire her to her husband, who was a free man, Sprigg said no, he would not, for that she was good for nothing enough already, and if he hired her to her husband she would make all her family as worthless as herself." He let Mrs. Hall " have Esther for $24 per year."

Verdict and judgment for the petitioner in the county court, " reversed, and *procedendo* awarded." [496] " the verbal gift was sufficient to transfer the property in the petitioner to M. Herstons, without any other delivery."

Pye v. Wood, 3 Har. and John. 504, December 1814. [505] " in order to show by the declarations of the plaintiffs, that the said negroes were of little or no value, [defendant] offered to ask the witness the following questions: ' Did you hear the plaintiffs at any time in October 1809, say that they knew where the negroes were, that they had left their possession by their orders, and that they would take no steps to regain the possession of them, and that they did not wish, and would not allow them to return? ' To the answering of these questions by the witness, the plaintiffs objected."

[1] " the granddaughter of the said Sprigg." Sprigg *v.* Negro Presly, *infra*.

[2] Esther was sent to the house of Herstons a few days after he married Sprigg's daughter, in 1797. *Ibid.* 494.

[3] See Sprigg *v.* Negro Mary, p. 62, *supra*.

[4] [495] " the father and guardian by nature of M. Herstons," who owned Esther and her children.

Haney v. Waddle, 3 Har. and John. 557, March 1815. The petitioner was the slave of Samuel Haney, a minor, and had been sent in February 1810 from Virginia, " where he was born and raised," to Baltimore, and hired " to Joseph Nevitt, the captain and owner of the Alexandria packet, which sailed between Alexandria and Baltimore; . . December 1810, . . he deserted and ran away from him, and shortly after filed this petition for his freedom." Verdict and judgment for the petitioner reversed: [558] " a minor could do no act to affect his rights, nor could his guardian for him."

Fulton v. Lewis, 3 Har. and John. 564, May 1815. The owner of the petitioner arrived at Baltimore in August 1793 from Santo Domingo, " flying from disturbances which then existed there, . . and brought with him into the state three negroes, of whom the petitioner . . is one." In May 1794 he sold the petitioner as a slave, and returned to the West Indies in 1796. Held: the petitioner is free.[1]

Duvall v. Medtart, 4 Har. and John. 14, December 1815. " the plaintiff offered in evidence, that the negro man . . was sold to him by the defendant for $400, . . That he was ruptured and diseased . . [15] and afflicted with the consumption, and was unable to do ordinary and usual labour from the time of said sale," " The defendant then offered evidence . . that about four months after the negro was so sold, the plaintiff wrote to a certain Christian Kemp, by the negro, offering him the said negro, for the sum of $400 cash, or $450 credit. The plaintiff then offered evidence, that the negro had a wife at Kemp's, and wished to go to him. . . at the time the said letter was written, that he, the plaintiff, said . . that he would fix a price, which he knew would prevent a purchase by Kemp, and that he only wrote the letter in order to deceive the negro, and to prevent him from absconding, through fear of being returned to the defendant."

Chilton v. Jones, 4 Har. and John. 62, December 1815. [64] " Davis said . . that they were motherless children, and he parted with them on that account; . . the mother had died with the King's evil, or scrophula." Held: " the circumstance of the mother of the children . . having died with the King's evil . . is not of itself sufficient evidence of the unsoundness of any of her children, to entitle the plaintiff to recover "

Walls v. Hemsley, 4 Har. and John. 243, June 1817. " some time before the surrender of York Town to the American army, the witness had gone to James River, with one captain J. Sweat; that he was afterwards transferred to the *Baltimore* Galley, and after the surrender of the British he again went on board captain Sweat's vessel and went into York River. That about two or three weeks after the said surrender, he left York Town; that before he left there he had been on shore at Gosport, where he had seen negro Suck, the mother of Henny, one of the petitioners, selling cakes and beer without control; and that he saw her repeatedly afterwards selling cakes and beer at the shore of the river at York Town, until the day before captain Sweat sailed, when Suck was brought on board

[1] Act of 1783, ch. 23.

his vessel by five or six men at about 9 o'clock at night, and purchased by Sweat. That another black woman was brought on board captain Sweat's vessel by the same persons, who was released and set on shore in consequence of her cries and screams. That Sweat had informed Suck that he would make her his wife. That Suck had said, during her passage to Maryland, that she was sorry she had come away, as she was free in Virginia, and had a white husband there. . . [244] Denny . . heard a conversation between Suck and the mother of the witness, in which Suck stated herself to have been free in Virginia, and to have been stolen from thence by captain Sweat. . . the Court . . permitted the witness . . to testify as to the reputation of the neighbourhood in relation to Suck's freedom." Verdict and judgment for the petitioners " Judgment reversed, and *procedendo* awarded."

Burroughs v. Negro Anna, 4 Har. and John. 262, June 1817. Will of L. Burroughs, dated 1811: " I give and bequeath unto my negro woman called Anna, her liberty, and the advantages of her son as a labourer, so long as she lives, and a young bay mare three years old next spring, and four barrels of Indian corn, and three hundred weight of pork, and one black cow about six years old, and a hoe and an axe, and a spinning wheel, and cards, cotton cards, and one iron pot, holding three gallons or thereabouts, and half a dozen pewter plates, and the balance of the wool after clothing the family, and one young white sow, and all the dunghill fowls, and half a barrel of wheat; also it is my will and desire that my man Josias, her son, be the entire right and property of her the said Anna." When the testator died, in 1815, Anna " was above the age of forty-five years. . . The county court [Johnson, C. J.] gave judgment for the petitioner, . . Judgment reversed." [1]

Henderson v. Negro Tom, 4 Har. and John. 282, June 1817. " Cole, a citizen . . of New-York, removed . . into Harford county, in . . 1793, and brought with him from New-York . . sundry negro slaves, of which the petitioner Tom is one; . . the petitioner was born in . . New-York, in the family of . . Cole, to whom the petitioner and his mother belonged as slaves," Cole did not comply with the provisions of the act of April 1783, ch. 23. [283] " The County Court gave judgment . . that the petitioner was entitled to his freedom," Affirmed.

Negro Hannah and Children v. Sparkes, 4 Har. and John. 310, June 1818. Petition for freedom based on the will of Charles Barniclow, dated 1811: " My will is, that my negro woman Hannah, and her child Elijah, shall be free after my death." In 1786 Barniclow married the daughter of J. Ireland, in whose family they lived till August or September 1787. In January 1787 they had a child named Anna. " in March 1787 the child of Barniclow and wife being in the cradle, . . Hannah, then a girl [the slave of Ireland], was rocking the cradle, and that J. Ireland called her up and put his hand on her, and requested the witness, Trew and Downing, to take notice that he then gave Hannah to Anna the child of Barniclow and wife; that he declared at the time that Hannah, and her posterity,

[1] Act of 1796, ch. 67.

should be the property of Anna, except the first child which she might have, which child, if it lived, should be the property of his daughter A. Ireland. That Hannah was then about seven years of age. That immediately after this ceremony, Hannah returned to rocking the cradle. That from that time Hannah continued to sleep in the room of Barniclow and wife, and to attend to the child, which was also done by another girl about the house." Hannah remained in the possession of Barniclow, though Anna [311] "went to live with her grand-mother," In 1792 J. Ireland was at Barniclow's house on a visit and, calling two witnesses into the house, "said he had given Hannah to his grand-daughter Anna before, and to make the thing firm, as they were young, said, now take notice Holding [one of the witnesses], if any claim should come against Barniclow, that Hannah is not Barniclow's property, but the property of his daughter, striking the witness on the back with a whip, and saying, now take notice you remember this in a coming day."

Judgment aginst the petitioners, affirmed: [312] "the gift as proved . . was . . sufficient in law to transfer the property" in Hannah to Anna.

Fishwick v. Sewell, 4 Har. and John. 393, June 1818. Will of Ann Loockerman, dated 1755: [400] "bequeathing to her niece Jane Fishwick, the child her negro wench Dido went with, be it boy or girl, to her and her heirs forever."

Extract from Darnall's account against the estate of J. Fishwick: [401] "Cr. 1775. By one mulatto wench called Dinah, with a child at her breast, value, [£] 80. 0. 0." Letter by Darnall, June 28, 1782: [400] "God be praised, we can do very well without Dinah; her work has not been equal to the charge of maintaining four small children."

De Fontaine v. De Fontaine, 5 Har. and John. 99 n., June 1818. "M. and Madame De Fontaine . . were driven from their estate in the island of St. Domingo, by an insurrection of the negroes; and being in different parts of the island at the moment of insurrection, the husband fled to St. Jago, in the island of Cuba, carrying with him his two slaves, the present petitioners, whilst the wife fled to Baltimore with their only child and heir, the present defendant. . . 1805 . . the father . . shipped the petitioners to his wife and child, in Baltimore," In 1808 Madame de Fontaine returned to St. Domingo, leaving the slaves with her agent as a pledge for money lent. Held: the slaves are not emancipated by the law of Maryland.[1]

Johnson v. Negro Lish, 4 Har. and John. 441, June 1819. Petition for freedom. A bill of sale or deed of gift, dated 1793, was offered in evidence: "he gave and granted unto her [Sarah Bradshaw], and to her lawful issue forever, a negro girl called Lish, about Eight years old, with a proviso, that if Sarah should die without issue as aforesaid, Lish, and all her increase, should devolve and return to the donor's estate to all intents and purposes, as although the deed of gift had never taken place." Sarah Bradshaw married J. Melvin and died without issue. Will of Melvin, 1810: "the negro children Eliza and Mehala, together with any

[1] Act of 1796, ch. 67.

further or more children that the negro woman Lisha may have during the life of my wife, shall all be free at the death of my wife." Will of Sarah, who died in 1816: "I give to Moses W. Jones my negro woman Letisha, my negro girl Eliza, and my negro girl Sinah, to serve him six months after my death, and then to be free from all servitude whatever." Verdict and judgment for the petitioner: [442] "the gift to Sarah Bradshaw passed the absolute property to her in negro Lish,"

Wicks v. Chew, 4 Har. and John. 543, December 1819. Richard Darnall, "on the 10th of May 1805, executed and acknowledged a deed of manumission, whereby the petitioners were manumitted from slavery. That Darnall died soon after the execution of this deed, and that it has been omitted to be recorded within the time prescribed by law, without any fraudulent design or intention whatever." In 1817 Chancellor Kilty authorized the recording of the deed of manumission, which had not been enrolled within the time prescribed by law. The Court of Appeals reversed his decree, holding that the chancellor had erred in his construction of the acts of assembly.[1]

Moore v. White, 4 Har. and John. 548, December 1819. The trustee of a lunatic, "in passing his final account charged, among other things, for the raising of sundry negro children belonging to the estate of the lunatic, and which were born after his trusteeship, and also for the midwife's fees. Jonathan Moore . . filed objections against the said account, alleging that there are negro men to hire out to the amount of $400 at least, and negroes enough left to cultivate the land." Held: [550] "the expenses attending the birth and raising of the young negroes" are "incidental to the trust, and the possession of the property under it," and cannot be allowed.

Adams v. Anderson, 4 Har. and John. 558, December 1819. In 1816 Adams (defendant, now appellant) brought a stranger, Nixon, to Anderson's house and said he, Adams, wished to buy a negro woman. Anderson asked if he desired her for his own use, Adams living about a mile distant, and he replied that he did. The price, $300, seemed too high to the defendant. "The plaintiff then said he had another, with a child about six years old, . . and would sell for $400." He asked $700 for all three. "Upon the defendant's objecting to the price, the plaintiff said as the defendant would take them for his own use, and the negroes were willing to go with him for that purpose, (the negroes having expressed their willingness,) he would sell them lower on that account, and would take $675." Defendant said his friend Nixon "wanted one of them for his own use," and that he would take one, and himself the other, . . at that price. That Nixon then offered to give his bond, obliging himself to keep the woman for his own use, and from being removed from the city of Washington, where he lived. The plaintiff replied that a bond was not necessary, . . if the defendant would be responsible, and engage to that effect, . . [559] That he abhorred the practice of selling to slave-dealers, and would not so sell the negroes for any consideration, nor dispose of

[1] Acts of 1792, ch. 41, and 1796, ch. 67.

them except with the understanding that they were to be kept in the neighbourhood. The defendant then declared that he did so engage, . . Upon this the bargain was made, the money paid, and the negroes delivered . . They were all immediately carried off out of the state by Nixon, and removed to Carolina," Nixon being known by Adams to be "a slave-dealer from South Carolina," Defendant "boasted of the manner he had managed the affair for Nixon, whose agent he was, and from whom he had received $40 for his agency; that when they saw the negroes, Nixon fixed a price on them, and told the defendant that he might get as much lower as he could, and he would allow him the difference. . . These negroes (one of them about 16 and the other 20 years old,) were born and raised in his [plaintiff's] family, and one of them had a father and mother belonging to him, and then in his service. . . A few days after the sale he called on the defendant, and reproaching him for his conduct, said he would return the money, and demanded the negroes, which the defendant said the plaintiff might get, but they had been then removed from the city of Washington. That the father and mother of the girl so sold, when they heard she had been carried off, were in great distress and trouble, and for sometime unable to do their usual work in the plaintiff's service, though they were not confined by sickness." Held: [560] "a palpable cheat and fraud on the part of the appellant, for which the appellee is entitled to damages."

Walkup v. Pratt, 5 Har. and John 51, June 1820. The petitioner [58] "claims his freedom as being the son of Tansey, who was the daughter of Violet, a free Indian woman;" Will of P. Feddeman, 1733: [53] "bequeathed two mulatto slaves, namely Violet and Davy, to the child his wife was then big with, to be delivered when the said child came of age." The petitioner asked a witness, "if he had ever heard in the neighbourhood, of C. C. Ruth, that Violet, and her children, were entitled to freedom?" The court did not admit this testimony. [54] "The petitioner proved by a witness, that . . Mrs. Ruth made complaints of Violet's conduct. Mr. Ruth . . said, Becky, no one can please you; but I cannot beat Violet, for she is as free as you or I. . . that after the death of Mr. Ruth, she heard Mrs. Ruth say, . . that she refused to take [one of Violet's children, as part of her thirds] . . and told Henry Pratt that she would not, for that he, Pratt, knew that Violet's children were free." A witness for the defendant testified that she [55] "had a conversation with Violet, and that she then acknowledged herself to be a slave—that her mother was a black woman, and her father a white man."

Verdict and judgment against the petitioner, affirmed: [56] "general reputation of the neighbourhood, that the petitioner, or his . . maternal ancestors, were free negroes," is not admissible in evidence. "In the cases referred to in the reports of Harris and McHenry, such evidence was received by the court. It was however refused by the Supreme Court of the United States, in the case of Mima Queen [1] . . and in the case of Henry Helmsley [Hemsley] . . against Walls, decided by this court . .

[1] 7 Cranch 290 (1813).

1817,[1] such testimony was rejected . . and the court have no reason to be dissatisfied with that decision." [Martin, J.]

Negro William v. Kelly, 5 Har. and John. 59, June 1820. Will of L. Goslee, 1808: "I give and bequeath to all my negroes their freedom; that my heirs, executors, nor administrators, shall have no right nor title to them after they arrive at the ages hereafter mentioned—the males at twenty-eight years of age, and the females at twenty-five years of age, according to the ages in my book." The widow renounced the devises and bequests in the will, and agreed to take her thirds of the estate, as allowed by law. The testator "left personal estate, exclusive of his negroes, more than sufficient" to pay his debts; but not sufficient to compensate the widow for her thirds. The petitioner in 1819 had "arrived to the age of 28 years, . . and is of a sound healthy constitution, and able to get his living, and to support himself by labour." Held: he is not entitled to his freedom.

Baptiste v. De Volunbrun, 5 Har. and John. 86, June 1820. Madame de Volunbrun fled from St. Domingo, arriving in New York in 1797, "but finding the climate unfavourable to her health, removed to the city of Baltimore, with the petitioners as part of her family, in 1802. That she has constantly and uniformly declared her intention to return to her own country . . and for this reason never became a citizen of the United States, or of this state. That the petitioners having attempted to escape to Saint Domingo, she caused them to be sent to New-Orleans, as her property, subject to her future orders."

Judgment against the petitioners, affirmed: Madame de Volunbrun was a sojourner within this state (1802-1818), driven here by necessity, and not within the prohibition of the act of 1796, ch. 67.

Davis v. Jacquin, 5 Har. and John. 100, June 1820. Miss Davidson, when seventeen years of age, took her slave, the petitioner, with her to Pennsylvania. The Maryland act of 1798, ch. 101, provides that the guardianship of female infants shall cease when they attain the age of sixteen. Verdict and judgment against the petitioner. Affirmed: [110] "the law conferred on her a new capacity; but this capacity does not destroy the state of legal minority,"

Negro Clara v. Meagher, 5 Har. and John. 111, June 1820. Deed of manumission, executed in Delaware, October 12, 1801, and signed, sealed, and delivered, in the presence of two witnesses. One of them, on November 18, 1801, "made oath, in due form of law, that he saw the grantor sign, seal and deliver, the deed; that he subscribed his name to it as a witness, and saw Daniel Baker subscribe his name as another witness." Act of Delaware, 1797, ch. 124, requires witness to a deed of manumission to subscribe in the presence of the grantor. Petition for freedom dismissed: [113] "The proof made by the subscribing witness . . does not establish the point that the witness did attest the deed in the presence of the grantor."

Hall v. Mullin, 5 Har. and John. 190, June 1821. Action of "trespass *quare clausum fregit*, brought . . by Dolly Mullin . . against . . Hall."

[1] Walls *v.* Hemsley, p. 64, *supra*.

Will of Benjamin Hall, executed 1803: [191] "I hereby manumit and set free, from the time of my decease, my carpenter, called old Basil." At the time of Hall's death Basil was "upwards of forty-five years of age. . . Dolly Mullin, the plaintiff below, was the slave of Henry L. Hall [the son of Benjamin], and the daughter of Basil, to whom Henry L. Hall, (if practicable,) sold her, and in the month of April 1810, executed to him a bill of sale of her; and on the 26th of May 1810, Basil, as far as he was competent so to do, executed a deed of manumission to Dolly Mullin."

Will of Henry L. Hall, dated 1817: "I give and bequeath to Dolly Mullin one hundred and forty-one acres of land . . for the use and benefit of Dolly Mullin, and her son Henry Mullin, during the life of the said Dolly Mullin, and after her decease to be the right of the aforesaid Henry Mullin, his heirs and assigns for ever. . . I give and bequeath to Dolly Mullin two young negroes, one called Joan and the other Aaron . . [Bequests of other negroes to others] . . I leave and bequeath all the remainder part of my negroes free."

"Judgment for the plaintiff affirmed: I. As Basil [192] "was upwards of 45 years of age, when . . his master, died, he was not manumitted by his will, because of the positive provision of the act of 1796, ch. 67." II. [195] "Basil, being a slave, was incapable of taking and acquiring any property in Dolly Mullin, under the bill of sale . . and that the said bill of sale was void." III. The will of Henry L. Hall set Dolly free [194] "by implication, or by the true construction of his will, taking all its parts together . . it was the intention of the testator that none of his slaves should remain slaves after his death, other than those he named and bequeathed as slaves; . . without the aid of the residuary clause she would have a right to freedom, under those parts of the will by which property was given to her; her freedom by implication, is indispensably necessary to give efficacy to those clauses of the will." [Johnson, J.] [195] "The testator imagined Dolly was free; she was not free, but a slave, at the time the will was made, and being a slave, the will operated to give her freedom, and the lands devised to her." [Chase, C. J.]

Hepburn v. Sewell, 5 Har. and John. 211, June 1821. "After the commencement of the action of trover,[1] in which the verdict was rendered [for Hepburn], the slaves Sall, Patt and Phillis, each had a child, and the present action of trover was instituted to recover the value of the said children." Held: the action cannot be maintained. If the property increases in value between the conversion and the satisfaction of the judgment, the defendant is entitled to the benefit of such increase.

Queen v. State, 5 Har. and John. 232, June 1821. The indictment charged that Queen "did assist a negro woman named Nelly . . in eloping and running away from [her master] . . by accompanying her a considerable distance, and showing her the road by which she might escape," He was found guilty and the county court [233] "rendered judgment upon the verdict . . for the penalty prescribed by the act of 1796, ch. 67."

[1] Fishwick *v.* Sewell, p. 66, *supra.*

Hughes v. Negro Milly, 5 Har. and John 310, June 1821. Will of Margaret Coale, dated 1776: "I give and bequeath unto my son, Philip Coale, my negro girl named Prina, until she arrives to the age of twenty-one years, being at this time about fifteen years of age, and I do order him, that immediately after my decease he manumit her, and her posterity, so that their freedom may be secured to them at the age of twenty-one years." The testatrix died in 1786. Philip Coale neglected to execute the deed of manumission, and Samuel Coale, her administrator and residuary legatee, executed a deed of manumission to them March 3, 1819. Held: they are entitled to freedom.

Fenwick v. Forrest, 5 Har. and John. 414, June 1822. See same *v.* same, p. 72, *infra.*

Law v. Scott, 5 Har. and John. 438, June 1822. Action of slander. Defendant had said to United States senators that the plaintiff, who had been nominated by the President to the Senate, for the office of commissioner of claims, [439] "had forcibly and fraudulently transported from the district of Columbia, and the state of Maryland, and sold to the south, negroes entitled to their freedom, he (meaning the plaintiff,) well knowing that the negroes were entitled to their freedom, and had suits depending . . for establishing their freedom; . . [440] by reason thereof the aforesaid senators . . wholly and entirely refused to concur with the president of the U. S. in appointing the plaintiff"

Duvall v. State, 6 Har. and John. 9, June 1823. "The indictment . . charges nothing more than that the party prosecuted gave a pass to a slave, the property of . . Withers, contrary to the act[1] . . without avering any loss of service by the master . . [10] The court are therefore of opinion, that the offence contemplated by the law, is not charged in the indictment, and that the judgment of the court below must be reversed."

Hamilton v. Cragg, 6 Har. and John. 16, June 1823. Will of Rachel Turner, dated 1801: "I give and bequeath unto my loving sister Sarah Turner, five negroes, by name, Frank, Joe, Lille, Mill and Lin, to possess and enjoy during her natural life, them and their increase, and my will is, that after my said sister's death, the above named negroes be free." James Cragg, the petitioner, is the son of Mill, and was born in 1805 or 1806, after the death of the testatrix, and in the lifetime of Sarah Turner, who died in 1807.

Judgment for the petitioner, reversed: [18] "the above named negroes" are "words of description, . . applying to all who were the subject of the bequest, the issue as well as their mothers." But James Cragg was not more than two years old [19] "at the time that the freedom intended to be given was to commence;" and "consequently was not . . able to work and gain a sufficient maintenance and livelihood."[2]

Scott v. Burch, 6 Har. and John. 67, June 1823. Public auction, October 1818: [68] "Sydney for $540, Louisa for $525, Eliza for $755, and Rachel and her two children for $1030."

[1] Act of 1796, ch. 67, sect. 19.
[2] Act of 1796, ch. 67.

The St. Jago de Cuba, 9 Wheaton 409, February 1824. John Gunn built the vessel in the port of Norfolk, and needing money, mortgaged her to Maher of Baltimore. [411] "instead of an hypothecation in ordinary form, Gunn executed a bill of sale to Maher, admitted, on all hands, to have been intended to serve only as the means of enabling Maher to expedite the vessel on a voyage to Cuba, there to be sold, and to account with Gunn for the proceeds, as well of freight as of sale. This purpose Maher appears soon to have abandoned, for an enterprise of a very different nature. . . For no sooner does she arrive at St. Jago, than she is colourably conveyed to Vinente, . . [412] and she is completely equipped, colourably a Spaniard, but really an American, for the African trade. On her voyage thence to the coast of Africa, she is pursued by hostile vessels, and in the chase sustains damage, which compels her to put into Baltimore to refit. There she encounters Gunn, her original and equitable owner, but who finds in her nothing of her original character, but what served to identify his vessel, and expose to him how his confidence had been abused, and his property forfeited, through his own indiscretion, in conveying her to Maher." Decreed: the vessel and cargo are forfeited to the United States.[1]

Fenwick v. Forrest, 6 Har. and John. 415, June 1825. Sall, the slave of Nicholas Sewall, married David Sommerville, and Sewall [416] "agreed that she should attend her husband in Baltimore, And that if he would pay him . . a sum of money . . , that Sall should be the property of her husband. . . between 1809 and 1813, David Sommerville and Nicholas Sewall . . had an interview, in which Sommerville expressed his fears that his wife might be interfered with as a slave and runaway; and that it was then understood between the said Sommerville and Sewall, that the contract, in relation to the said negro woman, was affirmed, in consideration of having raised two children which he was either to send home, or had sent home to the said Sewall, and a sum of money which was then paid." Lynch testified that in May 1817 "six negroes were brought on board his vessel lying at Baltimore, and were brought by him" to the house of Fenwick, guardian of Sewall's children. Fenwick, in July 1817, sold four of them to Forrest for $750, and warranted "said negroes to the plaintiff [Forrest] against all persons whatsoever, to be slaves for life, and the property of the plaintiff,"[2] They were taken out of Forrest's possession by virtue of a writ of replevin issued against Fenwick by David Sommerville. Fenwick did not defend the action of replevin. Held: he is liable to Forrest in an action of covenant.

Key v. Parnham, 6 Har. and John. 418, June 1825. On January 9, 1817, Key hired of Parnham [419] "six negro men, for the use of . . Heath, . . and for and during the present year, and agree . . to give eighty dollars as wages for each of the said negroes, and to furnish them with all necessary clothing and food,"

Letter dated January 12, 1817: "Dear Sir, Mrs. Key is anxious I should hire your sister's woman for Mrs. Heath. If then she will take

[1] Act of 1794, sect. 1; act of 1818, sect. 2.
[2] Fenwick *v.* Forrest, p. 71, *supra*.

no less than $25, and the woman can go up with the other hands, you will send her up, and I will be answerable for the wages, clothing and food. The woman will have a tender, good mistress; and indeed I know that great care will be taken of the whole of them. P. Key."

Chew v. Gary, 6 Har. and John. 526, June 1825. Will of Mary Ann Wood, dated 1800: "My will and desire is, that all my negroes shall be free, except my negro woman Nanny; and my will is that she shall serve my mother, Ann Brown, during her life, and at her death my said negro woman Nanny to enjoy her freedom." The petitioner, who is the daughter of Nanny, was born after the death of the testatrix, but during the life of Ann Brown. Held: the petitioner is a slave.

Winder v. Diffenderffer, 2 Bland 166, August 1825. Will of Charles Rogers, dated 1805: "I . . bequeath to my said wife all my negro slaves to be by her manumitted, when she may think prudent and advisable. . . [170] my slaves are to be manumitted, notwithstanding my personal property be insufficient to pay my debts; it being my intention, that the same be charged on . . my real estate, . . [171] in order to enable them to be manumitted at all events,"

Crapster v. Griffith, 2 Bland 5, September 1825. [20] "Alfred, about fifteen years of age, and of the value of $280; Cuffee, about thirteen years of age, and worth $250; and Eliza, aged thirteen years, and of the value of $175."

Coale v. Harrington, 7 Har. and John. 147, June 1826. "Trover for three slaves names Julian, Alexander and Commodore." In 1806 John Deford sold to his father Thomas L. Deford "all his personal estate," which included "a negro woman named Henny . . and her child named Julian," In 1812 Thomas L. Deford executed a bill of sale of Henny and Julian to his granddaughter (John's daughter, who married Harrington in 1820). [149] "after such transfer Henny had two children, Alick and Commodore. Alick . . was yellow, and Commodore black." [148] "John Deford was opposed to Mr. Harrington marrying his daughter, and said Harrington should not have the negroes if he could keep them from him. . . [149] Alick lived with Harrington some weeks . . Alick did not like to stay, and deponent believes he run away. . . [150] Henny, . . about the year 1812, and for some years after, lived in Centreville, and hired herself about, in different places, as a free woman. That some persons threatened to enforce the law against masters who suffered their slaves to go at large as free. That John Deford reclaimed Henny," and hired her out. Harrington went to Baltimore in search of Henny and soon after finding her, [150] "sold her to a Georgia negro trader." John Deford, claiming to be the owner of the children, "brought them with him in the steam boat to Baltimore, a few days before this action was brought;" and requested the defendant, Coale, "to take possession of the said negroes, . . that the plaintiff was attempting to get possession of them for the purpose of selling them;" Harrington demanded the children but "the defendant refused to give them up . . saying he should not have them without legal process, for he would punish Harrington for

selling the mother of said negro children to Georgia. . . [151] The defendant then offered in evidence a deed of manumission, executed by John Deford, . . dated the 18th of September 1821, whereby the said Deford . . manumitted and set free his negro girl Julian, aged about ten years, his negro boy Alexander, aged about eight years, and his negro boy Philip Commodore, aged about four years, and giving them immediate freedom. The deed was acknowledged . . before the defendant, being a justice of the peace . . and recorded the same day . . the defendant . . put one of them into the possession of a Mr. Tyson, another into the possession of an uncle of the child, and the third into the possession of one Cowman;" These persons "have never claimed any right or title to them, but have always . . declared them to be free." Verdict and judgment against the defendant. Affirmed.

Bohn v. Headley, 7 Har. and John. 257, June 1826. In 1796 Thomas Tucker executed a deed whereby he granted unto his three daughters "three negro slaves, as follows: Unto his daughter M. T. Tucker his negro boy Ben, unto his daughter R. F. Tucker his negro boy Charles, and unto his daughter Harriet Tucker his negro girl Dorcas, . . to . . receive the said negroes at his death, and not before, . . [the grantor] to have the use and labour of them during his natural life. The deed was acknowledged . . and recorded . . At the time of making the said bill of sale, Dorcas was an infant of the age of seven years, and Harriet, the plaintiff, . . an infant of the age of ten years." In 1810 "Tucker brought Dorcas with the boy George, her child, then an infant, to Baltimore, and sold . . her by the name of Darkee, and also the said George, to the defendant, as slaves for life to him, for . . $280 then paid . . The defendant has ever since continued to hold Dorcas and George as his slaves, . . together with the other negroes in the declaration mentioned, all of whom are the children of Dorcas, and who . . were all born during the life of Tucker, . . [259] Tucker died in . . 1818," Held: [263] "the children, born during the life of Tucker, belonged to him and his assignee,"

U. S. v. Gooding, 12 Wheaton 460, January 1827. Prosecution under the Slave Trade Act of April 20, 1818, ch. 373. Gooding [464] "purchased of one McElderry the vessel called the *General Winder,* . . and that said vessel was built in the port of Baltimore, . . that at the time said purchase was made, the said vessel was not completely finished, and that the same was finished under the superintendence of a certain Captain John Hill, who was appointed by the defendant master of said vessel on her then intended voyage. . . the said Hill ordered various fitments for the said vessel at . . Baltimore, which said fitments were furnished for said vessel, and afterwards, . . were paid for by the defendant. . . that some of these fitments were peculiarly adapted for the slave trade, and are never put on board any other vessels than those intended for such trade; a part of such fitments so ordered by captain Hill and paid for by the defendant, to wit, three dozen of brooms, eighteen scrapers, and two trumpets, were actually put on board the *General Winder* in the port of Baltimore, . . And the rest of such fitments, peculiar to the slave trade as aforesaid, were shipped at . . [465] Baltimore, on board another

vessel called the *Pocahontas,* chartered by the defendant: That the said vessel called the *General Winder*, sailed from . . Baltimore, fitted as aforesaid, . . on or about the twenty-first day of August, eighteen hundred and twenty-four, having cleared for the island of St. Thomas in the West Indies."

The *Pocahontas* sailed the next month, and on her arrival at St. Thomas " the said peculiar fitments shipped as aforesaid in the *Pocahontas,* were there transhipped from said vessel to the *General Winder,* . . the defendant, about six or seven months after the sailing of the *General Winder* from Baltimore, declared . . that the *General Winder* had made him a good voyage, having arrived with a cargo of slaves, the witness thought he said 290,"

At St. Thomas, Captain Hill proposed to " Captain Coit, to engage on board the *General Winder* as mate for the voyage then in progress, and described the same to be a voyage to the coast of Africa for slaves, and thence back to Trinidad de Cuba. That he offered to the said witness [Coit] 70 dollars per month, and five dollars per head for every prime slave which should be brought to Cuba. That on the witness inquiring who would see the crew paid in the event of a disaster attending the voyage, Captain Hill replied, ' uncle John,' meaning . . John Goading the defendant."

Held: [473] " any preparations for a slave voyage, which clearly manifest or accompany the illegal intent, even though incomplete and imperfect, and before the departure of the vessel from port, do yet constitute a fitting out within the purview of the statute." [Story, J.]

Murphey v. Barron, 1 Har. and Gill 258, June 1827. Action of *assumpsit.* On April 10, 1818, Barron sold Murphey a negro slave named Isaac for $404.61, as Barron owed Murphey that amount. Barron [260] " complained to the defendant that the sum . . was less than he was worth. Whereupon the defendant promised the plaintiff, that if he wanted the said negro for his own use, and would not sell him out of the state, if he would . . within four months . . pay . . him the amount of the consideration money, . . he would relinquish to the plaintiff all the right of said negro " On July 7 Barron paid the amount of the consideration to Murphey, and [261] " did exonerate him from the delivery of the said negro; that he knew where he was hired; that he would take him where he was, and as he was." Isaac had been hired to C. G. Hall, and when Barron [260] " went into the harvest field, where the labourers of the said C. G. Hall were at work, he found that the said negro had absconded, about an hour before his arrival, and left his cradle in the harvest field; and that he never gained possession of said negro, who since then, has not been found." Murphey had understood that Barron intended selling Isaac out of the state, and had directed " one of his female slaves to go to and inform the said Isaac that the plaintiff intended to see him out of the state; " Verdict and judgment against Murphey.

Reversed: [266] " he was expressly discharged by the plaintiff himself " from the duty of delivering the slave. Barron's [267] " proper remedy . . would have been a special action on the case against Murphey for enticing or persuading his slave to abscond from his service."

Negro George v. Corse, 2 Har. and Gill 1, June 1827. Will of James Corse, dated 1824: [2] "*Imprimis.* I hereby set free all my negroes of every description, . . the men . . at my death; also the women . . with their issue, . . and the boys as they severally arrive to the age of twenty-one, . . and the girls at the age of eighteen, with their issue, . . And it is hereby expressly provided, that if my personal estate, exclusive of the negroes, should not be sufficient to discharge all my just debts, then my will is that my executor . . may sell so much of my real estate as will pay my debts, so as to have my negroes free as before stated." The testator left land and personal estate, exclusive of negroes, sufficient to pay his debts; but his personal estate, "either including or excluding his negroes," was not sufficient. Verdict and judgment against the petitioners.

Judgment affirmed by the Court of Appeals. "The judges delivered their opinions *seriatim*." [1] [8] "The creditors are the first objects . . It is not in his [testator's] power to confine them to a particular fund for the satisfaction of their debts, . . to turn them over from the natural fund, to one more uncertain, and less accessible." [Earle, J.]

Laidler v. State, 2 Har. and Gill 277, June 1828. [278] "charging him in 1805 and 1806, with the hire of a negro slave for two years, amounting to 1924 lbs. of net tobacco, of new inspection,"

Price v. Read, 2 Har. and Gill 291, June 1828. Read had a "woman slave . . who had been brought up in [his] . . family and service, but for whose services he had no further use," and was willing to dispose of her "for a sum far less than her real value [$400], to a master who resided and would keep her in the neighborhood, and would engage that she would not be sold away to the southern negro traders;" On this condition he sold her to Price for two hundred dollars, and he [294] "sold the said negro to a person residing in a state south of the Potomac river, for the sum of $225." [295] "Verdict for the plaintiff [Read], and damages assessed to $133.33"

Le Grand v. Darnall, 2 Peters 664, January 1829. [667] "Bennett Darnall . . 1810 . . executed his last will . . and thereby devised to his son [Nicholas], the appellee, several tracts of land in fee, one of which was called Portland Manor, . . The mother of Nicholas Darnall was the slave of the testator, and Nicholas was born the slave of his father, and was between ten and eleven years old at . . the death of the testator. Bennett Darnall, in his will, . . confirms two deeds of manumission executed by him; one . . in 1805, and the other in 1810." [665] ("By some omission, neither of these deeds are exhibited.") [667] "In both of those deeds, Nicholas Darnall and a number of other slaves were included, and emancipated after his decease. The testator died in . . 1814. Nicholas Darnall, on his arrival to full age, took possession of the property devised to him, and . . 1826 he entered into a contract with Le Grand . . for the sale of . . Portland Manor"

[1] Criticized in Fenwick *v.* Chapman, 9 Peters 461 (1835): [477] "With all respect for the judges deciding that cause, these opinions cannot command our assent." [Wayne, J.]

Held: Nicholas Darnall's [669] "title to the land sold was unquestionable," for he was, "at the time of the death of the testator, . . entitled to his freedom under the will . . His claim to freedom under the [will] . . depends upon a just construction" of the Maryland act of 1796.[1] Was he, when only ten or eleven years old (the time of his freedom commencing immediately after the death of the testator), "able to work and gain a sufficient maintenance and livelihood?" "Four respectable witnesses of the neighbourhood . . all agree in their testimony, that Nicholas was well grown, healthy and intelligent, and of good bodily and mental capacity: that he and his brother Henry could readily have found employment, either as house servant boys, or on a farm, or as apprentices; and that they were able to work and gain a livelihood. The testator devised to each of them real and personal estate to a considerable amount. They had guardians appointed, were well educated and Nicholas is now living in affluence. . . [670] The court of appeals of Maryland, in the case of Hall *vs.* Mullin,[2] decided, that a devise of property real or personal by a master to his slave, entitles the slave to his freedom by necessary implication. This court entertains the same opinion." [Duvall, J.]

Addison v. Bowie, 2 Bland 606, April 1829. Will of Baruck Duckett, dated 1809: [607] "I give and bequeath to my son-in-law, William Bowie, of Walter, one-third of my negroes. The whole of my negroes to be valued by two impartial men, not related to either side, and divided into three classes, as equal in value, considering age and sex, as can be, and then each class to be distributed by lot; the first number giving the first choice; the second number giving the second choice; and the third number giving the third choice."

Hammond v. Hammond, 2 Bland 306, December 1829. [314] "There can be no doubt, that every devise, and every bequest, including the emancipation of his slaves, for the gift of freedom to a slave, is a most precious specific legacy, are all of them specific legacies which can, in no manner, be made abateable or reducible by any deficiency of the testator's personal estate;" [Bland, Ch.]

Miller v. Negro Charles, 1 Gill and John. 390, December 1829. Will of John W. Beard, 1825: "my negro man Charles to be free, on the first day of January one thousand eight hundred and twenty-seven, on condition that he the said Charles, pay the sum of ten dollars annually to my before named sister, Mary Glover, so long as he lives." At the death of the testator and on January 1, 1827, Charles was under 45 years of age and "able to gain a sufficient livelyhood and maintenance." Held: the petitioner is free. The condition is not a condition precedent.

Gibbs v. Clagett, 2 Gill and John. 14, December 1829. [27] "received the wages of two sawyers, and one plantation hand, for eight years; . . at the time he took from the estate the two sawyers, . . he said their wages would pay all the debts;"

[1] Ch. 47, sect. 13.
[2] P. 69, *supra*.

Stockett v. Watkins, 2 Gill and John. 326, June 1830. Mrs. Stockett declared, about March 1818, [332] "that she was much attached to the negroes she had brought up, and intended to have set them free at her death. . . Mr. W, assured her . . that she had a dower right in the land, which if she would consent to sell . . she might have the negroes, and do what she pleased with them;" She died in 1818, and her executor took possession. In 1822 Watkins "hired Sam the elder . . [328] And . . 1825, settled . . for his hire, at thirty dollars per annum; that he objected to the amount,"

Waring v. Waring, 2 Bland 673, September 1830. "a large proportion of the personal property of the deceased had been sold for the payment of his debts; and that if any more of it, especially negroes, should be sold, there would not be enough left for the purpose of carrying on and working to advantage the real estate which had been left to descend to the children and heirs at law of the deceased." Decreed: that real estate be sold to save the personalty.

Williams' Case, 3 Bland 186, March 1831. [251] "The African race, in our country, are, in many respects, materially different from the European. The negro constitution has in it something peculiarly calculated to resist that malaria which is so deadly to the whites. A negro, it is well known, will enjoy good health during some seasons and in many situations in which the white man can scarcely exist. In all that concerns the probable or average duration of human life, as being in any way involved in a judicial determination upon a right of property, it would seem to be wholly unnecessary to extend our inquiries beyond the class of free whites; because free negroes have little property, and negroes held as slaves can have none. But although slaves are incompetent themselves to hold property; yet considered as property they have always been valued, assessed, and taxed in proportion to their ability of body, age, and sex; and there is no legal reason why an estate may not be held during the life of a negro slave. It is by no means uncommon for negroes to have legacies given to them for their support by way of an annuity for life, or to have small pieces of land given to them for life. Where slaves are given by a parent to his child as an advancement, if, after the death of the parent, the child brings such advancement into hotchpot, in order to be let in as a distributee, the advancement, here as in England, must be valued as of the day when it was made, and, consequently, slaves so given, must be valued as of that day, exclusive of their subsequent increase. And so too in all other cases where slaves are to be valued it must be with reference to their peculiar expectation of life as well as to their bodily ability, skill and other qualities."

Arnold v. Cost, 3 Gill and John. 219, December 1831. Forged paper given to slave Jerry to facilitate his escape: "Know all man by this present that the said negro boy was the property of my onkle, Richard Johnson, living near the mouth of Monocosa. He deceased 1821. He died without any airs. He never was married. Therefore he maid all his negroes free by his will and testament. This boy name is Sam Waker. He always behaved onest, and industrust, and is a good hand about horses,

and a good wagoner. The farmers in our part has for common all slaves or hands of their own, therefor he wants to dry some other part, the Commossary offis ad Frederick town will proof his freedom, herewith I haf sat my hand and seal, Thomas Johnson (seal) near the mouth of Monocosa, Frederick County, Maryland, date 25th September, 1826."

Berry v. Harper, 4 Gill and John. 467, December 1832. [468] "he was authorized [1827] . . to ascertain the price in Alexandria, and when he ascertained it, (the negro then being in the Alexandria jail,) to take him out of jail, and deliver him to the plaintiff. . . the highest price was $200."

Davis v. Calvert, 5 Gill and John. 269, June 1833. Thomas Cramphin, by his will, 1824, and codicils, 1824 and 1825, left the whole of his large estate to Caroline Calvert [308] "and her children named in the will, with a contingent devise to George Calvert, to the exclusion of all others." [306] "Caroline Calvert, who is the reputed illegitimate daughter of George Calvert by a female slave, was not the wife of Thomas Cramphin [the testator], but his kept mistress: that at the time of his forming that illicit connexion with her, he was about seventy-five years of age." Two days before Cramphin (then about eighty-five years old) made his will, Calvert, "the confidential friend of the testator," emancipated Caroline and her seven children (born "between the time when the connexion was formed, and the date of the will"), and executed a bill of sale to Caroline of the seven children till they should reach the age specified for their manumission. Calvert was made sole executor of the will, trustee and contingent devisee of the whole estate. Caroline continued to live with Cramphin till his death in his ninety-second year and had three more children. Calvert "declared, that though he had promised . . Cramphin to provide for said children, yet he did not consider himself bound to do so, because he was convinced they were not the children of said Cramphin."

Slemaker v. Marriott, 5 Gill and John. 406, December 1833. A slave worth $375 "ran away, was apprehended, and confined in Harford County jail." The owner had the slave brought to Annapolis and carried before a justice of the peace, who committed him to the custody of the sheriff of Anne Arundel County. The slave was delivered "with the following commitment to the jailer, in the jail. The sheriff of Anne Arundel County will receive into his custody, the body of negro Bill Philips, the property of Jacob H. Slemaker, and him safe keep, until released by his said master. Given under my hand and seal, this 26th October 1830. James Hunter. (seal.)" The slave escaped from the jail. Held: the sheriff is responsible for his safe keeping. [411] "It has been the constant practice . . for owners of slaves in the State, to have them committed to the jails of the respective counties, for real or supposed offences committed against their owners. But a great abuse of the public jails having grown up, in making them the receptacles of slaves for persons engaged in the traffic of buying and selling them, the act of 1818, ch. 208, was passed to correct that abuse." That act however authorizes the commitments of slaves [412] "at the instance of owners not . . engaged in the [slave] traffic."

Plater v. Scott, 6 Gill and John. 116, June 1834. "Plater . . received from the board of commissioners, appointed to distribute the fund paid to the United States, by virtue of the provisions of the convention of 1826, commonly called Gallatin's Convention, the sum of about $3000, in the year 1828, as compensation paid by the British government for certain captured and deported negroes, . . deported . . by the naval officers of Great Britain in the year 1814, in the late war,"

Burke v. Negro Joe, 6 Gill and John. 136, June 1834. Petition for freedom. "about the year 1784, negro Dinah the grand-mother of the petitioner, and negro Lavy or Lavinia, the mother of the petitioner, and the only child of said Dinah, were the slaves of a certain William Mackubin. That in the year 1797, the said Dinah and Lavy, were going at large as free-women, living, acting, and passing in all respects as such, in the neighborhood of the said William, and within three miles of his residence, and with his knowledge, . . renting small tenements, owning property, contracting debts, being distrained on for rent, and supporting themselves and children." Neither Mackubin, until his death in 1805, nor his wife till her death in 1824, nor [138] "their children after her death, until the year 1832, ever set up any claim to any of them, but treated them as free persons." They "were sometimes hired by the family in which she [the widow of Mackubin] lived, and received wages as free persons." In 1832 one of the heirs of Mackubin "seized and took possession of the petitioner, and all the issue of the said Dinah and Lavy, claiming them as slaves for life." The court [139] "instructed the jury, that from the evidence . . they might presume that the said Dinah was legally manumitted" Verdict and judgment against the defendant [Burke], affirmed.

Evans v. Iglehart, 6 Gill and John. 171, December 1834. Will of James P. Soper, who died in 1826, left the slave Nick free, and bequeathed "Soper Hall" and other land to his wife for life; and after her death "the tract of land called 'Soper Hall,' together with all the personal property which may belong thereto, . . to Elizabeth Evans, . . I . . give unto my dear wife, . . during her natural life, all my personal property . . which is not herein before disposed of,"

Held: [195] "the widow of James P. Soper ought to enjoy his personal estate specifically, . . A considerable portion of our personalty consists of slaves, born in our families, humanely treated, faithfully serving us, and warmly attached to their masters and their connexions. To part with such property, even when under the influence of pressing necessity, is a severe trial to the feelings of the master. But voluntarily, and uninfluenced by any such necessity, to subject them by will to sale under the hammer, perhaps in foreign bondage, whilst his farms, to which they belonged, were distributed amongst his connexions and relatives, is conduct, the idea of which rarely if ever entered into the imagination of a Maryland land-holder. We cannot therefore for one moment suppose" that the testator intended [176] "that his executors should sell and invest the same and pay to her its annual income for life." [Dorsey, J.]

Biscoe v. Biscoe, 6 Gill and John. 232, December 1834. Will of Anna Biscoe, 1824: "I give and bequeath to my nephew John McKay Biscoe, my slave Samuel; in case the said John McKay Biscoe should die without lawful heir of his body, I then give the said slave Samuel to my nephew Thomas Kayton Biscoe," John died in 1831 "without ever having had a child." Thomas brought an action of replevin, "and the verdict and judgment being against him, he appealed"

[242] "Judgment reversed and *procedendo* awarded." The limitation over is not too remote: [239] "the subject of the bequest . . is a negro man, a life in being, and the limitation over could never by possibility take effect, but in his life-time. . . [242] "the case of Johnson *vs.* Negro Lish [1] . . is a materially different case. . . the limitation was of a woman and her issue, after a dying without issue, . . which looks to an indefinite failure of issue, as the issue of the negro woman might continue as long as the issue of the first taker." [Buchanan, C. J.]

Steam Navigation Co. v. Hungerford, 6 Gill and John. 291, December 1834. William Hungerford bought negro Henny, "a valuable house servant," "in 1819 . . of Richard Batturs for $250." and "afterwards conveyed her to his brother, the plaintiff, who gave him liberty to use her free of all wages, until he should be married, . . That on the 18th of March, 1828, a young gentleman came to the house of witness [in Baltimore] to inquire about this negro, and on the following morning a carriage came to his door, and drove off with her. That witness pursued, and saw her go on board the steam boat, and went down, and told Captain Pearce of that steam boat, that he suspected she was on board. That Pearce then told witness to search for her every where but in the ladies' cabin, which witness did, but could not find her, and having stated this to the captain, he promised witness, if she was on board to bring her back from Frenchtown. That the negro was carried to Philadelphia, and has never been returned. That when the steam boat returned, the witness saw Captain Pearce, who informed him the slave was on board, and claimed by Batturs and his daughter at Frenchtown. That Batturs paid her passage and took her on." Captain Pearce testified that he "pointed to a police officer, and directed him, Hungerford, to go and take the officer and search all parts of the boat for the negro. . . That officers are always placed on board these boats before their departure, to prevent runaways from escaping." Held: it was the duty of the master of the boat to make such a search as would have prevented the escape of the slave, and not doing this, the owners of the boat are responsible.

Allein v. Negro Jim Sharp, 7 Gill and John. 96, June 1835. Hutton manumitted the petitioner by [103] "deed dated 9th November 1819, the said manumission to commence and take effect, on the 1st of January 1827. The petitioner also proved, that at the time his freedom commenced, according to the provisions of the deed, he was under the age of 45 years, and able to gain a sufficient livelihood, and maintenance, and was going at large and acting as a free man, until . . the administrator of . . Hut-

[1] P. 66, *supra*.

ton took possession of him, and returned an inventory in which he was included as a part of Hutton's personal estate." Hutton was insolvent from before 1819 till his death in 1832.

Held: [106] "the deed is operative and effectual to give freedom to the slave, unless the rights of creditors are injured by it, and that it is not incumbent on the slave to prove, as a condition precedent to effective manumission, that the residue of his master's property was sufficient for the payment of his debts. . . [107] the act of 1796, ch. 67 . . charges the whole of the manumitter's property with the payment of his debts, in favor of his manumitted slaves, . . [108] the proper remedy of a creditor . . is by a bill in equity, where the manumitted slaves, and all proper parties, can be brought before the court, and where an account may be taken of all the property of the deceased, . . and if that should be found inadequate to the payment of his debts, the manumitted slaves may be decreed to be sold for that purpose, either for life, or for a term of years, as circumstances . . might require." [Stephen, J.]

Negro Cesar v. Chew, 7 Gill and John. 127, June 1835. Petition for freedom. Will of Nathaniel Chew, 1828: "I give to my nephew Nathaniel Chew . . all my personal property . . and negroes upon the terms herein mentioned, to wit—my woman Nanny, to serve two years after my death, then to be free—and her child Rachel, now six years old, to serve until she is twenty-eight years old, then to be free—Nanny's youngest child named Susan, to be the property of its mother, to serve her until it is eighteen years of age, then to be free. I also give to my nephew Nathaniel Chew, my woman Rachel, now twenty-three years old, to serve four years after my death, also her children, to serve until they are twenty-three years old—also my men, Will, Cesar, and Allen, to serve five years after my death; and it is my will that my men Jim, and Tom, and my woman Suke shall be free at my death,"

Verdict and judgment against the petitioner reversed: [131] "The legatee . . had the absolute interest in Cesar, 'upon the terms,' . . that he was to serve for five years. After this period, he could not be the property of the legatee, . . nor could he be the property of any other, because the whole interest was passed away by the will from the representatives. The apparent intent of the testator was to manumit all his negroes, at the periods, and ages respectively given," [Chambers, J.]

Allein v. Sharp, 7 Gill and John. 96, June 1835. See Allein *v.* Hutton, p. 97, *infra.*

Franklin v. Long, 7 Gill and John. 407, June 1836. "Received, July 5th, 1833, of John Ware, four hundred and sixty dollars, in full payment for a negro man named John, aged 27 years, which negro I warrant and defend to be sound in body and mind, and a slave for life . . John Long." Long gave Ware at the same time a paper directed to the sheriff of the county, in whose custody the slave was confined for safe keeping: "You will please to deliver my man John, to John Ware, and oblige yours, John Long." Ware [415] "on the same day proceeded with the order to the jail, and residence of the sheriff, and required of him to deliver the negro

man. That a short time after his arrival, and on going to the jail it was ascertained, that the negro man had cut his throat, and soon after died, and that after he was dead, and not before, the sheriff offered to deliver him to the agent [Ware], who declined to receive him."

Held: [420] "the plaintiffs are entitled to recover back the money paid, which *ex aequo et bono,* the defendant ought to refund, the consideration having entirely failed." "It was the intention of the parties, that the transaction should be consummated by a delivery of the negro man, which . . was not so consummated;"

Anderson v. Negro Julia Ann Baily, 8 Gill and John. 32, June 1836. Deed of manumission, executed December 2, 1803: "I, Gideon Longfellow . . do hereby release from slavery, manumit, and set free, my negro girl named Lucy, being of the age of eleven years or thereabouts, when she shall arrive at the age of thirty years; and in case the said negro girl Lucy shall, or may hereafter have a child or children, before she arrives at the age aforesaid, that then, such child or children, shall be free at their birth." The petitioner, Julia, is the child of Lucy, born before her mother became entitled to her freedom, and now nineteen years of age. [33] "about two years before his death said Taylor, gave the petitioner then a small child to his daughter . . who held her until after her father's death, when the family supposing her to be free under the said manumission, suffered her to depart from their service, and come to Baltimore, to reside, and where she has continued to reside for about ten years last past, enjoying her freedom, until arrest" by Anderson, Taylor's son-in-law, "which occasioned the filing this petition [for freedom]. . . the City court gave judgment for the petitioner,"

[35] "Judgment reversed and *procedendo* awarded." [34] "the intention [of the testator to liberate the issue at its birth] cannot be legally perfected, for at the moment of time, when the freedom is to operate, the petitioner was incompetent to take it; that is, she was unable to gain a sufficient maintenance."[1] [Archer, J.]

Evans v. Merriken, 8 Gill and John. 39, June 1836. Held: the issue of a mortgaged slave, born after the title of the mortgagee has become absolute at law, and during the possession of the mortgagor, is liable for the payment of the mortgage debt; and such issue may be sold upon a bill filed to enforce payment, although no specific notice of the issue is taken in the bill. [49] "we are happy to find that . . the law of the land, and the law of nature, so far from being at variance are in perfect harmony;" [Stephen, J.]

Wilson v. Negro Ann Barnet, 8 Gill and John. 159, December 1836. Will of Elizabeth Richmond, who died in 1831: "*Item*—In case my personal property, other than negroes, shall not be sufficient to pay debts and legacies; I do hereby direct my executor . . to sell so many of my male negroes until they attain the age of thirty-two years, at which time it is my will and desire that they be free, those under seven years of age I wish to be free at the age of twenty-five, and none to be sold out of the

[1] Act of 1796, ch. 67, sect. 13. Follows Hamilton *v.* Cragg, p. 71, *supra.*

State. *Item*—I give and bequeath my negro man Sam, to the Rev. Thomas D. Monnelly, to serve him three years, at which time I wish him to be free. I give old William, at his own request, to his friend, John Holland, a free negro, and all the others who have attained to the age of forty or upwards, to be given or sold for no more than one dollar a piece to such of their free relations as they may choose to go to. As it is my wish and desire that all my *female* negroes may be free at my decease, unless my debts should require the sale of them, in which case I desire, that as many of them that is under the age of twenty-five, may be sold until they arrive to that age, and I desire, that all the children that they may have in the time of their service may be free when their mothers are free. I desire the female children under the age of six and seven to be given to their mothers." Negro Ann, the petitioner, was included in the inventory, which [161] " described her above thirty years of age," [160] " she had been living and acting in the City of Baltimore, as a free woman, from the 27th July, 1830, until she was arrested as a slave by the defendant [Mrs. Richmond's administrator *de bonis non*] on the 11th October 1836, and confined in . . jail as a runaway by his order." The administrator had applied to the Orphans' Court, which had, on August 15, [161] " ordered that he sell at public or private sale at his discretion, for cash or on credit, for not less than the appraised value the following negroes . . Ann Barney [*sic*], and her daughter, Ann Milly Gross, and her two children, Jacob and Jemmy, and boy Robert." The verdict and judgment being against the defendant, Wilson, he appealed.

Judgment reversed and *procedendo* awarded: [165] " we do not perceive any evidence in the record of the consent of the administrator, that the petitioner should act as a free woman, or that her residence in . . Baltimore was, at any time previous to her arrest, known to him." [Archer, J.] See same *v.* same, p. 88, *infra.*

Divers v. Fulton, 8 Gill and John. 202, December 1836. Action of replevin " for a negro woman named Phillis, and her child, Lucinda. . . Mrs. Martha Amos, a widow, . . having broken up housekeeping some time in the autumn of 1828, . . [203] negro Phillis left the house . . with all her clothes and things, in the carryall of the plaintiff, with him and his wife, who was the daughter of said Martha, and remained in their service till the death of said Martha; and never was off the farm of the said plaintiff from 1828 until about two days before this replevin was issued [1833], when she went to the house of the defendant," James Fulton, son-in-law and administrator of Martha Amos. Mrs. Amos had died in April, 1832, and had left a will, dated the second of that month: " I give to my three daughters Martha McComas, Hannah Fulton, wife of James Fulton, and Elizabeth Divers, wife of Ananias Divers, my negro woman, Phillis, to work alternately and equally between . . them, and they to be at equal expense in her clothing and support, and also at equal expense in her support if she should become infirm, or from any cause be rendered unable to labour for them to profit, and each one shall make their election at my decease, whether they will take this legacy or donation subject to the incumbrance, and such election shall thereafter

be binding on them respectively." On April 24, 1832, the plaintiff wrote to the defendant, James Fulton: " Philas is in sarch of a master, as shee cant serv three at wounst, she wants to stay in the family. I am willing to take forty dollars for my shear of here, or I will give forty, if she is willing to stay with me. I am willing to give here that chance."

Judgment against the plaintiff affirmed: his letter showed [209] " his recognition of the legal validity of the bequest . . to his wife, and her . . sisters."

Negro John v. Morton, 8 Gill and John. 391, December 1836. Petition for freedom, based on the will of James Clagett, who died in 1834: [392] " I give full power to my executors, and I direct them immediately after my decease, to manumit and release from slavery my two negro men, Robert and Aaron, to whom I hereby give the use and quiet possession, rent free, of my tenement and garden in Georgetown, late in the possession and occupancy of Mrs. Rabbitt, to hold and continue such use and possession for their joint lives, and the life of the survivor of them. I direct my executors, immediately after my decease, to manumit and release from slavery, after well-clothing them, my four negro women, Mary, Phoebe, Sophia, and Elizabeth, and all their increase, which increase shall be so specially manumitted as to belong to their mothers, the boys to the age of twenty-one years, and being girls to the age of sixteen years; and I declare, that all the said negroes may remain on my farm, and be supported out of my estate, they working thereon as usual, until the said farm shall be sold, and I direct my executors, when the said negroes shall depart from my farm in consequence of its being sold, to give and deliver unto Mary and Phoebe, in consideration of their numerous offspring, three barrels of corn, and one hundred pounds of meat, or a milch cow a-piece, at their option. I direct my executors, after making sale of my farm, whereon I reside, and after conveying and giving possession thereof to the purchaser thereof, without any delay, to manumit and release from slavery, (after well-clothing them,) all and every of my other slaves, except only my negro man, named Harry, a shoemaker, now in the service of Jesse Leach, which said Harry is to be taken as a part of the residue of my estate. My will and desire is, and I do hereby will and direct, that my male slaves shall be manumitted and discharged from slavery upon this condition, that they make comfortable and ample provision for old Phoebe during her life." The next of kin had filed a *caveat* in the Orphans Court, alleging that Claggett was, " at the time the said paper writing was executed by him, of an unsound mind," and the said court had [393] " refused to admit the same to probate." Judgment against the petitioners for freedom affirmed.

Pocock v. Hendricks, 8 Gill and John. 421, June 1837. Action of trover. In 1825 Mary Hare executed a bill of sale to Pocock [422] " of a negro boy, named Richard Hughes, . . for the consideration of $100," [432] " not an absolute bill of sale, but was intended to secure the plaintiff from loss by reason of his securityship for Mary Hare; . . that he held the negro . . as security for a liability which was nearly . . extinguished; . . he suffered the negro slave [in 1828] to go to Mrs.

Hare, in Pennsylvania [where she then resided with Hendricks, her son-in-law] and remain with her or in her service more than three years," during part of which time he was hired out in Baltimore to Galloway, a son of Mrs. Hare. Being sick there [425] " he was again carried by the daughter of Mrs. Hare to the state of Pennsylvania, where he remained about six or eight weeks, when he returned to Galloway's in Baltimore, and there staid to complete his time of two years. About the 1st September, 1830, the said boy went again to Pennsylvania, and immediately after worked with one Walker, who resided in New Market, Maryland, for one month; that during the one month the boy returned to defendant's every Saturday night, where his washing was done for him, that by the end of the said month, the said boy, about the 1st of October, went to the defendant's house, where he continued until about the last of March, 1831, when he was sent again to the said Galloway's with whom he continued to live, . . the plaintiff and defendant lived within a mile or two of each other, the defendant in Pennsylvania, the plaintiff in Maryland; that the said boy Dick, between the years 1828 and the death of Mrs. Hare, was frequently in the state of Maryland, once or twice at a husking match on the farm of the plaintiff, also at a camp meeting in the neighborhood, and that he appeared at all times openly, and it was notorious to the neighbours that he resided with the defendant for the period above stated." The counsel for the defendant prayed the court to instruct the jury [430] " that then by the laws of this state, the boy is free, and the plaintiff is not entitled to recover." The instruction was given and the plaintiff excepted.

The Court of Appeals held that [432] " the prayer on the part of the defendant would have been rightly granted had it called on the jury to find one additional fact, *viz*: That the bringing of the negro back into . . Maryland to reside, was the act of the plaintiff, or was done by his authority, or with his approbation."

Newton v. Turpin, 8 Gill and John. 433, June 1837. " an action of trover for the value of a negro girl." Turpin, a resident of Maryland, gave the slave to his daughter, who " removed and carried the said negro girl to . . the District of Columbia, and resided there for some time; and afterwards, in the year 1826, removed . . and carried the said negro girl slave into the state of Delaware, and there resided " Turpin, in 1829, " took and sold the said girl . . in Maryland. The defendant [administrator of Turpin] on his part offered in evidence " the act of Delaware, passed February 3, 1787. [435] " The county court gave judgment for the defendants, *pro forma*, and the plaintiff appealed "

Judgment reversed: " the slave . . is not entitled to her freedom. The design of the proviso or exception in the act of assembly, was to encourage persons removing with their slaves to settle in Delaware. There could have been no motive with the legislature of . . Delaware in protecting settlers removing from . . Maryland or Virginia in the enjoyment of their rights as slaveholders, which did not apply with equal force to like settlers from the District of Columbia."

Bland v. Negro Beverly Dowling, 9 Gill and John. 19, June 1837. "At the trial, the petitioner proved, that some time prior to the 7th of August, 1833, Sophia Bland . . being the legal owner of the petitioner as her slave, who had been hired to some person in Baltimore, entered into an agreement with the said slave, that he should be set free, on the payment to her of the sum of $200; in and from which period, until he was arrested in October, 1835, as a slave, he went at large and acted as a free man, by keeping an oyster house, and boot-black shop, and otherwise acting as his own master. . . that on the 17th day of August, 1833, he paid to her, in part performance of said agreement, the sum of $100—on the 25th of October, 1834, the further sum of $23—and, on the 1st of June, 1835, the further sum of $50, for which he obtained receipts, expressed to be on account of his freedom. That shortly after the last payment, the petitioner left Baltimore, and proceeded to New York, where he was a waiter on board a steamboat, on the North river, until the month of October, 1835, when he returned to Baltimore, and paid over to Jonathan Pinkney, Esq. through whose hands the other payments were made, the sum of $27, the balance of the $200 which he was to pay for his freedom, which sum was tendered by Mr. Pinkney to a Mr. Law, the agent of Sophia Bland, but refused to be received as such balance. That after the payment of said $27 by the petitioner to Mr. Pinkney, and the tender of that sum by the latter, as the balance due under said agreement, the petitioner was arrested in Baltimore as a runaway slave, and soon thereafter sold . . [24] verdict and judgment . . for the petitioner,"

Affirmed: [25] " we cannot maintain the principle that a slave can enter into any binding contract with his master, or . . appear as a suitor in any of our courts . . to enforce any alleged contract. . . [29] the receipts furnish evidence of her sanctioning during a long period this procedure [going at large and acting as a free man] . . if in the exercise of this permission he should go abroad into another state, . . the mistress must take the consequence . . [30] On the subject of a resumption of the rights of property over the petitioner after his return, and his seizure and sale amounting to an importation within the meaning of the act of 1796, ch. 67, . . the question was yielded . . Even although the return had been *originally* against the consent of the owner, . . by such . . sale . . his return was sanctioned, and if such a course of proceeding do not amount in law to an importation within the meaning of the act, its provisions would be liable to great evasion." [Archer, J.]

Hope v. Hutchins, 9 Gill and John. 77, June 1837. Bill of sale from Hannah Hope to Hutchins, in 1818, " of a negro girl, named Betty, . . provided the said Hannah Hope shall not be debarred . . holding, using, and enjoying, the said property . . and all profits arising therefrom during her natural life; . . [78] The negroes claimed [by Hutchins, in an action of replevin against Hannah Hope's administrator] were the children of Betty, born after the execution of the bill of sale, and during the life time of Hannah Hope."

Judgment for the plaintiff affirmed: [80] " the property was transferred by the deed immediately . . and nothing more was reserved than a . . temporary right of user, which expired upon the death of the donor."

Wilson v. Negro Ann Barnett, 9 Gill and John. 158, December 1837. See same *v.* same, *supra.* "The defendant [Wilson] for the purpose of showing the insufficiency of the personal estate of the testatrix, for the payment of her debts, independent of her negroes, (which . . amounted to the sum of $1,315,) offered in evidence . . his administration account . . dated . . 1833, in which he charged himself with . . Negro hire to 27th September, 1833, . . $192.68 . . [160] The petitioner, in order to show a sufficiency of assets offered evidence, that the hire of negro men, exclusive of food and clothing, was from $50 to $60 per annum; women from $20 to $25 per annum; of girls of eleven or twelve years of age, $15 per annum, all exclusive of food and clothing. To the competency of which testimony, the defendant, (now appellant) objected, because the petitioner had offered no testimony to show, that the defendant had hired the negroes . . after the 9th October, 1833, or that he had received any profit or advantage from their labour. But the court permitted the evidence to go to the jury, . . The petitioner . . prayed the court to direct the jury, that the administrator was answerable to the estate for the reasonable hire and profits of the slaves . . from . . 1833, till they were disposed of in October, 1837, and that the jury had a right to add the amount of such hire or profits of said negroes, to the amount of the inventory as part of assets to pay debts, . . [161] The court granted the direction, . . the verdict and judgment being for the petitioner," the defendant appealed.

Judgment affirmed: [163] "The ground most strongly urged against the claim of the petitioner, that her right to freedom, must depend on the sufficiency of the personal assets of the deceased, at the moment of her death to pay all her debts, has nothing in reason or law to support it. Had such estate at the death of the testatrix, been abundantly sufficient . . [164] but in due course of administration, and before the assent of the administrator, to the freedom of the petitioner, and without any default on his part, the estate other than negroes, had . . become wholly inadequate to the payment of debts, the petitioner's right to freedom would no longer have existed; and if by events subsequent to the death of the testatrix, . . her estate, at her death greatly insufficient, should become sufficient, the right of the petitioner to her freedom could not be resisted. To be a sound rule it must work both ways." [Dorsey, J.]

Negro Peggy v. Wilson, 9 Gill and John. 169, December 1837. Petition for freedom. [170] "A list of slaves brought into this State from the State of Virginia, to work on his farm in Alleghany county, Maryland, to wit: One negro woman, Peggy—16 years of age. 15th June, 1824. Michael Wilson." Judgment against the petitioner affirmed: [173] "the statement of the manner of acquiring the title . . is clearly dispensed with, by the act of 1823," [1]

Negro Harriett v. Ridgely, 9 Gill and John. 174, December 1837. Will of Eleanor Dall, 1829: [175] "I hereby manumit, enfranchise and set free my negro woman Maria, and her two children, Benjamin and Harriett,

[1] Ch. 87.

the freedom of said children to take effect when they shall have respectively attained the age of twenty-one years." " Harriett . . is now in jail, and claimed by Edward Ridgely, executor . . as his slave for life. The petition then suggested that the said Ridgely intended to remove the said negro Harriett from the state of Maryland—prayer for a subpoena, and that he give security not to remove said girl, now about 17 years of age, entitled to freedom at the age of 21 years;" Ridgely answered " that the said Harriett was born the slave of . . Sterrett, . . mortgaged . . to Mrs. Dall, but . . that mortgage conveyed no title to Mrs. Dall;" A niece of Mrs. Dall testified: [176] " Harriett . . was never . . in my aunt's possession. . . Harriett lived with her grandmother in the country, who was Mr. Sterett's slave, but permitted by him to live with her son who was a free man." [177] " The city court . . adjudged the petitioner to be a slave," Affirmed.

Negro Anna Maria Wright v. Rogers, 9 Gill and John. 181, December 1837. [184] " Mrs. Anna M[aria] Tilghman executed a deed of manumission to her female slave, [Anna] Maria Wright, on the 18th of May, 1832; this deed was not recorded within six months after its date as required by the act of 1796, ch. 67, sec. 29. Mrs. Tilghman afterwards sold Maria to Tench Tilghman, who by a bill of sale dated the 2d of May, 1833, transferred her as a slave for life to Lloyd N. Rogers " for the consideration of $100. " By an act of the legislature, passed 23d of February, 1835, December session, 1834, ch. 95, sec. 1, the clerk of Talbot county was authorized to admit to record, ' three several deeds of manumission from Ann Maria Tilghman, of which the above deed was one, and that when recorded, they should be as valid and effectual for every purpose as if the same had been duly recorded within the time prescribed by law.' Under this act the deed to the appellant was recorded . . 21st March, 1835." [182] " the county court gave judgment for the defendant, and the petitioner appealed " G. W. Dulany, counsel for the appellee: [192] " the act of 1834 is void . . because it destroys vested rights;" Judgment affirmed.

Cross v. Black, 9 Gill and John. 198, December 1837. [200] " Woolsey Welles, on part of the petitioners, deposed; that he saw William Black at Palmyra, in Ohio, on the 21st November, 1835, with his wife and two sons and the petitioners, eight persons, very slightly tinged with African blood, and a light colored mulatto girl. Black said he was going to Mercersburg, Pennsylvania, where a brother of his resides. That Exhibits No. 1, 3, and 4, were drafted and witnessed by deponent, that he saw Black and his wife sign them. That Exhibit 2, is in the hand writing of John Curtis, and signed by David Cross and William Black in the presence of the witness, after the execution of the deeds of manumission of David and Airy Cross. That Exhibits 1, 2, 3, and 4, were executed by Black and his wife freely and voluntarily, without any threats of personal or other injury to himself or family, or any of them, and without any circumstances calculated to produce a reasonable apprehension of personal or other injury to himself or family, or any of them. The witness further deposed, that he told said Black, before the execution of any of the papers,

that he, the witness, had in his possession, a writ of *habeas corpus* directed to Black, commanding him to bring the coloured persons in his custody, and whom he claimed as slaves, before the judge who issued the writ; that if that writ was served upon him, he would have to go with the slaves before the judge, and that inasmuch as the laws of Ohio providing for retaking and reducing again to slavery of fugitive slaves, only spoke of 'blacks and mulattoes,' the probability was, the judge would discharge from his custody, all those who have not a sufficient amount of African or negro blood, to come under the description of mulattoes or blacks. The witness stated that he had such a writ in his possession, it was never served on William Black, and that the opinion he then expressed to said William Black, was his honest opinion. Black said he thought it morally wrong to hold his fellow-men in slavery, and had intended to give freedom to his slaves, and after the execution of the deeds of manumission, he asked what was to pay for drafting them, and being answered, not any thing, he expressed his thanks for making out the papers: witness has no distinct recollection of what Black said in relation to his intended residence, but thinks he said, he intended to go to Missouri: that the justice of the peace . . [201] who took Black and wife's acknowledgment, was an acting justice, . . and witness has no doubt he was a lawful justice according to the laws of Ohio. As to his general character witness cannot speak understandingly, nothing against his character, but that he drank ardent spirits: that the witness Daniel M. Lathrop is a minister of the gospel of the Presbyterian denomination; his voice having failed, so that he cannot preach the gospel, he has been engaged for a year or more, as editor of the *Ohio Atlas*. He is a man of good character, would be believed any where in the Northern part of Ohio, where he has been extensively known as an agent of the American Home Missionary Society. The other witness to the deed of manumission is John Curtis, a student of law, lives in Brownhelm, in Ohio, a member of the Presbyterian Church, and to be relied on, where known. That witness, Woolsey Welles, is an attorney at law, and not aware of any law of Ohio in relation to negroes residing there *temporarily* with their owners: that slavery is prohibited by the constitution of Ohio, and knows of no law relating to manumissions. Upon cross-examination, Welles deposed as follows: 'that he resided in the village of Elyria, Loraine county, Ohio, where he has resided since July, 1835. From that time back to June, 1834, he was travelling (as the agent of the Ohio State Temperance Society), in various parts of the state of Ohio, principally in the Miami country, and on the Western Reserve; from that time back to May, 1826, he had resided in Akron, Portage county, Ohio, engaged in the practice of law, as a justice of the peace, a collector of canal tolls on the Ohio Canal, and as a post master, which latter office he resigned . . [202] before he entered upon his agency for the Ohio State Temperance Society. From . . 1826, back to . . 1823, he resided in Elyria, aforesaid, where he practised law. From that time back to . . 1819, he resided in Cleveland, Cuyahoga, Ohio, engaged in the study of law, and teaching school, and for a short time as a clerk in a store. From that time back to 1808, he resided for the most

part in his father's family in Lerveille [Lowville], Lems [Lewis] county, New York. From that time back to the year, 1802, he resided in his father's family, in Lanesborough, Berkshire county, Massachusetts, where, if the family Bible record be true, he was born on the 26th May, 1802. That what led to his acquaintance with William Black, was information that the said Black was in possession of a number of persons, nearly of white colour, whom he claimed as slaves, and to whom he had promised liberty. He told his own name, and there was with me at the time I became acquainted with him, Daniel W. [M. ?] Lathrop, John Curtis, and a citizen of Edinburgh, a township adjoining Palmyra, by the name of Greenbury Keen; that Black stated to the witness, at the time he first saw him, that he claimed all the persons in his custody, except David Cross, as his slaves, to wit: Airy wife of David, Charles, David Perry, Mary, James and Harriette, their children, and Maria Thornton, a yellow girl; that he was undetermined whether he should go to Virginia, to Maryland or to Pennsylvania; he told us he was a cooper by trade, and that either David Cross the elder, or Charles Cross, was also of that trade; his (William Black's) wife and two sons were with him at the same time. This witness further proved, that the Exhibits 1, 2, 3, 4, were executed in the presence of the slaves; he cannot say they expressed a desire for them. They were evidently under constant fear of their master or mistress; their conduct and conversation was different when in, and out of their presence. The papers were executed at Palmyra; that within an hour or two after the execution of the papers, William Black and family started with their teams and the coloured persons, from Palmyra, eastwardly, intending, as he then said, to go to Mercersburgh, in Pennsylvania; he heard Black say he intended to manumit his slaves, and that he did not believe it morally right to hold them. Witness has heard Curtis express opinions that slave-holding is a sin against God. That he (Curtis) and Lathrop are members of an Anti-Slavery Society; that no consideration was given for the manumission deeds. Witness considers slavery as a sin, and would consider it no immorality, in aiding a slave to escape from his master. Another witness proved, that Black had admitted David Cross, the father, to be free; that the mother was in part paid for; that the children would be freed by him at certain ages: and the slaves were then inquired of, whether if he, Black, would manumit them, they would serve him, and enter into agreement to that effect, until the time of liberation arrived? That Black executed the deeds voluntarily, without any apprehension or grounds of damage, either to himself or his family. Other witnesses were examined under the commission, to the same effect.

"Exhibit No. 1, was a deed from William Black and wife, manumitting Maria Thornton, (the yellow girl) in consideration of her faithful services, theretofore rendered, and the good will and affection which the said Black had for her. Exhibit No. 2, was a contract, setting forth that the children of David and Airy Cross, had theretofore been the slaves of William Black, and in consideration of manumission, the children agreed to serve him respectively, until they reached the age of

twenty-five years. Exhibit No. 3, was the manumission by Black and wife, of David and Airy Cross, and their six children. Exhibit No. 4, was the contract of Maria Thornton, with David Cross as her surety, that in consideration of liberty, the said Maria should serve Black until she was twenty-five years of age. These Exhibits were dated 21st November, 1835; and executed and acknowledged at the same time, and before the same witnesses. . .

[206] " The defendant then offered proof to the jury by several witnesses, that said defendant had, at various times, from six months before, to the very day on which he left the state of Maryland, declared to said witnesses, that it was his intention to go to the state of Missouri to reside. That when advised a short time before he left the state, by one of the witnesses, to go to the state of Ohio, and there reside, he objected to doing so, because he could not there hold his negroes in slavery, and that he did leave Maryland, and on the day he departed he said he intended to go to Missouri, and that in the progress of his journey he went to the residence of his brother in the state of Ohio, where he remained about two days and a half. That he was induced to make said visit to his brother, because the latter had assured him that he would go with defendant to Missouri; that his said brother being unable to go with him to Missouri, on account of the sickness of his family, the defendant then left his brother's house, with a view to get to the Ohio river, and to go upon said river to St. Louis, in Missouri; that upon his way from the residence of his brother to the Ohio river, he was overtaken in the village of Palmyra, and with his wife, forced by a large collection of persons to sign instruments of writing, purporting to be deeds of manumission of all the petitioners, which said deeds were read in evidence by said petitioners. That in consequence of this forcible interposition, he determined to return to Maryland, and immediately bent his way in that direction; where, without stopping, except in the usual manner of travelling, he arrived in the month of December, 1835, the said negroes voluntarily returning with him; and the defendant further proved, that the petition for freedom by the plaintiffs was filed in March, 1836. He also proved that the said negroes constituted the greater and more valuable part of the defendant's property, . . [207] shortly after his return, the defendant advised with his friends as to the course he should pursue to assert his right to said negroes, and that he had by the advice of some . . of his friends, sent Charles out of the state, and there sold him as a slave for life, . . [208] The jury found David Cross, the father, to be free, and that the others are not free persons."

" The judgment . . against them," affirmed: [211] " what is the true construction of the act of 1831, chapter 323,[1] in reference to negro slaves, under the circumstances which exist in this case? . . [213] The act is penal . . A literal interpretation will include this case, as doubtless the petitioners were 'brought' into this state in one sense of the term; . . From our earliest history, masters have been accustomed to take and send their slaves out of the state for purposes obviously temporary. The legis-

[1] Sect. 4.

lature has secured to citizens of other states the privilege of having their slaves here while 'travelling or sojourning,' . . It could not then be the design of this statute, or the older statute,[1] from which this portion of it is copied, to deprive a citizen of Maryland of the privilege elsewhere, which every citizen of every other portion of the United States can enjoy in this state. . . [215] The case made by the petitioners . . does not consummate the purpose of a permanent abandonment of the state. . . The itinerant and unsettled condition of the master will give character to the condition of his slaves. They are to be considered as attached to his person; dependent on his movements; and their will is merged in his. Their return with him, therefore, under the circumstances we have been considering, must be regarded, like his, as the termination of a temporary absence, which will not constitute an importation within the meaning of the acts of assembly." [Chambers, J.]

Wood v. Bruce, 9 Gill and John. 215, December 1837. In 1824 Ann W. Wood filed her bill, "alleging, that in . . 1818, she purchased of . . Strickland, a negro woman on credit, for . . $500, . . that said negro belonged to . . John Peirce, who devised her to be free at the age of twenty-one years; that said negro was upwards of twenty-one years of age when she purchased her, at which time she had never seen the will of Peirce; . . that a *fi. fa.* has been . . levied. That the negro has recently filed a petition for freedom; that the complainant has been summoned to answer that petition, and the protection of the court granted to said negro. The bill prayed a subpoena against Strickland and Bruce [his assignee], for an injunction" An injunction granted in 1824 was dissolved in 1837. Order reversed.

Hawkins v. Bowie, 9 Gill and John. 428, June 1838. The defendant [431] "says, that at the time of the making of the bill obligatory . . the said Thomas Hawkins . . was . . a slave, . . Which, upon motion of the plaintiff's counsel, were not received by the court, and a judgment [in 1835] . . was entered for the plaintiff," The defendant petitioned the county court for [432] "a writ of error, *coram nobis,* to correct the record of said judgment" and it was ordered to be issued. "the court . . reversed the judgment, and . . the plaintiff appealed. It is admitted that the said Thomas Hawkins, the legal plaintiff, was born a slave, and continued a slave up to the time of his death, although an attempt was made by his master, the late Osborn Sprigg, to manumit him by his last will and testament, which was inoperative in consequence of the said Hawkins being above forty-five years of age at the death of the said O. Sprigg. It is admitted that Samuel Sprigg, the residuary devisee and legatee of said O. Sprigg, suffered the said Hawkins to go at large and act for himself."

Judgment reversed by the Court of Appeals: the plea [438] "that at the time of making the bill obligatory, . . Hawkins . . was . . a slave . . was rejected by the county court; on what ground, the record does not inform us; . . If it were error, it was error in law, and . . does

[1] Act of 1796, ch. 67.

not belong to the class of errors which may be corrected by proceeding in error *coram nobis,*"

Caton v. Carter, 9 Gill and John. 476, June 1838. " The petitioner . . offered proof that he was the son of a free woman; that he was lawfully bound to Mrs. Anne Kearney by indenture of the 2d September, 1834, approved by the justices, and recorded in the records of Anne Arundel county court, that his name was Robert Carter, and that upon the death of his said mistress, whom he served several years, her representatives abandoned all claim to him—that the mother of the appellee is dead, and her and his next of kin were now in court, soliciting that he should be bound again. . . [477] The orphans court . . ordered him, with the consent of his nearest relation, to be bound to . . Duvall."

Cheney v. Duke, 10 Gill and John. 11, December 1838. The plaintiff sold a slave [12] " to the defendant by parol, on the 1st May, 1836, . . for . . $650, . . the defendant was then engaged in the purchasing of slaves, for the purpose of exporting them beyond the limits of this state, and that he was known to the plaintiff to be so engaged; and that the plaintiff . . knew he was purchasing said slave, . . for the purpose of exporting . . said slave beyond the limits of the state." [23] " The suit was brought to recover the price in part "

Held: [25] " a knowledge on the part of the vendor, of the illegal[1] purpose contemplated by the vendee, . . without any participation in the accomplishment of the illegal . . purpose . . will not close against him the doors of a court of justice, when seeking to recover his purchase money,"

Sutton v. Crain, 10 Gill and John. 458, December 1839. Will of Henry Watts, who died in 1819: [459] " I give and bequeath to my loving wife . . and her heirs . . the following property, *viz*: one negro man Jess; one negro woman Catherine and her three children; . . also, during her life the use of negroes Nell, Anna and Daniel, after which they and their increase to be the right and estate of my son . . I give and bequeath to my grand-daughter . . one negro girl by the name of Lydia, and her increase. . . [460] I bequeath . . to the children of my . . son George H. Watts . . and their heirs . . the following property: negro man Perry, negro woman Amey and all her children, and negro woman Sarah, to be paid to them when they arrive at age, . . And I direct that the profits arising from the hire or use of said negroes, be applied towards their education and maintenance respectively, until a divison of the same under this my will can take place; and in case either of them shall die before they arrive at lawful age, then I give the share of him or her so dying, unto the survivor or survivors of them. It is however my desire that their mother, Ann Watts, shall have the exclusive use of negro Sarah until the youngest of my said grand-children arrives at age." Sarah " came to the possession of Mrs. Ann Watts immediately after the death of . . Henry Watts, . . negro girl Mary . . was the daughter of negro Sarah . . born after the death of Henry Watts, . . and long before the

[1] Act of 1817, ch. 112.

youngest of Mrs. Ann Watt's children came of age; that Mrs. Watts . . sold her to defendant [Sutton] . . 1834," and Sutton sold her in 1836. Held: [479] "There is nothing . . in the will . . which militates against the right of Mrs. Watts to the issue born during the existence of her estate."

U. S. v. Dow, 25 Fed. Cas. 901 (Taney 34), April 1840. "Lorenzo Dow was indicted[1] for the murder of the captain of the brig *Francis*, on the high seas; the brig being an American vessel, and Lorenzo Dow one of the mariners on board." Dow [902] "was a native of the town of Manilla, . . his parents were both Malays . . the prisoner was baptized and educated in the Christian religion, and had always professed to be a Christian. At the time of the murder, the captain was the only white person on board; the crew consisted of the Malay, three negroes, and one mulatto; two of the negroes were natives of Philadelphia, and one a native of the state of Delaware; the mulatto was a native of the British province of Nova Scotia; they were all free."

Held: "according to the acts of Maryland,[2] negroes and mulattoes, free or slave, are not competent witnesses in any case wherein a Christian white person is concerned; but they are competent witnesses against all other persons." Dow is not a Christian white person. He was found guilty on a reindictment, and sentenced to death, but was pardoned by the President.

Strohm v. United States, 23 Fed. Cas. 240 (Taney 413), April 1840. The schooner *Anne* "(together with another of a like description built at the same time), was built for a Portuguese merchant, named DeSylva, who was a partner of a mercantile house established at Bahia, in South America; but DeSylva himself generally resided in Cuba. The two vessels were built under the superintendence of two men who were sent to Baltimore for that purpose, from Havana, by DeSilva [*sic*]; . . [241] a Spaniard and . . a Portuguese; and it appeared from the letters of DeSilva, introducing them to his factor, that they were to have the command of these schooners, as masters in the service, when the vessels were finished. The contracts for the building and equipping these vessels were made by Strohm and Co., merchants of Baltimore; who were the factors of DeSilva, . . when the *Anne* was finished and equipped, and ready to sail, she was registered by Strohm and Co., as their own property; and the usual oath of ownership was taken by Strohm, at the custom-house, in order to obtain for her American papers. As soon as Strohm thus registered her, she was seized by the collector, and the proper information lodged against her with the district-attorney;" under the act of Congress, April 20, 1818, ch. 91.

Held: "it was very clear that the *Anne* was built for the slave-trade, and that Strohm and Co. knew it, . . when the criminal purpose is proved to exist in the owner, or in the factor or master, who has the direction of the vessel at the time she is built or fitted out, the forfeiture attaches; . . the purpose of either one of them . . would subject the vessel to forfeiture." [Taney, C. J.]

[1] Under the act of Congress of Apr. 30, 1790, ch. 36, sect. 28. 1 Stat. at L. 118, ch. 9.
[2] Acts of 1717, ch. 13; 1801, ch. 109; 1808, ch. 81.

Garrott v. Johnson, 11 Gill and John. 173, June 1840. Agreement, in 1836, [176] "that . . Garrott gives to . . Johnson his negro man Sandy, for two hundred and fifty barrels corn, . . Garrott to deliver . . the said negro to-morrow or the next day, or when the said Johnson takes his negroes to the south." Johnson "was . . a citizen of Frederick county, of respectable character, and who had not been in the habit of purchasing negro slaves for a foreign market, but was at the time of said sale engaged in purchasing negro slaves to take to some of the southern States,"

Young v. Robinson, 11 Gill and John. 328, December 1840. Dr. Daniel Young's will (executed in 1823, proved in 1838): [329] "I give . . to my niece . . a slave. . . It is my will . . that all my negroes shall be entitled to their freedom the [*sic*] in course of three months after my decease, or sooner, at the discretion . . of my executors." The codicil of 1837 "gave specific legacies to . . one of his servants,"

Lee v. Pindle, 11 Gill and John. 362, December 1840. [363] "1839, it appearing to the Chancellor . . that the negro slaves . . and their increase, are not susceptible of division among the parties entitled, without a sale thereof, . . it is ordered . . that the said slaves and their increase be sold; . . From this decree, Stephen L. Lee entered an appeal,"

Abell v. Harris, 11 Gill and John. 367, June 1841. [368] "Bill of sale . . 1822, for Stephen, a house carpenter, 45 years of age; Nace a blacksmith, 29 years of age; Lewis 25 years of age; Basil 18 years of age; Jinny 40 years of age; Rose Ann 18 years of age; Lora 8 years of age; Emeline 6 years old; Alonzo 4 years of age; Manning 2 years of age; Henry 26 years of age; Eliza 20 years of age."

Hatton v. Weems, 12 Gill and John. 83, December 1841. Will of Henry Hatton, dated 1822, admitted to probate 1824: "I . . give in trust to my . . son, Henry D. Hatton, for my . . daughter, . . Mary R. Hatton, . . [87] the following negroes, namely: Frank, Hendley, etc., etc.; Rose, Kitty, Mathilda, etc., twenty in all, and their increase; also Kitty's children and Mathilda's child" [86] "during her [Mary's] natural life, and after her death, to her children, . . but if she should die without lawful issue . . then . . to my . . son" In 1832 Weems married Henry Hatton's daughter Mary and they filed their bill, praying for an account. Henry D. Hatton answered, in 1833: [87] "that the expense and trouble of the negroes were worth more than their actual profits, nearly all of them being very old, very young,[1] or breeding women." In 1834 [88] "Hatton petitioned for an order to sell certain negroes, on the ground that they had become refractory, ungovernable, and disposed to run away; that some had run away, and some were now in jail for safe custody;" In 1835 "the Chancellor authorized Hatton to sell certain of the negroes." Mrs. Weems died, "leaving issue an only daughter . . also dead."

[1] [110] "Eight witnesses are examined to prove, when in their judgment, a child ceases to be expensive to his master, and what would be a fair price for the maintenance of a child; . . witnesses . . vary in such opinions, of the annual expense of each negro, from five to twenty dollars."

The court held that, under the will, Mrs. Weems [107] "took an absolute estate" "in the personal property . . and that the limitation over to Henry Hatton, being after an indefinite failure of issue, is void. This construction of the will as regards the limitation over of the stock, plantation utensils, and kitchen furniture, is not denied; but it is insisted, that the case of Briscoe and Briscoe [*sic*][1] is an authority to shew that he is entitled . . at all events, to the male negroes. The court in their determination of Briscoe *v.* Briscoe, refer to the case of 4 Harr. and Johns. 441,[2] and 4 Harr. and McH. 393,[3] and do not overrule them; but distinguish them from the case then before the court, by the character of the subject matter of the bequest. These latter cases are decisive of the right of Mrs. Weems to the negro women, and their children and increase. Did the testator mean a definite or indefinite failure of issue, as the event upon which the ultimate legatee was to take? These cases are decisive to shew, that where the subject of the bequest is a woman and her increase, that the testator meant an indefinite failure of issue. Such terms are used in this clause, and are decisive of the right of the first taker to the women and children; the men are contained in the same clause, and the same intention must be considered as applicable to them; for he clearly meant that all should go over on the same event, and not that one portion of the bequest should go over on definite, and the other on an indefinite failure of issue. He could not, and clearly did not, mean to separate them, as would be the case upon the construction contended for." [Archer, J.]

Allein v. Hutton, 4 Md. Ch. 537, December 1841. Petition for freedom. "Richard G. Hutton, . . by a deed of manumission, executed . . 1819, manumitted sundry negro slaves after a term of years, to wit: 'George, aged twenty-five, to be free on the 1st of January, 1827; James, aged twenty-three, to be free on the 1st of January, 1827; Little James, aged twenty, to be free on the 1st of January, 1828; William, aged one year, to be free on the 1st of March, 1840; woman Nancy, aged nineteen, to be free on the 1st of January, 1827, and all the increase of the said Nancy born during the time of her servitude to serve, if males, twenty-one years, and if females, eighteen years. Woman Minta, aged seventeen, to be free on the 1st of January, 1824, and all the increase of the said Minta born during the time of her servitude, to serve, if males, to the age of twenty-one years, and if females, eighteen years, and the increase of the above women, born after their term of servitude is expired, to be free to their latest generations.' Hutton died in 1832, and . . 1833, negro Jim Sharp . . filed his petition for freedom . . against . . Allein,[4] the administrator . . who had taken possession of him . . the Court of Appeals . . decided that . . 'the proper remedy . . is by a bill in equity where the manumitted slaves and all proper parties can be brought before the court,' . . [539] 1836, Allein, the administrator, and several of the

[1] Biscoe *v.* Biscoe, p. 81, *supra.*
[2] Johnson *v.* Negro Lish, p. 66, *supra.*
[3] Davidge *v.* Chaney, p. 55, *supra.*
[4] Allein *v.* Sharp, p. 81, *supra.*

creditors of Hutton . . filed their bill in equity, alleging that Hutton, at the time of the execution of said deed of manumission, was largely indebted . . and that he continued insolvent . . till his death. That Hutton remained in possession of the negroes . . till his death. That he executed said deed with a view of prejudicing . . his creditors, . . [540] the Auditor . . 1841, filed his report . . that the debts due by the deceased amounted to $9421.79, that no account of his personal estate was rendered . . the whole having been absorbed by executions binding thereupon."

Decreed " that the defendants, Jim Sharp, Jim Ennis, Nancy, George, Minta, Lloyd, Samuel, Admirilla, William and Wilson, together with the increase, if any, . . be sold for the purpose of satisfying the claims . . appoints a trustee to make the ' sale of the said negroes for life,' . . Under this decree the negroes were sold,"

Slater v. Magraw, 12 Gill and John. 265, December 1841. [266] " Received, . . 1838, of William Slater, the sum of two hundred dollars, in full, in payment for my negro boy Upton, to serve ten years as a slave . . I do hereby obligate to give the said . . Slater a good title for said boy when called on."

Lee v. Pindle, 12 Gill and John. 288, June 1842. Will, dated 1827: [290] " I give . . to my . . son, Stephen Lewis Lee, one negro man, to be selected by him, etc., giving to him the right of first choice. I give . . to my son, Thomas Daniel Lee, one negro man, to be selected by him, having the right of second choice." Second codicil, dated 1832: [293] " I do hereby revoke the bequest of any of my slaves, as made in my will, but will and direct that the whole of my slaves shall remain in the possession of my wife, during her life, for the benefit of her and my children, in common, in working and cultivating the lands and premises whereon I now reside, . . and after her decease, the same shall be equally divided among my children," In 1837 a bill was filed to procure a distribution of the slaves. Several had died [295] " in the life time of the widow, but Abraham was drowned since the property came to the possession " of the executor. " Ordered, that this case be . . referred to the auditor, . . and . . if practicable, to make an equal division of the said slaves and their increase, among the said legatees, . . but if an equal division of the said slaves cannot be made without a sale, then to state the same accordingly to the end, that the court may be enabled to order a delivery of the said slaves or the payment of the proceeds of the sale of them in due proportions to the said legatees. And it is further ordered, that the defendant, Stephen Lewis Lee, account for the hire and profits of the said slaves, and their increase, after the death of the testator, to the said legatees, from the death of the said widow of the said testator, until the same shall have been delivered up or sold;" In 1839 the chancellor ordered [298] " that the said slaves and their increase be sold;"

The Court of Appeals held: [304] " Proper allowances ought also to be made for the expense of maintaining and clothing the whole, as well those incapable of labor as those who were able to work. The hire of the negro man Abraham, who was drowned, ought to have been carried up to the time of his death; and ought not, certainly, to have been extended

beyond that period, as a charge against the appellant. We think there was no error in the charge of interest on the annual hire or value of the negroes' services."

Hall v. State, 12 Gill and John. 329, June 1842. [331] "State of Maryland—Benjamin T. Pindle, Informer, agst. Randall Hall, Kissey Lane, Henry Lane, Richard Lane and Mary Lane. February 15, 1842. This case having been heard and considered, it is this day adjudged and ordered, that Randall Hall, K. L., H. L., R. L. and M. L., who have been proved before me to be free negroes immigrating to this State from the State of Virginia, in the year 1836, and remaining in it contrary to the provisions of the act, entitled, an act relating to free negroes, passed at December session 1831, chap. 323,[1] each pay to the sheriff of Anne Arundel, the sum of fifty dollars per week, for each and every week, commencing from the 1st day of January, 1837, and ending the 10th day of February, 1842, and each and every of said negroes refusing or neglecting to pay said fine, to be sold by the said sheriff at public sale, for such time as may be necessary to pay said fine, he first giving ten days notice of such sale. The said sheriff, after deducting prison charges, and a commission of ten per centum, to pay over one-half of the nett proceeds to the informer, and the balance to the county commissioners, for the use of the county. Wm. Glover."

Held: [337] "The act of 1839[2] was a merciful modification of the act of 1831. It assumed that a single penalty of twenty dollars might keep this class of persons out of the State; a penalty which they could pay, and be not subject to sale as slaves. Both cannot be in force, . . The judgment was passed in 1842. . . for a money penalty, a debt accruing weekly from 1837, . . The judgment upon its face is barred" by the act of February 1777.[3]

State v. Nutwell, 1 Gill 54, June 1843. Nutwell was indicted for suffering "a slave to be in his store-house, in which [he] . . was accustomed to sell distilled liquor between sunset . . and sunrise of the succeeding morning, . . not having a written . . license for that purpose from his master,[4] . . [55] the county court arrested the judgment [against Nutwell]," Affirmed: [56] "the indictment . . is defective, in omitting the name of the slave and that of the master, if known,"

Brooke v. Berry, 1 Gill 153, December 1843. [155] "Articles of agreement made . . 1837, between Elisha Berry . . and William F. Berry, . . [156] to wit: The said Elisha Berry, for the consideration hereinafter mentioned, doth for himself, his executors and administrators, covenant . . with the said William F. Berry, his executors, administrators and assigns, that he the said Elisha Berry . . will furnish him the said William F. Berry, with the following property, to wit, one negro man named John, one negro man named Andrew, one negro man named

[1] Sect. 1.
[2] Ch. 38.
[3] Ch. 6.
[4] Act of 1817, ch. 227, sect. 1.

Robert, one boy named John, one boy named Hanson, one boy named Robert, one woman named Beck, and one boy named Bill; two plough horses, two oxen, ploughs, cart, and other plantation utensils; all which property is to remain with the said William F. Berry, on the land where he now resides, for and during the term of ten years from the date hereof. And he the said Elisha Berry, doth further covenant . . to pay to the said William F. Berry, one hundred and fifty dollars, annually; and the said William F. Berry, on his part, doth hereby covenant . . that he will pay to the said Elisha Berry, the one-half of the crops made by him the said William F. Berry, . . during the term above named, after deducting the expenses for making the said crops. And he, the said William F. Berry, doth covenant and agree to superintend and look after all the said Elisha Berry's business." [157] "immediately on the execution of the said agreement, the . . negroes . . were delivered into the possession of" William F. Berry, "and remained with him until the spring of the year 1840, when . . [John, Bill and Hanson] ran away, and came to the possession of Elisha Berry and the defendant." William F. Berry brought an action of replevin. [155] "the jury found . . that the plaintiff is entitled to the possession of the negroes replevied . . John, Bill and Hanson, for the unexpired term of ten years, . . and one cent damages."

Bowling v. Lamar, 1 Gill 358, December 1843. [365] "a receipt . . purporting to have been given by . . the sheriff . . for the apprehension fee and jail fees of negro Hanson, . . But no proof has been offered . . that negro Hanson had ever run away or been confined in jail as a runaway."

Chaney v. Smallwood, 1 Gill 367, December 1843. [368] "all the negroes . . are the descendants of a negro woman, slave, named Peggy, of whom . . Zephaniah Mitchell acquired the possession about twenty-five or thirty years ago; . . some of the said negroes were . . returned sold . . by . . the administratrix of the said Z. M.;"

Jones v. Earle, 1 Gill 395, December 1843. Will of Alfred Jones, dated 1830: [398] "I give . . all my personal estate, . . In trust, . . to manumit all my slaves as they severally arrive to the age of forty years, the said forty years of age to be determined by an entry in the last part of my oldest day-book, where I have made a list of their names and respective ages; and to manumit all my slaves, immediately upon my real estate devolving on my . . grand nephew, . . should it come to his hands;" The testator "also made provision for the support of some of his aged slaves, then unable to labor." Codicil, dated 1831: "I hereby revoke and make void that part of my will which manumitted my servants, as they severally arrive at the age of forty years, and do now give and devise all my said servants (except old Harry,) to my dear wife, for and during her natural life, and after her death, then said servants to be free; but in case that any of said servants shall run away, and afterwards be apprehended, they shall forfeit their freedom, and be sold for life. . . If any of my servants, which I have at this time run away, shall be apprehended after my death, I do hereby direct that they shall be sold for life."

[397] "negro Jeff ran away about the 6th of August 1836, and was apprehended and sold . . about the 20th of August 1836, for the sum of $800, and that the expenses of apprehending the said negro Jeff, amounted to $50 . .; that about the 25th of March 1841, negro Peggy ran away, and that she was apprehended and sold about the 30th March 1841, for the sum of $575, and that the expenses of apprehending her amounted to seven dollars," Held: the proceeds belong to the widow of the testator.

U. S. v. Brig Malek Adhel, 2 Howard 210, January 1844. [213] "The next vessel we met [1840] was the *San Domingo*, . . our captain was acquainted with the passengers . . after they left, Captain Nunez told witness, that the passenger had been a slaver, and was just returning from a prosperous voyage; . . [218] Nunez struck the cook; cook said, 'When I shipped, I did not know I shipped on board a slaver.'"

State v. Jones, 2 Gill 49, December 1844. [55] "special judgment bearing interest from . . 1824, to be paid in negro property,"

McElfresh v. Schey, 2 Gill 181, December 1844. Will of Caspar Mantz, 1832: [187] "It is my will . . that my sister Theresa shall pay to Catharine Clark, a free coloured woman, $100 in quarterly payments of $25 each, in advance, during her natural life."

Isaac v. Williams, 3 Gill 278, December 1845. [279] "in 1835, . . the defendant paid to the plaintiff [her son-in-law] twenty-five cents, for one year's hire of negro Harriet" and said "that she would continue to do so as long as the plaintiff would suffer her to keep possession of said negro" Defendant [280] "asked the plaintiff if he would agree to sell negro Harriet, and her children . .; that Harriet had selected a Mr. Hyatt for her master, if the plaintiff would agree to sell them; that the plaintiff asked the defendant, if she did not recollect a promise he had made his wife . . on her death bed?[1] . . that he would not sell them, but that he would take said negroes home; . . defendant then said that negro Harriet would not be satisfied at the plaintiff's, that his rules were too severe for her; . . [281] in 1836, the plaintiff furnished clothing for the children of Harriet. . . in 1838, the defendant . . asked the plaintiff, whether he had the clothing for Harriet's children? that the plaintiff brought the cloth out and cut it off, when the defendant said, the plaintiff had not given enough, when the plaintiff told defendant to cut it off; . . and stated . . that he should, the next year, take said servants home, that they were old enough to earn their clothes; . . defendant then said, that Washington, one of the children of Harriet, was becoming useful to her, and asked the plaintiff to let him stay with her. . . that Mary, one other of Harriet's children, should be put out near her mother, who could attend to her; . . in 1840, the defendant asked . . if he would pay the doctor's bill for said negroes? . . the plaintiff said, that if she would bring the bill to him, he would get the doctor to separate the items, and would pay them,"

Chaney v. Tipton, 3 Gill 327, December 1845. [331] "a negro woman, valued [in 1830] at $300, . . sold for $500,"

[1] [281] "that he . . would give said negroes to his daughters."

Compton v. Barnes, 4 Gill 55, June 1846. John Barnes, by his will, made in 1844, "manumitted [two] negroes,"

Mudd v. Turton, 4 Gill 233, December 1846. In 1839, Turton, [234] "who was the father of the plaintiff, told the plaintiff, who was then attending the negroes now in controversy, as a physician, and had been so attending them for a long time before, that if he would cure the said negroes, who were at that time sick, and small children, he might have them for the medical bill; and that he must make no charge against them, from that time: to which proposition the plaintiff assented. The witness also proved, that one of the negroes was not, in his opinion, at that time worth more than five dollars; and that the other was worth nothing, by reason of their then state of sickness. . . they recovered from their sickness under his treatment." [238] "the defendant's testator had a considerable family of negroes, there being charges in the account for attending ten,"

Peters v. Van Lear, 4 Gill 249, December 1846. [250] "The bill in this cause was filed on the 12th May 1842, by Caesar Peters, Thomas Clemens, Alexander Clemens, Henry Jones, Isaac Clemens, Nathan Mingo, Margaret Pierce, and Sophia Clemens, colored persons, residing in Washington county, and alleged, that they were, during the lifetime of Mary Van Lear, . . the servants and slaves of the said Mrs. V. L. . . about the year 1828, the owner of your orators departed this life, leaving her last will and testament, which contains a provision . . 'It is my will, and I do hereby . . direct my said executors to manumit, by deed, all the slaves which may be mine at the time of my death, whose age and health may be such, as that their manumission may not be prohibited by law, leaving it in the discretion of my said executors to carry this clause into effect, at such time or times as they may judge expedient and proper.' Which was admitted to probate, . . 1828; That *fourteen* years have elapsed since the death of their mistress, during all which time the said executors have refused to allow to your orators any benefit of the said last will and testament, and contrary to the express intention of the said testatrix, the said executors have ever since held your orators in bondage and servitude, and have refused to execute deeds of manumission to your orators, although your orators have not been prohibited by law from being manumitted, in consequence of their age or health, or any other cause whatever. And the said executors have, ever since the death of the said testatrix, and do now hold, your orators in servitude and slavery, although there is no reason for their doing so. That the best part of the life of many of your orators, when freedom would be of most value to them, is wearing away; and that the said executors have retained . . [251] your orators in servitude, for their own profit and emolument, which your orators charge is contrary to good faith, and the kind and benevolent intentions of the said testatrix; . . That your orators may be decreed to be free and discharged from slavery; that the executors, or one or more of them, may be required to execute to your orators deeds of manumission; that they may be allowed, under the decree of your honorable court, adequate

compensation for their services, for the time during which they have been detained in slavery by the said defendants; . . a sufficiency of personal estate of the testatrix came into the hands of her executor to pay her debts, without including the complainants in the same,"

Held: [262] "by the laws of this State, a slave possesses no civil rights, and as a general proposition, it is true, that he is incapable of instituting a suit either in a court of law or equity. But as he has been made capable of acquiring freedom, by deed or will, the statutes [1] of Maryland recognize his ability to assert in a court of law his right to freedom, notwithstanding, pending the controversy, . . he is treated as a slave. . . [263] As in this case, the complainants were under the necessity of invoking the aid of a court of equity, that an execution of the power created by the will might be enforced, as preliminary to the institution of a petition for freedom in a court of law; we think, that in analogy to the right secured to the slave of preferring his petition in that court for the purpose of establishing his freedom, and on the principle so distinctly announced by the Supreme Court, in the case of Fenwick and Chapman,[2] they must be regarded as capacitated for the purpose of this suit, and therefore able to maintain it. . . [264] the court below had no power to determine by their decree the freedom of the complainants, nor to order an account of the value of their services, . . but . . the court had jurisdiction of the cause, for the purpose of directing the executor to execute deeds of manumission as required by the will. . . [265] Cause remanded under act of 1832, ch. 302, sec. 6." [3]

Mayo v. Mayo, 4 Md. Ch. 103, July 1847. [113] "he has been compelled, from a well founded apprehension, that negro man Phil . . [114] would escape out of the state, to sell him; that he has received for him the sum of $600, . . [115] said slave hired at the rate of $60 per annum, and was worth about $80 a year,"

Spencer v. Spencer, 4 Md. Ch. 456, September 1847. Will of William Spencer, 1822: [458] "none of my negroes to be sold out of the state, except for gross misconduct." In 1835 [460] "credit is taken for $1200 on account of runaway slaves, . . [461] all the negroes belonging to the estate of William Spencer, appraised at $1200, absconded soon after his death, and were finally lost, though legal measures were taken to recover them, by his executor,"

Worthington v. Shipley, 5 Gill 449, December 1847. Bill of sale executed, in August 1841, by James Shipley to his daughter: [451] "one negro woman, named Catharine, aged about twenty-five years, and one negro girl named Nancy, three years of age," [450] "said negro girls have been seized and taken out of the possession of your oratrix [Mary E. Shipley] by . . the sheriff . . by virtue of . . a writ of *fieri facias*, issued . . 1842, upon a judgment . . against James Shipley . . by the court . . at the March term . . 1841, . . that the said S. was induced

[1] Act of 1796, ch. 67, sect. 21.
[2] 9 Peters 475.
[3] See Pearce *v.* Van Lear, p. 122, *infra*.

to convey the said girls to your oratrix, by the death-bed solicitations of her said mother, who requested said S. to give all the negroes, who came to him through her, upon her marriage to her several children . . that S. gave said girls to your oratrix during the lifetime of his wife, . . and that said deed was made in pursuance of said gift. . . they are favorite negroes with your oratrix, both on account of the manner in which they became the property of your oratrix, and on account of their own good character,"

Bill for injunction, dismissed: [455] "We have not been able to discover in this record any evidence even tending to prove . . an express delivery [1] of these slaves by James Shipley to his daughter at the time . . of the verbal gift alleged to have been made in the life-time of Mrs. Shipley; . . [460] the voluntary conveyance in this case . . must be pronounced fraudulent and void. The donor, at the period of its execution was literally loaded with debt;"

Anderson v. Hammond,[2] 5 Gill 461, December 1847. Hammond "married Elizabeth Ann Shipley, another daughter of James Shipley, to whom . . 1841, he made another conveyance of a slave called Miranda. The appellee claimed also under a gift from J. S., to his daughter made in 1835, at which time S. was not indebted."

Bill dismissed: [462] "the appellee has not succeeded in proving that express delivery of possession at the time of the gift, which is required by the act of 1763, ch. 13."

Buchanan v. Pue, 6 Gill 112, December 1847. [113] "The will of Edward Buchanan [who died in 1843], after . . liberating a certain negro man slave,"

Magruder v. Darnall, 6 Gill 269, December 1847. [283] "The inventory of the [personal] estate of Richard Hill . . amounts to $12,208.87, comprising fifty-six negroes, mostly women and children; 25 between the ages of 1 and 10 years; and 10 (men and women,) between the ages of 44 and 94, *viz*: 44, 45, 45, 60, 62, 63, 60, 68, 52, 94. Some of them . . shewn to have been worth nothing." [272] "To proceeds of sales [1842] —negro Harry, . . $415.00 Deduct jail fees, . . $4.76" [275] "By hire of Tildy, in 1829, . . $12.00 By interest on $480, value of Priss and Moses, who died in 1825,"

Cornish v. Willson, 6 Gill 299, June 1848. Will of Beachamp Harper, 1795: [304] "I give . . unto my daughter . . one negro boy, called Jacob, . . and at her decease, for said negro boy to be free. . . [305] N. B.—Before the signing, sealing, and delivery of these presents, the said Beachamp Harper doth set free, and to be at their liberty as followeth: one negro woman called Leddy, and one negro man called David, and one negro woman called Taymer, to be free 1st January, 1799, and one negro boy called Thomas, to be free 1st January, 1815, and one negro boy called Stephen, to be free 1st January, 1817, and one negro boy called

[1] Act of 1763, ch. 13.
[2] See Worthington *v.* Shipley, p. 103, *supra.*

Jonathan, to be free 1st January, 1820, etc. Signed, B. H." On the day that the will was admitted to probate "Solomon Twyford, being a new Quaker, did solemnly . . affirm, that he was present at the late mansion house of Beachamp Harper . . at the time when the aforegoing instrument . . was executed; and that he heard the testator . . say that negro Leddy and negro David were to be free at his death; . . and the rest of the negroes mentioned . . to be free at the particular . . times mentioned in said writing," In 1796 the executors returned an inventory of the personal estate: [306] "The negro David's age, thirty-nine. Taymer's age, thirty-seven. Boy Jacob, nine years; one boy, five years; one boy, three years, and one boy, five months. Negro woman, Leddy, fifty-seven, . . £211. 5. 0" . . The Orphans Court ordered the executors [307] "to sell all . . the residue of the deceased's effects [which included the negroes], to pay the creditors" [308] "a return of sales [dated 1797]. . .

One negro man, David,.....	£58	0 *s.*
" negro woman, Taymer,.....	45	0
" child, Thomas, ...	25	15 *s.*
" " Stephen, ...	22	10
" " John, ...	10	0
" negro woman, Lid,.....	7	10
	£168	15 *s.*"

[342] "even, after their sale, the insufficency [of the legal assets] still continued." In 1846 negro Stephen filed a petition for freedom, and proved [305] "that on the first day of January, 1817, . . he was able to work and gain a sufficient livelihood . . [306] and that he was under the age of fifty years;" The court refused to instruct the jury to find for the petitioner [309] "unless they shall believe . . that there was a deficiency of personal and real estate, to pay the debts . . [311] The verdict being against the petitioner for freedom, he appealed"

Judgment affirmed: [341] "neither upon the true construction of the act of 1796, nor of the will of the testator, is there any charge upon the real estate of the testator for the payment of debts,"

Maryland v. Dorsey, 6 Gill 388, June 1848. "Nicholas Worthington . . by his will, . . manumitted . . all his negro slaves, . . appraised in the inventory at $15,433 . . 1847. The State . . filed a suggestion . . alleging . . that the State was entitled to the tax of two and a half per cent. under the act of 1844, ch. 237," Held: [391] "The bequest of freedom to the slaves are legacies, and the executor is liable for the tax . . on their appraised value."

Thomas v. Wood, 1 Md. Ch. 296, September 1848. "Joseph G. Harrison, . . by his will, dated . . 1844, . . manumitted some of his slaves immediately," [304] "He bequeathed her [his widow] his negro man Major, to serve her for three years after his decease, at the expiration of which period he was to have the privilege of going to Africa, or remaining here if the law will permit him; and then the will says, 'that all

the rest of my negroes shall serve my wife, under the direction of my executor, for the interest of my estate, for the term of three years,' and after that time, and as the negroes attained the ages designated by the testator, they were to have the privilege of going to Africa. . . an authority given to the executor to sell the residue of the . . real estate at his discretion; . . [305] 'all, both real and personal, shall remain under his direction, the proceeds applicable to the payment of my debts,' "

Held: " the testator did not intend to give his wife the same interest in the services of the residue of his negroes, as he had given her in the negro named Major, but that he designed that these negroes, other than Major, should, for the space of three years, be employed for the benefit of his estate, for the payment of debts," [301] " the personal estate, independently of the slaves, is quite sufficient to pay the debts, . . [302] In this case, the creditors, if any remain unpaid, are not before the court, . . But with regard to the manumittor himself and his legal representatives, the manumission, though in prejudice of creditors, is valid, and the negroes manumitted are not assets for the payment of debts." [Johnson, Ch.]

Duffy v. Calvert, 6 Gill 487, December 1848. [490] " to Caroline Calvert, her choice of ten negroes— "

Garner v. Smith, 7 Gill 1, December 1848. In 1841 or 1842 Smith said [2] " that he had given nearly all the young negroes to his sons at the south, and to . . his daughter, and that his stock of negroes was old and unable to work his farm, and that he should be obliged to buy negroes for his own use; that he gave in twenty odd negroes to the assessors: "

Brooke v. Waring, 7 Gill 5, December 1848. In 1843 [6] " the witness was sent, by the plaintiff's intestate [Baldwin], to the residence of the defendant, to receive a negro girl, which the . . defendant had . . contracted to sell . . and on which contract . . one hundred dollars had been paid; . . the witness was informed . . that he could not then deliver the negro . . that the negro woman was unwell, and unfit to be delivered, . . but that in ten days' time, she would be left at the house of Dr. Wyville, . . witness did go to said Wyville's, and the said negro girl was not there, . . she having died shortly after said last application for her delivery to him. . . between the two visits of the agent of plaintiff's intestate, . . the defendant informed said plaintiff's intestate, that he need give himself no uneasiness about the . . one hundred dollars, that . . it should not be Baldwin's loss if the negro girl was not delivered " Judgment for the defendant reversed: [9] " the principle of *nudum pactum*, can have no application to such a transaction."

Brooke v. Townshend, 7 Gill 10, December 1848. Will of John Townshend, dated 1844: [12] " I give and bequeath to all my negroes or servants, old and young, and their increase, their freedom; and do direct, that my executor hereinafter named, shall, immediately after my demise, procure and deliver to them respectively, from the proper office in said county, such certificates as may be necessary to secure to them their full enjoyment of their freedom; the said certificates, when thus procured, to

be paid for by my executor out of my estate. And whereas also, in and by a certain deed of manumission, by me heretofore executed, bearing date . . 1831, and recorded . . 1832, my said negroes and their increase are to be liberated, manumitted, and set free, from and after the time of my death: and some doubts have been expressed as to the validity of said deed, I have, for remedy thereof, inserted the aforegoing clause herein, and in case the said deed and this, my will, should be insufficient to manumit and free from slavery my said negroes, and their said increase, I hereby give and bequeath them, and their said increase, to my nephew, Jeremiah Townshend, and his heirs, not for the use of himself and his heirs, but for the use of the said negroes and their increase, save the amount of one cent per capita per annum, which the said slaves, and their said increase, are hereby required to pay forever hereafter to the said Jeremiah Townshend and his heirs. I give, devise and bequeath, to my said negroes, and their said increase, all my property, both real and personal, to be divided amongst them equally, share and share alike, to them and their heirs, forever. This devise and bequest is to take effect, even if, for any cause at all, at present unforeseen by me, the said negroes, or their said increase, should after my death, be deprived of their said freedom and held in bondage." The testator believed [13] "that he had seen and conversed with God face to face, and that he had been told by God, to make such a will. . . [20] He died [in 1846] at the age of eighty-one years, possessed of a real estate, amounting to thirteen or fourteen hundred acres, and a large stock of negroes, more than fifty in number. Judgment in favor of the caveators reversed and *procedendo* awarded.[1]

Gibbons v. Riley, 7 Gill 82, December 1848. [85] "The admission . . that Martha and Mary jointly purchased the negro man Henry, does not prove that they were joint tenants. The presumption is, that each of them paid one-half of the purchase money for the negro, and were tenants in common thereof."

Janney v. Sprigg, 7 Gill 197, December 1848. Will of Sarah Lamar, executed 1839: [199] "It is my will and desire, that if my executor should think it most advisable, he may sell . . my negro woman, Ellen, and her children, the said negro woman is to have the privilege of choosing her own master. It is my wish, that the mother and children may not be parted, but should my niece, Mary Tilghman, wish to retain, for her own use, one or more of said Ellen's children, she is to have the privilege of doing so."

Patterson v. Crookshanks, 7 Gill 211, December 1848. In 1832 Ford of Baltimore County sold to Crookshanks of the same county [212] "for the sum of $200, a negro boy named William, aged about eighteen years, to serve until the 1st of January 1844." Crookshanks covenanted "that from and after the said 1st of January 1844, the said negro boy William shall be liberated, manumitted and set free, and forever discharged from any and all kinds of slavery whatsoever." The bill of sale was not recorded. In 1838 William [Patterson] "absconded" and "was recently arrested as an absconding servant," He was brought before the Orphans Court of Washington County, which [212] "ordered, that the term of service of

[1] See Townshend *v.* Townshend, p. 116, *infra*.

said William Patterson, (negro,) be extended for eight years [1] from this date [1848], and that . . Crookshanks have the right of selling . . Patterson, . . in or out of the State of Maryland." The defendant appealed on the ground [214] "that the orphans court of Washington county, had no jurisdiction in the cause. . . The master . . must reside in the county where the application is made;" Counsel for the plaintiff contended [215] "that the bill of sale . . if intended to operate as a deed of manumission, is void, because it was not recorded . . the negro remains a slave, and . . has no status in court."

Frick, J.: The appellee "first arraigns him before the court as a freeman, and then to drive him from his rights and his defence as such, he invokes the instrument of his title, and its defective execution, to convert him into a slave. . . The orphans court . . did not profess to deal with Patterson in that character, and the very sentence imposed by them, denies it, by adding to the previous limited term of his servitude. . . [216] The forum selected by the appellee has no jurisdiction . . and their decision must be reversed."

Negroes Monica et al. v. Mitchell, 1 Md. Ch. 355, December 1848. Ignatius Semmes, by his will, executed April 1843, [356] "gives freedom to several of his slaves, to each of whom he bequeathed a pecuniary legacy of three hundred dollars." Also, "I will and devise, that my executor shall cause to be erected on some part of my farm, called Rose Hill, (the place to be selected by the above manumitted negroes,) a good substantial dwelling house, with one brick chimney, which house, together with two acres of land adjoining thereto, I give and devise to the above manumitted negroes and their heirs forever."

Held: "the testator intended by this devise, to provide the negroes in question, with a habitation to live in, and, as this intent comes in conflict with the policy of the legislature, which forbids persons in their situation from remaining in the state, unless upon terms incompatible with the unrestricted enjoyment of the devise, the latter must fail. Looking to the 3d, 4th and 5th sections of the act of 1831, chap. 281, it is manifest, that no slave manumitted since its passage can remain in this state in a condition of freedom. It is true, that the orphans courts may or may not grant slaves so manumitted annual permits to remain, but the privilege of doing so depends upon the discretion of the court, and if withheld, they are liable to be expelled at any time." [Johnson, Ch.]

Conner v. Ogle, 4 Md. Ch. 425, December 1848. [428] "By a codicil, executed on the 23d of June, 1815, the testatrix [Mrs. Henry Margaret Ogle] manumitted her negro man, Caesar, and gave him an annuity of $20 per annum, during his life, also her negro man Orson, and her negro cook, Nan Bowser, and gave each an annuity of $10 per annum, during their lives; also her negro girl, Nance, whose freedom was to commence on the 1st of January, 1818, and requested these devises to be scrupulously carried into effect. By another codicil, dated the 28th of July, 1815, the manumission of the negro girl, Nance, was postponed until the 1st of

[1] Acts of 1833, ch. 224; 1845, ch. 105.

January, 1820, and her services in the mean time were bequeathed to . . [432] On the 11th of June, 1828, . . executor . . passed . . an additional final account, charging himself 'with cash received for [twelve] negroes under the treaty of Ghent, $3,402,' . . The negroes referred to in this order had been carried away during the late war with England. On the 1st October, 1828, . . a further additional final account, in which he charges himself 'with cash received for negroes under the treaty of Ghent, $1,291.68,' "

The African Methodist Bethel Church v. Carmack, 2 Md. Ch. 143, March 1849. A bill for an injunction, alleging [144] " fraudulent misconduct on the part of the five defendants . . in collecting and misapplying the funds of the church,"

Spencer v. Negro Dennis, 8 Gill 314, December 1849. Samuel Brohawn's will, executed 1831: [315] " My will and desire is, that all my negroes be free at the age of thirty-eight years, provided they leave the State of Maryland, and do not return therein to reside, in the course of thirty days after they arrive to the age of thirty-eight years; and should they return to reside in the State of Maryland, my will is, then, that they shall be slaves to my heirs." His slave, Dennis, attained 38 years on December 19, 1845, and received a certificate of freedom. He was " permitted to go at large, and act as a freeman, until taken by appellant, on the 1st of August, 1849. That the appellant, sometime in February, or the 1st of March last, sent for petitioner, and notified him, if he did not give security, or leave the State, he (appellant,) would sell him, as he had stayed longer than the will allowed. That if he would leave the State, he would let him go free. That petitioner made no answer to this notice. That he has never left the State, and never offered to leave it. The court gave judgment that petitioner was entitled to his freedom,"

Affirmed: [321] " The conditions attached to the bequest for freedom . . are manifestly conditions subsequent, and being subsequent, they are wholly unauthorised by the act of Assembly, and are therefore void. The power of testamentary manumission only exists in Maryland, in virtue of the 13th section of the act of 1796, ch. 67, and it can only be exercised in pursuance of the authority thereby given. A testator . . is explicitly empowered to limit . . the period at which manumission shall commence . . but there his power ceases. . . 'Once free and always free,' is the maxim of Maryland law . . Freedom having once vested, by no compact between the master and liberated slave, nor by any condition subsequent, attached by the master to the gift of freedom, can a state of slavery be reproduced." [318] " The acts of Assembly of Maryland, authorising the manumission of slaves, were not passed in consequence of any legislative hostility to slavery, or in gratification of any general wish or policy to diminish or destroy it; or to confer benefits upon slaves, and promote their comforts and happiness; because all observation and experience, in Maryland, had demonstrated, that the reverse would be the result; that slaves, for the most part, were far better fed and clothed; more contented and happy; and in point of sobriety, virtue and moral character, far above the free coloured population of the State. But the design of these enact-

ments was to gratify the masters of slaves, to enlarge their privileges, and to give them an authority to dispose of their slaves, in a way which otherwise they did not possess." [Dorsey, C. J.]

Negro Andrew Franklin v. Waters, 8 Gill 322, December 1849. Deed of manumission executed by Charles Waters, in 1812, by which he [323] "manumitted and set free my negro boy, Andrew, from and after the 1st of January, 1840." Andrew "was detained in slavery by said testator up to the time of the latter's death, on the 12th of May, 1846, and was kept in ignorance of said deed of manumission, and of his right to freedom, until he was discharged by the defendant, as executor [of Waters] . . on the 2nd of September, 1846." Waters, in his will, "bequeaths a legacy of $100 to his 'negro man Andrew,'" The court refused to instruct the jury that [324] "the plaintiff is entitled to recover so much as the jury may find . . his services were worth from the period . . he was so retained [in the service of defendant's testator] . . after the 1st day of January, 1840." The plaintiff excepted, "and the verdict and judgment being against him, appealed"

Judgment affirmed: [327] "The relations that exist between master and slave, must necessarily modify those general rules which govern the rights of persons . . . [328] no such *assumpsit* or contract to pay can be implied, where the facts show that the parties did not intend or design the one to pay or the other to receive."

Dorsey v. Whipps, 8 Gill 457, December 1849. Action of slander. Whipps, [459] "a blacksmith," declared that Dorsey, the defendant, had said: [458] "I have been informed, that some gentleman in the neighborhood of Mr. Whipps, had missed some clevises off his ploughs, and went to Whipps to have others made, and, on arriving there, found his clevises in the possession of Mr. Whipps; that he claimed the clevises, and Mr. Whipps pretended not to know how they came into his shop, but afterwards acknowledged that he had purchased them from one of the claimant's negroes, and begged him to say nothing about it, as it would ruin him;" [459] "meaning that the plaintiff had acknowledged that he had purchased said clevises from one of the negroes of said gentleman, and meaning further, that the said clevises had been feloniously stolen by said negro, and purchased by said plaintiff from him, knowing the same to have been feloniously stolen." A witness [460] "heard a negro slave ask Whipps if he wanted to buy some crowbars, and Whipps said he would take them; no bargain was then made, but the negro afterwards left two crowbars at Whipps. The same witness also proved, that he had known Whipps to purchase old horse shoes from negroes." The verdict was in favor of the plaintiff. Judgment arrested: [461] "no special damage is charged to have resulted to the plaintiff, . . [462] We do not think that the words charged . . to have been spoken by the defendant, are *per se* actionable."

Taymon v. Mitchell, 1 Md. Ch. 496, December 1849. [504] "a case in which the complainant has been induced to purchase a family of incurably diseased slaves, upon representations made to him by the vendor, that

they were sound and healthy." [498] " They were radically and permanently diseased. The complainant stated that the negroes had been of very little service to him, requiring frequent care and medical attendance, and that one of them, an infant, died before the bill was filed; and that as soon as he ascertained their unhealthy condition, which was about a month after the sale, he applied, without success, to the defendants to take them back." Decree [506] " to rescind the contract *in toto,*"

Holmes v. Mitchell, 4 Md. Ch. 162, March 1850. Will of Ignatius Semmes: " I . . devise to . . Mitchell . . my farm . . together with all the rest of my negroes, . . [163] in trust . . the income therefrom to be applied to the mutual benefit of my uncle William Holmes, . . and my aunt Sarah Floyd, during their lives, and after their death to my cousins." Holmes filed a bill, claiming " that the trustee should be compelled . . to transfer to the complainant " " the issue of the female slaves comprehended in the bequest, born since the death of the testator, . . or such of them as the complainant is properly entitled to, and one-half of such as may be hereafter born,"

Held: [166] " the testator . . meant the annual income and no more." [165] " To separate the issue from the mother, . . involves the necessity of determining at what age this may be done. The infant cannot be torn from its mother and sold or transferred to the complainant. No one would buy, and humanity would cry out against it. There would have then to be a periodical partition, or sale, after first determining at what age the offspring could with propriety or without shocking the public sensibility, be separated from the mother. . . I cannot think . . that the reasons which have influenced the courts to give to the legatee for life or for a term, the after-born issue, apply to a case where a mass of property is left in trust as here. . . the title to the issue . . will pass with their parents to these who are entitled in remainder upon the termination of the life estates." [Johnson, Ch.] [1]

Harker v. Dement, 9 Gill 7, June 1850. [8] " plaintiff was in possession of a farm and negroes . . under the management of . . his overseer; That on the 13th March, 1846, John Campbell . . [9] came to this farm . . accompanied by Mr. Edmund Briscoe and the sheriff; . . that Briscoe then and there bargained with Campbell for the sale of the [two] negroes, . . that no money was then paid, but Campbell handcuffed the negroes and carried them away."

Hayden v. Burch, 9 Gill 79, June 1850. Will of Peregrine Hayden, executed in 1848: [80] " confirming freedom to certain negroes therein named, whom he devised to the appellant, in trust, to receive their freedom whenever they shall determine to emigrate to a free state or to Liberia, but should they determine to remain in this State under existing laws, the appellant was still to hold them in trust, to aid them in their support, and permit them to live on testator's land free of rent. The will also states, that having executed a deed of manumission to said slaves, 'it is my wish, in the event of the said deed proving inadequate to secure

[1] See same *v.* same, p. 122, *infra.*

their freedom, that this my will and testament may take effect for the object and purpose herein declared and set forth.' "

Anderson v. Garrett, 9 Gill 120, June 1850. Will of Sarah Cord, executed in 1805: [125] "My will and desire is, that all my negroes be liberated and set free, and is by this my will liberated and set free from bondage, in the manner and form following: that is to say, that my negro man Tom, my negro man Joshua, and my negro woman Phebe, be free to all intents and purposes, from the date of my decease; my negro woman Beck, and my negro man Basil, to be free at the expiration of four years from the date of my decease, my negro boy Levi, my negro boy David, my negro girl Seny, my negro girl Mariah, my negro girl Elizabeth, my negro girl Matilda, my negro boy Elias, my negro child William, all and each of them to be free when they arrive at the age of twenty-five years, them and their issue or increase forever." The testatrix [125] "desired that no letters of administration should be taken out on her estate, . . Rebecca Garrett, the petitioner, was the daughter of Beck, . . John Cord, named as executor of Sarah Cord, sold the rest of the negroes." No letters testamentary "had been ever granted to any one." In 1849 [122] "Rebecca Garrett and her five children, by . . their next friend, filed their petition for freedom in Baltimore county court, . . The defendant, Thomas Anderson . . pleaded in abatement to the jurisdiction of the court, averring that the petitioners did . . reside . . under the directions of the defendant, their master . . at Howard district of Anne Arundel County, out of the jurisdiction of said court. . . Rebecca . . came to Baltimore about eighteen years ago, where she has continually resided with her children till within a short period prior to the filing of this [123] petition. That during all this time she was reputed a free woman, and always acted as such, making contracts, renting houses, hiring herself out and receiving her own wages, hiring out her children and receiving pay for their services, and raising and supporting her family by her own industry. That shortly before the filing of their petition, Isaac J. Anderson, the son of defendant, with several police officers, came to the house of petitioners at night, seized and hand-cuffed them, and carried them off to the residence of defendant, in Howard district. On the part of the defendant, it was proved that he claimed the petitioners as his slaves, the mother, Rebecca, having been given to his wife at five or six years of age." "that about twenty years ago, . . not having constant employment for her, he permitted her to live with her husband, one William Garrett, a free negro. That several years afterwards, . . Garrett being about to remove to the city of Baltimore, Rebecca applied to defendant for permission to accompany her husband. That defendant for some time refused to let her go, but afterwards agreed to hire her to her husband, and he took her with him to reside in the city of Baltimore. That by this agreement, . . Garrett promised to pay a certain sum, yearly, for the services of Rebecca, and defendant reserved to himself the right at any time, to take and remove [124] her, or any child or children she might afterwards have, from the possession of . . Garrett, without any previous notice. That all the petitioners mentioned as the children of said Rebecca,

were born after this agreement was made. That for several years . . Garrett continued to pay the sum stipulated in the agreement, but defendant, in consideration of the expense and trouble of supporting his large family of children, did not exact afterwards the payment of the same from him. That defendant frequently supplied Rebecca and her children with provisions and whatever else necessary to their support, his farm afforded." [123] "That he had permitted them to live as they had for many years, until recently, when having heard that one of them was about to escape into Pennsylvania, he did, acting under the advice of counsel, seize . . them . . as stated above. That immediately upon doing so, he addressed a letter to petitioners counsel, . . inviting him to bring suit for freedom in [Howard district] . . court. . . the court . . overruled the plea and directed the defendant to answer over, . . [127] The court granted the fourth [prayer] . . of petitioners:" [126] "The jury may presume, from the lapse of time and all the evidence . . that . . John Cord had acted under letters testamentary . . And . . that the estate . . was fully administered, and all debts paid. And if the jury find . . that . . Rebecca . . [127] publicly acted for herself as a free person . . for a period of twenty years, or any considerable length of time less than twenty years, without the interruption of any one; . . and that no attempt was made . . to claim them as slaves, then the jury may find that they are abandoned, . . and . . entitled to their freedom. . . The verdict and judgment being for petitioners, the defendant appealed."

[137] "judgment is reversed and no *procedendo* will be awarded." [129] "In overruling the appellant's plea, in abatement . . Baltimore county court erred," [128] "By the act of 1796,[1] . . the county court of that county in which the . . 'petitioners shall reside, under the direction of . . their master' . . are exclusively vested with the power of trying the petition for freedom. . . In acquiring a residence by a slave, he has no will of his own. . . Its creation and continuance depend entirely upon the acts and intentions of the owner, . . [131] We concur in opinion with the county court, that by the last will . . of Sarah Cord, . . Rebecca Garrett, was not manumitted. . . [132] As to the issue of her negro woman Beck, . . she has made no provision, . . [134] There having been no letters testamentary granted, no . . presumption ['that the estate . . was fully administered and all debts paid'] can legally arise. . . [135] The county court . . erred in declaring that the petitioners are entitled to their freedom had they thus gone at large as free for any time less than twenty years. . . [136] The conclusion of the prayer . . is also erroneous. . . If it meant to assert that abandonment by the owner of a slave that he might be free, is, *per se,* a legitimate mode of manumission in Maryland, it is a proposition as novel as it is contradictory to the express provisions of our act of Assembly upon the subject. . . This prayer, however, is radically wrong, upon another ground . . An executor has no power, . . as such, to execute a deed of manumission; . . No presumption . . that such a deed was executed by the executor can ever arise," [Dorsey, C. J.]

[1] Ch. 67, sect. 21.

Clements v. Smith, 9 Gill 156, June 1850. Plaintiff sold Smith a negro boy at auction, in August 1845, for three hundred dollars, the auctioneer warranting him [157] "sound as a dollar;" The defendants, in an action of debt, proved by a witness "who saw the boy the day after he was purchased, and had frequently had the boy in his service since, that the boy had not the free use of his limbs, and can do no good service; that his stomach is swollen, and he is . . defective in body and mind, and not worth more than his victuals and clothes. . . By another witness, . . that he seems to be deformed, and cannot walk well; that no defect is discernible in the boy when sitting or standing still, but is perceptible when he moves; . . [158] he is more defective in body than in mind. By another witness, that plaintiff before the sale had offered the boy to witness's brother, who told plaintiff he would not buy him, that he was very defective both from whipping and deformity, that in witness's opinion the boy was worthless, and a tax upon any one who owned him; that when the boy is in his clothes, he looks tolerably well, and that the defects are shown upon examining him. They also proved that the value of a boy of his age, (about seventeen years,) varied from $300 to $400. . . The plaintiff . . proved by a competent witness that he raised said negro, and sold him in December, 1844; . . that at that time the boy was sound; but the defendants objected to this evidence . . which objection the court sustained, and plaintiff excepted. . . [159] the verdict and judgment being against him, he appealed."

Judgment reversed and *procedendo*: [159] "The defendants had offered evidence to prove, that the negro man was [un]sound before the sale, and without limitation of time, as to how long before the sale; and Carter's testimony was admissible to rebut that evidence."

Lark v. Linstead, 2 Md. Ch. 162, September 1850. Lark [164] "died in . . 1826, and his executrix returned an inventory of his personal estate in March, 1827; in which there is included a negro woman and child, (the latter supposed to be the boy in dispute,) appraised together at $250. . . [165] June 1829, she passed . . her . . final account," In November 1829 she sold the boy, who had been bequeathed to her for life, to Linstead for $35. The legatees [162] "in reversion of" the testator filed a bill, alleging that Mrs. Lark "could only have sold her life estate in the said boy" Linstead answered that [164] "he purchased the boy . . bona fide and for a fair price as a slave for life,"

Bill dismissed: [165] "If the child was but two or three years old, or even a year or two older, the price given . . though less than the witnesses say negro children of that age were worth, is not so low as of itself to create a presumption . . that the defendant did not purchase the child for life. . . [166] It does not seem very probable that a cautious person would purchase a negro child of tender age for the life of another person . . past the meridian of life. . . [168] there is no ground for imputing fraud." [Johnson, Ch.] [1]

Ex parte Garnett, 10 Fed. Cas. 6 (7 Leg. Int. 174), October 1850. "Henry Garnett belonged to the estate of Benedict Jones; that he was

[1] See same *v.* same, p. 119, *infra.*

held to labor for a term of years, and that said Henry had run away from his owner, as long ago as the year 1842." [7] "Henry was seventeen years old at the time of his escape;" The son of Jones had him arrested, under the act of October 18, 1850.[1] He was brought before the court, and it was held that [11] "the party [Jones] has failed to make the necessary proof," The claimant's counsel promised "to have the proper certificates here, certifying to this will" "if your honor will remand the prisoner until to-morrow morning, . . Your honor knows from the state of feeling on this subject, that the moment it is known, that a claimant is pursuing a fugitive, that moment the fugitive is secreted and escapes and there is no opportunity to get him."

Judge Grier: "I knew the excitement this arrest would cause, and I was determined, that if he made good his case, I would at all expense carry out the requirements of the law." [10] "the party was warned yesterday . . to be prepared." [11] "This man is in the possession of the marshal here, at a risk of one thousand dollars every minute." "the prisoner has a right to be discharged, and is discharged."

Edelen v. Middleton, 9 Gill 161, December 1850. Will, executed 1808: [164] "I give and bequeath unto my son, Ignatius Fielder Thompson, two negroes, the one called Pol, who is the wife of Nace, and the other her child called Gusty, as also, the said Pol's future increase, . . to be paid to him after the natural life of my wife, Eleanor and myself, at which death may last happen. But in case my said son shall die without lawful issue, and before he possess the said negroes, . . my will and desire is that the whole of them shall go to my daughter, Mary Ann Thompson; in case she . . should die as aforesaid, . . the property aforesaid, shall go to my second daughter Elizabeth . . and so on, down to the youngest of my children; this being according to a particular contract made with my brother in law, . . at the time I swapt with him for said negro Pol."

Clarke v. Marriott, 9 Gill 331, December 1850. [332] "an action of replevin brought by . . administrator of Walter Clarke, for a negro boy" In 1820 Marriott, by a bill of sale, transferred his "negro woman named Jemima . . to . . Walter Clarke, to serve for the term of ten years . . and the children of said Jemima, if boys, born during the said term, to serve until the age of thirty years. The boy in question in this suit, was born in 1833, . . Walter Clarke died in the year 1826. The appellees offered in proof . . that about eighteen months before his death, . . Peach, claiming to act as trustee, employed . . auctioneer . . to sell all the estate of Walter Clarke; . . he sold . . Jemima, to Caleb, the brother of said Walter, and that Walter there delivered the woman to Caleb. . . [333] the woman was never out of the possession of Walter Clarke, *except as stated*, but she continued in his possession up to the period of his death; and afterwards with his widow, until after the birth of the boy, who, at the age of two or three years, was . . still in the possession of the widow."

[1] 9 Stat. at L. 462.

Held: " This negro being the property of Walter S. Clarke in 1820, remaining in his possession until his death, and there being no ground for a presumption that Marriott . . ever had possession, or set up any title to Jemima or her child, until the institution of this suit, it would seem that the plaintiff is entitled to the negro boy . . unless it can be shown that his intestate by his own act, lost or parted with the title thereto. . . [336] the testimony was not sufficient to justify the inference of a sale, . . [340] It was intimated that the original bill of sale from Marriott . . was not such . . as is required by the act of 1817, chap. 112, sec. 3. . . such a disposition of a slave for life, is not within the provisions or the spirit of the act "

Tayman v. Tayman, 2 Md. Ch. 393, March 1851. Suit for divorce. Answer of the husband: [395] " He admits, that on one occasion, she, in her disobedience, attempted, by interposing her person, to prevent respondent from whipping her negro boy, who was disobedient and impudent to respondent, and when, in his proper efforts to chastise the boy, he may have accidentally struck complainant "

Henderson v. Jason, 9 Gill 483, June 1851. [484] " The petitioners proved by Alfred Warfield, that the petitioner William is now nineteen, Reuben thirteen or fourteen, Asbury fifteen, and Louisa about seventeen years of age. That they are all healthy . . Their reputed father is Aaron Jason, with whom they had lived from their birth until the defendant took them. Their mother was Rachel, who up to 1830 was the slave of Mrs. Francis Warfield. . . Rachel went to live with Aaron in 1830, by permission of Mrs. W. and under an agreement between Mrs. W. and Aaron. . . [485] that in consideration that he, Aaron, should support and bring up two of Rachel's children then *in esse*, Arch and Sam, she, Rachel was to be free." [484] " Gustavus Warfield . . always regarded Aaron as free, has attended him and the petitioners, his children, as a physician, and charged Aaron therefor, who paid him; that Aaron sometimes put out the petitioners for their victuals and clothes, . . [485] Charles D. Warfield proved, that his father owned Aaron, and that he was too old to set free when witness' father died, being over forty-five years. That witness in 1829 or 1830 let him go free for $100, of which Aaron paid $90, and witness gave up the rest; . . [486] Sam, one of Rachel's children, staid with Aaron about six months or a year, and was taken away by Eli [Warfield] for his mother, . . and that Arch . . staid longer; . . five or six years, . . at the time Rachel went to live with Aaron she was under forty-five years of age, and able by her labor to gain a competent livelihood. . . [490] verdict, and judgment . . in favor of the petitioners," Affirmed.

Townshend v. Townshend,[1] 9 Gill 506, June 1851. [513] Evidence by the caveators: " Townshend stated that God had commanded him to set his negroes free, and to give them all his property, that he had told him this repeatedly, that at one time he, Townshend, intended to convey a piece of land to one of his nephews, and that God had told him that he

[1] See Brooke *v.* Townshend, p. 106, *supra*.

must not do so, but must give it to his negroes: . . that it was not his will, but God's will;" "Townshend was of sound and disposing mind. . . [514] That his opinions . . were professed on the occasion for the purpose of disputation, . . They also read the deed of manumission referred to in the will, . . by which he liberated . . all his negroes, thirty-five in number, . . with their increase . . after his death. . . [517] The jury rendered a verdict . . for the caveatees. . . judgment against the caveators for costs, . . [520] "Judgment reversed and *procedendo* awarded." [1]

Bayne v. Suit, 1 Md. 80, December 1851. Sealed agreement: "Bought of . . Bayne, one of the administrators . . two servants, Tom and Aaron, for . . $1150. In case the administrator, . . Webster, should not sanction the sale . . we bind . . ourselves, under the penalty of $300, to return the . . negroes to . . Bayne, or . . Webster on or before Saturday night next, and provided the purchase money is returned, we do promise to make no charges for our trouble in taking and keeping said negroes, until such time." Webster "did not sanction the sale . . the plaintiff [Bayne] tendered . . the purchase money" [81] "but the appellees refused to receive it, and . . sold the said negroes to a trader in Baltimore," When the covenant was signed, [84] "there was an action of replevin pending [2] for the same negroes." Verdict for the defendant. Judgment affirmed.

McChesney v. Bruce, 1 Md. 344, December 1851. [345] "The will of Helen Bruce bears date . . 1841, . . giving freedom to some of her negroes,"

Linstead v. Green, 2 Md. 82, June 1852. Will of Ignatius Bright, dated 1823: "I will and bequeath my negro woman Caroline, to be and go free at the age of thirty-six years old, both she and her increase, she being at this time seventeen years old. I will and bequeath my negro boy Joshua, son of said Caroline, to be and go free at the age of thirty-six years he being at this time four months old." Caroline [83] "died about . . 1836 or 1837, before she arrived at the age of thirty-six." The petitioner for freedom is her daughter who was born about 1830 or 1831, and [87] "was not at the time of the filing of her petition, nor is she now, thirty-six years old." Held: the testator [88] "designed to manumit Caroline when she should become thirty-six years old, and, also, to manumit each . . of her children when they should respectively attain the same age, and not before."

Usilton v. Usilton, 3 Md. Ch. 36, July 1852. Will, executed 1850: [37] "I give . . unto my son, . . one negro man . . and one boy . . one negro woman . . and one negro woman . . an old man Ned he is to support and take care of,"

Robinson v. Robinson, 4 Md. Ch. 176, September 1852. A bill was filed in 1850, [177] "by Henry Robinson, a free negro, and others, free negroes, against Washington D. Robinson and others, free negroes, and

[1] See Townshend *v.* Townshend, pp. 124, 126, *infra*.
[2] Act of 1833, ch. 274.

. . Farquharson, for the sale of certain real estate devised to William Rea, in trust for them, by William S. Harper, . . Rea had declined the trust, and . . Farquharson had been appointed . . trustee in his stead; . . By the third clause [of Harper's will, dated 1838] bequeaths a horse to his negro boy Henry. By the fourth he directs all his personal estate . . to be sold . . and the money . . and whatever money may be due him at the time of his death, to be equally divided, . . [178] between the negroes manumitted by the succeeding clause . . 'Fifth. It is my will . . that my eight negroes . . Old John, Kate, Daniel, Mary, Hannah, Henry, Ann, and Nancy, shall be free immediately after my death. Sixth. I devise to my friend William Rea . . my plantation whereon I now live, and all the lands thereto belonging, . . upon trust that the said plantation shall be rented out by him, and the rents and profits . . paid over to my negro boy Daniel, or his written order, attested by some justice of the peace.'" There were similar provisions as to other land, [180] "to be rented out . . and annually paid to my negro boy Henry, or his order, . . [179] and any other real estate not already devised in trust to be rented out . . and the money . . equally divided between . . Old John, Kate, Mary, Hannah, Ann, and Nancy, and their respective proportions paid annually to each one, . . immediately after the decease of any of the legatees, . . trustee . . shall pay over whatever property he shall then have as trustee to the legal representatives and heirs at law of the . . deceased, unless the deceased shall make some other appointment by his last will." Codicil executed in 1840: [180] "If any bequest or devise contained in my last will and testament, or this my codicil, shall fail to take effect from any cause, in such an event I will and desire that the trustee and executor by this will appointed, shall immediately transfer the equitable and legal title to the same, be the same real or personal, (except negroes,) to the states of Delaware, Pennsylvania or New Jersey, for the benefit of said states, or either of them that will guarantee the freedom and emancipation of my slaves by this my will and codicil, to be liberated and freed, as well as my two young negroes, Washington Decatur, aged about fifteen months, and my negro girl Diana, aged about nine months, whom I hereby manumit and set free at my death, and I desire my executor and trustee to provide for their support out of my funds belonging to my estate until they shall be able to obtain their freedom under this my codicil and the laws of this state, and to have their part of the property devised under the eighth clause of my will." A third codicil executed June 2, 1841, makes [181] "an additional devise of a house to his boy Daniel, and also one to Henry, and some wearing apparel to his negro women." A decree was passed [181] "to sell this real estate . . The sales were made . . for $7280," Jacob Wilson, in 1850, bought Henry's share, worth [183] "very little short of $2800," for $750. In 1851 Wilson [181] "by his petition . . stated that he was one of the purchasers, and claimed . . [182] the proportion of the proceeds of the sale to which . . [Henry] Robinson, . . was entitled. . . Farquarson interposed his petition, in which he alleges that . . the consideration is grossly inadequate, and the deed was extorted . . by fraudulent practices"

Wilson's petition dismissed: there are no [183] "circumstances . . to raise a presumption of fraud" but [185] "the testator never contemplated conferring upon any of the *cestui que trusts* the power of sale. . . [187] The vendor can neither read nor write. His mark is affixed to all the papers executed by him," [Johnson, Ch.][1]

Lark v. Linstead,[2] 2 Md. 420, December 1852. [423] "he was then about five years old, and that the value of a sound boy of that age, at that time, as a slave for life, was from $75 to $100."

Decree reversed and cause remanded: [428] "Having passed a final account, . . she could sell rightfully only in one character—that of legatee for life. The law will not presume that she committed a wrong upon the legatees in remainder."

Rawlings v. State, 2 Md. 201, December 1852. [202] "The grand jurors of the State of Maryland for Calvert county, upon their oaths do present, that Richard H. Rawlings, late of said county yeoman, on the eleventh day of January, in the year one thousand, eight hundred and forty-nine, at the county aforesaid, (the said Richard being then and there a licensed retailer,) did suffer a negro slave named Charles, the property of one John Mad, to be in his storehouse, wherein he, the said Richard, was then and there accustomed to sell a certain distilled liquor, commonly called whiskey, then and there situate, about the hour of nine, between sunset in the evening of the same day and sunrise of the succeeding morning, (the said slave then and there not having a written order or license for that purpose from his said master or from his mistress, owner, or other person in whose employment the said slave then and there actually was, with the consent of his said owner, and the said slave not being then and there employed as a wagoner, or by a traveller putting up or stopping whilst travelling through said county,) against the act of Assembly[3] in such case made and provided, and against the peace, government and dignity of the State." The traverser was found guilty.

Buel v. Pumphrey, 2 Md. 261, December 1852. Action of trover. Connell, the agent of Pumphrey (the plaintiff and owner of the slave) went, in August 1847, [262] "to the residence of defendant [Buel], . . with an order . . to deliver up the negro woman . . and her child; that defendant . . stated that he had hired the negro from the plaintiff, who had the right to take her away at any time; that defendant asked witness if he was trading for the south, to which witness replied he was not; . . that he had purchased . . the said negro for his sister-in-law, in Washington, that defendant then said, if the woman knew him he could take her; . . the woman . . said she knew him, and defendant asked him to wait until the woman had done her breakfast; that in a few minutes after this defendant had some conversation with his wife, and then stated to witness that he could not have her, that the society to which he (the defendant) belonged would not permit him to hold slaves, and they could not give the price that was asked for her, and that if defendant did not

[1] See Wilson *v.* Farquharson, p. 123, *infra.*
[2] For other facts see same *v.* same, p. 114, *supra.*
[3] Act of 1817, ch. 227.

get her, she should never be of service to Pumphrey or any one else. . . some days afterwards" Connell "in company with the plaintiff, went after the said negro woman, that they did not see the defendant on his farm or at his house, but they saw the woman escape through the window and run to the woods, and that some months afterwards the plaintiff advertised her as a runaway, offering a reward of $50 for her if taken out of the State. . . [263] The witness Connell further proved, that he made the statement of purchase to induce the defendant to deliver up the negro, but that in fact he had not purchased her. Defendant . . proved . . that on Sunday morning in August 1847, plaintiff came to witness and stated to him, that he and Connell, on the Friday before, had run the woman off from Buel's, and wanted him to help to catch her, and that he was afraid Ann was so frightened she would not come back again;" Verdict and judgment against the defendant.

Negroes Jerry, Anthony, et al., v. Townshend,[1] 2 Md. 274, December 1852. [275] "This was a petition for freedom, filed . . 1847, in Prince George's county court, . . Upon the suggestion of the appellants, supported by the affidavit of their counsel, that they could not have a fair . . trial in that county, that court removed the cause to Anne Arundel county court" in a different judicial district. [277] "Anne Arundel county court refused to hear the case, and ordered it to be remanded to Prince George's county."

Judgment reversed and *procedendo* awarded: I. the act of 1849, ch. 518, under which this removal was made, is constitutional; II. [279] "a petition for freedom is embraced within the meaning of the terms 'suit or action at law.'" "The plaintiff in the present suit, of all the classes in our community, belongs to that which is the most defenceless. Our laws give him a standing in court to prosecute his petition for freedom. An unimpeachable attorney . . makes oath that he cannot have justice done him in his own county. . . Would it not involve a contradiction of terms to say that he shall have the benefit of our courts of justice, but at the same time that his case shall be tried in a county where he cannot have a fair and impartial trial?" [Mason, J.]

Vansant v. Roberts, 3 Md. 119, December 1852. Will of Cornelius Vansant, 1841: [125] "I give and bequeath unto my dear wife, Jane, all my estate, both real and personal, during her natural life, . . and after her decease, do hereby release from slavery, liberate and set free my negroes," naming them, "and their issue forever; provided nevertheless, that the aforesaid negroes are willing to leave the State, according to the act of assembly in such case made and provided, and to go to Liberia or some other colony in Africa." The will provides for raising money to pay their expenses in case they elect to go, by hiring them out. "But if the aforesaid negroes, at the decease of my wife . . are not willing to leave the State as aforesaid, then, and in that case, they, the said negroes, are to be hired out . . [126] from year to year, and every year, and their wages or hire, clear of good and sufficient board and clothing to be paid over annually . . unto . . the Methodist Episcopal Church, located in

[1] See same *v.* same, p. 129, *infra*.

Philadelphia," The negroes [120] " have not elected to go to Liberia or any other African colony." The brother and sole next of kin of the testator filed a bill in 1848, praying that the administrator *c. t. a.* " be required to deliver up all the property . . remaining in his hands,"

Held: [127] " Whilst we cannot in this proceeding adjudge the freedom of the negroes . . they not being parties properly before us, we can so far recognize the case of Spencer *vs.* Dennis [1] as to defeat the claim of the petitioner."

Steuart v. Williams, 3 Md. 425, June 1853. Elijah Williams petitioned for freedom, and [426] " offered in evidence the will of Catharine Belt, executed in 1825, . . ' I bequeath my negro woman Esther to my son, George . . during the natural life of my son, Thomas . . and the children of the said Esther now born or that may hereafter be born of the said Esther, in trust, for the sole use . . of my said son, Thomas . . and upon his death, . . I . . bequeath to my grandson, . . Elijah, son of the said Esther.' Also a codicil executed in the same year, . . ' that none of them shall be sold out of . . Maryland, and . . if any of them should be sold in . . Maryland, that they shall serve for a term of years, . . viz: the children of my woman Esther . . shall be free . . at twenty-eight years of age, provided they be sold.' . . [427] since the death of the testatrix, Thomas Hanson Belt had sold him to the defendant as a slave for life, and that he was . . over twenty-eight years old." T. H. Belt testified " that his mother . . about . . 1812, gave to him a family of negroes, among whom . . Esther was one, and that ever since she has resided with him, . . and employed by him as his slave; that in . . 1822 or 1824, the petitioner was born of . . Esther in his house," In the inventory " the petitioner, then nine years old, was appraised as a slave for life at $160;"

Judgment in favor of the petitioner, reversed and *procedendo* awarded: [430] " a gift of a negro . . when accompanied by delivery, is just as effective as though it were evidenced by a bill of sale, and can only be impeached according to the . . principles of the law of evidence; . . This has not been attempted."

Cole v. Ensor, 3 Md. 446, June 1853. In 1822 Cole devised to his mother, for life, " two negro women, . . who, while in possession of Mrs. Cole, . . had issue, ten children." [452] " the ten slaves . . constitute $2105 of the . . estate."

Magruder v. Carroll,[2] 4 Md. 335, December 1853. Will of Michael B. Carroll, dated 1837: [336] " to my dear wife, Jane, I give and bequeath all my slaves, and do request that none of them be sold or disposed of for the payment of my debts, but that provision shall be made for discharging the same out of the other personal property and effects which I shall leave at the time of my death." Jane was made residuary legatee and executrix. Carroll died in August 1851. His widow died in September 1853, leaving a will by which she manumitted all her slaves five years after her death. Her executors filed a " bill for an injunction restraining the

[1] P. 109, *supra.*
[2] See Carroll *v.* Carroll, p. 124, *infra.*

administrators d. b. n. of Mr. Carroll from selling the negroes for the payment of his debts."

Order refusing the injunction, affirmed: [351] "It is contended . . that the real estate and personal property, other than the negroes . . ought to be applied to the payment of his debts before the negroes are resorted to. . . the question is not before us . . *This is not a bill filed on behalf of the negroes*, . . Carroll died in debt . . His creditors would have the right to proceed . . first, . . against the personal [estate] as the primary fund. *Their* rights could not be affected by anything he might request in his will; . . *He did not manumit his slaves*; . . Had she, immediately on obtaining letters of administration, manumitted the negroes, it could not be pretended such manumission could have affected the rights of the creditors of her testator; . . [352] if she could not do it . . as executrix, . . she could not accomplish it by her will." [Le Grand, C. J.][1]

Holmes v. Mitchell,[2] 4 Md. 532, December 1853. Affirmed by a divided court: if the testator, Ignatius Semmes, [539] "had intended the issue to pass to the appellant, he would not have used the word 'income,' . . It is not so employed generally. . . [542] He appears to have had a peculiar regard for his negroes. Some he sets free and provides for. To one he gives his watch and wearing apparel, and to another his furniture. . . reason for creating the trust may have been, that the negroes, whom from considerations of kindness and affection for his relatives he could not manumit, should be kept together on the estate, the increase to follow the legal title in the trustee, and not to be separated from their parents, as would have been the consequence of a direct bequest of the use to the appellant. . . [546] the whole estate, including the increase of the negroes, shall be kept together as trust property, . . In this way the expenses of the young negroes will be paid by the estate, and the loss to the *cestui que trusts*, by reason of any diminution of income on this account, will ultimately be made up to them by the increased value and future earnings of the negroes so reared." [Tuck, J.]

Thomas and Sally Pearce (negroes) v. Van Lear, 5 Md. 85, December 1853. [87] "The mother of these petitioners, with other negroes of Mrs. Van Lear, filed their bill in equity [in 1842] claiming freedom under her will, . . The Court of Appeals decided that they were entitled to relief, and remanded the cause, in order that deeds of manumission might be executed according to the will.[3] A decree was . . passed . . directing deeds to be executed . . from which the present defendant in error [John Van Lear, jr.] appealed; and . . 1850, "that decree was reversed as to negroes Isaac and Sophia, who were three and five years old at the death of Mrs. Van Lear; and affirmed as to the other parties, including Margaret, the mother of the present petitioners, who received her deed of manumission on the 1st April 1851."[4] The petitioners for freedom [88] "insist, that their mother was free as of the time of her mistress' death, and that they, having been born in the years 1841 and 1844, respectively,

[1] See Alexander *v.* Worthington, p. 125, *infra.*
[2] See same *v.* same, p. 111, *supra.*
[3] Peters *v.* Van Lear, p. 102, *supra.*
[4] Twenty-three years after the death of the testatrix.

are entitled to their freedom as issue of a free mother." [85] " the court below . . was of opinion the petitioners were not entitled to their freedom,"

[91] " Judgment reversed and judgment for the petitioners." [90] " if the executors had a right under the will to retain these negroes in the service of the estate, as long as it might be unsettled, and that they were then to take freedom under the deeds of manumission alone, and not from the time of Mrs. Van Lear's death, they might possibly never become free at all, although capable under the law of taking freedom at her death. This the testatrix never designed." [Tuck, J.]

State, use of Clements v. Van Lear, 5 Md. 91, December 1853. [94] " action on an appeal bond, executed by the appellees. The *cestui que use* was one of the complainants in the case of Peters, *et al., vs.* Van Lear,[1] . . [95] When that cause was remanded to the equity court, . . a final decree was passed directing the defendant to execute deeds of manumission, according to Mrs. Van Lear's will.[2] . . Van Lear appealed, and gave bond on which this suit is brought." The plaintiff [92] " assigned as breaches . . that Van Lear . . did not pay the plaintiff the value of his freedom for the time it was suspended by the appeal, . . the defendants demurred, which demurrer the court . . sustained and gave judgment for the defendants,"

Judgment affirmed: [95] " It cannot be maintained that one can be required to contract, by bond or otherwise, with a negro whom he claims to be his property. . . The fact that the State is the obligee . . does not vary the case, . . The decree did not make the parties free. . . As long as the contest continued and the deed was not executed they were slaves under the law, because held and claimed as such." [Tuck, J.]

Wilson v. Farquharson,[3] 5 Md. 134, December 1853. [140] " Order of chancellor reversed and cause sent to . . county circuit court, as a court of equity:[4] [138] " We concur . . with the chancellor, there is no evidence to show that the appellant practiced any fraud . . [139] we do not perceive that the sum agreed to be paid was so grossly inadequate," " The peculiar nature of the interests . . devised . . and the state of our law in regard to that class of our population, especially since . . the act of 1831,[1] . . may very well have suggested doubts . . as to the value of the rights of Robinson, . . Robinson is shown . . as possessing an intelligence quite equal to the general run of colored persons, and fully competent to the transaction of business; . . Moreover, the disparity in the value of the rights assigned and the amount agreed to be paid for them, is considerably lessened, according to the view we have of the interests which he had the right to assign, . . only . . the interest of . . John and Daniel, which devolved absolutely on him by their death, and the profits arising from his share of the devise during his life. He could only dispose of his own share in fee by last will." [Le Grande, C. J.]

[1] P. 102, *supra*.
[2] See Pearce *v.* Van Lear, p. 122, *supra*.
[3] For facts see Robinson *v.* Robinson, p. 117, *supra*.
[4] Ch. 281.

Rebecca Ringgold and others (negroes) v. Barley, 5 Md. 186, December 1853. In 1832 Money [192] " having sold all his property in Maryland, left for . . Missouri, carrying with him the petitoner and other of his slaves, together with his own family. Such of his slaves as were unwilling to remove with him to Missouri had been previously sold to the south. . . immediately on his arrival in Missouri, [he] rented land and commenced farming; that he continued to farm till November 1833, when, falling into bad health and changing his purposes, he sold out his property of every kind, except his slaves, and returned to Maryland, bringing with him the petitioner, Rebecca." Held: Rebecca is entitled to freedom.[1] Missouri had becomeMoney's [193] " fixed present domicil,"

Townshend v. Townshend, 5 Md. 287, December 1853. [288] " an appeal from an order of the court below, granting an injunction to restrain the appellants, who are, (except Jeremiah Townshend,) negroes, from the further prosecution of their petitions for freedom.[2] The bill was filed by the appellees, who, with . . Jeremiah Townshend, are the heirs at law . . of John Townshend, deceased, and states that said John having been, from . . 1794 to his death, *non compos mentis,* . . 1831, and . . 1846, executed two pretended deeds of manumission of about seventy negroes; that shortly before his death, . . he executed a writing purporting to be his last will [3] . . by which he gave to his said slaves their freedom and all his real estate, . . which writing was . . declared by the verdict of a jury, utterly null and void, . . That certain of said negroes have filed petitions for freedom . . [289] The bill charges, that by reason of the insane delusions of said John Townshend, especially in reference to his negroes, he was wholly incapable of executing these pretended deeds of manumission,"

[297] " Decree reversed and bill dismissed with costs to the appellants in both courts." [295] " The proper mode . . by which to try the title of a negro to his freedom, is by petition filed in the circuit court. This right is to be asserted subject to certain restrictions and privileges, . . By the act of 1796, ch. 67, one of those privileges secured to both parties, consists in the right of *peremptory challenge.* . . any tribunal that would attempt to adjudicate upon the rights of an alleged slave, (except under some other specific proceeding pointed out by statute,) in a manner which would deprive him of this right of challenge, would act in violation of law," [Mason, J.]

Carroll v. Carroll,[4] 16 Howard 275, December 1853. Will of Michael B. Carroll, 1837: [280] " To my dear wife, . . I give . . all my slaves, and do request that none of them may be sold . . for the payment of my debts, but that provision shall be made for discharging the same out of the other personal property "

Marriott v. Badger, 5 Md. 306, June 1854. Petition for freedom. John Hammond bequeathed his slave Hess [310] " to his son Wm. Hammond

[1] Act of 1831, ch. 323, sect. 4.
[2] See Negroes Jerry *et al. v.* Townshend, p. 129, *infra.*
[3] Brooke *v.* Townshend, p. 106, *supra;* Townshend *v.* Townshend, p. 116, *supra,* p. 126, *infra.*
[4] See Magruder *v.* Carroll, p. 121, *supra.*

for life, and that after his decease, she . . passed under the will of John Hammond to his [grandson] . . William H. Marriott, . . whilst Hess was held by . . Marriott, the petitioner was born." Before petitioner's birth William Hammond died, leaving a will manumitting Hess,[1] and bequeathing "a considerable sum of money" to Marriott. Held: [312] "receiving the legacy, and continuing to hold the negro in slavery without any testimony to show that an election was made, did not confer freedom."

Alexander v. Worthington,[2] 5 Md. 471, June 1854. I. [493] "land descended was first applicable in payment of debts in relief of personal estate specifically bequeathed." II. "at the suit of the specific legatee, equity will restrain the executor from voluntarily applying the chattel bequeathed in payment of debts, in a case where the executors are also heirs, and have assets descended, which are first applicable in payment of debts, . . the creditors were not pressing . . for a sale of the negroes. . . [494] To permit the heirs at law who have availed themselves of their proximity in blood to obtain administration on the personal estate of the testator, to sell the negroes into ceaseless bondage in foreign climes, for the purpose of providing for payment of debts which are justly chargeable on the lands descended to the heirs at law, and to do this under the pretence that equity ought not to restrain the remedy of creditors, and where the creditors themselves are passive, would seem to be an act of injustice of which a court composed of slave-holders, residing in a slave-holding State, could not possibly be guilty." [Le Grand, C. J.]

Pierce v. Negro John, 6 Md. 28, December 1854. [29] "The petitioner offered in evidence the will of Richard Pierce, executed . . 1850, and admitted to probate . . 1851. This will manumits the petitioner, John, at the death of the testator, and also negroes Aaron, Charles, Priscilla, Adaline and Mary. . . also . . a bequest of $100, to the testator's daughtor Mary Rowles, . . and directed the residue of his property to be sold, and the proceeds equally divided between his son and daughter, . . final account of . . the executor, in which he claimed allowance for . . disbursements, '1st. Of current money, legacy left . . to Mary E. Rowles, as per receipt . . $100. 2nd. Of current money, appraised value of six negroes divided between representatives, as per receipt . . $2125.' Also the following receipt signed by . . Rowles and wife, . . 1851, . . [30] 'Received of . . executor of Richard Pierce, . . one thousand and fifty dollars, in negroes, which we acknowledge to be our full and just share of negroes. Names of negroes are John, Priscilla and Mary.' The defendants then offered a bill of sale executed by . . Pierce, . . 1828, conveying to Mary E. Pierce, (afterwards the wife of Rowles,) . . a negro woman named Charity, and her three children, Moses, Aaron and Priscilla. . . Mary was the child of Priscilla, and John . . the child of Charity, mentioned in this bill of sale, born after its execution. . . the petitioner remained in possession of Richard Pierce, from his birth till the death of said Pierce. . . [31] The verdict and judgment was in favor of the petitioner."

[1] He could not manumit a slave in which he had only a life estate.
[2] See Magruder *v.* Carroll, p. 121, *supra.*

Judgment reversed and *procedendo* awarded: [35] " Rowles and wife . . did not elect to take the legacy in lieu of the negroes, but determined to have both. . . [36] considering the receipt as acknowledging satisfaction of a claim to negroes belonging to the estate of Richard Pierce, it was consistent . . to have the value inserted, and also to state that the negroes received were in full of the share to which the parties were entitled. . . [37] the acceptance and the receipt do furnish some evidence of an acknowledgment, that the petitioner belonged to the testator; and . . that he had the right to manumit him." [Eccleston, J.]

Woodland v. Wallis, 6 Md. 151, December 1854. Will of John Mason, executed in 1826: [164] " to my daughter Mary Matilda Mason, all . . except my negro man Thomas and my negro woman Ann, who it is my will that Thomas should serve four years and Ann seven years after my death; also the children, Elizabeth, George and Jervis, should each of them be free when they arrive at the age of thirty years, if my daughter should die without heir, but if not, then the said children to serve for life." Elizabeth died during the life of testator's daughter, who [152] " died . . 1843, unmarried and without issue, leaving a will, in which she . . gave [Wallis] . . all the residue of her property including negroes," The wife of the appellant Woodland was a residuary legatee of John Mason. " This was a suit by the appellants . . to determine . . whether [they] the plaintiffs have any title . . to George and Jervis, . . [153] It was . . agreed that if the court . . should be of opinion that the plaintiffs were entitled to recover, judgment should be entered in their favor for $150, and the negroes to remain the property of the defendant until they attained thirty years of age, when they were to be free, . . The court . . gave judgment for the defendant,"

[167] " Judgment reversed, and judgment for plaintiffs," [165] "As freedom is a personal privilege . . a contingency upon which it is to depend must . . occur within a life in being, when the party intended to be manumitted by the will is *in esse* at the date of the will, . . the negroes could not possibly be entitled to freedom except upon the decease and failure of issue of Mary M. Mason during their lives." [Eccleston, J.]

Townshend v. Townshend, 6 Md. 295, December 1854. [296] " This is the third appeal in the case;[1] . . At the trial under the last procedendo . . exceptions were taken by the caveatees, . . [297] Among other evidence on the part of the caveatees to show that John Townshend would both buy and dispose of negroes, were three deeds or bills of sale, the first . . 1803, . . conveying several negroes to said Townshend; the second . . 1813, by which . . Townshend, conveyed several negroes to William Townshend, and the third . . 1824, by which he also conveyed several negroes to George S. Townshend. The caveators then produced . . a witness, and proved by him that he knows the whole family of the slaves which belonged to . . John Townshend, and . . proposed to prove by this witness, that the several slaves named in the above deeds were not, . . at any time, one of the family of slaves of said John Townshend, and that

[1] Brooke *v.* Townshend, p. 106, *supra*; Townshend *v.* Townshend, pp. 116, 124, *supra.*

no one of them ever resided with him . . as one of his slaves. . . evidence which they deem material upon the first issue,[1] as rebutting evidence, and as showing that no one of the negroes mentioned in said deeds was at any time of the family of slaves owned by [298] Townshend at the time of making the declarations, . . that he had been commanded by Almighty God to set his negroes free and to give them his property. . . to the refusal to exclude said evidence for the purpose for which it was offered, the caveatees excepted, and the verdict being against them upon the first issue, appealed."

Judgment affirmed: [302] "If this case rested *alone* upon the testimony of this witness, its admissibility might well be questioned on the ground of irrelevancy or of its legal insufficiency to establish the issues. But . . The testimony was rebutting evidence, and besides, constituted but one of many items of the caveators' proof." [Mason, J.] [2]

Nash v. Smallwood, 6 Md. 394, December 1854. Will of Ann Ward: [395] "I . . bequeath to my Sister, Jane Smallwood, my man Henry, and boy Lawrence, during her life, and at her death the above named servants are to be sold to some humane person, who is to keep them in the county . . [396] I . . bequeath to my niece . . the child with which my woman Peggy is now pregnant," "general legacies were left to the appellants, . . It required all the property, except the specific legacies, to pay debts and costs of administration. The appellants filed a bill . . praying that the executor might be required to sell the property bequeathed to the appellees, and divide the proceeds, pro rata, among all the legatees. This the court refused, . . Order affirmed"

Smith v. Smith, 6 Md. 496, December 1854. Will of George Smith, who died in 1834: [499] "It is my will that my negro girl Maria, be retained by my wife until she arrives at the age of thirty-five, which will be in October 1858; and should it so happen that my wife should die before that period, that then and in that case my son shall take her himself, and have her time for the term of her service valued, and account therefor as he has to do as executor." The widow "sold the girl for the term prescribed . . for . . $275," to a person who "afterwards sold her beyond the limits of the State of Maryland;"

Held: "This right of disposition—her husband's estate being solvent—was only limited by the legislation of the State, prohibiting the sale of a slave, for a term of years, beyond its limits. The purchaser could not defeat the right of the estate of George Smith, to the value of the services of the girl from the time of the death of Mrs. Smith [in 1852] up to October 1858:" Chief Justice Le Grand closes his opinion by [500] "expressing our condemnation of the contrivance, by who[m] ever made, to deprive a helpless negress of the freedom to which she was entitled by her master's will. Such conduct was not only a gross fraud, but ought to be visited with the severest penalties of the criminal law."

[1] "Whether . . Townshend, at the time of signing the . . instrument of writing, purporting to be his last will . . was of sound . . mind," Brooke *v.* Townshend, 7 Gill 10 (15).
[2] See Negroes Jerry *et al. v.* Townshend, p. 129, *infra*.

Negro Louisa Jason v. Henderson,[1] 7 Md. 430, June 1855. [441] "The question involved . . is, whether a negro, who has been adjudged to be free, can maintain an action on the case to recover damages for having been unlawfully held in servitude? This very question was determined in the case of Franklin *vs.* Waters,[2] . . and settled adversely to such a claim."

Tongue v. Negroes Crissy, Rhody, et al., 7 Md. 453, June 1855. Will of John Collinson, executed 1836: [454] "I will and devise that all my negroes, of which I shall die possessed, shall be free from the servitude of all persons whatever, from and after my decease: *provided* that they, my said negroes, shall go to Liberia, or some one or other of the American settlements on the coast of Africa. But should they refuse to go to either of the settlements in Africa aforesaid, then and in that case I will and bequeath them as follows" [to various legatees] Crissy and Rhody "were, at the time of the death of John Collinson, their master, of the ages respectively of six and four years. . . the other petitioners are the children of said Rhody and Crissy, . . the personal estate of . . Collinson, other than his manumitted negroes, was more than sufficient to pay his debts, and that he left no widow." The defendant [456] "offered to prove that . . Rhody and Crissy, were the children of Nelly Hutton, (. . one of the negroes manumitted by [Collinson's] . . will,) . . and . . offered to read in evidence certain proceedings in the Orphans Court . . showing that . . 1837, . . Nelly Hutton and another, two slaves of said Collinson, appeared in open court, 'and after an explanation made to them, made their election to remain in the State and serve the family of Thomas Tongue in preference to emigrating to Liberia.' The woman Nelly appears to be about twenty-three years of age, and says she has a husband a slave of Gideon G. Tongue," The defendant "offered to prove . . that . . Rhody and Crissy . . since the filing of their petition . . had said that they never authorized the filing of it, and did not consent to be manumitted. To the admissibility of this evidence the petitioners objected, . . sustained, . . [457] verdict and judgment . . in favor of the petitoners,"

Affirmed: The act of 1796 [464] "in so far as its limitations[3] are concerned, is repealed by the act of 1831.[4] The limitation in the act of 1796, was evidently intended to guard the public against the burden which would devolve upon it, if persons were permitted to manumit such of their slaves as were unable to maintain themselves. At that time the idea of colonization had not taken hold of the public mind. When, however, it came into general favor, the policy of the State was to get rid of its free colored population of all ages, and accordingly authorized the manumission of *all* slaves, irrespective of their ages. But . . [465] if he [the emancipated slave] be unable to maintain himself, and does not remove out of the State, his former owner, and if dead, his representatives, are liable for his support. . . We do not consider any *consent* to the gift of

[1] For facts, see Henderson *v.* Jason, p. 116, *supra.*

[2] P. 110, *supra.*

[3] "no manumission . . by last will . . shall be effectual . . unless the said slave . . shall be under the age of forty-five years, and able to . . gain a sufficient . . livelihood at the time the freedom given shall commence." Ch. 67, sect. 13.

[4] Ch. 281, sects. 3, 5.

freedom necessary. The consent mentioned in the 3d section of the act of 1831, refers to removal from the State, and not to manumission. . . The law presumes that as freedom is a most precious legacy, those on whom it is cast do accept it, and has provided a mode how their dissent, wherever it exists, shall be evidenced by requiring it to be done in *open court*." [Le Grand, C. J.]

Lammott v. Maulsby, 8 Md. 5, December 1855. "the orphans court bound out a free colored boy . . by indenture, dated . . 1854. . . [6] the appellee filed a suggestion . . stating that the indentures were not in conformity with the act of 1839, ch. 35,"

Negro Henry Rozier v. Holliday, 8 Md. 381, December 1855. Petition for freedom. [384] "the will of Van S. Brashears, . . [385] executed . . 1832, . . provided that all his property . . should belong to his wife, . . but that at her death all his slaves then existing, and those that might be born of them thereafter, should then cease to be slaves, and ever thereafter remain free." The testator died soon after. It was proved "that petitioner was born after the death of the testator, and was the son of Henry and Mary Rozier, slaves of the testator at his death; and that the widow . . died . . 1837, when petitioner was about four or five years old; and that a negro boy is not able to work and gain a sufficient maintenance and support until he is ten or twelve years of age. . . the orphans court passed an order, that the administrator . . 'proceed to make such disposition of the negroes . . as will enable him to close the estate . . with the court.' The administrator [in 1838] sold the petitioner, then in his fifth year of age, to . . Fitzhugh, to serve from the 1st of March 1838 until the 1st of March 1860, who afterwards sold him to the appellee in this case for the residue of the term." [382] "the verdict and judgment were against the petitioner,"

Judgment reversed and *procedendo* ordered: [386] "under the act of 1831, ch. 281, a negro of whatever age is capable of receiving freedom, by will, . . The right is derived under the will, limited in its enjoyment by the term of service that may be imposed in the due administration of the estate; and when the time expires, . . the party can claim the usual certificate of freedom from the register of wills. Hence . . at the time the appellee purchased the appellant from Fitzhugh, he was in a condition which secured to him the protection afforded by the act of 1817,"[1] [Tuck, J.]

Negroes Jerry et al. v. Townshend, 9 Md. 145, June 1856. [146] "The petitioners offered in evidence a deed of manumission,[2] executed by John Townshend, . . 1831, and duly recorded . . 1832, . . Townshend died in . . 1846. This deed describes 'Jerry' as forty-four years of age." The defendant "took possession of these negroes immediately upon the death of John Townshend, . . and . . offered to prove that at the time of the execution of the deed of manumission, in 1831, . . Townshend was insane,"

[1] Ch. 112, sect. 3.

[2] See Brooke *v.* Townshend, p. 106, *supra*; Townshend *v.* Townshend, pp. 116, 124, 126, *supra*.

Verdict and judgment in favor of the defendant. Affirmed: [157] " In the case of a petition for freedom, the issue being *freedom vel non*, and not title to the negro, any party who may be in the possession of the negro, and who may be the party defendant to the suit, may offer any legal evidence to defeat the negro's petition."

O'Byrne v. Clagett, 9 Md. 512, December 1856. The will of O'Byrne, who died in 1842, provides that his property shall remain in the possession of his wife, " until his son, Terence, should attain the age of twenty-one years, unless . . , in either of which events [his executors] . . were directed to sell his stock, . . hire out the negroes, . . and apply the proceeds . . to the . . benefit, support and education of his children. When his son . . [513] attained twenty-one, . . his personal estate, then to be sold, . . He next gives a negro man to Terence,"

Wampler v. Wampler, 9 Md. 540, December 1856. Abraham Wampler, by his will, dated 1855, [541] " first manumits a negro woman and her children,"

Wilson v. Smith, 10 Md. 67, December 1856. [73] " action of replevin, instituted . . 1850, for the recovery of a negro woman named Milly, claimed by the plaintiff as the property of Samuel Owens, [who] . . died . . 1815 . . [74] he had . . certain negroes, among which was Milly. . . he devised, for life, to his wife, . . all his property, with remainder to his children and grand-children, . . in 1834 the said widow . . sold the woman Milly, with others, issue of Milly, born after the death of . . Owens, to . . Lowe, as slaves for life, . . [75] Lowe had said, he . . was going to send a cart for them, and on being informed that there had been no letters of administration granted on the estate of . . Owens, and that she had no right to dispose of them, he declared he did not care, that Mrs. Owens owed him a large bill, and if he got the negroes into his possession, he would take care of himself." "After his death the woman was distributed as a portion of his estate, . . In 1847, she was sold at public sale " to the defendant.

Farrell v. Bear, 10 Md. 217, December 1856. [220] " Mrs. Farrell did not want to sell the negro to a trader."

Townshend v. Matthews, 10 Md. 251, December 1856. [253] " In contemplation of an intended marriage between Henry M. Chew . . and Elizabeth Ann Haw . . a deed was duly executed . . [254] 1833, . . by which the real and personal estate of Elizabeth Ann were conveyed to . . Matthews and his heirs, . . ' for the sole . . use of . . Elizabeth Ann, her heirs and assigns, the said Elizabeth Ann and her assigns, during her life, to . . receive all the . . issues and profits,' . . in 1839, Elizabeth Ann, the wife, died, leaving several children, . . negroes Sophia and Anthony . . were originally the property of Elizabeth Ann Haw, before . . her intermarriage with . . Chew; . . the other slaves mentioned in the *nar*, are the children of the said Sophia, born during the coverture of the said Elizabeth Ann." All remained in Chew's possession " from the time of his wife's death up to . . his decease, . . 1851;"

Held: [255] " the deed excluded the husband from any title to the two elder negroes, . . [256] the husband became entitled to whatever issues or profits accrued, and were actually received by his wife during the coverture, . . Negroes Mary and John, as children of Sophia, are issues or profits of the trust property, according to the Maryland decisions." [Eccleston, J.]

Scaggs v. Railroad Co., 10 Md. 268, December 1856. " Trespass on the case . . to recover the value of a negro slave killed by the defendant's cars," The defendant offered to prove by the conductor, engineer, and brakeman [270] " that all care . . was used to avoid the collision, . . The plaintiff objected to the competency of these witnesses, since the act of 1846,[1] . . but the court overruled the objection,"

Judgment against the plaintiff, affirmed: [278] " The act of 1846 . . covers every description of stock. . . it is remarkable that the Legislature, . . if slaves were in their contemplation, should have . . omitted all mention of the most valuable of personal estate, . . we think it as reasonable to suppose that negroes were intentionally omitted, because of their greater capacity to avoid such dangers than stock, as that they were designed to be comprehended by the general terms employed." [Tuck, J.]

Negroes Louisa Bell and others v. Jones, 10 Md. 322, December 1856. " a petition for freedom, filed . . 1854, in the Superior Court of Baltimore city, . . against Campbell, who . . disclaimed title, and . . the appellee filed his petition claiming title . . and prayed a removal of the case to the circuit court for Prince Georges county, where he resided. . . The court . . ordered the removal . . The case . . came up for trial . . [323] 1855, . . A jury was empannelled . . and the petitioners being called and not answering, the petition was dismissed . . and judgment rendered in favor of the defendant, for $11.98⅓, ' for his costs and charges ' . . On the same day the petitioners filed their second petition against the appellee, who at the same time made and filed " [329] " an affidavit, in which he says, " that by virtue of the first petition for freedom, filed by the petitioners in the second case, he has sustained, and incurred the following expenses: for fees paid his two counsel, $250 each, making $500; ' for jail fees and board of the petitioners ' from the 13th of November 1854, to the 11th of June 1855, ' at twenty five cents each per day, making $250 or thereabouts, in addition to the taxable costs in his cause.' " Thereupon the court ordered " that there shall be a stay of all proceedings in the second petition, until the said costs and expenses shall be paid or secured to be paid."

Order reversed and [333] " a *procedendo* awarded in regard to the second petition." [331] " we do not think the act of 1796 [2] should be construed to include counsel fees, as ' reasonable damages and expenses,' or either." The legislature [330] " were aware that negroes, held as slaves, could not have funds of their own, nor be expected to procure them from others, sufficient to pay the fees of counsel employed by their masters. The

[1] Ch. 346.
[2] Ch. 67, sect. 27.

laws of this State recognize negroes as slaves, and the courts are bound to protect and enforce the legitimate rights of masters. It is likewise the duty of our courts so to administer the laws as will secure to negroes the rights designed for them by law." [Eccleston, J.]

Atwell v. Miller, 11 Md. 348, December 1857. [349] "Asbury Johns, the consignee . . was a *colored man*; that plaintiff, some three or four years ago, sent goods to Liberia by Johns, and they were jointly interested in the profits and losses; . . they made some $3000, . . Johns was here when these goods were brought, and aided in making the selection of them, and went out in the *Harp* with them; . . the business was done in the plaintiff's name here, and in Johns' name at Monrovia. . . he was a porter in witness' store until he went to Liberia, . . 1851; . . he received his own wages, and acted as a free man; . . [350] The defendants' counsel . . asked . . this question: 'Did you hear any conversation . . between said Johns and the defendants, . . and what was said by said Johns?' . . the plaintiff objected, . . sustained," Counsel for the plaintiff: [354] "He is proved to be a *negro,* and his declarations are inadmissible in a suit between white persons. Act of 1717, ch. 13. . . The policy of this law extends to the declarations or conversations of negroes as well as to their testimony. The protection of this law should be extended fully to the citizen, because the policy of our laws keeps the black race in such a condition as to make them unfit, in a great measure, to be entrusted with any power over the rights of the superior race."

Held: [359] "the testimony was inadmissible" on other grounds. "This view relieves us from all necessity of inquiring, whether the color of the party, whose declarations are proposed to be given in evidence, could have a *legal* bearing on the question in any event?"

Waring v. Edmonds, 11 Md. 424, December 1857. During her last illness Miss Deborah Waring said to her physician: [431] "I have given my sister (Mrs. Edmonds) my three negroes. Mrs. Edmonds was then in the room, and the negro girl Louisa; and Miss Deborah Waring told Louisa, 'There is your mistress, (pointing to Mrs. Edmonds,) you must be a good girl, and obedient to her.' She sent for Mrs. Mary Beall ['for the other negroes, who were small children, were at the quarters' on her plantation], and requested her, after her death, to deliver the negroes to Mrs. Edmonds." Held: These are valid gifts *mortis causa.*

Brown v. *Brown*, 12 Md. 87, June 1858. Will of Clement Brown, dated 1835, admitted to probate in 1836: [88] "*Item.* I leave the plantation on which I now live to be rented out yearly. *Item.* I leave one negro girl, Ellen, to be hired out for ten years, one negro boy, Thomas, to be hired out for ten years, and one other negro girl, Nancy, to be hired out for fourteen years, by my executor, . . and then set free, under the protection and care of my executor. *Item.* I leave my negro woman Beckey, Elizabeth Ellen and James Henry, free, them and their heirs forever, under the protection and care of my executor, . . [89] *Item.* I placed $700 in the hands of Thompson D. Hayden, to purchase a negro man for me. Should it be so, he is to be hired out for seven years, and then set free,

by my executor . . under his protection and care. . . *Item.* I leave my negro woman Beckey and her children a reasonable support . . from the income of my real and personal estate, as long as she shall live; at her death, I give to Elizabeth Ellen all the income of my whole estate . . to her and her heirs forever, . . except there should be any one among them not able to support themselves, then they must have a support. I also leave Elizabeth Ellen one bed and bedstead, one pair of sheets, two pillows and bolsters, two counterpaines, to her and her heirs forever,"

Held: [94] "the testator intended that his executor should hold this land, as well as the personal property not otherwise disposed of, for the benefit of the negroes . . [95] since the case of Monica *vs.* Mitchell,[1] the chancellor and this court have recognized a trust of this description by giving effect to a will in which land was devised to trustees for the purpose of being rented out, and the proceeds applied for the use of negroes manumitted by the will. If, as we think, this will created a trust by implication for like purposes, its provisions no more infringed the policy of the law[2] than did that of the testator in . . Robinson *vs.* Robinson, . . and Wilson *vs.* Farquharson,"[3] [Tuck, J.]

Robinson v. Commissioners of Harford Co., 12 Md. 132, June 1858. George Brown, the slave of the appellants, was [142] "presented, indicted [for larceny], arrested, tried, found guilty, sentenced and valued on the 23rd of November 1853." The judge of the court (the Hon. Albert Constable) directed [438] "that the criminal should be sold as a slave for life, by the sheriff of the county, to some person who should convey him beyond the limits of this State; and the judge also valued and appraised the negro, George Brown, at the sum of six hundred dollars, which it was adjudged and determined should be assessed and levied upon the taxable property of Harford county, by the commissioners of said county, to and for the use of the present appellants; and that if the negro should sell for more than $600, then the excess thereof should be assessed and levied in addition thereto by the said commissioners, to and for the use of his owners aforesaid. . . [142] Nine days thereafter" [139] "the commissioners for the county filed a petition, alleging that the valuation of the negro was excessive," with a doctor's affidavit "stating the crippled condition of the negro, and the diseased state of his feet." Thereupon the court ordered the sheriff to "suspend the execution of the judgment and retain the . . negro prisoner until the hearing of this application, and the further order of the court;" The negro was retained by the sheriff for two years. "On the 29th of November 1855, Judge Price (the successor of Judge Constable) ordered and adjudged that the said negro should be sold to some person who would carry him out of this State," the court valuing the negro at the sum of $400, to be paid to his owners. He [140] "was sold, on the 29th of January 1856, for $250;" The owners appealed. Counsel for the appellants: [134] "Campbell, who deals in negroes, and knows more of their value than any other witness, says the

[1] P. 108, *supra*.
[2] Act of 1831, ch. 281.
[3] Pp. 117, 123, *supra*.

negro was worth, in his then condition, $750. Dallam, the sheriff, was offered $500; so that it will be seen, by the proof, that the valuation was not too high. A convicted negro is valued as if his morals were good. If it were otherwise, as some of the witnesses evidently suppose, then a murderer, or other atrocious offender, would not be valued at any thing. Convicted negroes are always valued at the 'price the traders give for negroes of similar qualities which have not been convicted.' But few, if any, of the States allow convicts to be introduced. Hence conviction injures the sale, though it does not affect the valuation. If a negro is to be hung, he is valued as if he were a slave in the market, free from crime. The amount a convict sells for, therefore, is no test of value; it is common for them to sell for less than half what they are valued at. Reference to the affidavits will show that the valuation ought to have been $750; the negro was one of uncommon value. Besides, in this case, the owner lost two years' services, worth, according to the uncontradicted testimony, $100 per year, and this after the negro was convicted. . . The valuation must be made at the time of the sentence, nor can the sentence be long delayed. The negro might die, escape from jail, and many accidents might happen which would deprive the owner of the value of his negro. As soon as the slave is found guilty of felony, his master loses him, and is entitled to his value. He is like property taken for public purposes."

Order affirmed: [142] "We see no good reason why the sentence should have been suspended and the negro retained, instead of being sold. . . But supposing the court committed an error in thus ordering the sentence to be suspended, it is not such an error as can be revised on this appeal by the owners," [140] "The State and the negro were the only parties who could ask this tribunal to review the action of the court below in relation to the sentence. The owners have no such right. When a convicted slave is sentenced, if the court should neglect to ascertain his value, the owners would have the right to apply for a prompt valuation;[1] . . And should such an application be refused, the owners would be entitled to an appeal. The amount of the valuation, however, is a matter within the discretion of the court in which the case is tried, and . . not subject to revision by an appellate tribunal." [Eccleston, J.]

Hughes v. Jackson, 12 Md. 450, June 1858. Action of trespass *quare clausum fregit*, brought in 1851, [451] "charging the defendants with breaking and entering the plaintiff's messuage or dwelling-house, and taking and carrying away, and converting to their use his property, to wit, his two children of the value of $1000." [450] "In the writ, declaration and proceedings the plaintiff is described as a 'negro,' and in the original *nar*, . . the defendants are described as 'free negroes.' . . [451] verdict rendered in favor of the plaintiff . . for $750 damages." Motions for a new trial and in arrest of judgment, overruled.

Affirmed: [464] "The words, *free negro*, are not essential in the averments of the pleadings except in the case of a petition for freedom; in all others the word 'negro' is sufficiently full in its description; it notifies the adversary party of the fact of color, and thus affords him an oppor-

[1] Act of 1809, ch. 138, sect. 21.

tunity to show the condition of slavery, if such be the case, by pleading that disability." [463] "From the earliest history of the colony, free negroes have been allowed to sue in our courts and to hold property, both real and personal, and at one time, they having the necessary qualifications, were permitted to exercise the elective franchise. To deny them the right of suing and being sued, would be in point of fact to deprive them of the means of defending their possessions, and this, too, without subserving any good purpose to the rest of the community. Neither the policy of our law, nor the well-being of this part of our population, demands the principle of exclusion contended for by the appellant, on the contrary, they are both opposed to it, and so long as free negroes remain in our midst a wholesome system induces incentives to thrift and respectability, and none more effective could be suggested than the protection of their earnings." [Le Grand, C. J.]

Negroes Charles and others v. Sheriff, 12 Md. 274, July 1858. Will of Henry H. Waring executed in 1853, admitted to probate in 1854: "It is my will and desire that at my death all my slaves . . shall be free, and that my executors . . shall immediately after my death remove them from the State of Maryland to the District of Columbia, or some free State, and make the necessary provisions out of my personal estate, for their comfortable support for the space of twelve months from my death." In 1858 [275] "the negroes thus manumitted . . filed their bill . . against the executor, the pecuniary and residuary legatees, and also against certain persons . . as *judgment creditors* of the testator . . to obtain an injunction, to restrain the further trial of a petition for freedom, instituted by the complainants, and then in progress of trial, and also to restrain certain of the judgment creditors from selling the complainants then levied on under executions, and that the assets of the estate may be marshalled," The bill [278] "avers that there is property . . beyond what is necessary to pay all the debts of the estate without a resort to them, . . that they had filed a petition for freedom, but that they were unable to prosecute it successfully because of the difficulty in showing the true condition of the assets of the estate." [275] "There was *no affidavit*" to the bill. [279] "The court refused the injunction."

Order reversed and cause remanded: "the complainants are negroes, and, under our act of Assembly of 1846, incompetent to give testimony in any case in which a white person is interested. They therefore, could not have made the affidavit. What is required as preliminary to the granting of an injunction, other than the sufficiency of the averments of the bill, is, that the confidence of the court should be obtained, and this may be had on documentary evidence as well as on affidavit. . . the will . . is their muniment of title. . . They are also . . entitled to the decision of [a court of equity] . . as to whether the real estate . . is charged with the payment of debts in favor of the bequest of freedom, . . [280] The investigation . . can . . occasion but a short delay . . while it will guarantee the preservation of the rights of a helpless class, if any rights they have." [Le Grand, C. J.] See Sheriff *v.* Negroes Charles and others, p. 136, *infra*.

Sheriff v. Negroes Charles and others, 12 Md. 280, July 1858. "After the appellees in this case had filed their bill in the circuit court for an injunction, as stated in the *preceding case*,[1] the executor, the present appellant, filed his petition in the orphans court, asking for the passage of an order directing a sale of the appellees for terms of years or for life, for the payment of the debts of his testator." He averred [282] "that the personal estate . . other than the negroes, was inadequate to the payment of its debts; that some of the creditors had prosecuted their claims to judgment, and that all the other property . . had been specifically bequeathed, and that the negroes were the primary fund out of which the debts were to be paid." [281] "The court . . dismissed the petition."

Order affirmed: [282] "There had been no marshalling of the assets of the estate, . . nor any adjustment of the proportions in which the several legatees, if bound to do so at all, were to contribute to the payment of the debts of the estate. . . Had [the prayer of the executor] . . been granted, the rights of the negroes would have been concluded, when, under the law of this State, they had the right to have them passed upon by a court of equity, prior to the determination of their petition for freedom." [Le Grand, C. J.]

State v. Baltimore and Susquehanna Steam Co., 13 Md. 181, March 1859. [187] "an action of debt to recover the penalty imposed by the first section of the act of 1838, ch. 375," [182] "Henry Miles, a citizen of Somerset county, Maryland, was, in August 1855, the owner of a negro boy, 'Sam,' and that at a camp-meeting which took place in that county, on the Annamessix river, the steamer *Lancaster* was there for bringing passengers to the camp-meeting from Baltimore, and carrying them in return; that, on Sunday, witness went on board the said steamer to go to Baltimore, where the boat arrived the next morning, and that after the steamer left the camp-meeting, witness saw said negro 'Sam' on board the boat, in the public passage from bow to stern, talked with him, and has not seen him since that time. The defendants then proved, that . . [183] the *Lancaster* was chartered by her owners . . that the captain and crew of the owners were to navigate the steamer, and the charterers were to have the exclusive control . . that whilst in the river, at the camp-meeting, . . one of the charterers, sold some tickets for the trip back, but only one to a negro man, he having gone down without a ticket; . . Mitchell [one of the charterers] went into every hole and corner of the boat, except the fireman's room, to collect tickets and to see if improper . . persons without tickets, were on board; that he knew 'Sam,' and . . [184] did not see him . . no negro was in the fireman's room . . the captain . . looked in all parts of the boat to see if slaves were on board, and that he found no negro on board, except such as went down in the boat."

Judgment for the defendants, reversed and *procedendo*: [187] "the liability may be enforced without reference to such circumstances. . . If the Legislature deemed it expedient . . to hold persons responsible for

[1] Negroes Charles and others *v.* Sheriff, p. 135, *supra*.

transporting negroes, whether they were instigated by a criminal intent or not, they had the power to do so. . . [188] as recited in the preamble, it had been represented to the Assembly, that the owners of slaves had suffered great loss by the facilities of escape offered to slaves, by means of railroads and steamboats; . . would it not be going in the face of the law, to give [the words used] . . a different construction, by allowing the party charged to excuse himself, . . when the law, in terms, declares, that the transportation of slaves, without permission in writing, shall be unlawful under the penalty sought to be recovered here?" [Tuck, J.]

Chew v. Beall, 13 Md. 348, May 1859. [364] "Aquila Beall, the husband of the plaintiff, made a gift of two negroes, Jenny and Eliza, to their daughter Amelia H. Beall, when she was a small girl. That Aquila died in April 1840; that Amelia H., about four or five years before her marriage to the testator of the defendants, which took place in October 1835, gave to her mother . . negro Maria [one of the children of Jenny], then about sixteen years of age; that in 1836, L. H. Chew [the husband of Amelia], being about to sell the children of Maria to one Frisby Chew, of Mississippi," [362] "Maria wished to go with them, and Mrs. Beall was persuaded by Mr. Chew and his wife, to take Jane in exchange for Maria her sister, in order that Maria might not be separated from her children."

Cecil v. Negroes Rose and others, 14 Md. 64, July 1859. "The appellees filed a petition for freedom . . August 1857, against the appellant, which was dismissed on the 13th of November following, and . . 1858, they filed a second petition . . The appellant then filed his petition, . . alleging that he had incurred costs and expenses to the amount of $377.53 in the defence of the first petition and the maintenance of the negroes during the pendency thereof, and asking a stay of proceedings in the second petition until such . . expenses were paid,[1] . . [65] The items claimed were costs of suit . . jail fees and board, medical bill, personal expenses of the appellant, boarding and clothing the negroes from the 12th of September to the 2d of November; expenses incurred in bringing the negroes from Montgomery county to Upper Marlborough, and then . . to . . Anne Arundel county, and for an examination of docket entries and records. The court . . passed an order allowing the following expenses . . 'and no more, that is to say, $28.43⅓ for cost of suit, $3 for personal expenses, $18.50 paid Judson Richardson, November term 1857, $25 for bringing negroes to court, and $14 for medical bill.'" Appeal dismissed.

Negroes William and others v. Reynolds, 14 Md. 109, July 1859. Will of Betty Reynolds, executed 1840: [110] "I give and bequeath unto my niece, Harriet Reynolds, all the rest and residue of my property, of every kind whatsoever, except my negroes, which I dispose of in the following manner: It is my will and desire, that my man Lewis, aged twenty-three years, and my man David, aged twenty years, be hired out by my brother, . . until they arrive at the age of twenty-seven years, then to be free to go to Africa, and the money arising from their hire

[1] Act of 1796, ch. 67, sect. 27.

to be paid to Foreign and Domestic Missions, except ten dollars to be paid to each of the above named servants, annually, out of their hire; and if the said Lewis and David refuse to go to Africa, at the time specified, then they shall serve my niece, Harriet Reynolds, until they do go, but whenever they, or either of them, desire or consent to go, after their term of servitude, they shall be at liberty to do so; and on the same terms and conditions I leave to my niece, Harriet Reynolds, my servant, Lucinda, until she arrives to the age of twenty-seven; Fanny to serve until she is twenty-five years, and Clarissa to serve until Fanny arrives to the age of twenty-five years, then Fanny, Clarissa and Lucinda shall be free to go to Africa at the end of their respective terms, and carry with them any child or children they may then have under the age of five years; all the children which they, or either of said female slaves, may have, over five years of age, at the time of their departure from the United States, for Africa, shall serve my niece, Harriet Reynolds, until the male children arrive at the age of twenty-one years, and the female children arrive at the age of eighteen years, and then, like their mothers, to be free to go to Africa, and their children also in like manner; and if all, or either of the above named negroes, should die in the United States, or refuse to go to Africa, nevertheless, all or any of their children, or descendants, are hereby made free to go to Africa, at any time they may please, with the above restrictions, that is, after serving an apprenticeship, as before stated, for all children over five years of age." Lucinda [111] "attained the age of twenty-seven in 1847." On May 5, 1856, she filed a petition for freedom [109] "in behalf of herself and her seven children; . . [111] at the time of this trial (July 1858) William was about sixteen years old, Juliet from eleven to twelve, John from seven to eight, Charles about six, Robert from four to five, and Jane from three to four. . . [112] The verdict of the jury was in favor of Lucinda, and against the other petitoners, who appealed from the judgment thereon against them."

Judgment reversed and *procedendo* awarded: [115] "Lucinda was free at [twenty-seven] . . whatever her mistress may have intended; because, according to the established doctrine in this State, in reference to conditional bequests of freedom, the words, 'to go to Africa,' can have no effect on the question. . . The consequence is that the children of Lucinda, . . born after that time, were free at their birth," But as to "such of Lucinda's children, as were under the age of five at the time she reached twenty-seven, . . It is a mistake to suppose that they became free when their mother's freedom commenced. Their state was made to depend on a contingency; the removal of the mother to Africa." [Tuck, J.]

Reynolds v. Negroes Lewis and David, 14 Md. 116, July 1859. "Petition for freedom, filed . . 1857, . . under the same will as in the preceding case.[1] . . [117] judgment for the petitioners," Appeal dismissed.

Reynolds v. Negroes Juliet and others, 14 Md. 118, July 1859. [119] "Petition for freedom, filed on the 5th of May 1856, . . under the will

[1] Negroes William and others *v.* Reynolds, p. 137, *supra.*

of Mary Reynolds," The court refused to instruct the jury "that the petitioners . . are not entitled to their freedom, because there is no evidence of the sufficiency of the estate of Mary Reynolds, . . to pay the debts due from the estate." Verdict and judgment for the petitioners. Judgment affirmed: [120] "If there was any proof on the subject of assets, it ought to have been set out"

Negro Ann Hammond v. State, 14 Md. 135, July 1859. Negro Ann [136] "was indicted for obtaining goods under false pretences" and [147] "was described in the indictment as a free negress; at the trial, . . it appeared that she was a slave; whereupon the State's attorney moved the court for leave to amend the indictment according to the fact, which was allowed. The trial proceeded to conviction, when a motion was entered in arrest of judgment" [137] "The court overruled this motion, imposed a fine of $10 and costs, and adjudged her to be imprisoned ninety days in the county jail,"

Judgment affirmed: [148] "The Act of 1835, ch. 319, does not exclude slaves. . . it is supposed that the word 'persons' is a discriminating term, and excludes them. Several examples were furnished from other Acts of Assembly, but they do not sustain the argument. And if they did . . how should this court decide, in view of the fact that punishments have been inflicted on slaves, on the authority of other laws, where the word 'persons' is used, and especially the Act of 1809, ch. 138? If that word does not include this class, many judicial murders have been committed in this State. . . [149] Hardship upon the master may be assumed in any case where his slave is taken under the law for punishment, for the benefit of society; but if compensation is not provided, it does not become the courts to avert the consequences of such a *casus omissus,* by arresting judgment if jurisdiction be conferred." [Tuck, J.]

"Since the above opinion was prepared the court has been furnished with the following opinion of Taney, Ch. J., which is directed to be appended . . as well on account of its importance, as because it sustains the views here presented:" See U. S. *v.* Amy, I. 247, of this series.

Watkins, free negro, v. State, 14 Md. 412, July 1859. Watkins [421] "was indicted[1] for the larceny of a silver watch, valued at six dollars, and, upon a verdict of 'guilty,' judgment was pronounced . . 'to be sold for the period of five years out of the limits of the State,'" Counsel for the plaintiff in error: According to [415] "the construction now contended against . . a negro convicted of wilfully burning down a courthouse, or of enticing slaves to run away, has a chance of being kept comfortably at home by a merciful application of the discretion committed to the court, while a negro who pilfers a ham or a jewsharp, is to be hopelessly assigned to the clutches of a speculator, and has absolutely no chance of escape from a doom, which everybody knows is equivalent to perpetual slavery, aggravated by banishment." Judgment reversed: [424] "The judgment was not authorized by the law,"

[1] Act of 1858, ch. 324, sect. 1.

Haney v. Baltimore Steam Packet Co., 23 Howard 287, December 1859. [301] "the wheelsman was a colored man, and could not, therefore, be examined as a witness; but it is abundantly proved that he was an experienced wheelsman, and accustomed to perform that duty on steamboats and was fully competent and trustworthy." [Taney, C. J.]

Whitridge v. Dill, 23 Howard 448, December 1859. [452] "the master [of the vessel] . . directed the steward, a colored man, to keep a lookout, . . [453] the steward assisted the master in putting up the helm;"

Negro Ann Maria Cornish v. State, 15 Md. 208, March 1860. "The plaintiff in error (a free negro) was indicted for the larceny 'of one mouseline-de-laine dress, of the value of two dollars, current money, and one muslin skirt of the value of one dollar, current money.' Upon a verdict of guilty the court . . sentenced the convict to 'be sold at public auction, by the sheriff, for the period of two years and six months from date, as a slave, out of the State, according to the provisions of the Act of 1858, ch. 324.'"

Judgment reversed: [211] "the court has no power to superadd any other punishment to that prescribed by the Act of Assembly. There are some offences enumerated in the same Act for which the convict may be sentenced to be sold as a slave, 'either within or without the State, according to the discretion of the court,' but the offense of which the plaintiff in error was convicted is not one of them." [Bartol, J.]

Northern Central Railway Co. v. Scholl, 16 Md. 331, July 1860. [347] Action [333] "to recover the value of a slave . . alleged to have been lost . . by being transported in the cars over the railway of the defendant." "The slave was last seen at the home of his master, in Frederick county, Maryland, on the evening of Whitsunday of 1855; and that he was next seen on Whitmonday, in Hanover, Pennsylvania, by a Mr. Epply, in company with two other slaves, who had also run away, at the same time, from the same neighborhood in Frederick county. At the time Mr. Epply saw them, all three slaves were in the ticket office of the Hanover Branch Railroad; and one of the other slaves had applied for, and had obtained, a ticket for Little York, Pa. The agent of the railroad then inquired of the slave to whom he had sold a ticket, whether the others wanted tickets also. Being answered in the affirmative, the agent proceeded to prepare for the last mentioned slaves, two tickets, and whilst so employed, Mr. Epply asked him, 'How he came to give those boys tickets, not knowing whether they had permits, or were free or slaves?' He replied, 'That it was not his business to enquire,' and added, 'that if a black man called for a ticket, and paid for it, he had as good a right to a seat in the first class cars as any other man.' Epply told the agent that the boys were runaways and that he wanted to arrest them. It was *after* this notice, given by Epply,—according to his testimony,—that the ticket was given to the slave of the intestate of the appellee. Mr. Lieb, the agent, testifies the ticket was sold *before* the notice was given to him. The ticket purchased by the slave was a through ticket to York, by which he was

entitled to travel over the appellant's road. There is no direct evidence how far the slave travelled on either the Hanover or the appellant's road; he was never heard of after the starting of the cars from Hanover." [338] "The verdict was in favor of the plaintiff for $813.40, damages and costs,"

Judgment thereon, affirmed: [351] "The plaintiff is a citizen of Maryland, and his right of property in his negro slaves is recognized by the Constitution of the United States, which is the supreme law of the country; and whilst it is perfectly competent to Pennsylvania, or any other State, to prohibit within its borders, negro or any other kind of slavery of the person, yet, it is beyond its power to authorize its inhabitants, or others, to assist in despoiling its neighbors of their property in slaves. It may, if it pleases, forbit its courts to grant redress for the wrong, but it cannot oust the jurisdiction of the courts of the State of the injured party. Whenever the wrong-doer comes within its limits, he is liable to be made answerable for his tortious acts. . . [352] Although slavery be not established by the laws of Pennsylvania, it is recognized, and its protection guaranteed, by the Constitution of the United States; and a railroad company, in Pennsylvania, has no more right, knowingly, to assist in the escape of a runaway slave, than a wagoner on the highroad." [LeGrand, C. J.]

McKee v. McKee, 16 Md. 516, January 1861. [519] "an action of trover, instituted . . by the administrators of Alexander McKee against the administrators of his wife, Margaret McKee, who died in 1851, to recover the value of a number of negroes, . . her husband . . died in 1855; . . and exercised absolute control over them . . up to the time of his death. The defendants . . offered to prove, by . . Quinn, that . . 1847, he had in his hands, as deputy sheriff . . a writ of *vendi exponas*, which had issued out of the Court of Appeals, at the suit . . *vs.* Alexander McKee . . and that negroes Charlotte, Silvey and Martha, (three of the negroes, and the mothers of the remaining negroes in controversy,) had been previously seized on a *fi. fa.*, issued in the same case; and that on the same . . day . . the witness, as deputy sheriff, sold the said three negroes to Mr. Carroll (who said he bought them for Margaret McKee [wife of Alexander McKee]) for the sum of $700, and that it was her money. . . [520] The court . . excluded the said testimony as incompetent to show title in the defendants' intestate . . unless the executions . . is [*sic*] produced, . . verdict and judgment . . for the plaintiffs," Judgment affirmed. See McKee *v.* McKee, p. 143, *infra.*

Cox v. Harris, 17 Md. 23, March 1861. Will of William W. Cox, dated 1853, admitted to probate in 1857: [28] "I devise . . that my negro woman Kitty, and her children, John, Catharine, Sarah and Charles, shall work for themselves, by paying my executors annually, one cent per year hire;"

Cause remanded: [30] "We should regard with favor, the propriety of the point . . that the negroes would take their freedom by implication, if the testator had confined himself to that provision of his will, . . 'work for themselves,' . . But the condition annexed . . would have been in

direct contravention of the Act of 1817, ch. 104. . . The testator, doubtless, intended to discharge his negroes from servitude; that they should be free in fact, but not in law. In such case, the intent contrary to the law, or its policy, must render the whole bequest void, and we are of opinion, that the will, if executed, would be in violation of the Act of 1817, ch. 104, and the Act of 1831, ch. 281." [Goldsborough, J.]

Cecil v. Negro Rose and others, 17 Md. 92, March 1861. Petition for freedom, filed in 1860. [93] "Samuel Owens, Sen., died in 1821, . . bequeathed negro Rose . . to his wife, Mercy Owens, whom he appointed his executrix. . . [She] died in 1831, leaving a will, by which she bequeathed the same negro, Rose, to her daughter, Tabitha Macbee, 'for seven years after my decease, after the expiration of which term of servitude, I will the said mulatto woman Rose to be . . forever set free from slavery,' . . The other petitioners are children of Rose, all born after the expiration of the said term of seven years. After the death of Mercy Owens, Rose went into the possession of Tabitha Macbee, . . who, after holding possession of her for two years, sold . . [94] her to . . Clarke, to serve for five years . . after the expiration of which period she went at large and acted as free . . until 1857, when she was taken possession of by the defendant, after he had obtained letters of administration upon the estates of Samuel Owens, Mercy Owens . . He . . proved . . that in 1818 . . Samuel Owens, Sen., sold to his son, Samuel Owens, Jr., a tract of land for $700, the son paying therefor $300 in cash, and delivering Rose, then a child six years old, at a valuation of $200, . . The defendant then offered in evidence two deeds" and on account presented in the Orphans Court, to show [95] "that Samuel Owens, Sen., died indebted, and that the said . . Rose was the only property left by him at his death as assets for the payment of his debts, but the court . . rejected said offered evidence." Verdict and judgment for the petitioners.

Judgment affirmed: Mercy Owens [102] "had a right to negro Rose, which vested upon the death of the testator; her title was derived from the will, and although, to perfect it, an administration was necessary, yet, before administration, she had an inchoate title, which it was competent for her to assign or dispose of by her will. When administration is afterwards had upon the estate, her title, or the title of those claiming under her, becomes complete; it relates back to the time of the testator's death, and may be asserted against the defendant, who is administrator, with the will annexed, of Samuel Owens, in the same manner as if such administration had been granted in the life time of Mercy Owens. . . [103] there was no evidence of any debts due . . by the estate of Mercy Owens, . . the burden of proof is on the administrator, . . [104] neither the deeds nor the account presented in the orphans court, were admissible for the purpose of showing a debt due by Samuel Owens, Sen." [Bartol, J.]

Negroes Chase et al. v. Plummer, 17 Md. 165, April 1861. Jacob W. Brashears died in 1816, leaving a will, executed in 1811, giving all his estate to his sister: [167] "It is my wish and desire, in case my sister Mimy die without issue, that she shall will and devise all my negroes to

be free, or manumit them in any other way she may think proper; this request I hope she will comply with in time, so as to carry my wish into effect." Mimy married Wells, and took possession of the negroes. Wells "died in 1853, . . leaving a will, of which he appointed the defendant the executor, who . . has possessed himself" of the slaves. Jemima Wells died in 1854 "intestate, without issue, and never having had a child, and without having devised the said negro . . to be free, or manumitted them in any way."

Held: [176] "Mrs. Wells took an absolute estate in the negroes . . [177] the testator . . did not intend their freedom to take effect, at all events, on the death of his sister. . . [178] it has never been held [in Maryland] that freedom can be obtained under a trust of this kind. . . We are dealing with the rights of parties under the law, not with the moral duties of Mrs. Wells, or of any claiming under her and her husband. If . . the appellee has these negroes in possession, claiming them as owner under Mr. and Mrs. Wells, he must determine for himself whether he will manumit them or not. This court possesses no power to direct it." [Tuck, J.]

McKee v. McKee, 17 Md. 352, October 1861. The children of Alexander and Margaret McKee filed the bill in this case, in April 1861, "against the appellees, the administrators of the said Margaret and of the said Alexander. The bill charges that, in 1845, a judgment was recovered . . against the said Alexander.[1] . . Margaret died . . intestate, . . [353] after the death of said Alexander, one of said children, for himself and on behalf of his brothers and sisters, took possession of said negroes and their increase, . . Charlotte hath three children, Sylvia five, and Martha seven, and that these negroes are incapable of advantageous partition amongst said children, and that it will be for their interest . . that the same should be sold, and the proceeds distributed amongst said children. . . the complainants claim these negroes and their increase directly from their mother, and not through her administrators, so that the recovery against the latter [2] does not prejudice the rights of the complainants. . . [354] The bill then prays that the judgment so recovered . . may be declared void . . and for an injunction restraining the administraors of . . Margaret from delivering to the administrators of . . Alexander, . . as well the original stock as the increase thereof, in satisfaction of said judgment, and that all said negroes may be sold . . The court (Crain, J.) refused to grant the injunction"

Order affirmed and cause remanded: under the act of 1842, ch. 393, sect. 4, slaves which were the separate property of the wife, and their increase, born during the life of the wife, descend, on the death of the surviving husband, to her children, without the necessity of administration on her estate; but the increase born during the survivorship of the husband, are his, in absolute right.

Maddox v. Negroes Price and others, 17 Md. 413, June 1861. Will, executed 1837: [416] "I . . bequeath to my nephew, James T. N.

[1] See facts given in McKee *v.* McKee, p. 141, *supra*.
[2] *Ibid.*

Maddox, the residue of my negroes in trust, which negroes he shall hire out from year to year, until my just debts are paid as well as certain legacies discharged and paid, . . then he . . may, if he wish to do so, take such of my negroes as are willing to go to the State of Kentucky, or elsewhere, where they shall be manumitted; it being my wish and intention, to manumit all my negroes except Josias, when my just debts shall have been paid, and the bequests made in this will are discharged and paid; and if any of my negroes shall refuse to leave the State of Maryland—a condition of freedom required by our equitable laws—then he . . may sell such negro or negroes, allowing those sold the privilege of choosing masters, provided the persons chosen will give a fair price for them." Dr. Maddox, the executor, "called on said negroes after the debts and legacies were paid off, to go out of the State of Maryland; they have refused and still do refuse to leave the State of Maryland."

Held: the removal of the negroes out of the State, by their *consent,* is a condition precedent to their manumission. [418] "They are sentient, rational beings, and have capacity to make the election, under the will, before they have become free; such a choice is not inconsistent with a state of servitude. On the contrary, by the provisions of the Act of 1831, ch. 281, sect. 4, the privilege is accorded to a manumitted slave to renounce freedom and to continue a slave. In the will before us, the testatrix referred to that law with approbation, and plainly intended to give to the petitioners a similar choice."

Cecil v. Clarke,[1] 17 Md. 508, June 1861. Cecil brought suit for malicious prosecution against defendants for causing him to be arrested on a charge of kidnapping negro Rose and her four children. [523] "The plaintiff, accompanied by friends, arrives in a village which has been alarmed by the report of and flight of negroes to it for protection. He has in his charge and under his care certain negroes whom he has brought from an adjoining county, and is in pursuit of others well known in the village. He finds, on his arrival, a number of persons standing around, gossiping, it being a place of great resort. His right to the negroes is denied by one of these persons, and he is asked for his authority which he exhibits. The testimony is, that he was permitted to depart, although he failed to convince the bystanders that he had the right to take with him the negroes. It was then said by one of the defendants, Welling, that he could not be arrested unless some one would make an oath, whereupon Moore volunteered to do so. It does not appear from any part of the evidence that the meeting of the defendants was by concert, or that its motive had anything whatever to do with the arrival of the plaintiff or the negroes; for aught that appears, it seems to have been purely accidental. None of these parties did anything violent, except one, who, according to the testimony, did not know what he was doing, being under the influence of liquor. When the warrant for the arrest of the plaintiff was issued, the defendants refused to assist in its execution, and were only prevailed on to do so by being threatened by the constable with being presented to the grand jury, if they refused. Surely there is nothing in

[1] See Cecil *v.* Negro Rose, pp. 137, 142, *supra.*

all this unusual or malicious. That such an arrival in a small village would create some agitation, was to have been expected; and we see nothing in the conduct of the defendants to whom we have alluded, which is deserving of censure. Their conduct was both natural and humane. There is no evidence that there was any conspiracy whatever among them; all that was said and done on the occasion, was clearly from the impulse of the moment, and from a commendable impulse, to see that helpless beings were not illegally and forcibly carried out of their county. They would have been less than men, had they not exhibited some emotion on the occasion. In our judgment, they did nothing but what they had a right to do—they made inquiries and expressed their opinions in regard to the rights of the negroes, and nothing more." [LeGrand, C. J.]

Merrick v. Bradley, 19 Md. 50, December 1862. [51] "Received December 22nd, 1858, of Mr. Clinton Wright an order on James Merrick for six hundred and fifty dollars, in payment for a colored woman, Mary, a slave for life, whom I guarantee to be sound up to this day. S. J. Bradley." "Mr. David Wallace:—You will please let Mr. Clinton Wright have Mary, as I now consider her his property. December 22nd, 1858. S. J. Bradley." Mary was in the possession of Wallace under contract of hire to him. [52] "Wright came up to the kitchen door where the said negro was, . . and the said Finley said to the said Wright, pointing to said negro, 'There is your negro,' and the said Wallace said, 'I am sorry you have come, for it will put me to great inconvenience.'" Mary committed suicide before actual delivery, while Wright was waiting at the door to receive her. Held: there was a valid sale to Wright, and the purchase was thereafter at his risk.

Wilson v. State, 21 Md. 1, February 1864. [2] "action of debt brought . . 1860 . . to recover the penalty of $500, imposed by the Act of 1838, ch. 375, for the illegal transportation . . of the negro slave of Davis, from Annapolis to Baltimore, . . [3] The said negro Washington was hired by his owner to the defendants as a seaman or hand, to work on board of, and assist in, the management and sailing of the sail vessel of the defendants, and as such hired hand or seaman was received on board of the said sail vessel, and was assisting in the navigation and working thereof, with the consent and knowledge of his said owner."

Held: the words in the Act, "without a permission in writing from the owner of such slave," were not intended to apply to a care of hiring a slave by the owner to the master of a vessel, as a seaman to work on board of said vessel. [10] "It is not necessary to constitute the offence punishable under the first section that an escape should actually have occurred."

McCeney v. Duvall, 21 Md. 166, March 1864. [167] "an action brought . . 1863, by the appellee . . to recover damages for a negro woman named Hester, . . [169] 'Annapolis, Nov. 10th, 1859. Received of . . Duvall, the sum of thirty-four hundred and fifty dollars, . . in full for . . three negro slaves, named: Swain, aged eighteen years, Hester, aged twenty years, and Ann, aged thirteen years. . . I . . warrant them

sound and healthy, and slaves for life. . . Edward McCeney, (Seal.)' . . [Hester] was then apparently a hearty and healthy woman, and was then, if sound, worth $1150 or $1200 for the Southern market; . . [Duvall] kept her a day or two, and then sent her to Campbell, in Baltimore, who shipped her, with other negroes, to New Orleans, for sale, from whence she was returned to Campbell, in Baltimore, on the last of March or first of April 1860, as unsound, and Campbell, after having her examined by a physician, returned her to the plaintiff, in Annapolis, telling him she was unsound." Three physicians examined her [170] " in March and April 1860, and found that she was suffering from *prolapsus uteri*; . . and all concur in the opinion that it was a very serious case, of long standing, and must have existed for some time prior to November 1859; that the effect of the disease was seriously to impair the woman's usefulness and ability to labor, and was almost, if not quite, an incurable case." Witnesses testified " that after her return from New Orleans, the woman was of no value for the Southern market, that about here she was worth $250 or $260." A witness stated that [171] " McCeney asked the woman why she had not spoken before the sale, about her having this disease, to which she replied that she had been ashamed to speak of it, but that she had been so a long time. . . the woman was afterwards sold by Duvall, at the court house door, at public sale, . . and witness bought her . . for $250 or $260, and afterwards sold her to Campbell for $15 more than he gave for her; he bought her to sell again. . . Campbell . . sold her to a Mr. Logan, of South Carolina, for about $300, . . without a guarantee, and after a statement of her condition. . . it was not their custom to examine women particularly at the jail, . . because they always receive a warranty of soundness," Another witness " had seen her working in the crops like other hands, and in October 1859, she and her mother worked several days, with other negroes of McCeney, on the public roads [with a hoe] under charge of witness, as supervisor; the work was very laborious, and she kept up with it as well as any other negro. . . in September 1859, being short of hands, witness hired her of McCeney to tend a threshing machine; that the work is of a very laborious character, requiring a great deal of stooping and lifting, and that being pressed for hands, he required her to work briskly and for a long time, and that he could perceive no difference between her ability to work and that of the other negroes. . . [172] Doctor Claytor . . for many years has been the attending physician on his [McCeney's] place, and . . knew Hester as one of the hands, sometimes a house servant, but frequently in the crop, and that he never was called to attend her, . . she could not have performed the work spoken of . . in 1859, if she had been diseased with *prolapsus uteri,* . . Dr. McCeney never attended himself to his negroes, . . [175] The verdict was in favor of the plaintiff,"

Judgment reversed, and *procedendo* awarded: [183] " the declarations of a slave, though admissible to prove the present nature of the disease . . must be confined to the disease under which the slave is laboring at the time . . and cannot be so extended, as to make those declarations evidence to show that she had been diseased . . anterior to that time."

Morsell v. Baden . . and Negroes Caroline and Solomon, 22 Md. 391, November 1864. A bill in equity, filed in 1854, "to set aside as . . void as against creditors, a deed of manumission executed by [Jeremiah M. Baden] . . 1833, manumitting the said negroes. . . the manumission to take effect at certain periods specified in said deed; that Baden . . [392] was insolvent . . the negroes . . plead limitations of three years and twelve years, and *laches*. . . [393] The Court below . . 1859, passed a decree dismissing the bill with costs, and the complainant appealed."

Decree affirmed: [396] "under the existing Constitution, the particular relief sought by this bill cannot now be granted. . . as they have been declared free by the organic law of the State, the claim of the appellant, that they should be sold for the purpose of paying the debt alleged to be due to him . . [397] can no longer be maintained. In view, however, of the question of costs, we think it proper to express . . our opinion of the case, as it stood upon the law when it was argued; . . [398] The right to vacate the deed, could have been maintained only on proof of the exhaustion of the real and personal estate, and its insufficiency for the payment of the debts."

Trustees of the African M. E. Church v. Gibbs, 24 Md. 323, December 1865. [329] "The question as to the use and employment of a musical instrument in the divine service of the African Methodist Episcopal Church [of Baltimore], was submitted, after due notice, by the minister in charge (Rev. Mr. Cronin,) to a meeting of the male members of the Church, called according to the charter of the corporation, at which he presided, and was, as is proved by the minutes, duly attested, decided by the majority of the said meeting that the musical instrument [an organ, which the trustees 'had introduced into the Church building'] should not be so used and employed." [331] "The appellees 'as male members of the African Methodist Episcopal Church of the City of Baltimore,' . . sue the appellants . . [333] praying an injunction . . An injunction was issued . . May, 1864,"

Injunction dissolved and bill dismissed: [336] "The male members of the Church are invested with no . . controlling power over the minister or trustees,"

Coston v. Coston, 25 Md. 500, July 1866. "Leah Coston, on behalf of Simon and Washington Coston, as mother and next friend, petitioned for a writ of *habeas corpus* to be directed to Samuel Coston, . . The writ was issued on the 6th of May, 1865, . . Coston appeared in Court on the 17th with said Simon and Washington, and returned that he held them as apprentices, . . [501] To this return the following pleas, in substance, were filed on behalf of the petitioner: 1st. That the parents of said children were not summoned to be present at the binding. 2nd. That the said children, at the time of said binding, were not the children of free negroes, but were born in slavery, and that both they and their mother were the slaves of the defendant until set free by the Constitution of 1864, and that the detention of said children under the color of apprenticeship, as returned, was a detention in slavery or involuntary servi-

tude contrary to said Constitution. . . the Court . . passed an order discharging them from his custody, and delivered them to their parent"

Brady v. Dilley, 27 Md. 570, July 1867. [585] "1857, . . Greenwade sold . . negro 'Jim,' for one thousand dollars, and . . 1859, negro 'Bill,' for twelve hundred dollars."

In re Turner, 24 Fed. Cas. 337 (1 Abbott U. S. 84), October 1867. "Having upon a writ of *habeas corpus*. The petition . . alleged that Elizabeth Turner . . was restrained of her liberty . . by . . Hambleton, . . in violation of the constitution and laws of the United States. . . [338] the child and her mother were formerly held as slaves by the respondent. They were emancipated by the new constitution of the state, which took effect November 1, 1864." [339] "Almost immediately thereafter many of the freed people of Talbot county were collected together under some local authority, . . and the younger persons were bound as apprentices, usually, if not always, to their late masters. . . Elizabeth, the petitioner, was indentured ['by the consent of her mother, present in court'] to Hambleton by an indenture dated November 3, two days after the new constitution went into operation." [338] "The indentures . . provided that Elizabeth Turner shall be taught the art or calling of a house servant; and that the master shall provide . . food, clothing, lodging, and other necessaries, and shall pay to Betty Turner, her mother, ten dollars at the end of her sixteenth year, twelve dollars and fifty cents at another period, and fifteen dollars to the girl at the end of her term of service, . . 1874, she having been born . . 1856." [339] "The petitioner, under this indenture,[1] is not entitled to any education; a white apprentice must be taught reading, writing, and arithmetic. The petitioner is liable to be assigned . . at the will of the master to any person in the same county; the white apprentice is not so liable. The authority of the master . . is described in the law as a 'property and interest'; no such description is applied to authority over a white apprentice."

Held: "The alleged apprenticeship . . is involuntary servitude, . . [340] The petitioner, therefore, must be discharged from restraint by the respondent." So ordered and "that the costs of this proceeding be paid by the petitioner." [Chase, C. J.]

Nickerson v. Nickerson, 28 Md. 327, February 1868. In 1853 [328] "the defendant in the presence of the witness . . said to Bill Johnson the negro . . 'Go home Bill, to Sam and serve him, until John comes of age, and then you will go to John,' neither Samuel Nickerson nor the plaintiff being present,"

Held: "said declarations do not constitute a gift in the law," [332] "It is equally essential, [under the Act of 1763, ch. 13] . . as under the common law rules . . that there should be an express delivery of the property *at the time*, and *in pursuance* of the gift."

Goldsborough v. Cradie, 28 Md. 477, March 1868. Action to recover a reward of $600 offered for the apprehension and delivery in jail of three

[1] "claimed to have been executed under the laws of Maryland relating to negro apprentices."

runaway slaves. [479] "On Saturday night, the 21st of August, 1858, five of the negroes of the defendant's intestate ran away; on Monday following, . . the defendant had advertisements printed offering a reward, which in the afternoon of Monday were sent from Easton for distribution. Before the advertisements were circulated, the negroes came into the town of Felton, in Delaware, . . stated they had run away from their master, and wanted to get tickets in the stage to take them home. The plaintiffs, Cradie and Davis, . . took some of the negroes about the town, and locked them up in a room in the hotel, gave them their dinner, etc., but afterwards, there being some excitement, gave over the negroes to the constable Clymer, . . [480] who said he would take them to Easton. While this state of things existed, no one having charge of the negroes, they being at large, Mr. Cheezum, a friend of the defendant, came in the train and seeing the negroes whom he well knew, and hearing from them that they had run away and wanted to return to their masters, he paid their passage, and re-paid the sums the plaintiffs had paid for the negroes at Felton, and took the negroes in the stage with him; . . Arriving at night in Easton, he put them in the jail, notified the defendant, and received from him all his expenses on account of the negroes."

Judgment for the plaintiffs reversed: [486] "Upon no fair or just principle could the reward be claimed, unless at the time of their alleged apprehension, the negroes still continued absconding and runaways from their owner."

Clark v. Mayor, 29 Md. 277, June 1868. [283] "the appellant enlisted at Baltimore city, in Company 'G,' Fourth Regiment of United States Colored Troops, a regiment raised in the city and credited as part of the quota of the city under the call of the president for five hundred thousand men.[1] That he was mustered into the service on the 11th of August, 1863, and was honorably discharged in May, 1866."

Williams v. Johnson, 30 Md. 500, May 1869. "an action of trover brought . . 1860, . . to recover the value of a certain negro man, her slave. . . 1867, . . [501] the defendant demurred to the *nar.*, . . The demurrer was held good by the Court, and judgment was entered thereon."

Judgment reversed and *procedendo* awarded: [505] "the sole question raised by the demurrer is, whether . . [the] abolition [of slavery] by the Constitution of 1864 operates as a bar to the plaintiff's recovery. The radical error, which underlies the argument of the appellee's counsel, is the assumption, that negro slavery, as it existed in this State, was the creature of statutory law. . . The act of 1663, ch. 30, . . so far from establishing slavery in the colony, recognizes, in express terms, its existence at that time, . . when these colonies were planted, negro slavery and the slave trade were not only recognized as lawful, but sanctioned and protected by all of the enlightened and commercial nations of Europe. . . [506] Especially was it the policy of Great Britain to introduce and encourage it in the colonies, . . The cases, therefore, in which it has been held that actions based upon statute law, fall with the repeal of the law, . . do not

[1] Feb. 1, 1864. Richardson, *Messages*, VI. 232.

apply. Slavery being established by the municipal law of the State, . . rights vested under the municipal law . . are not affected by a change or abrogation of the law. . . [507] To deprive the plaintiff of this [perfect and vested] right,—to impose upon him the costs of a suit brought under the sanction of the law, . . would indeed be an alarming subversion of principle." [Robinson, J.]

Griffith v. Plummer, 32 Md. 74, January 1870. Will, admitted to probate in 1839: [77] "I give unto my son . . one hundred and sixty acres, . . in trust, together with nine negroes, . . in trust for his sister Rachel;"

Wallis v. Woodland, 32 Md. 101, February 1870. Will of John Mason (executed in 1826, and admitted to probate in 1829): [104] "I give . . to my daughter . . all . . the property . . except my negro man, Thomas, and my negro woman, Ann, who, it is my will that Thomas should serve four years and Ann seven years after my death. Also the children . . should each of them be free when they arrive at the age of thirty years, if my daughter should die without heir, but if not, then the said children to serve for life."

Smith v. Doe, 33 Md. 442, January 1871. [446] "Conner died about . . 1813, . . and that by his will, . . he bequeathed the [leasehold property] . . to his wife . . for life, and after her death to her son Lloyd Gibbs, for his life, and after the death of the latter to an illegitimate son of the testator, named Thomas Conner, absolutely. The last named legatee was a slave for life, . . [447] and not belonging to the testator, the bequest of that interest failed; it being well settled that a devise or bequest to a slave for life, if it cannot operate to give freedom, as well as the property intended for the benefit of the devisee or legatee, is absolutely void." [1]

Needles v. Martin, 33 Md. 609, February 1871. [614] "Simultaneously with the execution of his will [in 1843] he [Nelson Wells] executed another paper, in the form of a letter of instructions to Needles, Tyson and Jessop, . . 'Being in my last moments desirous to make some provisions for the school education of free colored children, . . [615] I have, by my last will . . bequeathed . . to you, as a special, confidential trust, the stock I hold of the City corporation of Baltimore, say about three thousand five hundred dollars, . . And further . . on the death of my wife . . all the residue of my estate. Now it is my . . will that you will hold the same in trust, . . and that the net income . . be applied by you to the education of free colored persons in . . Baltimore.' . . [616] the whole income . . has been expended by them in the accomplishment, as far as was practicable, of the intentions . . of the testator." Held: [618] "The trust . . is too vague . . to be enforced, and is void"

Henning v. Varner, 34 Md. 102, February 1871. Henning's will, dated 1830: [103] "the proceeds of sale of his slave Louisa, should his wife sell her for cause;"

[1] Hall *v.* Mullin, p. 69, *supra*.

Jones v. Jones, 36 Md. 447, June 1872. [453] "David Jones was married, while yet a slave, to Hannah Williams, a free woman, and that some of her children were born before David became free and some afterwards, and that David and his brother Andrew were both manumitted by Margaret Gardner by deeds, . . 1814, . . David's freedom to commence five years and Andrew's six months thereafter. David and Hannah lived together as man and wife . . long after David's emancipation, and up to the time of Hannah's death, . . [454] David died twelve or fifteen years ago. Andrew died in August, 1870, leaving . . his widow, but no child"

Held: since the act of 1777, ch. 12, sec. 11, slaves could lawfully marry, [455] "and consequently the issue would be legitimate." David's children [457] "are capable in law of inheriting from their uncle Andrew D. Jones,"

Gent v. Cole, 38 Md. 110, May 1873. Cole, the plaintiff, [111] "was born free, being a negro—that in October, 1864, he was about seventeen years of age, and an apprentice to the defendant, and had been living with him in that relation for ten or twelve years; . . that in obedience to his orders he . . [112] was enlisted in the army of the United States . . he had not been drafted, but was placed in the army by the defendant as a substitute for his son, who had been drafted." A substitute broker testified that "in October, 1864, . . substitutes were high; that three hundred dollars at that time was a very low price. . . A verdict was rendered for the plaintiff for $300."

New trial awarded: he owed the defendant service until twenty-one year of age. [114] "By entering the army he absolved himself from his apprenticeship, . . and . . became entitled to receive . . the regular pay of a soldier . . [115] the Court below was in error in admitting the evidence . . as to the price of substitutes," [Alvey, J.]

DISTRICT OF COLUMBIA

INTRODUCTION

I.

[401] " In the second section of the act of the 19th of December, 1791,[1] the state of Maryland declared, ' that all that part of the territory called Columbia, which lies within the limits of this state, shall be, and the same is hereby acknowledged to be for ever ceded and relinquished to the Congress of the United States, in full and absolute right and exclusive jurisdiction, as well of soil as of persons residing, or to reside thereon pursuant to the tenor and effect of the eighth section of the first article of the constitution of government of the United States—provided that the jurisdiction of the laws of this state, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article in the constitution before recited.'

" Previously to the above cession, in 1789,[2] Virginia ceded to the United States, ' ten miles square or any lesser quantity for the purposes aforesaid, as Congress might direct,' with the reservation ' that the jurisdiction of the laws of Virginia over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress having accepted the said cession, shall, by law, provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.' This cession was accepted.

" By the first section of the act of the 17th [27th] of February, 1801,[3] Congress provided, ' that the laws of the state of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia which was ceded by the said state to the United States, and by them accepted,' etc., ' and that the laws of the state of Maryland as they now exist, shall be and continue in force in that part of the said district which was ceded by it, etc.' The part of the district ceded by Virginia constitutes Alexandria county, and the part ceded by Maryland, constitutes Washington county. . . [404] the counties of Washington and Alexandria are governed by the laws of the states to which the territories composing them were respectively attached before the cession. This is especially true in regard to the importation and sale of slaves. . . It was, undoubtedly, the policy of Congress, until the passage of the act

[1] 2 Laws Md. 1791, ch. XLV.
[2] 13 Hening 43.
[3] 2 Stat. at L. 103.

of 1812,[4] to preserve the same relation between the counties of the district, on this subject, that existed between the two states. . . The act of 1812 was designed to enable the owner of slaves in either of the two counties, within the district, to hire or employ them in the other. . . [405] The counties of Washington and Alexandria, excepting the modification made by the act of 1812, are as foreign to each other, as regards the importation of slaves, as are the states of Virginia and Maryland." [5]

The county of Alexandria was re-ceded to Virginia in 1846.[6]

II.

A few months before the date of the earliest case recorded in the ensuing pages, Congress, by the Act of February 27, 1801, provided for a circuit court of the District of Columbia consisting of three judges, one of whom should be chief judge. It was to have the same powers within its jurisdiction as those of the circuit courts of the United States, with appeals in civil cases to the Supreme Court of the United States. This circuit court held sessions in each of the two counties into which the District of Columbia was divided,—Washington County north of the Potomac and Alexandria County south of it. It continued to be the highest court of the District until the passage of the Act of March 3, 1863, which provided for a Supreme Court of the District of Columbia, consisting of a chief justice and three associate justices (a fourth was added in 1871), from which cases might be brought by appeal or writ of error before the Supreme Court of the United States.

[4] 2 Stat. at L. 757.
[5] Judge McLean, in Rhodes *v.* Bell, 2 Howard 397.
[6] 9 Stat. at L. 35.

Rose v. Kennedy, 20 Fed. Cas. 1188 (1 Cranch C. C. 29), July 1801. "Action of assault and battery to try the plaintiff's right to freedom. She was brought into Virginia in . . 1792, and she claimed to be free because her owner had not taken the oath prescribed by the act of Virginia of December 17, 1792, sect. 4.[1] The defendant produced a certificate . . of an oath taken by the owner . . 1792, but varying in some respects from the oath prescribed. . . the Court directed it to be read to the jury, and instructed them that they might judge from that, and the testimony produced, whether the oath was taken or not."

Talbott v. Hartley, 23 Fed. Cas. 650 (1 Cranch C. C. 31), July 1801. " Bowling, the owner of the [two negro] boys, had by indenture bound them as apprentices to the plaintiff. Bill was to serve until September, 1798, and Hanson until September, 1799. Talbott hired the boys to Hartley,"

Sylvia v. Coryell, 23 Fed. Cas. 591 (1 Cranch C. C. 32), July 1801. "Assault and battery to try the right of the plaintiff to her freedom. . . The plaintiff was born a slave in Virginia, in 1779, . . In . . 1789, the defendant [her owner] sent her to New Jersey, where she remained three years in the service of the defendant's mother, but continued all that time the property of the defendant. At the end of three years, the plaintiff returned to Virginia, . . Judgment for the defendant," [2]

Resler v. Shehee, 1 Cranch 110, December 1801. " 1799, Resler . . procured a certain false . . warrant, . . charging Shehee with having received from a certain negro slave . . certain stolen goods,"

U. S. v. Jack, 26 Fed. Cas. 555 (1 Cranch C. C. 44), December 1801. Indictment against negro Jack, a slave, for theft. " The Court decided that they had not jurisdiction,[3] and ordered the slave to be delivered to a constable to be carried before a justice of the peace."

Atkinson v. Patton, 2 Fed. Cas. 105 (1 Cranch C. C. 46), January 1802. Slander: " at the time the defendant spoke the words, he stated that he had received his information from his slave." Held: no justification.

Thomas v. Jamesson, 23 Fed. Cas. 952 (1 Cranch C. C. 91), April 1802. "Assault and battery. The plaintiff was a man of color. The defendant, a free white man, offered his slave as a witness under the act of assembly.[4] The Court refused to permit the slave to be sworn." [5]

[1] Rev. Code 196; ed. 1803, p. 187.
[2] Act of Va., Dec. 17, 1792, ed. 1832, p. 186.
[3] " by the act of assembly of Maryland."
[4] Rev. Code 289, sect. 3; Old Acts Assem. 284.
[5] Act of Jan. 21, 1801, sect. 4. Laws Va., 1800-1801, p. 38.

U. S. v. Bell, 24 Fed. Cas. 1081 (1 Cranch C. C. 94), November 1802. "Indictment for stealing. Slaves were permitted to be sworn on the part of the United States against the prisoner [Betty Bell, alias Mullican, a free mulatto]." [1]

U. S. v. Louder, 26 Fed. Cas. 998 (1 Cranch C. C. 103), December 1802. "Indictment for stealing. The prisoner pleaded *ore tenus* that he is a slave . . the court . . ordered him to be delivered to a constable to be carried before a justice of the peace and tried;"

Hamilton v. Russell, 1 Cranch 309, February 1803. [314] "On the 4th January, 1800, Robert Hamilton made to Thomas Hamilton an absolute bill of sale for a slave . . which . . was recorded . . The slave continued in possession of the vendor; and some short time after the bill of sale was recorded, an execution on a judgment obtained against the vendor was levied on the slave, . . In July, 1801, Thomas Hamilton, the vendee, brought trespass against the defendant Russell, by whose execution, and by whose direction, the property had been seized;" Judgment for the defendant, affirmed: [318] "an absolute bill of sale is itself a fraud, unless possession 'accompanies and follows the deed.'" [Marshall, C. J.]

U. S. v. Wright, 28 Fed. Cas. 790 (1 Cranch C. C. 123), June 1803. Indictment against Betty Wright, a slave, "under the statute for stealing goods. Some question arose how she should be tried. Under the law of Virginia, she would have been tried by five justices of the county court, without a jury. Upon consideration of a former precedent in this court, she was tried by a jury in the usual form. Verdict, guilty. Judgment, 20 lashes, 1 cent fine."

U. S. v. Barton, 24 Fed. Cas. 1024 (1 Cranch C. C. 132), July 1803. "Indictment for stealing a handkerchief. Upon the prisoner being brought to the bar, he appeared to be a mulatto. Two black witnesses, manumitted, were produced by the United States. . . witnesses admitted, after reading the acts of assembly of Maryland, 1717, c. 13, and 1796, c. 77. Barton was indicted as a free man."

Rogers v. Fenwick, 20 Fed. Cas. 1113 (1 Cranch C. C. 136), July 1803. [1114] "Voss had employed Rogers . . to attend Mrs. Fenwick's negroes whom he had hired of her. The court instructed the jury that if they should be of opinion that it was the general custom of the country, in the hiring of negroes, that the owner should pay for medicine and medical attendance, and that the defendant did not inform Voss that she had a family physician [at a certain sum per annum] who was bound to attend to all her slaves, it was lawful for Voss to employ the plaintiff on the defendant's account, to administer the necessary and proper medicine to such of the slaves as might require it."

U. S. v. Swann, 27 Fed. Cas. 1379 (1 Cranch C. C. 148), December 1803. "Indictment for theft [against Nancy Swann, a free mulatto]. Mr. Hewitt, for defendant, prayed for a summons for a negro slave as

[1] Old Acts of Va. 348; Rev. Code 199, 200; Act of Jan. 21, 1801, sect. 4.

a witness for the defendant. The Court inclined to think that the slave could not be a witness against her, and therefore not a good witness for her, and refused the summons."

McCall v. Eve, 15 Fed. Cas. 1232 (1 Cranch C. C. 188), November 1804. " the slave secreted himself in the forecastle, and was not discovered for five or six hours after the vessel had sailed; the captain landed him at St. Mary's, in Maryland, and lodged him in jail; and wrote to the owners of the vessel requesting that information might be given to the master of the slave." " Question—Whether the master of the vessel is liable to the penalty [of the act of Virginia [1] for carrying a slave out of the commonwealth], if he did not know that the slave was on board at the time he sailed? . . Mr. Simms, for defendant. . . the carrying cannot be attributed to the captain unless it was with his knowledge." Fitzhugh, J. *contra*: " The legislature intended to excite vigilance in captains. . . they have never made a knowledge in the exporter necessary to constitute an offence; . . slaves constitute a large proportion of our property, disposed to escape from our possession; and a disposition having been discovered in captains of vessels to aid them in their attempts, it was found necessary to impose severe penalties. . . The defendant, after discovering he was on board, should have landed him in Virginia, where he could not have claimed his freedom by removal. . . he ought not to presume the negro to have been free. Color and law forbid it."

Bazil v. Kennedy, 2 Fed. Cas. 1096 (1 Cranch C. C. 199), November 1804. Will of Mrs. Turner, who died in 1796: " I will that my slaves be sold by my executors, for the following terms: Bazil for eight years, . . I will that after the above slaves respectively arrive at the completion of the above terms, they shall be free and their posterity after them at the age of thirty years." " Her husband suppressed the will. Bazil was sold as the property of the husband, by the marshal, to the defendant Kennedy, on the 27th of January, 1802. The will was found and proved June, 1804. This action was brought on the 22d of August, 1804."

Held: " the term began to run from the time of her death, unless some cause should be shown for extending it for a further reasonable time; and that as more than eight years had elapsed . . the plaintiff is entitled to his freedom."

U. S. v. Prout, 27 Fed. Cas. 625 (1 Cranch C. C. 203), December 1804. " The Court . . instructed [the jury] . . that the selling of spirituous liquors to negroes in a public manner, assembled in considerable numbers, and suffering them to drink the same in and about the house on the Sabbath, constitutes it a disorderly house. Verdict for the United States. The defendant had not an ordinary license. Fined $100."

U. S. v. Coulter, 25 Fed. Cas. 675 (1 Cranch C. C. 203), December 1804. " Indictment for keeping a disorderly house. . . Coulter had a license to keep a tavern; . . The Court: The license does not authorize the defendant to sell to slaves or negroes on a Sunday; it is therefore no

[1] Act of Dec. 17, 1792. Rev. Code, P. and P. ed., p. 195.

justification as to those facts. The practice of selling spirituous liquors in a public manner to negroes and slaves, assembled in considerable numbers, and suffering them to drink in and about the house on the Sabbath, constitutes the offence of keeping a disorderly house. Verdict guilty. Fined $10."

U. S. v. Brown, 24 Fed. Cas. 1246 (1 Cranch C. C. 210), December 1804. "Indictment [against Scipio Brown] for stealing a pair of boots, . . Verdict guilty. Sentence, twenty stripes, and one dollar fine."

U. S. v. Fisher, 25 Fed. Cas. 1086 (1 Cranch C. C. 244), July 1805. Indictment against a free white man "for beating prisoner's wife. . . Lucy Butler, a black woman, was offered as a witness on the part of the United States. Mr. Threlkield having sworn that she had always passed for a free woman for many years, the court permitted her to be sworn to the jury. *Quaere*. See the act . . of Maryland (1717, c. 13, sect. 2)."

U. S. v. Lindsay, 26 Fed. Cas. 971 (1 Cranch C. C. 245), July 1805. Lindsay, "being a shopkeeper, sold liquors to slaves on Sundays," Held: "the practice of selling spirituous liquors in a public manner to negroes assembled in considerable numbers, and suffering them to drink the same in or about the house on a Sabbath day, constitutes the offence of keeping a disorderly house."

Voss v. Howard, 28 Fed. Cas. 1301 (1 Cranch C. C. 251), July 1805. Assault and battery on plaintiff's servant, *per quod servitium amisit*. "Joseph Cole, a mulatto slave, . . hired himself, with his owner's permission, in the city of Washington, to Nicholas Voss, by the month; the said negro received the wages for his labor, and lived, not with Mr. Voss, but with his own wife, a free white woman, and came daily to his labor; that an affray and fight took place between the defendant and said Cole; that the defendant struck and beat the said Cole, but not so as to occasion any loss of labor to the said Voss." Judgment for the defendant: "The loss of service is the gist of the action, and the statement admits that there was no loss of labor, which the court considered as synonymous with service."

U. S. v. Scholfield, 27 Fed. Cas. 975 (1 Cranch C. C. 255), November 1805. "Indictment for false imprisonment of James Carter, a mulatto boy. . . the boy (who was a free mulatto) was bound to the defendant in Maryland. The defendant brought him to Alexandria . . [and] sold his time to Hodgkins."

Lee v. Lacey, 15 Fed. Cas. 209 (1 Cranch C. C. 263), November 1805. Action "upon the case upon the statute of Virginia of 25th January, 1798, 6, 7, by the owner of a slave, against the master of a Georgetown packet-boat, for damages for carrying the plaintiff's slave from Alexandia to Georgetown, whereby the plaintiff lost the service of the slave from the 29th of April to the 21st of May," "Verdict for the plaintiff, 120 dollars."

London v. Scott, 15 Fed. Cas. 940 (1 Cranch C. C. 264), November 1805. See Scott *v.* London, p. 158, *infra*.

Scott v. Negro London, 3 Cranch 324, February 1806. " Negro London brought an action of assault and battery against Scott, to try his right to freedom." [1] Scott's [325] " father, claiming to own the plaintiff as his slave, brought him from Maryland into Alexandria, in July, 1802, without the knowledge or consent of the defendant, and hired him out in Alexandria until his death, which happened about Christmas in the same year." He " never took the oath required by the 4th section of the act. The defendant, in March, 1803, got possession of the plaintiff, and in April following, being then a resident of Maryland, but intending to remove to Alexandria, hired him out in Alexandria, claiming him as his slave, . . The defendant came from Maryland in June, 1803, and on the 5th of July next following, took the oath prescribed by the 4th section of the act." Negro London resided in Alexandria from the time of his importation in July 1802 " until the present time, except for about three weeks in April, 1803." The court below held [326] " that the oath ought to have been taken within sixty days after the removal of the negro," and directed the jury [331] " that, under the circumstances stated, the plaintiff below was entitled to his freedom,"

Judgment reversed by the Supreme Court: [329] " within the year from the time the negro was brought in, and also within the sixty days from the time the plaintiff in error removed to Alexandria, the oath prescribed by the law was taken. . . the acts of bringing the negro into the state, and of removing into it " need not " be concomitant." [Marshall, C. J.]

Ex parte Anthony, 1 Fed. Cas. 1045 (1 Cranch C. C. 295), March 1806. " *Habeas corpus*. . . the prisoner was committed by a warrant under the hand of Mr. Justice Faw, . . 'Alexandria County, ss. You are hereby required to receive into your custody negro Anthony, who was brought before me . . as a runaway, said to be a slave, the property of Mr. Richard West, of Prince George's county, Maryland, and him safely keep until he be thence discharged according to law. . . 1806' . . The prisoner was discharged, on consideration of the Acts of Assembly, of December 26, 1792, p. 246; December 10, 1793, pp. 315, 316; and January 21, 1801, p. 412."

Moses v. Dunnaho, 17 Fed. Cas. 892 (1 Cranch C. C. 315), June 1806. " Petition for freedom. Mr. Caldwell, for petitioner, moved the court for leave to the petitioner to go in search of evidence in support of his petition. Refused. The Court said they knew no law which authorized them to give such leave. The usual recognizance is to permit the petitioner to attend court from time to time."

Foster v. Simmons, 9 Fed. Cas. 579 (1 Cranch C. C. 316), June 1806. " Petition for freedom on the ground that the petitioner . . on 27th of February, 1801, resided in that part of the District of Columbia which was ceded by Virginia . . with . . his owner, who sold him to Mr. Payne, who sold him to the defendant in Washington county, in this

[1] Act of Assem. of Va., Dec. 17, 1792, P. P. 186, sects. 2-4.

District, and sent him . . into this county." Counsel for the petitioner: "a bringing from Alexandria county to Washington is the same as from Virginia to Maryland." Held: "It was the intention of congress [1] to continue in force in this part of the District all the laws [2] as they then existed."

U. S. v. Terry, 28 Fed. Cas. 41 (1 Cranch C. C. 318), June 1806. "Indictment [against the negress Terry, a free woman] for assault and battery on Mr. Foxon. A slave was offered as witness for the traverser. . . The Court permitted the slave to be sworn. Verdict, not guilty."

Ex parte Letty, 15 Fed. Cas. 411 (1 Cranch C. C. 328), July 1806. "*Habeas corpus* upon the petition of a man claiming to be the master of the negro Letty, committed to jail by a magistrate, upon a complaint made that she was entitled to her freedom under the law of Virginia, December 25, 1795 [3] . . The negro had been confined in jail in Washington, and, while in jail there, was sold by B. G. Orr to Henry Dawes, of Georgetown, by him brought to Alexandria, and sold to Dozier of South Carolina. She had petitioned for her freedom in Washington county, where the petition was still pending. . . The court . . refused to suffer the master to take the negro away, unless upon giving security not to take her out of the District of Columbia, etc., according to the Maryland practice, and remanded her."

Ben v. Scott, 3 Fed. Cas. 154, 155 (1 Cranch C. C. 350, 365, 407), October and December 1806, June 1807. See Scott *v.* Ben, p. 163, *infra*.

Harrison v. Evans, 11 Fed. Cas. 648 (1 Cranch C. C. 364), December 1806. [649] "a mulatto woman slave, named Nell" was carried away in the stage-coach of the defendant who "had ordered the driver to call at Mrs. Thompson's and take a servant, who proved to be the slave in question." She was thereby lost to the plaintiff. The court instructed the jury, "that if the slave had a written authority from the plaintiff, without limitation of time or place, to seek for a new master, the plaintiff could not recover in this action, although such authority was not shown to the defendant or his agents. Verdict for the plaintiff, $180. New trial refused."

Minchin v. Docker, 17 Fed. Cas. 437 (1 Cranch C. C. 370), December 1806. "Charles Cavender, a black man, was admitted to testify . . after witnesses had testified that Charles had acted publicly for eleven years as a free man, and was generally reputed as such. Duckett, Circuit Judge, said that persons born free, that is, descended from a white woman, were not, in Maryland, held to be negroes; and were permitted to testify against white persons. And although color is *primâ facie* evidence of slavery, yet the fact that the witness had, for a long time, publicly acted as free, turned the presumption the other way, and was *primâ facie* evidence that he was born of a white woman. Cranch, Chief Judge, concurred." [4]

[1] 2 Stat. at L. 103.
[2] Act of Md., 1796, ch. 67.
[3] Rev. Code, 1803, p. 346.
[4] See Acts of Md., 1717, ch. 13, sect. 2; 1796, ch. 67, sect. 5.

Burr v. Dunnahoo, 4 Fed. Cas. 806 (1 Cranch C. C. 370), December 1806. " the petitioner relied on the act of Maryland, 1796, c. 67, and that he was brought in for sale. The evidence was that the negro came from Virginia to Mr. Nourse, more than one year after Mr. Nourse came here, and was sold by Mr. Nourse to . . Dunnahoo. Verdict for the petitioner."

U. S. v. Shorter, 27 Fed. Cas. 1072 (1 Cranch C. C. 371), December 1806. Indictment against William Shorter, " a free black man." A slave was admitted as a witness. Verdict, not guilty.

U. S. v. Butler, 25 Fed. Cas. 212 (1 Cranch C. C. 373), December 1806. Indictment " for beating a woman of color (a slave) to her damage, . . Mr. Hamilton, for the traverser, contended that beating a slave was not an indictable offence. *Curia, contra.* The property which a man has in a slave is not of the same nature as his property in a horse. It is only a right to his perpetual service." [1]

Ex parte Amy, 1 Fed. Cas. 799 (1 Cranch C. C. 392), April 1807. " Negro Amy, on her petition for freedom, having . . 1805, been delivered to the custody of the marshal by order of the court, and none of the material facts stated in the petition being proved . . to the satisfaction of the court, it is ordered that she be delivered to Joseph Thomas, who is stated . . to have held her in slavery, upon his paying the marshal's fees for her custody,"

U. S. v. Walker, 28 Fed. Cas. 388 (1 Cranch C. C. 402), June 1807. " Indictment for stealing wood. . . the wood was delivered to the prisoner (or rather suffered to be taken) by the owner's servant, a slave. The Court . . directed the jury that if they should be satisfied that there was a collusion between the servant and the prisoner, with intent to commit a theft, the fact of the delivery does not alter the case, but it is still a felony."

Fidelio v. Dermott, 8 Fed. Cas. 1175 (1 Cranch C. C. 405), June 1807. " Petition for freedom. The petitioner proved by Lund Washington that he was sold by him to James R. Dermott, in April, 1800, upon the express condition that he should be free at the expiration of the term of six years from the sale; and the price paid (£80) was much less than if the sale had been for life." [1176] " the will of James R. Dermott . . bequeathed the petitioner his freedom after a service of four years." There was " a codicil, by which the testator ordered his ' negroes,' (generally), to be sold,"

Held: the codicil does not revoke the bequest of freedom, " because, at the time of making the codicil, there were three years unexpired of the time of his service; which might be sold, and so make the codicil consistent with the will," Verdict for the petitioner.

Mulatto Lucy v. Slade, 15 Fed. Cas. 1091 (1 Cranch C. C. 422), July 1807. " Trespass, for assault and battery and false imprisonment, to try the right of freedom. E. J. Lee, for defendant, offered a deed of gift of

[1] See pp. 190, 191, *infra*, U. S. *v.* Lloyd, *contra*.

the plaintiff by Colonel William Lyles to Miss Ann Lowery, whom W. H. Lyles afterwards married, acknowledged before . . a justice of the peace . . The Court decided that it was not evidence, unless proved by witnesses. . . The Court also allowed the plaintiff to give evidence of an importation by Colonel William Lyles, . . whereupon the defendant gave in evidence a certificate of an oath taken by William H. Lyles; but the Court instructed the jury that the said oath was not in compliance with the Virginia act [1] . . unless taken within sixty days after the removal of W. H. Lyles."

Lee v. Ramsay, 15 Fed. Cas. 224 (1 Cranch C. C. 435), July 1807. See Ramsay *v.* Lee, p. 162, *infra*.

Negro Jenny v. Crase, 13 Fed. Cas. 547 (1 Cranch 443), July 1807. " Bill for injunction to prevent the defendant from taking away the plaintiff out of this county, until he appears and answers a suit at law to try the right of freedom. Injunction refused. Defendant not a resident of the county of Alexandria, nor of the District of Columbia. The plaintiff merely states her apprehension."

U. S. v. King (*a Negro slave*), 26 Fed. Cas. 786 (1 Cranch C. C. 444), November 1807. Indictment " for highway robbery of John Graham, and taking from him his watch. . . Verdict, guilty of the robbery, but not in a highway. The Court sentenced him to be burnt in the hand and whipped with one hundred stripes." [2]

U. S. v. Milly Rhodes (*a slave*), 27 Fed. Cas. 794 (1 Cranch C. C. 447), November 1807. Indictment " for stealing a piece of Russia linen, the property of Mr. Vowell."

Held: Mr. Vowell is not a competent witness, for " the act of congress under which she is indicted makes the fine a necessary part of the punishment, and Mr. Vowell will be entitled to one half of the fine."

Crease v. Parker, 6 Fed. Cas. 791, 792 (1 Cranch C. C. 448, 506), November 1807, July 1808. [792] " an action brought against a free negro for money lent to him while a slave, to enable him to purchase his freedom." He " was manumitted in due form of law on the 30th of March, 1803. . . defendant did, in the month of November, 1806, subsequent to the commencement of this suit, acknowledge . . that he . . was indebted to the plaintiff in the sum of £24, and would be able to pay it by the time a judgment was rendered against him." Judgment for the defendant.[3]

Wilson v. Kedgeley, 30 Fed. Cas. 138 (1 Cranch 477), December 1807. " Trespass *vi et armis*, for beating his slave, whereby he lost his services. Mr. F. S. Key moved in arrest of judgment, . . Motion overruled."

Negro Reuben Reason v. Bridges, 20 Fed. Cas. 370 (1 Cranch C. C. 477), December 1807. " Petition for freedom. The defendant . . challenged Mr. Smith . . for favor. . . The court refused to suffer Mr. Smith to be examined on oath as to . . whether the Methodists had religious scruples as to the legality of slavery. A witness . . testified that

[1] Act of Dec. 17, 1792, p. 86, sect. 4.
[2] Act of Assem. of Va., Dec. 17, 1792, p. 190, sect. 34.
[3] Act of Va., Dec. 17, 1792, ch. 103, sect. 36, p. 191.

it was not an essential tenet of their religion that slavery was contrary to the divine law; but some of them were of that opinion."

Ramsay v. Lee, 4 Cranch 401, February 1808. Action of detinue for a slave. "Mrs. Gordon, being the owner of the slave in 1784, made a verbal gift of him to the defendant Ramsay, who was then only eight years old, and possession accompanied the gift; the slave remained with the defendant and his mother, Mrs. Ramsay, in the family of Wilson, until the year 1790, when Mrs. Ramsay, (claiming the slave as residuary legatee under the will of Mrs. Gordon, under the idea that the parol gift to her son was void,) by deed . . conveyed the slave to Wilson," in whose family Ramsay and his mother and the slave continued to live from the year 1784 till the year 1805, when Ramsay took the slave away "and has ever since detained him. . . The court below . . instructed the jury, 'that if such a verbal gift was made to the defendant . . and such possession given . . the gift is void in law,'[1] . . verdict and judgment . . against the defendant," Affirmed: [403] "This court gives no opinion as to the title acquired by such possession."

Davis v. Baltzer, 7 Fed. Cas. 111 (1 Cranch C. C. 482), June 1808. The slave, Harry Davis, was "brought into the state of Maryland, from Virginia, by Daniel Dulany, in the year 1797;" and "was sold by Dulany within fourteen months after he was brought into Maryland."

Held: "the master's entry of the slave, with the clerk of this court, made this day, was not a compliance with the act of Maryland, 1796; . . and that it ought to have been made with the clerk of the court of the county into which the slave was first brought. . . Verdict for the petitioner."

U. S. v. Mullany, 27 Fed. Cas. 20 (1 Cranch C. C. 517), December 1808. "Indictment for assault and battery. The defendant was a white man." "Several free-born negroes and mulattoes are offered as witnesses to support the prosecution. . . [22] I am clearly of opinion, that free-born negroes, not in a state of servitude by law, are competent witnesses in all cases, or rather than color alone does not disqualify a witness in any case."[2] [Cranch, C. J.]

U. S. v. Hill, 26 Fed. Cas. 318 (1 Cranch C. C. 521), December 1808. "Indictment for stealing a gold watch. The defendant [Peggy Hill] was a free-born mulatto, not subject to any term of servitude by law." Charity, a slave, was offered as a witness against the prisoner. Held:[3] not a competent witness. "Verdict, 'Not guilty.'"

Nan v. Moxley, 17 Fed. Cas. 1147 (1 Cranch C. C. 523), December 1808. Petition for freedom by the negress Nan and children. "Affidavit of the negro Charles, a manumitted negro, that his wife Nan . . was about to be removed out of the District. The Court . . allowed a *subpoena*, returnable immediately, to answer the petition just filed by Mr. F. S. Key."

[1] Act of Va., 1758. 7 Stat. at L. 237, ch. 5.
[2] Act of Assem. of Md., 1717, ch. 13.
[3] Acts of Assem., 1717, ch. 13, and 1751, ch. 14, sect. 4.

Joice v. Alexander, 13 Fed. Cas. 907 (1 Cranch C. C. 528), December 1808. Petition for freedom by Clem Joice. Wright, who was called as a juror, was challenged because he had declared that " they had better not summon him on negro causes, for he would free them all." " Mr. Caldwell, for petitioner, asked the witness what was the general reputation of the neighborhood as to the condition of Ann Joice, who was alleged to have been brought into this county by Lord Baltimore, *viz.*, whether she was a free white woman. . . the Court refused to permit it to be asked, . . [908] admitted the copy of the deposition [of Thomas Lane, in Mahoney *v.* Ashton [1]] to be read in evidence to the jury, as the declaration of a deceased person. Verdict for defendant."

Scott v. Negro Ben, 6 Cranch 3, February 1810. The petitioner claimed his freedom on the ground that he had been imported into Maryland, contrary to the act of 1783. The lower court refused [4] " to admit, as evidence, two certificates made during the trial, the one by the collector of the customs and naval officer of the United States, . . and the other by a collector of taxes . . that Scott [the master of the slave] had . . (16th June, 1807), by his own oath, proved, to the satisfaction of each of those officers, respectively, that Ben was a resident of the state of Virginia . . three whole years next preceding the time when the said mulatto Ben was brought into the state of Maryland."

Held: [8] " the fact of the residence of the plaintiff below within the United States was open for examination, even had his master omitted entirely to make the proof of that residence before the naval officer, or collector of the tax, and . . the circuit court erred in refusing to admit testimony respecting that fact." [Marshall, C. J.]

Thomas v. Scott, 23 Fed. Cas. 970 (2 Cranch C. C. 2), June 1810. " Petition for freedom. . . Scott, offered to appear and disclaim all right of property in the petitioner at the time of service of the *subpoena* or any time since. Mr. Law, for the petitioner, . . suggested that Mr. Scott, knowing that a petition was filed, sold and conveyed away the negro before service of the *subpoena*."

Priscilla Queen v. Neale, 20 Fed. Cas. 130 (2 Cranch C. C. 3), June 1810. " Petition for freedom. The declaration of the ancestor, while held as a slave, cannot be given in evidence, to prove that the ancestor came from England. . . A witness . . stated that he heard a deceased person say that the ancestor was free. . . the court . . permitted it to be read to the jury, as evidence that she was in fact free, that is, that she was not actually holden in slavery. The court . . refused to instruct the jury that Jiam's declarations,[2] that the ancestor was a free woman, and sold only for seven years, were incompetent to prove the petitioner's title to freedom; and instructed the jury that those declarations were admissible evidence, to prove that she was a free woman."

[1] P. 53, *supra*.
[2] See Mima Queen *v.* Hepburn, pp. 164, 165, *infra*.

Mima and Louisa Queen v. Hepburn, 20 Fed. Cas. 130 (2 Cranch C. C. 3), June 1810. "Petition for freedom. . . The Court admitted a free-born black to give evidence. . . Verdict for the defendant." [1]

Newman v. Davis, 18 Fed. Cas. 98 (2 Cranch C. C. 16), December 1810. "Trespass *vi et armis* for assaulting and shooting the plaintiff's slave."

Bell v. Hogan, 3 Fed. Cas. 107 (2 Cranch C. C. 21), June 1811. "Trespass [by Hogan against Bell for] assault, battery and false imprisonment. . . the defendant took up the plaintiff as a runaway, and carried him before a justice of the peace."

Held: I. if a colored man "was born a slave, his being permitted to go at large without restraint, and to act as a free man, was no evidence of his being free." II. if the plaintiff's freedom "was not so notorious that the defendant might be presumed to know it, then the defendant is not liable . . if he used no unnecessary violence," "the plaintiff's color was *prima facie* evidence of his being a slave, and justified his being taken up under a suspicion of his being a runaway."

Davis v. Forrest, 7 Fed. Cas. 129 (2 Cranch C. C. 23), June 1811. Petition for freedom. Rosamund Bentley, the petitioner's aunt, had recovered her freedom in a suit against Addison. The court admitted the record "as evidence, to prove the freedom of Mary Davis, the ancestor of the present petitioner," and "also suffered the depositions of witnesses, now dead, which had been taken in that suit, and made part of that record, to be read in evidence as hearsay. . . also admitted in evidence the record of a recovery by the petitioner's sister, Susan Davis, of her freedom, on the ground of having been free-born. Verdict for the defendant."

U. S. v. Thomas, 28 Fed. Cas. 78 (2 Cranch C. C. 36), December 1811. [79] "Indictment for selling negro Flora as a slave for life, who was entitled to freedom at a certain age. . . The defendant offered evidence that he had informed . . the *cestui que* trust, before the execution of the deed, that Flora was not a slave for life."

Held: "in a criminal case, parol evidence might be given to explain the intention, the *quo animo*, with which the deed was made, and to prove that the defendant only meant to sell his right to her service during the term."

Thompson v. Carbery, 23 Fed. Cas. 1028 (2 Cranch C. C. 39), December 1811. A female slave was valued at $425.

Wood v. John Davis, 7 Cranch 271, March 1812. "John Davis and others, were children of Susan Davis, a mulatto woman, who had obtained a judgment for her freedom in a suit which she had brought against Caleb Swann, to whom she had been sold by Wood . . her petition stated that she was born free, being descended from a white woman;" [272] "Duvall, J. stated that in all the petitions which he filed in Maryland, in the cases of the Shorters, the Thomases, the Bostons, and many others, he always stated their title at large, tracing it up to a free white woman;

[1] Affirmed by the Supreme Court of the United States. 7 Cranch 290.

and after judgment in those cases, the Courts always held, that the subsequent petitioners who claimed under the same title, were only bound to prove their descent." [273] "March 10th . . All the Judges being present, Marshall, Ch. J. Stated that the opinion of the Court to be, that the verdict and judgment in the case of Susan Davis against Swann, were not conclusive evidence in the present case. There was no privity between Swann and Wood; . . Wood had a right to defend his own title, which he did not derive from Swann." Judgment reversed.[1]

U. S. v. Butler, 25 Fed. Cas. 213 (2 Cranch C. C. 75), June 1812. Indictment for arson in burning a stable. A slave was offered as a witness. "Mr. Key, for defendant [Minta Butler, a free black woman], objected that he was not a competent witness against a free negro in a capital case. Mr. Jones admitted the objection to be good. Mr. Key then objected to free negroes as witnesses against the prisoner, and cited the Maryland act of 1717, c. 13, sect. 3. But the Court said that only free negroes, during their term of servitude by law, or mulattoes, during their term of servitude by law, were excluded by that act."

Lewis v. Spalding, 15 Fed. Cas. 500 (2 Cranch C. C. 68), December 1812. The plaintiffs charged that the defendant conspired to kidnap their slave, and "by false pretences, procured a warrant to have the slave apprehended and delivered to the defendant; and hired persons to seize and carry away the slave out of the peaceable possession of the plaintiffs, . . by means of which . . conspiracy the plaintiffs were put to great labor, expense . . in watching and protecting their said slave, and were deprived of his labor"

U. S. v. Patrick, 27 Fed. Cas. 460 (2 Cranch C. C. 66), January 1813. "The defendant, a slave, was convicted of an attempt to ravish a white woman. The indictment was under the act of assembly of Maryland, 1751, c. 14, sect. 2. Judgment of death was entered on the 30th of January, 1813, and executed on the 11th of March. The slave was valued by the court at 400 dollars, according to the 7th section of the act."

Mima Queen and child[2] *v. Hepburn,* 7 Cranch 290, February 1813. Petition for freedom. Hearsay evidence was introduced in the court below [292] "to prove that a certain ancestor came from England." "Caleb Clarke's deposition, as to what he heard his mother say, was admitted, but, as to what he heard his mother say her father said, was rejected." The lower court overruled [291] "part of the deposition of Freeders Ryland, which stated what he had heard Mary, the ancestor of the petitioners, say[3] respecting her own place of birth and residence." [294] "Richard Disney . . deposed that he had heard a great deal of talk about Mary Queen, the ancestor of the Plaintiffs, and has heard divers persons say that Captain Larkin brought her into this country, and that she had a great many fine clothes, and that old William Chapman took her on shore once, and that no body would buy her for some time, until

[1] See Davis *v.* Wood, p. 168, *infra.*
[2] They "were descended from a yellow woman, a native of South America." 1 Wheaton 7.
[3] See Priscilla Queen *v.* Neale, p. 163, *supra.*

at last James Carroll bought her." Thomas Warfield deposed " that John Jiams . . told him that Mary the ancestor of the Plaintiffs was free and was brought into this country by Captain Larkin, and was sold for seven years." These depositions [293] " were rejected by the Court " Verdict and judgment were rendered for the defendants.

Judgment affirmed: [295] " hearsay evidence is incompetent to establish any specific fact, which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge. . . [297] This Court is not inclined to extend the exceptions further than they have already been carried." [Marshall, C. J.]

Duvall, J. dissented: [298] " In Maryland the law has been for many years settled that on a petition for freedom where the petitioner claims from an ancestor who has been dead for a great length of time, the issue may be proved by hearsay evidence, if the fact is of such antiquity that living testimony cannot be procured. . . the reason for admitting hearsay evidence upon a question of freedom is much stronger than in cases of pedigree or in controversies relative to the boundaries of land. . . the right to freedom is more important than the right of property."

Park v. Willis, 18 Fed. Cas. 1109 (2 Cranch C. C. 83), November 1813. Action on the case " founded on the Virginia laws of December 17, 1792, p. 192, sect. 50, and January 25, 1798, p. 374, sects. 6, 7; . . The jury . . found . . That the defendant, on the 29th of January, 1802, hired the plaintiff's negro slave Anthony, in Alexandria, in the District of Columbia, by the following written agreement: . . 'until the 1st day of January, 1803, . . for $110, and to furnish the said negro with every thing necessary except his clothing and taxes,' . . the defendant did transport him from the town of Alexandria, in the sloop *Hope,* whereof the defendant was master and owner, into the city of Philadelphia, . . where the slave made his escape . . [1110] And if the law be for the plaintiff, they assessed his damages at $453; . . the Court . . was of opinion that the law was for the plaintiff,"

U. S. v. Douglass, 25 Fed. Cas. 896 (2 Cranch C. C. 94), December 1813. " Indictment for larceny. The defendant was a white woman. Nancy Butler, a freeborn mulatto, was permitted to testify for the United States," [1]

U. S. v. Bruce, 24 Fed. Cas. 1279 (2 Cranch C. C. 95), December 1813. " Indictment under the statute of Maryland, 1751, c. 14, for conspiring with Negro Charles to burn Mrs. Love's house, Charles having been convicted and pardoned.[2] . . The indictment charged the defendant [Jacob Bruce] as a slave. The statute makes it a capital offence." His counsel offered as evidence of his freedom [1280] " an informal paper, purporting to be an instrument of manumission, and evidence that he was actually set free before the commission of the offence by Mr. John M. Goldsborough, his master, for his faithful services; and a formal deed of manumission, executed after the commission of the offence, agreeably to the provisions of the Maryland law, 1796, c. 67."

[1] " upon the authority of U. S. *v.* Mullany . . 1808."
[2] See U. S. *v.* Charles, 25 Fed. Cas. 409 (2 Cranch C. C. 76).

Held: "as between the master and slave, the informal paper, with actual manumission, was valid, and that the defendant could not be convicted as a slave under the act of assembly."

U. S. v. Peter, 27 Fed. Cas. 506 (2 Cranch C. C. 98), April 1814. "the prisoner [the negro Peter], . . indicted for larceny . . was entitled to a peremptory challenge of twenty jurors." [1]

Simmons v. Gird, 22 Fed. Cas. 157 (2 Cranch C. C. 100), April 1814. The slave Simmons was "brought into Alexandria, whence he sailed on a voyage, and returned to Alexandria, but was not 'kept therein one whole year together, or so long, at different times, as amounted to one year,' unless the time of his sailing on the voyage should be included." Judgment for the defendant.

Emanuel v. Ball, 8 Fed. Cas. 611 (2 Cranch C. C. 101), June 1814. Petition for freedom. Emanuel "was permitted to come from Virginia, to the city of Washington to see his wife, and to return by a certain day; but he stayed some months longer, and was taken up in Washington, by an agent of his owner, but escaped and eloped, and the agent sold him to the defendant, while he was so eloped and while he was in the city of Washington." The Court "instructed the jury that he was not entitled to his freedom under the Maryland law of 1796, c. 67."

Violette v. Ball, 28 Fed. Cas. 1218 (2 Cranch C. C. 102), June 1814. Petition for freedom by the negro Violette against Henry W. Ball. Violette had been [1219] "sent from the city of Washington to Virginia for sale, and, not being sold, brought back to the city, after an absence of eight or nine months." The Court refused to instruct the jury that she was entitled to freedom.

Garey v. Johnson, 10 Fed. Cas. 1 (2 Cranch C. C. 107), December 1814. "Trespass *vi et armis* for beating the plaintiff's slave. The Court instructed the jury that the plaintiff might recover if the defendant unnecessarily, and without sufficient provocation, beat the plaintiff's slave, although the plaintiff did not prove any damage by loss of service."

O'Neale v. Willis, 18 Fed. Cas. 698 (2 Cranch C. C. 108), December 1814. "Assault and battery, by beating the plaintiff's slave. A free colored man was offered by the plaintiff as a witness. The court was divided as to his admission. . . The witness was not sworn."

U. S. v. Minifie, 26 Fed. Cas. 1272 (2 Cranch C. C. 109), December 1814. "Indictment, for larceny, against [Christopher Minifie] a white man. Mr. Jones, for the United States, offered, as a witness, a black man who had obtained his freedom by being removed from Virginia to Maryland, contrary to the Maryland law of 1796, c. 67. . . The Court . . rejected the witness."

U. S. v. Carrico, 25 Fed. Cas. 309 (2 Cranch C. C. 110), June 1815. Indictment [2] for selling a free person as a slave. "The witness stated that he delivered to the defendant the papers which he had received with the

[1] Act of Va., Nov. 13, 1792, p. 103, sect. 8.
[2] Under Act of Md., 1796, ch. 67.

woman who was sold, which papers showed that she was bound to serve only three years and nine months. . . A special verdict was found, upon which judgment was arrested."

U. S. v. Tom, 28 Fed. Cas. 200 (2 Cranch C. C. 114), November 1815. " The defendant, a slave, was convicted of manslaughter, and the judgment of the Court (*nem. con.*) was that he should be burnt in the hand by the jailor in open court, and should be publicly whipped with thirty-nine stripes." [1]

Negress Sally Henry, by William Henry, her father and next friend, v. Ball, 1 Wheaton 1, February 1816. The petitioner for freedom " being a child, and the slave of the defendant, who resided in Virginia, was, some short time before the month of May, 1810, put to live with Mrs. Rankin, then residing also in Virginia, whose husband was an officer in the marine corps, stationed in the city of Washington. Mrs. R. was to keep the girl for a year, and was to give her victuals and clothes for her services. Some time in May, 1810, Mrs. R. removed to Washington, and brought the petitioner with her, whether with or without the permission of Mr. Ball, is entirely uncertain. . . In October, 1810, Mr. Ball married, and soon after took the petitioner into his possession, and carried her home, he then residing in Virginia."

Judgment for the defendant: the act of assembly of Maryland,[2] prohibiting the importation of slaves into that state for sale or to reside, does not extend to a temporary residence, nor to an importation by a hirer or person other than the master or owner of such slave.

Negro John Davis v. Wood,[3] 1 Wheaton 6, February 1816. The witnesses " had heard old persons, now dead, declare, that a certain Mary Davis, now dead, was a white woman, born in England, and such was the general report in the neighborhood where she lived; and [the petitioners] also offered the same kind of testimony to prove that Susan Davis, mother of the petitioners, was lineally descended, in the female line, from the said Mary; and it was admitted, that said Susan was, at the time of petitioning free, and acting, in all respects, as a free woman; which evidence, by hearsay and general reputation, the court refused to admit, except so far as it was applicable to the fact of the petitioners' pedigree. . . [7] having proved, that the petitioners are the children of Susan Davis, and that she is the same person named in a certain record in a cause wherein Susan Davis, and her daughter Ary, were petitioners against Caleb Swan, and recovered their freedom, the plaintiffs offered to read said record in evidence to the jury, . . connected with the fact that the defendant in this cause sold said Susan to Swan, . . which the court refused to suffer " Judgment against the petitioners, affirmed.

U. S. v. Pickering, 27 Fed. Cas. 528 (2 Cranch C. C. 117), April 1816. " an indictment for dealing with a slave without the consent of his master,[4]

[1] Act of Va., Dec. 17, 1792, sect. 34, p. 190.
[2] Act of 1796, ch. 67, sects. 1, 2.
[3] See Wood *v.* John Davis, p. 164, *supra.*
[4] Act of Va., Dec. 17, 1792, p. 188, sect. 16.

. . The Court . . decided . . that an indictment will not lie; the statute having directed the prosecution to be by action on the case by the master"

Ex parte Deane, 7 Fed. Cas. 306 (2 Cranch C. C. 125), November 1816. A motion "for a *habeas corpus* to bring up the slaves of Joseph Deane, who had been committed by the mayor of the town [Alexandria] for the supposed violation of a by-law prohibiting the nightly meeting of slaves," [307] "The lot on which the meeting of negroes was held, was at some distance north" of the limits of Alexandria.

Held: "the common council had no authority to make by-laws operating beyond the limits of the town, . . and that the corporation could not enforce its by-laws by corporal punishments." [Thruston, J.]

Beverly v. Brooke, 2 Wheaton 100, February 1817. Three slaves were hired to the "master of the brig *Sophila*, then in the county of Alexandria," for a voyage to Amsterdam, or "as a last resort . . to Liverpool," [101] "these slaves were received on board the vessel as mariners on the usual wages, and without any special contract." The slaves escaped at Liverpool, [105] "and have been totally lost."

U. S. v. Bowen, 24 Fed. Cas. 1207 (2 Cranch C. C. 133), April 1817. "Indictment, at common law [against Henry Bowen, a negro], for stealing a banknote. Verdict, guilty. Judgment arrested; the court . . being of opinion that it was no offence at common law to steal a banknote."

Thompson v. Clarke, 23 Fed. Cas. 1032 (2 Cranch C. C. 145), December 1817. Petition for freedom "by Jo. Thompson, a negro." "John Thompson by his will dated December 31st, 1804, devised, that if his wife should not have a child within nine months after his death, the petitioner, his slave, should be free after ten years service. The widow renounced the provision made for her by the will and adhered to her legal rights; and the executor assigned to her the petitioner in part of her thirds, their [*sic*] being other personal property enough to satisfy her claim without resorting specifically to the slaves. . . [1033] Verdict for the petitioner, and judgment. Although the title of several other of the slaves depended upon the same will, no writ of error was issued."

Washington v. Wilson, 29 Fed. Cas. 359 (2 Cranch C. C. 153), November 1818. [360] "action upon the case for the value of a slave . . carried away as a seaman by the defendant and lost. . . The Court . . refused to suffer evidence to be given that the slave hired himself as a free man to another master of a vessel in a previous voyage, . . Verdict for the plaintiff, $400 damages; the slave being supposed to be worth $800."

U. S. v. Godley, 25 Fed. Cas. 134 (2 Cranch C. C. 153), November 1818. "Indictment at common law for stealing a 'mulatto boy, named William Foote, of the price of 500 dollars, of the goods and chattels of one Fanny Thomas.' . . [1342] The Court . . quashed the indictment, because it did not aver the boy to be a slave. Mr. Herbert, then moved that the prisoner should be recognized to appear at the next term to answer to a new indictment. But the Court . . refused; being of opinion that

the decisions of the courts of Virginia, that an indictment at common law, for stealing a slave, cannot be supported, are conclusive upon this court."

Love v. Boyd, 15 Fed. Cas. 992 (2 Cranch C. C. 156), November 1818. Action upon the case against "the marshal of the District of Columbia, for negligently suffering the plaintiff's female slave to escape from his custody to which the slave, who had sued for her freedom, had been committed for safe keeping by order of this court, the owner having failed to give security to have her forthcoming . . Verdict, for the plaintiff, $250."

Betty v. Deneale, 3 Fed. Cas. 319 (2 Cranch C. C. 156), November 1818. Held: "the deed of manumission, . . when it was acknowledged and recorded, . . related back to the time of its execution."

Slacum v. Smith, 22 Fed. Cas. 316 (2 Cranch C. C. 149), December 1818. Jane H. Slacum hired to Amos Smith [317] "a negro slave . . to serve as a mariner on the brig *Virginia* . . on a voyage from Alexandria, D. C., to Lisbon, and thence back to a port in the United States; . . the said slave, with the plaintiff's . . consent, subscribed shipping articles . . That the plaintiff received from the defendant $25 for one month's wages in advance." At Lisbon "the slave was confined nine days in prison, for disorderly conduct, . . the brig . . arrived [in New York] on the 29th of April, 1813; on which day the said slave absented himself from the said brig, without leave of the master . . and has not since returned." Held: his wages were not forfeited.

Bias v. Rose, 3 Fed. Cas. 328 (2 Cranch C. C. 159), December 1818. The petitioner for freedom was brought into the county of Washington from Maryland by his owner, and "within three years thereafter was mortgaged" The court held [329] "that the law[1] was against the petitioner,"

Contee v. Garner, 6 Fed. Cas. 361 (2 Cranch C. C. 162), December 1818. "The defendant pleaded, that at the time of signing the bond he was a slave, and so *non est factum*, . . The Court . . decided that a slave cannot bind himself, at law, to pay money to his master, even for his freedom."

Sarah v. Taylor, 21 Fed. Cas. 431 (2 Cranch C. C. 155), April 1819. On January 8, 1789 Alexander Smith sold to Thomas Taylor "one negro woman named Tamah, about five and thirty years old, to serve him . . nine years . . and no longer." Taylor was not to take her out of certain counties "in this commonwealth, during the term aforesaid of her servitude, and, at the end thereof, . . set free and emancipate the aforesaid negro" Sarah, the daughter of Tamah was born during the nine years of service. Tamah was manumitted but Sarah was detained by Taylor as his slave. She brought a suit for freedom. Judgment for the plaintiff.

Sam v. Green, 21 Fed. Cas. 284 (2 Cranch C. C. 165), April 1819. Held: Sam "did not acquire a right to freedom by being brought into

[1] Act of Md., 1796, ch. 67, sects. 1-3.

Alexandria, and continuing there one year, unless he was continued there a year by one and the same master." [1]

Gusty v. Diggs, 11 Fed. Cas. 128 (2 Cranch C. C. 210), June 1820. "A negro boy, about eight years old, was brought into court by *habeas corpus,* in the custody of Edward Diggs. . . he had been brought into the city of Washington from Maryland, where he had been bound to Diggs to be taught the business of a farmer. Diggs hired him here to a chimney-sweeper. The Court discharged him from his indentures, and ordered him to be bound out again;"

Grant v. Bontz, 10 Fed. Cas. 977 (2 Cranch C. C. 184), November 1820. Bontz sold Grant a slave Celia, who "was not sound, but on the contrary . . was afflicted with the misfortune of idiocy, . . the plaintiff . . paid the defendant $350 for her . . although the plaintiff saw her before he purchased her, yet the defendant prevented the plaintiff from speaking with her, under the pretence that she might run away, if she knew that he was about to sell her. . . when she was delivered to the plaintiff and he spoke to her he immediately perceived that she was an idiot, and offered to return her, but the defendant refused to receive her; and the plaintiff lodged her in the jail, where she died in less than a month after the sale. . . [978] judgment was rendered for $370, according to the verdict."

Reeler v. Robinson, 20 Fed. Cas. 455 (2 Cranch C. C. 220), November 1820. "plaintiff was only six years old when imported" from Maryland to Alexandria, twenty-four years before. Held: "No presumption [that the importers took the oath required by the Virginia law] could begin to arise against him until he was of full age,"

Garretson v. Lingan, 10 Fed. Cas. 46 (2 Cranch C. C. 236), April 1821. Petition for freedom. Jack Garretson [47] "was carried, by his owner, from Maryland to Virginia, in the year 1784, and kept there several years, and then brought back to Maryland. By the law of Virginia of 17th of December, 1792,[2] the slave was entitled to his freedom, unless the owner took a certain oath within sixty days after his removal to Virginia." The court refused to instruct the jury "that after such a lapse of time they have a right to presume that the oath was duly taken agreeably to law."

U. S. v. Neale, 27 Fed. Cas. 79 (2 Cranch C. C. 241), April 1821. "The Court permitted Edward Pleasants, a black man, to be sworn as a witness for the United States, after proof that he had publicly lived and acted as a freeman for eight years, and was generally reputed to be free."

U. S. v. Pompey, 27 Fed. Cas. 590 (2 Cranch C. C. 246), May 1821. "Indictment [against the negro Pompey] . . for enticing away a slave belonging to Judge Washington. Verdict, guilty, and the jury assessed the fine at $50."

[1] Act of Dec. 17, 1792.
[2] P. 186.

Costin v. Washington, 6 Fed. Cas. 612 (2 Cranch C. C. 254), October 1821. Held: the clause in the charter of Washington which gives power to the corporation "to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city," is applicable only to those persons of color who come to reside in the city after the promulgation of such terms and conditions. [613] "The clause in the charter does not, in itself, seem to be repugnant to the constitution." Nor does the by-law of April 14, 1821, ch. 133, in its prospective operation.

Dunbar v. Ball, 7 Fed. Cas. 1185 (2 Cranch C. C. 261), October 1821. Leonard Dunbar "is a native-born slave of Virginia, and was there purchased by . . Brunet, . . March, 1820;" In March 1821 Brunet removed to Georgetown, D. C. About three weeks later Leonard was brought by Brunet's order from Virginia, through Alexandria county, to Georgetown, and was sold in Georgetown to Ball in July 1821. Dunbar brought a petition for freedom.[1] [1186] "Mr. Jones, for defendant, contended . . under the act of the 24th of June, 1812,[2] Brunet, as soon as he brought his slave into Alexandria county, which he had a right to do under the act of the 3d of May, 1802,[3] had a right to remove him to Washington county, and there exercise over him fully all the rights of ownership. Mr. Taney, for petitioner, contended that the act of . . 1812, was only applicable to bona fide . . residents of Alexandria county, not to persons merely *in transitu*. The Court . . rendered judgment for the petitioner."

Daniel v. Kincheloe, 6 Fed. Cas. 1150 (2 Cranch C. C. 295), April 1822. Petition for freedom. Held: if "the importation of the petitioner into the county of Washington was with the intent that he should be hired to remain a limited time only, . . it was not such an importation as is within the first section of the Maryland act of 1796, ch. 67."

Brown v. Wingard, 4 Fed. Cas. 438 (2 Cranch C. C. 300), April 1822. "The petition of negro Joseph Brown, stated, that before the year 1818, he then being the slave of Abraham Wingard, . . entered into an agreement with the said Abraham, at his, the said Abraham's request, for the purchase of his freedom, at and for the sum of nine hundred dollars, . . the said Abraham immediately suffered the petitioner to go at large and labor for his own use; and in the course of that year he paid the said Abraham $300, and in the next year, $550, expressly as the purchase-money of the petitioner's freedom, leaving a balance of fifty dollars due, as appears by the receipt . . [439] that he brings into court the fifty dollars," but the executrix of Wingard "refuses to manumit him," A. Taney, counsel for defendant: "The petitioner is still a slave, and, in law, incapable of contracting." The court "ordered judgment to be entered up for the defendant."

Scott v. Bartleman, 21 Fed. Cas. 813 (2 Cranch C. C. 313), May 1822. The defendant, Bartleman, hired a negro woman, the slave of Scott, for one year at $36. "Within ten days after hiring, she was arrested and

[1] Act of Md., 1796, ch. 67.
[2] 2 Stat. at L. 757.
[3] 2 Stat. at L. 194.

imprisoned upon a warrant for theft, and kept in custody the rest of the year." Held: "the loss of time and service must fall on the defendant."

Somboy v. Loring, 22 Fed. Cas. 788 (2 Cranch C. C. 318), May 1822. "Trespass *vi et armis* [by negro Sampson Somboy against Solomon Loring], for taking away the plaintiff's son and servant *per quod servitium amisit*. . . [789] judgment for the defendant, . . it was necessary for the plaintiff . . to prove either actual force, or a knowledge on the part of the defendant that the young man was under age."

Humphries v. Tench, 12 Fed. Cas. 883 (2 Cranch C. C. 337), October 1822. "Petition for freedom. The defendant offered to read the depositions in a record of Charles county court in Maryland, in a suit for freedom, by one of the same family of negroes, as hearsay, in relation to the common ancestor of that family. . . The Court . . said that the depositions could not be read in evidence, to prove the condition of the ancestor, (Airy.) Verdict for the petitioner."

Matilda v. Mason, 16 Fed. Cas. 1106 (2 Cranch C. C. 343), April 1823. See Mason *v.* Matilda, p. 179, *infra*.

Jordan v. Sawyer, 13 Fed. Cas. 1101 (2 Cranch C. C. 373), April 1823. [1102] "the petitioner, early in January, 1823, was brought into this county, from Wheeling, in Virginia, by . . Peyton, who never has been a resident of this county or district, and who sold the petitioner to the defendant in this county . . in March, 1823. That it was agreed . . that the petitioner should be sent by the defendant, forthwith, to Norfolk in Virginia, which was done; . . when he was put on board the steamboat for Norfolk, the purchase-money was paid . . petitioner returned in the steamboat, and filed his petition.[1] . . the case was settled by the parties."

Gardner v. Simpson, 9 Fed. Cas. 1202 (2 Cranch C. C. 405), April 1823. Petition for freedom. Simpson "offered evidence to prove that the petitioner [Vincent Gardner] was his slave, born in Virginia, and that he hired the petitioner to the petitioner's father, Tom Gardner, for the year 1821, who then lived in Virginia. And that in 1822, he hired him to one Barnes, for the petitioner's father, not knowing that the father was about to remove into the county of Washington in the District of Columbia, which he did in December, 1821, taking the petitioner with him, where he remained" a year, returning to Simpson's house in Virginia December 25, 1822. The petitioner "afterwards returned to Washington,"

Held: the petitioner is not entitled to his freedom under the Maryland act of 1796, ch. 67, by being hired to a resident of the county of Washington for a limited time only.

U. S. v. Thompson, 28 Fed. Cas. 89 (2 Cranch C. C. 409), May 1823. A constable came "to take the defendant upon a warrant . . upon a charge . . of having violently beaten negro Griffin, the slave of Jonah Thompson."

U. S. v. Randall, 27 Fed. Cas. 696 (2 Cranch C. C. 412), May 1823. "Indictment [against the negro Randall] for a rape"

[1] Act of Md., 1796, ch. 67, sects. 7-11.

U. S. v. Ellick, 25 Fed. Cas. 999 (2 Cranch C. C. 412), May 1823. Indictment " of a slave, for an assault and battery upon . . a white man. The jury found him guilty, and assessed the fine at $23. The Court arrested the judgment, being of opinion that neither the court nor jury could assess a fine or inflict corporal punishment upon a slave, and that an adequate corporal punishment could only be inflicted by a justice of the peace. . . ordered the marshal to take the prisoner before . . a justice of the peace, to be dealt with according to law, and that the verdict and this order be certified to the said justice."

Amelia v. Caldwell, 1 Fed. Cas. 596 (2 Cranch C. C. 418), October 1823. Middleton, the master of the slave Amelia in Maryland, removed to Fredericksburg, Virginia, to reside, and in 1820 took Amelia there, " with an agreement and understanding . . that if she did not like to continue in Fredericksburg, she should return and get a master, either in Maryland or the district, as she might choose. That after staying some time [one year] in Fredericksburg," she " became dissatisfied, and expressed her desire to return; . . Middleton . . gave her a pass authorizing her to proceed from Fredericksburg to Washington. That in some few weeks afterwards, the said Middleton came to Washington, . . and sold her to the defendant." Held: the petitioner is not entitled to her freedom.[1]

Smallwood v. Worthington, 22 Fed. Cas. 367 (2 Cranch C. C. 431), October 1823. [368] " the defendant promised that the servant, whose time of service the plaintiff had bought of the defendant, had three years to serve, when, in truth, she had only one year to serve." " the said slave . . was entitled to her freedom in one year,"

U. S. v. Richard, 27 Fed. Cas. 798 (2 Cranch C. C. 439), November 1823. Negro Richard was indicted for stealing planks, the property of McGuire. " The prisoner, upon a promise that he should not be prosecuted, was induced to confess his guilt, . . and to select those [planks] which belonged to Mr. McGuire. . . The Court said that the fact that the prisoner selected Mr. McGuire's lumber was evidence against him. Verdict, ' Guilty.' "

U. S. v. Brockett, 24 Fed. Cas. 1241 (2 Cranch C. C. 441), November 1823. " The indictment charged that the defendant . . ' did make an assault [upon his slave Nat], and . . did . . cruelly . . cut, slash, beat, and ill-treat [him], . . The jury found the following verdict: . . ' not guilty . . but recommend that the court should express their strong disapprobation of similar conduct.' "

Tarlton v. Tippett, 23 Fed. Cas. 702 (2 Cranch C. C. 463), April 1824. " Petition for freedom. Mr. Alexander Scott had been appointed by the president of the United States, an agent to Caraccas in South America. He went with an intention to reside permanently, if certain events should happen. He took the petitioner with him, and she remained there with him

[1] Act of 1796, ch. 67.

more than a year. The event not having occurred upon which his decision to reside there permanently was to be founded, he returned to reside here, and brought her with him." The court instructed the jury "that if they find . . that, at the time of his being compelled to leave Caraccas, he had not actually settled himself as a permanent resident there, but still remained there undecided as to the duration of his residence, . . then the bringing the petitioner back . . to Maryland and from Maryland to this District, was not an importation against the act of assembly." [1]

Fanny v. Kell, 8 Fed. Cas. 995 (2 Cranch C. C. 412), May 1824. In 1796 Sims "purchased Dorcas, the mother of the plaintiff, for a term of years," of Smith. "That Smith voluntarily promised to execute a deed of emancipation for the rest of her life. . . but the deed of emancipation was, from inadvertence, neglected to be executed." After some years Sims sold his right for the unexpired term to "Carrington, with whom the said Dorcas served out her term, and was then discharged by him as a free woman. During her servitude with Carrington, she had two children, one of whom, the plaintiff Fanny, is now in the possession of . . Kell, who purchased her . . with notice of the rights of the said Fanny." Judgment for the defendant; . . upon the authority of Brown v. Wingard [2] . . 1822."

U. S. v. Ware, 28 Fed. Cas. 404 (2 Cranch C. C. 477), May 1824. "Betsey Ware, a free colored woman, was indicted for burglary"

Alice v. Morte, 1 Fed. Cas. 408 (2 Cranch C. C. 485), May 1824. Alice, a mulatto woman, "stated that she was formerly held as a slave in Maryland, by one Samuel Edelin, in whose family she continued till she was sixteen years of age, and where she was kindly treated. That Edelin was an unmarried man, and about five years ago gave her what she supposed was a deed of emancipation, an[d] was suffered by him to go at large, as a free person, which she did for some time, in his immediate neighborhood, with his knowledge and approbation. That, with his knowledge, she then went and resided in Washington, D. C., where she continued unmolested until the year 1819. That she lost her paper which was given her by Edelin, when she was discharged from his service, . . That she was lately seized, thrown into jail, and sold to the defendant, Peter Morte, who was informed of her claim to freedom, and who is about to remove her to some part of the southern or western country." The deposition of John B. Edelin fully confirmed these facts.

Decreed: "That the complainant should be emancipated and set free, and that the defendant Edelin should make, execute, and deliver to her a proper and full deed of emancipation, duly prepared for record; and that the defendant Morte should be perpetually enjoined from exercising, or in any manner setting up, any claim to the complainant."

Rebecca v. Pumphrey, 20 Fed. Cas. 384 (2 Cranch C. C. 514), January 1825. Pumphrey "had attempted to carry the petitioners [Rebecca and

[1] Act of Md., 1796, ch. 67.
[2] P. 172, *supra.*

her three children] away, after notice of their having filed their petition for freedom, the judge, upon the urgency of the case, directed the marshal to take them into custody. The defendant refused to give the security required by law for the forthcoming of the petitioners to prosecute their petition, and they were kept in prison until the trial, viz. from November 26, 1824, to January 8th, 1825, forty-four days, at an expense of thirty-four cents a day for each, and one dollar each for commitment and release; making $63.84. Verdict for the petitioners. . . The Court . . ordered this expense to be taxed in the bill of costs against the defendant."

Peter v. Cureton, 19 Fed. Cas. 312 (2 Cranch C. C. 561), April 1825. " Anthony Addison, being the owner of negro Joanna, the mother of the complainants [Peter and Lewis], in the year 1797, sold her to Walter D. Addison for the term of twelve years, without saying anything of her increase. . . Walter D. Addison transferred her to Peter Savarie, in whose family the complainants were born, . . Peter in 1801, and Lewis in 1803. Savarie died. . . Preuss married his daughter and sole heiress, and took out letters of administration upon his estate; and took possession of the complainants as slaves, who continued in his service until he sold them to the defendant Cureton; as slaves for life, at the price of $640, who confined them in gaol, to be carried to South Carolina. At the expiration of the twelve years, viz. on the 8th of October, 1809, Anthony Addison executed a deed to manumit the negro immediately, and her children after they should respectively attain the age of thirty-one. This deed was duly executed, acknowledged, and recorded. . . injunction to prevent the removal of the complainants from the jurisdiction of this court, . . was granted " but the bill for leave to sue for freedom was dismissed: [313] " the complainants, being the issue of a slave, were born slaves, either of Savarie, or of Anthony Addison. If of Savarie, they are slaves for life. If of Anthony Addison, they are slaves until they arrive at the age of thirty-one years; and that not being yet entitled to their freedom, this bill must be dismissed." [1]

U. S. v. Clark, 25 Fed. Cas. 441 (2 Cranch C. C. 620), November 1825. " The defendant [John Clark], who was a slave about thirteen years old, was indicted for the murder of another slave, named Burdet, about fifteen years old. The deceased was larger and stronger than the defendant, and struck him several times, till the latter drew a knife and told the deceased that if he did not leave striking him, he would stab him; the deceased continued to strike him, and he stabbed the deceased in the left breast, of which wound he died instantly. The jury found him guilty of manslaughter, and the Court sentenced him to be burnt in the hand, and whipped with ten stripes."

Young v. Palmer, 30 Fed. Cas. 863 (2 Cranch C. C. 625), December 1825. " a special contract of sale of slaves . . in which the defendant promised not to sell them out of the neighborhood, etc., whereby the plaintiff was induced to sell them for less money; but the defendant sold them . . contrary to his agreement. . . the plaintiff ' believes ' he could

[1] See Lee *v.* Preuss, p. 179, *infra*.

have sold them for four hundred dollars more than he got for them from the defendant if he had sold them unconditionally,"

Semmes v. Sherburne, 21 Fed. Cas. 1059 (2 Cranch C. C. 637), December 1825. The defendant hired a female slave from the plaintiff and carried her [1060] " away to N. Hampshire and did not bring her back again . . Verdict for the plaintiff, $360, and judgment."

U. S. v. Calvin, 25 Fed. Cas. 265 (2 Cranch C. C. 640), April 1826. " Indictment for a riot, and assault and battery, by slaves, on a constable." Held: " this court has not jurisdiction; . . the prisoners committed to take their trial before a justice of the peace." [1]

Stump v. Deneale, 23 Fed. Cas. 278 (2 Cranch C. C. 640), April 1826. Will of George Deneale, dated 1815: " I further recommend to my wife to sell all the negroes that I shall die possessed of, for such term of years as their respective ages shall warrant to them a support when free."

Letty v. Lowe, 15 Fed. Cas. 411 (2 Cranch C. C. 634), May 1826. Petition for freedom. Lowe agreed to pay Mary Greenfield $250. for the slave Letty. Thomas Bingay " then took the defendant aside, and inquired of him what was his purpose and object in making the said purchase; to which he replied that he was about to make the said purchase from motives only of Christian charity, and to serve the said woman, of whom he had a good opinion, and whom he thought it his duty to serve; that he had confidence in her, that she would repay him what he should advance, and that she should then be free. The witness told him . . he would, if he desired it, be security for Letty for $50; that she would pay up, in small sums, what he might advance; and that he would, moreover, put into his hands $40 then, to enable him to make the first payment for Letty. . . which the witness thereupon paid him. The witness got the said $40 from a colored woman, to whom Letty told him to apply for it, saying that it had been contributed by some friends of hers, for the purpose of enabling her to buy herself of her said mistress. . . That after the said bargain, the defendant never claimed nor held the petitioner in his service; but that she lived at large, as a free woman, in the city of Washington, . . and while so living at large, the child . . was born. . . paper writings . . signed by the defendant. [I] 'Washington City. This is to certify that Letty Brown, the bearer of this, is my property; that I, in 1817 or 1818, purchased her from Miss Mary Greenfield, then her mistress. I further certify that I have received from her (Letty,) at sundry times, $206, and that there is now due . . to me, $64.94, on payment of which I hereby promise and find myself that she (Letty) shall be free, her lifetime, from bondage to any person or persons. . . 21st day of February, . . 1823.' . . [II] 'Washington City, 8th October, 1823. Received from Letty, through the hands of Mr. Bingay, $20, in part payment of the above Claim.' . . [III] [412] 'Received of Letty nine dollars. 5th February, 1825.' " The petition was filed July 15, 1825. The defendant demurred to the evidence. The court " ordered judgment

[1] Laws of Va., Dec. 17, 1792, p. 187, sect. 11.

to be entered for the defendant upon the demurrer, without prejudice to any equitable relief which the petitioners might thereafter have."

William v. Van Zandt, 29 Fed. Cas. 1286 (3 Cranch C. C. 55), December 1826. Petition for freedom. Mrs. Straas imported William [1287] "into this county, and delivered to the clerk a list of slaves imported by her, including the name of the petitioner; . . she afterwards, within three years after such importation, sold him to one Coburn, in this county, contrary to the act of assembly of Maryland, 1796, c. 67, sect. 3. . .

The court instructed the jury that if Mrs. Straas had only a distributive share in the slave, her sale would not entitle the petitioner to his freedom; but . . [if she] exercised acts of ownership, and several of the distributees knew it and did not object, and . . [the administrator] never claimed the slave until after the sale, they may presume she had good title. . . Verdict for petitioner."

U. S. v. Williams, 28 Fed. Cas. 647 (3 Cranch C. C. 65), December 1826. "Indictment under the 19th section of the Maryland act of 1796, c. 67, for aiding . . the escape of a female slave of W. L. Brent, 'by means whereof she was put into a stage to be transported out of the District.' . . The Court said there must have been a transporting of the slave out of the District or the offence was not complete. Verdict, 'not guilty.'"

Armstrong v. Lear,[1] 12 Wheaton 169, January 1827. "Thaddeus Kosciuszko, on the 5th of May, 1798, placed a fund[2] in the hands of Thomas Jefferson, and executed a will,[3] as follows: 'I, Thaddeus Kosciuszko, being just on my departure from America, do hereby declare and direct, that, should I make no other testamentary disposition of my property in the United States, I hereby authorize my friend, Thomas Jefferson, to employ the whole thereof in purchasing negroes, from among his own, or any others, and giving them liberty in my name, in giving them an education in trade or otherwise, and in having them instructed for their new condition in the duties of morality, which may make them good neighbours, good fathers or moders, husbands or wives, in their duty as citizens, teaching them to be defenders of their liberty and country, and of the good order of society, and in whatsoever may make them happy and useful. And I make the said Thomas Jefferson my executor of this. (Signed,) T. Kosciuszko. 5 May, 1798.' . . [171] That said

[1] Administrator (with the will annexed) of Kosciuszko.

[2] Mr. Justice Wayne, in Ennis *v.* Smith, 14 Howard 400 (412) gives the origin of the fund. After the Revolutionary War, General Kosciuszko "returned to Poland, poorer than when he came to us, and was, in fact, our creditor for a part of his military pay, . . he returned to the United States [in 1798] after he was released from the prisons of Catherine, by her son and successor, the Emperor Paul. Whilst he was absent from the United States, a military certificate for twelve thousand two hundred and eighty dollars and fifty-four cents, had been issued, as due to him for services during the war. . . That military certificate, with a part of the interest upon it, was the basis of the fund now in controversy." The funds were augmented by "lending them to the Government during the late war, . . to seventeen thousand one hundred and fifty-nine dollars and sixty-three cents:" Thomas Jefferson to De Poletica (Russian Ambassador), June 12, 1819. Armstrong *v.* Lear, 8 Peters 52 (64).

[3] Written "all with his own hand," *ibid.*, p. 63.

Jefferson refused to take letters testamentary under said will,[1] . . Mr. Jefferson received a letter from General Kosciuszko dated as late as the 15th of September, 1817 [one month before Kosciuszko's death], in which he thus affirms his first will." " nous avançons tous en âge, c'est pour cela, mon cher et respectable ami, que je vous prie de vouloir bien (et comme vous avez tout le pouvoir) arranger qu'apres la mort de notre digne ami Mr. Barnes, quelqu'un d'aussi probe que lui prenne sa place, pour que je reçoive les intérêts ponctuellement de mon fonds; duquel, après ma mort, *vous savez la destination invariable*, . . " [2] But the will of 1798 had been revoked by the testator in his will of 1816, and it was decided by the Supreme Court of the United States in 1852 that General Kosciuszko died intestate as to " the funds in controversy, . . and that they may be distributed to his relations who may be entitled to inherit from him." [3]

Mason v. Matilda, 12 Wheaton 590, March 1827. [591] " Matilda, a negress, brought suit in behalf of herself and her three children, to receive their freedom. . . James Craik . . in the year 1792 brought Matilda from . . Maryland into . . Virginia, and there settled and resided until his death, . . The whole time which elapsed from the bringing of Matilda into Virginia to the commencement of this suit, was thirty years. . . On the trial, the defendants below could not produce positive testimony that the oath [required by the Virginia statute [4]] had been taken " The lower court refused to charge the jury " that, from the circumstances so given in evidence, the jury might presume that the oath had been taken in the prescribed time," and a verdict was found for the plaintiffs below. [594] " Judgment reversed, and *venire facias de novo* awarded." [5]

Lee v. Preuss, 15 Fed. Cas. 223 (3 Cranch C. C. 112), May 1827. " Petition for freedom by Lizette, John, and Janette, or Jeane, children [6] of Joanna," (the slave of Anthony Addison), " and Nancy, the daughter of Lizette [Lee] " against Augustus Preuss, the son-in-law and administrator of Savary or Savarie, to whom Joanna had been conveyed for the remainder of an unexpired term of twelve years. Lizette, John and Janette or Jeane were " born during the said term of twelve years; and the petitioner Nancy . . was born long after the expiration of the said term,

[1] "After the testator's death, Mr. Jefferson proved the will in the county court of Albemarle, but renounced the executorship," Estho *v.* Lear, 7 Peters 130 (131). " When the general named me his executor, I was young enough to undertake the duty, although, from its nature, it was like to be of long continuance; but the lapse of twenty years more, had rendered it imprudent for me to engage in what I could not live to carry into effect: finding now, . . that it is likely to become litigious, and age and incompetence to business admonishing me to withdraw myself from entanglements of that kind, I have determined to deliver the will and whole subject over to such court of the United States as the attorney general of the United States shall advise, . . and to petition that court to relieve me from it, and to appoint an administrator with the will annexed." Thomas Jefferson to De Poletica June 12, 1819. Armstrong *v.* Lear, 8 Peters 52 (64).

[2] *Ibid.* The last words are not italicized when the same quotation from Kosciuszko's letter is given in Ennis *v.* Smith, 14 Howard 400 (413). Much of the italicizing in the reports seems to have been done by counsel to emphasize important points.

[3] *Ibid.*, p. 421.

[4] 12 Hening 182.

[5] Follows Abraham *v.* Matthews, 6 Munford 159.

[6] See Peter *v.* Cureton, p. 176, *supra.* Peter and Lewis were also children of Joanna.

to wit, in the year 1825, or thereabout; the mother [Lizette] still being held by the said Savary" who did not deliver them up to Anthony Addison when Joanna was returned to him at the end of the twelve years. "after the expiration of said term . . 8th of October, 1809, . . Addison executed . . an instrument of writing, purporting to be an emancipation of the said Joan or Joanna, and her children; . . after certain terms of service," which "will expire at the times following, to wit, of the said John in May, 1830; of Lizette at Christmas 1827; of the said Janette or Jeane, on the 19th of May, 1834; and petitioner Nancy is about two years old."

Held: "the petitioners will be entitled to their freedom, at the expiration of their respective terms of servitude" The defendant "being now fully apprised of the petitioners' contingent right to freedom, will take care that he do not subject himself to the penalty of the law of Maryland by selling them out of the state for a longer time than they have to serve by law." The solicitor for the petitioners "filed a bill for injunction . . stating their contingent right to freedom, and their fears that the defendant would sell them to persons who would carry them to some distant place,[1] where they would not be able to prove and maintain their right to freedom. The petitioners had run away from the defendant, believing themselves entitled to freedom, and had been taken up and committed to jail here where they petitioned for their freedom. . . [224] Injunction refused."

U. S. v. Birch, 24 Fed. Cas. 1148 (3 Cranch C. C. 180), November 1827. "James Birch, a white man, was indicted jointly with others for a riot. One of the defendants, William Bill, was a colored man. . . Wilfred Mortimer, a colored man, born of a white woman, [was offered] as a witness for the prosecution against the colored defendant, William Bill. . . The Court rejected the witness; because it was a joint indictment, . . and the testimony, if given against one, would operate against all."[2]

Foxall v. McKenney, 9 Fed. Cas. 645 (3 Cranch C. C. 206), December 1827. Foxall (who died in 1823) by his will, gives his wife [647] "the use of all my servants during the remainder of their time of servitude." Trustees, empowered under the will to carry on his bakehouse business "in the same manner as the same is now carried on by me," "claim the use of the bakehouse servants" who "were literally Mr. Foxall's servants, and had a limited time to serve;" Held: Mrs. Foxall "is not entitled to the use of the bakehouse servants."

Richard v. Van Meter, 20 Fed. Cas. 682 (3 Cranch C. C. 214), December 1827. Richard [683] "was the slave of William W. Claggett, who, on the 25th of June, 1822, gave him the following written certificate: 'This is to certify that Richard, my negro, wishes to purchase himself, and it is my wish that he should do so; therefore, he is at liberty to work for himself, so as he may be able to accomplish his object. Upon his

[1] He had so sold their brothers Peter and Lewis. See Peter *v.* Cureton, p. 176, *supra*.
[2] Act of Va., Dec. 7, 1792, p. 187, sect. 5.

finally paying one hundred dollars he then is to be free." Claggett sold him, December 6, 1822, to Bussard, as a slave for life. "There is no evidence that Mr. Bussard ever saw Mr. Claggett's certificate until after he bought him, although there is some reason to believe, that he knew, that the negro had received some such promise. It is probable that some part of the 100 dollars was paid by Richard to Mr. Claggett; but how much, is uncertain. Mr. Walter Claggett has testified, that he heard his brother, William W. Claggett, say, that about thirty-five dollars were due, and that when that sum was paid, Richard was to be free. There is no evidence that Mr. Van Meter had any knowledge, at the time of his purchase of the negro, that he had any promise of freedom. . . the judgment must be against the petitioner." [Cranch, C. J.]

Mitchell v. Wilson, 17 Fed. Cas. 524 (3 Cranch C. C. 242), December 1827. In 1787 Joseph Wilson sold to his son Joseph "his slave Bet, then about six years old, and three other slaves" for £105. Bet "was an idiot, lame, and worthless." In 1801 the son Joseph sold to his brother Thomas for £25, "Bet, then said to be about twenty-three years of age, 'and all her increase, from and after the date hereof, and her son, a negro boy named Patrick, about eighteen months old;' . . [525] Bet continued in the possession of the father. In . . 1805, however, she was found, with her child, Mahala, then from six to nine months old, living in the family" of Mitchell, whose wife was the daughter of Joseph Wilson, sr.

Held: the possession of a slave for twenty years is *prima facie* evidence of a good title in a plaintiff in replevin, against everybody who does not show a better.

U. S. v. Holland, 26 Fed. Cas. 343 (3 Cranch C. C. 254), December 1827. "Negroes Margarett Holland and her daughter Louise . . were indicted separately for the same theft." Both were found guilty. "There seemed to be some doubt whether Margarett was actually present at the taking of the goods; and the court granted her a new trial, upon which Mr. Key, for the United States, entered a *nolle prosequi*. The other prisoner, Louisa, was sentenced to be whipped fifteen stripes, and to pay a fine of $1, and costs."

Mandeville v. Cookenderfer, 16 Fed. Cas. 580, 586 (3 Cranch C. C. 257, 397), December 1827, December 1828. The slave Richard Bunbury [586] "eloped from the plaintiff's service in Alexandria and went to Washington City, and there called himself Seymore Cunningham; and showed a certificate from a notary-public, which had been granted to Seymore Cunningham, stating that he, the said S. C., was a free man of color; and that the said slave, Richard Bunbury, stated that he was, in fact, the said Seymore Cunningham. . . R. B. . . was taller than the person described in the certificate, and was a very bright mulatto, whereas Cunningham . . was a dark mulatto." The slave "went to the stage-office in Washington City, . . represented himself . . as Seymore Cunningham, and showed his said certificate of freedom; and the defendant [the agent of the stage company] thereupon permitted him to take his seat in the book of the said stage-office, . . and permitted him to take

passage in the stage . . and the said slave went off in the said stage to Baltimore, and from thence to Boston." [581] " the plaintiffs were put to great trouble and expense in recovering him. . . "

The jury found a general verdict for the plaintiffs for $200 damages. Verdict set aside: the defendant [588] " was not bound by his orders, to be more vigilant than he was. . . he was to permit every colored person to pass who could produce a certificate purporting to prove the freedom of the person presenting it."

Barnes v. Barnes, 2 Fed. Cas. 855 (3 Cranch C. C. 269), December 1827. John Barnes, who died in 1826, left a will, " manumitting his two negro women, Abigail and Nelly, providing them with an annuity and bequeathing them some small articles," [858] " Decreed, . . that the executors and trustees shall invest $1,750 in the six per cent. stock of the corporation of Georgetown, . . to pay the annuities to Abigail and Eleanor,"

Archer v. Deneale, 1 Peters 585, January 1828. Deneale, in his will, dated 1815, [588] " recommends to his wife, to sell the negroes for a term of years."

Whelan v. Washington, 29 Fed. Cas. 918 (3 Cranch C. C. 292), May 1828. A non-resident slaveholder was fined " $20 for not paying the tax of two dollars on a female slave, hired out by the defendant, in the city of Washington, before the hiring, under the second section of the by-law of April 5, 1823. The tax was paid before the prosecution was commenced." Judgment reversed: " the tax . . did not accrue until the hiring was complete; "

Johnson v. Mason, 13 Fed. Cas. 771 (3 Cranch C. C. 294), May 1828. Held: " if the petitioner was not brought into this county [Washington] for sale or to reside, she is not entitled to freedom under the Maryland act of 1796 (chapter 67), and that the act meant a permanent residence, a residence without expectation of change."

Battles v. Miller, 2 Fed. Cas. 1037 (3 Cranch C. C. 296), May 1828. Petition for freedom. Miller, a citizen of Virginia, removed to Washington, being his slave, John Battles. Within three years he sold John to a person residing out of the District of Columbia, who removed John " to Alexandria, on his way to his ultimate destination; that the said slave . . [1038] while temporarily detained in Alexandria till the said purchaser was ready to proceed on his journey, absconded and returned to Washington of his own accord, and that the sale was then rescinded by agreement of parties,"

Verdict for the petitioner. " if the slave was sold by the importer within the three years, the importer is not protected by the 2d section of the act of 1796, c. 67, from the prohibiton contained in the first section." [Cranch, C. J.]

Murray v. Dulany, 17 Fed. Cas. 1047 (3 Cranch C. C. 343), November 1828. "Assault and battery. The plaintiff was a mulatto." Held: he

cannot be compelled to prove his freedom, as " the defendant had waived the objection to the person of the plaintiff by pleading the general issue."

Reardon v. Miller, 20 Fed. Cas. 369 (3 Cranch C. C. 344), November 1828. " Manly, in 1800, made a deed to Reardon of a slave called Henry Nokes, for the benefit of Manly's wife, and such children as he had, or should have, by her. The slave was then only one year old. In 1810 Manly, with the consent of his wife, sold the same slave to Mordecai Miller, the defendant, for $250, as a slave for life, . . the former deed to Reardon was not known to Miller, who resided in Alexandria, although it was recorded in Virginia. Miller had possession of the slave from 1810 until the present time. He purchased this slave for the purpose of emancipating him at a future day." Held: the plaintiff cannot recover.

Clagett v. Gibson, 5 Fed. Cas. 808 (3 Cranch C. C. 359), December 1828. [809] " Petition for freedom. . . The petitioners [Phillis Clagett and her children] were her [defendant's] property at the time of her marriage with Gibson; and claimed their freedom under his deed of emancipation, dated October 31, 1826, duly acknowledged and recorded, according to the Maryland act of 1796 [1] . . by which he emancipates them to be free after his death. The defendant had filed a petition . . against . . her husband, for alimony, and obtained an injunction on the 10th of July, 1826, to prevent him from conveying away his property. This suit for alimony was pending at the date of the deed of manumission. He died in the following year." Verdict for the defendant.

Pipsico, a free mulatto, v. Bontz, et al., white men, 119 Fed. Cas. 727 (3 Cranch C. C. 425), April 1829. " *Indebitatus assumpsit* for work and labor. . . The defendants' counsel offered a free mulatto as a witness . . Mr. Taylor, for plaintiff, objected; and cited the Virginia laws [2] . . The Court rejected the witness."

Wigle v. Kirby, 29 Fed. Cas. 1179 (3 Cranch C. C. 597), May 1829. [1180] " Petition for freedom. The petitioners [negro Harry Wigle and others] claimed freedom under the will of John Baptist Kirby, by which they were to be free at his death. Some of them were over forty-five years of age at the death of the testator." Held: the manumission is void as to the petitioners over the age of forty-five at the testator's death.[3]

Butler v. Duvall, 4 Fed. Cas. 898 (3 Cranch C. C. 611), May 1829. The petitioners for freedom were " Thomas Butler, his wife Matilda, their three children, . . and their two grandchildren . ." They stated " that they were about to be sold out of this district to foreign purchasers." Their master, Duvall, a resident of Maryland, " pleaded to the jurisdiction of this court "

Held: [900] " the remedy by petition for freedom . . existed long before, and was in daily use at the time of passing the [Maryland] act of 1796. . . There is no statute which expressly gives to a person, held in

[1] Ch. 67, sect. 29.
[2] Rev. Code, p. 187, Dec. 17, 1792, ch. 103, sect. 5.
[3] Act of Md., 1796, ch. 67, sect. 13.

slavery, a right to sue for his freedom. The remedy was probably adopted in analogy to that given . . in cases of complaints between masters and servants [1] . . and was probably in use from that time. . . Nor can the action, or the cause of action, be considered as local. . . It is in its nature, strictly personal. . . The petitioners sue quasi in forma pauperis, and the court ought to see that they are not entrapped in the subtleties of special pleading." [Cranch, Ch. J.] The cause [901] " was tried upon its merits, and verdict rendered for the petitioners."

Scott v. Auld, 21 Fed. Cas. 812 (3 Cranch C. C. 647), November 1829. " Detinue [by Scott's executor] for three negroes who were born while Hannah, their mother, was in the possession of James Anderson, under the following instrument: 'Alexandria, March 1, 1816. I have this bo't of Mr. Jessey Scott, Hannah and her sonn John; Hannah to serve twelve years, and John untull he is thirty-five years old, and then both to be free;' " Held: " Scott parted with his whole right in the slaves . . Judgment of nonsuit to be entered."

Smith v. Parker, 22 Fed. Cas. 618 (3 Cranch C. C. 654), December 1829. "Appeal from the judgment of a justice of the peace, for $50, upon a note given by the appellant [negro William Smith] to the appellee [Daniel Parker] in consideration of his emancipation by the latter. The note was given immediately upon the execution and delivery of the deed of emancipation, and bears date the same day. . . The Court affirmed the judgment, with costs, Cranch, Chief Judge, doubting."

Maria v. White, 16 Fed. Cas. 732 (3 Cranch C. C. 663), December 1829. Maria " claimed her freedom by reason of importation, contrary to the act of Maryland, 1796, c. 67;" She was the slave of Joseph White, " a resident of the territory of Florida, and the delegate in congress from that territory. That he brought the slave to Washington to wait upon his family, while he was attending congress, in the winter of 1828-1829. . . at the end of the session," she " was too far advanced in pregnancy to be removed, with safety, to Florida; and was, therefore, left by her master in Washington. That, at her request, after her confinement, she was permitted by her master, who was reëlected, to hire herself out in Washington, until he should return to congress, in December, 1829;" she " received her wages to her own use. That the defendant, learning that she had a free husband in Washington, and that she wished to live with him, agreed that if he could raise $400 for him he should have her. That the money was never raised," The court refused to instruct the jury that " the continuing of the petitioner in this county, under such circumstances, is evidence of an importation contrary to the law of 1796, c. 67."

Beall v. Beck, 2 Fed. Cas. 1111 (3 Cranch C. C. 666), December 1829. " Replevin for the plaintiff's slave William, hired to Mr. Easton, who was a boarder at Mrs. Rich's boarding-house, for whose rent, due to Mr. Archer, the slave was, by his order, distrained." Easton hired [1112] " the slave in question for his own exclusive service as a domestic servant,

[1] Act of 1715, ch. 44, sects. 30, 31.

. . paid for his hire and clothed him." Held: the slave is exempt from distress for rent, on the ground of public convenience.

U. S. v. Gray, 26 Fed. Cas. 17 (3 Cranch C. C. 681), December 1829. "Indictment [against Charity Gray, a free mulatto,] for larceny. The prisoner's daughter, who is a slave, was offered as a witness for the United States. . . Thruston, Circuit Judge, was of opinion that, under the third section of the act of [Maryland] 1717, c. 13, the court, in its discretion, might admit the witness, but that the daughter ought not to be forced or permitted to testify against her mother. . . Verdict for the prisoner."

Harris v. Alexander, 11 Fed. Cas. 611 (4 Cranch C. C. 1), April 1830. Petition for freedom. "The slave was brought into the county of Washington, with the defendant, to reside; but the defendant sold him before the expiration of three years." Judgment for the petitioner.[1]

Stanback v. Waters, 22 Fed. Cas. 1042 (4 Cranch C. C. 2), April 1830. "Action on the case for enticing away and receiving the plaintiff's slave, named Williamson, in Virginia, and bringing him into the District of Columbia."

Quando v. Clagett, 20 Fed. Cas. 105 (4 Cranch C. C. 17), May 1830. Will of Mrs. Clagett: "After my decease it is my will that my woman Maria, and all her increase, including the children that she now has, to be free and manumitted forever; and that the money that is now due to me, be received by Thomas Clagett, and for the support of the said Maria and her children until the last of May next; and I also desire that my woman Rhoda, and all her increase to be free and manumitted after serving the term of two years where Elizabeth Osborn shall hire her anywhere in the district, and the hire to be applied to the getting of the said children good places, and paying Elizabeth Osborn for her trouble. My will is that my man Harry is to serve one year to any person that will give a fair hire for him, one half to be applied to the support of Maria and her children, and the other part to himself." Held: "there could be no doubt of the intention of the testatrix to emancipate the petitioner [Harry]."

Simon v. Paine, 22 Fed. Cas. 163 (4 Cranch C. C. 99), November 1830. Negroes Simon and Lewis "had been brought here by their master and kept here more than a year." After having been taken back to Maryland, their master's domicil, "they escaped into this district, and gave themselves up [to] the magistrate, and prayed leave to sue *in forma pauperis*. . . The cause was tried, and the jury found a verdict for the plaintiffs,"

Bernard v. McKenna, 3 Fed. Cas. 277 (4 Cranch C. C. 130), April 1831. "a negro woman named Carolina, of the value of $300,"

Butler v. Duvall, 4 Fed. Cas. 901 (4 Cranch C. C. 167), May 1831. Petition for freedom. I. "more than twenty-five or thirty years before the bringing of this petition," Dales, "the owner of the petitioners, or their parents, in the state of Maryland, or in Georgetown in the District of Columbia, . . removed to Virginia, and kept them in that state, one

[1] Act of Md., 1796, ch. 67.

whole year together," The court instructed the jury that the petitioners are "entitled to their freedom under the law of Virginia, unless the said Dales, within the time specified in the Virginia law, complied with the requisitions of that law by taking the oath therein prescribed;" but after the lapse of twenty-five or thirty years, the jury may presume that such oath was taken as prescribed, and within the limited time. II. Dales, "more than twenty years before the bringing of this petition," sold the petitioners to Duvall [902] "then residing in Washington county, D. C., who then carried said slaves to Prince George's county [Maryland] with intent to reside therein," The court instructed the jury that the petitioners are entitled to their freedom, whether Dales was still residing in Virginia, or had removed with the slaves "to the District of Columbia, and sold them within three years after such removal," in which latter case "the jury may infer that the said slaves were imported with intent to sell them;" Verdict for the petitioners.

Edds v. Waters, 8 Fed. Cas. 298 (4 Cranch C. C. 170), May 1831. Slander: "that as keeper of the Georgetown penitentiary he suffered a negro-buyer to escape for a bribe."

Gilbert v. Ward, 10 Fed. Cas. 348 (4 Cranch C. C. 171), May 1831. Petition for freedom by Emanuel Gilbert, a negro, under the will of Peter Dejean.

Held: "under the 13th section of the act of Maryland of 1796, c. 67, the manumission is *prima facie* valid; and that the defect of age, which by the proviso is to render the manumission ineffectual, must be shown by the party who claims the petitioner as a slave." Verdict for the petitioner.

Kitty v. McPherson, 14 Fed. Cas. 709 (4 Cranch C. C. 172), May 1831. "The petitioner claimed her freedom under the will of Mary Brooke, who directed that she should be free in the year 1840. . . her hire for the intermediate time is bequeathed to a particular legatee;" The jury found that she would be entitled to her freedom in 1840, and "the court ordered the original injunction to be continued, restraining the defendant from removing the petitioner from the jurisdiction" of the court unless he gave a bond for $600 not to remove her. He did so.

Mary v. Talburt, 16 Fed. Cas. 949 (4 Cranch C. C. 187), December 1831. "the petitioner was brought here [Washington] from Virginia by her lawful owner, and afterward ran away, and her owner sold her running, supposing her to be then in Virginia;" The Court refused to instruct the jury that "the running away . . will prevent the slave from the benefit of the provision [of the law[1]] in her favor. . . Verdict for the petitioner."

Samuel v. Childs, 21 Fed. Cas. 306 (4 Cranch C. C. 189), December 1831. Negro Sam "was included in a deed of manumission made in Maryland, February 17, 1797, which was witnessed by only one witness. The Maryland act of December 31, 1796, c. 67, sect. 29, required two witnesses. The master afterwards carried them to Virginia, where he died,

[1] Act of Md., 1796, ch. 67, sects. 1-3.

having by his will left them free at the age of twenty-five. The petitioner's mother, one of those slaves, was living in Virginia at the death of the testator; after whose death, and before the petitioner's mother had attained the age of twenty-five, that is, before she was actually free, the petitioner was born in Virginia. . . Judgment for the defendants." [1]

Johnson v. Brown, 13 Fed. Cas. 734 (4 Cranch C. C. 235), May 1832. " Slander; in saying of the plaintiff, ' he is a yellow negro,' . . the plaintiff is a free white male citizen . . Judgment for the defendant."

Delilah v. Jacobs, 7 Fed. Cas. 415 (4 Cranch C. C. 238), October 1832. " The plaintiffs [negro Delilah and others] claimed their freedom under the law of Maryland of 1796 (chapter 67), or the act of 1783, by being imported from Virginia into Maryland by a . . citizen and resident of Maryland, who gave no list of them to be recorded,"

Held: the compact between Virginia and Maryland " did not prohibit Maryland from prohibiting her own citizens from importing slaves, or any other property, belonging to them."

Esther v. Buckner, 8 Fed. Cas. 797 (4 Cranch C. C. 253), November 1832. Petition for freedom by Esther, a negro, and her two children. They were brought to Washington from Virginia January 6, 1828. Their master had come to Washington November 3, 1826, and had given a list of his slaves " in order to be able to hire his slaves in this District without incurring the fine of $20 each, imposed upon slaves of non-residents hired out in the city," He " had some of his household furniture . . in that city; and some of his family, . . and some of his servants resided there. His wife and some of his children and . . furniture did not arrive until about the 7th of January, 1827. . . on the 7th of January, 1828, he gave a like list of other slaves brought in within twenty days preceding. . . This last list included the petitioner, Esther, and her two children." Verdict for the petitioners.

Estho v. Lear, Administrator of T. Kosciuszko, 7 Peters 130, January 1833. See Armstrong *v.* Lear, p. 178, *supra.*

U. S. v. Prout, 27 Fed. Cas. 625 (4 Cranch C. C. 301), March 1833. Prout was fined fifty dollars for enticing " a certain slave named Joseph Dozier [worth $600], . . to run away," [2] The slave was recovered by the owner, [626] " and the expense of recovering, and loss of service, were much less than the value of the slave."

U. S. v. Johnson, 26 Fed. Cas. 625 (4 Cranch C. C. 303), March 1833. " The indictment, which was founded on the Maryland act of 1796, c. 67, sect. 19, charged that the defendant did, on the 19th of April, 1833, ' assist the transporting of a certain slave named Joseph Dozier, [from Washington County] . . by advice, and by conveying said slave in a gig . . to the city of Baltimore, . . thereby depriving . . the ow[n]er of said slave, of the service of her said slave,' " The defendant was found guilty and fined fifty dollars.

[1] Following Maria *v.* Surbaugh, 2 Randolph 228.
[2] Act of Md., 1751, ch. 14, sect. 10.

Moore v. Jacobs, 17 Fed. Cas. 686 (4 Cranch C. C. 312), May 1833. Petition for freedom. The petitioner, Clara Moore, "was owned by Mr. Mills, in Alexandria, D. C., who removed to Maryland to reside, and settle there, and took the petitioner with him. She ran away and returned to Alexandria. While there, her owner in Maryland, sold her ('running') to Jacobs."

Held: "that her escape to Alexandria was not a voluntary importation into Alexandria county; and that the sale in Alexandria . . was not such a sale as could give the petitioner a right to freedom under the Maryland act of 1796, c. 67."

Bell v. English, 3 Fed. Cas. 102 (4 Cranch C. C. 332), October 1833. "Orphans' Court, Alexandria County, October Term, 1832. Andrew Bell, a free orphan boy of color, who will be thirteen years old on the 25th of November next, is, by the court, bound an apprentice to James English until he is twenty-one years of age, to learn the business of a house-servant; which said business, in open court, the said James English agrees to teach the said apprentice, to furnish good board, clothing, washing, and lodging, and pay him $20 freedom dues."

U. S. v. Summers, 27 Fed. Cas. 1363 (4 Cranch C. C. 334), October 1833. "Indictment for stealing a slave, . . under the Virginia statutes of December 17, 1792, p. 190, sect. 29, and January 25, 1799, p. 387, making it a felony punishable by death without benefit of clergy; and the penitentiary act of congress,[1] sect. 14, changing the punishment from death to penitentiary confinement and labor. . . Verdict, not guilty."

U. S. v. John, 26 Fed. Cas. 615 (4 Cranch C. C. 336), October 1833. "Indictment for stealing a five-dollar bank-note. The prisoner [the negro John] had been convicted . . of stealing a pocket-book valued at ten cents, and sentenced. The bank-note was in that pocket-book, . . The Court . . rendered judgment for the prisoner:" "the former conviction . . for stealing the pocket-book, is a bar to this prosecution,"

Lee v. Lee, 8 Peters 44, January 1834. Petition for freedom. [46] "Upon the trial, the petitioners [Samuel and Barbara Lee] proved that they were born in the state of Virginia, as slaves of Richard B. Lee, now deceased, who moved with his family into the county of Washington in the district of Columbia about the year 1816, leaving the petitioners residing in Virginia as his slaves, until the year 1820, when the petitioner Barbara was removed to the county of Alexandria in the district of Columbia, where she was hired to Mrs. Muir, and continued with her thus hired for the period of one year. That the petitioner Sam was in like manner removed to the county of Alexandria, and was hired to general Walter Jones for a period of about five or six months. That after the expiration of the said periods of hiring, the petitioners were removed to the said county of Washington, where they continued to reside as the slaves of the said Richard B. Lee, until his death, and since as the slaves of his widow, the defendant." Judgment for the defendant, reversed and cause sent back for a new trial.[2]

[1] 4 Stat. at L. 448.
[2] Lee *v.* Lee, p. 195, *infra*.

Held: I. As to the jurisdiction of the supreme court of the United States: [48] "the matter in dispute is . . the value of their freedom, and this is not susceptible of a pecuniary valuation. Had the judgment been in favor of the petitioners, and the writ of error brought by the party claiming to be the owner, the value of the slaves as property would have been the matter in dispute, and affidavits might be admitted to ascertain such value. But affidavits, estimating the value of freedom, are entirely inadmissible; and we entertain no doubt of the jurisdiction of the court."

II. The court below erred in refusing to submit to the jury the question [49] "whether, from the evidence, the bringing of the petitioners from Virginia to Alexandria,[1] and the hiring of them there, was not merely colourable, with intent to evade the law[2] . . [50] If the original intention of the owners of the slaves was to bring them into the county of Washington, the hiring of them in Alexandria might have been thought by the jury a device to evade the law of 1796." [Thompson, J.]

Kosciuszko Armstrong v. Lear, 8 Peters 52, January 1834. See same *v.* same, p. 178, *supra.*

Fleming v. Foy, 9 Fed. Cas. 262 (4 Cranch C. C. 423), March 1834. Wager: "September 24th, 1832. I agree to pay Mr. M. Foy $20 if your colour man did not execute my three springs of my carrage all to gether moening the four springs."

U. S. v. Brooks, 24 Fed. Cas. 1244 (4 Cranch C. C. 427), March 1834. The negro, John Brooks, was convicted of "disturbing the congregation of the African meeting-house while engaged in the worship of God." "by cursing . . in and near the . . meeting-house,"

Hobbs v. Magruder, 12 Fed. Cas. 265 (4 Cranch C. C. 429), March 1834. Petition for freedom. Will of Margaret Stockett, owner of the petitioner: "I give and bequeathe to my daughter Eliza Ann . . all my property . . and in case [she] . . should die without having an heir . . of her body, it is then my wish and will that my negroes are to be free," Eliza Ann married and "came to reside in this district with her husband, who brought the petitioner here and sold her to . . Magruder; the said Eliza Ann, at the time of the sale, having had no issue of her body; but having since the sale, had issue . . now living. The petitioner claims freedom under the act of Maryland of 1817, c. 212." Held: the act of Maryland is of no force in this district.

Chapman v. Fenwick, 5 Fed. Cas. 477 (4 Cranch C. C. 431), March 1834. See Fenwick *v.* Chapman, p. 191, *infra.*

Thomas v. Magruder, 23 Fed. Cas. 962 (4 Cranch C. C. 446), March 1834. "Petition for freedom. . . Mr. Key, for petitioner, offered in evidence the record of the deed of manumission . . recorded in the office of the clerk of this court. . . Lee objected and called for the original, and

[1] Act of Congress, June 24, 1812. Davis's Col. 265, sect. 9.
[2] Act of Md., 1796, in force in Washington County by virtue of the act of Congress of Feb. 27, 1801. Davis's Col. 126.

proof by the subscribing witnesses. The Court . . refused to require Mr. Key to produce the original, and permitted him to use the copy on the record; it having been acknowledged and recorded according to Act Md. 1796, c. 67, sects. 28, 29."

Bowman v. Barron, 3 Fed. Cas. 1075 (4 Cranch C. C. 450), March 1834. Petition for freedom. The widow of Barron, who had been a resident of Virginia, lent a slave, Frederick Bowman, belonging to her deceased husband's estate, to her son-in-law, H. Gassaway in Washington. After remaining there for more than a year, Bowman [1076] " was sent back to Virginia . . to abide the final distribution of the estate; . . and . . was allotted to Ann C. Barron, one of the children of the intestate, after which he, . . without the knowledge or consent of the owner, left Virginia, came back to Washington, and there filed his said petition," Verdict for the defendant.[1]

Crawford v. Slye, 6 Fed. Cas. 778 (4 Cranch C. C. 457), March 1834. Petition for freedom by Joseph Crawford. " The importation of the slave (the petitioner) was alleged to be justified under the 11th section of the Act of Maryland, 1796, c. 67, which requires a list of the slaves so imported, distinguishing their sex. The list merely calls the slave 'Jo.'" Held: " that the list offered does not designate the sex; and that, therefore, the petitioner is entitled to freedom."

Keziah v. Slye, 14 Fed. Cas. 451 (4 Cranch C. C. 463), March 1834. Keziah " was brought from Virginia to Washington, under the 9th section of the Maryland act of 1796 (chapter 67), but was not recorded within three months thereafter, as required by the statute." Verdict for the petitioner.

U. S. v. Lloyd, 26 Fed. Cas. 986 (4 Cranch C. C. 468), October 1834. Indictment against Henry Lloyd. " The first count was for a simple assault and battery upon a slave. The second count was for assault (not assault and battery) with intent to kill and murder, a negro slave, Harry. . . Verdict guilty on both counts, and amerced by the jury $20 on the first count. The Court . . was of opinion, that a simple assault and battery on a slave, is not an indictable offence;[2] that a simple assault upon a slave, even with an intent to murder him, is not an offence at law; that the second count was bad under the penitentiary act,[3] because it did not charge a battery. Cranch, Chief Judge, doubted of this, because the murder of a slave is a felony, and an assault with intent to commit a felony is a misdemeanor, at common law. . . [987] A new indictment was . . found by the grand jury against the defendant. The first count was for publicly and cruelly beating Harry, a slave. Second count for assault and battery with intent to murder the slave, Harry. Mr. Brent, for the defendant, moved to quash the indictment, because . . it was not an offence to . . beat a slave, even with intent to murder him. The Court . . re-

[1] Act of Md., 1796, ch. 67.
[2] See U. S. *v.* Butler, *contra,* pp. 160, 165, *supra.*
[3] 4 Stat. at L. 448.

fused . . without prejudice to a motion in arrest of judgment, if the verdict should be against the defendant."

U. S. v. Lloyd, 26 Fed. Cas. 987 (4 Cranch C. C. 470), October 1834. " Indictment [against Richard B. Lloyd] for beating his own slave Henry, cruelly, and exposing him, so beaten, to public view. Verdict guilty, and amerced by the jury $100. . . The Court rendered judgment for the amount assessed by the jury."

U. S. v. Nathan, 27 Fed. Cas. 78 (4 Cranch C. C. 470), October 1834. " Indictment [against negro Nathan, a slave] for stealing a pair of shoes, of the value of one dollar. The prisoner pleaded guilty, and he was sentenced by the court to be burnt in the hand in open court, and to be whipped with ten stripes."

Brooks v. Nutt, 4 Fed. Cas. 297 (4 Cranch C. C. 470), October 1834. "Action, of assault and battery, for freedom. The plaintiff's mother, Clara, was the slave of . . Stewart, and sold by him to Finley . . 1805, by bill of sale, recorded . . 1833, for the term of seven years. Finley bound himself to Stewart to emancipate Clara at the end of the seven years; and Stewart bound himself to Finley then to relinquish his right to Clara. The plaintiff [Ann Brooks] was born in 1811, . . Finley emancipated Clara in 1817, but always claimed the plaintiff as his slave, she having been born while her mother was his slave. On the 3d of June, Stewart made a deed of emancipation of the plaintiff (Ann)." Held: Ann is a slave and belongs to Finley's estate.

Runaways and Petitioners for freedom, 21 Fed. Cas. 1 (4 Cranch C. C. 489), November 1834. " The following questions were submitted to Cranch, Chief Judge, by the attorney of the United States and the marshal: Whether the United States are liable to the marshal for the maintenance of free colored persons committed by justices of the peace as runaways, and discharged on *habeas corpus*; and also for the maintenance of petitioners for freedom, committed by order of the court to attend the trial, etc. . . [5] I am of opinion that the marshal has not a right to include, in his account against the United States, his imprisonment fees for persons committed as runaway servants or slaves under the adopted laws of Maryland.[1] . . The expense of maintaining [petitioners for freedom, if the defendant refuses to give security for their appearance and security] . . is one of the reasonable contingencies accruing in holding the court, and ought to be allowed if the petitioners gain their freedom; otherwise, that expense must be paid by their owners."

Fenwick v. Chapman, 9 Peters 461, January 1835. Will of Frances Edelin, of Maryland, 1825: [467] " after my debts[2] . . are paid, I devise and bequeath as follows. . . negro woman Letty, her daughter Kitty, a mulatto, with her three children, to wit, Eliza, Robert and Kitty Jane, with their future increase, and an old woman named Lucy, I do hereby declare them free at . . my death, and they shall have the right to live

[1] " By the act of Congress of the 27th of February, 1801 (2 Stat. at L. 103), the laws of Maryland, as they then existed, were continued in force in the county of Washington."
[2] Act of Md., 1796, ch. 67, sect. 13.

in . . the back room in the house . . I . . bequeath to my nephew . . [468] To the two old negro women, I give them and bequeath 10 dollars a year to each of them as long as they live; and 10 dollars a year, during two years after my death, . . to mulatto Kitty." [469] "the deceased left real estate to an amount in value more than sufficient to pay her debts, without the sale of the negroes emancipated by the will, . . but not personal estate sufficient." In 1833 the executor, [467] "in virtue of an order of the orphan's court . . to sell all the personal estate" sold the petitioners, Eliza and Robert, to Fenwick, after he had [462] "permitted [them] to go at large as free" "from the time of deceased's death"

Judgment in favor of the petitioners, affirmed: [481] "when a testator manumits his slaves by will . . and it clearly appears to have been his intention that the manumission shall take place at all events; the manifest intention, without express words, to charge the real estate, will charge the real estate for the payment of debts; if there be not personal assets enough, without the manumitted slaves, to pay the debts of the testator. . . [482] when an executor permits manumitted slaves to go at large and free, under a manumission to take effect at the death of the testator, he cannot recall such assent by his own act: nor can it be revoked under the order of an orphan's court in Maryland, for the sale of all the personal estate . . that court not having jurisdiction of the question of manumission." [Wayne, J.]

Thornton v. Davis, 23 Fed. Cas. 1147 (4 Cranch C. C. 500), March 1835. Petition by negro John Thornton for freedom. [1148] "two of the constables . . stated facts implicating the purity of the professional character of Mr. Giberson, one of the counsel of the petitioner in this cause, intimating that he had consented to take $25 for discovering where the petitioner was, so that he might be seized by the constables who were trying to catch him to deliver him up to his master, so that he might carry him away out of the jurisdiction of this court, in violence of the injunction. Whereupon Mr. Key, attorney of the United States, . . moved for a rule on Mr. Giberson to show cause . . why he should not be dismissed from the bar, or be otherwise dealt with as to the court should seem proper." The attachment against Orrine Davis was returned, and the defendant appeared. The court rejected a plea of misnomer in abatement: "The proceeding by petition for freedom is a summary proceeding; it has little or no analogy to an action at common law, and is not subject to the technical rules of pleading. It is a petition by a person *prima facie* incompetent to maintain an action at law. It is framed in the simplest terms; complaining that the petitioner is a freeman, but is held in slavery by the person named, and praying that he may be summoned to answer the petition. The trial of the fact as well as the law is to be by the court, unless either party should apply to the court for the benefit of a trial by jury; . . Here is no original writ . . which is the subject of abatement; . . There can be no personal judgment against the respondent, the judgment of the court only establishes a fact; namely, the freedom or the slavery of the petitioner. . . the court will not suffer the merits of the case to be smothered in the technicalities of special pleading"

Lowe v. Stockton, 15 Fed. Cas. 1017 (4 Cranch C. C. 537), March 1835. " an action upon the case for permitting the plaintiff's slaves to be carried away in the defendant's stage-coach. The slaves were colored persons. A decent, respectable-looking white woman, who gave her name as Powell, came to the stage-coach office of the defendants in the morning of that day, or the day before, and told the office-keeper that she wished to take seats for two of her servants, and that they would be there at the time of the departure of the evening stage-coach; and she paid for their passage. The servants came at the time and said they were the persons for whom Mrs. Powell had paid the passage; and they were permitted to take their seats." [1018] " Verdict for the plaintiff, $200. But a new trial was granted upon new evidence discovered, that the woman, who paid for the seats of the slaves, was not named Powell, but Howard, and was the sister of the plaintiff, and resided with her."

U. S. v. Frye, 25 Fed. Cas. 1222 (4 Cranch C. C. 539), May 1835. Indictment against Henry Frye " a slave for the manslaughter of Robert Jackson. . . [1223] Jackson, the deceased, and one Nightengale, had beaten the prisoner severely on shore, who escaped from them, and fled to his master's boat, which was then in his custody, and under his command, by the authority of his master. They followed him down to the wharf, and Jackson dared him to come on shore, that he might lay his hands on him again. The prisoner refused, and told Jackson to stand off, and not to come on board; and if he did, he would shoot him. The warning and threat by the prisoner were repeated. Jackson said, 'shoot and be damned,' and jumped on board. The prisoner, who was standing with a gun in his hand at his cabin door, about fifteen feet from Jackson when he jumped on board, instantly shot and killed Jackson." On the first trial Frye was found guilty; on the second, the jury could not agree; on the third the prisoner was again " convicted. It being stated . . that the prisoner is a slave, the sentence was, 'that he be burnt in the left hand, and publicly whipped with twenty-five stripes.' " [1]

Taylor v. Buckner, 23 Fed. Cas. 737 (4 Cranch C. C. 540), May 1835. " Petition for freedom by Negro Charles Taylor, and others; six cases; removed from Washington to Alexandria county for a fair trial. The petitioners claim freedom by reason of their importation from Virginia into the county of Washington 'to reside,' contrary to the Maryland act of 1796, c. 67, sect. 1. . . some of the petitioners, namely, Fanny and her children, were the property of the defendant for the life of his wife only."

Held: I. the consent of the reversioner to the importation is not necessary to give freedom to the slaves then imported; II. the question of the intent with which the importation is made is for the jury.

U. S. v. Nelson, 27 Fed. Cas. 86 (4 Cranch C. C. 579), October 1835. " The prisoner [negro Nelson] was convicted of stealing a hair cap, of

[1] See act of Congress, Mar. 3, 1801, supplementary to the act concerning the District of Columbia, sect. 3 (2 Stat. at L. 115), and Act of Va., Dec. 17, 1792, p. 190, ch. 103, sect. 24.

the value of one dollar and twenty-five cents. . . he was a slave, . . The Court . . sentenced the prisoner to be whipped with twenty stripes."

Brent v. Armfield, 4 Fed. Cas. 60 (4 Cranch C. C. 603), October 1835. "The petitioner [Rachel Brent] claimed freedom by having been brought into the county of Washington, D. C., by Mr. Buckner, from Virginia, to reside, or for sale, contrary to the first section of the Maryland act of 1796, c. 67. . . Verdict for the petitioner." "the defendant was not protected under the said 4th section of that act, if the said Ariss Buckner returned and removed his family to Virginia in December, 1830, and left the petitioner hired out in Washington till June, 1832, and he did not attempt to remove her until that time when he sent for her."

U. S. v. Cross, 25 Fed. Cas. 705 (4 Cranch C. C. 603), November 1835. Cross was charged with cruelly beating Milly, the slave of Walker, on the public highway. "The Court instructed the jury that if they should be of opinion . . that the defendant cruelly beat the slave in the public highway, and left her there, exposed to public view, it was an indictable offence."

U. S. v. Davis, 25 Fed. Cas. 775 (4 Cranch C. C. 606), November 1835. Davis was indicted for an assault and battery with intent to kill Shorter, a colored man. A mulatto man, "born of a white woman, and not in a state of servitude by law, was admitted by the court to testify for the defendant, who was a white man."[1]

U. S. v. Brown, 24 Fed. Cas. 1247 (4 Cranch C. C. 607), November 1835. "Indictment [against John Brown, a mulatto] for highway robbery of George Milburne. . . [1248] one Sandy Spriggs, a free mulatto who had been convicted of larceny, and suffered his term of imprisonment and labor in the penitentiary of this district" was offered as a witness, and rejected because "the execution of the sentence . . did not restore his competency. The prisoner was acquitted. The witness, Sandy Spriggs, was afterwards convicted of the same robbery, and sentenced to the penitentiary for four years only; he having probably prevented the other robbers from killing Milburne."

U. S. v. Henning, 26 Fed. Cas. 265, 267 (4 Cranch C. C. 608, 645), November 1835, January 1836. Henning "was convicted[2] . . for attempting to sell a free mulatto boy [Thad Key, bound to service until he was twenty-one years of age] as a slave for life," He brought him on his vessel from Virginia. [273] "From the smallness of the boy he was no use aboard; there was no evidence that there was any obvious purpose of taking him aboard as a hand," The judgment was arrested. Henning was then indicted [268] "under the 17th section of the penitentiary act for the District of Columbia, of the 2d of March, 1831"[3] and was found guilty. [270] "For some time previous to the passing of this act, we know that there were rumors of kidnappers passing through this district from the state of Delaware, and the eastern shore of Maryland, to the

[1] Act of Md., 1717, ch. 13, sect. 2.
[2] "upon an indictment . . contrary to the fifteenth and sixteenth sections of the Maryland act of 1796 (chapter 67)."
[3] 4 Stat. at L. 450.

Southern states, with their booty; and applications have been made, from time to time, to the court and to the judges, to stop them by writs of *habeas corpus,* and injunction, which, when granted, only served to hasten their departure. This statute furnished the ground of issuing a warrant to arrest the parties in the first instance. . . The offence intended to be punished by the 17th section of the act, was the having a free negro in possession with an intention to sell him here or elsewhere, provided that intention should be accompanied here by the overt act or acts of coercion or control, mentioned in the statute." [Cranch, C. J.] [274] "The prisoner was sentenced to one year's imprisonment and labor in the penitentiary."

U. S. v. Spalding, 27 Fed. Cas. 1277 (4 Cranch C. C. 616), November 1835. "Indictment for a conspiracy to cheat one Washington Roby by selling him a free negro as a slave for life. . . defendants were acquitted."

U. S. v. Larkin, 26 Fed. Cas. 866 (4 Cranch C. C. 617), November 1835. The prisoner, indicted for highway robbery of Milburn, "replied that Milburn had no witnesses but colored persons, and they were not good witnesses against a white man."

U. S. v. Sims, 27 Fed. Cas. 1080 (4 Cranch C. C. 618), November 1835. "Indictment [against the negro Henry Sims] for highway robbery of one Latimer, by snatching his watch from his side pocket, . . The jury found the prisoner guilty of simple larceny, and that he was a slave; whereupon the Court . . ordered him to be taken before a justice of the peace, to be dealt with according to law."

U. S. v. Soper, 27 Fed. Cas. 1260 (4 Cranch C. C. 623), November 1835. "an indictment for conspiracy to extort money from one William Hickey, by seizing two of his slaves, and confining them in Maryland, as runaways, so that the defendants might claim the reward allowed by the laws of Maryland for taking up runaway slaves."

Fenwick v. Tooker, 8 Fed. Cas. 1146 (4 Cranch C. C. 641), November 1835. Petition for freedom. "The mother of the petitioner was the slave . . of Robert Patton, . . an inhabitant of . . Alexandria county, in the year 1817; . . in that year she was sold . . to Mr. Tennison, an inhabitant of Washington county, who took her immediately to Washington county, to reside therein, and that the petitioner was afterwards born in Washington. Held: Mr. Key, for petitioner, contended that the power of removal of slaves from Alexandria to Washington, under the act of 1812,[1] was confined to inhabitants of Alexandria owning slaves therein; and that . . an inhabitant of Washington [could not] bring slaves from Alexandria to Washington. . . Verdict for the petitioner."

Lee v. Lee,[2] 15 Fed. Cas. 209 (4 Cranch C. C. 643), November 1835. "Upon the trial of this cause on the *venire de novo*" the court was [210] "of opinion that an inhabitant of Washington county could not, under

[1] 2 Stat. at L. 755.
[2] See same *v.* same, p. 188, *supra.*

the ninth section of the act of congress of the 24th of June, 1812 [1] remove his slaves from Alexandria county to Washington county; he not being an inhabitant of the county in which the slaves were, and possessing them therein. The verdict was for the defendant; and the court refused to grant a new trial,"

U. S. v. Beddo, 24 Fed. Cas. 1061 (4 Cranch C. C. 664), November 1835. "The defendants were convicted of a cheat, by passing and imposing a paper having the appearance of a bank-note, upon a free negro, born of a free colored mother. The only witnesses for the prosecution were free negroes and mulattoes, born of free colored mothers. The defendants were free mulattoes. . . Beddo, one of the defendants, was a mulatto, born of a white woman, and not in a state of servitude, by law." New trial granted. But [1062] "the attorney for the United States, finding that there were no witnesses for the prosecution other than free negroes and mulattoes born of colored women, ordered a *nolle prosequi* to be entered with the leave of the court." [2]

Wallingsford v. Allen, 10 Peters 583, January 1836. [584] "The petitioner [for freedom] produced a regular deed of manumission, duly recorded, executed by Rachel Wallingsford, . . dated the 8th of September, 1826; by which, and for divers . . considerations, and in consideration of the sum of 150 dollars paid to her, she released the petitioner and her children from slavery; the petitioner being at that time nineteen years old, and her two female children of the respective ages of three years and five months."

Judgment for the petitioner, affirmed: [592] "the terms of the act of Maryland,[3] and the policy intended by it, were meant to prevent the manumission of slaves, who, from infancy, age, or decrepitude, would become burthensome to the community at the time the deed of manumission should take effect: and to such as were over the age, after which manumission is prohibited. But the slave manumitted must either be positively in the latter predicament; or be so decrepit, if under the age of forty-five; and if neither one nor the other, and being in infancy, it must stand so unrelated to any other free person, coloured or white, that it can have no claim, natural or artificial, to support from any one; and must, therefore, be at once a charge upon the charity of the community, or a charge upon its poor laws. It would be an unreasonable restraint upon the privileges of manumission, as it is granted in this act, if it were interpreted to exclude the manumission of mother and an infant child, the former being of healthy constitution and able to maintain it, as of other children who, in the natural progress of human life, would be able, in a few years, to maintain themselves by labour, and who would find in their adolescence, persons who would gladly maintain them for the services they could render. If this construction of the act could not prevail, there can be no fixed age in childhood when manumission can take effect; and the act

[1] 2 Stat. at L. 755.
[2] See U. S. *v.* Beddo, p. 200, *infra*.
[3] Act of Md., 1796, ch. 67, sect. 13.

would be made to operate differently upon persons by no certain rule. The legislature having laid down the age after which manumission shall not be made, a strong presumption is raised that it did not mean to exclude all infants absolutely from the benefits of the act, or it would have said so in terms; or have fixed an age when, in childhood, manumission should be allowed." [Wayne, J.]

U. S. v. Bowen, 24 Fed. Cas. 1207 (4 Cranch C. C. 604), February 1836. "Indictment of a slave [John Arthur Bowen] for an attempt to murder his mistress [Mrs. Anna Maria Thornton]; and for burglary. . . [1208] Mr. Key . . prayed the jury: (1) 'That if they believe from the evidence that the prisoner took the axe, and entered . . his mistress's room, with the intent to murder her, and was prevented by the awakening of his mistress and her servant, and by their noise, and his being seized and forced out of the room, from executing his intention, then he is guilty under the act of assembly.'[1] (2) 'That if the jury believe from the evidence that the prisoner was drunk . . it does not excuse' . . Which instructions the court gave, but added . . that the intoxication . . is a fact proper to be considered by the jury in forming their opinion of the intent . . The prisoner was convicted, and . . sentenced to be hanged . . but he was reprieved from time to time and finally pardoned at the instance of his mistress."

Smith v. Elwood, 22 Fred. Cas. 532 (4 Cranch C. C. 670), March 1836. "Henrietta Smith, a colored child, between nine and ten years of age, by . . Duncausen her next friend, filed her petition stating that she had no parent but her mother, a free colored woman of bad character, and unable to maintain the petitioner; that . . Duncausen . . is willing to keep her as an apprentice. That the mother, to prevent the child being bound to the said Duncausen, has recently gone before two justices of the peace and entered into some writings purporting to be an indenture of apprenticeship, binding the child to . . [533] Elwood . . That the child was not brought before the said justices" "The Court ordered the child to be discharged from the indenture, and to be bound out to Mr. Duncausen."

U. S. v. Crandell, 25 Fed. Cas. 684 (4 Cranch C. C. 683), March 1836. Indictment against Reuben Crandell, a member of the Anti-Slavery Society, [685] "for publishing libels[2] tending to excite sedition among the slaves and free colored persons in this district." One of the witnesses against him was [689] "John Colclazer, a colored man, born of a white woman. . . Verdict, not guilty."

Manning v. Cox, 16 Fed. Cas. 644 (4 Cranch C. C. 693), March 1836. [645] "the wife of the defendant's slave, was the slave of the plaintiff, and that he was permitted from time to time, to visit his wife, with the

[1] Act of Md., 1751, ch. 14, sect. 2.

[2] "Reply to Mr. Gurley's Letter;" "Three Months' Residence, or Seven Weeks on a Sugar Plantation, by Henry Whitby;" plan of emancipation; twelve other libels [686] "in which were represented . . 'several disgusting . . pictures of white men in the act of inflicting, with whips, cruel . . beatings and stripes upon young . . black children;'"

consent of the plaintiff and defendant. That on one of these visits he was taken sick [with the small pox], and after lingering three weeks, died at the plaintiff's house. That the defendant, as soon as he heard of his slave's illness, offered to remove him to his own house, but the defendant [plaintiff] would not consent to it." Held: the plaintiff is not entitled to recover for her services in nursing the defendant's slave.

Harris v. Firth, 11 Fed. Cas. 625 (4 Cranch C. C. 710), March 1836. The petitioner was brought from Virginia to Washington by his master, Wilkes, who " was at the head of a company of sportsmen, (gamblers,) . . he had hired a house in Washington . . for three years, and afterwards. . . That Wilkes was considered as a citizen of the world, . . That shortly before his death he intended, when he had made money enough, to go to the West " The court instructed the jury that if they found " that Wilkes removed to this county with an intention of remaining here for an indefinite time, and as a place of present domicil, this was his place of domicil, . . [626] Verdict for the petitioner." [1]

Bank v. Smith, 2 Fed. Cas. 736 (4 Cranch C. C. 712), March 1836. " 1830, . . securities for the said rent; to wit, a deed . . of five slaves, and a deed . . for three slaves, each of which deeds authorized . . Smith to sell the said slaves . . in case of the non-payment of the rent, when due."

U. S. v. Fenwick, 25 Fed. Cas. 1062 (4 Cranch C. C. 675), April 1836. " Indictment for a riot. . . defendants [to the number of nearly one hundred, armed with clubs] . . surrounded, and entered the house of Snow and Walker, and destroyed their goods," Their purpose was to seize [1063] " Snow, on account of insulting expressions which they had heard he had used," " Walker, a colored man, and partner of Snow, had . . said that the sign was cut down at his (Walker's) request, to prevent further excitement." [1064] " The jury found six of the defendants guilty, and recommended them to the mercy of the court." They were " sentenced to six months' imprisonment, and to pay a fine of fifty dollars and costs."

U. S. v. Jeffers, 26 Fed. Cas. 596 (4 Cranch C. C. 704), June 1836. [597] "A colored lad, serving for hire in the family of Mr. Bankhead, his Britannic majesty's secretary of legation, was this morning taken away from the house of that gentleman by a constable of the name of Jeffers, . . upon the plea of conveying him to his master, Mr. King from Alabama. No previous intimation of a wish to remove the lad from Mr. Bankhead's service had been given to him " Held: Jeffers " was guilty of a violation of the privilege of his Britannic majesty's envoy " and removed from his office of constable.

U. S. v. Carter, 25 Fed. Cas. 314 (4 Cranch C. C. 732), October 1836. Held: an indictment at common law, in the county of Alexandria, will lie against a free negro or mulatto for assault and battery upon a white man; notwithstanding the Virginia statute of December 17, 1792, sect. 17.

[1] Act of Md., 1796, ch. 67.

Carey v. Washington, 5 Fed. Cas. 62 (5 Cranch C. C. 13), November 1836. Carey "was residing in . . Washington . . and had complied with the requisitions of the by-law of 1827, respecting the admission and residence of free colored persons. That he . . sold perfumery, and paid for a licence therefor, previous to . . 29th of October, 1836, . . he applied to the mayor . . for a renewal . . who refused . . under the ordinance of the 29th of October, 1836.[1] That he continued to . . sell perfumery after the expiration of his said license. The justice rendered judgment for a fine of 25 dollars," Judgment reversed: [66] "Although free colored persons have not the same political rights which are enjoyed by free white persons, yet they have the same civil rights, except so far as they are abridged by the general law of the land. Among those civil rights, is the right to exercise any lawful and harmless trade, business, or occupation;" [Cranch, C. J.]

U. S. v. West, 28 Fed. Cas. 529 (5 Cranch C. C. 35), November 1836. "A colored woman was offered as a witness for the United States. . . Eckloff testified that she had lived in his family as a free woman; that he had known her about twelve months; and that she was generally reputed to be, and passed as a free woman." There was other similar evidence. Held: "this evidence was sufficient to rebut the presumption arising from color,"

U. S. v. Prior, 27 Fed. Cas. 624 (5 Cranch C. C. 37), November 1836. Indictment of negro Ralph Prior "for stealing the goods of one Eckloff. . . for receiving them, knowing them to be stolen. . . [625] Cranch, C. J., said . . that the whole confession must be given in evidence to the jury; . . Verdict, not guilty."

U. S. v. Vinsent, 28 Fed. Cas. 379 (5 Cranch C. C. 38), November 1836. "Indictment for giving a pass to one of Mr. Custiss's slaves, 'being a paper writing, purporting to be a certificate from the president of the board of aldermen, and acting mayor of the city of New York, under seal of the mayoralty of said city of New York, that the bearer thereof, Alexander Vinsent, was a free person.'" Held: "not such a 'pass' as is contemplated by the 19th section" of the Maryland act of 1796, chapter 67.

U. S. v. Herbert, 26 Fed. Cas. 284 (5 Cranch C. C. 87), November 1836. James Herbert, a negro, was indicted for assault and battery with intent to kill Sybert. He was found guilty, and sentenced to the penitentiary for two years and a half.

Hill v. Washington, 12 Fed. Cas. 181 (5 Cranch C. C. 114), March 1837. Three judgments had been rendered against Ann A. Hill "for the penalty of $20 in each case, for not causing three slaves to be recorded on the books of the corporation, which she had brought into the city to reside; and for not depositing with the register an affidavit that they were bona fide her property, within twenty days after bringing them in,"[2] Held: the by-law is warranted by the charter.

[1] Sect. 3.
[2] By-law of the city of Washington, Apr. 5, 1823, ch. 80, sect. 5.

Nevett v. Berry, 18 Fed. Cas. 27 (5 Cranch C. C. 391), March 1837. Forty-nine slaves " and all their children under three years and six months of age " were sold in 1835 to Nevett, a Mississippi planter, for $18,775. " while the negroes were yet in the possession of the defendant, he applied to the plaintiff to withdraw from the said sale several of the said negroes," And though the plaintiff refused, he retained some of them. [28] " Verdict for the plaintiff, $750."

Moody v. Fuller, 17 Fed. Cas. 658 (5 Cranch C. C. 303), March 1837. Petition for freedom. Fuller, an officer of the United States, residing for several years at Fortress Monroe, brought the negress, Sally Moody, " into the District of Columbia, with his family, when he removed here to reside; " and sold her within three years. Held: the petitioner became free by such importation and sale.

U. S. v. Farrell, 25 Fed. Cas. 1051 (5 Cranch C. C. 311), May 1837. Indictment against Farrell [1] " for forging a certificate of freedom for Mr. T. F. Mason's slave Sandy. The slave Sandy was offered as a witness for the United States." The court permitted him to be sworn and examined.[2] " Verdict, guilty. Sentenced to the penitentiary for four years," " Note. The prisoner was again convicted of a like offence, by forging a pass for negro Sam, another slave of Mr. Mason, at October term, 1837," He was sentenced to three years additional.

Bank v. Lee, 2 Fed. Cas. 702 (5 Cranch C. C. 319), November 1837. [704] " her husband sold George, and substituted Peter; and she emancipated Peter . . her husband sold Henry, Milly, Letty, and her two sons,"

Richardson's Case, 20 Fed. Cas. 703 (5 Cranch C. C. 338), November 1837. " the prisoner, William Richardson, a colored man, was committed by a warrant, issued by a justice of the peace, . . stating that whereas, F. B., a constable, had . . brought before him, . . Richardson, ' charged with being a runaway; and whereas no proof has been adduced before me that the said Richardson is not a runaway; you are hereby commanded to receive into your jail . . Richardson and him safe keep " Counsel for the prisoner " suggested that the old statutes of Maryland were not applicable to this part of the district, nor to the present state of society " and discussed the laws of 1715, 1719 and 1792. There was evidence [705] " which satisfied the court that the prisoner was born free in New Brunswick." Prisoner discharged.

Prather v. Burgess, 19 Fed. Cas. 1243 (5 Cranch C. C. 376), November 1837. " he was frequently heard to say that the slaves were the property of his wife, and he wished her to sell them, and sometimes drove them away from his plantation; "

U. S. v. Beddo, 24 Fed. Cas. 1063 (5 Cranch C. C. 378), November 1837. " Indictment for larceny. The defendant was a colored man, born of a white woman. The Court rejected as witnesses, free colored persons, not born of white mothers. Verdict, not guilty."

[1] Evidently a negro or mulatto.
[2] Act of Va., Dec. 17, 1792, sect. 5.

Washington v. Lasky, 29 Fed. Cas. 353 (5 Cranch C. C. 381), November 1837. Held: the corporation, under its charter has power to prohibit keepers of ordinaries or taverns from selling spirituous liquors "on Sundays, and other days between sunset and sunrise" "to colored persons of all descriptions, free or bond, young or old,"

U. S. v. Pearl, 27 Fed. Cas. 484 (5 Cranch C. C. 392), March 1838. "Indictment, under the penitentiary act[1] (section 9) [against negro Frank Pearl] for stealing" a silk reticule, pencil, and bank notes left by mistake in his hackney-coach. [485] "Verdict, 'Guilty.' There was a motion in arrest of judgment; but before it was argued, the president pardoned the defendant, and he died."

Bell v. McCormick, 3 Fed. Cas. 107 (5 Cranch C. C. 398), March 1838. Will of Benjamin Prather, Maryland, 1836: [108] "My will is, that my two servants, Robert and Sarah, immediately after my decease, be set at liberty, and forever free from slavery, and that my executor pay, out of my estate, to the said Robert, the sum of fifty dollars, and to the said Sarah, the sum of twenty-five dollars. Item, I will all the rest of my negroes, namely, Bacchus, Joseph, Bill, Dorsey, Hanson, Ann, John, Martha and Rachel, to be sold under the following provisions: that is, none of the said negroes shall be sold to any person residing out of Prince George's county, without their own consent; and in all cases they shall have the liberty of choosing their masters." To six of the last mentioned slaves, he bequeathed twenty-five dollars each. "The present suit was brought by Bacchus and Joseph, . . the testator left assets, sufficient to pay his debts, without resort to a sale of the negroes, and to leave a *residuum*; . . the petitioners had demanded their legacies . . of the executor, who refused to pay them." Counsel for the petitioners "contended that a legacy to a slave is an implied emancipation,"

Held: "the petitioners were not entitled to freedom under the will. That an implied emancipation cannot be inferred in direct opposition to the express order of the testator to his executor to sell them."

Coots v. Morton, 6 Fed. Cas. 496 (5 Cranch C. C. 409), March 1838. Petition for freedom under the will of Mary Morton: "I will that George, if he behaves well until the year 1837, and continues to hire for good wages, shall, at the end of that year, be free." George ran away and "the defendant had to expend two hundred dollars to get him back again." Verdict for the petitioner.

Johnson v. Washington, 13 Fed. Cas. 876 (5 Cranch C. C. 434), March 1838. A justice of the peace had rendered judgment against a negress "for a fine for keeping a tavern without a license. . . The Court . . was of opinion that the corporation has a discretion to prohibit the granting of tavern licenses to colored persons."

U. S. v. Beerman, 24 Fed. Cas. 1065 (5 Cranch C. C. 412), August 1838. [1068] "At the last spring term in Alexandria, a woman (colored) . . was charged . . with stealing two articles [garments] belonging to

[1] 4 Stat. at L. 448.

two boys . . at Holbrook's school, both together of the value of nine dollars. . . sentenced . . to three years' confinement in the penitentiary;"

Fenwick v. Grimes, 8 Fed. Cas. 1142, 1144 (5 Cranch C. C. 439, 603), November 1838, November 1839. Fenwick owned a "valuable woman slave, named Henny, who had been brought up in the plaintiff's family and service, but for whose services he had no further use, and was willing to dispose of said woman slave for a sum far less than her real value to a master who resided and would keep her in the neighborhood, and would engage that she would not be sold away to the southern negro-traders" Grimes bought her, on these terms, for four hundred dollars, her real value being six hundred dollars; and sold her to a negro-trader who carried her out of the District. Grimes claimed that he [1143] "bought the woman for his own use, . . and was afterwards persuaded by his friend that she was unfit for his use, and that he ought to sell her as aforesaid," [1145] "a verdict for the plaintiff . . for $150 damages,"

Jennings v. Washington, 13 Fed. Cas. 547 (5 Cranch C. C. 512), November 1838. "Appeal from the judgment of a justice of the peace against [Mary Jennings] . . a free mulatto, for the penalty of $10, for being out after ten o'clock at night, contrary to a by-law of the corporation. . . Judgment affirmed, with costs." "the by-law . . was justified by the clause in the charter which gives the corporation power 'to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes.'"

Bank of the U. S. v. Lee, 13 Peters 107, January 1839. In 1809 Richard Bland Lee of Virginia conveyed to trustees for the use of his wife, during her life, [113] "the following slaves, . . John and his wife Alice, and their [eight] children . .; Ludwell, and his wife Nancy, and their [five] children . .; Henny and her child Eleanor; Rachel and her child Rachel; two sisters . . and their [two] brothers . .; George, (a blacksmith,) Harry, (a carpenter,) Harry, (a wagoner,) Tom, (a carter,) Thornton, (a cook,) Samuel, (a smith,) and John, (a ploughboy,) . . It was further agreed . . that the said Richard should be authorized . . to sell . . any part of the said slaves . . with the consent of a majority of the . . trustees, . . [116] most of the slaves have been sold to supply his improvidence and necessities:"

Thomas v. Mackall, 23 Fed. Cas. 961 (5 Cranch C. C. 536), March 1839. "Bill in equity to restrain the defendant from removing the plaintiff's female slave from the District of Columbia; the slave having been sold by the plaintiff to the defendant for a term of years only, after which she was to be free, although not yet manumitted, and having two or three years yet to serve the defendant; the complainant having the reversionary right to the slave in himself, for the purpose of manumitting her."

Kennedy v. Purnell, 14 Fed. Cas. 318 (5 Cranch C. C. 552), March 1839. The petitioner for freedom was brought from Maryland into Virginia by a citizen of Maryland, who never abandoned his residence in Maryland, and was kept in Virginia two years. Verdict for the defendant.[1]

[1] Act of Va., Dec. 17, 1792, sect. 2.

Nichols v. Burch, 18 Fed. Cas. 187 (5 Cranch C. C. 553), March 1839. Held: "the corporation [of Washington] had power to pass the by-law of 31st May, 1827, sect. 6, to prevent free persons of color from being out after 10 o'clock p. m." without a pass, etc.

Corcoran v. Jones, 6 Fed. Cas. 544 (5 Cranch C. C. 607), November 1839. The plaintiffs offered two negro girls [545] "of the value of $2,000, for sale at public auction to the highest bidder; upon condition, however, that the said slaves, nor either of them, should be sold to any person south of the Potomac out of the District of Columbia, nor removed out of the said District south of the Potomac; but, in case of their being so removed, the said slaves should be immediately entitled to their freedom. That the defendant attended the said public sale, and bid for and purchased the said slaves, subject to the condition aforesaid, for the sum of $650 [$660], . . Yet, the said defendant . . hath knowingly sold the said several negro girls . . as slaves for life, to persons south of the Potomac out of the District of Columbia, and hath removed the said negro girls . . to places remote therefrom, and unknown to the said plaintiffs." Judgment for the defendant.

U. S. v. Davis, 25 Fed. Cas. 775 (5 Cranch C. C. 622), January 1840. "*Habeas corpus ad subjiciendum,* directed to Thomas N. Davis, commanding him to have before the court the bodies of Israel Brinkley, Emanuel Price, and Maria Course, persons of color, with the cause of their detention. . . Davis stated upon oath, that he purchased the three negroes publicly, in the bar-room of Thomas Lloyd's tavern, in the city of Washington, as slaves for life, from one Joseph Woodall, . . that he paid for them the sum of $1,200, . . the said individuals were removed . . beyond the District of Columbia, . . testimony tended to show that Davis had removed the negroes, because he suspected that they would apply for a writ of *habeas corpus*." As Davis refused to produce the negroes, he was committed to the custody of the marshal. Four days later he produced Emanuel and Maria. ("The negro Israel Brinkley had run away, and had been taken up an[d] lodged in jail in Baltimore.") They filed their petition for freedom against Davis; and as he refused [776] "to enter into recognizance, in the sum of $1,000, that he would not remove the said negroes out of the jurisdiction of this court, until their right to freedom shall be tried," the negroes were committed to the marshal for safe-keeping.[1] "These negroes afterwards established their right to freedom, and were discharged; their jail fees being charged to the United States,"

Newton v. Carbery, 18 Fed. Cas. 130 (5 Cranch C. C. 632), March 1840. Will of Eloysa Mattingly, dated 1838: [131] "I will . . that my negro woman Matilda Gordon, and her child Mary Ann Elizabeth, shall be free at my death."

Jones v. U. S., 13 Fed. Cas. 1035 (5 Cranch C. C. 647), March 1840. William H. Brewster, Lucretia Clarke, alias Letty Clarke, free negress,

[1] See Laws of Md., 1796, ch. 43, sect. 5, ch. 67.

and Harriet Jones, free negress, were indicted for obtaining money under false pretences. They pretended to Williams that Letty was the slave of Brewster, and sold her to him for three hundred dollars. [1039] "Judgment reversed; and ordered to be arrested."

Graham v. Alexander, 10 Fed. Cas. 916 (5 Cranch C. C. 663), March 1840. "the petitioner is the son of Milly, . . the slave of Miss Brown, who . . about 1813, . . brought Milly from Washington county, where she had been living hired out by her mistress for one or two years, to [her sister's] Mrs. Alexander's, in Alexandria county. . . the petitioner was born afterwards, . . Miss Brown . . sold Milly and her two children to Mrs. Alexander; she to be free at thirty-one, and her children then born, and those afterwards to be born, at the same age. . . Miss Brown died in 1825, making her last will . . 'that the time of the . . children of Milly, shall be purchased by my executor, and that they shall be forthwith emancipated by him; and I . . authorize him to make such purchase out of the estate I shall leave.' . . the petitioner will be . . 1839, twenty-six years of age. . . Milly . . is free now;"

Held: [917] "the petitioner will be entitled to his freedom . . 1844, and not before; . . ordered that the . . defendant . . shall not be permitted to take the . . petitioner into his possession, . . until he . . shall have given bond . . with condition to be void, if he shall have the . . petitioner forthcoming . . 1844; . . provided, however, that the . . petitioner . . shall have first given security . . conditioned that he . . shall continue faithfully in the service of . . Alexander . . until . . 1844."

Bell v. Greenfield, 3 Fed. Cas. 103 (5 Cranch C. C. 669), March 1840. Ann Bell, a negro slave, and her children "claimed their freedom under a paper purporting to be the last will . . of Gabriel P. T. Greenfield, of Maryland. . . probate has been conclusively refused by the highest court in Maryland. . . [104] The Court (Thruston, J. contra) refused to permit the paper to be read in evidence . . as a will" or "as an instrument of manumission,"[1]

Beckley v. United States, 3 Fed. Cas. 28 (1 Hayw. and H. 88), June 1842. "Jesse Beckley, the younger, a free negro," was indicted for stealing one hundred dollars and fifteen cents in 1841. [29] "Upon the trial of this cause the United States offered a free colored witness to give testimony in the same, to which the defendant objected, and offered evidence tending to prove that the mother of the defendant was a white woman, but his father was a black man. The court . . permitted the witness to be sworn;" The jury "returned a verdict of guilty. The judgment of the court was that he suffer imprisonment and labor in the penitentiary for the period of two years." Affirmed.

Williams v. Ash, 1 Howard 1, January 1843. Will of Maria Ann T. Greenfield, 1824: [2] "I . . bequeath to my nephew, Gerard T. Greenfield, all my negro slaves, . . James Ash, . . provided he shall not carry them out of the state of Maryland, or sell them to any one; in either of

[1] Under Act of 1796, ch. 67, sect. 29.

which events, I will and desire the said negroes to be free for life." G. T. Greenfield sold James Ash to Williams in 1839. Soon after Ash "presented a petition, stating that he was entitled to his freedom, and that he is . . confined in the private jail of . . Williams." Judgment for the plaintiff [Ash] affirmed: the bequest of the slave to her nephew, under the restrictions imposed by the will, was not [13] "a restraint on alienation inconsistent with the right of property bequeathed by the will. . . [14] the bequest . . was a conditional limitation of freedom to the petitioner, and . . took effect the moment he was sold." [Taney, C. J.]

Brown v. Robertson, 4 Fed. Cas. 426 (Hayw. and H. 134), April 1843. Action of trespass *vi et armis*. Brown, a free negro, "in the employment of Hon. Daniel Webster, then a senator of congress," was arrested by Robertson, a police officer, and imprisoned "in the watch-house for being out after ten o'clock at night, contrary to the provisions of the by-law of the corporation of the city of Washington, approved May 31, 1827." [1] No evidence was given "that he exhibited the evidence of his exemption from its general provisions to the officer making the arrest, . . Verdict and judgment for defendant."

Cassedy v. Williams, 5 Fed. Cas. 272 (Hayw. and H. 151), August 1843. Williams "purchased, on the 9th of October, 1840, a negro boy . . at Leesburg, Va., for $600,"

Rhodes v. Bell, 2 Howard 397, January 1844. "petition for freedom filed by Bell." Before 1837 he was the slave of "Hoff, a resident of Alexandria county, in the District of Columbia; . . in . . 1837 . . Hoff . . did sell . . petitioner to one Little, . . [398] a resident of Washington county, . . and the petitioner was immediately removed by said Little to Washington county . . Little shortly afterwards . . sold the petitioner . . at the time of the sale . . the petitioner was more than forty-five years of age, . . and is now fifty-nine or sixty years old."

Judgment in favor of the petitioner, affirmed: [404] "the question . . depends exclusively on the laws" of Maryland in regard to the importation of slaves.[2] [405] "The counties of Washington and Alexandria, excepting the modification made by the act of 1812, are as foreign to each other, as regards the importation of slaves, as are the states of Virginia and Maryland.[3] . . Slaves brought into the state of Maryland, in violation of the law, are declared to be free without reference to their age." [4] [McLean, J.]

Adams v. Roberts, 2 Howard 486, January 1844. [487] "On the 30th of December, 1801, Summers executed a deed of manumission of several negroes, and amongst them, Sarah, then about eighteen years old, to be free on the 1st day of January, 1814; and . . that the children of Sarah should be free at the age of twenty-five years." Her daughter Julia

[1] Rothwell's Laws 196.
[2] Act of November 1796. 2 Maxcy's Laws 351.
[3] Act of Congress, Feb. 17, 1801.
[4] Although the Maryland law prohibits "the owner of a slave from manumitting him, if he be over forty-five years of age;"

Roberts, the plaintiff, [493] "was twenty-eight years old when the trial took place, in May, 1842." Judgment of the court below, in favor of Julia's freedom, affirmed.

U. S. v. Gassaway, 25 Fed. Cas. 1263 (1 Hayw. and H. 174), March 1844. Indictment [1] against Samuel Gassaway, a slave. On November 26, 1842 he broke into a storehouse and stole "three pair of boots of the value of $10.50 . . and . . one quarter box of segars, of the value of four dollars and fifty cents," He was found guilty.

Fletcher v. U. S., 9 Fed. Cas. 274 (1 Hayw. and H. 186), June 1844. Henry Fletcher, a free negro, "was indicted for an assault and battery by shooting a pistol with intent to kill Elizabeth Fletcher, and was convicted."

Miller v. Herbert, 5 Howard 72, January 1847. Betsy [74] "about forty-two years of age, and . . Caroline Herbert about seventeen" [72] "claimed a right to their freedom, under a deed of manumission, executed to them . . 1842, by their owner, George Miller, . . an inhabitant of Washington county," He sent for a justice of the peace and two witnesses, who came to his house; and he executed the instrument [73] "then and there, in the presence of the said witnesses, . . and did acknowledge the same before the said justice of the peace; but the said witnesses neglected to sign, or did not understand that they were called upon to sign, . . Miller retained the said paper-writing . . until some short time before his death, when he gave it to your petitioners, with instructions to place it in the hands and follow the directions of Mr. John McLelland, of this city; . . [75] The jury, under the instructions given by the court, found a verdict for the petitioners, viz. that they were free." Judgment reversed and the cause remanded: [82] "this is a question of Maryland law, . . the recording of the deed of manumission . . within the time prescribed by the statute of 1796,[2] was an indispensable prerequisite to confer any rights on the petitioners" [Daniel, J.]

Drayton v. U. S., 7 Fed. Cas. 1063 (1 Hayw. and H. 369), February 1849. Drayton was [1065] "convicted of stealing two slaves," [3] Judgment reversed and cause remanded: [1068] "the court below erred . . In refusing to give the instructions prayed by the prisoner" [1067] "That if the jury find . . that the two Slaves . . were runaways and that the prisoner, having the control of the schooner *Pearl*, . . did receive the said runaways on board . . with intent to transport them beyond the limits of the county of Washington, in the end that they should escape from their owners and go to a state where slavery does not exist, and did in fact so transport them . . then the offence . . is that which is provided for in the act . . of Maryland, 1796, c. 67, sect. 19, and is not larceny."

Wilkinson v. Williams, 29 Fed. Cas. 1270 (2 Hayw. and H. 1), January 1850. Wilkinson received $600 in notes for a negro man, in 1840. [1271] "Rodbird . . testified that during the years 1839 and 1840 he was em-

[1] Under Act of Md., July 1729, ch. 4, sect. 3.
[2] "within six months from the date of such instrument of writing." Ch. 67, sect. 29.
[3] Act of Md., 1737, ch. 2, sect. 4.

ployed by the defendant to purchase negroes for him in . . Maryland and Virginia; . . that the business . . of the defendant was a trader in negroes; that witness paid for the negroes in the identical money placed in his hands by the defendant, . . 'Received of Wm. H. Williams ten hundred dollars, to be laid out in negroes, or returned when wanted. June 16th, 1839.' "

Ennis v. Smith, 14 Howard 400, December 1852. See Armstrong *v.* Lear, p. 178, *supra.*

Hickerson v. U. S., 30 Fed. Cas. 1087 (2 Hayw. and H. 228), December 1856. " Indictment for an assault on a slave." James, " a slave of Mary A. Dodson, . . was hired to Mr. Burch, the keeper of a livery stable, and that the defendant was the manager for said Burch, with authority from him to correct and manage his servants; " He whipped James in the stable. The Court instructed the jury: [1088] " It must amount, and you must believe that it was a nuisance, for a technical assault and battery on a slave is not indictable. A master or hirer of a slave, or his manager, has a right to correct a slave that belongs to him, or to whose services he is entitled by hiring, but if he does so in a cruel or inhuman manner in such a place, . . as to be an annoyance or nuisance to the citizens, whose pleasure or business carry them near the scene of the infliction, he is indictable. The question of nuisance, or no nuisance, is one of fact exclusively for the jury to decide." " Judgment of criminal court affirmed."

Pemberton v. Lockett, 21 Howard 257, December 1858. [262] " The claims . . originated as far back as . . 1841, in consequence of the unwarrantable interference of the public authorities at Nassau, in the island of New Providence, one of the Bahama Islands, belonging to Great Britain, and liberating a cargo of slaves, who were on a voyage from Virginia to New Orleans, and who had mutinied, overcome the officers, and carried the vessel into that port. The persons interested in the slaves, of whom they were deprived by this interference, immediately appealed to their own Government for redress. A correspondence was opened between this Government and Great Britain . . which continued down to the time of the convention . . of the 8th of February, 1853. . . a board of commissioners, one to be named by each Government, and the two to appoint an umpire . . sat in . . London . . the umpire allowed to the insurance company [which had been subrogated to the rights of one of the claimants for compensation against Great Britain, in the case of the brig *Creole*] $28,460. . . [265] there were six separate claimants, besides Pemberton [liquidator of the Merchants' Insurance Company, in the city of New Orleans], for compensation arising out of the case of the *Creole*, . . And there were, also, the cases of the brig *Enterprise* and schooner *Hermosa,* involving principles similar to those upon which the reclamation depended in the case of the *Creole.*"

U. S. v. Merryman, 26 Fed. Cas. 1240 (2 Hayw. and H. 337), February 1860. [1241] " Sweggert sent a cart to a colored man named Rogers to be mended. . . Rogers would not give it up, alleging it was not paid for, and took the screws (nuts) from the axle . . Merryman [a constable]

. . decided that that was a felony; . . Sweggert made oath to the search warrant, . . Merryman proceeded to Rogers' shop, broke it open, . . and took the cart [but] . . did not . . 'return the body' of Rogers, . . simply using a criminal process . . for the purpose of taking unlawful possession . . of property which Rogers held lawfully as a pledge for a debt. The Court . . remarked that such a proceeding . . was a high-handed wrong, . . The clerk was then ordered to dismiss the defendant from the office of county constable, and take away his commission."

Vigel v. Naylor, 24 Howard 208, December 1860. "a petition for freedom filed by Susan Vigel," "she offered in evidence the will of John B. Kirby, by which all his slaves over thirty-five years of age were emancipated; and all those under that age were to be emancipated—the males at thirty-five, and the females at thirty years of age. This was allowed by an act . . of Maryland of 1796, ch. 67, sec. 13. A witness testified . . 'that a few days after the death of Kirby, . . 1828, George Naylor brought to his house . . the petitioner, her mother, and her brother, and her sister; and . . Naylor stated . . that the had brought said negroes from the residence of said Kirby; and that the petitioner was then between six and eight years of age.' The petitioner then offered to prove that her brother Richard, and her mother Sarah, and her sister Eliza, had obtained their freedom under the will of Kirby; . . Sarah . . and Eliza . . by suits brought against George Naylor, . . in 1838; and . . in 1842. . . that it was very unusual for children of the age of the petitioner at the time of Kirby's death to be separated from their parents; but the court excluded the testimony offered from the jury. . . [214] judgment of the Circuit Court . . reversed, and the cause remanded for another trial."

U. S. v. Copeland, 25 Fed. Cas. 646 (2 Hayw. and H. 402), May 1862. Petition for a writ of *habeas corpus* for the discharge of the fugitive, William Copeland. Refused. Held: the fugitive slave law of 1850[1] is as applicable to this District as to any of the states.

Reed v. Campbell, 20 Fed. Cas. 422 (2 Hayw. and H. 417), October 1862. "the testator was a free colored person" and "the parties claiming the fund in question are free colored persons," "Reed, the executor, is a Christian white freeman" "the testimony of an old [free] colored woman, Kitty Pad . . was objected to[2] . . The objection was overruled." [426] "The decree of the orphans' court is reversed,"

Nailor v. Williams, 8 Wallace 107, December 1868. "Several negroes had been convicted in Virginia of heinous crimes and sentenced to death; but being reprieved by the governor of Virginia, were sold by that State to two persons, Williams and Davis, upon Williams's giving bond to transport them beyond the limits of the United States. Williams did not so transport them, but took them to Louisiana, and was there indicted, convicted, and sentenced to a heavy fine, under a statute of Louisiana, for bringing negroes convicted of crimes into that State. The negroes them-

[1] 9 Stat. at L. 462.
[2] Act of Md., 1717, ch. 13, sect. 2.

selves, however, were not confiscated, but were sold by Williams for a large sum, to be thereafter received. In this state of facts, Davis (his partner in the purchase from the State of Virginia) assigned, in 1847, by instrument of writing, all his interest in the slaves to one Nailor, . . and Williams having received the purchase-money for the slaves, Nailor thereupon sued him . . to recover his share of the proceeds, and called two witnesses to prove the genuineness of Davis's signature to the instrument of assignment, and Williams's acknowledgment of the claim now set up by Nailor. One of them testified that the assignment was shown in the latter part of the year 1867 by the plaintiff to Williams, . . [108] This witness, on cross-examination, was asked: 'Was not the said plaintiff, at the date of said assignment, engaged in trading in negroes?' The question was objected to, and the objection was overruled. This was the ground of an exception. The next witness was asked on cross-examination: 'Was not he (the witness), at the date of the said assignment, engaged in aiding the plaintiff in trading in negroes?' This question too was objected to, and the objection was overruled; and this constituted a second exception. On these two exceptions the case was brought here. The bills of exception did not show what answers the witnesses gave to the questions abovementioned," Counsel for the plaintiff in error: "The only tendency and object of the inquiry was to excite in 1867, the prejudices of the jury against a plaintiff who, twenty years before, might have dealt in slaves. The same objections exist with increased force to the similar inquiry regarding the business of the witness, and his aiding the plaintiff in negro trading, and which makes the subject of the second exception. The purpose of the question was, really, to impeach the credibility of the witness by a collateral inquiry into his business twenty years ago, in matters irrelevant to the subject before the jury."

Judgment affirmed: "where a question is asked which is illegal only because it may elicit improper testimony, and the court permits it to be answered against the objection of the other party, the injury done the party is by the answer," Unless he makes "the answer a part of the bill of exceptions, . . there is no error of which a revising court can take notice. . . also . . there is nothing in the bill of exceptions which enables us to say that the questions themselves exceeded the reasonable license which a court, in its discretion, may allow in cross-examination,"

Bouldin v. Alexander, 15 Wallace 131, December 1872. "From about the 1st of September, 1857, a small number of colored persons were in the habit of consociating in prayer-meetings and other religious conferences at the house of one Albert Bouldin, a colored man from Virginia, who had been licensed to preach, and was so styled the Reverend Albert Bouldin; he being always a chief actor in the assemblages. The persons were, at first, few in number, feeble in resources, and without any church edifice. But under Bouldin's leadership they increased in strength, and . . went to work to raise money to build a meeting-house; Bouldin taking the lead . . and being at once pastor, collector, treasurer, chief agent, and actor in the enterprise, and getting into his own hands most of the moneys collected. Having bought a lot on which to build a church, he took a deed

for it in his own name, and proceeded to have the church built, . . now standing, on the corner of Fourth and L Streets northwest. . . [133] April 1st, 1864, he and his wife conveyed a large part of the lot, including that on which the church was built, . . to four persons, . . as trustees, to be used, . . as 'the Third Colored Baptist Church of the City of Washington;' . . A congregation had by this time been organized with sufficient regularity and in full conformity with the constitution of the general Baptist Church of the United States,"

Hume v. Beale, 17 Wallace 336, December 1872. Berry of Maryland, in 1826, conveyed his farm "stocked with thirty slaves," to Beale in trust for the use of his wife, during her life or widowhood, "and after her death or marriage," to their children. [337] "In the years 1828 and 1829, that is, after the death of Mr. Berry, . . nearly all the slaves had disappeared from the farm; the slaves were 'not sold in a body but picked off one or two at a time; that is, sent to a place where the traders could get them; locked up there till the traders came.' . . [342] negro, Johnson, testified: . . 'not one was left to tell the tale. . . I have seen the negro-traders there often. Mr. Beale would bring them down there from the city, and have the negroes hiding about like young rabbits. . . [343] He only told me that he would see that I was not sold to Georgia. . . I flew the track; they sold me running.'"

DELAWARE

INTRODUCTION

I.

The line which the English mathematicians, Mason and Dixon, drew to the north and east of Maryland in 1763-1767, to settle the boundary dispute between Lord Baltimore and William Penn, divides Maryland from Pennsylvania (which then included Delaware) like a T-square, or rather like a letter Z, whose lowest member is embryonic. Actually,[1] the present state of Delaware lies wholly outside the traditional "pale" of the slave states, yet she was not free. Her air was not too pure for a slave to breathe, nor did her soil impart freedom to the slave who set foot thereon; but the atmosphere was kindlier to him there than in Maryland and further south.

A vital distinction was, that in Delaware a negro was presumed to be free, while in the other slave states he was presumed to be a slave. The first enunciation of the doctrine in the Delaware Reports appears in 1840 in the case of the State *v.* Dillahunt,[2] though it had been so held prior to that case.[3] A colored woman was objected to as a witness "because she was not proved to be a free woman, though it was proved that she acted as such. The court held her competent on two grounds. At the common law there was always a strong presumption in favor of freedom. In the first settlement of this country, the fact of the existence of the negro race in a state of bondage to the whites, and a large majority of that color being slaves, was considered sufficiently strong to outweigh the common law presumption, and to introduce a legal presumption that a colored peron is *prima facie* a slave. Yet that state of things has changed; and *cessante causa, cessat et ipsa lex.* There are in this State about 20,000 persons of color; of whom 17,000 are free, and 3,000 slaves. A large majority of all persons of color in the United States are free. In point of fact, therefore, there is no reason to presume slavery from color; in opposition to the strong common law presumption, that every man having the human form is a freeman. And such has been the decision of this court on several occasions. But additionally, it has always been the practice to take reputation as proof of freedom." [4]

The contiguity to Maryland and the large numbers of free negroes offered a great temptation to kidnap them in Delaware and to carry them

[1] Though not figuratively.
[2] 3 Harrington 551.
[3] State *v.* Jeans, 4 Harrington 570 (1845): "it has been repeatedly decided that as a mere presumption, the inclination is in favor of freedom. It was so held prior to the case of Dillahunt, though that is the first case reported."
[4] As in Maryland.

into slavery in Maryland. In 1793 an act[5] was passed providing that "every person who shall feloniously kidnap, take and carry away from this state, into any other state, any free Negro or free Mulatto, or shall aid or assist . . shall be publicly whipped on his or her bare back with thirty-nine lashes well laid on, and shall stand in the pillory for the space of one hour, with both of his or her ears nailed thereto, and at the expiration of the hour, shall have the soft part of both of his or her ears cut off."

In 1826 "a fine of not less than one thousand dollars nor more than two thousand dollars" was added; the lashes were increased to sixty; the ears were left free; but the act provided that the person convicted "shall be imprisoned, in solitary confinement, for a term of not less than three nor more than seven years and at the expiration of said imprisonment shall be disposed of as a servant to the highest and best bidder or bidders for the period of seven years; and every person . . so offending a second time, upon conviction of such second offence, shall suffer death."[6] The Act of 1841 reduced the lashes again to thirty-nine, and the term of imprisonment to not less than one year nor more than two. For a second offence, the fine was increased ($2000 to $5000), and exile was substituted for death.[7] Nevertheless the temptation to kidnap was too strong to be resisted, the profits of the business overbalancing the fear of punishment, as the numerous kidnapping cases testify.[8]

Even slaves could not, by the Act of 1787,[9] be carried out of the state for sale, or sold for export, without a license, on pain of forfeiting one hundred pounds for each offence; and an additional penalty was inflicted by a clause in the kidnapping act of 1793,[10] declaring such slaves free.

About 1799 one Hicks removed eleven of his negroes to Maryland. In 1801 one of them, Amelia, "escaped from the service of Hicks," and returned to Delaware. "Subsequently she was found in the possession of Andrew Allen, who claimed and held her as his slave in this state for nearly thirty years, . . It was alledged that he purchased her of . . Alston, but this fact was not established, . . It was in evidence, however, that this Alston was a negro trader from one of the southern states, and that Hicks actually sold all of the other negroes which he took from this state, to the traders, after he had taken them to Maryland." Amelia's three children, born after her return to Delaware, and her grandchildren,

[5] Act of June 14, 1793, ch. 22. c. sect. 1 (2 Del. Laws 1093). This act also contained a section (sect. 4) declaring slaves free, who were carried out of the state for sale, or sold for export without a license. The act "was intended to prevent the crime of kidnapping; to restrain the traffic in human beings, and gradually to abolish slavery in this state." Allen *v.* Negro Sarah, 2 Harrington 434 (1838).

[6] Act of Feb. 8, 1826, Rev. Laws 1829, 131.

[7] Act of Feb. 18, 1841, ch. 346, sect. 1. Sess. Laws 1841, 400. For further modifications see Rev. Stat. 1852, 473 (ch. 127, sect. 12).

[8] State *v.* Whaley, 2 Harrington 532, 538 (1836 and 1837); State *v.* Whitaker, 3 Harrington 549 (1840); State *v.* Griffin, *ibid.* 559 (1841); State *v.* The same defendant, *ibid.* 560; State *v.* The same defendant and Wilson, *ibid.*; State *v.* Jeans, 4 Harrington 570 (1845); State *v.* Updike, *ibid.* 581 (1847); State *v.* Harten, *ibid.* 582 (1847).

[9] Act of Feb. 3, 1787, ch. 145. b. sects. 1, 2. 2 Del. Laws 885.

[10] Act of June 14, 1793, ch. 22. c. sect. 4. 2 Del. Laws 1094.

petitioned for freedom, under the act of 1793.[10] The members of the court were "unanimous in the opinion, that the petitioners are entitled to their freedom;" that such exportation did, *ipso facto*, establish Amelia's freedom; and that the "right and title to freedom . . attaches the moment the offence is committed, which is prohibited by the statute."[11] It was held in 1849[12] that "a prior conviction [of the master] is not requisite; . . proof of the fact of exportation, contrary to the act, confers freedom."

Conversely, by the Act of 1787, a slave became free if brought into the state, "for sale, or otherwise,"[13] Even a slave sent by his master in Maryland to haul wheat to sow on his Delaware farm,[14] or to plow on his farm there for a few days,[15] was decreed free.[16]

The kidnapping cases together with some cases of assault and battery on free negroes produced one beneficent result: they gave rise to an interpretation of the rules of evidence as to the admission of the testimony of free negroes in cases where a white man is a party, which gave the free negro a bulwark for his rights not vouchsafed him in the other slaveholding states. The statute of Delaware, passed in 1787,[17] provided that no free negro "shall be entitled . . to give evidence against any white person, or to enjoy any other rights of a freeman, other than hold property, and to obtain redress in law and equity for any injury to his or her person or property." In 1793 a white man was indicted for an assault and battery on Phillis Miller, a negro woman. She was offered as a witness for the State, and admitted. "Negroes are allowed the same redress for injuries to their persons as whites.[18] Indictment is one mode of redress for an injury to the person, principally useful where the party injured is the only witness of the fact necessary to be proved. The act giving to negroes this right of redress must be construed to allow the means absolutely necessary to obtain redress. . . we do not mean to say that a negro is a witness between two white persons; nor, in cases like the present, where other proof can be procured; but only in the case where justice must otherwise fail."[19] Justice would usually have failed in the kidnapping cases if negro testimony had been excluded.

In 1799 an act[20] was passed admitting "free black persons and free mulattoes" to give testimony "in all criminal prosecutions, where it shall appear to the court . . that no white person or persons competent to give

[11] Allen *v.* Negro Sarah, 2 Harrington 434 (1838).
[12] Anderson *v.* Thoroughgood, 5 Harrington 199.
[13] Act of Feb. 3, 1787, ch. 145. b. sect. 7. 2 Del. Laws 886.
[14] Negro Guy *v.* Hutchins, 5 Harrington 103 n.
[15] Negro Abram *v.* Burrows, *ibid.* 102 n. (1804).
[16] The Act of 1827 obviated this difficulty: "any person . . occupying a farm . . through which the line of the State runs, may lawfully employ his . . slaves upon every part of such farm . . and pass and repass them over said line for that purpose;" Rev. Laws 1829, 154.
[17] Act of Feb. 3, 1787, ch. 145. b. sect. 8. 2 Del. Laws, 887.
[18] *Ibid.*
[19] State *v.* Bender, p. 217, *infra.*
[20] Act of Feb. 1, 1799. 3 Del. Laws 80.

testimony, was or were present at the time when the fact charged is alledged to have been committed, or where such white persons who were present have since died, or are absent from the State and cannot be produced as witnesses," except " against any white man, to charge such white man with being the father or reputed father of any bastard child." In 1840 the negro kidnapped was allowed to give evidence, though there was a white person present who was " implicated " in the crime, but not indicted: " the act [of 1799] contemplated, in excluding negro testimony where a competent white witness was present, not the mere case of competency on the part of the witness, but the sufficiency of his evidence under ordinary circumstances, to produce conviction." [21] In an assault and battery case, in 1842,[22] the negro assaulted was permitted to testify, although there had been two white persons present and " both knew that a blow was struck," but " one of them was drunk, and the other did not see the whole of the fight." [575] " The law of humanity is in favor of the old decisions, . . Otherwise there will often be a failure of justice, and wrongs may be committed with impunity." [Read, C. J.] As late as 1867 the old act of 1799 [23] was relied on to exclude the testimony of a negro man against a white man indicted for assaulting him, there being a competent white witness present; but " the fact that the negro called as a witness, was the person on whom the assault and battery had been committed, having come to the knowledge of the Court, the Chief Justice remarked that his testimony was admissible under the rulings of the Court, on the ground of humanity and necessity, although there was a white witness present,"

The Delaware court agrees with that of Maryland [24] in holding that a slave born during the continuance of a life estate in the mother, belongs to the legatee for life: " He who supports the child of the slave in infancy, ought to be justly remunerated for his expense and trouble by its services, and the expectation that he will be so remunerated will insure greater care and attention to the wants of the child. . . the maxim [*partus sequitur ventrem*] is misapplied when it is used to direct us not as to the condition of the issue, but as to the person entitled to the ownership of that issue." [25]

The maxim, as applied " to the condition of the issue," comes up for interpretation in those cases where a female slave is to become free *in futuro*, and she gives birth to a child or children before the end of the term of intermediate servitude. The Virginia interpretation was generally followed in the slave states: [26] that as the mother was not actually free till the future date, her offspring born while she was not actually free,

[21] State *v.* Whitaker, 3 Harrington 549. Affirmed in State *v.* Griffin, *ibid.* 560: " at the time he was kidnapped, there were white persons present aiding and assisting in the crime."
[22] State *v.* Cooper, *ibid.* 571.
[23] " the eighth section of which was re-enacted in 1852." Rev. Code, ch. 107, sect. 4.
[24] In the other slave states, the child belonged to the remainderman.
[25] Smith *v.* Milman, 2 Harrington 497 (1839).
[26] Maria *v.* Surbaugh, 2 Randolph 228 (1824).

but a slave, were slaves; and so it was held in Delaware, in the case of Jones *v.* Wootten, in 1833.[27] Judge Harrington dissented: [84] "By the act of manumission [*in futuro*] the mother acquires a vested right. . . The child follows the condition of the mother. At its birth the mother is not in the condition of absolute slavery, but only of limited slavery, owing services for a limited period; if the child be in the same condition it is that of limited slavery, measured by the term of its mother's servitude. . . [86] I regret that I have not been able to bring my judgment into coincidence with that of the other members of the Court. I think the petitioner . . is entitled to his freedom." But in 1849 the judgment "of the other members of the Court" was overruled in the case of Elliott *v.* Twilley [28] and Judge Harrington's opinion in Jones *v.* Wootten was followed.

Delaware differed from the other slave states in another particular, unique in the line of reasoning followed by the court and in the conclusion reached. In other slave states there were many cases of free negroes who bought slaves, usually members of their own families, and generally in order to set them free if the law so permitted.[29] In Delaware a free negro, who had been "legally married" to a slave and had purchased their son Isaac when he was an infant, bequeathed him to Tindal "until he should attain the age of twenty-five years," and on Tindal's death, his executor sold Isaac to Hudson. It was held (in 1838)[30] that Isaac was "entitled to his freedom." Judge Clayton, in delivering the opinion of the Court, says: "we observe one . . pervading feature [of slavery], that the black is the slave to the white man; . . this court . . will not extend slavery beyond what it has been heretofore, . . to give the free negro a right to hold slaves, would be to institute another and a dangerous species of slavery hitherto unknown.[31] . . the negro is not such a freeman as to extend protection; he is . . almost as helpless and dependent on the white race as the slave himself; . . We think, therefore, that neither usage, policy, nor the necessary relations of master and slave, will permit free negroes in this state to hold slaves. . . also . . we ought not to recognize the right of a father to hold his own children in slavery. Humanity forbids it. The natural rights and obligations of a father are paramount to the acquired rights of the master; and the moment the father purchases his child and these rights become blended in the same person, the lesser rights and obligations are merged in the greater, and the child is free. . . [443] Humanity revolts at the idea of a parent selling his own children into slavery."

[27] 1 Harrington 77.
[28] 5 Harrington 192.
[29] See the extraordinary case of the Guardian of Sally, a Negro *v.* Beaty, 1 Bay 260 (1792).
[30] Tindal *v.* Hudson, 2 Harrington 441.
[31] The Act of Va., Oct. 3, 1670, provided that "noe negroe or Indian though baptised and enjoyned [enjoying] their owne Freedom shall be capable of any . . purchase of christians, but yet not debarred from buying any of their owne nation." 2 Hening 280.

II.

The judicial system provided for the Delaware State by the constitution of 1776 comprised a Supreme Court consisting of three judges, one of whom was to be chief justice, and a Court of Appeals consisting of a president and six other judges. The constitution of 1792 separated equity jurisdiction from that of the law courts, and instituted a chancellor and a Court of Chancery. The sessions of the Supreme Court were to be held by three or four judges, one of whom was to be resident in each county, and one of whom was to be chief justice. Appeals from it were to go to the High Court of Errors and Appeals, consisting of the chancellor, the judges of the Supreme Court, and those of the Court of Common Pleas.

The constitution of 1831, under which most of the cases which follow were heard, provided instead of the Supreme Court a Superior Court with four judges (one of them to be chief justice), but required that, of the associate judges, there should be one from each of the three counties of which the state consisted, and that no associate judge should sit in the county in which he resided. The chancellor and Court of Chancery were retained. Appeals were to be heard by the Court of Errors and Appeals, which in the case of appeals from the Superior Court was to consist of the chancellor, the associate judge of the Superior Court who had not sat in the case below, and one of those judges of that court who had so sat, while in the instance of a case brought up from the Court of Chancery the appeal was to be heard by a court consisting of the chief justice and his three associates. Criminal cases were heard either by the Court of Oyer and Terminer or by the Court of General Sessions of the Peace and Jail Delivery, composed variously of the chief justice and associate judges. From these two criminal courts there was no appeal to any other court.

Robinson v. Adams, 4 Dallas xii, September 1788. Will of Thomas Bagwell, dated 1690: "I give to my son John, one negro woman."

Negro Brister v. Dickerson, 5 Harrington 102, 1792. Petitioner was decreed free because he was sold with intent to export.[1]

Collins v. Hall, 3 Harrington 574 n., November 1793. "Upon the trial of this cause [between two white persons [2]], . . one Levin Thompson, negro, was offered as a witness . . Thompson was a freeman; that his mother and grandmother had been free; and that they lived in, and he came from, the State of Maryland."

Held: [576] "The witness is incompetent and must be rejected." "There is no doubt but this man must be taken for the issue of a slave; and, though he were made free by the laws of Maryland, he is clearly within the spirit of the act of 1787." [3]

State v. Bender, 3 Harrington 572 n., December 1793. "The defendant, a white man, was indicted for an assault and battery on Phillis Miller, a negro woman. Phillis Miller was offered as a witness for the State," [574 n.] "*Per Curiam.*—Witness admitted." [573 n.] "her credit to be left to the jury. . . Negroes are allowed the same redress for injuries to their persons as whites. Indictment is one mode of redress for an injury to the person, principally useful where the party injured is the only witness of the fact necessary to be proved. The act [4] giving to negroes this right of redress must be construed to allow the means absolutely necessary to obtain redress. . . we do not mean to say that a negro is a witness between two white persons; nor, in cases like the present, where other proof can be procured; but only in the case where justice must otherwise fail." [Bassett, C. J., Rodney, J., concurring—McDonough, J. dissenting.]

State v. Farsons, negro, 3 Harrington 576 n., May 1794. "Indictment for an assault and battery upon . . a white man. David Hutt, a free negro man, was offered as a witness for the defendant. . . Hutt was the only witness present at the transaction"

Held: "We consider him incompetent" "The witness is not seeking redress, and therefore not within the clause of the act of assembly [5] relied on by the court in The State *v.* Bender." [6]

Negro Isaac v. Ferguson,[7] 5 Harrington 102, November 1794. Petitioners were decreed free because they had been sold with intent to export.[8]

[1] Wilson's notes 168.
[2] State *v.* Bender, *infra.*
[3] Act of Feb. 3, 1787.
[4] Act of assem., Feb. 3, 1787, 2 Del. Laws, 887, sect. 8.
[5] Feb. 3, 1787.
[6] *Supra.*
[7] Cited from Wilson's notes.
[8] Negro Jemima *v.* Ross, 5 Harrington 102 (1796).

Negro Guy v. Hutchins, 5 Harrington 103 n., 1803(?). [104 n.] "Guy was sent by his master with a cart load of wheat to sow on his farm in Delaware. Decreed free." [1]

Cedar Swamp Case, 5 Harrington 104 n. (c. 1804). "The negro was hired by a person living in Maryland, near the line, of his mistress, who resided in Maryland also. He kept him in the swamp at work; and at one time kept him to work in Wells' Swamp repairing bridges, for the space of two weeks; but slept in Maryland, and carried his dinner with him. Petition [for freedom] discharged." [Judge Rodney's MS. notes.]

Blacksmith's Shop Case, 5 Harrington 104 n. (c. 1804). "Perhaps negro Tom *v.* Banks. The slave worked frequently, say five or six days, in the Blacksmith's shop, in which his master was a partner; but did not sleep in Delaware. After argument the court discharged the petition [for freedom]. His domicil appeared to be in Maryland—and no intention to elude the act of 1787 appeared to the court." [Judge Rodney's MS. notes.]

Negro Abram v. Burrows, 5 Harrington 102 n., November 1804. "Abram was the property of Edward Burrows, who resided in Maryland, and had a farm in Delaware, on which his brother Lewis lived as a tenant. Abram was sent to plow several days, two or three, and also to save fodder two or three days, in the years 1802-3." Lewis "returned work to Edward for it; that he came with his master's plows and horses; . . Burrows lived three miles from this farm." Held: "amounted to a hiring or sale; and therefore is a bringing into the State, under the act [2] so as to entitle negro Abraham to his freedom." [3]

Negro Beck v. Holiday, 5 Harrington 101, November 1805. "Petition for freedom. Mrs. Wood.—I heard Edward Holiday say he did not buy Beck for life, but would not tell her so. . . Beck had been in possession of Edward Holiday five years. George Clow.—Has heard Edward Holiday, the elder, say he bought Beck of John Cloud, for life. Holiday gave £30 for her and her child, . . Cloud lived in Maryland. Cloud said he took a bond from Edward Holiday, that Beck was to be free in six or seven years." Witnesses for defendant: "Cloud told me he sold Beck for life." "Cloud lived in Delaware when he sold." The court adjudged negro Beck free.[4]

State v. Johnson, cited in 3 Harrington 549, 1822. Held: "the person [free negro] kidnapped was a competent witness, though an accomplice [white] in the crime, and present at its commission, was also examined;"

Burton v. Derrickson, 1 Harrington 7, spring 1832. "an action of trover brought for four negro slaves. . . Burton married the daughter of Capt. Wm. Derrickson, who gave these negroes to the wife of Burton. The negroes went into the possession of Burton and remained in his possession after the death of his wife and during all his life. After his

[1] Judge Rodney's MS. notes.
[2] Act of 1787.
[3] Judge Rodney's MS. notes.
[4] Judge Rodney's MS. notes.

death, they were taken back by Capt. Derrickson." His administrators "have sold them as a part of the estate of Derrickson."

Davis' Case, 1 Harrington 17, spring 1832. Note: [19] "Form of Indenture of a coloured boy" by the father. It differs from the form for a white boy in the following particulars: I. "a negro (or mulatto) boy," instead of "a white boy"; II. "servant" and "servitude" instead of "apprentice" and "apprenticeship"; III. "at the regular expiration of his servitude, to furnish him with two suits of clothes suitable to his condition, and also to pay to the said Y. Z. the sum of — dollars in lieu of schooling, it being inexpedient to stipulate for education in reading and writing." The white apprentice must be given "reasonable education in reading and writing, to wit: — years and — months schooling during his said apprenticeship;" Forms of indenture are also given "of a poor coloured boy under ten years old, by two justices of the peace; or two trustees of the poor; or a justice and trustee" and [20] "of a poor coloured boy, over ten years old."

Gordon, 2 Harrington 528, 1832. "Judy Gordon petitioned for freedom on the ground that her master had sold or exported her to Maryland. The court . . made an order that the master should enter into recognizance in $500, with sufficient surety, conditioned for the forthcoming of the petitioner at the hearing, and to pay her wages if her freedom should be decreed; and, if he declined doing so, that the petitioner should be allowed to give a like recognizance on her part."

Negro Ben. Jones v. Wootten, 1 Harrington 77, April 1833. Petition for freedom. [79] "George Vincent by his last will, dated May 12th, 1797, bequeathed as follows:—'I give to my daughter Betsey my negro girl Rhoda, until she arrives to the age of thirty years, then to have her freedom from slavery.' The petitioner Benjamin (now of the age of twenty-seven years,) is a son of Rhoda and was born in 1805, after the death of George Vincent and before his mother attained the age of thirty years, and claims to be free under the act of 1810."

Held: [84] "he was not born free for his mother was then a slave—of course therefore he was born a slave, and that slavery was and is for life, so it is not limited to a shorter period by any valid law which applies to his case, or by the will of Mr. Vincent the master of the mother." [Black, J.] Petition ordered to be dismissed.

Harrington, J. dissented: "By the act of manumission the mother acquires a vested right. . . The child follows the condition of the mother. At its birth the mother is not in the condition of absolute slavery, but only of limited slavery, owing services for a limited period; if the child be in the same condition it is that of limited slavery, measured by the term of the mother's servitude. This is the view I take of the question as it stood before the act of 1810. The principal [*sic*] is no doubt prejudicial to the master and imposes a great hardship on him of maintaining the infant children of his manumitted slaves; but it . . is a consequence of his own act of manumission. The injustice of such a case as it regards the master was probably the origin of the act of 1810. . . This act was passed on the recommendation of Governor Truitt; and it seems probable, from

the terms he uses in bringing the subject to their notice, that the legislature proceeded rather on the ground of extending the time of service as a compensation to the master than on any idea of restricting any rights that he possessed. . . [85] It is true that slavery is tolerated by our laws; but it is going too far to say that this kind of property in slaves is precisely like every other species of property. The spirit of the age and the principles of liberty and personal rights as held in this country are equally opposed to a doctrine drawn from the ages and countries of despotism, . . in many, perhaps in most, of these United States it has either been done away or provision has been made for its prospective abolishment. . . there now remain in [Pennsylvania] . . as appears from a statement lately made by a committee of their legislature, less than one hundred slaves with a certainty of the speedy extinction of slavery there. . . [86] I regret that I have not been able to bring my judgment into coincidence with that of the other members of the Court.[1] I think the petitioner, being now 25 years of age, is entitled to his freedom."

Lockwood v. Burton, 1 Harrington 138, spring 1833. "Replevin for a negro boy . . valued at $200 . . as there was no proof that . . the first administrator . . ever paid debts to the amount of the boy or any part of his value, he therefore was not administered, but remained in specie as the property of William Brinkloe and liable to the execution"

Eaves v. King, 1 Harrington 141, spring 1833. "Replevin for a negro woman and two children. . . The def't offered evidence of the freedom of the negroes, but it was rejected by the court. . . the freedom of the negroes cannot be tried in this proceeding."

Murphy v. Countiss, 1 Harrington 143, spring 1833. "The pl'ff was claimed as a servant by . . Townsend, and the def't being a constable, arrested and put him in prison as such servant. . . it turned out that Townsend had no valid claim to the pl'ff. Whereupon he brought this suit [for trespass, assault and battery, and false imprisonment]. . . The plaintiff had a verdict."

Morris v. Cannon, 1 Harrington 220, fall 1833. "Replevin for a negro boy; an apprentice. . . 'The negro boy . . was, on the 2d of April, 1830, bound as an apprentice to Margaret Hudson, her heirs and assigns; at the time and before the binding he was a free negro; Margaret Hudson afterwards, became the wife of William M. Morris, who took possession of the said negro apprentice . . After his death his executor took possession of the boy and hired him to the def't. The negro boy was duly inventoried and appraised in the estate of William M. Morris." [222] "Judgment of non suit," "Replevin will not lie for a free man;" "the court intimating an opinion that the pl'ff was nevertheless entitled to the unexpired time of the apprentice."

Chandler v. Ferris, 1 Harrington 454, fall 1834. The will of Thomas Chandler "bore date the 24th May, 1833, and was made when the testator was in his 73d year of age. . . in the hand writing of Benjamin Ferris,

[1] The judgment "of the other members of the Court" was overruled in 1849. Negro Ann Elliott *v.* Twilley, p. 234, *infra*.

who was constituted an executor and trustee. It contained a great number of small bequests, amounting in the whole to about seventeen thousand dollars, most of which were to the testator's relatives; and it then disposed of the rest and residue of his estate, real, personal and mixed, in the following manner. 'And whereas it hath frequently occurred to my mind that the African race or descendants of African natives in the United States, are in a deplorable degraded condition, and considering that neither the federal government nor any other institution has made adequate provision for their improvement in education, morals and industry I have thought that a great and permanent benefit might accrue, not only to that people but to the white population of our country, if a foundation could be laid, though in a small way, of a fund to be appropriated to the promotion of these important ends. With the hope therefore that benevolent individuals who may survive me, may be disposed to aid in this concern, and contribute towards its accomplishment, until a fund may be raised sufficient to commence an institution to carry into effect the views before expressed, so far at least as to educate male children of the African race, so as to render them useful to themselves and the community by a course of instruction in morals, science and productive employment, agricultural, mechanical or otherwise; I do hereby give, devise and bequeath to John Clark, . . Benjamin Ferris . . all the rest and residue of my estate, . . in trust, . . [456] And it is further my will and a condition of the afs'd devise and bequest to my trustees as afs'd that the estate so given to them in trust shall be appropriated and applied to the uses and purposes afs'd within seven years after my decease; and if within that time no such institution shall be established or commenced, and no other funds raised for the purposes of such establishment, then and in such case all the said residue of my estate shall go to and be equally divided among all the children of my nephews and nieces. . . Excepting nevertheless out of such bequest the sum of five hundred dollars, part of the said residue, which I do hereby give and bequeath to the African school society of Wilmington, incorporated by the Legislature of the State of Delaware, for the purpose of instructing the descendants of the people of Africa,—the same to be paid to the said society on failure of the said institution and not otherwise.' " He adds an outline of the plan of the proposed institution: " children should be admitted at seven years of age and older, as pupils from any section of the United States, but those from the State of Delaware to have the preference in all cases when it may be necessary from the state of the school to make a choice. Fourth. When pupils arrive at fourteen years of age, having had a competent share of learning to fit them for business, they should be permitted, if they so choose, to be apprenticed to suitable persons at the discretion of the managers, to learn trades, agriculture or other business, in which they may be useful to the community and of advantage to themselves—otherwise they may at the discretion of the managers, be kept on the farm or in the workshops under the care of the institution, until they arrive at the age of twenty-one years. Fifth. The pupils should be maintained and educated without other charge or compensation than their own labor, and should be found in food and good plain clothing during their residence in the institution. Sixth. The

course of instruction should include reading, writing, arithmetic and English grammar—and where inclination and capacity on the part of the pupils are manifest, the course of instruction should extend to the higher branches, particularly those that may be most useful in practice, such as navigation, surveying and the necessary preliminary acquirements. . . [457] The farm ought to be managed in the best manner, and according to the most approved system of agriculture, so as to be a proper model or pattern for others. All the labor should be performed by the students, which should be so regulated that each pupil should do his proper share of labor and have his fair proportion of literary instruction daily. Ninth. As the funds and resources of the institution may authorize, workshops should be built and mechanics employed to teach the pupils in their several branches, such as smiths, shoemakers, cabinet-makers, turners etc., seeing that the elevation of this class of people much depends on their usefulness as members of the community." The estate " amounted to between thirty and forty thousand dollars." Witness for the defendant testified that " The execution took place at the house of Benjamin Ferris, who was a scrivener by profession. This witness gave a very decided opinion as to the sanity of the testator. The idea had never occurred to him, nor had he ever heard it suggested by another, previous to the death of Thomas Chandler, that he was not of sound mind." [458] " Copy of a letter from William Lloyd Garrison, editor of the *Liberator,* to Benjamin Ferris [was read in evidence]. The first page contained printed ' proposals for establishing a school on the manual labor system for the education of colored youth,' and a printed plan for such school, in substance similar to the one contained in Chandler's will. The manuscript was as follows: ' Boston, Feb. 16, 1833. Respected Friend; I presume the enclosed plan for the establishment and government of the manual labor school for colored youth will be acceptable to you and your benevolent friend. The managers of the anti-slavery society deem it unnecessary to urge upon either of you the importance and need of the contemplated school. It is desirable that whatever is done, should be done speedily. Subscriptions have been commenced, in this quarter, under very favorable circumstances. Your friend, we trust, will add his name to the list of donors. We are cheered in view of the progress of the anti-slavery cause in this country. The example, so long given by the society of friends, is beginning to have its legitimate influence. Your humble friend, Wm. Lloyd Garrison.' . . the instructions given by Thomas Chandler to Benjamin Ferris for drawing his will " were " in the hand writing of Thomas Chandler. . . [464] Verdict setting aside the will."

State v. Minos, 2 Harrington 529, October 1834. " Purnel Minos, a free negro, was convicted, under the instruction of the court, for stealing the slave of Charles Polk, although that slave was the wife of the defendant."

State v. Shockley, 2 Harrington 531, October 1835. Held: " In an indictment against a free negro for larceny, if there be no proof of his being free, or having acted as a free man, he must be acquitted."

State v. Gray, 2 Harrington 531, April 1836. "Nutter, a free negro, had been convicted of larceny, and sentenced to be whipped and 'disposed of as a servant to any person or persons residing in this state, for the highest sum that can be obtained for such term as shall be necessary, in order to raise the restitution money, and all costs, *or any balance that may remain after such payment as he may be able to make.*' J. S. Gray was indicted for exporting Nutter. In the indictment the words in italics were omitted. The variance was ruled to be fatal, as Nutter could not be sold under the order of the court, if he paid the restitution money and costs."

State v. Whaley, 2 Harrington 532, 538, October 1836, April 1837. "John Whaley was indicted for aiding . . in kidnapping and taking from the state into Maryland, Robert Ricords, a free negro." [539] "the boy was kidnapped in Kent county and carried into Sussex, and from thence directly on into Maryland, . . Judgment against the prisoner."

State v. Buckmaster, 2 Harrington 533, October 1836. "Ruled, that an indictment for an assault and battery on a slave could be sustained, such having been the decision and practice under chief justice Booth in the Court of Quarter Sessions; and that the rule there adopted would be recognized as the law of this state."

Saxton's Case, 2 Harrington 533, October 1836. "Sam Saxton, a free negro, was indicted for breaking and entering the store of J. H. Stevenson, in the night time and stealing the goods of J. H. S."

State v. Morris, n., 2 Harrington 534, April 1837. The prisoner, "though not indicted for a second offence, had been convicted of larceny in this court and sold as a servant to pay the restitution money and costs. Before the expiration of his term of service he committed larceny again, and was convicted thereof . . The indictment was drawn in both cases charging the prisoner generally as a free mulatto." The act of February 8, 1826, sect. 5,[1] provides [537] "that a felon convict, during his servitude, shall not be deemed to be a freeman,"

Held: convict free negroes or mulattoes are not embraced in this section of the act. [536] "distinction between a 'free negro'[2] and a 'freeman' in this state, . . [537] If, then, the legislature . . can be supposed to have declared that such a convict, if a free negro, shall not be deemed to be a free negro during his servitude, they have exempted such negro convicts from all punishment during the term of servitude for every second or subsequent offence. For being thus held to be neither free negroes nor slaves, they would be quite out of the pale of the criminal jurisdiction of any judicial tribunal in the state. . . [538] In this case, as the indictment does not in terms describe the felony as a second offence, we shall not order the prisoner, under the circumstances, to be sold to any person residing out of the state." [Clayton, C. J.]

Rowland v. Burton, negro, 2 Harrington 288, fall 1837. "The plaintiff below [Burton] was sworn on the *voire dire* to prove his books; when he produced as his book of original entries a small stick, cut and notched

[1] Digest 144.
[2] Act of Feb. 3, 1787: "the charter of their rights in this state,"

in a variety of ways, by which he undertook to prove an account running through two or three years, and consisting of a number of items. He was fully examined on his book, and the accuracy of his entries tested by an account made out from it some time before. They corresponded with the exception of one item; and it was afterwards ascertained that one of the notches had been defaced by the breaking of the stick. . . 1 day working in garden; self, . . [$] .75 . . 3 days work of boy, at .25, . . [$] .75" The whole amount was $25.40. "The court permitted the stick to go before the jury, with the party's oath that the notches were made at the time the work was done, and the plaintiff had a verdict."

Rice v. Simmons, 2 Harrington 309, 417, fall 1837. "Action on the case for a libel. . . following paper . . posted by the defendant at the market house in Wilmington. 'The public are hereby cautioned against receiving from Washington Rice [a white man], or John Agnes, a black man, any papers relating to my business, as sundry papers hath been purloined from my store and fell into the hands of said W. Rice, who hath endeavored to put some of them in claim against me, *viz*: bills and receipts for grain I had bought and paid for," Counsel for plaintiff: [418] "the association of Rice with Agness [*sic*], who was proved at the trial to be a very low and worthless negro, was designed and calculated to degrade and disgrace Rice." Judgment for plaintiff.

Phillips v. Short, 2 Harrington 339, spring 1838. "trover for a negro boy, Jerry. . . Hopkins, by his will in 1807, bequeathed the mother of this slave to his daughter, Nancy Short, wife of Wingate Short, for life; . . [340] On the marriage of Wingate Short with Nancy Hopkins, several years before the death of her father, Bet, the mother of Jerry, then a little girl, went into the family of Wingate Short, . . Short, by his will made in 1818, bequeathed Jerry to his wife for life, and after her death to his son, Leonard Short, the defendant. . . a bill of sale was produced for one-half of Bet and her issue, in consideration of $500, . . the verdict went for the plaintiffs."

In the matter of Negro Hannah a slave of Richard Cooper, 2 Harrington 365, spring 1838. The trustees of the poor had incurred expenses, to the amount of $168, "in support of negro Hannah, a slave of said Richard Cooper, discharged from his service after she was thirty-five years of age; and for funeral expenses of the said slave. At the hearing, the order was resisted, on the ground that no one but the master or mistress was liable under the statute,[1] but the court, on the equity of that act, . . ordered that the . . widow and administratrix, and the . . children of Richard Cooper, who were also his devisees and legatees, should . . reemburse them"

Allen v. Negro Sarah, 2 Harrington 434, June 1838. About 1799 Hicks brought an action of replevin against the administratrix of his father-in-law, "and recovered Amelia, with ten other negroes, whom he afterwards removed from this state to the State of Maryland, . . In

[1] Digest 415, sect. 3.

1801, Amelia escaped from the service of Hicks, and returned into this state. Subsequently she was found in the possession of Andrew Allen, who claimed and held her as his slave in this state for nearly thirty years, . . It was alledged that he purchased her of . . Alston, but this fact was not established, . . It was in evidence, however, that this Alston was a negro trader from one of the southern states, and that Hicks actually sold all of the other negroes which he took from this state, to the traders, after he had taken them to Maryland. Amelia had three children, after she returned to this state, to wit: Sarah, Grace and Bayard, three of the petitioners; the other petitioners were children of Sarah and Grace." [440] "The members of this court are unanimous in the opinion, that the petitioners are entitled to their freedom," I. [437] "such exportation did, *ipso facto,* establish her freedom; and that a judicial adjudication upon the facts, was wholly unnecessary to enable her children, born after the exportation, to their freedom. . . The right and title to freedom . . attaches the moment the offence is committed, which is prohibited by the statute." [1] II. The act of 1793 is constitutional. [439] "This act was intended to prevent the crime of kidnapping; to restrain the traffic in human beings, and gradually to abolish slavery in this state. . . The slave has rights. He is under the protection of the law, and it was for his protection, as well as for subserving the principles of humanity, that the law of 1793 was passed." [Layton, J.]

Isaac Tindal v. Hudson, 2 Harrington 441, fall 1838. "Petition for freedom. The petitioner's father, George Long, was a free negro, legally married to Phoebe, the mother of Isaac, who was the slave of a certain Conoway. Isaac was born while his mother was a slave; and whilst an infant he was purchased by his father, . . His father never manumitted him; but, on the contrary, by will bequeathed him to Minos Tindal, until he should attain the age of twenty-five years. Minos Tindal took possession of Isaac; who, at the death of his master, was sold by the executor to Daniel Hudson."

Held: Isaac is "entitled to his freedom." [441] "we observe one . . pervading feature, that the black is the slave to the white man; . . [442] this court . . will not extend slavery beyond what it has been heretofore. . . to give the free negro a right to hold slaves, would be to institute another and a dangerous species of slavery hither to unknown. The free negro cannot, in this country, base his right to hold slaves upon the principle of conquest. . . the negro is not such a freeman as to extend protection; he is . . almost as helpless and dependent on the white race as the slave himself; he has few civil rights, being merely protected in his person and property by the law, and being allowed in some cases to give his evidence in a court of justice. . . We think, therefore, that neither usage, policy, nor the necessary relations of master and slave, will permit free negroes in this state to hold slaves. . . also . . we ought not to recognize the right of a father to hold his own children in slavery. Humanity forbids it. The natural rights and obligations of a father are

[1] Act of 1793, 2 Del. Laws 1094, sect. 4.

paramount to the acquired rights of the master; and the moment the father purchases his child and these rights become blended in the same person, the lesser rights and obligations are merged in the greater, and the child is free. . . [443] Humanity revolts at the idea of a parent selling his own children into slavery." [Clayton, C. J.]

State v. Milman, cited in 3 Harrington 549, 1838. "the negro was examined though Robert Houston, a white person, was present not at, but after, the kidnapping and taking out of the State, and saw the boy in prisoner's custody in Maryland."

Prettyman v. Dean, 2 Harrington 494, spring 1839. "The plaintiff charged a violent entry of her house" by [494] "the defendant, Steel, as the sheriff's officer, and the others as his *posse*, in executing a writ of replevin . . for two negro slaves." [495] "and an aggravated assault and battery."

Stephen Smith, negro, by a next friend, v. Milman, 2 Harrington 497, spring 1839. "Petition for freedom. Rachel Marvel by will, dated 27th August, 1791, bequeathed the mother of petitioner, Hessy, to her daughter Ann Smith for life; and, after her decease, to her grand-daughter Nancy Smith, her heirs and assigns forever. And if the said negro Hessy should bear children, she gave to her grand-daughter, Sally Smith, 'the first child that she bears, to be hers and her heirs forever.' After the death of Rachel Marvel, the negro girl Hessy went into the possession of Ann Smith and bore children, the first of whom was either dead born or lived but a few minutes, . . and the second was the petitioner, Stephen. Stephen was held by Ann Smith, and sold by her to Sally Smith for a term of years, and manumitted in the bill of sale to be free after she [he?] attained thirty-one years of age. Sally Smith lived with Elisha Evans [husband of Nancy Smith, the legatee over] and died in his family, directing verbally in her last sickness that Evans should have the use of Stephen during the remainder of his term of servitude. On the death of Ann Smith, Hessy passed into the possession of Elisha Evans," who "in his lifetime sometimes claimed Stephen as his slave for life, at others declared he had no right to him; and in 1816, by an instrument under seal, declared that he was free. Before that time, however, Evans became embarrassed in his circumstances, and Stephen was levied on by execution process as his property, and was sold . . for a small sum to . . Robinson . . who had never taken possession of him." Decree "for the freedom of the petitioner." I. If [498] "the petitioner was the first child negro Hessy bore . . he was the property of Sally Smith, . . If we . . credit the respondent's witnesses, who say that negro Hessy was the mother of a child before the petitioner was born, then he was the property of Ann Smith, the legatee of Hessy for life, having been born during the life of Ann Smith;[1] . . He who supports the child of the slave in infancy, ought to be justly remunerated for his expense and trouble by its services, and the expectation that he will be so remunerated, will insure greater care and attention to the wants of the child. If Stephen was the slave of Ann

[1] Delaware follows the Maryland doctrine in this respect.

Smith, then is he clearly free by her deed of manumission. . . the maxim [*partus sequitur ventrem*] is misapplied when it is used to direct us not as to the condition of the issue, but as to the person entitled to the ownership of that issue." [Clayton, C. J.]

State v. Pettyjohn, negro, 3 Harrington 548, October 1839. "the defendant was indicted for selling liquor by the small measure, and in the indictment he was alledged to be a 'free negro,' which the State neglected to prove. . . The court said: The criminal code makes a distinction between white people and free negroes or mulattoes, only in the cases of larceny and receiving stolen goods. . . the punishment being different, . . [549] We incline, therefore, to the opinion, that the averment in this case was unnecessary, and need not be proved; . . The defendant was acquitted, and the question was not again stirred."

State v. Whitaker, 3 Harrington 549, April 1840. In an indictment against a white man for kidnapping, the negro kidnapped was allowed to give evidence, though there was a white person present who was "implicated" in the crime, but not indicted. [551] "the act [1] contemplated, in excluding negro testimony where a competent white witness was present, not the mere case of competency on the part of the witness, but the sufficiency of his evidence under ordinary circumstances, to produce conviction." [Bayard, C. J.]

State v. Dillahunt, negro, 3 Harrington 551, April 1840. "Indictment for the murder of William Frisby Green, negro. Charlotte Green, a colored woman, was called as a witness for the State, and objected to because she was not proved to be a free woman, though it was proved that she acted as such. The court held her competent on two grounds. At the common law there was always a strong presumption in favor of freedom. In the first settlement of this country, the fact of the existence of the negro race in a state of bondage to the whites, and a large majority of that color being slaves, was considered sufficiently strong to outweigh the common law presumption, and to introduce a legal presumption that a colored person is *prima facie* a slave. Yet that state of things has changed; and *cessante causa, cessat et ipsa lex.* There are in this State about 20,000 persons of color; of whom 17,000 are free, and 3,000 slaves. A large majority of all persons of color in the United States are free. In point of fact, therefore, there is no reason to presume slavery from color; in opposition to the strong common law presumption, that every man having the human form is a freeman. And such has been the decision of this court on several occasions. But additionally, it has always been the practice to take reputation as proof of freedom. The defence in the case was insanity. . . Verdict of acquittal."

Chase v. Maberry, 3 Harrington 266, fall 1840. "The defendant was a constable of Kent county, and had, together with plaintiff, arrested a runaway slave from Maryland, for which a reward of $60 was offered. Having obtained from a justice of the peace a permit to take the slave home, Chase left him with Maberry until he should visit the master and

[1] Act of 1799, Digest 407.

negotiate an increased reward, which he effected, the master agreeing to pay $100, on his delivery in Maryland. Chase expressed his fears to Maberry that the boy would escape, and wished him lodged in jail; but Maberry said he would take care of him and be responsible for him. He placed him in the garret of his house, from which the boy escaped during Chase's absence and was not again retaken. . . The plaintiff had a verdict for $40.00."

Henry Wilson, (negro) v. Waples, 3 Harrington 270, fall 1840. "Petition for freedom. . . Harry Wilson, the father of petitioner, a free negro, after the birth of Henry the petitioner, bought his wife, petitioner's mother, then and at the time of Henry's birth, a manumitted slave; and took an assignment of the bill of sale of his said wife. That Harry Wilson the father, afterwards, 7th January, 1826, bought the unexpired service of his son Henry, (being a slave until twenty-five years old,) and took a bill of sale for him from his master, George Frame. Having become indebted to Dr. S. K. Wilson in $20, Harry the father, to pay this debt, sold Henry the son to Dr. Wilson, and on the 5th of May, 1829, assigned the bill of sale which he had received from Frame. Dr. Wilson died, and the boy Henry was sold to Mr. Waples, and the same bill of sale assigned by Wilson's executor. The boy was now eighteen years old. . . The court decreed the petitioner's freedom." [1]

State v. Warrington, negro, 3 Harrington 556, October 1840. "Indictment larceny. The defendant was indicted as a 'free negro,' and proved to be a free mulatto, according to general reputation. The Court said it made no difference. The punishment is the same. The law distinguishes between white persons and free negroes or mulattoes in the punishment of larceny, but not between negroes and mulattoes. . . In point of fact this distinction of color between negroes and mulattoes would not be susceptible of proof in many cases. In the case of the present defendant it could not be proved. The color of his skin, made lighter by confinement, places him between the two; while his hair is that of the negro race, and his features those of the mulatto. The defendant was convicted."

Elliott, negro, v. Morgan, 3 Harrington 316, spring 1841. "Turner, negro, had been summoned as a witness by the plaintiff below [Morgan]," Held: "Negro testimony is always received in the courts of our State, in cases between negroes or against a negro."

William Hooper's Case, 3 Harrington 320, spring 1841. "William Hooper, negro [insolvent], applied to be discharged from imprisonment; . . the Court said . . that they must proceed with the hearing of his petition . . and that apart from any fraud they would, on a proper case appearing, adjudge him to serve his creditors. The petitioner was discharged."

Trustees of the Poor v. Hall, 3 Harrington 322, spring 1841. "Richard Howard . . owned a negro slave, Anthony, who was blind when his master died in 1822, and has ever since been a charge on the estate."

[1] Tindal *v.* Hudson, p. 225, *supra.*

Howard's [323] "land was divided . . and assigned in thirds . . The heirs at law supported this slave . . at their joint cost, until recently, when the heirs of Robert Howard sold their third to the defendant, H. F. Hall; and on his refusing to contribute to the expense, the slave was sent to the poor house, and this application was made to charge him under Dig. 416." Held: [329] "Hall is not bound to pay or contribute any part of the expense of keeping or maintaining the aforesaid slave Anthony;"

State v. Griffin, 3 Harrington 559, April 1841. "Indictment for kidnapping Maria Coursey, a free negro woman. Adjudged that the presumption of law is in favor of liberty, and no presumption to the contrary arises from color. A negro called as a witness is *prima facie* free. (Layton, J. dissenting.) Adjudged, that the allegation of freedom, as contained in an indictment for kidnapping, is a substantive allegation and must be proved. Verdict—not guilty."

State v. Same [*Griffin*], 3 Harrington 560, April 1841 (?). "Indictment for kidnapping Peter Howard, a free negro. Peter Howard was sworn on the *voire dire* without previous proof of freedom; but on his stating that he was born a slave, the court held, that proof of his freedom must be made aliunde. This was done: but it appeared that at the time he was kidnapped, there were white persons present aiding and assisting in the crime, the point ruled in Whitaker's case [1] was again raised. Chief Justice Booth and Judge Milligan affirmed that decision. Judge Layton dissented. The prisoner was convicted."

State v. same and Wilson, 3 Harrington 560, April 1841. "The defendant, Wilson, (the only one now on trial) was indicted with Jacob R. Griffin, for exporting from this State to Virginia, two negro convicts, Emory Hand and James Hickman, contrary to section 17, of the act [2] . . Emory Hand was called as a witness, and objected to, on the ground that he was not a freeman." Held: a convict servant is a free man for the purpose of giving evidence, as well as of punishment. "The defendant was acquitted."

State v. Ann Dobson, negro, 3 Harrington 563, April 1841. "Indictmen[t] for larceny of bank notes, . . The State proved . . the confession of the prisoner that she stole them, . . The defendant was acquitted."

State v. Conover, negro, 3 Harrington 565, April 1841. "Indictment for enticing away a negro indented servant to leave the service of her master, contrary to the act of 1837.[3] . . The act of 1827,[4] . . authorizes the binding negroes either as apprentices or servants. . . The girl alledged to have been enticed away by the prisoner, was bound under the provisions of this act as an apprentice, to learn the art, trade and mystery of housewifery."

[1] 3 Harrington 549 (1840).
[2] Digest 148.
[3] 9 Del. Laws 184.
[4] Digest 34.

Held: "the act of 1837, which is a highly penal act, ought not to be enlarged so as to embrace apprentices, it being in its terms confined 'to negro or mulatto slaves or indented servants.' The prisoner was acquitted on this ground."

State v. Negro Bill Jefferson, a slave, 3 Harrington 571, April 1842. "The prisoner was indicted for an assault and battery with intent to murder. He shot at a negro girl with a gun loaded with shot, and within shooting distance. None of the shot hit her. . . said that he meant to cripple but not to kill." Held: "the intent must be proved as well as the assault;" [1]

State v. Cooper, 3 Harrington 571, April 1842. "Indictment, assault and battery on John Oney, negro. John Oney, n. was called to prove the assault and battery and objected to, on the ground that there were white persons present, competent to give testimony. . . They ruled out the evidence of the negro; but, it afterwards appearing that though there were two white persons present, one of them was drunk, and the other did not see the whole of the fight, though they both knew that a blow was struck; the court now admitted the testimony of the negro." [575] "The law of humanity is in favor of the old decisions, and we now go so far with them as to hold that even though white persons were present at the commission of a crime, if they were not in a situation or position to see the act, and did not in fact observe all that happened at the time . . , the person upon whom the crime was committed, though a negro, is a competent witness to prove it. Otherwise there will often be a failure of justice, and wrongs may be committed with impunity." [Read, C. J.] [2] The defendant was convicted.

Conoway v. Piper, 3 Harrington 482, fall 1842. "Edward Short . . devised as follows . . To Hannah Piper, my daughter, and Naomi West my negro Jinn, . . that my son Isaac Short, should have my negro Frank,"

Thorn v. Laverty, 5 Harrington 102, October 1842. Cited. "petitioner was decreed free because he had been sold with intent to export."

Davis v. Marshall, 4 Harrington 64, fall 1843. Wilson "was the owner of a sloop . . of which one Jerry Jeffers, a coloured man, was master, trading from Slaughter creek. Jeffers sailed the vessel for a share of the freights."

Redden v. Spruance, 4 Harrington 217, spring 1845. "The plaintiff proved that his man 'Jerry,' reputed to be his slave, ran away from the service of W. Jones, to whom he was hired, on Saturday afternoon, May 25th, 1839, and was afterwards seen in Philadelphia, but was never recovered. . . Azael Stevens, sworn.—Drove defendants' stages from Milford to Camden in the spring of 1839. Has frequently taken up passengers on the road; the route from Milford to Smyrna is a night route. One night about that time took up a colored man or boy, . . He called to me; said he wanted a passage; said he was a free man named Peter Clayton;

[1] "The act of assembly provides, that if any negro or mulatto slave shall, with violence, make an assault upon another, with the intent to commit murder, he shall be guilty of a felony,"

[2] 3 Harrington 575n.

offered me a paper which he said was a pass, which he got from Squire Redden. It was dark and I could not read it. I took him on the box with me; after we passed Canterbury, he offered to sell me a pistol. He said he wanted money to pay his fare. I told him if he had no money he must get off, and I turned him off. . . [218] There was nothing like a runaway about the negro; no concealment. I had no suspicion he was a runaway. . . [219] The Court granted the nonsuit on the ground that there was no proof that the defendants carried the slave off with knowledge that he was a runaway slave"

Dawson Dulany, negro, v. Green, 4 Harrington 285, fall 1845. "Petition for freedom. . . [286] Jesse Green, jr., bought Clansey and her son the petitioner, in 1831, at public sale, as slaves for life, for $201;" [285] "being about to leave the State, on the 9th of July, 1833, [he] executed his deed of manumission . .: 'Now therefore, know all persons, that for and in consideration of her the said negro's good conduct and behavior towards me, I do hereby discharge her the said Clansey, negro, from me and all persons claiming by, through, or under me after I shall leave this State, to be free, and to enjoy all the privileges of other free negroes, according to the laws of this State in like cases, and that the said Clansey is to have the said Dawson, her son, until such time as I shall call for him, and to be delivered to no other person or persons, neither to be the property of any other person or persons except I myself, in person; and if I should not receive the said boy, for him to be free as his mother aforesaid, according to the laws of this State;' which deed of manumission was signed, sealed and acknowledged by the said Jesse Green, jr., before a justice of the peace . . and was afterwards . . recorded" Green died without claiming Dawson; but his widow claimed him, maintaining that the manumission [286] "was made in a drunken fit, and to defraud creditors;" Petition dismissed.

State v. Peter Frame and David Frame, negroes, 4 Harrington 569, October 1845. "Indictment, larceny of forty bushels of Indian corn in the ear; . . the defendants were acquitted" on a technicality in the indictment.

State v. Jeans, 4 Harrington 570, October 1845. "The defendant was indicted for imprisoning, with intent to kidnap, a certain Betsey Bungy; she being a free negro. It was argued on the part of the defendant, that the prosecuting witness was incompetent to prove her freedom against a white man: . . [571] it was argued by the prosecution, that the law presumes every person to be free until the contrary is proved,"

Held: [571] "It was originally considered, though it does not seem to have been adjudged, that in this State persons of color were presumed to be slaves; the presumption being founded as it has been said on the fact, that a large majority of persons of color were slaves. But the fact has long since changed; and it has been repeatedly decided that as a mere presumption, the inclination is in favor of freedom.[1] It was so held prior to the case of Dillahunt,[2] though that is the first case reported. . . Ac-

[1] Not so in most of the slave states.
[2] State *v.* Dillahunt, p. *227, supra.*

cording to these decisions a person of color is presumed to be free for the purpose of being a witness, but this presumption cannot supply full proof of a material fact . . [572] a fact necessarily averred in the indictment; necessary to be proved affirmatively by the State, and yet a fact which Betsey Bungy, whether free or slave, is not competent to prove against a white man, it being susceptible of other proof which is unobjectionable and competent." Verdict, not guilty.

State v. Burchinal, 4 Harrington 572, October 1845. "he was in the habit of selling liquor, and permitting it to be drank in his store, about which, there was frequently collected a crowd of persons, black and white, particularly on Saturday nights:"

Webb v. Pindergrass, 4 Harrington 439, fall 1846. "the administratrix, who was a colored woman, was offered to prove a book of original entries, kept by her for her husband, showing the number of bushels of ashes sold and delivered to B. Webb. Her testimony was objected to; 1st, as a person of color;" Held: [440] "We think this woman competent, under the act of 1787, and from necessity,"

State v. Updike, 4 Harrington 581, May 1847. "Indictment, kidnapping William Hogans, negro. . . the jury being unable to agree, after being up all night, were discharged . . It now came up again before another jury, and the defendant was convicted."

State v. Harten, 4 Harrington 582, October 1847. "On the trial of James Harten, who was indicted with Jacob R. Griffin and others, for kidnapping one Peter Howard, a free negro, with a count for aiding and assisting Griffin to kidnap, it was ruled, 1st. That the record of Peter Howard's discharge on a petition for freedom filed against his former master for selling him out of the State, was sufficient evidence of his being a free negro. 2d. That the general reputation of Jacob R. Griffin as a kidnapper might be given in evidence, to show the intent with which the defendant aided him in binding and carrying off the said Howard. The defendant was convicted."

State v. Burris, n., 4 Harrington 582, October 1847. "Indicted for enticing and aiding slaves to run away." Change of venue denied: [584] "we have every confidence that whatever may be the sense of this community in relation to the offence of aiding the escape of slaves, the sense of justice in the people generally, and particularly in the jury present, is much stronger, and will insure a perfectly fair and impartial trial of any one accused of this offence, however humble he may be." [Booth, C. J.] "The defendant was afterwards acquitted on this indictment, and convicted on two others, for a similar offence.

Sarah Thoroughgood, Negro v. Anderson, 5 Harrington 97, October 1848. "The petitioner belonged to John Thoroughgood, as a slave for life. He purposed to set her free at twenty-eight years of age; and in the mean time sold her to Thomas McIlvaine, and took his bond in $200, obliging him to free her at twenty-eight. She was actually sold to that time, with the understanding of all parties; though the bill of sale was

general, without specification or limit as to time. McIlvaine sold her to one Stewart, he to Warren and Warren to James Anderson, as it was alledged, to be free at twenty-eight; but the transfer was by endorsement on the first bill of sale, which was general. Thomas McIlvaine executed a manumission in pursuance of his bond on the 20th of March, 1844, some time after Sarah had attained twenty-eight. She filed a petition for freedom on the 18th of November, 1845, against James Anderson, who transferred her to Caleb B. Sipple, his son in law, on the 21st of November. Mr. Anderson appeared to the suit on the 24th of April, 1846, and disclaimed title. The plaintiff filed a petition for freedom against Sipple on the 23rd of October, 1846, and he re-transferred her to Anderson on the 24th, and on the 26th appeared to the suit and disclaimed title. The plaintiff also filed a petition for freedom against John M. Rawlins, another son in law of Anderson, on the 23rd of October, 1846. He appeared on the 25th and disclaimed title. Pending these proceedings the petitioner was taken to Baltimore, to remain, as was alledged on the one side, in the family of a friend temporarily; on the other, for the purpose of evading the judgment, and for exportation and sale." [103] "The Court entered a decree of freedom on the proof of exportation; from which an appeal was taken" The judgment was affirmed.[1]

Sipple, Negro v. Adams, 5 Harrington 149, spring 1849. The defendant, Sipple, was discharged from custody. Held: a commitment under the statute against non-resident negroes,[2] must show the offence, and the judgment in pursuance of the statute.

Page v. Vandegrift, 5 Harrington 176, spring 1849. Action under the statute of January 19, 1826.[3] In October 1848, William Clensy, said, in the declaration, to be the slave [4] of Mary Page, [177] "skulked on board" the steamboat *Zephyr* (of which Vandegrift was captain) "and hid himself from the knowledge and observation of the captain and crew;" and was carried out of the state. Verdict and judgment for plaintiff: "the captain was bound to know every body on board," The judgment was reversed in 1854.

Taylor v. Horsey, 5 Harrington 131, April 1849. Trover "Thaddeus [a boy eight or ten years old] was the slave of . . Kinney, and as such was bound by execution process in the sheriff's hands against Kinney. . . before the levy, Kinney sold and delivered the boy to . . Horsey, who had no knowledge of the execution. The boy was afterwards levied upon and sold by the sheriff to . . Jefferson, who immediately transferred him to plaintiff, who was a son in law of . . Knowles, a negro trader, and who had until recently lived in the State of Ohio. Jefferson was not present at the sale; and soon after left the State. A witness was asked if Jefferson also was a negro trader; which, though objected to, was allowed; and the answer was that he bore that character."

[1] Anderson *v.* Thoroughgood, p. 234, *infra*.
[2] Act of 1841, Digest 410.
[3] Digest 291.
[4] He "was not only not a slave, but could not be a slave. He was an Indian; since given up by the claimant as such." Vandegrift *v.* Page, p. 236, *infra*.

Held: [132] "on the question of the intent with which a person bought a slave, his general character as a negro trader is relevant, and admissible in evidence."

Collins v. Bilderback, 5 Harrington 133, April 1849. Action "under the statute of 1826,[1] against a steamboat captain, for carrying a slave out of the State. . . [135] the plaintiff's daughter, proved that the negro slave Alice left her father's house on the 11th of August, 1847, in company with her mother [Mrs. Collins], and went to Leweston; and on Friday morning, August 14th, she went to Philadelphia, on the steamboat *Portsmouth,* Captain Charles Bilderback. She had been held by plaintiff as a slave." Mrs. Collins "was taking Alice up with her to Philadelphia . . with the intention of staying; . . Alice was in her [*sic*] six years old then." Verdict for plaintiff. Held: [138] "The act imposes the penalty, although the act of transportation is done without knowledge or notice that the negro . . is escaping from the owner's service." "The law is severe, and it is the only one that makes a party criminally liable, without a criminal intent." [Booth, C. J.]

Negro Ann Elliott v. Twilley, 5 Harrington 192, June 1849. "four cases of petitions for freedom. . . will of George Moore, . . admitted to probate . . 1805:—'Also, I give to my wife . . one negro man called Isaac, and one negro woman called Bett, to serve her during her natural life, and after that time to go free.' The petitioners were the issue of Bett, all born after the death of George Moore, and during the life of his widow, . . The court below gave judgment, (without argument) dismissing the petitions, in conformity with the case of Negro Ben. Jones *vs.* Wootten,[2] . . these appeals were taken from that decision." Decreed in each case that the petitioner is entitled to freedom (overruling Jones *v.* Wootten).

Anderson v. Thoroughgood, negro,[3] 5 Harrington 199, June 1849. Held: [200] "a prior conviction [of the master] is not requisite; . . freedom is not the consequence of conviction, but is by virtue of the act of assembly,[4] and results from the fact of exportation. . . proof of the fact of exportation, contrary to the act, confers freedom." Judgment below affirmed. [Johns, Ch.]

State v. York, (Negro), 5 Harrington 493, 1850 (?). "The defendant, an indentured servant, was running away from his master; and, to make good his escape, mounted a horse which he found hitched on the road, and after riding him to Wilmington, put him at a livery stable, and abandoned him." Held: not larceny. "he ought to be acquitted."

State v. Anderson, negro, 5 Harrington 493, December 1850. Anderson was indicted for the murder of Joseph Williams, convicted and executed.

[1] Digest 291.
[2] P. 219, *supra.*
[3] For facts see Thoroughgood *v.* Anderson, p. 232, *supra.*
[4] Digest 154.

Lord v. Horsey, 5 Harrington 317, spring 1851. "Trover for a negro girl slave."

State v. Winsor, 5 Harrington 512, June 1851. [520] "He said he had got Milford Saunders [negro] to conjure for him to get his wife back, but he couldn't succeed;"

Burr's Case, 5 Harrington 351, fall 1851. "*Habeas corpus* to the jailer of Sussex county. The prisoner was committed . . for non-payment of a fine of $50, imposed on him, on the information of George Harris, charging him, . . Burr, free negro, with being a non-resident and being in the State of Delaware, contrary to the statute, . . The Court discharged the petitioner, on proof that he did not come into the State after the passing of the act of 1851;"

Simpson v. Warren, 5 Harrington 371, fall 1852. "two negroes ran away from the defendant; that he offered $300 for their arrest and return, or $150 for either one; and that plaintiff arrested and returned one of them. On the 15th of September, 1850, negro Robert Carlisle fled from his master, Samuel Warren, and embarked on Captain Errickson's vessel, in Murderkill creek, where he represented himself to be a free boy. Before they got out of the creek, Capt. Errickson heard that the boy was a slave; and, giving him in charge of the mate, he started to see Samuel Warren. This was early in the morning of the 16th. On the road he learned that Samuel Warren had gone to Dover, to advertise the boy. He then returned to get him, and take him to Samuel Warren's house; but in his absence, the plaintiff came to the vessel and took the boy away. In the meantime, Warren had notices advertising the reward printed and posted in Dover." Verdict for defendant.

Proctor, negro, v. State, 5 Harrington 387, fall 1852. "the complaint of Major W. Allen stated, 'that Elisha Proctor, a free negro, hath come into this State, after a voluntary absence of more than sixty days from this State; and that the said Elisha was not at the time engaged in any occupaion of mariner or waterman, nor was he absent as a wagoner or messenger in the actual employment of a citizen of this State."

Judgment against Proctor, "for the sum of fifty dollars fine, and one dollar and fifty-five cents costs, one-half to be paid to the said State of Delaware, and the other half to be paid to the said Major W. Allen, the informer; and the said defendant was ordered to give surety in the sum of fifty dollars, that he would leave the State in five days from this date. and on his default in both the payment of the fine and costs, and the giving of the security, he was committed to the public jail." Judgment reversed [388] "on the ground that the record did not show at what time the offence was committed; nor against what law, whether the act of 1851 or the Revised Code of 1853."

State v. Turner, 5 Harrington 501, 1853 (?). "The defendant was indicted for exporting a slave; Daniel Webb. . . Turner, his master, took him out of the State by night, and confined him in a private jail, at Salisbury, from which he escaped. Suit was instituted for his freedom, founded on these facts; and a decree of freedom entered, from which the master

took an appeal, which was still pending. The negro boy was called as a witness and objected to. . . The witness was rejected. "A judgment lawfully appealed from, is for the time removed, . . the consequences flowing from it for the time avoided. The effect of this judgment, therefore, in establishing Webb's freedom cannot be, at present, to make him a witness." Turner was found guilty.

State v. Brown, 5 Harrington 505, 1853. "Isaac Nathans, (negro.) . . I have had fifty-one children, by three wives; fourteen by the first, fifteen by the second, and twenty-one by the third, all born alive."

State v. Johnson, free negro, 5 Harrington 507, 1853. Johnson was tried "for breaking and entering a store house and stealing certain goods therefrom." His confession was admitted in evidence.

Vandegrift v. Page,[1] 5 Harrington 439, June 1854. "The plaintiff [Mary E. Page] had a verdict for $500 and judgment;" Judgment reversed: "the declaration was materially defective, for want of an averment that the plaintiff was a citizen of this State."

Union Church of Africans, 1 Houston 100, June 1855. "In the year 1813 certain free colored people residing in . . Wilmington, associated themselves together as a religious society, . . and . . proceeded to elect . . trustees" [for the purpose of taking care of the temporalities [2]] who "upon their election took upon themselves the name of 'Union Church of Africans,' . . [104] in process of time, other societies were . . formed in the States of Delaware, New Jersey, Pennsylvania, New York, and Connecticut, in connection with the original society in Wilmington, . . [105] Your petitioner . . became a member of one of the societies of said African Union Church; . . at Christiana, . . about the year 1815; that, soon afterwards, he was duly licensed as a preacher in this church; that, in the year 1835, he was chosen by the elders of his said society to the office of deacon, and was thereupon ordained to said office by Peter Spencer, then elder minister in said church, agreeably to the provisions of the Discipline thereof; that he continued to preach as a deacon in the said African Union Church until the year 1846; in the month of April of which year he was nominated, according to the usage of said church in such cases, by a Yearly Conference,[3] . . to the office

[1] For facts, see Page *v.* Vandegrift, p. 233, *supra*.

[2] Act of Assem. Feb. 3, 1787.

[3] [137] "The respondent's position rests on the repeated use of certain expressions in the Articles of Association and Discipline, requiring the consent of the congregations to the induction of a preacher, and showing a fixed opposition to the appointment of preachers over them by a Conference, or any independent power. On this ground they seceded from the Methodist Episcopal Church, which claimed and exercised this power over them, as it still does over all its own societies. The answer to this . . is this: that the Conference, against whose power they were then contending, was a body which was not a part of their own church organization; it was a body composed of white ministers, in which they were not represented; that, while they threw off its authority, they provided for a similar Conference as a part of their own organization, composed of their own official members, but without defining its powers; that, by constant usage from the beginning, this body nominated the elder ministers; leaving it still to the congregations and ruling elders, after trial, to accept or refuse the person nominated; and that the expressions so often repeated, that no preacher should have the right to preach, except to those who were willing to hear him, have reference to a settled and recognized distinction, always existing, between licensed preachers, deacons, and elder ministers."

of elder minister . . and . . ordained . . by Isaac Barney, then elder minister in said church. . . That the said Barney, residing in the city of New York, assumed more particularly the charge of the northern societies in said church; and that the southern societies, including the said original society in Wilmington, fell under the immediate charge and superintendence of your petitioner . . he has . . been forcibly excluded from said church, . . prays . . a writ . . of *mandamus,* directed to the said Union Church of Africans, commanding them to admit your petitioner to preach in the said Union Church at Wilmington whenever he may see proper so to do, and to administer the ordinances and discipline thereof, and to exercise a pastoral charge over the same, or to show cause to the contrary." [127] "the judgment of the Superior Court, ordering the peremptory *mandamus,* ought to be reversed and declared to be of no effect."

Socum v. State, 1 Houston 204, spring 1856. Held: Section 2, chapter 52, of the Revised Code,[1] does not apply to non-resident free negroes or mulattoes, who were residing in the state at the time the Code went into effect.

Doe d. Short v. Prettyman, 1 Houston 334, spring 1857. Will of Edward Short: "My will and desire is, that my son Isaac should have my negro Frank," The date of the will is not given, but the context shows that it was earlier than the fall term of the Court of Chancery, 1835.

King v. Phillips, 1 Houston 349, spring 1857. "Replevin for a negro slave, bequeathed by Spencer Phillips to his wife," during her widowhood.

Horsey v. Horsey, 1 Houston 438, fall 1857. Will of Thomas C. Horsey: "I give, devise and bequeath . . to my beloved wife . . one negro woman, named Emeline, until she shall arrive at the age of thirty-four years, which will be on the 25th day of August, 1850, and then to be free." "to his daughter . . a negro girl, named Mary, to serve to the age of twenty-eight, and then to be free, and to his son . . a negro boy, named John, to serve until the age of thirty years, and then to be free."

State v. Jones, Houst. Cr. Cas. 21, October 1857. Jones, a colored man, was indicted and tried for the murder of Ralston, another colored man. They, with four other colored men, were employed by "a farmer of the county. . . while they were all up stairs, a quarrel arose . . about a lamp," The deceased was stabbed. "Verdict—Guilty of manslaughter."

State v. Anderson, Houst. Cr. Cas. 38, April 1858. "Anderson, negro, was indicted and tried for the murder . . of . . Emery, negro, in the month of August preceding. They had met at the camp-meeting near Camden, and having had a quarrel, Anderson told Emory that if he would follow him off the camp ground he would give him satisfaction," Anderson stabbed him with a pocket knife. Verdict—"Guilty of murder in the second degree."

State v. Downham, Houst. Cr. Cas. 45, April 1858. "Downham was tried on a bill of indictment found against him . . for the murder of a

[1] P. 144.

negro man . . in the forest of Murderkill hundred, . . 1852. . . [48] Pompey Tribbet [a mulatto] was . . called and sworn as a witness," Held: by the act of 1799, the prisoner's confession of the crime, committed when no white person was present, may be proved by a negro witness. Verdict—"Not Guilty." [The negro who was murdered had previously shot at the prisoner.]

Windsor v. Boyce, 1 Houston 605, fall 1858. "an action of replevin for a negro slave"

State v. Newcomb, Houst. Cr. Cas. 66, October 1858. The deceased said that he would "kill that man [the prisoner], if he was the last man in the world, and a d—d nigger too."

Doe d. Burton v. Wright, 2 Houston 49, spring 1859. [51] "the counsel for the plaintiff endeavored to impeach and invalidate the marriage of the defendant with Walter Wright, who were both negroes, or mulattoes, and for this purpose he called to the stand Robert Clark, a negro, as a witness."

Held: [52] a "negro or mulatto . . is competent to testify against a negro, or mulatto in all cases." But witness was rejected on the ground that "if he was the husband of the defendant, he was incompetent for that reason to testify either for, or against her" as "the wife is a party to the suit." [53] The counsel for the plaintiff then called another witness who had known the defendant for twenty-five years, . . he was present at her marriage with Robert Clark about twenty years ago at her father's house. They were married by Rev. John T. Hazzard, a minister in full standing in the Methodist church, and then rode the circuit in that section of country. She was then very young, only about fourteen years of age. When the marriage ceremony was about to be commenced, she did not appear to come forward very willingly, nor stand very easy during it. Her waiter conducted her up before the minister and she hung back considerably. She and Clark stood up together, however, but when the minister told them to join hands, she would not do it, and when he told them to salute each other, she would not do it. To the questions put to her by the minister in performing the ceremony, she made no answer; and the minister afterward said to him, the witness, that he did not know what to think of it, that he had never seen such a case before and that he could hardly call them married; and that he did not remember that he heard the minister pronounce them man and wife. But witness attributed her conduct at the time to her diffidence and modesty, rather than to aversion, or disinclination to marry Clark. That she did not retire with him that night, nor did they live together for some time; after a while, however, they commenced living together, but soon parted and never lived together afterward. . . [54] The defendant's counsel then called Rev. John Rogers as a witness, . . did you, as a minister of the Baptist Church, unite in marriage, Walter Wright, since deceased, and Elizabeth Wright, the defendant in this suit? . . [55] The witness . . proved the marriage of the defendant to Walter Wright, and that she passed at the time by the name of Elizabeth Clark."

Brinkley v. Jackson, 2 Houston 71, spring 1859. "The proceeding below was at the suit of Jackson against Brinkley, on the provision of the Act of Assembly, Rev. Code, 46 Sec. 18" in regard to free negroes or mulattoes, "not residing within the limits of any town where an election shall be held," who "shall be found within the limits of such town . . on the day of such election,"

State v. Owens, Houst. Cr. Cas. 72, April 1859. "Mary Owens (n.) was indicted for aiding the escape of an indentured servant girl from her master. She was the mother of the girl and had bound her to the master by an indenture of servitude"

State v. Burrows, Houst. Cr. Cas. 74, April 1859. "Mary E. Burrows, a negro [of a very weak and imbecile mind], was indicted and tried for arson in setting fire to the dwelling house" of her step-mother. "verdict of not guilty."

State v. Oliver, 2 Houston 585, fall 1863. In 1855 "Oliver, a free negro, was indicted and tried for the murder . . of David Burton. A son of the prison[er] had been duly bound as an indentured servant to a brother of the latter, and in his absence from home, the prisoner went to his house and took his son away from his service, and while on their way from his house, the deceased met them on the public road, . . took his son away from him and sent him back to his brother's residence. In the meanwhile, first an altercation and then a collision ensued" Burton struck Oliver "twice upon the head with a piece of fence rail, and . . the same day . . made a complaint before a Justice of the Peace that the prisoner had drawn a dirk knife upon him on the occasion and threatened to kill him, on which he issued an informal precept . . to . . a deputized constable . . to apprehend the prisoner" who shot Burton from an upper window of his house, when the *posse,* which included Burton, came to arrest him. Verdict of guilty of murder in the second degree.

State v. Gardner, Houst. Cr. Cas. 146, May 1864. "Rosannah R. Gardner, negro, was indicted and tried for the murder of Martha Ann Segreave, negro, . . the parties were friends. . . Both had been drinking, . . [150] Verdict—Guilty of murder of the second degree."

State v. Brister, Houst. Cr. Cas. 150, May 1864. "John Brister, a negro boy about fifteen years old, was indicted and tried for the crime of arson in setting on fire the dwelling house of James Davis . . He had been sent by his master, James Williams, to whom he was indentured as a servant, to Mr. Davis to work for him on his farm, who had whipped him for not working as he should, for which he ran away a few days afterwards," witness [153] "told him [Brister] several times during the night that he must have set fire to it. He however said he did not, but the next morning after Mr. Hayes [for whom Brister had been working] had whipped him, he asked him if he did not set fire to the house, to which he replied that he did —" He was "dragged soon after with his hands tied behind a horse and carriage to Middleton before the Magistrate, . . Verdict—Not guilty."

State v. Frazier, Houst. Cr. Cas. 176, May 1865. [191] "A colored woman testified that she had lived all her life a servant in the family of the deceased,"

Cannon v. Stuart, 3 Houston 223, spring 1866. [224] "*Habeas corpus* case. . . Mary Cannon (n.) was a minor . . and was unlawfully restrained of her liberty by . . Stuart, by virtue of . . binding by indentures of apprenticeship" [1] [225] "the constable who gave the information required under the act, and upon which the two justices of the peace proceeded to bind the petitioner, gave no notice whatever . . to the mother of his intention to do so, unless she provided a suitable home for her with some respectable white person in the mean while; and . . the two justices of the peace . . proceeded at once to bind the petitioner without delaying it until five days after their hearing of the case, to afford the mother an opportunity of indemnifying the county against the petitioner becoming a charge upon it, as was also required by the act." Held: "the petitioner is hereby discharged from the said indentures of apprenticeship, and from her servitude to the respondent."

State v. Rash, Houst. Cr. Cas. 271, October 1867. Rash "was indicted for an assault and battery committed on Samuel Derry, a negro man. . . 'The first witness called was a negro man, named Berry [Derry]. He took his place at the witness stand ready to testify, when the counsel for the defendant objected to his competency, on the ground of the Act of Assembly of February 3, 1799, the eighth section of which was re-enacted in 1852" [2] [272] "There was a competent white witness present at the time the alleged assault . . occurred," The Attorney General "claimed that the evidence of the negro was admissible, . . insisted that the civil rights bill [3] was the supreme law, and as such, was binding on all courts whether state or federal,"

The Court, Gilpin, C. J.: [280] "in so far as the civil rights bill assumes to compel, regulate, or control the admission of evidence in the Courts of this State, it is inoperative, unconstitutional and void. The fact that the negro man called as a witness, was the person on whom the assault and battery had been committed, having come to the knowledge of the Court, the Chief Justice, remarked that his testimony was admissible under the rulings of the Court, on the ground of humanity and necessity, although there was a white witness present," [4]

State v. Draper, Houst. Cr. Cas. 291, April 1868. "Jesse Draper, a deaf and dumb man, was indicted for the murder . . of . . Dickerson. . . [292] the prisoner, who was a negro, about thirty years of age, and deaf and dumb from his birth, had been living for the last seven years in the family of the father of . . the deceased, working on the farm . . and had long evinced a strong and peculiar partiality for the whole family, and had never before manifested any disposition to injure any member of it, or fear any of them, except the deceased, who was the only member

[1] Under Rev. Code of 1852, 245, ch. 79, sect. 3.
[2] Rev. Code, ch. 107, sect. 4.
[3] Act of Congress.
[4] State *v.* Whitaker, p. 227, *supra*; State *v.* Cooper, p. 230, *supra*.

of it capable of mastering him, and who had sometimes had occasion to conquer and chastise him, when in his violent and angry moods actual force was required to overpower and subdue him." In such an encounter the prisoner stabbed the deceased [293] "in fifteen different places with a sharp pocket-knife . . although the prisoner had never been able to speak or hear, and had never received any instruction or education in the alphabet or language of signs taught in the schools of mutes, he had signs of his own by which he could readily communicate his ideas to and converse with such persons as were familiarly acquainted with him, on many ordinary matters and things, and was possessed of a good deal of intelligence and mechanical ingenuity, and was not only a good hand and workman on a farm, but could make well any article he tried to make that was required upon it, and knew the boundaries of it and the adjoining tracts in the woods better than the owner of it, and knew the difference in the value of our national silver coins, as well as our smaller bank notes, and could be sent to the stores in the town to buy many ordinary articles required on the farm or in the family; and although he had never received any religious instruction, he seemed to have some conception of a future state of rewards and punishment, and to believe that there is a heaven above for the good and a hell beneath for the bad, indicating by appropriate signs that those who shout at religious meetings will go to the former, while the bad would descend to the latter. He also in like manner could make known that he knew the public jail and the whipping post and pillory, and what they were for in Georgetown, and that people who stole were there whipped and imprisoned for it. His previous character had been good, and though evidently conscious of what he had done, he made no effort to escape or attempt to deny it, but seemed apparently to exult over it. . . [302] The verdict of the jury was, not guilty by reason of insanity, or want of criminal responsibility."

Handy v. Clark, 4 Houston 16, spring 1869. "*Assumpsit* for work and labor . . The plaintiff was a colored woman and had been owned and held as a slave for life by the defendant for many years prior to the adoption of the thirteenth amendment of the constitution of the United States, and afterward voluntarily remained in his service and continued to work and labor in his family as a domestic servant until the 10th day of April 1868, when she voluntarily left it without any complaint or demand of wages, and without any objection, or effort on the part of the defendant or his family to prevent her leaving or to induce her to remain in it. It further appeared that he had never said anything to her, nor she to him, in the meanwhile, in regard to the abolition of slavery or her freedom under the operation of the constitutional amendment, but he knew from her deportment that she was well aware of the fact that she was free, for she left and returned to his house at her will and pleasure, and without saying anything to him about it, which she had never done before, and without any complaint or remonstrance on his part, for he had never requested her to remain, or not to go, but had ever since considered her at liberty to leave his house and service entirely, whenever she pleased. He had in the meantime, however, clothed and maintained her, and paid

for medicine and for the attendance of physicians upon her when she was sick, the same as he had before when she was his slave. The sum demanded by her in the action was at the rate of two dollars per week for one hundred and forty two weeks. In addition to the defendant who was called and examined as a witness for the plaintiff, a daughter and a sister of hers were also called as witnesses for her." Counsel for the defendant objected to their competency "on the ground that they . . were not admissible under the statute of the State[1] . . But the Court overruled the objection on the ground that the amendment of the constitution and the act of Congress, entitled the 'civil rights bill,' had removed the disability imposed upon them . . [18] by our statute, and rendered them competent witnesses in the case." Charge to the jury: [19] "the law would imply a promise on his part to pay her for the services as much as they were reasonably and justly worth . . but it would be subject to a proper deduction for the clothes furnished and the expenses incurred by the defendant for medical attendance and medicine on her account during the time she was so serving him, . . The plaintiff had a verdict."

Morris v. Morris, 4 Houston 414, June 1872. Will of Elijah M. Morris, executed 1861: [416] "I give and bequeath unto my son, William . . the unexpired term of the indentured servant, John W. Pratt (negro). . . unto my son, James . . the unexpired term of the indentured servant, Alfred Pratt (negro)." Appealed from Delaware Court of Chancery. See Warren *v.* Morris, 4 Del. Ch. 289.

[1] Rev. Code, ch. 107, sect. 4.

PENNSYLVANIA

INTRODUCTION

I.

"Since the act for the gradual abolition of slavery,[1] ['that act which has been the pride of Pennsylvania, as one of the most noble and glorious emanations from the spirit of the revolution,'][2] a number of persons . . formed a society in Philadelphia, for the purpose of relieving those of their fellow creatures, who are held in illegal slavery."[3] The society was not incorporated till December 8, 1789;[5] but the judicial records show its activity as early as 1784. In that year Dalby, a resident of Maryland, was "attended . . to Philadelphia" by a slave who "presented so pure a complexion, that the attention of the society was excited, and a writ of *habeas corpus* taken out at their instance;" but on the advice of Chief Justice McKean, the case was thrown into the form of an action *de homine replegiando*. On the trial it was proved that the plaintiff was born in Maryland "of an unmarried *mulatto* woman," a slave, and he "was shewn to the Jury, that they might . . draw some conclusion, that he was, at least on one side, the issue" of a white parent. The Chief Justice charged the jury that the rule of the common law of England, that "the issue follows the condition of the father" is confined to *villeins* and that "villenage never existed in America, . . The contrary practice ['authorized by the civil law'] has . . been universal" here. Consequently the jury gave their verdict for the defendant.

In 1795, on the trial of Richards,[5] charged with violating the seventh section of the act of 1788,[6] "it was admitted that the prosecution was carried on by the society for the abolition of slavery, . . Thereupon the defendant's counsel insisted, that none of the members of that society should be received as jurors" and the court declared the "objection . . relevant." Again the society failed of its purpose, the court deciding that the section applied only to *free* negroes, while the evidence had shown that the negro who had been restored to his master by Richards's scheme of taking him to New Jersey, was in fact a slave.

In 1811[7] "Milnor, for the abolition society," obtained the discharge of Hester, who had been committed to prison for absconding from one of those "ill disposed persons" whose devices the act of 1788 was enacted

[1] Passed Mar. 1, 1780. 10 Pa. Stat. at L. 67.
[2] Baldwin 586.
[3] Pirate *v.* Dalby, p. 256, *infra.*
[4] 2 Pa. Stat. at L. 424.
[5] Respublica *v.* Richards, p. 260, *infra.*
[6] An act supplemental to the act for the gradual abolition of slavery. 13 Pa. Stat. at L. 54 (56).
[7] Commonwealth *v.* Hester, p. 270, *infra.*

to circumvent.[8] Though she had been born in August 1780, her master had never registered her as the act of 1788 provided; but had continued to hold her as a slave till 1798, when she was manumitted by him "and at the same time bound as a servant for ten years." The court "acknowledged that the . . binding was void, Negress Hester being at that time . . a free woman." As Chief Justice Tilghman had said, in Sylvia's case:[9] [371n.] "There is no evidence that . . [she] had the assistance of friends or counsel, or that she had any idea of a right to freedom, except what was derived from the deed of manumission, which bears the same date as the indenture, and must be considered as being executed immediately before it. Taken together, the two instruments form one transaction." As she was already free, the manumission was no consideration for the binding.

Manumission also failed as a consideration if the indenture for service was executed *after* the slave was brought into the state by a prospective resident, although the promise had been made previously.[10] It also failed in the case of Sylvia,[11] "a black girl, of . . fifteen years," who had been taken to Rhode Island in 1808 by her mistress, Madame Bertrand, "one of those unfortunate persons whom the Spanish government . . compelled to leave" Cuba, and had been brought thence, a few months later, to Philadelphia, where she was manumitted and "on the same day bound herself, by indenture, as a servant to Mrs. Bertrand . . for thirteen years." Chief Justice Tilghman stated, when she was brought before him "on a *habeas corpus*" in 1809, that it "has been customary for negroes in Philadelphia, claimed as slaves by persons living in other states, to bind themselves for . . periods, not exceeding the age of twenty-eight . . by way of compromise with their masters; . . These compromises, especially when the negro has acted under the direction of the abolition society, or any of its members, ought, if possible, to be supported." For "an infant [as Sylvia is] may make a contract for his own benefit; now nothing can be more for his advantage than to commute . . slavery, for servitude until . . twenty-eight . . the act for the gradual abolition of slavery, (sect. 13) does, by necessary inference, affirm the validity of [such] an indenture, . . Sylvia was not free by the acts . . of Pennsylvania, when she executed the indenture, because her mistress did not come . . [371 n.] with a view of settling . . nor had she been [here] six months . . at the date of the indenture. But the case turns upon the Act of Congress, passed the second of March 1802, . . 'to prohibit the importation of slaves . . after the first of January 1808.'" Sylvia was free as soon as she set foot on the soil of the United States, so that the indenture was without consideration.

[8] Preamble to the act of 1788.
[9] Commonwealth *v.* Lango, p. 268, *infra*.
[10] Commonwealth *v.* Cook, p. 285, *infra*; same *v.* Robinson, p. 268, *infra*.
[11] Same *v.* Lango, p. 268, *infra*.

Susan Stephens, "a black woman" who had run away from her Maryland master and had married a free negro in Philadelphia, was apprehended and about to be taken back, when "Clements, at the solicitation of both husband and wife, agreed to pay [her master] . . 195 dollars, provided he would manumit the wife, it being understood, that [they] . . [207] should bind themselves as servants to Clements for . . three years. The indenture of the wife . . was also executed by William Masters, one of the society for promoting the abolition of slavery, who was styled the next friend of the wife." She sought in 1814 [12] to be freed from the service on the ground that she was a married woman and her husband was not a party to the indenture, though he was "present, and consenting." Chief Justice Tilghman declared the marriage unlawful as "she was incapable of entering into a contract of marriage without the master's consent," and she was remanded to the service of Clements.

In 1833 [13] Justice Baldwin, while censuring the conduct of Mr. Ellis, an honorary member of the Pennsylvania society for promoting the abolition of slavery, by whom "their legitimate objects . . [had] been perverted . . by [his] contributing money to employ counsel to prosecute a master for lawfully seizing and taking away his runaway slave," declared that "we are well convinced that it has been equally repugnant to the feelings and practice of the members of the society,[14] as it would be to their charter." "No society was ever founded for nobler objects,[15] . . but it was no part of the design . . of this benevolent society, to protect or rescue runaway slaves from the claims of their masters. It was provided in their charter that their . . regulations . . be . . not contradictory to the constitution and laws of the state. . . So far as has come to our knowledge . . this society has acted on the philanthropic principles of its institution, . . never interfering with the rights of property, . . they have not infringed the condition of their charter, but pursued their legitimate objects with untiring zeal." The many cases which do not specify that the abolition society was active in instituting them, but which indicate that the records of the registry required by the acts of 1780, 1782 and 1788, had been searched by keen and experienced eyes, to take advantage of defects which would give freedom, lead us to the conclusion that such "untiring zeal" was due to the abolition society.

[12] Commonwealth *v.* Clements, p. 271, *infra.*

[13] Johnson *v.* Tompkins, p. 286, *infra.*

[14] He might have revised his statement twenty years later. In 1853 Mr. David Paul Brown, "being . . it was supposed, employed by certain societies in Philadelphia, known as 'Friends of Humanity,' 'Abolitionists,' etc.," was forbidden by the court to interfere in the *habeas corpus* proceedings for the discharge of the deputy marshals who had assaulted a fugitive slave in attempting to arrest him. *Ex parte* Jenkins, p. 308, *infra.* The high-handed conduct in 1855 of Passmore Williamson, "secretary of the active committee of the old Pennsylvania Anti-Slavery Society," landed him in jail. U. S. *v.* Williamson, p. 311, *infra.*

[15] "for promoting the abolition of slavery and for the relief of free negroes unlawfully held in bondage and for the improving the condition of the African race," 13 Pa. Stat. at L. 427.

Neither the omission of the county [16] where the owner resided, nor of the words "for life" [17] after "slave" invalidated the registry of Bob or of Hannah under the act of 1780; but Belinda was freed in 1817 [18] because her sex was not mentioned as required by that act. "We cannot recognize the name Belinda as being exclusively that of a female," says Judge Gibson.

To slaveholders residing in Westmoreland and Washington Counties on September 23, 1780, the time for registration was extended by the act of April 13, 1782 [19] beyond the date (November 1, 1780) required by the act of 1780 to January 1, 1793, as "the boundary between Pennsylvania and Virginia was in dispute [in 1780], and as the inhabitants . . [19] on the border could not tell to which state they belonged." [20] Accordingly, Cassandra and Lydia were declared free in 1797,[21] and John in 1799 [22] because their masters had not brought them from Maryland till after September 23, 1780.

Peggy, who was registered on November 10, 1780, nine days after the limit allowed by the act of 1780, claimed her freedom; but the Supreme Court decided in 1815 [23] that, as she was held as a slave in Westmoreland County on and before September 23, 1780, the owner had the benefit of the extension of time granted by the act of 1782. Chief Justice Tilghman declares: "I know that freedom is to be favoured, but we have no right to favour it at the expense of property. The only just mode of extirpating the small remains of slavery in the state, would be by purchasing the slaves at a reasonable price, and paying their owners out of the public treasury."

As the act of 1780 was not sufficiently explicit, an act to "explain" it was passed on March 29, 1788.[24] By the latter act the children of all registered slaves must be registered on or before April 1, 1789, or "within six months next after the birth," if the master would hold them as servants till the age of twenty-eight.[25] The defective registry of John in June 1807, as born the *following* January, was permitted in 1811 [26] to be explained by parol evidence and he was obliged to continue to serve until twenty-eight years from January 1807, "the real time of his birth." But Judge Gibson in 1817,[27] while agreeing with Chief Justice Tilghman that "the construction [of the act of 1780] should be liberal in favour

[16] Cook *v.* Neaff, p. 264, *infra.*
[17] Respublica *v.* Findlay, p. 264, *infra.*
[18] Wilson *v.* Belinda, p. 275, *infra.*
[19] 10 Pa. Stat. at L. 463.
[20] Marchand *v.* Peggy, p. 274, *infra.*
[21] Pennsylvania *v.* Blackmore, p. 261, *infra.*
[22] John *v.* Dawson, p. 263, *infra.*
[23] Marchand *v.* Peggy, p. 274, *infra.*
[24] 13 Pa. Stat. at L. 52.
[25] Act of Mar. 1, 1780. 10 Pa. Stat. at L. 67 (69).
[26] Commonwealth *v.* Blaine, p. 271, *infra.*
[27] Wilson *v.* Belinda, p. 275, *infra.*

of the master," "where there appears to have been an intent to comply honestly" with it, announced that in "every case of registry under [the act of 1788,] . . I, for one, shall hold the master to a strict . . execution of everything enjoined, except where express decisions of this Court may have established a contrary construction." "The [latter] act . . was intended to be exclusively for the benefit of the servant registered, by furnishing him with evidence, conclusive of the termination of the servitude, . . The servant has nothing to do with either the fraud or mistake of the master, . . the master, who is the author of the mischief, and not the servant, should suffer."

Accordingly, Bob who had been returned on November 21, 1792, as born "on, or about the 23d May last," was discharged from service in 1818:[28] "The report was made in *about six months,* but whether *within* six months, is doubtful."

But even construing the act strictly, the Supreme Court in 1819[29] remanded Bell to service though the oath in returning her was taken by her master before a deputy clerk of the peace instead of a clerk of the peace, as the act prescribed; held in 1826[30] that "esq." sufficiently designated the occupation of one who combined farming with judicial duties; and in 1825[31] and in 1829[32] that "yeoman" was "sufficiently certain" in describing a farmer. But Frank was discharged from service in 1824[33] because the occupation of the master was not mentioned.

The case of Stiles *v.* Nelly, decided in 1823,[34] deserved more consideration than it received at the time. The question then before the court was whether the owner's return, in March 1789, of Nelly's mother, Rachael, "born about the 15th of November, 1780," was certain enough to render Rachael a servant for twenty-eight years, and Nelly likewise. The court held that the "*precise certainty*" required by the act of 1788 with respect to registry within six months after birth, was not required with respect to births before the passage of the act. [371] "All that was necessary . . was, to show, that Rachael was born *after the 1st March*, 1780." So Nelly was remanded to the service of her master. Eight years later Judge Kennedy exclaimed: "Although it appeared upon the face of the record . . that Nelly was the child of one bound . . until twenty-eight only, it never occurred to her counsel to claim her freedom upon that ground, nor yet to any of the learned judges of the Court."[35] Until the decision of Miller *v.* Dwilling in 1826,[36] "a directly opposite opinion . . prevailed, not only with a great portion of the community, but with many

[28] Commonwealth *v.* J. D. Greason, p. 276, *infra.*
[29] Same, *ex rel.* Bell, *v.* W. Greason, p. 277, *infra.*
[30] Same *v.* Vance, p. 282, *infra.*
[31] Same *v.* Irvine, p. 281, *infra.*
[32] Cobean *v.* Thompson, p. 284, *infra.*
[33] Commonwealth *v.* Barker, p. 281, *infra.*
[34] P. 280, *infra.*
[35] Judge Kennedy, in Urie *v.* Johnston, p. 284, *infra.*
[36] See p. 282, *infra.*

of the most distinguished lawyers in the State." In that leading case, Chief Justice Tilghman declared the opinion of the court to be that [446] "no child can be held to servitude till the age of twenty-eight . . but one whose mother was . . a slave at the time of its birth." For if, as contended, every child whose mother had to serve till twenty-eight, must likewise serve till he reached that age, "the legislature of Pennsylvania, though it abolished slavery for life, established . . a servitude . . which may continue . . to the end of the world."

A case of similar importance, involving the obligation to serve till twenty-eight, had been decided in 1789,[37] the first case under the act of 1780 which came before the Supreme Court of Pennsylvania "upon the arguments of Counsel." The construction of the obscurely worded sixth section of the act was the crux. Chief Justice M'Kean was of opinion that the children, Betsey, Cato and Isaac, who were born before the passage of the act, must continue to serve till twenty-eight "though not registered," and though their "parents had obtained their freedom" in consequence of that neglect. "If the word '*not*' . . had been expunged, I should have been of a different opinion." The three other judges held that the children were absolutely free. Judge Atlee called attention to the preamble of the act which, "among the unhappy circumstances formerly attending these people, mentions their being cast into the deepest affliction by an unnatural separation of husband and wife, from each other, and from their children: . . to separate these children from their parents . . appears . . to clash with the intention of the makers of the law." Judge Rush thinks that in construing the act, the "not" should be "rejected. . . The word in all probability has slipt into the act by inadvertence;" and he derives confirmation of his opinion from other sections.

In addition to cases involving technicalities of registry under the six months clause of the act of 1788, the Supreme Court of Pennsylvania was called on to decide cases based on the six months clause of the act of 1780, which was of quite a different nature. That clause excepted from the benefits of the act the domestic slaves of sojourners whose stay did not exceed six months. In 1794 [38] the slaves of Mrs. Chambrè [*sic*] who had fled with them to Philadelphia, "on the conflagration at Cape Francois [*sic*]," "asserted their freedom" on the ground that she had retained them in Pennsylvania more than six lunar months, though less than six calendar months. The court "were, unanimously, of opinion, that the legislature intended calendar months." But Joseph, brought, at the age of thirteen, to Philadelphia from Santo Domingo in the spring of 1793, and apprenticed to his mistress in June 1794 for fourteen years in consideration of manumission, was discharged in 1805,[39] as there was "no

[37] Respublica *v.* Betsey, p. 256, *infra.*
[38] Commonwealth *v.* Chambrè, p. 259, *infra.*
[39] Respublica *v.* Smith, p. 266, *infra.*

evidence of any terms being agreed upon within six months" after his arrival. The manumission was no consideration for the indenture as the sojourner's exemption had expired and Joseph was already free.

George Taylor, a negro who had run away in 1809 from his master, who had purchased him in New Jersey while residing there, and had removed to Philadelphia in 1808, was discharged from custody,[40] though his master had taken the precaution of going back with him to New Jersey several times during the first six months of his residence in Philadelphia. The master had ceased to be a sojourner and his "taking him to Trenton several times, can have no operation to disprove the master's residence here."

The court held in 1821 [41] that Charity who had been taken by her mistress from Maryland to Pennsylvania for divers sojourns, no one of which, according to the finding of the jury, lasted six months, was not free although, "tacked together," they exceeded that period. "The continuing of a sojourner, must be a single, unbroken one, for six months. . . It was well known to the framers of our Acts for the Abolition of slavery, that southern gentlemen with their families, were in the habit of visiting this State, attended with their domestic slaves, . . year after year passing the summer months with us, . . If these successive sojournings were to be summed up, it would amount to a prohibition—a denial of the rights of hospitality."

The act of 1780 made an exception also of "domestic slaves attending upon delegates in Congress . . foreign ministers and consuls," but in 1806,[42] in a *habeas corpus* proceeding in the circuit court of the United States for the third circuit, Ben was discharged from the service of Pierce Butler, member of congress from 1794 until 1805, with the exception of two years when he was a member of the South Carolina legislature, "always having Ben with him." For a jury had found, in a special verdict, that Senator Butler, in spite of his official connections, was a resident of Pennsylvania, as "from 1794 . . with the exception of an annual visit to his plantations [in South Carolina and in Georgia] . . he has kept a dwelling house . . in . . Philadelphia, and has *resided* in it." Judge Washington held that the law was with Ben, since a slave brought into Pennsylvania by a resident after March 1, 1780, is free. As to the exception in favor of members of congress, "for two years he . . lost the privilege . . conferred upon him," and Ben had the advantage of that lapse. On the other hand, the slave Lewis was restored to Langdon Cheves of South Carolina in 1814,[43] the court holding that the exception in favor of members of congress still applied though the seat of government was no longer in Philadelphia and though the slave had been brought to Pennsylvania during a recess of congress.

[40] Commonwealth *v.* Smyth, p. 268, *infra.*
[41] Butler *v.* Delaplaine, p. 278, *infra.*
[42] Butler *v.* Hopper, p. 267, *infra.*
[43] Commonwealth *v.* Holloway, p. 272, *infra.*

In 1837 [44] the Supreme Court of Pennsylvania decided that it was [560] "bound to pronounce that men of colour are destitute of title to the elective franchise," following a precedent of 1795, lodged in the memory of a member of the bar, of which, however, no record could be found. Chief Justice Gibson declared that [556] "an inhabitant of an incorporated place, who is neither servant nor slave, . . may be no freeman in respect of its government . . till the instant when the phrase [in the constitution of 1790] on which the question turns, was penned, the term freeman had a . . specific sense, . . to denote one who had a voice in public affairs." "The laws agreed upon in England, in May 1682, use the word in this specific sense, . . [557] It was foreseen that there would be inhabitants . . who, though free as the winds, might be unsafe depositories of popular power; . . [558] As was justly remarked by President Fox, in the matter of the late contested election, our ancestors settled the province as a community of white men; and the blacks were introduced . . as a race of slaves; whence an unconquerable prejudice of caste, . . insomuch, that a suspicion of taint still has the unjust effect of sinking the subject of it below the common level. . . [560] Their blood, however, may become so diluted . . as to lose its distinctive character;" and he regretted that "no . . regulation [similar to that in the amendment of 1835 to the constitution of North Carolina] [45] . . has been attempted here; in consequence . . every case of disputed colour must be determined . . by the discretion of the judges [of election]; and thus a great constitutional right . . will be left the sport of caprice."

The Court held in 1853 [46] that a free negro was not excluded from acquiring a pre-emption right to land. [25] "The right to the fruits of his industry and to invest them . . as he may deem most conducive to his comfort, is an incident to the grant of his freedom."

Various cases arose in Pennsylvania under the fugitive slave acts of 1793 [47] and of 1850.[48] The court held in 1816 [49] that the case of Eliza, born of a fugitive slave about two years after her flight [308] "is not embraced, either by the constitution of the United States, or by the act" of 1793. "It cannot be supposed for a moment, that the child . . who was not in existence when her mother ran away, . . was a fugitive." [50] In 1817 [51] the court decided that the constitution of the United States "is not to be construed so as to exempt [fugitive] slaves from the penal laws of any state where they may happen to be." "It may be hard on

[44] Hobbs *v.* Fogg, p. 288, *infra.*

[45] "No free negro . . or free person of mixed blood, descended from negro ancestors, to the fourth generation inclusive (though one ancestor of each generation may have been a white person) shall vote for members of the senate or house of commons." Thorpe 2796.

[46] Foremans *v.* Tamm, p. 310, *infra.*

[47] 1 Stat. at L. 302.

[48] 9 *id.* 462.

[49] Commonwealth *v.* Holloway, p. 275, *infra.*

[50] See Field *v.* Walker, III. 172, of this series.

[51] Commonwealth *v.* Holloway, p. 275, *infra.*

the owner . . but it is an inconvenience to which this kind of property is unavoidably subject." In 1819 [52] the court quashed a writ *de homine replegiando* sued out by a fugitive slave, to whose master had been given, after a *habeas corpus* proceeding, a certificate permitting his removal to Maryland. Chief Justice Tilghman says: [63] " Whatever may be our private opinions on the subject of slavery, it is well known that our southern brethren would not have consented to become parties to a constitution . . unless their property in slaves had been secured. . . [64] It plainly appears from the whole scope and tenor of the constitution and act of Congress [of February 12, 1793], that the fugitive was to be delivered up, on a summary proceeding, without the delay of a trial in a court of common law. . . the writ has been issued in violation of the constitution of the United States." Justice Washington held in 1822 [53] that mere obstruction " is no offence under this act . . unless it be interposed previous to, or whilst the claimant . . is in the act of seizing . . the fugitive, or is endeavouring to make such seizure." And in 1824 [54] he declared, in refusing redress to the owner whose slave had escaped from jail where he had put him after receiving a certificate for his removal, that, the magistrate having " no authority to issue a warrant to apprehend the fugitive in the first instance, or to commit him after the examination is concluded, and the certificate given . . the act is found to be practically of little avail." "An attempt . . made in congress to correct these glaring defects . . has not yet succeeded."

In 1834 [55] a New Jersey slaveholder, who, in retaking his slave who had fled to Pennsylvania, had been " attacked with stones and clubs, . . and kept . . in custody . . being refused even a bed," was awarded $4000 damages in an action " of trespass *vi et armis,* false imprisonment, etc.," which he brought against his assailants, " highly respectable members of the society of friends." Justice Baldwin, in his charge to the jury, declared that under the first article of the constitution of the United States, " slaves are not only property as chattels, but political property, which confers the . . most sacred political rights of the states, . . The apportionment . . of their representatives . . of direct taxes . . The number of electoral votes . . the foundations of the government . . rest on the rights of property in slaves . . the whole structure must fall by disturbing the corner stones."

Two important cases under the act of 1793 were decided as late as 1853: Van Metre *v.* Mitchell,[56] and Oliver *v.* Kauffman, Weakley and Breckbill.[57] The respective owners of the fugitive slaves won a verdict in both cases, though against only one of the defendants in the latter.

[52] Wright *v.* Deacon, p. 277, *infra.*
[53] Hill *v.* Low, p. 279, *infra.*
[54] Worthington *v.* Preston, p. 281, *infra.*
[55] Johnson *v.* Tompkins, p. 286, *infra.*
[56] P. 305, *infra.*
[57] P. 306, *infra.*

These results do not support Judge Washington's statement that the act of 1793 was "found to be practically of little avail;" but it is undeniable that it contained "glaring defects," and these the act of 1850 attempted to correct. "Immediately after its passage," "extreme factions [in the North] . . set themselves to work through the pulpits, the press, through public harangues and secret engines of every kind, to bring about resistance to the law, and to destroy the power of executing it through the force of public opposition."[58] One of the first fruits was the murder, in September 1851, "by a mob of negroes"[59] ("between fifty and a hundred")[60] of a citizen of Maryland while seeking to arrest his fugitive slaves. Hanway, a spectator who had refused to assist the deputy marshal in making the arrests and had declared "that he did not care for that act of congress or any other act,—that the negroes had rights and could defend themselves," was tried for treason and acquitted. Williams, a colored man, who "had come up in the cars with several men who were after slaves, and . . had conveyed the news" but was not present at the conflict, was also tried for treason and acquitted.[61] In contrast to these opponents of the act, at least one citizen of Pennsylvania gave up being a farmer after 1850 to engage in the "business of *slave-catching* . . [in which] for some months at least previous to his death [by suicide], he was habitually and very diligently occupied."[62]

The three cases involving Jenkins and two other deputy marshals,[63] who, in attempting to arrest a fugitive slave, "had been obliged to have a violent and bloody encounter with him," and the three Passmore Williamson cases[64] show the unavailing efforts of abolitionists to override the courts, state and federal, in order to defeat the enforcement of the act.

The fugitive slave clause of the federal constitution was "for the first time, brought before . . [the Supreme] Court [of the United States] for consideration"[65] in 1842 when the case of Prigg *v.* Pennsylvania[66] was removed to that court on a writ of error, "by the co-operation . . both of the state of Maryland, and the state of Pennsylvania, in the most friendly . . spirit, . . so that the agitations on this subject in both states, which have a tendency to interrupt the harmony between them, may subside, and the conflict of opinion be put at rest." Prigg had carried a fugitive slave back to Maryland by force, as the state magistrate before whom she was brought refused to take cognizance, relying on the Pennsylvania act "to give effect to the provisions of the constitution of the

[58] Charge to the grand jury, p. 300, *infra.*
[59] Justice Grier's description, in Oliver *v.* Kauffman, p. 306, *infra.*
[60] U. S. *v.* Hanway, p. 301, *infra.*
[61] U. S. *v.* Williams, p. 304, *infra.*
[62] Hartman *v.* Insurance Co., p. 310, *infra.*
[63] *Ex parte* Jenkins, p. 308, *infra.*
[64] U. S. *v.* Williamson, p. 311, *infra.*
[65] Prigg *v.* Pennsylvania, p. 291, *infra.*
[66] P. 291, *infra.*

United States, relative to fugitives from labour, for the protection of free persons of colour, and to prevent kidnapping," which had been passed in 1826.[67] The justices of the Supreme Court of the United States were unanimous in holding the state act unconstitutional, but their reasons why were diverse.[68] Justice Story declared that the power to legislate on the subject of fugitive slaves, whether to help the master or to hinder him, was exclusively federal, and Justices Wayne and McLean agreed with him. Chief Justice Taney and Justices Thompson and Daniel agreed that the Pennsylvania act was unconstitutional because it hindered the master in regaining his slave; but were of the opinion that states might pass acts helpful to the master. Justice Baldwin did not specify in what way he "dissented from the principles laid down by the Court as the grounds of their opinion."

In addition, three of the justices made noteworthy statements. The first is by Justice Story. [622] "As to the authority . . conferred [by the act of 1793] upon state magistrates, while a difference of opinion has existed, and may exist still . . in different states, whether state magistrates are bound to act under it; none is entertained by this Court that state magistrates may . . exercise that authority, unless prohibited by state legislation." This final clause was "seized upon by anti-slavery States as a justification for legislative measures refusing the assistance of their officials to enforce the Federal Fugitive Slave Law." [69] Justice McLean, on the other hand, holds that Congress may [665] "require appropriate duties in regard to the surrender of fugitives from labour, by other state officers," since, according to his interpretation, it could "require . . the highest state officer" to cause fugitives from *justice* "to be arrested, etc." [70] He then comes [666] "to a most delicate and important inquiry . . whether the claimant . . may . . remove [his slave] . . by force out of the state in which he may be found, in defiance of its laws . . which are [not] in conflict with the Constitution, or the act of 1793. . . those laws which regulate the police of the state, maintain the peace of its citizens . . [669] here is no conflict between the law of the state and the law of Congress. . . no power to . . forcibly remove the slave without claim is given by the act of Congress. . . [671] this state law . . is a most important police regulation. . . That a slave is property must be admitted. The state law is not violated by the seizure . . [672] but by removing . . by force, . . This force, not being authorized by the act

[67] 9 Laws of Pa. 95, ch. 5777.

[68] "everyone of them dissenting from the reasoning of all the rest, and everyone of them coming to the same conclusion, the transcendent omnipotence of slavery in these United States, riveted by a clause in the Constitution." Diary of John Quincy Adams, Mar. 10, 1842. Cited in Charles Warren, *Supreme Court in United States History*, II. 359.

[69] Warren, *Supreme Court in United States History*, II. 361. See act of Pa. of Mar. 3, 1847, sects. 3 and 4.

[70] "But will they come when you do call for them?" Chief Justice Taney declared in 1860: "If the Governor . . refuses, there is no power delegated to the General Government . . to compel him." Kentucky *v.* Dennison, I. 441, 442, of this series.

of Congress nor by the Constitution, may be prohibited by the state. . . [673] This view . . removes all state action prejudicial to the rights of the master; and recognizes in the state a power to guard . . the peace of its citizens. . . In my judgment . . [the state magistrate] was bound to perform the duty . . by a law paramount to any act, on the same subject, in his own state. But . . [his] refusal does not justify the subsequent action of the claimant. He should have taken the fugitive before a judge of the United States, two of whom resided within the state."

Justice Wayne gives a succinct exposition of the theory that slaves are property nationally. [643] "This provision [concerning fugitives from service] is the only one in the Constitution in which a security for a particular kind of property is provided; . . [645] the property of an individual is not the less his, because it is in another state . . The provision, then, in respect to fugitive slaves, only comprehended within the general rule a species of property not within it before. . . [646] If this be so, upon what principle shall the states act by their legislation upon property, which is national as well as individual?"

Chief Justice Tilghman had in 1815[71] emphasized the fact that the object of the act of 1780 was "to produce a gradual abolition" only. "If slavery had been deemed altogether incompatible with the public good, freedom would have been purchased by a reasonable price paid to the master ['out of the public treasury'];[72] . . But it was thought that no harm would result, from leaving the right of property unimpaired as to existing slaves; provided means were taken by ascertaining, by a public registry, those persons who were either slaves, or servants for 31 years, at the time of the passing of the law." Though the number of slaves was small, "their condition . . [was] unchanged."[73] By 1842 slavery had, "with only here and there a time-stricken relic of former policy, vanished from the soil"[74] The sweep was made clean by the passage of the act of March 3, 1847,[75] "the first act for the abolition of slavery in the United States."[76]

II.

An act of May 22, 1722,[77] established a Supreme Court, consisting of three judges [increased to four by the act of May 20, 1767,][78] "persons of known integrity and ability, . . one of whom shall be distinguished . . by the name of chief-justice . . [303] Saving to all . . persons . . their right of appeal . . to His Majesty in council, or to such court . .

[71] 2 S. and R. 18.
[72] Marchand *v.* Peggy, p. 274, *infra.*
[73] Johnson *v.* Tompkins, p. 286, *infra.*
[74] 16 Peters 590.
[75] Laws of 1847, p. 208.
[76] Edward Raymond Turner, *Slavery in Pennsylvania,* p. 78, note 40. See also pp. 82, 83.
[77] 3 Pa. Stat. at L. 302.
[78] 7 *ibid.* 108.

as by our Sovereign Lord the King . . [304] shall be appointed in Britain, to . . judge of appeals from His Majesty's plantations." This was " a very expensive, difficult and precarious remedy." [79] Therefore in 1780, " whereas the good people of this commonwealth . . are released from this badge of slavery," [80] a High Court of Errors and Appeals was erected consisting of [54] " the president of the supreme executive council, the judges of the supreme court, the judge of the admiralty . . together with three persons of known integrity and ability . . [with] power . . to examine all . . errors . . assigned or found, in . . any . . judgment given in the supreme court, and thereupon to affirm or reverse " them. This act was repealed by the act of April 13, 1791, which provided for a new High Court of Errors and Appeals, consisting of " the judges of the supreme court, the president[s] of the several courts of common pleas . . together with three other persons of known legal abilities." [81] The act of February 24, 1806,[82] abolished the High Court of Errors and Appeals, and all its powers were vested in the Supreme Court. The act of March 11, 1809 provided that " in case of a vacancy . . in the office of a judge of the supreme court, the governor shall not supply such vacancy, unless the number of judges shall be reduced to fewer than three." [83] The act of April 14, 1834, provided that the court should "consist of a chief justice and four associate judges." [84] The constitution of 1873 raised the aggregate number to seven.

[79] Act of Feb. 28, 1780, 10 *ibid.* 52.
[80] *Id.* 53.
[81] 14 *ibid.* 110.
[82] 18 *ibid.* 64.
[83] *Ibid.* 966.
[84] Acts of 1833-1834, p. 341.

Pirate, alias Belt, v. Dalby, 1 Dallas 167, April 1786. "Since the act for the gradual abolition of slavery,[1] a number of persons have formed a society at Philadelphia, for the purpose of relieving those of their fellow creatures, who are held in illegal slavery;[2] and this action is owing to that institution. The Plaintiff, being the supposed issue of white and mulatto parents, attended the Defendant to Philadelphia in the autumn of 1784, and presented so pure a complexion, that the attention of the society was excited, and a writ of *habeas corpus* taken out at their instance. . . the facts being disputed, the Chief Justice advised the Council [*sic*] to throw the case into the form of an action *de homine replegiando*; and . . a declaration was filed of September term 1784, . . Upon the trial . . it was given in evidence, that the Plaintiff was born in Maryland, of an unmarried *mulatto* woman; that the grandmother, and the mother of the Plaintiff, are . . slaves; that he was purchased by the Defendant's agent, . . that the Plaintiff had not been *six months*[3] in Pennsylvania when the *habeas corpus* was brought; and the Plaintiff . . was shewn to the Jury, that they might . . draw some conclusion, that he was, at least on one side, the issue of white parents [*sic*]."

Chief Justice M'Kean's charge to the jury: [168] "the rule [in England], that the issue follows the condition of the father; and . . that the bastard is always free; because, in contemplation of law, his father is . . unknown, and . . his slavery shall not be *presumed*, must be confined . . to . . *Villeins*. . . *villenage* never existed in America, . . [169] The contrary practice has, indeed, been universal in America;[4] . . authorized by the civil law, . . and . . so consistent with the precepts of nature, that we must now consider it as the law of the land." "Verdict for the Defendant."

Respublica v. Negro Betsey et al., 1 Dallas 469, September 1789. *Habeas corpus.* [470] "the first case [under the act of March 1, 1780][5] that has come before [the Supreme Court of Pennsylvania] . . upon the arguments of Counsel," [478] "the negro children Betsey, Cato, and Isaac," [472] "were born before the passing of the act, and . . they and their parents were . . the slaves . . of . . Moore . . who neglected to register them agreeably to the directions of the act. In consequence . . the parents have obtained their freedom, and the children now seek it,

[1] Passed Mar. 1, 1780. 10 Pa. Stat. at L. 67.

[2] "a voluntary society has for some years subsisted [in this state] by the name . . of 'The Pennsylvania Society for promoting the abolition of slavery and the relief of free negroes unlawfully held in bondage,'" Preamble to the act of Dec. 8, 1789, incorporating "The Pennsylvania Society for promoting the abolition of slavery and for the relief of free negroes unlawfully held in bondage and for the improving the condition of the African race." 13 *ibid.* 424.

[3] "domestic slaves attending upon . . persons . . sojourning in this state . . [may not be] retained in this state longer than six months." 10 *ibid.* 71.

[4] Not in Maryland from 1664 to 1681. See introduction to the Maryland cases.

[5] 10 Pa. Stat. at L. 67.

that they may . . be under the care . . of those parents," [469] " The case was twice argued; first . . [in] 1786, . . and a second time, in . . 1789, . . the Judges delivered their opinions separately, . . M'Kean, Chief Justice: . . The question . . is, whether the negro can be held as a servant until . . twenty-eight . . or is she *absolutely* free? On the part of the master, it has been argued, that, . . by the fourth section, . . every negro . . child, born within this state, after the passing of the act, who, in case the act had not passed, would have been born . . a slave, should be deemed a servant until . . twenty-eight . . that the Legislature could not intend a greater favour to negroes . . born as slaves . . *before* the passing of that act, than to those born *after*: . . [470] the sixth [section] . . comes in by way of . . restraint upon the fifth. There, the owners . . of . . negroes . . '*though not registered*,'[1] shall be answerable for their maintenance . . unless . . [they] manumit them before . . twenty-eight . . [471] from the scope of the whole [act] it may be collected, that the . . intention of the Legislature was, that all . . slaves . . within the State at the time . . under . . twenty-eight . . might be detained as servants, until . . that age, though they should not be registered; . . If the word '*not*' . . had been expunged, I should have been of a different opinion; . . [472] Atlee, Justice: . . [474] I am . . of opinion, that the implied construction contended for in behalf of . . Moore, on a doubtful . . clause in the act, cannot be admitted . . against the express letter . . of its fifth and tenth sections; and, consequently, that these persons ought to be discharged from his service." " The preamble to the act, among the unhappy circumstances formerly attending these people, mentions their being cast into the deepest affliction by an unnatural separation and sale of husband and wife, from each other, and from their children: In the present case, it is attempted to separate these children from their parents, by a construction which appears . . to clash with the intention of the makers of the law; . . Rush, Justice: . . [475] The true intent . . of . . sections [five and ten], considered in one view, I take to be, that all negroes and mulattoes born at the time of passing the act, shall be free from every degree of servitude, unless registered by those who had a right to their service for life, or thirty-one years, . . [476] This construction . . is corroborated by adverting to the fourth section . . By this section, in case any *after born* child should be abandoned by its master . . the overseers are directed to take charge of it:—But why [not] provide . . for a child born *before* the act in a similar situation? . . The silence of the Legislature . . affords a striking argument . . that they never entertained an idea that children born *before* the act, were to be servants till . . twenty-eight; . . But the greatest difficulty . . is, the sixth section . . [477] I examined . . the law signed by the Speaker, and also the recorded act, but found them both correspond with the printed law. I still think, however, in construing the act, *that* word ['not'] should be rejected. The clause then will mean this, . . It prohibits [the owner] . . from abandoning his right, unless he does it [by setting the slave free] *before* his arrival at . . twenty-eight; and

[1] " notwithstanding the name . . shall not be . . recorded" 10 Pa. Stat. at L. 70.

where at the time of registering . . he was *above* that age, he can never afterwards abandon his right, but shall remain always liable to support him. . . [478] The word in all probability has slipt into the act by inadvertance; some member mistaking the design . . and moving *that* as an amendment, which has proved the source of so much . . litigation." [477] " This construction of the sixth section is still further confirmed by . . the word *assigns*, . . there can be no assignee of an unregistered negro, because he is free. . . I concur, therefore, with . . Judge Atlee, . . Bryan, Justice: . . hitherto I have agreed . . with the Chief Justice; but I now unite with my brothers Atlee and Rush, . . [479] that it was in the power of . . Moore to have secured the service of the negroes . . and, having omitted to do so, he cannot . . take advantage of his own negligence;"

Cowperthwaite v. Jones, 2 Dallas 55, August 1790. [56] " The action is brought upon a bond, given to the sheriff, upon his executing a writ of *Homine replegiando*. . . [He] was instructed . . not to take the Negro out of the possession of the master; but to leave him in his hands, during the dispute; . . the sheriff . . proved the leaving the Negro in his master's house, when he executed the writ, . . [57] but he says that some short time afterwards, the master brought the Negro to his office, to deliver him up, and he refused to take him; and ordered him to return to his master. There is some evidence of his being afterwards seen at his master's house; but he was finally abandoned, and has never since returned."

Held: " as the *Homine replegiando* was not prosecuted with effect, the plaintiff having discontinued it, and the Negro never returned, the defendants were legally answerable upon their bond; and . . [58] the price of the Negro was . . the proper measure of damages; which, if accepted by the master, will in equity, and perhaps by operation of law too, emancipate the Negro; he having been a party to the *Homine replegiando*, and a full satisfaction, equal to his value, made by his sureties for him."

Jackson v. Robinson, 1 Yeates 101, January 1792. The will of Elizabeth Vanderspiegel " directed 200 *l.* to be put out at interest for a black girl who was born in the family, and who was to be taught to read, etc."

Roberts v. Kidd's Executors, 1 Yeates 209, January 1793. " she was the niece of Mrs. Kidd, . . lived in Mr. Kidd's family, . . making clothes for all the family, which consisted of eight blacks and one while girl of ten or eleven . . After many years . . she was . . compelled to leave . . occasioned . . at first by an insult offered to her by one of the negroes,"

Respublica v. Keppele, 1 Yeates 239, January 1793. M'Kean, C. J.: [235] " I know that negro and mulatto children have been often bound out as servants," Bradford, J.: [236] " The children of free negroes and mulattoes might formerly be bound to service. (Act of 1725, sect. 4. New edition of Laws 144.)"

Pennsylvania v. Negress, Addison 8, January 1794. Note to Pennsylvania *v.* M'Kee: "At January sessions 1794, a Negro woman was tried . . for the murder of her bastard child. The circumstances were very

strong, . . However, the jury did not find the murder, but found the concealment of the birth and of the death. The court gave judgment of confinement for five years."

Respublica v. Gaoler, 1 Yeates 368, April 1794. *Habeas corpus.* " Mrs. Mary Weed the gaoler, made return, that . . negro Robert was detained . . under a commitment of . . one of the alderman . . as the runaway servant of Anne Tharp, . . he was brought into the state in 1779, as a slave for life, was not registered, according to . . the act . . [of] 1780, . . 1784, he was bound by indenture by the guardians of the poor . . to . . [Tharp] . . as a servant, to serve . . from the age of fourteen to . . twenty-eight . . now of full age." [369] " Negro Robert must . . be discharged." " *free* negroes . . can be only bound until twenty-one. ['if a female, until . . eighteen.'] . . But negroes . . *bound in other states*, to serve until twenty-eight . . whose indentures have been executed to liberate them from a longer servitude, or from slavery, and *brought into this state*, may be holden as servants according to their indentures," [1]

Commonwealth v. Chambrè, 4 Dallas 143, September 1794. "A *habeas corpus* was issued to the jailor of Philadelphia, to bring before Judge Shippen, the bodies of Magdalen and Zare, two negro women, committed as the absconding slaves of Mrs. Chambrè. . . Mrs. Chambrè was a widow lady, in the island of St. Domingo, and owned the negroes in question as slaves; but on the conflagration at Cape Francois, she fled, bringing them with her, to Philadelphia; where she resided five calendar months and three weeks; a period that exceeds six lunar months, in computation of time. She then removed with the negroes to Burlington, in the state of New-Jersey, designing, as it was suggested, to avoid the operation of the act, for the gradual abolition of slavery; but no proof was offered, that she had ever intended to settle in Pennsylvania. The negroes, absconding from Mrs. Chambrè, came to Philadelphia; and now they asserted their freedom, under the 10th section of the act, which declares all unregistered negroes . . free, 'except (*inter alia*) . . slaves attending upon persons . . sojourning . . provided . . not . . retained in this state longer than six months.' [2] . . [142] the Court . . were, unanimously, of opinion, that the legislature intended calendar months; . . that there was nothing illegal, or improper, in the conduct of Mrs. Chambrè, on the occasion; and that, therefore, the negroes must be remanded into her service."

Pennsylvania v. Montgomery, Addison 262, March 1795. "A writ of *habeas corpus*, for . . a mulatto woman, having been directed to . . Montgomery, he returned, that he claimed her as a servant under an indenture, dated . . 1777, by the overseers of the poor . . [263] binding her, as the child of a [white] woman an indented servant of his, to him, till the . . child, born . . 1775, should accomplish . . thirty-one years," [3] Young, for the woman: " There ought to have been a previous

[1] Act of Mar. 1, 1780, sects. 12 and 13. 10 Pa. Stat. at L. 72.
[2] 10 Pa. Stat. at L. 71.
[3] "if any white man or woman shall cohabit . . with any negro under pretense of being married, . . the child . . of such . . shall be put out to service . . until . . thirty-one" Act of Mar. 5, 1725-1726, sect. 8. 4 Pa. Stat. at L. 62.

conviction in the county court,[1] . . [264] The indenture . . says not, that the father and mother *lived together under pretence of marriage.*" President: [265] " No authority is shewn, but the indenture. That . . is not sufficient, for a longer term, than till . . eighteen." " The woman was discharged."

Respublica v. Richards, 2 Dallas 224, April 1795. " This was an indictment, on the 7th section of the act supplemental to the act for the gradual abolition of slavery "[2] [1 Yeates 480] " Before the jury was sworn, it was admitted that the prosecution was carried on by the society for the abolition of slavery, incorporated 8th December 1789, by law."[3] Thereupon the defendant's counsel insisted, that none of the members of that society should be received as jurors. *By the court.* . . [481] The objection . . is relevant. . . The negro was the slave of General John Sevier, of the South Western Territory, and was purchased and retained by him as such for eight or nine years. . . put under the custody of . . his son, to attend him on a visit to Philadelphia, . . January 1794. In April . . Toby absconded, but being discovered," [2 Dallas 225] " the defendant told Mr. Sevier [his brother-in-law] that there was no way of managing the matter effectually, but by inducing the negro to go into New-Jersey, and then to lay hold of him; that Toby was forcibly sent by . . Sevier, to Cooper's-Ferry, whither the defendant went on purpose to secure, and actually did secure him;" [1 Yeates 481] " The negro attempted to escape, but was pursued, and being overtaken, was struck several times by both," [2 Dallas 225] " Sevier . . demanded Toby's pocket-book, which Toby, however, delivered to one of the witnesses, saying, ' it contains my freedom papers '; . . the witness delivered the pocket-book to . . Sevier; and . . the defendant and . . Sevier put Toby on board of a boat, and carried him down the river [to Gloucester]. . . several witnesses [for defendant], who had known Toby as a slave for more than ten years, were examined, to repel the idea, suggested by the negro himself, that he had ever been emancipated."

Chief Justice M'Kean's charge to the jury: [227] " we were unanimously of opinion, as soon as it was proved the negro was a slave; that not only his master had a right to seize, and carry him away; but that, in case he absconded or resisted, it was the duty of every magistrate to employ all the legitimate means of coercion in his power, for seizing and restoring the negro to . . his owner," [1 Yeates 483] " The great design of the [7th section] . . was to prohibit . . the nefarious practice of . . forcing or . . seducing a *free* negro . . to other places, with the . . intention of selling or detaining him as a *slave.*" Verdict, not guilty.

U. S. v. Insurgents, 26 Fed. Cas. 499 (Whart. St. Tr. 102), May 1795. During the " Whisky Insurrection " in July 1794 [504] " General Neville had received warnings for some time previous, that an attack was intended on his house. . . he had had his house prepared for resistance. . . and

[1] " such white man or woman shall forfeit . . thirty pounds or be sold as a servant not exceeding seven years by the justices of the . . county court," *ibid.*

[2] Act of Mar. 29, 1788. 13 Pa. Stat. at L. 56.

[3] *Id.* 424.

the negroes abundantly supplied with arms and ammunition." The insurgents came and [505] "were fired upon from the house. They returned the fire; but being unexpectedly attacked by the negroes in the out-houses, they precipitately retired, with six of their number wounded and one killed." The next day the "mansion" was attacked by five or six hundred rioters and "set on fire, and it and the out-buildings were consumed, except a small out-house, which was preserved at the request of the negroes, as containing their bacon."

Respublica v. Mulatto Bob, 4 Dallas 145, June 1795. "Indictment for murder of the first degree." "It appears, that a wedding being fixed for Easter Monday, a considerable number of negroes assembled; and, about 10 o'clock at night, a quarrel arose between mulatto Bob . . and negro David, the deceased. For awhile, the parties fought with fists; and the prisoner was heard to exclaim 'Enough!' The affray, however, became general, . . When it was over, the prisoner went to a neighbouring pile of wood, and furnished himself with a club. He was advised not to use it, but he declared that he would, and entered the crowd with it . . After remaining there about ten minutes, he left . . without his club; and, again repairing to the wood-pile, took up an axe. Being, likewise, dissuaded from returning to the crowd with the axe, he said 'he would do it;' and striking the instrument, with great passion, into the ground, 'swore, that he would split down any fellows that were saucy.' Accordingly, he mixed once more among the people; a struggle was immediately heard about the axe; the prisoner then struck the deceased with it on the head; the deceased fell; and as he was attempting to rise, the prisoner gave him a second blow on the head with the sharp edge, which penetrated to the brain. After languishing three days, death was the consequence of this wound." [145 n.] "During the trial the counsel for the prisoner offered a negro slave as a witness . . but . . he was rejected, without argument: and it was said by M'Kean, Chief Justice, That it was a settled point at common law, that a slave could not be a witness, because of the unbounded influence of his master over him; which was, at least, equal to duress: that the act of assembly was in aid of the common law, not to change its principles: and that it would be difficult to administer an oath to a slave, for want of knowing any religion he professed." Verdict, guilty.

Ruston v. Ruston, 2 Yeates 54, March 1796. Will, dated 1784: "I bequeath to my wife . . a mulatto female slave, . . [55] I give to my daughter Louisa . . three mulatto slaves. . . to my daughter Elizabeth . . three mulatto slaves."

Pennsylvania v. Blackmore, Addison 284,[1] May 1797. "a writ of *habeas corpus* was directed to Aberilla Blackmore . . for Cassandra and Lydia . . whom she held as slaves. . . The return was . . 'That . . [they] were slaves to my deceased husband . . in . . Maryland, . . [285] having sold his land in Maryland, he . . December [1780] . . arrived with his family . . in Westmoreland . . County . . Lydia was then with

[1] Also reported in 2 Yeates 234.

him, and Cassandra had been sent up about two weeks before, with . . his sons. . . That "an act" . . passed 13th April, 1782,[1] enabling certain inhabitants . . to register their slaves, he registered [them] . . 19th day of December,'" Ross, against the return: [286] "The act of . . 1782, reciting that 'many of the inhabitants of Westmoreland and Washington counties, conceiving themselves under the jurisdiction of Virginia, had no opportunity of . . registering their slaves,' . . enacts, 'that it be lawful for all such . . who were, on the 23d of September, 1780, possessed of . . slaves . . to register such' . . [288] Blackmore . . had no slaves here to register . . and, coming in afterwards, he brought in his Negroes under the operation of the law of 1780; . . [289] I argue this case without recompense, but . . in the satisfaction of doing a good action." [290] "the judges delivered their opinion, that the Negroes were free."

Respublica v. Gaoler, 2 Yeates 258, December 1797. "Duvivier Jubla . . had been arrested by the name of M. Gastog, . . Captain Butler, of the sloop . . swore, that the contract on which the . . suit was brought, was made with a merchant of colour, and one of the administration of St. Domingo; that . . he had . . accosted the prisoner [in Philadelphia] by the name of Gastog, to which he answered, . . But . . other witnesses swore, that the prisoner never acted as a merchant, or as one of the administration . . that he had a brother who . . acted in both those capacities, and was called M. Gastog, a name under which the prisoner never passed in the French West Indies; and that the prisoner being deaf, might not have distinctly heard" Discharged.

Lucy (a negro woman) v. Pumfrey, Addison 380, February 1799. "Lucy brought a writ *de homine replegiando* against the defendant, who held her as a slave. It was admitted, that on or before 1st March, 1780, and . . [till] 1786, . . Pumfrey was an inhabitant of . . county of Westmoreland, which in 1781, was erected into the county of Washington, . . held Lucy . . as a slave; and since . . has held her . . in Virginia; and that, after 13th April, 1782, and before 1st January, 1783, . . Pumfrey registered . . Ruth . . aged 13 years; . . Simonson, for the defendant, offered parole testimony, that . . Lucy . . is the slave registered by the name of Ruth; . . never known by the name of Ruth."

President of the court: [381] "We do not admit the testimony. It would reduce that certainty of a registry . . to . . uncertainty. . . Fraud and perjury would be let in, to . . make slaves of Negroes really free. The fault lies with the master, and he must bear the consequences." Verdict for the plaintiff.

Giles (a negro man) v. Meeks, Addison 384, March 1799. "On a writ *de homine replegiando*, a certificate of the registration of the plaintiff as a slave, on 19th December, 1782, was produced . . from the clerk . . of Washington county. . . evidence, that . . the master . . had confessed, that Giles was not registered, till after January, 1783.[2] . . [385]

[1] 10 Pa. Stat. at L. 463.
[2] Act of Apr. 13, 1782.

The defendant offered a witness, who swore, that in 1783, he asked Hull, whether he had recorded his Negro, and he said, he would be very sorry to leave such property in risk; and, that he and . . Meeks had both had their Negroes recorded. President. . . [386] Every reasonable presumption ought to be made in favour of the certificate. It was not uncommon for one to enter the slaves of another his neighbour or friend, without the knowledge of the . . master." Verdict for the defendant.

Philip (a negro) and Eve (his wife) v. Kirkpatrick, 2 Yeates 444, May 1799. "Case. The plaintiff declared . . That whereas . . Eve . . June 1788 . . agreed to serve . . Abraham . . four years . . Abraham . . did assume to pay . . what the service . . should . . be reasonably worth. . . [445] in proof, that Eve was brought into this state as a slave, . . October, 1787, and in . . three or four weeks, was sold to . . Work, who in the winter following, sold her to the defendant; and that . . June 1792, a *habeas corpus ad subjiciendum* issued against the defendant, who returned that he claimed her by indenture, . . September following, the defendant's counsel admitted, that she was entitled to her freedom, and she was discharged from his custody" Nonsuit: the "special promise [must] be shewn."

John (a negro man) v. Dawson, 2 Yeates 449, May 1799. "*Homine replegiando*. . . the plaintiff was born a slave in Maryland, and was brought . . October 1782, into Westmoreland county, by . . master, who before the 23d September 1780, was not an inhabitant of Westmoreland or Washington counties; . . the plaintiff was registered . . as a slave on 30th December 1782." Verdict for the plaintiff.

Evans v. Bollen, 4 Dallas 342, April 1800. A *qui tam* action in the circuit court of the United States for the district of Pennsylvania, founded on the act of Congress, "to prohibit the carrying on the slave trade, from the United States to any foreign place or country,"[1] Evans "saith that [Bollen in 1797] . . at the port of New-York . . was aiding . . in preparing and sending away . . a . . vessel called the *Betsey*, intending that the same should be employed for the purpose of procuring . . from the coast of Africa, the inhabitants . . to be transported . . to the island of Saint Croix, to be disposed of as slaves," Held: no jurisdiction.

Hauer v. Shitz, 3 Yeates 205, September 1801. Will dated 1795: [207] "I give unto my son . . for his use . . only, my servant man and servant boy, for all the time of their servitude,"

Negro Peter v. Steel, 3 Yeates 250, September 1801. "The plaintiff . . was captured during the late revolutionary war, within the British lines, by the defendant then an American officer, and brought into Lancaster county. The defendant there registered him as a slave, and after being six months within the state, he was discharged by *habeas corpus*. The action was brought for remuneration for his services, after he had been six months within the state."

[1] 1 Stat. at L. 347.

Cook v. Neaff, 3 Yeates 259, October 1801. "Case on two . . notes, the one for 20 *l.* the other for 50 *l.* . . The defendant purchased a mulatto . . from the plaintiff as a slave for life. He contended, that the registry of him was imperfect . . and that he was entitled to his freedom, the entry . . omitting the county . . '23d October 1780, Bob, a mulatto slave for life, aged six years, entered by . . Cook . . farmer.' . . *By the court.* . . we have no doubts of its validity, . . The defendant then proved . . that the plaintiff had highly recommended the slave, and sold him as a trusty . . fellow; and offered to shew . . that in consequence of his being suspected of felony committed before the sale, he was taken from the service of the defendant. . .

[260] *By the court.* If the mulatto had been convicted . . the record might have been received in evidence, to shew a want of consideration. . . not done, . . it must . . now be presumed, that the circumstances were insufficient to effect a conviction. . . The evidence must be overruled. Verdict *pro quer.* for 60 *l.* 1 *s.* damages."

Respublica v. Findlay, 3 Yeates 261, October 1801. "On a *habeas corpus ad subjiciendum*, . . negro Hannah was brought before the court, . . sole question was, whether her registry was invalid, . . entered *as a slave*, without subjoining . . *for life*." Held: "*slave* . . signifies . . a perpetual servant; . . the negro must be remanded to her master."

Campbell v. Wallace, 3 Yeates 572, October 1803. "*Indebitatus assumpsit* [[271] 'To recover back the price of two . . slaves, alledging [*sic*] that the consideration failed?' The defendant, an inhabitant . . of Westmoreland county, . . sold to the plaintiff in 1787, a negro wench, named Beck, aged 16 years, and her child for 106 *l.* . . taken by the plaintiff into . . Virginia, where she continued with him 11 or 12 years, and then under pretence of not being registered in Pennsylvania, left . . and took with her five children, . . went into the north western territory, but occasionally visited the plaintiff, with her children. It appeared by the record of the clerk . . that the defendant, in December 1782, registered 20 negroes . . that Bess . . [was] among the number, then aged . . [573] 11 years; but no . . Beck . . Mr. Ross for the defendant, . . offered to prove, that . . he possessed . . Beck . . eleven years of age. Some months previous . . he also owned . . Bess . . (who was 20 years of age,) and her two children, but had sold them . . to . . M'Mahon, in Virginia, . . The defendant employed his cousin to make out his return . . cousin . . writing . . in the usual character of his hand writing, . . Bectz . . [575] The evidence was . . received, and the facts . . were fully proved . . verdict for the defendant."

Dunning v. Caruthers, 4 Yeates 13, December 1803. [14] "In 1757 or 1758 . . Dunning erected a small cabin on the land and put a black man and his wife in it."

Wilson v. Rhoades, 4 Yeates 38, March 1804. [39] "On his refusal [to give up the possession in 1770?], Howard ordered his negro to throw the roof off the cabin;"

Stiles v. Richardson, 4 Yeates 82, September 1804. "Ward held two negroes in Maryland, as slaves . . They ran away . . into New Jersey. He followed . . [83] and there executed a bill of sale of them to . . Pennington. . . 1797, Pennington executed a deed of manumission to them both, in consideration of their engaging to serve him for four years; and Ward declared in their presence, that he had no further claim to them, and they should go home with him. The defendant claiming under Ward, . . 1798, sold . . Isaac, to the plaintiff as a slave for life, in consideration of 75 *l.* When the period of his four years services was expired, Isaac was liberated, and the plaintiff brought an action for money had and received; . . The defendant contended, that the deed of manumission was *pia fraus*, and intended . . to obtain the possession of the negroes . . where runaway slaves were harboured . . and that when the bill of sale was made . . they both expressed their object to be the procuring of the negroes from their lurking places. . . *Sed per cur.* . . the laws of New Jersey, were open for obtaining the possession of the negroes. . . The defendant cannot avail himself of the fraudulent pretext, . . The trick is too gross to receive the sanction of a court . . Credit must be given for the time . . Isaac continued in the plaintiff's services," "Verdict *pro quer.* for $275.50 damages."

Jones v. Executors of Rees, 4 Yeates 109, October 1804. "deceit . . in . . affirming negro Will to be a slave for life, and selling him to the plaintiff for 100 *l.* Virginia currency, equal to $333 33⅓ . . evidence, that the negro was brought into this state in . . 1781, . . and sold . . to Rees. About 1786, Rees sold him, then . . about 25 . . to the plaintiff, . . The negro brought a writ of *homine replegiando* against the plaintiff . . 1799, and the [executors of Rees] . . were required to take upon them the defence. . . 1801 . . a verdict was found for the plaintiff [negro Will], with 254 dollars damages. But the declaration having only laid the damages at $100, a *remittitur* was entered of 154 dollars, . . The costs . . $18.59, . . with the damages, were paid by the then defendant, and now plaintiff, Jones."

By the court: [111] "when he obtained his liberty . . [plaintiff's] right of action accrued against the defendants. The true rule in assessing the damages seems to be, by . . estimating the yearly services . . and deducting . . his clothing, maintenance, and other necessary expenditures. As far as this balance exceeds the . . interest of the consideration money, it should go towards the payment of the principal . . For the residue, together with the 100 dollars damages, and 18 dollars and 59 cents costs, and a reasonble sum for defending the action of replevin, and interest . . the plaintiff appears entitled to a verdict," "Verdict *pro quer.* for $425 damages."

Elson (*a negro*) *v. M'Colloch*, 4 Yeates 115, October 1804. "*Homine replegiando*. The only question . . was, whether a stranger might register a negro, under the act . . passed the first March 1780? The court declared, . . No one . . except the party . . intitled to the negro, . . or a person legally authorized [1] . . It was agreed that a verdict should be

[1] But see Giles *v.* Meeks, p. 262, *supra*.

entered for the plaintiff for nominal damages only, he having been in the defendant's service but two months, and full costs."

Coulon v. the Neptune, 6 Fed. Cas. 625 (2 Pet. Adm. 356), 1804. "The brig *Neptune*, being American property, . . was seized by a French armed vessel . . under pretext of having violated an *arrete* [*sic*] issued by the . . governor of St. Domingo, interdicting trade . . with certain ports in the French part of that island, to prevent supplies to the revolted blacks. . . a pretended court of admiralty was held, at sea, on board the capturing cruizer, . . The brig . . was condemned. The persons composing this pretended court were then in a state of flight from the island of St. Domingo, then in full possession of the blacks,"

Respublica v. Smith, 4 Yeates 204, March 1805. "*Habeas corpus ad subjiciendum*, to the keeper of the jail . . to bring . . negro Joseph . . The return was, that he was detained under a commitment, as the runaway servant of . . Conyngham. . . the negro was a slave in St. Domingo . . of a French lady, who intermarried with . . Boudineau . . They came to Philadelphia, the negro led forming a part of the family, in the spring of 1793. In the fall . . the husband returned to France, . . June 1794, Joseph [14 years old] executed an indenture to Madame Boudineau for fourteen years, wherein she covenanted to learn him the arts of a cook and house waiter; which she assigned to Mr. Conyngham . . April 1795, and followed her husband to France in 1804. The indenture . . [205] was . . in consideration of the negro's manumission" Held: "He must be discharged." "There is no evidence of any terms being agreed upon within six months after the negro was brought into this state." [1]

Conframp v. Bunel, 4 Dallas 419 (1 Wash. C. C. 340), April 1806. "On a rule [on the plaintiff] to show cause, why the defendant should not be discharged on common bail, the following facts were established by the plaintiff: That in . . 1787, the defendant gave his note for 55,000 livres . . for value received in 55 negroes. . . several partial payments were . . indorsed upon it. . . 1789, a suit was instituted at Port-au-Prince, to recover the balance; and a judgment, by default, was entered for 36,666 livres; to recover which was the object of the present action. For the defendant it was shown, that all the parties . . were French subjects, resident in . . St. Domingo, . . that in August 1793, the French commissioners (Polverel and Santhorax) had proclaimed, at Port-au-Prince, the abolition of slavery, and the freedom of the negroes; which the national convention ratified in the February ensuing; . . that, in consequence . . the very negroes, who had been purchased by the defendant, had been taken from him; and that with a view to the calamitous situation of the colony, the following laws had been enacted by the French government: 1st. Extract from the law of the 6th of September 1802. 'Sect. 1. Until the 1st of Vendemaire [*sic*] 16th year all suits are suspended . . for debts contracted prior to the 1st of January 1792, for the purchase . . of negroes.'"

[1] Act of Mar. 1, 1780. 10 Pa. Stat. at L. 71.

Held: [420] " the suspension of the law, applied as well to the commencement of the suit, as to the issuing of an execution. The rule made absolute."

Butler v. Hopper, 4 Fed. Cas. 904 (1 Wash. C. C. 498), October 1806. " This case comes before the [circuit] court [of the United States, for the third circuit,] on a special verdict, the material parts of which find; that the plaintiff [Pierce Butler] formerly lived in . . South Carolina, where, as well as in Georgia, he had a valuable plantation, which he cultivated, and still cultivates, by his overseers and slaves, . . That from . . 1794 . . with the exception of an annual visit to his plantations . . he has kept a dwelling house in . . Philadelphia, and has *resided* in it," Among his domestic servants was Ben " who was his property, as a slave at the time of his coming into this city, and who continued with him . . until September 1805, when he was discharged from his service, under a *habeas corpus* issued from the court of common pleas of this state. Whilst on his plantation in South Carolina, during these annual visits, the plaintiff kept house, always having Ben with him. From . . 1794, until . . 1805, the plaintiff represented . . South Carolina in congress, except for two years . . when he was a member of the legislature of that state." [905] " The plaintiff claims an exemption . . 1st, as a member of congress; and secondly, as a sojourner." Held: " for two years he . . lost the privilege . . conferred upon him, under the exception in the law.[1] . . the jury find that the plaintiff was a *resident*, . . upon this verdict, the law is with the defendant." [Washington, J.]

Brig Tryphenia v. Harrison, 24 Fed. Cas. 252 (1 Wash. C. C. 522), October 1806. " the slaves were the property of two French ladies, taken on board the brig at St. Thomas, and carried to the Havana, . . they were not carried for sale or traffic, but as the servants . . of those passengers." Held: the laws of the United States, of March 22, 1794,[2] and of May 10, 1800,[3] do not extend to the present case.

Clayton v. the Harmony, 5 Fed. Cas. 994 (1 Pet. Adm. 70), 1807. The *Harmony*, owned by citizens of Pennsylvania, bound from Great Britain to Philadelphia, [995] " was captured by a French corvette . . the captain of the *Harmony*, the officers, seamen and passengers, were taken on board the corvette, except the libellants, who were suffered to remain in the *Harmony*, on board whereof were put three French officers and seven seamen, who were ordered to conduct her into Rochelle in France." Forty-eight hours later she was " recaptured by the libellants and the mate of the . . *Harmony*. . . [998] the male receptors . . should be classed in the following order. 1. . . the mate. The cook, in a manner highly meritorious, first mentioned to the mate that 'he did not think it right the ship should go to France.' . . the mate, who reproved this venial loquacity in the cook, . . immediately proceeded . . to combine and array . . the dangerous, but successful, attack on the French officers and crew. . . 3. The cook, Stephen Revel, a man of colour,

[1] Act of Mar. 1, 1780, sect. 10. 10 Pa. Stat. at L. 71.
[2] 1 Stat. at L. 347.
[3] 2 *ibid.* 70.

whose merit is very distinguished. His reward should follow the spirited and beneficial exertions of one, whose station in life does not always produce persons of such courage and good conduct. 4. James Bowen, the steward, a black, whose deserts in cheerfully undertaking, and bravely accomplishing, his part of the enterprize, entitle him to share the reward of such hazardous services. I have a pleasure in declaring, that these are not the only instances I have had judicially before me, of virtuous, patriotic, and spirited conduct, in men of the African race. . . [999] I do hereby adjudge . . 2. Stephen Revel three thousand eight hundred and fifty-three dollars, and forty-one cents. 3. James Bowen three thousand three hundred and fifty-three dollars and forty-one cents." [Peters, J.]

Small v. the Messenger, 22 Fed. Cas. 366 (2 Pet. Adm. 284), 1807. Goods taken from a wreck were libelled for salvage. It was decreed: [367] "James Parker and Robert Sennett, white men, and negroes William, Joe, Europe, Lewis, Jerry and Peter, slaves, all seamen, shall each have one share, or twenty-three dollars, and eighty-seven cents" "The negroes . . being slaves, are nevertheless to receive their proportion of salvage, as mariners on board the brig *Catharine*, for their own separate use." [Peters, J.]

Commonwealth v. Smyth, 1 Browne 113, September 1809. "A *habeas corpus* was taken to bring . . George Taylor, a negro, . . The gaoler returned, that he held him as the run-away slave of . . Dowers, . . The facts . . were, that . . Dowers, who had resided . . at Trenton, in New Jersey, purchased the . . negro boy . . while he resided at that place, and brought him to Philadelphia, in October 1808, whither he removed . . and rented a house for six months. . . he told . . Massey he intended to return within the six months, and to take the boy with him. . . he several times went with him to Trenton, . . staid a short while . . After . . the six months, . . he still resided in [Philadelphia.] . . In June 1809, the boy deserted from his master, who then caused him to be apprehended" [114] "Prisoner discharged." [1] "His taking him to Trenton several times, can have no operation to disprove the master's residence here,"

Commonwealth v. Lango, 1 Browne 369 n., 1809. Tilghman, C. J.: "Silvia [*sic*], a black girl, of . . fifteen years, . . brought before me, on a *habeas corpus,* is claimed by Elizabeth Lango, as her servant, till the age of twenty-eight . . Sylvia was formerly the slave of E. Bertrand, a French-woman, who resided in . . Cuba. . . one of those unfortunate persons whom the Spanish government . . compelled to leave . . She came to Rhode-Island in the spring of last year, and in . . [370 n.] August following, arrived in [Philadelphia,] . . bringing Sylvia . . executed a deed of manumission of Sylvia, who on the same day bound herself, by indenture, as a servant to Mrs. Bertrand . . for thirteen years . . Mrs. Bertrand covenanted to find her sufficient meat, drink, clothing, washing and lodging. . . Mrs Bertrand, in consideration of two hun-

[1] Act of Mar. 29, 1788, sect. 2. 13 Pa. Stat. at L. 52.

dred dollars, assigned this indenture to Elizabeth Lango, . . It has been customary for negroes in Philadelphia, claimed as slaves by persons living in other states, to bind themselves for . . periods, not exceeding the age of twenty-eight . . by way of compromise with their masters; . . These compromises, especially when the negro has acted under the direction of the abolition society, or any of its members, ought, if possible, to be supported." For "an infant [as Sylvia is] may make a contract for his own benefit; now nothing can be more for his advantage than to commute . . slavery, for servitude until . . twenty-eight . . the act for the gradual abolition of slavery, (sec. 13) does, by necessary inference, affirm the validity of [such] an indenture, . . Sylvia was not free by the acts . . of Pennsylvania, when she executed the indenture, because her mistress did not come . . [371 n.] with a view of settling . . nor had she been [here] six months . . at the date of the indenture. But the case turns upon the Act of Congress, passed the second of March 1802, . . 'to prohibit the importation of slaves . . after the first of January 1808.'" [370 n.] "the indenture is void; because she was entitled to her freedom upon her importation . . the deed of manumission, in consideration of which the indenture was given, was an useless ceremony, which only tended to deceive her. . . [371 n.] There is no evidence that Sylvia had the assistance of friends or counsel, or that she had any idea of a right to freedom, except what was derived from the deed of manumission, which bears the same date as the indenture, and must be considered as being executed immediately before it. . . the two instruments form one transaction: thus situated, an ignorant girl binds herself to serve for thirteen years, for no other consideration than meat, drink, washing and lodging; no education is to be given; no art, trade, or useful business to be taught; she is not even to receive freedom dues. . . Can it be said, that the infant derives any benefit . . the prisoner must be discharged."

Commonwealth v. Sturgeon, 2 Browne, 205, April 1810. "Negro Henry, being a free man about twenty-four . . bound himself to the defendant by indenture of apprenticeship, to learn the tanner's trade. . . The only question . . was, whether a free person of full age can bind himself an apprentice, so as to be held to personal servitude, and subject to the provisions of the act [of September 29, 1770][1] . . giving summary jurisdiction in disputes between master and apprentice."

Held: [211] "recourse must be had to the covenants, if any breach of them . . the summary remedy . . before a Justice does not apply." "cases, of persons above age, in this state, becoming apprentices, are so rare, that the construction now given can be of little inconvenience; whilst on the contrary, to subject persons, who on equal terms became parties to the contract, to the power of the sessions by a disgraceful punishment for a breach of duty, appears harsh and inexpedient." [Hamilton, P.]

Overseers of Forks v. Overseers of Catawessa, 3 Binney 22, June 1810. [24] "the pauper was the slave of . . Arndt . . of Forks township, who recorded him as such, of the age of thirty-five, on the 23d of October,

[1] 7 Pa. Stat. at L. 360.

1780; . . [25] After . . some time, the pauper was manumitted by deed not recorded. He afterwards left . . married, had children, and has lived in various places, but gained no settlement." [23] "He first became chargeable in the township of Catawessa." They [24] "were removed by an order of two justices of the peace . . to Forks township . . The overseers of Forks, appealed to the Quarter Sessions . . who affirmed the order"

[25] "Order of the sessions confirmed." [25] "the pauper is not to be left starving, until the representatives of Arndt can be compelled to maintain him. . . the township, in which the master . . resides, is . . in the first instance bound to support him, in case he falls into distress . . by the old laws of the former province, the person manumitting . . was obliged to give security to indemnify the township. . . They may take their remedy against the estate of Arndt." [Tilghman, C. J.]

Jack v. Eales, 3 Binney 101, September 1810. "The plaintiff in error claimed the defendant as his servant until the age of twenty-eight [1] . . produced an authenticated copy of an entry . . 'Bently . . enters a female negro child . . named Eales . . aged three years and seven months. Oath made before . . Parker esq. to the age etc. of . . child, the 1st day of April 1789.'" Held: [102] "the entry was sufficient." A justice of the peace may administer the oath by virtue of his general powers.

Hall v. Vandegrift, 3 Binney 374, March 1811. Will of Sarah Mallowes, 1723: "I give unto my negro boy Toby, when he arrives at the age of twenty-four . . [375] ten pounds lawful money, likewise ten acres . . during his life."

Commonwealth v. Beck, 1 Browne 277, March 1811. [279] "Negroes often desert their masters, and find protection among their friends. On a *Habeas Corpus* directed to such patron, if the negro fails to establish his claim of freedom, he is . . delivered over to the owner"

Commonwealth v. Negress Hester, 1 Browne 369, September 1811. "A *Habeas Corpus* was directed to the keeper of the common prison, commanding him to bring . . Negress Hester, . . The jailer returned, that he held [her] . . by virtue of a commitment . . charging her with having absconded from the service of . . Matlack . . to whom she was a servant for years. . . [370] Hester was born . . August 1780, . . had never been registered . . manumitted by Matlack, in 1798, and at the same time bound as a servant for ten years to . . Murgatroyd. . . sometime afterwards, she absconded . . and after . . a considerable time . . was retaken and committed to prison, and . . the Mayor's Court . . 1810 . . made an order, that . . Hester should serve . . Murgatroyd . . for five years . . as a compensation for the time she had been absent [2] . . afterwards assigned to . . Matlack, . . Milnor, for the abolition society, contended, that . . Hester was a free woman, . . having been born subsequently to the passing of the Act of 1780, . . and never having been

[1] Act of Mar. 29, 1788. 13 Pa. Stat. at L. 54.
[2] Acts of Nov. 27, 1700, 2 Pa. Stat. at L. 55; Mar. 9, 1771, 8 *ibid.* 31.

registered"[1] [373] "*Per curiam.*—Rush, president. . . the original binding was void, . . Hester being . . a free woman; . . Both the original binding, and the order of the Mayor's Court appear to have been predicated on a mistake" Prisoner discharged.

Commonwealth v. Blaine, 4 Binney 186, October 1811. "To a *habeas corpus* to the defendant, to bring . . John, she made . . return: . . 'he is my servant to the age of twenty-eight . . duly registered' . . [187] The registry was . . 'Sarah E. Blaine, 26th June, 1807, . . enters one male negro child . . born'" January 2, 1808. [188] "admitted that . . John was born . . 1807,"

Held: "It is a case which may be explained by parol evidence. . . [189] Mrs. Blaine is entitled to hold . . John . . from the real time of his birth, till . . twenty-eight" [Tilghman, C. J.] Gibson, J., who had been counsel for the negro, declared in 1817: "it is a general principle, that where a loss must fall on one of two innocent persons, *it shall be borne by him whose negligence was the cause of it.* . . I then thought, and still think, [the negro] should have been discharged." 3 S. and R. 162.

Commonwealth v. Snelling, 4 Binney 379, January 1812. "special verdict . . that David Harrod the prosecutor was met . . by . . prisoner. That they jostled . . That the prosecutor . . asked the prisoner's pardon. The prisoner . . said, you d—n black son of a b—h, what did you run against me for? . . took the prosecutor by the cravat . . That the prosecutor was afraid . . that the prisoner would whip him, . . That . . the prisoner . . took the prosecutor's [silver] watch . . from his fob, without the prosecutor's knowledge" Held [385] "the offence was robbery."

Ex parte Meason, 5 Binney 167, September 1812. Counsel: [171] "The term *servants* . . [in the] restricted sense . . in Pennsylvania . . embraces only *imported servants* and people of colour, bound to serve to the age of twenty-eight,"

Ex parte Lawrence, 5 Binney 304, December 1812. "Phillips on behalf of Ann Lawrence, petitioned . . for a *habeas corpus* . . to . . Vogdes, to bring . . Adam Lawrence then in his custody as a slave, whereas, according to the suggestion, he was free. . . the case had been already heard upon a *habeas corpus* by the Common Pleas of Philadelphia county, who remanded the prisoner; . . no new evidence" Refused: "the party . . may resort to a *homine replegiando*."

M'Dowell v. Burd, 6 Binney 198, October 1813. "action of debt . . upon a single bill given by Burd for 200 dollars, . . 1808, . . payable in three months . . [199] proved, that the consideration . . was a negro boy sold . . for a term of years. The defendant . . offered to prove, that *before, at* and *after* the time of sale, the negro was afflicted with a disorder which made him of little value. . . admitted" Affirmed.

Commonwealth, ex rel. Susan Stephens, v. Clements, 6 Binney 206, January 1814. "*habeas corpus* issued to . . Clements, . . to bring . . Susan Stephens . . evidence, that . . [she] was a black woman, form-

[1] Act of Mar. 29, 1788. 13 *ibid.* 54.

erly the slave of . . Maxwell . . of Maryland; and that she ran away . . to Philadelphia, where she married George Stephens a free black . . Maxwell . . apprehended the woman . . and was about to carry her to Maryland, when . . Clements, at the solicitation of both the husband and wife, agreed to pay Maxwell 195 dollars, provided he would manumit the wife, it being . . understood, that [they] . . [207] should bind themselves as servants to Clements for . . three years. The indenture of the wife was executed before an alderman . . her husband being present, and consenting, but not being a party. It was also executed by William Masters, one of the society for promoting the abolition of slavery, who was styled the next friend of the wife. . . At the time . . Susan was in a state of pregnancy."

Prisoner remanded: [209] "counsel for Susan Stephens . . rests his client's case on the circumstance of her being a married woman at the time of binding herself. . . It is . . a case *sui generis*, to which the common law . . furnishes no parallel. . . neither Susan Stephens nor her husband could acquire any rights by marriage in derogation of the rights of her master, . . [210] same principle which protects a free woman, would oppress a slave, by preventing her acquisition of freedom." [Tilghman, C. J.] "Whatever may be our ideas of the abstract right of detaining our fellow creatures in slavery, that relation is recognized by most of the states . . and is tolerated *sub modo* in this government. A temporary servitude . . has been substituted . . [211] for the horrors of slavery, . . this intermarriage was unlawful. . . she was incapable of entering into a contract of marriage without the master's consent." [Yeates, J.] Brackenridge, J.: "I would propose to give the applicant . . election [as in the case of a man rescued, but injured,] . . to annul the evidence of her manumission, and procure her indenture to be taken up, and to put herself in her master's hands, [and then to prosecute her action.] . . If she [does] . . not do this . . her complaint . . must be dismissed."

Commonwealth, ex rel. negro Lewis, v. Holloway, 6 Binney 213, January 1814. "a *habeas corpus* to the jailer . . to bring . . negro Lewis. . . agreed, 'that Langdon Cheves . . resident of South Carolina, . . was a member of congress . . that . . in March 1813, after congress rose, Mr. Cheves came to Pennsylvania bringing Lewis . . rented a house . . and lived there . . till . . December . . when he went to Washington . . Lewis . . absconded before Mr. Cheves left'"

Prisoner remanded to the custody of the jailer. Tilghman, C. J.: [218] "We all know that our southern brethren are very jealous of their rights on the subject of slavery, and that their union with the other states could never have been cemented, without yielding to their demands on this point. Nor is it conceivable that the legislature of Pennsylvania could have intended to make a law [in 1780 or in 1788], the probable consequence of which would have been the banishment of the congress from the state. I am therefore of opinion . . [219] that the domestic slaves of members of congress who are attending on the family . . even during its recess, gain no title to freedom, although they remain in the state more than

six months, whether the seat of congress be in Pennsylvania or elsewhere." Yeates and Brackenridge, J J.] concurred.

Commonwealth, ex rel. Jesse (a black man), v. Craig, 1 S. and R. 23, September 1814. *Habeas corpus.* " the defendant claimed the relator as his servant till 28, under a registry [1] . . ' enter on record . . one negro boy named Jesse, born some time in May last, or beginning of June. . . November 5, 1792." The owner, General Neville, transferred Jesse's unexpired time to the defendant. [24] " The Court . . were clearly of opinion that he should be discharged, because . . it does not appear by the registry . . whether it was made within six months from the birth "

Wood v. Negro Stephen, 1 S. and R. 175, October 1814. Tilghman, C. J.: " Negro Stephen . . in a writ *de homine replegiando,* claimed his freedom under the last will . . of Richard Williams . . of Maryland . . dated the 2d April, 1768. . . Wood, gave in evidence an act . . of Maryland, made in 1752, chap. 1, sect. 3, by which manumissions by last will . . were declared . . void. . . evidence also of the continuation of this act, until . . 1766, and of its repeal . . 1796, . . The Court of Common Pleas was of opinion, that this evidence was not sufficient to prove, that the act of 1752, was in force in 1768, . . I cannot perceive any error . . The defendant gave further in evidence the record of a petition for freedom by . . grandmother of . . Stephen, against Samuel Chase, Esq. . . [176] under the same will . . and by the judgment of the General Court of Maryland the petition was dismissed. But . . Stephen . . claims freedom . . under his mother . . also manumitted by the will of . . Williams. . . affirmed."

Commonwealth, ex rel. Stephenson, v. Vanlear, 1 S. and R. 248, January 1815. " a *habeas corpus* to bring . . Augustus Stephenson, a black boy. . . 1814, the boy, then fourteen . . was bound before alderman . . with the consent of his father, to . . Duffee [of Philadelphia], for seven years, as a waiter. . . December . . assigned . . to Vanlear [of Chester County], . . The father was not present," Held: [250] " The boy must . . be . . delivered to . . Duffee." [2]

Green v. African Methodist Episcopal Society, 1 S. and R. 254, January 1815. " the return to a *mandamus* . . directed to the defendants, commanding them to restore the plaintiff to his standing as a trustee and member " [255] " states, that ' at a special meeting of a select number of members of the African church, called Bethel, . . being a committee appointed to . . try . . Green and . . Samons, charged with having, contrary to the rules and discipline, entered a law-suit against . . a member ' . . both . . were found guilty: " and expelled. A peremptory *mandamus* awarded: " The return . . does not state, in what manner . . committee was selected or appointed."

Graham [*Simmons?*] *v. Graham,* 1 S. and R. 330, April 1815. " On a *habeas corpus* . . [331] the court ordered an issue to try whether . .

[1] Act of Mar. 29, 1788.
[2] Act of Apr. 11, 1799, sect. 2.

Simmons had a right to hold Shepherd Graham by virtue of an indenture of apprenticeship, . . until he attained . . fifteen . . to be instructed in the art of a chimney sweeper. . . The indenture was executed by the boy and his mother, in the presence of a justice of the peace . . Both . . were negroes, . . the father . . at the time . . was a slave belonging to a person in . . Delaware. After . . some time . . he was permitted to go home to his mother, with whom he lived about fourteen months, when she died. . . evidence that . . [she] had agreed to pay Simmons 100 dollars, and it was contended on the trial, that the indenture was vacated by the consent of master, mother, and apprentice. . . the judge submitted it to the jury . . with an intimation of his own opinion, that the indenture was cancelled." " the jury found against Simmons," Judgment on the verdict affirmed.

Commonwealth v. Stewart, 1 S. and R. 342, April 1815. [345] " swore . . that persons of bad repute, . . black and white, frequented [the house] . . both by night and day."

Commonwealth v. Kendig, 1 S. and R. 366, July 1815. "A *Habeas Corpus* . . to . . Kendig to bring Jane Bantham," " a black girl under . . eighteen, residing in . . Delaware, . . bound to . . Pearce . . in this state, until . . eighteen. . . before a justice of the peace of Delaware, . . 1813. . . 17th May, 1814, she was bound . . to . . Baker . . of Philadelphia, as an apprentice to learn the art of housewifery, etc. . . Pearce was party to this indenture as the *master and next friend* . . executed in presence of alderman Bartram. . . 25th May, . . Baker assigned the indenture in presence of alderman Bartram to . . Kendig, who paid 35 dollars, . . divided between . . Baker and . . Pearce, . . Jane Bantham's father is living . . in . . Maryland, . . no evidence of his having taken any care of her for many years."

Apprentice discharged: [367] " I consider the binding to Baker, and assignment to Kendig, as nothing else than a sale by Pearce to Kendig, through the intervention of Baker, who is a broker in this kind of business. . . I think it would be of dangerous consequence to admit, that a man . . about to sell his apprentice, should take the place of *next friend*, . . therefore . . the indenture to Baker . . was not agreeable to the act of assembly," [1] [Tilghman, C. J.]

Marchand v. Negro Peggy, 2 S. and R. 18, September 1815. " a *homine replegiando* brought by Negro Peggy," " 23d September, 1780, held as a slave . . [in] Westmoreland county, and . . for some time before. . . [19] appears on the register . . 10th November, 1780: . . contended . . that she is entitled to freedom, because she was not registered agreeably to the act of 1st March, 1780, (which allows only to the 1st November, 1780,) nor to the act of 13th April, 1782, which has no retrospect."

Judgment for the plaintiff reversed: " The object of the last act was to give time . . until the 1st January, 1783." [18] "At the time . . the boundary between Pennsylvania and Virginia was in dispute, and as the inhabitants . . [19] on the border could not tell to which state they

[1] Act of Sept. 29, 1770.

belonged, it was thought reasonable to allow them further time . . until the 1st January, 1783. . . 10th November, 1780, was certainly prior . . I know that freedom is to be favoured, but we have no right to favour it at the expense of property. The only just mode of extirpating the small remains of slavery in the state, would be by purchasing the slaves at a reasonable price, and paying their owners out of the public treasury." [Tilghman, C. J.]

Commonwealth v. Holloway, 2 S. and R. 305, July 1816. "A *Habeas Corpus* . . to the keeper of the prison . . to produce . . Eliza, a negro child, . . he returned that he held her by virtue of a warrant of commitment, . . 'as being the daughter of Mary, . . the slave of . . Corse, of Maryland, and as such, also . . [his] slave' . . it appeared that the mother had absconded . . and come to Philadelphia, where, after . . about two years, the child was born."

Held: [307] "under the act of assembly of this state,[1] and the constitution of the United States, . . Eliza was born free." Yeates, J.: [308] "It cannot be supposed for a moment, that the child . . who was not in existence when her mother ran away, . . was a fugitive." "The convention who formed the federal compact, had the whole subject of slavery before them, . . It was no easy task to reconcile the . . discordant prepossessions . . but the business was accomplished by acts of concession and mutual condescension."

Commonwealth, ex rel. Johnson (a negro), v. Holloway, 3 S. and R. 4, January 1817. *Habeas corpus.* "David Johnson . . was in custody of Holloway, keeper of the prison . . on two commitments . . first as the runaway slave of . . Frazier . . of Maryland; second on a charge of fornication and bastardy.

[6] "prisoner . . remanded to answer the charge of fornication and bastardy." [5] "fornication is . . a crime; and where it is accompanied with bastardy, security must be given to indemnify the county against the expense of maintaining the child. It may be hard on the owner to give this security, or lose the service of his slave; but it is an inconvenience to which this kind of property is unavoidably subject. . . But it is objected, that by the Constitution of the United States, (art. IV. sect. 2.) the slave is to be delivered up to his master. . . This provision . . [6] is not to be construed so as to exempt slaves from the penal laws of any state where they may happen to be. . . These runaway slaves are often guilty of riots, violent assaults and batteries, and other offences, . . It is necessary that they should be restrained by the fear of punishment;" [Tilghman, C. J.]

Wilson v. Belinda, 3 S. and R. 396, September 1817. "a *homine replegiando*, in which the question was, whether . . Belinda, the plaintiff below, was duly registered under the act of 1st March, 1780. . . The return . . was as follows: Carlisle, 'September 26th, 1780. . . negroes belonging to John Montgomery. . . Belinda, . . about 23 months old.' . . The following was the entry made in a book, kept for the registry of

[1] Act of Mar. 1, 1780.

. . slaves, in the office of the clerk . . 'John Montgomery, esq. . . Belinda, a negro, . . 23 months.'"

Held: [399] "Belinda is entitled to her freedom." I. [398] "the registry is good, though it does not . . say, whether Belinda was a slave . . or servant for years." "The act creates a forfeiture of property in case of a defective registry, and therefore, where there appears to have been an intent to comply honestly . . the construction should be liberal in favour of the master. . . [II.] [399] But I know of no decision which dispenses with the insertion of the . . *sex,* . . [III.] The act requires the occupation to be mentioned. . . parol evidence might be given, to shew that Montgomery had no occupation. . . also . . the addition of *esquire* . . by the clerk . . may fairly be taken into consideration." [Tilghman, C. J.]

Gibson, J.: [400] "As far as cases have already gone, I am willing to go; but not a jot further: . . [401] But . . every other particular . . must be strictly complied with; and for this simple reason, that the act declares the slave shall be free, if it be not. In the paper delivered by . . Montgomery . . neither his own occupation . . nor the sex of the plaintiff, is set forth; and, for both these reasons, I hold the registry to be void. . . We cannot recognise the name Belinda as being exclusively that of a female,"

Commonwealth v. Hambright, 4 S. and R. 218, May 1818. "A *habeas corpus* having issued to . . jailor . . to bring . . negro Tom, he returned, that he held him as the agent of Isaac Law his master [a resident of Pennsylvania], by virtue of an indenture made . . 1805. This indenture recited, that Law had manumitted Tom, whom he [had purchased] . . in . . New Jersey, and who was twelve years old . . and that in consideration of manumission, Tom had, with the approbation of two justices of the peace of . . New Jersey, (he having no parents in that state . .) bound himself to Law to learn the occupation of a husbandman, and to . . serve him . . until . . 1821, in . . Pennsylvania, or in any other state in which Law might reside. . . Tom was sent to prison by his master . . until he should consent to go [back] with him to . . New Jersey, where he intended to reside."

Prisoner discharged: [221] "To carry the negro there, against his consent, is directly contrary to the law," "the act of 29th March, 1788, sect. 3,[1] . . extends to all negro . . servants for years, whether bound within the state or without." [Tilghman, C. J.]

Commonwealth v. James D. Greason, 4 S. and R. 425, September 1818. "On a *habeas corpus* . . to James D. Greason, commending him to bring . . Bob, . . it appeared, that on the 21st November, 1792, . . Gibson returned to the clerk . . a certain male mulatto child, named Bob, born of his negro wench, named Hannah, on, or about the 23d May last." Prisoner discharged: [426] "the report was made in *about six months,* but whether *within* six months,[2] is doubtful."

[1] 13 Pa. Stat. at L. 52.
[2] Act of Mar. 29, 1788, sect. 4. 13 Pa. Stat. at L. 54.

Wright alias Hall v. Deacon, 5 S. and R. 62, January 1819. "the plaintiff ['a coloured man'] having been claimed by . . Gale . . of Maryland, as a fugitive from his service, was arrested by him . . and carried before . . justice of the peace, who committed [him] . . to prison, in order that an inquiry might be made . . The plaintiff then sued out a *habeas corpus*, returnable before . . Armstrong, . . an associate Judge of the Court of Common Pleas. . . [He] gave a certificate, that it appeared to him, by sufficient testimony, that the plaintiff owed . . service to . . Gale . . and . . delivered the said certificate to . . Gale, in order that the plaintiff might be removed to . . Maryland." "a writ *de homine replegiando* [was then] . . sued out by the plaintiff . . against the defendant, who was the keeper of the prison"

Writ quashed: [63] "Whatever may be our private opinions on the subject of slavery, it is well known that our southern brethren would not have consented to become parties to a constitution . . unless their property in slaves had been secured. . . [64] It plainly appears from the whole scope and tenor of the constitution and act of Congress,[1] that the fugitive was to be delivered up, on a summary proceeding, without the delay of a trial in a court of common law. . . the writ has been issued in violation of the constitution of the United States." [Tilghman, C. J.]

Commonwealth, ex rel. Bell, v. Greason, 5 S. and R. 333, October 1819. "Negro Bell was registered by William Greason, on his oath as being born of his negro slave named Hannah, . . 9th March, 1796. The oath was taken before . . Lyon, deputy clerk of the peace." Relator remanded: [384] "Mr. Lyon did not exceed his lawful authority"

Commonwealth v. Cain. et al., 5 S. and R. 510, March 1820. "motion for a rule on the defendants, to shew cause why an information in the nature of a *Quo Warranto* should not be filed against them for usurping the office of vestrymen of 'St Thomas's African Episcopal Church of Philadelphia.' . . a bye-law [*sic*] made . . 1819 . . enacted, that no member . . whose pew rent was in arrear for a longer time than two years should be entitled to vote . . the defendants relied on the 2d section [of the act of incorporation] . . which . . provided, that the election . . should be conducted agreeably to certain . . rules . . made . . 1794."

Held: [512] "The . . rule made . . [513] 1784 [*sic*], is to be considered as part of the act of incorporation, . . [514] as . . [the] by-law is reasonable, for the good of the church, and not contradictory to the act of incorporation, . . it is valid."

Overseers of Ferguson v. Overseers of Buffaloe, 6 S. and R. 103, June 1820. "Negro Tom, a pauper, was removed by an order of two justices of the peace . . from Buffaloe township . . to . . Ferguson . . On an appeal to the Quarter Sessions, the order . . was reversed . . It appeared that in . . 1780, . . the pauper . . then thirty . . was the property of . . Jenkins, a resident in Buffaloe . . who, in . . 1796, sold him to . . Patton, then residing in what has since become Ferguson township, . . with whom he continued several years. He then . . returned . . and

[1] Act of Feb. 12, 1793, sect. 3. 1 Stat. at L. 302.

maintained himself by his own exertions, until he was far advanced in years. In the record of registry . . the name of the slave was illegible;"

Order of the Sessions quashed: [104] "a slave has a settlement in the township where his master resides, which is bound to support him in the first instance, and take its remedy over, against the master." [1] "as the pauper continued to be a slave till after the age of *seventy-eight*, the master [Patton] is bound to afford him a maintenance . . [105] the pauper was held, at least, by *colour* of right. If, therefore, he continued . . as a slave, whether ignorantly or voluntarily, until he became unable to make a provision for his old age, it would be inhuman to permit the master to deny the legality of the servitude, and thus get rid of the duties . . [106] the act of 1780, does not, in express terms, render the servitude of an unrecorded negro, void. Wherever, therefore, there has, by colour of right, been such a servitude as would, if it had been in all respects legal, have gained a settlement, no defect in the registry can be taken advantage of, to deprive the pauper, of the miserable advantages of a state of legitimate slavery, if any slavery can be legitimate." [Gibson, J.]

U. S. v. Kennedy, 26 Fed. Cas. 762 (4 Wash. C. C. 91), April 1821. "Indictment [2] for serving on board a vessel employed in transporting a slave from . . St. Thomas, to . . Cuba;" Kennedy, the master of the vessel, "took on board, at St. Thomas, a negro boy, which he stated to the witness he had received from the lady with whom he boarded, to carry to Cuba to her brother, for the passage of whom fifteen dollars had been paid him. That after their arrival at St. Jago, the defendant told the witness he had been compelled to sell the negro boy to a Mr. Clark, for three hundred dollars. . . it was said at St. Jago, that the boy had been taken into the country to Mr. Clark, his master." Verdict, not guilty.

Alexander v. Stokely, 7 S. and R. 299, September 1821. "a *homine replegiando*, brought by Susannah Stokely . . to try . . [her] right . . to the services of a negro girl named Nance . . [300] the daughter of Milley, a coloured woman. . . The defendant . . offered in evidence, the record of a judgment . . in an action of *homine replegiando*, brought against Susannah Stokely, by Milley . . in which Mrs. Stokely pleaded that she held . . Milley as a slave duly registered. . . judgment for . . Milley, . . This record was rejected by the Court" "Nance was born after her mother became . . free . . in account of . . defect in the registry," Held: [302] "The Court erred in not admitting" the record. [301] "The child with the record in his hand, cannot be held in slavery or servitude."

Butler v. Delaplaine, 7 S. and R. 378, October 1821. "Error to the Court of Common Pleas . . in *homine replegiando* brought by Henry Butler and Charity his wife, and . . their children . . Bruce, in 1782, was the owner of . . land in Maryland, stocked with . . slaves [including Charity], and demised it, with the slaves to cultivate it, to . . Cleland,

[1] Overseers of Forks *v.* Overseers of Catawessa, p. 269, *supra.*
[2] Act of May 10, 1800. 2 Stat. at L. 70.

and removed . . seventy miles distant . . Shortly after . . Cleland entered into a contract with . . Gilleland respecting Charity. Gilleland, for her services, was to feed and clothe her until . . sixteen . . A separation took place between Gilleland and his wife, . . She . . went to reside . . near the [Pennsylvania] line . . occasionally went into Pennsylvania to work, taking . . [her infant] child and Charity . . to nurse it. She returned at intervals to . . Maryland, which continued her domicil. Whether she ever remained with Charity [in Pennsylvania] at any one time for six months, was a fact left to the jury. She returned Charity to . . Bruce . . at the age of eleven . . The counsel for the plaintiff, requested the Court to instruct the jury . . [380] that a residence of six months in the whole, although compounded of periods shorter than six months each, with an interval of two or three weeks between them, . . is a residence of six months, so as to entitle Charity, and her issue born afterwards, to their freedom," [1] But the court charged: "Different acts of residence, at different periods, cannot be tacked together, so as to make a whole; . . [381] And if no authority . . was given by Bruce . . to remove [Charity] . . to this State, your verdict should be for the defendant." The plaintiffs excepted. Verdict for the defendant.

Judgment thereon affirmed: I. [383] "We are not at liberty to infer a power of removal, . . [386] under the 4th article, section 2d of the Constitution of the United States, . . the slave coming into the State, in any other way than by the consent of the owner . . cannot be discharged under any law of this State, but must be delivered up on claim of the party to whom his . . labour may be due." II. [383] "The continuing of a sojourner, must be a single, unbroken one, for six months. . . It was well known to the framers of our Acts for the Abolition of slavery, that southern gentlemen with their families, were in the habit of visiting this State, attended with their domestic slaves, either for pleasure, health, or business; year after year passing the summer months with us, their continuance scarcely ever amounting to six months. If these successive sojournings were to be summed up, it would amount to a prohibition—a denial of the rights of hospitality. The York and Bedford springs are . . [384] frequented principally, and in great numbers, by families from Maryland and Virginia, attended by . . slaves." [Duncan, J.]

Hill v. Low, 12 Fed. Cas. 172 (4 Wash. C. C. 327), October 1822. Ezekiel, the slave of the plaintiff, had escaped from Maryland into Pennsylvania. The plaintiff arrested him in Philadelphia to take him before a magistrate, and the defendant obstructed him "in so securing and arresting the said fugitive when so arrested," [2] Verdict and judgment for the plaintiff. Reversed and the cause remitted: [173] "Mere obstruction . . is no offence under this act . . unless it be interposed previous to, or whilst the claimant . . is in the act of seizing or arresting the fugitive, or is endeavouring to make such seizure;" [Washington, J.]

Ex parte Simmons, 22 Fed. Cas. 151 (4 Wash. C. C. 396), October 1823. "an application made to Washington, J., in Philadelphia, . . under

[1] 10 Pa. Stat. at L. 71.
[2] Act of Congress, Feb. 12, 1793, sect. 4. 1 Stat. at L. 305.

the third section of the act of congress respecting fugitives from justice, etc.[1] . . for a certificate as provided by that section. The evidence was, that Mr. Simmons came to Philadelphia from Charleston, South Carolina, where he resided, and has plantations, in February 1822, and rented a house for one quarter, which he furnished, and in which he continued to reside with his family for three quarters and six weeks. That he brought with him his slave, as his property, who remained during that period, or the greater part of it, in his service as a domestic, and who has remained in Philadelphia until the present time, . .

" The judge refused to grant the certificate . . 1. . . this is not a case within either the words or the intention of the . . act . . under which this application is made. That relates to *fugitives* from one state or territory to another. . . [152] The slave . . having been voluntarily brought by his master into this state, I have no cognizance of the case, so far as respects this application, and the master must abide by the laws of this state . . 2. I am of opinion that the alleged slave is free under the [Pennsylvania act of March 1, 1780.] [2] . . This man has been retained in the state . . for a much longer period than six months."

Stiles v. Nelly (*a mulatto*), 10 S. and R. 366, October 1823. " a *homine replegiando* brought by Nelly . . in which judgment was entered for [her] . . by consent of parties. . . [Stiles] claimed Nelly as his servant till 28, under a transfer from . . Duncan . . the owner of Rachael, the mother of . . Nelly: . . On the 27th March, 1789, a paper was filed . . ' Negro Rachael, the property of . . Duncan, born about the 15th November, 1780.' " [370] " The register contains every particular required by law. Rachael is entered, as a female, born the 15th November 1780, owned by . . Duncan, of Carlyle, merchant."

Judgment reversed [3] and judgment entered for the plaintiff in error: I. [370] " It was not necessary that the register of Rachael, who was born before the 29th March 1788,[4] should be made within six months from her birth. . . [371] All that was necessary . . was, to show that Rachael was born *after the 1st March,* 1780. . . [II.] [Although] in the paper filed . . the sex of Rachael, and the occupation of . . Duncan are omitted . . they are both inserted in the record. There is not the least appearance of fraud . . [372] The return of the owner and the record of the clerk may be considered as . . forming one transaction." [Tilghman, C. J.]

U. S. v. Haskell and Francois, 26 Fed. Cas. 207 (4 Wash. C. C. 402), October 1823. [208] " The *Tatler* . . sailed from Baltimore . . with . . a crew consisting of the mate, Smith, the [two] prisoners, and a black boy." After Smith killed the mate, the captain, finding " that no hope remained that . . [the prisoners] would assist him against Smith, . . ordered Peter, the black boy, and his friend throughout, to bring him his gun."

[1] Act of Feb. 12, 1793, sect. 3. 1 Stat. at L. 302-305.
[2] 10 Pa. Stat. at L. 71.
[3] See Urie *v.* Johnston, p. 284, *infra.*
[4] 13 Pa. Stat. at L. 52 (54).

Wike v. Lightner, 11 S. and R. 198, May 1824. "What is the general character of York Frever, negro, . . Answer.—I do not know him by the name Frever, but I know Black York, . . he worked for me three days; and . . I had reason to believe him not to be an honest man."

Commonwealth v. Barker, 11 S. and R. 360, September 1824. "*habeas corpus* to produce . . Frank, a mulatto boy, . . The boy was registered . . April, 1812, . . 'Barker . . returns to the clerk a male mulatto child, called Frank, born on or about the 12th day of November, 1811, of a negro woman, called Milla, the property of . . Barker, and liable to serve until . . twenty-eight'" Prisoner discharged: [361] "The occupation of the master is not mentioned in the register."[1]

Worthington v. Preston, 30 Fed. Cas. 645 (4 Wash. C. C. 461), October 1824. "action on the case for not keeping in safety Tom, a fugitive slave, . . defendant was the . . deputy of the sheriff of Bucks county, . . It was proved by the person who acted under a regular power of attorney from the plaintiff, that on the 19th of September, 1822, he, with the plaintiff's son, seized the said slave in Bucks county, and took him before a state judge, who, after examining witnesses as to the plaintiff's property in Tom, gave to the attorney a certificate for the removal of the slave to . . Maryland, whence he had before escaped. That he and the son of the plaintiff carried him, the same afternoon, to the gaol . . and delivered him to the defendant, who locked him in the gaol yard, which is surrounded by a high wall . . nineteen feet high . . That upon the agent being informed . . that the prisoners were all locked up in the evening, he requested that the slave should not be locked up until he had eaten his supper. That the slave was then left by the turnkey and the agent in the yard, where all the other prisoners were, and the door communicating with it was locked, and so continued till after the escape, which took place, over the wall, whilst the turnkey went to the kitchen to procure the supper; . . No proof was given that any reward was to have been given for the safe keeping of the slave." Washington, J., charged the jury that the act of February 12, 1793[2] [646] "confers only a limited authority upon the magistrate to examine into the claim of the alleged owner, and being satisfied on that point, to grant him a certificate to that effect. This is the commencement and termination of his duty. He has no authority to issue a warrant to apprehend the fugitive in the first instance, or to commit him after the examination is concluded, and the certificate given. . . An attempt has been made in congress to correct these glaring defects in the act, without which correction the act is found to be practically of little avail; but the attempt has not yet succeeded. . . But . . [in this case] no warrant of commitment was in fact granted." Verdict for defendant.

Commonwealth, ex rel. Annette (a mulatto girl), v. Irvine, cited in Commonwealth *v.* Vance, 15 S. and R. 36 (38), September 1825. Held: "that yeoman was a sufficient description."

[1] Act of Mar. 29, 1788. 13 Pa. Stat. at L. 54.
[2] 1 Stat. at L. 302.

Miller v. Dwilling, 14 S. and R. 442, September 1826. "action, of *Homine replegiando*, in which Alfred Dwilling . . was plaintiff, . . to try the right of the defendant to hold the plaintiff as his servant, until . . twenty-eight" His [443] "mother . . was the daughter of a registered slave."

Held: [446] "no child can be held to servitude till the age of twenty-eight . . but one whose mother was . . a slave at the time of its birth." [443] "If the argument in favour of servitude be correct, the legislature of Pennsylvania, though it abolished slavery for life, established . . a servitude . . which may continue . . to the end of the world. . . [445] the general expressions, 'who would, in case this act had not been made, have been a . . slave,' must be . . modified in such a manner as to answer the intent of the act, as it appears from an examination of . . its different parts."[1] [Tilghman, C. J.]

Scott v. Waugh, 15 S. and R. 17, October 1826. "*Homine replegiando* at the suit of John Scott, a coloured boy, . . the child of Negro Nell, who was the slave of Aaron Finley . . and was regularly registered by [him] . . as a slave. . . Finley made his . . will . . 1793; . . [died] 1794," [19] "My will is, that Nell continue with Margaret, my wife, during her widowhood or . . life; and, if she marry, Nell shall be valued at whatever time is to come of twenty years from this date, and the money arising therefrom . . divided between my children, Maria and William: if her widowhood or . . life exceed twenty years from this date, then Nell is to be free" [18] "Scott was born . . May, 1803, . . and was . . registered . . October, 1803. Margaret Finley, in . . 1809, . . sold . . Scott and his unexpired term of service, to William Waugh, and Waugh . . bequeathed Scott . . to his son . . the defendant [who] . . claims [him] . . as a servant, until . . twenty-eight . . Margaret . . married a second husband in . . 1809," Judgment for the defendant. [18] "Stephens, for the plaintiff in error. . . The recording acts operate only on the issue of slaves. Carothers, contra. . . A servant for years is bound to recompense the master for the offence of having children:"

Judgment reversed and judgment entered for the plaintiff: [19] "By the will [of Aaron Finley] . . Nell ceased on his death to be a slave, and became a servant for [twenty] years. . . [20] consequently, her children [are] as much free as the children of any white woman." [Duncan, J.]

Commonwealth, ex rel. Cribs, v. Vance, 15 S. and R. 36, October 1826. "The return to this *habeas corpus*, directed to . . the keeper of the gaol . . at the instance of Pompey Cribs, was . . that he held him as the servant, till . . twenty-eight . . of . . Brown. . . Pompey was the son of Grace, a registered slave, the property of . . Maxwell, . . And the question turned on the legality of the registry of Pompey . . 'On the 6th of August, . . 1804, . . Maxwell, . . esq., appeared . . and on his solemn oath returned a mulatto male child, his property, called Pompey, born . . 24th . . of February last, . . to be recorded.' . . Maxwell was

[1] "in the manner and on the conditions whereon servants bound by indenture for four years are . . holden," 10 Pa. Stat. at L. 69.

a farmer, and an associate judge" Pompey remanded: [38] "Esquire would, with more certainty, designate this . . Maxwell . . where almost the occupation of the whole community was that of farmer." [Duncan, J.]

Eulogium on Chief Justice Tilghman, 16 S. and R. 437, July 1827. Horace Binney: [453] "Having been asked to take part in a public meeting . . upon . . the Missouri question, he thought it expedient to decline. 'My office,' he said, 'compels me often to decide upon this irritating question of slavery; and it is not expedient to take part in a public discussion, that might bring my partiality into doubt. No one who knows the arrangement that I have made with the slaves which belonged to me, will doubt my fervent wish to see the evils of this institution mitigated, and, if possible extinguished.' The arrangement was an instrument executed . . 1811, by which he emancipated four . . immediately, nine others in successive periods of from three to seven years, and the residue, twenty-five in number, together with their issue, on the first day of January after they should respectively attain . . [454] twenty-eight. There was but one prescribed impediment . . unlawful absence from duty, wilfully or by imprisonment for crime; in which case . . freedom was deferred for treble the term of . . absence. The benevolent proprietor lived to see this emancipation attained by twenty,"

Jacob v. Executor of Jacob, 2 Rawle 204, November 1828. "suit . . to recover the price of negro Ben, a black servant who had been sold by Jane Jacob . . to D. R. Jacob, . . Ben sued out a *Habeas Corpus* . . 1819, . . he was discharged. . . Ben was the son of Sall, who belonged to . . Pierce, and was recorded . . October, 1780. The return . . was . . 'Pierce . . returns . . Black Sall, August 25th, 1761, born,' . . [205] The defendant . . offered the docket entry, . . 'Pierce . . farmer. —Sall, a female . . slave . . nineteen years.' . . the plaintiff objected, that the entry cannot be given . . to vary . . the original return. . . overruled," Affirmed: [206] "On the authority of [Wilson *v.* Belinda][1] . . the registry cured the defects in the return." "it would be pernicious . . to overthrow [the decision] . . now, for a mere speculative error. No lasting mischief can arise . . as the species of property to which it relates must shortly be extinct."

Overseers of Point v. Overseers of Lycoming, 2 Rawle 26, July 1829. "suit brought . . to recover money expended in the support of Charles ——, a coloured man, . . [27] thrown from a horse"

Russell v. Commonwealth, 1 P. and W. 82, October 1829. "a writ of error . . to remove the record and proceedings upon a *habeas corpus* which issued to . . Russell . . for the body of Charity Brogden. . . [She] was a slave for life in Maryland, and there sold at public sale, by the sheriff, on an execution against her master. Mr. Russell, . . the surety of the master for the debt for which the . . slave was sold, became a bidder and purchased . . A deed of manumission was executed by Mr. Russell . . on consideration of her serving him for a certain term . .

[1] P. 275, *supra.* But Belinda was freed because neither the return nor the registry stated that she was a female—Ed.

An indenture was then [1821] executed and acknowledged . . by which she voluntarily binds herself to serve . . in Pennsylvania, for . . ten years, . . Mr. Russell covenants to find her sufficient meat, drink, clothing, washing and lodging, etc. and one dollar when free, etc. Previous to the dispute, Mr. Russell remitted . . the last three years . . At the time the deed and indenture were executed, Charity was forty . . and at the time the writ of *habeas corpus* issued . . forty-five . . Upon the single fact . . of Charity being forty-five [1] . . the Court of common pleas . . discharged [her] . . that to hold Charity under the circumstances, would be contrary to the spirit of the laws of Pennsylvania, for the gradual abolition of slavery." Writ of error quashed, [83] "on the ground that no writ of error will lie to remove a judgment upon a *habeas corpus*."

Cobean v. Thompson, 1 P. and W. 93, October 1829. "The only question . . is, whether 'Yeoman' is such a designation of the occupation of a master, as is required by the act . . for the gradual abolition of slavery, to be returned . . proved that the master was a farmer," Held: "The designation is sufficiently certain."

Hamilton v. Commonwealth, 3 P. and W. 142, September 1831. [143] "The fourth count . . charges 'that . . Hamilton . . with force and arms . . a certain negro man . . did cause to be . . carried away . . to . . Virginia . . with a design . . of causing [him] . . to be kept . . as a slave.'" [142] "found guilty . . [143] The Court sentenced him 'to pay a fine of five hundred dollars . . to be confined in the penitentiary for . . seven years, to be kept to hard labour . . etc.'" Judgment reversed: [144] "error . . in not charging [Hamilton] . . with having caused the . . negro . . to be . . carried away '*by force or violence.*'" [2] Huston and Ross, J. J., dissented.

Urie v. Johnston, 3 P. and W. 212, October 1831. "Sampson Johnston . . brought *in debetatis* [*sic*] *assumpsit* for . . services" He is [219] "the son of a negro woman, who was . . regularly registered a Pennsylvania servant until the age of twenty-eight . . [220] and she was the daughter of a regularly registered Pennsylvania slave for life. . . [He] was born . . 8th of July, 1800, during the servitude of his mother, and registered by her master in eight days . . considered as a servant under the abolition act of . . 1780, and as such . . sold, two or three times, and . . last . . on the 16th of September, 1816," to Urie for $550. [212] "7th of January, 1827, he was discharged upon *habeas corpus*, . . and shortly after this suit was brought." [214] "The plaintiff waives the question on the statute of limitations, by only asking a compensation for five years and six months before suit brought, . . from the time . . [he] came of age." [212] "verdict for three hundred and seventy dollars."

[1] The age over which no slave could be freed in Maryland. Act of Md., 1796, sect. 28.

[2] An act to give effect to the provisions of the Constitution of the United States, relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping, sect. 1. Passed Mar. 25, 1826. Acts of 1826, p. 150. 9 Laws of Pa. 95.

Judgment thereon reversed: [220] "he was discharged from the service . . shortly after the Supreme Court . . had decided in . . Miller *v.* Dwilling,[1] that the child of one bound to serve to the age of twenty-eight, was not bound . . for the same period; but was absolutely free. Until this decision, a directly opposite opinion . . prevailed, not only with a great portion of the community, but with many of the most distinguished lawyers of the State. . . Although it appeared upon the face of the record in [Stiles *v.* Nelly][2] . . that Nelly was the child of one bound . . until twenty-eight only, it never occurred to her counsel to claim her freedom upon that ground, nor yet to any one of the learned judges of the Court, . . Considering this state of uncertainty . . and the extravagant price . . paid . . it cannot be presumed that [Urie] . . doubted that the defendant in error was a servant until twenty-eight. . . [222] [He] was . . bound in gratitude to make some compensation for the care . . and expense bestowed, . . And as his counsel allege that he is a man of considerable merit, it may be presumed that he owes this in part to his good education, . . [223] Although Johnston . . could not have been compelled to serve Urie, and . . satisfy him for the money . . paid, . . yet having done so, he cannot claim now to have his character changed into a hireling, and be paid for his labour contrary to the understanding that existed between them during the whole time of such labour" [Kennedy, J.]

Commonwealth, ex rel. Taylor, v. Hasson, 3 P. and W. 237, October 1831. "*Homine replegiando*. . . Owens . . of Maryland . . executed [in 1828] the following deed: . . 'I . . in consideration of [$500] . . set free my negro boy William Taylor, aged sixteen . . [and] my negro girl . . aged 11 . . from . . the day on which they shall respectively arrive to the age of twenty-eight . . And . . I . . for [$500] . . have . . sold . . unto . . Hasson' 'the unexpired time' . . [238] Hasson . . brought Taylor into Pennsylvania" Held: "as the transportation of *slaves* only is prohibited . . and . . the interest and right of the person sold were . . advanced, such sale . . [is] valid."

Commonwealth, ex rel. Hall, v. Cook, 1 Watts 155, September 1832. "*habeas corpus* . . The respondent returns, that he holds . . Hannah Hall by virtue of a deed of indenture, executed by [her] . . with the consent of her mother . . to serve . . seven years, to learn the art and mystery of a servant and waiter; in consideration of manumission . . granted in the District of Columbia, . . the indenture . . was not executed until . . several days after . . arrival [of Hannah and her mistress] at Pittsburgh, with intention of making it a place of permanent abode." It was assigned to Cook with the consent of her mother.

Relator discharged: being [156] "free at the time the indenture was executed, the indenture is void;[3] . . The only evidence [of the agreement] is the recital in the indenture, . . [157] The pains taken in the

[1] P. 282, *supra.*
[2] P. 280, *supra.*
[3] Free negroes could "be only bound [like white persons] until twenty-one," "if a female, until . . eighteen." Respublica *v.* Gaoler, p. 259, *supra.*

indenture to recite the agreement, and the studious care . . taken to explain the joy with which she acceded . . are sufficient . . to create a doubt of the entire fairness of the transaction." [Rogers, J.]

Commonwealth, ex rel. Hall, v. Robinson, 1 Watts 158, September 1832. "*Habeas corpus* . . upon the relation of Hannah Hall for her son" "the respondent makes the following return, . . fully proved . . 'he holds Francis Hall . . by virtue of an indenture entered into . . with the consent of his mother . . whereby . . [he] covenanted to serve . . Williamson, until he . . should attain twenty-eight years, *viz.* until July 1852; . . executed in [Pittsburgh] . . 1830 . . in pursuance of a verbal agreement entered into . . for herself and her son . . and . . their mistress [the daughter of Williamson] in . . Washington . . [159] a few days previously to leaving . . made at the earnest request of . . Hannah Hall, who was unwilling that herself and her children should be sold as slaves. . . indenture . . was . . assigned . . to . . Robinson'" Held: [160] "to make the contract binding, it must be by indenture . . or [and?] executed before the . . negro is brought within the state." [Rogers, J.]

Neide v. Neide, 4 Rawle 75, February 1833. Will, dated 1796: [76] "I give . . to my molatto [*sic*] boy . . five pounds"

Johnson v. Tompkins et al., 13 Fed. Cas. 840 (Baldwin 571), April 1833. In 1822 [841] "negro Jack, . . the property of the plaintiff [[842] 'a farmer of considerable wealth and unexceptionable character'], . . residing near Princeton, New Jersey, fled to . . Pennsylvania, in the neighbourhood of Hatborough, commonly called the Billet, and there was hired by the defendants, John and Isachar Kenderdine [[842] 'men of moderate property, also of a fair character, and highly respectable members of the society of friends']. . . On Sunday morning, the 20th of October 1822, the plaintiff, with [three friends] . . arrived at Kenderdine's, . . Jack agreed to go at once. He was placed in the wagon with fetters, and . . an ineffectual attempt [was made] to obtain Jack's clothes, . . Before they started, Isachar Kenderdine . . arrived . . and demanded their authority to take Jack. The taking was conducted so quietly that it was not heard in the sick room up stairs. Before the party had got back to the Billet, they were overtaken by John and Isachar Kenderdine, and a large assemblage of persons, who had been collected; were attacked with stones and clubs; the plaintiff received a blow, which produced a contusion on the side of the head, and the physician pronounced it a serious wound. When they arrived at the Billet, they were surrounded by a mob of forty or fifty persons, and were compelled to go at once to Judge M'Neil . . to prove their property. The plaintiff being very weak, begged to stay till morning. This was refused, . . a partial hearing took place, and the judge recommended a further hearing as to the slavery of Jack, and that in the mean time Justice Tompkins should commit Jack to jail, and bind over the plaintiff and his associates to prosecute his claim. John and Isachar Kenderdine went to Justice Tompkins, and entered security in 800 dollars for the appearance

of Jack to answer to the claim of his master. The constable and the mob then conducted the Jersey party back to the tavern, and kept them in custody till the next day. . . [They] were treated with great severity, being refused even a bed. Before daylight on Monday morning, a compromise was agreed to by all the parties who were present, the plaintiff offered to manumit Jack and pay the expenses. A message was despatched to John Kenderdine to obtain his consent, but he peremptorily refused, declaring they should be prosecuted. . . the . . Jerseymen were taken before Justice Tompkins, and security in 6,000 dollars was required of them to answer the charge of kidnapping. . . [842] At the trial . . before the pettit [*sic*] jury, great excitement against Johnson and his co-defendant, prevailed. A subscription was made to employ additional counsel to aid the attorney-general in conducting the prosecution; after a long and arduous trial, the defendants were acquitted, and negro Jack was delivered up to his master," who had [855] "offered manumission to his slave on the first night, and has since [[842] 'his restoration'] executed it," Johnson brought [841] "an action of trespass *vi et armis*, false imprisonment, etc. . . [842] Jack . . attended . . court as a witness for the plaintiff,"[1]

Justice Baldwin charged the jury: [843] "It is not permitted to you or us to indulge our feelings of abstract right . . the law of the land recognises the right of one man to hold another in bondage, . . [847] it was no part of the design . . of . . [the Pennsylvania] society [for promoting the abolition of slavery], to protect or rescue runaway slaves . . they have . . pursued their legitimate objects with untiring zeal. If they have been perverted by any honorary member, like Mr. Ellis, by contributing money to employ counsel to prosecute a master for lawfully seizing . . his runaway slave, we are well convinced that it has been equally repugnant to the feelings and practice of the members, as it would be to their charter. . . [848] While the abolition act . . abolished slavery for life, as to those thereafter born, it did not . . interfere with those born before, or slaves excepted . . they were then, and yet are, considered as property; slavery yet exists in Pennsylvania, . . though their number is small, their condition is unchanged. . . [850] As to all the proceedings . . of the defendants . . either for the purpose of taking the Jersey party before the justice or judge to prove the property of the plaintiff or to establish a charge of kidnapping; we instruct you, without hesitation, that they were without any warrant or authority of law, wholly unqualified and illegal. . . [851] The supreme court [of Pennsylvania][2] declares that the constitution of the United States would never have been . . assented to by the southern states, without some provision for securing their property in slaves. Look at the first article, and you will see that slaves are not only property as chattels, but political property, which confers the . . most sacred political rights of the states, . . The apportionment . . of their representatives . . of direct taxes . . The number of electoral votes . . for all these great objects, five slaves are, in federal numbers,

[1] [1850] "He was a competent witness . . if he was a free man or only a servant for years."

[2] Wright *v.* Deacon, p. 277, *supra*.

equal to three freemen. . . [852] Thus you see that the foundations of the government . . rest on the rights of property in slaves—the whole structure must fall by disturbing the corner stones . . [855] This case illustrates the effects of indulging that false philanthropy which prostrates the law and the constitution in its zeal against slavery; it extends not merely to make the slave free, but freemen slaves." "Verdict for 4000 dollars damages, and judgment on the verdict."

Overseers v. Baker's Executors, 2 Watts 280, May 1834. [281] "The act . . of the 1st of March 1780 . . enacts in section 6,[1] that unless the owner, before the slave attains his twenty-eighth year, executes and records a deed of manumission, he shall be liable 'to the overseers of the poor of the city, township or district to which . . such negro . . shall become chargeable,' for the expenses . . they may be put to through the neglect of the owner. The negro Hope, being twenty-one . . at the passage of this act . . [was] set free by . . Baker, by his will dated in 1798. In 1818 an order was made by two justices of the peace of Cumberland county, to remove him to the poorhouse . . as a pauper, . . In 1820 the legislature . . laid off . . a new county . . which included the poorhouse. . . 1824 . . he was brought back . . and taken into custody by the overseers of the poor of . . township" where [280] "Baker . . had lived and died . . and maintained till he died, . . [281] [The overseers] brought this action . . to recover the money expended" Held: "The want of an order of two justices, adjudicating Hope to be chargeable to the township . . is fatal to the claim"

Hobbs et al. v. Fogg, 6 Watts 553, July 1837. "an action of the case, brought . . by William Fogg ['a coloured man'] . . against . . inspector, and . . judges, of the general election, held . . October 1835. . . The declaration set forth . . [that the plaintiff] being one of the freemen, and citizens . . above . . twenty-one . . and having paid a county tax[2] . . he offered to vote, but they . . refused to receive his vote, . . [554] the president judge (Scott) charged . . 'We know of no expression in the constitution or laws of the United States, nor in the constitution or laws . . of Pennsylvania, which can legally be construed to prohibit free negroes . . otherwise qualified, from exercising the rights of an elector. The preamble to the act [of March 1, 1780] . . fully indicates an intention . . to make the man of colour a *freeman*. . . the verdict . . must be in his favour,'"

Judgment thereon reversed: [555] "This record raises, a second time, the only [and 'the *same*'] question on a phrase in the constitution . . since its adoption; . . About . . 1795, as I have it from James Gibson, Esquire, of the Philadelphia bar, the very point . . was ruled by the high court of errors and appeals against the right of negro suffrage. . . no memorandum of the cause . . But Mr Gibson's remembrance is perfect and entitled to full confidence. That the case was not reported, is probably owing to the fact that the judges gave no reasons; . . the more to be regretted, as a report of it would have . . prevented much unpleasant

[1] 10 Pa. Stat. at L. 70.
[2] Constitution of 1790, art. III, sect. 1. Thorpe 3096.

excitement. Still the judgment is not the less authoritative as a precedent. . . [556] But the omission of the judges, renders it proper to show that their decision was founded in the true principles of the constitution. . . an inhabitant of an incorporated place, who is neither servant nor slave, . . may be no freeman in respect of its government. . . The laws agreed upon in England, in May 1682, use the word in this specific sense, . . [557] It was foreseen that there would be inhabitants . . who, though free as the winds, might be unsafe depositories of popular power; . . till the instant when the phrase on which the question turns, was penned, the term freeman had a . . specific sense, . . to denote one who had a voice in public affairs. . . the word . . was used in legislative acts convertibly with electors, so late as . . 1798, when it grew into disuse. . . [558] As was justly remarked by President Fox, in the matter of the late contested election, our ancestors settled the province as a community of white men; and the blacks were introduced . . as a race of slaves; whence an unconquerable prejudice of caste, . . insomuch, that a suspicion of taint still has the unjust effect of sinking the subject of it below the common level. . . [559] The only thing in the history of the convention [of 1790], which casts a doubt upon the intent, is the fact, that the word white was prefixed to . . freeman, in the report of the committee, and subsequently struck out; probably because . . thought superfluous, or still more probably, because it was feared that respectable men of dark complexion would often be insulted at the polls, . . I have heard it said, that Mr Gallatin sustained his motion to strike out on the latter ground. . . [560] I have thought it fair to treat the question as it stands affected by our own municipal regulations . . Yet it is proper to say that the second section of the fourth article of the federal constitution, presents an obstacle to the political freedom of the negro, which seems . . insuperable. . . Every man must lament the necessity of these disabilities; but slavery is to be dealt with by those whose existence depends on the skill with which it is treated. . . interpreting the constitution in the spirit of our institutions, we are bound to pronounce that men of colour are destitute of title to the elective franchise. Their blood, however, may become so diluted . . as to lose its distinctive character; . . By the amended constitution of North Carolina,[1] no . . free person . . descended from negro ancestors, to the fourth generation inclusive, though one ancestor of each generation may have been a white person, shall vote for members of the legislature. I regret to say, no similar regulation . . has been attempted here; in consequence . . every case of disputed colour must be determined . . by the discretion of the judges [of election]; and thus a great constitutional right . . will be left the sport of caprice." [Gibson, C. J.]

Lynch v. Commonwealth, 6 Watts 495, September 1837. "executors . . alleged . . that the property was sacrificed, and 'proposed to prove the value of one negro woman slave for life . . levied on . . 1823,'"

Thompson v. Garwood, 3 Wharton 287, February 1838. Will of Henrietta Ware, 1820: [293] "I do give to Maria Turnell, a black

[1] Ratified in 1835. Thorpe 2796.

woman who now lives with me, one hundred dollars, for her kind attention to me during my illness."

Commonwealth v. Williams, 2 Ashmead 69, March 1839. [71] " Kearney, the deceased, ' a short time before he breathed his last, declared, that black Williams stabbed him.' . . proved that York, . . tried with the prisoner [and acquitted], had, on the evening before . . been . . unprovokedly knocked down by some persons who fled into Kearney's house, . . that Williams was with . . York . . and . . swore, ' that he would have satisfaction ' . . [72] the mob . . breathed nothing but vengeance against the black inhabitants of the neighbourhood." Williams was convicted of murder in the first degree. [89] " The motion [for a new trial] is overruled; and the commonwealth must have judgment on the verdict."

Case of Williams, 29 Fed. Cas. 1334 (Crabbe 243), March 1839. " This was a proceeding under the act of February 12, 1793,[1] by Ruth Williams, claiming the delivery of ' Isaac,' or William Stansbury, as a slave." Hopkinson, J.: Stansbury " has lived among us for more than twenty-three years; has a wife and family of children depending upon him, and a home, from which he must be separated, if the claimant has made good her right. . . [1335] He was taken suddenly in the street, without any notice or expectation of any such design or danger. . . George F. Alberti . . informed her [Mrs. Williams, in a letter dated at Philadelphia, on the 29th December, 1838], that he understood she had a slave named Isaac, alias William Stansbury, who absconded from her about the year 1815. He gives the name of Isaac's mother, and tells her, that his features are just the same as usual, and advises her how to proceed to have him arrested and delivered to her. . . [1336] in the inventory of the estate [made in 1806], we find a ' boy named Isaac,' about ten years old, appraised at $200. . . Beale Duval . . said that he had no doubt that the respondent is the boy Isaac; he recognized him as soon as he saw him; he has a mark on his forehead, occasioned by a burn when young. . . had not seen him, until then, for upwards of twenty years;" Other witnesses were equally certain of the identity: " I knew the mother of the boy; . . she bought her freedom, . . the respondent is the same man; . . is not changed; . . he had a scar over one of his eyes; the witness points to the scar." On the other hand, Melburn [1339] " speaks of the building of the batteries on the west side of the Schuylkill for defence against an expected attack by the British. He says that he and Stansbury went out together with the colored people to assist in that work. . . and he knew him a year before that. Now, it is a fact of general notoriety that the colored people did go out to work at these batteries, and that this took place in the fall of 1814. . . Isaac . . did not leave . . [Mrs. Williams's] service until February, 1816; . . Ignatius Beck . . brother of the mother of Isaac . . knew Stansbury in 1810, or thereabouts; . . understood Stansbury to say he came from the northward, somewhere about New Bedford. . . during the visit of his sister Amy here ten years ago,—a visit which continued for nine or ten months,—he never saw her and

[1] 1 Stat. at L. 305.

Stansbury together. This is incredible, if she was the mother of Stansbury and Beck his uncle. . . [1340] Amy Curry . . the mother of Isaac . . said, pointing to the respondent: 'This is not Isaac, he is none of mine.' She spoke of the mark as being on Isaac's cheek differing from those who said it was on his forehead, as this man's is. . . Captain Whippey . . confined in the debtor's apartment . . where the respondent has also been kept" says that respondent asked him "if I had any recollection of coming from Nantucket in 1810; his naming the sloop and the master's name, brought it to my recollection, that I was a passenger in her. He told me he was a boy at the time on board of her; I don't recollect anything of this man; but there was a colored boy on board, who ran away from the vessel on our arrival at New York; . . Stansbury mentioned to him the year, the season of the year, and the name of the sloop and her master, all correctly. . . [1342] I must refuse the certificate applied for, and order William Stansbury to be discharged from the arrest."

Huston's Appeal, 9 Watts 472, May 1840. Will, dated 1820: [473] "I . . leave to my wife my servant boy Harry;"

Prigg v. Pennsylvania, 16 Peters (U. S.) 539, January 1842. Prigg, [659]. "a citizen of Maryland," [543] "with . . Bemis, . . Forward, and . . Lewis . . were indicted by the Grand Jury of York county, Pennsylvania," [608] "for having, with force and violence, taken . . to . . Maryland, a . . negro woman, named Margaret Morgan, . . contrary to a statute of Pennsylvania, passed . . 26th of March, 1826.[1] . . [609] passed with a view of meeting the supposed wishes of Maryland on the subject of fugitive slaves;"[2] [543] "Prigg pleaded not guilty. The cause was tried . . May, 1839;" [608] "the jury found a special verdict . . [609] that the slave escaped and fled from Maryland into Pennsylvania in 1832; that . . [Prigg] the agent . . of . . Margaret Ashmore [the owner], in 1837, caused the said negro woman . . to be . . apprehended . . by a state constable, under a warrant from a Pennsylvania magistrate; that . . [she] was . . brought before the said magistrate, who refused to take further cognisance . . and thereupon [Prigg] . . did remove . . the said negro woman and her children out of Pennsylvania into Maryland, and did deliver [them] . . into the . . possession of the said Margaret Ashmore. . . one of the children was born in Pennsylvania,[3] more than a year after [the mother] . . had . . escaped from Maryland. . . the Court . . adjudged . . [him] guilty . . A writ of error was brought from that judgment to the Supreme Court of Pennsylvania, where the judgment was, *pro forma*, affirmed. From this latter judgment, the present writ of error . . [was] brought to [the Su-

[1] An act to give effect to the provisions of the Constitution of the United States, relative to fugitives from labour, for the protection of free persons of colour, and to prevent kidnapping. 9 Laws of Pa. 95, ch. 5777.

[2] *Ibid.* 449n., 450n.

[3] See Commonwealth *v.* Holloway, p. 275, *supra*. "the condition of the children removed with the mother, and both without a compliance with the act of congress, was neither discussed by the counsel nor adjudicated by the court, because probably the indictment contained no charge of kidnapping *them*," 9 Laws of Pa. 456.

preme Court of the United States] . . by the co-operation . . both of the state of Maryland, and the state of Pennsylvania, in the most friendly . . spirit, with a view to have those questions finally disposed of by the adjudication of this Court; so that the agitations on this subject in both states, which have had a tendency to interrupt the harmony between them, may subside, and the conflict of opinion be put at rest. . . the statute of Pennsylvania of 1826, was . . passed with a view of meeting the supposed wishes of Maryland on the subject of fugitive slaves;"

Judgment [626] "reversed, and the cause remanded to the Supreme Court of Pennsylvania;" [608] "Mr. Justice Story delivered the opinion of the Court. . . [611] By the general law of nations, no nation is bound to recognise the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favour of the subjects of other nations where slavery is recognised. . . This was fully recognised in Somerset's Case,[1] . . [612] which was decided before the American revolution. It is manifest from this consideration, that if the Constitution had not contained . . [the fugitive slave] clause, every non-slaveholding state in the Union would have been at liberty to have declared free all runaway slaves coming within its limits, . . a course which would have . . engendered perpetual strife . . The clause was accordingly adopted into the Constitution by the unanimous consent of the framers of it; . . The clause manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law . . can in any way qualify, regulate, control, or restrain. . . [616] the act of [congress of] the 12th of February, 1793, ch. 51, (7,) . . [617] points out fully all the modes [of enforcing the rights of the owner] . . which Congress . . have as yet deemed expedient . . to meet the exigencies of the Constitution. . . the legislation of Congress, if constitutional, must supersede all state legislation upon the same subject; and by necessary implication prohibit it. . . [622] We hold the act [of 1793] to be clearly constitutional in all its leading provisions, and, . . with the exception of that part which confers authority upon state magistrates, to be free from reasonable doubt . . As to the authority so conferred upon state magistrates, while a difference of opinion has existed, and may exist still . . in different states, whether state magistrates are bound to act under it; none is entertained by this Court that state magistrates may . . exercise that authority, unless prohibited by state legislation.[2] The remaining question is, whether the power of legislation upon this subject is exclusive in the national government, or concurrent in the states, until . . exercised by Congress. In our opinion it is exclusive; . . [625] the act of Pennsylvania upon which this indictment is founded, is unconstitutional and void. . .

[626] "Mr. Chief Justice Taney. I concur . . that the law of Pennsylvania . . is unconstitutional and void; . . But . . [633] I dissent . .

[1] See vol. I., p. 14, of this series.

[2] "seized upon by anti-slavery States as a justification for legislative measures refusing the assistance of their officials to enforce the Federal Fugitive Slave Law." Warren, *Supreme Court in United States History,* II. 361.

from that part of the opinion of the Court which denies the obligation and the right of the state authorities to protect the master . . provided the state law is not in conflict with the remedy provided by Congress." [630] " Indeed, if the state authorities are absolved from all obligation to protect this right, and may stand by and see it violated without an effort to defend it, the act of Congress of 1793 scarcely deserves the name of a remedy. . . [631] So far from regarding the state authorities as prohibited from interfering . . the Congress of that day must have counted upon their cordial co-operation. They legislated with express reference to state support. . . Maryland . . has continually passed laws . . for the arrest of fugitive slaves from other states as well as her own. . . [632] as fugitives from the more southern states, when endeavouring to escape into Canada, very frequently pass through her territory, these laws have been almost daily in the course of execution in some part of the state. . .

[633] Mr. Justice Thompson. I concur in the judgment . . [635] But I cannot concur in that part of the opinion of the Court, which asserts that the power of legislation by Congress is exclusive. . . The Constitution protects the master in the right to the possession . . of his slave, and of course makes void all state legislation impairing that right; but does not make void state legislation in affirmance of the right. . .

[636] Mr. Justice Baldwin. Concurred . . in reversing the judgment . . on the ground that the [Pennsylvania] act . . was unconstitutional; inasmuch as the slavery of the person removed was admitted, the removal could not be kidnapping. But he dissented from the principles laid down by the Court as the grounds of their opinion.

Mr. Justice Wayne. I concur altogether in the opinion of the court, . . [643] This provision is the only one in the Constitution in which a security for a particular kind of property is provided; provided, too, expressly against the interference by the states in their sovereign character. . . [645] the property of an individual is not the less his, because it is in another state . . The provision, then, in respect to fugitive slaves, only comprehended within the general rule a species of property not within it before. . . [646] If this be so, upon what principle shall the states act by their legislation upon property, which is national as well as individual; . . [650] if experience shows any deficiency in its enactments, Congress will no doubt supply it. . .

Mr. Justice Daniel. Concurring entirely . . in the conclusions . . relative to the . . validity of the statute of Pennsylvania . . I am constrained to dissent from some of the principles . . [652] There is a class of powers originally vested in the states, which by the theory of the federal government have been transferred to the latter; . . which Congress may or may not enforce . . it may find them for the time beneficially executed . . under the state authorities. These are not properly concurrent, but may be denominated dormant powers in the federal government; they may at any time be awakened . . by Congress, and . . so far as they are called into activity, will of course displace the powers of the states. . . even in instances wherein Congress may have legislated, legislation by a state

which is strictly ancillary, would not be unconstitutional or improper. . . [656] I hold then that the states can establish proceedings which are in their nature calculated to secure the rights of the slaveholder guarantied [*sic*] to him by the Constitution; . .

[658] Mr. Justice M'Lean. . . I differ on one point from the opinion of the Court, . . [659] This clause of the Constitution is now, for the first time, brought before this Court for consideration. . . [664] It seems to be taken as a conceded point in the argument, that Congress had no power to impose duties on state officers, . . But do not the clauses in the Constitution in regard to fugitives from labour, and from justice, give Congress a power over state officers, on these subjects? . . 'A person charged in any state with . . crime, who shall flee . . and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up' . . In . . the act of 1793, Congress have provided that . . 'it shall be the duty of the executive authority to cause the person demanded to be arrested,' etc. The constitutionality of this law, it is believed, has never been questioned. . . [665] Now, if Congress may by legislation require [1] this duty to be performed by the highest state officer, may they not . . require appropriate duties in regard to the surrender of fugitives from labour, by other state officers. . . [666] I come now to a most delicate and important inquiry . . whether the claimant of a fugitive from labour may seize and remove him by force out of the state in which he may be found, in defiance of its laws. I refer not to laws which are in conflict with the Constitution, or the act of 1793. Such . . are void. But I have reference to those laws which regulate the police of the state, maintain the peace of its citizens, and preserve its territory . . from acts of violence. . . [667] Both the Constitution and the act of 1793, require the fugitive . . to be delivered up on claim being made, . . [669] The act of 1793 authorizes a forcible seizure of the slave by the master, not to take him out of the state, but to take him before some judicial officer within it. The act of Pennsylvania punishes a forcible removal of a coloured person out of the state. Now, here is no conflict between the law of the state and the law of Congress. . . no power to . . forcibly remove the slave without claim is given by the act of Congress. . . [671] there is no provision in the [Pennsylvania] act which embraces slaves. . . it was designed to protect free persons of color within the state. But it is admitted, there is no exception as to the forcible removal of slaves. . . No conflict can arise between the act of Congress and this state law. . . only between the forcible acts of the master and the law of the state. . . It is a most important police regulation. . . That a slave is property must be admitted. The state law is not violated by the seizure . . but by removing . . by force, . . This force, not being authorized by the act of Congress nor by the Constitution, may be prohibited by the state. . . [673] This view removes all state action prejudicial to the rights of the master; and recognizes in the state a power to guard . . the peace of its citizens. It appears, in the case under consideration, that

1 "But if the Governor . . refuses, there is no power . . to compel him." Kentucky *v.* Dennison (decided in 1860) I. 441 (442), of this series.

the state magistrate before whom the fugitive was brought refused ['under the act of 1826'][1] to act. In my judgment he was bound to perform the duty required of him by a law paramount to any act, on the same subject, in his own state. But this refusal does not justify the subsequent action of the claimant. He should have taken the fugitive before a judge of the United States, two of whom resided within the state. . . My opinion . . does not rest so much upon the particular law of Pennsylvania, as upon the . . sovereign power of a state, to protect . . the peace of its citizens, in any . . mode . . which shall not conflict with a defined power of the federal government."

U. S. v. Holmes, 26 Fed. Cas. 360 (1 Wallace jr. 1), April 1842. The American ship *William Brown* struck an iceberg and the boats were lowered. The next night, Holmes [361] "and the rest of the crew began to throw over some of the passengers [from the long-boat] . . 14 male passengers. These, with the exception of two married men and a small boy, constituted all the male passengers aboard. Not one of the crew was cast over. One of them, the cook, was a negro. . . [362] When one McAvoy was seized, he asked for five minutes to say his prayers, and, at the interposition of a negro, the cook, was allowed time to say them before he was cast overboard."

Blenon's Estate, Brightly 338, April 1843. Will of Peter Antoine Blenon, 1836: [339] "I give . . to . . institutions of charity . . for the relief of . . those who live under the affliction . . of privations, without any distinction of sect or religion, . . the residue of my estate." [344] "It was objected that the testator never meant to include . . societies ['composed of negroes or people of colour'], and that under the authority . . of Hobb *v.* Fogg,[2] . . they are destitute of the rights of citizenship. The auditors find nothing on the face of the will to warrant such a construction, . . [345] and the decision of the supreme court goes solely to the question of their political . . rights." Decreed by the orphans' court: "That all societies for the alleviation of the privations . . of individuals whether white or coloured, are entitled" Affirmed.

Reed v. Bias, 8 W. and S. 189, December 1844. "action of trespass *vi et armis* . . against . . Reed and others for pulling down 'the Coloured Temperance Hall of Moyamensing.'" [190] "The hall had been erected under the patronage of the 'Moral Reform Society of Philadelphia,' by contribution. The building was pulled down in pursuance of orders from the corporation of Moyamensing. There was a riot in progress, and the destruction of this building was believed to be one object of the rioters." [189] "The property was threatened and fired twice, so that the adjoining property was in danger."

Jones v. Murphy, 8 W. and S. 275, December 1844. Tittermary's testimony: [281] "I was sent over for [in April 1837] by Mrs. Shade's black girl . . to witness the will. . . [282] I called . . having been sent for by a coloured girl. . . [283] I do not recollect when . . the black

[1] 9 Laws of Pa. 455.
[2] P. 288, *supra*.

girl called," Green testified: "I witnessed a will for Peter Shade . . in . . June or . . July 1837." "He sent his little coloured girl for me . . she said her master wanted to see me." Mrs. Green testified: [285] "I know the black girl came"

In re Pennsylvania Hall, 5 Pa. St. 204, May 1847. "June 1838, Webb and others, members of the board and trustees of the Pennsylvania Hall Association, presented their petition . . setting forth the act of June [16], 1836, relating to compensation for the destruction of buildings . . by a mob or riot . . and averring that the association . . had erected a building . . [205] dedicated and occupied for free discussion of liberty, slavery, etc. That on the 16th of May [1837], the hall was assailed by a mob, . . whereupon the petitioners applied to the mayor and sheriff, . . but . . no attempt at resistence of the mob was made by them, and . . the building was . . burned by the mob . . In June, 1843, . . inquest reported . . that the damage . . was $22,658.27, and that the owners . . had not any . . active participation in the . . riot." [210] "Proceedings affirmed."

Beltzhoover v. Costen, 7 Pa. St. 13, September 1847. Wallace's will, 1803: [14] "it's my will that my wife . . shall keep any negroes that I may have at my death, during her lifetime or marriage, and after either, to be divided between my . . legatees"

Clellans et al. v. Commonwealth, 8 Pa. St. 223, June 1848. "an indictment against . . Clellans and thirty-six others for a riot, accompanied with the aggravation of riotously rescuing from their owners . . fugitive slaves from . . Maryland, who had been arrested in Cumberland county . . and where at the time . . in the lawful custody . . of their owners, . . The jury returned a verdict of guilty against . . Clellans and twelve others . . and not guilty as to the other defendants. The sentence . . [224] passed upon [Clellans and] . . ten others" "was . . 'Sept. 7, 1847. . . suffer punishment by . . solitary confinement at labour in the State Penitentiary . . for . . three years; . . pay a fine of one dollar [each] . . and the costs' . . The other [two] . . were . . sentenced to imprisonment in the jail"

Held: [229] "Our laws do not authorize the sentence inflicted [on Clellans and ten others] . . and the judgment is reversed. As the prisoners have been confined in the . . Penitentiary about three-fourths of a year, we deem this as severe a punishment as if they had been confined in the county jail, where they legitimately should have been sent, for two years. They are discharged." [Burnside, J.]

Overseers of Milton v. Overseers of Williamsport, 9 Pa. St. 46, July 1848. "Louisa Finly had acquired a settlement by hiring in Milton. She then married Deems, who had acquired a settlement in Chester county." [47] "deserted . . and . . partially deranged. She required relief in Milton," [46] "The overseers . . wrote [in August] to the overseers of Williamsport [in Lycoming County], alleging she was chargeable on that township." [48] "puerile letter . . enclosing a copy of the affidavit of . . Louisa's husband, and desired the overseers of Williamsport to

make provision to have Louisa and her *child* removed," [46] " No answer was received " [48] " Instead of regarding the act of Assembly [of 1836], or the dictates of humanity, . . [the overseers of Milton] permit this unfortunate deranged woman, in an inclement season of the year [November], . . to wander from . . Milton." " The next we hear of Louisa . . [the] overseers of [New Berlin] . . wrote to the overseers of Williamsport, that a coloured woman, apparently of unsound mind, was wandering in their streets without any means of support, and . . they had to pay fifty cents a day for her keeping. Shortly after this, Louisa is found wandering in the streets of Williamsport. The day after . . she was removed to Milton by order of two justices, who adjudged Milton as her last place of settlement. . . Milton appeals " [47] "Anthony, P. J. [of the Quarter Sessions of Lycoming], was of opinion that, as they had failed to prove that Williamsport was . . chargeable, the order of removal was correct."

[49] " Decree of Sessions is affirmed." [48] " the overseers of Milton . . not only neglected their duty as officers, but as men." " it was their duty to have provided for Louisa until they found, in a legal manner, her last place of settlement." [Burnside, J.]

Overseers of Baldwin v. Kline, 9 Pa. St. 217, September 1848. " The overseers of the poor . . brought an action against Kline, to recover the cost of the maintenance of a [non-registered] negro who had been held by him as a slave and also to recover the value of her services while so held. It was in proof that the negro had been bought . . [218] as a slave, and reputed as such for fifty-six years, and had lived with defendant for many years."

Held: I. " the plaintiffs . . [are] entitled to recover the cost . . [of] maintenance of . . Sylph, from the time that she became a charge to the township until the commencement of this suit,[1] . . [II.] the plaintiff [*sic*] has no right to recover, on a *quantum meruit*, compensation for the services of Sylph, . . [219] Judge Gibson remarks,[2] that the act of 1780 does not, in express terms, render the servitude of an unrecorded negro void. Sylph was at least held by a claim of right. There is not the slightest reason to believe that the defendant knew that she was entitled to her liberty, in consequence of the omission to register her name. . . Had he known the true state of the case, *non constat* that he would not have dispensed with her services altogether." [Rogers, J.]

U. S. v. Brown, 24 Fed. Cas. 1245 (cited in 1 Brightly Dig. 809), 1848. Held: ownership of the vessel engaged in the slave trade, by a citizen, if the accused be not himself one, or citizenship of the accused, if the ownership be not in a citizen, is an essential ingredient of the offense described by the act of May 15, 1820, section 4.[3]

Kauffman v. Oliver, 10 Pa. St. 514, May 1849. " the plaintiffs' declaration set forth, that they were owners of . . slaves held under the laws

[1] Overseers of Ferguson *v.* Overseers of Buffaloe, p. *277*, *supra*.
[2] *Ibid.*
[3] 3 Stat. at L. 600.

of Maryland; that the slaves escaped into Cumberland county, . . that the defendant . . did . . assist them to escape . . Defendant pleaded that the courts of the United States had exclusive jurisdiction. . . plaintiffs demurred, . . judgment for plaintiffs."

Plea to the jurisdiction sustained, and judgment reversed: [516] "as by the compact ['of union'] the slave is not discharged from his service by escaping into a free state, the owner . . may . . take him, without . . breach of the peace, by manucaption . . in any place where the compact is obligatory, just . . as if the recaption was in the slave territory. . . But if the fugitive is harboured, . . the owner must make the claim . . by legal process, according to . . the laws of the United States. . . Congress has regarded this claim, to the service of the fugitive, as a right of property, . . [517] and it must be made by one person . . against another . . in a court of justice. It is, therefore, a controversy between parties, arising under the constitution and laws of the United States, and must be referred to the forum having jurisdiction of such controversies." [Coulter, J.][1]

Ferris v. Henderson et al., 12 Pa. St. 49, September 1849. "The bill . . was preferred by Thomas Ferris, . . born in 1774, the slave of Joseph Becket, the ancestor of the defendants." [52] "He records him in 1781, and pretends to hold him under the Act of 13th April, 1782,[2] . . but Becket never took the oath required . . He sells Ferris and buys him back," Ferris charges, "that notwithstanding . . [53] Joseph . . [knew] that . . [Ferris] was free, he . . fraudulently concealed the same . . and held him in . . slavery until . . 1810, under pretence, and a threat, that if . . [he] did not faithfully serve . . until [1810] . . Joseph, would hold [him] . . a slave for life." A deed of manumission, executed in 1802 when Joseph was twenty-eight,[3] "is appended . . It recites that . . Joseph, from motives of benevolence and humanity, agrees to set free his *mulatto man* . . on condition that he will serve seven years.[4] The bill further alleges that the plaintiff was forced to serve one year [more] . . under the pretence that that was the true meaning of the act of manumission. . . that the plaintiff was free at the time he was manumitted, but . . was totally ignorant of that fact until . . 1846," [49] "The bill prayed an account and discovery, and satisfaction in respect of the services . . defendants . . put in . . a plea of the statute of limitations. . . sustained by the Court below, and the bill was dismissed with costs."

[55] "decree . . reversed, and the record remitted, with instructions that the defendants answer over to the plaintiff's bill." [54] "the complainant . . belonged to a caste in which ignorance, submission, and oppression was the badge of their tribe. . . [55] why shall the condition of the plaintiff not account for a want of knowledge as to the facts which made him free? . . it would seem . . that the knowledge was acquired after he was put on the township for support, when the defendants refused to remunerate the overseers." [Coulter, J.]

[1] See Oliver *v.* Kauffman, p. 306, *infra.*
[2] 10 Pa. Stat. at L. 463.
[3] Act of Mar. 1, 1780. 10 Pa. Stat. L. 67 (70).
[4] *Id.* 72.

The Malaga, 16 Fed. Cas. 535 (2 Am. Law J. 97), 1849. In accordance with the act of congress of March 3, 1819[1] and with the treaty of Washington (between the United States and Great Britain in 1842) [536] " the president of the United States, on the 20th December, 1844, ordered Commodore Skinner to proceed with a squadron to the coast of Africa, to cruise there for the suppression " of the slave trade. Instructions of the secretary of the navy: " The cunning of the slave trader is constantly framing new disguises to elude detection . . They take especial care to put on the appearance of honest traders, . . It is their practice to run into some river or inlet, where they have reason to believe that slaves may be obtained, make their bargain with the slave factor, deposit their handcuffs and other things calculated to betray them, and then sail on an ostensible trading voyage to some neighboring port. At the appointed time they return, and, as the slaves are then ready to be shipped, they are taken on board without delay, and the vessel proceeds on her voyage. Thus the slavers do not carry within themselves any positive proof of their guilt, except before they reach the coast, and after they leave it with the slaves on board." Lieutenant Bispham, commander of the brig *Boxer*, one of the squadron, " was directed [1846] to cruise in the vicinity of Kabenda, 'where,' said his orders, 'our flag, it is believed, is frequently employed to cover the designs of slavers.' Immediately on his arrival " his suspicions were directed, by the commander of a British frigate, to an American vessel in the bay, and he boarded her the next day. She " proved to be the American brig *Malaga*, of Beverly, Massachusetts, with a cargo of farina, rice, rum, gunpowder, etc. . . [537] Her consignee at Kabenda was a noted slave factor, named Da Cuntra; the port was one devoted exclusively to the slave trade and its tributaries; and the cargo was entirely suited to the exigencies of that traffic. . . She was under charter to Manuel Pinto de Fonseca, . . the great employer of American vessels in the Brazilian slave trade, . . and the rate of charter (about 1400 dollars a month, paid for the first month in advance, the vessel being of less than 184 tons) implied that the voyage was one of peculiar hazards. The vessel, moreover, when leaving the United States for Rio, had laid in a stock of provisions for a year; . . [539] According to the mate, 'she had on board some three or four hundred bags of farina and rice.' The former . . is a coarse flour, used almost exclusively for the diet of slaves on the passage to Brazil. . . that circumstance " " standing by itself unexplained, would go far to justify the arrest of the *Malaga*. . . which in an English court would condemn the ship."[2] [537] " The *Malaga*, having arrived in the United States in charge of a prize crew, was libelled . . Subsequently . . it was ordered by the court that 'said libel be discontinued, and said brig *Malaga* be delivered to . . captain thereof;' " A year later (July 1847) the captain and owners of the *Malaga* instituted a libel against Bispham, to recover damages for the alleged unlawful detention of the brig. Libel dismissed, with full costs: [539] " the whole case is pregnant with suspicion."

[1] 3 Stat. at L. 532.
[2] Act of 2 and 3 Vict. c. 73, sect. 4.

Commonwealth, ex rel. Miller et al., v. Cornish, 13 Pa. St. 288, March 1850. "By the charter ['of the African Methodist Episcopal Bethel Church, in . . Philadelphia'] . . granted in 1796, it was declared . . that the trustees and members . . acquiesced in . . the rules of the Methodist Episcopal Church . . That the elder of the [latter] . . in . . Philadelphia . . should nominate the preacher who . . was authorized to license exhorters and preachers from among the members . . By an amendment . . in 1807, the board of trustees were authorized to nominate a preacher, reserving the right to the elder . . [289] as theretofore, to preach once on Sunday and once during the week. In 1816, the African M. E. C. separated from the white methodists . . an amendment to the charter of the Bethel church in 1837 [1817?] . . provided that the trustees, ministers, exhorters and leaders . . should have power to elect from their own body, a presiding minister . . In 1816, Allen was elected the first bishop . . and from the date of the amended charter to his death continued to be the minister in charge of Bethel church. The bishop, his successor, occupied the same office until 1844. At the conferences of that year and of 1845, 6, 7, the bishop appointed the minister in charge. In . . 1848, the bishop appointed the present respondent, . . Dissensions having arisen, the board of trustees . . elected S. Bassit, a licensed preacher of their own body, to be the minister in charge"

Held: [292] "The respondent . . is the legally inducted elder in charge; and the trustees who were expelled by him . . have no standing in court." [291] "a congregational election of a presiding elder could be neither" legal nor canonical.

Robson v. the Huntress, 20 Fed. Cas. 1060 (2 Wallace jr. 59), April 1851. "The *Huntress,* an American brig, bound on a trading voyage to Sierra Leone, and other places on the west coast of Africa, . . [gave a] signal of distress. . . her captain had died . . and . . the first mate . . was . . near his end. The crew was composed of five coloured men and one white man, the second mate."

Charge to the grand jury on the law of treason, 30 Fed. Cas. 1047 (2 Wallace jr. 134), September 1851. [1048] "On the 18th of September, 1850,[1] congress, in order to give effect to a provision of the constitution, passed a law to enable the owners of fugitive slaves to recover them when found in the states to which they had fled. Slavery, the abolition of slavery, this law, or any law for the recovery of slaves, had been for some time prior to the passage of the act, the themes of passionate and fanatical debate by extreme factions in the Northern and Southern states. The country was convulsed by party rage, and that 'unity of government which constitutes us one people,' had itself become endangered. Not content with resisting the passage of the act, the northern part of the faction, immediately after its passage, set themselves to work through the pulpits, the press,[2] through public harangues and secret engines of every kind, to bring about resistance to the law, and to destroy the power of executing it through the force of public opposition. In this circuit, everywhere,

[1] 9 Stat. at L. 462.
[2] "especially in New England." U. S. *v.* Hanway, p. 301, *infra.*

owing to the energy of this court, and of the commissioners and officers appointed by it to execute the provisions of the act, the law was generally enforced with integrity. 'As the Lord liveth, and as my soul liveth,'—declared Mr. Justice Grier, just after its passage, and in the midst of an assemblage whose murmurs of violence were disturbing his administration of justice,—' this court will administer this law in its full meaning and genuine spirit till the last hour that it remains on the statute book.' In one of the interior counties, however, it was successfully resisted. Mr. Edward Gorsuch[1] . . of Maryland, who had come to Christiana, in Lancaster county, Pennsylvania, to reclaim his slaves, was met by a body of armed men, assaulted, beaten and murdered. His son who was with him, was at the same time, beaten, robbed and stabbed, and his life endangered. An officer of the United States was driven back by . . violence while proclaiming his character and exhibiting his warrant. The time and manner of these outrages, their asserted object, the denunciations by which they were preceded and the concerted action of the persons, evinced, it was thought, a combined purpose forcibly to resist the statute. And it was stated that for some time before this, gatherings of people had been held from time to time at West-Chester, a town near the place of the outbreak, at which denunciations of the law were made as unconstitutional and of no obligation against ' the higher law of every man's conscience: ' the judges of the United States who would enforce it denounced as Scroggses and Jeffrieses, and exhortations made and pledges given to defy its execution to the last. The murder of Mr. Gorsuch, under such circumstances, caused a deep feeling throughout the whole country: and it being stated to the court that several bills of indictment for treason against the United States would be laid before the grand jury, that body was thus charged on the law of treason, by Kane, J. . . If it has been thought safe, to . . instigate others to acts of forcible oppugnation to the provisions of a statute . . to represent the constitution . . as a compact of iniquity, which it were meritorious to violate . . the mistake has been a grievous one; . . successfully to instigate treason, is to commit it."

U. S. v. Hanway, 26 Fed. Cas. 105 (2 Wallace jr. 139), October 1851. [106] " Hanway was indicted for treason[2] . . A number of other persons also . . for the same offence . . The bill charged Hanway with intending to resist, in a treasonable way, the execution of an act of congress, passed September 18th, 1850,[3] . . commonly called ' The Fugitive Slave Law.' " The principal case: [110] " On the 9th of September, 1851, Mr. Gorsuch, of Maryland, having procured from a commissioner of the United States . . warrants to arrest some fugitive slaves of his, went with Kline, an officer appointed by the commissioner, to Christiana, in Lancaster county, Pennsylvania, to take them. The place was inhabited by people, who, in general, were strongly opposed to the fugitive slave law; many of them being violent and fanatical on this subject. Mr. Gorsuch's son, nephew and some relatives, went with the officer. The fact that the writs had

[1] See U. S. *v.* Hanway, *infra*.
[2] See charge to the grand jury, p. 300, *supra*.
[3] 9 Stat. at L. 462.

issued, became known to Williams,[1] a negro in Philadelphia, who preceded Kline and his party to the neighbourhood of Parker's house, where the slaves were lurking, and gave notice that the arrests were to be made, leaving with another person the names of Mr. Gorsuch's slaves, on a piece of paper. On the 11th, the officer and the others went over to Parker's, which they reached about daylight. While proceeding along the road, their attention was arrested by the sound of horns and the blowing of a bugle. After watching about Parker's house for a short time, one or two negroes were seen coming out of it. On discovering Kline and his party, they fled back into the house, and on pursuit being made by him, ran up stairs. These negroes were recognized by Mr. Gorsuch as his slaves. Kline entered the house, and almost immediately ascertained that a large number of negroes were concealed in the upper part of it; he nevertheless went to the stairway and called the keeper of the house to come down, stating that he was desirous of speaking to him. The negroes at this time were heard loading their guns. Kline, hearing the noise, said to them that there was no occasion for arming themselves,—that he designed to hurt no one, but meant to arrest two men who were in the house, and for whom he had warrants. Some one replied they would not come down. Mr. Gorsuch then went to the stairway, called his slaves by name, and stated that if they would come down and return home, he would treat them kindly, and forgive the past. Kline then read the warrants three times, and afterwards attempted to go up stairs, when a sharp-pointed instrument was thrust at him, and an axe afterwards thrown down, which struck two of the party below. Mr. Gorsuch then went to the front door of the house, and looking up to the window, again called to his slaves by name, when a shot was fired at him from the window. To show that his party was armed, Kline fired his pistol. At this period a horn was blown in the house, which was answered by other horns from the outside, as if by preconcerted action. The negroes then asked fifteen minutes time for consideration, which was granted to them. At this moment a white man was seen approaching the house on horseback. It turned out to be Hanway. Kline walked towards him, and inquired if he resided in the neighbourhood. According to the testimony of this Kline, who was not a person of the best character for veracity, his answer was . . 'It is none of your business.' Kline replied, by letting him know he was a deputy marshal of the United States, gave him the warrants to read, and called upon him, in the name of the United States, to assist in making the arrests. Hanway replied 'he would not assist—that he did not care for that act of congress or any other act,—that the negroes had rights and could defend themselves, and that he need not come there to make arrests for he could not do it.' By this time another white man had arrived on the ground (Lewis),[2] who walked up to Kline, and asked him for his authority to be there. Kline showed his papers to him also. . . Lewis, after reading the warrants, said, 'the negroes had a right to defend themselves.' Kline then called upon him to assist him in making the

[1] See U. S. *v.* Williams, p. 304, *infra*.
[2] [113] "Lewis was not included in the *present* indictment."

arrests, when he refused, and would not even tell his name. Kline then asked Hanway where his residence was? He replied, 'You must find that out the best way you can.' . . By this time the blacks had gathered in very large numbers around the house, armed with guns, which they commenced pointing towards the marshal. At this juncture, Kline implored Hanway and Lewis to keep the negroes from firing, and he would withdraw his men, leave the ground, and let the negroes go. Hanway instantly replied, 'they had a right to defend themselves, and he would not interfere.' Kline's answer was, 'they were not good citizens, or they never would permit the laws to be set at defiance in this way.' One of Mr. Gorsuch's family then remarked, 'that all they wanted was their property, and that they did not wish to hurt a hair of any one's head.' Lewis replied, 'that negroes were not property;' and . . [111] walked away. By this time another gang of negroes had arrived, armed with guns and clubs, and Hanway rode up to them and said something which was not heard. He moved his horse out of the way of the guns; the negroes shouted, and immediately fired from every direction. Hanway rode a short distance down the lane leading from Parker's house, and sat on his horse watching the blacks. Kline then called to Lewis, telling him a man was shot, and begging him to come and assist, which Lewis refused to do. The number of negroes assembled at this time was between fifty and a hundred. Before the firing commenced, Mr. Gorsuch was struck with a club on the back part of the head, and fell forward on his hands and knees. As he was struggling to rise, and in the act of getting upon his feet, he was shot down amid frantic yells and howlings; and when prostrate on the ground, was cut on the head with a corn cutter, and beaten with clubs. His son . . immediately rushed to his assistance, when his revolver was knocked out of his hand, and he himself shot in various parts of the body, rendering him utterly helpless. A nephew was attacked at the same time, and defended himself with his revolver, which he twice snapped at his assailants, but the powder being wet it would not go off. He was also struck down, beaten and maltreated. When the firing commenced, Kline . . escaped into a corn-field, but on seeing Mr. Gorsuch's son struggling, apparently wounded and bleeding, went to his assistance, and placed him under the shelter of a tree until aid could be procured. Two . . others of Kline's party were at the time making their escape. The negroes overtook one . . knocked him down with a gun, beat and bruised him. . . A number of shots were fired at others, . . these last rushed towards Hanway, . . besought him to prevent the negroes from pursuing farther. He said he could not. They then asked for permission to get upon his horse, which would afford the means of making their escape. He refused . . and . . rode off at full speed. Several of the United States party were subsequently carried to houses in the vicinity, and were a long time recovering from their wounds. Mr. Gorsuch was killed. . . Hanway was a native of one slave state, had resided long in another, had been a resident of a part of the country far distant from Pennsylvania, and had been living in the neighbourhood of Christiana for only three years past, and while there was evidence that anti-slavery conventions had been held at West Chester, a place near Hanway's residence, where the fugitive slave

law was denounced as unconstitutional, wicked and of no force against 'the higher law of every man's own conscience,' and denunciations made against every judge, who would enforce it, as governed by the spirit of Jeffries and Scroggs; there was no evidence that Hanway attended these meetings. As to the events of the morning of the 11th of September, the defence showed that about sunrise of that day, Lewis . . was informed by a person, who . . called at his house, that there were 'kidnappers at Parker's house.' And starting at once for this place, as he passed, gave the information to Hanway, who was just getting up. Hanway . . rode over, and at the place met Lewis, . . In regard to this matter of 'kidnappers,' it was not easy to gather the exact facts of the case. It was certain that in September, 1850, and in March, 1851, men of bad character . . not professing to have any warrant of law, had in a rough way come to Christiana, and carried away at night, out of the houses where they were, two negroes, then residing there, who never again returned. But whether these negroes were runaway slaves, now taken home by men, who expected to be paid by the owners, or to get a reward publicly offered; or whether they were free persons of colour, stolen by 'kidnappers' in the legal sense of the word, was not proved. [112] The term was perhaps a slang one . . which had been frequently applied with others, as bad, to persons who came from the South, to recover their runaway slaves. It appeared, however, that the events excited some alarm in the place, which had many persons in it opposed to the fugitive slave law, and that there was some feeling of insecurity professed among the people of that neighbourhood." The jury found for the defendant, and the prisoner was discharged.

U. S. v. Williams, 28 Fed. Cas. 631 (4 Am. Law J., n. s., 486), February 1852. Indictment under the seventh section of the fugitive slave law.[1] The defendant, a colored man, [634] " went up in the cars on the night of the 9th of September (the outbreak near Christiana being on the morning of the 11th,) as far as Penningtonville, arriving there about 2 o'clock on the morning of the 10th, . . went after day-light . . to the house of a witness, whom he did not know, some three miles from Parker's house, saying that he had mistaken it for the house of another man, whom he wished to inform that he had come up in the cars with several men who were after slaves, and he requested the witness to let the slaves know; that he said one of the slaves was named Nelson, and that the names of the others were on a paper that he had left at Christiana, . . he got into the cars about 9 o'clock in the morning, and returned to Philadelphia; and that when arrested for treason some five days afterwards, he said to the officer . . that he had conveyed the news to Christiana, and would do so again if he was at liberty, and that he considered it his duty to do so. . . [There had been] anxieties and alarm for some weeks before among the colored population of the neighborhood, in consequence of attempts made to kidnap free persons near them, some of which had been successful, as was proved," Verdict not guilty.

[1] 9 Stat. at L. 462 (464). See U. S. *v.* Hanway, p. 301, *supra.*

U. S. v. Brune, 24 Fed. Cas. 1280 (2 Wallace jr. 264), April 1852. "an indictment [1] . . charged that Brune, being second mate of the brig *Fame*, owned by a citizen . . of the United States, . . did . . aid . . in . . detaining on board . . 400 negroes with intent to make them slaves, . . The fact that the defendant had been engaged in a slaving voyage, was perfectly proved: and to prove that the vessel was owned by a citizen . . of the United States, the prosecution . . offered the ship's registry,[2] and evidence of general reputation of ownership,"

Held: [1281] "The registry . . is not even *prima facie* evidence of [ownership] . . in a criminal prosecution like this; nor would common reputation be." [Grier, J.] Footnote: "the court charged in favour of the prisoner. The jury found a verdict of 'Not guilty under the charge of the court; but guilty in point of fact;' . . which the court obliged them to alter to one of not guilty."

Van Metre v. Mitchell, 28 Fed. Cas. 1036 (2 Wallace jr. 311), October 1853. [1037] "Jared and another negro ran away from their master in Virginia, and came without stopping to the defendant Mitchell, in the town of Indiana . . in Pennsylvania [about the last of April, 1845]. Why they made their way to that place, or by whom they were directed to make application to the defendant, did not appear. But there, as in a few other parts of Pennsylvania, it was matter of common knowledge—though not perhaps capable of the *clearest* proof—that fanatics, 'friends of humanity,' were banded together under professions of conscience and philanthropy, and vows of propagandism to disregard the constitution and laws of the country, which secure to our Southern citizens a right to follow and reclaim their runaway slaves. A regularly organized association existed there, as in some other places, to entice negroes from their owners, and to aid them in escaping to the North. And there was a good deal of evidence to prove the connection of the defendant with these persons. He appeared, if the evidence against him was true, to be a 'Philanthropist' by distinction, 'a Friend of the Black Man.' He discoursed intemperately against Southern planters as kidnappers, dealers in human flesh, monsters in men's form, and emissaries of hell. When a Southern planter came to Indiana to see if his slaves were there, Mitchell gave out to black people that 'Indians were abroad,' [3] and paid the negroes in his employ their wages forthwith. When requested by a supposed agent of an owner for leave to visit his farm, leave was granted only on condition that he would not molest any man of colour upon it. He cautioned persons—such supposed agents—to be careful how they interfered with any negroes in Indiana, as they were armed, had guns and knives, and were able to take care of themselves, and most likely would fight. When one of them was arrested, and the defendant was asked about the others, and if they had best leave the place, he said that they had been apprised of their danger that evening, and were safe: that they were safe where they were, being armed. On one occasion he had a meeting of 'Friends

[1] Under the act of Congress of May 15, 1820, ch. 113, sect. 5. 3 Stat. at L. 601.

[2] Wallace, Reporter: "I have reason to think that it was a ['copy or'] certified copy of the registry which was offered in evidence,"

[3] [1041] "a slang phrase, well understood in the country as a warning to be on their guard, and make their escape."

of the Black Man,' in his house, a runaway negro being secreted in a back room; and a committee was appointed to *protect and counsel* the fugitives, and to have them paid wages whenever necessary. When Jared and his companions arrived at Indiana, the defendant sent them with a letter to his tenant residing on his farm, about nine miles from town. They were directed to take possession of a vacant house on the defendant's farm, and were furnished with bedding, cooking utensils, grain, a cow, and axes. They were employed by the defendant to labour on his farm in making fences and otherwise, and also hired themselves to work for the neighbours. The defendant gave them money with which they bought ammunition and gun caps, and they had guns and dirks. They remained . . in this way about four months; and the defendant well knew that they were fugitive slaves, and that Van Metre, the plaintiff, owned them. But no notice, that is to say no formal or specific notice, was ever given by the plaintiff to the defendant of that fact. It was well known to people in the town . . and in the neighborhood . . that these slaves were on Mitchell's farm; and except that he once asked a partner of his, who had a saw mill some distance from town, if he could not find employment for the negroes at this mill, alleging as a motive, 'that they would be out of the way if they were there'—there was no evidence that Mitchell desired to conceal their place of retreat, . . Two counts of the declaration charged the defendant with 'harbouring *and* concealing;' two others with harbouring.'" [1] Grier, J., charged [1040] "'notice' as used in this act . . means knowledge. . . [1042] If . . you believe . . [defendant] has afforded shelter . . to the fugitive to further his escape, . . you will find for the plaintiff $500." Verdict accordingly. Motion in arrest of judgment overruled.[2]

Oliver et al. v. Kauffman, Weakley, and Breckbill, 18 Fed. Cas. 657 (1 Am. Law Reg. 142); 678 (2 Wallace jr. 324), October 1853.[3] [678] "This suit was not, like the last,[4] for the $500 penalty, but an action on the case for damages" [5] caused by the illegal harboring and secreting of the plaintiffs' fugitive slaves by the defendants. Oliver [658] "had formerly resided in Maryland, and removed to . . Arkansas, where he died in . . 1846. . . Twelve slaves, consisting of two husbands and their wives and their children, were allotted to the plaintiffs [his children]. In May, 1847, the mother returned to Williamsport, Maryland, taking with her the plaintiffs . . and their slaves. On their way they passed through Pennsylvania, on the National road between Wheeling and Cumberland. In October, 1847 . . these slaves fled to Pennsylvania, and were pursued by the agent and [the] friend of the plaintiff[s] for the purpose of capturing them and taking them back. In this attempt they were unsuccessful. The fugitives were traced through Chambersburg into Cumberland county." [678] "to the defendant's barn [6] . . it rather appeared

[1] Act of Congress, Feb. 12, 1793, sect. 4. 1 Stat. at L. 302 (305).
[2] Van Metre *v.* Mitchell, 28 Fed. Cas. 1042 (1044).
[3] See Kauffman *v.* Oliver, p. 297, *supra.*
[4] Van Metre *v.* Mitchell, p. 305, *supra.*
[5] "saving . . to the person claiming such labour . . his right of action . . on account of the said injuries" Act of congress, Feb. 12, 1793, sect. 4. 1 Stat. at L. 302 (305).
[6] They were secreted first in Kauffman's barn, later in Weakley's.

that *before* they got there, the plaintiff[s] had lost the track of them . . and that although the defendant had harboured or concealed them, this was not the cause of the plaintiff's [*sic*] loss of them." Grier, J., charged the jury: [658] "The odium attached to the name of 'Abolitionist' . . should not be suffered to supply any want of proof of the guilty participation of the defendants . . Beware also, that the occasional insolence and violent denunciation of the South be not permitted to prejudice your minds against the just rights guaranteed to them by the constitution and laws of the Union. An unfortunate occurrence [1] has taken place . . which, as it is a matter of public history, and as such has been introduced into the argument of this case, it becomes the unpleasant duty of the court to notice in connection with this portion of our remarks. A worthy citizen of Maryland, in attempting to recapture a fugitive, was basely murdered by a mob of negroes on the southern borders of our state. That such an occurrence should have excited a deep feeling of resentment in the people of that state, was no more than might have justly been expected. That this outrage was the legitimate result of the seditious and treasonable doctrines diligently taught by a few vagrant and insane fanatics, may be admitted. But by the great body of the people of Pennsylvania, the occurrence was sincerely regretted, and an anxious desire was entertained that the perpetrators of this murder should be brought to condign punishment. Measures were taken, even at the expense of sending a large constabulary and military force into the neighborhood, to arrest every person, black and white, on whom rested the least suspicion of participation . . [659] A large number of bills of indictment were found against the persons arrested for high treason, and one of them was tried in this court. The trial was conducted by the attorney general of the state of Maryland; and although it was abundantly evident that a riot and murder had been committed, by some persons, the prosecution wholly failed in proving the defendant, on trial, guilty of the crime of treason with which he was charged. But, however much it was to be regretted that the perpetrators of this gross offence could not be brought to punishment, the court and jury could not condemn, without proof, any individual, to appease the justly offended feelings of the people of Maryland. Unfortunately, a different opinion with regard to our duty in this matter, seems to have been entertained by persons holding high official stations in that state; and certain official statements have been published, reflecting injuriously upon the people of Pennsylvania and this court, which have tended to excite feelings of resentment, and to keep up a border feud, which, if suffered to have effect in our courts, or in the jury-box, may tend to prejudice the just rights of the people of Maryland, and of the plaintiffs in this case. . . It is your duty to treat with utter disregard ignorant and malicious vituperation of fanatics and demagogues, whether it comes from North or South, . . [663] If in your judgment, the hypothesis of the defendants' counsel is supported by the evidence; if Mr. Breckbill was merely a spectator, . . if Mr. Weakley did not participate . . at all, you should find them not guilty. If you believe, also, that Kauffman . .

[1] See U. S. *v.* Hanway, p. 301, *supra*.

merely fed them out of charity, and suffered them to rest for a few hours in his barn; that they were brought there without his knowledge, consent, or approbation, and taken away without his assistance, or any act of his, to enable them to elude the pursuit of their owners, or to further their escape, your verdict should be in his favor also. If, on the contrary, you find . . they were received by him . . and secreted in his barn, then taken by him . . after night, in order to assist them to escape, . . transferred by him, with the . . assistance of Breckbill, to the barn of . . Weakley; if Weakley kept them secreted . . and removed them on the following night to places unknown . . you should find for the plaintiffs the full value of the slaves in damages, as against all . . or such of them as you believe . . to have had an action participation"

[664] "The jury, failing to agree, were discharged, standing ten for the plaintiffs, and two for the defendants." [679] "On the second [trial] they found a verdict of guilty as to one of the defendants and damages of $2800 against him. The other defendants they found 'not guilty.'"

Ex parte Jenkins et al., 13 Fed. Cas. 445 (2 Wallace jr. 521), October 1853. First case: "Jenkins, Wynkoop, Crossin and Keith, deputy-marshals of the United States, in executing, in Luzerne county, Pennsylvania, a warrant . . to arrest one William Thomas, a negro boy, as 'a fugitive from labour,' had been obliged to have a violent and bloody encounter with him, in which the negro, being encouraged by certain people in the neighbourhood, . . escaped . . One Gildersleeve . . was induced to go before *a county Justice of the Peace*, and swear to the facts necessary to procure a warrant as for an assault and battery, with intent to kill. . . the *constable of the borough* . . arrested the deputy-marshals and put them in gaol. On a petition from the prisoners . . a *habeas corpus* from this [circuit] court [of the United States] was applied for . . Mr. David Paul Brown . . objected[1] . . [446] that, as . . the deputy was a prisoner . . under legal process from *the state* magistrate, it was useless to proceed;[2] . . The writ . . having been granted, notwithstanding, and the constable having . . made a return . . Mr. Brown, after reading for him the return, was going on to argue as counsel against the discharge; but, being then called upon . . to state for whom he appeared, said . . for the *constable*. The court informed him that he had already performed his duty to his client in making that officer's return . . also . . [that] on the application for the writ, it had announced . . from the Bench, that if he or any other . . appeared by authority from the Governor, or Attorney-General of Pennsylvania . . the court would be . . happy to hear him . . But as the court had . . no reason to believe that . . those officers had shown any countenance to such proceedings, and as the negro . . had confessed the justice of his arrest by fleeing . . it would not permit mere volunteers to interfere for the purpose of embroiling the state of Pennsylvania against her will, with the United States, nor permit that any association, however respectable some of its members might be in private life, should assume to be the guardians of *her* peace and dignity.

[1] "The court . . allowed Mr. Brown to speak as *Amicus Curiae,* without . . inquiry as to who had authorized him."

[2] Act of Congress of Sept. 24, 1789, sect. 14. 1 Stat. at L. 82.

Mr. Brown . . being in fact, it was supposed, employed by certain societies in Philadelphia, known as 'Friends of Humanity,' 'Abolitionists,' etc., was not permitted to speak. . . the District Attorney of the United States . . stated that the writ had not . . been . . granted under the old . . powers given by . . the Judiciary Act" [447] "but . . under special powers conferred by the act of congress of 2d March, 1833, (chapter 57, sect. 7,)[1] . . [448] the order of the court is, that the prisoner [*sic*] be discharged."

Second case, February 1854. "Some time after . . the negro, Thomas, brought a civil suit in the Supreme Court of Pennsylvania against . . the same deputy marshals. The negro . . filed no affidavit of his cause of action, but . . two affidavits [were] filed by other persons. They showed, that on the day of the attempted arrest . . Thomas . . came out of a hotel in Wilkesbarre, wounded, bleeding and faint—that he was pursued—that there was a cry of 'Shoot him,' and the sound of pistol shots—that he made his way to the river, and plunged in, declaring 'that he would never be taken,'—that he subsequently came out, but was driven back again to the water's edge, by a presented pistol—that there were many persons on the river bank, some of whom were menacing, and some who are spoken of as the 'pursuers' and 'the officers;' that among the persons on the bank" were Wynkoop, Crossin, and Jenkins. "a judge . . allowed a *capias ad respondendum* in trespass, *vi et armis*, . . All four officers were arrested by the sheriff . . and not giving bail, committed to prison. In a suit of the United States, at their relation, against . . the sheriff, they now presented their petition for a *habeas corpus*, . . [450] Relators discharged."

Third case, May 1854. "The prisoners had not been discharged very long before they were arrested a third time, by the sheriff . . under a bench warrant of outlawry . . based on an indictment . . charging them with riot, assault and battery, and assault with attempt to kill; but not setting forth that the parties indicted were officers of the United States, nor that . . they were acting . . in pursuance of a law of the United States, . . The prisoners had recently presented a petition for a *habeas corpus*, in which . . they averred, that all their action . . was lawful . . and in pursuance of a legal warrant directed to them by a duly constituted commissioner of the United States, . . indorsed by one of the justices of the Supreme Court. On the return . . the petitioners offering to prove these facts, it was objected, by Mr. D. P. Brown, that they were concluded by the warrant and indictment, and that this indictment not setting forth any case which could give this [federal] court jurisdiction to interfere under the act . . [451] of . . 1833 . . the court could not go behind it;" Kane, J.,: [May 9, 1854] "I cannot be restricted to the evidence which may be found among the records of another court. . . [452] it is my duty to hear and determine, notwithstanding the proceedings . . before a state court, just so far as may bear upon . . the relators' right to a discharge under the laws of the United States. . . If the evidence . . shall show that these relators . . have transcended the rightful limits

[1] 4 Stat. at L. 634, 635.

of their authority, . . no considerations . . will press upon this court to rescue them from punishment, by withholding them from the tribunal which demands their presence. . . [453] I must therefore proceed to hear the case on its merits . . and . . must receive the evidence . . offered by the relators."

Hood's estate, 21 Pa. St. 106, 1853. [107] "Hood . . was born in Philadelphia, in 1786, . . In about 1818, he purchased land and servants in . . Cuba, and made a coffee estate,"

Hartman v. Insurance Co., 21 Pa. St. 466, 1853. [467] "action . . founded on a policy of insurance . . dated . . March, 1851. . . the night following . . the insured . . committed suicide." "The company . . plead that . . Callender misrepresented his occupation, stating that he was *a farmer*; whereas . . he was engaged in the business of *slave-catching*." [476] "It was shown on the trial, that the assured had not for many years been a farmer; that he had been at Wilkesbarre in search of fugitives, and had gone to Hagerstown to bargain for the apprehension of others; that he was at Harrisburg in pursuit of negroes whom he spoke of running over to Frederick without a warrant. In short, the evidence is very strong that for some months at least previous to his death, he was habitually and very diligently occupied at this business. . . [477] he told a person at Hagerstown, a few days before he effected the insurance, that he was engaged in that business and had a man at Harrisburg who knew all the slaves that ran away from that part of Maryland." The clerk of the insurance company testified: [471] "we would not take a person at any price if it was known that he was engaged in slave-catching. I consider it a much more perilous occupation than farming—liable to be shot down or assassinated:" Verdict for defendant. Judgment thereon affirmed.

Foremans v. Tamm, Grant 23, 1853. "action of trespass *vi et armis quare clausum fregit*, brought by Tamm, a colored man, . . [who] claimed title to the *locus in quo*, by virtue of being a pre-emptor under the Act of Assembly,—that the land was . . vacant . . and that he had settled . . 'with a manifest intention of making it a place of abode and the means of supporting a family.'[1] Foremans defended on the ground that a colored man was not within the meaning of the Act . . The Court . . instructed . . that a colored man might acquire a pre-emption right under the Act . . and a verdict was rendered for the plaintiff."

Judgment thereon affirmed: "The question has no relation to the political rights of the colored population. Whenever the white population, who settled this Commonwealth, under a charter and laws derived from a government established by a similar caste . . think proper to admit into political partnership either the black population of Africa or the red aborigines of America, they have a right to do so. Until this be done, the negro and the Indian must be content with the privileges extended to them, without aspiring to the exercise of the elective franchise, or to the right to become our legislators, judges and governors. . . [24] There

[1] Act of Dec. 30, 1786. 12 Pa. Stat. at L. 351.

is nothing in the principles of the common law, or in the former condition of the colored population, which excludes them from acquiring . . freedom and the right to purchase property, by the consent, . . express or implied, of those who had hitherto held them in bondage. . . [25] The effect of . . [the] act of manumission [of 1780] is to give to the colored man the right to acquire . . and dispose of lands . . as fully as the white man . . an incident to the grant of his freedom. There is nothing in the Act [of 1786] . . or usages of the State, in relation to pre-emption rights acquired by settlement, which excludes the colored man . . Without doubt there are many titles to land held by colored people, without dispute. Within sight of the courthouse in which this question was first raised, there is an island in the Susquehanna, the title to which was taken out of the Land Office by a colored man, whose right we have never heard disputed." [Lewis, J.]

Fulton v. Moore, 25 Pa. St. 468, 1854. Cooper's will, 1821: [469] "To his wife . . the two black boys,"

Fontain v. Ravenel, 17 Howard 369, December 1854. Will of Frederick Kohne, of Charleston and Philadelphia, dated 1829: [382] "I . . empower my executors . . [383] after the decease of my . . wife, to dispose of [the remainder of all my estate] . . for the use of such charitable institutions in Pennsylvania and South Carolina, as they . . may deem most beneficial to mankind, and so that part of the colored population in each of the said States . . shall partake of the benefits thereof." "no such appointment having been made . . during the lifetime of the executors . . [391] we are not satisfied that the fund . . ought to be withdrawn from . . the heirs of . . Kohne."

Passmore Williamson's Case, 26 Pa. St. 9, 1855. See *infra*.

U. S., ex rel. Wheeler, v. Williamson, 28 Fed. Cas. 682 (3 Am. Law Reg. 729), July 27, 1855; 686 (4 Amer. Law Reg. 5), October 1855. [26 Pa. St. 11] "Colonel John H. Wheeler, of North Carolina, the United States' minister to Nicaragua" "presented his petition to the District Court of the United States, . . setting forth that he was the owner of . . Jane [and her two children] . . and that they were detained . . by . . Passmore Williamson, . . prays for a writ of *habeas corpus*, to be directed to . . Williamson, commanding him to produce their bodies . . granted . . 18th July" [28 Fed. Cas. 682] "On the 19th, no return being made, and it appearing that . . [Williamson] was absent from the city, Mr. Wheeler's counsel applied for an *alias* writ . . allowed, . . On the following morning, Williamson appeared" and [684] "made return, that the persons named . . [685] 'nor either of them . . was . . at any . . time, in . . [his] custody, power or possession' . . [Judge Kane] allowed the relator to traverse this return; and several witnesses . . testified" Wheeler's evidence: [682] "I left Washington . . the 18th . . under orders from my government to proceed to . . Nicaragua . . was upon my [way] . . to take passage from New York, in company with my three servants, [[26 Pa. St. 10] 'Jane, aged about thirty-five . . her sons, Daniel about twelve, and Isaiah . . about seven,'] [[687]

'stopped at . . Hotel . . went to dinner; and while . . absent . . [Jane] informed one of the waiters . . (a colored woman) that she and her children were slaves.']¹ [[684] 'Still, a colored man, . . clerk at the Anti-Slavery office in North Fifth street' 'informed [Passmore Williamson] . . secretary of the active committee of the old Pennsylvania Anti-Slavery Society.']² . . On going on board . . I retired with my three servants to the hurricane deck . . Williamson . . came up . . and asked if he might speak to my servants. I replied that I could not imagine what business he could have with [them] . . and that if he had anything to say I was the proper person to say it to; Mr. Williamson then pushed past me, and asked the woman (Jane) if 'she was a slave, and if she knew she was in a free country,' . . and then, 'if they (the servants) would like to be free;' " [684] " Mr. W. [Wheeler] reminded her of her children at home, and asked if she wanted to leave them; she replied that she did not, but that she wanted to be free; Mr. Wheeler insisted that the woman did not want to go; there was an excitement and the children cried." ³ Williamson " was followed by some dozen or twenty negroes, who by muscular strength carried the slaves to the adjoining pier; two of the slaves . . if not all three, struggling to release themselves, and protesting their wish to remain with their master; two of the negro mob, in the meantime, grasping Col. Wheeler by the collar, and threatening to cut his throat if he made any resistance. The slaves were borne along to a hackney-coach that was in waiting, and were conveyed to some place of concealment; Mr. Williamson following and urging forward the mob, and giving his name and address to Col. Wheeler, with the declaration that he held himself responsible towards him for whatever might be his legal rights, but taking no personally active part in the abduction after he had left the deck." ⁴ [683] " after the negroes had got off the boat, Mr. Williamson walked behind the crowd, and said something in a whisper to a large burly policeman, who was standing near." Wheeler " spoke to the policeman in a whisper, asking him to observe the people who were committing the outrage, but . . [he] refused to have anything to do with the matter, as 'he was not a slave-catcher.'" Wallace testified: " I am an officer. . . saw several negroes forcing along a colored woman, who was holding back with all her strength, and two boys who were also struggling; they were all crying; . . the defendant whispered to me . . that they were slaves,—they were getting away,—and asked me to protect them; I said that I would have nothing to do with the matter." Mr. Vandyke, district attorney, " moved for an attachment against the respondent, for contempt in making a false return to the writ. . . Williamson was then affirmed: . . 'I have had no control over them, nor have I had any hand in their escape; . . I saw [Still] . . this morning . . he said they were safe, and that they would not return under any circumstances;' . . [684] Kane, District Judge, said that the case was of so grave a character . . that he was desirous to take time to consider"

¹ Statement of Jane Johnson in her petition, p. 313, *infra*.
² Testimony of Williamson.
³ *Id.*
⁴ Judge Kane's summary.

[691] "urged . . that if practicable, the negroes should . . be brought before the court. But the negroes were not produced. . . afterwards . . by a process of a Pennsylvania state court, they or some of them were brought forward . . in this city, to testify for Mr. Williamson or some of his confederates. But before the court of the United States, . . at the distance of perhaps a hundred yards, it was not thought . . expedient or practicable to produce them. . . The decision was announced at the end of the week. It was, that Mr. Williamson's answer was evasive and untrue;" [685] "He was the person by whose counsel the so-called rescue was devised. . . [686] Let Mr. Williamson . . be committed to the custody of the marshal without bail or mainprise, as for a contempt of the court in refusing to answer to the writ of *habeas corpus*" "United States Marshal Wynkoop took the prisoner . . and conveyed him to . . prison," On July 31 Williamson [26 Pa. St. 11] "applied to . . Chief Justice [Lewis of the Supreme Court of Pennsylvania] . . for a writ of *habeas corpus* . . refused."[1] In August he applied [9] "to the Supreme Court [of Pennsylvania] sitting in banc" Writ refused: [23] "the District Court had power to punish for contempt . . the prisoner is convicted of such contempt—and . . the conviction is conclusive upon us." [22] "Mr. Williamson stopped the investigation *in limine*; . . There is no reason to believe that any trouble whatever would have come out of the case if he had made a true, full, and special return of all the facts;" [Black, J.] [28 Fed. Cas. 686] "October 3, 1855, . . Mr. Townsend and Mr. . . Read, presented to the [district court for the eastern district of Pennsylvania] . . a paper purporting to be 'the suggestion and petition of Jane Johnson, [[694] "now in Massachusetts"];' on which they moved for a rule to show cause why the writ of *habeas corpus*, issued against . . Williamson, should not be quashed. The paper . . was in the following form: . . [687] 'Your petitioner was very desirous of procuring freedom . . and before she left Washington determined to make an effort to do so, if . . Wheeler should take her North. . . Williamson . . informed [her] . . that if she wished her liberty, she could go ashore . . [She] voluntarily . . left the boat, and . . has never seen him since . . was not at . . any time . . in the custody . . of Mr. Williamson, . . prays . . that the . . writ of *habeas corpus* . . may be quashed, and . . that . . Williamson may be discharged from his imprisonment.'"

Held: [695] "The application to enter this paper among the records of the court, must . . be refused." [694] "She has . . no status whatever in this court."[2] [691] "Mr. Williamson . . is now undergoing restraint, not punishment. . . 'during the contempt:' . . it had appeared from the defendant's declarations . . that he supposed Mr. Wheeler's slaves to have become free, . . incorrect, . . By the common law, as it came to Pennsylvania, slavery was a familiar institution. . . The counties of New Castle, Kent, and Sussex, which were . . [692] for many years . . annexed to Pennsylvania, and governed by the same law,

[1] See Williamson *v.* Lewis, 39 Pa. St. 9.

[2] [694n.] "Neither the petition for the writ of *habeas corpus*, nor the writ itself, names Jane Johnson."

continue to recognize slavery up to the present hour. It survived in our commonwealth, as a legally protected institution, until some time after the census of 1840; . . The act of 1847 repealed so much of the act of 1780 as authorized . . owners of slaves to . . retain [them here] . . for any period of time whatever. But it . . left the right of transit for property and person, over which it had no jurisdiction, . . as it stood under the constitution of the United States and the law of nations. . . the right of every citizen of a friendly state. . . what is to be deemed property . . refers itself necessarily to the law of the state from which the citizen brings it: . . no man in the convention . . thought of making the right of transit a subject of constitutional guaranty. Everything . . about the constitution implies it. . . [693] when the constitution was formed in 1787, slaves were recognized as property, throughout the United States. The constitution made them a distinct element in the distribution of the representative power and in the assessment of direct taxes. They were . . returned by the census, three years afterwards, in sixteen out of the seventeen states . . and as late as 1830, they were found in every state of the original thirteen. How is it possible then . . to regard slave property as less effectively secured by the provisions [of the constitution] . . than any other property which is recognized as such by the law of the owner's domicil? . . We revolt in Pennsylvania . . at this association of men with things as the subjects of property; for we have accustomed ourselves for some years—now nearly fifteen—to regard men as men, . . *sub modo*, however; for we distinguish against the negro much as our forefathers did; and not perhaps with quite as much reason. They denied him civil rights, as a slave: we exclude him from political rights, though a freeman." [Kane, J.]

U. S. v. Darnaud, 25 Fed. Cas. 754 (3 Wallace jr. 143), October 1855. [755] "Darnaud . . who had been engaged in a slaving voyage on the *Grey Eagle*, was indicted.[1] . . five distinct charges were made . . 1st, receiving [five hundred] negroes on board . . on the coast of Africa; 2d, confining and detaining on board . . 3d, aiding . . in confining and detaining . . 4th, delivering on shore at Cuba . . having previously sold; 5th, delivering on shore . . with the intention of selling. . . counsel of the prisoner . . moved that the prosecution should be made to elect on which of the counts it would proceed;" Grier, J.: [756] "I think . . that the selling and delivering . . on the Cuban coast is a distinct transaction." The district attorney "elected . . [to strike] out all which charged with crime on the coast of Cuba." Statement of facts: "The *Grey Eagle* was an American built vessel; . . Marsden [a citizen of the United States] . . concluded a purchase of the vessel for $9,100, . . March 4th, 1854. . . commenced the active preparation . . for a voyage. . . employed the rigger, the carpenter, and sailmaker; bought the coppers which were put on board the vessel for cooking purposes; purchased 28,000 pounds, upwards of 10 tons, of rice; 12 or 14 barrels of beef, and half the number of pork; 24,000 gallons of water; in short he, and he alone,

[1] Under the act of Congress of May 15, 1820, ch. 113, sects. 4 and 5. 3 Stat. at L. 600, 601.

had the vessel prepared for the voyage. . . [751] The vessel, by the agency of Marsden, and by the assistance of Darnaud [the captain], . . was ready . . 25th of March to be put afloat. . . Marsden employed a broker to make a bill of sale to . . Gray . . a citizen of the United States. . . crew list has appended to it the oath of a notary public that he has received sufficient proof of the American character of the vessel and of the crew . . The position of the prosecution was that the transfer from Marsden was a mere fraud . . to get Marsden's name as owner from off the custom house registry. . . that Marsden was still owner . . On the other hand there was . . evidence . . that Marsden was a man of no property . . and . . that all the funds came to him from . . Machado, . . naturalized here, . . merely the agent of another Spaniard *not naturalized*, one Rivero, who . . [was] on board . . during her voyage to Africa, as one of her two or three captains;[1] . . So far as concerned the citizenship of the prisoner—a matter important only in case the vessel was . . not owned by an American—it appeared that . . [he] was a native of France, and came to this country twelve or fourteen years before this voyage; . . represented himself as a Frenchman . . [758] when arrested . . [but] had hailed for twelve or fourteen years as from the United States . . and had acted as captain of a vessel which he knew was registered as American; a privilege allowed by law to American citizens only." Judge Kane's charge to the jury: [760] " Piracy is essentially an offence against the universal law of the sea. . . The slave trade, however horrible it may be, is not within that category. . . It is only within a few years . . that the first declaration was made by national authority that it was a crime. . . there are nations professing to be civilized, Christian nations, that have refused peremptorily to unite in so recognizing it. . . [761] The element, therefore, of citizenship . . is an essential condition . . of the crime . . charged; . . [762] [I.] You are to judge . . whether the . . ownership . . not according to the paper title . . but . . in point of fact was in Marsden, . . were a different doctrine to be held by our courts, there would be scarcely any protection whatever against the arts of slave traders. If the paper title . . indicated what was the ownership . . no one American, base enough to engage in the slave trade, would ever be found on . . a vessel with an American register, . . she would be sold to some Rivero, or some anonymous Portuguese; the Portuguese flag would be hoisted, and the American owner . . would exult under the protecting fraud of an alien flag, and a fabricated bill of sale. . . [II.] it is an essential element, that the accused was a citizen of the United States . . [763] It is citizenship, such

[1] [755n.] " Slave vessels sail with two or three, or four captains. One captain clears her in a United States port, and swears that he is an American citizen. Another, belonging to a different country, in connection with the first, when she arrives at the coast of Africa receives the slaves on board. Another, after the slaves are received, takes charge of them and commands the vessel, and makes one of the former captains the doctor, mate, steward, or something else. Another delivers the slaves on shore. This is done . . to enable the vessels to seek the protection of a flag which the cruiser hailing them will . . regard . . when a American cruiser comes in sight, the Portuguese or Spanish flag is run up, and the false Portuguese or Spanish papers are produced. In the present instance, when a British cruiser hove in sight, the American flag was run aloft . . and when that flag was seen the cruiser went off."

as yours and mine . . if by common reputation, . . his nationality was recognized as in accordance with his declarations . . then surely his uncontradicted declarations are entitled to some credit. . . [764] So far as I remember them, those papers from the custom house contained no proof at all as to the citizenship of the accused." [765] " Verdict, not guilty."

Clingan v. Mitcheltree, 31 Pa. St. 25, May 1857. In 1852 [27] " Sally Polk, the black girl, came in, and was putting some wood in the stove, and Mrs. Mitcheltree told her to clear out of that, for she was always gaping to hear all she could hear;"

Hoff and Tucker's Appeal, 28 Pa. St. 51, 1857. Will of John Hoff: [53] " *Sixth item.* 'In the event that the Pennsylvania and other African Colonization Societies of the United States, do succeed in establishing the free blacks from the United States in an independent government in Africa, so as to enable the emigrants to purchase and hold lands, . . I bequeath $10,000 for the purchase of lands adjoining those already obtained by the United States societies.' Then follows a description . . of the character of the emigrants to be sent out, concluding thus: 'This tract . . to be designated " The *State* or District of Hoff," . . The good we do ought to live after us, saying to our successors " Go and do likewise." ' This $10,000 was unclaimed,"

Stephen Smith's Appeal, 30 Pa. St. 397, 1858. " 1844, . . Smith . . was appointed guardian of the estate of Thomas Y. and William Savage, two colored children, who resided with their mother in Philadelphia. John M. Savage, the father . . died in Monrovia, in Africa, in 1840, leaving a will, . . to his wife one-fourth . . and a fourth to each of his children, a daughter and the two sons . . The guardian filed an inventory in 1845, showing that he had received $14,150, belonging to the sons. . . 1854, Thomas Y. Savage, who had been studying medicine in Canada, determined, with the consent of his mother, to visit Europe for the purpose of completing his medical education. . . 24th June, he accompanied his guardian . . and his uncle, John Henderson, to the office of a conveyancer, when the following bond was executed . . 'Know . . that I, John Henderson, . . of New Jersey, gentleman, am . . bound unto . . Smith, . . [398] in the sum of $3000, . . Whereas . . Smith . . at the special . . request of . . Henderson, hath this day advanced unto . . Savage . . $1500, . . Henderson . . shall cause . . Savage, on his arrival at . . twenty-one . . to pay . . Smith . . with . . interest, . . then this obligation to be void,' . . Smith advanced to Henderson $1500, . . Henderson gave $500 of it to Savage, who then proceeded to Europe. Savage became of age . . November, 1854, . . drew on Smith for $500 in favour of Henderson . . [who] afterwards absconded." Thompson, J.: [400] " the misfortune of the guardian consists in his inability to show anything over . . $500 . . applied to the object in view; and to this extent we think the guardian should have been allowed. . . Savage . . now sets up that on coming of age he paid it back to Henderson, who is worthless, and looks to his guardian to pay it over again to him. . . [401] We hold him to the duty of paying to the proper party, his guardian, who will then be the loser of over $1000."

Missionary Society's Appeal, 30 Pa. St. 425, 1858. Will of Elliott Cresson, dated October 7, 1853: "I . . bequeath to the mission and schools of the Episcopal Church, about to be established at or near Port Cresson, . . five thousand dollars; in the disbursement of which . . I desire . . that the pastor of the church of St. Andrews . . shall enjoy a full and equal voice. Should a collegiate department for the benefit of the natives and citizens be added . . I hereby add . . five thousand dollars." The testator died in 1854. [426] "one of the executors, testified that, in 1834, a portion of territory on the western coast of Africa, known as Bassa Cove, and within the state of Liberia, was purchased by the action of the Young Men's Colonization Society of Pennsylvania, the testator contributing one thousand dollars . . and that the American settlers, upon their arrival . . [427] resolved to call their town Cresson. . . At the north-western end [of the cove] . . is . . the native village of Bassa, . . having a population of 400 or 500, all black, except a missionary and his wife. . . In 1835 . . the . . town of Cresson, or Port Cresson, was attacked by the natives, and the settlers were driven off. There is no evidence as to a rebuilding . . In . . 1853, the legislature of Liberia gave the name of Port Cresson to an anchorage . . in front of the old town of Cresson. . . [428] the testator . . used the term . . as extending to the surrounding region," [426] "For about the last twenty years, . . the original [missionary] society [of the Protestant Episcopal Church], or the present corporation, has established or continued missions and mission schools . . on the western coast of Africa; and . . during the fall of . . 1853, . . a mission and school were established . . at or near the place meant . . by the testator as Port Cresson. . . [428] the Rev. Jacob Rambo, a missionary of the Protestant Episcopal Church, is stationed at Bassa, . . [429] engaged [in 1855] in organizing a school, . . two lads, one a native, the other a colonist, . . were to be pupils" "The outbuildings were finished, and the main building was in process of erection." "a collegiate department . . would . . be altogether premature."

Held: [436] "the appellants, being 'The Domestic and Foreign Missionary Society of the Protestant Episcopal Church' . . [437] are legitimate claimants . . to the legacy of five thousand dollars. The additional bequest . . was given upon a condition which has not been complied with, . . will fall into the residue of the estate."

Pennsylvania v. Ravenel, 21 Howard 103, December 1858. [106] "Mrs. Kohne [1] continued to reside alternately in Charleston and Philadelphia, . . until . . 1850, when she left Charleston, to return there no more, and came to Philadelphia, followed soon after by her whole Charleston household, (except one old female servant,) all of whom remained with her in Philadelphia until her death, . . 1852, . . These were Emma and her husband, Jacob, Peter, Margaret, and Carolina, servants or slaves."

U. S. v. Buck, 24 Fed. Cas. 1289 (17 Leg. Int. 181), 1860. "an indictment against Jeremiah Buck for an attempt to rescue from the custody

[1] See Fontain *v.* Ravenel, p. 311, *supra*.

of the marshal a fugitive slave." [1291] "a fugitive slave had . . been brought . . before a judge[1] . . the right of the claimant had been established, and the certificate . . issued, when the claimant's affidavit that he had reason to apprehend a forcible rescue was regularly made; . . the marshal, therefore, . . retained the fugitive in custody, and was in the act of removing him from the court house, . . There was in the street a crowd chiefly composed of colored persons. More than fifty officers of the city police . . to keep the passage clear. . . Three deputies . . took seats inside of the carriage [with the fugitive] and another . . by the driver. . . colored persons . . crowded forward . . once or twice, if not three times. The speed of the horses was increased as they approached Chestnut street, . . some colored persons . . rushed from both footways into the carriage way, seized the head of the horses . . [1292] Several witnesses heard the word 'rescue' shouted. . . Seven witnesses . . positively identify the defendant as one of the three principal actors in the scene . . when the horses were forced upon the pavement. . . [1293] colored persons of good character, whose usual deportment was quiet and orderly, were not able to command their feelings . . so as to abstain from acts of lawless violence. . . That colored persons generally were excluded from the court room seems to be true. . . the colored clergyman, who was refused admittance, says that he had 'quite a squabble' with one of the marshal's deputies." Verdict [1297] "that the defendant is guilty on the first count[2] . . of the indictment."

[1] Under the act of Congress of Sept. 18, 1850. 9 Stat. at L. 462.

[2] [1294] "The first count, after stating the warrant of arrest, and subsequent proceedings is the granting of the certificate, avers that the affidavit of apprehension of a rescue was afterwards made by the claimant, and lays the offence as an attempt to rescue from the custody of the marshal, and the persons employed by him"

NEW JERSEY

INTRODUCTION

I.

No uncertainty marked the beginning of slavery in colonial New Jersey, but as the institution waned a curious situation arose out of a somewhat inconsistent combination of constitutional and statutory provisions which are cited in the cases.

While slavery was commonly practised in New Jersey, there was from earliest days considerable anti-slavery sentiment in the colony. By act of 1713-1714,[1] it was provided that every man who manumitted his slaves should furnish security to the Queen in the sum of 200 pounds to insure that he would pay each manumitted slave 20 pounds annually; evidently the colony did not propose to give relief to those who by age, infirmity, or sloth, could or would not support themselves after manumission. A similar act of 1769 conditioned the validity of the manumission upon a 200-pound bond to the King. In 1798,[2] it was enacted that every slave should continue to be such unless manumitted in the manner prescribed by law. In the Emmons case (note 1), it was held that the instruments of manumission were fatally defective for lack of two subscribing witnesses as required by the act of 1798.

The case of the State *v.* Post [3] brought to light an apparent conflict between the New Jersey constitution of 1844 and legislative acts of 1804 and 1820. By writ of *habeas corpus* directed to the slave-holder, the question whether the constitution of 1844 abolished slavery was squarely raised. By a divided court it was held that the institution of slavery had not been destroyed by that constitution. On behalf of the plaintiff it was contended that slavery was abrogated by Article I., section 1, declaring that " all men are by nature free and independent, and have rights, among which are those of enjoying . . life and liberty, . . property," but it was urged by defendants that by Article X., schedule, section 1, declaring that " all writs, actions, . . claims and rights of individuals and of bodies corporate shall continue," slavery was to continue like other property rights. Attention was directed also to the act of 1804 [4] which provided that every child born of a slave after July 4, 1804, should be free but should remain the servant of the owner of the mother until the age of twenty-five in the case or males and twenty-one in the case of females. This act was re-enacted in 1820,[5] with added provisions. The court held that the constitutional provision cited by the plaintiff never was intended

[1] State *v.* Emmons, p. 328, *infra*.
[2] Rev. Laws, 1833, p. 374.
[3] 1 Spencer 368 (1845).
[4] Statutes, 29 sess. 1, p. 460.
[5] Rev. Laws, 1821, p. 579.

to abolish slavery. A concurring opinion by Randolph, J., discusses the problem in considerable detail. Hornblower, C. J., dissented.

The New Jersey legislature removed all doubt on April 18, 1846, by an act [6] which formally abolished slavery as such, but retained its essence by holding the old slaves to service, thereby removing the odium of slavery while preserving the vested rights of the owner to the services of former slaves. Notwithstanding the state's policy of gradual emancipation of slaves, an act of December 26, 1826,[7] made provision for the return of fugitive slaves found in New Jersey. This act was amended in 1837 [8] to provide for the trial of such cases before a court of three judges, with the privilege of a trial by jury.

In 1797 the Supreme Court held that Indians might be slaves in New Jersey.[9] There was no necessity for special legislation covering Indian slavery since no distinction existed.

In 1821,[10] the act of March 14, 1798, imposing penalties for transporting slaves out of the state, was invoked by the plaintiff in an action to recover the value of a slave carried as a passenger from Elizabeth to New York on a ferry-boat belonging to the defendant. The Court of Errors affirmed the judgment of the state Supreme Court in favor of the plaintiff, in spite of the fact that actual knowledge of the slave's status and intent to carry him out of New Jersey were not proved affirmatively. It was considered that the color of the man was sufficient evidence that he was a slave.

II.

Prior to the constitution of 1776, the colonial courts of New Jersey were rooted in the county court, from which appeal might be taken to the provincial court, thence to the governor in council, and finally to the crown.

Under the state constitution of 1776, supreme judicial power rested in the Court of Appeals composed of the governor and council. The state Supreme Court, from which appeal could be taken to the Court of Appeals, was composed of judges selected by the council and assembly for five-year terms. The county courts were, of course, vested with original jurisdiction.

Under the constitution of 1844, the judicial power of the state was vested in a Court of Errors and Appeals, a Court of Chancery, a Supreme Court, circuit courts (corresponding to county courts), and such inferior courts as then existed. The Court of Errors and Appeals consisted of the chancellor, the justices of the Supreme Court, and six judges of the Court of Errors and Appeals itself. The circuit courts were to be presided over by one or more of the justices of the Supreme Court. Litigants could go from the circuit court to the Supreme Court, or directly to the Court of Errors and Appeals by writ of error.

[6] Rev. Stat., 1847, p. 382.
[7] Compilation, 1833, p. 145.
[8] Digest, 1838, p. 531.
[9] State *v.* Van Waggoner, p. 327, *infra*.
[10] Gibbons *v.* Morse, 2 Halsted 253.

State v. Lyon, 1 Coxe 403, April 1789. "This was a *habeas corpus*, commanding the defendant to bring up the body of Margaret Reap, whom he detained and claimed as a slave. . . Williamson, for defendant, moved to quash the writ, on the ground that it had been issued *improvide*, without any affidavit being filed or cause being shown. . . it is necessary and highly reasonable that some [404] grounds should be shown to satisfy the court that it is proper and necessary." Held: "There must have been some ground exhibited to the judge who allowed this writ, or . . he would not have done it."

"For the defendant it was then moved that he should not be compelled to answer the writ until security was given that the [405] costs should be paid in case the negro should be adjudged a slave. . . [406] In support of the claim to freedom preferred by the negro, various testimony was produced, some of which being parol— "

Per Curiam: "It has been the constant practice of the court in cases of this kind to hear *vivâ voce* testimony when offered. The general principle in the admission of evidence is, not that courts are restricted by narrower rules in receiving testimony than juries are, but that they being able to discriminate between that which ought to be listened to, and that which should be disregarded, are not prohibited from hearing any evidence which they may think calculated to illustrate the subject before them. . . [407] The evidence . . on the part of the negro was—1st. A deed of gift . . from Zaccheus Moyen . . to Lucy Little, by which he conveyed to her his title to Flora, a negro girl, the mother of Margaret. 2d. That . . Lucy Little, . . intermarried . . with . . Dr. Joseph Eaton, and that they came . . to Shrewsbury, . . and brought Flora with them. 3d. Dr. Eaton, . . sold Flora, . . to John Worthley, who, . . conveyed her to John Williams. 4th. Williams sold Flora again to Dr. Eaton, . . It was further proved, . . that Dr. Eaton, . . repeatedly . . declared that he was principled against slavery; that he never intended Flora to belong to his estate, nor should any of his children be entitled to hold her as their property. Lucy Eaton survived her husband, and, . . sold a spinning wheel . . saying that she had no further use for it, having set Flora free, . . Since that period, Flora has been considered, . . as a free woman. No claim to hold her as a slave was heard of for seventeen years. She worked as a free woman, in the neighborhood of the widow Eaton, and occasionally for her, and for the wife of John Eaton, the eldest son of the doctor, who always paid her wages. . . she married Joseph Reap, a free negro, . . Flora, . . [408] had two children, . . These children lived with their parents, . . until Margaret [daughter of Flora] was seized and carried away forcibly. . . The only evidence offered on behalf of the defendant, was an affidavit taken *ex parte*, . . its admission in evidence was objected to by the attor-

ney general. . . [415] We have maturely considered the questions involved in this case, and are of opinion that the negro must be discharged. It is true, . . that negroes claiming their freedom, must prove themselves entitled to it; . . we think there is sufficient evidence to establish her freedom. The declaration made by Dr. Eaton at so early a period, the apparent dereliction of every claim after his death, the express declarations of his widow, . . and unmolested enjoyment of freedom, . . are *prima facie* evidence of the freedom, not only of the mother, but the daughter, sufficient to put defendant on proving a strict legal property. This he has not done, and the court are warranted in granting the discharge prayed for. Negro discharged."

State v. Administrators of Prall, 1 Coxe 4, April 1790. "a *habeas corpus cum causa* had issued . . to the defendant, commanding him to bring up the body of negro Tom. The administrator . . brought up the negro, and claimed him as a slave of the intestate, at the period of his death. . . From the testimony of several witnesses . . it appeared that, about three years before his death, the intestate declared that Tom had been a faithful servant to him; . . that he should never serve another master, but be free at his (the intestate's) death. . . that these declarations had subsequently to this period been made repeatedly and to different persons, and that the intestate always manifested and expressed a peculiar affection for Tom. During his last illness, when he was asked what should be done with his negroes, he ordered them all to be sold, with the exception of Tom, who he said should be free. . . Tom had ever been a faithful and affectionate servant."

Held: [5] "The proof in this case amounts to an actual manumission by the master, to take effect on the happening of a certain event, viz., his own death. It appears that Prall, the intestate, frequently declared that Tom should have his freedom—that the other negroes should be sold, but Tom should be free. These declarations mean something more than an intention hereafter to enfranchise. If, however, the evidence be considered in the light contended for by the counsel for the defendant, as proving nothing more than a promise to liberate at some future period, still we think the obligation of this promise is binding on his representatives, and that the negro cannot under such circumstances be detained in slavery. Negro discharged."

—— *v. Gaston*, 1 Coxe 52, April 1790. "This was an action of debt, to recover the penalty for trading with Gaston's negro. The justice gave judgment for £4 1 *s.* 6 *d.*, in favor of Gaston." Held: "Reverse the judgment. The action should have been *qui tam* on the act, and the judgment only for the penalty of 20 s., to the use of the poor," [1]

State v. Anderson, 1 Coxe 36, September 1790. "This was a *habeas corpus* to bring up the body of negro Silas. . . it appeared that John Horsfield was possessed of two negro girls, . . slaves. By his will, . . he devises thus: '*Item*, my two negro girls, Betty and Nelly, I leave to be sold by my executors, for . . fifteen years, and at the end of that term,

[1] Act for regulating slaves, 1713-1714.

to be free; and the money arising thereby to be equally divided amongst my daughters.' He further ordered, that if the said girls became chargeable or misbehaved, it should be at the risk of the buyer. The executors, . . sold the two negroes for the term . . to one Covenhoven, who sold them to the present defendant. During the term Betty had a child, [Silas, the negro in question,] who was now of full age. Anderson claims him as his slave, contending that his mother continued in a state of slavery until the expiration of the fifteen years. The court were of opinion that Silas was not born a slave, and discharged him from the service of Anderson. The Chief Justice, . . said, that . . the purchasers . . could acquire only a temporary, . . interest in these girls. On the death of the testator, they ceased to be slaves; . . Their time of servitude was limited to a definite period; they were therefore servants for a term of years, and entitled to their freedom. The issue born during that period, therefore, could not be slaves; they follow the condition of the mother, who was not one. The issue of servants are free. The hardship pretended by the defendant, does not alter the case; the loss he may have sustained by the temporary incapacity of the mother ought not to be recompensed by the slavery of the child. . . the will directs that the risk shall be upon the purchaser. . . [37] the purchaser had no interest in Betty beyond her service for fifteen years; he cannot, therefore, pretend to any rights which result from the mere condition of slavery. Negro discharged."

State v. Farlee, 1 Coxe 41, November 1790. " a *habeas corpus* to bring up the body of negro Joe. *Leake*, for Farlee, . . insisted that this being a claim of property, no man could, under the constitution and laws of the state, be ousted of his property, . . unless by the intervention of a jury . ."

Held: [42] " We have no power in such a case to order a jury. This is not directly a case of property—it is one of personal liberty—it is a writ of right, intended for the protection of individuals against arbitrary or illegal detentions, and we are to decide upon it in our constitutional capacity, . . the court had refused similar applications."

State v. Beaver, 1 Coxe 80, April 1791. " A *habeas corpora* was directed to defendant for Abraham, a negro, and his wife, Dolly. . . Defendant returned that they were his slaves for life, and prayed it might be inquired of by the country. For the trial [81] by jury, Leake insisted that a *habeas corpus* was not a summary proceeding, and that error would lie on it,"

Held: " This point is settled in the case of *The State v. Farlee*: take nothing by your motion. The court remanded the negroes to the administrators. There was some evidence of declarations by the master, manifesting an intention to liberate them, but the testimony was not satisfactory."

State v. Pitney, 1 Coxe 165, May 1793. " On *habeas corpus* for negro Prince. It appeared that Jasper Smith, . . by his will manumitted all his slaves, of whom the mother of Prince was one. The administrators . . to whom all the personal estate was bequeathed, joined in the sale of Prince

to Pitney." Held: "The boy is entitled to his freedom, whether the administrators have given the security required by the act or not."

State v. Shreve, 1 Coxe 230, September 1794. "*Habeas corpus* to bring up the body of negro James. It appeared that the mother of the negro had bound or sold the boy until he should be twenty-seven years of age, and that the negro was more than twenty-one years old." Held: "The parental authority to dispose of a child's services ceases when the latter arrives at the age of twenty-one; and in this case, the negro, being above that age, is entitled to his freedom. Negro discharged."

State v. Justices, 1 Coxe 244, November 1794. "By an act of . . 1792, the sheriff . . is directed to advertise an election, for fixing on a place where the jail and court house for the county shall be erected; . . the election shall be by ballot, . . These proceedings have been brought before this court by a *certiorari*, issued on the application and complaint of some [245] of the inhabitants . . the following facts . . appear: 1st. The inspectors or some of them objected to some of the voters, and demanded that they should be put to the test required by the act of assembly. Instead, . . the bare declaration of the voter was received as conclusive evidence of his being qualified; . . 2d. A negro man was admitted to vote, who had no legal residence; and his declaration that he had been manumitted in another state, was received as sufficient proof of his being entitled to a vote. . . [254] if a vote is objected to, it shall not be received, until the person who offers it takes the oath of allegiance, and, if required, that he is worth £50, and has resided within the county one year. The provision is a good . . one; . . The bare word of one man that he was qualified, the affirmation of a black man that he had been manumitted, were held sufficient to entitle these persons to vote for the place where the court house and gaol were to be erected. . . [255] We are, therefore, unanimously of opinion that the election is illegal and void, and must be quashed."

State v. Frees, 1 Coxe 259, November 1794. "On *habeas corpus* to bring up the bodies of Henry, Dinah, and Susan, negroes, detained as slaves by the defendant, who claim their freedom. . . the negroes had been the property of Robert Patterson, who appeared to have had an intention of setting them free, and in casual conversation with third persons, and sometimes in the presence of the negroes themselves, had declared this intention. No express promise or understanding was proved; Patterson made his will, devising all his real and personal estate, without mention of his negroes' freedom. His executors sold the slaves to Frees for £157. The court disallowed the claim, and remanded the negroes, holding that these casual . . declarations, unaccompanied with any particular act or formality, were insufficient to give them their freedom. . . And as testator had devised away all his real and personal estate, they must go with the other property, and legally belonged to the defendant. *Leake*, for Frees, the master, moved for a rule upon the abolition society of Salem (which society was endorsed as the prosecutor of the writ,) to show cause why they should not pay the defendant's costs and expenses.

. . refused by the courts, . . it was a laudable and humane thing in any man or set of men to bring up the claims of these unfortunate people before the court for consideration."

State v. Mount, 1 Coxe 292, April 1795. "On *habeas corpus* to bring up the body of negro Grace. A *habeas corpus* had issued in the vacation, . . It appeared that one Mary Pope, being the mistress and owner of the negro, conveyed her, by a bill of sale legally executed, . . for the consideration of £5, to Thomas Kerlin and his wife, to hold to them and their heirs forever. At the end of the bill of sale followed these words: 'And the said Thomas Kerlin doth covenant and agree, that if the said Grace shall serve him ten years without having children, then at the end of the said ten years to offer her her freedom. . . about four years after the sale, (Grace having had an illegitimate child within that time,) Kerlin sold her to Mount as a slave, after which, and within the period of ten years, she had several more bastard children."

Held: [293] "The first bill of sale was absolute; she was actually sold a slave, and the condition in her favor was a condition precedent, which she was bound fully to comply with before she could claim the benefit arising out of it. Unless she performs this condition . . the conveyance becomes absolute, and the property of the master is not divested. . . she was bound to inform herself of the condition in her favor, her mistress having sold her on these terms, without any stipulation in the bill that Kerlin should give her notice of the fact. Negro remanded."

State v. Heddon, 1 Coxe 328, May 1795. "A *habeas corpus* had in this case been directed to Heddon, the gaoler of Essex county, . . it appeared that Cook was committed to gaol in October, 1793, . . on the supposition of his being a runaway slave; . . he had been kept under . . restraint from that period, without any commitment by a justice. He was claimed by Snowden as his slave,"

Held: [329] "Mr. Snowden now comes forward and claims him as his slave. . . to make out this title to him he produces a bill of sale . . from I. Heard, executed, I think, since the commitment. Capt. Thomas, . . swears that Heard and himself together, . . bought this lad from one Conner, in Philadelphia, for forty guineas: that the boy lived with him about a year, when he conveyed his right . . to Heard, with whom he lived until he ran away. . . Two witnesses prove that Conner had the negro in his possession at New York, and that Heard had him in New Jersey. On the other hand, it has been proved that, . . before the surrender of New York to the American army, . . this boy, then about twelve or thirteen years of age, was in the service of Colonel Tarleton, . . he belonged to the regiment, and was considered as a prisoner, and not as a slave. When Tarleton went to England, he left this boy with a servant woman, . . it appears to me that whether Cook is a freeman or not, is a question upon which this court are not, at present, called upon to give any opinion. Whether Snowden has made out his claim so as to entitle him to the order of the court, that the boy should be delivered to him, is another upon which it is necessary that we should give our decision. . . It is a notorious fact . . [330] that Lord Dunmore, in order to distress

the State of Virginia, . . attempted to arm the negro slaves against their masters; . . and, to induce them to this measure, he proffered them their freedom. . . many were so far seduced by his promises, as to leave their masters and join his forces. . . If the negro, originally, went voluntarily to the British, as to them he was undoubtedly entitled to his freedom; . . if he was plundered, or taken as the property of an enemy, some authority should be produced to warrant the robbery, or the decision of some court to sanction this alleged transference of property from the original owner. . . In either of these points of view I am unable to perceive the justice of Snowden's claim, or the propriety of sustaining it, . . [331] Nor can any inference be derived from the possession and the acquiescence of the boy. If his going originally to the British was voluntary, the fear of punishment might have induced him to submit to almost anything, in preference to a return to his American master. If taken by force, his conscious inability to prove the compulsion might have suggested the same apprehension. . . The claim of Snowden is, in my opinion, therefore, not proved with sufficient clearness to warrant me in saying that he has any property in the boy. No other claim has been preferred, and after so great a length of time he ought to be liberated from his confinement," Negro discharged.

Dissenting: "I think we may reasonably infer that there is scarcely a probability that a negro boy of thirteen or fourteen . . should be entitled to his freedom in Virginia. . . Whether the black is entitled to his freedom, therefore, we are without the means of ascertaining. No claim to detain him in gaol seems to be supported, . . What is to be done with him? is the next question. . . a person applying for his freedom, must show that he is free, . . and whenever the negro applying has failed in doing this, he [332] has been remanded to the custody of the person in whose possession he was, . . I am therefore of opinion that he should be delivered to the person in whose possession he has so long been—I mean Heard, or those who claim under him." [Chetwood, J.]

State v. M'Donald and Armstrong, 1 Coxe 332, May 1795. "*Sur habeas corpus* to bring up the body of negro Phillis. . . The case, . . appeared to be as follows: That, in 1776, Sarah Linn, the mother of witness, purchased the negro from the executors of her husband. After this, Mrs. Linn frequently told witnesses that Phillis should serve no one but herself, and that after her death, the negro should be free. In 1783, Mr. Hanna addressed witness' mother, and afterward married her; but, previous to the marriage, witness heard his mother tell Hanna of her intentions with regard to Phillis, that she should be free. In 1785, Mrs. Hanna died. The negro then left Hanna's house, and went to live with Mrs. Armstrong, a daughter of Mrs. Hanna, at whose house, . . she worked as a free woman, until about two years since, when she quitted Pearson's, and has since worked at different [333] places for herself, until last February, when she was seized by M'Donald, under a bill of sale from Hanna, conveying all his right to her. During the period between 1785 and 1795, . . Phillis had married a free negro, and had three children by him."

Held: [335] "This negro woman was a slave of Mrs. Hanna, and during the period of her ownership, and before her marriage, she frequently declared that Phillis should be free at her death, and that she should serve no other person. She made use of the same language to Mr. Hanna, . . and in fact after her death, which was in 1785, Phillis became free, and was allowed to remain free until 1795, when, for the first time, a claim asserted under Hanna's bill of sale, and this woman and her three children are seized by these speculators in human flesh, and claimed as slaves. We are of opinion that these declarations of the mistress, Hanna's acquiescence for so long a period of time, and the circumstance of the negro's having enjoyed her freedom from [335] the death of the mistress, are sufficient evidence of her right to liberty at the death of Mrs. Hanna. In equity, a thing agreed to be done is looked upon as done; and in a case where the liberty of a human being is involved—where the promise is coolly and deliberately made—it ought to receive from this court a similar construction. It is far better to adopt this rule than to suffer promises thus made, in a matter of so great consequence to a human creature, to be violated or retracted at pleasure. Negro liberated."

State v. Van Waggoner, 1 Halsted 374, April 1797. "This was a *habeas corpus*, which had issued to bring up the body of Rose, an Indian woman, claimed as a slave. Brown, whose affidavit was read, swore that he knew the mother of Rose, who was an Indian woman, and lived with one Vangeson. Vangeson, never . . claimed her as a slave, but called her a North Carolina squaw. . . On the part of the defendant, it was proved that the mother was purchased as a slave, and had continued in that capacity for fifty-five years; that both mother and daughter were considered as slaves, and stated by the person under whom the defendant claimed to be such."

Held: [376] "The *habeas corpus*, in this case seems to have been sued out under the supposition that an Indian could not be a slave under our laws. But this idea is contradicted by various acts of assembly, some of which have been cited on the argument,[1] and indeed it cannot be urged with any shew of reason. They have been so long recognized as slaves in our law, that it would be as great a violation of the rights of property to establish a contrary doctrine at the present day, as it would in the case of Africans: and as useless to investigate the manner in which they originally lost their freedom. With regard to the proof . . that . . adduced on the part of the state appears to have been almost exclusively founded upon the supposition . . shewn to be erroneous. The defendant has proved, that the mother of Rose was purchased as a slave many years ago; that for upwards of fifty years the mother and daughter have been held as slaves, and no claim for freedom was ever thought of before the year 1796. The slender circumstances and vague expressions on the other side are insufficient to overturn this testimony. We therefore think that the slavery of Rose has been sufficiently proved, and that she must be remanded to the custody of her master."

[1] Act of Mar. 11, 1713-1714; Act of May 10, 1768.

State v. Emmons, 1 Pennington 10, May 1806. "The claims of freedom in the above causes, are founded on two manumissions, purporting to be signed, one by John Emmons, and to bear date on the 16th day of June, 1803, declaring the freedom of the negro Richard, otherwise called Dick. And the other by John Emmons, and Mary his wife, and to bear date on the same day, declaring the freedom of negro Phebe, . . The defence set up, questions the validity, in point of law, of the said manumissions; and also, that the said manumissions were respectively obtained by fraud, or by forgery. Now it is agreed that the question of law arising on the said manumissions, whether effectual to enable the [11] negroes named . . to a discharge on the present *habeas corpus,* as free persons, be submitted to the Supreme Court, . . at the . . September Term."

Held: "The case stated for the opinion of the court, places the claim of these two black people, to their freedom, upon two certain deeds of manumission, . . These deeds were not executed in [12] the presence of two witnesses, as the act of 1798 requires; and for this cause alone, their validity is questioned; . . The defendants . . rest upon the decisions . . on the acts of 1713-14, and 1769. The act of 1713-14 recites that it is found by experience that free negroes are an idle slothful people, and prove very often chargeable to the place where they are; and, therefore, enacts that every master manumitting his slave shall give security to the Queen, in the sum of 200 pounds, that he will pay yearly to the slave . . the sum of 20 pounds—and that upon refusal so to do, the said manumission shall be utterly void, and of none effect. . . The giving of the bond, . . intended for the benefit of the township, . . the court so construed the act, as to make this particular intent limit the generality of the words in the last clause; yet in all controversies between the person manumitting and the master, [13] it should be valid, . . The object . . was to secure the townships against the expense of maintenance; . . But . . the manner of manumitting was not prescribed by those acts, and the courts, in favor of liberty, had gone a great way in supporting manumissions, which were not very precise and determinate; and . . as frequent applications were made for discharges, on the ground of loose conversations, conditional promises, . . to the . . expense of those who had lawful right; . . the Legislature, in 1798, thought proper to take up the subject anew, and expressly enacted, that every negro, Indian, mulatto or mestee, within this State, who . . was a slave . . should continue to be such, unless manumitted and set free in the manner prescribed by law. . . It is to be by writing, under hand or seal, executed in the presence of at least two witnesses; . . When . . I see the Legislature enact that every slave . . shall continue to be a slave . . unless manumitted in the manner prescribed by law; and when I see the same Legislature, . . prescribe that manner, . . [14] I hold myself bound to say, that the instruments in question cannot prevail."

Dissenting: "It is contended that these deeds not being executed in the presence of two subscribing witnesses, . . are 'void to all intents and purposes; and so far as respects the State and the master, . . this

declaration is undoubtedly correct. . . Taking up then, these three acts, . . I confess, that although our legislators have made use of different modes of expression in their formation, and have according to the progress of humanity . . made the terms of [15] manumission more safe and easy for the master, and beneficial to the slave, as far as respects this question, I see no difference in the construction to be put on them. . . And as it has . . been decided by this court, that proofs of partial freedom, abundantly less than that now before us, . . were amply sufficient to discharge the slave from all claims of the master, . . to the actual service of him, with whom the contract of partial freedom was made. For the sake of uniformity in our decisions, as well as in the aid of liberty and humanity, . . I cannot but believe that the instruments in question, completely exonerate the blacks, Dick and Phebe, from all claims of personal service."

Concurring: [17] "I take it for granted, that these negroes were slaves . . in 1798, . . and if they were, the only inquiry under that statute would be, have they been manumitted in the manner prescribed by the act of 1798; they certainly have not, in which case, according to the terms of the act, they must continue slaves, and cannot be deemed and adjudged to be free; but their manumission is absolutely void and of no effect. . . [19] That the deed of manumission should be executed in the presence of at least two witnesses, appears to me, to be a solemnity introduced by the Legislature, for the purpose of preventing fraud and perjury, . . [20] If the law is a hard one, be it on those who made it; I had the honor of a seat in the Legislature when it passed, and opposed my feeble abilities to the section on which the defendants ground their defence; but I was not so fortunate as to induce the house, to which I belonged, to think with me. It, therefore, became a law, and sitting as a judge, I feel myself bound to give it its full operation and effect. Judgment for the defendants."

State v. Quick, 1 Pennington 413e, March 1807. "On *habeas corpus*, for negro Dick. The defendant returned that he was entitled to the services of negro Dick, as his slave, during life. . . it appeared in evidence that negro Dick was formerly a slave in . . New York, . . and while the said negro was a slave, and residing with his master in the State of New York, Sir James Jay, . . purchased him of his master. . . That he passed through the hands of several masters, when at length the defendant bought him."

Held: [414e] "Dick claims his freedom, because, . . under the laws of . . New York, he is made free; if so, it must be that he was free before he was brought into this State; for the [415e] State of New York cannot extend into this State . . nor does the law of New York intend any such thing. If he is free by . . act of . . New York, it is because Sir James Jay purchased him with intent to bring him into . . New Jersey, and here sell him. . . Sir James keeping him in his own employment for at least two years, and then not selling him until after there

was a difference between him and the negro, is to my mind, evidence of a contrary intent. . . Verdict for defendant."

Den, Lloyd v. Urison, 1 Pennington 212, May 1807. "Joseph Wright, called Joseph the first, was seized in fee of the premises . . he made his last will . . and devised . . his estate in the following manner:—To Joseph Wright, his son, he gave £200 [213] and a mulatto. To his son James Wright, he gave all and singular the lands . . he bought of Margaret Keniman. To his son, Thomas Wright, he gave the plantation and tract of land . . and a negro boy. In the devises to Thomas and James, he provides, that in case either of them should die before he arrived at the age of 21 without issue that in such case, the plantation so devised to the son so dying under age without issue, should go to his son Joseph Wright. . . testator died seized of the land . . Thomas, . . entered . . and . . died intestate without issue . . Joseph, . . devisee in remainder, . . entered on the premises; and . . died intestate, leaving issue Thomas the second, and another child named James, . . James . . died intestate, without issue, in the lifetime of the said Thomas . . who thereupon entered on the remainder of the said premises, and was seized in fee of the whole. . . Thomas . . died, seized in fee of the premises, intestate, and without issue. That Joseph Wright, the second, father of the said Thomas, . . intermarried with Lydia Lambson, by whom he had issue the aforesaid, Thomas Wright, the second. . . after the death of . . Joseph, . . Lydia intermarried with Isaac Bilderback, by whom she had issue one child, Margaret, one of the lessors [214] of the plaintiff. . . on the death of Thomas the second, James Wright, . . uncle to the said Thomas . . entered on the premises . . claiming the same as heir-at-law to . . Thomas . . That the lessors of the plaintiff demised the said premises to John Den, who entered and was expelled by the defendant," Held: [220] "On the whole, . . I am of opinion, that the *postea* be delivered to the defendant."

Heirs of Potter v. Potter's Widow, 2 Pennington 415 o, May 1808. "The plaintiff demands of the defendants one hundred dollars, for keeping Jin, an old and infirm black woman, who was the property of the said Caleb Potter at the time of his death, and for finding her meat, drink, and clothing, for six years since the death of the said Caleb, when according to the statutes and customs of the State of New Jersey, the said defendants, heirs as aforesaid, were bound to support and maintain, at all times after the death of the said ancestor, the black woman; but which upon demand, they the said heirs refused to do; [416 o] and therefore, the plaintiff . . brings this suit. The defendants pleaded verbally that they owed nothing. The plaintiff obtained a judgment for $40.08. The defendants brought this *certiorari* to reverse the judgment. The counsel for the plaintiffs in error raised . . objections, . . The one on which the court decided the case was, that it did not appear by the state of demand, that the maintenance of the wench was at the request, or by the direction or authority of the defendants; that even if the defendants were liable to support the slave, which he denied, yet that it did not lay in the power of any person

to furnish that support without their approbation or request, and then bring an action against them for it. . . The Court gave no opinion as to the persons liable to support the slave, or the manner of compelling it; but were clearly of opinion, that the plaintiff below could not take upon herself to maintain the slave, and then bring an action for such maintenance; and reversed the judgment."

Prall v. Patton, 2 Pennington 570, September 1809. "Patton was the plaintiff below, and brought an action of *assumpsit*, against Prall, on the warranty of two female negroes, sold by Prall to Patton, at Baltimore, . . Patton alleged . . that Prall warranted the negroes to be slaves, but that the negroes were free. . . After Prall had left Baltimore, the negroes found friends, who set up their freedom under the laws of Maryland, . . A record of a judicial proceeding had in the County Court of Hartford county, Maryland, between the negroes and Hicks was offered in evidence by the [571] plaintiff below. . . this evidence was objected to by the defendant . . Prall; but admitted by the court. A bill of exception was taken to the proceeding below; . . this writ was brought."

Held: [574] "As the record from Maryland is between other parties, it was *res inter alios acta* and *prima facie* inadmissible. . . The issue below, was freedom of the negroes at the time of the sale. . . [575] after the departure of Prall from Baltimore, Hicks interested himself in favor of the negroes and at his instance they were taken out of the hands of Patten [*sic*], and were taken to Hicks' house; and while there, the negroes petition the court, stating that they were free, and that Hicks unlawfully held them in servitude, Hicks . . says, that he cannot deny the fact, and the negroes have judgment. This record was offered . . to prove . . the freedom of the negroes at the time of the sale. . . it was inadmissible . . and was calculated to mislead the jury. . . the record from Maryland, (putting out of view the evident marks of collusion) at most, goes to establish this fact, that the negroes were free at a time subsequent to the sale, by Prall to Patton; this might all be true, and yet they may have been slaves at the time of the sale; . . Judgment of the Common Pleas reversed, and a *venire de novo* awarded."

Anonymous, 2 Pennington 576, September 1809. "Application . . for *mandamus*, to two justices of the peace, and two overseers of the poor, to compel them to make a certificate for the manumission of a slave. The application was made on the part of the executor, to enable him to comply with the will of his testator. The facts . . were, that application had been made to the justices and overseers of the poor, who had met, heard the application, and decided against it,"

Held: "All we can do, is to compel the justices and overseers of the poor, to proceed to the examination of the slave, and to exercise the discretion rested in them by law: . . they have done that already. *Mandamus* refused."

Brooks v. Farmer, 2 Pennington 640, February 1810. "The action below, was an action of debt, brought for a penalty under the sixth section

of the act respecting apprentices and servants; for enticing away the servant of the plaintiff below, the defendant in this court; who obtained a verdict and judgment for $30, the penalty given by the act. It appeared . . that the servant enticed . . [641] from his master, was slave for life. That the justice, . . sustained the action, . . 'that although all servants were not slaves, he considered all slaves as servants.'"

Held: "The justice has mistaken the law; the act respecting apprentices and servants cannot, . . be construed as extending to slaves; the penalty created by that act for . . enticing away any clerk, . . or servant, does not embrace the case of slaves; it must be confined to the subject matter of the act, which is wholly aside from slaves; . . the act respecting slaves, has made provision on the same subject by creating a penalty for employing, harboring, or concealing a slave. Judgment reversed."

Nixon v. Story's Administrators, 2 Pennington 991, February 1813. "The action below was brought on the following state of demand: To carrying away black servants into Pennsylvania, $50.00; To cash paid Rodford Job, 25.00; To do. paid John P. Conover for their expenses, 25.00. The justice tried the cause, and rendered judgment against the defendant below, $50. The insufficiency of the state of demand was assigned for error. Ewing, for the defendants in error, . . endeavored to support this . . demand, by considering the first charge as for work and labor, in carrying black servants for the defendant below, and the two following charges, as expenses incident to it." Held: [992] "That will not do. It was probably intended as a charge for enticing away the servants of the plaintiff below; but it is vague and uncertain. Judgment reversed."

Potts v. Harper, 2 Pennington 1030, May 1813. "The error assigned . . was, that on the trial of the cause in the common pleas, the court admitted a black man to be sworn as a witness, without evidence of his freedom. The fact was, that the man had been considered and reputed by his neighbors, to be free from his childhood; but it was contended, that nothing short of proof that he was born free, or that he had been manumitted, and the instrument of manumission produced in court, would have been sufficient." Held: "We think the Common Pleas did right. Let judgment be affirmed."

Smack v. Warford, 1 Southard 306, February 1816. "The declaration on a sealed bill, . . for $55.25 with lawful interest, . . The defendant pleaded payment, . . the defendant offered to prove, that in 1798, plaintiff gave him a letter of attorney to pursue and arrest a negro of plaintiff's who had run away, and agreed if defendant would go in pursuit, and bring him back or cause him to come back, he would pay him one-half the negro; that he did pursue, but did not see the negro; that in consequence of the pursuit, the negro returned, and the plaintiff afterwards sold him for a certain sum. . . [307] The jury rendered a verdict, . . and found for the plaintiff 118 dollars, 17 cents, with six cents costs."

Held: [310] "the jury, before whom the cause was tried, should balance the accounts of the parties, and render their verdict for that balance

only. . . it is enacted, that if there be plea of payment, . . then upon the trial, if it shall appear that any part of the debt has been paid, it shall be the duty of the jury to discount so much, and to find a verdict for the balance, for which the plaintiff shall have judgment. . . [311] the verdict is right, and the judgment is right."

State v. Aaron, 1 Southard 231, September 1818. " The defendant was indicted in the Court of Oyer and Terminer . . for the murder of Stephen Conelly, a child, little more than two years old. . . being an infant and a slave, the court, assigned L. H. Stockton, G. D. Wall and Joseph W. Scott, esquires, as counsel to defend him. . . [232] It appeared in evidence, that the prisoner was born in July 1806, was of the ordinary size, and in the opinion of some witnesses, possessed the common capacity and intelligence: by the testimony of others, he was more cunning, and smarter in his play than was usual for boys of his age. Stephen Conelly, was a stout, healthy child, and on the 26th of August . . was found in a well, about . . 19 feet deep, having a curb two and a half feet high, so that he could reach the top with his hands, and it was in such a state that all the witnesses supposed it impossible for him to get over it. The well was about one hundred rods from two public roads, and the same distance from the house, in which, Stephen lived; . . Stephen was seen playing . . with the prisoner, a short time before he was missed by the family; and when they were searching for him, the prisoner was up in a cherry tree. Being asked if he had seen him, he said ' yes he is gone up the road; ' . . After the body was found and taken out of the well, he came up and seeing it lying there, he said ' so, you've found Stephen.' There was yet nothing in his manner, which excited attention or suspicion. That night he went to bed earlier than usual, and without his supper. The next morning he told a young lad, . . that he saw Stephen fall into the well; that he was ten or twelve paces off; that he then went up and saw Stephen splash the water, and then went on to pick up apples, which his master had directed him to do. Being asked why he did not tell of it, he gave no answer. The counsel for the prisoner, objected to any evidence of his confessions, as improper and incompetent, he being under the age of twelve years, . . [233] the court admitted the confessions in evidence. It then appeared that . . the jury went to the well that he might shew them, how Stephen got over. He shewed them. His master and one of the jurors then took him aside, . . He told them he had done it; that Stephen went to the well and put his hand on the curb, and he took hold of his legs and threw him over; . . [234] The case was ably argued, and the court gave a minute charge to the jury. The prisoner was found guilty. A motion was then made for a new trial, and it being desired by the court, that the opinion of the Supreme Court at bar, upon the several questions might be known,"

New trial granted: [245] " Were the confessions of the prisoner legally admitted? . . we do not understand that there was, at the trial, proof of promises or threats to induce the confession, but a decided denial of both. . . Were the prisoner an adult, his confessions, . . would be competent. . . [246] The confessions of any one, especially of one so very

young, and in an offence so highly penal, ought to be received with the strictest caution, and investigated with a desire to obviate their force. . . [247] In reviewing the propriety of admitting the confessions . . it will be recollected that evidence had been submitted to the jury, . . to prove both his capacity and the fact charged . . This evidence laid such a foundation for his confessions, that the court did not feel authorized to withhold them from the jury. . . Was Levi Solomon a competent witness? By the law of this state, . . blacks born after 4th July 1804, are placed in all respects in the situation of persons bound to service by the overseers of the poor. Levi Solomon was not then the absolute owner of Aaron. Aaron was not the absolute slave of Levi Solomon. They stood in the relation of master and apprentice. And without further remark as to the consequences of a conviction to the master, there is no doubt that he was a competent witness in this case. His exclusion furnishes proper ground for a new trial. In this opinion the court unanimously concur."

Den v. Vancleve, 2 Southard 589, September 1819. [617] "told witness [daughter of the defendant] to go with her sisters into the kitchen and help the black woman shell peas, which witness did, . . The black woman had the charge of getting dinner, and Mrs. Stevens never before gave witness such a direction." [620] "he asked a little black boy, belonging to defendant, where his master and mistress was?"

Gibbons v. Morse, 2 Halsted 253, November 1821. "This was an action of trespass on the case, brought by Morse against Gibbons under the 'act respecting slaves,' passed the 14th of March, 1798, to recover the value of a certain slave, the property of the plaintiff, and who had been taken passenger in one of Gibbons' ferry boats from Elizabeth Town to New York, and afterwards ran away and was lost. . . [255] Plea, not guilty. The cause was tried before his honour, the Chief Justice, . . and a verdict found for the plaintiff for . . $250, and a judgment rendered thereon. Upon this judgment two bills of exceptions taken at the trial, which were as follow: . . the plaintiff, . . produced in evidence Jonas Marsh, who said, that, that he knows Harry, the slave of the plaintiff; . . Zodoc Tooker, a free black man, testified that he knew Harry, . . that witness went to New York on the 4th of July, 1818, in the boat of Mr. Gibbons called the *Nonpareil,* and that Harry went in the said boat along with witness; that a black man, named Cato, was the captain and sailed the boat, and was . . [256] in the employ of Mr. Gibbons, and sailed her to New York; . . [259] The defendant, . . offered Cato Williams, a free black man, as a witness, who . . said—that he sailed the *Nonpareil* on the 4th of July, 1818; that he was not acquainted with Harry Morse, and did not see him about the dock on that day, or on board until they had got under way; . . that Mr. Gibbons told the witness not to carry persons he knew to be slaves without a pass; . . [261] the court charged the jury as follows:— . . [262] it is a settled principle, that the judges are to settle questions of law, and the jury questions of fact. . . the slave in question was the property of the plaintiff; . . he was carried from New

Jersey to New York in the defendant's boat, without the consent . . of the plaintiff . . that he who carried him . . is liable . . in damages . . If the matter rested here, therefore, there could be no doubt. But, . . to exonerate himself . . the defendant alleges— . . That the plaintiff, . . secretly connived at, . . the going away of this man, . . If you think . . the plaintiff did secretly connive . . then you will do well, . . to find . . for the defendant, . . [264] that neither he nor his agents knew this man to be a slave. . . in New Jersey, . . black men, . . are *prima facie* slaves, . . that this man, . . by stealth entered into his boat, and then concealed himself . . If from the evidence you should find this allegation to be well founded, I think the law is with the defendant. . . The jury rendered a verdict for the plaintiff for $250, . . and a writ of error brought," Affirmed: [271] "The court of Errors affirmed the judgment."

Chatham v. Canfield, 3 Halsted 52, September 1824. "The township of Chatham . . brought an action of debt before a justice of the peace, against the executors of Samuel Canfield, to recover the amount of moneys . . expended by said township, for the support of a negro named William, alleged to have been the property of the said . . Canfield, . . On the trial of the cause before the justice, a judgment was rendered in favor of the township. . . an appeal was taken to the Common Pleas, by whom the judgment . . was reversed; and to review this judgment of the Common Pleas, this *certiorari* was brought. The facts . . agreed upon . . were as follows:—' The plaintiffs gave in evidence an original order, . . on the overseers of the poor . . of Chatham, to pay to the said negro William, one dollar per week for and towards his support . . ' They also gave in evidence a notice from one of the overseers . . of Chatham, . . informing the defendants, ' that negro William, formerly belonging to their testator, was a pauper and unable to support himself, and that unless they . . provided for his maintenance they should consider them responsible for his support; ' . . And also a transcript . . of the will of Samuel Canfield, deceased, which . . contained . . the following clause: ' I hereby give . . to my sons John and Benjamin, two thirds of the residue of my real estate, provided they indemnify, from any charge, the rest of my heirs, for the maintenance of my negro William; but if they neglect or refuse to comply therewith, I hereby empower my executors to [53] sell and convey as much of their land as will indemnify said heirs.' . . negro William . . was a cripple from his birth, and although able to do some light work, never earning his subsistence, . . and when said negro was about twenty years of age, he went to live with Samuel Canfield, . . That said Canfield died, leaving a good farm of upwards of one hundred acres, and a good stack of farming utensils. He left a large family . . after the death of Samuel . . William was kept for some time by his sons John and Benjamin, alternately, . . William lived in the family of John, and in his service until the spring of 1821, when he was thrown upon the township of Chatham. . . It further appeared, that . . the township . . had paid the full amount . . for the relief . . of the said negro . . and that the said sum was no more than a reasonable compensation for the same.' "

Held: "The court are of opinion, that negro William was, . . the slave of Samuel Canfield, and therefore the judgment of the Court of Common pleas ought to be reversed. Judgment reversed."

South Brunswick v. East Windsor, 3 Halsted 64, November 1824. "Two justices of the peace of the county of Middlesex, at the instance of the overseers of . . South Brunswick, removed a negro man named Jack as a pauper from that township to the township of East Windsor, . . East Windsor appealed to the General Quarter Sessions by whom the order of removal was quashed. Jack, the pauper, is the slave of John Mount, who . . prior to, . . 1802, resided . . in the township of E. W., from which . . he removed into . . New York, where he now resides, and is of sufficient ability to . . maintain the said slave. It is conceded . . that the overseers of the poor of a township where a person needs relief, must provide for him, unless and until they can find some other person or township legally chargeable, and that the township . . cannot change their burden to another, unless a legal establishment in such other township can be established. On the part of S. B. it is shewn that the settlement of John Mount, the owner of Jack, was . . in . . East Windsor, and it is contended that the legal settlement of Jack is therefore in that township, . . the slave acquiring a derivative settlement from the owner. . . [65] our legislature have made provision, and to their enactment alone we must therefore resort for our guide. By the 25th section of the act respecting slaves,[1] . . it is enacted that the legal settlement of every slave manumitted . . who shall be likely to become a public charge, shall be in that township . . where the owner . . shall have a legal settlement . . By the 26th section . . that the owner of any negro or other slave not manumitted . . shall be obliged at all times to . . maintain such slave, provided, that if any such owner shall become insolvent . . then such slave shall be deemed a pauper, whose legal settlement shall follow the legal settlement in this state of his or her owner. . . [66] it is clear that unless a settlement can be shewn in E. W. in this case under the 26th sec. the slave not having been manumitted, no settlement exists. . . It is said the owner is not within the state, he has no property here, that a suit cannot be maintained against in the courts of New York where he resides and has sufficient property, . . The courts of . . New York would entertain a suit and enforce a recovery for the maintenance of the slave. . . [67] Every person unable to . . maintain himself is, *prima facie*, a pauper entitled to relief. . . In ordinary cases the township must provide for a pauper needing assistance, though he may have no other claim than his poverty on their bounty.—So in case of a slave. . . [68] On the whole, the slave, Jack, had no legal settlement in E. W.—the order of removal was unduly made. Let the order of the sessions, quashing the order of removal, be affirmed, with costs."

Cutter v. Moore, 3 Halsted 219, November 1825. "an action of trespass on the case . . to recover the value of a certain slave of the plaintiff, who was carried out of the state by the steam-boat of which the defendant

[1] Rev. Laws, 375.

was the captain, and afterwards ran away and was lost. . . Upon the trial of the cause before the Court of Common Pleas . . a verdict was found for the defendant under the charge of the court; to this charge the [220] following bill of exceptions was taken . . to this court,"

Reversed: [223] "Upon the trial in the court below of this action which was brought on the 5th section of the act of the 14th of March, 1798, . . the court, after the evidence of the plaintiff was closed . . charged the jury, 'that the plaintiff, had given no evidence to entitle him to recover.' . . It was fully proved at the trial, that Michael, the negro . . was the slave of the plaintiff; that he left the service of his master without consent; that he was put, in the same manner as other passengers, on board the steam-boat *Olive Branch*, . . and that he had been . . unsuccessfully sought for by his master, . . [224] Proof that the defendant was captain at a particular time, . . is *prima facie* evidence that he was then on board. Such was his duty, . . Proof that the defendant was captain and on board, is also *prima facie* evidence that he knew Michael, the negro in question, was conveyed . . from Amboy to New York. . . [225] Upon the authority of . . Gibbons *v.* Morse,[1] then I am of opinion the plaintiff had given evidence to entitle him in the absence of any contradictory evidence on the part of the defendant to recover, the charge was erroroneous, and the judgment should be reversed."

Fox v. Lambson, 3 Halsted 275, May 1826. "The plaintiff seeks to set aside the verdict [276] rendered for the defendant . . upon several objections to evidence admitted on the trial. I. The admission of Abel Comency. His testimony was resisted on the testimony of Hannah Keasby, and on the presumption of slavery arising from his color. Hannah Keasby testified, that her husband bought Abel of Henry Loomis's estate for a number of years; . . she could not say he was a slave—he said his master gave him a manumission in the presence of his mistress— . . the testimony of the declaration of Abel is to be laid out of the case. . . For if Abel himself, because a slave, could not be examined as a witness . . his declaration even to shew his condition could not be legally received as evidence . . [277] It is a settled rule . . that the black color is proof of slavery, . . which must be overcome before the witness can be received. . . Jonathan Hildreth testified that he knew Abel when in the service of Keasby and Reeves, as one bound for a term of years and not as a slave; that he served out his term with the latter, left him and was reputed free, had married and for more than 20 years had been in full and actual possession of freedom. And this testimony was . . abundantly sufficient. . . Color is not an absolute . . proof, but affords a presumption of slavery. . . [278] A long fruition of all the rights and privileges of a freeman raises a violent presumption of freedom. . . I am . . of opinion that Comency was rightfully admitted, . . [279] The remaining objection relied on for setting aside the verdict, is the admission of an entry . . in a book kept in the clerk's office . . of a certificate of manumission dated in 1797, for the purpose of shewing the manumission . . of Jubilee Sharp, a colored person offered as a witness. . . [280] An

[1] P. 334, *supra*.

entry by the clerk in a book in his office, of an instrument not previously acknowledged . . or otherwise authenticated . . does not in case the instrument is invoked as a matter of evidence stand in the place of the instrument . . unless such efficacy is given by . . statute. . . [282] The book containing the entry of the certificate of manumission was in my opinion improperly admitted. Let the verdict be set aside and a new trial ordered."

Boice v. Gibbons, 3 Halsted 324, September 1826. "This was an action of trespass on the case, brought by George Boice against Thomas Gibbons, . . for conveying away and assisting to convey away the slave of the plaintiff. . . [326] To this declaration the defendant demurred specially, and shewed to the court here the following causes of demurrer to the said declaration— . . That there is no averment that the defendant has been found guilty of conveying . . the said negro man Tom, . . That there is no averment that the said defendant was guilty of conveying . . the said negro Tom, . . that . . no allegation . . that the defendant . . knew . . Tom to be the slave of the plaintiff. . . [327] To which there was a joinder in demurrer."

Held: "The first objection is that the declaration contains no averment that the defendant had been found guilty of conveying away . . the slave; . . Neither in the language . . nor in the cases cited, do I find any support for this objection. . . [329] The second objection is, . . no averment that the defendant was guilty of conveying . . away the slave. . . Guilt implies knowledge and intention. . . To bring the defendant within the purview of the section . . he must have known the person to be a slave, and must have intended to carry him away. . . all black men . . are *prima facie* slaves and are to be dealt with as such. . . [330] I think it clear that the words of the declaration . . are not of the same import and would not require the same proof as the language of the statute,' . . The essential quality . . of knowledge or intention is not either directly or indirectly expressed with sufficient certainty. . . [331] there is no allegation the defendant knew the negro to be the slave of the plaintiff. Nor is it at all necessary such allegation should be made, . . The offence consists on conveying a slave— . . [333] The second cause of demurrer is sustained. The others are declared to be insufficient."

Fox v. Lambson, 3 Halsted 366, September 1826.[1] "In the term of May last, the verdict which had been rendered for the defendant, was set aside and a new trial awarded. . . Jeffers, on behalf of the defendant, now moved for judgment as in case of nonsuit against the plaintiff, because he had not carried the cause down for trial at the last Salem circuit, which was held on the second Tuesday of June last. Dayton, for plaintiff, opposed the motion. He said that there was not time between the delivery of the opinion of the court at the last term awarding the new trial, and the circuit, to notice the cause and prepare for trial, without he had imme- [367] diately upon the delivery of the opinion of the court, written to his client and given notice of trial! The opinion . . was delivered on

[1] Same *v.* same, p. 337, *supra*.

the eleventh day of May, and the Salem circuit commenced on the thirteenth day of June, so that to give twenty days' notice, . . would have left him but one week to transact his business at the Supreme Court, return home, communicate with his client and give notice of trial—this was too short a time. Justices Rossell and Ford, (the Chief Justice being absent from indisposition,) ordered judgment as in case of nonsuit."

State v. Guild, 5 Halsted 163, September 1828. "The jury having been sworn and affirmed, the prosecutor introduced his evidence, by which it appeared:—That Catharine Beakes, . . resided in . . Hopewell . . in a small house . . on the side of a public road. She was . . sixty years of age, and in good health; her family consisted of herself, her son, . . and a grandson, . . her son went to work . . her grandson went to school, and she was left alone in the house. [164] The prisoner was a colored boy, . . the servant of one Joshua Bunn, . . his house being situate . . on the opposite side of the road. There was a cornfield . . across the road . . in which the prisoner was that afternoon engaged, alone, in cutting up corn. . . M'Coy, . . saw the prisoner about twenty yards from the road, . . He halloed to witness . . and appeared in a good humor, . . Having some errand at the house, witness . . knocked; nobody answered. Witness concluded he could do his errand on his return, and left the door. . . and returned about five o'clock; . . he met the little boy coming home; . . He stepped into the door and flew back. Witness entered and saw her. She lay in the corner of the fireplace, her head near the back, but did not touch it. . . 'I put my finger on the top of her skull, and it appeared to be mashed in. I looked around and saw the yoke . . about, four feet off. There was some blood on the yoke.' . . [165] a coroner's inquest was held . . A constable went for the prisoner and he was brought up. He was asked if he knew anything how the old lady came to her death. He denied knowing. . . Daniel Cook, . . testified that 'the next day, . . I met some persons who told me they had got the murderer; that he had made confession. . . I had him put on my wagon. . . I asked him, Jim, did you kill the old lady? yes, said he, I did. . . I took his examination in writing. . . [168] The court excluded the written examination, . . Mr. Halsted offered to prove confessions made by the prisoner . . five months after the first; . . the confessions [were] permitted to be given in evidence. . . [171] Gentlemen of the jury, James Guild is indicted for . . murder . . [175] The jury . . returned a verdict of guilty. . . Mr. Scott, . . moved the court, . . to take the advisory opinion of the Supreme Court upon several questions of law . . This motion was acceded to by the court,"

Held: [178] "The first question . . respects the admissibility of certain confessions of the prisoner . . [184] we find no reason to disapprove of the conclusion in point of fact, . . to submit these confessions to the jury; . . [185] We are now to examine, . . whether the evidence . . was sufficient, . . to warrant the conviction of the prisoner. . . [189] The age of the prisoner was earnestly pressed . . by his counsel, who strenuously insisted he was too young to be exposed to punishment on such evidence. At the perpetration of the office he was aged twelve

years and somewhat more than five months. . . In regard to a youth of the years of the prisoner, the law most wisely requires the utmost circumspection from the jurors; and [190] . . . the jury were distinctly reminded of their duty. . . Under a deep sense of responsibility, . . and feeling the strongest impression of the tenderness due to the life of a fellow creature, we hold ourselves bound to advise the Court . . not to grant a new trial, but to proceed to discharge the solemn duty which remains to them, by pronouncing the sentence of the law on the crime of murder. The prisoner was sentenced and executed."

Upper Freehold v. Hillsborough, 1 J. S. Green 289, February 1833. [291] "A *certiorari* was directed to Andrew Howell, esq. to bring up a pass warrant, made by him as a justice of the peace of the county of Somerset, under the 33d section of the act for settlement of the poor,[1] . . The return shews, that a constable of Hillsborough in that county, apprehended and brought before him a colored girl named Jenny, and complained that she had strolled from her place of legal settlement, and was begging from house to house . . the justice took her examination in writing, . . touching her vagrancy, and place of settlement, and found the complaint to be true, and adjudged her place of legal settlement to be in . . Upper Freehold . . A motion is [292] made on behalf of the overseers of the poor of Upper Freehold to quash this warrant. A pass warrant contains the opinion of a justice, touching the vagrants place of legal settlement, founded on the examination of the vagrant herself, in the absence of all parties interested. . . It is not an order for the overseers of Upper Freehold to provide for her maintenance. If they do not admit her settlement to be in their township, they may have her removed in due form to the proper place. . . The question is, did the justice draw a fair conclusion from the evidence . . Upon her examination there was no room to hesitate; she was about fifteen years old and had lived the last ten years . . in Upper Freehold in the family of David Hay. . . a probability she owed service to him and was to have support from him. This probability became evident by the deposition of Mrs. Cornell, representing that David Hay was under contract to keep her till the age of twenty-one, for her services; . . Hay had carted her from Upper Freehold into Somerset, and set her down there in the highway, and left her to beg for subsistence. . . [293] I cannot say that there is any irregularity in the proceedings of the justice, or that he drew a wrong conclusion from the evidence before him. Therefore let the warrant be affirmed."

Stoutenborough v. Haviland, 3 J. S. Green 266, February 1836. "The declaration before the Justice contains two counts— . . The second count sets out an exchange of a negro boy and twenty dollars, for a wagon, and warranty by the defendant below, 'that the said boy was bound to serve according to the laws of New Jersey, till he was twenty-five years of age, . . that the defendant had good right and title to said boy, and to make sale and disposition of him.' . . 'that the said negro boy was a free boy, and that the defendant had no right and title to him, and to

[1] Rev. Laws 48.

dispose of him, in consequence of which he became of no value to plaintiff.' "

Held: "Before the court below, two principal questions were made, which have been reviewed here. Does the declaration contain a sufficient specification of a legal cause of action? Was it supported by proofs? [267] I am of the opinion that the second count in the declaration, is sufficient to support this action . . although it does not show any disposition of the boy; . . But the most important question in the case is, whether a person in possession of a colored boy under fifteen . . and selling him as 'his boy,' is by the law of this State, held to an implied warranty, a right to dispose of him, until he attain the age of twenty-five . . It was once the doctrine of this court, that every colored person was presumed a slave till the contrary was shown. . . I have more than once expressed an opinion, that this presumption ought no longer to be admitted, both from the . . fact, that the generality . . are not in truth held as slaves now, as well as from the natural consequence which must be supposed to follow our statute for the gradual abolition of slavery, yet it by no means would follow that a person . . would not be affected by an implied warranty of title. . . such a property may exist in New Jersey; . . Much more . . may the seller of such a boy . . be held to an implied warranty . . Such a boy cannot be a slave here. . . It further appeared in evidence, that the boy was, . . an indented servant, bound to serve to the age of twenty-one years. But that would not authorize a sale in this manner. . . [268] the evidence is, that on the discovering of the true situation of the boy, the plaintiff offered to restore . . him to the defendant, and demanded the wagon again. It was refused . . and the boy was abandoned by the plaintiff. I hold that the plaintiff was not bound to expose himself to an action for false imprisonment, wherein the recovery . . might be extended in the discretion of a jury, . . [269] This is a hazard to which the defendant has no right to expect the plaintiff to submit. . . Judgment affirmed."

Stille v. Jenkins, 3 J. S. Green 302, May 1836. [304] "The plaintiff brought this action in the year 1833, and declared on his possession of a certain colored boy who was bound to serve him until the year 1837, and that the defendant, knowing the premises . . harbored said servant in his steamboat at New Brunswick, and . . conveyed him to . . New York, whereby the plaintiff wholly lost the said servant . . for the term . . then unexpired. After a verdict . . for the plaintiff, the defendant moves in arrest of judgment, because the action is for . . future damages, . . that will not have accrued until August 1837. . . [305] It is objected that . . a total loss is laid in the declaration, which is more than the plaintiff could possibly prove. But the jury have found it total as it is laid. . . The plaintiff can never maintain a second action for this same injury, and all the damages he ever can recover must be awarded to him in this one. The jury had a right to consider [306] . . whether it was a total loss or not, and to award damages commensurate with what they believed to be the truth of the case. . . the rule to show cause why the judgment should not be arrested must be discharged."

Stillwell v. Pease, 3 H. W. Green 74, July 1837. [75] " Then I will that my son, John Pease, should come in, . . with my beloved wife, Martha Pease, to live; . . and that my colored man Jacob, and Hester his wife, should remain on said farm with said Martha and John Pease in co-alike in their maintenance, and clothing, and sickness and death, and that to be done for them as long as my beloved wife, Martha Pease, should live and remain my widow, c."

Force v. Haines, 2 Harrison (N. J.) 385, February 1840. " Henry Force sold the custody and services of his adult slave Minna, unto Elizabeth Haines, by deed, to be holden from September, 1822, till June, 1826, when the slave was to be returned to him. Elizabeth Haines, at the expiration of the time, . . tendered the slave to Mr. Force, and on his refusal either to receive . . Minna, or be accountable for her maintenance, she maintained the slave about two years herself, and then turned her out of doors. After . . about six months, Minna returned again to Mrs. Haines, who . . maintained her about seven years more; and then, . . declared against said Force, 1. . . she had furnished board, [386] clothing and necessaries for the slave . . that he afterwards promised to pay . . 2. That being indebted to her in $2000, . . The defendant pleaded *non-assumpsit,* and the statute of limitations. At the trial, the plaintiff proved the tender of the slave, . . his refusal to receive . . her . . that the plaintiff had maintained the slave, . . that she had a very bad temper; that she had lost the sight of one eye, by intemperance, and was partially . . blind of the other; that her services were of little or no value; and that her maintenance was worth a dollar and a half a week. There was no evidence of her being requested by Force, to maintain the slave, or that he ever promised to pay for it. . . the court refused a motion, . . for a non-suit, . . a verdict for the plaintiff, and damages to the amount of $300. . . Now the great and leading rule of law is, to deem an act done for the benefit of another, without his request, as a voluntary [387] courtesy, for which, no action can be sustained. . . The rule of law, that an act done for the benefit of another, without his request, will not maintain an action, need be traced no further back than the year, 1767, . . 'Even a moral obligation on the defendant to do the act, will not render him liable without an express promise to pay.' . . [393] The situation of Elizabeth Haines cannot be relieved without upholding this action for maintenance of a slave against the owner's will; without his request or any promise to pay for it, and in a case of no emergency; which would legalize interference with the private business of others, in a manner subversive of law, and mischievous to society. She ought not to have harbored the slave; but if actuated by pity towards an old servant, should have notified the overseers of the poor, who would have found a ready mode of compelling the owner to do his duty. The court erred also in not charging the law explicitly to the jury, as they were requested to do, and on both grounds, the judgment ought to be reversed." [Ford, J.]

Dissenting: [402] " This cause . . makes no appeal to our discretion or our sympathies—it presents for our consideration, an abstract question

of law: we are not called upon to say, whether the jury did write [*sic*] or wrong; but simply, whether upon the pleadings and evidence in the cause, the plaintiff below was entitled to recover at all. . . [403] The question then arises whether upon these facts, Mrs. Haines, was entitled to recover in this action, any thing, . . That she was so, . . I have not the least doubt. Not only, by the law of our nature, but by . . our statute, every master is bound to provide for, and support his slave. . . The law has not left it to the humanity, the averice [*sic*], or the caprice of the master, to say, whether he will or will not, support his helpless slave; nor yet, whether he will do it himself, or compel the public in the first instance to furnish such support, and then look to him for remuneration. . . That such is the principle of law, in the case of husband and wife, and of parent and child, will not be denied: and why it should not be so, in the case of master and slave, I cannot conceive, unless we are to degrade the slave to the condition of a brute, and deny to him those sympathies, which the law recognizes in relation to human beings. . . [404] suppose . . the overseers of the poor had received the slave, and afforded her relief; at whose expense . . There is no such thing in the [405] law, as an order . . on a master, for the maintenance of his slave. But how could the overseers . . maintain such action, upon the implied request of the defendant, . . any more than Mrs. Haines could? . . [410] in my opinion a man cannot excuse himself from paying, what by law he is bound to pay, by simply refusing to do so. . . I am . . strongly of opinion, that the judgment in this case ought to be affirmed." [Hornblower, C. J.]

Chance v. Teeple et al., 3 H. W. Green 173, January 1842. "The complainant holds a second mortgage upon the premises, and Grant, one of the defendants, a third mortgage. . . The only question is, whether the defendant, Grant, at the time of taking his mortgage, had actual notice of the complainant's mortgage: . . The answer of Grant denies notice; . . There is the direct evidence of one witness, a colored man, who proves that Grant called on Chance prior to the date of Grant's mortgage, and told him not to press Teeple, for he, Grant, would take the place next spring. . . [174] The master has probably felt himself bound by the principle, that two witnesses are necessary to overcome the answer of the defendant. This is not universally true; one witness and corroborating circumstances are sufficient. . . Decree accordingly."

Perth Amboy v. Piscataway, 4 Harrison (N. J.) 173, September 1842. [174] "James Bruen the pauper was formerly the slave of Joseph Stille of Piscataway, and was sold by him as a slave to Isaac Stille jr. of the same place, by a bill of sale, . . 1816. . . in 1825, Isaac Stille jr. sold the negro man either as a slave for life, or for a term of years, to M. Bruen of Perth Amboy. Whether this sale was, for life, or only for a term of years, is a fact in dispute between the parties. . . [175] counsel for Piscataway, produce the manumission papers of the negro, and M. Bruen's deed of manumission, . . 1832, in which he describes himself as the owner of the negro James, whom he thereby manumits and sets free. . . if James . . never was the slave of M. Bruen, then he has

never been manumitted, and is not a pauper subject to be removed by an order; at least not so long as his master Isaac Stille is able to provide for him. . . the court . . were the proper judges of this fact; and they have decided that James was the slave of M. Bruen. . . [176] All we have to do therefore, is to inquire whether the Sessions arrived at those conclusions by lawful evidence. . . Admitting therefore, that the deed of manumission, was some evidence, . . as against Bruen, that he owned the slave, was it evidence against the township of Perth Amboy? I think not. I cannot make a city or town liable for the support of a negro, by simply executing to him a deed of manumission. Whoever seeks to make the city liable, must . . prove, that he was my slave when I executed the deed. . . [177] The deed has no subscribing witness. The statute, Elm. Dig. 523, sec. 21, requires that the deed of manumission shall be executed in the presence of 'at least two witnesses.' . . Admitting, therefore, that M. Bruen was the absolute owner of the slave, he never manumitted him according to law; or in any such manner as to make him a public charge; . . Upon this ground alone then, . . the order of removal and the order . . must be quashed. But there is another fatal objection to these orders. . . an order was made . . removing this same negro man from Piscataway to Perth Amboy. It was executed . . the overseer of Piscataway abandoned that order, and certified . . that the order had been improvidently made, and that the pauper was not chargeable to Perth Amboy, and he thereby agreed to take back the pauper and [178] relieve Perth Amboy from the charge without an appeal, . . that desertion of the order did not preclude Piscataway from sending the pauper to any other place where his settlement might be found to be. For both these reasons therefore, I am of opinion both orders must be reversed, with costs."

State v. Post; State v. Van Beuren, 1 Spencer 368, May 1845. "Two writs of *habeas corpus* were sued out and returned to the May Term . . The object of these writs was to present for adjudication the questions, whether the constitution, adopted in 1844, abolished slavery in New Jersey, as well as the involuntary servitude of [369] the children of slaves under, the 'Act for the gradual abolition of slavery,' passed in 1804, and re-enacted in 1820. By the writ directed to Post, a slave was brought up, born previous to the 4th day of July, 1804; and by the writ to Van Beuren, the child of a slave born since that period, and held in servitude under the provisions of that act."

Held: "This proceeding is designed to present . . the question, whether slavery can exist within the limits of this state under its present constitution and laws; and it derives . . solemn importance from its bearing upon a class of human beings, . . held in slavery, . . much of the argument seemed rather addressed to the feelings than to the legal intelligence of the court. The first inquiry . . is: Has the relation of master and slave, or has the institution of slavery ever existed by law in . . New Jersey? And if it has: Has it ever been abolished by constitutional or legislative enactment? . . [370] The legislative records . . prove not only that slavery existed . . but that it was recognized . . as

a legal institution. . . In proof of this, I refer to the grants . . as early as 1664. . . [371] whilst we were yet a colony of Great Britain, the relation of master and slave existed here, . . sanctioned and regulated by law. . . in the year 1798, the legislature by statute declared, that every negro who was then a slave, should remain so for life; unless manumitted in the mode prescribed by that statute. . . How far these laws have been wise, . . or . . consistent with principles of humanity and natural and inherent right, it is not our province, . . In 1804, the legislature . . passed an act declaring, 'That every child born of a slave, after the 4th of July of that year, should be free, but remain the servant of the owner of the mother, . . until he or she should arrive at a specified age.' This law was re-enacted in 1820, . . Under the operation of these . . laws . . slavery has become nearly instinct [*sic*] in this state and must soon pass entirely away. . . [372] I think it sufficiently manifest, that when the new constitution came into operation, slavery existed by law in this state. . . [377] Upon the best consideration . . I am of opinion, [378] First, That the relation of master and slave existed by law, at the adoption of the constitution in 1844. Secondly, That the constitution has not destroyed that relation, or abolished slavery. Thirdly, That the colored man William should be remanded to the custody of the defendant, and for similar reasons I think a like order should be made in the case of The State *v.* Van Beuren; which is the case of a colored apprentice, under the act of 1820, for the gradual abolition of slavery."

Franklin v. Bridgewater, 1 Spencer 563, January 1846. "The pauper—a black girl, called Sarah Brocaw—was born on the 25th of February, 1819, . . [564] in the township of Bridgewater, . . the child of a female slave of Autun. . . The pauper served Margaret McCain, in Bridgewater, . . until . . Mrs. McCain sold her time of service . . to one Bergen Brocaw, of . . Franklin . . The pauper . . served him till she became twenty one years of age. . . An order of removal of the pauper was made, charging the township of Franklin,"

Held: [565] "The place of birth is, in ordinary cases and *prima facie*, the place of settlement. Children follow the settlement of their parents. In the peculiar case of children of slaves, born since the 4th day of July, 1804, provision has been specially made by statute. . . [566] By the 6th section of the act of the 10th of June, 1820, Elm. Dig. 416, 417, such children 'who have not been bound out to service by trustees or overseers of the poor, . . shall after the males arrive at the age of twenty-five, and the females to twenty-one years, be deemed settled in the township . . in which . . born; . . The pauper not having been bound out to service by trustees or overseers of the poor, . . and having [567] arrived to the age of twenty-one years, must be deemed settled in Bridgewater, where she was born. Besides, having duly served the owner of her mother, . . in the same township, for more than seven years, she further obtained by this service a legal settlement in Bridgewater; and is still chargeable to that township, . . Her service in Franklin, . . was for a period much less than seven years, and her settlement in Bridgewater remains unaf-

fected and unchanged. The order of removal was erroneous and with its affirmance in the sessions on appeal must be quashed."

Franklin v. Bridgewater, 1 Spencer 567, January 1846. "An order of removal of a pauper colored woman, from Franklin to Bridgewater, was made by two justices. Lavinia King, the pauper, who had become sick and chargeable to Franklin, was the child of a female slave, and was born since the 4th of July, 1804. In 1815, when an infant of about six weeks old, with her mother, she was purchased by a Mrs. Morris, and served her in Bridgewater, until arrived at . . fourteen years . . and never acquired a settlement in any other place. On appeal the sessions quashed the order of removal, because it did not set forth the age of the pauper."

Held: [569] "It is not necessary that the order of removal should state the age of the pauper. The approved forms used in this state, do not require the age to be set out in the order, and the reason for such requirement in the present case fails. . . In regard to the second objection to this order, it is said to have been ruled . . that legal settlement and last legal settlement are the same thing, because by every new settlement the precedent is discharged. In accordance with this authority and sound reason, the Supreme Court of New York held, . . 'that the legal settlement of the pauper is in Vernon,' to be sufficient . . The order of the Sessions must be quashed and the order of the two justices affirmed."

McBride v. Elmer et al., 2 Hals. Ch. 107, March 1847. "The bequest . . is as follows: 'I give to the Bridgeton trustees for free schools one thousand dollars, the interest to be applied annually for ages as far as may be practicable for the tuition of poor children, without regard to denomination or color, in the elements of English literature.' [112] The Chancellor delivered an opinion, orally, declaring the bequest good as a trust to be executed. That the only difficulty was a mistake in naming the trustees; and that the court would appoint trustees,"

State v. Post,[1] 1 Zabriskie 699, January 1848. "To a writ of *habeas corpus* allowed at the bar of the Supreme Court, commanding Post, the defendant, to bring up the bodies of a colored man named William and of a colored woman named Flora, whom he illegally detained. Post returned that he held them as Slaves by virtue of the laws of New Jersey, under a bill of sale. To this return there was a demurrer and joinder, the real question raised and argued being whether Slavery and all involuntary servitude was not abolished by Sec. I, of Article I, of the State Constitution of 1844. The Supreme Court . . held the return sufficient, and overruled the demurrer. . . [700] The court affirmed the judgment below."

Pennington v. Van Houten et al., 4 Hals. Ch. 272, June 1850. "Abraham Van Houten, the elder, by his will, first gives to his wife, Rachel, if she survives him, the use of his farm and dwelling-house where he then lived; . . also his family of colored people, together with his household and kitchen furniture . . until his son . . should arrive at the age of twenty-one years;"

[1] Court of Errors and Appeals. See State *v.* Post, p. 344, *supra*, for decision of Supreme Court of New Jersey.

Van Houten v. Pennington, 4 Hals. Ch. 745, March 1852. "The testator first gives to his wife the use of his farm and dwelling-house with his farming utensils, stock, household servants . . [748] The devisee was the testator's only child, and at the date of the will an infant of very tender years. . . After making suitable provision for his wife, and making bequests to the relatives of his former wife and to his slaves, the testator gives the whole residue of his estate, . . to his only child in fee simple,"

Shanck v. Arrowsmith et al., 1 Stockton 314, May 1853. [315] "The bill alleges that John Arrowsmith, . . died possessed and seized of considerable real and some personal estate; that at the time of his death he left the following will, . . [316] I also give unto my said wife my black girl, named Isabel, during her term of servitude; but if my wife should die before her term of servitude expires, then it is my will that the same Isabel should serve the remainder of her term with my daughter, Maria Arrowsmith."

Freeman v. Staats, 4 Hals. Ch. 814, June 1853. "Isaac Staats exhibited his bill against Reuben H. Freeman and Margaret, his wife, . . the complainant intermarried with one Martha A. Ross, by whom he had one child, . . named Margaret. That his said wife died . . That his daughter, . . intermarried with Reuben H. Freeman, a man with pretensions to education . . but . . destitute of the means to support . . his wife. That the complainant took said Freeman and his wife into his house and supported them . . [815] That . . the complainant intermarried with Maria Matthews, . . That soon after . . said marriage, the said Freeman and his wife insinuated . . that the said Maria . . was a bad woman, and would ruin the complainant and strip him of all his property. . . [816] That . . while the complainant was in a state of gross intoxication, . . the complainant executed a deed to his said daughter, . . for the farm . . and . . gave his note to the said Freeman for $1600, . . [819] The bill prays that the said Freeman and wife may be decreed to reconvey, . . and prays an account of the said personal estate, . . Freeman denies that . . he was entirely destitute . . [827] also deny that . . at or before the execution of the deed . . the complainant was in a state of gross intoxication. . . [832] deny that the complainant ever applied for . . a reconveyance of said farm, . . [837] Elizabeth Giles, . . says: I lived with Mr. and Mrs. Staats . . the clothing of the servants about the house, and their rooms, were very comfortable; there were three colored servants about the house—one woman and two boys; . . [839] he bought each of his three black boys a Sunday suit, and each two every-day suits; I never knew them to be scanted in any way while I lived there; . . [843] Peter Clickener being again called . . says: . . what little I saw of the clothes of the blacks they were quite indifferent; . . they seemed to be quite raggy. . . [844] Doct. Robt. S. Smith, . . says: . . I am the family physician; . . my impression is that the blacks about the house were not very nice, but I am not positive; . . [848] I thought it best for Isaac to go home because I thought Mrs. Freeman

would nurse him with more judgment than his wife; . . her family consisted of herself and child; a colored family occupied the back part of the house; . . [855] Richard Staats, a witness . . says: I formerly lived with Isaac Staats; . . I had but one shirt during the time, and that one I borrowed of Harry, . . I wore that shirt three weeks before it was washed; . . [856] I had one pair of pantaloons, which were all in pieces; . . I had no coat, but had to wear my master's coat; . . I could not get my clothes washed and mended properly; Mrs. Staats was too lazy to wash them; there was a black woman there to wash, . . she was busy with other things; . . [857] Lewis Smock, Betty, Jack and Frank lived with Mr. Staats while I lived there; they are all colored people; . . [858] Jack Staats, a witness . . says: . . I lived with Isaac Staats . . while Mrs. Staats lived there I had one shirt; . . my clothes, generally, were ragged; my meals were pretty good; . . I have known Mrs. Staats to sleep in the kitchen several nights; I have known her to use the chamber pot while we were at our meals; in the same room; . . [859] she would swear at him (Freeman;) sometimes she would swear at me; she would call me a damn nigger, frequently when she got out of humor with me; . . she said she wanted the niggers to obey her; . . [865] Jane Doty, . . says: . . when Mrs. Staats left the negroes had not any shirts; they wore their winter coats in the summer time to cover their ragged shirts; me and my sister assisted in making shirts for the negroes after Mrs. Staats went away; . . I am a sister to Isaac Staats; . . [876] Lewis Smock, a colored man, . . being sworn, says: I lived with Isaac Staats at the time he married his present wife; . . he had two black boys; they were not in good condition for clothing when Mrs. Staats came; . . Jack was in a very bad condition when I was there; his clothes were ragged and he was filthy and lousy; . . Dick's clothing was very poor; . . Mrs. Staats . . had Jack cleaned . . I slept with the boys before Mrs. Staats came; . . there were plenty of bugs in the bed, . . my woman came there to live and Mrs. Staats made a bed for us up stairs. . . [877] I never did see Dick change his shirt but once; . . Diana Staats, a colored woman, . . says: Lewis Smock is my husband; . . I was at Isaac Staats for two weeks . . the black boys had very poor clothing . . but they were clean; . . [878] Jane Staats, a colored woman, . . says: I went to work for Mr. Staats after he was married; Mrs. Staats sent for me; . . I see lice on Jack; . . I washed one shirt for him; . . Jack is my son; . . I heard Mrs. Staats tell Jack to wash himself; . . [880] Phineas F. Annin, . . says: . . [881] I lived with Reuben H. Freeman; . . I went frequently with Isaac Staats to Bound Brook, to Mrs. Staats house, . . [882] during the time that I lived there I have seen Isaac Staats sober; . . [883] at the instance of both parties, a special jury was struck, . . and . . [884] the same was tried . . and the said jury, by their verdict, found that the said deed was and is invalid, and that the said Isaac Staats, at the time of making and executing the same, was incapable of conveying or assenting to any conveyance by reason of extreme intoxication, and that the said deed was obtained from the said Isaac by fraud, covin and misrepresentation, and that the said

promissory note and warrant of attorney . . were obtained . . by fraud, . . an application was made . . for a rule to show cause why the verdict should not be set aside on the ground that it was against the evidence. And the Chancellor, after argument, refused the rule. . . a decree was signed by the Chancellor, . . that the said deed was . . void, . . and that the said note . . are . . void, . . an appeal . . was taken to this court." Held: [885] " The decree of the Chancellor was unanimously reversed."

Williamson v. Chamberlain, 2 Stockton 373, May 1855. "Amos Hoagland died in 1807. By his will, he disposed of his property as follows: . . Lastly. I give unto my said wife a certain negro girl, named Rose, now living with a certain James Lake, to be to her and her heirs for ever."

Morris v. Warren, 2 Dutcher 312, June 1857. " Two justices . . of the township of Warren, in the county of Somerset, made an order removing a pauper to the township of Morris, . . upon the ground that his father had been a slave of one Solomon Cooper, who died . . in the last-named township. The pauper, a colored man aged twenty-four years, resided, . . with his father, in . . Warren. Where he was born did not appear. The father was the slave of one John Manning, . . he was sold, . . in 1804, and purchased by Cooper. He served Cooper fifteen or twenty years until he was married, when Cooper gave him a certificate of freedom, and he left him, afterwards residing in different townships, but not gaining a settlement. . . a slave acquires no settlement, except when legally manumitted or in case of the insolvency of the master. The pauper was not himself a slave, and his father, who was, never had any settlement in Morris, Cooper never having legally manumitted him, and not having become insolvent. The child, not having been born in Morris, had no settlement there, and the order of removal, being illegal, must be set aside."

Emery v. Van Syckel, 2 C. E. Green 564, March 1867. " The object of this bill is to restrain the defendant, Van Syckel, from proceeding in an action of ejectment, [565] . . to recover possession of a farm, and wood lot adjoining, devised to the complainant by George Apgar, her father, by his will, . . The testator died in 1846, leaving him surviving, . . Lydia, the wife of Nicholas Emery, who is his only child. In . . 1861, four several judgments were recovered at law against Nicholas Emery by his creditors, one of which was assigned to Van Syckel, . . Upon these judgments executions were issued, and . . the right, title, interest, and estate of Nicholas Emery, . . were levied on and sold by the sheriff . . to the defendant, Van Syckel, . . and on the next day, . . the action of ejectment was commenced against Nicholas Emery, to recover possession of the lands. . . The general ground of relief claimed is, that, by the will, there is a separate equitable estate in the wife that cannot be reached by the creditors of the husband, and which it is the duty of a court of equity to protect. . . [566] The will then gives to Lydia, all the testator's books, and the remaining two-thirds of the household and kitchen furniture, and live stock, and proceeds . . ' I also give and bequeath to my daughter, Lydia, . . during . . her natural life, my farm, . . and after her death, I do give, devise, and bequeath the same to her

children, . . [567] It is my will, that if my daughter, Lydia, should be dispossessed of the farm . . then I do order . . my executors, . . to take charge of her estate, both real and personal, . . and pay over to her the rents and interest . . and her receipt, and hers, only, shall be sufficient for the same. The testator then gives to a black girl her freedom, a bed, bedding, chest, and one cow; also the sum of twenty-four dollars a year, so long as she will support herself without the assistance of that sum and no longer, to be paid to her yearly by his executors; and adds, 'and for the certain payment thereof, my real estate is hereby charged and made liable.' . . [574] No power of sale, or appropriation of the yearly proceeds of the land, . . is given to the executors by the will. The provision of $24 a year to the black girl, [575] Phillis, is also of the same character, and is only a charge upon the real estate. . . [576] By the deed from the sheriff, . . Van Syckel, acquired all the . . estate of Nicholas Emery, in . . the lands devised. . . [578] Under the very peculiar circumstances of this case, Emery will be considered in possession as trustee from the delivery of the deed. The contingency then, within the contemplation of the will, happened, and the trust estate for the sole and separate use of the wife began. Henceforward, during her life, she has such an estate. It being the duty of the Court of Chancery to protect it, the complainant is entitled to have the suit in ejectment enjoined, and the relief as prayed for in the bill. The decree should be reversed."

NEW YORK

INTRODUCTION

I.

Slavery was established in New Netherland by the Dutch West India Company, and continued throughout the English period of the colonial history. The earliest slaves bore Portuguese names and seem to have been procured from Brazil or Curaçao. In later decades the importations were mostly made from the West Indian islands or the other colonies of Great Britain, to a minor extent directly from Africa.[1] The number of negro slaves in the province in 1723 is stated as 6171. The census of 1790 showed 21,324. At the maximum, the slave population constituted about one-seventh of the total.

During the Dutch period, and still more during the English, much legislation designed for the purpose of regulating slavery and the conduct of slaves found its way to the statute-books of the colony or of the city of New York. A lingering fear that the slave might endanger the social order accounts for denying to slaves the privileges of trade, for refusing to receive the testimony of a slave against any person except another slave, for close restrictions on the defence permitted a slave charged with the crimes of murder, arson, or rape, the punishment being death upon conviction, and for such apparently trivial ordinances as those forbidding a negro or Indian slave from going abroad into the streets an hour after sunset, or going more than forty miles from the city of Albany, without his master, or meeting in groups of more than three. The act of 1730 "for the more effectual preventing and punishing the conspiracy and insurrection of negroes and other slaves, for the better regulating them, and for repealing the acts therein mentioned, relating thereto," practically finished New York's legislation relating to slaves, prior to the Revolution.[2]

The effects of the Revolution on the minds of New York were like those observed in other states. In 1788 it was enacted that "if any person shall sell as a slave within this state any negro or other person who has been imported or brought into this state, after the 1st June, 1785, he shall be deemed guilty of a public offence and forfeit 100 *l.* and the person so imported or brought into this state, shall be free." Thereafter a rather steady stream of legislation demonstrated the trend of public opinion toward emancipation and freedom for the negro, though the right of

[1] Miss Donnan's lists of cargoes for 1715-1740, *Documents Illustrative of the History of the Slave Trade,* III. 462-506, show less than a fifth of the slaves imported into New York to have come directly from Africa.

[2] Laws, 1752, ch. 560. See A. J. Northrup, "Slavery in New York," N. Y. State Library *Bulletin,* History, no. 4, and E. V. Morgan, "Slavery in New York," in *Papers* of the American Historical Association, V.

colored men to vote continued, even under the Constitution of 1822, to be severely restricted.

In 1799 an act was passed for the gradual abolition of slavery, providing that any child born of a slave mother in the state of New York after July 4 of that year should be deemed to be born free, but should serve the legal proprietor of the mother until such servant should reach the age of twenty-eight years if male, twenty-five if female. Importation of slaves was forbidden by act of 1810. By act of 1817, all negroes born before July 4, 1799, should be free after July 4, 1827.[3] Thus slavery in New York was extinguised.

Perhaps the most convincing evidence that public sentiment on the whole, subsequent to the Revolution, tended constantly toward liberality of treatment of slaves is to be found in the statutes, beginning with the act of February 22, 1788, already mentioned, and the construction placed upon those statutes by the courts of New York. In Sable *v.* Hitchcock,[4] it was rather apologetically held that that act, quoted in part above, did not apply to the sale of slaves by the executor of an estate, because it was not within the spirit of the act to prohibit such sales, and because it would be injurious to creditors to prevent the sale of slaves and the application of the proceeds to the debts of the deceased. The same statute was involved in another case,[5] also decided in 1800. This time, however, the slave had escaped from his master in New Jersey, and was arrested by order of the defendant, who purchased the slave plaintiff from his New Jersey owner. By a divided court, the plaintiff was declared to be free although the original owner had by contract merely let the plaintiff to the defendant for twenty years, with full power over the slave as the owner himself had prior to said contract.

The voluntary manumission of slaves was encouraged by statute. The comment of Justice Woodworth [6] indicates that even prior to 1788, the owner of slaves could manumit his slaves by will or certificate, that by the act of 1788 [7] the owner could manumit his slave by will or otherwise, but such owner was liable thereafter for the support of a manumitted slave unable to support himself. By the act of March 29, 1799, the owner could manumit by certificate, and apparently the earlier liability for an indigent manumitted slave was abolished. The dictum found in the case of Smith *v.* Huff, that no writing was required to manumit a slave under the 1788 law, is repudiated without specific reference in Trongott v. Byers,[8] where it is said: "The parol agreement of Paff, to manumit Peter, if he served faithfully for 5 years, was not a valid manumission. Such a manumission can only be in writing."

[3] Acts of 1799, ch. 62; of 1810, ch. 115; of 1817, ch. 137.
[4] P. 355, *infra*.
[5] Fish *v.* Fisher, p. 357, *infra*.
[6] Smith *v.* Hoff, p. 379, *infra*.
[7] 2 J. S. Green 88.
[8] P. 382, *infra*.

Sympathy for the slave was not allowed to override legal principles. Where a testator [9] by his will gave Nan her freedom at his death, but sold her as a slave during his life-time, she was denied her freedom under the manumission laws, on the grounds that the testator had changed his mind, and that the sale was *pro tanto* a revocation of his will.

The question whether a slave [10] was eligible to receive a patent to land as a gift under the act of March 27, 1783, to those serving in the Revolutionary War, was decided in the affirmative, and the heirs of one Peter Stringerland, a slave, were permitted to succeed to his rights.

Perhaps the most bitterly contested issues involved the problem of the fugitive slave. The legislature of New York by successive acts complied with the spirit as well as the letter of the federal Constitution,[11] requiring each state to deliver to the owner any person held to service or labor in another state. The 1829 edition of the *Revised Statutes* of the state [12] contains a group of sixteen paragraphs entitled "Of the Importation into this State of Persons Held in Slavery, of their Exportation, of their Services, and Prohibiting their Sale." The same edition [13] contains another group of eleven sections entitled "Of Persons held in Service," dealing with the status of slaves and their progeny within the boundaries of New York, and limiting the time during which any slave or child of a slave might remain a slave under the law.

An excellent illustration of the temper of the times is found in a case [14] in which Jack, a former slave owned by Mary Martin, of Louisiana, sued out a writ alleging that Mary Martin had detained him in New York as a slave. At the hearing it developed that Mary Martin had been given possession of the negro plaintiff under the act of Congress,[15] pursuant to the provisions of the federal Constitution. Judgment was, of course, given for the defendant in the Supreme Court. The case then went to the Court of Errors,[16] where it was again urged that the plaintiff was a free man under the laws of New York. The judgment of the Supreme Court was affirmed on the ground that "the right of the master to reclaim his fugitive slave is secured to him by the federal constitution" and further that no good citizen "will interfere to prevent this provision from being carried into full effect." The extent to which the highest court in New York was willing to go in 1860,[17] is found under peculiar circumstances, in which the owner of slaves, a woman resident of Texas, *en route* to that state from Virginia with eight slaves, and waiting for a vessel, was deprived of her property in that the slaves were declared free

[9] In the matter of Nan Mickel, a negro girl, p. 373, *infra*.
[10] Jackson *v.* Lervey, p. 382, *infra*.
[11] Art. IV., sect. 2, subs. 3.
[12] 1 Rev. Stat. 656.
[13] 2 Rev. Stat. 156.
[14] Jack a negro man *v.* Mary Martin, pp. 389, 391, *infra*.
[15] Act of Feb. 12, 1793, 2 Laws of U. S. 165.
[16] 14 Wendell 507.
[17] Lemmon *v.* People, p. 405, *infra*.

under sections 1 and 16 of the act of 1829.[18] Three dissenting opinions featured this case. It is difficult, if not impossible, to reconcile the decision with Jack *v.* Martin,[19] and it seems to ignore the plain terms of the constitutional provision,[20] as well as the act of 1793.[21]

II.

Under the Dutch regime the highest judicial tribunal consisted of the governor, a council of five members, and the schout fiscael, an officer whose duties correspond to those of the modern sheriff and prosecuting attorney. Appeals were theoretically permitted to the Amsterdam chamber of the West India Company, but were difficult to perfect, because of governmental interference. Under the early English regime, the Duke's Laws of 1665 created, as the highest tribunal, the court of assizes, composed of the governor, his council, and several justices of the peace. The bulk of litigation, both civil and criminal, was tried in the courts of sessions before juries; trivial cases were heard by the town courts. In 1691, the Act for Establishing Courts of Judicature reorganized the judicial system of the province. Thereafter the highest ordinary common-law court was known as the Supreme Court of Judicature, but by writ of error cases adjudged in it could be brought before the governor and council, and there was a court of chancery, a prerogative (probate) court, and an admiralty court.[22]

The Revolution effected no immediate change in this system. The constitution of 1777 left all these courts in existence, save that of the governor and council, but added above them a court for the trial of impeachments and correction of errors, consisting of the president of the senate, the chancellor, the three justices of the Supreme Court, and the senators.[23] The constitution of 1821 retained this court for the trial of impeachments and correction of errors and the Supreme Court of three judges.[24] The constitution of 1846 substituted for the former a Court of Appeals of eight judges, four of them elected from the state at large and four from among the judges of the Supreme Court, and for the latter and the chancellor a Supreme Court of thirty-two judges, of law and equity both.[25]

[18] P. 353, note 12, *supra.*
[19] P. 353, notes 14 and 16, *supra.*
[20] P. 353, note 11, *supra.*
[21] P. 353, note 15, *supra.*
[22] Julius Goebel's chapter, "The Courts and the Law of Colonial New York," in *History of the State of New York,* ed. Flick, vol. III.
[23] Art. XXXII.
[24] Art. V., sects. 1, 4.
[25] Art. VI., sects. 2, 3, 4.

Lewis Morris v. Lewis De Bois, New York Hist. Soc. 1912, p. 5, October 1680 (General Court of Assizes). "An appeal from the Judgmt of the court of Mayor and Alderman Given the 13th of January 1679 about the negroes taken by the Dutch and sold in vandue att the Esopus to the Defend't and runnaway from him to the appeal't who Detained them; which the appealt was Ordered to Deliver with Damage. The proceedings of said Court being Read and partyes fully heard the Court Reversed the Judgm't in the Mayors Court, And give Judgmt for the Appeal't that he keep the said two Negroes. The Def't to pay Costs of suite."

Cases of Robert Seary and Mingoe, N. Y. Hist. Soc. 1912, p. 34, October 1682. "Upon Information Given by John Colier Sheriffe of the Citty of New Yorke That the Said Two Negroes by name Robert Seary and Mingoe Are Runn awayes from Virginia And Maryland And have been A Long time in his Custody and Putt him to Greate Charges for their Maintenance and in Apprehending them Againe when Broake Prison And Escaped and though Notice Given to their Mas. or Owners Noe Care is Taken for their Releasement and Payment of the Charges. It is Ordered That upon Notice Given to their Mas. or Owners If in the Space of two months noe Care be taken for their Releasement And Payment of the Charges of their Imprisonment and Prosecucon That then the Said Negroes be Exposed to Sale att A Publique Outcry by the Said Sherriffe to Sattisfie the Same and the Over Plus if any to be Returned to their Mas. or Owners." . .

"Robert Seary A Negro Man Being Indicted and Arranged for Breaking Prison and Stealing A Boate which he with Others Runn Away with out of the Mould or Harbour of this Citty on his tryall Pleaded not Guilty Butt Being Found Guilty by the Jury was Sentenced to be Tyed to a Carts Arse and to Receive tenn Lashes or Strips on the Bare back att Each Corner Round the Citty And to be Branded in the forehead with the Letter R." . .

"Mingoe A Negro Man Being indicted and Arranged for the Like Crymes and Found Guilty by the Jury Received the Same Sentence."

Sable v. Hitchcock, 2 Johns. Cas. 79, October 1800. [82] "On these pleadings, the question is whether the disposition made of the plaintiff, by the executors of Samuel Ellis, to the defendant, was a sale, within the meaning of the act of the 22d February, 1788, by which 'in order to prevent the further importation of slaves into this state, it is enacted, that if any person shall sell as a slave within this state, any negro or other person who has been imported or brought into this state, after the 1st June 1785, he shall be deemed guilty of a public offence, and forfeit 100 *l.* and the person so imported or brought into this state, shall be free.' 1. I consider the disposition of the slave, made by the executors

as equivalent to an absolute sale. It was probably made . . under an apprehension that . . the plaintiff came within . . the act, and with a view to elude the prohibition. It gives to the defendant a complete authority over her as his servant, and unlimited in its duration. . . [83] But, 2. I am of opinion, that the sale by the executors was not a sale within the spirit of the act. The objects of the act are sufficiently answered, if it be restrained in its operation to the ordinary traffic or sale of slaves, brought into this state, by persons acting in their own right, and for their own emolument. It ought not . . apply . . to those who act . . for . . others, and in performance of a trust imposed by law. . . [84] In all cases, therefore of persons acting in autre droit, as executors . . and trustees on whom the duty devolves, by . . law, I think the act cannot apply. It would be highly injurious to creditors . . and extremely embarrassing to persons acting in these capacities. . . They are not bound to keep them as their own, and if kept as the property of the estate . . it would be impossible to convert them to any valuable purpose . . By selling them, they would incur a heavy penalty, besides the forfeiture of the slaves. . . In the present case the removal of the testator into this state, without a consequent sale by him, created no forfeiture. The property of the slave continued lawfully in him; and, unless extinguished by his death, was transmitted to the executors, and became assets in their hands. If so, they had a right to dispose of her for the benefit of the estate of their testator, and the sale was not within the act. I am, therefore, of opinion, that there should be judgment for the defendant. [Radcliff, J.]

Held: [85] " While slaves are regarded and protected as property, they ought to be liable to an essential consequence attached to [86] property, that of being liable to the payment of debts. . . By considering the sale mentioned in the act, as confined to a voluntary disposition of the slave, for a valuable consideration, by the owner himself, we are enabled effectually to reach the mischief in view, the importation of slaves for gain, and we take away every such motive to import them. . . For these reasons, I am inclined to think, that slaves so imported, may be held as assets by creditors on execution, and consequently, that judgment must be for the defendant." [Kent, J.]

Dissenting opinion: " The question is whether a slave, so imported, or brought into the state, and remaining unsold, can, on the death of the master or owner, be sold by his executor? . . [88] should the slave be adjudged transmissible to the executor, namely, that the goods of the testator coming to the executor, subject to a power and trust to sell them, he may sell the whole of them, . . and it not being passible to deduce or conceive his life or any other given time, as the limitation of a term for which only he may sell, he may therefore sell in perpetuity, and if so, then there may be a sale of a slave, as a slave, and neither the seller be liable to the penalty, nor the slave be free, which is contrary to the express provision of the act. For these reasons, I am of opinion, that the plaintiff is entitled to judgment." [Benson, J.] Judgment for the defendant.

Fish v. Fisher, 2 Johns. Cas. 89, October 1800. "*In homine replegiando*. . . The plaintiff was the slave of one Van Voorst, who resided . . in . . New Jersey. He ran away from his master, and came to the city of New York. Van Voorst came to New York on the 26th of February, 1795, and entered into an agreement with the defendant, . . by which, for . . 225 dollars, he let the plaintiff, who was twenty-five years of age, to the defendant for twenty years, with authority to correct, imprison, and exercise all such lawful authority over him, as he, Van Voorst, himself before that time might do. The defendant, who lived in New York, then took the plaintiff into custody." . .

Held: [90] "By the act of the 22d of February, 1788, in order 'to prevent the further importation of slaves into this state,' it is enacted, that if any person shall sell as a slave within this state any negro or other person who has been imported or brought into this state after the 1st June, 1785, he shall be deemed guilty of a public offence, and forfeit 100 *l.* and the person so imported or brought into this state shall be free. 1. The first question is, whether the slave was brought into this state within the meaning of the act. 2. Whether the letting to hire, as above stated, was a sale within the act. With respect to the first question, . . the slave eloped from his master. He certainly could not be said to be brought into this state, if the master . . had not sanctioned his coming by . . disposition of him to the defendant. He thereby made the change of the residence of the slave his own act, and the slave by the consent of his master, became domiciled here. This is the same, . . as bringing him, . . 2. I think the letting of the slave to the defendant was a sale, designed to be in evasion of the act. . . [91] I am . . of opinion, on both points that . . plaintiff is entitled to judgment." [Radcliff, J.]

"I am also of opinion that the case of a slave running away from his master into this state, and followed by the act of the master here in selling him within the state is . . a constructive bringing into the state, within the . . act. . . On the second question . . I think the judgment . . must be, . . that it is a sale within the act. . . judgment ought to be given for the plaintiff. Lansing, Ch. J. was of the same opinion. [92] Benson, J. dissented. He agreed that where a slave runs away . . and is retaken here and sold, the slave is to be considered as imported or brought in, and sold, within . . the statute. But for the reasons given by him in . . Sable *v.* Hitchcock,[1] he did not think the agreement in the present case was to be so understood . . as . . in fraud or evasion of the act, . . or so as to produce the effect of making the slave free by law; but that, . . it was good for twenty years, if Van Voorst should so long live. Lewis, J. also dissented. Judgment for the plaintiff." [Kent, J.]

Giles v. Bradley, Executrix, 2 Johns. Cas. 253, April 1801. "On the 19th November, 1798, the plaintiff purchased of the defendant's testator a negro slave for 200 dollars, for the payment of which sum the plaintiff executed to the defendant's testator a single bill, payable in five months, with interest; and the bill was afterwards paid by the plaintiff. At the time of the purchase, it was agreed . . that if the plaintiff or his wife

[1] P. 355, *supra*.

did not like the boy, the testator would take him back, upon his being returned at any time within five months from the time of the purchase; and that the testator would . . refund the purchase money . . [254] The plaintiff, not liking the boy, returned him to the testator within five months . . assigning as a reason that the plaintiff did not like the boy; but the testator refused to receive him, or to refund the purchase money."

Held: "This action is well brought. . . The convenience of parties, in cases like the present, may often require such terms; and there are frequent instances of such agreements being held valid in law. . . [255] The subsequent payment of the bill, connected with the circumstance, that the period of five months, at the expiration of which it was made payable, was the same within which the negro was to be returned, might afford the presumption that the plaintiff had thereby made his election, and determined the contract. But in answer to this, it is expressly stated, that the testator agreed that the money should be refunded on the return of the negro. The agreement to refund controls the presumption, and shows that a payment was . . optional in the plaintiff, before the expiration of the five months, . . without prejudice to his right of returning the negro. . . [256] plaintiff is entitled to judgment." [Radcliff, J.]

Hitchcock v. Sable, 2 Johns. Cas. 488, February 1802. "This cause came before this court by writ of error from the supreme court, (see ante, p. 79,) and after argument the court ordered and adjudged, that the judgment of the supreme court be affirmed, with costs, . ." [1]

Deas v. Smith, Col. and Cai. Cas. 221, August 1803. "Issue had been joined in this cause, in 1800, and two commissions had been sued out; one had been returned, but a long time having elapsed, the defendant gave notice, for the last term, that he would then move for judgment, as in case of nonsuit. On its being brought on, the plaintiff stipulated to try, at the next sittings, or circuit court, reserving to himself the right of applying to the court, for a renewal of the stipulation, in case the other commission, then pending, should not be returned. [222] Benson now renewed the application for judgment, on an affidavit, stating, that a few days after the above stipulation was entered into, the commission to which it alludes, arrived, and that the cause had been duly noticed for the last sittings, but had not been brought on. Woods, contra, read an affidavit by the parties, on account of whom the plaintiff had effected the policy of insurance, on which the present action was brought. . . that the cause was, . . noticed for trial, under an idea of proving interest in . . the cargo by one York Wilson, who, . . deponent believed to be resident in New York, . . but had lately gone to the East Indies; . . [223] Benson offered a counter affidavit to show that York Wilson was a slave, and therefore the want of his testimony could never have prevented the cause from being heard, because, had he been present, his evidence could not have been received." [224]

Held: "The application is for judgment, as in case of nonsuit: this is opposed by a deposition . . disclosing facts, to rebut which, the defen-

[1] See Sable *v.* Hitchcock, p. 355, *supra.*

dant offers a counter affidavit: a question is made whether it can be received . . the court finds the practice . . against its reception. . . [225] The want of a witness is alleged, and no diligence shown to procure him. . . [226] In the meantime, judgment of nonsuit must be entered."

Link v. Beuner, 3 Caines 325, November 1805. "This was an action to recover the amount paid for the services of a negro man named Bartley, . . By an act of the legislature, passed in 1788, proprietors introducing slaves into this state, after the 1st day of June, 1785, were prohibited from selling them as slaves, and such persons, if 'sold contrary to the true intent and meaning of the act,' were declared to be free. In 1794 . . the former owner of the negro . . brought him into this state. On the 8th of April, 1801, . . it was enacted, 'That if any person . . shall . . sell as a slave, or transfer for any period whatever, any person who shall hereafter be imported . . as a slave,' . . [326] 'shall be free.' On the same day it was ordained by another statute, . . that 'all acts . . heretofore passed . . which come within the purview . . of any of the acts passed during the present session of the legislature, . . are hereby repealed . . provided, however, that such repeal shall not affect any act done, right accrued, . . previous to . . the first day of October next,' . . In March, 1803, when the negro . . was 18 years old, Parsons . . transferred to the defendant his services for 20 years, . . In April, 1804, the defendant, for . . 225 dollars, . . assigned the residue of the term to the plaintiff, into whose service the negro entered, but on the 15th of August following deserted it, claiming to be free. It was now submitted to the court whether, under the above circumstances, he was entitled to freedom? if so, the right to recover was admitted." [329]

Per Curiam: "The sale in this case is not within the principle of Fish *v.* Fitcher, and an evasion of the act of 1788. Under that law, the negro acquired a right not to be sold; an important right which secured him against a change of master; he also acquired a further right of being free if the right was invaded. These rights, the proviso of the repealing act of 1801 continued to him unimpaired, for it is not possible to suppose that the legislature intended to leave all slaves imported between June, 1785, and October, 1801, out of the protection of every law. Judgment for the plaintiff."

Gurnee v. Dessies, 1 Johnson 508, August 1806. "On the return to the *certiorari* in this cause, the only error assigned was, that the justice had refused to admit the evidence of a free black man, as to facts which took place while he was a slave. The cause was submitted without argument." *Per Curiam*: "A free black man is a competent witness to prove facts which may have happened while he was a slave. The judgment below must be reversed."

De Fouclear v. Shottenkirk, 3 Johnson, 170, May 1808. "action of *assumpsit*. . . From the evidence . . it appeared that a conversation had taken place between the plaintiff and the defendant, relative to the sale of a negro slave, belonging to the plaintiff, and that the price was mentioned to be 300 dollars. The slave not appearing satisfied with the change of masters, the plaintiff's wife said to him that he might go a day or

two, and see how he liked the defendant. . . [171] that the plaintiff, after the negro ran away, said 'he had lost 300 dollars, for in a day or two he had sold him.' . . The judge charged the jury, . . that if, . . satisfied that the sale of the negro was absolute, the plaintiff would be entitled to their verdict; but if . . of opinion, . . that it was a sale upon trial, that then, while the slave remained in the possession of the defendant, he was bound to take as good care of him, as he would of his own slave; . . if he had not done so, the plaintiff was entitled to a verdict; . . that if the sale was not absolute, it was incumbent on the plaintiff to show, clearly, on what terms it was made; . . verdict for the defendant." . .

Held: [173] "Was the property of the negro, at the time he ran away or subsequently, in the plaintiff or defendant? . . [174] The negro was in the possession of the defendant, but whether as being sold to him, or put into his possession until he should signify his assent to buy, or return him, will depend on the facts in the case. . . The plaintiff rests upon circumstances from which to infer the fact; these the defendant has rebutted by . . proof of the acknowledgment of the plaintiff, that the negro was his when he ran away. I cannot see that the jury have decided against the . . evidence, . . and I am, therefore, unwilling to disturb the verdict. . . [175] Rule refused."

In the case of Tom, a negro Man, 5 Johnson 365, February 1810. "A *Habeas Corpus* . . directed to Adolph Walradt, commanding him to bring up a negro . . Tom, detained in his custody, . . as a slave. The negro was now brought up, and his master made a return to the *habeas corpus,* stating that the negro was born a slave in the county of Montgomery, . . held as such by Johannes Walradt, of whom he, Adolph Walradt, purchased [366] him as a slave, some years ago; that since the death of . . Johannes, the negro claims to be free, by virtue of a certificate . . given to him by . . Johannes, . . in which . . Johannes sets forth, that he thereby 'manumits . . Tom, from and after the death of . . Johannes, in spite of all bills of sale, or last will by him thereafter to be made,' which certificate was given before the sale . . to Adolph . . On this return, it was submitted to the court, whether the negro was entitled to his freedom or not." *Per Curiam*: "We think the negro is free, by reason of the certificate of manumission given by Johannes Walradt, in his life-time; and he must, therefore, be discharged."

Quackenboss v. Lansing, 6 Johnson 49, May 1810. "action for a breach of covenant. The declaration stated, that the defendant, . . by his deed, sold and delivered to the plaintiff, a negro female slave, . . Nanny, aged about 18 years, for . . 40 pounds, paid by the plaintiff to the defendant, . . and that . . defendant 'the sale of the said slave . . against all persons . . [50] would warrant and forever defend,' . . that at the time of the sale, the defendant had no . . title in the girl, . . but that she was free, and not a slave; . . The defendant demurred to the declaration, because. 1. The plaintiff has not set forth any breach of the covenant of warranty; . . 2. Because, . . the plaintiff puts in issue, . . the fact, whether the negro was a slave or free, at the time of the sale."

Per Curiam: "There is a sufficient assignment of a breach. . . The defendants was to warrant and defend the sale; . . by the averment, . . the sale was null and void, . . The substance of this covenant was, that the defendant would warrant the sale; and if the negro was free, the sale was void, and the covenant [51] immediately broken. . . The averment, that she was free, was equivalent to showing an eviction; for it showed that the plaintiff was ousted of all right and lawful possession. Judgment for the plaintiff."

Ketletas v. Fleet, 7 Johnson 324, February 1811. "action on the case, to recover the price of a negro boy sold by the plaintiff to the defendant. . . [325] At the trial, the plaintiff proved the sale . . for . . 250 dollars, and the delivery of the negro to the defendant; . . The defendant offered in evidence a writing, under the hand and seal of the plaintiff, . . stating that he did promise . . to give his boy Tom free in eight years, from the 1st day of April, 1804, upon condition that Tom conducted himself as an industrious, honest and faithful servant, during that period. This writing was . . admitted and proved. It was also proved, that the negro left it in the hands of a third person, for safe keeping. The defence was, . . defendant had no knowledge of this contract, and that it was fraudulently concealed from him. . . The defendant proved, that eight or ten days after the sale, he went to the house of the plaintiff to deliver back the negro, on account of that contract, and to pay wages for the time he had the boy. . . that he was informed of the existence of the writing . . about eight or ten days after the sale, and that the plaintiff had applied for [326] the instrument, stating that the boy was sold, and that the instrument was of no consequence. . . The judge charged the jury, that if the defendant knew that the plaintiff had agreed to give the boy free in eight years, yet if he did not know of the writing, they ought to find for the defendant; and the jury found accordingly. A motion was made for a new trial,"

Per Curiam: [330] "The covenant of the plaintiff to manumit the negro in eight years, on condition of faithful service, was one that the slave could avail himself of, if the condition was fulfilled. . . The statute . . allows [331] the master to manumit his slave . . The manumission does not rest upon the principles of a contract, . . but it is an act of benevolence, sanctioned by the statute, and made obligatory, if in writing. . . If, then, the covenant was unknown to the defendant at the time of the sale, and if, under an ignorance of the writing, he purchased the negro as an absolute slave for life, he had a right to return the negro as soon as the fact was discovered, and rescind the contract. The jury have found the fact of his ignorance of the writing; and the concealment of it from him, when the sale was made, was a fraud that will vacate the contract. . . Motion denied."

Bayley v. Bates, 8 Johnson 185, August 1811. "action on the case, for a false return. The declaration stated, that a judgment was obtained in February, 1809, in favor of the plaintiff, against R. B. on which a *fi. fa.* was issued, . . and delivered to the defendant, as sheriff . . That

the defendant had not the moneys . . but falsely, maliciously, and deceitfully returned on the *fi. fa.* that he could find no goods or chattels, lands or tenements, of . . R. B. . . Plea, the general issue. . . On the *fieri facias* . . the defendant had endorsed a return of *nulla bona.* It was proved, that . . the defendant had levied on a negro boy, said to be a slave of R. B., . . who brought the negro into this state in 1803, . . [186] and had filed in the proper office, the affidavit and certificate required by law in such case. . . The plaintiff gave notice to the defendant, that the negro was the property of R. B., and offered to indemnify the defendant if he would sell the negro; and protested against a trial of the question of property by a jury, . . The offer of indemnity was verbal, . . The defendant summoned a jury . . and by an inquisition . . the jury found that the negro was not, in fact, the property of R. B. . . The Chief Justice charged the jury, that the inquisition was conclusive in favor of the defendant, unless the plaintiff proved that the defendant had acted dishonestly and fraudulently; . . and that it was for the jury to decide whether the defendant had acted impartially and with good faith, in taking the inquisition. . . verdict for the defendant. [187] A motion was made to set aside the verdict,"

Per Curiam: [188] "The question is, whether the defendant was protected under the inquest of office from the charge of a false return. It is found that he . . conducted the inquest with impartiality and good faith; . . that the plaintiff had due notice of it, and that there was not any regular indemnity offered to the sheriff, in case he would sell the negro. . . [189] In the present case, there are no circumstances to deprive the sheriff of the protection which the inquisition ought to give, and the motion for a new trial is denied."

Glen v. Hodges, 9 Johnson 67, January 1812. "action of trespass . . for taking the plaintiff's negro man slave out of the plaintiff's possession, and carrying him away. . . [68] The plaintiff proved that, in February, 1808, he bought of one Deoffendorf, a negro man, named Harry, who, at the time of such purchase, was a runaway, and had been gone about two years. Deoffendorf went with the son of the plaintiff, who had a power from his father, to take the negro in the state of Vermont, and they found him in Rutland. The negro was taken by Jacob S. Glen, in behalf of his father, the plaintiff; and while the negro was in the custody of the plaintiff's son, a constable came and arrested him, by virtue of a writ of attachment, at the suit of the defendant and his partner. The son of the plaintiff claimed the negro as a slave; but the constable took him by force, carried him away, and committed him to the gaol of the county. . . [69] It was admitted, that by the constitution and laws of Vermont, slavery was wholly prohibited. The judge declared his opinion on the law and the evidence, that the plaintiff was not entitled to recover, and the plaintiff submitted to a nonsuit, with liberty to move the court to set it aside, and to grant a new trial."

Per Curiam: "There is no doubt that the negro was the property of the plaintiff, and had run away from service into Vermont. He was held to service or labor under the laws of this state, when he escaped, and the

escape did not discharge him, but the master was entitled to reclaim him in the state to which he had fled. This is according to a provision in the constitution of the United States (art. 4. s. 2,) and the act of congress of the 12th of February, 1793, . . prescribes the mode of reclaiming the slave. It not only gives a penalty against any person who shall knowingly and willingly obstruct the claimant in the act of reclaiming the fugitive, but saves to such claimant his right of action for any injury he may receive by such obstruction. The plaintiff was, therefore, in the exercise of a right . . and the single question is, whether the defendant is not responsible in trespass, for rescuing the slave, . . under the form and color of an attachment for a debt . . The negro, being a slave, was incapable of contracting, . . A contrary doctrine would be intolerable, so far as respects the security of the owner's right, and would go to defeat the provision altogether. . . The fact being established that the negro was a fugitive slave, the attachment was no justification to the party who caused it to be [70] sued out. . . the interference of any private individual, by suing out process, . . under the pretence of a debt contracted by the negro, was an act illegal and void. . . A new trial is, therefore, awarded, with costs to abide the event. Motion granted."

Wells v. Lane, 9 Johnson 144, May 1812. "Lane brought an action of debt against Wells, . . under the act concerning slaves, for harboring the slave of the plaintiff, named Betty, . . The plaintiff, who was a free black, proved that he purchased Betty and her mother, about twenty-four years ago, and that he married the mother when Betty was about a year old. Betty and her mother were born slaves. The plaintiff declared to one witness, that he had purchased his wife and child from bondage, and that they were received among their society (quakers) as free persons; . . to another witness he expressed a determination to have a free family, and said that his wife had assisted in procuring her and her daughter's freedom, and that he always called Betty his child. . . The jury found a verdict for the plaintiff, for twenty-five dollars, on which the justice gave judgment."

Per Curiam: "In determining whether the negro woman, Betty, is . . the slave of the plaintiff below, we must look at the law, as it stood at the time of the purchase, . . upwards of twenty years since. Our present statute . . would seem to require . . some instrument in writing, [145] These terms are more limited than those used in the statute of 1788, . . which are, that if any person shall by last will or otherwise, . . set free his slave, such slave shall be considered as freed . . the provision, in the third section of the present statute, was intended to confirm manumissions informally made. It declares, that all the manumissions of slaves made by the people called quakers, . . before . . 1798, although not in strict conformity to the statutes then in force, relating to such manumissions, shall be valid from the time they were made. . . And if parol manumissions were binding, the plaintiff's declarations fully show he never considered Betty as his slave, nor did he purchase her as such. . . After such declarations and such a lapse of time, to authorize the plaintiff to claim her as his slave, would be extremely unjust; and unless she was his

slave, there is no ground upon which he could maintain the action. . . The judgment must, therefore, be reversed."

Hopkins and Mudge v. Fleet and Young, 9 Johnson 225, August 1812. "Fleet and Young, . . as overseers of the poor . . brought an action against the plaintiffs in error, as executors of Thomas Hopkins, for twenty-five dollars and fifty-nine cents laid out . . for the support . . of a certain slave, belonging to the said Hopkins, in his life-time. . . [226] At the trial, it was proved that the slave . . Jordan, belonged to the testator . . that the defendants . . had expended the sum demanded, as being requisite for the support of the slave, . . The defendant . . then offered in evidence the following certificate in writing: . . 'We do hereby certify that the bearer, named Jordan, the property of William Hopkins and Co. appears to be under the age of fifty years, and of sufficient ability to get his own living. We do hereby manumit the same. . . Overseers of the Poor.' . . but the court refused to admit the certificate as evidence. The defendants . . then offered in evidence the will of Thomas Hopkins, . . but the court . . rejected the evidence. The defendants . . then offered to prove by parol . . their intention . . to manumit the slave by the said certificate, . . but the court rejected the evidence, and charged the jury, that the matters offered in evidence by the defendants . . were incompetent . . and that the jury ought to find a verdict for the plaintiffs . . for the amount stated in their declaration, and the jury found a verdict accordingly. A bill of exceptions was tendered . . and signed by, the court below."

Per Curiam: [227] "The certificate . . was conclusive evidence of the age and ability of the slave, and sufficient to charge the town with his subsequent maintenance as a pauper. . . That certificate would, probably, be sufficient evidence of manumission, to conclude the owner, but the town have no further concern with that question, after having given the certificate required by law, and which the statute renders conclusive to exonerate the owner. Judgment reversed."

The Executors of Rogers v. Berry, 10 Johnson 132, May 1813. "action of trover for a negro girl. . . At the trial, the plaintiff offered a negro man, named Adam, as a witness. The defendant objected to his competency, and proved that he was the slave of the testator at . . his death. The plaintiffs then proved that . . the testator bequeathed the slave, . . to his son, Walter, . . until the 17th of April, 1817, on which day and year the testator gave the slave his freedom, . . Walter, . . in writing . . dated the 8th of January, 1811, . . considering the impropriety of holding Adam longer in servitude, . . he thereby, from principles of benevolence, . . manumitted and set him free from the date of the instrument. It appeared that Walter was eighteen years of age at the time he executed this instrument of manumission, and that his guardian endorsed thereon his written consent to the act of manumission. The objection to the witness was still insisted on, on the ground that the instrument . . being executed by an infant, was voidable, . . The judge deciding against the competency of the witness, a verdict was found for

the defendant. A motion was made to set aside the verdict, and for a new trial." . .

Per Curiam: [133] "The manumission by the infant was voidable when he should come of age. . . But, in the mean time, the sale, gift, or transfer, is valid, and the interest . . vests. . . the witness was not, at the time, a slave, and the objection to his competency was not well taken. He must be a slave at the time, to come within the disqualification prescribed by the statute. The power which the infant had of revoking the gift . . would, . . have a strong . . bias on the . . witness, but this would be an objection to his credit only. . . The verdict must, . . be set aside, and a new trial awarded,"

Dunbar v. Williams, 10 Johnson 249, May 1813. "Williams brought an action against Dunbar before the justice, for medicine administered by the plaintiff . . and attendance as a physician, on a negro slave, belonging to the defendant. The defendant pleaded *non assumpsit*. The plaintiff proved the bill to be reasonable, . . and that the person be attended was the slave of the defendant. It was proved that the slave had a foul disease, which he concealed from the defendant, and that he applied to the plaintiff who cured him. No request of the defendant, nor promise by him to pay the plaintiff, was shown. The justice gave judgment for the plaintiff, for seven dollars and sixty-eight cents,"

Per Curiam: "If medical aid or other assistance be rendered to a slave in a case of necessity, which does not admit of a previous application to the master, the person so rendering the assistance, would, probably, be entitled to compensation from the master; . . [250] But the case of the slave in the present instance, was not one that required instant and indispensable assistance. . . It was not a case *in extremis*; and if the plaintiff did not choose to apply to the master, or to take care that his assent was obtained, the service must be deemed gratuitous. It would be dangerous to the rights of owners of slaves, to allow them to charge their masters with medical assistance, when the case was not so urgent as to prevent a previous application to the master for his direction. The judgment must be reversed."

Cramer v. Bradshaw, 10 Johnson 484, October 1813. "This was an action of covenant. The plaintiff declared on a bill of sale, by which the defendant, in consideration of one hundred and seventy-five dollars granted, bargained and sold to the plaintiff, 'a negro woman slave, named Sarah, aged about thirty years, being of sound mind and limb, and free from all disease, to have and to hold, . . And the defendant, . . covenanted to warrant and defend the slave, so sold to the plaintiff, against the defendant and all persons. The plaintiff alleged as a breach of the covenant, that the slave was unsound, and affected with divers diseases, to wit, fits, etc. The defendant, after craving oyer of the bill of sale, demurred to the plaintiff's declaration. The point raised on the demurrer was, that the bill of sale did not contain any such covenant, as to the soundness of the slave, but only a warranty as to the title."

Per Curiam: "The words in the bill of sale, 'being of sound mind and limb, and free from all disease, are an averment of a fact, and import

an agreement to that effect. The words were not used as a mere description of the slave; they amount to an express, not an implied, covenant; to a warranty of the soundness of the slave. . . Judgment for the plaintiff."

Caesar v. Peabody, 11 Johnson 68, January 1814. "A Motion was made for a *mandamus* . . directed to I. Peabody, commanding him to manumit . . Caesar, a black man, held by him as a slave. . . Caesar was brought into this state, about nine years ago, from Virginia, by one Hallam, as his slave, and the requisite certificate obtained and filed, according to the 4th section of the act passed the 8th of April, 1801. . . A judgment was, afterwards, obtained against Hallam, and a *fi. fa.* issued thereon, under which Caesar was sold . . to one Perkins, who afterwards sold him, at private sale, to Peabody, who now holds him as a slave. It was agreed that if the court should be of opinion that the sale by Perkins to Peabody was void, and the slave, under the act, was free, . . that then a peremptory *mandamus* should issue."

Per Curiam: "According to the decision of this court, in Sable *v.* Hitchcock,[1] . . the sale of the slave on the execution was valid; but the subsequent sale by the purchaser to Peabody, was contrary to the act, being a voluntary sale by the master of a slave, imported or brought into the state. That sale was, therefore, void; and, according to the agreement of the parties, a peremptory *mandamus* must issue. Rule granted."

Babcock v. Stanley, 11 Johnson 178, May 1814. "Stanley brought an action against Babcock, before the justice, . . he declared on an agreement, stating that B. agreed to purchase of him the service of a certain negro woman, for four years, at ten dollars per annum, which S. agreed to accept; and that B. had refused to perform the contract. B. pleaded the statute of frauds. There was no evidence that the negro woman was delivered, or offered to be delivered, by S. to B., or that any earnest money was paid, or a note or memorandum in writing made of the agreement. . . judgment for the plaintiff."

Per Curiam: "It may be questionable whether the contract for the sale of the service of the negro woman could be considered as a sale of goods, etc. within the statute for the prevention of frauds: but it was incumbent on the plaintiff below to show a performance on his part, by an offer of the wench to the defendant, before he called upon him for the payment of the money. . . No such offer appears to have been made. The judgment below must, therefore, be reversed."

Methodist Episcopal Church v. Jaques, 1 Johns. Ch. 65, June 1814. [67] "The personal estate of which Mrs. Jaques died possessed, was alleged to consist of moneys, and securities for moneys, . . horses, carriages, and slaves." See same *v.* same, p. 369, *infra.*

Dickey v. The United Insurance Company, 11 Johnson 358, August 1814. "This was an action on two policies of insurance, one on the schooner *Minerva,* and the other on the cargo on board of the same vessel, . . In the order for the insurance, the defendants were informed,

[1] P. 355, *supra.*

that the cargo consisted of soaps, wines, etc., and that the schooner would have on board some negroes, bound to the Havanna. The policy contained a written warranty, ' free from loss, if not permitted to entry, in consequence of having negroes on board.' . . [359] a verdict was taken for the plaintiff for 7,000 dollars, subject to the opinion of the court on a case made, the amount of the verdict to be reduced as the court might direct. The *Minerva* sailed from St. Bartholemew's on the voyage insured the 10th of October, 1810, having on board forty-five African negroes, . . From the 19th to the 23d, she experienced violent winds, and on the evening of that day anchored near the Moro Castle, . . which was the usual place for vessels having negroes on board to come to. Vessels loaded in whole or part with slaves are not permitted, by the laws of Havanna, to come to the usual places for landing other cargoes, until they have been visited, and the slaves are landed. On the 24th of October, the usual petition was presented by the consignees, in behalf of the *Minerva*, to the proper officers, praying she might be visited and examined, . . previous to landing the slaves. The weather on the 24th October, was . . tempestuous, . . On the 25th of October, a violent hurricane prevailed, . . During the gale, she was run against by another vessel and was driven ashore among the rocks, and was wrecked, . . one of the negroes only being lost."

Held: [363] " It appears that the port of Havanna consists of an outer harbor . . used . . for the landing of slaves, . . and of an inner harbor at the city, where vessels having cargoes, other than slaves, usually anchor . . and which inner harbor is a place of safety. . . As it regards the vessel and that part of the cargo insured by these policies, I am of opinion that the voyage insured was to end at the inner harbor; and, . . that the *Minerva* was not ' moored twenty-four hours in good safety ' . . The underwriters were expressly informed by the assured, before they signed the policy, that the schooner would have on board some negroes bound for the Havanna. . . [364] The defendants seek protection under the special clause in the policy, viz. ' Warranted free of loss if not permitted to entry in consequence of having negroes on board,' and the . . question is, whether the vessel failed to complete her voyage in safety, by reason of ' not being permitted to entry in consequence of having negroes on board.' I think the cause of loss intended to be guarded against, and excepted by these policies, did not occur in this case. . . By the laws of Havanna, vessels having negroes on board were ' permitted to entry; ' and while going through the forms necessary and usual for that purpose, the vessel and cargo insured were destroyed by the tempest, before they arrived at the end of their voyage. The plaintiff is entitled to recover. Judgment for the plaintiff."

Mann v. Executors of Mann, 1 Johns. Ch. 231, September 1814. " The testator, . . devised . . and, also, bequeathed to her all the rest, residue and remainder of the moneys belonging to his estate at the time of his decease; and, also, his negro slaves, horses,"

Gelston v. Russell et al., 11 Johnson 415, October 1814. " The plaintiff demanded of the defendants three hundred dollars, being the amount

of the wages of Peter Latham, a black man, as a seaman on board of the vessel of the defendants, and who was the slave of the plaintiff. It was proved, that in 1798, Peter lived with the plaintiff. The sheriff having an execution against James Latham, sold all his right and title to Peter, at auction, and the plaintiff became the purchaser under the sheriff's sale. Peter lived with him some time before, and some time after the sale. . . before Peter was born, the father of James Latham went into Canada, leaving all his property here with his wife and children; and he died in Canada . . subsequent to the sale of Peter to the plaintiff. One of his sons, James Latham, took the management of his father's estate, . . There was no other proof of the property of the plaintiff in Peter. . . [416] His honor, . . directed the plaintiff to be nonsuited,"

Held: [417] "The question in this case is, whether the evidence is sufficient to establish the plaintiff's property in the slave. The mother of Peter was the slave of the father of James Latham. By the statute, . . he followed, from his birth, the state and condition of his mother; and, consequently, he was the slave of Latham the father of James; unless, after going to Canada . . the master has been attainted of adhering to the enemies of the country, which would operate as a lawful manumission of the slave. . . But such attainder and conviction, if any, has not been shown. In 1798, the time when Peter was sold by the deputy sheriff, it appears . . the father, of James, was living . . in Canada; . . The abandonment of his family and property could not divest him of his right to the slave; and . . possession could not create such an interest in . . his son, as to subject the slave to be seized and sold for . . his debts. The plaintiff, Gelston, having only purchased the right and title of James Latham from the deputy sheriff, he cannot, now, under that sale, establish his claim to him, as his slave, who, if not a freeman altogether, must be considered as part of the estate of Latham, the owner of the slave's mother, and subject to the disposition and control of his executors and administrators, in the same manner as the other personal property of the deceased, unless otherwise directed by will. The plaintiff having no claim to the services of Peter, the nonsuit was properly granted by the judge; and the motion to set it aside must be denied."

Cook v. Husted, 12 Johnson 188, May 1815. "Sarah Husted, the plaintiff below, sued Cook, and declared against him for work, labor, and services performed by a negro girl, alleged to be her property. . . It was proved on the part of the plaintiff, that the girl was born the slave of Mary Pugsley, of whom the plaintiff, two or three years before the trial, had purchased her, and that Mary Pugsley, until the time of such sale, had the . . exclusive control of the slave; . . a bill of sale had been given, . . was admitted to be read in evidence, after the handwriting of Mary Pugsley had been proved. The defendant below claimed to have purchased the slave from Israel Pugsley, a son of Mary; and Israel Pugsley . . swore, that when he was about fourteen years old, his mother told him, that if he would procure the women to assist at the birth of the child, she would give him the child, but whether he did so or not does not appear; . . It was proved . . that the child was called Israel's in

the family. . . the slave was in the defendant's service about a year and a half, and some evidence was given to show that her service was not worth more than her living. . . judgment for the plaintiff for ten dollars."

Per Curiam: [189] "If the slave was the property of the plaintiff, the law will raise an implied promise on the part of the defendant to compensate her for the services of such slave. Both parties claim under Mary Pugsley, as once being the owner of this slave; and there is no sufficient evidence . . to show that she ever parted with her right to Israel Pugsley, . . He could not be considered as a purchaser, no consideration whatever having been given by him, and he acquired no right to the slave as a gift. A delivery of possession was essential to change the property, and this never took place; . . Mary Pugsley continued to have the . . absolute control of the slave, until she sold her to the plaintiff; . . the handwriting of Mrs. Pugsley being proved, was sufficient to authorize the reading of the bill in evidence, which, according to the return, vested the title to the slave in the plaintiff. The judgment must, therefore, be affirmed."

Methodist Episcopal Church v. Jaques, 1 Johns. Ch. 450, June 1815. [453] "The defendants, . . admitted that Mary Jaques, . . was possessed of personal property, consisting of slaves, household furniture, horses, . . amounting to about twenty-two thousand dollars." See same *v.* same, p. 366, *supra*.

Concklin v. Havens, 12 Johnson 314, August 1815. "the question . . was whether the plaintiff was the slave of the defendant. . . One Joseph Concklin was the owner of a negro slave, named Maria, and her daughter Cloe Concklin, by his will . . bequeathed all his personal estate to the defendant, . . and by a subsequent clause, . . 'Item—I give my negro wench, Maria, her time; and I also give to Maria her daughter Cloe, during her natural life.' After the death of the testator, and during the life of Maria, Cloe had several children, of whom the plaintiff was one."

Held: "In my view, . . the plaintiff cannot be deemed the slave of the defendant. . . By our laws, . . slaves are protected, . . yet they are considered, . . as goods and chattels, . . Not to enforce this doctrine in the present case, when on other occasions, it is applied to slaves as personal property, would be manifestly unjust; and [315] I rejoice that an instance has occurred, by which the law, . . will operate in favor of personal liberty. According to the general principle of law, a person hiring an animal is entitled to the increase, . . If this is the case where there is a hiring for a time, the doctrine applies with greater force in favor of a person having a right, or who is proprietor during life. The children of Cloe were born during the lifetime of Maria, . . they, therefore, belonged to her, and in case of her decease, to her legal representatives; and if there should be no such representative, which probably is the case in this instance, . . they of course have become free. The plaintiff being one of those children, if not entitled to his freedom altogether, at all events, cannot be claimed by the defendant in this cause. Judgment for the plaintiff."

The Overseers of the Poor of the City of Hudson v. the Overseers of the Poor of the Town of Taghkanac, 13 Johnson 245, May 1816. "Two justices of the peace of the town of Taghkanac, . . made an order for the removal of Elizabeth Heydon and her four children, paupers, from that town to the city of Hudson. . . About forty years ago, one Catreen Race, an inhabitant of the town of Livingston, . . charged one Adam Heydon, a freeholder . . of Hudson, with being the father of a bastard child with which she was then pregnant. Heydon married her, but refused to cohabit with her, and she continued to live in Livingston, and he in Hudson, where he still resides. Three months after their marriage, Catreen Race was delivered of a male black child, (both parties being white persons,) which Heydon refused to acknowledge. The child went by the name of William Heydon, and was, when about two years old, bound out by his mother, . . to one Phillips, . . inhabitant of Livingston, until he should arrive to the age of 21. The child continued with Phillips, . . six years in the town of Livingston, and about twenty months more in that part of Livingston which is now Taghkanac, and then removed with his master into the state of New-Jersey, where he completed his term of service, and then returned to Taghkanac, where he married and died, leaving a widow and four children, the paupers in question. . . the Court below decided that William Heydon, . . was the child of Adam Heydon; that his residence followed his father's, and was, therefore, in Hudson; and that, having gained no legal settlement elsewhere, his widow and children were chargeable to Hudson. The admission of evidence as to the color of William Heydon, [246] and his offspring, was objected to, but the objection was overruled by the Court below."

Held: [247] "If the return had stated that Catreen Race, a white woman, had been delivered of a mulatto child, instead of a black child, there could be no question on the subject of illegitimacy, because it would have appeared impossible for Adam Heydon, a white man, to have been the father; and the law, in such case, would pronounce the child a bastard; . . but, whether Catreen Race was delivered of a legitimate or a bastard child, is rendered immaterial, as respects the liability of the overseers of Hudson, because . . the child was bound out . . to . . Phillips, . . His last place of residence, . . in this state, was Taghkanac; but the binding, and first habitation, under the indenture, were in . . Livingston. . . so that, . . [248] the town of Livingston would be chargeable with the maintenance of the paupers in question; and if William Heydon could even be deemed legitimate, yet the apprenticeship stated was sufficient, . . to exonerate the overseers of Hudson; . . If Adam Heydon had objected to the binding, . . the overseers of . . Tag[h]kanac might have been justified in the attempt to make the overseers of . . Hudson chargeable, but the full . . service having been rendered, . . the objection . . ought not to prevail; . . The overseers of Hudson are, therefore, exonerated from the maintenance of his widow and children, the paupers in question. The judgment of the Court below must, consequently, be reversed, and the order of the justices quashed."

Scidmore v. Smith, 13 Johnson 322, August 1816. "Smith, the defendant in error, brought an action of trespass . . against the plaintiff in error, to recover damages for seducing and harboring his man servant. It was objected that the action should have been debt, . . but the exception was overruled, and judgment was given for the defendant in error."

Per Curiam. "The statute penalty, for harboring slaves or servants, is cumulative, and does not destroy the common law remedy. Judgment affirmed."

Oatfield v. Waring, 14 Johnson 188, May 1817. "This was an action of *assumpsit,* brought to recover a compensation for supporting the defendant's slave. . . It was proved on the part of the plaintiff, that the slave, . . was the property of the defendant's wife, at the time of her intermarriage with the defendant, in 1810, and had lived with the plaintiff, in the city of Albany, and been supported by him from the time of the defendant's marriage until . . 1815, when he was demanded, and the day after received, by the defendant, from the plaintiff. The defendant lived in the city of Albany, and knew that the slave was kept by the plaintiff; but no proof was given of any express request on the part of the defendant, to the plaintiff, to keep the slave, nor of any express notice given by the plaintiff that he expected any compensation. It was proved that the plaintiff was the grandfather of the slave, and had himself been the slave of the father of the defendant's wife; that the wife of the plaintiff was formerly a slave of the same family; that when the plaintiff moved from the house of his late master, in 1810, the slave went with him, and that about the same time the defendant and his wife removed to Albany. . . [189] The judge left it to the jury to determine from the evidence, whether any request from the defendant to the plaintiff to support his slave could be inferred. The jury found a verdict for the plaintiff for 143 dollars. A motion was made, on the part of the defendant, to set aside the verdict, and for a new trial."

Held: [192] "The defendant makes two objections to the verdict. 1st That the facts proved do not justify an inference that the maintenance of the defendant's slave was at his request. 2d. That the plaintiff is a slave, and is incompetent to maintain the action. The judge submitted it to the jury, whether a request on the part of the defendant, that the plaintiff should keep, provide for, and maintain his slave, had not been made out, and they find that there was a request. . . I am decidedly of the opinion, the circumstances well authorized the conclusion drawn by the jury. As to the second point. The fact, that the defendant had himself sued the plaintiff for harboring his slave, goes a great way in establishing that he was free; at all events, it is a very solemn concession of the defendant that he was so. . . [193] Motion denied."

Skinner v. Fleet, 14 Johnson 263, August 1817. "action of trespass on the case. The declaration stated that the plaintiff was possessed of a negro slave called Primus, and . . the defendant, being sheriff of the city . . of New-York, by . . a writ of *pluries homine replegiando,* caused Primus to be replevied; . . that the defendant, . . suffered him

to go at large, without surety . . for his return, . . that Primus did make default, . . and that Primus, . . was eloigned whereby he could not be returned to the plaintiff. . . It was admitted that the defendant had replevied and set at liberty Primus, . . The material testimony . . of the plaintiff was . . Edward Chapple was the owner of the slave in question, and was an inhabitant of . . Connecticut. In April, 1802, Primus ran away from him, and was gone until January, 1804, when Chapple accidentally met him in . . New-York, and took him into custody. The plaintiff, . . also an inhabitant of Connecticut, was then in New-York, and the master of a vessel bound to London. The defendant [plaintiff] agreed to take Primus to sea with him as his cook, and allow his master wages, but told him that unless he had some writing to show when in London, the boy might claim to be free, and leave him, and proposed that Chapple should give him a bill of sale, to be given up on his return home. A bill of sale was . . given, and Primus went the voyage, and returned . . to New-York; and in . . 1804, a soon as Chapple had heard of the . . return, he offered to sell him the boy, and proposed, . . that he should keep the bill of sale . . [264] The defendant [plaintiff] agreed . . and sent Chapple the purchase money, together with the wages due him. The plaintiff owned . . Primus as his slave, . . for . . years after that time, and took him to New-York . . when he went to sea. . . It appeared on the part of the defendant, that a bond had been given . . to . . the defendant in this suit. . . The obligors in the . . bond were members of the manumission society in the city of New-York. . . [265] The judge charged the jury, that this could not be likened to a case of property; . . recourse must be had to the laws and customs of England in relation to villeins; that the sheriff ought to have brought Primus into Court, . . that if they believed the testimony of Edward Chapple, the sale of Primus was made . . in New-London; the plaintiff being then on business in New-York, and both being . . citizens of Connecticut; . . and that the only question for the jury would be as to the damages. The jury found a verdict for the plaintiff, and the defendant moved for a new trial."

Held: [267] "the questions arising on the case are, 1st. Whether the sheriff performed his duty on the writ of *homine replegiando*? [268] . . 3d. Whether Primus became free in consequence of the sale to the plaintiff? 4th. Are the damages excessive? . . The judge, . . ruled correctly, that the sheriff ought to have brought Primus into Court, on the *homine replegiando*, and returned that he was claimed as a slave. . . [269] By the act concerning slaves . . it is . . unlawful to sell as a slave . . any person who shall be imported or brought into this state; and every person so imported, or sold, is declared to be free. . . The facts here are widely . . different. The slave ran away from his master in Connecticut, and was sold to the plaintiff, a resident of that state; and it cannot be said that the domicil of the slave was changed to this state, . . This case, therefore, is not brought within the purview [270] of the statute, . . We have no facts before us authorizing us to grant a new trial for excessiveness of damages. We must infer from the case, that the plaintiff

in . . Columbia county; . . The return also stated, that the slave was . . left in the street in the town of Claverack, from whence she [284] wandered into the city of Hudson. The Court below decided that the sale . . to Woodworth was void, and affirmed the order of removal."

Held: " By the 14th section of the ' act concerning slaves and servants,' . . it is enacted, ' that if any person shall, by fraud or collusion, sell, or pretend to sell, or dispose of, any aged or infirm slave, to any person who is unable to maintain such slave, such sale or disposition shall be void,' . . And by the 33d section of the ' act for the relief and settlement of the poor,' . . it is enacted, ' that it shall be lawful to remove any slave who shall have left his master, or shall have wandered from town to town, to the place of settlement of his master, etc., if such place of settlement can be found in this state; and, if none can be found, then to the place . . whence such slave shall have last come,' . . I incline to the opinion that the facts present a case within . . the 14th section of the act; and that the sale from Van Rensselaer to Woodworth, . . must be deemed collusive and void. If so, the justices who made the order of removal had a right . . to consider either Van Rensselaer, or Jacobs, as the master of this slave; . . [285] If Van Renselaer may not be regarded as the present master of the slave, on the ground that his transfer was . . void, then I think Jacobs is . . the owner. . . Allowing, then, . . that Jacobs is . . the true owner, then, I think, the order of removal may be sustained; for the return states, that . . ' Sarah wandered from the town of Claverack, into the city of Hudson; which presents a case expressly provided for in the 33d section, . . On either ground, . . I am of opinion, that the order of the Sessions was correct, and ought to be affirmed."

Smith v. Kniskern, 4 Johns. Ch. 9, January 1819. " Bill for a partition. Jacob Kniskern died possessed of a large real and personal estate in Schoharie, and by his last will, . . he gave to his wife, ' all his beds and bedding, together with all his household furniture, his negro wench S. and negro boy J. and her comfortable support and maintenance out of his estate, . . and the privilege and use of one room in his dwelling-house during all such time as she should continue to be his widow, and no longer.' . . The bill prayed for a partition, and that the widow might be decreed to elect whether to take the provision under the will, or to claim her dower. [10] The widow, in her answer, insisted, that she was not bound to make an election, but if she was bound, she elected to take the provision under the will."

Held: " The charge of a ' comfortable support and maintenance,' falls, probably, upon the real estate, as well as the personal. . . I do not perceive, however, that the provision destroys the right to dower. . . It is sufficient that he has not made any declaration of his will on the subject, . . [11] The rule is, that the widow takes both provisions, unless the estate is insufficient to support both, or such an inconsistency appears between the provisions in the will, and the dower, as to make the intention clear and indubitable, that both provisions were not to be taken. I shall accordingly declare, that the widow is not to be put to her election."

Helm v. Miller, 17 Johnson 296, January 1820. "plaintiff gave in evidence a note executed by the defendant, . . 'For value received, four years after the date hereof, I promise to pay to William Helm, or order, three hundred and fifty dollars, with interest until paid. This note is executed in consideration of a negro man, named John, this day delivered by said Helm to said Miller; and it is the express understanding of the parties, that if, in consequence of any law of this or of the United States, the said negro man shall be legally discharged or liberated from the possession of the said Miller, previous to the payment hereof, then this obligation to be void. This provision is not, however, to extend to any laws to be passed hereafter for the emancipation of slaves; dated October 21, 1813.' It was proved that the defendant purchased the negro man of the plaintiff; . . it was agreed, [297] . . for greater caution that the plaintiff should confess a judgment in favor of the defendant; and that an execution should issue by . . which the negro should be sold; which was accordingly done, and a bill of sale was executed by the sheriff to the defendant, . . the negro man was brought from . . Virginia by P. Thornton, who owned him, at the time of his death, in 1806; and by his will, . . he devised to his wife all the property he possessed in the state of New-York, including his negro slaves, and appointed his wife executrix, . . Previous to the giving of the . . note the plaintiff married the said Susan Thornton. . . The judge ruled that the action was not sustainable and nonsuited the plaintiff. A motion was made to set aside the nonsuit, and for a new trial."

Held: [299] "The case of Sable *v.* Hitchcock,[1] decided, that the sale of a slave imported into this state since the . . act of 1788, in the course of administration, . . would not be within the act, so as to subject the vendors to the penalty, or to emancipate the slave, if the sale was free from collusion. In the present case, the facts show that the sale was not made by the plaintiff as executor of Thornton. . . So far does the sale of the slave appear to have been unnecessary in the administration of Thornton's estate, that the note . . was disposed of to pay the plaintiff's private debt. . . The lapse of time, too, since Thornton's death, precludes the idea that it was necessary to sell the slave to pay his debts. The acts of the plaintiff are decisive, that he did not sell the slave as executor, but in his private right, and as part of his property acquired by his intermarriage with Mrs. Thornton. The motion to set aside the nonsuit must be denied."

Brush v. Wilkins, 4 Johns. Ch. 506, June and August 1820. "Ichabod Brush, the testator, formerly of Demarara, South America, but late of Huntington, [New York] . . [507] made his will, . . dated March 6, 1807, by which he directed, (1.) That his plantation, slaves, and effects, in the colony of Demarara, be sold by his executors: (2.) That his executors pay to Miss E. Wilkins 20,000 dollars, in five annual payments, and in case of her death, to her parents: (3.) That they pay to the plaintiff, his sister, 500 dollars, annually, during her life. . . In June, 1808,

[1] P. 355, *supra.*

the testator married Miss E. Wilkins; and . . made another will, . . March 14, 1809, in which he revoked all former wills, and made various bequests . . giving to the plaintiff an annuity of 300 dollars, . . and to his wife, jointly with the child of which she was then enseint [*sic*] his estate at Huntington, etc., . . The testator died at H. the 1st of August, 1809, leaving one child; and the second will, subscribed by him, but not published in the presence of witnesses or attested, was found with the first will, sealed up in the same envelope, among his valuable papers. The defendants treated the first will as a nullity, and . . proved the second, . . The bill charged, that the defendants had . . the personal estate of the testator, in this state and in Demarrara, and . . the produce of the real estate; and prayed that the defendants might be decreed to set forth the situation, and to account" . .

Held: [509] "The first question arising . . is, whether the will of . . 1807, was revoked by operation of law, by reason of the subsequent marriage and birth of a son. . . [510] It had become a settled rule of law and equity, . . that marriage and a child, taken together, . . did amount to an implied revocation, . . [516] I have no hesitation, therefore, in declaring, that the will of . . 1807, was revoked by the subsequent marriage, and the subsequent birth of a child. . . [520] The will of 1809 was not executed with the solemnities requisite . . to pass real estate, and so far the estate descended to the child, as heir at law, subject to the dower of the wife . . , the slaves . . attached to the plantation in Demarara, passed as appurtenant to it, . . to the heir."

U. S. v. Andrews, 24 Fed. Cas. 815 (1 Brun. Col. Cas. 422), September 1820. Andrews "was indicted under the second section of an act of congress, passed the 10th of May, 1800,[1]" Stringham [816] "being attached to the *Cyane* sloop of war, a ship of the United States, in the capacity of lieutenant, on the 6th of April last, . . boarded the *Endymion,* commanded by the defendant at Cape Mount, on the coast of Africa. He found on board an American register, . . The vessel had a berth deck, a large quantity of water, two large cabooses, and provisions, but no cargo; and the witness found in the hold a quantity of hand-cuffs. . . the defendant admitted that she was a lawful prize to the first officer of the *Cyane*; . . that he had sent home by another vessel one hundred and fifty; that he had made enough by those he had sent home to clear the owners from the loss of the vessel; and that had he not been taken, he would have cleared two hundred thousand dollars. His wages, he admitted, were two hundred dollars a month, and those of the crew forty dollars; whereas . . [817] the usual wages on board merchant vessels is but fifteen dollars a month. . . after the arrival of the prisoner here, he admitted that he had made about fifteen thousand dollars, was willing to give any lawyer two thousand dollars who would free him from his embarrassment; and that he had been inadvertently drawn into the affair at a dinner party at Baltimore." Held: on an indictment for engaging in slave trade, it is not necessary that the vessel to which the accused belongs should actually have had slaves on board.

[1] 2 Stat. at L. 70.

U. S. v. Malebran, 26 Fed. Cas. 1145 (1 Brun. Col. Cas. 426), 1820. "The defendant, a foreigner, and resident in this city, was indicted under the act of congress, of 1818.[1]" Stringham "testified that in April last, being a lieutenant on board the *Cyane* sloop of war, he boarded the schooner *Science*,[2] at Cape Mount, on the coast of Africa, and found on board two several letters, written in French, by the defendant; the one dated in this city, on the 31st of December, 1819, directed to Francisco Mathieu; and the other, on the 1st of January, 1820, to Capt. Adolphus La Cost. It appeared from the translation of this last mentioned letter which, with the other, was read in evidence, that it was a letter of instructions to the captain, in reference to an agreement previously made, directing him to proceed to Porto Rico, where the vessel was to be changed into Spanish; and after procuring shackles, handcuffs, etc., to proceed on the contemplated voyage. Another person, at Porto Rico, was to assume command of the vessel. He was to be the captain on paper; but La Cost, the real captain, who was to receive further directions from the brother of the defendant, Don Pedro Malebran, at Trinity de Cuba. To this place the merchandise, to be obtained on the voyage, was to be carried; and the letter states the agreement between the defendant and La Cost to be that the latter was to receive a specific sum per head; but the word 'slaves' was not mentioned. It was then proved by James B. Leonard and Joshua Phillips, clerks at the custom-house, that on the 31st of December, 1819, the *Science* cleared from this port for Porto Rico. Stringham, on being again called, testified that he found on board the *Science* fifty pair of irons, some of which were shackles, and some handcuffs: and he also found muskets, tobacco, and callicoes, the usual cargo for the slave trade." For [1146] "uncertainty in the indictment, the judge advised the jury to acquit the defendant, and he was acquitted. . . [He] [1147] was bound over for his appearance at the next term."

Van Alst v. Hunter, 5 Johns. Ch. 148, February 1821. "He also devised to them his negroes, furniture, and stock on his farm,"

Petry v. Christy, 19 Johnson 53, May 1821. "a verdict was taken for the plaintiff, subject to the opinion of the Court, on the following case: the declaration was on a promissory note for 100 dollars, drawn by the defendant, and payable to the plaintiff, . . By a special endorsement, the note was assigned by the payee to Frederick Getman, to be collected at his own risk and expense. Getman was, therefore, the real plaintiff. The defence was . . want of consideration . . or failure of the condition on which it was given. The facts . . were, that Petry sold a negro man (Tom) and his wife and child, as slaves, to Frederick Getman, and Getman's note for the price. . . in the fall of 1815, Getman told the negro (Tom) that if he would procure good notes to amount of 200 dollars, payable to Petry, to whom Getman was indebted for the negroes, and would give his own note to Getman for 75 dollars, he would immediately manumit the negro and his wife and child. The negro . . procured good notes to the amount of 200 dollars, payable to Petry (of which the note

[1] 3 Stat. at L. 450.
[2] See U. S. *v.* La Coste, p. 497, *infra*.

in question formed a part,) and delivered the notes to Getman, . . Petry, . . approved the notes . . and agreed . . to accept them, to be applied on Getman's note to him. On the 7th of November, 1815, Getman made out a formal instrument of manumission for the three slaves, and subscribed his name to it; and, on the same day, procured from the overseers of the poor, a certificate that the slaves were of sufficient ability to provide for themselves. But Getman refused to deliver the instrument of manumission, and kept the papers . . until . . 1818, when he delivered them to the town clerk to be recorded. During the time that he so held the papers, Getman exercised control . . over the negroes, as his slaves. [54] He hired out Tom, and received part of his wages. He told the negroes that 'they were as much his slaves as ever they were;' . . It was proved that during that time he did offer to sell them."

Held: "The note . . was undoubtedly given by the defendant, in consideration of the promise, of Getman, that he would 'immediately' manumit the negroes; and although the note is made payable to Petry, yet it is clear that the original contract was made by Getman, the present assignee, and holder of the note; and there is no evidence that the note was ever delivered to Petry. The . . presumption . . is, that it has remained in the hands of Getman, ever since it was given. . . An assignee of a promissory note in the usual course of business . . without notice of a defect . . is protected . . But it would be an outrageous perversion of the rule, to consider Getman as standing in that situation. . . The promise . . of Getman was to manumit the slaves immediately on receiving the notes, . . yet he in fact refused to manumit the slaves, until two years and five months afterwards; . . in the mean time, treated them as his slaves. . . [55] Their freedom was the consideration for this note; of that freedom he wrongfully deprived them; and it would be an insult to the law, and to common sense, to say, that his restraint of their liberty was illegal, . . when he claims the price of that liberty. The defendant is, therefore, entitled to judgment."

Bay v. Tallmadge, 5 Johns. Ch. 305, July 1821. [318] "on the 5th of October, 1798, he issued another *fi. fa.* to the sheriff of Columbia, for the purpose of levying on two negroes and some timber,"

Van Horne v. Fonda, 5 Johns. Ch. 388, July 1821. [398] "he took possession, as executor of Jellis F., of three negroes, and disposed of them, according to a schedule annexed."

The Overseers of the Poor of the Town of Marbletown v. the Overseers of the Poor of the Town of Kingston, 20 Johnson 1, May 1822. "Francisca, the mother of the pauper, was born in 1800, in . . Marbletown, of parents who were slaves, in the house of J. H. Hasbrouck. Her master, . . on the 10th of December, 1801, abandoned her to the overseers of the poor of M. . . about [2] four years since her grandmother purchased her time, and she came to reside with her at Kingston. In 1817, she married the slave of H., residing at K. By her husband, she had a child, named Dinah, born in K. Francisca and her husband cohabited together, as husband and wife, until her death, which happened soon after

the birth of Dinah, and about a year ago. The husband of F., . . resided with his master, an inhabitant of Kingston. After the death of her mother, Dinah became a town charge, and was removed from K. to the town of M., as the place of her last legal settlement. The question was, whether the settlement of the pauper was in K., by virtue of the marriage of her mother in K., or by birth, or otherwise."

Held: "It is clear, that by . . the statute of 1801, the mother was a pauper of Marbletown, and the child, Dinah, would follow the condition of the mother, unless her marriage with a slave in Kingston makes a difference in the case. . . [3] It is a rule, that children follow the condition of the mother, where both parents are slaves, and *a fortiori*, it ought to be so where the mother is free and the father a slave. . . I cannot admit that by such a marriage, a free wife subjects herself to the custody and control of the slave husband. . . The husband is not emancipated, nor is the wife enslaved by such a marriage. I am inclined to listen to the suggestions of policy and humanity, which I think dictate the rule, that the children of such marriages shall follow the condition of the free mother as to all their civil rights and duties, and that she shall have the exclusive custody and control of them, as though their father were dead; . . I think the most consistent rule will be, to consider the children of such marriages as belonging to the town in which the mother had her legal settlement, without any regard to her slave husband. We are, therefore, of opinion, that the order of the justices for removing the pauper to Marbletown ought to be affirmed. Order of Sessions affirmed."

Oothout v. Thompson, 20 Johnson 277, October 1822. [278] . . "This is an action for fraud in the sale of a negro wench, in fraudulently representing her health and capacity for work. The pleas were not guilty, and not guilty within six years. The jury found a verdict for the plaintiff, on the question of fraud. The judge reserved the question on the operation of the statute of limitations, . . a witness, testified, that he drew the note given by the plaintiff to the defendant, on the sale of the wench. It is dated on the 4th day of October, 1814, . . and he thought the sale took place on the day the note was executed. . . The writ, in this case, was tested the 23d day of October, 1820; so that there were more than six between the sale and the commencement of the suit. In 1815, it appears that the plaintiff charged the defendant with cheating him in the sale of the wench; the defendant did not deny it, but said he was willing to do what was right. . . The question then is, whether, if we consider the defendant as admitting the fraud, within six years, and declaring [279] he was willing to do what was right, such admission and declaration can take the case out of the operation of the statute. . . it is inconceivable, how an admission of of the fraud within six years, can render the party guilty of committing it anew. It was consummated when the sale took place, and any subsequent confession relates back to that period. . . [280] Judgment for the defendant." [Spencer, Ch. J.]

Smith v. Hoff, 1 Cowen 127, May 1823. "*Assumpsit*, on a promissory note, made by the defendant, payable to the plaintiff. The consideration was a negro man, purchased by the defendant of the plaintiff, February

15th, 1815. In 1800, the plaintiff and Peter Smith owned the negro. He asked permission to work for his freedom; for which they agreed to take £80, payable in 3 years; . . He accordingly left their service, and afterwards paid $31.75, previous to Feb. 19th, 1801. Nothing more being paid, the plaintiff ordered him to return to his service. He refused to obey, and was confined in jail. While there, the plaintiff sold him to the defendant. He never lived with the plaintiff, or P. Smith, since he first left them, . . [128] The plaintiff proved, that when he was sold to the defendant, he promised to serve him faithfully, and urged the defendant to buy him; that the plaintiff had imprisoned him twice before, and let him go on his promise to pay the money."

[129] Held: "It is contended on the part of the defendant, that the agreement was a manumission; that to enable the negro to perform his part of the contract, it was necessary he should have all the rights of a freeman, . . If it is to be understood, that the plaintiff actually parted with his right to the services, in consideration of the promise to pay £80, . . I incline to think it . . a manumission; but . . it was evidently conditional. . . he did not intend to relinquish his hold. He consented that he might earn the money by his labor, and pay it over. . . This case is analogous to that of Kettletas *v.* Fleet,[1] . . where the owner of a slave gave a written promise to manumit him in eight years, on condition of his faithful service during that period; it was held to be a conditional manumission, . . By the act relative to manumissions, the owner may manumit a slave, . . The cases decided . . [130] seem to consider a writing as necessary, . . on the whole, I am of opinion that the negro continued a slave, not having complied with the agreement, upon which his emancipation depended. The plaintiff is entitled to judgment."

U. S. v. Jones, 26 Fed. Cas. 644 (Brun. Col. Cas. 462), April 1824. "The brig *Holkar* sailed from the port of N. Y. in Oct. 1818, under Captain Brown, and a coloured crew, with the exception of one man. . . for Curacoa," Oliver King, a mulatto (who had been three years in the state prison for grand larceny and had served his time out), testified that at Curacoa, Robinson (*alias* Jones), the prisoner, had been [645] "taken up for stealing part of a barrel of beef from the vessel, and remained in prison till the brig sailed. The night before, [three others] . . ran away, but were taken up and carried on board, the morning she sailed." The white member of the crew was left at Curacoa. "Capt. Humphries came passenber in the brig," The crew murdered Captain Brown, Captain Humphries, and the mate, threw them overboard, and scuttled the vessel. The prisoner [648] "was found guilty and sentenced to be executed"

The Plattsburgh, 10 Wheaton 133, March 1825. [135] "The *Plattsburgh* was duly registered at Baltimore as an American vessel . . in October, 1817. She cleared out . . under the command of Captain Joseph F. Smith, in December, 1819, having . . an assorted cargo on board, on a voyage ostensibly for St. Thomas . . but in reality, for St. Jago, in the island of Cuba. . . [136] a bill of sale of the schooner was

[1] P. 361, *supra.*

executed to Stark, by all the owners, to enable him to convey the same to any purchaser. . . [137] At the time of the equipment of the *Plattsburgh* at Baltimore, . . the brig *Eros* . . was also fitting out at that port for St. Jago de Cuba, with a cargo suited for the slave trade, under the management of Stark, as charterer for the voyage. This vessel was at first detained by the collector upon suspicion, but he, being satisfied, upon inquiry, that the owner of the *Eros* had no intention of having her engaged in slave trade, afterwards released her, taking out some few of her equipments. The *Plattsburgh* first dropped down the Chesapeake bay, and, afterwards, (if the witnesses are to be believed,) some grape, canister, and round shot were taken on board, and, on stowing them away, a barrel of irons, or handcuffs, was discovered, which was not contained in the manifest of the cargo. The vessel then sailed down to New Point Comfort, and there waited ten or twelve days for the *Eros,* and as soon as the latter appeared, after taking on board Mr. Stark, the *Plattsburgh* sailed in company with the *Eros,* directly for St. Jago de Cuba. The crew on board are represented to have distinctly understood, soon afterwards, that the voyage was designed ultimately for the African coast for slaves." After an ostensible sale to Marino, "a Spanish subject, and a resident merchant of St. Jago de Cuba," [138] "the *Plattsburgh* underwent repairs . . and was in due form made a Spanish ship, with Spanish national documents; and the usual preparations were made, and the usual passports obtained, to equip her for a slave voyage to the coast of Africa, under her new owners. A part of the cargo of the *Eros* was taken on board of the *Plattsburgh,* and particularly about 300 casks of gunpowder. The original crew were, apparently, discharged, but Captain Smith, two of the mates, and six or eight of the men, together with Stark, still remained on board, and accompanied the vessel to the coast of Africa, she being, during that voyage, under the nominal command of a Mr. Gonzalez, with the assumed name of the *Maria Gertrudes.* She was captured, while lying on the coast of Africa, north of the line, by the boats of the United States ship of war *Cyane,* . . was brought into the port of New-York for adjudication, and was there finally condemned by the District and Circuit Courts;" [1] Decree affirmed.

The Overseers of the Poor of the Town of Guilderland v. the Overseers of the Poor of the Town of Knox, 5 Cowen 363, February 1826. "Two justices made an order, . . removing Patience York, a free woman of color, and her children, from Knox to Guilderland, . . Guilderland, . . gave notice of an appeal . . [364] The respondents . . proved that 13 years before the hearing, Patience was married to Ichabod, a black man, in the town of Berne; and lived with him there. They also proved that Ichabod was bound by his father and mother to . . Williams, by indenture, in Connecticut, about 30 years before the hearing; and he then removed . . to . . Berne, Ichabod being about three years old. . . he assigned him, . . to John Howard, of Guilderland, . . till 21."

Held: [367] "The question then arises, was the settlement in Guilderland? This will depend on the settlement of Ichabod, the husband. He was the apprentice of Williams, who lived in Berne. Williams gave the

[1] Acts of Congress, 1794, ch. 11; 1800, ch. 205.

indenture to Howard, who lived in Guilderland, for $40; . . The apprentice was placed in a situation to gain a settlement in Guilderland, if he continued to serve the time required by the statute, . . I am of opinion that the apprentice gained a settlement in Guilderland; and that the order of the sessions be affirmed."

Jackson, ex dem. The People v. Lervey, 5 Cowen 397, February 1826. "Ejectment, to recover possession of 50 acres of land, . . as escheated land. . . Lot number 26, . . was drawn by Peter Stringerland, a soldier in the revolutionary war. Stringerland was a slave; and died during the war, leaving a child born of a woman, between whom and Stringerland the ceremony of marriage had taken place, previous to the birth of the child; and the defendant derived title, *bona fide,* from the child of Stringerland. The mother . . was also a slave; and the child was born before the revolutionary war." . .

[400] Held: "J. Peter Stringerland, . . died . . leaving a child . . From him the defendant is a bona fide purchaser. The lot in question was drawn by Stringerland. The act of 1790 directed the patents to issue in the names of the persons who had actually served, and to their heirs and assigns forever; and . . should be deemed to have vested in the grantees and their heirs, on the 27th March, 1783. The act of April 5th, 1803, declared that patents made to persons, who were dead in 1783, vested in those persons at the time of their deaths respectively. In my opinion the question here presented will depend on a just construction of the patent, and . . acts of the legislature; and not on the question, . . whether a slave has capacity to take, hold or transmit to heirs by descent. . . The gratitude of the country [401] was due to the defenders of our rights . . It was directed to the men who had rendered the service, whether citizens, aliens, or slaves. . . The remuneration was intended to apply equally to all. . . The patents are to issue in the names of the persons who served; and to vest in them and their heirs. . . The soldier being dead when the patent issued, it was in effect, a grant to his heirs. . . [402] I think we are called on to decide, that the disabilities of the patentee and the heir, arising from a state of slavery, are removed by the acts authorizing the grant. . . it is contended, that the marriage of a soldier had not been legalized, and consequently the child not legitimate. . . [403] The act declares, that all marriages contracted, . . wherein one of the parties was, or might be slaves, shall be considered equally valid as though the parties . . were free, and . . children of such marriages shall be deemed legitimate. . . If I am right . . then the child of the soldier was legitimate, and became the heir of the father; . . [404] and being such, the legislature intended to remove the disabilities incident to slavery, so far as to permit the issue to take an estate of inheritance; and transmit it, in the same manner, as if no disability had existed. I am of opinion that the defendant is entitled to judgment."

Trongott v. Byers, 5 Cowen 480, May 1826. "*Assumpsit* for the work and labor of the plaintiff, by his slave. . . It was proved . . that Peter Gilbert, a black man, . . worked for one Paff, as a slave, and Paff claimed

him as such, about 2½ years. That Paff then promised him that if he would stay and work on his farm (which he had then leased to the plaintiff) 5 years, he should be free. The lease . . contained an agreement between Paff and the plaintiff, that Paff should leave Peter with the plaintiff during his natural life; and that if he should be sold in two years, one half the purchase money should be paid to Paff. The lease . . was for 2½ years. Peter worked . . for five years, (in the service of the plaintiff, who [481] continued his possession,) . . with a view to his freedom; but no written manumission was shown. After this, Peter left the plaintiff's service, and worked for the defendant. . . the jury found for the plaintiff,"

[482] Held: "The evidence, was, . . sufficient to establish the fact that Peter was the slave of Paff. . . That the contract between Paff and the plaintiff amounted to a sale of the negro there can be no doubt. The latter was to have . . Peter during his natural life; but if he sold him within two years, he was to pay one half . . to Paff. . . The plaintiff did not sell him; and his interest became absolute . . [483] The parol agreement of Paff, to manumit Peter, if he served faithfully for 5 years, was not a valid manumission. Such a manumission can only be in writing. . . New trial denied."

The Overseers of the Poor of the Town of Owasco, v. the Overseers of the Poor of the Town of Oswegatchie, 5 Cowen 527, May 1826. "Two justices made an order for the removal of the children of Diana, a black woman, by her husband, Peter, from Oswegatchie to Owasco, in St. Lawrence county. . . It was admitted, . . that Peters had never gained any settlement in Owasco, or elsewhere in this state; that Diana, the mother, was born in Owasco, and the order of removal was made on this ground, as the residence of the children would follow that of the mother. Daniel Kellogg was sworn . . and testified that . . [528] Diana, . . then single, came to reside with him . . That there was a writing made between the witness and the mother of Diana, under which she served; but which he had lost, . . But the court refused to hear any parol evidence of the contents of the contract."

Held: "The court below clearly erred in rejecting the parol evidence offered, . . The objection was, that it was executed by the mother, and not by the father. . . She served her time out with Kellogg, and the father does not appear ever to have interfered, or manifested any disapprobation of the binding. . . [529] a binding by a voidable indenture, and a service under it for two years, gives an apprentice a settlement in the town where he serves; and it is not competent for the town to object to the validity of the binding. Though Diana, was born in Owasco, an offer was made of competent evidence, to show that she subsequently acquired a settlement in Marcellus. This having been rejected by the court below, their order must be reversed."

Livingston v. Ackeston, 5 Cowen 531, May 1826. "*assumpsit* for work and labor by Ackeston against Livingston; . . verdict and judgment was for the plaintiff, . . Those facts were, that Ackeston, a black man, worked for Livingston from the spring of 1819 till June, 1820, when he sold him

to one Benn. That Livingston had bought him of one Ham, as a slave or servant, at $200; and that he was to serve till he was 28 years old. That he became dissatisfied, and procured Benn to purchase him of Livingston. That Ackeston was born of black parents, who kept house and acted for themselves as long ago as 1798, in which year he was born. The parents had be- [532] fore been slaves to one Dings."

Held: "The plaintiff, . . must be considered as . . freeman, during the period he was in the service of the defendant. But the defendant purchased him as a slave in perfect good faith, for a . . valuable consideration. The plaintiff supposed himself to have been a slave; and at his own request, was sold by the defendant to a person whom the plaintiff had induced and procured to purchase him. There is no pretence of an express promise on the part of the defendant, to pay the plaintiff for his services; . . The plaintiff knew, . . that the defendant had purchased his time, until he was 28 years of age; . . [533] The law, under such circumstances, cannot raise an implied *assumpsit*. . . Judgment reversed."

Minklaer v. Rockfeller and Feller, 6 Cowen 276, August 1826. "Minklaer sued R. and F. before a justice, . . for neglect of duty as overseers of the poor of the town of Clermont, in not providing for John M'Gill and his wife, two paupers belonging to that town. . . To the opinion of the C. P. nonsuiting the plaintiff, he excepted."

Held: [278] "The bill of exceptions presents the question, whether an action on the case will lie against overseers of the poor, for omitting or refusing to take . . measures to provide for paupers, in favor of an individual, who from motives of humanity, furnishes them with the sustenance and attention, which their situation absolutely requires. . . there is no evidence that their neglect was wilful, . . except what is to be inferred from their admission, that M'Gill and his wife were paupers, . . [279] I think it is fairly to be inferred . . that the defendants did not intend to admit that . . Clermont was bound to maintain these paupers. . . they said they could do nothing about it, until they saw Mr. Edward P. Livingston; and the return states that the defendants . . proved two written agreements between . . Livingston and his wife, and Adam Minklaer, junior; and also a bill of sale . . between . . M'Gill and the plaintiff. The plaintiff . . proved three receipts given by . . Livingston; . . two to the plaintiff, and one to . . M'Gill. The defendants proved an assignment or surrender, under seal, from . . M'Gill to . . Livingston. . . it is probable, that M'Gill had been a slave; and that, . . it was doubtful whether he had been so manumitted as to exonerate his master from the responsibility of maintaining him. . . This evidence was clearly insufficient to entitle the plaintiff to recover. The defendants were not bound, nor had they any authority to make provision for the paupers in the first instance. All they could do, was, to apply to a justice of the peace, and, . . inquire into the . . circumstances of the persons asking relief; and if . . they were in . . indigent circumstances . . then the justice was bound to give an order in writing to provide for them. . . [280] When the plaintiff seeks to charge the defendants as public officers, for an omission of duty, he is bound to prove it affirmatively . . The plaintiff was under no legal obligation to take care

of the paupers. . . it must be considered voluntary . . and cannot lay the foundation of an action against the overseers of the poor. . . the only course to be pursued, . . is, to apply to this court in behalf of the paupers for a *mandamus*. . . It appears to me, that if an action would lie at all, it must be in the name of the paupers themselves. . . Judgment affirmed."

In re Martin, 16 Fed. Cas. 881 (2 Paine 348), 1827-1840. [882] "This is a motion to quash the writs *de homine replegiando* . . by which the marshal is commanded that he cause to be replevied Peter Martin, . . a citizen of the state of New York, (whom John Enders, and John Grace, citizens of the state of Virginia, have taken and do keep,) . . Peter was claimed as the slave of John Enders, and . . had escaped. . . the recorder of New York . . allowed a *habeas corpus,* . . But before the recorder had decided upon the case, the writs of *homine replegiando* were issued to the marshal of the district, and the custody of Peter was transferred from the sheriff to the marshal." Subsequently the recorder "granted a certificate, according to the provisions of the act of congress of February, 1793," [1]

Held: [884] "that the act of congress under which the certificate of the recorder was given, is a valid and constitutional law, and that the writs of *homine replegiando* were irregularly issued, and must be set aside."

Warren et al v. Brooks, 7 Cowen 218, May 1827. "the following facts were in evidence: On the 22d of June, . . Van Wie, . . sold . . the negro to Isaac Denniston; who on the same day executed a writing, by which he covenanted, . . he would manumit him at the expiration of 6½ years. . . Denniston indorsed an assignment of all his right and title, . . to the defendant. The indorsement . . stated that the slave promised to live [219] with the defendant 3 years. On the 16th of December, 1820, the defendant, by writing . . manumitted the slave; . . in June, 1823, Christian, being in bad health, and unable to support himself, was examined before two justices, who . . gave orders on the overseers of the poor of Bethlehem to pay . . for his . . support; . . They amounted to about $160. . . the slave was unable to support himself, at the time he was manumitted. The judge charged that . . the defendant, not having obtained a certificate from the overseers, of his slave's ability to support himself, etc., pursuant to the statute, was responsible in this action, if Christian was, in fact, not of sufficient ability to support himself when . . manumitted. . . Verdict for the plaintiffs, 6 cents."

Held: [221] "The liability of the defendant arises, on the 7th section of the act relative to slaves and servants. . . It is contended by the defendant, that there must be a previous adjudication, before the master is liable. . . It seems to me, the right of the plaintiffs is made out, if the person manumitted was a slave, unable to support himself at the time of manumission, had become a charge on the town, and the expenditures were reasonable. . . [222] On the 28th June, 1823, Christian was examined before two justices. He declared he was unable to support [223] himself. . . It seems that all necessary previous steps were taken before

[1] 1 Stat. at L. 302.

relief was afforded. . . On the whole, I am of opinion that Christian was the defendant's slave until the manumission; that he was unable to support himself, and became a charge to . . Bethlehem; that no adjudication of settlement was necessary, and that the defendant is liable for the money advanced. A new trial must be granted, with costs to abide the event."

The Public Administrator v. Watts and LeRoy:—Norton v. the Same, 1 Paige 347, 1829. [349] "I give my black man James his freedom and one hundred dollars; for the last time enjoining upon him a reformation of conduct, without which freedom will prove his greatest punishment."

Curranee v. McQueen, 6 Fed. Cas. 984 (2 Paine 109), 1829-1840. Curranee, [985] "a colored man, born a slave in the Island of Jamaica, came into the state of Georgia with the defendant, she claiming and holding him as a slave, he then being a minor . . He became of age in January, 1824, and in January, 1826, entered into an agreement with the defendant to purchase his freedom for a certain stipulated price — upon which agreement considerable sums of money were paid at various times, though not to the full amount of the stipulated purchase;"

Held: I. "the plaintiff became free on being brought into Georgia,"[1] II. "All claim to wages, under any implied promise, arising from the mere fact of service, is excluded. . . The claim, therefore, to wages prior to the agreement for manumission in 1828, is not sustained; but we think the plaintiff is entitled to recover back the money paid under that agreement, on the ground that it was paid without any consideration."

Demeyer v. Souzer, 6 Wendell 436, January 1831. "In May, 1829, the plaintiff commenced this suit to recover for services rendered for the defendant by a negro slave. . . Mrs. Demeyer, by her will, gave the slave to the wife of the defendant, and he continued to work for the defendant . . after the death of Mrs. Demeyer, . . On the trial . . the plaintiff produced a bill of sale of the slave, executed by Mrs. Demeyer to him, . . in 1819, . . The plaintiff was present when the will of his mother was opened and read, and interposed no claim to the slave. . . the negro testified that never until the expiration of the time of service for which the defendant sold him, did the plaintiff inform him that he belonged to him. . . [437] the judge . . ordered the plaintiff to be nonsuited, with leave to apply to this court to set aside the nonsuit;"

New trial denied: "If a slave deserts his master and goes into the service of another, the master can recover for services performed by the slave before he gives notice of his claim; but this principle should not, . . be applied to a case where the master never had possession of the slave, and was chargeable with concealing his claim from the defendant while the slave was performing the services. There could scarcely be imagined a case where an implied waiver of right to the slave, if any valid right ever vested in the plaintiff, was more clearly made out. Though the bill of sale declares delivery was made, yet such was not the fact. Mrs. Demeyer continued, . . to exercise . . ownership over the slave for three

[1] Act of Congress, Mar. 2, 1807, 4 Stat. at L. 426.

or four years . . At her death the defendant took the slave under her will. This was done with the implied assent of the plaintiff. . . he saw him exercise dominion over him . . and did no act to undeceive the defendant for six or seven years. . . the plaintiff's conduct repels all inference of an implied promise by the defendant to pay for the services."

Rathbone v. Dyckman, 3 Paige 9, October 1831. [10] "The testator . . also provided for the payment of an annuity of $150 to Mrs. Conklin: and for the support of a black servant, during her life."

Cross v. Cross, 3 Paige 139, February 1832. [141] "as in Will Whisterlo's Case, where it was attempted to charge a black man as the father of a white child born of a mulatto woman."

Van Epps v. Van Deusen, 4 Paige 64, January 1833. [65] "The complainants filed their bill . . against the defendant, as the sole acting executor of Harpert Van Deusen, . . to recover the value of a certain female slave, and the proceeds of a bond which were bequeathed to Mrs. Van Epps, . . The complainants alleged, . . that M. Witbeck, . . bequeathed to Mrs. Van Epps, then an infant, a female slave named Ann, . . That Van Deusen, . . father and natural guardian of Mrs. Van Epps, . . when she was about fourteen years of age, received . . the money due on the bond; and that he also took into his possession the female slave, and received her services and her wages until she died at the age of twenty-four . . years. . . That the complainants frequently called upon H. Van Deusen, . . in his lifetime, to pay the amount . . on the bond, and to compensate them for the black girl; . . That he died in 1827, . . That the defendant alone made probate of the will; and that he had received assets more than sufficient to pay all the debts of the testator. And that the complainants had called upon the defendant . . to pay the amount . . on the bond, and the value of the black girl; but that he had refused to pay the same. . . [66] the defendant, . . denied all knowledge . . as to the existence of the supposed legacies . . or that his testator ever received the money on the bond, or had possession of the slave, . . [67] The complainants gave in evidence the will of Maritie Witbeck, bequeathing the bond and female slave to Mrs. Van Epps; and . . evidence . . that he had the services of the black girl, . . until her death,"

[70] Held: "there is very little doubt that Harpert Van Deusen, . . received . . money, [71] . . this money then belonged to his infant daughter. It also appears that he took home the black girl, . . and had the benefit of her services until her death. . . he had no right to receive the money due on the bond, or to receive the services of the slave, yet this court will hold him liable . . as if he had been the legally constituted guardian, so far as he has had the benefit of the infant's property. . . The father, however, could not be charged with the value of the slave, but only with the net profits of her labor received by him, over and above the expenses of her clothing and support. The death of the slave at the early age of twenty-four . . was a loss for which the father could not be answerable. . . In relation to the equity of these claims, . . the com-

plainants . . received . . equivalent . . in the free use . . of the Greenbush farm without rent, for more than ten years . . [76] the discharge of E. Van Epps under the insolvent act, in 1816, . . were distinctly stated in the answer. . . [77] there is no excuse for their neglect to bring the assignee before the court, . . I shall therefore direct this bill to be dismissed, . . but without prejudice to the equitable rights of the wife,"

Livingston v. Bain, 10 Wendell 384, May 1833. "This was an action of *assumpsit,* . . On the 3d June, 1820, the plaintiff sold to the defendant the services of a negro called Tobe, to end on the 1st June, 1825. The consideration of the sale was $200, of which $50 was paid down, and the residue secured by a note, . . on which this action was brought. . . Tobe worked for the defendant until the 30th September, 1823, when he asserted his freedom, and left the service of the defendant, and . . commenced a suit against Livingston, to recover for services rendered for him previous to the sale to Bain. . . It was now admitted, that at the time of the sale to the defendant, Tobe was a *freeman,* although in May, 1817, plaintiff had bought his services from a third person, for a period expiring 1829, and paid the consideration of $200. . . The judge ruled that the consideration of the note not having wholly failed, the plaintiff was entitled to recover a proportional part of the sum agreed to be paid, . . and it was agreed [385] between the parties that according to this principle, the plaintiff would be entitled to recover $147. The jury, . . found a verdict for . . that sum. The defendant, . . now moves for a new trial."

New trial granted: "The plaintiff cannot recover, for the want of consideration in the note. . . The ignorance of all parties . . could not make a free man a slave, much less authorize the sale of him. . . He asserted his freedom in the only way in which he could, by emancipating himself from his servitude, and claiming and exercising the rights and [386] privileges of a free citizen. . . Although the sale in this case may not have been immoral, as the parties were ignorant of the fact, still it is not the less illegal."

Floyd v. Recorder of New York, 11 Wendell 180, April 1834. "*Mandamus.* A fugitive slave was brought before the recorder of New-York on a *habeas corpus.* The fugitive sued out a writ of *homine replegiando,* upon which an issue was joined and tried in the New-York circuit, and a verdict found that the fugitive owed service to the person claiming the same. Upon which judgment was rendered, and the recorder applied to for a certificate allowing the removal of the fugitive, which he declined to give, being of opinion that by the suing out of the writ . . he had lost jurisdiction of the person of the fugitive. The claimant asked for a *mandamus* directing the recorder to grant the certificate."

Mandamus granted: "The recorder did not lose jurisdiction by the suing out of the writ . . the only effect of it . . was to suspend the proceedings upon the *habeas corpus,* until final judgment upon the writ of *homine replegiando.* . . the recorder ought to have granted the certificate."

Jack, a negro man, v. Mary Martin, 12 Wendell 311, July 1834. "Jack sued out a writ . . in which, after alleging that he, a negro man, [312] was in the custody of Mary Martin, and that she claimed him as a slave, . . that she detained him . . the sheriff was commanded to cause Jack to be replevied, . . The defendant put in three avowries: . . [313] In the second avowry, she says she took Jack, and detains him, because he was and still is her slave, and this, etc.; wherefore she prays judgment and a return, etc. [314] . . The superior court . . gave judgment for the defendant; . . a writ of error was sued out,"

Held: [315] "This replevin suit is under the provision of the state law. The defendant, in the superior court, set up in defence the fact that the plaintiff was her slave, and acknowledged the taking, by virtue of proceedings alleged to be in conformity to the act of congress. . . [329] The act of congress provides, that 'upon due proof to the satisfaction of such magistrate, that the person so seized or arrested doth owe service to the person claiming him or her, it shall be the duty of such magistrate to give a certificate, etc. . . The act of congress provides that the proof upon which the certificate shall be granted, may be either by oral testimony or affidavit, and the averment that the recorder heard the proofs and allegations of the parties, is sufficient within this law." Affirmed.[1]

Mulheran's Executor v. Gillespie, 12 Wendell 349, July 1834. "Gillespie sued the executors . . for board and lodging, provided a servant of the testator, at his request. . . The demand of the plaintiff was [350] . . for the . . period . . between June, 1823, and June, 1829, when . . the testator died. . . on the 29th June, 1829, Mulheran made his will, and . . gave all his personal property to his niece . . on condition that she should pay for the board of his old colored servant Nancy, should clothe her . . and at her decease decently inter her. . . the sum of $719.44 . . was paid to the plaintiff and his wife, the wife . . being one of the daughters of Margaret, the sister of the testator. The judge decided that the bequest and the acceptance thereof did not operate as an extinguishment . . of the plaintiff's demand, and so instructed the jury, who found a verdict for the plaintiff for $212. . . [354] defendants sued out a writ of error." Held: [355] "Judgment affirmed."

Scott v. Shufeldt, 5 Paige 43, January 1835. "The bill . . was filed for the purpose of annulling a marriage contract, on the ground that the consent of the husband . . was obtained by fraud, force and coercion. . . the complainant had occasionally visited the defendant, . . she afterwards made oath before a magistrate that she had been delivered of a bastard child, and that the complainant was . . arrested upon a warrant, . . required to give bail as the putative father of such bastard; and believing it to be a white child, and being unable to procure bail, he consented to marry the defendant, and was . . married to her . . that he subsequently ascertained that the child, . . was a negro child; the complainant and defendant being both white persons; and that he had not cohabited with the defendant subsequently to such marriage. . . complainant, . . [44] prayed that the marriage contract . . be annulled,"

[1] See same *v.* same, p. 391, *infra*.

Held: "if the mother, at the time she charged him as the putative father, and induced him to marry her under the supposition that the child might possibly be his, knew it was not his child, but that it was the child of a negro, she was not only guilty of perjury, but she also intentionally defrauded the complainant in such a manner as to [45] authorize this court to declare the marriage contract a nullity. . . I shall therefore direct a reference to a master . . that the master . . report whether the child . . was a negro or mulatto child; and whether, at the time she made that charge, and at the time of the marriage, she knew . . it was a negro or mulatto child, and intentionally concealed that fact from the complainant. . . also . . whether the parties to this suit have voluntarily cohabited as husband and wife since the alleged marriage. . . to the end that . . a decree of nullity may be pronounced if the allegation of fraud, . . shall be established by the proof."

Griffin v. Potter, 14 Wendell 209, October 1835. "Potter sued Griffin for work, labor and services rendered by him. Potter is a negro; he was born 8th of May, 1806, of a mother who was at the time of his birth a slave, and by the act for the gradual abolition of slavery in this state, passed 29th March, 1799, he owed service to the proprietor of his mother until he arrived to the age of twenty-eight years. In January, 1823, his services were sold to a person residing in Buffalo, and being unwilling to go with his master, he besought the defendant to buy him, telling him that he was to serve until he was 28 years old, and that if he would buy him he would be a faithful servant until that time. The defendant bought his services of his master, for which he paid $300, and Potter then went to live with the defendant, . . until January, 1827, when he declared he would serve him no longer, and went away. The plaintiff contended he was born a freeman; but if not, that he was released from his services at the age of 18, by the omission of the owner . . to deposit in due time, . . an affidavit . . in pursuance . . of an act passed 31st March, . . [210] The jury found a verdict for the plaintiff . . The defendant . . sued out a writ of error."

Held: "By the act for the gradual abolition of slavery, all children born of slaves, subsequent to 4th July, 1800, were declared to be free but to continue servants to the owners of their mothers—males till the age of 28, . . [211] The affidavit is clearly not a compliance with the statute. . . [214] The defendant here, at the request of the plaintiff, bought his services, . . A very large price was paid; and there is reason to infer, that but for the request of the plaintiff, the defendant would not have made the purchase. . . it is clear that but for a clerical error . . the plaintiff would have been bound to serve until 28. The court below seem to have considered the plaintiff as entitled to his wages after 18. According to the statute he was free; but if at 18 he asserted his freedom, it would have been the duty of the overseers of the poor to have bound him an apprentice until 21; . . If he remained in the defendant's service after he knew he was not bound to remain there, and the defendant did not agree to pay for his services, there is ground for an implied promise. . . Judgment reversed, and *venire de novo.*"

Jack a negro man v. Mary Martin, 14 Wendell 507, December 1835. "Error from the supreme court.[1] . . [508] Jack sued out a writ *de homine replegiando,* . . stating that Mary Martin, . . had taken . . him upon the . . allegation that he was her slave, . . she avows the taking . . because, . . Jack . . is the slave of the defendant, . . and such proceedings were . . had that . . it did appear . . that the defendant was entitled to . . Jack, . . that Jack was then delivered . . to the sheriff . . [510] wherefore, the defendant . . took Jack . ."

Held: [528] "we may deplore the existence of slavery in any part of the Union, . . yet, as the right of the master to reclaim his fugitive slave is secured to him by the federal constitution, no good citizen, . . will interfere to prevent this provision from being carried into full effect, . . [530] It stands undenied . . that the defendant was entitled to the services of the plaintiff, under the guaranty of the federal constitution and that the judgment of the supreme court was right upon the whole record."

Gibbs v. Mennard, 6 Paige 258, January 1837. "The complainant's bill stated that the brig *Felix,* . . the defendant was master, was at Turks Island . . while there a bond was executed . . by the defendant as principal and the complainant as surety, in the penalty of £1000, . . that the brig *Felix* should not . . carry out . . any servant or slave without leave of the master or owner; that when the brig sailed she . . brought . . to New York a slave or servant without leave . . and that . . the bond became forfeited and the complainant, . . became liable to pay the penalty . . that the defendant was about to depart [259] from this state to . . Cape Breton. . . the defendant produced his own affidavit, . . that the colored man secreted himself on board before the brig sailed, and was not discovered by the defendant until it was too late . . to turn back; and that upon his arrival at New York, the defendant endeavored to send him back, and had engaged a passage for him in another vessel, when he was taken from on board the brig by order of the civil authority . ."

Held: "From the facts . . I think the defendant was properly discharged from custody . . [260] it would be contrary to the settled principles of this court . . to compel a party to pay a forfeiture . . before it had been legally ascertained that either the defendant or his surety would or could be compelled to pay such penalty."

Wood v. Vandenburgh, 6 Paige 277, January 1837. [278] "The bill . . was filed . . to obtain a construction of . . will, and the direction of the court as to the distribution . . [279] Jacob G. Vandenburgh, by his will, . . directed his executors to sell his . . estate . . and . . to put the money at interest, . . [280] and . . upon the death of his parents, his estate, . . should be divided . . and that Negro Tom should be maintained out of the testator's property during life. . . The bill alleged that the annual interest . . was insufficient, for the support of the father and his sister . . and the negro Tom;"

[1] See same *v.* same, p. 389, *supra.*

Held: [284] "the legacies for the support of negro Tom, . . must next be provided for out of the proceeds . . and the master must set apart a sufficient fund for the support of negro Tom, . . As the legacy . . and the provision for the support of negro Tom are both general in their natures, and are payable out of the same fund, . . they must of course, in case of a deficiency of assets, abate rateably. . . [286] As the support of the parents and unmarried sister and of negro Tom, exceeded the income of the estate, . . there was no interest or income to be paid over to the decedent's parents, . . beyond the amount of the provision for their support."

Sunday v. Gordon, 23 Fed. Cas. 408 (1 Blatchf. and H. 569), February 1837. An action to recover seaman's wages and damages by Quaselle Sunday, a native of Elmina, on the coast of Africa. [410] "it is customary, on the coast of Africa, for trading vessels to employ natives, at about twenty-five cents per day, as laborers, in loading and unloading foreign vessels in harbor and doing other work on board of them; that these laborers frequently accompany such vessels from port to port along the coast, and often come out to the United States and return with them; that, in the latter cases, they are compensated by a 'clash,' as it is called, being some trifling articles for trade, and also personal clothing; that the natives regard it as a great object to come off in that way and learn the English language, as it gives them consequence at home and enables them to get good employment on vessels trading on the coast; that they are no sailors, and are never put to duty as seamen; that, in this particular case, the libellant came off with the expectation of being left at Liberia, but the master, being sick with the fever common to that coast, retained him as a nurse or waiter to attend upon him, and brought him to the United States; that he understood nothing of a ship's duty, and was never, whilst attached to the brig, put to any other employment than that of sweeping decks and occasionally working at the pump, and then chiefly for his necessary exercise; that his services were never of any value to the vessel; that, when the brig went back from this port, with the libellant on board, she was on a trading voyage, and it was within her instructions to run down the coast of Africa, if a good market should not be earlier found, and there land the libellant where he could most readily reach home; that, after the cargo was disposed of at Mogadore, no vessel was there by which the libellant could be sent down the coast; that the master refused to leave him, because, by the laws of Morocco, he would have become a slave; that he was accordingly brought in the ship to the United States; and that the respondents clothed and maintained him here, and procured a passage for him back to Liberia on two occasions, but that once he refused to go, and on the other occasion he was out of health, and probably so much so as to excuse his accepting the offer. The court can discern, in these facts, nothing that affords the libellant ground for maintaining this action. . . [412] suits of this character ought never to be instituted in the name of the party, without the direct authorization of the court. This ignorant savage, who cannot communicate at all in our language, is made to attest, under oath, to a series of allegations . .

which . . he is scarcely more capable of making than any other individual of his tribe remaining in Africa. According to the testimony of some of the witnesses who know him best, he can hardly be made to comprehend the simplest facts occurring before his senses. . . I shall decree that the libel be dismissed, and with costs, as a necessary consequence, although the latter part of the order must, of course, be inefficacious and nugatory." [Betts, J.]

Van Kleeck v. the Reformed Dutch Church, 6 Paige 600, August 1837. [601] "And I, the said John Haberdinck, do further give, devise and bequeath unto my said wife Mayken Haberdinck, all the rest of my temporal estate, real and personal, . . whether the same shall . . consist in houses, . . gold, silver, . . negroes, bonds, . . or any other estate whatever, . . during her natural life."

Dixon v. Allender, 18 Wendell 678, August 1837. "A writ *de homine replegiando* was sued out . . by the alleged slave, and a motion was now made by the claimant to quash the writ, on the strength of the decision of this court in the case of Jack, a negro man, *v.* Martin, (12 Wendell 311.) . . [679] The Court, Nelson, Ch. J. presiding, directed the motion to be suspended until the next special term; in the mean time the attorney for the plaintiff to have leave to prepare and serve his declaration, and the attorney for the defendant to have leave to plead the proceedings had before the recorder under the act of congress, to which the plaintiff may demur, with the view to enter the formal judgment of this court, so that the cause may be removed to the court of dernier resort in this state, for a final decision upon the constitutional [680] question involved . ."

Wright et al v. Trustees etc., 1 Hoff. Ch. 201, 1839. [205] "The bill in this case was filed by the executors of Archibald Campbell, for the purpose of obtaining the direction of the court as to the distribution of the surplus funds of the estate of the testator in their hands. . . Archibald Campbell made his last will . . duly executed, and . . executed a codicil thereto . . [207] . . 'I give . . five hundred dollars in trust, . . to the New-York Society for the Manumission of Slaves, and for protecting such of them as have been or may be liberated to be applied for the use and benefit of said Society,'"

Held: [214] "It is admitted by counsel, that the variations in the designation are immaterial as to . . The New-York Society for Promoting the Abolition of Slavery. . . With respect to the pecuniary legacies given to these . . institutions, paid by the executors, charged in their final account, and passed upon by the surrogate, I hold that the point cannot be now raised; neither in the present suit from the omission to present it in the pleadings, nor in any original suit whatever, by the present parties."

U. S. v. The Catharine, 25 Fed. Cas. 332 (2 Paine 721), 1840. The *Catharine*, an American vessel, [333] "built and owned in Baltimore," was brought to Havana and sold to Tyng, an American citizen, a ship

broker. [335] "The vessel sailed from Havana on the 28th of June [1839]; she had on board about twenty-eight or thirty persons; the majority were Spanish or Portuguese; . . some of the crew were employed in making sennet; it is yarns plaited together, and is used in putting around ropes and rigging to prevent chafing; . . [336] under the directions of the boatswain's yeoman, who told him [witness] it was to be used in tying slaves; they made a very great quantity; many were engaged in making it, and more was made than was necessary for the use of the vessel;" On August 13 a British brigantine, the *Dolphin*, chased the *Catharine*. [334] "She showed no colors, but hoisted American colors after about two hours' chase, and after the *Dolphin* had fired several shots. . . They finally compelled her to heave to, . . Lieut. Holland came on board and searched Capt. Peterson, and found the following paper concealed on his person: 'The main thing for you to do on this voyage is to be ready, in case you are boarded by a man-of-war, to show your log-book, . . and you are, in that event, to take all command with your American sailors, according to your roll; all the others are to be passengers. You are to be very careful that, in any cross questions, you do not commit yourself, but always stick to the same story. When the vessel is discharged, you must at once cut your register in two pieces: one piece you must . . send to . . Baltimore; . . Throw one piece overboard if you are obliged to by being boarded by a man of war.' . . within half an hour afterwards, they found a Spanish log-book of the voyage, kept co[n]temporaneously with the American log-book," Among the papers was found "a list of twenty-four persons, Spanish or Portuguese, with designations showing them to compose the officers and mariners of a ship's company, at the head of which was Pereyra as master; the plan of a slave deck drawn on paper; . . [335] six or eight men would be quite sufficient to navigate the vessel in a lawful trade; . . They found on board a large boiler . . sufficient to cook for three hundred people; a quantity of lumber which was marked and numbered for laying a slave deck, and could easily have been put up in a few hours as a slave deck after the cargo was discharged; a number of wooden vessels, some made up and some in shooks; about nine were made up and there were materials for about six more; each would have contained from four to six hundred gallons. They also found five hundred and seventy wooden spoons, similar to those used in slave vessels, and thirty-six large tin dishes and a number of small ones. These equipments are generally found in slave vessels, and witness had never seen them anywhere else. . . [337] in the month of September, 1840, on taking out the cargo of the *Catharine* . . there were found near the bottom of the hold two bags containing iron manacles or handcuffs. . . in one of the bags . . one hundred and seventy-five . . the other bag . . appeared to contain about the same number," The *Catharine* was brought to New York and was condemned. [341] "The penalty was incurred, and the forfeiture attached from the very inception of the voyage, . . The vessel becomes tainted with the offence wherever she may go, or into whatever hands she may fall." [Thompson, J.]

U. S. v. Morris, 14 Peters 464, January 1840. "Morris, was indicted under the second and third sections of the act entitled 'An Act in addition to an Act entitled "An Act to prohibit the carrying on the Slave-trade from the United States to any foreign Place or Country,"' approved on the 10th of May, 1800.[1]" Morris, a citizen of the United States, was in command of [465] "the schooner *Butterfly*, carrying the flag of the United States, and documented as a vessel of the United States, (her register being dated the 24th day of May, 1839, and issued by the collector of New Orleans to Nathan Farnsworth, a citizen of the United States, as owner,) was boarded and examined, on the 26th day of August, 1839, on the high seas, in latitude 5° 25′ north, longitude 30° east, near Cape St. Paul's, on the coast of Africa, by the British brig of war *Dolphin*, on suspicion of being a Spanish vessel engaged in the slave-trade, in contravention of the treaty between Great Britain and Spain for the suppression of the slave-trade. That on such examination, the vessel was found to be on her voyage from Havana, in the island of Cuba, which port she had left on the 27th day of July, 1839, bound to St. Thomas, in the island of Principe, near the coast of Africa; that the vessel had on board twenty-four large leagers capable of containing each from two hundred and fifty to three hundred gallons of water; eighteen of these were in shocks, that is, the staves were in bundle not fitted; four of them contained water, and two contained bread; there was a quantity of plank stowed away in the hold, similar to the planks used in framing slave-decks, but this plank could not have been fitted as a slave-deck until the vessel had discharged her cargo; and that such leagers and slave-decks were commonly found to be a part of the equipments and fittings of vessels engaged in the slave-trade on the coast of Africa; that she had on board a full cargo, consisting of various commodities, adapted either to the traffic in negroes, or to any lawful trade carried on by trading vessels upon the coast of Africa; that the prisoner was in command of the vessel; that he was described in the ship's papers, and represented himself as a citizen of the United States; that the rest of the ship's company were represented in the crew-list as Spaniards, or Portuguese, who had been shipped at Havana; that there were also on board fourteen Spaniards who had been received at Havana as passengers; that the cargo had been shipped at the same place, and according to the invoice and bill of lading was to have been delivered at St. Thomas, in the island of Principe, aforesaid, and appeared, by the documents, to be owned by persons residing at Havana; that two log-books, one in English and the other in Spanish, were found on board; that various documents in the Spanish language were also found on board; that under these circumstances, the vessel was captured by the *Dolphin*, suspecting the same to be Spanish property, and sent for adjudication to Sierra Leone to be proceeded against in the Mixed Commission Court at that place, which Court declined taking cognisance of the case on account of the vessel being documented as an American vessel; that she was then sent to the port of New York, to be dealt with

[1] 1 Story's Laws 780.

by the authorities of the United States as they might think proper. No slaves were found on board the vessel at the time of her capture; and it was testified by the witnesses for the prosecution, that from the cargo and situation in which the vessel was found, no slaves could have been carried or transported in her at any time during the voyage on which she was then engaged: that it would have been necessary to have discharged the cargo before slaves could have been taken on board: that the vessel was short of water, having only about eleven gallons on board when she was captured: and that Cape St. Paul's is a common watering place on the coast, being about five hundred miles distant from the island of Principe."

Held: [476] "the vessel in question was employed in the transportation of slaves, within the meaning of the act of Congress of May 10th, 1800, if she was sailing on her outward voyage to the African coast, in order to take them on board to be transported to another foreign country. . . 'voluntarily' . . means, 'with knowledge' of the business in which she is employed. And in order to constitute the offence, the party must have knowledge that the vessel was bound to the coast of Africa, for the purpose of taking slaves on board, to be transported to some other foreign country." [Taney, C. J.]

Maurice v. Graham, 8 Paige 483, October 1840. [484] "This suit was brought to foreclose a mortgage given by the defendant . . to the complainant, . . And this was an application . . of the complainant to compel . . the purchaser . . at the master's sale, to complete this purchase. . . the purchaser insisted, that under the will of W. Turpin, . . the mortgagor had not a perfect title to the rent and reversion. Turpin . . devised the premises as follows: 'I give . . to Juda Jackson, my freed colored girl, and equally to her brother Edward Butler, . . provided they both live to the age of twenty-one years, or to the survivor if only one should live to attain that age, all that lot' etc. (describing the premises.) 'If Juda and Edward both die leaving no child or children, in that case I leave . . this lot to my freed black woman Lucy Bates,' . . Juda Jackson attained . . twenty-one . . and . . intermarried with the defendant . . the mortgagor. . . she joined with her husband in a conveyance of all her interest . . to a third person, . . who . . reconveyed [485] . . to Graham, the husband. Edward Butler became of age . . he conveyed all his interest . . to his sister Juda, . . She died . . without issue, leaving her mother, . . and her brother, Edward Butler, her only heirs at law. And they conveyed all their interest . . to Graham, who . . mortgaged . . to the complainant."

Held: "The question . . is, what interest . . passed to the devisees of W. Turpin, under his will; . . I think his general intention is very obvious, . . [486] It does not appear, nor is it material to the decision of this case, whether Lucy Bates is still living. For if the limitation over to her . . was . . valid, the whole estate of the mortgagor, . . under Juda and Edward, is liable to be divested by the death of Edward without issue living at the time of his death; his sister Juda having already died childless. . . If these several estates . . of Juda, and Edward and Lucy,

are to be considered as legal estates, . . the purchaser at the master's sale will not obtain a good title to the whole premises. For he will have to take the title subject to the contingency of its being divested, in favor of Lucy Bates or his heirs, in [487] case of the death of Edward without leaving issue at the time of his death. . . [488] . . the purchaser must be discharged from his purchase. And the premises may be re-sold by the master, subject to such claims as may exist thereon in favor of Lucy Bates for her annuity; or in favor of her and her heirs, as devisee of the remainder in fee, in case Edward Butler should die without leaving issue surviving him."

Moore v. Lyons, 25 Wendell 119, December 1840. " Betsey Lyons bro't an action of ejectment against James Moore, for the recovery of the moiety of a house and lot in the city of New York, which she claimed under a devise in the will of Cornelius Clopper, . . The clause . . under which the plaintiff claimed is in these words: 'I give . . unto the said negro-woman Mary, my dwelling house and lot . . during her natural life; . . after her death, I give . . said dwelling house and lot . . to Susan, Jane and Betsey, three daughters of said Mary, or to the survivors . . of them, their . . heirs . . forever.' By a previous clause in the will, the testator manumitted his negro wench Mary, and her children, and . . directed his executors to place £600, at interest, . . to pay the interest thereof annually to Mary during her natural life; and after her decease, he directed the £600 to be called in . . and divided among the heirs of her body, in equal proportions. At the time of the death of the testator, Mary and her three children were living. In 1811, Jane intermarried with the defendant, . . and died in 1822, intestate, [120] . . Susan died before her mother, without issue, . . In 1824, Mary, the mother, died, leaving . . Betsey, her son-in-law . . and his two sons."

Held by the lower court: " The remainders to the children of Mary were clearly not vested, but were contingent, as they went to the survivor; . . The counsel for the defendant concedes the case to the plaintiff, unless he can maintain that the clause of survivorship referred to the death of the testator. Such a conclusion would conflict with the plain intent of the will. . . Judgment being . . entered the defendant sued out a writ of error,"

On appeal. Held: [123] " the plaintiff below, . . claimed the whole estate in fee, as the last survivor of those interested in remainder: insisting that the remainder was contingent, and the survivorship referred to the death of the tenant for life. . . [124] in the construction of wills, . . the intention of the testator . . is to govern. . . [126] 'courts will never construe a limitation into an executory devise, when it can take effect as a remainder; nor a remainder to be contingent, when it can be taken to be vested.' . . [127] The solution of this question involves the decision of the main point . . 'to what period does a general clause of survivorship refer?' . . the decisions from the earliest period . . have established . . the rule of referring survivorship to the death of the testator. . . [143] I am, therefore, of opinion . . That the remainders in this case were vested, and not contingent; . . That the plaintiff in

error, as heir at law of his deceased son, . . is entitled to the possession of one equal undivided moiety of the whole premises . . and . . that the judgment of the supreme court is erroneous and ought to be reversed."

Nash v. Benedict, 25 Wendell 645, October 1841. "an action for a libel, . . in these words: 'A northern freeman enslaved by northern hands. . . Peter John Lee, a free colored man . . was kidnapped by . . Daniel D. Nash, . . and hurried away from his wife and children into slavery.' . . [646] The counsel for the defendant, for the purpose of showing that the defendant had probable cause for believing the publication to be true at the time it was made, and thus rebut the inference of actual malice and mitigate damages, offered to read in evidence certain articles in the *Emancipator*, . . which were objected to by . . the plaintiff; but the judge ruled that if the articles were in explanation of, . . the libel, they were admissible . . counsel . . then read one . . when on the objection to their admissibility being renewed, the judge sustained the objection, . . that the articles did not explain the libel; and . . charged the jury that . . in his opinion the libel would admit of no other construction than a charge of felonious kidnapping under the statute. . . verdict for the plaintiff with $1,500 damages. The defendant moved for a new trial."

Held: [647] "Seizing Lee, and hurrying him away . . into slavery, imports at least a seizure or kidnapping with intent to cause him to be held to service against his will. . . The learned judge was right, therefore, in this part of his charge. . . [648] on looking at the articles . . it is most manifest that they tend directly to aggravate rather than mitigate its character; as they explain the whole transaction . . by showing that the seizure of Lee, . . took place in pursuance of lawful authority, . . on a charge that he was a fugitive felon from Virginia. By the reference to these articles . . it appears that this explanation was before the defendant, at the very time when he penned, or adopted, and inserted it in the almanac; thereby negativing every pretence of misapprehension or mistake. New trial denied."

Havens v. Van Den Burgh, 1 Denio 27, May 1845. [28] "He also gave to his four daughters his negro woman, a slave, with power to his executors, . . to sell her and divide the money equally among his [29] said daughters;"

Frazer v. Western, 1 Barb. Ch. 220, November 1845. [221] "John Mathews, . . made his will, by which he gave, . . to his executors, in trust for his daughter Mary, . . the one half part of certain slaves, to her use, during her life, . . and upon her decease, to her children equally; with a power of disposition, if there were no children. Upon an application to the court of chancery . . a sale of the slaves was ordered, . . and it was further ordered that Israel G. Collins . . should be substituted as trustees of the portions coming to their . . wives, . . The proportion of Mary Collins, . . amounted to $7596.25; and this sum was paid over to Collins, . . on his giving a bond, . . in double the amount, . . The bond was given . ."

The Osceola, 18 Fed. Cas. 868 (Olcott 450), July 1846. "William Frances, a colored seaman, . . shipped as cook and steward, at $16 per month. . . the vessel sailed with a cargo from Boston to Demarara and thence to New-Orleans, where . . he was taken out of her and confined in prison at New-Orleans for one month, when he was returned again on board;" The master [869] "testified that when the vessel arrived in New-Orleans, March 9, 1843, and he found he must give bonds in $500 not to leave the libellant there, and that the libellant must also be put in prison until the departure of the vessel, he gave him the choice of being then discharged and shipping in another vessel, for a Northern port, or to remain in prison until the brig was ready to sail. The libellant elected to be discharged, . . All the jail fees were . . paid by the consignee of the vessel. . . two or three days after, the libellant shipped" "as cook, . . at the wages of $18 per month, for a new voyage to Bilboa, thence to one or more ports in Europe," At Bordeaux he . . deserted the vessel, as she was leaving the port for New-Orleans;"

Vandenburgh v. Truax, 4 Denio 464, May 1847. "A negro boy, about sixteen or eighteen years old, was the plaintiff's ostler; the boy was seen in the street . . near the plaintiff's store, approaching the defendant with a stone in his hand, and appearing, . . very angry; . . The negro did not attempt to throw, or strike with the stone. The defendant took hold of the negro, and told him to throw the stone down; . . The boy got loose . . and ran away. The defendant took up a pick-axe and followed the boy, who fled into the plaintiff's store, and the defendant pursued him there, with the pick-axe in his hand. The back door of the store was shut, so that the boy could not get out there without being overtaken; and he ran behind the counter, . . to save himself from being struck . . In fleeing behind the counter, the boy knocked out the cock, or [465] faucet, from a cask of wine, and about two gallons of the liquor, of the value of $4, were spilt and lost. For that injury the action was brought. . . judgment for the plaintiff for four dollars . . defendant brings error."

Held: "when one does an illegal . . act, which is likely to prove injurious to others, . . he is answerable, . . for all the consequences which . . result from his conduct; . . it is not necessary that he should intend to do the particular injury which follows; . . [468] And there is nearly as much reason for holding him liable for driving the boy against the wine cask, . . as there would be if he had produced the same result by throwing the boy upon the cask, . . Judgment affirmed."

The Mary Ann, 16 Fed. Cas. 949 (Abb. Adm. 270), April 1848. "the crew shipped on board the *Mary Ann* for a voyage to the coast of Africa. Arriving there [Gallinas] . . they became suspicious that the master intended to engage the vessel in the slave-trade. Resolving to prevent this," they [951] "united in the determination to put or leave the master on shore," [950] "took possession of the vessel, and after navigating her along the coast, in search of an American cruiser, under whose authority they might place her, but without success, they brought her back to the port of New York. Proceedings were taken . . by the United States

authorities, to procure the condemnation of the vessel as a slaver. The court decided that . . the charge was not sustained, but that there was probable cause for her arrest." Held: the crew forfeit both the wages already earned to Gallinas and those for the residue of the voyage.

Howland v. Conway, 12 Fed. Cas. 730 (Abb. Adm. 281), May 1848. Six of the crew " on a voyage from New York to New Orleans, Mobile, Liverpool, and back to New York " were colored men.

The Laurens, 14 Fed. Cas. 1192 (1 Abb. Adm. 302), June 1848. Libel " filed by the United States against the bark *Laurens*, and $20,000 in specie on board her, . . for being employed in the slave-trade, in contravention of the acts of congress of March 27, 1794, and May 10, 1800." In 1849 " a decree was rendered declaring the vessel and cargo forfeited."

Tingle v. Tucker, 23 Fed. Cas. 1294 (1 Abb. Adm. 519), April 1849. " Some of the libellants [five colored men] sailed with the vessel from New York to Apalachicola, and all of them performed the voyage from Apalachicola to Marseilles. . . It did not appear . . that the libellants were guilty of any extreme misconduct, or that the officers had any reasonable cause for apprehending personal danger or any intentional mutiny. . . It was, however, clear, that the conduct of libellants was at times perverse and offensive to the officers, and that they were deficient in ready subordination and alacrity in the performance of their duties." " on the arrival of the ship at Marseilles, the conduct of the crew was reported to the United States consul . . who, after taking the depositions of the officers and steward, and inquiring into the facts, ordered the libellants to be discharged from the ship," [1297] " Then the consul . . had the men committed to prison, and afterwards sent home, as prisoners for trial. . . The decree will be, that the libellants . . recover their several wages up to the time of their discharge at Marseilles, with costs to be taxed; and that the demand for wages to the termination of the home voyage be denied." [Betts, J.]

Shorter v. the People, 2 N. Y. 193, May 1849. [194] " Henry Shorter, a negro, was indicted for the murder of Stephen C. Brush, and tried . . It was proved . . that . . the deceased was passing down Seneca-street . . that they were conversing and laughing about a negro character that had been acted that evening at the theatre; and that they passed the prisoner and another negro on the side walk. The prisoner . . came up with them, . . and as he passed a fight occurred between the deceased and the prisoner. . . After several blows had passed the deceased hallooed, 'he has got a knife,' and he then retreated to the middle of the road. The prisoner followed him and blows were passing . . or else the prisoner was striking the deceased and the deceased defending against the blows, until he got to the middle of the road, when he fell down and died in about fifteen minutes. . . the prisoner . . ran away. . . the prisoner carried . . a large dirk knife, with which he inflicted . . nine or ten severe wounds, one of which entered the cavity of the heart and was mortal. . . [195] The jury found the prisoner guilty of murder. . . The prisoner brought error to this court."

Held: [201] "The life of a human being must not be taken upon slight grounds; there must be a necessity, either actual or apparent, for the killing, or it cannot be justified. . . [203] Where a man is struck with the naked hand, and has no reason to apprehend a design to do him any great bodily harm, he must not return the blow with a dangerous weapon. After a conflict has commenced he must quit it if he can do so in safety, before he kills his adversary: and I hardly need add, that if his adversary try to escape, he must not pursue, and give him fatal blows with a deadly weapon. . . I am of opinion that the judgment of the supreme court should be affirmed; and my brethren concur in this opinion, upon both the points which have been considered."

In re Long, 15 Fed. Cas. 821 (9 N. Y. Leg. Obs. 73), January 1851. "In the matter of Henry Long, claimed as a fugitive from service." Dr. Wade testified: [822] "Henry was born . . in the town of Christianburgh, Virginia; that his mother was a slave, owned by Mr. Anderson; that they were brought up together as boys and men; . . Dr. Wm. Parker, another citizen of Virginia, testifies that . . he . . had the letting of Henry in Richmond, Va., to the house of Haskins and Libby, as the slave of this claimant, and collected the wages, transmitting the same to his brother-in-law, Smith; that while so in service in Richmond, Henry was sick, more than once; and that he was his physician, attending him while sick, and sat up with him through the night; . . [823] in Dec., 1848, Henry left Richmond; that he advertised him; . . that since that time he has been found in New York." A witness for the defence testified that in 1848 Henry "was a constant driver of a carriage from a particular street [in New York] named by him; and that he often met him at a blacksmith's shop in Centre street." Another "testifies that Henry was a waiter in New York; another one that he saw Henry with his waiter's garb and dress on board the *Vanderbilt*, all in the year 1848." Judson, District Judge: "there may have been a mistake as to the precise time when Henry was first seen in New York, and an honest mistake too. . . there is no real contradiction arising out of the evidence . . The consequence is that a certificate in conformity to the act of congress [1] be now issued by the clerk of this court, for the surrender of Henry Long, as a fugitive from service and labor."

Fugitive Slave Law,[2] 30 Fed. Cas. 1007 (1 Blatchford 635), April 1851. Charge to the grand jury: [1008] "the first [fugitive slave] act of congress, passed February 12, 1793, . . was passed on the urgent recommendations of the governors of Pennsylvania and Virginia, between which states a difficulty had arisen in the surrender of fugitives. . . the legislatures of some of the states [New York, as early as 1830] passed laws forbidding their own magistrates from acting under the law in the surrender of fugitives, and enforced the prohibition with heavy penalties. . . These, and other more direct interferences by legislative acts of the states with the execution of the law of 1793, together with the open re-

[1] Act of Feb. 12, 1793 (1 Stat. at L. 302), "and an amendment of September 18, 1850" (9 Stat. at L. 462.)

[2] Act of Sept. 18, 1850, 9 Stat. at L. 462.

sistance with which its execution was met in some instances, by combinations against law, led, necessarily, to the recent supplementary act; . . [1009] This act is designed, first, to substitute officers of the federal government in the place of these state magistrates; and second, to arm the officers with sufficient power and authority to enable them to execute the law against any resistance actual or threatened, and in whatever form it may be presented. . . [1012] the legislation of most if not all of the Northern states, tending to embarrass, and, in some instances, to annul the provisions of the act of 1793, has strongly impressed our Southern brethren with the conviction, that these states have resolved to throw off this constitutional obligation. . . has forced them to the question, whether the Union, with this provision of the fundamental law rejected and contemned—a provision vital to the rights and interests of that portion, and without which the Union would never have been formed—is to them a blessing or a curse. . . This question has been raised by fifteen states of the Confederacy, six of whom were original parties to the compact. . . they have come to the resolution, one and all, that if this hostile legislation is carried into effect, . . the Union is no longer a blessing, and should be dissolved—that the abrogation of one material provision of the fundamental law is destructive of the compact—and that the portion of the Union for whose benefit it was adopted, and whose rights and interests are thereby endangered, is absolved from its allegiance." [Nelson, J.]

Ex parte Davis, 7 Fed. Cas. 45 (14 Law Rep. 301), August 1851. John Davis, a slave, escaped from his master, George J. Moore of Louisville, Kentucky, [48] " on or about the 25th day of August, 1850," [46] " into the state of Ohio," and was, in August 1851, in the custody of a deputy marshall in Buffalo, New York. A writ of *habeas corpus* was allowed by Judge Conkling: " the [fugitive slave] act [1] was not passed until the 18th of September [1850] . . the 10th section of the act . . is clearly prospective, and therefore inapplicable to the case of an escape from labor or service, occurring before the passage of the act;"

Brown v. Hartley, 4 Fed. Cas. 383 (Betts' Scr. Bk. 225), August 1851. In 1849 Brown, a colored man, " signed shipping articles for a voyage as seaman on board the ship *Hungarian*, from the port of Saco, in Maine, to a port in the Gulf of Mexico," At New Orleans the ship " was moored out of the precincts of the city, to prevent the libellant and other colored men of the crew being put in prison during the stay of the ship there, according to the laws at that port. After so remaining a few days, the libellant requested the defendant, the master of the ship, to procure him a berth on another vessel going north, to relieve him from the danger of imprisonment at New Orleans. Such place was secured for him, and three other colored men of the crew,"

Fugitive Slave Law, 30 Fed. Cas. 1013 (2 Blatchford 559), October 1851. Charge to the grand jury: " The district attorney has called my attention to a crime recently committed in one of the most populous towns in the western part of this state—the case of the seizure and rescue of a

[1] 9 Stat. at L. 463.

fugitive slave out of the hands of a federal officer, by an unlawful assemblage of people, more or less armed, pending an examination before a magistrate in pursuance of an act of congress passed September 18, 1850.[1] The crime, as alleged, was committed in the edge of the evening, in the midst of the local police and municipal authorities of a city of intelligence and character; and this, after threats and other unmistakable evidences of an intended rescue and crime had been given out. The marshal, and all the authorities associated with him, and other persons coming to his aid and assistance, were overborne by the violence of the mob, and law and legal authority were trampled under foot. . . [1014] One or more members of the Confederacy cannot annul a material part of the compact which they have entered into with the other states, . . those other states, . . after an unavailing effort by the constituted authorities of the Union to enforce obedience, would have a right to regard the compact at an end, and to withdraw from a confederacy of faithless associates. . . The people of fifteen states of the Union . . have appealed to their Northern brethren to come up to their constitutional duties and obligations and save the Union." [Nelson, J.]

Bascom v. Lane, 2 Fed Cas. 994 (Brun. Col. Cas. 348), November 1851. " the complainants [commissioners appointed by the general conference of the Methodist Episcopal Church South] allege that differences and disagreements have sprung up between what was called the northern and southern members, in respect to the administration of the church government, concerning the ownership of slaves by the ministry of the church, of such a character . . as threatened fearfully to impair the usefulness of the church," The history of the separation of the Methodist Church South follows.

U. S. v. Reed, 27 Fed. Cas. 727 (2 Blatchford 435), October 1852. " the alleged offense consisted in rescuing from the custody of the United States marshal, at Syracuse, Jerry, . . held to service . . in the state of Missouri, and . . a fugitive from such service," [2]

U. S. v. Smidth, 27 Fed. Cas. 1131 (N. Y. *Times*, Feb. 26, 1855); 1138 (3 Blatchford 255), February 1855. " Capt. Smidth was convicted . . of being employed in the African slave trade,[3] on board the slave brig *Julia Moulton*" which he purchased in Boston from the American owners. " The evidence was not entirely clear that the purchase of vessel was made for himself, . . the prisoner, as master of the vessel, sailed from the port of New York to the coast of Africa, took in a cargo of [500] negroes, and from thence sailed to the Island of Cuba, where the cargo was landed, and the ship burned by his orders. Considerable evidence was given on the part of the prisoner tending to show that he was a subject of the kingdom of Hanover, in which he was born," [1132] " the national character of the vessel was submitted to the jury," [1131] " The jury found a general verdict of guilty. . . [1132] There must . . be a new trial."

[1] 9 Stat. at L. 462.
[2] Act of Congress, Sept. 18, 1850, sect. 7, 9 Stat. at L. 464.
[3] Act of May 15, 1820, 3 Stat. at L. 600.

U. S. v. Wilson, 28 Fed. Cas. 718 (3 Blatchford 435), March 1856. "an indictment . . charging that the prisoner, who was a colored man, being a mariner, belonging to the schooner . . did . . 1855, . . destroy the said vessel,"

U. S. v. Naylor, 27 Fed. Cas. 78 (19 Law Rep. 449), November 1856. History and construction of the statutes in relation to the slave trade. Held: act of March 22, 1794 [1] is still in force.

U. S. v. Cobb, 25 Fed. Cas. 481 (4 Am. Law J., n. s., 145), October 1857. Indictment against eight men for aiding in the escape of a fugitive from labor "after he had been apprehended, and while he was yet in custody [of the deputy marshal], in virtue of a warrant issued in a proceeding for his restoration to the person, a citizen of Missouri, to whom it was alleged his labor was due. . . on the first of October . . at the city of Syracuse, . . [482] a building in the midst of a populous city was partially demolished, and deadly weapons were recklessly used, . . to the grievous injury of several persons." "the defendants . . must severely be required to give bail for their appearance . . or, for want of sufficient bail, be committed to prison." [Conkling, J.]

U. S. v. the Henry, 26 Fed. Cas. 277 (4 Blatchford 359), September 1859. "a libel of information, filed . . against the brig *Henry,* upon a charge of having been fitted out in the port of New York, for the purpose of engaging in the slave trade, . . The district court dismissed the libel, but . . granted a certificate of reasonable cause of seizure,"

The Orion, 18 Fed. Cas. 817 (4 Wkly. Law Bul. 327), October 1859. The bark *Orion,* [818] "a vessel of about 450 tons burden, built in 1846," was chartered, in January 1859, to Miranda "for a voyage to the west coast of Africa and back to New York, for the sum of $850 per calendar month. . . she had from one-third to one-half a cargo, . . the whole crew [of twelve]," except the mate, "left the *Orion* at the port of New York during the interlapse of clearing and sailing, and that twelve others were shipped in their stead. The bark, though a small vessel, had two decks—the spar deck and a half between deck—a second deck commencing aft and coming forward to the main hatch, and another commencing forward and running back to the forecastle hatch, while between these half decks there are beams running across the vessel three or four feet apart, on which plank could be laid to complete this deck throughout the vessel. On these half decks no cargo was stowed. In the vessel, invoiced and manifested as part of the cargo, was found about 17,000 feet of lumber, which could have been used to complete the deck; 168 casks, most of them apparently intended for water-casks, and averaging over 130 gallons each, and invoiced at 35,540 gallons; 150 buckets, without handles; 200 barrels navy bread; 46 tierces containing about 29,000 pounds of inferior rice; 12 cases containing 240 muskets; about 300 feet in length of hoop iron, not on manifest or bill of lading, not in the invoice; a large quantity of medicines, consisting of Epsom salts, cantharides plaster, simple cereate, and powdered mustard. Also, a half barrel of flax-seed,

[1] 1 Stat. at L. 347.

a quantity of fire-wood, and about a ton of coal, two copper boilers, or stills, holding some 60 gallons each, a quantity of beef, pork, and beans, and about 100 bottles of disinfecting fluid, or chloride of soda in solution. Besides these, the cargo was made up principally of cheap shirtings and sheetings, cheap stripes and drills, cheap prints, cotton handkerchiefs, very cheap earthenware, including large quantities of bowls and soup plates, 24,000 gallons of rum, over 50 dozen of spear-points, knives, etc. The vessel sailed from New-York direct to the mouth of the Congo river, and soon after the arrival there, was boarded by the officers of a British vessel of war, and detained for a time as suspected of being intended for or engaged in the slave-trade; and the master, as appears by the log-book, there proposed to abandon the vessel as a prize to this British cruiser. This was opposed by the mate and crew, who declared that they were not conscious of having done anything illegal, and that if it were necessary to give up the ship, they would prefer being given up to a ship of their own nation. The mate then sought the *Marion,* and the *Orion* was searched, and sent home for condemnation. . . [819] all the circumstances are suspicious. The almost entire change of crew on the 20th of January; the character of the cargo, apparently selected with a view to the traffic of slaves, or to be used as provisions for them; the extraordinary quantity of water-casks under cover of their being intended for palm-oil, though the vessel was apparently seeking a part of the country where the trade is not in palm oil; the antecedents of the supercargo sent with the vessel, who was a Portuguese, who by his own account, had had previous experience both on the coast of Africa and at Rio Janeiro; the sailing of this small vessel under a charter-party at $850 per month with but one-third or one-half of the cargo; and other circumstances convince us she was intended and fitted out for slave-trade. . . probably Canhao and the master were the only persons who knew that the vessel was intended to be employed in the slave-trade, if such was the fact. . . decree of condemnation with costs." [Hall, J.]

Lemmon v. the People, 20 N. Y. 562, March 1860. [564] "Appeal from the Supreme Court. On the 6th day of November, . . Louis Napoleon, a colored citizen . . made application . . for a writ of *habeas corpus* . . to bring before said justice the bodies of eight colored persons, . . who . . were . . detained under the pretences that they were slaves. The writ . . issued, . . Lemmon made a return to the writ . . he averred that the eight persons . . were the slaves and property of Juliet Lemmon his wife, who had been the owner of such persons as slaves for several years, she being a resident and citizen of the State of Virginia: . . 'that . . Juliet, with her said slaves, . . is now *in transitu* . . from . . Virginia . . to . . Texas, . . and that she was so on her way . . when the . . slaves were taken . . under the writ' . . [565] The return also denied any intention, . . of selling the negroes. . . Mr. Justice Paine . . discharged the colored Virginians. . . Lemmon appealed."

Held: [600] "she embarked, . . for New York, . . to secure a passage from thence to her . . destination. . . The question to be decided is whether the bringing the slaves into this state under these circum-

stances entitled them to their freedom. The intention, and the effect, of the statutes of this State . . are very plain . . [601] The first and last sections of the title are . . 'sect. 1. No person held as a slave shall be imported, . . into this State on any pretence whatsoever, . . Every such person shall be free. . . sect. 16. Every person born in this State, whether white or colored, is free. . . and every person brought into this State as a slave, . . shall be free.' . . [602] If, therefore, the Legislature had the constitutional power to enact this statute, the law of the State precisely meets the case of the persons who were brought before the judge on the writ . . and his order discharging them . . was . . correct. Every sovereign State has a right to determine by its laws the condition of all persons who may at any time be within its jurisdiction; to exclude therefrom those whose introduction would contravene its policy, . . [605] The aspect in which the case of fugitive slaves was presented to the authors of the Constitution . . was this: A number of the States had very little interest in continuing the institution of slavery, and were likely soon to abolish it within their limits. . . [610] if the appellant can claim exemption from the operation of the statute . . on the grounds that she is a citizen of a State where slavery is allowed, . . she may retain slaves here during her pleasure; . . But my opinion is that she has no more right to the protection of this property than one of the citizens of this State would have upon bringing them here under the same circumstances, and that the clause of the Constitution referred to has no application to this case. . . [612] The act under consideration is not in any just sense a regulation of commerce. . . [615] Upon the whole case, I have come to the conclusion that there is nothing in the National Constitution or the laws of Congress to preclude the State judicial authorities from declaring these slaves thus introduced into the territory of this State, free, and setting them at liberty, according to . . the statute referred to." [Denio, J.]

Dissenting opinion by Clerke, J. [632]: "A considerable proportion of the discussion in this case was occupied by observations, not at all necessary to a proper disposition of it; . . What, . . could be the object of the Legislature in interfering with persons passing through our territory? . . [636] By the law of nations, the citizens of one government have a right of passage through the territory of another, peaceably, for business or pleasure. . . It is a principle of the unwritten law of nations. . . .[638] property in slaves existed to a great extent in nearly all the States; . . [641] If, then, by the law of nations, the citizen of one government has a right of passage with what is recognized as property by that law, . . is not a citizen of any State of this confederacy entitled, . . to a right of passage through the territory of any other State, with what that compact recognizes as property, without the latter's acquiring any right of control over that property." [Dissenting opinions were delivered also by Comstock, Ch. J. and by Selden, J.]

Dodge v. Pond, 23 N. Y. 69, March 1861. [70] "Action by . . Dodge, surviving executor, for a construction of the will of . . Phelps, . . [73] The seventeenth recited that it had been in contemplation to establish a

college in Liberia, Africa, and . . if . . $100,000 should be raised . . 'then, . . I give . . fifty thousand dollars,' . . wishing his executors especially to have in view . . a theological department in such college."

Held: [77] "The only specific objection . . is that made to the bequest, . . of $50,000 . . there is another objection to this legacy which is entirely fatal to its validity. It is not only made to depend upon a contingency, but a contingency which may never happen; . . Such a legacy is in direct contravention [78] of the statute against perpetuities. A provision limiting the period for raising the $50,000 to the continuance of two lives in being at the death of the testator, would have obviated this objection; but as no such provision was inserted, the legacy is clearly void, irrespective of the other objections which have been suggested."

U. S. v. the Augusta, 24 Fed. Cas. 892 ("not previously reported"), September 1861. "The libel is founded on the second section of the act of March 22, 1794, and on the act of April 20, 1818, and charges that the bark in question was fitted out at Greenport, L. I., with the intent to employ her in the slave trade. . . The vessel was purchased by Appley [of Southold, near Greenport and Sag Harbor] about the 1st of June last, and was seized on the 23d of the same month. . . The answer . . avers that the intent was . . to employ the vessel on a whaling voyage, . . It is insisted by the government that it appears from the evidence: (1) That the outfit of this vessel was made from a port at which the whaling business had been abandoned . . (2) That she is a larger and a much more expensive vessel than is ever used on a short voyage like the one for which the claimant says he fitted her. (3) That . . the provisions and water, were entirely inadequate for such a whaling voyage. (4) That no adequate preparations had been made for shipping such experienced officers and crew as were indispensably necessary, had such a voyage been contemplated. (5) That the comparatively low price of oil, and the general declension of the whaling business . . are inconsistent with the claim that she was designed for that business. (6) That her outfit, water and provisions indicate that she was intended for the slave trade."

Held: I. "the first of these claims [is not] . . entitled to much weight. . . [893] Greenport . . is not very far from several other whaling ports, . . [II.] the *Augusta* was a much larger vessel than it is usual to fit for so short a time as 15 months,—the period for which the claimant says he fitted her. . . he . . bought her, paying cash for her. . . [III.] There is one very extraordinary fact in regard to the beef. Several barrels of it were good and sweet, and suitable for the crew to eat, but the greater portion [47 barrels] was more or less tainted. . . [894] There are other deficiencies . . [IV.] About two weeks only remained before the time of sailing, and no inquiries made even for an officer, or for experienced whalemen, . . It is quite consistent with the idea that her officers and men were to consist, not of our honest whalemen, but of those desperate adventurers . . who infest our large seaports, and who are ready to embark in that inhuman traffic which the courts and the navies of most of the civilized world have as yet in vain striven to suppress. [V.] . . from the present price of oil, the scarcity of whales, and the losses . . in

the business, it is fast being abandoned. . . [895] another consideration . . is the danger of capture by so-called privateers. The claimant alleges the voyage was to be in the Atlantic,—the only ocean infested by these depredators. . . it may well be doubted whether these cruisers would capture a slave cargo at the present time. There must be little or no sale in the Southern ports for this kind of 'property,' in the present condition of things there, . . I am therefore of the opinion . . that the *Augusta* was not fitted for a whaler, . . this vessel was well adapted . . to carry a slave cargo. She had two permanent decks, . . The large fry works were admirably fitted for cooking the slaves' food, and were ample in size for the necessities of a large number of negroes. She was evidently provisioned, so far as the wants of the crew were concerned, for a short voyage, . . Yet she had 20 cords of wood, which would not be needed . . except upon the idea . . that she was going to have a large number of persons on board to cook for. She had eight barrels of salt, which would be needed in cooking the farinaceous food necessary for such a cargo, . . 30 pounds would have been sufficient for a whaling voyage of 15 months. . . an excess of rice, corn, meal, and beans, . . between 13,000 and 14,000 pounds of bread, . . for a short [whaling voyage] . . was greatly in excess. . . The vessel also had an immense supply of fresh water in casks. A portion of this was in casks that once had oil in them, but . . that . . would only injure the flavor, but not the salubrity, of the water. . . [896] My opinion . . is that this vessel was fitted out . . with the intent to employ her in the slave trade. . . She must, therefore, with her tackle and lading, be declared forfeited to the United States," [Shipman, J.]

U. S. v. Gordon, 25 Fed. Cas. 1364 (5 Blatchford 18), November 1861. Gordon was indicted under the 5th section of the act of May 15, 1820.[1] He was the son of a sea captain, both his parents being residents of Portland, Maine. He was the captain of the *Erie*, a vessel which had been built in the United States and owned by American citizens. After an alleged sale to a foreigner, in March 1860, the *Erie* left Havana in April 1860, [1365] "laden at that port—[with] some 150 or more hogsheads of liquor, a number of barrels of pork and beef, bags of beans, barrels of bread and rice, and some 250 bundles of shooks, with a corresponding number of hoops, for the purpose of being subsequently manufactured into barrels or casks. . . [1366] The vessel was of some 500 tons." Four seamen "state that, after they had been out some thirty days, and had discovered the provisions and freight on board, a suspicion arose, in the minds of the sailors, that the vessel might be intended for the slave trade, and that they disclosed this suspicion to the captain, . . The captain, however, disclaimed any such purpose, rebuked the suspicion, and ordered them forward. . . [1368] the [800] negroes were taken on board in the Congo river, some distance from its mouth, but where it is several miles broad, and really an arm of the sea." [1367] "These negroes were collected at the place where they were put on board, in

[1] 3 Stat. at L. 601.

barracoons, and were there under restraint by the persons who furnished them at the ship's side." The four seamen [1366] " also state that, after the negroes were put on board, they were called aft, and were applied to for the purpose of ascertaining whether they would continue to serve as seamen in the return voyage, and were told that, if they would, they should be paid a dollar a head for every negro landed at Cuba. . . that the prisoner gave a direction for hoisting the anchor, and directed the course of the vessel when she came out of the river." The first and second mates deny this. " They state that, after . . the discharge of the cargo, . . the control of the vessel and her navigation were passed over to the hands of another person, to Mr. Hill, who died, and afterwards to Mr. Manuel, whom they regarded as the captain of the vessel;" Gordon was on board when the *Erie* was captured [1368] " in the Atlantic Ocean, several miles from land." He was found guilty and sentenced to death.

U. S. v. Westervelt, 28 Fed. Cas. 529 (5 Blatchford 30), November 1861. " an indictment founded on the fourth and fifth sections of the act of congress of May 15, 1820,[1] . . The defendant [an American citizen] . . was the third mate of the ship *Nightingale*," a foreign vessel which sailed from Liverpool to the coast of Africa and received 800 negroes on board. Charge to the jury: [531] " The question you have to determine is, whether or not the prisoner did participate in the reception of the negroes, on board of the *Nightingale*, from persons who had seized them on the land, and brought them by force to the vessel, freely, voluntarily, and willingly," " The jury did not agree on a verdict." [Nelson, J.]

The Tropic Wind, 24 Fed. Cas. 212 (Blatchf. Pr. Cas. 64), November 1861. [213] " she proceeded, under the charge of the master and four colored men, shipped at Washington, on her voyage thence for Halifax. . . [214] the evidence of the colored informers, upon whose charge the vessel was seized, gave probable grounds of suspicion that she harbored the intention to go up the Rappahannock to Fredericksburg, and there make sale of the colored men, . . The whole evidence, when disclosed, dissipates that suspicion, and a decree must be entered dismissing the suit,"

Ex parte Gordon, 1 Black 503, December 1861. [504] " Gordon has filed a petition . . stating that he has been indicted and convicted . . of the crime of piracy, under the act of Congress prohibiting the African slave trade, and sentenced to death . . and . . he . . moves for an alternative writ of prohibition . . and also for a *certiorari*, . . This motion cannot be sustained." [Taney, C. J.]

U. S. v. Horn, 26 Fed. Cas. 373 (5 Blatchford 102), November 1862. Indictment against Albert Horn " for fitting out and sending away a vessel, with intent that she should be employed in the slave trade. At the trial, the defendant was found guilty,"

U. S. v. Santos, 27 Fed. Cas. 954 (5 Blatchford 104), November 1862. " indictment for fitting out a vessel with intent to employ her in the slave

[1] 3 Stat. at L. 600.

trade. . . The defendant appeared . . but, during the trial . . departed, without the leave of the court. . . the defendant was acquitted by the jury."

The Slavers (Kate), 2 Wallace 350, December 1864. Libel against the bark *Kate*, under the acts of Congress of March 22, 1794,[1] and April 20, 1818.[2] "The *Kate* . . arrived at New York from Havana, on the 17th of May, 1860, . . Six days after," her purported owners [351] . . purported to sell the vessel" to Lake of Brooklyn, for $10,500, though appraised soon after at only $4000. "The vessel was of about 250 tons, with one deck, three masts; . . sharp built, and had sixteen or eighteen spare spars and sails; there was an iron tank six feet square, for water, in the hold. . . Smith . . the custom-house broker who cleared the vessel [July 3, 1860, 'bound for Cape Palmas and ports on the west coast of Africa,'] . . appeared to have cleared vessels on former occasions for the slave trade. . . She had not gone far before she was seized . . and brought back; libelled . . A stipulation having been given for value and costs, she was released, and . . September, cleared by Smith again" Her cargo "on the 3rd of July, 1860, . . included large quantities of rum . . 5000 feet of lumber, 82 water-casks, filled with fresh water, . . The lumber was piled on the water casks, and formed a flooring throughout the length of the vessel, . . [352] After her second seizure[3] . . found . . on board some articles which were not reported to the custom-house; . . a surf-boat, . . The boxes manifested as containing 'iron pots' contained furnaces, with boilers on top, which could be used for cooking a quarter of a barrel of rice each. . . The crew list . . was inaccurate . . the first mate . . had been four or five times to the coast of Africa; the last time in the bark *Cora*, since seized as a slaver." [365] When the bark was first seized, she was accompanied outside the harbor by a tug, which conveyed the captain, Otto [the first mate], and one Da Costa" who "had, some four years before, been indicted for slave-trading, . . and had evaded the officers of the law. He pretended to be a stranger to Otto; to be ignorant of our language, and to have no connection with the bark; but trunks marked with his name were found in her cabin; he was detected exchanging signs with Otto, and it was soon discovered that his ignorance of our language was a mere pretence. Hernandez, who represented himself as shipper of part of the cargo, . . never appeared to protect his interest. There is reason to think that the name was but an *alias* for Da Costa." [354] "The bark and all her cargo was either adapted or capable of being adapted to a slave voyage. On the other hand, it was shown by . . a Portuguese, long in the African trade, and a person frequently summoned in slave cases, and . . by other persons . . that there is a regular trade with Cape Palmas and the west coast of Africa; . . that the vessel . . was suitable enough for the legitimate trade; also, . . every article on the manifest . . in demand by the native Africans; . . No manacles were found . . nor any supply of medicines unusual in

[1] 1 Stat. at L. 347.
[2] 3 *ibid.* 450.
[3] [365] "after refusal of her second application for clearance and before sailing."

a lawful voyage." District Judge Betts condemned the bark: [355] "In the earlier seizures . . vessels employed in the trade were found fitted out with arrangements so manifestly designed for that business, that the circumstantial proofs . . were nearly equivalent to positive testimony. The species of . . circumstantial proofs of that order, and then generally regarded as necessary to a conviction, were made public law by a treaty between England and Spain, . . and were generally acquiesced in by courts of the United States as laying down a safe rule of evidence. . . Very soon slave-trades discarded sets of manacles as part of their preparation. A slave deck was no longer found laid in the vessel or prepared . . She exposed no longer an extraordinary supply of provisions, medicines, or equipments specially adapted to the use of slaves, . . it has become notorious . . that slaving vessels are now . . fitted and cleared at ports abroad and in this country openly, with the appearance of lawful traders . . and that on arrival . . where slave cargoes are collected, the ship is, *impromptu*, put in a state to receive their victims on board, and is thus enabled, often in one hour's time to become transmitted from the . . aspect of an honest trader to a slaver" Decree affirmed.

The Slavers (*Sarah*), 2 Wallace 366, December 1864. "The *Sarah* was a bark of about 260 tons, . . similar to the *Kate*,[1] . . She was clipper-built, intended for fast sailing, . . She had . . extra spars, and besides her ordinary boats, two large surf-boats. The manifest showed a large quantity (19,448 gallons) of . . 'oil-cask shooks,' with a proportionate quantity of iron hoops and rivets. These would hold water as well as oil. . . 'oil casks'—are found in large quantities on nearly all vessels condemned as slavers. . . 15 or 16 barrels of beef or pork not on the manifest, also 16 barrels of bread and 6 barrels of flour, and 1 tierce of rice, marked for the homeward passage . . [368] The manifest showed 150 hogsheads of rum, also cases of muskets." [372] "rum, which, the expert witnesses say, is a well-known article of trade in the purchase of negroes. One of the expert witnesses, who had been . . in the custom-house at New York for seven years, testified that he had noticed that vessels designed to be used in the slave-trade were usually transferred two or three times just previous to the sailing of the vessel; and in this case" [368] "The deputy marshal . . seized the bark [1861] fifteen miles down the New York bay. When approaching, . . he saw through a spy-glass that several persons on board were examining the vessel he was on, and that immediately after, somebody threw a box, about 2 by 3 feet in size, overboard, . . [369] Delano swore that [one] Miller, in the act of employing [him,] . . represented himself as master of the vessel; said 'he was going to the coast of Africa; was going blackbinding,' . . He said, 'If you go with me, you will be gone about four months, and have about $3000 or $4000 when you get back.' . . No manacles, nor unusual supply of medicines were found on her, and the cargo was one which would have suited a lawful voyage to the African coast. The District Court condemned the bark." Affirmed.

[1] P. 410, *supra*.

The Slavers (Weathergage), 2 Wallace 375, December 1864. [376] "The vessel was a bark of about 365 tons, . . The outward foreign manifest, sworn to . . September, 1860, represented her as bound for Hong Kong, *viâ* Ambriz [1] . . [377] The bark had a between-deck, made of rough boards, . . two surf-boats, besides four other small boats, . . A lot of lumber . . usual in fitting a slaver, but not unusual in fitting any vessel. . . cargo was perfectly suited to the slave-trade. As respected Morris [to whom the bark was purported to have been sold September 5, 1860], . . no man of that name was, on the 6th September, . . known to be in the shipping business of New York. . . [378] vessels never clear from New York for China *viâ* any such place [as Ambriz], . . the ordinary size of vessels in the trade, on the west coast of Africa, is from 200 to 400 tons; that of those trading to China, averaging from 800 to 1200. On the other hand, . . No manacles, nor any unusual supply of medicines, were found . . Her size and equipments . . were not unfit for a lawful voyage . . All articles found on the vessel were entered on the manifest. . . [379] temporary decks were sometimes highly convenient, and were used accordingly in lawful voyages to Africa; and surf-boats, also;" [376] The District Court condemned the vessel." Affirmed: [382] "it seems to us . . that the manifest is a 'more complete one, in every respect, for engaging in the slave trade,' than any one heretofore presented to the court." "Besides the articles mentioned, the manifest also shows that she had one hundred and fourteen casks filled with water, and shooks and headings to make ninety-six more, . . also ten furnaces and boilers,"

White v. Howard, 46 N. Y. 144, September 1871. [145] "William Bostwick, . . died . . April 10, 1863, leaving a will, . . Letters testamentary thereupon issued, . . [146] The last clause of the 'seventh' article is . . whatever remains of said trust fund . . shall be divided equally between the following . . the American Colonization Society;" . .

Held: [163] "The American Colonization Society claims the one-sixth of the property under the will. This society was incorporated in 1836, by an act of . . Maryland, . . was authorized, to take lands by devise, and to . . dispose of such lands as the society should determine, to be most conducive to the objects of the society, namely, the colonizing of the free people of color of this country in Africa. The principal question . . is, whether it can take land in this State by devise. . . That it can take personal property by bequest, has been determined by this court. . . By the statute of this State . . all persons (other than bodies . . corporate) were permitted to take lands by devise, . . [164] By section 3 of the present statute of wills, all persons capable by law, to hold real estate, are authorized so to take, but . . no devise to a corporation shall be valid, unless . . by its charter or statute, be expressly authorized so to take. . . [165] it is equally clear that such charters only were intended, as were granted by a statute of this state, . . as it is that . . a statute of the State was intended. . . [166] It follows that the colonization society, can take no interest in the New York real estate under the will of the testator."

[1] [378] "a Portuguese town on the west coast [of Africa]. . . It is about 100 miles from any point where slaves are got."

CONNECTICUT

INTRODUCTION

I.

The Connecticut reports, as a whole, illustrate the economic evolution of a seaboard agricultural state into an industrial community. Starting with suits growing out of the problems of the farmer, the fisherman, the maritime adventurer, and the rural merchant, we encounter in turn the legal phases of the post-revolutionary land speculation, the hegemony of the Congregational church, the migration to the Western Reserve, the rise of the cotton mills, the development of the Yankee nation, the coming of the railroads, the departure of grub-staked prospectors for California gold, the temperance movement, the recruiting for the Civil War, the trend to the cities, and the ultimate supremacy of the factory. These changes are vividly reflected in the law books.

Except for the influence upon public opinion of the friendly relations with the South, following the growth of the cotton mills, all this has little to do with slavery or the negro. Nevertheless, as will appear, there were a few cases in Connecticut which contributed to the political controversies over slavery or cast an oblique light upon them, and we touch here and there upon the status of the negro in the North.

Connecticut has the distinction of having been the first American commonwealth to publish a law report—the single volume of Kirby, issued in 1789.[1] Following Kirby and in part overlapping the period, but not duplicating the cases reported, come Root's reports, followed by Day, and, in turn, the present series of Connecticut reports.

There were slaves in Connecticut, Indian and negro, from almost the earliest days of the colony. Connecticut legislation respecting slavery begins in 1711 with an act,[2] perpetuated in subsequent compilations, making owners who set slaves at liberty responsible for their relief. The first act looking toward abolition was that of 1774, forbidding the importation of slaves "by sea or land, to be disposed of, left, or sold within this colony."[3] Ten years later, in 1784, it was enacted that no negro or mulatto born in the state after March 1 of that year should be held in servitude after arriving at the age of 25 years,[4] and by act of 1797 the age was

[1] In recent years other states have issued compilations of decisions of earlier dates than those embraced in Kirby, and in Connecticut the Acorn Club has printed (1933) a small volume containing a few more cases noted by Kirby, probably with some intention of additional publication.

[2] Acts (1796), p. 231.

[3] *Id.*, Supplement, p. 403. Importation of Indian slaves had been forbidden earlier, October 1715; *Public Records of the Colony of Connecticut*, V. 534.

[4] Acts and Laws (1796), p. 399.

reduced to 21 years.[5] Provision was made for the support of those who were thus manumitted. So that after 1784 the only slaves for life peculiar to Connecticut were those born prior to that year; and the only other slaves held under Connecticut law were of limited servitude, being young persons born after 1784 but free on reaching the age of twenty-five or twenty-one. These, of course, were the offspring of the older slaves, as no others could be born in slavery after 1784. The number of slaves of both classes was very small and rapidly diminished. The editors of the *Compiled Statutes* of 1821 remark[6] that there were then very few slaves and in a short time there would be none.

In consequence, the early cases affecting negroes are not numerous and are significant as reflections of social or economic condition, rather than of political status. Under the Connecticut system of poor relief, paupers were chargeable to the town in which they were "settled." The earlier reports abound in suits between municipalities to determine where responsibility should fall for caring for particular persons who had become destitute. In a few instances the pauper was a negro. These cases should be read against the background of the far greater number of such cases where no negro was involved.

With the rise of the cotton mills and the development of commercial relations with the South, the reports begin to reflect the conflicting views and tempers prevailing in Connecticut toward the Peculiar Institution.

In 1833 the legislature passed an act to forbid the establishment of schools for negroes from without the state.[7] In a case that arose under that act in 1834 (Crandall *v.* State, p. 430, *infra*), the trial justice instructed the jury that free blacks were not citizens. On appeal counsel presented argument with respect to the principles on which the act was based, but the appellate court, after alluding to "the excitement which always attends the agitation of questions connected with the interests of one class and the liberties of another, more particularly at the present time," expressed a desire not "to agitate the subject unnecessarily," and decided the case on a technical defect in the information. This case attracted much public notice. Echoes of it were reverberating twenty years later, as will be seen.

In October 1845, an amendment to the state constitution was adopted, which provided, (Article VIII.), that

> Every white male citizen of the United States who shall have attained the age of twenty-one years, who shall have resided in this state for a term of one year next preceding and in the town in which he may offer himself to be admitted to the privileges of an elector, at least six months next preceding the time he may so offer himself, and shall sustain a good moral character, shall, on his taking such oath as may be prescribed by law, be an elector.

[5] Public Statutes (1808), p. 626.
[6] P. 430.
[7] 10 Conn. 340.

The word " white " in this amendment was not new, having been included in the qualifications of electors throughout the history of the state. In 1848 (act of June 12) slavery was abolished in Connecticut.

In June 1865, the legislature adopted a resolution asking the Supreme Court of Errors for its opinion upon the question " whether a negro is or is not a citizen of the United States " within the meaning of the above amendment. To this the judges returned the following reply: [8]

> The undersigned Judges of the Supreme Court, having considered the resolution of inquiry passed on the 10th day of instant June, in answer thereto say, that in their opinion a free colored person born in this state is a citizen of the state and of the United States, within the meaning of the amendment of the constitution referred to.

This reply was published in a supplement to 32 Conn. and the reporter appends the following footnote:

> " In the case of *Crandall v. The State,* 10 Conn., 339, Daggett, Ch. J., charged the jury in the superior court that free blacks were not citizens. The case was carried to the Supreme Court, where the question was elaborately argued, but was ultimately decided on another point, and no opinion expressed upon the principal question. The court was held by Daggett, Ch. J., Williams, Bissell and Church, Js. Peters, J., was absent. It appears by minutes of the consultation taken by Judge Bissell, and found since his death among his papers, and which the writer has had an opportunity to examine, that the question of the citizenship of free blacks was discussed at considerable length by the judges, and that while Judge Daggett adhered to the opinion expressed by him in the superior court, all the other judges either held or inclined to the opinion that they were citizens.
>
> " The writer has also seen a letter written by Judge Williams, in March 1857, (then in his 80th year) to Judge Bissell, in which, after expressing a desire that Judge B. would visit him, he goes on to speak of the Crandall case, as follows:
>
> " ' I should like to converse with you upon a subject which has become of some interest—the Crandall case. Those who did not understand it, or did not care to have others understand it, have represented the court, of which we were then members, as having adjudged that the blacks were not citizens. Everyone who reads the case knows that it is not so. Then I am inquired of what was the opinion of the judges on that point. You probably have the same inquiry made of you. Now I have no hesitation in saying that my own opinion did not coincide with Judge Daggett's, and I do not know as did that of one of the court, but I do not know as I can or ought to speak affirmatively for others. Now I should be glad to know what you say to such inquiries, or what I may say for you, and how far we ought to give our impression as regards the opinions of our deceased brethren. According to my recollection in the consultation at Brooklyn, Peters, J., absent, all of us differed from the Chief Justice so far as we expressed an opinion, but we gave no definite opinion, and when at Hartford concluded to dispose of the case on other grounds. If you are well enough please advise me what I ought to say to inquirers and whether there ought to be any delicacy in saying what were our impressions on the subject, though no judicial opinions were given. For myself I must say that

[8] 32 Conn. 565.

I did not then doubt, nor since have doubted, that our respected friend was wrong in his charge to the jury.'

" The reply of Judge Bissell has not been found.

" The question has lost some of its practical importance since the passage of the recent act of Congress, known as the Civil Rights Bill, but the foregoing facts are of much historical interest."

The Civil Rights Bill, mentioned by the reporter in the concluding paragraph of the above note, is the act of Congress passed over President Johnson's veto April 9, 1866,[9] which provided:

That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory of the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of persons and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

It will be observed that nothing is here said about the right to vote, a subject upon which, of course, Congress could not legislate.

Notwithstanding the dictum of Judge Daggett who instructed the jury in the Crandall case (*supra*) and " the learned Dr. Webster " upon whose dictionary the judge relied, it is well settled that citizenship does not in any case imply the right of suffrage. Children and lunatics are citizens, though they may not vote, and in some states commorants who are declarants for naturalization have been accorded the franchise, although they are not citizens.

In 1851, the Connecticut legislature passed a tax law.[10] Among the exemptions from taxation there was included " the personal and real estate of persons of color." Interpreting this act in 1860, in Johnson *v.* Norwich, p. 444, *infra*, the court held that " persons of color " is not a " term or phrase of art, having any peculiar or technical signification," and ruled that the expression applied to all who " have a distinct visible admixture of African blood . . disclosing visibly the peculiar and distinctive color of the African race." The court also observed that the exemption " was designed as a compensation to those persons on whom the constitution of the state does not confer the elective franchise."

The right of suffrage in Connecticut continued to be confined to free white males until the adoption of Article XV. of the constitution of the United States, which was ratified by Connecticut May 19, 1869, and proclaimed by the Secretary of State of the United States March 30,

[9] 14 Stat. at L. 27.
[10] Public Statutes (1850), ch. 47, sect. 6.

1870. Connecticut did not change her own constitution in this respect until 1876, when the following amendment was adopted: "Article Twenty-third. That Article VIII of the amendments to the constitution be amended by erasing the word 'white' from the first line."

Turning now to the status of negroes from other states, as affected by the Connecticut decisions. In 1837 a case arose involving the status of a Southern negro (Nancy Jackson *v.* James S. Bulloch,[11] p. 433, *infra*). It resulted in a three-to-two decision by the Supreme Court of Errors. The effect of the majority ruling was to set free the personal maid of a citizen of Georgia who had visited Connecticut several times, accompanied by this servant, and who, at the time the suit arose, had been sojourning in Hartford for about two years for the purpose of sending his children to school. Judge Bissell in his dissent adverts to "the excitement that is abroad on this subject," and the energetic style of his own opinion and that of the majority reflects the excitement which he deprecated.

For the famous case or cases of the *Amistad*, the data given in both state and federal reports are presented.

One of the last of our Connecticut cases, Tillotson *v.* Tillotson, illustrates various phases of American social and economic history extending over fifty years, before, during, and after the Civil War. The report covers 63 pages, but the portions of it having direct bearing upon slavery embrace only a few paragraphs, the essentials of which are given *infra*.[12]

II.

From the earliest days of the Connecticut colony (and the same is true of the New Haven colony while it had an independent existence) the highest court of justice was the General Assembly. From 1663 to 1711 the Court of Assistants was for most purposes the highest court, yet with possibilities of appeal to the General Assembly. An act of 1711 [13] provided for a Superior Court, consisting of a chief justice (by custom the governor or deputy governor) and four other judges, but appeals still went to the General Assembly. From its printed records and those of the Assistants (Council) a few cases concerning slavery and the negro have been reproduced in subsequent pages.

In 1784 it was provided by law that judges of the Superior Court should be chosen by the General Assembly, while the Lieutenant Governor and

[11] Maternal grandfather of Theodore Roosevelt. The plaintiff was probably nurse or "mammy" to the future President's mother.

[12] For the preceding portion of the Introduction, the volume is indebted to George W. Dalzell, Esq., of the bar of the District of Columbia. For general information on slavery in Connecticut, reference may be made to Bernard C. Steiner, "History of Slavery in Connecticut," nos. IX.-X. of the eleventh series of *Johns Hopkins Studies in Historical and Political Science* (1893), which treats with some fullness several of the cases here recorded, and to the articles by William C. Fowler on "The Historical Status of the Negro in Connecticut," in *Historical Magazine*, XXIII.

[13] *Public Records of the Colony of Connecticut*, V. 238.

Council should constitute the Supreme Court of Errors and should be the last resort in all matters of law and equity, brought, by way of error, from the judgment or decree of the Superior Court.[14] In 1793 the Governor was added to the highest court and made the presiding judge.[15]

By legislative act of 1806 the judicial system of the state was organized in a Superior Court consisting of nine judges who, in groups of three, held court in circuits, their courts having civil, criminal, and chancery jurisdiction; and a Supreme Court of Errors, consisting of all the judges of the Superior Court, sitting *in banco*, one term each year.[16] This court not only took cognizance of writs of error from the Superior Court, but heard argument on motions for new trials and on cases stated.

The state constitution of 1818 provided for a Supreme Court of Errors,[17] which by statute of the same year was constituted of a chief judge and four assistant judges.[18] Legislation of 1855 provided for a gradual reduction of the number of judges in the Supreme Court from five to three.[19] An act of 1858 added one or more of the judges of the Superior Court, to make a total number of not more than five.[20] An act of 1859 provided a court of four, three of whom would be necessary in order to reverse any decision of the Superior Court.[21]

[14] Acts of May 1784, p. 267.
[15] Acts of October 1793, p. 471.
[16] Acts of May 1806, p. 713.
[17] Art. V, sect. 1.
[18] Acts of 1818, p. 311.
[19] Public Acts, May 1855, ch. 25.
[20] Public Acts, May 1858, ch. 22.
[21] Public Acts, May 1859, ch. 54.

controversy had arisen between the said parties in respect to a certain negro, named Zacheus, claimed both by the said Kilborn and the said Griswould, and that said controversy was left to be decided by" two referees, " who awarded that the said Griswould had a legal right to said negro, . . and that said Griswould had obtained a judgment against the petitioner at the adjourned county court . . and complaining that . . damages were extremely exhorbitant, and that other disputes respecting the service and property of the said negro are still subsisting, and long and tedious lawsuits are likely to ensue thereon;" Referred to three referees, on whose award the county court is " fully impowered and directed to render judgment."

Case of Aaron Fish, 10 *Public Recs.* 182, May 1753. " Upon the petition of Aaron Fish, . . representing that Mr. James Danielson . . in his life time made and duly executed his last will and testament, . . in and by which he gave unto the said Aaron Fish all his real estate . . also his negro man named Crisp, and all other his personal estate not in said will before given away, reserving only the use . . thereof to his then wife Irenia during the time she should remain his widow,"

Case of Caesar Trick and Peter, 10 *Public Recs.* 333, January 1755. " Upon the representation of Joseph Fowler, Esq., [a justice of the Superior Court] . . shewing to this Assembly that one Caesar Trick, a molatto [*sic*] man, servant to Nathaniel Huntington, of Norwich . . and one Peter, negro man, late servant to Mr. Richardson, late of Lebanon, . . now deceased, were convicted before the adjourned superior court . . December, 1754; the aforesaid Caesar for making and signing sundry counterfeit bills in imitation of the bills of credit of the Colony of Rhode Island and Providence Plantations, and of the Province of New Hampshire, and the said Peter for uttering such counterfeit bills, knowing them to be such; . . and that the said Nathaniel Huntington hath applied that he may have his said servant Caesar released to him from the said gaol, where he now is, upon some reasonable terms: Also shewing that one David Richardson, of Lebanon, hath applied that he may have the said Peter released from said prison, where he now is, and secured to him, to serve with him to the day of his death, he paying all costs and charges . . resolved and ordered, that upon the said Nathaniel Huntington's paying, or giving good security to pay, the cost of the prosecution of said Caesar, and of his confinement since the conviction, . . and also giving good security so to dispose of him, said Caesar, as that he may be secured from going at large in any of the towns in this Colony, . . he shall receive him from the prison aforesaid." Similarly as to Peter.

Case of Bristow, 10 *Public Recs.* 595, January 1757. " Whereas one Bristow, a negro man servant and slave to Mr. George Beckwith of Lyme, having at the sessions of the superior court at New London in September last been legally convicted of committing a rape on the body of one Hannah Beebe of said Lyme, and thereupon by said court sentenced to suffer the pains of death," but " lawfully reprieved, and execution of said sentence by his Hon'r the Governor of this Colony respited . . for

the further orders and resolves of the then next General Court of this Colony, . . and whereas . . sundry depositions in writing and affidavits" show "that she, the said Hannah, hath soon after said condemnation openly and freely declared said Bristow to have been innocent of said crime, . . [596] resolved and ordered by this Assembly, that release and delivery . . be . . granted to him said Bristow,"

Lane v. Baldwin, 11 *Public Recs.* 142, May 1758. "on the petition of John Lane of Middleton, *versus* Michael Baldwin of Guilford, shewing to this Assembly that said Baldwin having brought his action against him for selling an unsound negro, demanding £100 damages, . . some unfair proceedings were had in taking a deposition *ex parte* improved[1] on a tryal of said case at the superior court held at New Haven in August last, by which the jury in said case were principally induced to find their verdict against said Lane, on which judgment was rendered against him;" New trial granted.

Delano v. Penoyer, 12 *Public Recs.* 91, October 1762. "Upon the petition of Thomas Delano of Sharon, against John Penoyer of said Sharon, shewing to this Assembly that the said Penoyer recovered final judgment against him at the superior court . . for £61 18 *s.* 7 *d.* lawful money, . . in an action brought by the said Penoyer wherein he charged the petitioner with fraud in the sale of a certain negro girl; complaining that the jury missed their evidence in said case, and praying for a new trial" Granted.

Roberts v. Smith, 12 *Public Recs.* 575, May 1767. "Upon the petition of William Roberts, of Amenia [567] . . New York, representing that Samuel Smith . . of Sharon . . at an adjourned county court held at Litchfield . . August, 1766, recovered judgment against him for the sum of one hundred pounds New York money, on a note of hand which was given by the petitioner to said Smith for one certain negro man slave for life to said Smith whom said Smith delivered to the petitioner to sell and dispose of for him, with instructions to the petitioner that if he could not sell said negro he might send him home at the proper risque of him, said Smith, and in that case said note was to have been given up; which negro the petitioner, not being able to sell, did dismiss in order to return home, but said negro hath never returned home and is lost, and the said Smith hath contrary to his engagements refused to deliver up said note, but having recovered judgment thereon hath procured an execution thereon to be levied on the petitioner's land;" Assembly appoints a committee to inquire and report.

County Treasurer v. Bissel, 1 Root 85, December 1783. "*Scire facias* on a bond for prosecution, given by said Bissel upon praying out a writ, in which one Robbin a negro man was plaintiff; setting forth in the *scire facias*, the judgment and execution recovered against said Robbin for cost; and also a commitment of said Robbin to gaol on said execution, and that he had taken the poor prisoner's oath, and gone out."

[1] Made use of.

Jack Arabas v. Thomas Ivers, 1 Root 92, 1784. "Jack was a slave to Ivers and enlisted into the continental army with his master's consent—served during the war, and was discharged. Ivers claimed him as his servant; Jack fled from him to the eastward, Ivers pursued him, and took him and brought him to New-Haven on his return to New-York, where he belonged, and for safe-keeping while he stayed at New-Haven, he got the gaoler to commit Jack to prison; and upon Jack's application to the court, complaining of his being unlawfully and unjustly holden in prison, the court issued a *habeas corpus*, to bring Jack before the court; also ordering the gaoler to certify wherefore he held Jack in prison; which being done, Ivers was cited before the court; and upon a summary hearing, Jack was discharged from his imprisonment, upon the ground that he was a freeman, absolutely manumitted from his master by enlisting and serving in the army as aforesaid."

State v. Hunn Beach, 16 Acorn Club Publications 20 (Kirby), March 1786 or August 1787. "Information at common law for assaulting, falsely imprisoning, transporting to South Carolina and there selling one Dinah Woodward, a free negro, as a slave for life. Witnesses for the prosecution, Captain Holbrook a passenger, and Hart a hand on board."

Wilson et al. v. Hinkley et al., Kirby 199, January 1787. "Hinckley and others, selectmen of the town of Tolland, brought their action before a Justice of the Peace, against Willson, and the other inhabitants of the town of Coventry, for certain sums of money advanced for the . . support of Amy Caesar and her two children, alledged to be the proper paupers of the town of Coventry. . It was then pleaded . . That said Amy was born in said Tolland, and that her mother was an Indian woman, a native of this country; and that said Amy lived with Jabez Edgerton, of said Tolland, as a servant, until she arrived at the age of eighteen years, when her service expired, and she was set at liberty . . in August, 1782, she married to one Timothy Caesar, in said Tolland, whose mother was also an Indian woman, and native of this country: That said Timothy, at the time . . was a slave and servant to one Joseph Hovey, of Mansfield; . . In March, 1783, they both came into the town of Coventry, and there lived for the term of eighteen months."

Held: "Timothy Cæsar, being born of a free woman, a native of the land, was not a slave, nor was he within the meaning of the statute, 'a servant bought for time;' nor does it appear that he was an apprentice under age, or that he was under any disability to gain a settlement by commorancy; and having resided more than one year in the town of Coventry, with his wife, the said Amy, he there gained a settlement for himself and her, also for her children."

Pettis et al. v. Jack Warren, Kirby 426, March 1788. "the defendant in error brought his action of trespass before the mayor's court, for an assault and battery. The defendants in the action pleaded in abatement—That the plaintiff was a runaway Negro, a slave for life, travelling without a pass, and being found by the defendants in the city of Norwich, was taken up to be examined before proper authority: . . and that neither

of the parties lived within the jurisdiction of said city. The plaintiff replied—That he lived within the jurisdiction of said city, and . . traversed his being a slave. . . The jury found a verdict for the plaintiff and 9 *l.* damages, leaving that part of the issue, whether the plaintiff was a runaway Negro, unanswered; on which it was moved in arrest of judgement, on this ground—that the verdict did not comport with the issue:—But the motion was overruled; which was one of the errors complained of. Another matter complained of in error was—That upon a challenge to one of the jurors; for that he had declared an opinion, 'that no Negro, by the laws of this state, could be holden a slave;' an inquiry into the facts was denied, and he admitted to sit."

Held: "Though by statute 'whatsoever Negro is *found wandering* out of the town or place to which he belongs, without a *ticket*, or *pass*, in writing, under the hand of his master or owner, or of an Assistant or Justice of the Peace, shall be deemed a runaway; and any person finding or meeting him, may seize and secure him, to be examined before the next authority, etc.' Yet the jury having found that the plaintiff, *lived and dwelt* in the city of Norwich, it appears that he was not *wandering* out of the town or place to which he belonged, so as by the statute to justify the seizure of him by a private person, not his master. . . As to the other point—An opinion formed and declared upon a general principle of law, does not disqualify a juror to sit in a cause in which that principle applies."

Lee Peck v. State, 1 Root 331, September 1791. "Petition for a new trial, stating that the petitioner was prosecuted and convicted by a verdict of the jury before this court for counterfeiting certain pieces of coined money; that thereupon he was taken into custody and committed to gaol; that he was surprized with the testimony . . of Jacklin, a negro man, upon which the jury convicted him; that he is able by certain new testimony to prove that the character of said Jacklin, a negro man, is bad in point of truth and veracity, and prays for a new trial."

Lemuel Lamb v. Sharp Smith and Wife, 1 Root 419, March 1792. "Error to reverse a judgment of the county court, in an action brought by Smith and wife against Lamb, declaring that David Lamb on the 6th of July A. D. 1771, made his will and gave to his two sons John and the said Lemuel, all his estate after the decease or second marriage of his wife, to be divided as follows, *viz.* etc. to Betsey, the wife of said Sharp Smith, a legacy as follows, Item, I give and bequeath to my negro woman Betsey, her freedom in six months after my decease. I also give to said negro woman Betsey, twelve pounds lawful money, to be put to interest under the care of the Rev. A. Rosseter and to be by him dealt out to said Betsey's use, at his discretion, as her circumstances shall require, to be paid equally by my sons Lemuel and John Lamb, within one year after my decease. . . the county court gave judgment that the declaration was sufficient and for the plaintiffs to recover the sum of £12-19-6 damages and cost."

"Judgment of the county court affirmed. . . the defendant and said John . . ought to pay the interest. Mr. Rosseter was appointed by the

will a kind of superintendant or guardian to said Betsey as to this legacy, but had no kind of interest in it. His accepting or refusing the trust can have no effect upon the negro woman's interest in it."

Hillyard v. Nichols, 1 Root 493, January 1793. "Action upon the statute, to recover the penalty of £200 for exporting two negro children out of the state, who were entitled to their freedom at the age of twenty-five years. . . The jury found a verdict for the defendant."

State v. Daniel Wilson a Negro, 2 Root 62, September 1793. "Information at common law for a high misdemeanor and breach of the peace, for threatening to kill and murder Mrs. Wheat and the family of Capt. Wheat, when he was from home, and actually stabbing one John Gordon and for other outrageous conduct; of which he was convicted and sentenced to Newgate prison for eighteen months, as a common law punishment." Judgment affirmed.

Hylliard v. Austin Nickols, same case [1] on motion for a new trial, 2 Root 176, January 1795. "Petition for a new trial, in an action brought by said Hylliard against said Nickols upon the statute entitled an act to prevent the slave trade—alleging that said Nickols at a certain time had transported out of this state into the state of Virginia, two negro children, contrary to the force and effect of said statute, whereby he had incurred the forfeiture of £100 for each; . . In which action the defendant was acquitted by verdict of the jury, upon the plea of not guilty. . .

"it was admitted by the defendant on said trial, that he carried said children out of this state into the state of Virginia; that he then removed into the state of Virginia for the purpose of settling there, and that he carried these children with him as a part of his family; and to prove this, said Nickols produced a deposition purporting to have been taken before justice Mitchel in Virginia, in which the deponent testified that said Nickols had paid taxes in said state; that the petitioner could now prove by said justice Mitchel and certain other documents, that said deposition and the signature of said justice, was all a piece of forgery. . . Further alledging, that he could now prove by incontestible evidence, which he knew not of at said former trial, *viz.*—naming the witnesses—That said Nickols carried said negro children into the state of Virginia for the purpose of selling them, and that in fact they were sold soon after they were carried there. Further, that he could prove by the testimony of sundry persons—naming them—That said Nickols never was taxed in said state of Virginia; that he did not remove there for the purpose of settling; but for the purpose of trafficking, and trading in land and negroes. . .

"By the court—This is not a criminal prosecution, but a civil action brought on a remedial statute to recover the penalty enacted to prevent the exportation of persons, of a certain description, out of this state into any other state for the purpose of selling them. . . After a hearing on the merits a new trial was granted."

Ebenezer Kingsbury v. Town of Tolland, 2 Root 355, February 1796. "Writ of error to reverse a judgment of a justice, in an action, Tolland

[1] Hillyard *v.* Nichols, *supra.*

against said Kingsbury, declaring, that said Ebenezer was sole executor of Ruth Kingsbury, late of Norwich, deceased—That said Ruth was mistress of Cuff and Phillis, a negro man and woman, whom she owned as servants for life—That in December, A. D. 1773, she liberated and set them free, and soon after died; leaving a clear estate of the value of £500 lawful money—That in A. D. 1776, said Cuff and Phillis, with the consent of said Ebenezer, removed into the town of Tolland, and had there resided and dwelt ever since. And on or about the 10th of February last, they were reduced to want, and the selectmen of said Tolland provided for their relief to the value of £2 lawful money, which was expended for their necessary support; of which the plaintiffs gave notice to the defendant, and requested payment; and thereupon the defendant became liable to pay said sum, and in consideration thereof, assumed upon himself and promised.

"Plea in bar, that on the 18th of November 1776, said Cuff and Phillis, being free citizens of this state, removed into the town of Tolland, where they had ever since resided and dwelled, without being warned to depart said town; whereby they became legal inhabitants of said town, and liable to be maintained by said town. Reply, that said Cuff and Phillis were foreigners, born in Africa—that they were owned as slaves by Joseph Kingsbury, and by him given to his wife the said Ruth, who liberated them as aforesaid; and in no other manner were said negroes free citizens of this state; and that they never gained any legal settlement in said Tolland. . .

"By the Court—The statute is, 'That all slaves set at liberty by their owners or masters, in case they shall come to want, shall be relieved by such owners, etc. respectively, their heirs, executors, or administrators; and upon their refusal so to do, the slaves, etc. shall be relieved by the select men of the town to which they belong; and said select men shall recover of said owners or masters, their heirs, executors and administrators, all the cost and charge, in the usual manner as in case of other debts.'"

Geer v. Huntington, 2 Root 364, March 1796. "Action for the service of a negro boy, who was born a slave, and was over twenty-five years of age. The plaintiff claimed him by a bill of sale from Mrs. Stanton, his mistress. The defendant claimed the boy to be free by force of manumission from his mistress, who was now living. The evidence was, that Mrs. Stanton had said, that the negro boy should be a servant to nobody but to her; and that he should be free at twenty-five years of age. At twenty-five the negro boy left his mistress, and entered into the service of the defendant, and for that, this action was brought.

"Verdict for the defendant, and accepted by the court—upon the ground that the declaration of the mistress made to the servant, that he should be free at twenty-five years of age, amounted to a manumission."

Town of Bolton v. Town of Haddam, 2 Root 517, February 1797. "Action of debt by book, for expenditures in supporting a negro man, claimed by the plaintiffs to belong to the town of Haddam. . . Verdict for the plaintiffs.

"In this case it was determined that a slave for life was settled with his master; and if manumitted by his master with or without a certificate from the selectmen, or by having enlisted and served in the army with his master's consent; that he continued to be a settled inhabitant in the town where he was settled before, until by legal means he becomes settled in another town."

Dickinson v. Kingsbury, 2 Day 1, June 1805. "This was an action of debt on bond, for two hundred dollars, . .

"the condition of which was, that one Benjamin (Negro) should appear before the Superior Court, and answer to a complaint made against him for burglary. . . a complaint was exhibited, by a grand-juror, against Benjamin for burglary; a warrant was thereupon issued, by which he was arrested, and brought before a justice for examination; the justice having heard the complaint, and the testimony relative thereto, gave judgment against Benjamin, that he should become bound, with sufficient sureties, in the sum of two hundred dollars, to the Treasurer of the State, to appear before the next Superior Court, and that, on failure of so doing, he should be committed to the gaol in New-Haven County; he neglected to procure bail; and the justice thereupon committed him to prison." The sheriff, "after the commitment of Benjamin, and while he remained a prisoner, took the bond, payable to the Treasurer of the State without his knowledge or consent, and thereupon immediately let Benjamin escape from gaol and go at large. The Superior Court . . ordered the Sheriff to set him at the bar, to plead to an information, which the Attorney for the State had filed against him. But the sheriff neglected to comply with that order;" The Supreme Court of Errors allowed such practice by a sheriff.

Richards v. Stewart, 2 Day 328, June 1806. [331] "After having proved, that Dill was put on board of the vessel, at Barbadoes, by Cruden, as supercargo; that as such he sailed, in June, 1804, and had the charge, and direction of the vessel from Barbadoes to St. Christophers, to take in a cargo of salt, by the order and for the benefit of Cruden, and from St. Christophers to New-York, whither the vessel was ordered by Cruden; . . and that there were four negroes put on board by Cruden, as seamen, who arrived with the vessel at New-York, in July, 1804, and were soon afterwards taken, by the direction, and under the care of Dill, as supercargo, to New-London; the defendant offered in evidence an advertisement, subscribed by Dill, for the negroes, who had escaped from him, describing them as mariners on board the schooner *Urania*, and slaves, and alleging that they had departed without license."

United States v. John Smith, 4 Day 121, September 1809 (U. S. Circuit Court). "This was an action of debt to recover double the value of the interest which the defendant had in certain slaves, transported in the brig *Heroine*, whereof the defendant was sole owner and master, from Africa to Havanna, and there sold, by the direction of the defendant and for his benefit, contrary to the provisions of the act of congress of May 10, 1800"

[no citizen to have property in any vessel engaged in the slave trade from one foreign place to another]. " The action was com[122]menced March 31, 1808. . . the crew of such vessel did forcibly seize, carry on board said vessel, and there confine more than one hundred of the natives of Africa, . . and . . did sail . . to the port of Havanna, . . at which port said vessel did arrive before the first day of June, 1806. And . . before the 30th day of June, in the year last mentioned, and within two years next before the date of this writ," they " were sold and disposed of as slaves."

By the court: [127] " It appeared that the vessel arrived at Havanna more than two years before the commencement of the suit; but it did not appear that the slaves were actually sold until some time within the two years " prescribed by the statute of limitations. [128] " My opinion is, and so I shall charge the jury, that the offence consists in transporting persons from one foreign country to another, with a view to their being sold as slaves; and as soon as the vessel arrives at the place of destination, the offence is completed, whether the slaves are sold or not. It is incumbent on the attorney for the United States to show an offence committed within two years; and as this has not been done, there must be a verdict for the defendant." (Edwards, J.) " The jury found accordingly."

Town of Windsor v. Town of Hartford, 2 Conn. 355, November 1817. . . " an action of *assumpsit,* for the support of Fanny Libbet, a pauper, and her two children. Fanny was born in Hartford, in the year 1785, and was the illegitimate daughter of Sarah, a slave of Jonathan Butler . . of Hartford. When Fanny was about three years old, Jonathan Butler gave her, and with her the right to all her services, to his son, Frederick Butler, an inhabitant of Wethersfield. She resided in Wethersfield until she was twenty-five years old, when the term of her service by law expired. Sarah, the mother of Fanny, was sold by her master, Jonathan Butler, in the year 1795, to Hezekiah Chaffee, an inhabitant of Windsor, and was emancipated by him in the year 1801." Counsel for the plaintiff " contended, that the settlement of Fanny, . . was in Hartford, that being the place of her birth, . . that she gained no settlement by her residence in Wethersfield, during her minority; . . and that she had no derivative settlement with her mother, [356] . . in Windsor. . . They also contended . . that Fanny never was a slave, having been born after the 1st day of March 1784."

Held: " Fanny . . never was a slave. During her residence with Frederick Butler, she is to be considered on the footing of an apprentice, or minor, living in another town, by the consent of parents or guardians; and did not thereby gain any settlement in Wethersfield. She never gained a settlement in Windsor, in right of her mother; for the mother being a slave could communicate no such right. She must, of course, retain her settlement in Hartford, and her two children follow the place of her settlement." [Swift, C. J.]

Town of Columbia v. Williams et al., 3 Conn. 467, October 1820. Action to recover the value of supplies furnished to a destitute negro. [470] "Adam, a negro slave of William Williams, Esq. late of Groton, deceased, becoming sick, and the defendants, who are the heirs of the said William Williams, refusing to relieve him, the plaintiffs supplied him with necessary food, medicine and attendance, to a considerable amount. The defendants, who had derived a large real and personal estate from the said William Williams, were notified, by the plaintiffs, of the advancements made, but refused to reimburse them; in consideration of which, the plaintiffs contend, that by virtue of the statute, they have a right to recover; . . It is not pretended, that the slave ever was an inhabitant of Columbia; or that he ever was emancipated; and from the facts conceded, it appears that he belonged to Groton, and was never made free. . . The section of the law on which the action is founded, is expressed in the following words: And that all slaves, set at liberty by their owners, and all negro, mulatto and Spanish Indians, who are servants to masters for time, in case they come to want, after they shall be set at liberty, or the time of their said service be expired, shall be relieved, by such owners of masters respectively, their heirs, executors or administrators; and upon their or either of their refusal so to do, the said slaves and servants shall be relieved, by the select-men of the town to which they belong; and the said select-men shall recover of the said owners or masters, their heirs, executors or administrators, all the charges or cost they are at for such relief, in the usual manner, as in case of other debts. Tit. 150. c. 1. s. 11. The persons to whom this section extends, are 'slaves set at liberty by their owners.' . . [471] Undoubtedly, when no authority is exercised over a slave, and he is suffered, without restraint, to reside or migrate where he pleases he is in fact free, and will continue so, until his master shall resume the government, which he has suspended; but the slave has not been 'set at liberty.' This expression denotes the putting of him in a permanent condition of freedom, and implies the extinguishment of the right, which the master had over the slave, and not the mere temporary cessation of actual authority. . . the slave in question has not been set at liberty, within the intention of the law. . . It has been contended, by the plaintiffs, that a person *belongs* to the town in which he resides, and hence, that Adam was of Columbia, the place in which he had a residence, at the time of his sickness. But the meaning of the word *belongs,* . . has been utterly misconceived. By the law of settlements, the support of a slave in necessitous circumstances, is incumbent on the town in which he is a settled inhabitant: Of consequence, the supplies by Columbia, gave her a right to recover of Groton," while Groton, by the statute, is given a claim against the owner or his heirs. "It . . is . . clear that the slave Adam did not belong to Columbia, within the intendment of the statute; and that the plaintiffs have no cause of action against the defendants." [Hosmer, C. J.] New trial ordered.

Prindle v. Glover et al., 4 Conn. 266, June 1822. Action for assault and battery: "There was no proof, on the trial, that the defendant Glover

personally committed the trespass complained of. But the plaintiff insisted, and adduced evidence to prove, that Frederick, a negro, the other defendant, made an assault on her, at the time alleged, at the dwelling-house of Bennett Prindle in Newton; and that Glover aided and abetted him, therein. To establish this fact, the plaintiff introduced testimony to prove, that at the time stated in the declaration, *viz.* about 12 o'clock at night, Frederick and Glover were together, at or near the place where the assault was alleged to have been made; and had there been seen at several times during the preceding evening."

Fuller v. Trustees of the Academic School in Plainfield, 6 Conn. 532, July 1827. Defendants alleged: [536] "That at a private party, at the dwelling-house of Levi Robinson, a member of the board, said Fuller pronounced the members of the board to be a set of rascals and scoundrels, (excepting Mr. Robinson when called upon by him) and no more fit to act in that capacity than Port Hall, an infamous black man too well known to all then present."

Pitkin v. Pitkin, 7 Conn. 315, June 1829. A bill in chancery, brought by executors praying for sale of real estate of a decedent to provide funds for administering his will. "In 1818, Elisha Pitkin executed [316] a deed of gift of all his real estate lying in this state to the plaintiffs and to the defendants. He retained that deed until his death, when it was his intention that it should take effect. At the same time, he made his will, and therein gave all his estate, not otherwise disposed of, to the plaintiffs and Joseph Pitkin, and the heirs of Timothy Pitkin then deceased, to be equally divided between them, they to take care of and provide for a negro woman called Flora, his slave; the expense to be borne equally between them; or his executors to reserve in their hands a sufficiency for that purpose. He constituted the plaintiffs his executors, and died in 1819. They accepted the trust, and proved the will; and . . paid large sums for the support of said Flora to the amount of 1,000 dollars, supposing there was a sufficiency of estate left for that purpose, by the testator. After the final settlement of the estate, it appeared, that there was not sufficient property, exclusive of that conveyed by the deed, to pay the debts of the deceased; and that a part of the estate so given by the deed, had been sold for the payment of debts; and that all the debts had been paid. Flora is still living; is aged and infirm; and large sums will probably be wanted for her future support. . . There is no other estate from which Flora can be supported. The bill prays the court to order a sale of so much of the real estate of the testator as will reimburse the expenses already incurred, and will provide for the future support of Flora for whose support his estate is liable."

Held: [318] "The court cannot know, that these sums were necessary for her support; much less can they foresee and provide for the future. . . this whole business properly pertains to the court of probate."

Town of East Hartford v. Pitkin et al., Executors, 8 Conn. 393, June 1831. "The declaration alleged, That Elisha Pitkin . . of East-Hartford, died in August, 1819; that he left, at his decease, a negro female

slave, named Flora, who then was, and ever since has been, a settled inhabitant of that town; that he was, during his life, and his estate has been, since his death, liable for her support; that she was and is part of the estate of the deceased; that she never was manumitted, but now is, and ever since his death, has been holden as a slave, and part of the estate of the defendants as executors. The declaration then alleged, That on or about the 1st of March, 1828, Flora became poor and destitute, and has at all times since, been in need of food, [394] clothing, medicine and attention; that she has no relation of sufficient ability to support her; that . . the town of East-Hartford, by their select-men expended 300 dollars in her necessary support; and that the defendants . . were specially notified . . and thereupon became liable."

By the court: [395] "Elisha Pitkin, if living, would be, and his estate since his death is, liable for the support of this slave. There can be no doubt of this position. It was never doubted, that a master was obliged to support his slave . . [396] Flora . . never was emancipated . . [397] Flora is not a pauper, in the sense of the statute" (title 93, Slavery, sect. 2). Declaration insufficient. [Daggett, J., Hosmer, C. J.] Williams, J., dissenting: [408] "By the principles of natural justice" the defendants "are bound to refund."

Town of Guilford v. Town of Oxford, 9 Conn. 321, July 1832. [322] "Alanson Bryan, the husband of Rhoda, was, at the time of his intermarriage with her, and still is a settled inhabitant of Oxford. Before the marriage and until that time, she was an inhabitant of Guilford or Wallingford. The marriage took place in October, 1828; and in March following, she was delivered, at New-Haven, of a coloured child, begotten by a black man, before the marriage, and soon afterwards went to Guilford, where she, together with the infant, became chargeable to and was supported by Guilford; of which Oxford had due notice. Alanson Bryan and Rhoda are both white persons; and at the time of the marriage, he was ignorant of her pregnancy. In May, 1829, he preferred his petition to the General Assembly, . . praying for an act of divorce." It was granted.

By the court: [328] "1. That the marriage . . was valid, I think there is no doubt. 2. . . It is . . unquestionable, that the divorce did not avoid the marriage *ab initio,* but only rendered it void *in futuro.* 3. . . Before the above marriage, the said Rhoda was a settled inhabitant of Guilford or Wallingford. By her marriage with Bryan, who was an inhabitant of Oxford, she became settled in that town. The settlement remains, notwithstanding a divorce; it having no retroactive effect." Rhoda and her illegitimate child are settled in Oxford, and "Oxford is liable to the plaintiffs."

Crandall v. State, 10 Conn. 339, July 1834. [340] "This was an information, filed by the prosecuting attorney of the county of Windham, for a violation of the statute of 1833, regarding the instruction of coloured persons not inhabitants of this state.[1] The information alleged,

[1] Act providing "That no person shall set up or establish in this state any school, academy, or literary institution, for the instruction or education of coloured persons, who are not inhabitants of this state, nor instruct or teach in any school, academy, or other

That at Canterbury, [341] in said county, on the 24th of September, 1833, for the purpose of attending and being taught and instructed in a certain school, which before that time had been and then was set up, in said town of Canterbury, for the instruction and education of coloured persons, not inhabitants of this State, Prudence Crandall, of said Canterbury, . . did harbour and board certain coloured persons, who, . . were not inhabitants of any town in this state; all . . without the consent in writing first obtained of a majority of the civil authority and also of the select-men of said town of Canterbury. . ." In the Superior Court, [342] "The defendent claimed . . that . . such coloured persons were to be regarded as citizens of the states where they respectively belonged and that they were entitled to the privileges and immunities secured by the second section of the fourth article of the constitution of the United States;[1] and that . . imposing a penalty for harbouring and boarding coloured persons not belonging to this state, while no such penalty was imposed for harbouring and boarding the coloured inhabitants of this state, was repugnant to the constitution of the United States, and void."

Held, by the Superior Court: [343] "The plain and obvious meaning of this provision" of the Constitution "is to secure to the citizens of all the states, the same privileges as are secured to [344] our own by our own state laws. . . The persons contemplated in this act are *not citizens* within the obvious meaning of that section of the constitution of the United States which I have just read . . slaves were not considered citizens by the framers of the constitution. A citizen means a *freeman*. By referring to Dr. Webster, one of the most learned men of this or any other country, we have the following definition of the term—'Citizen: 1. A native of a city or one who enjoys the freedom and privileges of the city in which he resides. 2. A townsman, a man of trade, not a gentleman. 3. An inhabitant; a dweller in any city, town or country. 4. In the United States it means a person, native or naturalized, who has the privilege of exercising the elective franchise, and of purchasing and holding real estate.' . . Indians . . are not citizens, according to the acceptation of the term in the United States.

"Are *free blacks* citizens? It has been ingeniously said that vessels may be owned and navigated by free blacks and the American flag will protect them; but you will remember that the statute which makes that provision, is an act of Congress, [346] and not the constitution. Admit, if you please, that Mr. Cuffee, a respectable merchant, has owned vessels and sailed them under the American flag; yet this does not prove him to be such citizen as the constitution contemplates. But that question stands undecided, by any legal tribunal within my knowledge. For the purposes of this case, it is not necessary to determine that question. It has been

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literary institution whatever in this state, or harbour or board, for the purpose of attending or being taught or instructed in any such school, academy, or literary institution, any coloured person who is not an inhabitant of any town in this state, without the consent in writing, first obtained of a majority of the civil authority, and also of the select-men of the town in which such school, academy, or literary institution is situated."

[1] "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

also urged, that as coloured persons may commit treason, they must be considered citizens. . . Treason may be committed by persons who are not entitled to the elective franchise. For if they reside under the protection of the government, it would be treason to levy war against that government, as much as if they were citizens. . .

[347] " To my mind, it would be a perversion of terms, and the well known rule of construction, to say, that slaves, free blacks, or Indians, were citizens, within the meaning of that term, as used in the constitution. God forbid that I should add to the degradation of this race of men; but I am bound, by my duty, to say, they are not citizens. . . But there is still another consideration. If they were citizens, I am not sure this law would then be unconstitutional. The legislature may regulate schools. . . I am not sure but the legislature might make a law like this, extending to the white inhabitants of other states, who are unquestionably citizens, placing all schools for them under suitable boards of examination, for the public good; and I can see no objection to the board created by this act." [Daggett, C. J.] [1]

The jury returned a verdict against the defendant. On appeal [365]. By the court: " The other point presented, is, that the information is insufficient; and this has been argued on the ground, that this law is contrary to the constitution of the United States. . . When the nature and importance of these questions are considered, the difficulties actually attending the construction of this clause of the constitution, the magnitude of the interests at stake, the excitement which always attends the agitation of questions connected with the interests of one class, and the liberties of another, more particularly at the present time; the jealousies existing on the one hand, and the expectations excited on the other; no desire is felt to agitate the subject unnecessarily. . . If then it appears, that the same result must follow if we do not examine at all this constitutional question, . . [367] as if it was decided, for one, I feel no disposition to volunteer an opinion on that subject. And on examination of this information, it seems to me, that no crime is charged upon this defendant, even if this law is constitutional. . .

" Prudence Crandall is not charged with setting up a school contrary to law, not with teaching a school contrary to law; but with harbouring and boarding coloured persons, not inhabitants of this state, without license, for the purpose of being instructed in such school. It is, however, no where alleged, that that school was set up without license, or that the scholars were instructed by those who had no license. . . The object in view of the legislature, . . [368] evidently, is, to regulate the schools, not the boarding houses; the latter only is auxiliary to the former. . . [369] It is the *unlicensed schools* which are the objects of this supervision; and these only are the schools forbidden. They only are guilty, who assist in such prohibited institutions, or harbour or board their pupils. To bring the case, then, within the act, the school must be . . a school set up or established without license; . . This information charges, that

[1] See p. 415, *supra*.

this school was set up in Canterbury, for the purpose of educating these persons of colour not inhabitants of this state, . . but omits to the state that it was not licensed. This omission is a fatal defect; . . [370] This information, therefore, is insufficient. . . [372] Judgment reversed." [Williams, J.]

Nancy Jackson v. Bulloch, 12 Conn. 38, June 1837. [39] " This was a writ of *habeas corpus,* before Ch. J. Williams, on the application of Nancy Jackson, by her next friend James Mars, alleging, that she then was, and for a long time had been, illegally confined, by James S. Bulloch, then residing in Hartford. The return stated, as the cause of detention, that Nancy was born in the state of Georgia, in the year 1813; that by the laws of said state, she is a slave and the property of the defendant, who is a citizen of that state; that in the month of June, 1835, the defendant came to the state of Connecticut, with a view to a temporary residence therein, and with an intention to return to Georgia; that he brought Nancy with him, and she has continued in his service from that time until the issuing of this process; that his residence in this state is, and has been, for a temporary purpose; that he intends, and ever since he came to this state has intended, soon to return to [40] the state of Georgia, with her; that his domicile is, and ever has been, there; that he came to Connecticut " in 1835, 1836, 1837, for some months of each year; " that his family have been in Connecticut at board, from the 16th of June, 1835, to the present time, June, 1837; and that during this period, Nancy has continued with them, in their service. The complainant, admitting the truth of these facts, claimed, that they were insufficient to justify her detention. . .

"Williams, Ch. J. The question in this case is, whether Nancy Jackson, the petitioner, can, by the laws of this state, be detained here longer, in a state of slavery; and it is a question of deep interest to this community, how far our laws tolerate slavery within our limits. . . It was expressly conceded " by the counsel for the respondent, " that slavery was a system of such a character, that it can claim nothing by the law of comity, which prevails among friendly states upon subjects of a different class: that it was local, and must be governed entirely by the laws of the state, in which it is attempted to be enforced. . .

[41] " The case, therefore, . . is to be decided upon the same principles, as if the parties [42] were inhabitants of any foreign country, with which we are at peace and in amity, where slavery is tolerated. . .

" In England, it is well settled, that slavery does not exist in that country; that a slave coming from another country—even their own colonies—was free, the moment he placed his feet upon English ground. *Somerset's* case, Lofft, 1. . . It is said, however, this is not our law; because slavery exists here to a certain extent. It cannot be denied, that in this state, we have not been entirely free from the evil of slavery; and a small remnant still remains to remind us of the fact. . . [44] This brings us to the question, what was the state of our law upon this subject, at the time of the adoption of the constitution [in 1818] of this state; for it has not

since been varied. . . In October, 1774, a law was . . passed to prevent the importation of slaves into this state, by sea or land. And almost as soon as the war, . . had terminated, another law was enacted, declaring that no negro or mulatto, born in this state after the 1st of March, 1784, should be held in servitude longer than until they arrived to the age of 25 years; which was subsequently reduced to 21 years. . .

[45] " Unless then, there is some defect in those statutes, which will prevent their operating in the manner intended, slavery in the state of Connecticut, (except as it respects the few born before the act of 1784,) is abolished. It may then become necessary to examine these statutes more in detail. The first statute was as follows: 'And whereas the increase of slaves in this state is injurious to the poor and inconvenient; *Be it enacted,* that no indian, negro or mulatto slave shall, at any time hereafter, be brought or imported into this state, by sea or land, from any place or places whatsoever, to be disposed of, left or sold within this state.' . . [48] It is not claimed, that Nancy Jackson was brought into this state to be sold or disposed of; and the respondent also insists upon it, she was not brought here to be *left.* On the other side, it is contended, that as she was brought here, and has been suffered to remain for nearly two years, she has been *left* here, within the true intent and meaning of this statute. . . [50] If it be asked how long " slaves " might continue here, before they could be said to be *left,* it is answered, that a liberal construction should be given to the term, depending upon circumstances, though two years could not be allowed under any circumstances, except of imperious necessity. In those states, where a time is limited, by statute, for the allowed residence of slaves from other states, brought in by their masters, no state has extended the time to two years. Pennsylvania has limited it to six months; and Virginia to a year. . . A slave, then, brought from another state or country into this state, may, in our opinion, be considered as *left* in this state, although the owner does not intend to reside here permanently himself, or to suffer such slave permanently to remain here. [51] So long as he is a traveller, passing through the state, he cannot be said to have *left* her here. But when he and his family are residing here, for years; and when he has suffered his slave to remain here, for almost two years; he cannot claim the privilege of a traveller, even although he intended at some future time, to return with his family to his former residence. If it be said, that the return shows, that the respondent did not mean to leave his slave here, and therefore, it is not a case within the statute; we reply, in the language of the court of Missouri, in the case before cited:[1] 'Is it true, that if a person does not intend to do an act, and yet does it, that the act is not done?' . . [52] In the opinion of a majority of the court,[2] it follows, that this slave has been brought and left in this state, contrary to the act of 1774; and therefore, that she cannot be claimed or treated as a slave, under our laws.

" The statute of 1784, follows up and completes the system of abolition. [53] The respondent, it has been conceded, can claim nothing by the law

[1] Julia *v.* McKinney, 3 Mo. 270.
[2] Three judges to two.

of comity, and nothing under the constitution of the United States. From the law, as settled in Somerset's case, that a foreigner who brings his slave into a country where slavery is not permitted, cannot hold him, it would seem to result, that upon this subject at least, an inhabitant of another state or country could claim no other or greater privileges that the inhabitants of that state or country into which he removed: . . [54] The result, therefore, to which a majority of the court have arrived, is, that these statutes [of 1774 and 1784] were designed to terminate slavery in Connecticut, and that they are sufficient for that purpose. . . We feel therefore bound to say, that we know of no law of this state, under which this woman can be holden in slavery; and therefore advise, that she be discharged."

[55] "Bissell, J. . . I find myself compelled to dissent from the opinion held by a majority of my brethren; and I feel bound, in justice to myself, to state the reasons on which my own opinion is founded. [56] By the laws of Georgia, the individual brought up, on this writ, is the slave and property of the respondent; and it is admitted, that by those laws, her condition is not affected, by her temporary residence among us. If she return with him to Georgia, she will still continue to be his slave and property. Is this relation destroyed, and is this respondent divested of his rights by the operation of our laws? . . [61] I must confess, that I am utterly at a loss to discover upon what principle, or in virtue of what statute, it is, that the property of the respondent in his slave has become divested.

"First, is it that slavery is opposed to the common law of this state? This claim has been gravely urged at the bar; and we have been told, that the common law of England is our common law; and that slavery has there been held repugnant to the principles of the common law. One would think, that a very slight glance at our statutes and our decisions, in which slavery is not merely tolerated, but sanctioned and regulated, would prove a very satisfactory answer to this claim; and show, most conclusively, that the common law of England, on this subject, never had any application here. . . Secondly, it has been insisted, that slavery has, here, become extinct, by the adoption of our state constitution. That part of the constitution, upon which most reliance has been placed, is in these words: 'All men, when they form a social compact, are equal in rights;' . . [62] But slaves are not, and are not capable of being, parties to such a compact.

[63] "If, then, the claims of the respondent are repugnant, neither to our unwritten law, nor to our constitution, it only remains, that we enquire whether they conflict with any of the statutes to which I have adverted.

"It has been supposed that the case falls within the spirit and meaning of the acts providing for the gradual abolition of slavery. These statutes, as we have seen, are confined, *in terms,* to persons *born in this state.* And I confess I hardly know [64] upon what principle of interpretation it is, that we are called upon to extend the provision of these acts to persons *born elsewhere.* . . [65] Again, it has been objected, and

much reliance is placed upon the objection, that the facts set forth in the return show, that the slave Nancy was brought here *to be left,* and has been *left,* within the meaning of the 4th section of the statute. . . 'To leave,' says Dr. Webster, (and with him agrees every English lexicographer), signifies '*to withdraw* or depart from,' 'to forsake,' 'desert, abandon,' 'to suffer to re[66]main,' 'not to take or remove.' Now, this slave has ever been in the service of the respondent's family, and under his protection and controul. He has not '*withdrawn from her.*' She has neither been *forsaken, deserted,* nor *abandoned*; and so far from suffering her to remain, he states his intention to be to take her with him to his domicile and hers. Now, is there any evidence that this slave was brought here *to be left,* within either the grammatical or popular meaning of the term? . .

I, however, understand it to be claimed, that to leave a slave in the state, within the meaning of the act, it is not necessary that he should be abandoned, but that it is sufficient if he *stop here with his master*: and that *to be left,* is used in the statute, only in contradistinction to a mere *transit* or passage through the state: that in the one case, the rights of the master are preserved, and in the other lost, although the place of the domicil be the object in both cases. I am unable to feel the force of this distinction; or to see why it is, that in the one case, we are to have regard for the law of the domicil, and suffer it to govern, and not in the other. Can anything depend on mere length of stay, so long as the domicil is unchanged and the *animus revertendi, bona fide* remains? . . "

Town of Colchester v. Town of Lyme, 13 Conn. 274, July 1839. [275] "In 1799 and for many years before that time, Jenny was the slave of Dr. Mather, who was then a resident and settled inhabitant of Lyme, and continued so to be until his death in 1832. In the year first-mentioned, Dr. Mather set free this slave, who was then fifty-six years of age, by giving her a letter of manumission; and he never afterwards exercised or claimed any controul over her. There was no evidence that he obtained from, or made any application for, to the civil authority and select-men of Lyme, a certificate authorising such manumission; nor was there any evidence of any record thereof in the town-clerk's office. Afterwards, during the year 1799, Jenny went to live with Dr. Watrous of Colchester, where she remained, as a hired servant, in his family, supporting herself until about eight years ago, when she became unable to support herself, and has ever since so continued. Since May 22d, 1834, she has been supported by the town of Colchester.

"Upon these facts the plaintiffs claimed, that Jenny had never lost her settlement in Lyme; and that the defendants were liable for her support. But the court charged the jury, that Jenny, by her residence in Colchester, supporting herself, had gained a settlement in that town; and that it was their duty to return a verdict for the defendants."

Held: [278] "The master of this slave, by relinquishing all claims to service and obedience, effectually emancipated her; and thus she became *sui juris,* and entitled to all the rights and privileges of other free citizens

of the state, among which the right of acquiring a new place of settlement, was the most important. . . The town where the emancipated slave belongs, or has a settlement, is the town empowered by statute to recover from the master, or his heirs, executors, or [279] administrators, for expenditures incurred for the support of such slave; and if in the present case, Colchester is such town, then Colchester only can recover of the former master or his representative." New trial not granted.

Gedney v. L'Amistad,[1] 10 Fed. Cas. 141 (Betts' Scr. Bk. 121), January 1840. In August 1839 "Lieutenant Gedney, commanding the brig *Washington* of the United States navy, seized and brought into the port of New London—the schooner *L'Amistad,* with . . 49 Africans, then claimed as slaves by Don Pedro Montez and Don Jose Ruez, subjects to her Catholic majesty the queen of Spain—the said Montez and Ruez also being on board the schooner." Several libels were filed, and the schooner, goods and Africans were taken into custody by the marshall. [142] "They have all been humanely treated; liberally fed and clothed by the government, into whose hands they have been providentially cast." A part of these Africans, by their counsel, filed an answer, as follows: "That Cinquez, Banna 1st, Damma, Fawni 1st, Phumah, [and twenty-eight others] . . are all Africans, entitled to their freedom; . . that part of said Africans . . were on shore on Long Island . . [144] at the time the vessel was seized . . The only reply which need be given to this claim is, that those on shore were there for a . . temporary object, to furnish the vessel with water and provisions for the continuance of their voyage to Sierra Leone. . . I proceed to the consideration of the merits of the cause. . . A Spanish vessel owned in Cuba, proceeded from thence to the coast of Africa, and having procured a cargo of native Africans, returned and landed near Havana, where they were put into a slave mart for sale. Within fifteen days from the time of landing, Jose Ruez and Pedro Montez, subjects to the queen of Spain, and residents of Guanaja, in the province of Puerto Principe, on the island of Cuba, being at Havana, purchased fifty-four of these Africans. The schooner *L'Amistad,* then lying in the port of Havana, possessing rightfully the national character of a Spanish vessel, owned and commanded by one Raymond Ferrer, master, . . the said Ruez and Montez put on board thereof the said fifty-four Africans with permits from the governor of the island of Cuba, to be transported as freight to the said port of Guanaja; and the said Ruez and Montez took passage in said schooner. . . Three days from Havana the negroes rose up on the vessel and killed the master and cook, and by force took command, and after being 63 days upon the ocean, she came into the waters of the United States, in a condition perilous to the vessel and the lives of Ruez and Montez and all others on board. . . [145] can salvage be allowed upon the slaves? . . these alleged slaves cannot be sold. . . Can a decree be predicated upon a supposed valuation to be ascertained by an appraisal? . . Are they to be estimated by their value in . . Connecticut? That is not one cent. . .

[1] See U. S. *v.* the Amistad, p. 438, *infra.*

[146] Shall these Africans, by a decree of this court, be delivered over to the government of Spain, upon the demand of her minister, as the property of Don Pedro Montez and Don Jose Ruez? . . In Cuba there are three classes of negroes, well known and distinguished: Creoles, who were born within Spanish dominion; Ladinos, who have been long domicilated on the island, or sufficiently so that the laws of Spain operate upon them, or, in other words, embracing those who owe Spain their allegiance; and, lastly, Bozals, embracing all such as have but recently been imported from Africa. The negroes now in question were all born in Africa; . . I find these negroes to be Bozals; . . in the month of June, 1839, the law of Spain did prohibit, under severe penalty, the importation into Cuba of negroes from Africa. These negroes were imported in violation of that law, and be it remembered that, by the same law of Spain, such imported negroes are declared to be free in Spain. . . [147] Who sold those Bozals to Don Jose Ruez and took his twenty thousand dollars from him? . . Why did they not ascertain that these negroes were Bozals. . . The secret is told in a word. In Cuba it is the custom to buy such negroes, and ship them as Ladinos or Creoles; . . [148] the Spanish consul says this mode of 'bona fide' selling is carried on without notice from the local authorities. . . The Spanish law declares they are not slaves; it would be utterly useless, then, to send them back to Cuba. . . to show that I abide by the treaty, . . I take another branch of this case. Antonio is demanded, and the proof from him is that he is a Creole, born, as he believes, in Spain. He was, at the time his master was murdered by Cinquez, a slave, so recognized and known by the laws of Spain. The property in him was in Raymond Ferrer, a Spanish subject, at the time of his death on board the schooner, and now is in his legal heirs. Here is both right and property in Spanish subjects. I shall decree a restoration of this slave, under the treaty of 1795. . . [151] Cinquez and Grabeau shall not sigh for Africa in vain. Bloody as may be their hands, they shall yet embrace their kindred. I shall put in form a decree of this court, that these Africans, excepting Antonio, be delivered to the president of the United States to be transported to Africa, there to be delivered to the agent, appointed to receive and conduct them home. . . Antonio, falling clearly within the other principle, and in the presence of the court, expressing a strong wish to be returned, will be decreed to the government of Spain," [Judson, J.]

U. S. v. the Amistad,[1] 15 Peters 518, January 1841. [587] "On the 27th of June, 1839, the schooner *L'Amistad,* [of about 120 tons burden] being the property of Spanish subjects, cleared out from the port of Havana . . for Puerto Principe, in the same island. . . the captain . . had with him a negro boy, named Antonio, claimed to be his slave. Jose Ruiz [*sic*] had with him forty-nine negroes, . . stated to be his property, in a certain pass . . signed by the Governor General of Cuba. Pedro Montez had with him four other negroes, also claimed by him as his slaves," (There were [522] " fifty-one male slaves, and three young female slaves,

[1] See Gedney *v.* L'Amistad, p. 437, *supra.*

who were worth twenty-five thousand dollars;") "while on the voyage, the slaves rose . . and killed . . the captain and one of the crew, and two more of the crew escaped . . Montez . . and . . Ruiz . . were spared to assist in the sailing of the vessel; and it was directed by the negroes, that the schooner should be navigated for the coast of Africa; and . . Montez, and . . Ruiz did, accordingly, steer as thus directed and compelled . . at the peril of their lives, in the day time, and in the night altered their course and steered for the American shore; but after two months on the ocean, they succeeded in coming round Montauck Point . . [523] Green and . . Fordham . . secured a portion of the negroes who had come on shore [for water]," The *Amistad* was taken possession of [523] "by the officers and crew of the [United States brig] *Washington*" and [522] "recaptured from the . . possession of the negroes . . and brought into the port of New London," and the negroes were [527] "taken into the custody of the marshal . . and confined . . in the jails in the cities of New Haven and Hartford," [1] Libels were filed in the district court on behalf of the various claimants. The court [528] "ordered that Antonio should be delivered to the government of Spain, . . [529] find that the respondents . . are each of them natives of Africa, and were born free, . . and still of right are free, . . that they were severally kidnapped in their native country, and were, in violation of their own rights, and of the laws of Spain . . imported into the island of Cuba . . [530] The decree . . recites the decree of the government of Spain of December, 1817, prohibiting the slave trade, and declaring all negroes brought into the dominions of Spain by slave traders to be free; . . the said Africans were shipped on board the said schooner . . under the passports signed by the Governor General of . . Cuba" in which they are described as "ladinoes." [2] [531] "said passports do not truly describe the said persons . . It is decreed that the said Africans . . excepting Antonio Ferrar, be delivered to the President of the United States . . to be by him transported to Africa, in pursuance of the law of Congress, passed March 3d, 1819, entitled 'An act in addition to the acts prohibiting the slave trade.'" The decree was appealed from. The circuit court "inspected certain depositions:" among them the deposition of Madden, a British subject, resident at Havana, [533] "under the British government, . . superintendent of liberated Africans . . and . . British commissioner, in the Mixed Court of Justice. . . To one of them, I . . repeated a Mohammedan form of prayer in the Arabic language; the man immediately . . repealed a few words of it after me, . . I also addressed [another negro] in Arabic, . . he immediately . . replied—'aleckoum salaam,' . . From my knowledge of oriental habits, and of the appearance of the newly imported slaves in Cuba, I have no doubt of those negroes of the *Amistad* being bona fide Bozal

[1] "Ruiz and Montez . . caused them to be indicted for piracy and murder. This was almost immediately disposed of, on the ground that the charges . . were not cognizable in the American courts, the alleged offences having been perpetrated on board a Spanish vessel." Sturge, *Visit to the United States in 1841*, App. E. xxxiv.

[2] In the passports they are all given Spanish names.

negroes, quite newly imported from Africa. . . no law . . has existed since . . 1820, that sanctions the introduction of negroes into the island of Cuba, from Africa for the purpose of . . being held in slavery; and, that all such Bozal negroes, as those recently imported are called, are legally free; . . [534] Africans, long settled in Cuba, and acclimated, are called ladinoes, and must have been introduced before 1820, . . To have obtained these documents . . for bona fide Bozal negroes, . . was evidently a fraud, . . there is never any inquiry or inspection of the negroes on the part of the governor or his officers, nor is there any oath required from the applicant. . . and by these means, the negroes recently and illegally introduced, are thus removed to the different ports of the island, and the danger obviated of their falling in with English cruisers, and then they are illegally carried into slavery. . . [535] Bozal Africans, . . when brought to the Havana, are immediately taken to the barracoons,[1] or slave marts; five . . in the immediate vicinity of the governor's count[r]y house, . . These barracoons, outside the city walls, are fitted up exclusively for the reception and sale of Bozal negroes; one of these . . I visited . . September last . . and the factor . . said to me, that the negroes of the *Amistad* had been purchased there; . . he said, 'che, castima,' or what a pity it is, which rather surprised me; the man . . said, his regret was for the loss of so many valuable Bozals, in the event of their being executed in the United States. . . from the necessity which my office imposes on me at the Havana of assisting at the registry of the newly imported Bozals, emancipated by the Mixed Court, I can speak with tolerable certainty of the ages of these people, . . [536] Sa, about 17; Ba, 21; Luckawa, 19; Tussi, 30; Beli, 18; Shuma, 26; Nama, 20; Tenquis, 21; . . With respect to the Mixed Commission, its jurisdiction extends only to cases of captured negroes brought in by British or Spanish cruisers; and not-withstanding the illegalities of the traffic . . from twenty to twenty-five thousand slaves have been introduced into the island during the last three years; and such is the state of society, and of the administration of the laws there, that hopeless slavery is the inevitable result of their removal into the interior." "It has been to me a matter of astonishment at the shortness of time in which the language of the negroes is disused, and the Spanish language adopted . . [537] As to the Mixed Commission, once the negroes clandestinely introduced are landed they no longer have cognisance of the violation of the treaty;" Vega, a Spanish consul, disagreed with many of these statements. [538] "Haley stated . . that he heard Ruiz say, that 'none of the negroes could speak Spanish; they are just from Africa.' James Covey, a coloured man, deposed that he was born at Berong-Mendi country; left there seven and a half years ago; . . I was stolen by a black man who stole ten of us. One man carried us two months' walk to Lumboko . . . I was sailing for Havana when the British man-of-war captured us." "I learned to speak English at Sierre Leone. Was put on board a man-of-war one year and a half. . . I have been in this country six months; came in

[1] "oblong enclosures, without a roof," Sturge, *Visit to the United States in 1841*, App. E, xlvi.

a British man-of-war; have been in this town (New Haven) four months with Mr. Bishop; he calls on me for no money, and do not know who pays my board. . . Have conversed with Sinqua; Barton [Quarto?] has been in my town, Gorang. . . All these Africans were from Africa. . . I could understand all but two or three. They say . . they sailed from Lumboko;" " three moons. They all have Mendi names, . . two or three speak different language from the others; the Timone language.' The testimony of Cinque and the negroes of the *Amistad*, supported the statements." [532] "The Circuit Court affirmed the decree of the District Court, *pro forma*, except [claims for salvage of part of the cargo] . . the United States, claiming in pursuance of a demand made . . by the . . minister of . . the Queen of Spain . . moved an appeal . . to the Supreme Court of the United States, . . and it was allowed." [566] "the able and interesting argument of Mr. Adams,[1] for the African appellees" had to be omitted, through "the publication of the 'Reports' has been postponed in the hope of obtaining it, prepared by himself. It has not been received."

Held: [597] "the decree of the Circuit Court, affirming that of the District Court, ought to be affirmed, except so far as it directs the negroes to be delivered to the President, to be transported to Africa, in pursuance of the act of the 3d of March, 1819; and, as to this, it ought to be reversed: and that the said negroes be declared to be free, and be dismissed from the custody of the Court, and go without d[el]ay."[2] [592] "It has been argued . . that the Court are bound to deliver them [the Africans] up [to Ruiz and Montez], according to the treaty of 1795, with Spain, . . The ninth article provides, 'that all ships and merchandise . . which shall be rescued out of the hands of any pirates . . on the high seas, shall be . . restored' . . it is essential to establish, First, That these negroes . . fall within the description of merchandise, in the sense of the treaty. Secondly, That there has been a rescue of them . . out of the hands of the pirates . . which, in the present case, can only be, by showing that they themselves are pirates . . [593] It is plain beyond controversy . . that these negroes never were the lawful slaves of . . Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain, . . By those laws, and treaties, . . the African slave trade is utterly abolished; . . and the negroes thereby introduced into the dominions of Spain, are declared to be free. . . If, then, these negroes . . were . . illegally detained . . on board of the *Amistad*; there is no pretense to say, that they are pirates . . [596] there is no ground to assert that the case comes within the purview of the act of 1819, or of any of our prohibitory slave trade acts. . .

[1] "the venerable John Quincy Adams, after an absence from the Courts of nearly forty years, . . did not think it beneath him to defend the Mendians before the Supreme Court," Sturge, *Visit to the United States in 1841*, App. E, xl, xli.

[2] "The Mendian negroes . . Embarked from New York for Sierra Leone [November 27, 1841], . . accompanied by five missionaries and teachers." Sturge, *Visit to the United States in 1841*, App. E, liv. See also pamphlet in the New York Public Library, entitled *Intelligent Negroes* (caption-title, no title-page; "Chambers's Miscellany of Useful and Entertaining Tracts," no. 63).

When the *Amistad* arrived she was in the possession of the negroes, asserting their freedom; and in no sense could they possibly intend to import themselves here, as slaves, or for sale as slaves." [Story, J.]

State v. Potter, 18 Conn. 166, July 1846. Indictment for murder. ". . Ball thereupon testified that the prisoner, on the 11th of February 1845, had confessed to Jesse Knevals, that he, the prisoner, had hired one Austin McGuire, a negro, for five dollars, to commit the murder; that he was present when McGuire did the act; and that afterwards, on the 12th of February, he made another confession to the witness, in which he stated, that the negro was not guilty, but that two young men by the names of Beecher and Sage were associated with him in the murder."

Tate et al. v. Protection Insurance Co., 20 Conn. 481, July 1850. Action on a policy of marine insurance on the bark *Fame,* lost while on a whaling and elephantary voyage to Kergerland and elsewhere. [482] " When the vessel sailed on her voyage, Joseph B. Mitchell was the master, Joseph Penny, the first mate, and Anthony Marks, the second mate, of the vessel; Mitchell having been appointed as such master, and Penny and Marks respectively shipped, as such mates, by the plaintiffs. In the prosecution of the voyage, Penny died, in consequence of a blow from a whale; whereupon the duties of the first mate devolved upon and were exercised by Marks. After which Mitchell died; whereupon the duties of master of the vessel devolved upon and were assumed and exercised by Marks, under whose command and direction the vessel was afterwards navigated, and on her homeward voyage, brought to Rio Janeiro, where a new crew being shipped, the vessel was thence taken, under the direction of Marks, acting as such master, on a slave trading voyage or expedition to the coast of Africa. There a great number of slaves were, by him, procured and transported in the vessel to Rio Janeiro, and there disposed of. He then caused the vessel to be taken elsewhere, and converted her to his own use, whereby she became wholly lost to the plaintiffs, by the barratry of Marks."

Gold v. Judson, 21 Conn. 616, June 1852. [617] " The following is a transcript of the testator's will: . .

'I give to Obed, a coloured man, living in Watertown, Litchfield County, Connecticut, son to Asahel, deceased, who was formerly servant to Agur Judson, of Huntington, deceased, the sum of one hundred dollars. I give to Silvia, a coloured woman, living in Watertown, Litchfield County, Ct., who was formerly a servant to Agur Judson, of Huntington, deceased, the sum of fifty dollars.' "

Town of New Haven v. Town of Huntington, 22 Conn. 25, June 1852. " Upon the trial [in the Superior Court] it was admitted, that Hannah Johnson, the mother of Richard W. Johnson, and a colored woman, had her original settlement in the town of Huntington. In the year 1804 or 1805, when about seven years of age, she went to live with a man in Cazenovia, in the state of New York, to whom she was bound. In 1806 or 1807, she was married to Titus Johnson, [26] a slave of one Child, then residing in Cazenovia. In 1816 or 1817, she returned to Connecti-

cut, where she has ever since resided. About a year after her return, Titus came to Connecticut, and lived with her about a year, in the towns of Derby and Bethany, and they had a legitimate son, Richard W. Johnson, the husband of Sybil, and the father of Henry and Charles Johnson, born in Bethany, in the year 1819 or 1820. He then returned to Cazenovia, where he died in 1826. About the year 1822, Hannah was married to Charles Treadwell, and had an illegitimate daughter, Charlotte Treadwell, born in the town of Orange, about the year 1823; and this daughter and her three illegitimate minor children, are the remaining paupers, named in the declaration. . . Much evidence was introduced to prove a settlement of Child in Cazenovia; but the court found it insufficient for that purpose; and further decided, that if Child were there settled, and Titus was legally emancipated, such emancipation had no effect upon the settlement of Hannah, and her descendants born in this state, while she was here domiciled; and therefore found the issue in favor of the plaintiffs.

Held: [28] " At the time of her marriage, her husband, Titus Johnson, was a slave belonging to a man living in Cazenovia, in the state of New York. Unless her settlement was changed, in consequence of that marriage, it remained as it originally was, in the town of Huntington. What effect the marriage of a free woman with a slave will have upon her previous settlement, under the laws of the state of New York, does not appear; and in this case, those laws must govern. If they are the same as ours, the settlement will remain unchanged, because a slave is incapable of imparting a settlement, either to his wife or his children." [Waite, J.] New trial refused.

Copp v. Town of Norwich, 24 Conn. 28, July 1855. Suit for taxes on land which had been conveyed by a father to a trustee for the benefit of the minor children of the grantor. [29] " The three children, named in the deed, are still living, and are all minors. Their father is a white man; their mother a mulatto woman, whose mother was of unmixed black, and whose father was of unmixed white blood; and the children correspond in complexion to their descent, being lighter than mulattos and darker than whites."

Held: [31] " The conveyance was to [the trustee] and not to [the children] . . [32] We do not think it was the design of the legislature to exempt property, thus situated, from taxation. The general rule is, that all real estate shall be subject to taxation, and an exemption of any particular estate is an exception to that rule; and to entitle a party to the benefit of such exemption, he must bring his case clearly within the provision of the law; which we think the plaintiff [the trustee], in the present case, has not done. He is not a person of color. Whether the children of the grantor, having a preponderance of white blood, can be considered as persons of color, within the meaning of the statute, and whether the provision [33] in the deed, relative to the payment of taxes, can have any effect upon the question, whether the property is, by law, liable to taxation, are questions we deem it unnecessary to consider." [Waite, C. J.]

Johnson, Executor, v. Town of Norwich, 29 Conn. 407, October 1860. "The testator owned certain real estate in the town of Norwich which had been assessed as taxable, and which was so unless his property was exempt from taxation under the provisions of the statute (Rev. Stat., tit. 55, sect. 6) which exempts from taxation 'the personal and real estate of persons of color.' The testator was a quadroon, or person of one-fourth African negro blood, and the question was whether he was a 'person of color' within the meaning of the statute."

Held: [408] "The defendant's testator having had one-fourth of African negro blood, we are of the opinion that his property was not liable to taxation under the" section above mentioned. "According to the common, general, and indeed universal acceptance of the phrase 'persons of color' in this community, it embraces not only all persons descended wholly from African ancestors," "but those who have descended in part only from such ancestors, and have a distinct, visible admixture of African blood. We therefore adopt that construction of the act in question, and hold that the exemption provided in it applies only to persons proved to be of such descent and also having and disclosing visibly the peculiar and distinctive color of the African race. We are strongly confirmed in this construction by the legislative history of the act, which shows clearly that the exemption of property furnished by it was designed as a compensation to those persons on whom the constitution of the state does not confer the privilege of the elective franchise, which is confined by that instrument to 'white' male citizens." [Storrs, C. J.]

Charles Treat's Appeal from Probate, 30 Conn. 3, April 1861. [114] "Homer Treat died in 1855, leaving a will, the important part of which was as follows: 'I give, devise and bequeath to [sundry persons named] and to their successors forever, (who shall as a Board of Trustees add to and perpetuate their number, so long as in their opinion the objects of this bequest shall require the existence of the same), all my estate as aforesaid, to be held by them in trust for the promotion of education and science among the Indian and African children and youth of the United States of America, or elsewhere, as in their judgment they shall deem best. I leave it entirely with them to decide in what manner to expend this bequest to secure the object for which it is designed, either by using the principal for the education of a number of children or youth, and thus prepare them for immediate usefulness to their fellow men, or only use the annual interest, and educate a smaller number, and thus continue; or if they shall judge it to be for the best, let them use the whole amount and establish an academy, which shall be destined to be a lasting benefit to that class of my fellow creatures for whose benefit I have most freely given all my property; wishing it to be used in that way, and at such time, and in that place, which they shall judge best, after due consideration upon the condition that the people of color shall be in . . the United States, at the time that this bequest shall be at their disposal. I wish it to be constantly and distinctly impressed upon the mind, that the bequest is given expressly for that, and for no other purpose, but for the promotion of the intellectual and scien-

tific knowledge of those unfortunate and hitherto abused fellow men above named.' " Held, that the bequest was not void for uncertainty; either as to the beneficiaries of the charity, or as to the mode of carrying the charity into effect.

State v. Jerome, 33 Conn. 265, February 1866. " Indictment for rape." " Evidence having been admitted on the part of the accused, who was a colored man, to prove that his wife had visited and taken tea with the complainant who was a white woman, the state afterwards introduced evidence to prove that his wife was a white woman; to the admission of which the counsel for the accused objected, but the court overruled the objection."

" The accused is a colored man, and if it was allowable at all to prove an act of intimacy between his wife and the complainant, it was proper to explain it consistently with public opinion by showing that his wife was a white woman." [McCurdy, J.]

Tillotson v. Tillotson, 34 Conn. 335, September 1867. [336] " Bill in equity for an account, discovery, and settlement of a partnership account; brought to the superior court in Hartford county, and referred to a committee, who made the following report: Prior to the year 1825 there was a partnership in the business of peddling clocks, subsisting between [four Tillotson brothers] of Avon in this state. . . [337] The partnership . . grew up without any formal articles of agreement, . . The business was widely extended, being carried on in the states of North and South Carolina, Mississippi, Louisiana, Ohio, and perhaps other states." A plantation in Louisiana was purchased, which finally, came to be joint property of Shubael and Romanta Tillotson, brothers. [339] " It was understood and agreed between Shubael and Romanta that neither of them should have any individual property, (except clothing and personal ornaments), but that all the estate, real and personal, standing in the name of either of them, should be regarded and treated as the property of both, . . it was the understanding and practice of the firm that each partner should have and take a reasonable and full support for himself and his family out of the partnership funds without any charge, or any account to be rendered therefor. . . [340] Shubael died. 1854 . . [342] the business of the concern . . as pointed out and requested in the will, . . went on under the principal and substantially exclusive direction and control of Romanta." Shubael's widow (executrix) and son petitioned for an accounting and settlement.

[357] " The committee allowed the sum of $3,023.58 for payments made by Romanta Tillotson for the support of a minister at New River, Louisiana. There were over one hundred slaves on the plantation, and the committee allowed these payments as a charge on the common [358] fund, as well on the ground of its being for the pecuniary interest of the concern in promoting in this way the good morals and behavior of their servants, as from the fact that the duty of caring for their slaves in this way in the relation in which they stood to them, had been recognized and acted on in the same ample manner by the firm in the lifetime of Shubael

Tillotson and at his special instance and entreaty. A building intended as a meeting house, and also for use as a school, had been built by the firm under the direction of said Shubael before his death, on land belonging to the firm, . . In this expenditure Romanta was but acting in the course of business pursued in the lifetime of his brother, and ardently sustained by him. It is true that others besides these families and their servants had the benefit of this ministry, while much the larger part of the expense was defrayed out of the funds of this concern. But the committee do not find that Romanta acted unreasonably in this, as the executrix of Shubael was aware of these expenses in a general way, although she supposed a larger portion of the expenses was contributed by others than was actually done. . .

[350] "In the spring of 1862 a destructive crevasse in the Mississippi river destroyed a valuable part of the sugar and molasses crop on the plantation, and after as well as before that time the condition of things in Louisiana growing out of the rebellion was extremely injurious to the prosperity of the concern. The loss of their property in slaves and the great difficulty in procuring the necessary help to carry on the plantation, have rendered the attempts of Romanta to conduct the same almost ineffectual, and the business has resulted in a loss. But the committee find that Romanta has exercised his best skill and discretion in the management of the business, and is not justly chargeable with any fault. . .

[353] "There has been a very large diminution of the value of the estate belonging to the concern since the death of Shubael, . . and especially has the estate suffered largely by the emancipation of all the slaves that belonged to it, and the final results and effects otherwise of the war of the rebellion."

By the court: [359] "The case finds that Romanta acted in accordance with this provision of the will, that he conducted the affairs of the partnership in the same manner in which they had been carried on in the lifetime of Shubael, and that in the expenditures in question he acted in good faith for the best interest of all concerned. It was clearly the expectation and desire of Shubael that such expenditures should be made, and we think that, taking into consideration the will, the good faith of Romanta in making the expenditures, the relation that he and the pe[360]titioners bore to their slaves upon the plantation, the benefit resulting to the petitioners in consequence of the expenditures, the previous practice of the firm, and all the facts of the case, there is no cause for complaint on this ground." [Park, J.]

Hill v. Hayes, 38 Conn. 532, October 1871. "Trover to recover the value of certain bank bills; . . On the trial it was admitted that the money described in the declaration belonged to the plaintiff, and was on the night of the 4th of November, 1865, stolen from him in Redding by one Billy Lake, a colored lad, who had, before he left Bridgeport the June previously, occasionally boarded for short periods of time in the family of the defendant, Hayes, an aged and infirm colored woman, who then resided in Bridgeport with her daughter, the wife of Jenkins, the other

defendant, and that on the morning of the 6th of November Billy delivered the money to the defendant, Hayes, to keep for him. Soon after, and on the same morning, Billy with Jenkins left her house, with the avowed intention of going to Birmingham [533] on business. On the afternoon of the same day, and before their return, the defendant, Hayes, was informed by some lads 'that the officers were looking after Billy,' but was not informed for what purpose. Jenkins soon returned, and she thereupon immediately gave the money to him, with directions to return it to Billy, and he forthwith left for that purpose. Soon after, Billy came and requested his money, but upon being informed of what had been done immediately left. Mrs. Hayes had never used the money, or received any benefit from it, and during all the time it was in her hands had no knowledge that it was stolen. There was no evidence that the money was ever returned by Jenkins to Billy."

State v. Ransell, 41 Conn. 433, October 1874. "Information, charging the defendant with misspending his earnings and not supporting his family; . . [434] On the trial the public prosecutor offered evidence to prove that on the 28th of April, 1874, the accused was lawfully married to Marina Campbell; that about the middle of July, 1872, she was delivered of a child which was now living; that at the time of the marriage she had one child about three years of age, she not having been previously married; that since her marriage with the accused he had not lived with her, nor . . contributed in any way whatever to her support or that of her children, though receiving a salary of $225 as a church sexton, and $8 per week as a hired servant; . . It further appeared in evidence that the said Marina was a native of King and Queen's County, Virginia, where she was born a slave, and where she lived till since the close of the rebellion, when with her mother she came to Bridgeport, where she had since resided; that previous to her marriage her reputation for chastity was not good; but that since that time nothing had been said against it."

RHODE ISLAND

INTRODUCTION

I.

The first landmark in the history of Rhode Island legislation regarding slavery is the act of 1652 passed by the representatives of Providence and Warwick, before Rhode Island and Providence Plantations were brought into one jurisdiction by the charter of 1663. It provided "that no blacke mankind or white being forced by covenant bond, or otherwise, serve any man or his assighnes longer than ten yeares, or untill they came to bee twentie four yeares of age, if they bee taken in under fourteen, from the time of their cominge within the liberties of this Collonie, and at the end or terme of ten yeares to sett them free." [1] Later, however, negro slaves were brought in more largely. There were 425 in 1708, 1645 in 1730, and between three and four thousand are shown in the censuses of 1749, 1756, and 1774. Various eighteenth-century statutes were passed regulating the conduct of negroes. Acts of 1728/29 [2] and of 1765 [3] provided that in case of manumission security should be given to indemnify the town from charge. The most important act of the colonial period was that of 1774 [4] providing that all negroes thereafter brought into the colony should be free, except slaves of persons travelling through the colony, or of persons coming into the colony from the other colonies to reside; yet, as is well known, Rhode Islanders continued to be engaged in the slave trade elsewhere.[5] Ten years later, 1784, it was enacted that all childern born of slave mothers after the first of March of that year should be free.[6]

The number of cases in Rhode Island courts concerning slavery or the negro would in any case be small; the amount of material to be got for this volume from the printed judicial reports from its highest court is made still less by the relatively late date at which they begin. The first reporter was not appointed till 1845; his first reports were published in 1847. Only a few cases of dates prior to the nineteenth century are reported, briefly, from the journals of the General Assembly, in the *Colonial Records of Rhode Island.*

[1] *R. I. Col. Recs., I. 243.*
[2] R. I. Laws, 1730, p. 162.
[3] *Ibid.*, 1767, p. 234.
[4] *R. I. Col. Recs.*, VII. 251. For the preceding period of the history of slavery in the colony, see W. D. Johnston, "Slavery in Rhode Island, 1755-1776," in R. I. Hist. Soc., *Publications,* n.s., vol. II., pp. 113-164.
[5] Ample means for tracing the history of the Rhode Island slave trade are provided in Elizabeth Donnan, *Documents Illustrative of the History of the Slave Trade to America* (Carnegie Institution, 1932), III. 108-404.
[6] R. I. Stat., session of February, 1784, p. 6.

II.

From early colonial days to the adoption of the first state constitution in 1843, supreme judicial authority was exercised by the General Assembly or legislative body, mostly on appeal or petition from decisions of the court successively entitled Court of Trials, Superior Court, and Supreme Judicial Court. Under the constitution of 1843, the Supreme Court was constituted of a chief justice and three associate justices,[7] and the exercise of appellate jurisdiction by the legislature ceased.[8]

[7] Constitution, art. III.; Acts, May, 1843, p. 11, June, 1843, p. 70.
[8] For the history of the Rhode Island courts, see chap. II., by Edward C. Stiness, in Edward Field, ed., *State of Rhode Island,* vol. III.

Taylor v. Cuff, 5 R. I. Col. Recs. 72, October 1743. "Whereas, Comfort Taylor, . . widow, did, by petition, set forth to this Assembly, that at a court of equity, held at Providence, [Oct. 9], the petitioner obtained a judgment against a negro man, named Cuff, belonging to Thomas Borden, . . for £200, and costs of suit, for a grievous trespass, committed by said Cuff, against her; and that, as the execution will go against his person to be imprisoned, according to the common form of executions, it is not clear that the sheriff can dispose of him, which she apprehends he ought to have power to do, because said negro is not free, but a private property; and therefore prayed that the said sheriff might be empowered to sell him, as other personal estate, taken by execution, to satisfy debts; and considering the great abuse she has suffered, and the charge that will come out of said negro, for prison fees, she desired that the fine of £20 against said negro Cuff might be remitted, otherwise she should get nothing for all the hardships she has endured;—Upon consideration whereof it is voted and resolved, that the sheriff . . be, and he is hereby fully empowered to sell said negro Cuff as other personal estate; and after the fine of £20 be paid into the general treas[73]ury, and all other charges deducted out of the price of said negro, the remainder to be appropriated in satisfying said execution."

Norton et al. v. Bennet, R. I. Acts and Resolves, 22 Geo. II., p. 35, June 1749. "Job Bennet, jun. of Newport . . was requested by the Sheriff, who was by an Act of this Assembly commanded to take up as Prisoners of war, several negroes that were brought into the Colony by Capt. Robert Morris and Capt. John Dennis, and sold as Slaves: Nothwithstanding he the said Job comply'd exactly with the Act of Assembly, he hath since been sued by Benjamin Norton, George Goulding, and John Clerk, and they have obtained Judgment against him for the Negroes, . ."

Fales v. Mayberry, 8 Fed. Cas. 970 (2 Gallison 560), November 1815. [971] "In the year 1799, the brig was fitted out . . on a slave voyage, from Boston to Georgia, thence to the coast of Africa, and thence to the West Indies. The brig accordingly sailed on the voyage, went to Africa, and there took on board 150 slaves, who were carried to the West Indies and sold; and afterwards the brig was, under the original instructions for the voyage and as a part of the project, sold . . at St. Bartholomews. The present action was brought to recover the two third parts of the proceeds of said voyage," Story, J.: "You need not labor the argument. Certainly this action cannot be maintained. The traffic in slaves is a most odius and horrible traffic, contrary is the plainest principles of natural justice and humanity. . . The laws of the United States,[1] long before the inception of this voyage, prohibited, under severe penalties, (including the forfeiture of the vessel) any trade by American citizens in carrying

[1] Act of Mar. 22, 1794, ch. 11. 1 Stat. at L. 347.

slaves to, from, or between any foreign countries. The voyage was, in its very elements, infected with the deepest pollution of illegality; and the present action is brought between the very parties, who formed and executed this reprehensible enterprise. . . As to the sale of the ship, it was a part of the original scheme, evidently adopted to evade the forfeiture inflicted by the laws of the United States;"

Town of Exeter v. Town of Warwick, 1 R. I. 63, October 1834. "This was an appeal from an order of removal of the town of Warwick of a pauper, to the town of Exeter . . Pruda Tillinghast . . was born in Exeter, in the year 1797 . . daughter of Braddock [Tillinghast], who purchased a freehold estate in said Exeter, December 8, 1797, for two hundred dollars; . . was assessed and paid taxes on his estate in said town, . . was treated by the town as a freeman . . From the evidence, there is no doubt that Braddock was either born or purchased a slave, but was permitted to leave his master and act for himself about the close of the revolutionary war, and that no claim on him, or for his services, was ever made by his supposed master; though no evidence of a manumission . . was offered.

"It is plain by this act [of 1748], that the place of birth is considered as the place of legal settlement, where none has been acquired. . . In the case in question the pauper was born in Exeter, . . If birth alone therefore gave a settlement, she belongs to that town. . . The pauper was not a slave. She was free born. All persons born after the 1st of March, 1784, were free born. The law, therefore, referred to for the support of manumitted slaves, has nothing to do with this case." Order confirmed.

Sands v. Champlin, 21 Fed. Cas. 339 (1 Story 376), November 1840. Will of Ray T. Sands, dated 1818: "I give unto my black woman Phillis, her entire liberty; but should she choose to remain with my nephew, Samuel P. Robinson, and work as she did for me, I desire the said Samuel P. Robinson to give her the same fare and usage, and the same privileges she enjoyed, particularly the room she now occupies, and finally such as she received from me; I also give her all such articles as she may claim, the determination of which I submit to my wife, however. I give unto my black boy John, should he continue in the service of my family, that is, my wife or Samuel P. Robinson, until he arrives at the age of twenty-one, the improvement from that time of the cellar house on the Kentucky farm,[1] the garden south of the house, . . [340] and the lot west of the cellar, . . to him and his family during his natural life; . . it is to be understood, that he lives on the premises himself; if he lives in my family until he arrives to the age of twenty-one, I order the annual profits to him from my death. When he goes on the premises to live himself, he is to suffer no other family to live with him, that would be injurious to my other property; then should he occupy the house and land in the manner just mentioned, I then give him four loads of tug annually, during five years, after he shall arrive at the age of twenty-one, to be dug out of the Rodman swamp, . . I also give him the privilege of carting sea-weed, or

[1] "my farm on the west side of the island,"

any other article he may need, on or off said premises, for his own use during the term, where no essential injury will arise."

Crane v. Cowell, 6 Fed. Cas. 749 (2 Curtis 178), November 1854. Will of Waite Smith, dated February 5, 1808: [750] "My will further is, that my executor . . fulfil my indenture to James Pink, my indentured mulatto servant, and that they provide for him a flock bed, under straw bed, bolster, and pillows, bedstead, cord, two pairs of sheets, pillows, and bolster cases, one pair of blankets, and one yarn coverlet, and set off to him a small piece of land most convenient for my devisors and large enough for a small house and garden, for his own use but not to sell, so that he may have the use and improvement thereof during his natural life, provided he lives in some respectable family after my decease, and faithfully fulfils his indenture to them as he was bound to do to me."

The Slavers (*Reindeer*), 2 Wallace 383, December 1864. "The bark *Reindeer* . . was forced by stress of weather into Newport, R. I., July 11, 1862,[1] . . the United States filed a libel . . [385] The District Court condemned the Vessel, cargo, . . The Circuit Court affirmed" Special counsel of the United States: [386] "The *Reindeer* was a vessel of 348 tons, . . owned by Pearce, of New York, . . [387] built with a rider,—an arrangement for laying an extra deck. . . she cleared and sailed for Havana . . January, 1861, . . shipped on her to Havana . . 14,700 lbs. of *tasajo,* or dried beef, and a box of hardware. Her outward manifest exhibited, besides, twenty-two packages of hardware. . . [391] The cargo was all of it suited to the slave-trade. . . Machats, or war-knives, innocently described as 'hardware;' 'sponges,' an article used to wash slaves after being packed under the hatches; 'vinegar,' given to them to rinse their mouths; 'medicines,' for these poor beings; disinfecting fluids, . . casks of long iron chains, with padlocks, . . [392] Tasajo is imported from Buenos Ayres, and is a food especially for slaves." [387] "The shipping articles, signed at New York . . described the bark *Reindeer* as 'now bound from the port of New York to one or more ports in Cuba; from thence to one or more ports in Europe, if required, and back to a port of discharge in the United States, or from Cuba back to the United States.' . . four deserted in Cuba, . . The captain and the rest of the crew remained all the time with the vessel, and were on her when she arrived at Newport. . . Pearce, the owner . . arrived in Havana about the middle of March, and remained until the 6th of May . . She laid [*sic*] at Havana from . . February to . . June, 1861. . . One of the consignees . . stated . . that on the 10th of May[2] Tejédor chartered the vessel, . . [388] On the 22d of June, 1861, the *Reindeer* cleared at Havana 'for Falmouth, England, and for orders.' . . 'on . . the 2d day of July, 1861, at sea, in about latitude 31°, longitude 69°, . . a squall, . . the ship unfit to perform the voyage, squared away for Newport, . . ' The location of the vessel, when the captain was thus compelled to put into Newport, showed her . . to have been on the route to the west coast of

[1] Misprint; should be 1861.
[2] The charter-party was dated Mar. 23, 1861.

Africa. . . [389] The marshal of the United States . . found on board . . a 'sea letter' . . This . . declared the destination of the *Reindeer* to be St. Antonio. . . an unimportant island in the Cape de Verd Group, in a line from Havana to the western coast of Africa. . . [392] a place for which such a cargo would have been wholly too large, and as much unsuited." Decree affirmed: [394] "No claim was ever filed by the owner of the vessel, . . [397] Expenses . . were to be borne by the charterer, but there was no change in the shipping articles, or in the crew-list, or in any of the ship's papers. On the contrary, the voyage went on as it was begun at New York, and the same officers and crew remained on board till the vessel was seized . . the list of the cargo taken from the vessel, shows that a large quantity of articles, specially suited to the slave-trade, were not on the manifest, . . Her manifested cargo, also, is of the same criminating character. . . [398] it is difficult to resist the conclusion, that they were all exported from the port of New York. . . Support to the theory that the charter-party is not a *bonâ fide* instrument . . [399] evidence . . that fourteen packages of stores for the vessel were shipped at New York, on the 10th of May, 1861, by order of the owner, . . None . . were manifested, and the directions were that they should not be, and they were not landed at Havana, but were transhipped directly on board the *Reindeer*. . . Claimants not only failed to call either of the supposed passengers who were on board, but they have neglected to call the master or any one of the crew, and the evidence shows that the master has absconded." [Clifford, J.]

Brown v. Meeting Street Baptist Society, 9 R. I. 177, March 1869. "This was an amicable bill in equity, . . for the purpose of effecting, . . the aid of this court, the exchange of the lot . . held by the complainants in trust. The bill . . alleged, that Moses Brown, by his deed . . conveyed to Obadiah Brown and others, the lot on meeting street, . . 'in trust . . for a Meeting House, for Divine Worship for the people of color, that now are, or hereafter may be in this town, and for no other use, but for the said people of color forever.' . . [178] That the original trustees, and, after them, the present ones, have permitted all people of color in Providence, . . to worship in the Meeting House . . and in 1855 the colored people who worshipped there, obtained an Act of Incorporation . . That, said meeting house being so greatly out of repair as to be nearly worthless, and the lot being very ineligible from its inaccessibility and surroundings, being entirely shut in by other buildings, the trustees pray for leave to exchange said lot for one much more eligible in every respect, said exchange being highly beneficial for the trust. The defendant Corporation filed its answer, admitting the facts as alleged and joining in the prayer of said bill. . . The matter was referred to S. W. Peckham, Esq., as master . . His report set forth that said exchange was necessary and expedient, and would be highly beneficial to the trust."

Held: [184] "In this case the plaintiffs have submitted to us an argument upon two points relating, first, to the jurisdiction of the court, and second, to the question whether there is anything in the terms and provisions of the deed under which the plaintiffs hold, to present the proposed

change. . . [185] We are satisfied, . . that it is within the jurisdiction of this court, under the full chancery powers . . to sanction, in a proper case, the sale or exchange of real estate held upon trust for charitable uses. . . [187] the primary purpose of the donor being the promotion of the charity, his incidental purpose that the particular property given shall be used for its promotion, may be disregarded, and the property sold or exchanged, if thereby the charity will be greatly benefitted. . . [188] The correct doctrine is, we suppose, that the trustees have the power, when the interest of the charity manifestly requires, to alienate the charity estate, and that the court is called upon to sanction the alienation, . . [189] We think, therefore, it is no infringement . . for the trustees to alienate the estate . . We are satisfied from the report of the master, that the charity as it now exists, will be very much benefitted by the exchange proposed, and we therefore give it our sanction and approval, and authorize it to be made."

MASSACHUSETTS

INTRODUCTION

I.

The first slaves of the Massachusetts Bay and Plymouth colonists, who appear in the court records, were Indians and Englishmen, condemned to slavery, permanent or temporary,[1] for their crimes. Chousop, "the Indian of Block Island, was adjudged" by the General Court of Massachusetts Bay, in 1636, "to be sent to the island, and there bee kept as a slave for life to worke, unless we see further cause."[2] "William Androws, having made assault upon his master, Henry Coggan, . . and not onely so, but did conspire also against the peace . . of this whole common welth, was censured [in December, 1638] to bee severely whiped, and delivered up a slave to whom the Court shall appoint."[3] But in September 1639, he "is released (upon his good carriage) from his slavery, and put to Mr. Endecott, hee promising to pay Henry Coggan 8 *l*; and so Androws is to serve Mr. Endecott the rest of his time."[4] Likewise Thomas Dickerson who was condemned to slavery in December 1639,[5] was "discharged from his slavery," in September 1640, "and commited to Ensigne Richard Walker. . . Jonathan Hatch,[6] . . for the present is commited for a slave to Leif't Davenport."[7] In June 1640, "Thom: Savory, for breaking a house in the time of exercise, was censured to bee severely whiped, and for his theft to be sould for a slave until he have made double restitution."[8] In December 1640 "Henry Stevens for fiering the barne of his master, Mr. John Humphrey, . . was ordered to bee servant to Mr. Humphrey for 21 years from this day, toward recompensing the loss."[9] Evidently Mr. Humphrey would be better recompensed for the loss of his barn by twenty-one years of service from Stevens than by his enslavement for a briefer period.

[1] In the seventeenth century and even later, slaves were of two kinds: slaves for life and slaves for a term; and they were not the less slaves though their servitude terminated before death.

[2] 1 Mass. Recs. 181. See also *Re* Indian Hoken, p. 472; *Re* Indian Tom, 472, *infra*.

[3] *Re* Andro[w]s, p. 469, *infra*.

[4] *Re* Androws, p. 469, *infra*.

[5] *Re* Dickerson, p. 469, *infra*.

[6] Hatch's slavery was not for a long period, for in March 1642, he "was taken for a vagrant," and again sent "to Leiftennant Davenport at Salem" (2 Plym. Col. Recs. 36). The following month he "is appoynted to dwell with Mr. Stephen Hopkins, and the said Mr. Hopkins to have a special care of him." *Ibid.* 38.

[7] In March, 1639, the "Generall Courte, houlden at Boston," ordered "that 3 *l* 8 *sh's* should be paid Leiften't Davenport for the present, for charge disbursed for the slaves, which when they have earned it, hee is to repay it back againe." *Re* Slaves, p. 469, *infra*.

[8] *Re* Savory, p. 469, *infra*.

[9] 1 Mass. Recs. 311. For further instances, see *Re* Barton, p. 470, *infra*; and *Re* Southwicke, p. 471, *infra*.

In 1641, the Code of Fundamentals, or Body of Liberties, of the Massachusetts Colony in New England (the first code of laws of that colony) provided that, "There shall never be any bond slaverie, villinage or Captivitie amongst us, unles it be lawfull Captives taken in just warres and such strangers as willingly selle themselves or are sold to us. . . this exempts none from servitude who shall be Judged thereto by Authoritie." [10]

Accordingly, indignation ran high when, in 1645, the ship *Rainbowe* arrived at Boston from Barbadoes (via Piscataqua?), having on board some negroes "fraudulently taken and brought from Ginny, by Capt. Smiths confession, and the rest of the Company." [11] A letter was at once dispatched "to Mr. Williams, of Pascataq., . . that he forthwith send the neger which he had of Capt. Smyth hither, that he may be sent home, which the Court doth resolve to send back without delay; and if you have anything to aleadge why you should not returne him . . make it appear, . . but not to make any excuses or delay in sending of him."

And in November 1646 "the Generall Courte, conceiving themselves bound by the first oportunity to bear witnes against the haynos and crying sinn of man stealing, as also to prescribe such timely redresse for the past, and such a law for the future as may sufficiently deterr all others belonging to us to have to do in such vile and most idious courses, justly abhored of all good and just men, do order, that the negro interpreter, with others unlawfully taken, be, by the first oportunity, (at the charge of the country for present,) sent to his native country of Ginny, and a letter with him of the indignation of the Courte thereabouts, and justice hereof, desireing our honored Governor would please to put this order in execution." [12]

But manstealing in America [13] was a different matter. As early as 1641, the very year in which the Code of Fundamentals was adopted it was "de-

[10] Printed in 1843 from the original manuscript, in 8 Mass. Hist. Coll. (3d ser.) 231. The heading of the chapter is "Liberties of Forreiners and Strangers." The same provision appears, under the rubric "Bond-Slavery," in the *Book of the General Lawes and Liberties* printed in 1648. In the second printed edition, of 1660, the word "strangers" is omitted. Thus, not only might captives and strangers be enslaved, but their children "if sold to us." There is therefore no foundation in law, as there was none in fact, as Chief Justice Parsons points out in Winchendon *v.* Hatfield (p. 484, *infra*) for the unanimous decision of the judges in Littleton *v.* Tuttle (p. 482, *infra*) "that Cato [the child of a slave], being born in this country, was born free:" See also Moore, *Notes on the History of Slavery in Massachusetts,* pp. 11-18: [18] "Based on the Mosaic code, it is an absolute recognition of slavery as a legitimate status."

[11] Smith *v.* Kaezar, pp. 470, 471, *infra.*

[12] *Re* Negro, pp. 470, 471, *infra.*

[13] And in Ireland. The Irish servant, William Hiferney, who had "bin stolen away out of his owne countrey," was not sent back, when he complained to the Court, in 1661; but his master was "perswaded . . that hee . . will remitt two yeares of the time of his service." He had been bound for "the tearme of twelve yeares . . engageing to soe long a time when hee was unaquainted with the English tongue," (3 Plym. Col. Recs. 220). However, by 1677, the public conscience was sufficiently aroused in respect to the stealing of Indians to cause the Council to order fifty-six pounds paid to Bernard Trott "for his services and expenses in the redeeming and returning from Fayal two Indians" (8 Acts of the Prov. 123) "a Sacamore and his Squa Stollen away [in the winter or spring of 1675-6] from the Eastward, . . and 13 Indians more, and carried to Fyall and Sold for Slaves Which made the first Indian Warr, there in those parts," (*ibid.* 485). Trott was not paid, however, till 1705, when he was allowed "eleven pounds per annum for five years, in part compliance." *Ibid.* 123.

clared to bee the mind of the Court, that if the Indians send not back our run awayes, then, by commission from the Governor and any 3 of the magistrates, to send and take so many as to satisfy for the want of them, and for the charge of sending for them." [14]

And only one month before the General Court of Massachusetts Bay bore witness "against the haynos and crying sinn of manstealing," the Commissioners for the United Colonies, meeting at New Haven,

> seriously consideringe [the proud affronts to the English] . . thought, that if such . . hostile practices against the English, together with the entertayninge, protectinge or rescuinge of offenders were suffered, the peece of the Colonies could not be secured, . . therefore concluded, that . . the magistrates of any of the jurisdictions, might at the plantifs charrdge send some convenient strenth of English, and . . seise and bring away any of that plantation of Indians that shall entertain, protect or rescue the offendor, . . [71] after . . due Warninge given them as abettors or at least accessory unto the Injury . . done to the English, onely woemen and children to be sparingly seised, unles knowne to be some way guilty. And because it wilbe chargeable keepinge Indians in prisone, and if they should escape, they are likely to prove more insolent and dangerous after, it was thought fitt, that upon such seasure, the delinquent or satisfaction be againe demanded, of the Sagamore or plantation of Indians guilty or accessory . . and if it be denyed, that then the magistrates . . deliver up the Indians seased to the party . . indamaged, either to serve or to be shipped out and exchanged for Negroes as the cause will justly beare.[15]

Indians so seized could hardly be regarded as "lawful captives taken in just wars" as excepted in the statute of 1641.[16]

The statute, in that respect, merely enacted what had become customary in Indian warfare. Some of the captives taken in the Pequod War, "fifteen of the boys and two women [were sent] to Bermuda [in 1637], by Mr. Peirce; but he, missing it, carried them to Providence Isle." [17] Some of the Pequod captives were given to the Narragansett allies,[18] some to the colonists.[19] The Indian prisoners taken in King Philip's War suffered a similar fate. In September 1672, Articles of Confoederation between Massachusetts Bay, New Plymouth and Connecticut, were signed, providing that "the whole advantage of the warr, . . whether it be in lands, goods, or persons, shall be proportionately divided among the said confoederaters." [20] One hundred and twelve men, women and children, several of whom "have bine actors in the late rising and warr of the Indians against us, and the rest complyers with them therein, . . contrary to . . covenant made . . with this collonie, . . as apeereth further also in that they did not discover that pernisious plott which Philip, with

[14] 1 Mass. Recs. 329.
[15] 9 Plym. Col. Recs. 61.
[16] Ancient Charters 52.
[17] Winthrop's Journal, I. 234. About a century later the French on the Mississippi sent three hundred of their Natchez captives to Santo Domingo to be sold. 5 Martin (La.), o. s., 480.
[18] See references in Moore, p. 7.
[19] 1 Mass. Recs. 201; Winthrop, I. 227.
[20] 4 Mass. Recs. (pt. 2) 473.

others, completed against us," were, " excepting some few of them," adjudged by the council of war (held at Plymouth, August 4, 1675) to be sold.[21] The Rev. John Eliot wrote on August 13:

To the Honorable Governor and Council, sitting at Boston . . the humble petition of John Eliot Sheweth That the terror of selling away such Indians, unto the Ilands for perpetual slaves, who shall yeild up themselves to your mercy, is like to be an effectual prolongation of the warre . . This usage of them is worse than death . . My humble request is, that you would follow Christ his designe, in this matter, to promote the free passage of Religion among them, and not to destroy them. . . it seemeth to me, that to sell them away for slaves, is to hinder the inlargment of his kingdom, . . to sell soules for money seemeth to me a dangerous merchandize. If they deserve to dy, it is far better to be put to death, under godly governors, who will take religious care, that means may be used, that thei may dy penitently. to sell them away from all meanes of grace, when Christ hath provided meanes of grace for them, is the way for us to be active in the destroying their soules, when we are highly obliged to seek theire conversion,[22]

Nevertheless, the

councell of warr . . being mett together att Plymouth [September 2] . . to consider of a certaine parsell of Indians lately come in to Sandwich in a submissive way to this collonie, doe find, that they are in the same condition of rebellion as those formerly condemned to servitude, and doe unanimously agree that the said Indians, being in number fifty-seven, are condemned into perpetuall servitude, and therfore doe heerby order . . the Treasurer to make sale of them, for and to the use of the collonie, as oppertunity may present.[23]

At this time begins the long series of bounties " for the Incurragement of Voulenteers [as well as of soldiers] to Goe forth in pursuit of the enimie " continuing through the French and Indian war: " the plunder . . whether Goods or persons being Legally soe adjudged . . shalbe to their owne proper use and behoofe." [24] Even " our honored Governor " has his share. " In reference unto such emergent charges that have fallen on [him] . . the summer past, the Court have settled and confered on him the prise of ten Indians, of those salvages [*sic*] lately transported out of the government." [25]

On the other hand, certain " Indians whoe came in, applying themselves to the government for acceptance to mercye," were ordered to " take up their abode from the westermost syde of Sepecan River," [26] and it was " ordered by the councell of warr, that it shalbe lawful for any of the

[21] 5 Plym. Col. Recs. 173.
[22] 10 Plym. Col. Recs. 451.
[23] 5 Plym. Col. Recs. 174.
[24] 10 Plym. Col. Recs. 360 (1675). See also 5 Mass. Recs. 95, 96 (1676); 5 Plym. Col. Recs. 207, 209 (1676); 6 Plym. Col. Recs. 213 (1689); 1 Acts of the Prov. 292 (1697); *ibid.* 530 (1703); *ibid.* 594 (1706); 13 Acts of the Prov. 399 (1744); *ibid.* 488 (1745); *ibid.* 521 (1746); 14 Acts of the Prov. 107 (1748); 15 Acts of the Prov. 308, 343, 349, 356, 396 (1755); *ibid.* 474, 552, 617 (1756); *ibid.* 709; 16 Acts of the Prov. 13 (1757).
[25] 5 Plym. Col. Recs. 175 (1675).
[26] *Ibid.* 210, 215 (1676).

magistrates . . to dispose of the children of those Indians . . unto such of the English as may use them well, especially theire parents consenting therunto, during the time untill such children shall attaine the age of twenty foure or twenty five yeers," [27] But it is

ordered by the councell, that all such Indians as have or shall come into the collonie in a clandestine way, not applying themselves to the authoritie of this jurisdiction for libertie, shall not expect the benifitt of the indempnitie formerly shewed to other Indians that did come in in an orderly way, but shalbe forthwith taken up and desposed off, as other captive Indians, to the collonies use.[28] . . [210] Whereas it is apprehended that the permission of Indian men that are captives to settle and abide within this collonie may prove prejuditiall to our common peace and safety, considering there hath never bin any lycence for such soe to doe, it is ordered by the councell and the authoritie thereof, that noe Indian male captive shall reside in this government that is above fourteen yeers of age att the beginning of his or theire captivity, and if any such captives above that age are now in the government, which are not desposed of out of this jurisdiction by the 15th of October next, shall forthwith be desposed of for the use of this government.[29]

In September 1676 " There being many of our Indian ennemyes seized, and now in our possession, the Court judgeth it meete to referr the disposall of them to the honoured council, declaring it to be their sence, that such of them as shall appeare to have imbrued their hands in English blood should suffer death here, and not be transported into forreigne parts." [30]

An act of the Province of Massachusetts Bay, passed in 1725, provided that

no Indian native of this province, upon any pretence whatsoever, shall be . . carried out of this province, beyond the seas, unless by order . . of the general sessions of the peace, or superiour court of judicature, court of assize and general goal [*sic*] delivery, or security given . . conditioned for the returning of such Indian.[31]

Though Indian captives proved too dangerous to hold as slaves longer than to secure their transportation out of the country, for sale or exchange, Indian slaves were obtained outside the bounds of the Massachusetts Bay and Plymouth Colonies. Any temptation to import free Indians as slaves was curbed by the Provincial Act of 1709,[32] which required " a certificate from the governor . . of the plantation from which they are brought that they are indeed bond-slaves."

There was, aside from Indian slaves, a more or less abundant supply of Indian servants. In the early years of the colony of Massachusetts Bay, it was found necessary to restrain their employment. A Court of

[27] *Ibid.* 207 (July 1676).
[28] *Ibid.* 209.
[29] *Ibid.* 209 (1676).
[30] 5 Mass. Recs. 115.
[31] 2 Acts of the Prov. 364.
[32] 1 Acts of the Prov. 634.

Assistants ordered, in 1631, "that whatever person hath receaved any Indian into their Famylie as a servant shall discharge themselves of them by the 1th [*sic*] of May nexte; and that noe person shall hereafter intertaine any Indian for a servant without licence from the Court." [33] "It is ordered [in 1634], that it shalbe lawfull for any Englishe man to imploy any Indean to shoote with a peece that the General Court shall give leave unto. There is leave graunted to the Deputy Governor, John Winthrop, Esq, and John Winthrop, Junior, each of them to intertaine an Indean a peece, as a howseholde servant." [34] In the following year the "Deputy Governor [Richard Bellingham] hath leave from the Court to intertaine an Indean into his Family." [35] In 1639, the "Governor had leave to keepe . . a Naviganset Indian and his wife." [36] They were not always contented with their lot. In 1642 "Sergent John Leveret and Sergent Edward Hutchinson were sent to Meantonomo . . to demand satisfaction of him: . . That hee doth keepe divers Pecoits which are run away from us, or at least doth countenance and alow the Niantick sachim so to doe. . . So for Willi:, lately the Governor his servant, run away, to bee sent us." [37] The mission was unsuccessful as far as Willi: was concerned, for the following spring, "Mr. Humfrey Atherton and Mr. Edward Tomlins are appointed to go . . there [Connecticut, New Haven, and Plymouth] . . and to get and bring Will, the Indian, if they can." [38]

In 1646, the "law which forbids the intertaining of any Indian into service without alowance of the Courte is repealed, there being more use of incuragement thereto then otherwise." [39]

In 1660, at a meeting of the Commissioners for the United Colonies, held in New Haven, it is ordered:

For the Incurragement of such Indians as shalbee willing to putt theire Children apprentices for convenient time proportionable to theire age to any Godly English within the united Collonies with the consent of the Comissioners for the time being . . that every such Indian shall Receive yearly during theire Childrens apprenticeship one coate out of the Corporation stocke or from theire masters besides meate drinke and clothing covenient for theire Children whilest they continew with theire Masters; provided the said Indians doe yearly bring to some of the Comissioners of the Collonies where they live; a Certifycate under the hand of the said masters; that such Indian Children hath or doth live with them; [40]

[33] 1 Mass. Recs. 83.
[34] 1 Mass. Recs. 127.
[35] *Ibid.* 158.
[36] *Ibid.* 285. See also 2 Mass. Recs. 61.
[37] 2 Mass. Recs. 23.
[38] *Ibid.* 35. See also 1 Mass. Recs. 298.
[39] *Ibid.* 152; 3 Mass. Recs. 64.
[40] 10 Plym. Col. Recs. 251. Revised, in 1678: "provided that they be put apprentices not for less term than until they come to twenty-one years of age," (*ibid.* 397). Such Indian children may not have been worse off than the children shipped in from England for servants in 1643. 2 Mass. Recs. 45, 76, 89, 98; 3 Mass. Recs. 30.

The consent of the parents was not essential though desirable, in the case of the Indian children, disposed of in the Plymouth Colony in 1676;[41] but the next year the Court ordered that indentures should be signed "for such as are soe disposed, to prevent future differences."[42]

Similarly, it was "enacted [in Massachusetts Bay, in May 1677], that such Indjan children or youths that are setled or disposed, by order of authority, or with their parents or relations consents to any of the English inhabitants in this jurisdiction, shall so remaine with them as servants . . untill each of them attein to the age of twenty fowr yeares . . except by speciall contract it be otherwise provided;" but "for such other Indian children, youths or girls, whose parents have been in hostility with us, or have lived among our enemies in the time of the warr, and were taken by force, and given or sould to any of the inhabitants of this jurisdiction, such shall be at the disposall of their masters or their assignees, provided they be instructed in civility and Christian religion;"[43]

Thus in the colony of Massachusetts Bay there was no limit put to the servitude of the children of hostile Indians—they might be slaves for life. In the Plymouth Colony, however, the "Court [in 1678] sees cause to prohibite all . . within our jurisdiction or elsewhere, to buy any of the Indian children of any of those our captive salvages that were taken . . our lawfull prisoners in our late warrs with the Indians, without speciall leave . . of the government of this jurisdiction."[44]

By a law of the Plymouth Colony, passed in 1674,

> such Indians as . . will not take care to pay their Just debts after conviction, shalbe made to serve either those to whom they are Indebted or some other man untill the debt be satisfyed for twelve pence a day in summer time and six pence a day in winter time and theire diett, and if they will not serve but run away; then it may be lawfull to sell them by order of two Majestrates of this Jurisdiction or the Selectmen of the Towne for soe longe a time as they shall see fitt, untill the debt be satisfyed for, and all such charges as shall arise upon defect as aforsaid; . . such Indians which shall . . steale any thinge from the English hee or they shall make restitution by payment of four fold either by serving it out; or some other way or be sold for his theft;[45]

By virtue of this law, "Isacke Tetatan, an Indian, resedent in . . Barnstable, . . [238] For the payment of . . three pound . . [was] delivered [in 1681] . . in execution to John Allin, of Barnstable, by the consent of [Isacke's creditor and of Isacke himself,] . . to live and faithfully serve . . from the eleventh of . . July untill the last . . of November."[46]

[41] See p. 459, *supra*, and 5 Plym. Col. Recs. 207.
[42] 5 Plym. Col. Recs. 223.
[43] 5 Mass. Recs. 136.
[44] 5 Plym. Col. Recs. 253.
[45] 11 Plym. Col. Recs. 237.
[46] *Re* Indian Isacke Tetatan, p. 475, *infra*. See also *Re* Indian Will, p. 478, *infra*; 6 Plym. Col. Recs. 81 (1682); *ibid.* 104 (1683); *ibid.* 177 (1685); 10 Acts of the Prov. 668 (1725); 12 Acts of the Prov. 175 (1742).

In 1712, an act was passed "prohibiting the importation or bringing into this province any Indian servants or slaves."

Whereas divers . . notorious crimes . . expecially of late, have been perpetrated . . by Indians and other slaves within several of the majestie's plantations in America, being of a malicious, surley and revengeful spirit, rude and insolent in their behaviour, and very ungovernable, the over-great number and increase whereof within this province is likely to prove of pernicious and fatal consequence to her majestie's subjects and interest here, . . and is a discouragement to the importation of white Christian servants, this province being differently circumstanced from the plantations in the islands, and having great numbers of the Indian natives . . about them, and at this time under the sorrowful effects of their . . hostilities,—Be it therefore enacted . . That . . all Indians, male or female, of what age soever, imported . . into this province by sea or land, . . to be disposed of, sold, or left within the province, shall be forfeited to her majesty for . . the support of the government, unless the person . . importing . . shall give security, at the secretarie's office, of fifty pounds per head, to . . carry out the same again within . . one month next after their coming in, not to be returned back to this province.[47]

Indian slavery may have persisted, however, for many years, from the increase of Indian slaves already residing in the Province, as indicated by the numerous laws passed, from 1746 to 1762, prohibiting the "selling any strong drink without license to any Indian, negro or molatto slave."[48] It may be argued, however, that in these acts, "Indian" may be a noun and not an adjective.

As English and Indian servants for a term of years were the rule in the Plymouth and the Massachusetts Bay colonies, in the seventeenth century, and the enslavement of members of those races exceptional or temporary, so in the case of the negro. He first appears in the judicial[49] records of these colonies as a servant[50] rather than a slave. In 1644, the year before the outburst of righteous indignation over the *Rainbowe's* cargo of "negars,"[51] the records of Massachusetts Bay contain another item indicating the same point of view: "Mr. Blackleach his petition about the Mores

[47] 1 Acts of the Prov. 698.

[48] 3 Acts of the Prov. 257 (1746). Similar acts were passed yearly in 1748, 1751-1755, 1757-1760, and 1762.

[49] Elsewhere we learn that in December, 1637, "Mr. Peirce, in the Salem ship, the *Desire*, returned from the West Indies after seven months. He had been at Providence [in the Caribbean], and brought some cotton, and tobacco, and negroes, . . from thence, . . He met there two men-of-war, . . who had taken divers prizes from the Spaniard, and many negroes." Winthrop's Journal, I. 254. James Savage, the editor of the Journal, notes: "Perhaps the unavoidable conclusion from this passage is, that slaves were brought here for sale. It was an unhappy exchange for the Indians—fifteen boys and two women—he had carried out, (see page 234;) though perhaps the blacks were happier than their red brethren."

[50] In 1653 his status appears to be equal to that of servants of the other races: "it is . . ordered by this Court . . that all Scotsmen, Negeres, and Indians inhabiting with or servants to the English, from the age of sixteene to sixty yeares, shalbe listed, and are hereby enjoyned to attend traynings as well as the English," (3 Mass. Recs. 268; 4 Mass. Recs. pt. 1, 86). But in 1657, the Court orders "that henceforth no negroes or Indians, although servants to the English, shalbe armed or permitted to trayne," (3 Mass. Recs. 397; 4 Mass. Recs. pt. 1, 257.) See also 1 Acts of the Prov. 130 (1693); 21 Acts of the Prov. 34 (1779); *ibid.* 397 (1780).

[51] 2 Mass. Recs. 129, 176, 196, 216; 3 Mass. Recs. 46, 49, 58.

was consented to, to be committed to the elders, to enforme us of the mind of God herein, and then further to consider it." [52]

The Plymouth Colony Records for the same year contain the case of the servant Hercules, who differed with his master as to the term he should serve, the Court ordering that Hercules is to serve his master "six yeares, which wilbe untill the third day of July next, and then to be free from him;" [53] but whether Hercules is black, white or red, is not indicated. Nor is the nationality given of "Ebedmelecke, the servant of Jobe Lane, [who] for runing from his said master, and stealing victualls on the Lords day, is adjudged [in 1653] to be whipt so it exceed not five stripes, the rigor of the law for his offence being remitted." [54] Was this remission of rigor due to his master's desire not to reduce the value of his property?

In 1653 there was also "a controversy . . betwixt John Smyth, Senior, of Plymouth, and a neager maide servant of John Barnes . . and with proper admonission, both parties were cleared." [55]

There are two cases of negro servants reported in 1676.[56] The will of Walter Briggs, executed in 1677, indicates the possession of negro slaves rather than servants.[57] No mention is made of any master of "Robert Trayes, negro," who was indicted in 1684 for wounding Daniel Standlake; [58] nor is the status given of the negro convict Nimrod [59] in 1685.

But, in spite of the scantiness of the judicial records, the prevalance of negro slavery is shown by "A Memorial [sent, in 1694] . . unto . . The Governour and the Generall Assembly . . By Many Ministers of the Gospel . . II. It is Desired That the wel-knowne Discouragement upon the endeavours of many masters [to] Christianize their slaves, may be removed by a Law which may take away all pre[text] to Release from just servitude, by receiving of Baptisme." [60]

In 1703 an act was passed prohibiting the manumission of mulatto or negro slaves "until sufficient security be given to the treasurer of the town . . in a valuable sum, not less than fifty pounds, to . . in dempnify the town . . from all charge for . . such molato or negro, . . in case he or she by sickness, lameness, or otherwise, be rendered uncapable to support him- or herself." [61] Free negroes and mulattoes appear to have been few in number in 1707, for the preamble to the act [62] of that year requiring them to work "in repairing of the highways, cleansing of the

[52] 2 Mass. Recs. 67.
[53] *Re* Hercules, p. 470, *infra*.
[54] *Re* Ebedmelecke, p. 471, *infra*.
[55] *Re* Negro, pp. 470, 471, *infra*.
[56] *Re* Negro Sebastian, p. 473, *infra*; *Re* Negro Jethro, p. 473, *infra*.
[57] Will of Walter Briggs, p. 473, *infra*.
[58] *Re* Robert Trayes, negro, p. 477, *infra*.
[59] *Re* Hannah Bonny, p. 478, *infra*.
[60] 7 Acts of the Prov. 537.
[61] 1 Acts of the Prov. 520. The first act restricting the manumission of servants in the colony of Massachusetts Bay was passed in 1636: "no servant shalbee set free, or have any lot, untill he have served out the time covenanted," 1 Mass. Recs. 186.
[62] 1 Acts of the Prov. 606.

streets, or other service, for the common benefit," [63] states that "in the several towns and precincts within the province, there are several free negro's and molatto's."

White servants were found to be more desirable for New England than negroes,[64] and the importation of the latter was discouraged by imposing, in December 1705,[65] a duty of four pounds on each negro imported. This called forth protests by those who had imported small negro children, and petitions for an abatement of the duty as "some of said Children were not worth the Money." [66] One of these petitions naively disclaims any scruple in separating negro infants from their mother:

A Petition [in 1720] of Ann Taylour of Boston Widow, Shewing that She being left at Jamaica a Widow with five small Children, was unable to support her self and Family there, And therefore returned to Boston the Place of her Nativity and brought with her two Negro Men and two Negro Women and their five young Children, the eldest of them not being more than eight years old and two of them being at the Breast, That She keeps the Women to look after her Children, and that the Negroe Children will sell but for very little, That She is informed the Law obliges her to pay a Duty of Four Pounds per head for the Children, as well as for the other Negroes, which if she had known, she would not have brought the Children with her, And therefore Praying in Consideration of the Premises, That this Court would please to remit or forgive, to the Petitioner the Duty arising upon the Importation of the said Negroes.[67]

It was resolved "that the Prayer of this Petition be granted."

The duty was remitted on "Jocky about fifteen years of Age," imported from Antigua, because "in . . September [!], on the back of Nantucket both the said Negro Boys Leggs were frozen, . . And the Surgeon was obliged . . to cut off both his Feet . . And the Petitioner was forc'd to sell him for Ten pounds, to a Taylour and paid Thirty five pounds for his Cure, . ." [68]

In 1776 the clause of the Code of Fundamentals of 1641 allowing the enslavement of "lawful captives taken in just wars," was repealed as far as negro captives, taken on the high seas, were concerned:

Whereas . . two Negro men, lately taken, on the High Seas, on board the Sloop *Hannibal* and brought into this State as prisoners, are advertised to be

[63] As they "are not charged with training, watchings and other services required of her majesty's subjects," *id.*

[64] "That the Importation of White Servants be encouraged, and that the Importation of Black Servants be discouraged," (10 Council Records 260, 1718). Letter of the Lords of Trade to Governor Dudley, Jan. 12, 1709: "One of the reasons you give why Negroes are not desired in New England is, because it being on the Continent the Negroes have thereby an opportunity of running away: The same reason will hold in Carolina, Virginia and Maryland, . . where negroes are so valuable." Dudley replied, Jan. 31, 1710: "though the reason that I formerly assigned of Negroes running from us seems to be equal with Carolina and other Colony's, the force of it continues, because they will always run to the Southward for warmer weather, and as the cold is disagreeable to them, so it demands of the master much more cloathing, and gives him much less service, for six months in the year." 1 Acts of the Prov. 580n.

[65] 1 *ibid.* 578.

[66] 8 Acts of the Prov. 770 (1707). See also *ibid.* 248.

[67] 10 Acts of the Prov. 9.

[68] *Ibid.* 39 (1720).

sold at Salem . . by public Auction, Resolved, That all persons concerned . . are forbidden to sell them or in any manner to treat them otherways than . . prisoners taken in like manner; and if any sale . . shall be made, it is . . void. And that whenever it shall happen, that any Negroes are taken on the High Seas, . . they shall not be allowed to be sold, nor treated any otherways than as prisoners are ordered to be treated, who are taken in like manner.[69]

The constitution of Massachusetts took effect the last Wednesday of October 1780. It begins with a "Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts" which opens with these words: "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying . . their . . liberties;"

In the following spring Quork Walker (sometimes called Quarko, Quack and Quaco), "a slave brought from Africa,"[70] ran away from Dr. Jennison to the home of John and Seth Caldwell, whose deceased brother, James Caldwell, had been the first husband of his deceased mistress, Mrs. Jennison. A few weeks later[71] Dr. Jennison "and several others"[72] came to the Caldwells' field where Quork was harrowing, "got the negro down," and "struck him with the handle of a whip,"[73] One of the Caldwells "heard a screaming . . young fellow upon the negro, I took him off . . and told Jennison his master had freed him—and Winslow[74] let him go—wounds in his hands and arms."[75]

This assault gave rise to two civil actions and one criminal prosecution. The first was an action of trespass, brought by Quork Walker against Nathaniel Jennison[76] on May 1, 1781. Jennison pleaded that "One Caldwell, being seised of the said Quork as of her own proper negro slave, was married to . . said Nathaniel, by means whereof the said Nathaniel . . became possessed of . . Quork as of his own proper negro slave." The plaintiff replied "that he the said Quork is a free man," The jury "returned a verdict for the plaintiff for £50 damages, upon which judgment was rendered . . The defendant appealed to September term 1781 of the Supreme Judicial Court, but, failing to appear . . was defaulted, and the judgment below affirmed."

To the same September term the defendants Caldwell appealed, against whom Jennison had brought an action of trespass on the case,[77] on May 28, alleging that they had "seduced the said negro man" from his service

[69] 19 Acts of the Prov. 568.
[70] Judge Sullivan to Dr. Belknap, Apr. 9, 1795. 3 Mass. Hist. Coll. (5th ser.) 403.
[71] On Apr. 2, 1781 [Jennison *v.* Caldwell, 1 Proc. of Mass. Hist. Soc. 1873-1875, 296], or on Apr. 30 [Walker *v.* Jennison, *id.*] or on May 1 [Commonwealth *v.* Jennison, *ibid.* 293].
[72] Commonwealth *v.* Jennison, p. 480, *infra.*
[73] Walker *v.* Jennison, p. 479, *infra.*
[74] Testimony of Joshua Winslow: "I was desired by the defendant to help him reclaim Quaco." Commonwealth *v.* Jennison, p. 480, *infra.*
[75] *Id.*
[76] *Id.*
[77] *Id.*

" and . . retained . . the said negro . . for six weeks, . . and did . . rescue out of the plaintiff's hands . . his said servant;" and obtained a verdict and judgment for £25. On appeal the defendants Caldwell [297] " were found not guilty, and had judgment for costs against the plaintiff." The report of the third trial, Commonwealth *v.* Jennison,[78] is fuller than the reports of the other two, as it is " printed . . *verbatim* from the note-book " of Chief Justice Cushing. Quork testified: " I lived with Dr. Jennison 7 years and ½ after I was 21. My old master said I should be free at 24 or 25. Mistress told me I should be free at 21—said so to Jennison, before and after marriage." The defence introduced in testimony a bill of sale from Zachariah Stone to Caldwell, deceased, " of Mingo and Dinah, 1754, and Quaco, 9 months old." [79] As a claim to freedom based on a promise made to a slave, was worthless in law, a more substantial foundation for Quaco's claim had to be found, and Chief Justice Cushing discovered it in the newly adopted Constitution. In his charge to the jury, he declared: [294] " our Constitution . . is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our . . Constitution; and there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract."

Jennison was found guilty and fined forty shillings. According to Judge James Sullivan,[80] " This decision put an end to the idea of slavery in this State." [81] But Judge James Winthrop [82] declares, in a letter [83] to Dr. Jeremy Belknap, in 1795, that it was " By a misconstruction of our State Constitution," Thereby " a number of citizens have been deprived of property formerly acquired under the protection of law."

Correct or incorrect, this judicial construction of the Constitution of 1780 abolished [84] slavery in Massachusetts. A statute was not needed, and Mr. George H. Moore, in his *Notes on the History of Slavery in Massachusetts,* is mistaken in saying, after his quotation of Lord Mansfield's statement in regard to villeins in gross,[85] that " it could be said with

[78] *Id.* The indictment was found in September, 1781.

[79] *Ibid.* 297. See p. 480n., *infra.*

[80] " a member of the Convention which framed the Constitution of Massachusetts. Soon after, he was one of the Justices of the Supreme Judicial Court, and took part in the decision of the civil action of Jennison *v.* Caldwell in 1781." 3 Mass. Hist. Coll. (5th ser.) 403n.

[81] *Ibid.* 403.

[82] Chief Justice of the Court of Common Pleas. Alden Bradford says of him: " We have no hesitation in ranking him among the most learned, useful, and patriotic citizens of Massachusetts." *Ibid.* 391n.

[83] *Ibid.* 389.

[84] But Venus " formerly the slave of . . Whittemore . . [was] disposed of . . at auction " for the term of her life, by Whittemore's administrator, in Cambridge in 1793 (Watson *v.* Cambridge, p. 495, *infra*). Such an auction sale differed from that of the ordinary pauper who was " put up . . to the lowest bidder for one year " only. Willington *v.* West Boylston, 4 Pickering 101 (1826); Mahen *v.* Scott, 10 Pickering 54 (1830).

[85] " villeins in gross may, in point of law, subsist at this day. But the change of customs and manners has effectually abolished them in point of fact." King *v.* Inhabitants of Thames Ditton, 4 Douglas 300 (302).

equal justice that slavery, having never been formally prohibited by legislation in Massachusetts, continued to 'subsist in point of law' until the year 1866, when the grand Constitutional Amendment terminated it forever throughout the limits of the United States." [86] And the comment which he adds in closing his book is nugatory.[87]

As to the causes of the abolition of slavery in Massachusetts, we have the opinions of several "prominent citizens of Massachusetts" in response to a series of questions respecting slavery in that Commonwealth, sent in 1795 by Judge St. George Tucker of Virginia [88] to Dr. Jeremy Belknap, founder of the Massachusetts Historical Society. Dr. Belknap had the questions printed "as a circular letter and distributed about forty copies 'among such gentlemen as it was supposed would assist in answering them.'" [89] Dr. John Eliot replied: "The cause of *abolition of slaves in the State* may be traced entirely to the *sentiment* of the people;" [90] but Samuel Dexter, in his answer to the questionnaire, says: "it was a very rare thing [fifty years ago] to hear the [slave] trade reprobated. Some disliked the custom of keeping negroes from prudential considerations; but the number was small indeed who had religious scruples. Such scruples were confined to the most liberal thinkers." [91]

And John Adams replies from Quincy, on March 21, 1795: [92] "I was concerned in several causes in which negroes sued for their freedom, before the Revolution. The arguments in favour of their liberty were much the same as have been urged since . . arising from the rights of mankind, . . [402] Argument might have some weight in the abolition of slavery in Massachusetts, but the real cause was the multiplication of labouring white people, who would no longer suffer the rich to employ these sable rivals so much to their injury. This principle has kept negro slavery out of France, England, and other parts of Europe. The common people would not suffer the labour, by which alone they could obtain a subsistence, to be done by slaves. If the gentlemen had been permitted by law to hold slaves, the common people would have put the negroes to death, and their masters too, perhaps. . . The common white people, or

[86] Moore, *Notes on the History of Slavery in Massachusetts*, p. 242.

[87] "It would be not the least remarkable of the circumstances connected with this strange and eventful history, that, although *virtually* abolished before, the actual prohibition of slavery in Massachusetts as well as Kentucky, should be accomplished by the votes of South Carolina and Georgia." *Id.*

[88] "Williamsburg, Virginia, Jan. 24, 1795. . . The introduction of slavery into this country is at this day considered among its greatest misfortunes by a very great majority of those who are reproached for an evil which the present generation could no more have avoided than an hereditary gout or leprosy. . . [380] having observed, with much pleasure, that slavery has been wholly exterminated from the Massachusetts, . . I have cherished a hope that we may, from the example of our sister State, learn what methods are most likely to succeed in removing the same evil from among ourselves." 3 Mass. Hist. Coll. (5th ser.) 379.

[89] *Ibid.* 381.

[90] *Ibid.* 382.

[91] *Ibid.* 384.

[92] *Ibid.* 401.

rather the labouring people, were the cause of rendering negroes unprofitable servants. Their scoffs and insults, their continual insinuations, filled the negroes with discontent, made them lazy, idle, proud, vicious, and at length wholly useless to their masters, to such a degree that the abolition of slavery became a measure of economy." [93]

Slaves owned in Massachusetts and residing there, were free by virtue of the Constitution of 1780; but the status of slaves who were owned elsewhere and were merely sojourning in Massachusetts, or had taken refuge there as fugitives, was not clearly settled till later.

II.

In what is commonly called the colonial period, the period when the government of Massachusetts was conducted under the first charter, the charter of 1628, judicial power, above that of local courts, was exercised by the Court of Assistants, which indeed in the earliest years was also the chief executive and legislative body; but, from an early date to the end of the period, appeals from its decisions were heard by the General Court or colonial legislature. The system in the Plymouth colony was similar. Under the exceptional regime of Governor Andros, an act was put forth in 1687 [94] reorganizing the judicial system, and providing, as the highest tribunal in the New England province, a Superior Court of Judicature, with appeals to the King in Council.[95]

This arrangement long survived the short-lived rule of Andros, for the first legislature under the second charter provided, in 1692,[96] a judicial system at the summit of which stood a Superior Court of Judicature, consisting of a chief justice and four assistants, and this continued to be the highest court in the province till the Revolution, indeed until the adoption of the constitution of 1780: for while the act of 1692 was disallowed by the crown, partly because of its provisions respecting a court of chancery, it was in all other essential respects repeated by an act of 1699.[97]

Neither was the composition of the highest court altered by the Revolution, nor by the constitution of 1780, still in force. Its style was altered to Supreme Judicial Court, but it continued to be composed of chief justice and four assistants till 1852, when the number of associate judges was increased to five.[98] At that figure it remained till after 1875, the date chosen for the end of the excerpts presented in these volumes.

[93] Governor Dudley had, in 1710, assigned reasons of economy for dispensing with negro slaves in Massachusetts. See p. 464n., *supra*.

[94] Mar. 3, 1687. Text in *Conn. Col. Recs.*, III. 412.

[95] See H. D. Hazeltine, "Appeals from Colonial Courts to the King in Council," in *Annual Report* of the American Historical Association for 1894, pp. 299-350.

[96] Act of Nov. 25, 1692, ch. 33. 1 Acts of the Prov. 72.

[97] Act of June 26, 1699, ch. 3. *Ibid.* 370.

[98] Act of Apr. 20, 1852, ch. 127. Acts of the Prov., 1852, p. 84.

Re Andro[w]s, 1 Mass. Recs. 246, December 1638. "William Androws, having made assault upon his master, Henry Coggan, . . and not onely so, but did conspire also against the peace . . of this whole common welth, was censured to bee severely whiped, and delivered up a slave to whom the Court shall appoint."

Re Haslewood, 1 Mass. Recs. 246, December 1638. "John Haslewood, being found guilty of severall thefts, and breaking into severall houses, was censured[1] to bee severely whiped, and delivered up a slave to whom the Court shall appoint Giles Player, [for similar offences] . . was censured to be severely whiped, and delivered up for a slave to whom the Court shall appoint."

Re slaves, 1 Mass. Recs. 253, March 1639. "It is order,[2] that 3 *l.* 8 *sh's* should bee paid Leiften't Davenport for the present, for charge disbursed for the slaves, which when they have earned it, hee is to repay it back againe."

Re Kempe, 1 Mass. Recs. 269, September 1639. "John Kempe, for filthy, uncleane attempts wth 3 yong girles, was censured to bee whiped both heare, at Roxberry, and at Salem, very severely, and was committed for a slave to Leif't Davenport."

Re Androws, 1 Mass. Recs. 269, September 1639. "Willi: Andro[w]s, who was formerly committed to slavery for his ill and insolent carriage, is released (upon his good carriage) from his slavery, and put to Mr. Endecott, hee promising to pay Henry Coggan 8 *l.*; and so Androws is to serve Mr. Endecot[t] the rest of his time."

Re Dickerson, 1 Mass. Recs. 284, December 1639. "Thomas Dickerson was censured to bee severely whiped, and condemned to slavery."[3]

Re Savory, 1 Mass. Recs. 297, June 1640. "Thom: Savory, for breaking a house in the time of exercise, was censured to bee severely whiped, and for his theft to be sould for a slave until hee have made double restitution."

Re Hope, the Indian, 1 Mass. Recs. 298, July 1640. "Hope, the Indian, was censured for her running away, and other misdemeanor, to be whiped hear and at Marbleheade."

Re Dickinson,[4] 1 Mass. Recs. 300, September 1640. "Thomas Dickinson is discharged from his slavery, and commited to Ensigne Richard

[1] By "A Quarter Courte, houlden at Boston," i.e., by the Court of Assistants. Decisions prior to 1684, whether of Massachusetts or of Plymouth, hereafter recorded, may be assumed to be decisious of the Court of Assistants unless otherwise marked.

[2] By the "General Courte, houlden at Boston."

[3] See *Re* Dickinson, *infra.*

[4] See *Re* Dickerson, *supra.*

Walker. . . Jonathan Hatch was censured to bee severely whiped, and for the present is commited for a slave to Leif't Davenport."

Re Barton, 2 Mass. Recs. 21, June 1642. "Marmaduke Barton is condemned to slavery, and to bee branded, and to remain in slavery till the Court take further order about him."

Re Hercules, 2 Plym. Col. Recs. 69, March 1644. "Upon hearinge of the differrence betwixt William Hatch, of Scittuate, and his servant Hercules,[1] for the terme he should serve him, whether six or seaven yeares, the Court,[2] haveing heard the evedences on both sides, do order that the said Hercules is to serve the said William six yeares, which wilbe untill the third day of July next, and then to be free from him."

Smith v. Kaezar, 2 Mass. Recs. 129, October 1645. "That Capt. Smith was cheife commander of the ship *Rainbowe*, . . That Kaezer, etc., had no . . just cause to bring away the shipp from Barbadoes, . . That Kaesar should pay to Smyth these ensuing damages, . . For the negars (they being none of his, but stolen) we thinke meete to alowe nothing. . . [136] The Court thought fit to write[3] to Mr. Williams, of Pascataq', (understanding that the neg'rs which Capt. Smyth brought were fraudulently and injuriously taken and brought from Ginny, by Capt. Smiths confession, and the rest of the Company, that he forthwith send the neger which he had of Capt. Smyth hither, that he may be sent home, which the [General] Court doth resolve to send back without delay; and if you have any thing to aleadge why you should not returne him, to be disposed of by the Court, it wilbe expected you should forthwith make it appear, either by yourselfe or your agent, but not to make any excuse or delay in sending of him."

Re Smith and Keysar, 3 Mass. Recs. 46, October 1645. "Upon a petition of Rich: Saltonstall, Esquier, for justice to be donne on Capt Smith and Mr Keysar for their injurious dealing with the negroes at Gynnye, the petition was graunted; and ordered, that Capt Smith and Mr Keisar be laid hold on and committed to give answer in convenient time thereabouts." (General Court.)

Re Rainebowe, 3 Mass. Recs. 58, October 18, 1645. "Upon the petitions of Capt Smith, Mr Keisar, Mr Selleck, and Grosse, that this [General] Courte would heare the case anew about the shipp *Rainebowe*, their request was granted,"

Re Negro, 2 Mass. Recs. 168, November 1646. "The Generall Courte, conceiving themselves bound by the first oportunity to bear witnes against the haynos and crying sinn of man stealing, as also to prescribe such timely redresse for the past, and such a law for the future as may sufficiently deterr all others belonging to us to have to do in such vile and most odious

[1] Hercules Hill was one of the eight men sent from Scituate against the Narragansett Indians, Aug. 23, 1645 (2 Plym. Col. Recs. 90). If the same Hercules, he has acquired a surname since March, 1644.

[2] "the Generall Court . . holden at Plymouth."

[3] The letter was written on October 14. 3 Mass. Recs. 49.

courses, justly abhored of all good and just men, do order, that the negro interpreter, with others unlawfully taken, be, by the first oportunity, (at the charge of the country for present,) sent to his native country of Ginny and a letter with him of the indignation of the Courte thereabouts, and justice hereof, desireing our honored Governor would please to put this order in execution." [1]

Re Smith and Kezar,[2] 2 Mass. Recs. 176, November 1646. "The Secretary, Mr Auditor Gen'r, Capt. Atherton, and Mr Sparhauk are appointed a committee to examine witnesses and draw up the case about Capt. Smith and Mr Kezar kiling, stealing, and wronging of the negers, etc." (General Court.)

Re Mores, 2 Mass. Recs. 196, May 1647. "The commission about the Mores is continued in the hands of the same men which were chosen by the last Courte." (*Id.*)

Ibid. 216, November 1647. "Upon the petition of Walter Merry, it is left to his liberty to appear at the next Court of Assistants, there to answer for Capt. Smith, and undergo the judgment of the Courte in the case, or to pay what they have forfeited." (*Id.*)

Re Ebedmelecke, 3 Mass. Recs. 306, May 1653. "Ebedmelecke, the servant of Jobe Lane, for runing from his said master, and stealing victualls on the Lords day, is adjudged to be whipt so it exceed not five stripes, the rigor of the law for his offence being remitted." (*Id.*)

Re Negro, 3 Plym. Col. Recs. 39, August 1653. "Whereas a controvercy depending betwixt John Smyth, Senior, of Plymouth, and a neager maide servant of John Barnes, was refered, for want of clearer evidence, unto this Court [3] . . and accordingly whatsoever could bee said on either side was heard; and with admonission, both parties were cleared."

Re Southwicke, 4 Mass. Recs. (pt. 1) 366, May 1659. "Whereas Daniell and Provided Southwicke, sonne and daughter to Lawrence Southwicke,[4] have binn fyned by the County Courts at Salem and Ipswich, pretending they have no estates, resolving not to worke, and others likewise have binn fyned, and more like to be fyned, for siding with the Quakers and absenting themselves from the publicke ordinances,—in answer to a quaestion, what course shallbe taken for the sattisfaction of the fines, the Court, on perusall of the lawe, title Arrests, resolve, that the Tresurers of the severall countjes are and shall hereby be impowred to sell the sajd persons to any of the English nation at Virginia or Barbadoes." [5]

Re Parthman, 4 Mass. Recs. (pt. 1) 428, May 1660. "In answer to the petition of Elias Parthman, as also the petition of Sarah, the wife of

[1] Also 3 Mass. Recs. 84.
[2] See Smith *v.* Kaezar, p. 470, *supra.*
[3] Court of Assistants held at Plymouth.
[4] A Quaker, banished May 11, 1659, in accordance with the order of the General Court, October 1658.
[5] General Court. "Edmund Butler, one of the treasurers, . . sought out for passage, to send them to Barbardoes for sale; but none were willing to take or carry them:" W. Sewel, *History of the Quakers,* I. 278.

Robert Fuller, in relation to Hopestill Coney, a kinsman of said Fullers, whom he [Parthman] sould at Virginea, the [General] Court . . orders that he give sufficient security . . to value of fiffty pounds on this condition, that he shall bring the sajd Hopestill Coney, whom he sold at Virginea, to Boston sometimes before the sayd County Court in Aprill next, if he be alive, or full. . . certifficat of his death, time when and place where he died, on returne whereof the County Court is hereby impowred to proceede to chancery his bonds as they shall see cause."

Re Indian servant, 4 Plym. Col. Recs. 70, July 1664. "the jury . . [71] found, that . . Wyatt road to a meddow of his to cutt grasse, a servant of his, an Indian boy, following him, and when hee came to the meddow hee found his master dead,"

Re Laborne, 4 Mass. Recs. (pt. 2) 153, June 1665. "the [General] Court judgeth that the petitioner [Alexander Laborne] . . be delivered to the creditors, to be sold or serve, he having taken his oath that he is not worth five pounds."

Re Franck Negro, 3 Records of Court of Assistants 194, March 1669. "Franck Negro is Indicted . . for conspiracy: aiding or assisting John Pottell in his escape out of the prison in Boston the 8th of December last, the said Pottell being committed in order to his tryall for murdering of the Cooke of the Ship *Golden Fox*. . . wee the Grand Jurie doe not find Franck negro guilty of the fact according unto this bill of Inditement."

Re Indian Hoken, 5 Plym. Col. Recs. 151, July 1674. "Wheras there is an Indian, called Hoken, that hath bin a notoriouse theife, and . . of late hath broken up the house of James Bursell, of Yarmouth, for which hee was committed to prison; and hee made an escape by breaking of prison, and since stole a horse, being insolent in his carryage and an incorrigable theife, that will not be reclaimed, but lyeth sherking and lurking about, wherby many persons are greatly in feare and danger of him; wherfore the Court doe order Mr Hinckley and Leiftenant Freeman, or any other majestrate that can light off the said Hoken, that they cause him to be apprehended and sold or sent to Barbadoes, for to satisfy his debts and to free the collonie from so ill a member."

Re Indian Tom, 5 Mass. Recs. 25, October 1674. "In answer to the petition of Tom, the Indian condemned by the last Court of Assistants to dy for his rape, etc, humbly acknowledging his offenc, pretending ignorance of the law, etc, the [General] Court judgeth it meet to grant his request as to saving of his life, but order, that he be sold for a slave for ten yeares, to be sent to the English living in some parts of the West Indjes, remayning in prison till he be sent away."

Re Mannapaugh,[1] 5 Mass. Recs. 58, October 1675. "Two Indians, one an old man named Mannapaugh, and Mannanesit, . . his son, pretending themselves to belong to Uncas, being found at Chelmsford, where the haystacke was fired, giving no reason of their comming and staying here, was

[1] See *Re* Monnipaugh, p. 473, *infra*.

judged to be spyes, and order to be sent away [1] by the Treasurer." (General Court.) Sentence reversed the next month.

Re Monnipaugh,[2] 5 Mass. Recs. 68, November 1675. "Whereas two Indians, that came in . . upon a safe conduct from the council, have, through some mistakes, been sentenced by this Court to be sold, . . it is ordered, that the sajd sentence be reversed, and that they be otherwise disposed of for their owne and the countrys security. The names of the Indians are Monnipaugh and Mannassett. And although the sajd persons should be sold, yet the keeper shall not deliver them without order of this [General] Court or council."

Re Indian captives, 5 Mass. Recs. 115, September 1676. "There being many of our Indian ennemyes seized, and now in our possession, the [General] Court judgeth it meete to referr the disposall of them to the honoured council, declaring it to be their sence, that such of them as shall appeare to have imbrued their hands in English blood should suffer death here, and not be transported into forreigne parts."

Re Negro Sebastian, 5 Mass. Recs. 117, October 1676. "In answer to the petition of Robert Cox, in behalfe of Sebastian, negro, his servant, the [General] Court judgeth it meet to grant the petitioners request, the life of the said Bastian Negro, and orders, that the said Bastian be severely whipt with thirty nine stripes, and allwayes to weare a roape about his neck, to hang doune two Foot, that it may be seene, whilst he is in this jurisdiction, and when ever he is found without his roape, on complaint thereof, to be severely whipt with twenty stripes, and dischardging the prison charges, to be releast and dischardged the prison."

Re Indian girl, 5 Mass. Recs. 122, October 1676. "In answer to the petition of Lef't Richard Way, humbly desiring this Courts favour to grant him liberty to Keepe his Indian girle in towne, the [General] Court judgeth it meet to grant this petition."

Re Negro Jethro, 5 Plym. Col. Recs. 216, November 1676. "In reference unto a negro named Jethro, taken prisoner by the Indians, and retaken againe by our army, which said negro appertained to the estate of the successors of Captaine Willett, deceased, our Generall Court have agreed with Mr John Saffin, adminnestrator of the said estate, mutually, that the said negro doe forthwith betake himselfe to his former service, and to remaine a servant unto the successors of the said Captaine Willett, untill two yeers be expired from the date heerof, and then to be freed and sett att libertie from his said service, provided, alsoe, that during the said tearme of two yeers, they doe find him meat, drinke, and apparrell fitting for one in his degree and calling, and att the end of his said service, that hee goe forth competently provided for in reference to apparrell."

Will of Walter Briggs, 6 Plym. Col. Recs. 135, January 1677. "I will that my executor allow my said wife a gentle horse . . to ride . . and that Jemy, the neger, catch it for her. Also, I will my said wife, Mariah,

[1] Synonymous with "to be transported and sold." *Ibid.*
[2] See *Re* Mannapaugh, p. 472, *supra.*

the little neger gerle, to be with her so long as my wife lives, provided she continue at Conihassett." Proved June, 1684, before the General Court.

Re Indian Popanooie, 5 Plym. Col. Recs. 243, July 1677. "Wheras Phillip . . and other sachems . . [244] have lately broken covenant with the English, and they and theire people have likewise broken out in open rebellion . . among which said rebells an Indian named Popanooie is found to be one, who . . is found to be very active in the great crewelty . . acted upon severall of the inhabitants . . of Dartmouth, . . after due examination had of the premises, this Court doth heerby condemne and centance him, . . and his wife and children, to perpetuall servitude, they likewise being found coepartenor with him in the said rebellion, and particularly that hee, the said Popanooie, is to be sold and sent out of the country."

Re Indian slaves, 5 Plym. Col. Recs. 270, November 1678. "These may certify. . . that certaine Indians,[1] liveing in or neare Sandwich, . . being apprehended, and on theire confession convict of felloniously breakeing open a house, and the chest of Zacheriah Allin, . . and . . stealeing . . twenty five pounds in mony, they haveing lost or imbezelled the said mony, and noe other way appeering how hee should be satisfyed for his loss . . the authoritie of this collonie have centanced the above named Indians to be his perpetuall slaves, and . . heerby doe authorise . . him . . to make sale of them . . to any Christian person or persons in New England or elsewhere, as his lawfull slaves for tearme of their naturall life." [2]

Re Indians, 6 Plym. Col. Recs. 14, June 1679. "In reference unto severall Indians bought by Jonathan Hatch of Captain Church, the brothers of the woman, desireing shee might be released, appeered in Court with the said Jonathan Hatch, and came to composition with her [*sic,* him] for the freedom of both her and her husband, which are two of the three Indians above named; and her brothers payed on that accoumpt the summe of three pounds silver mony of New England, and have engaged to pay three pounds more in the same specue, and then the said man and woman are to be released; and for the third of the said Indians, it being younge, the [General] Court have ordered, that it shall abide with the said Jonathan Hatch untill it attaines the age of 24 yeers, and then to be released for ever."

Re Indian Joseph Peter, 6 Plym. Col. Recs. 32, March 1680. "In reference unto an Indian called Joseph Peter, whoe was committed to prison att Plymouth for stealing a hyde from John Gorum, hee expressing himselfe pensive for his said fact, and promiseing reformation, was released from bodily punishment; but for satisfaction for two debts, the one which

[1] Three in number.

[2] "It is ordered by the Court, that in case Zacheriah Allin can not sell them, that this record shalbe extant against them, . . that if ever they be taken faulty in like respect, that then they shalbe forthwith sold out of the country." *Id.*

hee oweth to Mr. Barnabas Laythorpe, which is 5 *ll* 13 *s* 2 *d*, and for the answaring of the other debt, which is 03 16 06, hee is ordered by the Court to be and abide with the said Barnabas Laythorp and John Gorum, or such as they shall order him to be with, as theire servant, for the full terme of two yeers from the date heerof, and not to absent himselfe at any time from theire said service, by night or by day, without a tikett from one of them; and incase hee shall absent himselfe, hee shall pay four dayes worke for one."

Re Indian Samuel, 6 Plym. Col. Recs. 65, July 1681. "Att this Court it was ordered that Isacke, Indian majestrate att Saconett and places adjacent, doe send or cause to be sent an Indian youth named Samuell, the son of Wanwaneame, a prentece to the widdow of John Tucker, of late of Martins Viniyard, unto Steven Skiffe, of Sandwich, to be sent by him to said widdow; or that the said Isacke doe pay or give sufficient cecuritie to pay the said widdow, or said Skiffe in her behalfe, the full summe of eight pounds in mony, four pounds the last of October next, and other four pound the first of March next, which is according to his owne proposall."

Re Indian Isacke Tetatan, 7 Plym. Col. Recs. 237, July 1681. "William Randall . . complaineth against Isacke Tetatan, an Indian, resedent in . . Barnstable, . . [238] for the payment of . . three pound this Court have delivered the said Isacke Tetatan in execution to John Allin, of Barnstable, by the consent of the said William Randall, and Isacke Tetatan, to live and faithfully serve . . from the eleventh of this instant July untill the last day of November next"

Re Indians, 6 Plym. Col. Recs. 81, March 1682. "It is ordered by the Court, that Sam Bab and John Mohauke, two Indians . . that are now convicted of felloniously takeing the estate from John Williams, of Scittuate, and charges ariseing therupon, . . serve the said John Williams or his assignes the full time of four monthes, each of them, . . and then to depart from Scittuate,"

Re Indian Sam, 6 Plym. Col. Recs. 98, October 1682. "Sam, the Indian, . . for his rape committed upon an English gerle, being found guilty by the jury, who found him guilty by his owne confession, . . although in an ordinary consideration hee deserved death, yett considering hee was but an Indian, and therfore in an incapasity to know the horiblenes of the wickednes of this abominable act, with other cercumstances considered, hee was centanced by the Court to be severly whipt att the post and sent out of country. John, an other Indian, for his incorrigible theft the second time, in robing of a barke and other theft, was centanced . . to be sent out of the country."

Re Indian Gorge Partrich, 6 Plym. Col. Recs. 104, March 1683. "Wheras Captain John Williams did . . obtaine an execution . . for fifty six shillings against Gorge Partrich, Indian, sundry goods stollen away from said Williams, and damage don him, and assisting an Indian

squa, servant to said Williams, from under which execution said Partrich made an escape, and since committed sundry misdemeniors, as swearing, assaulting, threatening to kill the said Captaine Williams, for which being imprisoned, and brought to answar for said misdemenors, and being found convict therof, was by this Court centanced to be whipt, and warned not to come any more att Scittuate as hee would answare the contrary att his perill, and alsoe ordered him to pay to the said Captain Williams the said fifty shillin[g]s mensioned in the said execution, and twenty shillings more to said Captain Williams for his charge, trouble, and damage respecting the said misdemenors, and twenty shillings to the Scittuate constables for theire charges, and eleven shillings to the under marshall for his fees, amounting all to five pounds and seaven shillings in silver mony; and wheras for the payment wherof Mr William Clarke oblidged himselfe, and on request of said Gorge Partrich hath payed the said monyes, hee, the said Partrich, Indian, did promise well and faithfully to serve the said William Clarke from the date heerof untill the latter end of October next come twelve month, this Court doth therfore impower the said William Clarke to retaine the said Indian, Gorge Partrich, as his servant during the said tearme aforsaid, whoe is to find his said servant with meat, drink, and apparrell, sutable for him, and doe heerby order and require the said Indian, Gorge, to doe his master, Mr William Clarke, and his assignes, true and faithfull service, and his lawfull commands every where to doe, and from his said masters service not to absent himselfe by night nor day without lycence from his said master the whole tearm aforsaid."

Re Indian James, 6 Plym. Col. Recs. 101, June 1683. "In reference to an Indian named James, now liveing att Swansey with Mr Anthony Loe, whoe was out in the rebellion, and hath often soliseted the Court for his freedom, this [General] Court have ordered, that the Tusday after March Court hee shalbe free, except Mr. Loe doe appeer, or some one for him, att the said Court, to give satisfying reason to the contrary; and the Court orders, that when hee goes away from his said master, that hee shall give him a good suite of clothes."

Re Indian Josepth Peter, 6 Plym. Col. Recs. 108, June 1683. "an Indian named Josepth Peter, haveing bin somtime in durance, was presented before the [General] Court for stealing thirteen or fourteen pound in mony and a parte of a rundlett of liquor from Robert Parker, of Barnstable, on the Lords day, being alsoe convicted of acts of like nature rendering him a common theife and incorrigable, is centanced by the Court to be sold out of the country; and the charges of his imprisonment, etc, being defrayed, the resedew of prise to be delivered to the said Robert Parker."

Re Indian Imdah, 6 Plym. Col. Recs. 116, November 1683. "Imdah, an Indian, for thevery att divers places att severall times, and goeing on therein in an incorrigable way, is centanced by the Court to be sent out of the country. and incase hee doe att any time come any more into this collonie, that hee shalbe taken and ymediately brand marked, soe as hee may therby be knowne."

Re Robert Trayes, negro, 6 Plym. Col. Recs. 141, July 1684. "Bill of indictment: You, Robert Trayes, negro, are indicted . . for that you . . did, on the last day of March last, . . fire of a gun att the dore of Richard Standlake, therby wounding and shattering the legg of Daniell Standlake, of Scittuate, of which wound, and cutting of his legg occationed therby, died;" "The verdict of the grand jury is, *Bella vera.* . . [142] The Petty Juryes . . Verdict. . . Wee find him an instrument of the death of Daniell Standlake by misadventure. The Court approved the verdict; and the negro . . was cleared, with admonition to lay it much to hart that one should lose his life by him, although throw misadventure, onely amerced these fines . . to pay towards the charge of the lamnes of Daniel Standlake, unto his father, . . 3 *ll*: 00: 0 And for the negroes wrong that hee hath don in taking away, or being an instrument in takeing away, Daniell Standlake out of the world, although by misadventure, is fined . . 02 *ll*: 00: 0 or to suffer corporall punishment by being whipt."

Re Indian Timothy, 6 Plym. Col. Recs. 152, March 1685. "Timothy, Indian servant to the reverent Mr John Cotton, being complained of for running away from his master some time about November last, which was occation of considerable charge to his master, losse of time, and many waies to his damage, the Court, on consideration of damage that hee sustained, orders the said Timothy, Indian, to serve his said master or his assignes one yeer more, or besides the tearme hee is bound for by indenture, which yeers service hee willingly offered and promised in open Court for satisfaction to his master."

Re Indian Thomas Wappatucke, 6 Plym. Col. Recs. 153, March 1685. "Thomas Wappatucke, Indian, being found guilty of burglery att October Court last,—It is ordered by the Court, that hee be sold for a perpetuall servant; and it is left to the honored Governor and the worshipful Mr Barnabas Laythorpe to dispose or make sale of the said Indian, and give a bill of sale for them that buy him, and to proportion the mony made of him to them that have received damage by him." [1]

Re Freeman, 5 Mass. Recs. 477, May 1685. "Peter Freeman, Indean of Narraganset, having binn a guide to the English army for the colonies under the command of the late Generall Winslow, having donn good service to the country, and whiles his doing that service his daughter was taken and made a slave, the Court judgeth it meete to order the Treasurer of the country to give him two English coates, two paire of stockings, and two paire of shooes, (one for himselfe and one for his wife,) a white shirt, and five shillings in money to carry him home, having spent much time, both now and formerly, to obteyne his recompence; and its left to the major generall to informe himselfe where his said daughter is in

[1] "the South Sea Indians, liveing about Satuite Pond, . . desire to have confeirmed by this Court to Mr Sheirjashub Bourne . . [160] a certain neck of barren land . . with all the meadow on both sides . . being sold to said . . Bourn for the redemption of their countryman, Tom Wampetucke, from his being sold out of the country for his misdemeanor," (*ibid.,* 159, 160). The Court confirmed "said parcells of land . . unto . . Bourn,"

captivity, and with whome, and to endeavor hir reprisall and freedome, that she may returne to hir Father; and orderd, the secretary to write to Captain Prentice to take order accordingly, and make returne what he doth and cann doe in that respect." (General Court.)

Re Hannah Bonny, 6 Plym. Col. Recs. 177, October 1685. "Hannah Bonny, convict for fornication with John Michell, and also with Nimrod, negro, and haveing a bastard child by said Nimrod, is sentanced to be well whipt. Nimrod, negro, convict for fornication with Hannah Bonny, is sentanced to be severely whipt, and that said Nimrod pay 18 pence per weeke to said Bonny towards the maintenance of said child for a year, if it live soe long; and if he, or his master in his behalfe, neglect to pay the same, the said negro to be putt out to service by the Deputy Governor soe long time, or from time to time, soe as to procure the same."

Re Boomer, 6 Plym. Col. Recs. 178, March 1686. "The jury find the prisoner . . guilty of the breach of the Kings peace . . by breaking the Sabboth by sufering his Indian servants to hunt on the Saboth day."

Re Indian Will, 7 Plym. Col. Recs. 308, November 1690. "Will, Indian servant to Captain John Williams, being accused [1] per Thomas Coleman, of Scituate, for breaking into his cellar . . and thence stealing out wine, rum, and spice, and at this Court thereof convict, and of sundry other thefts . . [309] as said Indian confesseth, is sentenced to sit on the gallows, to be branded on the hand with the letter B, and to pay to the persons damnified by his theft five pound money, Court fees, and charge of prossecution, or to be sold for the payment thereof, and to be imprisoned till sentence be performed."

Re Negro James, 11 Acts of the Prov. 413, October 1737. "Order granting the freedom of James, a negro man. A Petition of James a Negroe Man formerly belonging to Samuel Burnel deceased Shewing that whereas upon his former Petition . . December 1735, Praying to be set free according to the Will of his deceased Master, this Court was pleased to Order that he might have a Writ of Protection for his security till three months after the death of his Mistress, that so he might further apply for his Freedom; that his said Mistress is now dead; and therefore Praying that this Court would now declare him to be absolutely free . . Read and Accepted; and for as much as it appears. . . that the Petitioners late master . . by four several Wills . . had ordered that the Petitioner should be set free from his service after the decease of his mistress. . .

Ordered . . that the Petitioner James be absolutely manumitted . . from his servitude and . . discharged from all Claims . . from the Administrator or Heirs of . . Burnell as a servant or as part of said Burnell's estate. Provided security be given . . to indemnify the town of Boston from any charge that may arise from the Petitioners freedom."

Larkin v. Dwight, 13 Acts of the Prov. 491, July 1745. "A Petition of . . Dwight . . shewing that . . Larkin brought his action against him . . for fraudulently selling to . . Larkin a castrated Negroe, and

[1] "At a Court of Assistants held . . at Plimouth."

Judgement went against the Petitioner, from which he appealed . . but being delayed on his journey, he did not get to Boston till . . Judgment was entered up against him . . praying that he may be allowed a new Trial"

Oliver v. Sale, Quincy 29, August 1762. "Oliver sues the Defendant for selling him two free Mulattos for Slaves. . . [31] *Mr. Otis, for Defendant.* I hold in the Case of a Negro, there should be an express Warranty of their Freedom, and that the Rule of Merchandise which obliges the Vendor to answer for what he sells without Warranty is confined to Manufactures . . which a Man must be supposed to Know the Quality of; but in this Case it is impossible [as] in most Cases to know whether they are free or not. *Ch. Just.* Is there not as palpable a Fraud, when a Man sells a Negro as a Slave whom he knows to be free, as when he sells a Bag of Feathers and assures them to be Hops? That he Knew them to be free they must prove . . [32] *Mr. Otis* offered a Deposition" [n.] "Lydia Whitaker . . testifies . . that she was at the house of Capt. John Sale when Mr Nath'l Brown and Mr John Oliver came to buy two of his negro boys and Capt. Sale told them that he would not sell them for Slaves because he understood they were to be free after some time, and he would only sell his right and title in them, and Mr Oliver said he would run the risk of their ever getting free. . . Sworn before the Court in Oct'r 1761" [33] "the Court directed the Jury to find Defendant Costs."

Allison v. Cockran, Quincy 94, 1764. "Trover for a Negro. The Administratrix of one Cockran, (Father-in-Law to the Defendant,) . . [95] was offered as an Evidence to prove the Sale from Allison to the Father."

Re Neptune, 21 Acts of the Prov. 115, June 1779. "John Greenwood . . about three Years ago his Negro-Man Neptune, aged about Twenty-two Years, entered on board a Privateer . . which Vessel . . was taken by one of the British Ships of War, that about one Month since the Ship called the *Blaze-Castle* was taken . . on board of which was . . Neptune, who is now in charge of the Commissary of Prisoners of this State, and prays that the said Commissary may be ordered to deliver him said Negro: Resolved . . Commissary . . discharge . . Neptune from his Confinement, that if he chooses he may return to the Service of the said John Greenwood."

Quork Walker v. Jennison, Proc. Mass. Hist. Soc. 1873-75, 296, September 1781. "On May 1, 1781, Quork Walker brought an action of trespass against Nathaniel Jennison . . alleging that the defendant on April 30, 1781, . . 'seized the said Quork and threw him down and struck him . . with the handle of a whip, and did . . imprison . . him' . . Jennison pleaded that . . 'one Caldwell, being seised of the said Quork as of her own proper negro slave, was married to . . said Nathaniel, by means whereof the said Nathaniel . . became possessed of . . Quork as of his own proper negro slave,' . . The plaintiff replied 'that he the said Quork is a free man,' . . The jury returned a verdict for the plaintiff for £50

damages, upon which judgment was rendered . . The defendant appealed to September term 1781 of the Supreme Judicial Court, but, failing to appear . . was defaulted, and the judgment below affirmed."

Jennison v. Caldwell, Proc. Mass. Hist. Soc. 1873-75, 296, September 1781. "On May 28, 1781, Jennison brought an action of trespass on the case against John Caldwell and Seth Caldwell, alleging that, on April 2, 1781, . . 'a certain negro man Quarko' was the plaintiff's servant, . . yet the defendants . . seduced the said negro man from the . . service of the plaintiff, and caused . . him to absent himself . . and . . retained . . the said negro . . for six weeks, . . and did . . rescue out of the plaintiff's hands . . his said servant, and did hinder . . him in . . reducing his said servant to his . . service . . upon a trial . . [Jennison] obtained a verdict and judgment for £25. The defendants appealed to September term 1781 of the Supreme Judicial Court, and . . [297] were found not guilty, and had, judgment for costs against the plaintiff."

Commonwealth v. Jennison,[1] Proc. Mass. Hist. Soc. 1873-75, 293, April 1783. "Indictment, found September, 1781, *vs.* Nathaniel Jennison of Barre, for an assault on Quack Walker, and beat with a stick 1st May, 1781, and imprisoned two hours. . . [Testimony for the Commonwealth] *Mr. Caldwell.* The Negro . . was at work in my field with a team . . heard a screaming . . Jennison and several others . . had got the negro down, young fellow upon the negro, I took him off . . and told Jennison his master had freed him—and Winslow let him go—wounds in his hands and arms. My brother said always he should be free at 25— . . *Quack.* I was harrowing. 10 years old when master Caldwell died. Mrs. lived a number of years before she married again. I lived with Dr. Jennison 7 years and ½ after I was 21. My old master said I should be free at 24 or 25. Mistress told me I should be free at 21—said so to Jennison, before and after marriage. Defence. From Zachariah Stone to Caldwell, deceased—Bill of Sale Mingo and Dinah, 1754, and Quaco, 9 months old.[2] . . *Mr. Jones.* Quaco lived with Caldwell till he died—appraised at £40—set off to his Mrs. as part of her personal estate. She married Jennison about 1770, and died about 3 years after. *Joshua Winslow.* I was desired by defendant to help him reclaim Quaco." Charge of Cushing, C. J. [294] "Fact proved. Justification that Quack is a slave . . that Mr. Jennison . . was entitled to Quack as his property; and therefore he had a right to bring him home when he ran away; . . And the defendant's counsel also rely on some former laws of the Province, which give countenance to slavery. . . As to the doctrine of slavery and the right of Christians to hold Africans in perpetual servitude, . . that (it is true) has been heretofore countenanced by the Province Laws

[1] "printed . . *verbatim* from the note-book" of Chief Justice Cushing.

[2] "Rutland District, May 4, 1754. Sold this day to Mr. James Caldwell, . . a certain negro man named Mingo, about twenty years of age, and also one negro wench named Dinah, about nineteen years of age, with her child Quaco, about nine months old: all sound and well: for the sum of one hundred and eight pounds . . which negroes I . . warrant and defend against all claims whatsoever. . . Zedekiah Stone" (*ibid.* 297). Judge Sullivan states that "Quock was a slave brought from Africa," Letter to Belknap, 3 Mass. Hist. Coll. (5th ser.) 403.

. . but nowhere is it expressly enacted. . . It has been a usage . . But whatever sentiments have formerly prevailed in this particular or slid in upon us by the example of others, a different idea has taken place with the people of America, more favorable to the natural rights of mankind, and to that natural, innate desire of Liberty, with which Heaven (without regard to color, complexion, or shape of noses, features) has inspired all the human race. And upon this ground our Constitution . . by which the people of this Commonwealth have solemnly bound themselves, sets out with declaring that all men are born free and equal—and that every subject is entitled to liberty, . . as well as life and property—and in short is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our own conduct and Constitution; and there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract." "Verdict guilty." [1]

Shelburne v. Greenfield, 5 Mass. Hist. Coll. (1st ser.) 46, 1795. "The action was brought by the town of Shelburne against the town of Greenfield, for the support, and to compel the removal, of two paupers [Romulus and Rosana].[2] These people . . were Africans, imported and sold as slaves. They were purchased, about . . 1757, by an inhabitant of Greenfield; claimed their liberty, like other blacks, in 1776, were married together [in 1778], and removed to Shelburne, and there became chargeable as paupers. The merits of the question, was, whether the paupers were chargeable on the commonwealth as state paupers, having gained no . . settlement in Greenfield? For the town of Greenfield it was argued, that the laws of the late province did not rank the Africans with the white people; they could not, whilst they were the property of others, be capable of holding property as their own: that their polls were not taxable as those of white people; they were not liable to train, labour in mending the highways, or to perform any other civil duty: that they could not be removed, or warned out of town, by the selectmen, because they were but the chattel of another; and therefore . . that they must come within the description of persons, who were found within the state, without any place of settlement, and were the proper charge of the commonwealth. It was further urged, that, as the Africans were bought and sold, as chattels, under the laws of the late province, and were emancipated by the force of the public opinion, it was enough for the masters to sustain the loss of their service, without being burdened with the support of them. The court gave no opinion on the point, whether the emancipated negroes were to be the charge of the town, or of their late masters; but were of opinion, that they come within the description of servants; and that they therefore gained a settlement, upon the principles of common law, where their masters were settled. Judgment was given, that Shelburne should

[1] He was "fined 40 *s.* This decision put an end to the idea of slavery in this State." James Sullivan to Dr. Belknap (3 Mass. Hist. Coll., 5th ser., 403). "James Sullivan was a member of the Convention which framed the Constitution of Massachusetts. Soon after, he was one of the Justices of the Supreme Judicial Court, and took part in the decision of the civil action of Jennison *v.* Caldwell in 1781." *Ibid.,* p. 403n.

[2] 2 Dane 412.

recover against Greenfield the charges of the past support of the negroes; and that they should be removed to Greenfield, the place of their last master's inhabitancy. Whether a town, in such case, can call upon the African's last master, is not yet determined by the court."

Inhabitants of Shelburne v. Inhabitants of Greenfield, cited in 13 Mass. 552, 1796. "the children of two negro slaves were considered to have their settlement in the latter town, because their parents had a settlement there under their master; although the parents were married, and their children were born, in Shelburne. But we find no reasons given for that decision; and it cannot therefore weigh against the strong reasons, which offer in favor of a contrary opinion." [Parker, C. J., in 1816.]

Inhabitants of Littleton v. Tuttle, cited in 4 Mass. 128n., October 1796. "an action of *assumpsit* for 7 *l.* money expended . . for the support . . of Jacob, alias Cato, a negro and a pauper. . . Cato's father, named Scipio, was reputed a negro slave when Cato was born, and, according to the then usage . . was the property of . . Chase, an inhabitant of Littleton. Cato's mother, named Violet, was a negro in the same reputed condition, and supposed to be the property of . . Harwood. Scipio and Violet were lawfully married, and had issue Cato, born in Littleton, January 18th 1773, and was then, in the general opinion a slave, the property of the said Harwood, as the owner of his mother. Harwood, . . 1779, sold him to the defendant, who retained him . . until he was 21 years old. He being then a cripple, and unable to labour, the defendant delivered him to the overseers of the poor of Littleton, . . refusing to make any provision for him: whereupon the overseers expended the money in his maintenance, for which this action was brought. The court stopped the defendant's counsel from replying, and the Chief Justice charged the jury, as the unanimous opinion of the court, that Cato, being born in this country, was born free;[1] and that the defendant was not chargeable for his support after he was 21 years of age. And the jury found a verdict accordingly without going off the stand."

Perkins v. Emerson, 4 Dane 412, November 1799. "In the year 1765, Emerson, an inhabitant of Topsfield, received into his family a negro girl, born in Wenham in 1759, and kept her as a slave till she claimed her freedom in the American revolution, and gave no notice of this to the town. In 1798 she became poor, and Topsfield paid $34.50 for her support, and sued Emerson on the act of 1736 for the money so paid. Judg-

[1] Chief Justice Parsons expressed himself to the contrary in Winchendon *v.* Hatfield, p. 484, *infra.* See also G. H. Moore, *Notes on the History of Slavery in Massachusetts,* p. 7: "There is an earlier report of this case furnished by James Sullivan, Attorney-General, who was of counsel in the case, for publication in 1798. It is a noticeable fact that he does not state that the judges declared the negro to have been born free." See 5 Mass. Hist. Coll. (1st ser.) 47: "The action was brought by the town of Littleton for the maintenance of a black man, who was born in the town, claimed as a slave, under the laws prior to the revolution, and sold to the defendant by his supposed master, of whose slave he was born. The black man, at the age of twenty-one years, became lame, and unable to labour; and the defendant carried him, and left him with the overseers of the poor, for support. The judges were of opinion, that, as he was born in the town, he was a proper inhabitant; and that the town was obliged to maintain him, as it would have been if he was a white man. Whereupon the plaintiffs became non-suit."

ment for the defendant for costs, and the court held, that from 1765 to 1776 she was Emerson's slave, and not an inmate or boarder, etc., within the act. That she could not be separated from Emerson, her master; so that she could not be warned and carried out of the town of Topsfield; hence it was no purpose for him to have given notice . . [413] In this case were cited the above act of 1736, and the acts of 1692, 1700: the act of 1703, respecting slaves, and the act of 1707, subjecting free negroes to do certain duties; "

Little v. Barreme, 2 Cranch 170, February 1804. [172] " The rest of the seamen [of the Danish brigantine *Flying Fish*] are Englishmen, Portuguese and Negroes."

Adams v. Woods, 2 Cranch 336, February 1804. " An action of debt for the penalty of 2000 dollars, under the 2d section of the act of congress of 22d of March, 1794, ' to prohibit the carrying on the slave trade from the United States to any foreign place or country.' [1] . . The defendant pleaded, ' that the cause of action . . did not accrue within two years next before the date . . of the writ in this case ' . . Lincoln, attorney-general, for the plaintiff. . . [338] The legislature could not suppose that the term of two years would be a proper limitation of all penal actions. In the present case it goes to a total annihilation of the penalties of the act. No vessel engaged in the slave trade can ever be subjected to condemnation; for the voyage is always circuitous, and generally takes up more than the two years to perform it. It is generally from the United States to the West-Indies—from thence to Africa—thence back to the West-Indies or South America, and thence home. . . I have lately seen a set of papers sent from our consul in England to the secretary of state, in which orders were given to the captain to go to the West-Indies, and from thence to Africa, and to continue the trade until the vessel should be no longer fit for a voyage." [342] " The court is of opinion . . that the issue in law . . ought to be decided in favour of the defendent." [Marshall, C. J.]

Commonwealth v. Battis, 1 Mass. 93, October 1804. " The defendant, John Battis, a negro of about twenty years of age, was indicted for the murder of . . a white girl . . There was another indictment . . for committing a rape on the body of the said . . on the same day, . . the prisoner . . pleaded guilty to each. The court informed him . . that he was under no legal or moral obligation to plead guilty . . He would not retract his pleas—whereupon the court told him that they would allow him a reasonable time to consider . . and remanded him to prison. They directed the clerk not to record his pleas, at present. In the afternoon . . he again pleaded guilty—upon which the court examined, under oath, the sheriff, the gaoler, and the justice (before whom the examination of the prisoner was had previous to his commitment) as to the sanity of the prisoner; and whether there had not been tempering with him, either by promises, persuasions, or hopes of pardon, if he would plead guilty, . .

[1] Vol. III., p. 22, of this series.

nothing of that kind appearing, the prisoner was again remanded, and the clerk directed to record the plea on both indictments. On the last day of the term . . [96] the Attorney General . . moved for sentence—which the Ch. J. delivered in a solemn, affecting and impressive address to the prisoner. The sentence was entered on the indictment for the rape. He has since been executed."

Martin v. Insurance Co., 2 Mass. 420, March 1807. [421] " On the 4th of February [1802], the town of Cape Francois [in the West Indies] was plundered and burnt by the negroes,"

Greenwood v. Curtis, 4 Mass. 93, March 1808. " This was *assumpsit* upon a contract in the following words, viz. ' Rio Pongos on the coast of Africa, July 27. 1802. I promise to pay or cause to be paid to the owners . . of Brig *Hope,* nine four foot slaves, thirty seven prime slaves, and seventy six bars on demand for value received of Capt. Hichborn. Benja. Curtis.' The first count alledges, that prior to the date of the foregoing . . the plaintiff had become the owner of the brig *Hope* and her cargo, . . that . . Hichborn was master of said brig: . . a new count . . alledges a settlement of accounts . . and a balance found in bars, equal to 4481 dollars 1 cent, due from Curtis to the plaintiff. The action was tried at the last November term, before Parker, J. from whose report . . the following facts appear. . . The defence, principally relied on, was that the contract declared or was in violation of the principles of the constitution and laws of the state, and of the United States, and therefore no action could be maintained on it in the courts of the Commonwealth. The judge directed the jury to that effect; and further that the plaintiff could not recover upon the *insimul computassent,* because . . the note . . was given in extinguishment of that balance, which note was not void, although payment of it could not be enforced by the laws of this Commonwealth. A verdict was returned for the defendant." Verdict set aside and new trial granted: " no objection lay to the *insimul computassent,* and that the note given in consideration of it, not being negotiable, could not in law be regarded as a payment of it," [1]

Inhabitants of Winchendon v. Inhabitants of Hatfield, 4 Mass. 123, March 1808. " a writ of error to the court of Common Pleas for the county of Worcester, brought . . to reverse a judgment . . respecting the settlement of a pauper, upon an appeal from the adjudication of a justice of the peace . . The records of the court below . . was . . ' Worcester, . . December, 1806. The town of Winchendon, . . complainants against the town of Hatfield, setting forth . . that Edom London, a negro man, now resident in . . Winchendon, is poor and become chargeable to said town, and that the said town of Hatfield is the place of his lawful settlement, . . The facts . . are, that . . Edom, in . . 1757, was the proper estate of . . Bond, and then by him sold to . . Williams of Weston; . . 1760, and after the decease of . . Williams, said Edom was set off as the estate of said Williams to the wife of . . Partridge of Hat-

[1] See same *v.* same, p. 489, *infra.*

field, who was the daughter of said deceased, . . and then went to live with . . Partridge, in . . Hatfield, and continued his servant until . . 1767, at which time he was sold . . to . . Ingersoll, Esq. of Westfield, . . and continued with him about three years; was then sold . . to . . M'Cluster of Longmeadow, lived with him a few weeks; was then sold . . to . . [124] Holcomb, of Simsbury in Connecticut, and lived with him about four years; then was sold . . to . . Bond, of Lincoln, and lived with him a short time; was then sold . . to . . Cowdin, of Fitchburg, and lived with him three or four years; was then sold . . to . . Stimson, of Winchendon; and the day following he abscondend [*sic*] and enlisted in the eight months' service in Cambridge, and before the expiration of said eight months' service, and in the year 1775, was sold by . . Stimson to . . Sawyer, of Winchendon, with whom he lived some time; then he was sold . . to . . Goodridge, of the same Winchendon, in . . July, 1776, with whom he lived about five weeks; then he enlisted into the three years' service, and the said Goodridge received the whole of his county, and part of his wages.

" The Court of Common Pleas affirmed the judgment of the justice, and adjudged that the lawful settlement of the said Edom London was not in the town of Hatfield. Upon the general issue pleaded of *in nullo est erratum* the cause was shortly spoken to at the last September term . . Upham for the plaintiffs in error . . relied on the pauper's residence in Hatfield more than a year prior to . . 1767,[1] without being warned to depart pursuant to the laws then existing, whereby he gained a settlement in that town, . . the facts show no settlement gained since the pauper left Hatfield. He is then yet settled there, unless his being a slave makes a difference in the case, of which Upham was not aware."

Judgment affirmed with costs. Parsons, C. J. delivered the opinion of the court: [125] " Slavery was introduced into this country soon after its first settlement, and was tolerated until the ratification of the present constitution. The slave was the property of his master, subject to his orders and to reasonable correction for misbehaviour, was transferrable like a chattel by gift or sale, and was assets in the hands of his executor or administrator. If the master was guilty of a cruel or unreasonable castigation of his slave, he was liable to be punished for the breach of the peace, . . [128] And the issue of the female slave, according to the maxim of the civil law, was the property of her master. . . in an action [2] . . [129]

[1] Prior to Apr. 10, 1767, the act of March 1701 was in force: " Nor shall any town be obliged to be at charge for the relief . . of any person residing in such town . . that are not approved [by the selectmen or by the town] . . unless such person or persons have continued their residence there by the space of twelve months next before, and have not been warned . . to depart." 1 Acts of the Prov. 453. This law was repealed by the act of March 1767: " That . . after the tenth day of April next, no person whatsoever, coming to reside . . within any town in this province, shall gain an inhabitancy . . by any length of time he . . may continue there without warning, unless such person shall first have made known his . . desire to the selectmen thereof, and obtained the approbation of the town, at a general meeting . . for his dwelling there; nor shall any town be obliged to be at charge for the relief . . of any person residing in such town . . that have not been approved as aforesaid." 4 Acts of the Prov. 912.

[2] *Contra,* Littleton *v.* Tuttle, p. 482, *supra.*

tried in Middlesex, . . 1796, the Chief Justice, in directing the jury, stated as the unanimous opinion of the court, that a negro born in the state before the present constitution was born free, although born of a female slave. It is however very certain that the general practice and common usage has been opposed to this opinion." [1] [128] "the treatment of slaves was in general mild and humane, and they suffered hardships not greater than hired servants. Slaves were sometimes permitted to enjoy some privileges as a *peculium,* with the profits of which they were enabled to purchase their manumission, and liberty was frequently granted to a faithful slave by the bounty of the master, sometimes in his life,[2] but more commonly by his last will. Several negroes born in this country of imported slaves demanded their freedom of their masters by suit at law, and obtained it by a judgment of court. The defence of the master was faintly made, for such was the temper of the times, that a restless discontented slave was worth little; and when his freedom was obtained in a course of legal proceedings, the master was not holden for his future support, if he became poor. But in the first action involving the right of the master, which came before the Supreme Judicial Court after the establishment of the constitution, the judges declared that, by virtue of the first article of the declaration of rights, slavery in this state was no more. [129] From this brief view of the state and condition of a slave, it is manifest that the master was obliged to support him, and was entitled to all his services. The slave therefore could not acquire a settlement in his own right. But he might, through age or disease, become useless, when the property of a master who was a pauper. In this case his maintenance would devolve on some town, and some settlement must be assigned to him, to designate the town subject to the burthen. He had consequently a derivative settlement from his master, and whenever the master acquired a new settlement, it was accompanied by the settlement of the slave, who could not be separated from his master.

[1] The following instance supports Chief Justice Parsons' assertion: "Upon reading a Petition of William Brown Son of a Free Man by a Servant Woman, and has been sold as a Slave, and is at present own'd by Mr Andrew Boardman, Setting forth that his said Master will sett him at Liberty and make him free, if this Court will indemnifie him from the Law relating to the Manumission of Negroes, as to maintaining of him in case of Age Disability etc, Praying the Court to indemnifie him: In as much as the Petitioner is a young able bodied Man, and it cannot be suppos'd that he is manumitted by his Master to avoid Charge in supporting him; Ordered that the Prayer of the Petition be granted, And that the Petitioner be deem'd free when sett at Liberty by his Master, Altho no Security be given to Indemnify the Town where he dwells from Charge by him, And in case the Petitioner shall hereafter want a Support, his said Master shall not be oblig'd to be at the charge thereof, Any Law Usage or Custom to the contrary notwithstadding [*sic*]." Passed November 1716. 9 Acts of the Prov. 492.

[2] Not always to a faithful slave, unless John Saffin's difficulties with his "negro man Adam" colored his recollections; for in his petition to the Legislature in 1703, asking [271] "liberty to Review the Action and Judgment the said Negro hath lately Obtained for his freedome" he declares that "when he lett his farme . . to . . Shepard [in 1694] with the said Negro, knowing him to be a Desperate Dangerous Villaine, . . I Endeavored to Oblige him to his Duty, and thereupon promised his freedom under my hand att the End of the Terme [of seven years] . . Provided that the said Adam . . Doe Dureing the Terme . . goe on Chearfully quietly and Industriously" He claimed that the condition had been broken (Adam *v.* Saffin, 8 Acts of the Prov. 266-271). According to Saffin, Adam had "been at no less than five Superior Courts, and two Inferior Courts seeking to Obteine his freedom." *Ibid.* 271.

"A reasonable conclusion from these facts is that slaves were not within the ninth and tenth sections of the statute of 12 and 13 Wm. III. c. 10,[1] making the warming out of persons within the year necessary to prevent a settlement; . . and that slaves are not within the fourth section of the statute of 7 Geo. III. c. 3,[2] which provides that no settlement shall be gained by residence, as that section extends only to persons, who were competent to gain a settlement by residence, if not warned out. To this construction it is objected that the statute of 2 Anne c. 2 [3] considers slaves as gaining a settlement by residence, because the master of a manumitted slave must indemnify the town where he lives. The language of this statute [4] is adapted to the cases, which most frequently, if not always, happened. A practice was prevailing to manumit aged or infirm slaves, to relieve the master from the charge of supporting them. To prevent this practice, the act was passed. The design of it was, to hold the master answerable for the maintenance of the slave, if the manumission was without indemnity. As slaves were rarely, if ever manumitted, until after a long course of service, probably it never happened that they acquired their liberty, until after a year's residence in the town, in which they were manumitted. And when they became free, they might gain a settlement in their own right by a year's residence, unless warned. The town wherein they were manumitted, was the proper town to be indemnified, for there only could they acquire a settlement against the will of the inhabitant, as, having lived there a year, they could not be the subject of warning. The law must now be applied to the facts stated. . . the pauper was once the slave of . . Partridge, living several years with him in Hatfield, where his master was settled. The pauper then acquired a derivative settlement in Hatfield. Afterwards his master Partridge sold him to . . Ingersoll, . . settled in Westfield. There he lived several years with his new master; and there he lost his settlement in Hatfield, by gaining a new derivative settlement in Westfield. . . Having lost his settlement in Hatfield and not having regained a new settlement there, the defendants in error are not liable for his maintenance: "

Inhabitants of Dighton v. Inhabitants of Freetown, 4 Mass. 539, October 1808. " writ of error . . brought to reverse a judgment . . by which the settlement of Dinah Walker, a pauper was determined to be in Dighton. . . [540] Dinah was more than twenty years since lawfully married to one Pomp Walker, a black man, who had formerly been a servant to Col. Elnathan Walker, deceased, and was appraised at fifty dollars as part of the personal estate . . lived with the administrator . . in Taunton, until 1779, when he was discharged from any further claims of the administrator for his services, and returned into . . Dighton, and was married . . and continued to reside there until his death: that the overseers of the poor of Dighton, . . 1805, gave notice . . to the overseers of the poor of Freetown, that . . Dinah had become chargeable to

[1] Act of March 1701, 1 Acts of the Prov. 453.
[2] Act of March 1767, 4 *ibid.* 912.
[3] Act of July 1703, 1 *ibid.* 519.
[4] Act of July 1703, 1 *ibid.* 520.

the town of Dighton, and requested them to remove her to Freetown, and pay the expence that had accrued to Dighton for her support, to which notice the overseers of Freetown gave no answer" Judgment reversed with costs: "It does not appear in what town Pomp's former master had his settlement; nor whether Dinah was in fact free or a reputed slave. She must therefore be considered by us as free when married; . . Pomp being . . a reputed slave until 1779, he was settled in the same town with his master, deriving his settlement from him, . . at his decease intestate [he] . . [541] as the personal estate of the deceased became the property of Peter Walker the administrator, and acquired the settlement of his new master, which was in Taunton; and there he lived with, and served him until 1779, when he became free by the manumission granted by his master. He then returned to Dighton and married . . Dinah. As a settlement in Dighton could not then be gained by residence, Pomp's settlement remained in Taunton, and in the same town Dinah acquired a derivative settlement with her husband. Had Dinah been a slave . . it would have deserved further consideration, before it had been decided that she gained a new derivative settlement by her marriage. . . So if Pomp . . had been a slave when he married Dinah, it might well have been questioned if she had gained a new settlement with an husband, who being the property of another had no claim to the service of the wife; nor would she have had any claim on her husband for maintenance." [Parsons, C. J.]

Inhabitants of Salem v. Inhabitants of Hamilton, 4 Mass. 676, November 1808. "an action . . to recover . . the expences incurred by the plaintiffs in the support of Scipio Freeman and Rose his wife, . . [677] Scipio, on African negro, now more than seventy years of age, was brought into Salem, when of the age of seven years, and was there sold as a slave to Samuel Lummas, and continued with him until his death in 1744; that he then became the property of his only son . . John . . that both the father and son resided . . in that part of Ipswich, which now constitutes the town of Hamilton . . until . . 1770, when John Lummas purchased a farm in the other part of Ipswich, on which he resided until . . 1787. In 1775 . . Scipio deserted from his master, and became a soldier in the American army for a short time, when he was reclaimed by his master, who transferred him to T. P. of Wenham, with whom he continued for several years, until for a consideration in money paid to T. P. who promised him his freedom, he again enlisted in the American army as a soldier for . . Wenham. In . . 1780, an informal marriage took place between him and Rose, and they have ever since lived together as man and wife." [676] "a verdict taken for the defendants, subject to the opinion of the court," Judgment entered upon the verdict: [677] "Scipio was in 1770 the reputed slave of John Lummas, living with him in Ipswich, and in that part of it not included within the limits of Hamilton, Scipio was therefore . . settled in Ipswich, . . Before the incorporation of Hamilton he had left Ipswich, and was considered as a freeman." [Parsons, C. J.]

Greenwood v. Curtis, 6 Mass. 358, March 1810.[1] [359] "the action was tried, November term, 1808, before the chief justice, and a verdict found for the plaintiff by consent of the parties, subject to the opinion of the court upon the following case agreed. On the 29th of January, 1802, the said brigantine was at sea, bound on a voyage from Charleston, . . South Carolina to the coast of Africa, . . laden with a cargo, the plaintiff's property, . . the plaintiff being . . an inhabitant of Charleston;— and the cargo was to be sold on that coast on his account for slaves, to be thence transported to Charleston; . . and the cargo was . . sold on barter and on credit, for one hundred and fifteen slaves, by . . Hichborn to the defendant, who then did, and for several years before had resided there as a factor, . . Hichborn died on the coast, and . . Delaney was appointed master . . who received on board a number of slaves in part payment . . and on the 27th of July, 1802, . . the defendant stated an account, . . in which Hichborn was debited for the advances made to him, and for fifty-nine slaves delivered to Delaney, and in which the defendant charged himself with the balance of 6056 bars [equal in value to 4481 dollars 41 cents], which account he signed, and on the same day he also signed a promissory note of the following tenor: . . [360] 'I promise to pay . . to the owners . . of the . . *Hope,* nine four foot slaves, thirty-seven prime slaves and seventy-six bars on demand, for value received . . Benjamin Curtis.' . . the said account and note were parts of the same transaction;" Judgment according to verdict: [371] "the plaintiff cannot recover, both on the note and on the account. If there be no illegality attached to this transaction, the plaintiff may recover on either, . . [375] The . . objection, that no action upon either . . can be maintained in this state, is principally relied on by the defendant. . . [376] The slave trade, . . [his counsel] has argued, is . . prohibited by a statute of the commonwealth, in the preamble of which it has been declared to be an unrighteous commerce; . . This objection deserves much consideration. By the common law, upon principles of national comity, a contract made in a foreign place, and to be there executed, if valid by the laws of that place, may be a legitimate ground of action in the courts of this state; although such contract . . [377] may be prohibited to our citizens. . . [378] subject to two exceptions. . . when the commonwealth or its citizens may be injured . . when the giving of legal effect to the contract would exhibit to the citizens . . an example pernicious and detestable. . . [379] founded on moral turpitude, in respect either of the consideration or the stipulation. . . In South Carolina it was lawful to purchase slaves on the coast of Africa, and to import them . . into that state. And it does not appear that this purchase . . was unlawful at Rio Pongos. . . To maintain the action, if it be not within the exceptions, is enjoined on us by the comity we owe another state. . . [380] We do not perceive any injury, that could arise to the . . interests of this state . . if either of the contracts had been faithfully executed . . The defendant therefore . . must . . shew that the action, as considered by the laws of

[1] See same *v.* same, p. 484, *supra.*

this commonwealth, is a *turpis causa,* . . This objection may apply to the counts on the note, but not to the count on the *insimul computassent.* . . [381] The consideration of the implied promise . . is the sale of the cargo, which involves no moral turpitude; neither is the performance of the promise by paying the balance in cash immoral." [Parsons, C. J.] Sedgwick, J. dissented [362n.-378n.]

Inhabitants of Medway v. Inhabitants of Natick, 7 Mass. 88, October 1810. "*Assumpsit* for monies expended . . in the support . . of . . Roba Vickons, a pauper, alleged by the plaintiffs, to have had her legal settlement in Natick, and a child of the said Roba. . . The pauper is the daughter of Ishmael Coffee, of Medway.—The said Ishmael is half black and half white.—His wife, who is the mother of Roba, . . is a white woman: . . Roba was married to . . Vicksons of Natick, a white person, . . 1789, by the Rev. Stephen Badger . . Roba, and her child . . are residing in Medway, . . If . . it should be the opinion of the court that the said Roba is a *mulatto,* within the meaning of the 'Act for the more orderly consummation of marriages,' [1] and that the said act, so far as it relates to a prohibition of marriage between a white person and a mulatto, and declaring the same to be . . void, is constitutional, then the plaintiffs agree to become nonsuit.—But if the court should be of opinion that . . Roba is not a mulatto, or that the said act . . is unconstitutional, then the defendants agree to be defaulted," Defendants defaulted: [89] " It is our unanimous opinion, that a mulatto is a person begotten between a white and a black. . . The pauper's father . . was a mulatto, and her mother was a white woman. The pauper is then not a mulatto."

Lord v. Dall, 12 Mass. 115, March 1815. "*Assumpsit* on a policy of assurance, made for 5000 dollars in favour of the plaintiff upon the life of Jabez Lord her brother, aged thirty-three years, bound on a voyage to South-America, or any other place he might proceed to from Boston, commencing the risk . . December 1809 and to continue until . . July 1810 . . Jabez had died on the coast of Africa, . . Jabez sailed from Boston, . . to Fayal, as supercargo of . . the *Mount Aetna,* at which place she was converted into a Portuguese vessel called the *Vincidero,* still belonging to her former owners, but sailing with Portuguese papers and under Portuguese colours. From Fayal the vessel sailed to Madeira, and from thence to the coast of Africa, for the purpose of procuring slaves, with intention to carry them to South-America: . . [116] Jabez acting as supercargo, and having purchased some of the slaves himself. . . It was not made certain, whether . . Jabez originally designed to go to the coast of Africa. . . The question . . reserved . . was whether the actual going upon a voyage for the purposes aforesaid . . avoids the policy. . . there was no evidence that the plaintiff knew where . . Jabez was bound." Judgment entered on the verdict for the plaintiff: [120] " Perceiving nothing in this contract unfriendly to the morals or interests of the community; and no knowledge of an illegal intention being imputed to the plaintiff;" [Parker, C. J.]

[1] Stat. at L. 1786, ch. 3, sect. 7.

Sawyer v. Insurance Co., 12 Mass. 291, May 1815. "on arriving in sight of Port au Prince [April 1812] he [the master of the brig *Lydia*] was hailed by an armed brig belonging to the king of Hayti, . . [292] The king of Hayti and all his officers were blacks, except his majesty's interpreter, who was a mulatto. . . The defendants produced a copy of the condemnation," [1]

Dunbar v. Mitchell, 12 Mass. 373, July 1815. "one James, a native Indian or aboriginal, was formerly seized of the land demanded, . . he died . . leaving . . a daughter named Hannah, . . the mother of the demandant; . . Hannah having been lawfully married to one Dunbar, . . Dunbar was a negro or mulatto, and . . Hannah was an Indian of the whole blood."

Inhabitants of Stockbridge v. Inhabitants of West-Stockbridge, 12 Mass. 400, September 1815. "*assumpsit* for expenses incurred . . in support of one Frank Duncan, a pauper, . . Williams . . previous to . . August 1770, being the owner of a forge and being in want of a bloomer to assist in working the same, he heard of a black man, who was a slave and said to be a good workman, then living with his master in New-Jersey. Having conscientious objections against holding a slave, the witness purchased the time of the slave for ten years, for which he paid the master 100 *l.* New-Jersey currency. He brought the man . . the pauper above named, to West-Stockbridge and he continued in the service of the witness, until he was fully paid and satisfied for the money he had advanced for his services" Plaintiffs nonsuit: [402] "it has been inferred by the counsel for the plaintiffs . . that the pauper became the slave of Williams, and through him gained a derivative settlement in West-Stockbridge.—But . . we think it repugnant to the terms of the contract, and the obvious intention of the parties, . . Williams . . expressly denies that he purchased the pauper, or held him as a slave. He considered him as a servant, but not as in a state of slavery. He treated him a[s] such; nor could he by any reasonable construction of the contract, legally treat him otherwise. The property in the slave remained unaltered by the contract: unless it may be considered as amounting to a manumission. Certainly the property was not transferred to Williams against his will, and his conscientious scruples, as expressed to the master, when he made the contract." [Wilde, J.] [2]

Locke v. Swan, 13 Mass. 76, March 1816. [77] "a return cargo was made up, consisting of gold dust and various other productions of the country [Africa] . . 1812 . . [the brig] was captured . . by the British frigate . . and was carried to Halifax. The defendant [who had hired the brig] was permitted to be on shore on his parole, a mulatto servant of his being the only one of the original crew remaining on board. While the brig lay at Halifax, the defendant, with the aid of the . . mu-

[1] "Henry . . first crowned monarch of the new world, . . etc. . . [293n.] Thus judged . . in Court, in presence of M. the king's procurer, by us, counsellor, seneschal, civil, criminal and police judge, performing the functions of judge of the admiralty, in the absence of the Titulaire."

[2] See same *v.* same, pp. 492, 494, *infra*.

latto, succeeded in secreting and getting into his possession gold dust to the value of 4000 dollars;"

Caesar v. Bradford, 13 Mass. 169, March 1816. "Caesar entered his action against Ingraham, and . . 1812 . . recovered judgment for 309 dollars 50 cents damage and costs."

Emerson v. Howland, 8 Fed. Cas. 634 (1 Mason 45), May 1816. Emerson, "being owner of a slave, called Ned, at Norfolk, in Virginia, on the 2d of March, 1811, shipped him as a mariner, at the monthly wages of $22.00 on board of the *Ann Alexander,* Kempton master, on a voyage from Norfolk to Liverpool, . . the ship . . sailed from thence for Archangel, and while on the voyage . . was captured by a Danish cutter, and carried into Drontheim, in Norway, for adjudication. . . About ten days before the restoration, Captain Kempton discharged all his crew, . . Ned received his discharge at the same time . . and Captain Kempton gave him a due bill for the amount of his wages up to that time [September 1812], and also a letter to his master," in which he says: [635] "Ned has behaved himself extraordinary well, while on board, and has discharged every duty with propriety. I have had the misfortune to be taken by the Danes, . . and am under the necessity of discharging your servant Ned." [634] "Ned went immediately on board of the barque *Frederick*, Coffin master, then bound to London, under an engagement to work for his passage without wages. Captain Kempton stated to Captain Coffin, that Ned was a slave; and requested him, on his arrival in London, to procure him a passage to the United States, and to assist him in this object he gave him £5 sterling. The barque proceeded to London, and on his arrival there, about the 1st of November, 1812, Captain Coffin procured a passage for Ned in a cartel, then bound to New York; and gave him the £5 to enable him to proceed from New York to Norfolk. . . The cartel arrived at New York on the 29th of March, 1813; but there was no positive evidence that Ned came home in her, or had ever returned to the United States."

Inhabitants of Stockbridge v. Inhabitants of West-Stockbridge, 13 Mass. 302, September 1816.[1] "a petition for a review . . The petitioners set forth . . that Mr. Williams, whose deposition was used . . was, at the time of his testifying, a very aged and infirm man, and since that time has died: that since his death, . . there has been found among his papers, by his executors, a bill of sale of Frank Duncan, . . by which William Bott of New Jersey, on the second of April 1770, in consideration of 100 *l.* paid him by the said Williams, sold him the said Duncan, then about 25 years of age, to hold to him, his executors, etc. during the natural life of the said Duncan," "by which it appears that the said Williams testified under a mistake, and that the said Duncan was his slave, and was therefore lawfully settled in . . W. Stockbridge." [304] "let the petitioners take their review."

[1] See same *v.* same, p. 491, *supra,* and p. 494, *infra.*

Inhabitants of Andover v. Inhabitants of Canton, 13 Mass. 547. November 1816. "*assumpsit* for 499 dollars 65 cents, expended in the relief . . of . . Lewis Elisha, his wife and four children. . . Lewis Elisha was born in that part of . . Stoughton which is now Canton, in . . 1773. His parents were Caesar Elisha and Abigail Moho, who were . . married in 1769. . . Caesar was, at the time of Lewis's birth and long before, a negro slave of Charles Wentworth, and so continued till his death in March 1780. . . Wentworth had a legal settlement in that part of Stoughton now Canton, . . Abigail Moho . . was the daughter of an Indian father of the Punkapog tribe, whose . . lands are within the limits of Canton; and her mother was a white woman, but admitted by the guardian of said tribe as one of their number. . . Lewis Elisha left Canton about 1788 or 1789, and never returned. In 1803 he married Hannah Richardson, the daughter of a mulatto father and a white mother, having her settlement before marriage in Andover or Boxford. Before the year 1765 and ever since, the Punkapog tribe . . have had guardians appointed over them, by the government of the province and commonwealth, . . On the 7th of November 1763 [1765[1]] the general court passed a resolve that Joseph Billings, guardian of the said tribe, be directed to take the same care of the mulatto children of the said tribe, as of the other Indians; and to bind out the said mulatto children as other Indians:" Plaintiffs nonsuit: [549] "There is no doubt that she [Abigail] was a mulatto, within the meaning of the legislative acts, providing for the care of this tribe of Indians and of those who mixed with them. . . [550] As between the years 1767 and 1789 there was no mode of acquiring a new settlement, but by approbation of the inhabitants . . and as Lewis left Canton in . . 1789 without ever having obtained such approbation; . . he has no legal settlement there, unless his *birth* gave it to him, or unless he derived it from his *father*, or his *mother*. . . after the passing of the provincial act of 7 Geo. 3,[2] . . 1767, it has been held [that birth gave no settlement] . . here. . . Did Lewis then derive a settlement in Canton from his father Caesar?—At the time of his birth, Caesar was a slave, and . . [551] was the property of his master, as much as his ox or his horse: he had no civil rights, but that of protection from cruelty; he could acquire no property, nor dispose of any without the consent of his master. . . he had not the capacity to communicate a civil relation to his children, which he did not enjoy himself, except as the property of his master. . . [553] the foundation of derivative settlements is the right to controul the person; which right could never be enjoyed by one held in absolute slavery." Lewis's [551] "mother was free, being the daughter of an Indian and a white woman both of whom were free. . . [552] we think there is no doubt that, at any period of our history, the issue of a slave husband and a free wife would have been declared free. So that Lewis never did become the property of his father's master; and so did not obtain a settlement through him as a slave. . . [553] Lewis derived no settlement in Canton from his father: and it is equally clear that he could derive none from his mother. For the mother

[1] 18 Acts of the Prov. 69.
[2] Act of March 1767, 4 Acts of the Prov. 912.

communicates a settlement only to *illegitimate* children. Besides, nothing in the case shows that Abigail Moho . . was herself lawfully settled in Canton. . . although she might perhaps . . have left the tribe as her son Lewis did; yet while she continued subject to the regulations established for that tribe, she could not be considered as having any municipal relation to the inhabitants of Canton: . . [554] The mother of Lewis, therefore, was not settled in Canton, in consequence of living within its limits: nor did Lewis . . gain a settlement by belonging to the tribe, for the same reasons:" [Parker, C. J.]

Inhabitants of Stockbridge v. Inhabitants of West-Stockbridge, 14 Mass. 257, September 1817. "This action . . came on again for trial upon a review granted by the court,[1] . . Williams . . had given his deposition . . that he supposed there was a deed or writing between him and the former owner, but had no particular recollection about it. It did not appear that he considered himself bound to restore the slave to his former master, at the end of the ten years. . . [258] Williams died in June 1815, and in . . October his son . . accidentally found . . a bill of sale [2] from . . Bott . . to . . Williams, of a negro slave called Frank, . . 1770: . . in the handwriting of . . Williams; . . the owner of the . . slave was . . Firman of New York, of whom . . Bott had hired him; that Firmin [*sic*], at the request of the slave, had written a letter to Bott, requesting him to sell the slave, or find another master for him; that Williams came there to procure a man to work at his furnace . . and upon Bott's recommendation Frank consented to go with him, he agreeing with Frank that if he would serve him faithfully for ten years, he would then give him his time, and would also give him a yoke of steers and ten acres of land; saying that he did not keep slaves any longer than till they had earned what he paid for them. . . Frank . . continued in his service seven years, and paid him *l.* 30 for the other three years . . which sum he paid out of the wages and bounty given him as a soldier in the army of the United States. . . [259] the judge instructed the jury, that . . Frank became the slave of . . Williams; and that his intention or his agreement . . to give him his time at the end of ten years, upon the condition of his good behaviour . . would make no difference in the case. A verdict . . for the plaintiffs," Judgment on the verdict: [261]" the bill of sale . . appears to have been a full . . transfer of the slave for his life. Williams's scruples . . made no difference in the character of his property. Nor did his intentions to emancipate him, or his promise to that effect, . . [262] in any wise affect the nature of his purchase. No contract made with the slave was binding on the master: for the slave could have maintained no action against him, had he failed to fulfil his promise, which was an undertaking, merely voluntary on his part. While Frank continued in Williams's service, he was to every intent his slave. He had a legal right to keep him in service for life, and in case of his sickness or inability to labour, his master must have supported him at his own expense." [*Per Curiam.*]

[1] See same *v.* same, pp. 491, 492, *supra.*
[2] *Id.*

Frith v. Sprague, 14 Mass. 455, November 1817. "Oakman Sprague . . at Turk's Island, . . 1808, in consideration that . . Frith would become bound to the king, as surety for . . Oakman, in a bond in the penal sum of *l.* 100 sterling, with condition that the brig *Mars*, of which . . Oakman was then master, should not carry out of the government of that island any servant or slave, without leave of the master or owner, or person having the charge of the same, . . in writing, promised to indemnify said Frith, and save him harmless etc. . . the *Mars* did carry a slave from the island without leave . . Frith was obliged to pay . . on the 18th of December 1809, 525 dollars to Messrs. Wood and Joel, the owners of the slave." Verdict for the plaintiff. Judgment on the verdict.

Watson v. Inhabitants of Cambridge, 15 Mass. 286, October 1818. "*Assumpsit* for the support of one Venus Whittemore, . . the plaintiff proved that . . Venus was ninety years old, and that she was formerly the slave of . . [287] Whittemore deceased, . . an inhabitant of Cambridge; . . The defendants proved that the administrator of . . Whittemore, in . . 1793, disposed of . . Venus at auction to . . Watson of Cambridge . . who gave to the said administrator a bond in the penal sum of £200, conditioned to provide for the support . . of . . Venus, in raiment and diet, . . in sickness and health, in a comfortable manner, and at her death to cause her to be decently buried, free of expense to the heirs of . . Whittemore; . . Venus was present at the said auction, and refused to go into the family of one of the bidders; that in consequence . . the auction was suspended for some time; that said Watson, after the auction, said he had undertaken to support . . Venus during her life; and that he did support her during his life. And the defendants contended that . . she had a right to recover the money, necessary [for her support] . . of the administrator of . . Watson; and so . . was not a pauper. . . the judge instructed the jury . . [288] that the evidence adduced by the defendants was not admissible, to prove that . . Venus had any estate: . . verdict for the plaintiff, . . But if, in the opinion of the whole court, the direction of the judge was wrong, the verdict was to be set aside," Judgment on the verdict: [290] "In this bond[1] . . she had no legal interest, . . Perhaps the town may be entitled to relief from the estate of Watson, if that is liable on the bond." [Parker, C. J.]

Inhabitants of Lanesborough v. Inhabitants of Westfield, 16 Mass. 74, September 1819. "*Assumpsit* for the support of Lucy Goman and William Hector Goman jun. paupers . . Plato and Flora his wife, parents of . . Lucy, were the slaves of . . [75] Bancroft, an inhabitant legally settled in Westfield, before the revolution: . . Lucy was born in April 1778, and continued with her . . parents in the family of . . Bancroft, until the . . adoption of the constitution of the commonwealth: that she resided in Westfield until . . 1803, when she removed to Lanesborough, and has dwelt there ever since: . . 1804 she was married to . . Goman, who has never gained a settlement in any town; . . William H. Goman jun., . .

[1] [290] "given by . . Watson . . in . . 1793."

was the legitimate child of the . . marriage," Plaintiffs nonsuit: "The plaintiffs cannot prevail, unless Lucy Goman derived a settlement in Westfield from her parents, who had their settlement in that town derivatively from Bancroft, . . it has been before settled that slaves did not communicate civil relations of any sort to their children.[1] . . By the colonial law of 1646[2] no bond slavery could exist, except in the case of lawful captives taken in just war, or such as willingly sold themselves, or were sold to the inhabitants.[3] Of course, the children of those who were . . slaves, not coming within the description, could not be held as slaves.[4] And in the year 1796 it was solemnly and unanimously decided by the court, that the issue of slaves, although born before the adoption of the constitution, were free.[5] Lucy . . [76] then did not derive a settlement in Westfield from her parents, nor from their master: nor did she acquire one from birth, that not giving a settlement at the time she was born. She must therefore be *filia reipublicae,* never having gained a settlement in any other town . . and the issue of her marriage . . is in like condition," [Parker, C. J.]

Inhabitants of Milford v. Inhabitants of Bellingham, 16 Mass. 108, September 1819. "*Assumpsit* to recover the expense of supporting Bess Corbett, a negro woman, . . she was born in the family of the late Dr. Corbett of Bellingham, long before the revolution, and was his slave. The defendants contended that Corbett had given her to his grand-daughter Esther . . who in . . 1778 married a Col. Frost of Milford, and that she was taken into his family, and remained there until some years after she became manumitted by the adoption of the constitution of the commonwealth. It was testified by a Mr. Craggin and his wife, that when Bess was six or seven years old, Dr. Corbett requested them to take her and bring her up, so that she might be useful to his said grand-daughter when she should be married, to whom he said he intended to give her. . . [109] Dr. Corbett also said that he had given each of his daughters one slave, that the one which he had given to Esther's mother he had taken back upon her death, and that he intended this negro girl for Esther in lieu of that [one] . . Col. Frost . . came for Bess soon after the marriage, and took her home with him, saying she had been given to his wife by her grandfather. . . There was some evidence contradictory . . particularly the deposition of Col. Frost, who denied that Bess ever belonged to him or his wife as a slave. . . the jury . . returned a verdict for the defendants:" Judgment on the verdict: [110] "A bill of sale, or other formal instrument, was not necessary to transfer the property in a slave, which was a mere personal chattel, and might pass, as other chattels, by delivery."

[1] Andover *v.* Canton, p. 493, *supra.*

[2] 1641. The Code of Fundamentals, or Body of Liberties of the Massachusetts Colony in New-England.

[3] Ancient Charters 52.

[4] G. H. Moore maintains the contrary in his *Notes on the History of Slavery in Massachusetts,* p. 11 *et seq.* See also Mass. Hist. Coll. (3d ser.), VIII. 231.

[5] Littleton *v.* Tuttle, p. 482, *supra.* Judge Parker omits to state that Chief Justice Parsons cited Littleton *v.* Tuttle, only to disapprove of the opinion of the court (*ibid.* 129). His disapproval was, however, only an *obiter dictum.*

Inhabitants of Medway v. Inhabitants of Needham, 16 Mass. 157, October 1819. "*assumpsit* for expenses incurred in the support . . of Ishmael Coffee and his wife, . . [158] he was a mulatto, and his supposed wife a white woman: and they were inhabitants . . of Massachusetts Bay at the time of the supposed marriage, which was previous to . . 1770. As the laws of the province at that time prohibited all such marriages,[1] they went into . . Rhode Island, and were there married . . such a marriage not being then prohibited by the laws thereof. It was objected by the defendants, that this marriage was void in law; . . But the judge overruled the objection, . . verdict for the plaintiff" Judgment on the verdict.

U. S. v. La Coste, 26 Fed. Cas. 826 (2 Mason 129), October 1820. Indictment [2] against Adolphe La Coste "for causing a certain vessel, called the *Science,*[3] to sail from the port of New York, for the purpose of procuring negroes . . from Africa, to be . . disposed of as slaves." "the defendant was first apprehended and brought into Massachusetts district," Verdict of guilty. [831] "motions for a new trial and in arrest of judgment are overruled,"

U. S. v. Smith, 27 Fed. Cas. 1167 (2 Mason 143, October 1820. See U. S. *v.* La Coste, *supra.*

Commonwealth v. Green, 17 Mass. 515, March 1822, "convicts in the state prison, were indicted . . for the murder of Billy Williams, a negro and a fellow convict" [551] "An insurrection had taken place among the prisoners. The man . . was found, beaten and mangled in a cruel manner. The prisoner was seen, with many other convicts, rushing from the place where the murdered man lay, in pursuit of another victim, . . The prisoner uttered . . his intentions to wreak his vengeance upon others."

U. S. v. La Jeune Eugenie, 26 Fed. Cas. 832 (2 Mason 409), May 1822. [833] "This was a libel against the schooner *La Jeune Eugenie* [Raibaud and Labatut, claimants] for being engaged in the slave trade." In order to enforce more effectually the acts of Congress against the slave trade [4] "the public armed schooner *Alligator,* commanded by Robert F. Stockton, Esq. was sent among other vessels to cruise on the coast of Africa early in the year 1821. On the 17th of May last, Captain Stockton fell in with the schooner *La Jeune Eugenie* at Galenas near Cape Mount, on the western coast of Africa, and captured her on the suspicion of her being engaged in the slave trade; she at that time bearing the French flag, and having papers. She was brought, under the charge of a prize master, into the port of Boston, and libelled . . as an American vessel engaged in the slave trade. . . it appeared from her register that she was owned by Messrs. Raibaud and Labatut, residents at Basseterre in Guadaloupe, but was built in the Unied States. It also appeared in evidence that she was

[1] Ancient Charters 748.

[2] "on the second and third sections of the act of 20th of April, 1818, c. 86 [3 Story's Laws 1698; 3 Stat. at L. 450, c. 91], against the slave trade."

[3] See facts in U. S. *v.* Malebran, p. 377, *supra.*

[4] See acts of Congress, Mar. 2, 1807; Apr. 20, 1818, 3 Stat. at L. 450; Mar. 3, 1819, 3 Stat. at L. 532; May 15, 1820, 3 Stat. at L. 600.

fitted out at Basseterre in the month of February, next preceding her capture; sailed from thence, sometime in the same month to St. Thomas, and from thence to the coast of Africa, with the ostensible purpose of procuring palm oil and other products of Africa. Wm. W. M'Kean, a midshipman on board of the *Alligator*, and the prize master, who brought the *Eugenie* into the port of Boston, deposed that the *Eugenie* had a moveable deck, that her main hatchway was very large, and grated with three iron bars, that the water on board was sufficient to supply two hundred men for a month; and her provisions, including rice, enough for her crew for a twelve month. Joseph Dickson, a seaman belonging to the *Alligator,* deposed, that the *Eugenie* had a crew of nineteen persons including boys; some of them Spaniards and some Italians, that she had a large supply of provisions, sufficient for her crew for five months, and a number of handcuffs and fetters. It was also in evidence that there was a surgeon attached to the vessel, and a supply of medicines on board. Henry Henderson, a seaman belonging to another vessel on the coast, which was also captured by the *Alligator* deposed, that he was on shore at a place called the 'Factory' four and a half days, in company with the captain of the *Eugenie*. And that he understood that the *Eugenie* was then after a cargo of slaves. That the captain had then procured twenty or more, and said that he should have all the slaves ready in twenty days; and Henderson further deposed, that he was told by the owner of the Factory, that the captain of the *Eugenie* was to have 250 or 300 slaves; and that he also heard the king's son say the same thing. All the seamen belonging to the crew of the *Eugenie,* who were examined, deposed, that they had no reasons whatever to suppose that the vessel was engaged in the slave trade. A claim was entered by the Chevalier de Valnais, the French consul, on behalf of the owners of the *Eugenie,* and also a protest against the seizure and judicial proceedings, on behalf of the French government. A claim for restoration of the vessel and damages for her seizure and detention was also made by M. Alleye de Billon, the attorney and agent of the owners, Messrs. Raibaud and Labatut." William Sullivan, counsel for the claimants, gives the history of African slavery,[1] and declares: [839] "It is the inefficient attempt at abolition, which is chargeable with these enormities:" "human beings are concealed in casks—and sometimes thrown into the sea" . . "the narrow space of a small swift-sailing vessel is filled with living men, women and children; shut up, where it is agony to breath;—where the living, the dying, and the dead, are found in the same fetters; . . No half-way measure can be justified. . . the means should be found of detecting, and punishing those, who stay at home, but who furnish the capital for the traffic, and who are far more guilty, than the brutal agents, whom they employ."

Held: I. [841] "the claimants in this case" must "show the bill of sale, by which they acquired their title, . . give the names of the American owners; and . . establish to a reasonable extent, that the transfer was for a valuable consideration." "It cannot be concealed, however hu-

[1] Pp. 836, 837.

miliating the fact may be, that American citizens are, and have been, long engaged in the African slave trade, and that much of its present malignity is owing to the new stimulus administered at their hands. I speak what the records of this court show; what the records of the government show; what is loudly and vehemently complained of by that foreign government, which is so zealously enlisted in the cause of its abolition." II. [847] "I am bound to consider the trade an offence against the universal law of society [1] and in all cases, where it is not protected by a foreign government, to deal with it as an offence carrying with it the penalty of confiscation. . . [849] the *onus probandi* rests on the claimants to establish the legitimate existence of the trade in France; and more especially since her recent declarations in the face of all Europe, that she had caused it to be everywhere abolished."

Decreed: [851] "that the property be delivered over to the consular agent of the king of France, to be dealt with according to his own sense of duty and right." [Story, J.]

The Alexander, 1 Fed. Cas. 362 (3 Mason 175), May 1823. The brig *Alexander* had no slaves on board, and none had been taken on board during the voyage, for transportation.

Held: "every vessel fitted out for the purpose of the slave trade may be truly and accurately said to be employed in that business, and carrying it on, as soon as she has sailed on the voyage. It matters not at what point of the voyage she is captured, her enterprise is the slave trade, and every act done on such a voyage is an act of carrying it on." [2] [Story, J.]

[1] [845] "What is the fact as to the ordinary, nay, necessary course, of this trade? It begins in corruption, and plunder, and kidnapping. It creates and stimulates unholy wars for the purpose of making captives. It desolates whole villages and provinces for the purpose of seizing the young, the feeble, the defenceless, and the innocent. It breaks down all the ties of parent, and children, and family, and country. It shuts up all sympathy for human suffering and sorrows. It manacles the inoffensive females and the starving infants. It forces the brave to untimely death in defence of their humble homes and firesides, or drives them to despair and self-immolation. It stirs up the worst passions of the human soul, darkening the spirit of revenge, sharpening the greediness of avarice, brutalizing the selfish, envenoming the cruel, famishing the weak, and crushing to death the broken-hearted. This is but the beginning of the evils. Before the unhappy captive arrive at the destined market, where the traffic ends, one quarter part at least in the ordinary course of events perish in cold blood under the inhuman, or thoughtless treatment of their oppressors. Strong as these expressions may seem, and dark as is the colouring of this statement, it is short of the real calamities inflicted by this traffic. All the wars, that have desolated Africa for the last three centuries, have had their origin in the slave trade. The blood of thousands of her miserable children has stained her shores, or quenched the dying embers of her desolated towns, to glut the appetite of slave dealers. The ocean has received in its deep and silent bosom thousands more, who have perished from disease and want during their passage from their native homes to the foreign colonies. I speak not from vague rumours, or idle tales, but from authentic documents, and the known historical details of the traffic,—a traffic, that carries away at least 50,000 persons annually from their homes and their families, and breaks the hearts, and buries the hopes, and extinguishes the happiness of more than double that number. See state papers of congress for 1821; report on the slave trade, February 9, 1821, page 59. 'There is,' as one of the greatest of modern statesmen has declared, 'something of horror in it, that surpasses all the bounds of imagination.' Mr. Pitt's speech on the slave trade, in 1792. It is of this traffic, thus carried on, and necessarily carried on, beginning in lawless wars, and rapine, and kidnapping, and ending in disease, and death, and slavery,—it is of this traffic in the aggregate of its accumulated wrongs, that I would ask, if it be consistent with the law of nations?" [Story, J.]

[2] Act of 1800, ch. 51. 2 Stat. at L. 70, sect. 1.

Commonwealth v. Griffith, 2 Pickering 11, October 1823. "indictment for an assault and battery and false imprisonment committed on the body of a negro, named Randolph, in . . [12] New Bedford. . . The defence . . was, that Randolph was a slave, formerly the property of . . M'Carty, of . . Virginia, . . deceased; Randolph having fled from his service in his life time. . . came to New Bedford four or five years ago, and . . had a dwelling-house there, . . The defendant had authority in writing . . from one Mason, the administrator . . and as Mason's agent and attorney, to seize . . Randolph, pursuant to U. S. Laws, 2 Cong. 2 Sess. c. 7, Sect. 3, . . and to take him before a judge or magistrate, and then remove him to . . Virginia . . it . . was admitted, that by the laws of Massachusetts Randolph did not owe service to any one; and further, that no letters of administration had been granted upon the estate of M'Carty within this commonwealth. The defendant, accompanied by a deputy sheriff, but without any warrant or other legal process, (though it appeared that application had been made by him to the District Judge . . who had decided that a warrant or other process was not authorized by the act of Congress, and was not necessary, seized Randolph and kept him in confinement for an hour or more, intending to have an examination before a magistrate, pursuant to the act above mentioned. A verdict was taken against the defendant;" Defendant discharged: [18] "a letter of attorney was not required to communicate power to this agent. . . if it was necessary to pursue the slave in the character of administrator, the authorities are clear against the defendant. But by the statute of the United States the person to whom the service is due may reclaim, and by the laws of Virginia an administrator is such person. . . This brings the case to a single point, whether the statute of the United States giving power to seize a slave without a warrant is constitutional. It is difficult in a case like this, for persons who are not inhabitants of slaveholding states, to prevent prejudice from having too strong an effect on their minds. We must reflect, however, that the constitution was made with some states in which it would not occur to the mind whether slaves were property. . . [19] They might have kept aloof from the constitution. That instrument was a compromise. . . The words of it were used out of delicacy, so as not to offend some in the convention whose feelings were abhorrent to slavery; but we there entered into an agreement that slaves should be considered as property. Slavery would still have continued if no constitution had been made. The constitution . . leaves [the mode of reclaiming a slave] . . to be determined by Congress. . . It is said that the act . . is contrary to the amendment of the constitution, securing the people in their persons . . against seizures . . without a complaint upon oath. . . It is very obvious that slaves are not parties to the constitution, and the amendment has relation to the parties. But it is said that when a seizure is made, it should be made conformably to our laws. This does not follow . . Whether the statute is a harsh one, is not for us to determine. . . We do not perceive that the statute is unconstitutional, and we think that the defence is well made out." [Parker, C. J.] Thacher, J. dissented: [20] "I

think it is the intention of the statute that the seizure of a slave here shall be by process of law here." " The Chief Justice then remarked that the construction now given . . had been adopted ever since the federal constitution went into operation, by Lowell and Davis, justices of the District Court of the United States."

The Marianna Flora, 11 Wheaton 1, February 1826. [11] " the *Alligator* was a public armed ship, belonging to the navy of the United States, and sent out to cruize against pirates and slave traders, under the different acts of Congress passed for the suppression of these offenders."

Commonwealth v. John Robinson and Sophia Robinson, Thach. Cr. Cas. 488, December 1827. The indictment [1] " charged that the defendants, on the 17th day of September, A. D. 1837, at Cambridge, seized . . a certain female child . . of five years of age, . . and kidnapped said child, . . The following testimony was introduced for the prosecution. Henry Bright. . . About two years since I lived in Mobile. While there, I had a female slave, a very excellent woman, who died, leaving a female infant,[2] whom my wife has since taken care of as her own. This child was removed to Cambridge with my family, . . On missing the child [on September 17], I made inquires, and learnt she had been taken to Boston, in a carriage, by Mrs. Robinson. Soon after, I went to some leading abolitionists in Boston, as I supposed the persons who had taken the child must have done so under a mistaken notion. I called on Samuel E. Sewell [*sic*], Esq. with my wife. We stated to him . . [489] that we had brought the child here to educate; that we had left Mobile with a view to reside here permanently; that the child was very much attached to Mrs. Bright, and she to the child; that we suppposed she had been taken from us by the abolitionists, under the impression that she was a slave, and that we were ready to give them entire satisfaction that such was not the fact; that we were willing to give security to any amount that she should never be made a slave, and that we were only actuated by a desire for the good of the child. Mr. Sewall advised us to draw up a paper,[3] setting forth the last-mentioned facts. At my request he drew up one; I signed it, and left it with him. The next morning I called on him again. He told me he had seen Mr. Snowden, the colored clergyman; that the latter could probably find the child, but, as the colored people were jealous of those who came from the South, he should like to have a bond from me that the child should never be carried into a slave-holding state. At my suggestion,

[1] Under Rev. Stat. ch. 125, sects. 20, 21.

[2] [495] " Stephen Burt, formerly Mr. Bright's slave, but emancipated by him, testified that on the day of the death of the child's mother, she gave her to a colored fellow servant by the name of Eleanor."

[3] [493] " Boston, Sept. 18, 1837. *To whom it may concern.* A colored child, named Elizabeth, aged about 5 years, having been taken from me, on suspicion of being a slave, I think it proper to declare that I do not claim her as a slave—that when she was brought here, it was with the intention of having her free and so brought up—and though I intend to go to the South and spend this winter, I have no design of taking her back. Mrs. Bright is attached to the child and wishes to bring her up to be a useful woman. I hereby promise never to claim the said Elizabeth as a slave, or to carry or send her to the slaveholding states as one. It may be proper to add, that Mrs. Bright is an immediate abolitionist. HENRY BRIGHT."

he drew a bond, the penalty of which was five hundred dollars.[1] I called the next morning. . . the young man in the office said the colored people would not give up the child. I then went to Mr. Ellis Gray Loring's office, knowing that he was an influential abolitionist. He said . . that he was satisfied that the child ought to be given up. He said some colored people had called on him; that he would send for them, and let me know the result. I called the next morning on Mr. Loring. After some private conversation between Mr. Loring, Mr. Sewall, and a Mr. Hanson, the latter expressed a desire that the child should be given up, and directed us to call on Mrs. Robinson. I requested a letter from Messrs. Sewall and Loring to her. They gave me one, the substance of which was, that they thought the child ought to be given up, as they did not suppose she would ever be made a slave. I then called on Mrs. Robinson with my wife. Her husband was present a part of the time. I . . [490] stated . . that we held it as a free child. She said . . that she took the child from Cambridge; that she had requested a Mr. Lewis, an aged colored man, at Cambridge, to bring the child to Boston, but he refused to do so; but that he was at my house for a trunk, the morning the child left, and sent the child into the street; that she then took the child and brought it to Boston; that she did not take it on her own account, but at the request of two white ladies; . . The next morning . . She . . directed us to call on the two Misses Parker, in Hayward Place. . . They said they knew nothing of the little girl till the evening before, when Mrs. Robinson told them of her; . . We stated to them the facts . . They said immediately, that the child should be restored, and one of them went with me to Mrs. Robinson. We found Mr. Snowden at Mrs. Robinson's house. Mr. Robinson came in soon. Miss Parker advised them to give up the child. Mr. Robinson said he was perfectly willing to do what those benevolent ladies advised. Mr. Snowden remarked . . [491] that some of the colored people thought the bond was not sufficient; that he had nothing to do with it, but he thought that if the bond was made larger, it would be satisfactory. I answered that I would make the penalty of the bond as large as was deemed reasonable and proper, and that my only desire was the good of the child. Mrs. Robinson still hesitated about giving up the child. . . She said that if we would call at Mr. Ellis Gray Loring's office in the afternoon, we should have a final answer, and that the child would probably be there. We called there and found Mr. and Mrs. Robinson, with several other colored persons there, with Mr. Loring. The child was not there. Mrs. Robinson said, that, notwithstanding the white people wished them to give up the child, the colored people thought differently, and were determined not to give her up, unless there was some law to compel them. Something was said in regard to treatment of the child while in our possession. We answered them she was treated with uncommon kindness, and if they would inquire of our neighbors or domestics, they would be satisfied of

[1] [494] "Boston, Sept. 19, 1837. I further agree and promise Samuel E. Sewall, to pay him the sum of $500, on demand, in case the said Elizabeth is carried into any one of the slaveholding states by me or through my agency or permission, in consideration of his exerting himself to find and restore the said Elizabeth to my protection. The above sum, if forfeited, I agree that said Sewall may apply for the anti-slavery cause. HENRY BRIGHT."

this fact. I also said, that I was a native of Massachusetts, and my wife of Connecticut, and that our sympathies with northern people were as strong as theirs. Till this time I had pursued the business with patience, supposing their motives were good. I now became excited. I next applied to Charles G. Loring, Esq. for counsel. By his advice I took out letters of guardianship in Middlesex county. . . I called on the defendants with an officer, and after reading to them the letters of guardianship, I demanded of them the child. At first, Mr. Robinson said, he presumed we could have the satisfaction we wished. When his wife came in, she said she would not give up the child, but would stand a suit, or words to that effect. We had some conservation with a colored woman present, who said she believed the child was out of town. I then applied to Chief Justice Shaw for a writ of *habeas corpus,* but got no relief there. I then brought a civil action, as guardian for the child, against the defendants. Damages were laid at one thousand dollars, and property was attached. This did not have the effect to produce the child, as I supposed it would. I then complained to the grand jury." Ellis Gray Loring testified: [492] "The colored people expressed an entire distrust of Mr. and Mrs. Bright's sincerity, as they were slaveholders. . . Some of the colored people said the child was ill-used at Mr. Bright's; that there were marks of a bruise on its head, and that her hair had not, from appearance, been combed for a long time. . . they were not sure that they could restore the child—and another suggestion was, that the slaveholders, with their smooth tongues, could deceive Mr. Sewall and myself, but could not deceive the colored people. The colored people were very much excited, and so were Mr. and Mrs. Bright. . . [493] Previously, another colored person had told me that there was a child at Cambridge, who was held by a slaveholder, and who would soon be carried into slavery. I was told that the child was permitted to go out of doors. I told the person that if the child was not restrained of her liberty, I doubted if any one could conscientiously take the oath on which to found a writ of *habeas corpus.* They asked what remedy there was. I told them that it was for the child to take its own liberty; that by a late decision in this state, this was the proper course. I was asked by these defendants, if they assisted the child to escape, whether they would be liable. I told them, they might lawfully receive the child, but had best return its clothing. . . I was told that the child was seven or eight years old. If I had known its real age, (5 years) I should have hesitated at giving the advice I did give. I never supposed Mr. and Mrs. Robinson intended any injury to the child." William Snowden: "I told Mr. Bright . . that the colored people thought the bond for $500, too low; that the child might be sold for that sum, and Mr. Bright would not be the loser if he forfeited the bond. Have known defendants several years. Their characters stand high." Mary S. Parker: [494] "Mrs. Robinson applied to me to procure a place for a child whom she supposed to be a slave. I told her I would procure a place. I did procure one, and informed her of the fact. It was understood that she was to send the child to our house, at No. 5, Hayward Place. The child was not sent to us. I next saw Mrs. Robinson at her house. I went there in consequence of an

interview with Mr. Bright. I assured Mrs. Robinson, that I felt a degree of confidence that the child would not be carried into slavery if returned to Mr. Bright. . . Have known Mrs. Robinson several years. Her character is good. . . [495] Mary Ann Whiting, sister of Mrs. Robinson, testified that the child remained at Robinson's till Monday morning, when . . some five or six colored people came to Robinson's house, and rang the bell. She ran up from the kitchen, and the child followed her. Upon opening the door, one of the men asked her if there was a slave child in the house. She said there was. They then asked if the child by her side was the one, and she said it was. The colored people then put on its bonnet, and took her off. The witness tried to hold the child back, but all the others laid hold of the child, and pulled her away. The witness has not seen the child since, but has heard that she was in Salem, and attended a school there. The witness said that all the colored people were entire strangers to her. . . the county attorney stated that Messrs. Sewall and Loring, Dr. Wainwright, Mr. Curtis and himself, had urged the defendants to restore the child, but that they had uniformily declared that the child was removed from their control, and that they did not know where she was. Parker, for the commonwealth. B. R. Curtis, for the defendants." Thacher, J. charged the jury: [496] "Having been brought into this state by her master, she ceased to be a slave, . . it being established law, that the moment that the master carries his slave into a country where domestic slavery is not permitted, he becomes free. . . [497] the supreme judicial court of this commonwealth. . . have gone to the utmost verge of law . . to withhold such a person from slavery. . . Elizabeth Bright . . was free . . and under the highest legal protection, and that she could not be . . carried out of [the state] . . against her will, either by Mr. Bright, who once claimed her as his slave, or by the defendants at the bar. . . [498] the child was happy and contented with its natural protectors, on the day of its abduction. The measures taken by Mr. Bright to recover the child, prove that he acted with humanity, and that he felt a deep interest in its welfare. . . persons came to the house [of the defendants] in their absence and took it away. Now it does not appear, that the defendants expressed surprise at this fact, or were dissatisfied with it, or that they took any pains to recover the child. . . Hence, if this abduction was the effect of a conspiracy, and the defendants were conspirators or accomplices in the act, they are accountable for the offence. . . [499] their former good character is not to avail for their acquittal, although it may speak much in mitigation of their punishment, especially if, by hastening to restore the child, they should acknowledge their fault. . . [500] From the fact, that, from the time the child was taken, to the present moment, it has been kept in secret confinement, away from its natural friends and protectors, and without their knowledge, and that the defendants now refuse to put it under the protection of the law, you must judge of the act done, and of the intent of the actors at the time. . . The jury returned a verdict, that both defendants were guilty of the first[1] and

[1] [488] "that the defendants . . seized and confined and imprisoned a certain female child . . with intent to cause her to be secretly confined . . in this state, against her will;"

second [1] counts, and not guilty on the other.[2] The defendants were sentenced to imprisonment for four months in the common jail, and to pay a fine of two hundred dollars and costs. The prisoners claimed an appeal, and gave bonds, in one thousand dollars each, to appear before the supreme judicial court." [3]

Whiting v. Smith, 13 Pickering 364, October 1832. "Action of slander. . . [365] 'she was no more fit to keep school than a whore from Negro hill.'" [4]

Brown v. Thorndike, 15 Pickering 388, March 1834. Thorndike's will, executed 1825: [389] "he directs the trustee . . 'that he shall not, without the free consent of my . . wife Mary M. dispose of the estate situate in . . Maryland, and consisting of land and negro slaves, of which I became possessed upon my marriage with said Mary M., but shall take care . . to have the said estate so improved as to be productive,' . . [390] after the execution of the will, . . Thorndike . . conveyed away . . all his right . . in the estate in Maryland,"

U. S. v. Gibert, 25 Fed. Cas. 1287 (2 Sumner 19), October 1834. In September 1832 pirates captured the brig *Mexican*, owned by Joseph Peabody of Salem. The pirate ship was a Spanish schooner (*Panda*), which sailed from Havana in August 1832, [1293] "bound to Cape Monte, on the cost of Africa, . . [1315] on a voyage in the slave trade, a voyage prohibited by the Spanish laws and treaties," The pirates left the *Mexican*, after carrying away the treasure and setting the ship on fire. [1289] "the captain contrived to get upon deck, and extinguished the fire . . Information of what had taken place . . was . . disseminated . . and reached the coast of Africa, where Captain Trotter [5] . . was then cruising." He captured the pirate ship, and the English government sent the crew to this country for trial. Story, J. (in summing up the case): [1292] "In regard to Ferrer, the cook, . . he was a black man, and possibly might be a slave, and no act was proved against him. If he was a slave, he was entitled to a very indulgent consideration, for he could hardly . . be deemed master of his own will. . . The jury returned a verdict of not guilty in favor of Ferrer, [and four others] . . and as to the rest of guilty."

U. S. v. Battiste, 24 Fed. Cas. 1042 (2 Sumner 240), October 1835. "Indictment for a capital offence, in being engaged in the transportation of slaves, contrary to the fourth section of the act of May 15, 1820 (chapter 113). . . Battiste sailed from New York, in July, 1834, in the brig *America*, . . bound to St. Helena or a market, . . at Nova Redondo . .

[1] "that the defendants seized the child with intent to hold her to service against her will."
[2] "that the defendants seized the child with the intent that she should be carried out of the state against her will."
[3] [500n.] "This appeal was entered at the March term of the supreme court, 1838; but on the 22d day of October of that year, upon request of Henry Bright, the prosecutor, and upon payment of costs,—the child having been returned to Bright, and the expenses of the civil suit having been large,—the commonwealth's attorney entered a *nolle prosequi*."
[4] [364] "right from the hill in Boston."
[5] "He was an officer of the British navy, stationed on the coast of Africa, with directions to use his exertions in suppressing the slave trade."

she received on board twelve negro slaves as passengers. These negroes were brought to the shore hand-cuffed, and chained together, attended by two negroes, a Portuguese and a soldier. Their fetters were then taken off, and they were carried aboard the *America*, without making any resistance. The negroes were young, the youngest being about fourteen years of age." The next day they reached St. Philippe. " The slaves, with some goods, were landed the next morning in one of the boats of the brig's the captain and mate going with them. . . she sailed to Old Benguela, where she took in fourteen negroes, who were also brought in irons to the shore, attended by a crowd of the natives, among whom was a king of the tribe. Battiste again assisted in removing the fetters, and receiving them on board the brig." The negroes were landed at Loando. [1043] " they next sailed to Old Benguela, where they took in wood and fowls; and thence to Nova Redondo for ivory. At St. Philippe . . they took in nineteen negroes, whom they received at the shore in irons; at Old Benguela, in the same manner they received twenty-one more negroes, . . On reaching Loando, they discharged this cargo in two or three boats; . . All were delivered, with the exception of a little girl, taken in at Nova Redondo, who was afterwards brought by Captain Miller to New York," Story, J. to the jury: " Neither the owners nor master of the brig, nor Battiste, nor any of the crew, had any interest or property in these negroes, or in the sale of them. They did not co-operate in making them slaves, or in perpetuating their state of slavery, unless the mere transportation of them . . [1044] is to be deemed such an act." The jury [1046] " found a verdict of not guilty for the prisoner. He was afterwards indicted on the second section of the act of 1800 (chapter 51), . . he received sentence for the offence."

Commonwealth v. Aves, 18 Pickering 193, August 1836. " *Habeas corpus.* On the 17th of August, 1833 [*sic*], upon the petition of Levin H. Harris, of Boston, representing that a colored female child, named Med, of New Orleans, was unlawfully restrained of her liberty by Thomas Aves of Boston; a writ of *habeas corpus* was granted by Wilde J., in vacation, . . Aves states . . that in 1833, Samuel Slater, a citizen . . of Louisiana, purchased the child and its mother . . for his slaves, . . [194] that . . about the first day of May, 1836, . . Mary Slater, the wife of S. Slater and the daughter of Aves, left New Orleans for the purpose of coming to Boston and visiting her father, intending to return to New Orleans and to her husband, . . after an absence of four or five months . . that the mother of the child remained in New Orleans, . . that the child was confided to the custody . . of Aves by Mary Slater . . during the absence of Mary Slater from Boston for a few days . . that this child . . is by force of the laws of Louisiana a natural child; that by the same laws the mother of a natural child is its legal guardian, and that such right of guardianship over the infant children of a slave, where such children are not themselves slaves, devolves upon the owner of their mother; that if this child is, by force of the laws of Massachusetts, now emancipated . . Slater, as the owner of the mother . . is entitled to the custody of the person of the child as its legal guardian, and that Aves is

the agent . . of . . Slater . . that the child is about six years of age and wholly incapable of taking care of itself; . . that no private person or magistrate has, by the laws of Massachusetts, any right to take the child out of the possession of Aves while he continues to use that possession . . [195] only for the purpose of benefiting the child, and only restraining it of its liberty so far as is necessary for its safety and health; . . The case was adjourned into court, and argued before all the judges. B. R. Curtis, for the respondent. . . [200] the grounds on which we distinguish this case from that of Sommersett are, that the owner of Sommersett was a British subject, resident in Virginia, then a British colony; that the question of national comity did not arise in that case;" Shaw, C. J. delivered the opinion of the court: [208] " by the constitution and laws of this Commonwealth, before the adoption of the constitution of the United States, in 1789, slavery was abolished, as being contrary to the principles of justice, and of nature, and repugnant to the provisions of the declaration of rights, which is a component part of the constitution of the State. . . [209] How, or by what act particularly, slavery was abolished in Massachusetts, whether by the adoption of the opinion in Sommersett's case [1771], as a declaration and modification of the common law, or by the Declaration of Independence, or by the constitution of 1780, it is not now very easy to determine, and it is rather a matter of curiosity than of utility; it being agreed on all hands, that if not abolished before, it was so by the declaration of rights. . . [211] But although slavery and the slave trade are deemed contrary to natural right, yet it is settled by the judicial decisions of this country and of England, that it is not contrary to the law of nations. . . [217] though by the laws of a foreign state, meaning . . a state governed by its own laws, . . a person may acquire a property in a slave, such acquisition, being contrary to natural right, and effected by the local law, is dependent upon such local law for its existence and efficacy, and being contrary to the fundamental laws of this State, such general right of property cannot be exercised or recognized here. That, as a general rule, all persons coming within the limits of a state, become subject to all its municipal laws, . . and entitled to the privileges which those laws confer; . . applies as well to blacks as whites, except . . fugitives, . . that if such persons have been slaves, they become free, not so much because any alteration is made in their *status*, . . as because there is no law which will warrant, but there are laws, if they choose to avail themselves of them, which prohibit, their forcible detention or forcible removal. That the law arising from the comity of nations cannot apply; because if it did, it would follow . . [218] that all those persons, who, by force of local laws, . . have acquired slaves as property, might bring their slaves here, and exercise over them the rights . . which an owner of property might exercise, and for any length of time short of acquiring a domicil; that such an application of the law would be wholly repugnant to our laws, entirely inconsistent with our policy and our fundamental principles, and is therefore inadmissible. . . [224] This opinion is not to be considered as extending to the case where the owner of a fugitive slave, having produced a certificate

according to the law of the United States, is *bonâ fide* removing each slave to his own domicil, and . . passes through a free State; . . Nor where an owner of a slave in one State is *bonâ fide* removing to another State where slavery is allowed, and in so doing necessarily passes through a free State, or where by accident or necessity he is compelled to touch or land therein, remaining no longer than necessary. Our geographical position exempts us from the probable necessity of considering such a case, . . [225] The child . . being of too tender years to have any will or give any consent to be removed, and her mother being a slave and having no will of her own and no power to act for the child, she is necessarily left in the custody of the law. The respondent having claimed the custody of the child, in behalf of Mr. and Mrs. Slater, who claim the right to carry her back to Louisiana, to be held in a state of slavery, we are of opinion that his custody is not . . a proper and lawful custody. Under a suggestion . . that a probate guardian would probably be appointed, we shall for the present order the child into temporary custody, to give time for an application to be made to the judge of probate."

Inhabitants of Franklin v. Inhabitants of Dedham, 18 Pickering 544, November 1836. " 1763, a warrant was issued for the warning of . . a negro woman, named Lettis, . . to depart from the town," of Dedham.

Lazarus v. Insurance Co., 19 Pickering 81, March 1837. " 1824, the plaintiff [a resident of Charleston, South Carolina] executed an indenture, whereby he assigns to Timothy Street, of Charleston, all his interest in . . certain slaves,"

Burbank v. Whitney, 24 Pickering 146, April 1839. Will of the Rev. Jonathan L. Pomroy, of Worthington, " signed in the presence of four witnesses " on Aug. 30, 1832: " To the American Bible Society, to the American Education Society, to the American Colonization Society and to the American Home Missionary Society, I bequeath four thousand dollars, or one thousand dollars to each society," The American Colonization Society [147] " was incorporated . . by the State of Maryland, on the 24th of February, 1831, for the purpose of colonizing, with their own consent, on the coast of Africa, the people of color residing in the United States."

The Tigris, 23 Fed. Cas. 1220 (3 Law Rep.), February 1841. Libel filed " by H. J. Matson, . . commander of her Britannic Majesty's brig *Water Witch* . . against the brig *Tigris*, of Salem, . . for certain alleged violations, on the coast of Africa, . . of several statutes of the United States for the suppression of the slave trade;" [1221] " the African boy, found on board the *Tigris* on the coast of Africa, and sent in that vessel to Salem, was committed to the care of the marshall of this district. . . repeated but unsuccessful essays have been made between this country and Great Britain to arrange a mutual modified right of search for the suppression of the slave trade; . . From the regretted failure of conventional agreement with Great Britain . . there is reason to apprehend, that vessels of the United States have not infrequently become par-

ticipators in that inhuman traffic. . . The evidences of guilt . . have been so apparent in some instances, that vessels of the United States, bearing the American flag, have been visited, examined and detained by British cruisers on the African coast, and sent to the United States for trial and adjudication. . . [1222] In the present instance, the United States proceeded by complaint against the alleged offenders, brought to Salem in this vessel, . . but the officers of the government . . have instituted no proceedings against the vessel and cargo, and it remains to be determined whether the commander of the *Water Witch* can sustain this libel against the *Tigris* and cargo, or whether he is incapacitated by a wrongful exercise of the right of search." [Davis, J.] Libel dismissed.

Commonwealth v. Elias M. Turner, 3 Metcalf 19, October 1841. Turner and Shearer were jointly indicted for kidnapping an eight-year-old colored boy with intent to send him out of the state and sell him as a slave in Virginia. Both were found guilty by a jury. [20] " There was evidence . . that the two defendants went together, . . from Palmer (where Turner, who is a minor, resided in his father's family) to Shirley, in the county of Middlesex, to the house of one William Little, . . and that on their return to Palmer, they stopped at Worcester and obtained possession of Sidney. There was also evidence . . that the father of Sidney was induced to commit him to Shearer, to live with him as a servant, through the false representations of both the defendants. Those representations, among other things, were, that said Shearer was a resident of the town of Palmer, and had resided there for several years, and had been and still was engaged in the business of trade, keeping a store there, and that the boy, Sidney, was wanted by Shearer to assist him in that store. The boy was taken by Shearer, and after being carried in a wagon to Palmer, with Shearer and Turner, was immediately afterwards transported by Shearer to the State of Virginia, where he (Shearer) resided. . . Turner was a nephew of Shearer; . . Shearer had not resided at Palmer for the last ten or twelve years; . . Turner knew that Shearer resided in Virginia; that he was an owner of slaves, and that he was engaged there in the business of buying and selling slaves; and that shortly before the boy was obtained . . Turner expressed his belief, that Shearer would not hesitate, if he could get free colored persons from Massachusetts into Virginia, to sell them there as slaves. . . Turner . . inquired of one John Metcalf, . . where they could procure a colored boy; said Turner representing that such a boy was wanted for his father." Exceptions to testimony admitted by the trial court were overruled upon appeal.

Commonwealth v. Mary B. Taylor, 3 Metcalf 72, October 1841. "A writ of *habeas corpus* was issued . . by Mr. Justice Wilde, to bring up the body of a negro boy, seven or eight years of age, named Anson, alleged to be in the custody of Mrs. Mary B. Taylor, . . in this county, and held as a slave . . Mrs. Taylor is . . of the State of Arkansas, in whose family the said boy was born and reared as a slave; . . that it was her intention to carry the boy back to Arkansas, and there hold him in his former condition as a slave. . . she disclaims all intention, on her return,

to remove him out of this State, unless by his own consent. But in point of law, a child . . of such tender years has no will, no power of judging or electing; . . different rule would apply, . . where . . a negro, . . has . . sufficient . . capacity to judge of his own interests, and elect whether he would return . . to a slave State, or be set at liberty here. . . We do order, that . . Anson be discharged from the custody of Mrs. Taylor, . . and . . be delivered into the custody of the guardians " [Shaw, C. J.]

Commonwealth v. Henry G. Tracy et al., 5 Metcalf 536, March 1843. Defendants were tried and three of them convicted on an indictment alleging that they and divers others unknown to the grand jury assaulted Jonas Stratton, a Boston constable, in attempting to take from him a negro known as George Latimer, *alias* Albert Mason, while Stratton had the negro in custody under a warrant charging larceny. [544] " on the trial evidence was offered, to show that at the time of the alleged riot and attempt to rescue, on the night of the 20th of October, the said . . constable . . had in his custody . . George Latimer, . . that on the 19th of October, a complaint had been made in the police court, charging . . Latimer with . . larceny in Boston, . . on which he was arrested; . . that on the afternoon of the 20th, . . complaint . . dismissed, . . in the forenoon of the same day, another complaint . . in the police court, charging . . Latimer with a larceny in Norfolk, Virginia, and being a fugitive from justice; . . warrant issued, . . upon which . . Stratton . . arrested . . Latimer, . . had him in custody, at the time of . . riot and attempt to rescue. . . that another fact was given in evidence, though not stated in the indictment, . . that shortly before the said riot, in the evening of said 20th of October, a writ of *habeas corpus* was issued by the chief justice of the supreme judicial court, . . [545] the case was heard by all the judges; whereupon it was certified by the chief justice, . . 'Latimer is in custody of . . Stratton, as the agent of James B. Gray of Norfolk, . . claiming . . Latimer as a fugitive from labor and service, and . . at the time of the service of this writ, . . Gray was . . proceeding to convey . . Latimer before the proper tribunal, to obtain a certificate, according to the law of the United States; ordered . . said Latimer be remanded to the custody of . . Stratton.' . . The first exception taken . . is, that there was a material variance between the complaint and warrant from the police court, as set out in the indictment, and the complaint and warrant . . in evidence . . And the court are of opinion that there was no such variance. . . [546] The second exception . . is, that the police court had no jurisdiction of a felony committed in another State; and as no requisition . . had been made by the executive of Virginia, conformably to the constitution of the United States [1] and the act of congress of 1793, ch. 1, there was no authority, under which a warrant could issue, for the arrest of Latimer. This depends upon the constitutionality . . of the Rev. Sts. c. 142, . . in regard to fugitives from justice. The case . . was precisely within . . those statutes, . .

[1] Art. IV., sect. 2, cl. 3.

[550] the court are of opinion, that the provision of the Rev. Sts. c. 142, sect. 8, authorizing any court or magistrate, on complaint against any person found within this State, charged with an offence committed in any other State, and liable by the constitution and laws of the United States to be delivered over, etc., to issue a warrant and cause such person to be held for examination, and imprisoned or bailed for a limited time, is a wise law, and . . constitutional and valid, and . . that the averment in the indictment, that the police court had jurisdiction . . is well sustained by . . proof. . . [551] The next exception is, that as . . Stratton was acting as the agent of the person claiming the custody of the prisoner as a slave, he could not avail himself of the protection derived from the warrant from the police court. . . We think, . . the averment in the indictment, that the officer was in the exercise of a lawful authority, under a warrant from the police court, is sustained by the evidence, and is not controlled . . by the proof that he claimed to act and hold the prisoner under another authority *in pais*. . . [552] The last exception is, that the holding of this warrant, by Stratton, at the same time that he held a power of attorney from Gray, claiming the custody of the prisoner as a slave, was an abuse of the process of the court. . . This is substantially the same point already considered. . . A person may be arrested by the same officer as a criminal, a debtor, a deserting seaman, . . all at the same time. . . [553] The court are of opinion, that the decisions of the municipal court, and the instructions to the jury, were correct, and that the exceptions must be overruled, and the conviction held good." [Shaw, C. J.]

The Cynosure, 6 Fed. Cas. 1102 (1 Sprague 88), July 1844. [1103] "The libellant, a man of color, was a mariner on board the American ship *Cynosure*, on a voyage to New Orleans. On arriving at that port he was, pursuant to a statute of the state of Louisiana,[1] taken from the ship and committed to jail. [He was detained there during the stay of the vessel, and delivered up to the master when the vessel sailed.] The master was compelled to pay the expenses of that imprisonment, and now claims to have the amount deducted from the wages of the mariner."

Held: "A state cannot thus interfere with the navigation of the United States, nor dictate to the owners of an American vessel the composition of her crew. . . this statute is invalid. . . No deduction is to be made from the wages." [Sprague, J.]

The Harvest, 11 Fed. Cas. 726 (1 Sprague 537), March 1848. Among the company of the whale ship *Harvest*, which sailed from Nantucket for the Pacific Ocean in 1844 was "one colored boat-steerer,"

Linda v. Hudson, 1 Cushing 385, March 1848. "an action on the case, . . plaintiff alleged that the defendant, without authority from her, made a complaint . . for the purpose of obtaining a writ of *habeas corpus*, in her behalf, on the ground, that she was . . restrained of her liberty; and that a writ of *habeas corpus* was issued . . and delivered to an officer,

[1] 1842, no. 123.

by whom the plaintiff was taken into custody, and carried before the judge by whom the writ was issued, . . against her consent. It appeared, . . [386] that the plaintiff was a woman of color, . . brought into this state from one of the southern states, in which she was held as a slave by the person by whom . . brought here, and in whose service she then was. It further appeared from . . testimony of . . Ruggles . . a servant . . that the witness met the plaintiff at the servants' table; that the plaintiff . . said . . she should like to be free . . that, . . he applied to the defendant . . that the defendant and witness . . employed an attorney to draw a petition for a writ of *habeas corpus*; that, before any further proceedings . . plaintiff's master . . went to Northampton . . taking plaintiff . . that the witness went . . to Northampton, . . and, . . waited on judge Dewey with the defendant for the purpose of signing and presenting the petition . . and that, . . he [witness] perceived that his master was about to depart from Northampton, and . . left the judge's without signing the petition. It further appeared, that the defendant . . applied to the plaintiff's master, . . and requested leave to speak with her, in order to inform her, that, in this state, she could take her freedom, . . that the master replied that . . defendant should not see her; . . defendant then returned to the judge and signed the [387] petition, . .

" When the plaintiff was brought before the judge, she was informed that she was free, if she chose to be so, . . plaintiff said she knew she was a slave, but chose to remain with her master, and then went away with her master and mistress. . . The judge, . . being of opinion, that . . the defence could not be maintained, directed the jury accordingly, . . verdict . . for the plaintiff. . .

" Shaw, C. J. . . the court are of opinion, that there was evidence for the jury to consider, on the question of fact, . . the case should have been left to them, to decide, . . whether the complaint and petition made by the defendant, . . [388] were so made at her request and for her benefit; with instructions, that if they were so made by the defendant, by her authority . . defendant was not liable . . otherwise . . a verdict for the plaintiff. The verdict, . . set aside, . . new trial granted."

Roberts v. the City of Boston, 5 Cushing 198, November 1849. " This was an action on the case, brought by Sarah C. Roberts, an infant, who sued by Benjamin F. Roberts, her father . . against the city of Boston, under the statute of 1845, c. 214, which provides that any child, unlawfully excluded from public school instruction in this commonwealth, shall recover damages therefor against the city or town by which such public instruction is supported. The case was submitted . . upon the following . . facts:—'. . primary schools are supported by the city, . . the city is divided . . into twenty-one districts, in which there are several primary schools . . These schools are under the . . management . . of the primary school committee . . [199] The regulations of the primary school committee contain the following provisions:—Admissions. No pupil shall be admitted into a primary school, without a ticket of admission from a member of the district committee. Admissions of applicants. Every mem-

ber of the committee shall admit to his school, all applicants, of suitable age and qualifications, residing nearest to the school under his charge, (excepting those for whom special provision has been made,) provided the number in his school will warrant the admission. Scholars to go to schools nearest their residences. Applicants for admission to the schools, (with the exception and provision referred to in the preceding rule,) are especially entitled to enter the schools nearest to their places of residence. At the time of plaintiff's application, . . Boston had established, for the exclusive use of colored children, two primary schools, . . the colored population . . constitute less than one sixty-second part of the entire population of the city. For half a century, separate schools have been kept . . for colored children, . . The teachers . . have the same compensation and qualifications as in other like schools in the city. Schools for colored children were originally established [200] at the request of colored citizens, whose children could not attend the public schools, on account of the prejudice then existing against them. The plaintiff is a colored child, of five years of age, . . applied to a member of the district primary school committee, . . nearest to her place of residence, for a ticket of admission . . the number "warranting her admission, and no special provision having been made for her, unless the . . two schools for colored children . . be so considered. . . The member . . refused her application, on the ground of her being a colored person, and of the special provision made . . Plaintiff . . applied to the primary school committee . . and was in like manner refused admission, . . petitioned the general . . committee, . . That committee referred the subject to the committee of the district, with full powers, and the committee . . refused the application . . Afterwards, . . plaintiff went into the primary school nearest her residence, but without any ticket of admission . . and was . . ejected . . by the teacher.' [201] the parties agreed that if the plaintiff was entitled to recover, the case should be sent to a jury to assess damages;"

Held: [204] "The question . . is, whether, . . plaintiff has been unlawfully excluded from such instruction. . . [205] The plaintiff had access to a school, set apart for colored children, . . the objection is, that the schools thus open to the plaintiff are exclusively appropriated to colored children, and are at a greater distance from her home. . . has the plaintiff been unlawfully excluded from public school instruction? Upon the best consideration we have been able to give the subject, the court are all of opinion that she has not. [206] if [the committee] . . have the legal authority, the expediency of exercising it in any particular way is exclusively with them. Conceding, . . that colored persons, . . are entitled by law, . . to equal rights, . . the question then arises, whether the regulation . . which provides separate schools for colored children, is a violation of any of these rights. . . [207] . . The statute, . . provides . . that . . a school committee . . shall have the general charge . . of . . public schools. . . [208] The power of general superintendence vests a plenary authority in the committee . . [209] The committee . . have come to the conclusion, that the good of both classes of

schools will be best promoted, by . . separate primary schools for colored and for white children, . . It is urged, that this . . tends to . . perpetuate . . distinction of caste, founded in a deep-rooted prejudice in public opinion. This prejudice, . . is not created by law, and probably cannot be changed by law. . . it is a fair . . question for the committee to . . decide upon, . . and we cannot say, that their decision . . is not founded upon just grounds of reason and [210] experience, . . the court are of the opinion, that upon the facts stated, the action cannot be maintained. Plaintiff nonsuit." [Shaw, C. J.]

Fugitive Slave Law, 30 Fed. Cas. 1015 (1 Sprague 593), March 1851. "The fugitive slave law, passed in September, 1850,[1] was received, in Massachusetts, with almost universal regret and disapprobation. With not a few, it produced great excitement and exasperation. Some openly avowed a determination to resist it by violence, declaring that it was a matter of conscience not to permit it to be executed. In the following February, a negro, by the name of Shadrach, was arrested in Boston, as a fugitive slave, and carried into the United States' court rooms for examination before a commissioner. A mob broke into the room, took him by force from the officers of the law, and effected a rescue. At the opening of the next regular term of the district court, in March, Sprague, District Judge, delivered the following charge to the grand jury: . . [1016] The constitution commands that fugitives from labor shall be delivered up. The supreme court has decided that it belongs to congress to provide the means, Congress has enacted this law. It is imperative, and will be enforced."

Thomas Sims's Case, 7 Cushing 285, March 1851. [291] "This is a petition for a writ of *habeas corpus* to bring the petitioner before this court, with a view to his discharge from imprisonment, . . [293] We are then to examine the petition, accompanied as it is, by a copy of the warrant under which the marshal of the district claims to hold the petitioner, and the return thereon. It appears that the petitioner has been arrested and is claimed as a fugitive from labor, [from the state of Georgia] upon a warrant, issued by . . a commissioner of the circuit court of the United States, in pursuance of a law of the United States, and that the deputy marshal has returned the warrant to the commissioner who issued it, and has the body of the petitioner before the commissioner for the purposes expressed in the warrant. [294] It is now argued, that the whole proceeding, . . is unconstitutional and void; because, although the act of congress of 1850, c. 60, (9 U. S. Stat. at Large, 462), has provided for, and directed this course of proceeding, yet that the statute itself is void, because congress had no power, by the constitution of the United States, to pass such a law, and confer such an authority. . . The subject matter of this act is the return and restoration of fugitive slaves, designated in the constitution as persons held to service or labor in one state under the laws thereof, [295] escaping into another. The whole provi-

[1] 9 Stat. at L. 462.

sion, art. 4 sect. 2, is as follows: 'No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' . . it is necessary to refer briefly to the circumstances under which the constitution was made, and the great social and political objects and purposes, which the people . . had . . in adopting it. . . These North American provinces, when they became independent of . . Great Britain, regarded themselves, and were regarded, as sovereign states; . . with the usual powers . . of . . exercising an exclusive control and jurisdiction over all persons and subjects within their respective territories. . . In some of the states, large numbers of slaves were held; in others a few only; but some, it is believed, in all except [296] Massachusetts, in which slavery was considered as abolished, by . . the constitution of 1780. . . [297] So long as the states remained sovereign, they could assert their rights in regard to fugitive slaves by war or treaty, and, therefore, before renouncing and surrendering such sovereignty, some substitute, in the nature of a treaty or compact, must necessarily be devised and agreed to. The clause above cited from the constitution seems to have been, in character, precisely such a treaty. . . [298] But the right, thus secured by the constitution to the slave owner, is limited by it, and cannot be extended, by implication or construction, a line beyond the precise *casus foederis*. The fugitive must not only owe service or labor in another state, but he must have escaped from it. This is the extent of the right of the master. It is founded in the compact, and limited by the compact. . . [299] But the constitution itself did not profess or propose to direct, in detail, how the rights, privileges, benefits and immunities, intended to be declared and secured by it, should be practically carried into effect; this was left to be done by laws to be passed by the legislature, and applied by the judiciary, for the establishment of which full provision was at the same time made. . . [300] It was, as we believe, under this view of the right of regaining specifically the custody of one from whom service or labor is due by the laws of one state, and who has escaped into another, and under this view of the powers of the general government, and the duty of congress, that the law of February 12, 1793, was passed. . . (1 U. S. Stat. at Large, 302) . . [304] The constitutionality of the act of 1793, came directly before this court, and was argued and decided in 1823. . . After alluding to the relative condition of the states, and the circumstances under which the constitution was made, he [Chief Justice Parker] says: . . 'That instrument was a compromise. It was a compact by which all are bound.' . . 'the constitution does not prescribe the mode of reclaiming a slave, but leaves it to be determined [305] by congress.' . . 'We do not perceive that the statute is unconstitutional, and we think the defence is well made out.' . . [306] The same principles have been decided by the supreme court of the state of New York. . . But the judicial authority most to be relied on, and which, . . is binding and conclusive upon all subjects within their special jurisdic-

tion, is that of the supreme court of the United States. . . A case came before the supreme court of the United States, in 1842, . . in which the point in question was fully discussed and deliberately settled. Prigg *v.* Pennsylvania, 16 Pet. 539. There was some difference of opinion among the judges upon minor points, but not, it is believed, upon . . the constitution[307]ality . . of the act of congress of 1793, and especially of that part of it which confers an authority on circuit and district judges, . . to take a summary jurisdiction, in the manner provided by the act of 1793. . . [308] We have thought it important thus to inquire into the validity and constitutionality of the act of 1793, because it appears to be decisive of that in question. In the only particular in which the constitutionality of the act of congress of 1850 is now called in question, that of 1793 was obnoxious to the same objection, viz., that of authorizing a summary proceeding before officers and magistrates not qualified under the constitution to exercise the judicial powers of the general government. . . [309] On the whole, we consider that the question raised by the petitioner, and discussed in the argument before us, is settled by a course of legal decisions which we are bound to respect, and which we regard as binding and conclusive upon this court. . . [310] I have, therefore, to state, in behalf of the court, under the weighty responsibility which rests upon us, and as the unanimous opinion of the court, that the writ of *habeas corpus* prayed for cannot be granted."

U. S. v. Scott, 27 Fed. Cas. 990 (Betts' Scr. Bk. 221), June 1851. Indictment against James Scott for the rescue of Shadrach, a fugitive slave.

Held: the fugitive slave acts of 1793 and 1850 are constitutional, although they provide for rendition by state officers; the rendition of a fugitive slave under these acts is an executive, and not a judicial proceeding, and trial by jury is not necessary therein, under the federal constitution. Sprague, J. gives "The contemporaneous construction of the constitution" [pp. 993-995]; and the judicial decisions.

U. S. v. Morris, 26 Fed. Cas. 1323 (1 Curtis 23), October 1851. John Debree [1329] "testified that he resided at Norfolk, Virginia, and Shadrach was his slave; that he purchased him in November, 1849, of John A. Higgins, and he remained in the service of the witness until May, 1850, when he left secretly, . . John Caphart . . testified that he was a resident of Norfolk, and had known Shadrach about sixteen years. When he first knew him he belonged to the Glen estate, and lived in Norfolk; he knew the persons who were called his mother and father, some ten or twelve years; his mother and father were said to belong to the same Glen estate. He had often heard Shadrach call them mother and father. He afterwards knew Shardach as the property of Mrs. Hutchins, and he was sold by the sheriff at public vendue, at the door of the court-house, and bought by John A. Higgins. That the witness, as a police officer, had arrested Shadrach for Higgins, and put him in jail; that Higgins employed him in working on the stand as a licensed porter; that he did not know of his doing any act of service for the Glens, but only heard the young Glens

speak of him as their slave. Each of these wittnesses described Shadrach as being between black and mulatto."

Held: [1331] "this evidence is admissible, and, if not controlled, sufficient to establish that Shadrach was held to service under the laws of Virginia when he escaped from that state. Certainly, it is merely *prima facie*, and liable to be controlled by other evidence, tending to show that he was not a slave." [Curtis, J.] "While one of the counsel for the defendant was addressing the jury, he stated the proposition that, this being a criminal case, the jury were rightfully the judges of the law, as well as the fact; and if any of them conscientiously believed the act of 1850,[1] commonly called the 'Fugitive Slave Act,' to be unconstitutional, they were bound by their oaths to disregard any direction to the contrary which the court might give them; . . he was stopped by the court, and informed that he could not be permitted to argue this proposition to the jury;" Opinion of the court: [1336] "under the constitution of the United States, juries, in criminal trials, have not the right to decide any question of law;"

The Inhabitants of Edgartown v. the Inhabitants of Tisbury, 10 Cushing 408, October 1852. "*Assumpsit* to recover the expenses incurred by the plaintiffs in the support of Nancy Michaels, a colored pauper, whose settlement was alleged to be in Tisbury. . . [409] plaintiffs offered to prove that Rebecca, a colored woman, was brought from Africa, before the year 1780, . . and owned as a slave by Cornelius Bassett, . . long before the adoption of the state constitution; . . that, in 1772, she gave birth to Nancy, the pauper; that said Bassett died in 1778, . . that said Nancy was inventoried and appraised as a part of his property, and was sold at auction to Joseph Allen of Tisbury; that she was taken by him, . . to Tisbury, . . that she had a child, named Lucy Ann, . . But the judge ruled that if the above stated facts were proved, they would not give a settlement to said Nancy in Tisbury. . . that the plaintiffs were obliged to furnish to her, [Lucy Ann] (and, as they contended, thereby constructively to her mother,) support and maintenance, . . that they commenced an action against the defendants, . . to recover . . for Lucy Ann's support; . . that judgment was rendered and execution issued, . . and . . satisfied; . . that all the records of the court . . were, in 1817, destroyed by fire. . . The [410] plaintiffs contended . . that such judgment was evidence of the settlement of Nancy, the pauper, in Tisbury. But the judge ruled . . that if it were admitted, it would not authorize the jury to find a verdict for the plaintiffs. A verdict was . . found for the defendants, and the plaintiffs alleged exceptions . .

Metcalf, J. "While slavery existed in Massachusetts, the settlement of the slave followed that of the master. . . if the pauper, . . was the slave of Joseph Allen, whose settlement was in Tisbury, her settlement is there, and the action can be maintained. But as she was born in Massachusetts, she was freeborn, although her mother was a slave. And she

[1] 9 Stat. at L. 462.

could not be held as a slave by Allen under the sale made to him. . . As the relation of master and slave never existed between Allen and the pauper, she derived no settlement from him. Nor did she derive any settlement from her mother, who was a slave; for a slave could not communicate a settlement. . . Nor does it appear where the pauper was born. This, however, is immaterial, inasmuch as she was born in 1772, when no child, . . could gain a settlement by birth. . . She therefore is not shown to have a settlement in any town, and she must be regarded as *filia reipublicae*. But the plaintiffs attempt to charge the defendants by an estoppel. That attempt cannot succeed. Whether a judgment recovered in 1813 . . would estop the [411] defendants to levy that the paupers settlement is in Tisbury, is a question which we have omitted to examine; . . But this, if clearly proved, would not estop the defendants from contesting the settlement of the child, . . *A fortiori*, it would not estop them from contesting, in this action, the settlement of the child's mother. Exceptions overruled."

U. S. Mingo, 26 Fed. Cas. 1270 (1 Curtis 1), June 1854. Indictment for murder, "the defendant and the deceased were both seamen, on . . an American ship, . . defendant was a Haytien negro; and the deceased a colored man from Baltimore; . . after some conversation, the two negroes came together on deck, . . Johnson holding a large hatchet, and Mingo a sheath knife, that each used his weapon against the other, and that Johnson received three stabs . . from Mingo's knife, and died of one of them next morning." [1271] "The jury found the defendant not guilty."

U. S. v. Stowell, 27 Fed. Cas. 1350 (2 Curtis 153), October 1854. "a motion to quash an indictment against Martin Stowell, for obstructing the marshal in the service of legal process. The obstruction complained of occurred during the proceedings for the rendition of Anthony Burns [escaped slave of Suttle of Virginia], in the year 1854." Motion allowed.

The *Glamorgan*, 10 Fed. Cas. 463 (1 Sprague 273), December 1854. "a libel of information against the brig *Glamorgan* and cargo, alleging a violation of the statute of the 20th of April, 1818,[1] for the prevention of the slave trade, . . A forfeiture was decreed." [2]

Stratton v. Babbage, 23 Fed. Cas. 225 (18 Law Rep. 94), 1855. "a libel for seaman's wages on board brig *Iddo Kimball*," "The libellants, who are free colored seamen, joined this vessel at Halifax, Nova Scotia, and signed for a voyage thence to Europe, and then 'to a port of discharge in the United States,' at the rate of $24 per month. The laws of Louisiana oblige a master of a vessel bringing free colored seamen to New Orleans, to give bonds in $1,000 to take every such seaman out of the state in his vessel, or to see that they go in some other vessel before he sails. While in port, the men must live on board the vessel, or in jail.

[1] 3 Stat. at L. 450.

[2] A question respecting appeal from the final decree was argued in the Circuit Court, May 1855, U. S. *v. Glamorgan*, 25 Fed. Cas. 1333.

The master stated the law to the men, and told them they might stay on board and work, and he would allow them the current wages, which were $15 per month, from the day of arrival in New Orleans. The vessel lay some three weeks in New Orleans, and then sailed for Boston. On the day of sailing, the master required the crew to sign articles for the voyage from New Orleans to Boston for $15 per month, including the time they lay in New Orleans. They signed the articles, but under protest."

Held: "New Orleans . . is not a port of discharge for colored seamen. . . They must be either in jail or on board this vessel, and must go to sea in this vessel, or in such other as the master may find for them. They cannot even leave the vessel without the hazard of being made slaves. . . they were entitled to proceed to Boston in the vessel at the original rate of wages. They did not waive this right freely, or for a valuable consideration, but made the new contract under duress and under protest, and for no consideration. Decree for the libellants for full wages, to the arrival in Boston, with certain additional wages as compensation for short provisions, and certain deductions for refusal of duty, and for the sickness of a seaman by his own fault." [Sprague, J.]

The Porpoise, 19 Fed. Cas. 1064 (2 Curtis 307), May 1855. "a libel . . against the brig *Porpoise*, Richardson, claimant . . founded on the first section of the act of May 10, 1800"[1]

The brig *Porpoise*, owned by Richardson, "a resident citizen of the state of Maine, arrived at Rio de Janeiro, in June, 1843, under the command of Cyrus Libby, also a citizen of the state of Maine, the owner being on board. On the fourteenth day of June, 1843, the brig was chartered by the master, to Manuel Pinto de Fonseca, a resident of Rio, by a written charter-party, for one year, or until the termination of any voyage in which she might be engaged at the end of the year. The master was to victual and man the vessel. The charterer had the right to put on board any lawful merchandise, and any free persons as passengers, and to send the vessel to any port, the voyage being lawful. Under this charter-party the brig made three voyages from Rio to the coast of Africa. The first was to St. Thomas, in the Gulf of Guinea; the second was to Cabindka Bay and the Congo river on the west coast; the third was to different points on the east coast. On her return from the last-mentioned voyage, in January, 1845, the brig was seized by the commander of the *Raritan*, a public armed vessel of the United States, . . one Paulo, a Brazilian, in the employment of Fonseca, and who sailed in the brig, from Rio, on her last voyage, as supercargo, purchased, at two of the Portuguese settlements on the east coast of Africa, among many other slaves, two boys, named by him, or some former master Pedro, and Guillaume. These boys had been reduced to slavery by being made captives in war, and they were sold by their owners to Paulo. They were brought in the brig to Rio, and on the passage waited on Paulo and performed some other services about the table at which the passengers took their meals." Richardson insists [1065] "that though purchased by Paulo as slaves, they were

[1] 2 Stat. at L. 70.

emancipated before they came on board, . . The substance of Captain Libby's statement in regard to Pedro is, that when the supercargo brought him on board he told him he was free, and that he, Libby, could go to the governor of the place and get his free papers and passports; that he did go, and received from the governor the papers which he produces. These purport to be a notarial certificate declaring that one Avelino Xavier de Minares, had emancipated his slave Peter, of the Landine nation, in consideration of the good services he had rendered him; and also a petition by Peter de Souya [Souza] a free black, a native of Lourenya Margues, [Lourenzo Marques], of the nation of Landine, declaring that he wishes to make a voyage to Rio, for his interest, in the *Porpoise,* and an answer of the governor that he is permitted to do so. . . there is nothing tending to prove that the person, named . . as emancipated, was the same Pedro brought to Rio; . . Pedro himself . . testifies he was Paulo's slave, never emancipated, and brought away from Africa in the *Porpoise* against his will. In substance, the same facts are proved concerning the other boy, Guillaume. . . on at least two occasions, when cruisers were in sight, the boys were concealed; and that on one of these occasion, the captain interposed to cause one of them to go below in the run. I am not convinced that Captain Libby believed these boys were free on the coast, and would remain so when landed in Brazil, in the custody of a man known to him as a slavetrader . . [1066] about the period in question, the slave-trade was carried on by residents of Brazil, by making contracts to purchase American vessels, deliverable on the coast of Africa at some designated point, where it was expected a cargo of slaves would be ready to be placed on board. The American vessel, commanded by a citizen of the United States, and manned in part at least by our citizens, and registered as a vessel of the United States, sailed under our flag to the coast of Africa; and when the time arrived for the cargo of slaves to be put on board, the American master and crew left the vessel, took away the American papers, she was delivered to a Brazilian commander and crew, and with or without papers, took her departure from the coast. It is quite apparent, that to the successful conduct of such voyages, some other vessel or vessels besides those sent over to bring back the slaves, were, if not absolutely necessary, undoubtedly useful and desirable. They were needed to carry to the coast, the merchandise to be used to purchase the slaves,—to transport the agent of the slave merchant who was to sell on the coast this merchandise, and with it, or its proceeds, buy the slaves; and also to receive on board, as passengers, the American masters and crews who navigated the slave-ships to Africa, and there left them, when the cargoes of slaves were brought on board. Now it clearly appears that this brig served this purpose throughout her last voyage. There was carried in her to the east coast of Africa a cargo of merchandise, intended to be used to buy slaves, to be transported to Brazil. . . two cargoes of slaves were brought by . . [Paulo, the supercargo], with the cargo of this vessel or its proceeds, and shipped in full view of the master of the *Porpoise.* The American master and crew of one of these vessels were received on board the *Porpoise,* when the cargo of slaves was carried on

board the slaver; and the American master of the slaver went from the slaver to the *Porpoise,* and from the *Porpoise* to the slaver, carrying his ship's papers, and the flag of the United States, as the fear of the cruiser of one nation or another might seem to render expedient. The *Porpoise* also aided one of these slavers, going in company with her into a barred harbor on the coast, to get over the bar, by relieving her of part of her cargo; and there is evidence tending to show that Paulo, the supercargo of the *Porpoise,* who controlled her movements, actually gave orders for the manoeuvring of one of these slave vessels, while on the deck of the *Porpoise*; and that the two went to sea in company, after the slaves were shipped, the *Porpoise* manoeuvring so as to attract the attention of any cruiser which might be in the neighborhood. . . if I were satisfied this vessel had never had a slave on her deck, I should still be of opinion that she had been engaged in the business of transporting slaves, as much as if she had been captured with a slave deck, extra water casks, provisions and irons, before a slave had been brought on board. . . Let a decree be entered . . pronouncing for the forfeiture." [Curtis, J.]

Ela v. Smith et al., 5 Gray 121, October 1855. [122] "Action of tort against . . Smith, mayor of Boston, . . Edmands, major general . . of the Massachusetts volunteer militia, . . Evans, commander of a company . . and . . Freeman, marshall of the United States for . . Massachusetts, for an assault, battery and false imprisonment of the plaintiff at Boston . . the 2d of June 1854. The defendants answered severally, each denying any part in any assault on the plaintiff; Smith also alleging that, apprehending a riot, he issued a precept and gave orders to Edmands to aid the police in keeping the peace . . Edmands that he acted under such precept and orders; Evans that he acted under orders of Edmands; and Freeman that he acted as marshal, in removing a fugitive from service to the State whence he fled, under the act of congress of 1850 . . 9 U. S. Sts. at Large, 465. At the trial . . the evidence introduced by the plaintiff tended to prove . . [that] on the 24th of May 1854, Anthony Burns was arrested in Boston by the United States marshal, at the claim of Thomas Suttle, as a person held to service or labor under the laws of Virginia, and brought before . . a commissioner of the circuit court of the United States, and was afterwards confined by the marshal, with the assistance of . . United States troops, . . until the 2d of June, when [123] the commissioner decided that he should be delivered to the claimant, and made a certificate under the act . . of 1850, reciting that Suttle had exhibited to him a record of a court of . . Virginia, of the slavery and escape of Burns . . proved the identity of Burns, and declaring that the claimant was authorized to remove him to Virginia. . . [126] On the 2d of June, the mayor . . gave such directions, verbal and written, as he thought would best tend to preserve the peace of the city; . . General Edmands, after receiving the mayor's note and proclamation, read the latter to his troops, and then, . . marched them . . to Court Square, and [127] . . so disposed them, in conjunction with the city police, as to exclude the public from Court and State Streets, and allow a free passage

for the marshal and his posse from the court house through those streets to Long Wharf . . The troops remained at their posts until about three o'clock, when the marshal and his posse, carrying Burns with them, passed through Court and State and Commercial Streets, . . and placed Burns on a steamboat lying at T Wharf, which took him out to the United States revenue cutter, to be taken back to Virginia; . . The plaintiff, after Burns had been taken down Long Wharf, attempted to pass along Commercial Street, but was pushed back and knocked down by the soldiers, and cut over the head by a commissioned officer, and then taken away by the police, [128] . . He was detained by the police some hours, and then released. . . [134] Bigelow, J. This case presents for the first time to the consideration of the court questions of great interest and importance, arising on the . . construction and . . operation of . . the statutes, by which authority is given to certain civil officers to call out the organized militia . . to aid in preserving the public peace and enforcing the laws. . . [135] The provisions of law, on which the defendants Smith, Edmands and Evans rely for a justification of the acts of trespass alleged . . are found in St. 1840, c. 92, . . The defendants justify on the ground, . . that an unlawful assembly or mob was threatened, and that it was in view of the imminent danger to the public peace, and an anticipated violence and resistance to the laws, that the acts charged . . were committed. . . [137] It follows . . that the question, whether a riot was actually threatened, cannot be inquired into in this action. The judgment of the mayor upon it was conclusive, and . . no liability was incurred by him in issuing the precept by which the armed force was called out. . . On familiar principles, it affords a complete justification to all those bound to obey its command, for acts lawfully done by them in pursuance thereof. . . [139] it was clearly within the authority conferred on the mayor by the statute, to order the troops assembled, . . to perform a specific duty . . such as . . preventing the ingress and egress of persons, if, . . it was . . necessary for the purpose of suppressing a tumult or . . resistance to the laws . . [141] It was urged by the plaintiff that all the defendants were liable . . because the occasion of the . . riot . . was the surrender of a fugitive slave, and that . . the act of congress of 1850, c. 60, . . was . . void, . . But it is entirely clear that this argument can have no legitimate bearing on the legal issues presented in this case. . . [142] Upon the evidence offered by the plaintiff . . there are no sufficient grounds . . to find a verdict against Freeman. . . [143] He is not shown to have advised or aided in the commission of any . . unlawful act by which the plaintiff was injured. . . the only questions as to the remaining defendants, Smith, Edmands and Evans, are, whether specific orders were given by the mayor for clearing and guarding the streets on the 2d of June 1854, and if so, whether any of the defendants acted unreasonably, or exceeded the just limits of the authority visited in them by law. . . The defendants Smith and Edmands will not be liable to the plaintiff for any force and violence used upon him, beyond that which was necessary to carry into effect the order for clearing . . the streets, . . The same rule would apply to

Evans, if he did not authorize or participate in the alleged violence offered to the plaintiff. Case to stand for trial. A trial . . resulted in a verdict for the defendants."

Curtis v. Mussey et al., 6 Gray 261, March 1856. [262] "Action of tort for a libel. The plaintiff . . alleged that he was a commissioner of the circuit court of the United States for the district of Massachusetts; and . . in the performance of his duty . . heard and determined a matter . . before him, wherein Thomas Sims was claimed under . . the laws of the United States as a fugitive from labor and service from . . Georgia, and delivered an opinion in said matter, and granted a certificate authorizing the removal of Sims to . . Georgia; 'and the defendants, afterwards, with intent to vilify the plaintiff, and to bring him into hatred, contempt and ridicule, both as a magistrate and as a man, to impute official misconduct to him, and to cause it to be believed that the plaintiff did knowing and wilfully decide and determine said matter falsely and contrary to law, and did wilfully grant said certificate, knowing the same ought to have been refused by him, did publish . . a certain false, malicious libel concerning the plaintiff, purporting to be a discourse delivered to an audience, in a part of which said libel there was and is contained the following passage.' The declaration then set forth successively several passages from the alleged libel, . . [263] The answer admitted that the plaintiff was a commissioner, . . and that he, . . [264] did hear and determine the matter of Sims . . [265] But the answer alleged that said proceedings [266] were had under the act of congress of . . 1850, known as 'the fugitive slave law,' and that the acts of the plaintiff therein were done by . . the authority conferred upon him as such commissioner . . but that said law, and the authority thereby conferred upon the plaintiff, were contrary to the Constitution of the United States, . . The answer further admitted that the defendants did, . . publish a book, . . and that in that book was contained a discourse, . . in which discourse were the several passages set forth in the declaration. . . [267] but they published said discourse . . without any intention to injure the plaintiff, as alleged in said declaration. . . [268] The plaintiff demurred to the answer, . . Fletcher, J., overruled the demurrer, and reserved and reported the case to the full [269] court. . .

[272] " The Court held, that the want of actual intent to vilify [273] or libel the plaintiff rendered the publication no less a libel, if such was the natural effect of the words published; . . that there were passage in the publication, which appeared on their face to be libellous, . . that the answer therefore, supposing all the matters contained in it to be true, . . did not constitute a complete defence . . to the plaintiff's action; but that, as there were still questions . . in issue between the parties, the case must stand for further proceedings. . . The case . . after the death of the defendant Mussey, and before any further action of the court, was settled by agreement of parties, by entering judgment for the plaintiff for five dollars, with costs to the time of the decision upon the demurrer."

McCrea v. Marsh, 78 Mass. 211, November 1858. "Action of tort for forcibly excluding the plaintiff from a theatre in Boston, . . At the trial . . the plaintiff, . . a colored person, introduced evidence . . to show that he bought of the defendant, . . a ticket . . on which were printed the words, 'Marsh's Juvenile Comedians. Family Circle. R. G. Marsh;' and . . ticket in his hand, went up the staircase leading to the 'family circle,' and at the head of the staircase offered his ticket to the doorkeeper . . who, under the directions of the defendant, refused to admit him, on the ground of his color and forcibly prevented his entrance. [212] plaintiff contended, . . that, 'even if the defendant possessed the right to exclude the plaintiff, still . . the defendant had, by contract imparted a right to the plaintiff for the time . . claimed by the plaintiff, and . . the assault, . . constituted an injury . . for which the defendant must respond in damages.' But Abbot, J. ruled, 'that the ticket . . was only an executory contract, by which the plaintiff contracted with the defendant to permit him to enter . . and occupy a certain place . . and if the defendant, before any part of said contract was executed, . . notified the plaintiff that he should not permit him to enter, . . that the exclusion of the plaintiff . . would not render the defendant liable to an action of tort; but, the remedy, . . must be by an action on the contract. . . the plaintiff . . alleged exceptions."

Held: "It was correctly ruled, . . that the plaintiff could not maintain this action, and that his remedy, . . was by an action of contract. . . [213] It was a license legally revocable, and was revoked before it was in any part executed. After it was revoked, the plaintiff's attempts to enter were unwarranted, and the defendant rightfully used the force necessary to prevent his entry. . . even if the plaintiff had been permitted to enter the family circle, the defendant might have ordered him to leave it, . . and, upon his refusal, might have removed him, using no unnecessary force. . . The plaintiff is doubtless entitled to recover, . . the money paid by him for the ticket, and all legal damages . . sustained by the breach of the contract . . Exceptions overruled."

The William Jarvis, 29 Fed. Cas. 1309 (1 Sprague 485), June 1859. [1310] "The ship went from Havre to New Orleans, and thence to Boston. She arrived in New Orleans on the 9th of February, 1859. The crew consisted wholly of colored men, who, by the laws of Louisiana,[1] are not permitted to be at large on shore, and might even be taken from their vessel and imprisoned; and the master was compelled to give bond to carry them out of the state."

Held: "that this law of Louisiana was invalid, . . It is of no avail . . to say that congress have not, in express terms, said that negroes may be seamen on board of American vessels. It is sufficient that there is no prohibition, and that all persons, of every shade of color, stand upon the same ground of right to constitute a part of the crew." [Sprague, J.]

U. S. v. The Isla de Cuba, 26 Fed. Cas. 553 (2 Sprague 26), March 1860; 548 (2 Clifford 295), May 1864; 551 (2 Clifford 458), May 1865.

[1] "The Black Code," sect. 101.

[548] "the *Isla de Cuba* was built in New York in the year 1849, . . Dobson, . . 1858, chartered the vessel to J. S. Correa for a voyage from the port of New York to the west coast of Africa [to Loango] and back, and that on the following day he took out a register in his own name, in which he made oath that he was the only owner of the vessel. He was also the master, . . Correa freighted the vessel, . . A suspicion arises from the manner in which the cargo was stowed. The evidence shows that the ground tier of casks was carefully arranged according to sizes, so as to present on the top a uniform surface like a deck; and there were four tiers of boards, constituting a platform, placed on the barrels, two fore and aft, and two athwart ship, which had the effect to convert the whole length and breadth of the hold of the ship into a substantial deck, where negroes might conveniently be carried on the voyage. . . the casks under that platform contained about twenty-two thousand gallons of fresh water, and the mate testified that the master informed him that ninety of the casks containing the water, were cleared as oil casks. The platform of boards was cut through in one place, as if to form a hatchway to get at the casks containing the water. The cargo on the return of the vessel was found to contain more than seventy barrels of rice, although it appears that twelve barrels had been sold at Fayal, in the course of the voyage. When the vessel sailed she had on board only a small quantity of beans shipped by the passengers, but an additional quantity of ten or eleven sacks was purchased at Saint Michael's, and taken on board at that port, where the vessel stopped for a short time. The vessel also had on board fifty boxes of herring, and fifty boxes of codfish, and most of all kinds of provisions usually found in a vessel engaged in a slave voyage. Four large boilers were also found on board in boxes, with all the necessary apparatus for cooking, and the cargo also included some ten dozen pails or buckets, and seventeen crates of crockery, embracing every variety which would be necessary and convenient, in supplying and serving the negroes with food and water. Muskets, swords, and cutlasses were also found on board, packed in boxes and stowed as cargo, and another box containing a considerable quantity of iron rods fitted for grating, and such as might conveniently be used to surround the main hatch, was also found on board. None of these boxes are on the manifest, . . [550] Four boxes of medicines, in addition to the usual medicine-chest for the ship's company, were also found on board, containing all or nearly all the ingredients usually found in vessels fitted out for the slave-trade and engaged in that traffic." There were four passengers "if J. S. Correa, sometimes mentioned as supercargo, be regarded as such, . . Three were Portuguese, and one was a Spaniard. The mate [Turner] testifies that the vessel arrived at Fayal on September 2, 1858; . . While there . . another passenger came on board, Jacob M. Smalley, who is an important witness for the United States. . . The attention of the mate was called by the master to the fact that the documents of the supposed supercargo showed, that there were twenty-two thousand gallons of fresh water in the hold of the vessel, and he (the mate) was requested to examine and ascertain if such was the fact. . . and found the fact to be as represented, . . the

suspicions of the master were greatly aroused . . They arrived at Saint Michael's on the 12th of the same month," During the passage from Fayal to Saint Michael's, Smalley, the new passenger, " had various conversations with the master, which in substance and effect show that the master felt himself in danger from the four foreigners on board as passengers, and . . [551] cautioned the witness not to drink any of the wine at dinner, unless he, the witness, first saw him, the master, drink from the same vessel, assigning as a reason for his fears that they had attempted to poison him at Fayal while the vessel lay there, and expressing the opinion that they intended to use poison to accomplish their purpose. . . the master, requested the mate to have his axe in readiness for use, and also requested the cabin-boy to sleep with a hatchet under his pillow; and so strongly were his fears aroused as to the danger, that he requested the witness to remain awake while he, the master, slept."

[552] " They arrived at Saint Michael on the 12th of September, and remained there till the 22d of the same month. . . the master communicated his suspicions to the mate. He was to receive pay at that port, and he told the mate that when he got his money, he should leave the ship, give him a letter, and order him home with the vessel, . . the mate was appointed master with the approval of the consul, and that the master, who was sick, left the vessel. His directions were that the mate should return to New York, and he advised him to keep all his papers out of the way, so that they might not be stolen by the passengers. The vessel sailed from Saint Michael on the 22d of September, Levi W. Turner, master, and when three days out, he called all hands, and stated to them that he suspected that the voyage was illegal, and that he was going to return to the United States, as advised by the former master. Some of the passengers shed tears, and wanted him to run into Flores, and put them ashore. They offered him $1,000 if he would do so, but he declined, saying that he would not go any nearer the land that he was. Willing to be rid of them, however, he offered them a boat of four or five tons; and they left in her, taking with them their trunks, one or two bales of goods, and some provisions." [551] " Before they left, however, J. S. Correa, the present claimant, made a bill of sale to the mate of all the cargo left on board." [553] " The libel was brought under the act of 1818, c. 91.[1] . . There was no appearance for the owner of the bark." The vessel was declared forfeited.

The Wanderer, 29 Fed. Cas. 150 (1 Sprague 515), June 1860. [152] " When the *Wanderer* sailed, and for several months before, she was owned by Charles A. L. Lamar, of Savannah, who had purchased her under a decree of condemnation for having been a slaver. Eight or ten days before she went to sea, Martin, by consent of Lamar, took actual possession and control of her, and acting as master, shipped a crew, purchased stores upon the credit of the vessel, and otherwise prepared her for sea, with intent, on his part, to engage in the slave-trade." [151] " Most of the stores were hurriedly taken on board, in the evening of the 18th

[1] 3 Stat. at L. 450.

of October [1859], and during the darkness of the same night, he hoisted sail, and went down the [Savannah] river, taking with him two seamen, who had just before come alongside in a boat, which had been employed by one Black, to convey him to the vessel; and these two men were compelled, against their will, to go the voyage. The vessel escaped from the port [Savannah], without any clearance from the custom-house, without charts or books of navigation, and so suddenly that none of the crew were allowed time to take their clothing from the shore, and many of them were coerced by threats, and a display of deadly weapons. . . To Hussey, the shipping-master, who was employed by him to engage the crew, ostensibly for a voyage to Matanzas, he declared that ' he had been in the slave-trade, and was going into it again.' And before the vessel left the river, while near its mouth, Martin prepared shipping articles,—describing the voyage to be to Saint Helen's Sound, a place on the coast of Africa,—which all the crew signed. This they were induced to do by a free use of intoxicating liquors, and a display of pistols. And, before leaving the river, Martin repeatedly declared that he was going for a cargo of ' black-birds,' that is, negroes. Upon getting to sea, instead of going to Matanzas, he shaped his course for the Western Islands, and arrived at Flores in thirteen days, with no deviations, except for the purpose of speaking other vessels, in order to obtain charts and supplies. At Flores he took on board a quantity of provisions, and then escaped furtively, without paying for them, and soon after arrived off Funchal, in the Island of Medeira; but seeing a man-of-war in port, he put to sea, directing his course for the coast of Africa. A few days after this, falling in with a French bark, he went on board of her with a boat's crew, and in his absence, the mate, with the concurrence of the crew, took the command, changed her course, brought her to Boston, and delivered her up to the officers of the revenue. . . [152] This vessel, her tackle, apparel, furniture, and lading, must be decreed forfeit." [Sprague, J.]

Burton v. Schepf, 83 Mass. 133, January 1861. "Tort for assault and battery. At the trial . . it appeared that . . one Thalberg gave a concert in a public hall in Lowell; that in the advertisement . . there was no restriction as to the persons to be admitted, . . the fee for admission was put at fifty cents; that the plaintiff, who was a colored man, . . purchased a ticket . . delivered his ticket to the doorkeeper, received from him a programme of the concert, entered the hall, and was proceeding to the seats, . . when the defendant called him back and said to him, ' You cannot go in here: we don't allow black men in here; ' that, . . the defendant ordered the plaintiff out and he refused to go, the defendant took hold of the plaintiff and put him outside . . in the presence of the audience . . and there tendered him the amount of money . . the plaintiff had paid for his entrance. There was no claim that any more force was used by the defendant to put the plaintiff out than was necessary, though the plaintiff's coat was somewhat torn. . . [134] A verdict . . for the plaintiff, and the defendant alleged exceptions."

Held: "The sale of the ticket to the plaintiff, . . was a license to him to enter the hall . . as its temporary lessee, and to remain in it during the concert . . But the license was revoked immediately upon the entrance of the plaintiff into the hall and before he had taken his seat. By remaining there afterwards, and refusing to depart upon request, he became a trespasser; and the defendant had a right to remove him by the use of such degree of force as his resistance should render necessary for that purpose. It is not alleged that in the exercise of this right the force used was at all excessive, or more than was requisite to effect his removal in a reasonable manner from the premises. . . [136] For such removal an action of trespass cannot, . . be maintained. . . the exception . . must be sustained."

U. S. v. Kelly, 26 Fed. Cas. 697 (2 Sprague 77), July 1863. Leno Kelly, a merchant of New Bedford, was found guilty of aiding and abetting "in fitting out . . the ship *Tahamaroo,* [in 1860] . . with intent to employ said ship . . in the trade and business of procuring negroes,"[1] Judgment arrested: the indictment must allege that the vessel was fitted out for that trade by some person other than the defendant, and that that person had the intent to employ her in that trade, and that the defendant did aid and abet such person in so fitting out; and that the fitting out was done at a port within the United States.

The Deer, 7 Fed. Cas. 353 (1 Lowell 95), 1866. "In the case of the steamer *Planter,* which was run out of Charleston, with great skill and at great hazard, by the negro Robert Small and his associates, and delivered to our fleet, congress granted them one-half the value."[2]

Commonwealth v. Sylvester, 95 Mass. 247, October 1866. "Complaint for refusing to allow Robert J. Stockton, a negro, to play at billiards in a billiard room and public place of amusement kept by the defendant, such refusal being on account of the color of said Stockton. There was no averment in the complaint that the place was licensed and the defendant moved to quash it for that reason; but the motion was overruled. At the trial . . there was no evidence to show that the place was licensed, and the defendant asked the court to rule that the evidence did not show a public place of amusement, under the statute; but the judge declined so to rule, and the defendant was found guilty, and alleged exceptions. . .

"By the Court. The evidence did not show that any offence, under St. 1865, c. 277, had been committed by the defendant. [248] It was not proved that the place kept by him was licensed, . . for the purpose of being used for hire, . . for the playing of the game of billiards for amusement. The statute was intended to apply only to places so licensed, . . it cannot be supposed, . . that it was the intent of the legislature to prescribe the manner in which persons should use their own premises,

[1] The count was "founded on the third section of the act of congress of 1818, c. 19 (3 Stat. 451)."
[2] 12 Stat. at L. 904.

or permit others to use them, if they did not carry on therein an occupation . . or suffer other persons to appropriate them to a purpose, which required a license in order to render such an appropriation lawful. Exceptions sustained."

Jackson v. Phillips et al., 14 Allen 539, January 1867. [540] "Bill in equity by the executor of the will of Francis Jackson, . . for instructions as to the validity and effect of the following bequests and devises: 'Article 4th. I give and bequeath to William Lloyd [541] Garrison, . . their successors and assigns ten thousand dollars; . . in trust, . . for them to use . . as they deem best, for the preparation and circulation of books, newspapers, the delivery of speeches, lectures, and such other means, as, in their judgment, will create a public sentiment that will put an end to negro slavery in this country; . . Other bequests, hereinafter made, will sooner or later revert to this board of trustees. . . Article 5th. I give and bequeath to the board of trustees . . two thousand dollars, . . in trust, . . to be expended by them at their discretion, . . for the benefit of fugitive slaves who may escape from the slaveholding states of this infamous Union from time to time. . . [544] By Article 10th, the testator made a similar bequest and devise of the remaining undivided third part of said residue to his brother George Jackson, . . in trust to pay the whole net income . . to . . Harriette M. Palmer, during her natural life, and at her decease, one half of such income 'to the board of trustees constituted in the fourth article of this will, to be expended . . for the . . purpose therein directed;' . . 'but, in case . . Harriette M. Palmer should outlive all her children, then, at her decease, I direct said trustee, . . to pay . . the whole of said trust fund to the . . trustees constituted in said fourth article in this will,' . . Answers were filed . . One argument was had in March 1863, . . and a second argument . . in November 1865. While the case was under advisement, the thirteenth [545] article of amendment of the Constitution of the United States was adopted, and the effect of this amendment upon the case was argued in March 1866. . . [549] Gray, J. . . The . . arguments of counsel have necessarily involved the consideration of the fundamental principles of the law of charities, . . [550] and have disclosed such diversity of opinion . . as to require the principles in question to be fully stated, . . I By the law of this commonwealth, . . gifts to charitable uses are highly favored, . . and trusts which cannot be upheld in ordinary cases, . . will be established and carried into effect when created to support a gift to a charitable use. . . The question of the validity of these trusts is not to be determined by the opinions of individual judges or of the whole court as to their wisdom or policy, but by the established principles of law; . . It has been . . contended . . that neither of the purposes declared by the testator is charitable [551] within the . . purview of the St. of 43 Eliz. c. 4, which all admit to be the principal test . . of what are in law charitable uses. . . It is well settled that any purpose is charitable in the legal sense of the word, which is within the principle and reason of this statute, although not expressly named in it; . . [556] A charity, in the legal sense, may be

more fully defined as a gift, to be applied consistently with existing laws, for the benefit of . . persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings . . or lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature. . . [557] In the light of these general principles, we come to the consideration of the language of the different bequests in this will. . . [560] The law of Massachusetts has always been peculiarly favorable to freedom, . . [564] The Constitution of the United States uniformly speaks of those held in slavery, not as property, but as persons; and never contained anything inconsistent with their peaceable and voluntary emancipation. . . [566] The bequest itself manifests its immediate purpose to be to educate the whole people upon the sin of a man's holding his fellow-man in bondage; and its ultimate object, to put an end to negro slavery in the United States; in either aspect, a lawful charity. . . [567] This bequest directly tends to carry out the principles thus declared in the fundamental law of the Commonwealth. . . [568] It falls indeed within the spirit, and almost within the letter, of many clauses in the Statute of Elizabeth. . . III. The next question arises upon the bequest in trust for the benefit of fugitive slaves who might from time to time escape from the slave-holding states of the Union. . . It is no part of the duty of this court to maintain the constitutionality, the justice, or the policy of the fugitive slave acts, now happily repealed. . . [569] A bequest for the benefit of fugitive slaves is not necessarily unlawful. . . [570] To supply sick or destitute fugitive slaves with food and clothing, medicine and shelter, or to extinguish by purchase the claims of those asserting a right to their services and labor, would in no wise have tended to impair the claim of the latter or the operation of the Constitution of the United States; and would clearly have been within the terms of this bequest. . . This bequest therefore, as well as the previous one, being capable of being applied according to its terms in a lawful manner at the time of the testator's death, must, upon the settled principles of construction, be held a valid charity. . . [588] There is no adjudication of this question by the supreme court of the United States. . . [591] The intention of the testator is the guide, or, in the phrase of Lord Coke, the lodestone, of the court; and therefore, whenever a charitable gift can be administered according to his [592] express directions, this court, like the court of chancery in England, is not at liberty to modify it upon considerations of policy or convenience. . . [593] The authority of administering a charitable trust according to the expressed intention of the donor, and, when that cannot be exactly followed, then as nearly as possible, is a part of this jurisdiction, which the court is not at liberty to decline. The only question is, whether the facts of the case show a proper occasion for its exercise according to the settled practice of chancery. . . [594] The charitable bequests of Francis Jackson cannot, in the opinion of the court, be regarded as so restricted in their objects, or so limited in point of

time, as to have terminated and been destroyed by the abolition of slavery in the United States. . . [595] Neither the immediate purpose of the testator— . . nor his ultimate object— . . has been fully accomplished by the abolition of slavery. . . [596] The mode in which the funds . . may be best applied . . must be settled by a scheme to be framed by a master and confirmed by the Court before the funds are paid over to the trustees. . . The case is therefore referred to a master, with liberty to the attorney general and the trustees to submit schemes for his approval; . . [597] As to the bequest in the fifth article, the master reported that . . it . . be applied by the trustees in accordance with their unanimous recommendation, to the use of necessitous persons of African descent in the city of Boston and its vicinity. This scheme was approved and confirmed by the court, with this addition: 'Preference being given to such as have escaped from slavery.' . . [599] The master . . reported that what remained of the fund bequeathed by the fourth article of the will should be 'ordered to be paid over to the . . Freedman's Union Commission, to be . . expended . . in promoting the education, support and interests generally of the freedmen (late slaves) in the States of this Union recently in rebellion.' And this scheme was by . . the whole court accepted and confirmed, modified . . by substituting for the words 'recently in rebellion' the words 'in which slavery has been abolished, either by the proclamation of the late President Lincoln or the amendment of the Constitution.' Final decree accordingly."

Attorney-General v. Garrison et al., 101 Mass. 223, March 1869. [224] "Information filed . . by the attorney general at the relation of the treasurer of the New England branch of the American Freedman's Union Commission, setting forth that in 1861 Francis Jackson's will was duly proved and allowed . . containing in its fourth article a bequest of $10,000 to William Lloyd Garrison, . . in trust . . 'to use . . for the preparation and circulation of books . . and such other means as . . [225] will create a public sentiment that will put an end to negro slavery in this country,' . . that . . the executor of the will, brought his bill in equity in this court, . . in regard to the true construction of the bequest . . whereupon proceedings were had resulting in a decree, establishing the bequest as a valid charity, and in 1867 ordering its execution cy pres, negro slavery having then been put an end to in this country. . . The material part of this decree the information recited as follows: 'And as to the sum . . given to the said trus[226]tees by the fourth article of said will, . . it is ordered, . . that the remainder . . being $9,259.80, be paid . . to the said trustees, to be by them paid over, at such times and in such sums as they in their discretion may think fit, to the treasurer of the New England branch of the American Freedman's Union Commission, to be by them expended in promoting the education, support and interests generally of the freedmen (late slaves) in the states of the Union in which slavery has been abolished,' . . The information then set forth that the executor duly paid . . to the trustees, . . but that they never made any payment whatever . . to . . any officer of the Commission;

. . 'and that they do not now intend ever to make any such payment,' . . [227] The prayer was, for the court 'to pass a new order . . that [the charity] may not fail; . . and to remove such of the said trustees, . . as may refuse . . to obey the order . . of the court, and appoint a new trustee or trustees in the place thereof;' and for general relief. . . Garrison, Quincy and May filed a joint answer, . . denying that they, . . had ever declared that they . . would never consent to pay over . . to the . . Commission, . . and alleging that 'they have long desired . . to obey . . the said decree of this court, . . but their efforts . . have been defeated by . . the said Phillips, Jackson, Bowditch and Whipple.' . . [229] Phillips, Whipple and Jackson also filed a joint answer, . . [230] that no payment of this fund . . had been made to . . any officer of the Commission, . . [232] denied that, . . a wise and proper discretion and proper administration of the charity would require that the whole or a considerable part of the sum should be paid to him forthwith, or should have been paid to him previously. Bowditch filed a separate answer, admitting . . that, notwithstanding the request . . [233] by the Commission . . they had made no payment to its treasurer; . . 'that the said decree . . does not purport to divest said . . trustees of the duty . . of exercising a sound discretion, as to the times and manner of expending the . . bequest.' . . [235] 'But he does not feel that he ought to consent, notwithstanding the decree . . to the application of the whole fund to a purpose which . . his testator would have disapproved of. Whenever, . . the amount . . paid over to the Freedman's Union shall exceed one half of the trust fund, . . it is probable that this defendant will refuse to note any further payments to said Freedman's Union.' Issue was joined on these answers; and a hearing had before the chief justice, who reserved the case for . . the full court . .

[238] "Chapman, C. J. The object of the information is, to enforce, the execution of a charitable trust in conformity with a decree of the court . . and the court are . . of opinion that the decree requires that the money, when received by the treasurer . . should be applied to the enterprise which it is now prosecuting. . . [239] Four of the [trustees] . . think that not more than five thousand dollars should be appropriated to the schools; . . These trustees are so unwilling to execute the trust in conformity with the decree . . that they prefer to be removed . . it becomes necessary to remove them. . . The other three trustees . . are willing . . to execute the trust by paying over the whole fund to the treasurer . . Decree for the removal of the four trustees, and for the nomination of persons to fill vacancies."

Commonwealth v. Cuffee, 108 Mass. 285, October 1871. "Indictment for the murder of Benjamin Howard . . at the trial, . . there was evidence . . tending to show that Howard was killed . . with a club, near his house . . and his body dragged into a . . wood, where it was discovered . . that the defendant, who was a negro thirteen or fourteen years old, as suspected . . that . . two police officers . . [286] went to the school which the defendant attended . . and asked him to accompany

them to the scene of the homicide; that he did so, and pointed out . . the localities at which, . . it was supposed that the homicide had been committed and the body dragged away and hidden; that they then, against his will, and without a warrant, took him . . searched him, stripped him . . and placed him in a cell . . and that, about ten o'clock at night, ' they took him out of his cell for the purpose of questioning . . and examined him from that time till midnight, without warning him of his right not to answer unless he chose to do so, or offering him any opportunity to consult with counsel or friends.' The defendants objected to the admission in evidence . . of statements made by him to the police officers, . . But it was ruled that, ' in the absence . . of threats or promises . . such statements were admissible . .' and the jury were afterwards instructed that ' if, . . it appeared to them that these statements were not induced by any threats or promises, they might be considered . . and allowed such weight as they should consider them to be entitled to; . . [287] The jury returned a verdict of guilty of murder in the first degree; and the question of the correctness of the . . rulings was reported for revision."

Held: " The ruling, that the statements were admissible in the absence of threats or promises, was in conformity with recent decisions of this court. . . [288] after all the evidence was in, the court still further guarded the rights of the prisoner by instructing the jury that if, upon the whole evidence in the case, it appeared to them that these statements had been induced by threats or promises, they should not be allowed any weight or effect against the prisoner. These rulings were sufficiently favorable to the prisoner. . . Sentence according to the verdict."

Coleman v. Parker, 114 Mass. 30, November 1873. " Contract, with a count in tort for the same cause of action, to recover a portion of the contents of a trunk, once the property of Sarah Craig, deceased. The plaintiff claimed the property as a gift *mortis causa* from the deceased: the defendant claimed it as administrator of the deceased. At the trial . . there was evidence that the plaintiff and the deceased had been intimately acquainted . . for . . twenty years; that . . deceased had, . . promised the plaintiff to leave all her property to her; . . that the deceased left no relative or heir, and came originally from Virginia, where she was a slave. . . Louisa Dortra, a witness for the plaintiff, testified: ' Mrs. Craig died in July, 1871. . . [31] she told me she wanted Mrs. Coleman to have the trunk if she died and wanted me to see that she got it. . . The key remained in the washstand until after her death; . .' [32] Upon the foregoing evidence the presiding judge ruled, that there was no evidence of any delivery of the trunk and its contents to the plaintiff, or to Louisa Dortra for the plaintiff by the deceased, to go to the jury, and directed the jury to return a verdict for the defendant, which was rendered accordingly; and the plaintiff alleged exceptions. . . "

Held: " The only question raised upon this bill of exceptions is as to the correctness of the ruling at the trial, that the case furnishes no evidence of any delivery of the trunk and its contents to the plaintiff, or to any one on her behalf. The evidence . . was sufficient to make out all

the other elements necessary to . . her title. . . it is not enough merely to show that the dying person intended to make the gift, and that she designated . . what was to given and to whom. It is necessary also to the plaintiff's case to show that the intention was carried into effect, and that the gift was consummated by an actual or effective delivery. . . [33] We have no doubt that a trunk with its contents might be . . delivered, . . by a delivery of the key, not as a symbolical delivery . . but because it is the means of obtaining possession. . . the evidence reported wholly fails to show that the witness had or was intended to have any such exclusive control or possession of the key. On the contrary, the evidence is that . . she was directed by the sick woman to lock the trunk and put the key back where she found it, and that it remained there until after the death of the sick woman. There was no such change in the possession of the key as would constitute an effectual delivery of the trunk. Exceptions overruled."

VERMONT

INTRODUCTION

As the first Constitution of Vermont prohibited slavery,[1] few cases are to be found in which it is involved. In the first, decided in 1802, Stephen Jacob, a justice of the Supreme Court of Vermont, had bought a slave Dinah in 1783 and had brought her into the state, but had little service from her as his neighbors enticed her away on learning how good a servant she was. When she became blind and paralytic, the selectmen tried to force Jacob to support her. It was held that the bill of sale to Jacob could not be read in evidence, that it did not operate in Vermont. In 1803 there is a case of lynching a free negro to extort a confession of theft. He was hanged by a halter till nearly suffocated and was otherwise abused. He was found guilty of larceny and one of his torturers was fined, there being " no statute against the crime, as the Legislature never could have contemplated its commission in an enlightened age, and amongst a free people." Among the very numerous " pauper " cases in Vermont, no mention is made of negroes, and but one case seems, from the name of the pauper's husband, Cato Williams, to involve that race. The case of Burlington *v.* Rhoda Fosby [2] is interesting in holding that Rhoda is the heir at law of Thomas Jackson, both being the illegitimate children of a slave belonging to a citizen of New Hampshire. Only one instance is found of caste distinction, Paige *v.* Smith,[3] in which the plaintiff threatened that he would hire some negro to whip the defendent.

If one may generalize from so few cases, it seems that in Vermont as so often elsewhere, the bench was much broader in its attitude toward the negro than the common run of persons, particularly the ignorant sort, who did not hesitate even in Vermont to resort to torture which would have disgraced states farther south.

[1] See paper read by Chief Justice Watson at the meeting of the Vermont Bar Association, 1920.
[2] P. 537, *infra*.
[3] P. 537, *infra*.

Selectmen v. Jacob, 2 Tyler 192, August 1802. " on the 26th of July, 1783, the defendant [1] purchased of one White Dinah, a negro slave, whom he then brought into the town of Windsor; that she continued to live with and serve him as a slave until some time in the year 1800, when she became infirm, sick, and blind, and in this condition was discarded by the defendant, and became a public charge, and that for the moneys expended by the corporation for medicine and attendance during her sickness, and for her support since, this action is bought." Counsel for defendant: [196] " Several of the inhabitants of Windsor, represented in their corporate capacity by the present plaintiff, discovering that she was an excellent servant, and wishing to profit themselves of her labours, inveigled her from her master's family and service by the syren songs of *liberty and equality*, which have too often turned wiser heads. She spent the vigour of her life with these people, . . and now she is blind, paralytic, and incapable of labour, they aim by this suit to compel the defendant *solely* to maintain her; . . When she was enticed from the defendant's service; he did not attempt by legal aid to reclaim her. As an inhabitant of the State, in obedience to the constitution, he considered that he could not hold her as a slave." [201] " The bill of sale cannot be read in evidence to the Jury."

Held: [2] [199] " Our State constitution is express, no inhabitant of the State can hold a slave; and though the bill of sale may be binding by the *lex loci* of another State or dominion, yet when the master becomes an inhabitant of this State, his bill of sale ceases to operate here."

State v. Cato Jenkins, 2 Tyler 377, February 1803. A negro, Cato Jenkins, was charged with stealing a pormanteau containing various bank bills " at Rutland, etc. on the evening of the 1st day of January, 1803, . . Whitney, the owner of the goods, had fastened his horse with the portmanteau upon the saddle, which contained a small jug of West-India rum, and . . the bills . . ; went into a tavern; passed a convivial evening; at a late hour he found his horse had slipped his bridle, was wandering in the public highway, and the portmanteau with its contents were missing. The next morning the defendant treated one Washburn with rum from the jug, which he had concealed in a barn. This led to a suspicion that the defendant stole the property. On being charged, he readily acknowledged that he had the portmanteau in his possession, which he had concealed in a hay-mow. He said he found it early the same morning in the road, but denied all knowledge of the bank bills. Some ill-advised persons [3] then seized the negro, and undertook to extort a confession as

[1] Assistant Judge of the Supreme Court of Vermont.
[2] " Jacob, Assistant Judge, being a party, did not sit in this cause."
[3] See State *v.* Hobbs, p. 537, *infra*.

to the bank-bills by torture, which was effected by suspending him by a halter round his neck from the limb of a tree, until he was nearly suffocated, and by other base and inhuman practices, too indecent to be mentioned. The negro, however, persisted in his first confession, and denied all knowledge of the bills. . . the Court, after reprehending, in strong and pointed terms, the practice of torture as a means of discovering the truth, charged the Jury . . That, however we might feel as men at the relation of the wanton, cruel, and outrageous abuse done to the prisoner, we must not suffer the impulse of the moment . . to divert us, as Judges or Jurors, from the obligation of our official oaths. The Jury returned their verdict guilty."

State v. Hobbs and Strong, 2 Tyler 380, February 1803. "Indictment for a misdemeanor in torturing a person suspected of theft. . . charged the defendants, that . . they . . made a violent assault upon the body of Cato Jenkins, . . and him the said Cato Jenkins with force and arms did then and there beat, bruise, torment, torture, and burn with fire, and him the said Cato Jenkins with like force did suspend and hang by the neck, . . The Jury acquitted Return Strong, and found Abraham Hobbs guilty. The Court, in delivering sentence, observed, That there was no statute against the crime, as the Legislature never could have contemplated its commission in an enlightened age, and amongst a free people. That if such a statute had existed, it would probably have been in the power of the Court to award a punishment more adequate to the enormity of the offence. . . The Court sentenced the culprit to pay a fine to the State treasury."

Castleton v. Clarendon, Brayton 181, 1820. "an appeal from an order of removal of Hester Williams, wife of Cato Williams,[1] . . on the 6th day of January, 1812, said Cato was warned to depart said Castleton, . ."

Burlington v. Rhoda Fosby, 6 Vt. 83, January 1834. "both the said Thomas [Jackson], the intestate, and Rhoda, the claimant, were the illegitimate children of one Candice, who was the slave of one Moore, a citizen of New-Hampshire." Held: [91] "Rhoda Fosby is the heir at law of Thomas Jackson, the intestate,"

Paige v. Smith, 13 Vt. 251, February 1841. "the plaintiff had made . . violent threats . . that he would way-lay the defendant, beat, flog, and whip him, and that he would hire some negro to whip him;"

[1] The name "Cato" indicates that negroes are involved.

NEW HAMPSHIRE

INTRODUCTION

I.

Slavery was of slight proportions in New Hampshire, only 158 slaves are indicated in the census of 1790; and before long slavery was abolished. The paucity of cases dealing with slave problems indicates that public sentiment never reached the boiling point on the question of abolition.

That the common law was sufficient to cover a case of attempted sale of an indentured mulatto boy of six years into slavery in Alabama is evidenced by the case of State *v.* Rollins;[1] the fact that the Supreme Court of the state granted a new trial after conviction in the lower court merely illustrates the principle that appellate courts will reverse for errors irrespective of whether the case was tried on a statutory or common law basis.

The incapacity of the slave to contract is illustrated by the famous case of Clark *v.* Pease;[2] this decision is entirely in harmony with similar instances in other states.

Perhaps the most striking instance of the tolerant spirit of New Hampshire is found in an advisory opinion of the Supreme Court in 1861.[3] The court was asked to pass upon the constitutionality of the act of June 26, 1857, which among other things provided that color should not bar from citizenship, or from the privilege of voting, that slaves who came or were brought into the state should be free, and that anyone who held another in slavery within the state should be guilty of a felony and punished accordingly. The immediate problem was whether or not the act was in conflict with the federal act known as the Fugitive Slave Law and hence unconstitutional. The court took the position that under settled rules of construction, no statute would be deemed unconstitutional if it was evidently not intended to confiict with federal law, merely because the act could not properly apply to all persons. It was said further that the state act was designed to remove doubts that might have arisen after the Dred Scott decision,[4] and was not designed to affect the rights of fugitive slaves or of persons lawfully reclaiming them.

[1] P. 540, *infra*.
[2] P. 541, *infra*.
[3] State of New Hampshire, p. 541, *infra*.
[4] 19 Howard 393.

II.

By the act for establishing courts of law,[5] the judiciary was organized as follows: The justices of the peace had jurisdiction over cases (except those involving title to realty) not exceeding forty shillings. Either party could appeal to the court of common pleas. In criminal cases appeal lay to the court of general sessions. From both the court of common pleas, and the court of general sessions, the final appeal was to the Superior Court of Judicature of the state.

[5] Passed Feb. 9, 1791.

State v. Rollins, 8 N. H. 550, December 1837. [551] " Indictment for assault and false imprisonment, and kidnapping. . . Upon the trial it appeared, that . . the overseers of the poor of . . Exeter placed said Swett, who was a mulatto boy, about six years of age, and one of the paupers of said town, with the defendant, . . as an apprentice; and the defendant . . executed a . . memorandum, . . to have and to hold him by an indenture to be made by the overseers in case he should use the boy well; and that he would clear the town from all expense that might accrue, by not returning the boy to the poor house within one year. . . On the 24th of October, . . defendant carried the boy from his house, . . to . . Jonathan Bennett, . . a distance of forty miles, [552] and left him there. He . . told the wife of said Jonathan that the boy was given to him . . that he had sold him to one Samuel Bennett, of Alabama, . . until he should be twenty-one years old, for the sum of fifty dollars, . . The boy remained there until the 29th of October, when he was taken away by the overseers of Exeter. . . Samuel Bennett . . went to the defendant's, and informed him that the overseers had taken away the boy. . . the defendant paid him fifty dollars. Bennett then asked the defendant for a bond which he had executed to him, . . a discharge was written upon it, and signed by the defendant. . . Bennett returned to Alabama. The bond . . provided that if said Bennett should well and truly return said bound and indented negro boy into the state of New Hampshire, free and independent as other apprentice boys when they had served out their time, the bond should be void, otherwise of force. [553] . . The jury found the defendant guilty upon the fourth count, ' of selling Benjamin Swett, with an expectation of his going into slavery; ' and the defendant moved for a new trial, and in arrest of judgment."

New trial granted: [559] " It is objected that the provisions of the common law for the punishment of the crime of kidnapping have never been in force in this state; . . [560] We are of opinion that this position cannot be maintained. . . [561] There seems to be no reason to doubt, . . that the body of the English common law, . . so far as they were applicable to the condition of the people, were in force here, . . [562] The form . . of civil government adopted by the congress of the colony, January 5, 1776, was intended for a temporary purpose, and made no change in this respect. The declaration of independence was read and published in . . 1776, and the colony assumed the name . . of New-Hampshire; . . [565] We are of opinion that the first count, for an assault and false imprisonment, is well sustained on the evidence before us. . . Every restraint upon the liberty of a free man will be an imprisonment. . . The defendant held Swett for the time as an apprentice, or servant, and might lawfully exercise authority over him as such; but when he took him and

carried him to Northwood, under a contract to transfer him, or his services, . . out of the state, that was a restraint upon his liberty and an unlawful imprisonment. . . It would be idle to say there was no restraint because there was no struggle, or because a boy of six years old was not conscious of it. . . [566] But as the indictment stands, there should be a finding that the intention was that he should be held in slavery during life. . . The defendant's only authority was to hold the boy as his servant, until the overseers claimed him. . . When, therefore, he sold him into servitude until he should become twenty-one, . . he was guilty of kidnapping. . . [568] But no judgment can be rendered on this verdict, as it does not find the offence charged in either count. A sale of the boy, with an expectation of his going into slavery, is not, necessarily, either kidnapping or false imprisonment. The verdict being imperfect, a *venire facias de novo* must be awarded."

Clark v. Pease, 41 N. H. 414, December 1860. [415] "It is a familiar principle, . . that the essence of a contract is the [416] . . agreement of the mind of both parties, and that there is no contract unless the parties there to assent, and 'when such assent is impossible, from the want, . . or incapacity . . there can be no perfect contract.' . . Upon this principle certain . . persons are held to be incompetent to make contracts. Such are infants . . slaves, . . [428] Take also the case of a slave. There the general rule is, that he is incompetent to contract; and if a man were about to purchase a note, and, upon inquiry as to who the signer was, should learn that he was a slave, that would be sufficient notice to him that the note was void, because all contracts made by all slaves usually are so, because while in that condition they must necessarily be constantly under a duress of body, mind, and will."

State of New Hampshire, 41 N. H. 553, June 1861. "To the Honorable House of Representatives: The undersigned, Justices of the Supreme Judicial Court, . . submit the following opinion: The first and fourth sections of the act referred to are as follows: Section I. . . 'That neither descent, near or remote, from a person of African blood, whether such a person is or may have been a slave, nor color of skin shall disqualify any person from becoming a citizen of this State, or deprive such person of the full rights and privileges of a citizen thereof. Section 4 Section first of chapter twenty-five of the Compiled Statutes shall not be so construed as in any case to [554] deprive any person of color, or of African descent, born within the limits of the United States, and having the other requisite qualifications, from voting at any election; but such person shall have and exercise the right of suffrage as fully and lawfully as persons of the white race.' We do not understand that the constitutionality of these sections has ever been questioned, nor are we aware that they made any change in the . . law. The second section provides that, 'Any slave who shall come or be brought into or be in this State, with the consent of his master . . or who shall come or be brought into or be in this State involuntarily, shall be free.' It has been suggested that this section could not be constitutionally applied to a person being carried through this state,

with or without process, under the Act of Congress, . . the Fugitive Slave Law, or under the provision of the Constitution of the United States, commonly called the Fugitive Slave clause, The third section is: 'Every person who shall hold . . in slavery, . . any person, of whatever color, class, or condition, in any form or under any pretence, . . shall be deemed guilty of felony, and, on conviction thereof, shall be confined to hard labor for . . not less than one, nor more than five years: . . [555] The rule of construction universally adopted is, that when a statute may constitutionally operate upon certain persons, or in certain cases, and was not evidently intended to conflict with the constitution, it is not to be held unconstitutional merely because there may be persons to whom, . . it cannot constitutionally apply; . . [556] There is nothing in the act of 1857 indicating an intention to obstruct or impede the operation of the Constitution, or any law of the United States; but we are not left merely to presume from this negative evidence that no such purpose existed, for the proviso in the third section, and the general tenor of the act, furnish positive evidence, and clearly manifest the contrary intention. The act was apparently designed to remove any doubts that might have arisen after the decision in the case of Dred Scott, . . as to the rights of free colored persons in those States where there were no statutes on that subject. It was evidently not designed to relate to, or to have any operation upon the rights of fugitive slaves, or of persons lawfully reclaiming them; and we are of opinion that it is not to be construed to have any such operation. . . [557] It is not necessary to give such a construction to any section of the act as to render it unconstitutional, and such a construction could not be adopted without violating well settled rules of interpretation. In our opinion, the act entitled 'An act to secure freedom and the rights of citizenship to persons in this State,' passed June 26, 1857, is constitutional."

Pickering v. De Rochemont, 45 N. H. 67, December 1863. "the declaration was as follows: . . [68] Also, the further sum of $1771, being the seventh part of the value of twenty-five slaves belonging to the said heirs . . Also, the sum of $1200, . . being the half part of the value of six other slaves . . Also, the sum of $3,000.00, being the one seventh part of the hire and earnings of said twenty-five slaves belonging to the said seven heirs, . . Also, the sum of $3,000, . . being the one half part of the hire and earnings of said six slaves . . Also, the sum of $2,000, . . being the one [69] seventh part of the Government compensation under the emancipation act of Great Britain for certain other twenty-five slaves . . received, . . by said defendant in trust and to the use of the said seven heirs . . Also the further sum of $1200, being the one half part of the Government compensation under the emancipation act of Great Britain, for certain other six slaves . . [70] the defendant pleaded the general issue, . . the case was referred to Henry A. Bellows, Esq., as Auditor, who . . made his report . . [72] sum of $2508.01, the auditor finds to be due . . to the plaintiffs, . . The auditor's report was admitted, and the defendant excepted."

Held: [75] " It is objected that the declaration alleges an indebtedness of the defendant to the plaintiffs jointly, while . . the evidence . . prove[s] an indebtedness to the wife alone before marriage. . . [76] The declaration before us is bad, therefore, for not setting forth the manner in which the wife is interested. . . our statutes authorizing married women to sue and be sued in certain cases, . . does not affect the rule which is [77] to be applied in other cases and thus provided for. . .[81] we think it must be held that the auditor's report was sufficient *prima facie* evidence to warrant the jury in allowing to plaintiffs all the items which he had allowed. . . the nonsuit was properly ordered, but the plaintiff may amend."

Orr v. Quimby, 54 N. H. 590, June 1874. [591] " Trespass, . . for . . cutting down, carrying away, and converting . . 710 trees and 195 cords of wood. The defendant pleaded . . a special plea . . that . . under . . authority of an act of congress . . the defendant entered . . for the purpose of exploring, . . the said coast, . . the plaintiff demurred. The plaintiff claimed, . . that the defendant could not enter without first tendering compensation;"

Held: [592] " The position was taken by the plaintiff's counsel that this statute . . requires the assessment of damages for which it provides, and payment or tender of the sum assessed, to precede the taking of property under it, . . It is clear that this position cannot be sustained."

Dissenting: [603] " the defendant does not deny that he took the plaintiff's property— . . Property taken for that survey is taken for a public use. . . [605] The plaintiff is equally entitled to compensation, whether his property was taken by the federal or the state government, . . [620] In 1772, when the number of slaves in England was estimated at 14,000 . . and their value at not less than £700,000 sterling, the immemorial custom by which they were held was not strong enough, in the opinion of Mansfield and the other judges . . to be an exception; and it was decided, . . to be illegal at common law. . . Upon those principles slavery is continuous personal violence, duress, assault and battery, and false imprisonment, for which an action of trespass and an indictment will lie. . . The slave title was derived from a foreign country where a free person had been overcome by a use of force, which, in England, would be an indictable offence. Personal violence, begun in Guinea, was continued in London. . . [621] The thirteen original states were all slave states when they declared their independence in 1776. . . ' How or by what act slavery was abolished in Massachusetts, . . is not now easy to determine, . . By the constitution adopted in 1780, slavery was abolished in Massachusetts,' . . [622] the constitution (including the bill of rights) of New Hampshire having been largely copied from that of Massachusetts, . . [623] If the national census is correct, the number of slaves in this state in 1790 was 158; in 1800, 8; in 1830, 3; in 1840, 1. Dr. Belknap, . . says,—' The state of New Hampshire established their constitution in 1783; and in the first article of the declaration of rights, it is asserted that " all men are born equally free and independent." The construction there put on this

clause is, that all who have been born since the constitution are free, but that those who were born in slavery before are liberated by it. By reason of this construction . . the blacks in that state, are . . distinguished into free and slaves.' . . [624] On the question whether the people of New Hampshire, when they adopted the constitutional reservation of the right of personal liberty in 1783, understood that it would abolish slavery, either instantly or gradually, very little if any direct evidence has been discovered. . . A small number of slaves continued to be taxed to their masters a few years after the adoption of the constitution of 1783. In the tax law of 1789, slaves were not one of the items of the list of taxable property. . . [625] If it were a matter of public history that Massachusetts, in making the reservation in her declaration of rights, intended to abolish slavery, there would be some legal ground for holding that New Hampshire intended the same thing. But, . . it does not appear that Massachusetts had such an intention. . . In 1774 the continental congress, not authorized . . to abolish the chattel slavery . . declared, . . that the inhabitants . . were entitled to life, liberty, and property. Such language, . . was universally understood to be qualified, . . by the exceptional custom of African slavery. . . [638] While the reservation of the rights of life, liberty, and property is unequivocal, it must be admitted that exceptional cases, within the letter of it but held not to be within its meaning, have extensively disseminated the idea that it is a transcendental theory devoid of all legal force. . . The compulsory purchase of the plaintiff's property, without compensation, is not an exception, but as plain a violation of the right as is possible."

MAINE

INTRODUCTION

I.

When Maine was separated from Massachusetts, in 1820, and became an independent state in the Union, slavery had long since ceased to exist in Massachusetts, and it never existed in the state of Maine. It seems therefore that there is no Maine legislation on the subject of slavery to record, except an act of 1857 requiring all county attornies to defend all persons arrested and claimed as fugitive slaves within their respective counties.[1]

The application of general statutes to negro or slave paupers is evidenced by the case of Hallowell *v.* Gardiner,[2] in which the question arose as to whether or not the pauper had acquired a legal settlement in the defendant town. It was held that the pauper had not acquired a settlement because her father was a slave and she was never emancipated. Her mother was a free black woman, but had no settlement since her husband had none.

In Bailey v. Fiske,[3] the demandants claimed certain real estate as the heirs of their father. Their claims were denied by the trial court and the supreme court of the state overruled exceptions to the verdict of the trial court on the grounds that the claimants were illegitimate, their father being a mullato and their mother the daughter of a white father and a mother who was one-eighth Indian. Under a state statute the marriage of white with colored persons was prohibited, and since the issue of such a marriage were illegitimate they could not inherit from their deceased father.

II.

The Maine Constitution of 1820[4] provided as the highest tribunal of the state a Supreme Judicial Court, which an act of the same year[5] organized to consist of a chief justice and two associate justices, increased to three in 1847,[6] and to six in 1852.[7] A peculiar act of 1855,[8] beside adding another associate justice, provided that for hearing and determining questions of law and equity and for trying capital offences four justices, of whom the chief justice should always be one, should be specially designated by the governor from among the members of the court. This was repealed in 1856, and the number of associate justices was reduced to six, but from 1857 till after the date at which our scrutiny of the reports comes to an end (1875) their number was seven.[9]

[1] Public Laws of 1857, ch. 43.
[2] P. 546, *infra*.
[3] P. 549, *infra*.
[4] Art. VI., sect. 1.
[5] Act of June 24, 1820. Laws of 1830, ch. 54.
[6] Public Laws of 1847, ch. 15.
[7] Public Laws of 1852, ch. 246.
[8] Public Laws of 1855, ch. 174.
[9] Public Laws of 1856, ch. 272; Laws of 1857, ch. 3.

Hallowell v. Gardiner, 1 Me. 93, September 1820. "*Assumpsit* for the support of a pauper alleged to have his legal settlement in Gardiner. . . Harriet, the pauper, was the grandchild of Isaac Hazard Stockbridge and Cooper his wife. Hazard was a negro man, imported from Africa about . . 1740, . . and . . a slave by purchase by Doctor Sylvester Gardiner, . . and resided with his master, in Boston, . . until about the year 1766. In . . 1765, Hazard, with the consent of his master, was legally married to Cooper Loring, a free black woman, . . Hazard . . was ordered to . . an estate of his master in . . Gardinerstown, . . afterwards Pittston, . . he resided with his wife and [94] children, among whom was Lucy Stockbridge, mother of the pauper, on the west side of the river, now Gardiner, on a new farm of Dr. Gardiner's. In . . 1776, Dr. Gardiner left . . Massachusetts, to which he never returned. He arrived at Newport in the State of Rhode-Island in 1786, where he died . . the Doctor intrusted the care of his estates . . to his son William, who . . required the services of Hazard . . and frequently furnished him with supplies . . until the death of Hazard in 1780. . . Gardinerstown was incorporated by the name of Pittston in . . 1779, Lucy then being about ten years of age. . . Lucy went to Augusta, . . until 1792, during which time she became the mother of Harriet, the pauper, who is illegitimate. She then returned to . . Gardiner, . . until 1809."

Held: [98] " plaintiff rests his cause on four distinct grounds: and if either of them be substantial the settlement of the pauper and her children must be adjudged to be in the town of Gardiner. . . [99] As to the first point, we do not perceive any facts which shew that Dr. Gardiner ever did, . . emancipate his slave. . . no manumission . . could be availing, unless a bond . . were given, . . no such bond was given . . As to the second point;—though . . slaves have no civil rights, . . it is provided by the Provincial Stat. 4 Ann. c. 6 . . that ' no master shall unreasonably deny marriage to his negro with one of the same nation, . .' . . The third point is of more importance. Could the wife of a slave gain a settlement by residence in a town with her husband at . . its incorporation, though her husband could not; . . [100] it seems to be settled that a slave can neither acquire nor communicate a settlement, like a free man. . . the reason . . why a wife cannot have a settlement separate from her husband, is, that it would lead to a separation of husband and wife; . . the wife of Hazard could not . . gain a settlement in her own right, by her residence with her husband in the town of Pittston at the time of its incorporation. The last point . . is, whether Lucy, . . being about ten years old, . . did, . . gain a settlement in that town. . . [101] the language . . of Stat. 1793, c. 34, . . is general. '*All persons,* . . dwelling and having their homes in any unincorporated place, at the time when the same shall be incorporated into a town . . shall thereby gain a legal settlement

therein.' . . the clause must be understood . . as the legislature . . intended; . . that all persons legally capable of gaining a settlement in any other mode, should, . . gain one in the method mentioned in that article; but not, that a married woman, or a slave, should thus obtain a settlement. . . Lucy lived in the family with her parents at the time of the incorporation, which marked her [102] . . as not emancipated, and so not capable of gaining a settlement. If a child, . . living in her father's family in a town one year before the 10th day of April 1767, without being warned to depart, could not gain a settlement . . when the parents gained none; we do not perceive upon what principle such child could, . . gain a settlement by living in a town at the time of its incorporation. . . Plaintiffs Nonsuit."

Polydore v. Prince, 19 Fed. Cas. 950 (1 Ware 402, 411), August 1837.

"This was a libel for an assault and battery committed by the master on a passenger, on a voyage from Guadaloupe to Portland. It appears . . that the libellant was a slave in Guadaloupe, that he was put on board the vessel by his master, Mons. Bercier, in company with his son, Eugene, a youth of about seventeen years of age, whom he was to attend during his residence in this country, as his servant. One morning, some days after they had been at sea, the captain ordered Polydore to clean out a hen-coop, in which there were some live fowls. Polydore refused, and the captain . . says, that he behaved otherwise insolently to him, . . But . . Polydore did not understand a word of English, nor did the master [of the ship] understand much more of French. It is also alleged by the master that in consequence of his taking Polydore at a low rate of passage money, he receiving sixty francs for Polydore and one hundred and fifty for Eugene, that Polydore was to perform such service in relation to Bercier, and also such service on board the vessel as might be properly required of him; that the fowls were for Eugene, and that it was Polydore's business to attend to them. But there is no proof in support of the first part of this allegation, and it appears in point of fact, that the fowls . . were used as a common stock on board the vessel. Upon the refusal of Polydore to do the service that he was ordered, the captain gave him a pretty severe flogging with a piece of dry twisted cowhide; some days afterwards, the cowhide was abstracted from the cabin and not to be found; on the captin's inquiring for it, he was told that Polydore had taken it and thrown it overboard, when in fact it had been taken and secreted by Eugene for the purpose of bringing it to this country and exhibiting in court, as the instrument with which Polydore had been flogged. Both Eugene and Polydore concurred in deceiving the captain. The captain then gave Polydore another flogging with a small rope."

Held: Polydore may maintain the action in his own name: [956] "it is not for me to say what would be the judgment of a court sitting within a jurisdiction where slavery is allowed, but sitting as this court does, in a place where slavery by the local law is prohibited, I do not feel myself called upon to allow that disqualification when it is alleged by a wrongdoer, as attaching to the libellant by the laws of a foreign power, for the

purpose of withdrawing himself from responsibility for his own wrong." [Ware, Dist. J.]

U. S. v. Libby, 26 Fed. Cas. 928 (1 Woodb. and M. 221), May 1846. Libby, of Scarborough, Maine, was master of the brig *Porpoise,* a vessel owned by a citizen of Maine, which sailed from Portland on a freighting voyage. On reaching Rio Janerio, the consignees there [929] "entered into a charter party for her with one Franceco, a Brazilian, . . to carry no persons not free, and no goods illegal in character." She [930] "sailed from Rio in February, 1844, for the eastern coast of Africa, with several passengers on board, who were Brazilians, and some of them agents of Franceco, with a cargo consisting of rum, cotton goods, iron bars, gunpowder, brass rings, etc., being articles such as are in demand on that coast, and such as usually are sold for money and slaves purchased sometimes with the proceeds, or such as are often exchanged for slaves. The cargo was landed there as different factories, under the direction of Paulo [a partner of Franceco in the slave trade] and others, and a launch, which belonged to him. The *Porpoise* arrived there in April, 1844, and remaining on the coast till December, 1844, landing the cargo at the places described, tended to show Libby's knowledge of their business, and for the same purpose he was proved also to have gone on shore occasionally during the time to get provisions at the factories; sometimes dined there by invitation with Paulo; saw slaves in their yards, and some of the witnesses swear he was present at times with themselves, when some were bought and branded by Paulo. It was further shown, that he sailed in company from Lorenzo de Marks to Inhambane, with a vessel called the *Kentucky,* and under the control of Franceco and Paulo, and took on board there some of her crew, who were Americans, as passengers, before the *Kentucky* loaded with slaves under a Brazilian captain and crew, and sailed with them as she did to Brazil; that the *Porpoise* and *Kentucky* hung out lights in the night for each other in going from Lorenzo de Marks to Inhambane, a voyage of sixty or seventy hours; that Libby took on board there one African boy, . . [931] called Guilheme, and another on his return at Lorenzo de Marks, called Pedro,[1] but both supposed to have the manumission papers before described, and carried no other Africans, unless he knowingly received Luez,[2] as charged in the indictment, and carried him about fifteen miles to Inaak, where he was landed with Paulo and the pilot's crew; . . [931] that after Libby's return from Inhambane, he waited by direction of those chartering the *Porpoise,* till a slave vessel, the *Galafelia,* was loaded and sailed the same day he did for Rio but he with no cargo on board the *Porpoise,* and merely provisions and water and some free passengers and the two boys, Guilheme and Pedro." [929] "On her return she [the *Porpoise*] was informed against by Johnson, a free colored man on board, who had been severely punished in Africa for taking a boat ashore without leave, and after examination at Rio before the

[1] [930] "Both of them were then in court, nobody claiming them as slaves since they came on board."

[2] Luez, a slave, was the brother of Pedro, and [935] "came on board in the same boat with the pilot as well as with Paulo; . . the master was then busily engaged."

American minister, consul, and the commander of the American squadron, was sent home by the latter for a breach of the laws of the United States against the slave trade." Libby "was charged with having received on board said brig . . within flow of the tide, at a place called Lorenzo-Marquez, on the eastern coast of Africa, a negro called Luez, not held to service by the laws of the United States or either of them, and with an intent to make him a slave."

Held: I. [935] "if . . in the pressure of business, and crowd of people, he did not know or notice that any black came on board in the pilot's boat, except his colored oarsmen,[1] he did not receive him designedly . . on board within the meaning of the law, so as to make the master [of the ship] punishable with death, as receiving him with a view to make him a slave." II. "Did he intend to make Luez a slave? In order to find this against him, it is not necessary that Luez should have been free, and that Libby thus attempted to make him a slave for the first time. It is enough, if he meant to co-operate as a party in interest and power, and design, to perpetuate his condition as a slave, and received him on board for that purpose." [2] [Woodbury, Circ. J.]

Bailey v. Fiske, 34 Me. 77, 1852. "Writ of entry. The demandants claim as heirs at law of their father Tobias Jones. The evidence . . proved, that Tobias was a mulatto; that their mother, . . was a daughter of a father who was entirely white, and of a mother who was one-eighth Indian, she having been the child of a man who was a quarter Indian. The Judge considered the marriage of Tobias Jones to have been null, and ordered a nonsuit, to which the demandants excepted."

Exceptions overruled: "There is a difference of opinion respecting the proportion of African blood, which will prevent a person possessing it from being regarded as white. Some Courts . . held, that a person should be so regarded, when his white blood predominated both in proportion and in appearance. Those least disposed to consider persons to be white, who [78] have any proportion of African blood, have admitted, that persons possessing only one-eighth part of such blood should be regarded as white. . . There was in Abigail Jones, according to her testimony, but one-sixteenth part of Indian blood, and she must be considered a white woman. She was married to a mullatto, who could not be regarded as a white man. The marriage of white with colored persons was then forbidden by statute. Their children were therefore illegitimate, and they could not inherit from their father."

Inhabitants of Raymond v. Inhabitants of North Berwick, 60 Me. 114, 1871. "*Assumpsit* for pauper supplies furnished by the plaintiffs to one Geo. A. Jones, a pauper found in need of relief in the plaintiff town. . . [115] It appeared on the part of the plaintiffs, that . . pauper supplies were furnished . . to the pauper, found in their town, . . in 1858; that

[1] [932] "which crew it was necessary to have temporarily on board, and to carry whom, while piloting the vessel, was, of course, not within the spirit or letter of the act of Congress."

[2] See U. S. *v.* Corrie, vol. III., p. 468, of this series.

the defendants, . . paid the bill; that the pauper was found in Gray, in 1860, . . was supplied by that town, and that . . the defendants paid that bill. The plaintiffs made out a *prima facie* case and stopped. It appeared, . . that Tobias Jones, the grandfather of George A. Jones, the pauper, had his settlement in North Berwick, and that he was the father of Levi Jones, who was the father of the pauper; that Tobias Jones was a mulatto, and that Abigail Green, his reputed wife, and the mother of Levi Jones was a white woman; . . The plaintiff claimed that Levi Jones gained a derivative settlement in the defendant town from his father Tobias; and if . . not . . through his father, then through his mother, or in his own right, by actually dwelling and having his home in the defendant town on March 21, 1821. The defendants contended that the marriage between Tobias Jones and Abigail Green was void, . . Levi Jones . . illegitimate and followed the settlement of his mother, and . . that George A. Jones, the pauper, followed and had the settlement of his mother, . . the Court instructed the jury, that if the parents of Levi Jones were in fact married to each other before he was born, and afterwards lived together as husband and wife in good faith, believ[116]ing the marriage to have been legal, and there was nothing to invalidate it except that the father was a mulatto and the mother a white woman, . . it was immaterial whether Levi was . . legitimate . . or . . illegitimate . . To this ruling the defendants alleged exceptions."

Exceptions sustained: [117] "Tobias Jones, . . had his settlement in the defendant town. He was a mulatto, and . . his reputed wife, . . was a white woman. Their marriage was void, and their children illegitimate. . . Levi Jones, . . was living with his father, in the defendant town, . . At that time he was a minor. . . Being illegitimate and not emancipated . . he had the settlement of his mother at the time of his birth. Where that settlement was at the time of the birth of the son, is nowhere shown. It was for the plaintiffs . . to prove . . Nor, though the mother might gain a new settlement by residence in the defendant town . . would the settle[118]ment of the son, while a minor, . . follow that of the mother. . . illegitimate children, under age, . . retain the settlement which she had at their birth. It is not pretended that the pauper had, . . in his own right, a settlement in the defendant town. It is seen that his father not having any, he did not gain one by derivation, nor by residence."

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Judicial Cases

concerning

American Slavery and the Negro

EDITED BY THE LATE
HELEN TUNNICLIFF CATTERALL
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WITH ADDITIONS BY
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VOLUME V

Cases from the Courts of
States north of the Ohio and west of the Mississippi Rivers
Canada and Jamaica

WASHINGTON, D. C.
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PAPERS OF THE DIVISION OF HISTORICAL RESEARCH

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PREFACE

This volume is the fifth and last of a series intended, as aptly stated by Dr. J. Franklin Jameson in his preface to volume IV,

> to furnish an unbiassed picture of American slavery as an actual institution, social and economic, by drawing off from the printed reports of cases in the highest state courts and those of the United States, all factual statements and quotations illustrating slavery and the life of the negro, and accompanying these by compressed versions of the law as pronounced by the respective courts.

Volume I of this series was published in 1926, and the succeeding volumes have appeared at intervals of two or three years since that date. The plan of making such materials available in condensed form may be credited to Dr. Jameson whose brilliant mind and gift for accomplishing large tasks are too well known to need restatement. The enormous bulk of case material condensed into five volumes of moderate size with perfect accuracy of form and substance will remain a lasting memorial to the vision of the man who made the original plan and carried it to a successful conclusion through a period of some twelve years.

In this final volume are presented the cases for the following states: Arkansas, California, Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, Ohio, Texas, and Wisconsin, together with similar cases from Canada and Jamaica.

The privilege of completing this project over which Mrs. Catterall labored for the major portion of ten years prior to her death in 1933 has been thoroughly enjoyed. That pleasure has been increased by the confident belief that in future years students of history in this field will have available for convenient use such an accurate picture of slavery and the American negro as is rarely found among the volumes of source material in the history of this country.

The index has been prepared by Mr. David M. Matteson.

JAMES J. HAYDEN.

MAY 15, 1937.

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LIST OF ABBREVIATIONS

Am. Law J. = *American Law Journal.*
Am. Law Reg. = *American Law Register* (Philadelphia).
Am. Law Rev. = *American Law Review.*
Ark. = *Reports of Cases at Law and in Equity argued and determined in the Supreme Court of Arkansas.*
Bond = Lewis H. Bond, *Reports of Cases decided in the Circuit and District Courts of the United States within the Southern District of Ohio.*
Breese = Sidney Breese, *Reports of Cases at Common Law and in Chancery argued and determined in the Supreme Court of the State of Illinois.*
Brit. Stat. at L. = *British Statutes at Large.*
Cal. = *Reports of Cases determined in the Supreme Court of the State of California.*
Causes Célèbres = [François Gayot de Pitaval], *Causes Célèbres et Intéressantes.*
Dall. Dig. = James W. Dallam, *Digest of the Laws of Texas.*
Digest = [*See* Steele and McC. Dig.]
Digest of 1835, 1845, 1855 = *The Revised Statutes of the State of Missouri, revised and digested by the Eighth* [*Thirteenth, and Eighteenth*] *General Assembly.*
Douglass = Samuel T. Douglass, *Reports of Cases argued and determined in the Supreme Court of the State of Michigan.*
Fed. Cas. = *The Federal Cases, comprising Cases argued and determined in the Circuit and District Courts of the United States.*
Geyer = Henry S. Geyer, *A Digest of the Laws of Missouri Territory.*
Gilman = Charles Gilman, *Reports of Cases argued and determined in the Supreme Court of the State of Illinois.*
Gould Dig. = Josiah Gould, *Digest of the Statutes of Arkansas.*
Grant (Jam.) = John Grant, *Notes of Cases adjudged in Jamaica.*
Greene (Iowa) = George Greene, *Reports of Cases in Law and Equity, determined in the Supreme Court of the State of Iowa.*
Hagg. Adm. = John Haggard, *Reports of Cases argued and determined in the High Court of Admiralty.*
Hart. Dig. = Oliver C. Hartley, *A Digest of the Laws of Texas.*
Hempstead = Samuel H. Hempstead, *Reports of Cases argued and determined in the United States Superior Court for the Territory of Arkansas.*
How. and Hutch. Dig. = Volney E. Howard and Anderson Hutchinson, *The Statutes of the State of Mississippi of a Public and General Nature, with the Constitutions of the United States and of this State.*
How. Miss. = Volney E. Howard, *Reports of Cases argued and determined in the High Court of Errors and Appeals of the State of Mississippi.*
Howard = Benjamin C. Howard, *Reports of Cases argued and adjudged in the Supreme Court of the United States.*
Ill. = *Reports of Cases determined in the Supreme Court of the State of Illinois.*
Ind. = *Reports of Cases argued and determined in the Supreme Court of Judicature of the State of Indiana.*
Iowa = *Reports of Cases in Law and Equity, determined in the Supreme Court of the State of Iowa.*
Johns. Cas. = William Johnson, *Reports of Cases adjudged in the Supreme Court of Judicature of the State of New York . . . . together with Cases determined in the Court for the Correction of Errors.*
Johnson (N. Y.) = William Johnson, *Reports of Cases argued and determined in the Supreme Court of Judicature, and in the Court for the Trial of Impeachments and the Correction of Errors, in the State of New-York.*
Kan. = *Reports of Cases argued and determined in the Supreme Courts of the State and Territory of Kansas.*
L. T. Rep. = *Law Times Reports of all the Courts.*
La. = *Louisiana Term Reports or Cases argued and determined in the Supreme Court of the State of Louisiana.*
Law Rep. = *Monthly Law Reporter.*

JUDICIAL CASES CONCERNING SLAVERY

OHIO

INTRODUCTION

I

The state of Ohio was part of the Northwest Territory, and was bound by the Ordinance of 1787, Article VI of which provided that " there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes."

Probably the most bitterly contested litigation concerning the negro in Ohio revolved around the fugitive slave law passed by Congress in 1793, and amended in 1850. In the case of *Ex parte* Bushnell,[1] the defendants filed a petition for habeas corpus to test the validity of the Fugitive Slave Law of 1850, under which they were convicted and serving a term of imprisonment for obstructing the master of an alleged fugitive slave in the seizure of the slave. The attorney-general of Ohio delivered an impassioned argument running through some seventy pages of the report of the case and contended that under the federal constitution Congress had no power to enact the act of 1850, or the act of 1793, on the same subject; that the acts were in reality a violation of the constitution; and that the Supreme Court of the United States was a sectional court, favorably inclined toward slavery. The opinion of the Ohio Supreme Court was that the right of Congress to enact the legislation complained of had long been settled by the adjudications of the Supreme Court of the United States, and hence petitioners were remanded to the United States marshal to serve the remainder of their term. Judge Sutliff filed a vigorous dissenting opinion in which he expressed the conviction that the power to legislate on the subject of slavery " belonged originally to the states " and was never yielded up by them to the federal government, hence that the act of 1850 was unconstitutional.

A curious example of the application of the Fugitive Slave Act of 1793 occurred in 1831.[2] Defendant Daily bought his sister Kate, a slave, at a sale, for a small price by declaring that his purpose was to liberate her from slavery. Shortly thereafter he declared her free; Kate gave birth to plaintiff Tom soon afterwards. Later Daily bought a slave from defendant Desha, and as security gave him a bill of sale to Tom, who evidently believing that the best defense was to take the offensive, brought

[1] P. 32, *infra*.
[2] Tom *v.* Daily, *et al.*, p. 3, *infra*.

suit to enjoin the threatened interference with his liberty. Desha contended that he had a right to possession of Tom under the act of 1793, but the court took the position that the conduct of Daily amounted to emancipation of Kate, and that Tom was therefore born free, and that neither Daily nor Desha had any rights against his person.

Sentiment in Ohio during the early days of its statehood was highly adverse in the matter of social relations with the negro. The Ohio Constitution [3] restricted the voting privilege to whites, and statutes carefully restricted admission of children to the common schools to those of white blood. Notwithstanding these limitations, we find the Ohio Supreme Court in 1843,[4] ruling that a plaintiff was entitled to damages because his children were denied admission to the common schools attended by white children, although his children were found to be of negro, Indian, and white blood, but of more than one half white blood. However, the apparent pro-negro trend of this decision is effectively destroyed by a later case,[5] which denied relief to a plaintiff whose children had about five-eighths white blood, and three-eighths negro blood, and were refused admittance to the common schools for whites. The court held that the act of 1853, which provided for separate schools for white and colored, and for a division of the school funds on the basis of population of whites and negroes, was a statute of *classification* and not of *exclusion,* hence was a valid exercise of legislative power in recognizing the natural antipathy of white people for the black race in making separate provision for the educational facilities for each class.

II

The Ohio Constitution of 1802 provided for a Supreme Court of three judges, having original and appellate jurisdiction as arranged in detail by the general assembly, but also provided that after five years the assembly might add a judge. This was done by act of 1807. An act of 1810 reduced the number to three; an act of 1816 restored the fourth judge. The Constitution of 1851 arranged that the court should consist of five judges.

[3] Art. 4, sect. 1.
[4] Lane *v.* Baker, p. 9, *infra.*
[5] Van Camp *v.* Logan, p. 24, *infra.*

Gray v. Ohio, 4 Ohio 353, January 1831. " Polly Gray was indicted for robbery. On the trial, . . the prosecuting attorney called . . a negro, as a witness . . counsel for the prisoner objected to his admission, . . under the statute regulating black and mulatto persons. The prisoner appeared, . . to be of a shade of color between the mulatto and white. The court over-ruled the objection, and the witness was admitted. . . counsel for the prisoner excepted; . . judgment being against her, she brought her writ of error."

Judgment reversed: [354] " The witness was improperly admitted. The statute compels courts of justice to reject black and mulatto witnesses, where a white person is a party. . . the court has no alternative but to yield to . . the legislative will. Three descriptions of persons are designated, by name, in the statute,—white, black, and mulatto; and these . . are well known, . . in common life; . . We are unable to set out any other plain and obvious . . mark between the different races. Color . . is sufficient. We believe a man, of race nearer white than a mulatto, is admissible as a witness, and should partake in the privileges of white. . . a party of such a blood entitled to the privileges of white, partly because we are unwilling to extend the disabilities . . further than its letter requires, and partly from the difficulty of defining . . the degree of duskiness which renders a person liable to such disabilities."

Tom v. Daily et al., 4 Ohio 368, January 1831. " injunction to restrain the defendants from interfering with the personal liberty of the complainant; . . The bill, . . charged that Kate Daily, the mother of Tom, and sister of the defendant, Thomas Daily, was formerly a slave . . at a public sale . . Kate, . . ensciente with . . Tom, was sold to . . Daily, brother of Kate, . . Daily made public proclamation, that his sole object in purchasing Kate was, to liberate her from slavery, . . In consequence of this public declaration, Daily purchased Kate without opposition, . . pronounced her a free woman, . . Kate removed to plantation of James Dummit, . . where the [369] complainant, Tom, was born, soon after the purchase . . Tom always lived with his mother, until she placed him, . . under the protection of . . Orange Witt, . . Daily, purchased a slave of the defendant, Joseph Desha, and to secure . . purchase money, gave Desha a bill of sale of the complainant. . . at the time . . complainant . . was not delivered to Desha. . . Desha threatened to . . reduce him to slavery, but his mother, . . sent him to Cincinnati, . . the mayor of Cincinnati, . . issued his warrant, . . The bill charges that Desha, . . knew that his mother . . was . . emancipated, . . Desha answered . . but denied all knowledge of the declaration . . to emancipate Kate. . . Daily . . informed him that he never intended to emancipate complainant."

Held: [371] "This is a contest between the complainant, . . and . . Desha . . who claims the complainant, as a fugitive slave, under the act of Congress of 1793. The . . question . . seems to be whether the acts . . of . . Daily, . . constitute . . emancipation . . a court of equity will enforce. . . The conduct of Daily . . was a fraud. . . Will a court of equity now permit him to turn around and claim his sister and her offspring as slaves? . . [373] The mother, . . in equity, . . was virtually, if not actually and formally, free at the . . birth of the complainant. It . . follows . . complainant was free. . . being free born, . . not the subject of property, . . neither Daily nor Desha, who claim under him, have any rights as against the person of the complainant."

Lawson v. Perry, 1 Wright 242, April 1833. "Assumpsit, for wages as steward of the steamboat *Pioneer.* The plaintiff proved the service and the common rate of wages. The defendant proved certain payments, . . Wright, J. to the jury. The plaintiff claims for wages as steward . . If he has satisfied you of the service, the law raises the presumption that he was to have common wages, . . $25 a month. . . defendant is also to show you the payments, if any. You have nothing to do with the color of the plaintiff, except to take care not to be influenced. . . that he is not of your color. The relation of the parties is no otherwise material than to ascertain if . . plaintiff must . . rely upon the defendant's . . books for his accounts. . . Verdict for the plaintiff, $94.50. Defendant moved for a new trial, which was overruled and judgment entered on the verdict without costs."

Woods v. Green, 1 Wright 503, April 1834. [504] "Replevin for a sorrel horse. Plea . . notice that the property in the horse is in the plaintiff. . . Crediting the witnesses, there were two horses nearly alike— . . The defendant's horse had been wounded . . in the breast, in the flank, under the belly . . and on the hip. . . Scars were found on the breast, on the hip, in the flank, and under the belly near the sheath. . . When the defendant (a colored woman) came to . . claim the horse, she said her horse had a habit of leering his ears, and would obey her call. They went to the horse—his leering habit was noticed. He was then turned into a field—she whistled for him, and he immediately came . . from a distance. . . The horse was then placed in the stable yard. She spoke to him, called him Tom, ordered him into the stable, and he walked in—he had been before fed there. The horse was then bridled and brought up to the fence, . . He held off from the fence—she reached up . . and spoke sharp to him to come up, and he instantly obeyed. . . Wright, J. to the jury. Woods has taken the horse . . and now has it. The defendant . . claims property in herself. . . If you find the property in the plaintiff, your verdict will be that the defendant is guilty, and you will assess . . damages . . If the property is in the defendant, your verdict will be for her, . . [505] and give her damages . . for the value of the horse . . Verdict for defendant, and $58 damages . . for the injury."

Williams v. School District, 1 Wright 578, May 1834. [579] "Williams brought suit against Cilly, . . as directors of school district No. 6, . .

He declared . . that the plaintiff was a citizen . . had property taxable for schools, had five white children over four years old which he sent to said school, who were refused admission . . It was proven . . that the plaintiff was one-quarter negro, and his wife, . . a white woman; . . the court below gave . . their opinion that the plaintiff could not sustain his action, and the jury without retiring found for the defendants,"

Held: " The law provides that while the teacher is employed out of the common school fund, the school shall be free to all white children: . . The real question we are asked to decide is, whether the children of a white mother, and a father three-quarters white are white children within the meaning of the law? . . Mr. Van Matre and Mr. N. Wright, insist that we resort to the color or complexion to determine who are white persons and do not inquire of the blood. . . a resort to color would be un-[580] satisfactory, . . We think the term white . . describes blood and not complexion, . . The plaintiff's children, therefore, are white within the meaning of the law, though the defendants have had the shabby meanness to ask from him his contribution of tax, and exclude his children from the benefit of the schools he helped to support. . . the Common Pleas erred in determining otherwise . . our examination shows these proceedings have been so negligently conducted for the plaintiff, as to present for him no right to judgment; . . we decide the main question for the plaintiff in error, . . must affirm the judgment with costs."

Birney v. Ohio, 8 Ohio 230, December 1837. " plaintiff . . was indicted for harboring and concealing a fugitive female colored slave. . . The first count, . . was . . ' That James G. Birney, . . did unlawfully harbor . . a certain mulatto girl . . Matilda then being a slave and the property of one Larkin Lawrence, contrary to the form of the statute,' . . The jury found the traverser guilty on the first count, and not guilty on all the others. The court adjudged him to pay a fine [231] of $50,"

Reversed: [237] " The statute upon which the indictment is predicated enacts, ' that if any person shall harbor or secrete any black or mulatto person, the property of another, the person so offending shall, on conviction thereof, be fined any sum not less than ten nor more than fifty dollars.' We . . consider whether, . . the indictment is sufficient? . . every indictment shall have a precise . . certainty. . . [238] There is no averment that the plaintiff in error *knew the facts alleged,* that Matilda was a slave, and the property of L. Larkin [*sic*], . . the presumption is in favor of freedom. . . knowledge . . was an ingredient necessary to constitute his guilt. . . knowledge should have been averred in the indictment, and proved on the trial, . . We know of no case where . . action is held criminal, unless the intention accompanies the act, . . it can not be assumed that an act which, . . involves no moral wrong, . . should be made . . criminal, when performed in total unconsciousness of the facts that infect it with crime."

Jeffries v. Ankeny, 11 Ohio 372, December 1842. " suit . . by the plaintiff against the trustees of Zenia township, for refusing his vote. . . [373] The jury find the defendants presiding as judges . . that the

plaintiff tendered his vote, and offered to prove his qualifications, . . defendants rejected his vote, because, . . plaintiff was 'a person of color.' That the plaintiff was of the Indian race, without more than one-fourth Indian blood."

Held: [374] "no suit lies against an officer, for a mistake in the exercise of his judicial discretion; . . It is only in cases of intentional injury, . . that the jury will . . inflict a severe penalty. . . The other question depends upon the construction of that passage of the constitution, 'free white citizens,' whether it [375] excludes from voting all persons having the intermixture of any other blood than that of entirely white persons. . . many persons . . the offspring of whites and half-breed Indians, . . have exercised political privileges . . One is . . a clerk of this court, and two are now members of this bar, . . We regard this matter as clearly settled . . that all nearer white than black, . . entitled to enjoy every political and social privilege of the white citizen; . . Judgment for plaintiff." [Lane, C. J.]

Dissenting: "The words of the statute, . . excludes Indians and part Indians, and all persons not of the pure blood of the white [376] race. . . The Indians are a distinct people, governed by their own laws and customs. . . Indians are not designated as white men. . . If it be desirable to extend the benefits of the educational fund of Ohio to Indians, and part Indians, the statute must be altered; as it now stands, it excludes them." [Read, J.]

Thacker v. Hawk et al., 11 Ohio 376, December 1842. "action . . against the defendants, trustees . . for refusing . . plaintiff's vote at an election . . On the trial, the following bill of exceptions was taken: [377] . . the evidence . . being closed, some . . tended to prove that the plaintiff . . had some negro blood in him, . . the court did instruct the jury, that if the plaintiff had . . any negro blood . . he was not entitled to vote . . plaintiff excepted . . [379] No argument for the defendants in error came to the hands of the reporter."

Reversed: "This case presents the same question as in Jeffries v. Ankeny et al.,[1] and must be decided by the same principles. The court charged the jury, that if the plaintiff had any negro blood whatever, he was not a lawful elector. That charge was wrong, and judgment must be reversed." [Lane, C. J.]

Dissenting: "I can not concur in the opinion, that any person of less than half black or negro blood, has the right of an elector, under the constitution of Ohio. . . color is a constitutional qualification of an elector in Ohio, and that instrument confers the . . [380] franchise upon white persons only, and . . excludes all persons . . not white. . . The word 'white' means pure white, unmixed. . . A mixture of black and white is not white; . . The word white has never been applied to persons of any shade of black or negro blood, . . [381] Whether a man is white or black, is a question of fact; that the white man, only, shall have the right to vote, is a rule of law; . . [384] The two races are placed as wide apart by the

[1] Same *v.* same, p. 5, *supra*.

hand of nature as *white from black*; . . to break . . the barriers, fixed, . . by the Creator himself, . . shocks us as something unnatural and wrong. . . [385] It violates the spirit of the constitution, because, . . I see no difference in allowing a mulatto to vote, and a person little less than mulatto, or a full black, for the tint of black blood extends to them all, and this is the reason of their exclusion." [Read, J.]

Chalmers v. Stewart, 11 Ohio 386, December 1842. " The declaration avers that the defendant in error was ready and willing to teach, etc., . . and the refusal of the plaintiff in error to pay, . . the cause submitted to the jury, a verdict found for the defendant in error, . . it appears that the plaintiff . . offered to prove . . that the defendant . . was employed by the directors . . to teach a common [387] school, his salary to be paid in part out of the common school fund, and . . by subscription, and that he had, . . received . . youths who, . . were colored, . . plaintiff . . withdrew his children from school; . . evidence was objected to . . objection sustained . . did the court . . err in the rejection of this evidence? . . The school . . was a public school; . . Section 51 . . provides, that all white youth over four and under twenty-one years . . entitled to equal privileges. . . By law, white children, only, have the privileges of common schools. A teacher, . . If he does admit blacks, . . violates the obligation . . to keep a legal school; . . the evidence offered was the direct admission . . that he did receive . . youths, against . . the statutes. This evidence . . was [388], and if . . established . . a bar to a recovery. . . the obligation not to admit blacks is imposed by statute. . . Judgment reversed "

Jones v. Van Zandt, 13 Fed. Cas. 1040, July 1843. Action of trespass on the case, brought by Jones, a citizen of Kentucky, against Vanzandt, a citizen of Ohio, " under the act of congress, in regard to fugitives from labor.[1] . . Jones, a witness . . stated that the plaintiff owned nine negroes (naming them) and resided in Boone county, Kentucky. That the greater part of them were born his, and that he purchased the others. That on Saturday evening, the 23d April, 1842, about nine o'clock, he was at the house of the plaintiff, and saw the negroes; the next day, at about twelve o'clock, he saw the same negroes, with the exception of two of them, in the jail at Covington. The plaintiff lives ten miles below Covington. Jackson, one of the absent negroes, returned in a few days; but Andrew remained absent, and has not been reclaimed. The plaintiff paid a reward to the persons who returned the negroes of four hundred and fifty dollars, and other expenses which were incurred, amounting in the whole to about the sum of six hundred dollars. Andrew was about thirty years old, and his services were worth to the plaintiff six hundred dollars. That he could be sold in Kentucky for that sum. . . Hefferman, a witness, stated, that he lives in Sharon, thirteen miles north of Cincinnati, on the road to Lebanon. That on Sunday morning, a little after day-light, he saw a wagon which was rapidly passing through Sharon. It was covered, and both the hind and fore part of the wagon were closed; a colored man was

[1] Act of Cong., Feb. 12, 1793. 1 Stat. at L. 302.

driving it. He knew the wagon belonged to the defendant, and his suspicion was excited. The witness and one Hargrave, another witness, started, in a short time, in pursuit of the wagon. They overtook it near Bates', about six miles from Sharon. The defendant lives near Sharon. On coming up with the wagon, the boy driving it was ordered by Hargrave to stop; he checked the horses, but a voice from within the wagon directed the boy to drive over him. The wagon horses were then whipped, running against Hargrave's horse which threw him off. The horses were driven in a run some two hundred yards, but at length were overtaken by the witness, who seizing the reins of the horses drew him up into a corner of a fence. The driver jumped off and ran some distance; Vanzandt, the defendant, then came out of the wagon and took the lines, but the witness refused to let the horses proceed. Eight negroes were in the wagon; one of them called Jackson, and Andrew, the driver, escaped; the other seven were brought back to Covington and lodged in jail. Hargrave, accompanied the above witness in pursuit of the wagon, which he knew to belong to the defendant. Being acquainted with the defendant, he knew it to be his voice, which directed the colored boy to drive over the witness. . . the defendant said it was a christian act to take slaves and set them at liberty. . . 'they are, by nature, as free as you and I.' The witness heard the defendant say that, having been at market in the city of Cincinnati, he returned to Lane Seminary, a distance of two or three miles, to spend the night with Mr. Moore. That he left his wagon standing in the road, and, when he came to it, about three o'clock the next morning, he found the negroes standing near it; that he did not know how they came there, or where they wished to go. He had no conversation with them. He geared his horses, hitched them to the wagon, and the negroes got into it. . . That he rose early, to have the cool of the morning. Defendant said he had done right. That he would, at all times, help his fellow man out of bondage; and that, what he had done, he would do again." [1046] "The jury returned a verdict in favor of the plaintiff for twelve hundred dollars," [1047] "motion for a new trial, and also in arrest of judgment." A new trial[1] was [1054] "granted at the costs of the defendant:" [1052] "The damages found are double the sum which in any view the jury could take . . should have been given." [1057] "Pending this proceeding there was also an action of debt between the same parties for the penalty of $500, provided by the statute for harboring runaway slaves. The cases were heard by the supreme court upon [fourteen] questions duly certified,[2] which were determined

[1] [1054] "Note. The costs not being paid by the defendant, a new trial was not claimed, but was abandoned. Vanzandt, the defendant, in the meantime died,"

[2] Jones *v.* Van Zandt, 5 Howard 215 (1847). [224] "because the questions involved could not otherwise be brought here; and they possessed so wide and deep an interest, as to render it desirable they should come under the revision of this court. . . [231] 1st . . . the notice need not be in writing by the claimant . . [232] 3d. That clear proof of the knowledge of the defendant . . that he knew the colored person was a slave and fugitive from labor, though he may have acquired such knowledge from the slave himself, or otherwise, is sufficient to charge him with notice. . . 13th. That the act of Congress approved February 12th, 1793, is not repugnant to the constitution of the United States. And Lastly. That the said act is not repugnant to the ordinance of Congress adopted July, 1787," [231] "Before concluding, it may be expected by the defendant

in favor of the plaintiff." [1046n.] "The motion in arrest of judgment was not heard by the court until after the death of Vanzandt, and nearly eight years after the hearing of the motion for a new trial. At the April term, 1851, the circuit court overruled the motion in arrest, and entered judgment upon the verdict of the jury." [1]

Lane v. Baker et al., 12 Ohio 237, December 1843. "action on the case, . . against the defendants, as school directors. The plaintiff declared . . [238] Lane was a resident . . and was the father of . . three, white children, . . entitled to the privileges of said school; . . yet the . . directors . . did, . . turn the said children . . out of said school, . . [239] the jury returned the following special verdict: 'We, . . find, that Thomas Lane, and his family, were residents . . that one of his children, . . was not permitted to attend the school in said district . . We find said youth, . . to be of negro, Indian and white blood, but of more than one half white blood; and, if the law be with the plaintiff, assess his damages at six cents.'"

Held: [252] "This case depends upon the same principles with that of Jeffries v. Ankeny [2] . . The jury found, . . that the youth, . . 'was of negro, Indian and white blood, but of more than half white blood.' . . A majority of the Court find no cause to change the opinion they expressed in the case cited, in which they followed former decisions. . . Judgment for Plaintiff on the Verdict."

Greathouse v. Dunlap, 10 Fed. Cas. 1062 (3 McLean 303), December 1843. In August 1838 Mahan, a resident of Ohio, was indicted for [1063] "aiding and assisting a certain slave, named John, the property of . . Greathouse, to make his escape from his possession, to the state of Ohio, . . June, 1838, whereby . . Greathouse lost his said slave; . . a demand was made of the governor of Ohio, for the surrender of Mahan as a fugitive from justice, . . he was surrendered . . and committed to the jailor of Mason county [Kentucky] . . a civil suit was instituted against him by . . Greathouse, and upon such civil process issued . . Mahan was imprisoned in the said jail;" He was released from imprisonment in November 1838, on Dunlap's giving a bond to pay Greathouse, if the latter "shall finally succeed in the said suit . . the amount of the recovery so finally had . . including all legal costs." "in the case then pending there was recovered against Mahan the sum of sixteen hundred dollars in damages." Mahan avers that the bond was procured by the fraud of Greathouse, "that he was not guilty of the charges in the indictment, and was not a fugitive;" Held: the bond is good.

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that some notice should be taken of the argument, urging on us a disregard of the constitution and the act of Congress in respect to this subject, on account of the supposed inexpediency and invalidity of all laws recognizing slavery or any right of property in man. But that is a political question, settled by each State for itself; and the federal power over it is limited and regulated by the people of the States in the constitution itself, as one of its sacred compromises, and which we possess no authority as a judicial body to modify or overrule." [Woodbury, J.]

[1] See same *v.* same, 13 Fed. Cas. 1057.

[2] Same *v.* same, p. 5, *supra.*

Driskell v. Parish, 7 Fed. Cas. 1100 (3 McLean 631), July 1845; 1093 (10 Law Rep. 395), November 1847; 1095 (5 McLean 64), November 1849. Action "under the fourth section of the act of Congress of 1793." [1] Col. Mitchell testified: [1094] "Peter Driskell . . lives . . about a quarter of a mile from the river, and about six miles from Maysville, Kentucky. Jane and Harrison Garrison were his slaves, together with four other children of Jane Garrison. On the 26th of October, 1844, I was called upon by Mr. Driskell to go in pursuit of them. They had escaped on the preceding night. We followed them, but a rain coming on soon obliterated all traces of their path, and we who were pursuing returned home. I never saw those slaves afterwards until the 28th of February, 1845. I was then in pursuit of the six slaves, in company with Andrew Jackson Driskell, the son of the plaintiff. On the 26th of February, I saw the boy Bill (one of the slaves,) at Sandusky city, near the tavern where I stayed. I employed a sub-agent, a small boy, to play marbles with Bill, and through him ascertain where all the boys were. I found by this where all were but one. I then employed an Irishman to induce Bill to come to my room at the tavern, told him what he was then to do, and how he was to go immediately after the rest. I had understood that Jane and Harrison Garrison were at Mr. Parrish's, and a little after twelve o'clock on that day I made my way there. Near his house, I met Parrish, defendant. I accosted him, and asked him if a woman calling herself Jane Garrison, and her boy Harrison, were at his house. He said they were. I asked him if I could see them. He replied, if Jane wished it I could do so. We then returned toward the house, and I stood by the gate on the outside, whilst he went in. He came out in a very few minutes, with the woman Jane." [1100] "She recognized the witness, and spoke to him, and was approaching him, when the defendant interposed his hand, though he did not touch her. She called young Driskell 'Master Jackson.' Some conversation was had respecting the death of her young mistress, who had died, as she said, before she left Kentucky. The boy was then asked for, and he was brought out. He also knew the witness and Driskell, and by his approach seemed to wish to shake hands with the witness, when the defendant interposed his hand and said, it was not necessary to shake hands. The witness then claimed the right to arrest these two persons, to take them before some judicial officer, and show the right of the plaintiff to their services. The defendant asked by what authority; the witness replied by virtue of a power of attorney from the master, and laid his hand, upon the paper; the defendant objected to the authority and said, that nothing less than judicial authority was sufficient or would satisfy him. He then by words or signs directed the woman and her son to return into the house, which they did, and he followed them, shutting the door after him." The slaves left Parish's house that night. The jury disagreed. In 1847 Driskell brought an action of debt against Parish [1093] "to recover the penalty prescribed by the act of congress of February 12, 1793," The jury [1095] "returned a verdict for the plaintiff—finding the defendant guilty both of harboring the slaves and obstructing the

[1] 1 Stat. at L. 302.

master. The obstruction consisted in the conduct of Mr. Parrish at the gate; the harboring in permitting the slaves to remain in his house until nightfall—" On the new trial in 1849, the jury [1100] " returned a verdict for the plaintiff, on the count for hindering and obstructing the arrest—assessing the damages at $500, the proved value of the slaves in question at the time of their escape. On the count for concealing and harboring, the verdict was for the defendant." Judgment entered on the verdict.

Jordan v. Smith, 14 Ohio 199, January 1846. " agreed statement of facts. . . suit is brought on a bond for $115, . . Process served on Nancy Smith only, and not found as to Parsons. The plea . . by defendant, . . that she did not execute the bond. The deposition of Mary Shoemaker, the subscribing witness, was taken; the counsel . . objected to reading the same, for the reasons . . the plaintiff is a white [200] person, and the defendant, Nancy Smith, and the witness, are both black persons; . . testimony . . should not be received. The plaintiff then offered to prove the handwriting of the subscribing witness, by a person who merely saw her subscribe her name to the deposition. . . objection . . by . . defendant: 1. Because . . witness would not swear that he was acquainted with the handwriting . . 2. Because a black person was not a competent witness "

Held: " The agreed case shows that the plaintiff is a white man, the defendant a black woman. . . defendant swore to the truth of her plea . . plaintiff . . offered . . deposition of the subscribing witness, who was also a black woman. . . objection . . on account of her color. . . [201] it is supposed that . . the act of April 1, 1807, . . is broad enough to exclude a black person from swearing even to the truth of a plea . . the statute is . . ' no black or mulatto person . . shall hereafter be permitted to be sworn or give evidence in any court of record, . . in any cause . . where either party is a white person, or in any prosecution . . against any white person.' . . The object is to prescribe an additional rule as to the competency of witnesses. . . The truth shall not be received from a black man, . . where a white man is a party. . . [202] Suppose that we were to give this section the construction insisted upon by the plaintiff, what would be the consequence? It would . . put the black man in the power of the white. The white man may now plunder the negro . . he may abuse his person; he may take his life: He may do this in open daylight, . . and he must go acquitted, unless . . there . . be some white man present. . . [203] the defendant had a right to swear to the truth of her plea, and the plaintiff must prove the execution of the note. . .[204] there is no evidence to sustain the . . action. . . the only reason he can not prove it is, that his witness is . . incompetent by . . law . . its uniform effect has been to prevent justice, . . the plaintiff must be nonsuited."

Jones v. Van Zandt, 5 Howard 215, January 1847. See same *v.* same, p. 7, *supra.*

Woodson v. State, 17 Ohio 161, December 1848. " action . . was debt upon an administrator's bond. Letters . . were granted . . to . . Chase,

. . estate of John Woodward, a mulatto. . . [162] suit was brought in the name of 'the state' . . on the administration bond. . . The breaches . . are: 1. Not making and returning inventory, though $1000 of goods, . . came to his possession. 2. . . he did not . . administer the goods . . 3. . . made no return of his administration. 4. . . has not paid the debts . . [163] defendant . . called, as witnesses . . Bond and Phillips, who were sworn, . . This evidence was objected to . . the witnesses were mulatto persons. No evidence of the fact was adduced, and none that Borland, for whose use the suit was brought, was a white person; but the court determined the condition of all three by inspection, and rejected the witnesses. Judgment . . for the plaintiff, . . without . . a jury."

Reversed: [169] "The right to prosecute a suit . . is given by the 182d section of the act . . which provides that after a claim has been allowed by the administrator, if he shall neglect upon demand by the creditor to pay . . the bond . . may be put in suit by the creditor. . . several things are required to entitle a party to . . a suit . . Among others, neglect to pay upon demand made. The declaration does not allege . . any demand . . nor . . any excuse for the omission. This is a fatal objection to the declaration. It is . . a case of defective title, that is bad even after verdict . . demand . . is an essential element of the right of action against the obligors in the bond. It is . . a condition precedent, . . and therefore indispensable."

Steuart et al. v. Southard, 17 Ohio 402, December 1848. "Southard . . was resident, . . in which a common school was taught; that he had sons and daughters . . which he was desirous to have taught at said school; . . defendants . . were school directors . . contriving . . to deprive him . . of having his said children educated, . . wrongfully admitted certain colored children into said school, . . he . . has been put to great . . expense . . to be taught . . defendant demurred." "The court . . overruled the demurrer. The defendant plead the general issue. . . [403] judgment . . for the plaintiff for $25."

Reversed: "This is . . an action for misbehavior of a public officer . . The most that can be made . . of the declaration . . is, that [defendants] . . misjudged the law and acted erroneously. . . [406] If suit may be maintained for an error in admitting colored children . . it must be on a principle that will enable every member of the school district to maintain an action . . for any other mistake . . The 50th section . . provides that a common school may be continued by the directors, or funds . . by voluntary subscription, or at the expense of those sending scholars. How this school was supported does not appear. . . defendant . . waived all matters of . . form . . and agreed that his case shall be decided upon the constitutionality of the school law. . . we cannot admit that parties have the power to call for an opinion on a matter not thus presented, . . Judgment reversed and demurrer sustained."

Campbell v. Kirkpatrick, 4 Fed. Cas. 1174 (5 McLean 175), October 1850. Action "to recover a penalty under the fugitive slave act of 1850." [1]

[1] 9 Stat. at L. 464.

Held: [1175] "an indictment under the fugitive law, of which the district court has jurisdiction expressly given, and of which the circuit court has no jurisdiction under the act, cannot be transmitted to and tried by the circuit court."

State v. Cincinnati et al., 19 Ohio 178, December 1850. "mandamus was issued, . . against . . Cincinnati, . . and William Disney, treasurer of said city, . . The information . . is as follows: . . Your petitioners, . . [179] state . . that they constitute the board of directors of common schools . . for . . colored youth . . your petitioners rented . . rooms, . . established . . schools . . employed . . teachers . . that . . Disney . . received . . two thousand one hundred and seventy-seven and sixty-seven hundredths dollars, for the use of . . the common schools for colored youth, . . that . . there became due . . for expenses . . sums . . set forth, . . that . . petitioners duly certified . . said . . accounts, . . [180] that the . . city council, . . refused to pass any order . . to the payment of said accounts, . . that . . Disney, . . refused . . to pay . . that by reason of said refusal . . the schools . . have been suspended . . that they are . . without remedy . . unless . . by . . [181] this . . court; . . the court . . ordered that writs . . issue . . [182] To this writ, . . Cincinnati . . made . . return: [183] . . This respondent says, that the . . trustees . . passed a resolution that the city should be divided into two school districts, for the colored youth . . that the . . board should notify the colored adult male tax payers . . that an election for school visitors and trustees, would be held . . Soon after . . the said board passed another resolution to employ suitable persons to list the colored tax payers . . that . . the accounts . . were presented . . [184] the city council refused to order said accounts to be paid. . . an enumeration was made of the colored youth . . eight hundred and forty-five, . . the white youth . . were also enumerated . . thirty-three thousand five hundred and forty-eight. . . The auditor . . made a division of the school funds, . . The amount . . for . . schools for colored youth was . . ($2,177.61) [*sic*], . . [185] respondent prays the judgment of the court, . . that the court will make such order in the premises, as shall be required by right and justice; . . [186] a general demurrer was filed by the relators."

Held: [188] "The facts stated . . are, . . admitted . . [189] It is claimed . . that the return is evasive, . . The return, . . is somewhat evasive, but . . the city council do not . . controvert the right . . to this money, provided, it has been 'legally levied and collected.' . . [190] The only question . . seems to be, whether this money was properly levied and collected, and whether they have the right . . to give it the direction by law intended, . . neither the city . . nor their counsel . . have pointed out wherein this money was levied and collected in violation of law. . . [191] If the provision of the law . . is, . . unconstitutional and void, . . the general law remains, securing to colored youth the right of attendance in common schools with white youth, . . [195] This money is in the treasury of the city for the use of schools in those districts. . . it is claimed . . that this law . . is . . null and void. Before this court

will declare any law to be unconstitutional, that part of the constitution . . with which it conflicts must be pointed out, and the discrepancy . . clearly ascertained. So long as doubts remain, . . the law should be enforced. [196] . . This law of 1849 does not say any thing as to the color of a person to be elected school director. . . it was the intention . . that colored persons might be elected directors. . . [197] Another constitutional objection is, that these directors are elected by colored voters. . . [198] As a matter of policy it is . . better that the white and colored youth should be placed in separate schools, and that this school fund should be divided to them in proportion to their numbers. . . the relators have made a case which entitles them to relief, . . A peremptory mandamus will . . be ordered."

Smith v. Swormstedt, 22 Fed. Cas. 663 (5 McLean 369), October 1852. [Leavitt, J.]: [679] "the Methodist Episcopal Church . . from its origin in this country, . . has never ceased to bear testimony against the owning of slaves by the ministry. The legislation in the slaveholding states,—especially the stringent laws passed in most of them prohibiting emancipation,—led, in 1840, to the modification of the rule, so that the holding of slaves in states where such a law was in force, should not be a disqualification for any official station in the Church. . . [681] Prior to the year 1844, there had been some abolition movements in portions of the North, which were probably indiscreet and uncalled for. In 1842, a large body of Northern Methodists seceded, on the ground that the Methodist Episcopal Church was too lax in its discipline in regard to the ownership of slaves by ministers and members." [679] "The general conference [in 1844] had before it . . two cases . . Mr. Harding, a travelling preacher in the Baltimore conference, had become the owner of slaves by marriage. He was cited to answer for a violation of the law of the Church . . The Baltimore conference, upon hearing the case, entered a judgment of suspension against him. . . the general conference . . affirmed . . the judgment of the annual conference . . Bishop Andrew, after his election, had also become the owner of slaves,—one by testamentary bequest, and one by marriage. In the Northern portion of the Church there was a decided feeling of dissatisfaction toward the bishop, arising solely from his connection with slavery; . . By the discipline of the Church, a bishop is declared to be amenable to the general conference for improper conduct. The general conference of 1844 held . . it was competent to inquire into the fact alleged against the bishop. He . . made a . . candid statement of all the facts connected with his ownership of slaves. . . the conference adopted [by a large majority] the following preamble and resolution: 'Whereas . . Bishop Andrew has become connected with slavery . . and this act having drawn after it circumstances which, in the estimation of the general conference, will greatly embarrass the exercise of his office as an itinerant general superintendent, if not in some places entirely prevent it; therefore, Resolved, that it is the sense of this general conference that he desist from the exercise of his office, so long as this impediment remains.'" [673] "There had been some previous causes of excitement and ill feeling, growing out of the alleged

ultraism of some Northern preachers, in connection with the question of slavery. And it is not strange that, from the collisions of a warm discussion of the subject, some sparks of unholy fire should have been thrown off. . . the idea of a separation of the seemingly discordant elements took possession of some of the leading men of the South and Southwestern portions of the Church." On June 8, the general conference adopted [1] certain resolutions, in pursuance of which "the annual conferences in the slaveholding States met [at Louisville, on the 1st of May, 1845], and erected themselves into a separate ecclesiastical connection, . . to be known as the Methodist Episcopal Church South." [2]

Miller v. McQuerry, 17 Fed. Cas. 335 (5 McLean 469), September 1853. George McQuerry absconded from the service of Miller, a resident of Washington county, Kentucky [336] "A little more than four years ago, . . in company with three others, . . The fugitives were advertised shortly after they absconded, and a reward of four hundred dollars was offered for their return. They were pursued by different persons, but were not overtaken. One of them was arrested, at Louisville, and returned, but shortly after he again absconded. When Wash., as the fugitive was generally called, was lately arrested, at Troy, in Ohio, he said nothing about being free, but observed that he had no intention to run off an hour before he started; that he was persuaded to do so by Steve, one of the individuals who accompanied him. . . He told the witness [for the claimant] that he was sorry he left Kentucky;" A deputy marshal, residing at Dayton, "arrested the fugitive, who said that the claimant was his master, and that he had always been well treated. . . the defendant has resided four years in Ohio, and conducted himself well, being considered as a free man."

Held: [340] "no doubt can exist on the evidence, that the fugitive owes service to the claimant; and, under the law, I am bound to remand him to the custody of his master, with authority to take him to the state of Kentucky, the place from whence he fled." [McLean, J.]

Weimer v. Sloane, 29 Fed. Cas. 599 (6 McLean 259), October 1854. "This action is founded on the seventh section of the act of congress, of the 18th of September, 1850,[3] known as the 'Fugitive Slave Act,' and is brought to recover the value of three persons . . slaves of the plaintiff," The defendant is charged "with having aided . . in the escape of the . . fugitives," He was acting as counsel for them. Patton, "being at Sandusky city, in pursuit of some slaves who had escaped from his service, . . received at that place a power of attorney from the plaintiff, authorizing him to arrest the slaves named in the declaration; that on the 20th of October, 1852, the slaves arrived in the cars, and were seen by the witness at the depot of the Mansfield Railroad. They were conducted by a colored man, from the depot to the steamboat *Arrow,* then lying at the wharf of the city, and were put on board. Witness called on Rice, a police officer of the city, and one Hedges and another person to assist in the arrest of the negroes. They went on board the steamboat, and the witness Patton

[1] "by a majority of over three fourths of the body". 16 Howard 299.
[2] *Ibid.*
[3] 9 Stat. at L. 462.

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saw and recognized them. He enquired of them, if they did not wish to return to Kentucky. George, one of the negroes, replied, that he did not care about going back. They were then arrested, it being about half after seven in the evening of the 20th of October, and, followed by a large crowd, proceeded to the mayor's office. The negroes were taken into the office, and took their seats on a settee on the south side of the room. The Mayor, Mr. Follett, was in the office; the room was crowded, and there was a good deal of excitement. Witness stated to the people present that the negroes were slaves, and informed the mayor that he wanted a trial, to prove property. The power of attorney under which he made the arrest, with some others in his possession, had been laid upon the table at which the mayor was writing, by Rice. After some time, the mayor said he doubted whether he had any authority to try the case, and refused to do so, at the same time referring witness to a magistrate. Witness said he was determined to hold the negroes. The defendant [whose services had been procured as counsel for the negroes] stepped out of the crowd, and said, who is it that detains these colored people? Witness replied that he did. Defendant then enquired if Marshal Rice was in the room, and Rice replied that he was. Defendant asked Rice if he had a warrant to arrest the negroes, who said he had no warrant. Defendant then asked witness if he had a warrant, and he was informed that he had none, and that he had arrested the negroes without any warrant, and brought them before proper authority, etc. Defendant said to witness, you should have had a warrant, and could not arrest without a warrant. Witness replied that he could arrest without a warrant, and intended to hold the negroes, and would hold every one responsible, if they were taken from him. Defendant smiled at this. Some conversation then followed about the value of the slaves, and witness said to defendant, he would hold him individually responsible, if he interfered with them, and that he might expect to pay $1,000 for each of the negroes, if he caused them to be taken out of his custody. . . [600] Defendant then took off his hat, and waved it over his head and said, Colored friends, arise, and take those colored friends of yours out of the room, with a row, or a rush. Witness is not quite certain which of these words were used. The crowd, of whom some twenty were colored men, some of them armed with clubs, rushed towards the slaves, and forced them out of the room, with a rush. Witness has never seen them since, and they have never been retaken." Leavitt, J. (charging jury): [602] "the authority is expressly given [1] to the owner . . or his agent or attorney, to arrest without warrant. . . the power of attorney under which he [Patton] acted as agent, was executed . . according to the requirement of the act of congress." Verdict for the plaintiff.[2]

Gibbons v. Sloane, 10 Fed. Cas. 294 (6 McLean 273), October 1854.[3] "Gibbons had executed a power of attorney in . . Kentucky, . . in which either no name was inserted as the agent of the plaintiff, or, if

[1] Act of Cong., Sept. 18, 1850, sect. 6. 9 Stat. at L. 462.

[2] In the case of Gibbons *v.* Sloane (*infra*) the power of attorney to Patton from Gibbons was held to be invalid, and there was a verdict for the defendant.

[3] See Weimer *v.* Sloane, *supra.*

any, that of some other person than Patton; and . . before the arrest of the fugitive by Patton, his name was inserted . . at Sandusky city, in . . Ohio, without any acknowledgment of the instrument in that state. The court instructed the jury, that under the act of 1850,[1] this was not a valid power to Patton, and did not authorize him to make the arrest. The jury returned a verdict for the defendant."

Ex Parte Robinson,[2] 20 Fed. Cas. 969 (6 McLean 355), April 1855. [970] " the colored girl Rosetta [Armstead] was taken by a habeas corpus at Columbus, in Ohio, while passing through the state with the agent of her master, before a judge of probate, who decided that she was free, and at the same time appointed Van Slyke her guardian. . . [972] The commissioner of the United States [on March 20, 1855] issued his warrant [commanding Robinson, marshal of the Southern district of Ohio] to arrest the supposed fugitive from labor on the application of the master." [970] " on the 24th . . he produced the said Rosetta before the commissioner, as commanded;" On March 29, while the case was pending, Rosetta was discharged from custody, by order of Judge Parker, of the court of common pleas for Hamilton county, " and immediately after the said minor was placed in the custody " of her guardian, Van Slyke, " Robinson again seized the said minor under the same " warrant of the commissioner, " and now [March 30] holds her in illegal imprisonment," Upon Van Slyke's affidavit to Judge Parker, a writ of habeas corpus was issued, to which the marshal made a return, in which he denied " the right and jurisdiction of the court of common pleas . . to compel him to produce the body of the said Rosetta before it, under the circumstances stated." He was [967][3] " arrested by a warrant issued by the judge as for a contempt. On application to Judge McLean," of the federal court, he " issued a habeas corpus to bring the marshal before him, and, after argument and full consideration, discharged him from the custody of the state officer, under the act of congress " of March 2, 1833, sect. 7:[4] [970] " The marshal omitted to do the act ordered to be done by the Honorable Judge Parker, because it would be in express violation of his duty under an act of congress.[5] . . [972] A sense of duty compels me to say that the proceedings of the honorable judge were not only without the authority of law, but against law, and that the proceedings are void, and I am bound to treat them as a nullity." [McLean, J.]

Ex parte Robinson, 20 Fed. Cas. 965 (1 Bond 39), April 1856. " on the 28th of January last, one Gaines, a citizen of Kentucky, on his affidavit that certain colored persons, owing him service . . had escaped to . . Ohio, obtained a warrant from . . a commissioner of the circuit court of the United States . . directed to the marshal . . requiring him to arrest said persons as fugitives from labor, . . while the investigation

[1] 9 Stat. at L. 462.
[2] The Rosetta Case.
[3] *Ex parte* Robinson, *infra.*
[4] 4 Stat. at L. 634.
[5] 9 Stat. at L. 462.

before the commissioner was pending, he issued his warrant to the marshal, requiring him to commit the alleged fugitives to the jail . . for safe keeping, to be produced from time to time as required; . . On the 21st of February, on the petition of . . Beckley, . . a writ of habeas corpus was issued by the judge of the probate court of Hamilton county, requiring the marshal to have them [the alleged fugitives] before said judge forthwith, . . On the 28th of February, the commissioner adjudged the said fugitives to be the property of said Gaines, and ordered them to be delivered to him, to be removed to the state of Kentucky. On the same day, the said Gaines made his affidavit that he was apprehensive that said fugitives would be rescued by force, and required that they should be delivered to him in the state of Kentucky by the marshal, pursuant to the provisions of the act of congress "[1] and they were so delivered. "On the 27th of February, the marshal appeared before the judge of the probate court . . and submitted . . a motion to dismiss the writ of habeas corpus . . and an order was entered by the judge that the marshal should not remove the persons named in the writ from the jurisdiction of the court till the final decision of the motion, which order was served on the marshal on the 28th of February. . . on the 7th of March . . the marshal, protesting against the jurisdiction of the probate judge, made his return to the writ of habeas corpus, . . that . . he held the persons named . . by authority of law, and that afterward, upon the demand of said claimant, delivered them to him in the state of Kentucky."[2] On March 18, the probate judge "decided that said return was insufficient" and [966] "adjudged the marshal guilty of a contempt of court," He was fined three hundred dollars and costs, and committed to jail. He petitioned the district judge, setting forth the facts, "and praying for a writ of habeas corpus directed to the sheriff," after the return of which, he moved for his discharge from custody. [969] "The petitioner is discharged." [968] "the obligation was imperative on him, under no circumstances to permit them [the fugitives] to be taken from his custody. . . There is no doubt as to the result if the marshal had placed these fugitives in the custody of the probate judge, in obedience to the writ of habeas corpus." For "he held that the proceedings before the commissioner . . were unconstitutional and void. . . obedience to this writ by the marshal would have resulted in the discharge of the fugitives." [Leavitt, J.]

Anderson v. Poindexter et al., 6 Ohio St. 622, December 1856. "action . . was assumpsit, . . to recover the amount of two promissory notes . . each for $100, . . Poindexter was the principal in the notes, . . was not served with process, and the suit has been . . defended by the sureties. . . [623] The first . . plea alleges that the plaintiff claimed Poindexter as his slave, and promised the defendants if they would execute said, that he would, by deed, manumit . . Poindexter; . . The second . . plea avers that the . . note was to obtain the freedom of Poindexter . .

[1] 9 Stat. at L. 465, sect. 9.

[2] [967] "In the Rosetta Case [*Ex parte* Robinson, *supra*] . . this same marshal refused to obey a writ of habeas corpus issued by a state judge, commanding him to produce the alleged fugitive"

whereas, . . plaintiff had permitted Poindexter to come from . . Kentucky into . . Ohio, . . by which act . . the latter was, . . set free by the laws of this state, and before the delivery of the notes . . was a free man; . . the parties submitted the cause to the Court, and, . . gave judgment for the defendants. A bill of exceptions accompanies the record . . it is shown that plaintiff, . . lived in . . Kentucky, . . that Poindexter had lived with him as a slave seven or eight years, . . [624] and worth one thousand dollars. Poindexter procured the execution of four notes of $100 each, payable to his master, . . Plaintiff . . let him go free on the . . notes, and as soon as . . paid he would give him free papers."

Affirmed: [626] "The plaintiff claimed that Poindexter was his slave, and agreed to set him free for four hundred dollars, secured by the notes of the defendants. . . He received . . these notes as the price of his manumission. This . . leads to the inquiry, whether Poindexter was, at the time, a slave, or whether that relation toward the plaintiff, . . had not been severed by the acts of himself? . . Poindexter had . . been sent . . into this state on business, and [627] afterward returned and continued in his service. . . His actual condition, at any time while he lived with the plaintiff, is not manifest from anything shown in the case. . . regarding him as a slave, . . what effect did that transfer of him from slave to free territory have? Some . . jurists in the slave states admit that if the master take his slave into a free state to reside permanently, that he thereby becomes emancipated, but, . . hold that if he go there with him for a temporary purpose, although he may, while in free territory, be suspended in his rights . . yet if the servant return voluntarily into the state . . the rights . . of the master re-attach . . [628] Slavery is entirely local . . and is repugnant to reason and . . natural law, . . The law of England abhors and will not endure the existence of it within the realm and the instant a slave lands there, he becomes a freeman. . . [630] In this state not only are our institutions . . opposed to, . . slavery . . but the ordinance of . . 1787, . . prohibits, . . its introduction here for any purpose . . To . . this ordinance, . . all of our laws, . . have conformed. . . [631] Kentucky can not, . . demand of this state an abrogation of its . . laws, to promote any of its own . . interests; . . Strengthened, . . by the clearest principles of natural law, and by the decisions of courts of high character, . . Poindexter, in coming into this state by the consent . . of his master, obtained . . the freedom of which he had been before deprived by local municipal legislation. His servitude, . . ceased, and there is no law which can bring into operation the right of slavery when once destroyed. . . [632] The court below properly gave judgment for the defendant for another reason. By the laws of Kentucky, no slave can make a contract with his master, or with any one else, for any purpose whatever. . . Slaves can be emancipated in no other way than such as is prescribed by law." [Bowen, J.]

Concurring: [633] "Two questions . . arise . . 1. It is contended . . that the case, . . is to be determined by . . the laws of Kentucky, . . Under the laws of Kentucky a slave is incapable of contracting. . . He has not a right to the child he has begotten, to nurture it, nor to the wife

he has chosen and cherished, to protect her. . . A contract of emancipation imparts to the slave no legal right, and imposes on the master no legal obligation. It is simply nugatory and void. . . [634] the note . . plaintiff now seeks to enforce here was invalid there. . . 2. But were it otherwise, could this note be enforced by judicial procedure in Ohio? . . the absolute . . freedom of all persons at birth is a fundamental principle . . This principle was, by the ordinance of 1787, impressed on the soil of Ohio . . The moment any person comes within . . Ohio, his personal rights are . . determined by the . . laws of Ohio [635] . . no exception . . save in the case of a person who, being held to service in another state, escapes into this. . . When, . . a . . slave . . escapes into this state he ceases to be, . . a slave. . . In Ohio, he is a man; . . In the case now before this Court, there was no escape from Kentucky into Ohio. Poindexter came . . [636] with the consent . . of the plaintiff. . . So coming, . . His . . status was that of a freeman. . . If a . . slave can be . . sent into Ohio for one hour, and still retain his status as a slave, then the same thing can be done for a day, a week, . . a lifetime; . . [637] it is said that the note was at least given in . . compromise . . of a doubtful claim, and . . valid. Not so; the promise was made by Poindexter, while under duress, . . and . . imposes no obligation either in morals or in law. . . [638] The enslavement, . . of a man once free, presents the monstrosity of a legalized wrong; . . The . . policy of Ohio is, to maintain the rights of men;" [Brinkerhoff, J.]

Concurring: [639] "Some states deem it good policy to subjugate one class . . to the other, . . This is slavery . . in men. It has never existed in Ohio. . . [640] That the constitution of 1802, . . acted, . . directly on the [641] status of a slave, sent here voluntarily by his master, dissolving the relation, . . [642] As to the constitution of the United States, it will be found, . . that its provisions, . . have no application to the question before us. . . [648] Whatever construction may be given by the Supreme Court of the United States to the constitutional provision relating to fugitives, whereby the laws of a free state are rendered inoperative, it . . is limited . . to, cases coming within that provision, . . in respect to escaping slaves. . . [671] Slavery is not authorized in England, but . . forbidden. . . [674] Poindexter, upon his return to Kentucky, was a slave by the law of that state. To relieve himself from this [675] condition, he entered into a contract for his manumission, . . By the law of Kentucky this contract was not obligatory upon the master." [Swan, J.; Scott, J. concurred].

Concurring in judgment, dissenting on reasoning: "Although I concur in the judgment . . I differ so essentially . . as to the main ground upon which the decision has been placed, . . I . . state my own views . . [677] That the contract in this case, . . made in Kentucky, must be governed by the laws of that state . . that Poindexter, . . being the slave . . had no . . capacity, . . to make a valid contract with his master . . and that the contract . . is without any validity . . are propositions to which I readily accede. And upon this ground I give my assent to the judgment in this case. But the main ground upon which the decision . .

is placed, . . is that Poindexter, by means of his having been sent into [678] Ohio by his master, on an errand, . . he returned voluntarily, . . to the service of the plaintiff, became a freed man, . . therefore the notes, . . were without consideration. . . he was simply in the state, *in itinere,* on business . . and, as far as residence is concerned, not distinguishable from that of a person *in transitu.* . . [681] Kentucky was . . the place of the contract . . also the place of the domicile of both the parties. . . laws of Kentucky recognize slavery . . the mode of manumission . . is . . prescribed, and can be effected only by a formal deed . . [695] It is argued, . . that the moment a slave, domiciled in Kentucky, is allowed by . . his master to step upon the soil and breathe the atmosphere of Ohio, he becomes a free man, and . . his status as a slave can not re-attach to him, even although he may return voluntarily . . There is nothing in the physical properties of either the soil or the atmosphere of Ohio which can have any such effect on the civil state and condition of the person." [Bartley, C. J.]

Ex parte Sifford, 22 Fed. Cas. 105 (5 Am. Law Reg. 659), September 1857. [106] " Sifford, the marshal of the United States for the Southern district of Ohio, presented his petition . . for a writ of habeas corpus, alleging . . that . . Churchill and nine others, being deputy and assistant marshals, were unlawfully imprisoned in the jail of Clark county, by a process issued by a justice of the peace . . A writ of habeas corpus was issued . . directed to . . Dayton, sheriff of said Clark county, . . The facts . . are, that on the 23d of May last, separate warrants were issued by . . a commissioner of the circuit court of the United States, for the arrest of Hiram Gutridge and three other persons . . on charges of having aided and abetted a fugitive slave in his escape, and having resisted . . the officers of the United States in the arrest of such fugitive. The persons named in the warrants were arrested by the deputy marshall and assistants; and when conveying them to Cincinnati, an attempt was made by the sheriff of Clark county to take said prisoners from the custody of the officers by a habeas corpus issued by the probate judge of Champaign county. . . [109] it is urged that the habeas corpus placed in the hands of Sheriff Layton [*sic*] was merely colorable, issued in fraud of the law, and was a part of a conspiracy by which to effect the rescue of the prisoners. . . It was issued under the Ohio act of 1856, . . while it provides for a writ, designated as a writ of habeas corpus, the writ has really none of the . . characteristics of the great writ of right. Whatever may have been the design of the statute, it seems admirably suited to effect the rescue of any prisoner in the custody of an officer of the United States." The sheriff [106] " was violently resisted and assaulted, and failed to execute the writ according to its command. . . on a complaint made before . . a justice of the peace of Clark county, . . the deputies and their assistants . . [107] were subsequently seized by a large armed force and taken before the said justice, and by him committed to the jail of Clark county;" The prisoners rescued from their possession " were taken by the sheriff of Greene county before the probate judge of Champaign, by virtue of the habeas corpus issued by him and were summarily discharged by his order.

and have since been at large. . . [109] The reason for this order . . was, that no one appeared to show by what authority the prisoners were arrested and held in custody. The truth was—whether known to the probate judge does not appear—that the deputy marshal named in the proceedings, and who was so solemnly called and defaulted for his non-appearance, was, at the time, a close prisoner in the jail of the adjoining county of Clark! . . [112] The deputy marshals are discharged." [110] " Sheriff Layton admits he was notified when the writ of habeas corpus was placed in his hands, that the persons having the custody of the prisoners were deputy marshals, and held the prisoners under the authority of the United States. It is very clear, . . even if the writ were valid, the power of the sheriff was at an end, and he was wrong in attempting the service. . . [111] there was a settled purpose, in at least a portion of the community in which these occurrences took place, to prevent . . the execution of a law of the United States. . . Great excitement prevailed, and crowds followed the officers in charge of the prisoners. From their excited bearing, there were reasons for the apprehension that an undisguised and forcible attempt at a rescue would be made. It does not change the real character of the views and purposes of these persons that they deemed it most expedient to effect their object by a resort to the forms of law." [Leavitt, J.]

Ex parte Bushnell, Ex parte Langston, 9 Ohio St. 77, May 1859. [78] " On *habeas corpus* before the judges of the Supreme Court of Ohio, . . separate applications were made, . . on behalf of Simeon Bushnell and Charles Langston, . . [79] it being made to appear, . . that said Bushnell and Langston were imprisoned and deprived of their liberty, . . without any legal authority. . . In obedience to the commands of said writs they were duly returned, and therewith were produced . . the said Bushnell and Langston . . [92] it was insisted by the counsel for Bushnell and Langston, . . that they were unlawfully deprived of their liberty and should be discharged. The counsel representing the . . United States, insisted that the relators should be remanded. . . [96] C. P. Walcott, attorney general, . . State of Ohio, insisting that the relators should be discharged, addressed the judges . . [97] ' Ohio, . . presented . . that they were . . restrained of their liberty by . . sheriff . . the sheriff . . returns that he holds them in custody by . . warrant . . by the marshal of the United States . . [98] it appears that the relators have been convicted of a violation of the . . fugitive slave act, . . 1850, . . and . . sentenced to . . jail . . This conviction . . being the cause of . . detention, the court are here called upon to inquire into the validity thereof. That validity is now challenged . . on the ground that the act . . is . . void. . . [102] If . . a state court may inquire whether a federal court had power to dispose of an ox or an ass, how much more, upon this great writ of *habeas corpus,* may it not inquire, whether that same court has power to dispose of the liberty of the citizen? . . [103] The right of the state to inquire into the validity of . . restraint upon its citizens . . results from the very nature of sovereignty . . [105] the right of the states to inquire into the validity of every imprisonment of persons held under federal authority has been constantly . . exercised by every state, . .

[106] Bushnell's conviction rests upon an indictment . . which, . . charges him with obstructing the master of the alleged fugitive, . . in the exercise of the right alleged . . of seizing his runaway slave . . and taking him back by force to the state from which he escaped. Langston's conviction rests on the indictment containing two counts; the first . . is . . similar to . . Bushnell's indictment; . . the second charges, . . that Langston had obstructed a deputy marshal of the United States, in the execution of a commissioner's warrant, commanding the arrest of John, an alleged fugitive from service. . . [107] it results that any man may come into one of the free states, and upon his mere claim that one of its . . citizens, . . is his slave, . . drag that citizen beyond the . . state . . and . . no one may interfere with this forcible capture, . . except on pain of fine and imprisonment, . . [111] The great question . . is: Does the constitution delegate to the master this right of recaption, and to Congress this power to legislate in aid or for the enforcement of this right? . . [116] 1. . . the general government has no power, save that . . delegated by the constitution; 2. . . all powers, not . . delegated, . . belong to the states . . 3. . . slavery is of so odious a nature, that the power to recognize its existence can be derived only from an affirmative, . . grant, . . lastly, that honored maxim . . requires every doubtful phrase to be construed in favor of liberty. . . [117] In all the constitution, the word slave . . is not there; . . [118] Vainly do you read the whole instrument in search of any . . express grant. . . [161] I do here and now emphatically declare, that this Supreme Court of the United States is a sectional court composed of sectional men, judging sectional questions upon sectional [162] influences. . . [164] the act of 1850 is, . . a violation of the constitution.' "

Held: [182] " The relators being brought before us on habeas corpus, our inquiry must be confined to such questions as are . . cognizable under that writ. . . The judgment of the district court is conclusive, and precludes all inquiry . . unless it is a nullity. . . [184] The only ground, . . upon which the relators can be [185] discharged is, to go behind the seventh section of the act, and maintain that Congress never had any legislative power, . . to provide punishment for a person who knowingly . . rescues an escaped slave. . . [186] It must be conceded that the power of Congress to legislate on this subject is as . . fully settled by the . . Supreme Court of the United States as any other constitutional question that has been presented for their determination. . . [188] I . . have been unable to find a single decision of any Supreme Court of any state in the Union, denying to Congress the power to legislate upon this subject. . . [198] The sense of justice of the people of Ohio has been shocked by some of the unjust provisions of the fugitive acts. It is not the authority of Congress to legislate that they deny, but it is the abuse of the power. That abuse may be remedied by Congress. . . All must admit that the owner of escaped slaves is entitled to their reclamation. . . As a citizen, I would not deliberately violate the constitution or the law by interference with fugitives from service. But if a weary, frightened slave should appeal to me to protect him from his pursuers, it is possible I might momentarily

forget my allegiance to the law . . and give him covert from those who were upon his track. . . and if I [199] did it, . . and brought by my counsel before this tribunal on a habeas corpus, and were then permitted to pronounce judgment in my own case, I trust I should have the moral courage to say, . . as I am now compelled to say . . bound . . to sustain the supremacy of the constitution . . 'The Prisoner Must Be Remanded.'" [Swan, C. J.]

[Dissenting]: [230] "We can only discharge the relators upon finding them *illegally* imprisoned. . . [231] the power to legislate upon the subject . . belonged originally to the states . . [233] The power is claimed to have been delegated by the states under the second section of article 4 of the constitution, which provides . . [234] 'No person, held to service or labor in one state under the laws thereof, escaping into another shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' No argument is needed to show that the power of legislation is not delegated to the federal government by the provisions of this section, as expressed in the language thereof. . . [237] It is well known that at the time of the formation of the constitution, it was the desire and expectation of the . . leading men in the slaveholding states that all the slaveholding states would follow the example of Massachusetts, Pennsylvania, and those other states which had then already passed acts of emancipation, looking [238] prospectively to the utter extinction of the system of slavery in the states. . . [253] I maintain, . . that the fugitive act of 1850 is unconstitutional, in that it is, in its provisions, repugnant to the express provisions of the constitution of the United States. . . [321] It is well known that Daniel Webster always entertained the opinion that this power belonged to the states, and not to the federal government, under the constitution. . . [325] While, therefore, I concede the largest discretion to the federal government in the exercise of its *incidental powers* 'to make all laws which shall be necessary and proper for carrying into execution' all *delegated* powers . . I am constrained to regard its exercise of power in passing the act of 1850 for the extradition from a state of persons 'owing service,' . . as strictly the exercise of a police power over the citizens of a state—a power unquestionably reserved by and belonging to the states . . It is, . . not a law 'of the United States,' . . I am . . clearly of the opinion, that the judgments under which the relators are imprisoned are utterly void, and that they ought to be forthwith discharged." [Sutliff, J.]

Van Camp v. Logan, 9 Ohio St. 406, November 1859. [407] "the plaintiff is a . . taxpayer, and . . has two white children . . that the defendants have . . five schools . . employing six teachers . . paid out of the common-school fund; that . . he applied . . to have said two children admitted . . the defendants refused; . . defendants . . admit these statements . . except that said children are *white*; . . they say that the plaintiff is a colored man, being of nearly one-half African blood, . . and so understood and treated . . that plaintiff's wife is a colored woman, . . their son is a colored child, . . that . . said . . apprentice is

also distinctly colored, having nearly one-half African blood, . . defendant's, . . deny that said children are white, but admit that they each have . . more white than . . African blood—say five-eighths white, and three-eighths African blood. The defendants also say, that the schools established are for white children alone; that the number of colored children in the district, . . has not . . exceeded ten, . . the money raised on all the colored persons, has been . . reserved . . for the education of said colored children; . . [408] no separate school for colored children has yet been instituted . . plaintiff demurred, . . judgment against the plaintiff for costs. . . petition in error was filed"

Judgment affirmed: "The only question . . is whether, since the . . act of . . 1853 . . 'children of five-eighths white and three-eighths African blood, . .' are, . . entitled to admission into the schools . . for . . white youth? . . plaintiff . . insists that his children, . . being more than one-half of white blood, are, . . to be regarded as white, and . . wrongfully excluded by . . defendants . . from the common schools of . . Logan. Prior to 1848 there was not any . . provision . . for the education of any but the white youth . . most of the previous statutes— . . exempt the property of blacks and mulattoes from taxation for school purposes, while some, . . exclude blacks and mulattoes [409] from the schools. The act of . . 1848 . . provided, for the first time in Ohio, for the education of colored children, . . directing . . tax . . upon the property of colored persons, . . to the support of separate schools for colored children, . . This law, . . was repealed in less than a year . . by the act of . . 1849 . . which . . provided for . . colored schools . . but . . appropriated no other funds . . save those collected from . . colored persons. . . The law of 1849, . . repealed by the law of . . 1853, which, . . not only provides for the education of colored children and imposes the duty or [of] organizing separate schools for them, . . but gives . . their full share, . . of the common-school fund, . . This act of 1853, . . makes provision for the education of all children within the state . . But in so doing, divides them into two classes, 'white' and 'colored,' and imposes the [410] duty of providing schools . . under different teachers, . . The law, then, is one of *classification* and not of *exclusion*. . . where the number of colored youth is too small to justify the organization or the continuance of a school for colored youth, such school must be . . delayed or suspended; but this is no more than might occur with the other class under similar circumstances. In determining . . the terms 'white' and 'colored,' . . we may look to the state of things existing at the time, the evils complained of, and the remedies sought to be applied. . . blacks and mulattoes had been a . . degraded race in Ohio. . . They were also excluded from our common schools . . incapacitated from serving upon juries, and denied the privilege of testifying in cases where a white person was a party. . . Whether consistent with true philanthropy or not, . . there . . still is an almost invincible repugnance to such communion and fellowship . . also . . a class had grown up . . which, though partly black, had . . a preponderance of white blood . . the courts, . . had held that such persons were [411] not only entitled

to vote . . and testify . . but were also admissible into the schools for white children. . . these decisions, . . did not receive the hearty approval of the state . . the act of 1853 was enacted. Three objects . . in view. To divide all the youth . . in two classes, to provide . . for . . both classes, and to require both classes to be separately instructed. To which of these classes do the children of the plaintiff belong— . . They are not in the ordinary, if they are in a legal sense, white. . . The demurrer admits . . they are, in fact, if not in law, colored children. . . A person who has . . admixture of African blood, is generally called a colored person. . . One of the evils . . was the repugnance felt by many of the white youths and their parents to mingling, . . with those who had any . . admixture of African blood. . . [412] If those a shade more white than black were to be forced upon the white youth against their consent, the . . law would be defeated. . . the words 'white' and 'colored,' . . were both used in their ordinary . . acceptation, and . . any other construction would do violence to the legislative intent, . . The colored population, . . affiliated with the blacks. . . it is claimed that the word 'white,' . . by a series of decisions of this court, been held to include all persons, though in part of African descent, who are more than half white, . . [414] These decisions . . have had their day, . . and we do not seek to disturb them. The statutes to which they apply, have been repealed, and the construction we place upon the act of 1853 does not conflict with them. . . [415] A majority of the court . . held that colored youth of the description stated in the answer of the defendants, are not, as of right, entitled to admission into the schools, organized . . under the act of . . 1853, for the instruction of white youth." [Peck, J.]

Dissenting: "I am unable to concur in the judicial construction given . . by my brethren, to the words 'colored children,' . . caste legislation, . . is inconsistent with the theory and spirit of a free . . government. . . [417] the word 'colored,' as used in the act of . . 1853, must retain the same construction as . . the act of . . 1849, . . [424] In the passage of the act of . . 1849, the legislature, . . evidently intended to express their approval . . of the . . uniform judicial construction given . . discriminating between 'black or mulatto' persons . . and white persons . . it is especially provided by section 5 that the term 'colored,' . . shall be regarded . . as the term 'black or mulatto.' And the act of 1853, . . uses the words 'colored children' in the same sense . . [425] it seems . . unwise . . to overrule all the decisions of the . . able . . judges who have preceded us, . . I utterly dissent from the opinion expressed by my brethren in this case." [Sutliff, J.; Brinkerhoff, C. J., dissented, without written opinion.]

Anderson v. Milliken et al., 9 Ohio St. 568, December 1859. "action . . by the plaintiff against the defendants judges of an election, for the refusal of his vote. . . submitted . . upon an agreed statement of facts, . . 'That the father of the plaintiff was a white man, without any admixture of African blood; that the mother of the plaintiff is a mixture of three-fourths white and one-fourth African blood; . . neither the plaintiff nor his mother ever were slaves or held as such; that . . plaintiff

for twenty-five years . . has been a resident of . . Hamilton, . . in Butler County, . . that, . . he was, . . a qualified voter . . unless disqualified on account of the admixture of African blood, . . plaintiff, . . offered to vote for electors of president and vice-president of the United [569] States, and . . defendants, . . judges of said election, refused to receive the vote of said plaintiff on account of his admixture of African blood, and for no other reason.' . . 'defendants were not actuated by malice . . but supposed themselves to be in the line of their official duty,' . . the court of common pleas rendered judgment for the defendants, . . a petition in error . . filed."

Reversed: "The constitution of 1802 contained the following provision . . 'In all elections, all white male inhabitants above the age of twenty-one years, . . shall enjoy the right of an elector;' . . The use of the word 'white,' . . necessarily excluded those inhabitants of the state, . . who were not white, and called for a determination of the question, who should be deemed 'white,' . . It was considered in view of blood or race, and the rule adopted to meet the . . difficulty [570] of a mixture of blood or races, was that the white race must predominate. There was a white race and a black race, and . . intent was, to exclude . . from the . . franchise. If an inhabitant . . had an equal portion of the blood of each race, the exclusion still applied; but if he had a larger proportion of the blood of the white race, he was . . regarded as white, . . [571] those who framed the present constitution knew what judicial construction the words . . had received. . . [572] 'a person having less than half black blood shall have the rights of a white man.' . . [573] In North Carolina, where before the adoption, in 1853, of amendments to the constitution of that state, it is well known that free blacks and mulattoes, under the general designation of free men, had the right of suffrage. . . [575] it is said in Bryan v. Walton, 20 Ga. 479-512, of a person having less than one-eighth of African blood, that 'he may exercise the rights and privileges of a freeman.' . . [576] it is useless to multiply . . authorities. We do not think one can be found which will countenance the idea that any the least admixture of African blood will preclude a person from being considered a citizen of the United States. . . [577] it seems too clear for argument that, had the phrase 'citizen of the United States' a then . . connotation . . that . . carried . . the attribute of [578] whiteness of color, and, . . of the absence of any admixture . . of blood or color, the word 'white' would have been applied . . [579] The simple question with us is, in what sense the word 'white' was used in the constitution, . . [580] We are unanimously of the opinion, that . . plaintiff, . . was entitled, . . to vote . . He is . . entitled to a judgment in his favor,"

Monroe et al. v. Collins, 17 Ohio St. 665, December 1867. [666] "action . . by Collins . . for rejecting his vote at an election theretofore held . . where the plaintiffs in error were judges of election. . . Collins alleges, . . having a 'visible admixture of African blood,' but a large preponderance of white blood; . . that . . he offered to vote, and his ballot was so rejected, . . that he had a large preponderance of white blood was . . known to said judges, . . The defendants interposed an

answer . . they admit . . that he was a person having ' a visible admixture of African blood,' with a preponderance of white blood, . . [667] But they allege that Collins, . . did not . . show that he was such white male citizen, . . That Collins, . . answered that his parents lived . . as husband and wife, but refused to answer whether they were married. . . That . . ' I associate with persons white and . . black, when agreeable to all parties.' . . That Collins, . . produced his father, who, . . refused to answer whether he and the mother of said Collins were married, . . That Collins called two other witnesses, . . one . . refused to answer some of the questions . . and the other . . refused to answer any of them. . . [668] respondents averred that, ' although said Collins had, resided in said ward more than thirty days ' . . he was not entitled to vote. . . Collins demurred . . The demurrer was overruled . . and judgments . . entered for defendants. . . in the district court . . the judgment . . was reversed; . . leave is asked to file a petition in error "

Held: [678] " The questions presented in this case involve, . . the constitutionality . . of the . . act of . . 1868, . . [683] As connected with this act, is to be considered also . . a proviso, . . in the . . act of the 17th of April, 1868, . . provides for penalties against judges of election who ' shall refuse to receive, or shall sanction the rejection of a ballot from any person, knowing him to have the qualifications of an elector,' . . ' provided that . . this act, . . shall not apply . . for refusing to receive the votes of persons having a . . visible admixture of [684] African blood,' If these enactments are constitutional, . . the district court erred in holding that none of the defences . . was a good bar . . That Collins refused to answer fully all the questions put to him; that either . . of the witnesses produced by him failed to answer the questions put . . that Collins failed to take the final oath . . that the evidence, . . failed to show that Collins was a white man—either of these defences was a good bar to the action, by . . the act of April 16, 1868. . . The whole case, . . resolves itself into a question of the . . constitutionality of these provisions of law— . . [685] suffrage is guaranteed by the constitution of Ohio to ' white male citizens.' By the constitution of 1802 . . to ' white male inhabitants ' . . It was repeatedly held by the supreme court of the state that men having an admixture of African blood, with a preponderance of white blood, were white men within its meaning, and had the same right to vote as persons of white blood. . . A colored man, . . having more white than black blood, is a white man within . . the constitution, and the legislature have no more power to deny . . his right to vote, than . . to intrench upon that of a man of pure white blood. As electors, . . both . . are regarded as white men. . . If the legislature have power to . . abridge . . suffrage of white men of visible admixture, then they can exercise the same power in regard to white men of black hair, of low stature, of small fortune, . . or of any other description. Between the legislative power and the legal elector, . . the constitutional provision stands as a bulwark for the protection of his right to vote. What the legislature cannot do directly it cannot do by indirection. . . [686] the law is partial, . . by imposing . . unreasonable burdens of proof, . . [687] black blood may be proven by reputation, . . but white blood must

be shown by direct . . testimony, . . [688] The law is also unreasonable, . . it is so framed as to be liable, . . to the construction that no man having African blood is a white man or has a right to vote. . . [689] The most objectionable feature . . is its unjust discrimination against him in regard to penalties, . . or against its abuse. . . [691] it cannot be supported as a law to facilitate and protect . . suffrage . . It discriminates . . it . . lacks . . fairness . . [692] the act is calculated to impair and defeat . . the colored man's . . right to vote, but . . such seems to be its leading, nay its only object. . . We therefore hold the act . . void."

Coolidge v. Guthrie, 6 Fed. Cas. 461 (8 Am. Law Reg., N. S., 22), November 1868. [462] " General Curtis alleged at the time of the seizure [in 1862] and sale of the cotton that his object was to apply the proceeds to the support of the starving negro population in the neighborhood of his camp.[1] A small part of the proceeds were so applied."

Garnes v. McCann, et al., 21 Ohio St. 198, December 1871. [203] " application for . . mandamus, . . to admit the children of the plaintiff to the privileges of a specific district school. . . the facts . . are . . plaintiff is a colored citizen having three children, and resides in school subdistrict . . nine . . There is but one public school in the subdistrict, . . but the teacher, under the direction of the local directors, . . refuses . . instruction to them, . . There are not twenty colored children in that subdistrict, . . but, . . there are more than that number of colored children in . . nine and the adjoining district . . The . . board . . has formed a joint district, . . for . . colored children, which . . affords . . all the advantages . . equal to those . . for white children, . . plaintiff and his children reside in the joint district . . which, . . is as convenient . . for the children of the plaintiff, as is that in . . number nine to some families of white residents . . The board . . have appropriated the full [204] share of all funds, . . for colored children, . . and is . . sustained each year for a longer period than the school for white children . . The defendants, . . acted in good faith, . . It is . . apparent . . that the proceeding is brought, . . to test the right . . to make a classification . . on the basis of color. . . The system of public education in Ohio is the creature of the constitution and . . laws of the State. . . [205] Amongst the numerous express powers confer-[206]red . . on boards . . is . . the 31st section, authorizing the establishment of schools for colored children. . . [207] it clearly appears that . . it did not operate to exclude the colored children . . from a common school education equal to that of the other youth. . . the only doubt . . is as to the . . validity of the law . . The constitution contains no restrictions upon the 'legislative discretion,' in regard to the classification . . for school purposes. . . the question of legislative power to authorize the classification . . for school purposes on the basis of color, has been determined by the supreme court of this State,[2] . . [208] It would seem, . . that . . the

[1] At Helena, Arkansas.
[2] See State *v.* Cincinnati, and Van Camp *v.* Logan, pp. 13, 24, *supra.*

right to classify . . for school purposes, on the basis of color, and to assign them to separate schools . . is too firmly established to be now judicially disturbed. [209] But it is claimed that the law . . contravenes the . . 14th amendment of the constitution of the United States, . . [210] The law in question . . does not . . deprive colored persons of any rights. . . [211] At most, the 14th amendment only affords to colored citizens . . equality of rights . . already secured by the constitution of the State. . . The plaintiff, . . cannot claim that his privileges are abridged on the ground of inequality of school advantages for his children. Nor can he dictate where . . instructed, or what teacher . . without obtaining privileges not enjoyed by white citizens. . . There is, . . no ground upon which the plaintiff can claim that his rights under the fourteenth amendment have been infringed. . . [212] Mandamus refused."

Townsend's Ex'rs v. Townsend, et al., 25 Ohio St. 477, December 1874. " action . . to obtain a construction of her will, and an order for the sale of real estate to pay legacies. . . Mrs. Townsend executed the will . . [478] The following is a copy of the will: . . [480] ' Twenty-second. I give and Bequeath to the Colored Orphan Assylum located in Cincinnati the sum of one thousand dollars. . . The balance of my estate shall be equally divided among all the heirs herein named ' . . The money legacies aggregate $138,000, and were about double in amount to the whole value of her personal estate."

Held: [486] " The principal question . . arises upon the residuary clause . . [489] the meaning . . is to divide the residuum, . . among all those persons named . . who might . . have stood in the relation of heirs . . It is also . . a question . . whether the real estate can be charged with the payment of the money legacies. We think the testatrix intended to make the charge. . . [490] The executors are . . entitled to an order for the sale of so much of the real estate . . as may be necessary for the payment of the legacies."

INDIANA

INTRODUCTION

I

Indiana began its history with a prohibition against slavery, but showed an early tendency to regret that such cheap labor was not available for its economic development.

Originally a part of the Northwest Territory, that area which in 1816 became the state of Indiana, was bound by the terms of the Ordinance of 1787, Article 6 of which provided that ". . there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment of crimes."

In 1796 petition was made to Congress to permit slavery in the territory. In 1800, a similar petition was presented to Congress by about 270 inhabitants, requesting that slavery be permitted under the guise of contract bondage, the children of such slaves to be free at certain ages.[1]

Prior to the Civil War, however, sentiment grew strong, not only against slavery but also against the mere presence of negroes. Under Article 13 of the 1851 Constitution of Indiana, negroes were forbidden to enter the state; contracts with them were declared invalid; and those who employed negroes were to be subject to fine. A statute carrying out these provisions was enacted in 1852. Its constitutionality was challenged in the case of Smith *v.* Moody,[2] in which a negro sued a white man; Smith had entered Indiana after 1851; judgment for defendant was rendered in the trial court. Upon appeal the Supreme Court of Indiana held that Article 13 of the state constitution and the statute in pursuance thereof were in conflict with the Fourteenth Amendment to the Constitution of the United States and therefore invalid.

The traditional disputes arising out of racial antipathy are found in Indiana. In 1850, James Lewis [3] sought mandamus to prevent colored children from attending the common school, where they paid their own tuition to the teacher. Relief was denied on the grounds that the application for mandamus failed to allege that there were colored children in attendance at that time, and that the trustees knew of it, and refused to remove such children. In Woodward *v.* State,[4] the defendant was tried for assault and battery with intent to murder a white man; a colored man

[1] Laws of Indiana Territory, Illinois Historical Collection, Introduction, p. xx.
[2] P. 42, *infra.*
[3] Lewis *v.* Henley *et al.*, p. 38, *infra.*
[4] P. 39, *infra.*

was offered as a witness for the colored defendant; on objection, the trial court rejected the testimony on the ground that the statute barred testimony of Indians and other persons having one-eighth of negro blood, in all cases in which a white person is a party; on appeal this decision was reversed, but only because the state, a party in this case, was not contemplated as a person of any particular color, and hence the statute did not apply. In Barkshire *v.* State,[5] the defendant was convicted of the crime of violating the act of 1852 prohibiting colored persons from coming into the state. The defendant, a colored man, brought a colored woman into Indiana and married her. In its opinion the Supreme Court of Indiana suggested that the wife might well be liable for similar punishment for coming and settling within the state.

II

The Indiana Constitution of 1816 instituted a Supreme Court of three judges, giving it appellate jurisdiction only, but providing that the general assembly might give it original jurisdiction in capital and in some chancery cases. An act of 1831 cut off appeals to it in criminal cases. The Constitution of 1851 provided that it should consist of not less than three judges nor more than five, and legislation gave it four throughout the remainder of the period covered by these volumes. An act of 1852 restored appeals to it in criminal cases.

[5] P. 40, *infra*.

In re Susan, 23 Fed. Cas. 444 (2 Wheeler Cr. Cas. 594), November 1818. Held: Act of Congress Feb. 12, 1793 [1 Stat. 302], providing a procedure for the reclaiming of a fugitive slave escaping into another state, is valid, and the remedy thereunder supersedes the remedy given by state laws.

Vaughan v. Williams, 28 Fed. Cas. 1115 (3 McLean 530), May 1845. McLean, J.: [1116] "Gentlemen of the Jury—From the evidence it appears, that the plaintiff purchased Sam, Mariah, and their child, from one Hendrick, in Missouri, 26th April, 1836, for the sum of eleven hundred dollars, five hundred dollars being paid down. He took the slaves into possession, and they remained with him until April, 1837, when they absconded. These persons formerly belonged to Tipton, a citizen of Kentucky, who, with the slaves, in October, 1835, removed to Illinois. He settled on military land, built a house, cleared ground, and made other improvements, declaring to different persons his intention to become a citizen of the state. Sam and Mariah were both employed in laboring in the fields and in the house, until April, 1836, when they were removed by Tipton to Missouri. Before this was done, there was much conversation in the neighborhood as to the right of the colored persons to their freedom. Tipton started with them before day-light, in the morning, being under some apprehension that they might, if discovered, be rescued. He sold them in Missouri, to the person of whom the plaintiff purchased. Tipton continued to reside in Illinois two years, and, on several occasions, exercised the right of suffrage. In the spring of 1844, the plaintiff heard that the slaves were residing in Indiana, Hamilton county. Taking certain persons along with him, to prove his purchase of the servants, and to identify them, he went to Indiana. Under the statute of that state, he procured a warrant to arrest the fugitives, and a constable to execute the process, and some two or three other individuals, to render assistance that might be necessary. They proceeded to the cabin occupied by the colored persons, in the morning, before daylight. Admission was refused them. They pried the door from its hinges, and threw down the chimney, when the inmates surrendered, acknowledging the plaintiff to be their master. Time was given to send for a neighbor, who, Sam alleged, was indebted to him fifty dollars. That neighbor arrived, and in a short time others, who expressed a strong interest in behalf of the slaves, and that they should not be taken from the neighborhood. The plaintiff alleged that he had no desire to take the fugitives by force, that they should have a fair trial, and if held to be free, he should be content. He agreed to pay Sam for his improvements, and other property. Some difference of opinion was expressed as to the justice before whom the fugitives should be taken; but the plaintiff finally decided that he would take them to Noblesville, a village some miles distant. They set out for that place, the company continually

increasing, until they arrived at Mr. Anthony's farm, where they stopped for breakfast. The plaintiff was averse to this, but yielded, of necessity. After some two or three hours' delay, the company, being greatly increased, set out again for Noblesville. A wagon from Mr. Anthony was procured, to convey the fugitives. They moved on at a very slow pace for a few miles, until they arrived at the forks of the road,—one road leading to Noblesville, and the other to Westfield. Here the company increased to about one hundred and fifty. There was great division of opinion which route should be taken. Mr. Bales addressed the assemblage, urging a submission to law, and saying, 'If the decision shall be against us, under our statute, we have a right to an appeal.' This pacified a majority, and there seemed to be a general acquiescence in the advice given. But there were some who refused to acquiesce, and among them was the individual who drove the wagon. Receiving some encouragement from persons in the crowd, he drove his horses on the Westfield road. The plaintiff and one or two others attempted to stop the wagon, but they were unable to do so; a shout was raised, and the wagon was driven rapidly. The fugitives escaped, and have not since been seen by the plaintiff. Owen Williams, the defendant, was in the company, at the cabin, at Anthony's, and at the cross-roads. He took an active agency in the proceedings, in behalf of the slaves, but was not seen near the wagon at the time it was driven off, nor was he heard to encourage the driver. . . [1118] But . . were not the colored persons entitled to their liberty? Having been brought to the state of Illinois, which prohibits slavery, by their master, from the state of Kentucky, and kept at labor for six months, under a declaration of the master that he intended to become a citizen of that state, and who actually exercised the rights of a citizen by voting, there can be no doubt that the slaves were, thereby, entitled to their freedom. . . A question is made whether the title to [of] the plaintiff is not good, if the colored persons voluntarily returned into slavery. This question does not arise in the case, as there is no evidence that they went voluntarily to Missouri. But on the contrary, from the manner in which they were removed from Illinois, there can be no doubt that they were forcibly abducted by Tipton. And it appears that they sought the earliest opportunity to escape from their new master. As the claim to the services of these persons is not sustained, if you believe the evidence, which is not contradicted, you will find for the defendant, however improper his conduct may have been. If the fugitives were free, he is not subject to the penalty claimed of him." "The jury in a few minutes returned a verdict for the defendant."

Ray v. Donnell, 20 Fed. Cas. 325 (4 McLean 504), May 1849. [326] "the plaintiff resides in Kemble county, Kentucky, was the owner of the woman Caroline and her four children, . . and that they escaped from his services on Sunday evening the 31st October 1847. They described the woman as about thirty-five years of age, of a dark color, and the children as of light complexion, . . On Monday evening the fugitives were discovered by Woodson Clark . . near Clarksburgh, Indiana, in a house nearly filled with clover hay, on Peyton's farm, . . His attention was drawn to the house by hearing someone coughing, and he there found

the woman and her children." Clark " took the fugitives to his own house, and from thence they were taken by his son, who lived near, and to secure them they were placed in a fodder house near the stable. The professed object in secreting the fugitives was, to detain them for their master, to whom Woodson Clark despatched a messenger. On the same evening the fugitives were removed from the fodder house, and by that means made their escape." Donnell and the two Hamiltons applied for a writ of habeas corpus which was allowed. Emry, a constable, accompanied Donnell to Woodson Clark's, about three o'clock in the morning of November 2. Not finding any one they went on to the son's house. The son swears that [327] " Between three and four o'clock on Tuesday morning," he " being on the watch, saw two men approach. . . The men entered the fodder house, and in a few minutes came out with the woman and her children, . . Donnell was carrying the youngest child. . . Donnell said . . that he carried victuals to the fugitives on Tuesday, who were then on the road between Brookville and some other place." The jury found for the plaintiff, and assessed his damages at fifteen hundred dollars.

Norris v. Newton, 18 Fed. Cas. 322 (5 McLean 92), May 1850. Action by John Norris against Leander Newton and others to recover damages for harboring fugitive slaves. " It is proved that the plaintiff is a citizen of Boone county, Kentucky, and that he held, as his property, the negroes—Lucy, Lewis, George, and James— . . these negroes absconded . . 1847. . . The witness and several other persons aided the plaintiff in his pursuit of the fugitives for more than one month, but were unable to find them. Certain articles of property, which were known to belong to the negroes, were found near Clarksburg, Indiana; but, not being able to trace them farther, the pursuit was relinquished. About two years after the slaves had absconded, the plaintiff was informed that they resided in Cass county, state of Michigan. He immediately set out, in company with several persons, to recapture them. On the 27th of September last, the company arrived at Casopolis, a village in the above county, about ten or eleven o'clock at night. The house where the negroes were found was entered. A guard was placed at the door to prevent the escape of any one, and the inmates of the house were charged to make no outcry or alarm. The plaintiff, finding his negroes among others in the house, informed them that he had come to take them back to Kentucky. They recognized him, and the younger boys were willing to return. Lewis, the eldest boy, objected, as he had recently been married. The plaintiff informed him that his wife might accompany them, saying that she should be well treated. She, however, declined going with her husband. Lucy, the mother of the children, interposed no other objection than that her husband would be left behind. David, her husband, had absconded with the others, but was not found when they were recaptured. The four slaves were put into a wagon, Lewis having his arms tied to prevent his escape. The plaintiff's party immediately set out on their return to Kentucky, travelling the remaining part of the night. They took a somewhat circuitous route, passing through the village of South Bend early in the morning of the 28th of September. Between one and two miles south of that village, they stopped

to take refreshments. While thus engaged, Crocker, the sheriff of the county, and others, rode up to them, and in a few minutes the company increased to one hundred and forty, or upward, some of them being armed, others had bricks, stones, or clubs. Some of the plaintiff's party observed that force was about to be used to take the negroes from them, and they must resist it. The slaves were directed to get into a wagon, and weapons were drawn. Crocker, one of the defendants, informed the plaintiff that the sheriff had a writ of habeas corpus, and that they had no other object than to ascertain whether the negroes belonged to him. The plaintiff replied that they might ask the negroes whether they were not his slaves. Crocker charged them to answer no questions, but said to the plaintiff that resistance would be useless, as there was force enough to take the negroes back to the village; but, if the plaintiff would agree to return, he should have a fair trial, and it would not detain him more than an hour or two. The plaintiff consented, and returned with the negroes to South Bend. As they approached the court house, a great number of people, black and white, joined them. Time was given to the plaintiff to procure counsel. . . [323] The counsel who appeared for the negroes moved the judge, who allowed the writ, and before whom it was made returnable, to discharge the negroes, on the ground of the insufficiency of the return; and the case was argued by the counsel on both sides. The court-house was crowded with spectators, and great numbers remained outside of the house, there not being room for them within it. Several of the persons within the house were armed with clubs. The crowd became much excited as the argument was in progress. Under the apprehension that the judge would discharge the fugitives, the plaintiff by the advice of his counsel, applied for, and obtained, a warrant to arrest the slaves as fugitives from labor, under a statute of Indiana. Hearing that such an application was about being made, Crocker, one of the defendants, who acted as counsel for the negroes, warned the state officer not to issue the warrant, as the supreme court of Indiana had declared the statute to be unconstitutional and void, under the decision of the supreme court of the United States in the case of Prigg v. State of Pennsylvania.[1] But the warrant was issued, and was held by the plaintiff to arrest the fugitives, should the judge discharge them. The judge supposed the procedure was under the act respecting fugitives from labor, of 1793;[2] and on the ground that the master had no right to arrest the fugitives to take them out of the state where the arrest was made, but for the purpose only of taking them before some judicial officer of the state, or of the United States, discharged the negroes from the custody of the plaintiff. While the judge was pronouncing his opinion, the plaintiff, holding the writ from the state officer in his hands, arrested the fugitives under it. The opinion being pronounced, Crocker exclaimed in a loud voice, three times, the negroes were discharged—that they were free; and some one said it was the time for action, and called upon those nearest the fugitives to hand them out. At this time, the plaintiff, touching each of the fugitives, arrested them under the

[1] 16 Peters 539.
[2] 1 Stat. at L. 302.

warrant he held, and his party drew their weapons—one or two revolvers and knives—and, standing near the fugitives, warned the crowd not to approach them. The excitement was intense. The plaintiff claimed the protection of the sheriff, and asked him if he would suffer the fugitives, who were his property, to be forcibly taken from him. The sheriff observed that he was doing all he could to pacify the crowd; and it was finally agreed that the negroes should be put into jail, for safe keeping. The plaintiff accompanied them to the jail door, declaring that he would trust no one with the possession of them. Crocker entered the jail shortly after it was entered by the plaintiff with the fugitives and the sheriff. On his coming out of the jail, Crocker pacified the crowd by informing them that the sheriff had assured him the negroes should not be surrendered from his custody without a fair trial. This was a short time after dark, on Friday. On the same evening, and the next day, warrants were issued against certain persons of the plaintiff's party, charging them with a riot and other breaches of the peace. One of them was fined by the justice. Civil process was issued against the plaintiff, claiming large damages, in the name of one or more of the negroes, on account of their arrest and imprisonment. Bail was required in the civil and criminal proceedings. On Saturday, the streets of the village of South Bend were crowded with people, the greater part of whom were colored. The latter entered the village in companies, some of them bearing firearms, and almost all of them had clubs. Through the ensuing day the crowd increased. The number of negroes was estimated, by different witnesses, from one hundred and fifty to four hundred. Many of them came from Cass county, in Michigan. The circuit court of the state met at South Bend on Monday, and the complaints for violations of the criminal laws of the state, against the plaintiff and his party, were made before the grand jury. No bills were found, and the persons charged were discharged from their recognizances. On Monday, another writ of habeas corpus was allowed by the judge, directed to the sheriff, commanding him to bring forthwith the negroes in his custody before him, etc. A notice was given to the plaintiff of the issuing of this writ, and of the place where the hearing would be had; but the plaintiff, under the circumstances, declined any further attempt to take the fugitives, and assigned as a reason that his rights had been violated, and that he should claim compensation from those who had injured him. The slaves were discharged by the judge, and, surrounded by a great number of colored persons, they proceeded from the court-house to a wagon, in which they were conveyed off. . . affidavits were made that the fugitives in question were free, and that they had been kidnapped by the plaintiff in the state of Michigan, with the view of making them slaves. An affidavit was made to this effect by a white person, a citizen of Michigan, and by one of the colored persons in the custody of the plaintiff. It is objected that a colored person, not being a competent witness in Indiana, could not make such an affidavit. I think differently. For this purpose, at least, he may be sworn. It has been so held in Virginia, and in some of the other slave states. . . [325] It appears that the plaintiff was an indulgent master—that he gave to David, the husband of Lucy, and father of the boys, a piece of ground to cultivate in vegetables for

their own use and profit. David was seen by several witnesses at Lawrenceburg at different times, selling vegetables; but there is no express evidence that the plaintiff sent him, or consented that he should cross the river." [327] "The jury returned a verdict for the plaintiff, for $2,850 in damages."

Lewis v. Henley et al., 2 Ind. 332, November 1850. [333] "*mandamus* issued . . upon the application of James Lewis, . . to the trustees of school district . . to show cause why they did not prevent 'colored children, . .' from attending the public school . . Lewis was . . white . . had children to send to school. Colored children attended . . but paid their own tuition to the teacher, . . The trustees answered . . final judgment for . . trustees, . . if colored children were admitted into the school and the trustees did not know it, . . or . . not know that any person objected, such a refusal . . did not exist as would authorize a mandamus. The application . . should have stated that . . negro children . . in attendance . . at the time of the application; that the trustees had been notified of the fact, and required to remove said children, . . and . . refused to do it. Without such statement, . . no necessity, . . for the writ. This application did not contain such a statement . . [334] question is, whether colored children may be permitted to attend our public schools, paying their own tuition, where . . parents of white children . . object. Chapter 15, R. S., . . makes the 'white inhabitants' . . a corporation, . . districts elect trustees . . trustees levy taxes for . . schoolhouses, but . . they omit 'all Negroes and Mulattoes' in forming the taxable list. And section 102, . . When any school is supported . . by the public school fund, . . such school . . open and free to all the white children . . 'within the district, . .' The effect . . is to limit the right of attending our district schools, . . to free white children. . . the colored children did not attend . . as sharers of the public fund, but by paying their own tuition; . . had they a right to do this? . . This has not been done because they did not need education, . . but because black children were deemed unfit associates of white, [335] as school companions. . . this reason operates with equal force against such children attending the schools at their own, . . expense. . . we incline to the opinion that this remedy is appropriate."

Norris v. Crocker, 13 Howard 429, December 1851. [430] "an action of debt . . to recover the penalty of five hundred dollars, upon the fourth section of the act of Congress, approved February 12, 1793 [1] . . respecting . . persons escaping from the service of their masters;" [440] "the suit was pending below when the act of September 18, 1850,[2] was passed,"

Held: "the act of 1850 has repealed, so far as relates to the penalty, the fourth section of the act of 1793 . . the repeal does bar this action,"

Polke et al. v. Harper, 5 Ind. 241, June 1854. "plaintiffs filed a petition for a mandamus against Harper, as trustee of a school district . . show

[1] 1 Stat. at L. 302.
[2] 9 Stat. at L. 462.

cause why he should not, . . remove . . colored children from the school, . . petitioners alleged that they were white . . and taxpayers . . that there was . . a . . district school, . . [242] taught by Miss Grey, under the . . supervision of Harper . . that . . petitioners had several children . . desirous to educate . . but were prevented by the . . attendance of . . colored children . . that they had served written notice on Harper to remove the colored children . . he had . . refused . . Harper made return, denying . . the school . . was a district school; denying . . there was any district school under his supervision . . that Miss Grey's school was a private enterprise, . . plaintiffs demurred; the Court overruled the demurrer; . . the petition was dismissed . . The return denies that there is any district school; . . the demurrer admits . . that Miss Grey's school, . . is a private school. . . Harper had, . . no right to interfere. . . judgment is affirmed with costs."

Woodward v. State, 6 Ind. 492, June 1855. "Woodward was indicted for an assault and battery with intent to murder. He is a colored man, . . the assault . . was upon a white man. On his trial he offered a colored man as a witness . . but the Court refused to hear the witness . . The statute . . is . . 'No Indian, or person having one-eighth . . of negro blood, shall be permitted to testify . . in any cause in which any white person is a party in interest.' . . Is a person upon whom a crime has been committed, . . a party to the cause . . against the criminal? If so, neither the state nor the defendant can call, in such cases, a colored witness, . . Suppose Woodward had been on trial for murder, would the dead man . . have been a party . . If not, shall the negro have . . testimony . . in killing, but not when he stops short of that point? We do not think the state was contemplated as a person of any particular color by the statute. . . The judgment is reversed."

Beebe v. State, 6 Ind. 501, November 1855. [548] "We have prohibited marriages between whites and blacks; . . and have made such marriages felony; . . Personally considered, such a marriage would be a mere matter of taste; but the state deems the product of such marriages, and of commerce in liquors, an undesirable class of persons, and will yield to no clamor in favor of unalienable rights which shall override the public good."

Freeman v. Robinson, 7 Ind. 321, November 1855. "Freeman brought an action against Robinson, . . marshal of the United States . . by virtue of his office having the plaintiff in custody upon a charge of being a fugitive from service and labor, did, . . assault the plaintiff, and strip him naked, and expose his naked limbs and body to divers persons . . against the plaintiff, and . . did expose the plaintiff to be carried into slavery for life by fraud and purjury. . . charges the defendant with having, . . extorted from the plaintiff illegally 3 dollars per day for the space of sixty days. . . defendant answered, denying the jurisdiction of the [322] . . Court, because, . . he was, . . a resident of Rush. . . final judgment for the defendant. . . Two questions . . jurisdiction of the . . action; . . jurisdiction of the . . defendant. . . It stands ad-

mitted, . . that the acts . . were done, but . . defendant . . was . . marshal . . Can the action be maintained in a State Court? We think it can. . . [323] The assault . . and the extorting of money were no part of his official duty, . . and were unlawful. We perceive no conflict between any provision of the fugitive slave law, and the common law right to maintain an action for a personal injury. . . On the question of jurisdiction of the person, we have . . statutory provisions. . . [324] The 29th section, . . contains exceptions . . It provides that certain actions must be commenced in the county where the cause . . arose, among which are . . 'Against a public officer, . . for an act done . . in virtue of his office;' . . the Court hold that the words 'public officer,' . . were intended to apply to officers of the state only, and not to those of the United States. The judgment is affirmed with cost."

Barkshire v. State, 7 Ind. 389, May 1856. "complaint against Barkshire, for bringing a negro woman into state . . and harboring her . . in contravention of the constitution and laws of Indiana. . . finding guilty, Barkshire appeals. . . defendant, is a man of color; . . resided in Rising Sun, . . for . . ten years; that since . . the constitution . . 1851, . . Arthur married a colored woman . . who now resides . . as his wife . . that the marriage was solemnized in this state; . . Elizabeth is a negro or mulatto; . . defendant . . harbored her as his wife . . before and at the time of information filed. . . does this evidence warrant the conviction? . . [390] The policy of the state is . . clearly evolved. It is to exclude any further ingress of negroes, and to remove those already among us as speedily as possible. The 13th article of the constitution, . . was . . submitted to . . the people, . . emphatically it was approved by the popular voice. . . Marriage, . . is but a civil contract. . . it is . . embraced in the constitutional provisions, . . which declares all contracts made with negroes and mulattoes coming . . contrary to . . the 13th article, void. . . A constitutional policy . . so . . conducive to the . . good of both races, should be rigidly enforced . . [391] Elizabeth . . seems . . liable . . to the same penalties for coming . . or settling here."

Weaver v. State, 8 Ind. 410, November 1856. "Information against Henry Weaver, alleged to be a colored man, for disturbing a common school. . . On the trial, the defendant offered two persons as witnesses, but the prosecuting attorney 'objected to their being sworn unless the defendant would admit that said witnesses were niggers, . . that the defendant was a [411] mulatto, . . defendant refused' . . witnesses were excluded. The defendant was convicted. The defendant had a right to have his . . witnesses admitted or rejected according to . . law, . . independent of any such conditions as were sought to be, . . imposed. . . Judgment is reversed with costs."

Graham v. Crockett, 18 Ind. 119, May 1862. "officers, had levied an execution upon a horse, . . of the appellee, who brought suit to recover the same, on the ground that it was exempt from sale, under the three hundred dollar act, . . trial and finding for the plaintiff; . . judgment on the finding. The main point argued . . is as to . . excluding the evidence of two witnesses . . who were not permitted to testify because

they were persons of color—mulattoes; the appellee being a negro, and the appellants white persons. It is insisted, that in a suit wherein one party is white, and the other colored, the white party may introduce a colored witness against the other party, but the colored party can not introduce the same or other witnesses of like color against the white party. The statute is, . . 'no person having one-eighth or more negro blood, shall be permitted to testify as a witness in [120] any cause in which any white person is a party in interest.' . . This statute, . . absolutely imperative . . where a party is white. . . The evidence, it appears to us, was correctly rejected. . . judgment must be reversed. . . nothing showing . . plaintiff demanded to have his property set off, or furnished a schedule, or proved the value thereof."

Riley et al. v. Watson, 18 Ind. 291, May 1862. [292] "action by Watson, . . against Riley and Davidson; . . During the trial one Sterret McClelland, . . testified . . 'I was going . . to . . Mr. Purcell . . I came near the railroad . . discovered five men on the track, . . when I got up . . close . . the three in front were . . Riley . . Davidson, . . Watson, . . the two behind were negroes. . . Davidson said, he believed the two negroes coming up were slaves; . . Riley . . pulled out an advertisement, and told the negroes that he believed they were runaway slaves. . . Davidson examined the negroes . . He discovered on the leg of one of them a scar, as pointed out in the advertisement. We all . . went to Carlisle, . . took the negroes to the . . Depot. . . Riley took one . . in his buggy, the other rode Watson's horse.' . . Riley and Davidson, took the negroes . . to . . Kentucky; . . [293] Watson proposed to go with them; but . . his going . . would . . increase the expense, he declined. . . no . . warrant . . authorizing the . . removal . . to Kentucky. . . expenses amounted to 20 dollars, . . they received a reward of 300 dollars. . . plaintiff, . . claims one-third, . . defendants moved . . instructions: . . the jury . . must be satisfied that the negroes were slaves. 2. . . plaintiff . . must show . . negroes were slaves, . . arrested and returned . . agreeably to the laws of the United States and of this State. 3. If . . negroes were taken . . in violation of . . the laws . . plaintiff can not recover any . . reward . . These instructions were, . . refused, . . defendants excepted. . . exception is not well taken. . . [294] were correctly refused. . . defendants, . . requested the Court to reduce its instructions to writing, but the Court refused to do so; and . . did . . instruct the jury orally. . . The Court in its refusal, . . to reduce the instructions to writing, . . committed an error, for which the judgment must be reversed."

Hatwood v. State, 18 Ind. 492, May 1862. "Mahon Hatwood, a mulatto, was prosecuted, . . for coming into and settling in this State. . . he offered . . the record of a former conviction for the same offense, but it was rejected. The record showed that . . the Court arrested the judgment and discharged the defendant. . . [493] it appeared . . that the act of coming into . . the state, . . occurred . . six years . . prior to the prosecution, . . statute of limitations may be taken advantage of

in criminal cases, under the plea of not guilty; . . We think the statute prohibiting the ingress of negroes constitutional, . . but . . defective in failing to provide for the removal . . upon conviction; . . Cause remanded to be dismissed."

Draper v. Cambridge, 20 Ind. 268, May 1863. "Complaint by the appellee against the appellant for a writ of mandate. . . judgment for plaintiff. Among the errors assigned, . . 'plaintiff complains . . and says that he is a resident in school district No. 6, . . that . . defendant, James Draper, is . . trustee . . and . . Hughes is now teaching a free public school . . [269] that the plaintiff, . . being the age of 21 years, and being neither a negro nor mulatto, nor the son of a mulatto, demanded admittance . . as a scholar, . . the defendants refused to admit . . Cambridge . . and refused to recognize him as a scholar . . We think Draper's demurrer . . should have been sustained. . . The complained should have averred that the plaintiff was over 5 years of age, and unmarried; . . It was as necessary to be shown that the plaintiff was over 5 years of age, . . and that he was unmarried, . . It does not appear . . that the plaintiff was entitled to admission as a scholar . . no ground is shown for the . . mandate. . . The judgment below is reversed,"

Smith v. Moody et al., 26 Ind. 299, May 1866. "Smith sued Moody . . upon a promissory note. . . plaintiff is a negro, . . and . . prior to . . 1851, he was a non-resident of . . Indiana, and . . settled in . . said State since that time; . . plaintiff . . filed . . reply: . . it is true he is a negro, . . but . . he was born free, . . in . . Ohio, and . . was . . a citizen of said State, and of the United States . . [300] final judgment . . against the plaintiff, . . The constitution of Indiana contains the following . . 1. No negro or mulatto shall . . settle in the State . . 2. All contracts made with any negro or mulatto . . shall be void; . . any person who shall employ such negro . . or . . encourage him to remain in the State, shall be fined . . The legislature of Indiana passed 'an act . .' as follows: . . 1. it shall not be lawful for any negro or mulatto to . . settle in, . . the State. . . 6. contracts . . with negroes . . who . . came . . subsequent to . . 1851, are . . void. . . 7. Any person who shall employ a negro . . or . . encourage such . . to remain . . shall be fined . . 9. Any negro . . who shall come . . in violation of, [301] . . the constitution, and . . of this act, shall be fined. . .' It is urged, . . that this article . . and this act . . are in conflict with the constitution of the United States, and . . void. The constitution of the United States provides . . 'The citizens of each state . . entitled to all the privileges and immunities of citizens in the several states.' . . [302] The . . constitution of Indiana, and the law . . to enforce the same, deprive all persons of African descent, not . . in the State at the . . adoption of the constitution, 1. Of the protection of the government; 2. Of the enjoyment of life and liberty. And not only do they deprive them of . . privileges and immunities secured . . by the constitution, but they denounce severe punishment upon . . persons who . . come into the State, regardless of . . skill, . . ability, . . worth, or . . services . . ren-

dered to the country. . . [303] question . . is: Are persons of African descent, . . born free within . . the United States, citizens thereof, within the meaning of the constitution? . . in the . . opinion of Attorney General Bates, . . he decides, . . correctly, that a 'free man of color, if born in the United States, is a citizen of the United States.' . . [304] Congress, . . declares such persons citizens of the United States, . . The Supreme Court, in the face of its own decision,[1] admits to its bar, as attorneys . . persons of African descent. . . [306] By the act of congress . . 'all persons born in the United States and not subject to any foreign power, . . are hereby declared to be citizens of the United States; . .' [307] no doubt of the power of congress to pass this act. . . The judgment is reversed, . . cause remanded, with directions to sustain the demurrer . . and for further proceedings."

Turner v. Parry, 27 Ind. 163, November 1866. "suit by the appellee against the appellant, for the specific performance of a contract for the conveyance of a lot in Richmond. . . Parry had the privilege of purchasing the lot at $1,500, within a year from October [164] . . 1864. . . Parry became the lessee . . for one year. . . alleged . . that . . plaintiff notified the defendant of his election to make the purchase; that . . he made a tender . . and demanded a conveyance, which was refused. . . that relying upon the performance, by the defendant, . . plaintiff made improvements . . value of $1,500. . . issue was tried by the court and found for the plaintiff, . . decree . . for plaintiff. . . A mulatto who had come into the State in defiance of . . the State constitution was offered by the defendant as a witness, and . . excluded, the plaintiff being a white man, and the defendant a mulatto. . . By the act of . . 1853, . . the witness . . incompetent. By the act of . . 1865, . . color as a test . . was removed, 'provided that no negro . . who has come, . . in violation of the . . constitution of the State shall, . . be competent to testify . .' . . By the act of Congress of . . 1866, . . 'all persons born in the United States, . . [165] are . . citizens of the United States; and . . shall have the same right in every state . . to make and enforce contracts, . .' I think that the article being void, the proviso, . . fails. . . Turner and Parry entered into the written contract set out . . The contract was drawn by . . Bell, . . employed by Turner . . as his agent . . Turner left . . and returned to Kansas, . . until December, 1865. . . [166] In April, 1865, Parry made permanent improvements on the lot . . to the value of $1,200. . . he notified Bell of his election to purchase . . Bell wrote to Turner . . Turner replied, that he would not make the deed, . . but . . keep . . it himself. . . Parry . . wrote . . to Turner . . Turner replied . . denying that he had ever made any such contract, . . Turner came to Richmond, . . Parry, . . tended him $1,500, . . Turner refused . . the conduct of Turner . . made . . tender to Bell immaterial, . . When a party . . gives notice . . of his determination not to perform the contract . . performance by the party receiving such notice is unnecessary. . . judgment is affirmed, with costs."

[1] Scott *v.* Sandford, 19 Howard 393.

Ex Parte Lindley, Executor, 32 Ind. 367, November 1869. "John Williams (a colored man) devised all his estate to appellant in trust, . . and apply the proceeds . . to the payment of his debts; . . the residue . . 'to the education of colored children in . . Indiana.' . . appellant was appointed . . executor as well as trustee . . Lindley, . . made his report, showing that . . there remained . . five thousand five hundred and seventy-seven dollars and fifty-eight . . to the trust. . . the court made an order directing the money to be paid in to court, . . declaring the trust closed. [368] The appellant, . . petitioned the court to have the money replaced in his hands, . . to carry out the trust. The court refused . . the executor appeals . . This is a charitable trust, . . a person . . to execute it, . . not void for uncertainty. . . The court below erred . . The judgment is reversed. Causes remanded, . . the money to be repaid to the appellant."

Grimes' Executors v. Harmon et al., 35 Ind. 198, May 1871. [201] "following facts are stated: that Samuel Grimes, . . executed his last will . . that he departed this life . . that . . he was a . . resident . . of Indiana; . . departed this life without issue, . . plaintiffs are his heirs . . decedent . . the owner of . . eight thousand dollars . . of personal property, and seized [202] . . of real estate, worth . . twenty thousand dollars, . . said will . . proved . . appellants, . . as executors . . qualified, . . converted the real and personal property . . into money; . . about thirty thousand dollars; . . that said will was void, . . 'Because, . . there existed . . when said . . will was executed, no organized . . body known as 'the orthodox protestant clergymen of Delphi,' . . also, because the terms . . 'colored children' and [203] 'colored race,' are so vague . . that it is impossible to ascertain who the testator intended . . the objects of his charity; wherefore, . . said will is void for uncertainty, . . [204] The testator, . . disposed of the residue . . as follows: '. . I give . . the residue of my estate, . . to the orthodox protestant clergymen of Delphi, and their successors, to be expended in the education of colored children, both male and female, in such manner as they may deem best, of which a majority of them shall determine; my object . . being to promote the moral and religious improvement and well being of the colored race.' . . It is maintained . . by . . appellants that the will . . was . . valid, and . . capable of being executed by the courts. It is maintained . . that the residuary clause . . is void . . First, . . there is no trustee . . competent to . . hold the property. Secondly, that the use is not clearly defined. . . Charitable uses, . . comprise a trust as well as a use. . . [205] when no competent trustees were . . appointed, . . no use was raised, and the court of chancery acquired no jurisdiction . . [207] at the time when the will was executed . . there did not exist . . an organized . . body known as 'The orthodox protestant clergymen of Delphi.' . . it . . results that there was no artificial trustee . . competent to execute the trust. . . It seems quite evident . . that the testator . . contemplated a perpetuity, by . . 'and their successors;' and . . he intended this his trust should be executed by associated action, . . [208] The ambiguity . . arises upon the face of the

instrument. It is . . a patent ambiguity, and the law is well settled that it cannot be explained by . . evidence debars the will, . . [229] We, . . hold that the residuary devise . . is void . . and cannot receive a judicial enforcement by a court of chancery . . It is admitted . . that the bequest . . would be sustained and executed in England. It is claimed . . that the courts of chancery . . possess all the powers of the court of chancery in England. . . It is also maintained . . that the statute of 43 Eliza-[230]beth created new rights . . [245] It has been, . . decided by the Supreme Court of the United States, . . that this statute created no new law . . but only provided a new remedy for existing rights. . . [253] where the beneficiaries are described, . . as the children, . . of the African race . . it will be impracticable to ascertain the beneficiaries, . . and where, . . the trustees have no discretionary power . . the devise and bequest are void for vagueness and uncertainty."

State v. Gibson, 36 Ind. 389, November 1871. "Appeal from . . Criminal Court. . . It appears . . that appellee was charged . . with having unlawfully . . married, . . Jennie Williams, a white woman . . he . . having one-eighth part or more of negro blood. The indictment was, . . quashed, and the State, . . prosecutes this appeal . . The indictment was based upon the . . act . . as follows: [390] . . 'No person having one-eighth part or more of negro blood shall be permitted to marry any white woman of this State, nor shall any white man be permitted to marry any negro woman, or any woman having one-eighth part or more of negro blood, and every person who shall knowingly marry in violation of the provisions of this section, shall, upon conviction thereof, be imprisoned . . not less than one, nor more than ten years, and be fined not less than one thousand nor more than five thousand dollars.' . . The . . question . . for our consideration and decision is . . the ruling . . in quashing the indictment. . . it is earnestly maintained that . . laws . . prohibiting the intermarriage of negroes and white persons were abrogated by the . . fourteenth amendment of the constitution of the United States, and the . . civil rights bill. . . appellee contends that . . 'marriage, . . being only a civil contract, . . the marriage specified in this indictment was lawful; and . . the judgment . . is correct.' . . [391] in placing a construction upon a constitution . . a court should look to the history of the times, . . also . . to the nature and objects of the particular powers, . . [393] The fourteenth amendment contains no new grant of power from the people, . . to the federal government. . . The only effect of the amendment . . was to extend the . . blessings of the constitution . . to a new class of persons. . . [394] It is claimed that the first section of the . . act which confers upon persons of the African race the right to make and enforce contracts has made it lawful for negroes, . . to . . enter into contracts of marriage with persons of the white race. . . [395] It, . . becomes necessary . . to inquire whether Congress possesses the power, . . to pass a law regulating . . marriage . . [396] The general government is one of limited . . powers, and it can exercise no power . . not expressly . . granted. . . [402] we . . deny the power of Congress to regulate, . . or . . interfere with the states in determining what shall

constitute crimes against . . the state, . . In this State marriage is . . a civil contract, but . . more than a . . civil contract. It is a [403] public institution established by God himself, . . [404] The people of this State have declared that they are opposed to the intermixture of races . . Why the Creator made one black and the other white, we do not know, . . The natural law which forbids their intermarriage . . is as clearly divine as that which imparted . . different natures. . . [405] judgment is reversed, . . cause is remanded, . . the court . . to place the appellee upon his trial for the crime charged in said indictment."

Shipman v. State, 38 Ind. 549, May 1872. [550] "Shipman was indicted . . for the murder of John C. Kelly. . . was put upon trial, and found guilty . . He moved for a new trial, on the grounds, . . of newly-discovered evidence; . . the defendant filed . . affidavit . . [551] 'on his oath says that . . he was attacked by said Kelly, . . with a knife, . . that since said trial affiant has discovered, . . that . . a knife was found in the pocket of said Kelly, . . upon the blade of which was discovered woolen lint, . . affiant alleges, it had been thrust through his coat-sleeve, . . that he can identify said knife . . as . . Kelly's, . . by one Moore, a colored washerwoman, whose given name is to affiant unknown, . . [552] We are of opinion that the application for a new trial, . . was properly overruled, . . the affidavits of the witnesses, . . were not filed. No good reason is shown why their affidavits were not or could not be procured. . . [553] judgment . . is affirmed, with costs."

Cary et al. v. Carter, 48 Ind. 327, November 1874. [329] "This was a proceeding by mandate, . . appellee, . . alleged that he was a citizen of . . Indiana . . and a taxpayer . . the father of two children, . . and the grandfather of Lucy and John Carter, . . that he was a negro of African descent, . . that his children and grandchildren were . . of the age that entitled them to the benefits of the common schools . . there was a common school for white [330] children . . his children . . were refused admittance by the appellants . . for the reason that the school was . . for white children, and not for negro children; . . that . . appellants . . have wholly neglected, . . and refused, . . to provide any school . . near enough for said children . . to attend . . and . . said children . . are denied all opportunity to attend any school . . no allegation that the trustee . . refused to provide the means of education . . to the extent of their proportion, . . of the school revenues of the . . district. . . appellants . . filed . . demurrers . . that it did not state facts sufficient to . . a cause of action, but the demurrers were overruled; . . [331] the court gave judgment for a peremptory writ of mandate. . . The question . . is, whether the court below erred . . the . . solution . . will depend upon the proper construction . . upon the constitution and statutes of this State and the Constitution of the United States; . . The act of . . 1865, provided for . . a tax on the property (except that owned by negroes . .), for . . common schools . . none but white children . . were entitled to its privileges. . . after the ratification of the fourteenth amendment . . an act . . [332] was approved . . 1869, . . as follows: '. . in assessing . . taxes for school purposes . . all property, . . shall

be taxed without regard to the race or color of the owner . . 2. All children . . without regard to race or color, shall . . be included in the enumeration . . but . . the officers . . shall enumerate the colored children . . in a separate . . list . . 3. The trustee . . shall organize the colored children into separate schools, . . But if there are not a sufficient number . . the trustee . . shall provide . . for said children as shall use their proportion, . . of school revenue to the best advantage.' . . [334] It is very plain . . that . . the legislature has provided for the education of the white and colored children . . in separate schools, and the question . . is, whether such legislation is in conflict with the constitution of this State or the Constitution of the United States. . . [338] It is essential to a correct interpretation . . of our constitution, . . that we should look to the history of the times . . at the . . ratification of our state constitution, . . [339] By sec. 7 . . of the constitution of 1816, it is provided . . neither slavery nor . . servitude . . otherwise than for . . crimes, . . [340] Other provisions . . excluded negroes and mulattoes from the elective franchise, from holding office . . and from participation in all of the privileges . . to . . active citizenship, making them a . . class of inferiors . . [341] It is unreasonable to suppose that the framers of the constitution, . . intended to provide for the education of the children of that race in our common schools with the white children of the State. . . [342] There is but one construction which will preserve the . . consistency of our state constitution, . . to hold that it was made and adopted by and for the exclusive use and enjoyment of the white race. . . It would be monstrous to hold that the framers . . intended that the common schools of the State should be open to the children of the African race, . . [344] the next step is to find . . its . . change by the Constitution of the United States. . . [347] The thirteenth amendment was . . ratified . . 1865. . . its obvious purpose was to forbid all shades and conditions of African slavery. . . [362] the legislature must provide for the education of the colored children . . we are required to determine whether the legislature may classify such children, by color and race, . . In our opinion, the classification . . involve questions of domestic policy . . within . . legislative discretion . . and do not amount to an exclusion of either class. . . [366] We are . . of the opinion that the act . . is constitutional, . . while it remains in force colored children are not entitled to admission into the common schools . . of the white children. . . the court below erred . . the judgment is reversed, . . the cause remanded . . with directions . . On petition for a rehearing. . . The petition is overruled."

ILLINOIS

INTRODUCTION

I

Illinois, as a part of the Northwest Territory, was subject to the Ordinance of 1787, Article VI of which provided that: "There shall be neither slavery nor involuntary servitude . . otherwise than in the punishment of crimes, . . Provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitives may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid." The Constitution of 1818, in Article VI, reaffirmed this provision, and provided further that contracts of negro or mulatto indenture for a term exceeding one year, except in cases of apprenticeship, should be invalid. Provision was made, however, for recognition of indenture contracts existing prior thereto, but children of such indentured servants were to become free at the age of 21 for males and 18 for females. This Constitution limited the right to vote to white male inhabitants. Legislative acts in Illinois prior to the Civil War concerning slavery and the negro are similar to those of most states in the Union. The case of Nance *v.* Howard [1] illustrates the familiar principle that slaves and indentured colored servants were considered chattel property. An act passed in 1827 provided that county taxes could be levied on certain classes of property, including slaves, indentured or registered negro or mulatto servants. The status of indentured negro servants under the Ordinance of 1787, under the Constitution of 1818, and under the act of 1827, was considered in the case of Phoebe *v.* Jay,[2] and the court held that although a contract of indenture was in no real sense a voluntary contract, yet the state had been admitted by Congress under a constitution making provision for such contracts, and hence had in effect permitted a modification of the Ordinance of 1787, and further that it would be an unreasonable hardship to require the master to prove the validity of the indenture. In the field of criminal law, the case of Willard *v.* The People [3] established the principle that the prohibition of slavery within the boundaries of Illinois did not prevent a citizen of another state from passing through Illinois with slaves without emancipation of such slaves and the defendant, under the criminal code, was fined $20 and costs for secreting one Julia, a mulatto girl, who was being taken

[1] Breese 182 (1828).
[2] Breese 207 (1828).
[3] 4 Scammon 461 (1843).

through the southern part of Illinois en route from Kentucky to Louisiana. The conflict in authority between state and federal statutes dealing with the recapture of fugitive slaves was settled in Thornton's Case,[4] which held void the Illinois act dealing with fugitive slaves on the ground that the federal act of 1793 superseded all state laws on the subject.

II

With one exception, that of a case heard in a federal court, the cases which follow were heard in the Supreme Court of Illinois. Under the Constitution of 1818, the judicial power of the state was vested in a Supreme Court, consisting of a chief justice and three associate justices, with such inferior courts as the general assembly should from time to time create. It was however provided that the general assembly might increase the number of judges after the year 1824, and in 1825 it did so, adding five judges and requiring the nine to go on circuit and hold circuit courts, which however were legislated out of existence in 1829. In 1841, five additional judges were once more appointed, the nine to hold also the circuit courts. The Constitution of 1848 confined the Supreme Court to three judges and relieved it of circuit duties. The Constitution of 1870 arranged for a Supreme Court of seven judges, and this continued to be the system till the end of the period considered in these volumes, that is, to 1875.

[4] 11 Ill. 332 (1849).

Cornelius v. Wash, Breese 63, December 1825. "Belleville, Nov. 9, 1819. Whereas I have employed R. Wash in the suit instituted by George, a black man, against Robert Whiteside and F. Bradshaw, for the recovery of his freedom, I hereby promise . . [64] to pay to said R. Wash . . the further [1] sum of fifty dollars, . . Joseph Cornelius." The suit was "commenced . . in July, 1818, by the late Mr. Mears," "was tried in the St. Clair court at the June term, 1820, . . that Mr. Peck appeared for George and managed the cause with ability, that a verdict was rendered for George for more than $400, and that the verdict was set aside and a new trial awarded, and that the cause was removed to Randolph county, and there tried" "in the fall of 1820, and decided in favor of George, the black man . . and his right to freedom thereby established;"

Cornelius v. Cohen, Breese 92, December 1825. "an action of replevin . . for the recovery of Betsy, a negro girl. . . October, 1804, Rachael, a free negro woman, aged 23, entered into a writing (purporting to be an indenture) with the plaintiff [Cornelius], by which she binds herself . . to serve the plaintiff for fifteen years. . . the master binds himself to allow the apprentice, meat, drink, lodging, and wearing apparel fit for such an apprentice. The indenture is signed and sealed by Rachael *only*. . . Rachael was the mother of Betsy, who was born in the fall of 1805. . . On the 17th September, 1807, the territory of Indiana passed an 'Act concerning the introduction of negroes and mulattoes into this territory.' . . The 13th section . . was the only one relied on in the argument, as securing the services of Betsy to the plaintiff. . . 'That children born in this territory of a parent of color owing service . . [93] by indenture according to law, shall serve the master . . of such parent, . . the female until the age of twenty eight years.'"

Held: "the children of Rachael cannot . . be embraced by it. Because Rachael and the plaintiff did not go before the clerk, and agree for her services as the act directs, and the indenture admits that she was free before the passage of the act. The claim to the services of Betsey [Rachael?] . . is equally inadmissible. . . The indenture, to have been valid, as between Rachael and the plaintiff, ought to have been executed by plaintiff. It is therefore void." [Lockwood, J.]

Coles v. County of Madison, Breese 115, June 1826. "an action of debt brought by the county commissioners . . for the use of the county, against Edward Coles for $2000, as a penalty for bringing into the county, and setting at liberty, ten negro slaves, without giving a bond, as required by an act of the legislature of 1819. . . A verdict was found against Coles, . . 1824, . . [116] but no judgment was rendered upon it, till September,

[1] Cornelius had, on the same day promised to pay Wash sixty dollars [65] "to secure a fee in the same suit."

1825, . . In January, 1825, the legislature passed an act releasing all penalties incurred under the act of 1819, (including those sued for) upon which Coles was prosecuted. This act Coles plead . . but the court . . rendered judgment for the plaintiffs." Judgment reversed and the "proceedings" remanded: [120] "The law . . is not an *ex post facto* law, . . It impairs the obligation of no contract, . . All the rights of the county . . are secured . . This law required the bond to be given, which has been done, and all costs . . and damages incurred in any case to be paid, which the defendant has also offered to do in this case. . . [121] the legislature have the constitutional power to pass the act of 1825, releasing Coles, upon the terms prescribed in that act." [Wilson, C. J.]

Mears v. Morrison, Breese 172, December 1827. "I do hereby sell, deliver over, and transfer to William Mears, the time, that a negro girl named Harriet, and her children, had to serve William Morrison, she being a daughter of a servant of said Morrison, indentured under the laws of this territory concerning the indenturing of slaves, for the sum of three hundred dollars, . . 17th June, 1818."

Nance, a girl of color v. Howard, Breese 182, December 1828. [187] "Nance, upon being brought into the territory of Illinois, and being registered, became a servant to her master until she should arrive 'at the age of thirty-two years,'" [183] "The point . . in this case, is whether a registered servant is liable to be taken and sold on execution? . . [184] The legislature . . pursuing the dictates of an enlightened humanity, have . . reserved for the use of families, a variety of personal articles of the first necessity, from sale on execution. But registered servants, are not among the reserved articles. Are then registered servants, goods or chattels within the meaning of the statute? This is a question of mere dry law, and does not involve . . any thing relative to the humanity, policy, or legality of the laws and constitution, authorising . . the registering and indenturing of negroes and mulattoes." Three acts passed by the territorial legislature, September 17, 1807,[1] "can bear no other construction, than that the legislature considered this description of servants as property, for they rendered them liable to sale on execution, to be assigned by their masters with their consent, to pass to executors, administrators and legatees, and to taxation. . . The legislature . . have invariably taxed servants, not by poll, but 'by valuation.' I refer to the acts passed 27th of March, 1819,[2] 18th of February, 1823,[3] and the 19th of February, 1827.[4] The 15th section of the last . . [185] is . . 'Whenever . . the revenue . . from the tax on lands shall be insufficient . . the county commissioners' court shall have power to levy a tax . . upon the following . . *property,* viz.: . . on slaves and indentured or registered negro or mulattoe servants,' . . By this act, registered servants are expressly denominated property. Each of the execution laws, passed March 22d 1819,[5] and 17th

[1] Rev. Code [of 1807] 188; 2 *ibid.* 608; *ibid.* 647.
[2] Laws of 1819, p. 313, sect. 3.
[3] Laws of 1823, p. 203, sect. 3.
[4] Rev. Laws of 1827, p. 331.
[5] Laws of 1819, p. 181, sect. 13.

of February, 1823,[1] contain the following provision, to wit.: 'That the time of service of negroes or mulattoes, may be sold on execution against the master, . . immediately from which sale, the said negroes or mullatoes shall serve the purchaser . . for the residue of their time of service.' There is, however, no such provision in the act . . passed 17th of January, 1825,[2] and which act repeals all former acts; . . the omission . . cannot be deemed decisive of the intention of the legislature. . . All these acts ought to be taken together, . . By the 22d section of the act . . passed 24th of January, 1827,[3] authority is given to the sheriff, when he 'shall serve an attachment on slaves, or indentured or registered colored servants, or horses, . . to provide sufficient sustenance for the support of such slaves, indentured or registered colored servants and live stock, until they shall be sold or otherwise legally disposed of, or discharged from such attachment.' . . [186] no doubt can exist, that the legislature acted on the supposition, that registered servants were regarded as property which might be seized and sold. And no good reason is perceived, why these servants should be liable to attachments, and not liable to sale on executions obtained by the ordinary prosecution of a suit. . . I have, therefore, come to the conclusion, that indentured and registered servants must be regarded as goods and chattels, and liable to be taken and sold on execution. In support of this opinion, I refer to the case of Sable *v.* Hitchcock,[4] . . They [Nance and Sable] were both slaves in the states from whence they were imported, and their services were held in the same manner, that the services of absolute slaves are held, for the masters were entitled to all the fruits of their labour. The rights of the master had no reference to the benefit of the servants; hence they are in every essential particular, personal property, and subject to most of its attributes and liabilities. . . [187] the judgment of the circuit court must be affirmed with costs." [Lockwood, J.]

Fanny, a woman of color v. Montgomery, Breese 188, December 1828. " an action of trespass, assault and battery and false imprisonment, brought to try the plaintiff's right to freedom. The defendant plead in bar, that plaintiff and others, were taken before a justice of the peace in . . Bond county, as a person held to labour and owing service in . . Kentucky, to John Housten, and that the justice of the peace, upon proof to his satisfaction that the said Fanny, with others, did owe . . and . . were fugitives . . did . . grant a certificate to said Housten, or his attorney, to . . take said Fanny, . . Defendants . . assisted said Housten, or his attorney, to take said negroes, . . that no more force was used than necessary, . . the plaintiff demurred, and . . the circuit court sustained the plea, and gave judgment for defendants, . . [190] the judgment must be reversed, . . and remanded . . with liberty to defendants to amend their

[1] Laws of 1823, p. 173, sect. 9.
[2] Laws of 1825, p. 151.
[3] Rev. Code of 1827, p. 76. Also act of Feb. 12, 1833, sect. 21 (Rev. Laws of 1833, p. 91).
[4] 2 Johnson (N. Y.) 79.

plea," [189] " In order to give a magistrate jurisdiction [under the Fugitive Slave Act,] . . it ought to appear, that the person apprehended as a fugitive slave, had escaped from the state . . where the labour . . is due, into the state . . where he . . is apprehended, . . It does not appear from this plea, that Fanny had escaped, . . But the plea is still more fatally defective, in not stating that the proof was, that she *now* owes service . . in Kentucky." [Lockwood, J.]

Phoebe, a woman of color v. Jay, Breese 207, December 1828. " an action of trespass, assault, battery, wounding and false imprisonment, to which the defendant plead, that the plaintiff . . 1814, before . . clerk of the court of common pleas of Randolph county, Illinois territory, agreed . . with one Joseph Jay, the father of this defendant, . . to serve him as an indentured servant, for . . forty years, . . conformably to the laws of the Illinois territory, respecting the introduction of negroes and mulattoes into the same; . . that the said Joseph, has since departed this life, leaving this defendant, his only son and heir at law, and who is also his administrator—That plaintiff came to his possession lawfully, after the death of said Joseph—That in order to compel plaintiff to . . perform the duties of an indentured servant, in doing the ordinary business of him, the said defendant, and remain in his said service, he had necessarily to use a little force and beating, . . [208] To this plea the plaintiff demurred, . . The circuit court sustained the plea, and thereupon, the plaintiff obtained leave to withdraw her demurrer and reply. Several replications were filed, to which defendant demurred, . . demurrers . . sustained, and judgment given . . for the defendant. . . [214] reversed . . and that the proceedings be remanded . . with liberty to defendant to amend his plea," I. [208] " The first question presented by this case, is, whether the 'act concerning the introduction of negroes and mulattoes into this territory, passed 17th September 1807,' [1] by the territory of Indiana, and continued by the territory of Illinois, was not a violation of . . the ordinance of . . 1787, . . If the only question to be decided, was, whether this law . . conflicted with the ordinance, I should have no hesitation in saying that it did. Nothing can be conceived farther from the truth, than the idea that there could be a voluntary contract between the negro and his master. The law authorises the master to bring his slave here, and take him before the clerk, and if the negro will not agree to the terms proposed by the master, he is authorised to remove him to his original place of servitude. I conceive, that it would be an insult to common sense to contend, that the negro, under the circumstances in which he was placed, had any free agency. The only choice given him, was a choice of evils. On either hand, servitude was to be his lot. The terms proposed, were, slavery for a period of years, generally extending beyond the probable duration of his life, or a return to perpetual slavery in the place from whence he was brought. The indenturing, was in effect an involuntary servitude for a period of years, and was void, being in violation of the ordinance, and had the plaintiff asserted her right to freedom, previous

[1] 2 Rev. Code [of 1807] 467.

to the adoption of the constitution of this state, She would . . [209] have been entitled to it. But, by the third section of the sixth article [1] . . 'Each, and every person who has been bound to service by contract or indenture, in virtue of the laws of the Illinois territory heretofore existing, . . without fraud or collusion, shall be held to a specific performance of their contracts or indentures, and such negroes and mulattoes, as have been registered, in conformity with the aforesaid laws, shall serve out the time appointed by such laws.' . . if these indentures were originally void, can any subsequent act, and that without the consent of the persons most interested, make them good? I readily concede, that no subsequent legislative act, could have made the indenture valid. Can then, this constitutional provision make a void indenture, valid? . . whatever condition is assigned to any portion of the people, by the constitution, is irrevocably fixed, however unjust in principle it may be. . . [210] As it respects the territorial legislature, the ordinance had the same controling influence over their acts, as a constitution has over the legislature of a state. . . although the act of the territory, in relation to indenturing negroes and mulattoes, was originally void, yet it enumerated a description of persons, that the constitution of this state has undertaken to fix their condition in life, and the rights they shall possess in this community. It has determined, that they shall serve their masters, according to the provisions of the law before recited. . . The provision . . does not . . conflict with the constitution of the United States. . . The ordinance . . is no doubt still binding upon the people of this state, unless it has been abrogated by 'common consent.' . . The people of this state, by recognizing the validity of the indenturing and registering of servants, in pursuance of the act of 1807, . . gave their consent, to alter so much of the ordinance as was repugnant to the constitution of this state. When the constitution of this state was presented to congress, . . the attention of that body was called to that clause . . which requires, that registered, and indentured servants, shall be held to serve pursuant to said act, and which was contended, and if I mistake not, was conceded to be, a violation of the ordinance. Congress, however, admitted this state into the Union with this constitutional provision, and thereby, I think, gave their consent to the abrogation of so much of the ordinance, as was in opposition to our constitution. . . [II.a.] [211] it evidently appears from the constitution, that it does not intend to confirm every indenture. . . unless the indenturing was in conformity to the law, it is void. . . [212] But after a period of more than ten years . . and an acquiescence in the mean time of the plaintiff, I think it would impose . . an unreasonable hardship, to require the defendant, to plead and prove all the facts necessary to shew the validity of the indenture. . . it would certainly be competent for the plaintiff . . to state facts inconsistent with these presumptions, . . [b.] The second objection to the plea is, 'that by the death of Joseph Jay, the indenture ceased to have any operation.' . . by the third section of the act, entitled, 'an act concerning servants,' [2] passed on the . . 17th day of September, 1807

[1] Rev. Laws of 1827, p. 36.
[2] 2 Rev. Code [of 1807] 647.

[the same day on which the indenturing law was passed], it is declared that, 'the benefit of the said contract of service . . [213] shall also pass to the executors, administrators, and legatees of the master.' . . by a strict . . construction of the language employed in the first section of this statute, to which the word 'contract,' in the third section refers, it might be considered doubtful, whether the words 'negroes and mulattoes,' under contract to serve another, embrace the negroes and mulattoes, registered and indentured under the act 'concerning the introduction of negroes and mulattoes into this territory,'[1] . . But when it is recollected, that the convention supposed that there were several laws on the subject of indentured and registered servants, I have no hesitation in concluding, that the act concerning servants, embraced indentured servants. . . I have been informed, that the members of the bar, always understood the act concerning servants, had application to indentured and registered servants, and upon that opinion, the community at large, have supposed, that these persons might be sold, with the consent of the servants, and that they went to the administrator . . The first legislature, . . in the act . . passed 30th of March, 1819,[2] have adopted the third section of the 'act concerning servants'[3] *verbatim,* though . . it does not appear that any contract of service is before spoken of. This section of the act of 1819, cannot have any . . meaning, unless it have reference to the indentured and registered servants, mentioned in the constitution. . . consequently, upon the death of Joseph Jay, the plaintiff went to the administrator as assets. [c.] The third objection to the plea, is, that it is uncertain whether the defendant claims the service, in virtue of his being administrator or heir? . . If the defendant claims . . [214] as heir, there is no law to sanction the claim. . . Should the party claim . . as administrator, still, the plea would be bad, as an administrator would only have the custody of the plaintiff for safe keeping, until her time of service could be sold; . . he had no power to compel the plaintiff 'to attend to the ordinary business of him, the said defendant.' . . The plea is also defective . . for not answering the wounding." [Lockwood, J.]

Littleton v. Moses, a man of color, Breese (App.) 9, December 1831. "This was an action brought in the Union circuit court by Moses, a man of color, for a trespass, assault and battery, and false imprisonment; . . The court instructed the jury that the mere fact of the plaintiff's working for the defendants, and under their control, was not of itself sufficient (unconnected with other circumstances) evidence of his being restrained of his liberty; and further . . that in this form of action, the plaintiff could not recover for services rendered, unless the jury should be satisfied from the evidence, that there was restraint or force used to compel him to work, or to abridge him of his liberty. . . that if they should be satisfied from the evidence, that the defendants had exercised restraint or force

[1] 2 Rev. Code [of 1807] 467.
[2] Laws of 1819, p. 358.
[3] 2 Rev. Code [of 1807] 647.

over the person of the plaintiff, that they should find for the plaintiff a verdict." "The jury found a verdict for the plaintiff, for forty dollars in damages." New trial refused.

Boon v. Juliet, a woman of color, 1 Scammon 258, December 1836. "an action of *trespass vi et armis* brought by the appellee against the appellant, for an assault and battery on her sons, Peter, Harrison, and Enoch, being her servants, and restraining them of their liberty, *per quod servitium amisit.* . . Boon, pleaded specially, that onē Gaston removed into this State, while it was a part of the Territory of Indiana, and brought with him Juliet, being the owner of her, then aged about nine years; and did on the 20th of July, 1808, register her name and age with Robert Morrison, clerk of the Court of Common Pleas of Randolph county, in said Territory, agreeably to the law of the Territory, entitled 'An act for the introduction of Negroes and Mulattoes into the said Territory,' passed Sept. 17th, 1807; . . Gaston . . 13th of July, 1819, transferred . . Juliet . . to one Alexander Gaston, Jr., by bill of sale; . . 7th of October, 1819, [he] . . transferred her . . to . . Boon, . . Enoch is 12 years and five months of age, born since the adoption of the Constitution, Peter 22, and Harrison 20 years of age; the two latter born before the adoption of the Constitution. The defendant, as Wm. Boon's administrator, entered plaintiff's close, and took said children, and detained them as part of his goods and chattels, which are the supposed trespasses, . . the plaintiff demurred, . . judgment on the demurrer for the plaintiff, and one cent in damages."

Affirmed: [259] "This action is confessedly instituted to ascertain the right of the children named in the declaration, to freedom. . . [260] the case of Phoebe . . *v.* Jay,[1] . . might be supposed to have left us little doubt in reference to the children of indentured servants, and their liability to serve out the time prescribed by the Territorial law, still it seems to my mind equally clear, that the provision of the 3d section of the 6th Article of the Constitution, could in no way alter, abridge, or change the condition of the children of registered servants. The Territorial laws had not in any way abridged their liberty, or rendered them liable to the performance of service to the owners of their parents; and it is in my judgment absurd and unjust to deduce such consequences from the proviso contained in that section of the 6th Article of the Constitution above quoted.[2] . . [261] this proviso was . . intended as a mere limitation on the imagined right of the master to the service of the children. As no such right existed at the formation and adoption of the Constitution, and as the proviso must be considered as an act intended for the benefit of, and enlarging the rights of a class of persons supposed to have been subjected to a period of servitude, when in truth and in fact, none such could be legally considered to exist, I am clearly of opinion, that the children of registered negroes and mulattoes, under the laws of the Territories

[1] P. 53, *supra.*

[2] "That the children hereafter born of such persons, negroes or mulattoes, shall become free; the males at the age of 21 years, and the females at the age of 18 years."

of Indiana and Illinois, are unquestionably free, . . It is also to be remarked that Peter and Harrison, two of the children, were born before the adoption of the Constitution, and are necessarily excluded from the terms of the 8th section of the 6th Article; and it is not pretended that any law of the Territory rendered them in any manner, whatever, liable to serve the owner of their mother." [Smith, J.]

Choisser v. Hargrave, 1 Scammon 317, December 1836. [318] "This action, for an *assault and false imprisonment,* was brought by . . Barney Hargrave, a colored man, against . . Choisser, (who claimed [him] . . as an indentured servant), to try his right to freedom. . . Barney 'was brought into the Territory of Illinois at or before 1816, but that he was not indentured or registered until . . 1818,' when he was indentured to Willis Hargrave, who transferred him to . . Wight, and he to Choisser."

Judgment in favor of Barney Hargrave, affirmed: [319] "The Constitution confirms only those indentures that were made in conformity to the act of 1807, and one of the essential requisites to the validity of an indenture under that act, was, that it be made . . within thirty days from the time the negro . . was brought into the Territory." [Wilson, C. J.]

Nixon v. The People, 2 Scammon 267, June 1840. [269] "The indictment charges . . Nixon, with an assault with the intent to commit murder on one Adam, a man of color, by . . throwing the aforesaid Adam from a certain wagon, . . upon the ground, . . frozen and very cold; . . did abandon . . him, . . lying on the ground, . . with intent him, the said Adam, by the means aforesaid, . . to kill . . Adam is a deformed person, and unable to walk or otherwise to move himself from place to place, and so deficient in his voice as to be unable to call aloud." [268] "The cause was tried . . 1839, . . The jury found [Nixon] . . guilty, and fixed the time of his confinement in the penitentiary at seven years." Judgment affirmed: [269] "This differs from most cases of assault with intent to commit murder; it is more malignant, . . But if one assault with intent to commit murder differs from another, it makes it no less a crime." [Browne, J.]

Kinney v. Cook, 3 Scammon 232, December 1840.[1] "an action of *assumpsit,* brought by Thomas Cook against William Kinney . . to recover a compensation for labor and services performed . . The defendant pleaded *non assumpsit,* and a setoff for board, washing, and clothing, goods, wares, and merchandise, sold and delivered to him. . . 1840, . . the cause was heard before a jury, . . it appeared in proof that the plaintiff was a negro, and was retained by the defendant as a slave, during the time stated in the declaration, although there was no proof that he was a slave. The plaintiff having proved the services, rested his cause, without having adduced any testimony whatever of his freedom, . . [233] whereupon the defendant's counsel moved the Court to instruct the jury as in case of a nonsuit; which motion was denied, and the defendant excepted." [232] "A verdict was rendered for the plaintiff for $285 damages, and judgment was entered"

[1] Opinion not delivered till December 1841.

Affirmed: [233] "With us the presumption is in favor of liberty; and the mere claim of the defendant to hold the plaintiff as a slave, and the fact of his having resided with the defendant during the time when the services were rendered, devolved no legal necessity on the plaintiff to prove his freedom. If the plaintiff was the slave, or indentured servant of the defendant, . . he should have pleaded such matter in abatement . . or in bar of the plaintiff's right of recovery. But there could have been, under the state of the proof in the case, no principle of evidence by which the judge would have been justified in advising the jury to find a verdict, as in the case of a nonsuit. The rule, in some or most of the slaveholding States, from considerations of public policy, is undoubtedly that the *onus probandi* . . lies with the party asserting his freedom. This rule, however, it is conceived is founded in injustice. It is contrary to one of the fundamental principles upon which our Government is founded: and is repugnant to . . natural right; nor can there be, in my judgment, sufficient grounds of public policy, to justify a departure from the well settled rules of evidence governing all other cases, and adopting one which inverts a rule drawn from the principles of natural justice. The arbitrary character of such a rule is repugnant to moral sense, and a violation of the fundamental principles of evidence, which requires him, who asserts a right, to produce the evidence upon which he seeks to maintain his claim." [Smith, J.]

Bailey v. Cromwell, 3 Scammon 71, July 1841. "The administrators of Cromwell brought an action of *assumpsit* . . against Bailey, upon a promissory note, . . The defendant . . states that the consideration has wholly failed, in this, that the said note was given in consideration of the purchase of a certain black or negro girl or woman, named Nance . . [72] which he [Cromwell] falsely . . warranted . . to be his property, slave, and servant, and lawfully bound, by the laws of the State of Illinois, to serve him . . seven or nine years, and that he had a right to sell her as his property, and that in a few weeks he would produce the title papers . . the title papers never were produced . . [73] the girl was in possession of Bailey . . for about six months, at the expiration of which time she left his service, and never since returned,—she asserting . . all the time that she was free. . . she was over twenty-one years of age, and had been a resident of this State for several years before the purchase, and . . had been in the possession of Cromwell since 1831. . . while the girl was living with defendant, she purchased goods at a store, and a regular account was kept against her." [72] "The Court found for the plaintiffs, and assessed their damages to $431.97, for which judgment was rendered, and an appeal taken" [71] "A. Lincoln, for the appellant, cited 10 Johns. 198; 10 Wend. 384; 3 Caines 325; Ordinance of Congress, Art. VI.; R. L. 57; Gale's Stat. 44; Const. of Ill., Art. VI.; 14 Johns. 188; 2 Bibb. 238; 2 Salkeld 666."

Judgment reversed: [73] "This Court decided at the last December term, in the case of Kinney *v.* Cook,[1] that the presumption of law was,

[1] P. 57, *supra.*

in this State, that every person was free, without regard to color. . . This presumption the plaintiffs did not attempt to rebut, . . Cromwell had warranted . . that he had a legal right to sell her, which the plaintiff did not show upon the trial. This want of title to her service is . . no consideration for the note. The girl being free, and asserting her freedom in the only modes she could, by doing as she pleased, making purchases, contracting debts, . . could not be the subject of a sale, . . The sale of a free person is illegal, and that being the consideration of the note, that is illegal also," [Breese, J.]

Sarah, alias Sarah Borders, a woman of color v. Andrew Borders, 4 Scammon 341, December 1843. [342] " an action of *trespass vi et armis,* brought by Sarah, a woman of color, to test her right to freedom. . . The defendant pleaded . . a special plea alleging ' that the said plaintiff . . owned by and owing service . . as a slave, to . . Padon, in . . Kentucky, and being above fifteen years of age, was, on the 2d day of December, 1815, brought by . . Padon into the county of St. Clair, Territory of Illinois; and . . on the 13th day of December, 1815, . . the said plaintiff did . . go with . . Padon, before one John Hay, clerk of the court of common pleas . . and did . . agree . . with . . Padon, to serve . . Padon, as an indentured servant, in conformity with . . an act of said Territory, . . passed September 17th, 1807, for . . the term of forty years . . and . . did enter into . . an indenture, . . recorded by the said John Hay, . . And . . November, 1816, . . the said plaintiff consented, in the presence of the said John Hay, he then . . being a justice of the peace . . that the benefit of said contract of service . . might be assigned . . [343] to . . Bradsby, . . a citizen of said Territory; . . which free consent of the said plaintiff was . . attested . . by the said justice of the peace.' . . 1818, . . Bradsby assigned said . . indenture to . . Kane, who . . 1825, assigned the same to Andrew Borders, the defendant. . . for the purpose of compelling the said plaintiff to . . perform the duties of an indentured servant, . . and in compelling her to remain . . in his service, he was necessarily compelled . . to use a little force, restraint, and beating, doing no unnecessary injury to the said plaintiff; . . To this plea there was a general demurrer . . The Court below overruled the demurrer, and gave judgment for costs against the plaintiff. . . March term, 1842, of the Randolph Circuit Court."

Judgment affirmed: [345] " This is a question of power, and not of policy. It is not the province of the Court to determine whether it was politic, just, or humane, but simply whether the people in Convention had the power to fix the condition of people of color, thus situated, at the adoption of our Constitution. This question came directly in judgment, in the case of Phoebe *v.* Jay,[1] . . we must affirm the correctness of that judgment. . . It is further argued, that, admitting the case of Phoebe *v.* Jay to have been correctly decided, yet the Constitution did not recognise the validity of the assignment of the indenture. The acts of the Territory did provide for the assignment of certain indentures of negroes, and which,

[1] P. 53, *supra.*

from contemporaneous practice, have always been understood as applying to these indentures. It needed not a constitutional recognition to give them validity." [Scates, J.]

[346] "Thomas, Justice, delivered the following separate opinion: I concur in the judgment of the Court, but not in all respects, in the opinion on which it is predicated, or in the opinion of the Court in . . Phoebe *v.* Jay; . . The counsel for the appellant [1] . . contend . . that as well the Territorial laws, under which the indenture was made . . as the 3d section of the 6th article of the Constitution of the State of Illinois, confirmatory of acts done under those laws, were . . in violation of the 6th article of the ordinance of 1787, and that, consequently, the indenture . . is void. In this position I do not concur. That the laws authorizing the indenturing . . of negroes . . within the Territory of Illinois contained provisions in contravention of the ordinance, and therefore void, I do not doubt. Nor do I deny that many of the acts of indenturing, and all of registering, done under those laws, were introductive of involuntary servitude . . and therefore legally insufficient to bind to service . . But I, at the same time, maintain that those laws were not in all respects void, and that indentures . . [347] were, in many cases, entered into under them voluntarily, and without 'fraud or collusion,' and that all such indentures were then, and are now, valid. . . these being good and valid, even under the compact,[2] as not imposing . . involuntary servitude. . . it [the state constitution] does not . . confirm indentures originally void. Between the constitutional provision in reference to indented servants, and the 6th article of the compact, there is therefore no incompatibility. . . the fact that the defendant . . may be able to prove, that the indenture . . was entered into strictly in conformity to law, may not always be conclusive of his right to such services. The replication may . . allege fraud, . . and under the Constitution, as he would have been under the compact, the plaintiff will, on sustaining such allegation, by proof, be entitled to a discharge from further servitude. It is, however, otherwise in regard to registered servants, and the issue of indentured servants. Their services were originally claimed without any contract . . they were therefore held in a state of involuntary servitude, under the Territorial laws, and, as I think, in violation of the compact. It does not however follow, that the constitutional requisition . . to serve out the time for which, under the Territorial law, they were bound to serve, is void, for repugnance to the compact. The Convention, when about to establish an organic law for the State, find, within its Territorial limits, a class of persons whom they do not choose to recognise as citizens, and who, consequently, will owe no allegiance to the State; and they claim the right, in the exercise of the police power incident to their sovereignty, to require such persons, for a specific time, to serve a certain class of their citizens; and Congress, having the sole power, if it existed anywhere, to repudiate their claim, affirm it. The people of the State, through their Convention, assert, and the original States, through Congress admit, either that the persons on whom this

[1] L. Trumbull and G. P. Koerner.
[2] Ordinance of 1787.

provision of the Constitution is to operate, are not thereby to be held in involuntary servitude, within the meaning of the compact; or else, that the condition of those persons may be fixed by the Constitution, the inhibitions of the compact to the contrary notwithstanding. . . [349] this is the 'common consent' required for such purpose, by the terms of the compact itself. . . their 'common consent' is clearly manifested to give full . . effect to the Constitution, and if it be repugnant, in any of its provisions, to the compact, *pro tanto* to repeal the latter. . . [350] the Constitution operates to confirm as well the assignment of indentures, as the indentures themselves, in cases where such indentures and assignments had been procured 'without fraud or collusion.' The only position of the counsel for the appellant remaining to be noticed is . . that . . the State legislature . . had no power to legislate further on the subject, and that consequently the law of 1819, and all acts done under it, are null and void. . . The Constitution of our State recognises the indentures . . as valid . . contracts, and neither that instrument, nor the Constitution of the United States, nor any treaty, nor law of Congress, made under the latter, imposes any restrictions upon the power of the legislature, to provide . . [351] for the assignment of such indentures, by the free . . consent of the persons bound thereby. . . Again: . . The law of 1819 . . considered as merely declaratory of the common law, and making the indentures . . assignable only by the consent of the servant, . . authorizes no act by which he can possibly be reduced to a state of involuntary servitude, but leaves his condition wholly unchanged. . . not one of the authorities relied upon by the counsel for the appellant conflicts in the least degree with any of the views hereinbefore expressed, except the case of Phoebe *v.* Jay, . . where the same conclusion is sustained by different reasoning."

"Caton, Justice, delivered the following separate opinion: I agree to this decision, but I do not concur in all the positions laid down by my brethren . . I think it was not the design of the framers of our Constitution to make indentures valid which were before void, and reduce to a state of involuntary servitude, those who were legally free, but only to continue those which were before obligatory. If the indentures were obtained by fraud or collusion, they were not legalized, and whether they were so obtained . . is a question of fact, and not of law."

Chambers v. The People, 4 Scammon 351, December 1843. [354] "The plaintiff was indicted[1] for . . harboring a negro woman named Sarah,[2] she . . being a slave, and owing service to one Andrew Borders, of Randolph County. . . The second count charged him with . . harboring a negro woman named Sarah, . . an indentured servant, and owing service to Andrew Borders, . . an indenture between Sarah and Wm. Padon . . entered into . . 1815, before John Hay, clerk of the court of common pleas of St. Clair county, to serve forty years, . . was offered to the jury in evidence, after proving the death and hand writing of John Hay; . . objection . . overruled, . . The prosecution also offered in evi-

[1] [352] "at the April term, 1843, of the Randolph Circuit Court,"
[2] See Sarah *v.* Borders, p. 59, *supra.*

dence a certain assignment of said indenture, . . made with the consent of Sarah, before John Hay, a justice of the peace of St. Clair county, after proving the hand writing of John Hay to the certificate of acknowledgment; . . objection . . overruled, and the same was read. . . Andrew Borders . . testified that Sarah had been living with him, as an indentured servant, since she was assigned to him in 1825, and until 1841, when she left." "Verdict of guilty rendered on the second count of the indictment." [352] "sentenced to pay a fine of $20 and costs." Judgment reversed and the cause remanded: [355] "it would . . be unnecessary to aver a *scienter* in charging such a statutory offence. . . [356] It was necessary . . to prove that John Hay was clerk, by some competent testimony, there being no seal of office to his attestation. . . when the official acts of justices of a foreign county are offered in evidence, they should be accompanied by certificate, from the proper officer, of his official character." [Scates, J.]

Wilson, C. J. delivered a separate opinion: "I concur in the judgment . . but not in the principles laid down in the opinion, which dispenses with an averment of a *scienter* in the indictment. . . If the defendant did not know that the negro girl was a slave, and owed service in this State, he was guilty of no crime."

Lockwood, J. also delivered a separate opinion: [357] "the indictment was clearly bad, . . contains no averment that Chambers knew that Sarah was an indentured servant. . . [359] If the offence . . is to be considered as consummated by harboring or secreting any . . colored person, who turns out to be a slave or servant, it will be dangerous for the people of this State to extend the most common offices of humanity to that unfortunate class of mankind, to whom God has given a skin colored differently from ours. It would be illegal to receive such persons into our houses, although they were perishing in the streets, with hunger, cold, or sickness. . . [360] The *gist* then of the offence of harboring or secreting a slave or servant consists, as well in the fact of harboring or secreting, as in the knowledge that the person so harbored or secreted was a servant or slave. The harboring or secreting and the *scienter* must both concur to constitute the offence, and to have a good indictment, both should be positively averred." Caton, J. dissented.

Willard v. The People, 4 Scammon 461, December 1843. Willard [462] "was indicted [1] at the March term, 1843, of the Morgan Circuit Court, . . for secreting" [468] "one Julia, . . a mulatto girl, . . who was a slave owing service . . to Sarah W. Liles, in . . Kentucky, . . [469] and in . . Louisiana . . in which latter State Sarah W. Liles resides; . . said slave escaped from . . the owner, without her knowledge or consent, while in . . Illinois, and passing from . . Kentucky to . . Louisiana, . . all of which facts were then . . known to . . Willard." [462] "Judgment was rendered against the defendant upon demurrer to the indictment, and he was sentenced to pay a fine of $20 and costs."

[1] Criminal Code, sect. 149.

Judgment affirmed: I. [469] "The 149th section of the criminal code . . [470] is a police regulation, and is not ancillary to the act of Congress [of 1793], or in violation of the Constitution of the United States." "If no regulation by a State is constitutional, which may incidentally afford protection to the rights of slave holders, no matter how essential it may be to preserve quiet and order in our community; to protect us from vagabond, or pauper slaves; to punish or prevent them from entering our territory, if we think proper; to forbid it, or punish those who may encourage them to come, or harbor or secrete them, while here, we are then, indeed, exposed irremediably, for hundreds of miles of contiguous boundary with Missouri and Kentucky, to heartburnings, criminations, and recriminations, quarrels, brawls, excitements, affrays, and breaches of the peace, arising from the influx of that unwelcome population, and the disturbances to which it may and does give rise. The power is so indispensable to our well being, and the good ordering of our own affairs, that I cannot doubt the power of the legislature to regulate it. The latter clause of the section does most clearly fall within the principles of that decision;[1] but the clause of the section under which the plaintiff is charged, neither gives the owner damages, nor apprehends, or restores the slave, nor in any way affects or furthers his claim or promotes his rights, unless it does so incidentally, by forbidding acts which may occasion disorders in our own society. . ."

"[II.] The remaining question is as to the repugnancy of this act to our own Constitution and the ordinance of 1787. . . [471] The demurrer admits that Julia is a slave owing service . . in Louisiana, . . and that the slave was brought into this State merely on . . her passage from Kentucky to Louisiana, . . The only question . . is, the right of transit with a slave. For if the slave upon entering our territory, although for a mere transit to another State, becomes free under the Constitution, then the defendant in error is not guilty of concealing such a person as is described in the law and in the indictment. . . The 149th section of the criminal code, for a violation of which the plaintiff is indicted, does most distinctly recognize the existence of the institution of slavery in some of these United States, and . . has provided by this penal sanction, that none shall harbor or conceal a slave within this State, who owes such service out of it. Every State or government may, or may not, as it chooses, recognise and enforce this law of comity. . . And to this extent this State has expressly done so. . . [472] England will not enforce the law of comity in relation to the institution of slavery in other countries. . . France has made a partial recognition of it only. . . But Louisiana . . , Kentucky . . , Missouri . . , Mississippi . . , Virginia . . , have recognised it, and held persons to be free, who had become so by the laws and Constitutions of free States. It would be productive of great and irremediable evils, of discord, of heart burnings, and alienation of kind and fraternal feeling, which should characterize the American brotherhood, and tend greatly to weaken, if not to destroy the common bond of union amongst us, and our nationality of character, interest, and feeling.

[1] Prigg *v.* Pennsylvania, 16 Peters 539.

Thousands from Kentucky, Virginia, Maryland, Tennessee, and the Carolinas, and other southern States have sought and found free and safe passage with their slaves across our territory, to and from Missouri. It would be startling, indeed, if we should deny our neighbors and kindred that common right of free and safe passage, which foreign nations would hardly dare deny. The recognition of this right is no violation of our Constitution. It is not an introduction of slavery into this State, as was contended in argument; and the slave does not become free by the Constitution of Illinois by coming into the State for the mere purpose of passage through it." [Scates, J.]

Lockwood, J. concurred in the conclusion, but "not in the views and reasoning . . [473] Julia . . was not a fugitive from labor, . . and being brought into this State by her mistress, where the presumption is in favor of her freedom, . . her case is taken out of the operation of the general rule by the law of comity, . . [474] Is the case . . of such a character as to appeal to the sound discretion of this Court to enforce the laws and institutions of a sister State? In answering this question regard should be had to the geographical position of Illinois, as well as to the relations we sustain to our sister States, confederated under the same General Government. First. In geographical position Illinois is situate between the States of Kentucky and Missouri, and by the laws of both these these two latter States slavery is permitted. The direct route of travel by land between these two States lies through the State of Illinois. The intercourse between many other of the slave States and Missouri, when carried on by land, must necessarily be through the State of Illinois. The State of Missouri has been populated principally by emigrants from Kentucky and other States. For upwards of thirty years past these emigrants, with their slaves, have been permitted, without objection, to pass through this State. While this free passage through the State, with their slaves, recognised as property in the States whence they emigrated, has been of great convenience to the slaveholding States, it has not been without its advantages to our own State. Being of mutual advantage it has been permitted for more than thirty years past. . . [475] If the owner of slaves emigrating through this State, without objection on our part, is not protected under this law of comity, it follows that all the slaves who have passed through this State to Missouri are free, and consequently unjustly held in bondage. The facts growing out of our geographical position, the past relations subsisting between this and neighboring States, the inconveniences to which we would subject them by a change of these relations, the loss of benefits to ourselves following a change of these relations, are such as appeal strongly to the discretion of this Court. . . [476] Should we refuse them the privilege of taking their slaves through our State, would there not be danger that such refusal would engender feelings on their part not favorable to a continuance of our happy Union? . . It is, however, said that it is contrary to our policy to tolerate slavery. This objection is too broad. . . By the act under which the defendant is indicted, and by numerous other acts, the relation of master and slave is recognised. Slavery, then, to a limited extent, is sanctioned by our policy.

But, in permitting emigrants and travellers the use of our highways, we do not thereby express any opinion upon the propriety of slavery. . . such refusal . . would not certainly tend in the slightest degree to emancipate [the slave] . . It would not prevent the master from emigrating . . [477] The master could still remove him to Missouri, by taking a circuitous and tedious route to that State, without passing through our State, and merely subjecting the slave to a long and toilsome journey, probably on foot. . . The 149th section of the criminal code . . has implicitly sanctioned the law of comity, and by so doing, the legislature has manifested a disposition to cultivate a spirit of harmony among the different members of the Union, which it well becomes the courts of justice to imitate."

Eells v. The People, 4 Scammon 498, December 1843. Eells was indicted in the Adams circuit court, in 1843, [508] " for harboring and secreting a negro slave.[1] . . owing service to . . Durkee, . . of Missouri, . . having secretly fled from such State," He was [498] " tried, and convicted . . sentenced to pay a fine of $400 and the costs of prosecution. The cause was heard before the Hon. Stephen A. Douglass."

Judgment affirmed: I. It is unnecessary to allege a *scienter.* [509] " It may be an act of humanity, in many cases, to afford shelter and succor to a slave, while knowing him to be a slave, and the property of another. The essence of the offence consists in the attempt to defraud the owner of his property; . . [II.] [510] the law upon which the indictment was framed is [not] in conflict with the third paragraph of the 2d section of the 4th article of the federal Constitution, . . [512] It neither aids nor impedes the owner in the reclamation of his property. . . it merely acts upon the citizens of our own State. . . [513] The police power of a State embraces the power of regulating the whole internal affairs of a State, and its civil and criminal polity. . . [514] If a State can use precautionary measures against the introduction of paupers, convicts, or negro slaves, it can undoubtedly punish those of its citizens who endeavor to introduce them." [Shields, J.]

Lockwood, J. dissented: I. From " the first section of the 6th article of the Constitution of this State, . . And . . the first section of the 8th article . . I deduce the following rule, that all men, whether black or white, are in this State presumed to be free, and that every person who claims another to be his slave, under any exception . . of the general rule, must clearly show that the person so claimed comes within such exception. . . [II.] [515] the indictment should aver that the accused had a knowledge . . that the person secreted . . was a slave . . [III.] the power of legislation, on the subject of fugitive slaves, is vested exclusively in Congress, . . [517] I am, however, of the opinion that the legislature of this State never intended to embrace the case of fugitive

[1] Rev. Laws 1833, p. 206, which re-enacts section 147 of the Criminal Code of 1827. Rev. Code of Ill., p. 156. A similar law had been passed, on March 30, 1819, by the first general assembly of the State of Illinois. Laws of Illinois, 1819, p. 355. The act passed in 1813 by the legislative council and house of representatives of Illinois Territory provided against the harboring of runaway negroes by free negroes or mulattoes. Laws of Ill. Territory 1813, p. 18.

slaves within the provisions of the 149th section of the criminal code. . . to what description of cases did they intend to apply its provisions, where interference took place with the rights of non resident owners of slaves? For a true solution of this enquiry, recurrence must be had to the situation of the State at and before the passage of the act. Illinois lies between Kentucky and Missouri. Emigrants and travellers from Kentucky and other slave holding States have, for years [*sic*], and men were passing through Illinois to Missouri, by thousands, and were accompanied by numerous slaves. The right thus to travel through the State was by common consent, . . by comity, universally conceded to the citizens of those States. To prevent persons who, from ignorance of the law, or from sinister designs, might feel disposed to interfere with the rights of masters thus situated, this section of the criminal code, it is reasonable to be presumed, was passed. . . [IV.] [518] To construe this section as being a mere police regulation [1] contradicts all my views of such regulations. . . [519] Wilson, Chief Justice, and Browne, Justice, concurred in the dissenting opinion." [2]

Williams v. Jarrot, 1 Gilman 120, December 1843.[3] [122] "Trespass *vi et armis,* . . the plaintiff, being a man of color, owned by, and owing service as a slave to John Beaird, in . . Tennessee, and being over fifteen years of age was brought by him into St. Clair county, in the Territory of Illinois, on the 10th day of October, 1814; . . [124] The defendants then introduced a book, . . 'Record of indentured servants for St. Clair county, beginning 3rd Nov. 1806, kept by John Hay, clerk of the Court of Common Pleas for St. Clair county;' and after proving by . . Kinney, clerk of the Circuit Court of said county, that the book was found amongst the old books . . of the county in his office, and by John Reynolds, the hand writing of John Hay, the defendants . . did read . . from said book, the following indenture: . . 'Be it remembered that on the 17th day of October . . 1814, personally came before me . . clerk of the Court of Common Pleas of the said county, John Beaird . . and Harry, a negro boy, aged near upon sixteen, and who of his own free will and accord, did in my presence, agree, determine and promise, to serve the said John Beaird, for the full space of time, and term of eighty years from this date. And the said John Beaird . . promises to pay him, said Harry, the sum of fifty dollars, at the expiration of his said service. . . Mark of X Harry. [seal.] John Beaird. [seal.] Signed and sealed in the presence of John Hay, C. C. C. P.' The plaintiff objected . . [125] and excepted to the opinion of the Court. The defendants proved by William A. Beaird, that John Beaird died in Dec. 1814, and then asked him who was John Beaird's administrator. . . plaintiff objected, the Court allowed the testi-

[1] Attorney-General McDougall states: [507] "At the time our law was passed, slavery existed, and it even now [1843] exists, to a limited extent in this State, but the institution, as well as a free negro population, was discouraged; penalties were enforced on those who employed negroes from other States, unless they complied with certain conditions; it was the policy of the State to prevent slaves or free negroes being brought here. . . it was . . [the] duty [of the legislature] . . to prevent the influx of a vagabond population,"

[2] See Moore *v.* The People, p. 73, *infra.*

[3] The opinion was not delivered until the December term, 1844.

mony, and plaintiff excepted." [123] "Joseph Beaird administered upon his estate, and as such administrator, came into the possession of the plaintiff, and . . about the fifth day of January, 1815, sold the benefit of said contract of service, . . to Joseph A. Beaird,[1] . . who took . . possession of plaintiff, as an indentured servant, until June, 1827, when he died. . . [125] Scipio Beaird administered on his estate. . . '10 negroes, defer [*sic*], sizes and sex' were sold to Scipio Beaird for $4000. . . plaintiff was one of the ten negroes mentioned in the bill of sale, and that Scipio Beaird purchased them all . . for the . . benefit of the widow and children of Joseph A. Beaird, . . plaintiff served them all nine or ten years and up to the death of Scipio [in 1837] . . Nicholas Boismenue . . and Cecile [Beaird], as administrators [*de bonis non*] of Joseph A. Beaird, sold plaintiff . . to the defendant Jarrot in 1837." [123] "plaintiff ran away from . . Jarrot, and . . so he . . justifies the trespasses, in his own right, and McAdams, as his servant, in compelling plaintiff to return to his service. . . the assault and battery, hand cuffing, and imprisonment were proven; . . [witness] [124] saw plaintiff in company with defendants and another man; that plaintiff was prostrate on the ground with his foot fastened to the stirrup, by which a horse dragged him along on the ground. On cross examination, defendants asked witness, 'Did Jarrot tell them, there, not to hurt him?' . . 'Yes,'" [123] "verdict for the defendants, Jarrot and McAdams."

Judgment reversed and cause remanded: I. [129] "parol evidence was inadmissible to prove who was the administrator of John Beaird." II. "The indenture set forth is, . . upon its face, conformable to the laws[2] then in force, and valid," "those records . . are in proper custody, in the hands of either the clerk of the Circuit Court, or County Commissioners' Court; . . no further authentication than is here shown, is necessary to make them admissible in evidence." [Scates, J.]

Hays v. Borders, 1 Gilman 46, December 1844. [47] "an action on the case brought by the appellee . . in the Perry Circuit Court, to recover damages for aiding, . . and enticing away his indentured servants. The trial came on at the April term 1844," [49] "The first count is for aiding . . four of plaintiff's servants to absent themselves . . whereby . . he lost their services from 15th Sept. to 1st Dec. 1842, and was put to great trouble and cost,[3] and expended a large sum of money, viz.: $200, in getting the servants back . . The second count charges the enticing away of Sukey, the plaintiff's registered servant, whereby . . his said servant was wholly lost to him,[4] and that he was . . [50] compelled

[1] Plaintiff's attorney set forth newly discovered evidence that [126] "plaintiff was sold to John Reynolds . . at the administrator's sale . . at Cahokia, on the 5th day of January, 1815; . . the first article mentioned in ['the sale bill'] . . is a negro boy, named Harry, sold to John Reynolds for $450."

[2] [123] "according to the Act of Sept. 17, 1807 concerning the introduction of negroes and mulattoes,"

[3] [65] "in . . . . making several long journeys to a distant part of the country [Knox County?], to which his servant and apprentices had gone, or been taken,"

[4] [68] "her term expired on the tenth day of January, 1844, after the commencement of the suit, which was on the eighth day of February, 1843, but before the trial, in April, 1844."

to expend . . $200, . . [51] The items of evidence offered to the jury by the appellee, and objected to by the appellant, . . consist of

1. The several indentures of Jarrott, Anderson, and Harrison, the apprentices named in the declaration, respectively entered into before two justices of the peace of Randolph county, . . with the consent of the probate justice of the peace of said county.

2. A paper, . . 'Registry of Negroes, Mulattoes, etc.'

Date	Person's name entered	Age	By whom entered	Color	Sex	For what length of time entered	From where last brought
1817, Jan'y 10th	Sukey	About five years	And'w Borders	Black	Female	Until 32 years of age	Georgia

with certificate by the clerk of the County Commissioners' Court 'that the foregoing is a true copy from the records of the registry of negroes and mulattoes, as the same exists . . among the records of the Court of Common Pleas, in . . the county of Randolph,'" [50] "The jury . . found the defendant guilty, and assessed the plaintiff's damages at $300. . . judgment rendered on the verdict."

Affirmed: I. [51] "the indentures . . are said to be defective, in not showing, in express words, that the persons bound were poor children, . . [52] and consequently void. In this view . . I do not concur. . . They, however, do describe the child bound out in each case, as a negro child, . . the natural child of Sukey, a registered servant, . . Could the indenture be required to furnish any other intrinsic evidence of the poverty of the children than is here done by describing them as the illegitimate offspring of a parent, herself in bondage, and, of course, destitute of the means of supporting them? . . [II.] [53] It is insisted that [the certified copy] . . was inadmissible in evidence . . *First.* Because no Court of Common pleas existed on the tenth day of January, 1817, . . *Secondly.* . . that act of registry was void, as it should . . have been made with the clerk of the Supreme Court of the Territory, within . . that county, . . the second objection requires the first and most thorough investigation. . . upon the determination of this, depend the rights of very many persons to much and valuable property. The authority for indenturing and registering servants . . [54] is found in the law of the Territory of Indiana, . . passed Sept. 17, 1807.[1] . . A separate government for Illinois Territory was established . . 1809; and . . by an Act passed by the Territorial legislature of Illinois, . . 1812, it was enacted that 'all laws passed by the legislature of Indiana Territory, . . in force on the first day of March, 1809, . . of a general nature . . and which are not repealed by the Governor and Judges of the Illinois Territory, are hereby declared to be in full force . . in this territory.[2] The law of 1807 . . thus con-

[1] Territorial Laws of Indiana, 467-469.
[2] *Ibid.* 33, 34.

tinued in force . . [58] By [the act of 1814] . . Courts of Common Pleas were made to pass quietly out of existence, and a new creature, styled County Courts, to supply their place, . . [62] The clerk of the Common Pleas of Randolph county kept the registry of negroes, . . until his office was abolished; the clerk of the County Court succeeded to its custody . . until he . . gave way to the clerk of the County Commissioners' Court, . . [who] [63] might, therefore, properly authenticate [this record.]" Lockwood, J. dissented: [69] "I think that the registry of a servant before the clerk of the Court of Common Pleas, after the Court of Common Pleas had been abolished, was void."

Joseph Jarrot, alias Pete, alias Joseph, a colored man v. Julia Jarrot, 2 Gilman 1, December 1845. [12] "an action of *assumpsit* commenced by the plaintiff in error . . in the St. Clair Circuit Court, at the April term 1843, for work and labor, and for service performed, but in fact for the purpose of trying his right to freedom. . . [13] the second special plea [filed by the defendant] . . sets up a claim to the services of the plaintiff as a slave by virtue of the laws of the State of Illinois." [12] "At the October term 1843, the Court overruled the demurrer to the second special plea, . . [13] Issue was then joined . . The cause was then submitted to a jury for trial, . . Vital Jarrot testified, that the plaintiff, Joseph Jarrot, had rendered services as the slave or servant of the defendant . . for the last five years,[1] and that his services were worth five dollars beyond his clothing and boarding;" [5] "The defendant proved Angelique, plaintiff's grandmother, was held as a slave at Cahokia in 1783, by one Joseph Trotier [reputed to be an old French settler of Cahokia as early as 1769], and afterwards by one Lebrun, a son in law of Trotier; that Lebrun sold Angelique in 1798, and her daughter Pelagie then four years old, plaintiff's mother, to Nicholas Jarrot, of Cahokia; . . that Nicholas Jarrot, by will dated Feb. 6, 1818, bequeathed to defendant all his personal property, including Pelagie, whom he held as a slave; that plaintiff is the son of Pelagie, born after the death of Nicholas Jarrot,[2] and while his mother was so held as a slave by defendant; and . . was about twenty five or twenty six years of age. . . The jury found for the defendant [in accordance with the instructions of the court]." [13] "A motion for a new trial was . . overruled . . and a judgment rendered in favor of the defendant for costs." [12] "The judgment of the Circuit Court will be reversed with cost, and the parties having consented in open Court, judgment will be entered here for the plaintiff, for the sum of five dollars with cost."

The opinion of the court was delivered by Scates, J.: [6] "The record does not show when the plaintiff was born, whether before or after the adoption of the State Constitution. . . So, it seems to me, that the question is legitimately presented by this record, whether the descendants of

[1] An action of *assumpsit* for services rendered more than five years before the commencement of the suit, would have been barred by the statute of limitations.

[2] "About the month of December, 1820, ... Nicholas Jarrot departed this life," Mills *v.* County, 2 Gilman 197 (213). His will was admitted to probate on December 18, 1820. Jarrot *v.* Vaughn, *ibid.* 132 (135).

the slaves of the old French settlers of the Illinois country, born since the adoption of the Ordinance and before the Constitution, or since the Constitution, can be held in slavery in this State. . . [7] I do not doubt but that the negroes possessed by the French settlers of the Kaskaskies and St. Vincents, while the Territory belonged to France, at its cession to Great Britain by the treaty of 1763, and at its conquest by Virginia during the Revolution, were held by them in slavery. It is an institution . . [8] dependent upon the municipal regulations of each particular Government; and although Great Britain and France would not tolerate it in those Kingdoms, they did, nevertheless, in their West Indian and American colonies, . . It is further evidenced and confirmed by an old edict of Louis XV. . . passed in 1723, authorizing it in the province of Louisiana, a copy of which has been preserved in the archives of Kaskaskia, . . But . . I cannot doubt the power of any of the sovereignties, which have had, or that now have . . jurisdiction over the Territory, to abolish it. . . After the conquest of this Territory by Virginia, she ceded it to the United States, and stipulated that the 'titles and possessions,' . . of the French settlers should be guaranteed to them. This, it is contended, secures them in the possession of these negroes as slaves, . . this case . . is not one of first impression, . . [11] After so many . . judicial determinations upon . . the application of the Constitution and Ordinance to facts . . like these . . I cannot allow my mind to doubt of the plaintiff's inherent and indefeasible rights,' to become 'equally free and independent' with other citizens,"

Young, J., delivered a separate opinion: [23] "were the descendants of Angelique free by virtue of the Ordinance of 1787? It cannot be ascertained from the evidence, whether the plaintiff was born before, or since the adoption of our State constitution, . . but the more reasonable presumption is,—and I adopt that presumption as the fact,—that he was born since. . . the matter to be determined is, whether all prior laws . . [24] which authorize persons of color to be held in slavery, the Virginia Act of Cession inclusive, were not abrogated by the sixth Article of the Compact, . . I think that such was the intention of Congress, and this opinion has been very much strengthened by an examination of the Act of 1789, and another in 1800, . . In neither of these is any mention made of any antecedent rights or privileges, either under the Cession Act of Virginia, or any prior law or custom, supposed to be in conflict with the provisions of the Ordinance. . . [29] while not a solitary case has been found, after the most laborious search, where it has been determined that the Act of Cession of Virginia . . had any controlling influence . . upon this subject, since the passage of the Ordinance of 1787, as an organic law for the government of the Territory. Does our State Constitution . . perpetuate . . the claim of the defendant, Julia Jarrot, to the plaintiff, Joseph, as a slave? . . It was evidently intended by the framers of our Constitution that this should be a free State, and yet it is contended . . that the French negroes and their descendants, though resident in this State, are slaves forever! As to the power of a State to emancipate the slaves of its citizens, there can be no reasonable doubt. . . [30] we cannot

resist the conclusion, that all persons of color, who were in this county before and since the passage of the Ordinance of 1787, and their descendants, usually known by the appellation of 'French negroes,' are free. . . [31] If the plaintiff was born since the adoption of our Constitution, . . that instrument, also, as well as the Ordinance of 1787, would entitle him to his freedom, as there is no saving clause in relation to the French negroes and their descendants, as in the case of indentured and registered negroes and their children."

Wilson, C. J.: [32] "The fact that the plaintiff was born after the adoption of the Constitution is fairly inferable from the case, and upon that ground, I concur . . But I am not prepared to say, that if the plaintiff was a slave before the adoption of the Constitution, that he could now assert his liberty. . . Justices Shields, Treat and Thomas dissent from the opinion of the Court."

Patterson v. Edwards, 2 Gilman 720, December 1845. An action of slander. [722] "the plaintiff proved . . the speaking of the following words by defendant, Maria Patterson: . . 'Mrs. Edwards has had children by a negro, and all her children are negroes.' . . The defendants then . . offered to prove that there was a report in circulation, that old Mrs. Edwards . . had children by a negro, . . that the words spoken were of old Mrs. Edwards, . . This testimony was objected to, and the objection sustained . . the jury found a verdict for plaintiffs for $220.00" Judgment reversed: [723] "the words spoken . . do not . . necessarily amount to a charge of fornication and adultery,"

Thornton's Case, 11 Ill. 332, December 1849. "Hempstead Thornton, a negro, presented his petition to this Court, representing that he was illegally restrained of his liberty, upon which a writ of *habeas corpus* was forthwith issued, made returnable instanter. The writ was served upon . . Jones, a constable of the county of Sangamon, whose return to said writ sets out, that he took possession of said Thornton, supposing him to be a fugitive slave, from . . Missouri; that he, . . Jones, had a dispatch . . from St. Louis, Missouri, stating that slaves had fled from said state to said county of Sangamon, and . . that he was, at the time said writ of *habeas corpus* was served on him, . . taking him before a justice of the peace, to have him placed in custody as a fugitive slave; and further, he had a writ from . . said justice . . 'You are hereby commanded to bring before me the body of one negro man, supposed to be forty or forty-five years old, with one leg off, rather dark complexioned, name unknown; also one negro man, supposed to be twenty-five or thirty years old, with one short leg, supposed to be occasioned by the white swelling, dark complexioned, name unknown; also one negro boy, supposed to be nine or ten years old, copper color, name unknown; also one negro woman, supposed to be forty or forty-five years old, copper color, name unknown; and also one negro girl, about five or six years old, copper color, name unknown; as it appears from an affidavit made before me that the above described persons are runaway slaves, and believed to be without free papers, and placed in the jail of said county. Given under my hand and seal, this 16th day of January, A.D. 1850.' . . [333] The foregoing writ

. . was issued under the fifth section of chapter seventy-four of the Revised Statutes, . . [334] Upon hearing the cause, Thornton was discharged by the Court. . . Opinion by Treat, C. J.: . . The manifest object of that section is to facilitate the recaption of fugitive slaves, found within the limits of this state. . . [335] Although the provisions of this section were incorporated into our statute as early as 1819, and seem to be dictated by a proper regard to the rights of citizens of other states, still we are constrained to pronounce them wholly inoperative. . . Congress, . . by the act of the 12th of February, 1793, prescribed the mode by which the master may retake . . his slave found in another state, . . The Supreme Court of the United States, in . . Prigg *vs.* . . Pennsylvania,[1] . . decided that all state legislation, intended either to impede or assist the master in the recaption . . was null and void, on the ground that the legislation of Congress on the subject was exclusive. . . [336] It follows that the arrest of the petitioner was without authority of law,"

Owens v. The People, 13 Ill. 59, November 1851. "The action was upon a bond executed to the people of the State of Illinois, by Thomas Hobbs, a man of color, and . . [60] Owens as his security. Which bond had the following conditions:—That whereas Thomas Hobbs, a colored man, was brought into this State by a woman calling herself Hobbs, and there left; and said negro . . is old, etc. Now if said Hobbs shall behave himself in a decent manner, and act as the law requires . . and shall not become a county charge, then . . this bond is to be void; otherwise to remain in full force . . The declaration contains but one count . . with breaches . . That the . . county of Massac was compelled to . . expend some $37 for the support, nursing, and maintenance of the said Hobbs, after the execution of said bond. . . The defendants filed four pleas. 2d. That at the time said defendants executed said bond, . . Hobbs . . did not produce any certificate of freedom authenticated as the statute[2] requires; and that he was, in fact, a slave brought to this State by his mistress, and the bond was therefore void. 3d. . . that soon after the execution of said bond, . . and before Hobbs became a county charge, . . Hobbs, was offered to be given up by the defendant, Owens, to the proper authorities, but that they refused to receive him. . . demurrers were sustained . . and the defendants electing to stand by their pleas, the Circuit Court of Williamson county, . . September term, 1851, rendered judgment for one thousand dollars, the penalty of the bond;"

Judgment reversed and the cause remanded: [62] "The statute in reference to negroes and mulattoes,[3] . . [63] was manifestly designed to discourage the settlement of negroes within this State. . . The legislature never intended this State to become a rendezvous for negroes . . of every description, who could give the required bond, but limited the privilege of residing here to such only as could furnish evidence of their freedom, and then give bond and security not to become a charge to the county

[1] 16 Peters 539.
[2] Rev. Stat. 1845, ch. 74, sect. 1.
[3] Rev. Stat., ch. 74.

as a poor person, and for their good behavior. . . [64] The first . . and second . . pleas, if true, which the demurrer admits, show, that the bond was taken in a case not authorized by law." [Trumbull, J.]

Ingalls v. Bulkley, 13 Ill. 315, December 1851. [316] "Bulkley had sent a colored or negro boy down after the horse, and also a white boy, . . but he would not let either of the boys have the horse; . . these boys were both minors." The second instruction given for the plaintiff was [317] "That the age or color of the plaintiff's agent . . can have no legal influence in the decision of this case." Held: "This instruction . . was erroneous."

Hone v. Ammons, 14 Ill. 29, November 1852. "This cause was heard at May term, 1849, of the Clinton Circuit Court, . . The action was founded on a promissory note. The second plea was, that the note was . . for the sale of a certain negro man, then running at large in the State, who was alleged falsely . . to be a servant for life, and that plaintiff had a good right . . to said negro; whereas . . said negro . . was a free man; and that said note was made . . for no good . . consideration." "a negro was seen in Clinton county the day on which the note was given; that Hone claimed that he was his runaway slave." "The verdict and judgment was for defendant in the circuit court."

Judgment affirmed: "The moment the defendant proved that the negro was on our soil, he established *primâ facie* that he was free. Not a shadow of evidence was adduced tending to rebut this presumption; . . [30] The bare claim of title by Hone was no evidence of slavery;" [Caton, J.] Trumbull, J. concurred "in affirming this judgment, on the ground that a contract made in Illinois, for the sale of a person as a slave, who is at the time in this State, and to a citizen thereof, is . . in the very teeth of the express provisions of the [state] constitution. . . I would as soon think of enforcing a contract to carry into effect the African slave-trade, as that under consideration. . . [31] The moment the master sold the slave in this State to one of its citizens, he ceased to be a fugitive from any other, . . By the very act of selling the slave here, his master must be considered as having consented to his coming and remaining here; and this made him free.[1] . . [33] If a private sale of this character is valid, then a public sale would be equally so; and the master of a slave who has escaped into this State, may expose him to public sale in any part of the same. . . and the courts of Illinois will be bound, when called upon, to aid . . Such an idea is not, in my judgment, to be tolerated for a single moment in a free State." Treat, C. J., "was clearly of opinion that the plaintiff in error was entitled to judgment on the note; and he dissented *in toto* from the conclusions of the other members of the court."

Moore, Executor of Eels v. The People, 14 Howard 13, December 1852. See Eells *v.* The People, p. 65, *supra.* [14] "This case was brought up from the Supreme Court . . of Illinois, by a writ of error" Judgment affirmed: [21] "we are of opinion [I.] that the act of Illinois,[2] upon

[1] Fish *v.* Fisher, 2 Johns. Cas. 88.
[2] Rev. Laws 1833, p. 206.

which this indictment is founded, is constitutional," [18] "The power to make municipal regulations for the restraint . . of crime, for the preservation of the . . morals of her citizens, . . has never been surrendered by the States, . . In the exercise of this power . . the police power, a State has a right to make it a penal offence to introduce . . fugitive slaves, within their borders, and punish those who thwart this policy by harboring, . . or secreting such persons. Some of the States, coterminous with those who tolerate slavery, have found it necessary to protect themselves against the influx either of liberated or fugitive slaves, and to repel from their soil a population likely to become burdensome or injurious, either as paupers or criminals. . . the results of such conduct as that prohibited by the statute . . are not only to demoralize their citizens who live in daily . . disregard of the duties imposed . . by the Constitution and laws, but to destroy the harmony . . which should exist between citizens of this Union, to create border feuds . . and to cause breaches of the peace, violent assaults, riots, and murder. . . If a State, in the exercise of its legitimate powers in promotion of its policy of excluding an unacceptable population, should thus indirectly benefit the master of a fugitive, no one has a right to complain that it has . . [19] fulfilled a duty . . imposed by its compact as a member of the Union. . . [II.] It has been urged that this act is void, as it subjects the delinquent to a double punishment for a single offence. . . The offences . . are different . . The act of Congress [1] contemplates recapture . . But the act of Illinois, having for its object the prevention of the immigration of such persons, punishes the harboring . . slaves, whether domestic or foreign, and without regard to the master's desire . . to reclaim . . them . . The fine imposed is not given to the master, . . but to the State, . . But admitting that the plaintiff in error may be liable to an action under the act of Congress, for the same acts of harboring and preventing the owner from retaking his slave, . . [20] Every citizen of the United States is also a citizen of a State or territory. . . The same act may be an offence or transgression of the laws of both. . . [III.] an affirmance of the judgment in this case will [not] conflict with the decision of this court in . . Prigg *v.* . . Pennsylvania," [2] [Grier, J.] McLean, J. dissented: [21] "It is contrary to the . . genius of our government, to punish an individual twice for the same offence."

Campbell v. The People, 16 Ill. 17, November 1854. "tried . . at June term, 1854, of Massac Circuit Court." [18] "The plaintiff in error, who is a negro, was indicted for the murder of . . Parker. The evidence . . tends very strongly to show that the deceased made an assault upon the prisoner, and that the homicide was committed in necessary self-defense. . . the deceased and three others went to seek the prisoner at his father's house, in the night time. . . deceased had a hatchet in his hands, . . There was no pretence that there was any sort of justification or legal cause for arresting or assaulting the prisoner. . . the defense offered to prove that on that day, and at other times shortly before . . the deceased

[1] Act of February 12, 1793.
[2] 16 Peters 539 (1842).

had made threats against the prisoner. . . evidence . . ruled out. . . In this the court unquestionably erred, . . [20] The thirteenth instruction asked for the prisoner, was this: 'It is the duty of the jury to consider the prisoner's case as if he were a white man, for the law is the same, there being no distinction in its principles in respect of color.' This . . was refused . . it was . . insisted on the argument, that the proposition is so . . universally . . recognized, that it would have been an insult to the understanding of the jury for the court to have instructed them on that point. The proposition is undoubtedly exceedingly plain and altogether undeniable, . . but it was still the right of the prisoner to have the law, plain as it was, declared to the jury by the court. But again it was objected, that the instruction asserts the absolute equality, in all respects, under our law, of the black man with the white. Even if the wording of the instruction was thus broad, it could only be understood as applying to the case upon trial, where the equality is admitted. . . [21] The judgment must be reversed and the case remanded." [Caton, J.]

Glenn v. The People, 17 Ill. 105, November 1855. "William Glenn, a negro, on the 31st day of January, 1855, was arrested under the third section of an act entitled, 'an act to prevent the immigration of free negroes into this State,' approved February 12, 1853. . . [106] The affidavit, which is the foundation of this proceeding, charges: 'that William Glenn, a negro, is now remaining in the town of Salem, where he has been so residing more than ten days, with the evident intention of residing in this State.'" [105] "He was tried before a justice of the peace . . found guilty and fined $50. Glenn appealed to the Circuit Court, . . a verdict of guilty . . [106] and judgment rendered against Glenn and Torrey, his security, for $50." Judgment reversed: "This charge amounts to no offence in law. . . The affidavit does not allege that the negro *came* into this State, and for aught that appears, he may have resided in this State at the time of the passage of the act of 1853, or have been born in this State." [Skinner, J.]

Rodney v. Illinois Central Railroad Co., 19 Ill. 42, November 1857. [43] "The plaintiff sued the Illinois Central Railroad Company [in 1855] . . for receiving as a passenger on their road, at Cairo, in this State, the negro slave of the plaintiff, held to his service under the laws of Missouri, knowing the negro was the plaintiff's slave, . . escaping from his service, and carrying the negro . . to Chicago, thereby . . aiding the fugitive to escape from service. The declaration also contains a count in trover for the conversion . . in this State, of the plaintiff's slave," "The defendant filed a demurrer . . and the court rendered final judgment upon the demurrer for costs of suit in favor of the defendant,"

Affirmed: [44] "The law of Missouri, under which the negro owes service to the plaintiff, being repugnant to our law and policy of our institutions, neither by the law of nations or the comity of States, can affect the condition of the fugitive slave in this State, or, within our jurisdiction, give the owner any property in or control over him. . . The Constitution of the United States, however, gives the owner the right of

reclamation . . [45] The federal courts . . are the proper forums[1] . . The count in trover cannot be sustained . . The plaintiff, under the local law, where the alleged conversion occurred, had no property in the negro," [Skinner, J.]

Wynkoop v. Cowing, 21 Ill. 570, April 1859. Letter from Cowing, of Yates County, New York, 1848: [579] "I . . have to work like an old Negro to git along,"

Bennett v. Waller, 23 Ill. 97, April 1859. [106] "Deposition of Timothy Webster [detective policeman], taken the 13th July, 1857: . . [167] Do you remember any occasion, when you were at Madison, [Wisconsin,] or Stoughton, that there was lecturing there upon abolitionism, . . a person by the name of Anderson, represented to be a free negro, and while there delivering his lecture, did you not take his cane and carry it away . . and exhibit it, stating . . that while a negro was lecturing you stole his cane; that you thought it was worth about $5; . . I was not in the hall where they said he attempted to deliver his lecture; I was also told by the landlord . . of the City Hotel at Madison, that this negro, during the time of his lecture in the hall, used language before ladies of a most degrading character, and for which, and for being drunk, the negro was locked up. . . the day after . . the lecture . . this negro . . came into the saloon of the City Hotel, and some one . . asked Anderson if he was going to lecture that evening; he was intoxicated at the time; he said he was if he had to use this, . . pulling a sword out of the cane. I took the cane . . while he was drinking, and handed it to the bar-tender; the negro looked round for his cane . . and pulled out a pistol, and said, that if he had not his cane, he had that to use; then some one . . told him that if he did not leave the saloon they would take that away from him, . . Professor Anderson, as he called himself, then left . . [168] about the time I was leaving, the bar-tender and others said to me, Professor Anderson, don't go away until you get your cane, . . the bar-tender handed me the cane, and I took it . . I told Kinzie what had been done to the negro at Stoughton and Milwaukee and Madison, what the landlord had told me; I told it in such a way that he would suppose that I was in the hall at Madison, at the lecture, and was one of those who threw rotten eggs at Anderson, and assisted in getting him to jail, . . I remember reading a piece . . in a democratic paper, commenting on Professor Anderson's course of lectures, setting forth how he had conducted himself at different places at which he had attempted to lecture, and how he had been dealt with by the authorities, and others while lecturing, and after his lectures; . . I showed this to Kinzie . . and have heard him read it to different democrats in town [Clyde], and . . using the words, 'the damn nigger ought to have been thrown into the lake at Madison.' Kinzie has told the story about the cane . . at Franklin, Dodgeville and Mineral Point, when he has been introducing me as a true democrat to his democratic friends and men that hold the highest office in that county by the gift of the people. Did you never reject this test of your democracy, or decline the distinction of being so introduced by Mr. Kinzie as one who

[1] Act of Congress of 1850.

had accomplished such a worthy exploit as to steal a negro lecturer's cane, wherewith he intended to protect his rights and liberty of free speech? I always corroborated Mr. Kinzie's statement about the cane, and have drank [*sic*] on the story several different times, . . [169] and Mr. Kinzie has said that . . he was glad that he was going to leave such a good democrat in his place on Otter Creek, to take care of the democratic party there. . . I don't remember exactly how the publication [in the newspaper] read, but I do know it was intended for a burlesque on Professor Anderson's course of lectures, to show the downfall of the republicans, at different places where he attempted to lecture, . . Was the discrepancy between your history, and the newspaper account of it, noticed . . by Kenzie . . It was, . . and I told him that it was after dark when it occurred, and the reporter did not see all. Kinzie told me that they had enough in to show what damned blackguards the republicans and abolitionists were, in having a nigger to run round lecturing for them. Kinzie has been to Madison with me, when I carried the cane spoken of, since his reading the article in the paper."

Nelson (*a mulatto*) *v. The People,* 33 Ill. 390, January 1864. [391] "Nelson, a mulatto, was arrested under the act of February 12, 1853, prohibiting the immigration of negroes and mulattoes into this state. . . The complaint . . was entered before a justice of the peace in Hancock county, and alleged that 'a tall, slim mulatto, about 55 years old, . . on the 25th day of December, 1862, . . came into this State . . and remained ten days and more, with the evident intention of residing . . That said mulatto person was not born in the State of Illinois, nor a resident thereof prior to 12 February, 1853, that he (the affiant) does not know whether he is a free person or slave, but that he is guilty of a misdemeanor under the law.' The trial . . resulted in a verdict of guilty, and a judgment assessing a fine of $50 upon the defendant, and directing that he be kept in the custody of the sheriff until the fine and costs be paid, or he be 'otherwise disposed of according to law.' The defendant took an appeal . . [392] to the Circuit Court of Hancock county, pending which the cause was removed, on change of venue, into the Circuit Court of Adams county. A trial . . also resulted in a verdict and judgment against the defendant, and thereupon he sued out this writ of error."

Judgment affirmed: [394] "It is first insisted that this enactment [1] is violative of the 16th section of article XIII. of our Constitution. . . In the case of Eells *v.* The People,[2] . . it was said, that a State has the power to define offenses and prescribe the punishment, . . In the rightful exercise of this power, the legislature has declared the emigration of persons of color to, and their settlement in, this State as an offense, . . the punishment by involuntary servitude, provided by the act,[3] is not unusual,

[1] Act of the 12th of February, 1853.

[2] P. 65, *supra.*

[3] "If said negro or mulatto shall be found guilty, and the fine assessed be not paid forthwith to the justice of the peace . . it shall be the duty of said justice to commit said negro or mulatto to the custody of the sheriff . . [58] or otherwise keep him, her or them in custody; and said justice shall forthwith advertise said negro or mulatto, by posting up notices thereof in at least three of the most public places in his district,

but is one of the common means resorted to, to punish offenses, as the State penitentiary, and the various houses of correction in our State, fully attest. Our legislature, at an early period in our history, . . declared that vagrancy in any of its citizens is a crime, punished by sale and involuntary servitude, in the same manner as the offense created by this statute. And we have yet to learn that the constitutionality of that law has ever been questioned. . . This does not reduce the person convicted to slavery, but it is a mode of punishment not prohibited by the 16th section of article XIII. of the Constitution. Under this proceeding, the person convicted and sold is only reduced for a limited period to the condition of an apprentice. . . The laws of all States of the Union authorize the relation of master and apprentice, and yet it has not been regarded as involuntary servitude within the meaning of our Constitution and others with similar provisions. . . [395] It is again urged, that this enactment is in violation of the fourth article of the Constitution of the United States. It declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States.' . . this record contains no evidence that the plaintiff in error is a citizen of any State. . . It is also insisted, that the provisions of this . . act apply to both bond and free persons of color, whilst article XIV. of our Constitution refers alone to free persons of that description. In the case of Eells *v.* The People,[1] it was held that the police power of the State embraces the authority over the whole of the internal affairs of the State, in its civil and criminal polity, and that it has the power to prevent the introduction of negro slaves into the State, and to punish those of its citizens who introduce them. It was likewise held that such a law was not in conflict with the third paragraph of section 2 of article IV. of the Constitution of the United States. . . [396] it follows that the State may, by the exercise of the same power, prohibit the slaves from coming to or settling in the State, and if they violate the prohibition they may be punished therefor. . . It is likewise insisted that the provisions of the 8th section of this act are in conflict with the act of congress, providing for the return of fugitives from justice and labor. . . [397] The placing the slave in the custody of the purchaser for the limited period, does not [obstruct the enforcement of the act of Congress], as the custody is declared to be subject to the act of congress. . . But when it declares that he shall pay the remainder of the fine, it would seem that such a provision may obstruct . . the execution of the act of congress. It imposes terms, . . additional . . to that act. . . But if these provisions are violative of the act of congress, the question does not arise in this case. When the master shall apply for his slave the question will arise, but he has not, so far as this record discloses, made such an application. Although the eighth section

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which said notices shall be posted up for ten days, and on the day and at the time and place mentioned in said advertisement, the said justice shall, at public auction, proceed to sell said negro or mulatto to any person or persons who will pay said fine and costs, for the shortest time; and said purchaser shall have the right to compel said negro or mulatto to work for and serve out said time, and he shall furnish said negro or mulatto with comfortable food, clothing and lodging during said servitude." General Laws of Illinois, passed 1853, p. 57, sect. 4.

[1] P. 65, *supra*.

of the act under consideration may be repugnant to the act of congress, still, the remaining portions of the law, not subject to the objection, and not violative of the national or State Constitutions, may be enforced. . . The fourteenth article of the [State] Constitution, was separately submitted to the people for adoption or rejection. After a full consideration of its provisions, the voters of the State sanctioned it by a majority of many thousand. . . the members of the general assembly . . had no choice but to give effect to its provisions, and when they have done so, it is for the courts to enforce the enactment according to its spirit, unless prohibited by the Constitution itself." [Walker, C. J.] "Mr. Justice Beckwith dissenting."

Farrell v. Patterson, 43 Ill. 52, January 1867. [54] "she had two negroes, a man and a girl, which were sold by her husband for her, he getting therefor $1,300. . . in the year 1858 or 1859. . . they came to Illinois from . . Missouri in . . 1859,"

Roundtree v. Baker, 52 Ill. 241, September 1869. [243] "an action of debt, brought . . on a writing obligatory, entered into [October 10, 1833] in . . Kentucky, . . given for the price of a negro girl . . the instrument sued on . . is for four hundred dollars, payable in equal annual installments of twenty dollars each, . . the girl, Eliza . . was a slave in . . Kentucky, . . That she was sold and delivered in . . [244] Kentucky by Dudley Roundtree to Turner Roundtree, who resided in this State, . . 1869, the cause was tried before the court, . . the court found for defendant; . . and a judgment was entered in favor of the defendant for costs."

Judgment reversed and the cause remanded: [247] "Our courts would not enforce a contract for the sale of a slave, whether made in this State, where slavery has always been prohibited, or in a State where such contracts are binding, because it is against public policy. But after the parties have fully executed their contract, and a note is given for the price, under this comity which exists between the States . . the note may be collected, and it is not for us, from caprice, or because we may abhor the system of slavery . . to refuse to lend the aid of the courts for the collection of the money. . . Under the laws of Kentucky the sale was authorized, and there was a sufficient consideration. . . [248] no language employed for the abolition of slavery can be construed to render notes given for the purchase of a slave inoperate and void." [Walker, J.]

MICHIGAN

INTRODUCTION

I

Somehow Michigan escaped the turmoil characteristic of Ohio and Wisconsin in the solution of slavery questions in the courts. The most serious litigation concerning the negro in Michigan centered around the voting privilege. In 1866 [1] was tested the constitutional provision restricting the voting privilege to "white male citizens." The defendant Dean was convicted of a violation of this provision. The testimony indicated that Dean had either negro or Indian blood in his veins, but the white predominated. The Supreme Court of the state granted a new trial on the ground that the lower court erred in charging the jury that a person of not more than one-sixteenth African blood was not a white person; that the true rule was that a person was white who had less than one-fourth African blood. Chief Justice Martin filed a vigorous dissenting opinion in which he expressed the view that a man who had a preponderance of white blood was a white man and hence entitled to vote.

A curious case [2] arose in 1872, involving the elective franchise. The plaintiff sought a writ of mandamus to compel the board of registration to register him as a voter. His application was denied on the ground that since his slave parents had escaped to Canada and settled there, neither the plaintiff nor his parents took any rights under the Fourteenth and Fifteenth Amendments to the Constitution of the United States; the plaintiff must therefore seek American citizenship like any other British subject, his color being no impediment to citizenship.

II

The Michigan Constitution of 1835 provided that there should be a Supreme Court, but left to subsequent legislation the details of its organization. An act of 1838 gave it a chief justice and three associate judges, and established a court of chancery, abolished in 1847. The Constitution of 1850 provided that for six years and until the legislature should arrange otherwise the Supreme Court should consist of the judges of the eight circuit courts; and that after the expiration of six years the legislature should have power to compose it of a chief justice and three associate justices, the court to have little but appellate jurisdiction. An act of 1857 established this system.

[1] People *v.* Dean, p. 85, *infra.*
[2] Hedgman *v.* Board of Registration, p. 87, *infra.*

Gordon v. Farrar, 2 Douglass 411, January 1847. "action on the case, . . by Gordon against [412] Farrar . . inspectors of election . . in . . Detroit, for refusing to receive the plaintiff's vote, . . Plea, not guilty. . . At the trial, the jury returned . . special verdict: 'The jury . . find for the plaintiff, and assess his damages at 12½ cents, subject to the opinion of the court upon the following facts, . . plaintiff is . . of Saxon and . . of African descent, but the Saxon blood in him . . predominates . . He is of a complexion as white . . or whiter than many persons descended from European nations; . . a mixture of African blood . . he has less than one-half.' The plaintiff offered his vote . . which was refused. He . . offered to take the oath . . which was also refused. . . [413] qualifications of electors . . are fixed by the constitution. Art. ii., sect. 1, . . provides . . 'every white male citizen, . . shall be entitled to vote . .' [414] no provision is made for testing . . the elector, as to his color, or descent. The inquiry is, . . confined to the qualifications enumerated, . . The duties of the inspectors . . are clearly pointed out. . . They . . make the . . inquiries, and if the party answers them fully, . . they are, . . required to administer another oath, . . and if he will take such oath they must receive his vote. . . But it is only white male citizens who are entitled to vote; . . If a colored person should offer his vote, and be challenged . . it would not be competent . . to receive the vote without determining, . . by inspection . . whether he came within the description of persons . . qualified. . . [415] The plaintiff relies upon the point that, . . the act complained of was . . a ministerial act. . . we think he is mistaken. . . Conceding, . . as the plaintiff . . does, to the inspectors, the right to adjudicate upon this inquiry, . . we cannot come to any other conclusion, than that the inspectors, in passing upon those facts . . acted judicially. This brings us to the question of judicial responsibility. . . [416] In this view . . it is unnecessary to examine the cases . . as we put the judgment of this court upon the distinct ground that the inspectors, . . acted judicially, and are . . not liable to this action."

Giltner v. Gorham, 10 Fed. Cas. 424 (4 McLean 402), June 1848. Action brought, under the act of 1793, sect. 3,[1] to recover the value of six slaves claimed by Giltner of Kentucky. The slaves absconded in August, 1843. In 1846 Giltner was informed that the fugitives were in Marshall, Michigan, and authorized Troutman, his grandson, [425] "to search for and arrest them and bring them to Kentucky, . . December 23d following, he arrived at Marshall, and finding the slaves there, he wrote to the plaintiff to send persons who could aid him, and who could identify the slaves. . . David Giltner, son of the plaintiff, William F. Ford, and

[1] 1 Stat. at L. 302.

James S. Lee . . met him at Marshall, and having procured the service of Dickson, the deputy sheriff of the county, early on the morning of the 27th [of January, 1847] they proceeded to the residence of the slaves. Dickson accompanied them to keep the peace. As they approached the house, Adam Crosswhite and his son Johnson, two of the fugitives, came out of the door and proceeded in different directions, apparently with the intention to escape. They were followed, and on being requested, returned to the house." [427] "On entering the house of the negroes, Troutman explained to them that he had come as the agent of Giltner to take them before a magistrate, to prove property, and then take them to Kentucky. Crosswhite consented to go—told the family to get ready—put a cloak round his little girl—said that it was cold, and that he did not wish to go without a wagon. Troutman said a wagon should be procured." Troutman [425] "permitted Adam to consult counsel, and he went to another part of the village, accompanied by Dickson, for that purpose. Witness [Troutman] remained in the house with the family. Before Adam's return, several colored persons and some white ones came to the house. Planter Morse, a colored person, and one of the defendants, entering the house, declared the family should not be taken. He was much excited, and pulling off his coat, declared he would go into the fight. He advised Adam, on his return, not to be taken, declaring that he and others would stand by him, and drive off the kidnappers. Adam then went to a drawer, took out of it something which witness supposed to be a knife and powder-horn. Morse drew a knife, and using it in a menacing manner, declared what he would do with it, if witness attempted to take the family away. About this time five other persons came to the house, one white man and a boy, the others colored. Hacket, one of the colored men, came near to the witness, who was standing in the door, and inquired what he was doing. Witness replied that he was doing what the law authorized him to do. Hacket said he would see about that, and attempted to pass into the house. Witness told him to stand back. Hacket's hand was in his pocket. Witness again told him to stand back, drawing a pistol which he retained in his hand, but did not present it in a firing attitude. Hacket retired, saying he would attend to witness. James Smith, a colored man, and one of the defendants, approached, and in an excited manner inquired where the Kentuckians were, who were attempting to kidnap the Crosswhite family. The witness was pointed out to him, and Smith with a club raised, approached within five or six feet of witness, when he was seized by Dickson, who, with the aid of one or two other persons, led him away. Smith, as he approached witness, threatened to smash out his brains. Charles Berger, a colored man, and a defendant, approached, and in an excited manner inquired where the Kentuckians were, and, as witness thinks, drew a knife, the handle of which he saw, and which he used in a threatening manner. Dickson interfered and led him aside, though he still remained on the ground. William Parker, a colored man, and also a defendant, came up with a gun, and declared he would risk his life to prevent the Crosswhite family from being taken. By this time one hundred or more persons, white and black, had collected. Threats against the

lives of the Kentuckians were made, if they persisted in taking the fugitives. They were denounced as kidnappers, and some proposed to tar and feather them—others to massacre them. About this time Charles T. Gorham, Herd and Combstock, defendants, came on the ground, . . This was about eight o'clock in the morning. A large crowd had assembled, who uttered a good deal of menace. The whites encouraged the blacks, . . Gorham said to the witness, 'You have come after some of our citizens.' . . 'You can't have them, or take them: this is a free country, and these are free persons.'" Giltner [428] "remarked, if by force they should be prevented from taking the negroes, that he would bring a regiment from Kentucky, and would take them." [429] "Gorham said they were not abolitionists—advised Troutman not to make an attempt to take the fugitives, as it would cause great excitement. Gorham evinced earnestness, but he was good natured. In one or two instances, Gorham exerted himself to allay the excitement." [426] "At this time the wagon to convey the family was driven near the house, . . Combstock, pointing to the crowd, said, 'You see that in making the attempt your lives will be endangered;' and added, 'You can't have them, or can't take them, by moral, physical, or legal force; and you might as well know it first as last, and the quicker you leave the ground the better for you.' Gorham took up the remark of Combstock, a short time after it was made, and offered the following resolution: 'Resolved that these Kentuckians shall not take the Crosswhite family by virtue of moral, physical, or legal force.' This was passed by general acclamation, and with much noise. Witness then said, taking a book from his pocket, that he wanted the names of all responsible persons who intended to prevent him from taking the slaves. Gorham said he came there by public sentiment, to prevent his taking the slaves; that public sentiment was above the law; that similar attempts had proved abortive; and we will not permit our citizens to be kidnapped and taken back to slavery. This was before he offered the above resolution. When witness called for names, he addressed himself to Gorham and Easterly. They both gave their names, and Gorham requested that his name might be put down in capitals; and he requested witness to bear it back to the land of slavery as a moral lesson; and he added, that he wanted to make an example of witness." Troutman "asked the privilege to offer a resolution: 'Resolved, that I, as agent of Francis Giltner, of Carroll county, Kentucky, be permitted peaceably to take the family of Crosswhite before Sherman, a justice, that I may make proof of property in the slaves, and take them to Kentucky.' Witness heard no votes for the resolution, at least not more than one or two. Witness then proposed that if they would permit him to take the slaves before the magistrate, and if he should prove the right of the plaintiff to their services, and obtain the certificate, he would give them time to raise money to pay for the slaves a reasonable price; and he proposed to contribute more than any other man. Gorham replied, 'You can't have a sixpence for them, and you can't take them.' Again witness requested Dickson to summon the above persons to assist in keeping the peace. . . Herd, standing outside of the gate, in the presence of Gorham, a few rods in front of the house, offered the following reso-

lutions: ' Resolved, that these Kentuckians leave town in two hours.' Here some one of the crowd added, ' Or they shall be tarred and feathered, and rode on a rail '—when Herd continued, ' Or they shall be prosecuted for kidnapping or housebreaking.' . . Dickson refused to execute " a warrant to arrest the slaves. A process was issued against Troutman for a trespass in breaking the fastening of Adam's door. The trespass case lasted through the next day and evening. "A judgment of one hundred dollars damages and costs, was entered against the witness [Troutman] by the justice in the trespass case. On the morning of the 29th, as witness and his Kentucky friends were about leaving, at the National Hotel, in Marshall, Herd, Gorham and others being present, witness said to Gorham, ' You have all got the advantage of me now,' but he could not tell how it would end. Gorham said, ' Yes, the negroes are gone, and you can never get them.' The witness estimates the value of the negroes at two thousand seven hundred and fifty-two dollars." [430] " The rescue of the slaves enabled them to escape to Canada, beyond the reach of the claimant," McLean, J. (charging the jury): [432] " This, gentlemen, is an important case. It involves great principles, on which in a great degree depend the harmony of the states, and the prosperity of our common country. The case has acquired great notoriety by the action of the Kentucky legislature, and of the senate of the United States. It is the first one of the kind which has been prosecuted in this state. . . However unjust and impolitic slavery may be, yet the people of Kentucky, in their sovereign capacity have adopted it. And you are sworn to decide this case according to law—the law of Kentucky as to slavery, and the provision of the constitution, and the act of congress in regard to the reclamation of fugitives from labor." The jury disagreed, after being out all night, and was discharged. "At the succeeding term a verdict was given for the plaintiff for the value of the slaves. Judgment."

Day v. Owen, 5 Mich. 520, October 1858. [521] " action . . against the defendant as a common carrier. The first count . . alleged that the defendant was the owner of the steamer *Arrow,* plying between Detroit aad Toledo, . . that . . plaintiff applied . . for a cabin passage from Detroit to Toledo, and offered to pay . . that, although there was room, the defendant refused to give the plaintiff a cabin passage, . . plaintiff was . . obliged to travel in the night a hundred miles out of his way to reach Toledo. A second count alleges that the defendant was a common carrier, . . of passengers in and by the cabin and deck of said steamboat, . . and was the proprietor of said cabin, or covered room, . . that the plaintiff . . demanded to be carried in said covered room to Toledo; . . plaintiff tendered the . . hire . . and said covered room was not full . . yet the defendant refused to carry plaintiff in said cabin, . . A third count alleged a refusal to carry generally, . . set up no ground of refusal, except that the plaintiff was a colored man. This count contained no averment that plaintiff . . was ready . . to pay the fare. The defendant pleaded the general issue, and appended . . three notices of special matter . . [522] 1. That the plaintiff was a colored man, . . that . . colored persons were not allowed the privileges of cabin passengers. 2. That by the

regulation . . of said boat, colored persons . . were not allowed to use the cabin as such passengers; . . 3. That the plaintiff, by his color and race, was excluded from ordinary social and familiar intercourse with white persons by the custom of the country, . . General demurrer by the plaintiff, . . overruled and judgment for defendant . . plaintiff brought error."

Affirmed: [525] "The last count is bad, as it contains no averment that plaintiff . . was ready . . to pay the fare. The second ground of defence, . . avers such regulations . . to be reasonable. . . The right to be carried, is a right superior to the rules . . of the boat, . . If defendant had refused to carry the plaintiff generally, he would be liable, . . the [526] accomodation of passengers, . . is subject to . . regulations . . provided they be reasonable. The right to be carried is one thing—the privileges of a passenger on board of the boat, . . is another thing. . . The refusal to allow plaintiff the privilege of the cabin, . . was . . denying him . . accommodations, while being transported, . . All . . regulations must be reasonable; . . [527] The notice states plaintiff is a colored person, . . The reasonableness of the rule, . . does not depend upon the color of the plaintiff, . . but on the effect the carrying of such persons in the cabin would have, . . As the duty to carry is imposed by law . . the law would defeat its own object if it required the carrier, . . to incommode the community at large. . . [528] The second defense . . is, . . a sufficient answer to the second count of the declaration. . . It states defendant refused to carry the plaintiff in the cabin, and not that he refused to carry him generally, . . judgment . . affirmed with costs."

People v. Dean, 14 Mich. 406, July 1866. [413] "Defendant was prosecuted for illegal voting; . . not being within the constitutional provisions regulating . . [414] voters. Two propositions were discussed . . first, whether a person of less than one-half of African blood was white, within . . the constitution; second, whether one of not more than one-sixteenth of African blood was white. The circuit judge charged against the prisoner on both points, . . exceptions . . to his rulings. . . The constitution . . gives the right of voting . . to 'white male' citizens . . when the present constitution was submitted to a popular vote, a separate proposition was submitted . . 'every colored male inhabitant' would have been . . upon . . the same footing, . . as if he were white. This proposition was rejected, . . the constitution, . . admitted none . . who were not 'white.' The origin of this regulation, . . is . . in the act of congress of . . 1819, authorizing . . a delegate . . from Michigan territory, . . the right of voting . . to 'free white male citizens,' . . [415] We are, . . to determine what was meant by . . 'white,' . . There was no . . prevalent legal meaning . . so attached to . . 'white,' . . of any governing weight in its adoption. . . The reasons for drawing distinctions . . between . . classes are notorious; . . the [416] course of events has, with the destruction of slavery, . . modified public opinions . . we cannot truly interpret . . our constitution upon . . voting, without . . consideration to the fact that it sprang from . . prejudice, . . Our state legislation has never sanctioned . . enactments which

put black men in the category of suspected criminals under bonds for good behavior, . . and we have never, . . attempted to make color a test of veracity in the witness box. . . it has never occurred to any one that different shades of color could afford . . ground of compromise. The mooted principle has been recognized as . . outside of any shades [417] and gradations of color or blood; . . no one has, . . advanced the . . notion that a preponderance of mixed blood, . . has . . bearing upon . . fitness . . to possess political privileges. . . The recognition of slavery, . . confirmed the feeling which has . . separated the white race into the . . dominant people . . [418] When the people of Michigan decided to retain their ancient system, and to allow none but white persons to vote, they . . intended . . only such as were commonly so called and received. Was a person in whom white blood . . predominated over negro blood thus regarded? . . it has never been the case that any one having visible tokens of African descent has been regarded . . as a white person. . . it is . . known that the associations of persons having visible portions of African blood, have . . been closer with each other than with those acknowledged as white. They . . live and act together. This mutual recognition, . . furnishes a commentary on the terms white and colored, . . [419] There are many decisions upon the subject, . . in all of them (except a class of decisions in Ohio) . . it has not been deemed proper to class as white any not of pure blood, . . the Ohio decisions . . have now being . . repudiated by the courts of that state, . . [422] there is not a court in the United States which holds that a 'colored person,' . . can be called 'white' without doing violence to language. In this state, . . the population of African descent has . . been divided into black, mulatto, and 'other persons of color,' . . [423] The constitution does not impose any restriction of color, except upon electors. . . [424] it seems necessary, . . that any general classification must be based upon the distinction between those who as classes are apparently white, and those who are not. . . [425] it should be considered, . . that persons are white . . in whom white blood . . preponderates that they have less than one-fourth of African blood; . . As the defendant came . . within this rule, . . a new trial should be granted." [Campbell, J.; Christiancy and Cooley, J. J., concurred.]

Dissenting: "Dean was . . convicted . . for illegally voting . . The bill of exceptions shows . . that Dean . . took the oath . . that he was a resident . . that he was of Indian descent, . . [426] counsel for the people introduced . . a witness . . who, . . testified . . that . . he regarded him as a mulatto, . . not . . a white man. . . other witnesses, . . testified that defendant was a mulatto; . . that he was born in . . Delaware; . . a witness . . testified that he was a . . surgeon . . for . . forty-three years; . . that he had examined the prisoner . . that there was some African blood in the defendant, . . not exceeding one-sixteenth part; . . that the only clear indication of African blood is a peculiarity in . . the nose, and this was an infallible indication; . . that his skin was not different from . . Europeans of bilious temperament; . . [427] that he was a white man, except such taint of African blood. . . defendant then introduced witnesses, who . . testified that they had known . . his

family in Delaware; that they were . . from the original Indians of Delaware; . . had no negro blood in them . . the . . judge did . . charge the . . jury that, . . if they believed, . . that he had . . African blood equal to one-sixteenth, . . [428] he was not a white man . . and was not entitled to vote. . . And . . if they believed, . . that he was . . of Indian descent, possessing, . . trace of . . African blood, amounting to one-sixteenth, . . he was not a white man, . . and was not entitled to vote . . If Dean . . had . . African blood . . not exceeding one-sixteenth, . . we are all agreed that he was a legal elector. . . This, . . is decisive . . another question was raised, . . they regarded it as the real question . . If the defendant had . . more than one-half, of the blood of the white race, was he . . a legal elector? . . [430] at . . the adoption of our . . constitution, I do not think this question of degree of blood entered into the consideration of voters. They . . determined that negroes should not vote, and this included, . . mulattoes. . . It has been left to freemen . . to excite this hatred of races, and deny to persons tainted with African blood the equality we boast all Americans are entitled to. [431] . . this prejudice is of northern origin; . . North Carolina, . . by law provided that all freemen who had paid a public tax—and free blacks were included . . might . . exercise the elective franchise. . . the same right is extended to free blacks . . No prejudice of blood existed in the slave states . . The negro, . . regarded as chattels, if slaves, . . the free negro, . . being regarded as a man. It was left to northern men to arouse that prejudice and excite that hostility toward the colored race, . . [432] This is the first occasion where the Supreme Court of this state has been called upon to construe the word ' white ' as used in the constitution, and I should regard myself . . derelict . . should I interpret it . . incompatible with . . progress, unless compelled to by . . evidence, that the people . . has the distinction of color . . however much diluted, active in their minds. . . They certainly had none that a person of less than quarter blood had . . a . . right to vote, over one possessing a preponderance of white blood; . . By what authority . . can we fix a strain of . . one-sixteenth, . . of African blood as a standard . . to make a man white or black, as he happens to have more or less, . . [434] I find . . no recognition of grade . . of admixture of blood, . . and . . preponderance of blood must control, . . [440] and that within the . . meaning of that instrument, [state constitution] Dean was white, . . had he possessed much more African blood than he is shown to have had." [Martin, Ch. J.]

U. S. v. Repentigny, 5 Wallace 221, December 1866. Letter of the Marquis de la Jonquière, the governor of New France, to the Minister of Marine and the Colonies, October 5, 1751: [220] " The said Sieur de Repentigny so much feels it his duty to devote himself to the cultivation of these lands [at the Sault St. Marie], that he has already entered into a bargain for two slaves, whom he will employ to take care of the corn he will gather upon these lands."

Hedgman v. Board of Registration, 26 Mich. 51, October 1872. " application for a mandamus to compel the respondents to register the relator

as a voter. The facts [52] . . his parents were . . of African blood, born in Virginia, . . as slaves; . . they . . went to Canada in 1834, . . where the father still resides; . . the relator was born in Canada . . and continued there until he was nearly twenty years of age, when he removed to this state, and now resides in said first ward. If these facts show him . . a citizen . . of Michigan, he is entitled to be registered; otherwise not. It is claimed, . . that he becomes a citizen by . . new amendments to the federal constitution. The . . point relied upon is, that by the fourteenth amendment all persons born in the United States, and subject to the jurisdiction thereof, are . . citizens; . . the laws of congress, which make citizens of the children of citizens born abroad, will apply to . . relator, and render him a citizen also. . . it is argued by the city counselor, . . that the laws of congress do not reach the case of one whose parents were not citizens at his birth, and that the parents of the relator were not, . . [53] The point in dispute . . is, whether the parents of the relator were citizens of the United States. The record shows that they were not free, but held in servitude, . . it is undeniable that those persons should never have been slaves, . . Slavery was the great ugly fact of our history; . . [54] The supreme court . . has recently been obliged to decide that contracts growing out of . . slavery, are not only valid . . but that the people . . have no power, . . to nullify such contracts . . state courts in the southern states are now, . . enforcing contracts made on the sale of men, . . [56] the parents of the relator were never citizens of the United States prior to . . the fourteenth amendment. That amendment, . . does not make them such. . . These persons are not subject to the . . United States. They have chosen another jurisdiction, and cannot have our citizenship forced upon them. . . The fifteenth amendment does not help the case. . . [57] The relator was never in a condition of servitude, and his color is no impediment to citizenship. He has the same rights with any native-born white British subject to become a citizen under the naturalization laws, . . the writ must be denied."

WISCONSIN

INTRODUCTION

I

Wisconsin was the battleground for one of the most bitterly contested series of cases involving the Fugitive Slave Act of 1850.[1] Booth was arrested by order of United States Marshal Ableman for aiding one Glover, a negro, to escape from the custody of Deputy United States Marshal Cotton in violation of the above-mentioned act. Booth petitioned for a writ of habeas corpus and it was granted by the Supreme Court of Wisconsin on the grounds that the act was void in that it purported to give judicial power to commissioners, and further, that it denied a jury trial to the alleged fugitive. Booth was again arrested by order of Ableman upon a warrant issued by United States District Judge Miller after indictment under the Fugitive Slave Act of 1850. On this occasion Booth's petition for habeas corpus was denied on the ground that the federal court had jurisdiction and that the state court would not attempt to prevent the court from trying a pending case. However, after Booth had been convicted, he again petitioned the state Supreme Court for a writ of habeas corpus, and it was granted on the ground that the counts upon which the petitioner had been convicted did not set forth an offence over which the federal court had jurisdiction. These cases were taken to the Supreme Court of the United States, and the decisions declaring the act of 1850 void met reversal as expected.[2]

II

The Wisconsin Constitution of 1848 provided for an appellate Supreme Court, arranging that for five years, and until the legislature should otherwise dispose, it should consist of the judges of the five circuit courts. After five years the legislature might compose the court of a chief justice and two associates. This was done by act of 1852, the new court to come into operation June 1, 1853, and the reports then begin.

[1] *In re* Booth, p. 91; *Ex parte* Booth, p. 93; *In re* Booth and Rycraft, p. 94; Ableman *v.* Booth, p. 95, *infra.*

[2] Ableman *v.* Booth, p. 95, *infra.*

U. S. ex re. Garland v. Morris, 26 Fed. Cas. 1318 (2 Am. Law Reg. 348), April 1854. " The relator, a citizen . . of Missouri, obtained a warrant upon affidavit, for the apprehension of Joshua Glover, . . his slave " who has escaped from him in Missouri. " The warrant was issued to the marshal, who arrested the fugitive, with the aid of the relator, in the county of Racine, . . the resistance by said Glover and others was great." The marshal " placed him in the jail of Milwaukie county for safe keeping, until the hearing. The same day . . a warrant was issued by the mayor of the city of Racine upon the affidavit of . . Clement, against the relator, for assault and battery upon the body of Glover. In the afternoon of the day of the imprisonment of Glover, a mob rescued him by forcing the jail doors; and at the same time the warrant for the arrest of the relator was placed in the hands of the respondent Morris, as sheriff of Racine county for service; and just after the rescue, it was executed by the arrest of Garland, the relator. Before the rescue, a writ of habeas corpus was issued by the judge of Milwaukie county to the marshal and also the Sheriff of Milwaukie county, to produce the body of the fugitive Glover; which writ was not obeyed." Garland applied to Miller, judge of the United States District Court, " for a writ of habeas corpus; which was allowed, and directed to the respondent to produce the body of his prisoner. The respondent made answer to this writ, that he held the custody of the relator, by virtue of the warrant of the mayor of Racine,"

United States District Judge Miller ordered that Garland should be discharged: [1319] " he was aiding the marshal in the service of a warrant, at the officer's request. . . The warrant for the apprehension of Glover, the fugitive, had not been fully executed by the arrest merely, . . it was in full force until the fugitive was brought before the judge, . . and an order made, . . Glover has been rescued and is now at large, and is liable to be re-arrested upon that same warrant. . . The relator and the marshal have a legal right to enter upon fresh pursuit of the fugitive. . . I cannot but consider the imprisonment of the relator, or of the marshal (who was also prosecuted in Racine,) a greater outrage than the rescue. The law under which the fugitive was apprehended, is a law of the United States, . . the judges, commissioners, marshals, or claimants are not to be interfered with, in its administration or execution, by state courts or officers."

U. S. v. Rycraft, 27 Fed. Cas. 918 (Milwaukee Daily News, Scrap Book, 178), no date. Indictment [919] " against John Rycraft for aiding, assisting, and abetting in the escape of Joshua Glover,[1] a fugitive slave." Cotton, a deputy marshal, had arrested Glover, a fugitive slave, owned by

[1] See *In re* Booth and Rycraft, p. 94, *infra.*

Garland of Missouri. [922] " Glover was lodged in jail, . . the defendant was present at the jail, working and assisting to break the door of the jail-yard and the door of the jail. . . [923] a committee of vigilance was organized on that morning," of which Rycraft was a member. Reed stated " that one of its objects was, that the kidnapper should not take Glover out of town before a trial; that the kidnappers were Cotton, the owner, and any others who took part."

Charge to jury: " The appellation of kidnappers applied to those men, under the circumstances, was to bring that jail down. . . This committee was probably the primary cause of that outrage," [Miller, J.] Verdict, " Guilty."

In re Booth, 3 Wis. 1, June 1854. [2] " 1854, in vacation, . . Booth, made application . . for a writ of *habeas corpus,* . . upon the following petition, . . that he, . . Booth, is restrained . . by . . Ableman, the marshal of the United States for . . Wisconsin, . . [3] Booth alleges that the restraint . . is illegal, . . that the said act of congress . . approved . . 1850, is unconstitutional . . [6] a writ . . was allowed, . . and . . Ableman, . . made return . . with the body of the petitioner, before the said justice, . . petitioner was discharged . . the following opinion . . delivered: [7] . . Accompanying the petition was a copy of the process, . . and recited that the petitioner . . 'unlawfully aided, . . a person named Joshua Glover, held to . . labor in . . Missouri, . . being the property of . . Garland, . . to escape from . . Cotton, a deputy . . [8] the petitioner alleges . . that the act . . of 1850, is in violation of the compact, . . in the ordinance of 1787, . . [9] The warrant, . . was not issued by a federal . . court, but by a commissioner of the United States. . . [10] It is not necessary here to inquire . . the . . effect of a warrant . . issued by a judicial officer of the United States. . . the States will never submit . . [11] that . . commissioners . . determine . . rights . . of their citizens, . . [12] The petitioner demands his discharge . . 1st. Because the law of congress, . . of . . 1850, . . is unconstitutional; and 2d. because the writ is defective. . . I entertain no doubt, that the writ is . . defective, . . But the petitioner has, . . expressed his desire . . to rest his case . . upon his objections to the constitutionality of the law . . [14] I do not admit the right of the citizen to complain . . of illegal imprisonment, . . and then waive . . his discharge except upon such grounds only as he shall see fit to prescribe. . . [15] The act of congress under . . which the petitioner is arrested, purports to have been enacted . . under the power . . of the fourth article of the . . constitution, . . 'No person held to service or labor in one state, . . shall, . . be discharged . . but shall be delivered up . . to whom such service or labor is due.' . . [17] the status of the fugitive is . . different in this state, from his status . . in the state . . whence he fled . . Here, he is entitled to the full . . protection of our laws; . . so long as he is unclaimed. . . So long as the owner does not choose to assert his claim, the cottage of the fugitive in Wisconsin is as much his castle—[18] his property, . . and person are as much the subject of legal protection, as those of any other person. . . This writ simply asserts,

. . that he ' aided, . . a person named Joshua Glover, . . [19] being the property of . . Garland, . . to escape from . . a deputy of the marshal . . [20] The gist of the offense . . is ' the aiding, . . the person so owing labor or service, to escape . .' There . . is no such charge in the warrant . . There is no allegation that Glover was in custody as a fugitive from labor, . . [22] The warrant, . . is clearly, . . insufficient, and the petitioner is . . entitled to a discharge. . . but it is . . urged that the act . . is . . void. . . [24] The judicial department of the federal government is the creature by compact of the several states, as sovereignties, and their respective people. . . [25] I solemnly believe that the last hope of free representative and federative government rests with the states. . . Without the states there can be no union; . . The constitution of the United States is a peculiar instrument, . . [26] It is an instrument of grants and covenants. . . [30] history . . demonstrates that the convention [constitutional] . . discriminated between grants of power to the government, and articles of compact between the states, . . was jealous . . in making such grants, . . [36] The law of 1793 was . . organizing the state authorities for the accomplishment of the . . duties devolved upon them. . . it is apparent that congress has no constitutional power to legislate on this subject. . . [37] It is equally apparent, that it is the duty of the respective states to make laws . . for the . . observance of this compact. . . The clause as finally adopted reads, ' but shall be delivered upon claim of the party to whom such service or labor is DUE.' . . [39] Here there is a fact, an issue, to be judicially determined, before a right can be enforced. . . What authority shall determine it? Clearly the authority of the state . . [41] Every person is entitled to his [42] ' day in court,' . . But the tenth section of the act of 1850, . . nullifies this provision of the constitution. . . the claimant may go before any court . . make proof of the escape, . . a transcript . . being exhibited to the judge or commissioner, must be taken . . conclusive evidence of the . . escape, . . that service or labor is due . . and may be held sufficient evidence of the identity of the person escaping. Here is a palpable violation of the constitution. . . [43] Other courts . . may pronounce this provision of the act of 1850 to be in conformity with . . the constitution . . but while I have a mind to reason . . and an oath to support the constitution . . resting upon my soul, I cannot so declare it, and for the price of worlds, I will not. . . [48] What, then, is to be done? Let the free states return to their duty, . . and be faithful to the compact, . . Let the slave states be content with such an execution of the compact as the framers of it contemplated. Let the federal government return to the exercise of the just powers conferred by the constitution . . [49] Afterwards, a writ of certiorari was applied for, and . . The cause came on for argument . . before a full bench."

Held: " The questions . . are of great importance. . . [51] The next question . . is, whether a justice of this court has the power to issue, in vacation, a writ of habeas corpus, and make it returnable before himself at chambers. . . [52] The act . . declares that the . . justices . . shall be subject to all the duties . . to which the judges of the former supreme court were subject. Among those duties was that of granting writs of

habeas corpus, . . we should be guilty of a gross violation of duty were we to refuse them . . because the case might be reviewed . . [64] We are of opinion that so much of the act of congress in question, as refers to the commissioners for decision, the questions of fact . . is repugnant to the constitution of the United States, and . . void for two reasons: First, because it attempts to confer . . judicial power; and second, because it is a denial of the right of the . . fugitive to have those questions . . decided by a jury, . . [70] We . . conclude that the alleged fugitive . . is taken back to the state . . without due process of law, . . we must affirm the order made in this case, discharging the relator." [Smith, J.]

Dissenting: "I . . designate . . the points upon which I dissent. . . [73] the question of greatest, . . relates to the constitutional power of congress to enact the law of 1850, . . [83] The right of trial by jury is highly . . esteemed, . . But suppose that a demand . . upon the governor . . has been made to surrender any citizen, . . upon a charge of felony . . There would seem . . no real difference between the demand of a fugitive from justice and the claim of a party to whom it is [84] alleged labor or service is due. . . [85] Assuming that the framers of the constitution had in view the cases of fugitive slaves only, . . it would seem obvious that if a trial by jury may be insisted upon, the determination . . might be protracted . . so as to defeat the very object of the . . provision." [Crawford, J.][1]

Ex parte Booth,[2] 3 Wis. 145, June 1854. "application made . . to the supreme court in term time for a writ of *habeas corpus.* The petitioner sets forth that he is restrained of his liberty, and imprisoned . . by . . Ableman, United States marshal; . . the cause . . of such imprisonment, . . is a warrant from Andrew G. Miller, judge of the district court of the United States, . . that the said indictment . . in said warrant is ground-[146]ed upon a pretended violation of the fugitive slave act of 1850, which act he represents is . . void, . . he prays that . . *habeas corpus* may be issued . . to have . . Booth before the supreme court."

Held: [147] "We think that this application must be denied. . . The warrant is tested in the name of the judge . . and signed by its clerk. In the case of Ableman *v.* . . Wisconsin ex rel Booth, . . we held that the issuing of a writ of *habeas corpus* by a state magistrate . . to bring before him a person who had been committed by a commissioner . . did not interfere with the juris-[148]diction of that court. But we said distinctly, that when a court had obtained jurisdiction . . no other court of concurrent jurisdiction would interfere, . . But the facts . . show that the petitioner is in confinement by . . a warrant issued by the court, . . These facts show that the district court . . has obtained jurisdiction . . and it is apparent that the indictment . . is for an offense of which the courts of the United States have exclusive jurisdiction. . . we are called upon to do an act which would prevent the court . . from proceeding to try . . a case now pending . . and of which it has exclusive jurisdiction; . . [149] it is further claimed . . that the district court . . can not ob-

[1] The Supreme Court of the United States reversed the majority opinion. See Ableman *v.* Booth, p. 95, *infra.*

[2] See Ableman *v.* Booth, p. 95, *infra.*

tain jurisdiction of a criminal proceeding when the facts show no offense has been committed. . . that court, . . is of necessity compelled to decide every question. . . No state court can . . interfere. The application must be denied."

In re Booth and Rycraft, 3 Wis. 157, June 1854. [158] "[These two applications are the same in all respects, and were made to the court, . . and were . . determined. But, as their subject matter bears so close a relation to the two preceding cases . . it is deemed more convenient . . to insert them here."][1]

Held: [175] " It will not be denied that the supreme court of a state, [176] . . has the power to release a citizen . . from illegal imprisonment. . . Were we to hold that we are without this power . . we should be obliged so to hold . . where not even the forms of law were observed; when, for instance, a citizen . . should be thrown into prison, by the arbitrary order of a judge . . of the United States, . . the state governments . . are not reduced to this humiliating condition. The petitioners must be discharged." [Whiton, C. J.]

Concurring: [179] " The simple question . . is, whether the district court . . had jurisdiction of the offense . . if it had such jurisdiction, it matters not how illegal, . . the proceedings . . may have been, . . if the court had jurisdiction . . it is by no means my duty . . to revise the decision . . That is the function of a superior federal tribunal, . . The district court . . is a court of special . . jurisdiction. . . [181] the return . . by the sheriff . . contains a record . . which . . shows, that the district court had no jurisdiction . . [182] The indictment . . contained three counts, the first of which . . charging an offense within the ' fugitive slave law.' The second and third counts, . . do not, . . set forth . . an offense punishable by any statute of the United States, . . The relator was found guilty as charged in the second and third counts . . but was not convicted of . . the first count, . . The second count charges that ' John Rycraft . . did aid, . . Glover to escape from . . Cotton, . . a deputy of the marshal of the United States . . ' [183] The third count is . . the same as the second, . . The intention, . . was to set forth . . an offense within . . the act of 1850, . . [184] it is not the aiding of any person to escape . . but it is the aiding of a person of a specified status . . who owes service or labor . . To constitute an offense . . every circumstance . . as defined by the statute, must be . . set forth, and . . Glover should have been described as a person owing service or labor . . [186] The indictment . . contained one count (the first) which charged an offense within the jurisdiction of the district court, . . Upon the first count . . no conviction, . . the sentence . . must be for an . . offense beyond the control . . of the court . . [189] I am of the opinion that the relator is entitled to be discharged from the custody of the sheriff . . the . . conviction . . presents no conviction . . of an offense which that court had jurisdiction over." [Crawford, J.]

Concurring: [190] " the subject matter . . has been considered with all the deep anxiety . . which the time would permit, . . [192] Has this

[1] See *In re* Booth and *Ex parte* Booth, pp. 91, 93, *supra.*

court the power to inquire into the . . authority by which . . the prisoner is, . . held in custody? . . [204] the federal government can only operate within the precise sphere marked out by the constitution; . . [208] The obligations of the state and federal governments are . . mutual and reciprocal. [210] It is . . our duty to grant this writ, to inquire into the cause of the prisoner's . . detention. . . [211] I have . . attempted to show that the act of congress, approved . . 1850, was not within the constitutional power of congress." [Smith, J.]

Ableman v. Booth and *U. S. v. Booth,* 21 Howard 506, December 1858. "Booth was charged before . . a commissioner duly appointed by the District Court of the United States for the district of Wisconsin, with having . . 1854, aided . . at Milwaukee, . . the escape of a fugitive slave from the deputy marshal, who had him in custody under a warrant issued by the district judge of the United States. . . the commissioner . . was satisfied that an offence had been committed as charged, and . . held him to bail . . But on the 26th of May his bail . . delivered him to the marshal, . . Booth made application on the next day, . . to . . one of the justices of the Supreme Court . . of Wisconsin, for a writ of *habeas corpus,* . . [508] alleging that his imprisonment was illegal, because the act of Congress of September 18, 1850, was unconstitutional and void; . . the justice . . issued the writ . . The marshal . . produced Booth, and made his return, stating that he was . . held in custody by virtue of the warrant of the commissioner. . . the justice decided that the detention was illegal, and ordered the marshal to . . set him at liberty, which was . . done. . . 9th of June . . the marshal applied to the Supreme Court of the State for a *certiorari,* . . allowed. . . The case was argued before the Supreme Court of the State" and it affirmed [509] "the decision of the associate justice discharging Booth from imprisonment, . . on the 26th of October, the marshal sued out a writ of error . . to bring the judgment here for revision; . . before the writ of error was sued out, the State court entered on its record, that, in the final judgment it had rendered, the validity of the act of Congress of September 18, 1850, and of February 12, 1793, and the authority of the marshal to hold the defendant in his custody . . were . . drawn in question, and the decision of the court . . was against their validity, . . the second case. At the [following] January term of the District Court of the United States for the district of Wisconsin, . . [510] the grand jury found a bill of indictment against Booth for the offence with which he was charged before the commissioners, and from which the State court had discharged him. . . a jury . . found him guilty. . . the court . . sentenced the prisoner to be imprisoned for one month, and to pay a fine of $1,000 . . and that he remain in custody until the sentence was complied with. . . three days after . . the prisoner . . filed his petition in the Supreme Court of the State, . . On the next day, the 27th [of January], the court directed two writs of *habeas corpus* to be issued—one to the marshal, and one to the sheriff of Milwaukee, to whose actual keeping the prisoner was committed by the marshal, by order of the District Court. . . [511] On the 30th . . the marshal made his return, not acknowledging the jurisdiction,

but stating the sentence of the District Court as his authority; . . On the same day the sheriff produced the body of Booth . . and returned that he had been committed to his custody by the marshal, by virtue of a transcript, . . annexed to his return, . . This transcript was a full copy of the proceedings . . in the District Court of the United States. . . The [State] court . . (February 3d,) . . decided that the imprisonment was illegal, and ordered . . that Booth be . . and he was . . forever discharged from that imprisonment. . . On the 21st of April next following, the Attorney General of the United States presented a petition to the Chief Justice of the Supreme Court, . . averring . . that the State court had no jurisdiction . . [512] and praying that a writ of error might issue. . . issued . . duly served on the clerk of the Supreme Court of Wisconsin, . . the district attorney of the United States . . when he served the writ . . was informed by the clerk, and has also been informed by one of the justices of the Supreme Court, which released Booth, '*that the court had directed the clerk to make no return to the writ of error, and to enter no order upon the . . records of the court concerning the same.*' . . the Attorney General moved . . for an order upon the clerk to make return . . no return having been made, the Attorney General, on the 27th of February, 1857, moved for leave to file the certified copy of the record of the Supreme Court of Wisconsin, . . [514] the supremacy of the State courts over the courts of the United States, in cases arising under the Constitution and laws of the United States, is now for the first time asserted and acted upon in the Supreme Court of a State. . . [521] This tribunal . . was erected . . not by the Federal Government, but by the people of the States, who formed . . that Government, . . engrafted it upon the Constitution itself, and declared that this court should have appellate power in all cases arising under the Constitution and laws of the United States. So long, therefore, as this Constitution shall endure, this tribunal must exist with it, deciding in the peaceful forms of judicial proceeding the angry and irritating controversies between sovereignties, which in other countries have been determined by the arbitrament of force. . . [524] No State judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them. . . [526] in the judgment of this court, the act of Congress commonly called the fugitive slave law is, in all of its provisions, fully authorized by the Constitution of the United States; . . The judgment of the Supreme Court of Wisconsin must therefore be reversed in each of the cases now before the court." [Taney, C. J.][1]

Ableman v. Booth, 11 Wis. 498, June 1859. [499] " the United States . . attorney . . asked leave to file . . two mandates . . one in each of the cases, from the supreme court of the United States. . . The mandates were also left . . to be disposed of as the court should direct . . The former is the title of a suit . . in the supreme court of the United States, . . that court . . reversed a judgment . . in a proceeding entitled . . ' petition of Sherman M. Booth for a writ of *habeas corpus,* . . ' The

[1] See *Ex parte* Hill, *in re* Willis, p. 255, vol. III., of this series.

latter is . . a like suit . . similarly entitled, . . in like manner . . reversed. . . [501] The only question . . is: Does the constitution . . confer on congress the power to provide . . for an appeal from the courts of the several states to the supreme court . . and to authorize that court . . to review and reverse the judgments . . in the cases specified in the . . act . . 1789? . . [502] Holding, . . that the affirmative . . is correct, my own embarrassments . . have . . increased, from . . the contrary decision of this court, . . by the refusal to make return to the second writ of error, . . [505] The 25th section of the . . act . . provides 'that a final judgment or decree . . in the highest court . . in a state . . where is drawn in question . . a treaty or statute . . under the United States, . . and the decision is against the validity . . may be re-examined and reversed or affirmed in the supreme court of the United States . . [521] In my opinion the motions should be sustained, and the mandate of the supreme court filed with the clerk of this court. . . [532] Second Note.—On the 6th day of March, 1860, Booth filed . . a petition for a writ of *habeas corpus,* . . alleged . . he was a prisoner . . of the United States, . . that he was arrested . . for . . aiding the escape of Glover, contrary to the fugitive slave act. . . the writ was denied but no opinion . . the chief justice stated orally . . his decision. . . The sentence of the United States court was executed in part upon Booth, when he was pardoned by President Buchanan."

Arnold v. Booth, 14 Wis. 180, June 1861. [183] "action commenced . . by the defendant . . for the purpose of recovering one . . printing press, and one . . steam engine . . which, . . had been unjustly taken . . by plaintiff . . In his answer, the plaintiff . . denied that the defendant . . was . . entitled to . . the property . . averred 'that he was, . . the lawful owner . . that the same was, . . duly seized by the United States marshal . . by virtue of an execution . . upon a judgment . . in an action . . in which . . Garland, . . was plaintiff, and . . plaintiff in this action was defendant, for . . twelve hundred and forty-six dollars; and . . the same . . advertised and sold by the . . marshal . . that . . defendant being the highest . . bidder . . same was sold . . to him . . Upon this issue the cause came on . . before the circuit court . . when the . . defendant below, . . read in evidence . . the record of a judgment . . [184] in favor of . . Garland, . . whereby . . defendant in error was convicted . . under the fugitive slave law of 1850, . . This record . . received in evidence, . . objection . . that they were invalid by reason of the unconstitutionality of the . . slave law. The . . court ruled that such record . . constituted no . . defense . . and gave judgment against the defendant, who prosecutes this writ of error. It is . . claimed . . that . . the circuit court, . . was correct . . [185] it is insisted . . that . . the constitutionality of the fugitive slave law is not involved . . because . . that act . . merely gave new right of action. . . that it might be admitted, . . that the fugitive slave law was void, . . that then, . . the district court erred . . but that the judgment . . though . . erroneous, is not void, but voidable, binding until . . reversed, and cannot be . . a nullity in a collateral suit. . . I

am unable to perceive why it is not sound and conclusive. . . [188] inasmuch as the district court has jurisdiction . . I think it could lawfully . . determine the action . . by Garland against Booth for a penalty given by the fugitive slave law. . . [189] in a collateral proceeding, such a judgment would not be . . a nullity . . So while holding that the fugitive slave law is an unconstitutional enactment, . . the district court had jurisdiction . . [190] and . . the judgment, . . is binding until reversed. I . . think that the circuit court erred in ruling that the . . judgment in that suit, and the sale . . constituted no defense to this action. . . new trial ordered."

In re Wehlitz, 16 Wis. 443, January 1863. [444] "Carl Wehlitz, . . was born in . . Prussia, and came to the United States in 1854, after which, and before his enrollment on the militia list . . he declared his intention to become a citizen . . but had not . . taken the final oath . . he was drafted . . into the military service of the United States, . . He . . obtained . . a writ of *habeas corpus,* directed to Col. Fritz Anneke. . . it appeared that the petitioner, . . had . . exercised the right of suffrage . . The commissioner, . . decided that the petitioner was not liable to be drafted . . and made an order discharging him . . The case came . . for review, on . . certiorari."

Held: [445] "The only question . . is, whether a resident . . who was a native of a foreign country, but who had declared his intention to become a citizen . . was liable to be drafted? The decision . . depends upon the meaning of . . act of congress, and the laws of this state, . . The act of congress . . approved . . 1792, designated . . 'every free, able bodied, white male citizen of the respective states, . . .' Prior to 1858, . . this state provided that 'every free, able bodied, white male person who has resided within this state one month, . . between . . eighteen and forty-five, shall be enrolled in the militia,' . . [446] The commissioner decided that it meant only those who were full citizens of the United States. . . it will be necessary to inquire whether the word has any other . . meaning, . . That it has such another meaning must be admitted. . . no state can confer . . citizenship upon an alien who has not complied with the laws of congress, so as to make him a citizen of the United States and entitled to the rights . . guaranteed . . by the federal constitution . . This doctrine has been . . stated . . in the Dred Scott case, in which the question was, whether a negro could be a citizen of a state . . so as to be entitled to sue in the federal courts. That [447] court said: '. . we must not confound the rights of citizenship which a state may confer . . and . . citizenship . . of the Union. . . He may have all the rights . . of the citizen of a state, and yet not be entitled to the rights . . of a citizen in any other state. . .' [448] further on in the opinion, . . the court says: '. . a person may be entitled to vote by . . a state who is not a citizen even of the state itself; . . the state may give the right to free negroes and mulattoes; but that does not make them citizens of the state and still less of the United States.' . . [452] If, . . the liability of this petitioner to be drafted depended upon the meaning of the word 'citizen' in our state law, I should have no hesitation in saying that he

was liable. . . [453] many foreigners who come here are not only unacquainted with our laws . . but . . our language; . . no . . reasons exist why these persons should not share the burdens of the common defense; . . [454] The . . act of 1792, . . provided for the enrollment of all 'able bodied white male citizens' . . whether the . . word 'white' as qualifying 'citizen,' for the purpose of excluding the African races, would indicate that . . the African race could not be citizens at all, may . . be . . questionable. . . assuming, . . that the African race could not be citizens . . as used [455] by the constitution of the United States, . . they might be citizens of the states . . And with this meaning, . . 'citizen' would include persons . . of the class to which the petitioner belongs. . . In this law, . . the word, 'white' is omitted, . . for the purpose of removing the prohibition against the African race; for the 12th section expressly authorizes the president to receive them into the military or naval service. . . [456] The order of the commissioner must be reversed."

IOWA

INTRODUCTION

I

Only a handful of cases illustrate the legislative and judicial history of slavery and the negro in Iowa. Prior to the Civil War only white males were permitted to vote,[1] or to act as witnesses.[2] The case of Clark *v.* The Board of Directors,[3] contains a very interesting history of the development of sentiment with respect to colored children in public schools. In 1868 it was established as a principle, based upon the state Constitution, that school authorities could no longer set up separate schools for colored children, but must permit them to mingle with white children in all public schools.

II

The first Constitution of the state of Iowa, that of 1846, provided for a Supreme Court of three judges, and that of 1857 made no change in this arrangement, except in providing that the general assembly might increase the number of judges, by one at a time. A legislative act of 1864 increased the number to four. All the cases named on the ensuing pages were heard in this court, except two cases reported from federal courts.

[1] Morrison *v.* Springer, 15 Iowa 304 (1863).
[2] Iowa *v.* Nash, 10 Iowa 81 (1859).
[3] 24 Iowa 266 (1868).

Daggs v. Frazer, 6 Fed. Cas. 1112 (2 Am. Law J., N. S., 73), January 1849. Action of trover against nineteen citizens of Salem, Iowa, by Daggs of Missouri to recover the value of the following slaves: "one negro man . . Samuel Fulcher, and of the value of $2,000; one negro woman, of the name of Dorcas, the wife of the said Samuel Fulcher, a tanner by trade, and skilful therein, and of the value of $1,000; one negro man of the name of John Walker, a skilful farmer and tanner, and of the value of $2,000; two negro women valued at $1,000 each; two negro children, [1113] each of the value of $500; two other male negro children, one aged three years, and one aged one year, and each of the value of $500;" The defendants demurred: "the laws and constitution of Iowa do not recognize men and women as property, and the subject of a suit;" Held: trover will not lie in Iowa to recover the value of slaves.

Wright v. Ross, 2 Greene (Iowa) 266, June 1849. "Is a pistol such property as may be sued for in an action of detinue? . . Detinue can only be maintained for the recovery of a personal chattel in specie. . . [267] A horse, a cow, a slave, etc., are objects that were commonly recovered in this action. . . It has been held, that detinue will lie for a negro woman by name without stating her complexion or age;"

Shields v. Thomas, 18 Howard 253, December 1855. [255] "Goldsbury died [in Kentucky] possessed of one male and one female slave, . . the widow . . [256] intermarried with . . Shields. . . Shields and his wife, after enjoying the services and hire of the male slave for several years, had ultimately sold him, and . . in . . 1818, they removed . . to . . Missouri, carrying with them the female slave . . together with her descendants, seven in number, . . and . . the slaves had by the son and son-in-law been secreted, carried off and sold, in parts unknown to the complainants,"

Reed and Co. v. Crosthwait, 6 Iowa 219, June 1858. [221] "The case of McGee v. Ellis, . . was upon the sale of a slave, which, . . is held as real estate in Kentucky. It was a bill in chancery, brought by the purchaser, . . against the . . creditor and debtor. The court of appeals held, that the purchaser was entitled to recover in equity from the debtor, because the debt being paid by the money of the purchaser, he would, in equity, be entitled to be substituted in the place of the execution creditor,"

Iowa v. Nash, 10 Iowa 81, December 1859. [86] "Section 2388 of the Code, enacts that every human being of sufficient capacity to understand the obligation of an oath, is a competent witness in all cases, both civil and criminal, except as herein otherwise declared. . . And what exceptions are so declared? They are those of Indians and colored persons; of persons having a direct, certain, and legal interest in the suit; of the

husband and wife; of cases of professional confidence, and of public officers."

Morrison v. Springer, 15 Iowa 304, December 1863. [325] "A white male person of the age of twenty-one years, . . may vote. . . a negro or black person, though twenty-one years old, cannot vote; "

Clark v. The Board of Directors, 24 Iowa 266, June 1868. [267] " Mandamus.—The petition sets forth, that plaintiff, Susan B. Clark, was born in . . Muscatine, . . that she is now twelve years of age, and sues by . . her father, . . who is a . . tax payer in . . Muscatine, . . that . . the defendants, the board of directors, have . . maintained schools . . that one of said [268] schools is designated as ' Grammar School No. 2,' and plaintiff resides . . within that portion of said district from which resident youths . . attend said school, and that she is duly qualified for admission into said grammar school, . . that it is the duty of said board, . . to so admit her; that, . . she presented herself, . . that said defendants refused to admit . . her . . but illegally excluded her therefrom. She asks for a mandamus to compel the defendants to so admit her. The answer, . . admits the statements . . as to plaintiff's birth, . . application . . etc. The defendants then aver, that the plaintiff is of negro extraction and belongs to the ' colored race; ' that . . they have . . a separate school for colored children, . . that plaintiff had attended said school . . up to the time she demanded admission . . that public sentiment in said . . district is opposed to the intermingling of white and colored children in the same schools, and the best interests of both races require them to be educated in separate schools. . . [269] the plaintiff demurred, . . The District Court sustained the demurrer, and the defendants appeal."

Held: " it would seem necessary, . . to justify a denial of such equality of right . . that some express sovereign authority for such denial should be shown. . . [270] we must look to the statute. And we can . . construe the statute when we examine it in the light of the legislative history . . [272] it will be seen that there have been three distinct phases of legislative sentiment . . First, the total exclusion of colored children from our common schools. . . Second, the allowance of . . inferior common school privileges, . . [273] Third, the allowance of equal common school privileges to all. . . [274] Now, under our Constitution, which declares that provision shall be made ' for the education of all the youths of the State through a system of common schools,' which . . has been effectuated by enactments providing for the ' instruction of youth between the ages of five and twenty-one years,' without regard to color or nationality, is it not equally clear that all discretion is denied to the board of school directors as to what youths shall be admitted? . . We conclude, therefore, that the law makes no distinction . . as to the right of children . . to attend the common schools, . . [275] The term ' colored race ' is . . but a synonym for African. . . if the board of directors are clothed with a discretion to exclude African children . . [276] they would have the same power and right to exclude German children . . require them to attend . . a school . . of children of that nationality, . . If the words ' colored race ' be stricken . . and the word ' English,' ' Irish,' or ' Ger-

man' inserted . . it would present precisely the same principle . . as is now presented. . . [277] it follows, that the defendants wrongfully refused her admission. . . The District Court did not err in making the mandamus peremptory. Affirmed."

State v. Keeler, 28 Iowa 551, June 1870. [552] "The defendant was indicted for the murder of a negro, whose name was . . unknown. He was acquitted, but upon the trial certain errors intervened, as is claimed by the State,"

Held: "The State insists that the court below committed two errors. The first relates to the admission of . . improper testimony. . . it is only necessary to say, that while the question asked the witness is given, the answer is not. The correctness . . of the ruling depends entirely upon the answer, and, . . we are, of course, not prepared to say that in its admission there was error. . . The record should show that the answer disclosed improper . . testimony, before error can be claimed. . . The court gave this instruction: 'The death of the negro, who fell into the river, as disclosed by the witness Rhodes, must be . . proved by direct and positive proof.' . . [553] while the proof should be clear and distinct, it is not necessary that it should be direct and positive."

Coger v. N. W. Union Packet Co., 37 Iowa 145, December 1873. [146] "Action . . to recover damages . . by plaintiff for an assault and battery . . by the officers of a steamboat . . as a common carrier . . while she was a passenger thereon, and for forcibly . . removing her from the dinner table of said boat, . . The defense pleaded . . that plaintiff is a colored woman, and that there was a custom . . of all boats of defendant, . . under which colored persons could not receive state rooms and first class privileges . . that she purchased a ticket which entitled her to the rights of a colored person . . that she purchased a ticket for meals, such as, . . were sold to [147] colored persons entitling them to meals upon the guards of the boat or in the pantry, but she returned the same and . . received back the money . . Afterward, by fraud, she purchased such a ticket as were sold to white persons; . . she seated herself at the dinner table with the white passengers . . the officers . . removed her from the table, . . There was a trial . . and a verdict for plaintiff. . . Defendant appeals."

Affirmed: "She is a quadroon, being partly of African descent, and was employed as the teacher of a school for colored children . . [148] Before the hour of dinner she sent the chamber-maid to purchase a ticket for that meal and one was brought to her with the words 'colored girl,' . . thereon. . . She returned the ticket . . and the price was repaid to her. After this she requested a gentleman to buy her a ticket for dinner, who bought her one without any indorsements . . When dinner was announced she seated herself at the ladies' table . . at a place designated for certain ladies . . She was then informed . . that she must leave the table . . She refused, . . the captain . . repeated the request, and, being denied compliance, he proceeded by force to remove her from the table . . [149] She resisted so that considerable violence was necessary to drag her out of the cabin, . . the covering of the table was torn off and dishes

broken, . . [152] the sole question . . is this: Had the defendant, . . the authority to establish and enforce regulations depriving an individual of color of the privileges . . accorded to white persons . . or . . are the rights and privileges of persons transported by public carriers affected by race or color? . . [153] In our opinion the plaintiff was entitled to the same rights and privileges . . notwithstanding the negro blood, be it more or less, admitted to flow in her veins, which were possessed and exercised by white passengers. . . If the negro must submit to different treatment, he is deprived of the benefits of . . equality. . . [154] It says to the negro, you may have inferior accommodations at a reduced price, but no others. . . The doctrines of natural law and of christianity forbid that rights be denied on the ground of race or color; . . [157] It is insisted that the rights claimed by plaintiff, . . are social, and are not, . . secured by the constitution and statutes, . . we are satisfied that the rights and privileges which were denied plaintiff are not within that class. . . [158] she was excluded from the table and cabin, . . because of prejudice entertained against her race, . . a prejudice, . . that is fast giving way to nobler sentiments, . . [159] It is also insisted that the treatment she received was justified by her bad language and improper behavior. . . [160] Whether her treatment resulted from the enforcement of such rules, or of others aimed at her exclusion on account of color, were questions for the jury. . . The judgment is therefore Affirmed."

MISSOURI

INTRODUCTION

I

The Missouri decisions [1] contain a solution of three prime problems in the history of slavery in America. The first of these is: can the descendant (in the maternal line) of an Indian woman be a slave? For Indians, unlike negroes, were presumed to be free, though the presumption might be rebutted by evidence of actual slavery; and the maxim of the civil law, *partus sequitur ventrem,* was accepted throughout the United States [2] as an axiom in the law of slavery. It has already been shown how the problem of Indian slavery was solved in Virginia.[3]

The first case in the Missouri Reports, which involves this question, was tried in 1806.[4] On May ninth of that year, "Joseph Tayon moved the general court for a warrant to apprehend" Celeste and her four children (Antoine, Paul, Sophia, and Margarette), "Catiche, Carmelite, Mazelite, La Couture, Zabelite, and another named Antoine, who, by said Tayon, were alleged to be his slaves, and running at large,[5] in the district of St. Charles . . one of the persons named . . was set free [6] from the custody of Pierre Chouteau,[7] and immediately claimed by Tayon." [8] Tayon had owned the ancestress of all these slaves, Marie Scipion, and had lent or given them to his children.[9] Celeste, who was born in about

[1] Including the federal decisions whose provenance is Missouri.

[2] Except in Maryland, 1664-1681.

[3] See introduction to the Virginia cases, I. 53, of this series.

[4] Catiche *v.* Circuit Court (p. 126, *infra*) contains a transcription of the case of Tayon *v.* Celeste.

[5] Not "runaway slaves" as Judge Tompkins calls them (*ibid.*). "neither Celeste, nor any of her children . . were ever known to have been out of the possession" of Tayon's daughter Helen Chevalier and her husband till the sheriff seized them for Tayon (Little *v.* Chauvin, p. 127, *infra*) nor could the "one named" who had been "set free from the custody of Pierre Chouteau" be deemed a runaway slave.

[6] Evidently by some judicial proceeding. See note 8, *infra.*

[7] The Chouteau family looms large in the Missouri Reports, "the first wife of Pierre Chouteau, senior, was the daughter or granddaughter [daughter is correct; granddaughter would have been too young] of Joseph Tayon, senior [8 Mo. 533]." Tayon lived at Fort Chartres, on the east bank of the Mississippi, until about 1770 [3 Mo. 570]. Chouteau came to St. Louis in 1764 [4 Mo. 583] ("about six months after the foundation of the same") [4 Howard 439], as did many of the French settlers in the present state of Illinois, after the cession to England by the treaty of 1763; and "attended Duralde . . as a student surveyor under him" at the surveying of Tayon's lots in 1770 [4 Mo. 469]. In 1800 "Peter Chouteau" ["Don Pierre Chouteau," "Don Pedro Chouteau"] is "lieutenant of militia and commandant of the fort of Carondelet, in the Osage nation," [2 Howard 346]. In 1837 he is commended as a witness by Judge McGirk: "Mr Pierre Chouteau, sen., a gentleman of intelligence, and entitled to great credit," [4 Mo. 588].

[8] "Where one has been declared free, the petition must be made by some claimant not a party to the former claim." 1 Mo. 608 (610), 1806.

[9] He could not sell them after O'Reilly's proclamation in 1769. See p. 107, *infra.*

1777, had been placed, when seven or eight years old, in the possession of his daughter, Helen Chevalier, and her husband, and in 1799 or earlier the rest of Tayon's eight children received their share.[10] In 1806, after one of these slaves has been "set free from the custody of Pierre Chouteau" and as Chouteau cannot claim the slave again,[11] Tayon construes his distribution of these slaves as a loan, not a gift,[12] to his children, for he does not wish them lost to the family. After filing security, [610] "conditioned to keep the said slaves subject to the order of this court, upon investigation," the warrant issued in these words: [627] "United States, territory of Louisiana—the United States to the Sheriff of the district of St. Charles, greeting: we command you that you apprehend Celeste, Catiche, Carmelite, Mazelite, La Cantue, another named Antoine, and Zebite, reputed slaves of Joseph Tayon, . . and them deliver into the custody of the said Joseph Tayon, there to remain and abide the determination of the general court of the territory of Louisiana: given under our hands and seals,[13] this ninth day of May, one thousand eight hundred and six, . . R. J. Meigs, (seal;) John B. C. Lucas,[14] (seal;)" The sheriff "took the said Celeste, together with her children, Antoine, Paul, Sophia, . . and Margarette, out of the possession" of Helen Chevalier [15] and delivered them to Tayon.[16] Catiche and the rest were likewise delivered to Tayon,—at least as many as were plaintiffs with Catiche in 1826.[17] They [612] "next appear in court as suitors"—a proceeding declared by Judge Tompkins, in 1826, to have been [613] "null and void," for after the slaves had been delivered to Tayon, the "force [of the warrant] is lost." [18] An attorney appeared for the reputed slaves and demanded a jury. [610] "A jury is summoned, and they find a verdict, in these words: . . 'that the persons claimed . . are really slaves, the property of the plaintiff,' . . [611] the court made an order,[19]

[10] In 1799 "Tayon presented a petition to the then lieutenant governor, representing that his wife was dead, and that he was aged and infirm and unable to manage his affairs, and wished to divide immediately all his property among his eight children," Little *v.* Chauvin, p. 127, *infra.*

[11] P. 105, note 8, *supra.*

[12] The court in 1826 was not satisfied with that construction. Little *v.* Chauvin, p. 127, *infra.*

[13] As the warrant did not [612] "bear teste in the name of the presiding judge" and was not sealed with the judicial seal of the court, it was held "not a judicial act, nor anything like a judicial act, and gave no authority whatever to the officer or person to whom it was directed." Little *v.* Chauvin, *ibid.*

[14] Judge Lucas testified in regard to these matters twenty years later. Marguerite *v.* Chouteau, p. 132, *infra.*

[15] Her husband had died in 1801.

[16] Shortly after, Sophia "was sold by the said Tayon, at the church door in the town of St. Louis" and came eventually into the possession of Little. In 1817 she was restored to the possession of Madame Chevalier, by virtue of a writ of replevin, and in 1826 the Supreme Court reversed the judgment of the lower court in favor of Little's administrator. Little *v.* Chauvin, p. 127, *infra.*

[17] Catiche *v.* Circuit Court, p. 126, *infra.*

[18] See note 7, *supra.*

[19] June 6, 1806.

that the plaintiff have the full benefit of his verdict," In this trial "the pedigree of the defendants in that court came directly in question." [20] They were "the children of Marie Scipion [21] . . Marie Scipion's mother was an Indian woman of the Natchez tribe; that she was brought [about 1731] to Fort Chartres" [71] "where she was sold as a slave" [73] "after the defeat of the Natchez Indians by the French, about the time of the massacre" [22] [71] "a negro man named Scipion was supposed to be the father of Marie Scipion;" Marie Scipion was bought by the mother of Mrs. Joseph Tayon and given to her daughter, so that she "belonged to and lived with Joseph Tayon . . from the time of his marriage" Sebastian Pratte who went to Fort Chartres in 1756 or 1757 and lived in Tayon's family [73] "observed in the family . . a Negro woman named Mary, an Indian woman called Marie Louise with her two children, and a girl called Scipion about ten or twelve years old of age, treated and well known as a slave, that he knew her in Tayon's possession for several years after his removal to St. Louis," Soon after his removal news came of a proclamation issued in December 1769 by the Spanish [23] governor O'Reilly at New Orleans, a proclamation which raised consternation in the hearts of the owners of Indian slaves. It ordered "that the actual proprietors of . . Indian slaves shall not dispose of those whom they hold in any manner whatsoever unless it be to give them their freedom. Awaiting the orders of his majesty on this subject we enjoin upon the said proprietors to go and make their declaration at the office of the recorder by giving the name and the nation of said Indians, and the price at which the proprietors shall value them." [24] Tayon's daughter "read the ordinance to her father, and conversed with him on the risk he ran of loosing his Indian slaves,[25] and that she remembered he sold one of these slaves and was compelled to take it back and hush it up, lest he should be fined under the ordinance; that she remembered to have heard her father say after the publication of the ordinance, that Marie Scipion and her children would be free at his death in consequence of that ordinance." Jean B. Reviere "understood

[20] Testimony of Judge Lucas, one of the signers of the warrant in 1806. Marguerite *v.* Chouteau, p. 132, *infra*.

[21] The testimony given in the various trials involving the history of Marie Scipion and her descendants is here given chronologically, irrespective of date of the cases in which it was reported.

[22] The Natchez tribe had massacred many of the French and had been nearly exterminated in requital. Three hundred of the tribe who survived were sent to Santo Domingo to be sold as slaves. Seville *v.* Chretien, 5 Mart. La. (O. S.) 275 (288). A few seem to have been left behind who were sold as slaves along the Mississippi.

[23] "the province of Louisiana was ceded by France to Spain, in 1763, by a secret treaty, but no effectual possession of the country was taken, until the arrival of Governor O'Reilly, in 1769." *Ibid.* p. 284. The secret treaty of Fontainebleau was signed November 3, 1762. The cession was confirmed in the definitive treaty of 1763.

[24] From the copy of O'Reilly's proclamation, furnished by counsel for Chouteau in Marguerite *v.* Chouteau, p. 132, *infra*.

[25] Aikin and Julien, the children of his Indian slave, Marie Louise, "ran away and passed for freemen at the commencement of the Spanish Government; that they went to New Orleans after the publication of an Ordinance of O'Reilly the Spanish Governor of Louisiana," Deposition of Madame Chauvin, Marguerite *v.* Chouteau, p. 132, *infra*.

Joseph Tayon to say that Marie Scipion lived in his family of her own free will and consent, because she was well treated and chose to remain with him, and that the said Marie Scipion and her children were at liberty to leave him at any time they pleased, but if they chose to remain till his death they should never serve any body." [26] But Tayon lived to a ripe old age. As the danger lurking in O'Reilly's proclamation passed with the recession of Louisiana to France, he saw no necessity of freeing Marie Scipion and her children at all. We know the dates of birth of three of her children: Celeste in 1777,[27] Catiche in 1782,[28] Marguerite in 1788.[29] As Catiche was born " at Pra[i]rie du Rocher, in that part of the late northwestern Territory which now forms part of the state of Illinois," [28] Tayon must have permitted Marie Scipion to return to the neighborhood of her old home,[30] or even encouraged her to stay there during the " troublous times " of the Spanish regime.[31] But after Congress passed the Ordinance of 1787, the Illinois bank of the Mississippi may not have seemed so safe for slavery as the opposite shore, and Marie Scipion was brought to St. Louis. In 1801 she was living in " the house of Mr. Chouteau, (where Tayon then lived,)" from which " she was removed sick " to the house of Madame Chauvin (a daughter of Tayon) " where she died in June 1802, aged about sixty years; " [32] The United States purchased Louisiana in 1803, and in 1806, a court of the Territory of Missouri (which had been carved out of the Purchase), having set one of the Indian slaves free from the custody of Pierre Chouteau, Tayon, as has been shown, decided to " round up " his family of Indian slaves who were " running at large " [33] and quiet his title to them. And it is quieted for many years, after the trial of 1806.[34]

In 1825,[35] " Catiche [36] and others " applied to the circuit court of St. Louis county " for leave to sue in that court, as paupers, for their

[26] *Ibid.*

[27] She was twenty-two years old in 1799, Little *v.* Chauvin, p. 127, *infra.*

[28] Theoteste *v.* Chouteau, p. 135, *infra.*

[29] Marguerite *v.* Chouteau, p. 132, *infra.* According to the first edition, which is printed " from a copy made out from the transcript of the Clerk, by one of the Judges of the Supreme Court." The transcript of the Clerk (followed in the second edition) gives 1778 as the date of Marguerite's birth.

[30] Prairie du Rocher is about four miles from the site of Fort Chartres which had been demolished in 1772. Tayon had declared that Marie Scipion was " at liberty to leave him at any time " she pleased.

[31] Tayon himself may have returned temporarily to the east side of the Mississippi: "A few years after the massacre [in 1780], the people generally left their lands [in and near St. Louis] for fear of the Indians." Hill *v.* Wright, p. 141, *infra.*

[32] Marguerite *v.* Chouteau, p. 132, *infra.*

[33] This must be a legal fiction as to some of them at least. See p. 105, note 5, *supra.* At any rate he had given them permission to go and come as they pleased.

[34] Pp. 105-107, *supra.*

[35] Catiche *v.* Circuit Court, p. 126, *infra.*

[36] Catiche (*alias* Theoteste) is the prominent member of this group of slaves. Her name heads the list of these slaves who are petitioners in 1825 for leave to sue for freedom, and plaintiffs in 1826 in the suit against the Circuit Court (*ibid.*). She is the only one of them all whom we know to have had two possible grounds on which to sue for freedom: descent from an Indian woman and birth in the Northwest Territory. Theoteste *alias* Catiche *v.* Chouteau, p. 135, *infra.*

freedom.[37] This leave being refused, . . a writ of *mandamus* was ordered to the circuit court, commanding it to admit the plaintiffs, or to shew cause." The circuit court declared that the records of the case of 1806 showed that "the absolute slavery" of the petitioners was established. The Supreme Court decided that those proceedings were [613] "without any legal authority, and consequently null and void. . . that a person held in bondage, should be compelled to come into court, and say he is free, and this to be done, too, at the instance of a person claiming his services, appears somewhat strange," says Judge Tompkins. "Let a peremptory *mandamus* go." The result of the leave to sue, so extorted, is seen in suits for freedom brought soon after by Catiche (*alias* Theoteste) and by Marguerite, the sister of Catiche and of Celeste.

Marguerite sued Pierre Chouteau [38] for her freedom on the ground of her descent in the maternal line from an Indian woman, the Natchez captive, who was her grandmother. There was testimony as to the enslavement of Indians by the French. One witness (Sebastian Pratte) deposed [74] "that there were at Fort Chartres [in 1756 or 1757] and elsewhere through the country a great many Indian slaves and but few blacks; that the Indians were universally acknowledged as slaves, and frequently sold as such before the Governor; that he himself sold several, one to . . the English Commandant at Kaskaskia; . . that a majority of the Indians held as slaves, were brought down the Missouri by the traders, and were of different nations; that there were many Indian slaves in St. Louis after its establishment, and but few blacks." [39] The judgment of the lower court was in favor of Chouteau, and Marguerite appealed to the Supreme Court of Missouri. Judge Tompkins was of the opinion that the judgment of the Circuit Court ought to be reversed. He bases his opinion largely on the histories of Du Pratz and of Raynal: [90] "all the posts established by the French in North America were designed to secure to themselves the commerce and friendship of the Indian tribes, and that an Indian slave population in Louisiana was unknown to the author [Raynal] cited by the appellee. I conclude then, that such a population was unknown to the laws and government of France. . . [91] Had it been in evidence that the ancestor of the plaintiff was one of the 300 Indians sent by Perier into St. Domingo as slaves, I should have thought the plaintiff was lawfully held in slavery." Judge Wash was of the opinion that the judgment of the lower court should be affirmed: [91] "I consider it as clearly settled by the testimony, that the maternal grandmother of the plaintiff was a Natchez woman taken prisoner by the French in the prosecution of an exterminating war against that tribe

[37] Under the statute of 1807 (Geyer 210), which was re-enacted in 1824. Rev. Code 404.
[38] Marguerite *v.* Chouteau, pp. 132, 143, *infra*.
[39] As late as 1807, Timothy Phelps writes from Louisville to Moses Austin: "I have it in contemplation to purchase a negro wench about 15 years old, . . You know there is no such thing as getting a servant of that kind in Louisiana." Barker, *Austin Papers*, pt. I, p. 142.

about the year 1731—that she was reduced to slavery, and that she and her descendants have been held in slavery ever since. . . [93] Indian slavery . . should be placed upon the same footing with negro slavery. . . There being a division of the court,[40] by operation of the law, the judgment of the circuit court [in favor of Chouteau] is affirmed." This is in 1828. Marguerite having been unsuccessful in obtaining freedom on the ground of descent from an Indian woman, her sister Catiche (Theoteste) brings her suit against Chouteau [41] on a different ground: her birth and residence in the Northwest Territory.[42] In the lower court there was judgment for Chouteau, and the Supreme Court affirmed this judgment in 1829. Judge Tompkins, whose opinions are usually on the side of freedom, declares that the right of property in Catiche is vested at her birth in 1782, and that "it cannot be supposed Congress [by the Ordinance of 1787] intended" to violate the provision of Virginia's act of cession "that the inhabitants [of the ceded territory] shall be protected in the enjoyment of their rights and liberties," [43] But all is not lost.

In 1833 the parties in the case of Marguerite *v.* Chouteau appeared before the Supreme Court by their counsel and "mutually agreed that the judgment in this cause before rendered in this court, should be set aside, and that it should be again argued before the court, consisting of all the Judges." [44] Judge Tompkins delivered the opinion of the court, Judge McGirk concurring. He amplified his former opinion that Indians were not slaves under the French and Spanish régimes, and criticized the decision in Seville *v.* Chretien,[45] the famous Louisiana case, which he "particularly examined," [46] consuming 27 printed pages in so doing. [571] "the decision of this cause [Marguerite *v.* Chouteau] is . . important in its consequences; and in deciding contrary to the opinion of the highest court of judicature of a sister State.[47] We have the misfortune not to be able to concur all [48] in the same opinion." The judgment of the Circuit Court in favor of Chouteau was reversed, and the cause remanded. Judg-

[40] Judge McGirk was absent.
[41] Theoteste *alias* Catiche *v.* Chouteau, p. 135, *infra*.
[42] "The plaintiff was born in the year 1782, at Pra[i]rie du Rocher, in that part of the northwestern Territory which now forms part of the state of Illinois;" *Ibid.*
[43] 1 U. S. L. 473.
[44] Marguerite *v.* Chouteau, p. 143, *infra*.
[45] 5 Mart. La. (O. S.) 285 (1817).
[46] 3 Mo. 544-571.
[47] Louisiana.
[48] Judge Wash dissented, holding to his former opinion: [574] "The evidence derived from the old archives of the country—the registers of baptisms and burials—the records of voluntary sales, and of the sales and distributions made of the estates of intestates with the clear and positive testimony of witnesses sworn in this cause, exhibit beyond doubt or question, numerous cases of Indian slavery commencing with the earliest settlement of the colony and continuing after the period when the Spaniards assumed the Government in 1769. . . [576] To regard the question then, as one to be settled by the laws which were in force prior to 1769 when Spain took possession of Louisiana, I can feel no doubt and the practice is shown to have been pursued and recognized by the Spaniards, under neither of the governments that have preceded us, could the plaintiff have asserted successfully her claim to freedom."

ment was rendered in favor of Marguerite, and Chouteau sued out a writ of error to the Supreme Court of the United States, but the writ was dismissed for lack of jurisdiction.[49]

After disposing of the question of Indian slavery in Louisiana under France and Spain the Missouri courts wrestled for seventeen years with another problem as distant in time and more remote in space: Did negro slavery exist in Canada in 1768?[50] In that year a negress, Rose, was born in Montreal. "about the year 1791, the said Rose was removed from Canada by a certain John Stock, an Indian trader, to [Mackinaw[51] and later to] his trading post at Prairie du Chien, in the northwestern territory . . where she was detained by him as his slave until his death, some time in the year 1793;"[52] or "1794, rendering service to him and his family."[53] "after the death of said Stock, she (Rose) was brought down to St. Louis by a certain Andrew Todd, a trader,[54] who sold her [in October 1795] as a slave to a Mr. Didier,"[55] [196] "curate of the parish of St. Louis, . . [199] by formal conveyance executed before the Lieutenant Governor of Upper Louisiana and authenticated by him,"[56] "Didier sold her and her children [in 1798] to the defendant's father, Auguste Chouteau."[56] "During the period of Rose's detention at Prairie du Chien, that post was in the possession of British subjects. . . The defendant below [Chouteau] gave evidence tending to show the actual existence of slavery in Canada in the year 1786 [1768][57]—that slaves were recognized as property and subject to be sold; that Rose, the mother of Pierre, was sold as a slave in Canada."[53] It was held, in 1845, in Pierre's case[53] that "the ordinance of 1787 . . never had any force or validity in the posts . . occupied by Great Britain. . . the mother of the plaintiff Pierre, was taken from Prairie du Chien to St. Louis before the period assigned for the surrender of the posts."[58] The court also declared that [8] "The

[49] Choteau *v.* Marguerite, p. 152, *infra.*

[50] The historical information contained in Charlotte *v.* Chouteau (p. 203, *infra*), concerning slavery in Canada in the eighteenth century, was considered of sufficient importance to cause the Lower Canada Jurist, in 1860 (III. 257) to print the whole report from a transcript certified by the clerk of the Supreme Court of Missouri, under the title "Slavery in Lower Canada."

[51] Charlotte *v.* Chouteau, p. 174, *infra.*

[52] Same *v.* same, p. 194, *infra.*

[53] Chouteau *v.* Pierre, p. 162, *infra.*

[54] "Andre Todd, a merchant of Montreal," [Charlotte *v.* Chouteau, p. 174, *infra*] "who had the monopoly of the Indian trade on the Mississippi." [Chouteau *v.* Molony, 16 Howard 203 (210)]

[55] Same *v.* same, p. 194, *infra.*

[56] Same *v.* same, p. 174, *infra.*

[57] Rose was about twenty-seven years old in 1795. Charlotte *v.* Chouteau, p. 174, *infra.*

[58] [10] "the northwestern posts were not, until after 1st June, 1796, surrendered by Great Britain—that her subjects within them owed no allegiance to our government—that they were protected in the enjoyment of their property," See also speech of George Washington, December 7, 1796. 1 American State Papers, Foreign 30.

statute under which Pierre sues, he being a negro, requires that he should prove his right to freedom. Then it would seem that it devolved on him to show the law forbidding negro slavery [in Canada]; for . . a court would not be warranted in saying, that institution was illegal in places where it actually existed, for want of a law expressly authorizing it." The judgment of the lower court in favor of Pierre was reversed and the cause remanded. Then Charlotte begins her fight for freedom. Rose's residence at Prairie du Chien is not stressed, as that fact was definitely settled in Pierre's case to be no ground for freedom; but in four volumes of the Missouri reports, beginning in 1847 and not ending till 1862, the battle of the lawyers, juries and judges rages over the question of the existence of slavery in Canada when Rose was born and lived there. The juries persisted in finding that slavery did not exist then and there,[59] in spite of the contrary evidence of treaties, proclamations, acts of Parliament, and the depositions of learned Canadian jurists.[60] All the judges in 1857 agreed that " negro slavery was sanctioned and permitted by law in the country called the province of Quebec (which includes Montreal) at all times from the year 1760 to the year 1790," but Judge Scott dissented from the decision of the other two (Richardson and Napton) to reverse the judgment of the lower court in favor of Charlotte and remand the cause: [484] "As the jury have found the fact,[61] whose exclusive province it was to do so, the practice of this court, now established for a number of years, forbids that a judgment should be reversed because a verdict is against the weight of evidence." The last trial in the lower court took place in 1859, resulting again in a verdict and judgment for Charlotte. Chouteau again appealed, and in 1862 Judge Scott's opinion (of 1857) was followed by the new bench of justices [62] which replaced the old,[63] whose members had forfeited their offices for failing to take the oath to support the Constitution of the United States.[64] The judgment in favor of Charlotte was affirmed. The court admitted that the judgment [201] " was founded upon a verdict which was rendered against the weight of the evidence. Notwithstanding that we might believe that the verdict should have been rendered for the defendant [Chouteau], yet the practice is so well established, not to reverse a judgment because the verdict appears to have been rendered against the weight of evidence, that we will not,

[59] " The existence of a foreign law was a question of fact, to be tried by a jury." Charlotte *v.* Chouteau, p. 216, *infra*.

[60] Same *v.* same, p. 203, *infra*.

[61] That negro slavery was not permitted by law in Canada from 1760 to 1790.

[62] Judges Bates, Bay, and Dryden.

[63] Judges Scott, Napton, and Ewing.

[64] Prescribed by the " People of the State of Missouri in Convention assembled." 31 Mo. iv.

for that cause, interfere in this case." [65] Charlotte won her freedom seventeen years after the Supreme Court had decided adversely to Pierre. In 1862 the question whether slavery existed in Canada in 1768 was becoming academic.

But the supreme question which agitated Missouri and which culminated in the Dred Scott Decision was the one which was settled in England in 1827 by Lord Stowell in his decision of the case of the Slave Grace.[66] Does a slave who sets foot on free soil [67] become free forever? [68] In Missouri, for many years, this question was answered: Yes, if his stay was such that the ordinance of 1787, the constitution of Illinois or the Missouri Compromise Act was violated.

The first case in the Missouri reports in this connection of which any detailed facts are given, is "an action of assault and battery, and false imprisonment," brought by "Winny, a free woman held in slavery," a unique description in the heading of a slave state report.[69] Near the close of the eighteenth century she had been brought by the defendant, Phebe Whitesides and her husband "from Carolina to Illinois, . . where they resided about three or four years, retaining the plaintiff, during the term of their residence in Illinois, in slavery, *in Illinois*." [70] From Illinois, the defendant and her then husband removed to Missouri, bringing with them the plaintiff in this action, and still holding her as a slave." The

[65] Same *v.* same, p. 216, *infra*.

To assist the layman in threading the maze of these cases, the following brief summary is given:

A. Pierre's case:
   1. Pierre wins in lower court; Chouteau appeals.
   2. Chouteau wins in the Supreme Court of Missouri, 1845 (9 Mo. 3).

B. Charlotte's case:
   1. Chouteau wins in lower court; Charlotte appeals.
   2. Reversed by Supreme Court in 1847 (Charlotte wins), and cause remanded (11 Mo. 193).
   3. Chouteau wins in lower court in 1853; Charlotte appeals.
   4. Reversed by Supreme Court in 1855 (Charlotte wins), and cause remanded (21 Mo. 690).
   5. Charlotte wins in lower court; Chouteau appeals.
   6. Reversed by Supreme Court in 1857 (Chouteau wins), and cause remanded (25 Mo. 465).
   7. Charlotte wins in lower court in 1859; Chouteau appeals.
   8. Affirmed by Supreme Court in 1862 with final victory for Charlotte (33 Mo. 194).

[66] 2 Hagg. Adm. 94.

[67] The soil of France as well as that of England was a specific for slavery. "Il [l'esclave] s'est toujours regardé comme libre, depuis qu'il a mis le pied en France." 13 Causes Célèbres 492 (ed. of 1747).

"Being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery." Marie Louise *v.* Mariot, 8 La. 475 (1836). This virtue was denied to the soil of Illinois by the Missouri court, in Nat *v.* Ruddle, p. 143, *infra*.

[68] "Once free for an hour, free forever." See introduction to English cases, vol. I., p. 1, of this series.

[69] Due probably to Judge Tompkins (who delivered the opinion of the court), "that apostle of freedom at that day. Indeed, it is fair to presume . . that he was deeply tinged with sentiments and opinions dangerous to the existence of that 'peculiar institution' known as domestic slavery." Counsel for Mrs. Emerson in Scott *v.* Emerson, p. 185, *infra*.

[70] Italics in the original report.

circuit court gave judgment in favor of Winny in 1822 and the Supreme Court affirmed the judgment in 1824.[71] [474] " Congress had both power to acquire the [Northwest] territory, and to forbid the introduction of slaves. . . [475] We are clearly of opinion, that, if by a residence in Illinois, the plaintiff in error [Mrs. Whitesides] lost her right to the property in the defendant, that right was not revived by a removal of the parties to Missouri. It was urged . . that the slaves of persons settling in that country, do not thereby become free. The words of the ordinance are, ' that there shall be neither slavery nor involuntary servitude in the said territory.' We did not suppose that any person could mistake the policy of congress, in making this provision. When the states assumed the right of self government, they found their citizens claiming a right of property in a miserable portion of the human race. Sound national policy required, that the evil should be restricted, as much as possible. What they could, they did. They said, by their representatives, it shall not vest within these limits, and by their acts for nearly half a century, they have approved and sanctioned this declaration. . . [476] the person who takes his slave into said territory, and by the length of his residence there, indicates an intention of making that place his residence and that of his slave, . . does, by such residence, declare his slave to have become a free man." [72]

The next case based on the Ordinance of 1787 was a suit brought by John Merry against his owners, Tiffin and Menard.[73] His mother had been " holden as a slave, in the territory north-west of the river Ohio, in that part now called Illinois, and . . after said ordinance, . . was still holden in Illinois as a slave; and while so holden, and about 36 years past, in the Illinois, John was born; and that he was holden there as a slave, till lately." " John is free," declared Chief Justice McGirk in his opinion: " The ordinance is positive, that slavery cannot exist; . . it is contended by the counsel of the defendants, . . that when we look at the cession act of Virginia, and the whole of the ordinance, that there is much room to doubt if these general positive words, ought not to be understood as to admit those who were slaves in that country, at the adoption of the ordinance, and their descendants, to continue so; because the ordinance says, in another place, that the inhabitants shall be protected in the just preservation of their rights and property, and that, by the act of cession of Virginia, it is stipulated, that the inhabitants shall be protected in the enjoyment of their rights and liberties: [74] . . This man was not then born, and when he was born into existence, the law forbid slavery to exist; and

[71] Winny *v.* Whitesides, p. 125, *infra.*

[72] Judge Tompkins.

[73] John Merry *v.* Tiffin and Menard, p. 128, *infra.* See the similar case of Menard *v.* Aspasia, 5 Peters 505.

[74] 1 U. S. L. 473.

at the time of the making of the cession act, this man, John, was not property; and at the time of his birth, he could not be property. There is nothing in the cession act, forbidding congress to fix and point out things which might afterwards be the subject of property."

In 1828 it was held that "the owner of a slave, who is merely passing through the country with him, or who may be resident in Illinois and may choose to employ him in Missouri in mining, or as a sailor, or boat hand . . in boats or vessels that occasionally lade and unlade their cargoes at some port or place within the state [of Illinois], though he may not do much in 'extending the fundamental principles of civil and religious liberty' certainly, does nothing towards engrafting slavery upon the social system of the state. . . The ordinance was intended as a fundamental law, for those who may choose to live under it, rather than as a penal statute to be construed by the letter against those who may choose to pass their slaves through the country." [75]

Theoteste *alias* Catiche did not obtain freedom in 1829 as her birth in the Northwest Territory took place before the passage of the Ordinance of 1787.[76] Judgment in favor of Adam's freedom was affirmed in 1829 as he had lived in 1810 with his master "at the United States Saline in the state of Illinois;" [77] the master removing with Adam to Missouri in 1817. It was held in 1830 that Vincent, who "had been hired [by his master, a resident of Kentucky] to labor at the Illinois Saline near Shawneetown, from the year 1817 till the year 1825" when he "was taken and carried bound to Kentucky:" and later to St. Louis, was entitled to his freedom, because he "resided at the Ohio Saline [in Illinois] as a laborer in 1817, by the consent of his master,"—before the adoption of the Constitution of Illinois, which permitted the hiring from year to year of a slave to work at the Saline.[78]

"Ralph a man of color," formerly the slave of Gordon, "hired his own time, and went to the [Ohio] Saline [in Illinois] of its [his] own accord." He worked there "occasionally . . from the year 1814 or 15," till 1818 or 1819. In his suit for freedom judgment was against him in the Circuit Court, but reversed in the Supreme Court in 1833: [195] "The object of the ordinance of 1787, was to prohibit the introduction of slaves into the Territory of which the present State of Illinois constitutes a part, and the master who permits his slave to go there to hire himself, offends against that law as much as one who takes his slave along with himself to reside there," [79] A few months later Julia, a slave who was brought by her mistress from Kentucky in 1829 and kept in Illinois a few weeks (during which time she was hired out there for about two days) on her way to be hired out in Missouri, won her freedom on appeal to the Supreme

[75] Judge Wash in François Lagrange *v.* Chouteau, p. 129, *infra.*
[76] Theoteste *v.* Chouteau, p. 135, *infra.*
[77] Tramell *v.* Adam, p. 136, *infra.*
[78] Vincent *v.* Duncan, p. 137, *infra.*
[79] Judge (Tompkins) in Ralph *v.* Duncan, p. 139, *infra.*

Court.[80] Her claim was based [272] "on the 6th article of the constitution of the State of Illinois, . . the very introduction of slavery, works an emancipation of the slave, . . [273] yet it can be introduced so far as to permit persons passing through the State, as mere emigrants or mere travellers, to carry with them their slave property, . . otherwise there could be no emigration through the State with slave property, which is a thing it cannot reasonably be supposed the constitution of Illinois intended to forbid. . . Something more than the mere convenience . . of the emigrant ought to intervene to save him from a forfeiture. Something of the nature of necessity . . swollen streams of water . . serious sickness of the family, broken wagons, and the like . . would be a good cause of delay . . if the journey is resumed as soon as these impediments are removed, provided also due diligence is used to remove them. . . [273] Unless, therefore, the case can be brought within some reasonable and equitable exception, to be engrafted on the constitution of Illinois, the plaintiff will be entitled to exact the forfeiture of emancipation, . . in this case . . slavery is introduced and continued for the mere convenience of the owner." [81] Nat did not win freedom in 1834, because he "ran-away from Missouri" where he was hired out, and went to his master's home in Illinois. The court charged the jury "that there was nothing in the soil of Illinois as in England that would work the emancipation of a slave by mere setting foot thereon, and that if the plaintiff went into that State on a mere voluntary visit, or ranaway from Missouri to that State he would not thereby be entitled to freedom." [82]

The case of Rachel,[83] decided in 1836, was almost precisely like the case of Dred Scott which came up to the Supreme Court of Missouri sixteen years later. Stockton, an officer of the United States army, stationed at Fort Snelling, "on the west side of the Mississippi river, and north of the State of Missouri, and in the territory of the United States" sent to St. Louis in 1830 to purchase a slave. Rachel was bought for him and taken to him at Fort Snelling where she remained "till the fall of 1831, when he removed to Prairie du Chien [in the Michigan territory], . . at which place he held her in slavery, till about the spring of the year 1834, when he took her to St. Louis and sold her." The judgment of the Circuit Court in favor of Rachel's owner was reversed and the cause remanded for a new trial. Judge McGirk exclaims: [352] "It seems that the ingenuity of counsel and the interest of those disposed to deal in slave property, will never admit anything to be settled in regard to this question." He reviews the Missouri decisions, all of which admit [353] "that the people of the United States have a right to pass through any of the districts where slavery is prohibited with their slaves, and while they

[80] Julia *v.* McKinney, p. 141, *infra.*
[81] Wash, J.
[82] Nat *v.* Ruddle, p. 143, *infra.*
[83] Rachel *v.* Walker, p. 148, *infra.*

justly retain the character of emigrants passing through the country, the fact that they have in their possession, when so passing slaves, does not emancipate them under the ordinance; . . In the case of Julia [84] . . the court say there should be something like necessity existing, to justify the owner of a slave to keep such slave in the country, so as to save a forfeiture. The counsel insist on a necessity as regards the owner to stay . . in the Missouri territory and Michigan for more than two years, and during all that time to keep the plaintiff there as a slave . . [354] though it be true that the officer was bound to remain where he did, . . yet no authority of law or the government compelled him to keep the plaintiff there as a slave. . . In this case the officer lived in the Missouri territory . . sent to a slave holding country and procured her [Rachel] . . without any other reason than that of convenience, and he and those claiming under him must be holden to abide the consequence of introducing slavery both in Missouri territory and Michigan, contrary to law." Otherwise " the convenience or supposed convenience of the officer repeals as to him and others who have the same character, the ordinance and the act of 1821 admitting Missouri into the Union, and also the prohibitions of the several laws and constitutions of the non slave holding States." Judge McGirk hit the nail on the head. Chief Justice Taney, twenty years later, did not hesitate to drive it in, but in a different direction.

In 1837 Melvin who had removed with his slaves to Missouri from Tennessee in 1834 and on the way stayed nine months with his son in Illinois where he " made a crop of corn, and remained in the State to gather and sell it " forfeited his slave Wilson,[85] although he took the precautions not to unload his wagon for about a month after reaching Illinois, " till the negroes were taken to St. Louis, because the appellee [Melvin] was told ' if he did, and made any place their home,' the slaves would obtain their freedom." Judge Tompkins, delivering the opinion of the court reversing the judgment of the lower court in favor of Melvin, says: [598] " The only question to be submitted to the jury . . was, whether he [Melvin] had made any unnecessary delay? " [597] " Something of the nature of necessity should exist before he would, or ought, to be exempted from the forfeiture [of his slave]."

And so the matter rests for over ten years. In 1848 the first " small cloud " of the gathering storm is described. Dred Scott and Harriet, his wife, appear in the law reports for the first time, in two brief decisions on the same page, Harriet preceding with eleven lines,[86] Dred following with two.[87] Before the final curtain falls on Dred, over 250 pages of state and federal reports will have been devoted to his cause. The first decisions involve a technicality which is summarily disposed of. Mrs. Em[m]er-

[84] Julia *v.* McKinney, p. 141, *infra.*
[85] Wilson *v.* Melvin, p. 150, *infra.*
[86] Emmerson *v.* Harriet, p. 175, *infra.*
[87] Emmerson *v.* Dred Scott, *ibid.*

son's writs of error are dismissed as premature as the causes are "still pending in the court below." In the court below where Dred Scott had instituted an action "to try his right to freedom" he obtained a verdict,[88] in accordance with the instructions of the court, which followed the Missouri precedents, Dred Scott's claim to freedom being based on the fact that his late master, Dr. John Emerson, "held him in servitude in the State of Illinois, and also in that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36 degrees 30 minutes, north latitude, not included within the limits of the State of Missouri. It appears that his late master was a surgeon in the army of the United States, and during his continuance in the service was stationed at Rock Island,[89] a military post in the State of Illinois, and at Fort Snelling,[89] also a military post in the territory of the United States, above described, at both of which places Scott was detained in servitude—at one place, from the year 1834, until April or May, 1836; at the other from the period last mentioned, until the year 1838. . . The defendant [90] moved for a new trial on the ground of misdirection by the court, which being denied to her," she again sued out a writ of error. The Supreme Court of Missouri, in 1852, reversed the judgment of the lower court and remanded the cause.[91]

The way had been paved, two years before, in the Supreme Court of the United States, for this overruling of the long line of Missouri decisions which had been made in accordance with the Ordinance of 1787, the constitution of Illinois, and the Missouri Compromise. In the case of Strader *v.* Graham,[92] Chief Justice Taney, in delivering the opinion of the court, had declared that [94] "the condition of the negroes [who had been sent by their master from Kentucky to Ohio for musical training], as to freedom or slavery, after their return [to Kentucky], depended altogether upon the laws of that State, and could not be influenced by the laws of Ohio. . . The Ordinance [1787] . . if still in force,[93] could have no more operation than the laws of Ohio in the State of Kentucky," Accordingly, Judge Scott, in delivering the opinion of the Supreme Court of Missouri, in the case of Scott *v.* Emerson,[94] declares:

[583] "No State is bound to carry into effect enactments conceived in a spirit hostile to that which pervades her own laws. . . [585] Laws operate only within the territory of the State for which they were made, and by enforcing them here, we, contrary to all principle, give them an extraterritorial

[88] Scott *v.* Emerson, p. 185, *infra.*

[89] "the officer goes to his post for a temporary purpose, to remain there for an uncertain time, and not for the purpose of fixing his permanent abode." Nelson, J., in Scott *v.* Sandford, 60 U. S. 393 (468). But see Rachel *v.* Walker, p. 148, *infra.*

[90] "Irone Emerson, the wife and administratrix of Dr. John Emerson."

[91] Scott *v.* Emerson, p. 185, *infra.*

[92] See vol. I., pp. 365-369, of this series.

[93] Judge Taney adds: "But it has been settled by judicial decision in this court [Permoli *v.* Municipality, 3 Howard 589], that the Ordinance is not in force."

[94] P. 185, *infra.*

effect. . . There is no ground to presume or to impute any volition to Dr. Emerson, that his slave should have his freedom. He was ordered . . to the posts . . In States and Kingdoms in which slavery is the least countenanced, and where there is a constant struggle against its existence, it is admitted law, that if a slave accompanies his master to a country in which slavery is prohibited, and remains there a length of time, if during his continuance in such country there is no act of manumission decreed by its courts, and he afterwards returns to his master's domicil, where slavery prevails, he has no right to maintain a suit founded upon a claim of permanent freedom.[95] This is the law of England, where it is said her air is too pure for a slave to breathe in, and that no sooner does he touch her soil than his shackles fall from him. . . [586] Times now are not as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose invitable consequence must be the overthrow and destruction of our government. Under such circumstances it does not behoove the State of Missouri to show the least countenance to any measure which might gratify this spirit. She is willing to assume her full responsibility for the existence of slavery within her limits, nor does she seek to share or divide it with others. Although we may, for our own sakes, regret that the avarice and hard-heartedness of the progenitors of those who are now so sensitive on the subject, ever introduced the institution among us, yet we will not go to them to learn law, morality or religion on the subject."

The case being remanded to the Circuit Court, it was " continued " in that court " to await the decision of the case " of Dred Scott against Sandford [96] to whom Mrs. Emerson had, in the meantime, sold Dred, Harriet, and their two children. This was " a fictitious sale " which had been " arranged by Mrs. Emerson (who had then become the wife of a strong abolitionist member of Congress from Massachusetts, Dr. C. C. Chaffee) to her brother, John F. A. Sandford of New York," [97] to enable Dred to bring a new suit in a federal court, on the ground of diverse citizenship. " In November, 1853, noted anti-slavery lawyers in St. Louis instituted in the United States Circuit Court, on his behalf, a suit for trespass " [98] *vi et armis.* Sandford appeared and filed a plea in abatement to the jurisdiction of the court, declaring that the court ought not to " take . . cognizance " because Dred Scott was not a citizen of Missouri, being a negro. Dred Scott demurred to the plea and the Circuit Court sustained his demurrer. [457] " The defendant then plead over in bar of the action . . and the cause went down to trial before the court and jury, . . and resulted in a verdict for the defendant, under the instructions of the court." The plaintiff excepted and the case was brought up, by writ of error, to the Supreme Court of the United States. On March 6, 1857, Chief Justice Taney delivered the opinion of the court: [427] " Dred Scott was not

[95] The Slave Grace, vol. I., p. 34, of this series.
[96] P. 198, *infra*.
[97] Charles Warren, *Supreme Court in United States History*, III. 3. See also Hodder, " Some Phases of the Dred Scott Case," in *Mississippi Valley Historical Review*, vol. XVI., no. 1.
[98] Warren, *op. cit.*, III. 2.

a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts;" [407] "In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument. . . They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations: and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit." It being decided "that the Circuit Court had no jurisdiction of the case," no more needed to be said, and the idea has been prevalent that the rest of Judge Taney's opinion is [427] "extra-judicial, and mere obiter dicta." He himself maintains that this "is a manifest mistake; there can be no doubt as to the jurisdiction of this court to revise the judgment of a Circuit Court, and to reverse it for any error apparent on the record, whether it be the error of giving judgment in a case over which it had no jurisdiction, or any other material error; and this, too, whether there is a plea in abatement or not. . . in a writ of error to a Circuit Court of the United States, the whole record is before this court for examination and decision; . . [430] We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom." The answer was No: I. [452] "neither Dred Scott himself, nor any of his family, were made free by being carried into" [432] "that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri," for the Missouri Compromise act,[99] which prohibited slavery in that territory, was unconstitutional and void, since it [450] "deprives a citizen of the United States of his . . property,[100] merely because he . . brought his property into a particular Territory of the United States," Such an act, says Taney "could hardly be dignified with the name of due process of law . . [451] the right of property in a slave is distinctly and expressly affirmed in the Constitution." II. Nor was Dred himself free by reason of his removal to Illinois: [452] "As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his *status,* as free or slave, depended on the law of Missouri, and not of Illinois. . . [453] we are satisfied . . that it is now firmly settled by the decisions

[99] It had been repealed in 1854, but was in force when Dred Scott resided at Fort Snelling.

[100] See E. W. R. Ewing, *Legal and Historical Status of the Dred Scott Decision,* ch. X., and Morris M. Cohn, "The Dred Scott Case in the Light of Later Events," 46 Am. Law Rev. 548 (556).

of the highest court in the State [of Missouri],[101] that Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant;" [102]

Much as Chief Justice Taney's memory has suffered because of his treatment of the Dred Scott case, the decision itself, so far as Dred and Harriet were concerned, is unquestionably correct. The crucial fact in the case is not that Dr. Emerson took Dred to sojourn on free soil, but the fact that Dred returned to Missouri with his master, as the Slave Grace returned to Antigua with her mistress. Thirty years before the Dred Scott decision, Judge Story, who made the conflict of laws his special study, declared in a letter to Lord Stowell concerning the latter's opinion in the case of the Slave Grace: [103] "I entirely concur in your views, . . It appears to me that the decision is impregnable. In my native State, (Massachusetts), the state of slavery is not recognized as legal; and yet, if a slave should come hither, and afterwards return to his own home, we should certainly think that the local law would re-attach upon him, and that his servile character would be redintegrated." [104]

As to whether the opinion on the Missouri Compromise act was "extra-judicial," [105] it may be conceded that it was "clearly" so in the case of Dred and Harriet. Whether the territory in which they sojourned with their master was or was not a free territory, was immaterial. They were slaves because they went back to Missouri and their child Lizzie was a slave because she was born of a slave mother in Missouri. But there was Eliza, [398] "born on board the steamboat *Gypsey,* north of the north line of the State of Missouri, and upon the river Mississippi." Although she was not born in three states like Kim of the "Show Boat," one state (Illinois) and one territory (Wisconsin, which in 1838 included the future state of Minnesota,) might claim her as a native. Whether she was born east or west of the thread of the stream, who could say? But if both sides were free, Eliza, though born of a slave mother, was free.[106] Consequently the constitutionality of the Missouri Compromise act had to be decided in order to reach a determination of her case.[107] Nevertheless, it appears that it would not have been passed upon, if it had not been for the determination of Justices McLean and Curtis to

[101] Scott *v.* Emerson, p. 185, *infra.*

[102] "Sanford became insane before the case was decided;" Warren, *op. cit.*, III. 3n. "In May, 1857, Dred Scott was conveyed by Dr. Chaffee and [his wife, the former] Mrs. Emerson to Taylor Blow of St. Louis for the purpose of emancipation, and he was set free in Missouri, within three months after the Court denied him to possess any rights as a free man." *Ibid.,* p. 24n. "The Court costs were paid by Taylor Blow of St. Louis, son of [Capt. Peter Blow of Virginia] . . who sold Scott to Dr. Emerson." *Ibid.,* p. 3n.

[103] Vol. I., p. 34, of this series.

[104] W. W. Story, *Life and Letters of Joseph Story,* I. 558.

[105] John Lowell and Horace Gray, "A Legal Review of the Dred Scott Case," Law Reporter, 1857.

[106] Spotts *v.* Gillaspie, I. 156, and Bank *v.* Benham, III. 188, of this series; Merry *v.* Tiffin, p. 128, *infra.*

[107] See Ewing, *op. cit.,* pp. 107, 108.

discuss it in their dissenting opinions.[108] To this day the controversy as to which view was correct has not ended. Historians and lawyers continue to argue pro and con. If the question *had* to be solved, as it apparently had to be in the middle of the nineteenth century, Alexander's method was the only possible. The sword alone could dispose of it effectually.

II

The Missouri Constitution of 1820 provided for a Supreme Court of three judges, having appellate jurisdiction only, and for a chancellor having both original and appellate jurisdiction. The latter office was abolished by an amendment of 1822, though it was provided that the general assembly might thereafter establish a court or courts of chancery. An amendment of 1851 vacated the offices of all the judges of the Supreme Court, thus providing for new membership, but did not change the system of its composition. Similarly, the system of three judges continued by the Constitution of 1865 was not altered by an ordinance of that year vacating their offices; but an amendment of 1872 raised their number to five.

[108] Letter of Justice Grier to President Buchanan, Feb. 23, 1857: "The first question which presented itself was the right of a negro to sue in the courts of the United States. A majority of the court were of the opinion that the question did not arise on the pleadings and that we were compelled to give an opinion on the merits. After much discussion it was finally agreed that the merits of the case might be satisfactorily decided without giving an opinion on the question of the Missouri compromise; and the case was committed to Judge Nelson to write the opinion of the court affirming the judgment of the court below, but leaving both those difficult questions untouched. But it appeared that our brothers who dissented from the majority, especially Justice McLean, were determined to come out with a long and labored dissent, including their opinions . . on both the troublesome points, although not necessary to a decision of the case. In our opinion both the points are *in* the case and may be legitimately considered. Those who hold a different opinion from Messrs. McLean and Curtis on the power of Congress and the validity of the compromise act feel compelled to express their opinions on the subject, Nelson and myself refusing to commit ourselves." *Works of James Buchanan* (edited by John Bassett Moore), X. 107n.

Tayon v. Celeste and others, transcribed in 1 Mo. 608, June 1806. [610] "on 9th May, 1806, Joseph Tayon moved the general court for a warrant to apprehend Celeste,[1] Antoine, Paul, Sophia, Margarette, daughter of Celeste, Catiche,[2] Carmelite, Mazelite, La Couture, Zabelite, and another named Antoine, who, by said Tayon, were alleged to be his slaves, and running at large, in the district of St. Charles. The court then gives an opinion, 'that, in those cases where slaves may be claimed, and not heretofore decided upon by the court, that a petition may be presented, supported by affidavit, and that, thereupon, a warrant may issue for the before mentioned slaves, and that the claimant file security in this (court,) in the sum of four thousand dollars, conditioned to keep the said slaves subject to the order of this court, upon investigation. Where one has been declared free, the petition must be made by some claimant not a party to the former claim, and that the petition be supported by the affidavit of disinterested persons.' . . it appears, that one of the persons named by Tayon in his motion, was set free from the custody of Pierre Chouteau,[3] and immediately claimed by Tayon. It appears that Tayon filed a petition, supported by affidavit, in which he claimed the persons above mentioned, as we suppose. The petition is not set out." A warrant, signed and sealed by two judges, Meigs and Lucas,[4] was issued the same day, commanding the sheriff of the district of St. Charles to apprehend the "reputed slaves of Joseph Tayon," and deliver them "into the custody of the said Joseph Tayon, there to remain and abide the determination of the general court of the territory of Louisiana:" The slaves were apprehended and [612] "next appear in court as suitors." [610] "An attorney appears for the reputed slaves, and demands a jury. A jury is summoned, and they find a verdict, in these words: 'we of the jury do find, that the persons claimed by the petitioners as slaves, are really slaves, the property of the plaintiff, and so we find for the said plaintiff, the said persons in the two [5] petitions mentioned as slaves.' It appears from the transcript, that there was a motion for a new trial, and one in arrest of judgment, both of which were overruled. After overruling the motion for a new trial, the court made an order, that the plaintiff have the full benefit of his verdict, by the jurors between the parties aforesaid found. After overruling the motion in arrest

[1] Celeste was born about 1777, for she is said to be twenty-two years old in Joseph Tayon's inventory of 1799. Antoine, Paul, Sophia and Margarette were her children. Little *v.* Chauvin, p. 127, *infra.*

[2] Catiche was born in 1782. Theoteste, *alias* Catiche *v.* Chouteau, p. 135, *infra.*

[3] "the first wife of Pierre Chouteau, senior, was the daughter or granddaughter of Joseph Tayon, senior." 8 Mo. 533 (1844).

[4] Little *v.* Chauvin.

[5] There was probably a second petition for the slave "set free from the custody of Pierre Chouteau."

of judgment, the court again orders, that the plaintiff do have the full benefit of the verdict and of the judgment heretofore given." [1]

Irwin v. Wells, 1 Mo. 9, April 1821. Andrain married the daughter of General Samuel Wells in Kentucky in 1806. " in that same year, Andrain moved to Fort Wayne, and took the slave in question with him. . . Wells, the plaintiff, called on some of his family to bear witness that the slave Kate was only lent to Andrain, and not given." Kate was taken back to Kentucky by Andrain in 1807, and brought by him to Missouri in 1809. Before leaving Kentucky, Andrain " executed to Wells an instrument of writing, June 19th, 1809. For the hire of a negro girl, named Kate, . . the just and full sum of $42 per year, . . until I return the said negro girl. . . I am . . to clothe her, pay tax, and return her at any time when called on by Gen. Samuel Wells for that purpose." The sheriff sold Kate in payment of debts due by Andrain and his brother. " before the sheriff's sale, Wells had demanded Kate of Andrain."

Held: [12] " if the jury found this instrument of hiring was only a contrivance to cover some ulterior illegitimate object," [11] " for the mere purpose of preventing the said negro woman from being liable for the debts of said Andrain, . . then said instrument in writing was void,"

McKnight v. Wells, 1 Mo. 13, April 1821. " action of detinue by Wells, . . to recover the boy Dick,"

Susan (a blackwoman) v. Hight, 1 Mo. 118, September 1821. " This was an action of assault and battery, and false imprisonment, instituted by order of the circuit court of St. Charles county, in the name of the plaintiff, (Susan, who claimed her freedom,) against the defendant, (who claimed her as a slave.) . . the statute [2] puts the burden of the proof on the plaintiff; and, where the issue is found, for the plaintiff, directs a judgment of emancipation. This shews, that the object of the legislature was, to afford to plaintiffs of this description, all opportunity of having the question of freedom fairly put in issue between the parties. Upon the first error assigned, the judgment of the said circuit court [for the defendant] must be reversed and the cause remanded to that court, . . the appellant must recover of the appellee, the cost of this appeal."

Nash v. Primm, 1 Mo. 178, April 1822. Action of trespass. " In this case the declaration alleges, that the defendant . . shot and killed a negro slave of the plaintiff's." Verdict for plaintiff. Held: the private injury is not merged in the public offense.

Potter v. Gratiot, 1 Mo. 368, November 1823. " State of Louisiana, Parish of Feliciana, Jacksonville, April 15th, 1820. I do give unto my nephew, Jacob Potter, a bill of sale of seven negroes, . . *viz.*: three female negroes . . and four boys . . and also, two tracts of land, . . which I agreed to bequeath to said nephew, if he would reside in this county, with

[1] For testimony given on this trial see Marguerite *v.* Chouteau, p. 132, *infra.* The trial was declared null and void by the Supreme Court in 1826, in an opinion delivered by Judge Tompkins. Catiche *v.* Circuit Court, p. 126, *infra.*

[2] Geyer 210. Passed June 27, 1807.

me, to which said nephew did comply with. Justus Terrill." These negroes had been [369] "brought by Justus Terrill to Missouri, in . . 1819, and kept there and hired out as his own, till 1821, when said Terrill died, having made his will, and appointed the defendants his executors—that defendants sold said negroes." Held: the bill of sale to Potter is good.[1]

Winny (a free woman held in slavery) v. Whitesides, 1 Mo. 472, November 1824. "an action of assault and battery, and false imprisonment, commenced in conformity to the statute,[2] . . Judgment for the plaintiff, . . 1822. . . about twenty-five years before, the defendant [Phebe Whitesides], with her husband, had removed from Carolina to Illinois, and brought from Carolina with them, the plaintiff, to Illinois, where they resided about three or four years, retaining the plaintiff, during the term of their residence in Illinois, in slavery, *in Illinois.* From Illinois, the defendant and her then husband removed to Missouri, bringing with them the plaintiff in this action, and still holding her as a slave." Judgment of the circuit court in favor of the plaintiff Winny, affirmed.

Held: [474] "Congress had both power to acquire the [Northwest] territory, and to forbid the introduction of slaves. . . [475] We are clearly of opinion, that, if by a residence in Illinois, the plaintiff in error lost her right to the property in the defendant, that right was not revived by a removal of the parties to Missouri. It was urged, thirdly, that the slaves of persons settling the country, do not thereby become free. The words of the ordinance are, 'that there shall be neither slavery nor involuntary servitude in the said territory.' We did not suppose that any person could mistake the policy of Congress, in making this provision. When the states assumed the right of self government, they found their citizens claiming a right of property in a miserable portion of the human race. Sound national policy required, that the evil should be restricted, as much as possible. What they could, they did. They said, by their representatives, it shall not vest within these limits, and by their acts for nearly half a century, they have approved and sanctioned this declaration. . . [476] the person who takes his slave into said territory, and by the length of his residence there, indicates an intention of making that place his residence and that of his slave, and thereby induces a jury to believe that fact, does, by such residence, declare his slave to have become a free man. . . In our opinion, the measure of damages is the worth of the defendant's labor; and any ill treatment during the time of the defendant being held in slavery, might have been given in evidence, in aggravation of damages." [Tompkins, J.]

Rocheblave v. Potter, 1 Mo. 561, November 1825.[3] [562] "the executors of Terril, in pursuance of his will, and in conformity with the law, advertised in one of the newspapers of the city, and sold at public sale, the slave in question, who was purchased by Mrs. Mary Lisa, who sold to Beebe, who sold to the plaintiff Rocheblave in error. That the said bill of sale, from Terril to Potter, was never registered or recorded," and the

[1] See also Rocheblave *v.* Potter, *infra.*
[2] Geyer 210.
[3] See facts in Potter *v.* Gratiot, p. 124, *supra.*

purchasers had no notice of knowledge of its existence. Potter, " during the whole of said time, resided in the state of Louisiana, and never had possession of the slave in question." Judgment of the circuit court [for Potter] reversed, " and judgment entered up in this court for the defendant [Rocheblave]"

Todd v. State, 1 Mo. 566, November 1825. " On the 6th of Dec. 1820, the plaintiffs in error . . entered into a recognizance . . for the appearance of a slave . . at the then next term of the Washington circuit court, to answer an indictment of larceny; and that they failed in the condition of their recognizance;"

Catiche and others v. Circuit Court, 1 Mo. 608, May 1826. "At the March term of the year 1825, the plaintiffs applied to the circuit court of St. Louis county, for leave to sue in that court, as paupers, for their freedom. This leave being refused, at the last term of this court, a writ of mandamus was ordered to the circuit court, commanding it to admit the plaintiffs, or to shew cause. The plaintiffs now demand a peremptory mandamus on account of the insufficiency of the return of the circuit court to the writ of this court. The circuit court returned, that the prayer of the plaintiffs was refused, because ' it appeared by the records of the general court of and for the territory of Louisiana, that by a verdict and judgment rendered in said court, on 6th June, 1806,[1] the absolute slavery of said petitioners was established.' The petitioners, plaintiffs in this court, claimed their freedom as descendants from an Indian woman,[2] and set up no claim to freedom, of a later date than said judgment. The plaintiffs contend, first, that the court could not, agreeably to law, receive evidence against them, on their application to sue; secondly, that the said judgment will be found to be void."

Held: I. upon petition to sue for freedom, no evidence can be admitted on the part of the claimant; for if he [609] " were, on this application, to be permitted to come in, and disprove the matter contained in petition, and thereby prevent [the] institution of a Suit, [it is plain] that every object of the law [3] is defeated; for the applicant has neither counsel nor testimony, and having no means to procure either, may be removed from the jurisdiction of the court. . . [II.] We are not willing to admit, that the circuit court has a right to resort to the records of another court, for evidence in such a case." III. But even so, [611] " no judgment has been given. . . it was the duty of the court to enter up a judgment which would shew what benefit the plaintiff was to derive from his verdict." [IV.] " But even were there a judgment entered up, in due form of law, we should hesitate to allow it any effect. That the court had jurisdiction of the question of freedom or slavery, there can be no dispute; but whether it ever took jurisdiction of the particular case, is the question here. . . [612] the writ should bear teste in the name of the presiding judge, and be sealed with the judicial seal of the court. It was still necessary that the writ should shew for what purpose those persons were brought into

[1] Tayon *v.* Celeste, p. 123, *supra.*
[2] Marguerite *v.* Chouteau, p. 132, *infra.*
[3] Geyer 210.

court. But this writ, if it could be called one, commands the sheriff to take up some runaway slaves,[1] . . Plaintiffs purchase their writs, as a matter of right, and it is for themselves to see whether they choose the proper one. . . [613] The object of the warrant [2] is, to cause the slaves to be delivered into the possession of Joseph Tayon, and that being done, its force is lost. The appearance of those persons, then, in court, by attorney," was "without any legal authority, and consequently null and void. . . that a person held in bondage, should be compelled to come into court, and say he is free, and this to be done, too, at the instance of a person claiming his services, appears somewhat strange. Let a peremptory mandamus go." [Tompkins, J.]

Little v. Chauvin, 1 Mo. 626, May 1826. Action of trover against Chauvin (appellant) " for the conversion of a female slave, named Sophia. . . Sophia was the daughter of one Celeste, who, 35 or 40 years before the time of trial in the circuit court, was in the possession of one Joseph Tayon, and shortly thereafter, at 7 or 8 years of age, came into the possession of Helen, (the daughter of said Joseph Tayon,) who had intermarried with one Louis Chevalier; . . [627] on the 26th of June, 1799, Joseph Tayon presented a petition to the then lieutenant governor, representing that his wife was dead, that he was aged and infirm, and unable to manage his affairs, and wished to divide, immediately, all his property among his eight children, in equal portions, and to that end, that an inventory might be taken, and a sale made thereof; that an inventory of the said Tayon's goods was made out accordingly, containing, amongst other things, the following entry: '*Item;* a mulatto, Celeste, 22 years old, having a little boy, Antoine, 3 years old, and another called Paul, 15 months old, valued together at $400.' . . [628] in the list of the sales made of said Tayon's property, no mention is made of Celeste, or any of her children;" [626] " Celeste continued in the possession of said Helen, and her husband, until the death of the latter, in 1801, and after his death, remained in possession of said Helen, until some time in the year 1806, when she was taken out of her possession by the sheriff of St. Charles county; that Sophia . . was born some time in the year 1800, whilst the mother, Celeste, remained in the possession of said Helen and her husband; that neither Celeste nor any of her children, of whom she had several besides Sophia, were ever known to have been out of the possession of said Helen and her husband, from the time when Celeste first came into their possession, until sometime in the year 1806, when the sheriff of St. Charles county, by virtue of a warrant, in the following words, *viz.*: 'United States, territory of Louisiana—the United States to the sheriff of the district of St. Charles, greeting: we command you that you apprehend Celeste, Catiche, Carmelite, Mazelite, La Cantue, another named Antoine, and Zebite, reputed slaves of Joseph Tayon, if they be found in your district, and them deliver into the custody of the said Joseph Tayon, there to remain and abide the determination of the general court of the territory of Louisiana: given under our hands and seals, this ninth

[1] See introduction to Missouri cases, p. 105, note 5.
[2] Little *v.* Chauvin, *infra.*

day of May, one thousand eight hundred and six, and of the independence of the United States the thirtieth: R. J. Meigs, (seal;) John B. C. Lucas, (seal;)' took the said Celeste, together with her children, Antoine, Paul, Sophia, . . and Margarette, out of the possession of the said Helen, . . [628] the said Sophia, in the year 1806, and shortly after she had been taken from the possession of said Helen, was sold by the said Tayon, at the church door in the town of St. Louis, when one J. P. Cabbanie become the purchaser, who, in 1809, sold her to Madame Veuve Labbadie." Sophia came eventually into the possession of Little, from whose possession she was taken in 1817, "by virtue of a writ of replevin, and delivered into the possession of the said Helen, who kept possession until her death, when she came into the possession of Chauvin, Helen Chevalier's administrator."

Judgment for Little's administrator reversed and the cause remanded: [631] "there was no proof of a loan from Joseph Tayon to his daughter, Helen, to be left to the consideration of the jury; and . . the jury should have been instructed . . that if the possession of Sophia, by Madame Chevalier, was in good faith, and that she had acquired her by purchase, donation, exchange, or the like, that then her title by prescription would be good. . . [632] It is not at all necessary to decide whether the old general court, for the territory of Louisiana, had jurisdiction of the subject matter of the warrant or not. The act is evidently not the act of the court.[1] It is not a judicial act, nor any thing like a judicial act, and gave no authority whatever to the officer . . to whom it was directed." [Wash, J.]

Mann v. Trabue, 1 Mo. 709, April 1827. "Mann made his covenant to Trabue, . . On the first day of June next, I promise to pay C. C. Trabue, or order, two hundred dollars, and on or before the 25th of December next, two hundred dollars more, which two payments . . is to pay for his negro woman, Fanny. If the said payments are . . not [made complete], I am to pay him thirty-five dollars hire for the present year, . . and return her, with good clothes," She died, "and so he could not return her." The jury found that "her death was occasioned by cruel and unusual treatment on the part of the defendent" Mann. "the defendant offered in evidence the record of a trial and acquittal of the defendant, for the felonious killing of this slave."

Held: Mann is not excused for non-performance, as he disabled himself by his own act "to perform his covenant, . . it is insisted, that the death of the slave was occasioned by the act of God, and that, therefore he is excused. In this transaction it is difficult to discover any agency on the part of God; but we clearly perceive the agency of the defendant, . . The judgment [for Trabue] is affirmed, with five per centum damages, and costs."

Merry v. Tiffin and Menard, 1 Mo. 725, May 1827. "action of assault and battery . . brought . . by John, for freedom . . the mother of the plaintiff, before the ordinance of Congress, of 1787, was holden as a slave,

[1] Catiche *v.* Circuit Court, p. 126, *supra.*

in the Territory northwest of the river Ohio, in that part now called Illinois, and . . after . . and while so holden, and about 36 years past, in the Illinois, John was born; and that he was holden there as a slave, till lately."

Held: [726] "John is free." [725] "The ordinance is positive, that slavery cannot exist; and shall we, or any other Court, say otherwise. . . The express word in the cession act of Virginia, that the inhabitants shall be protected in the enjoyment of their rights . . are completely satisfied, by securing to them the enjoyment of such rights as they then had, . . at the time of the making the cession act, this man, John, was not property: and at the time of his birth, he could not be property. There is nothing in the cession act, forbidding Congress to fix and point out things which might afterwards be the subject of property." [McGirk, C. J.]

McDonald v. Walton, 1 Mo. 726, May 1827. "David Polk, alias Pogue, and Rebecca Walton, intermarried, in the state of North Carolina, in the year 1805; . . shortly after . . removed . . to Kentucky, and settled on an island in the Ohio river, taking [Polk's] . . slaves with them." Polk died intestate and his widow "removed to upper Louisiana, now Missouri, taking with her the aforesaid slaves," She soon married Chapman and "they removed to some place unknown, in the lower country."[1] About 1815 they returned to St. Louis, "bringing with them said slaves and their increase, . . on the 19th of June, 1826, the plaintiff obtained letters of administration of the estate of said D. Polk, or Pogue." Judgment of circuit court for defendant reversed, and this cause remanded for further proceedings.

Held: although the defendant [728] "had possession of the slaves five years, still if there was no person authorised to sue for said slaves, in right of Pogue, till 1826, that possession is no bar to the action. . . [729] The removal to upper Louisiana, (now Missouri) in a few weeks after the death of Pogue, the early marriage of the widow with Chapman, and the subsequent removal from these, then western limits of American settlements, to parts unknown, induce a strong suspicion of industrious concealment of these slaves from somebody." [Tompkins, J.]

François La Grange (alias Isidore) v. Pierre Chouteau, 2 Mo. 20, May 1828. Action of *trespass vi et armis* under the statute, "to try the right of said François to freedom. . . in the year 1816, one Pascal Cerre . . was desirous of selling said slave, and the said Pierre Chouteau, Jun. . . wished to purchase him. That Cerre declined selling the slave to Chouteau, because he, Cerre, wished to sell him to some person who would remove him from St. Louis. That one Pierre Menard, a citizen of Illinois, and then residing at Kaskaskia, proposed purchasing the appellant, and accordingly Cerre sold him to said Menard for the sum of $500, . . [21] Menard, never bought the appellant with the intention of keeping him, or making Kaskaskia his place of residence; but that the slave had been purchased by him for Chouteau, to whom he was to be delivered after a few months; the object being to get around Cerre's objections to selling

[1] "Either in the Mississippi or Orleans territory." For further facts see same *v.* same, p. 131, *infra.*

him in St. Louis." [20] " Menard immediately after said sale, took said appellant to Ste. Genevieve, and from thence, sent him to work at Mine a la Motte, in Washington county, in this state. That some time afterwards, the appellant was sent to Kaskaskia, where he was put on board a keel-boat, and after remaining about two days, went in said boat as a working hand to New-Orleans. That about the last of March, 1817, the said appellant returned in the same boat to Kaskaskia, where he remained a few days, (one witness stated 8 or 9) assisting to unload said boat. Then was sent in said boat to the big swamp in Cape Giradeau county; and after remaining there five or six weeks, returned in the boat to Kaskaskia, and after two or three days, he was sent to St. Louis and delivered to the defendant, where he has remained ever since—and that said Chouteau since said delivery in consideration thereof, has paid the sum of $500 to said Menard." Judgment for Chouteau affirmed.

Held: [22] "Any sort of residence contrived or permitted by the legal owner, upon the faith of secret trusts or contracts, in order to defeat or evade the ordinance [of 1787], and thereby introduce slavery *de facto,* would doubtless entitle a slave to freedom, and should be punished by a forfeiture of title to the property. In this case, it is most apparent that the object of Menard and Chouteau, was to get around the objections of Cerre, and not to evade or violate the ordinance. . . The owner of a slave removing to Illinois, and carrying his slave along with him to reside there permanently, must intend to introduce ' involuntary servitude or slavery ' against the express terms of the ordinance; but the owner of a slave, who is merely passing through the country with him, or who may be resident in Illinois and may choose to employ him in Missouri in mining, or as a sailor, or boat hand, upon the rivers or high seas, in boats or vessels that occasionally lade and unlade their cargoes at some port or place within the state, though he may not do much in ' extending the fundamental principles of civil and religious liberty ' certainly, does nothing towards engrafting slavery upon the social system of the state. . . The ordinance was intended as a fundamental law, for those who may choose to live under it, rather than as a penal statute to be construed by the letter against those who may choose to pass their slaves through the country." [1] [Wash, J.]

State v. Gardner, 2 Mo. 23, May 1828. [24] " The indictment charges that Gardner was a justice of the peace, and . . did . . unwilfully issue his summons directed . . to the constable of St. Ferdinand township, commanding the said constable to summon one John Spencer to appear . . to answer to a pretended demand in favor of one black Locker, a negro man slave, which summons was served—the said Gardner . . knowing that Locker was a slave and the property of him the said Gardner, to the great perversion of public justice,"

Milly (a woman of color) v. Smith, 2 Mo. 36, May 1828. " This was an action of trespass, etc. under the statute brought by Milly the app. against Smith the appll. to establish a right to freedom." In 1826 David Shipman of Kentucky mortgaged land and slaves (" a negro man named

[1] See same *v.* same, p. 137, *infra.*

Moses, . . one woman named Milly, about 25 or 6 years old," and five others) to Smith. [37] "soon after the execution of said mortgage [which was recorded in Shelby county, Kentucky], said Shipman being greatly embarrassed, took the said Milly with several other of his slaves, and secretly ran away with them to Indiana: That in Jefferson county, in the state of Indiana, he executed a deed of emancipation to said slaves, . . [38] and acknowledged the same before a justice of the peace of said state. . . that immediately afterwards, said Shipman carried said Milly to Peoria county in the state of Illinois, where he . . settled, hired a farm, stocked the same and declared that he intended to reside there permanently, . . in May 1827, . . [Smith] came thither, and took said Milly secretly away against her consent, and the consent of said Shipman, and brought her to St. Louis, where the present suit for freedom was commenced;" Judgment for the appellee, Smith, reversed and the cause sent back for further proceedings.

Held: "This court is not disposed to view the deed of Emancipation with much favour. The plaintiff cannot be regarded as a purchaser for a valuable consideration, a slave having nothing to give; but it has often been decided by the courts of the late Territory of Missouri, and of this state, that slaves carried into Illinois with a view to residence, and staying there long enough to acquire the character of residents, do by virtue of such residence become free. The plaintiff in the circuit court made out a *prima facia* case of freedom; but if Smith be the legal owner, and did not connive at the removal of the plaintiff from Kentucky to Indiana and Illinois, then we are of opinion that the plaintiff did not acquire her freedom by such residence. . . [39] some evidence of the laws of Kentucky ought . . to have been preserved on the record. If we are to construe the writing according to our own laws (which must govern us where the foreign law is not proved) we are inclined to think Shipman is the legal owner;[1] since by the contract the right of possession remained in him for an indefinite time and Smith had only a lien on her to secure the payment of debts; which lien Shipman might at any time have defeated by paying those debts." [Tompkins, J.]

McDonald v. Walton, 2 Mo. 48, May 1828.[2] "At the Nov. term of the cir. court [1827] . . judgment being again given for Walton [Chapman's executor], McDonald appealed to this court." Walton had hired one of the slaves to McDonald in September 1825, and the following June McDonald [49] "obtained letters of administration on Polk's estate, in St. Louis county. . . Chapman and wife, before they departed hence for the lower country, expressed much uneasiness lest these slaves should be set free under Polk's will, about which there was much talk. . . Polk had been heard to say, before he was married to Rebecca Walton, that he had no relations in America known to him; . . Rebecca, soon after Pogue's death, and before her removal from Kentucky, had been heard to say, 'that she was much afraid that said slaves would be taken away from her, as Polk had, in his life time, made some arrangements with a man

[1] See Milly *v.* Smith, p. 137, *infra.*
[2] For facts see McDonald *v.* Walton, p. 129, *supra.*

at the Red Banks about keeping or taking care of said slaves after his death,' and gave this as a reason for her removal from Kentucky with said slaves."

Held: by the laws of Kentucky, when Pogue died, the slaves are real estate and [51] "would descend to the wife; . . [but they] [54] may be taken in execution for the payment of debts: . . our own laws would give the administrator the disposition of any of Pogue's property which by the law of Kentucky is subject to execution to pay his debts. . . The judgment of the circuit court is reversed, and the cause must be sent back for further proceedings." [Tompkins, J.]

Marguerite v. Pierre Chouteau, 2 Mo. 71, May 1828. "an action of trespass, assault, and battery and false imprisonment, brought by the appellant against the Appellee to recover her freedom. . . Madame Chauvin deposed, that Marguerite . . was born in the year 1788,[1] that the name of her mother was Marie Jean, sometimes called Marie Scipion, who belonged to and lived with Joseph Tayon,[2] the deponent's father: . . from the time of his marriage until January 1801, when she was removed sick from the house of Mr. Chouteau,[3] (where Tayon then lived,) to the deponent's house, where she died in June 1802, aged about sixty years; that the deponent has heard from her father and mother, that Marie Scipion was bought by deponent's grand mother, and given to her mother; that she had heard from the same, that Marie Scipion was daughter—of an Indian woman captured by the French near Natchez, and brought to Fort Chartres, where she was sold as a slave; that a negro man named Scipion was supposed to be the father of Marie Scipion; . . that the deponent's father had an Indian woman named Marie Louise, who had two male children, Akin and Julien, who ran away and passed for freemen at the commencement of the Spanish Government; that they went to New Orleans after the publication of an Ordinance of O'Reilly the Spanish Governor of Louisiana [in 1769], 'declaring all the Indian slaves then in the province of Louisiana free at the death of their master, and those born after the publication, free at their birth, prohibiting any sales by any persons then in possession of such slaves;[4] that the deponent read the ordinance to her father, and conversed with him on the risk he ran of loosing [*sic*] his Indian slaves, and that she remembered he sold one of

[1] 1778, according to the carelessly made second edition of these reports, and according to the *errata* at the end of the first edition of 2 Missouri; but these *errata* themselves contain so many obvious *errata* that they cannot be relied on. After listing them, the reporter says: "The printer informs me that the type in the case of Margurite [*sic*] *v.* Chouteau, were set from a copy made out from the transcript of the Clerk, by one of the Judges of the Supreme Court, from which the printed sheet varies but slightly. This accounts in great part for the variance between that case as printed and the certified transcript filed in the office, with which the case was last compared." The copy which the judge of the Supreme Court made for the printer seems more worthy of reliance than the transcript made by the clerk, for it was evidently the judge's revision of that transcript, as shown by the omission of Judge Tompkins' sweeping assertion ending "all judicial tribunals, in my opinion, [should] set at liberty every individual who sues for their freedom." See *Errata,* 2 Mo. 241 (first edition). Furthermore, the *errata* are not followed in quotations from this case used by Judge Tompkins in his opinion in Marguerite *v.* Chouteau, 3 Mo. 540.

[2] See Tayon *v.* Celeste, and Little *v.* Chauvin, pp. 123, 127, *supra.*

[3] See p. 123, note 3, *supra.*

[4] This quotation is not closed in the first edition.

these slaves and was compelled to take it back and hush it up, lest he should be fined under the ordinance; that she remembered to have heard her father say, after the publication of the ordinance, that Marie Scipion and her children would be free at his death in consequence of that ordinance. Jean B. Reviere . . [72] had heard Joseph Tayon in his life time, say, that Marie Scipion was given to him by one Guyon, on condition that she and her children should be free at the time of the death of Tayon and wife. This witness also speaks of the publication of O'Reilly's proclamation, with this difference, that it was thereby declared that all Indians then held in slavery, should be forthwith set at liberty [1] in pursuance of this proclamation. . . he understood Joseph Tayon to say that Marie Scipion lived in his family of her own free will and consent, because she was well treated and chose to remain with him, and that the said Marie Scipion and [her] children were at liberty to leave him at any time they pleased, but if they chose to remain 'till his death they should never serve anybody. . . Marguerite Reviere . . also testifies as to the publication of O'Reilly's proclamation, and says, that Indians before held in slavery were immediately set free. . . [73] John B. C. Lucas . . testified that about twenty years ago, the witness being then a judge of the superior court of the territory of Missouri, there was a suit in that court betwixt the children of Marie Scipion and Joseph Tayon,[2] that the present plaintiff Marguerite was probably one of the parties; [3] that in this suit, the pedigree of the defendants in that court came directly in question. The question then was, whether the then defendants and others were descended in the maternal line from an Indian woman. The witness then heard Antoine Reviere state, that Marie Scipion's mother was an Indian woman of the Natchez tribe; that she was brought to Fort Chartres after the defeat of the Natchez Indians by the French, about the time of the massacre as it was called, that the father of Marie Scipion was a negro man, that when the mother of Marie Scipion was brought to Fort Chartres he was a very young man, too young to go to hunt or to war; . . Madame Cochon, a witness who testified on that trial on the part of Tayon, stated, that Marie Scipion was the daughter of a Negro woman. . . Sebastian Pratte deposed that in 1756 or 1757 he went to Fort Chartres in Illinois, and lived in the family of Joseph Tayon, . . he observed in the family a Negro woman named Mary, an Indian woman called Marie Louise with her two children, and a girl called Scipion about ten or twelve years of age, treated and well known as a slave, that he knew her in Tayon's possession for several years after his removal to St. Louis, that he did not know the mother of Scipion;—that there were at Fort Chartres and elsewhere through the country a great many Indian slaves and but few blacks; that the Indians were universally acknowledged as slaves, and frequently sold as such before the Governor; that he himself sold several, one to the

[1] "and be allowed to remain in the settlements or to return to their own country at their own option; he further states that many Indians then held in slavery were set at liberty." *Errata* and second edition.

[2] See Tayon *v.* Celeste, p. 123, *supra*.

[3] No, Marguerite was not one of the parties to the suit in 1806. The "Margarette" in that suit is specifically distinguished from her aunt, Marguerite, by the addition, "daughter of Celeste."

Commandant; that the commandant he speaks of, was the English Commandant at Kaskaskia; that from his belief of the character of Mr. Tayon, he is certain he would not have sold a person as a slave who was not so; that a majority of the Indians held as slaves, were brought down the Missouri by the traders, and were of different nations; that there were many Indian slaves in St. Louis after its first establishment, and but few blacks. . . [74] Madame Dubrieul, stated, . . that she knew an old Indian woman named Marie Louise, who remained a slave to Tayon 'till the Spanish government declared her free; that many Indian slaves remained with their masters after they were so declared."

Judge Tompkins gave his opinion that the judgment of the circuit court in favor of Chouteau ought to be reversed: [82] "Du Pratz . . had lived at the post of the Natchez, and gives a very particular account of the war and capture of that tribe." One of the conditions of peace was that they restore [86] "tous les negres, negresses, negrillons, et negrittes qu'ils avaient pris aux Francais." "Not one Indian slave is demanded. Had there been any, Loubois had the will and the power to enforce restoration. . . [90] all the posts established by the French in North America were designed to secure to themselve the commerce and friendship of the Indian tribes, and that an Indian slave population in Louisiana was unknown to the author [Raynal] cited by the appellee. I conclude then, that such a population was unknown to the laws and government of France. That the small number of Indians which might have been purchased by French traders, were either clandestinely sold to other Indian tribes or retained in the French settlements by the purchasers or their friends, under pretence that they remained voluntarily, and that under the French government of Louisiana, the holders of such slaves never would have asserted in a court of justice, a claim to property in an Indian. Accordingly we see those pretentions to property in Indians first ripening into claims under the Spanish rule, when the population of the province was disaffected to the court of Spain, and governors might be presumed to be disposed to do much to conciliate the rich and powerful at the expense of the weak and defenceless. . . [All men are by the law of nature free: and without some positive declaration of the sovreign power of the State to the contrary, all judicial opinions, in my opinion, [should?] set at liberty every individual who sues for his freedom].[1] On this point then, I am for the appellant [Marguerite]. . . [91] Had it been in evidence that the ancestor of the plaintiff was one of the 300 Indians sent by Perier into St. Domingo as slaves, I should have thought the plaintiff was lawfully held in slavery." Judge Wash's opinion was to the contrary: "I consider it as clearly settled by the testimony, that the maternal grand mother of the plaintiff was a Natchez woman taken prisoner by the French in the prosecution of an exterminating war against that tribe about the year 1731—that she was reduced to slavery, and that she and her descendants have been held in slavery ever since. . . Du Pratz . . says,[2] that when the French returned to N. Orleans with the Natchez slaves, . . [92] 'On

[1] *Errata*. 2 Mo. 241 (1st ed.).
[2] Vol. III., p. 326.

les mit en prison; mais comme elle etait trop petite pour continer long tems tout ce peuple, sans s'exposer a etre infecte de leur voisinage on mit les femmes et les enfans sur l'habitation du Roi allieurs. Peu apres on embarqua ces esclaves pour l'ile de St. Dominigue afin que cette nation fut eteinte dans la colonie.' This authority has been misunderstood, and standing alone, would justify the belief that some of these prisoners who had been 'placed upon the plantation of the king and elsewhere' might have remained in the country. Be that as it may, the testimony, as I conceive, establishes the fact clearly, that the maternal grand mother of the plaintiff was so captured and did so remain. . . [93] Indian slavery . . should be placed upon the same footing with negro slavery. . . There being a division of the court,[1] by operation of law, the judgment of the circuit court [in favor of Chouteau] is affirmed." [2]

Theoteste alias Catiche[3] *v. Pierre Chouteau,* 2 Mo. 144, April 1829. "an action of trespass . . to try the right to freedom; plea, not guilty; verdict and judgment for the defendant. . . the plaintiff was born in the year 1782, at Pra[i]rie du Rocher,[4] in that part of the late northwestern Territory which now forms part of the state of Illinois; that she was born a slave . . and there remained [5] as such till about the year 1809 when she was brought to St. Louis, in the then territory of Missouri, and sold as a slave; and that the present defendant derives his title through one Manuel Lisa, who purchased of a person [6] who held her in slavery in Illinois, and derived his title from the original owner.[7]

Judgment, in favor of Chouteau, affirmed. [145] "The defendant claims to hold the plaintiff in slavery, through another whose right was vested as early as the year 1782. It appears that either the general terms 'neither slavery nor involuntary servitude shall exist in the territory,' must yield to the provision in the act of cession,[8] or that the provision of that act must be violated. This it cannot be supposed Congress intended to do." [Tompkins, J.]

[1] McGirk, J., was absent.

[2] See p. 143, *infra,* "in which this decision was overruled, and the case decided in conformity with the opinion of Judge Tompkins."

[3] The name of this slave and the date and place of her birth indicate that she was the same Catiche who was the plaintiff named in 1 Mo. 608 (p. 126, *supra*). Therefore she was a daughter of Marie Scipion, and a sister of Celeste (Tayon *v.* Celeste, p. 123, *supra*), and of Marguerite (Marguerite *v.* Chouteau, p. 132, *supra*). The defendant is the same as in Marguerite's case, Pierre Chouteau, from the custody of whom Pierre, Senior, or Pierre, a child of Marie Scipion, had been set free in 1806. Tayon *v.* Celeste, 1 Mo. 608 (1806).

[4] Prairie du Rocher is about four miles from Fort Chartres, between Cahokia and Kaskaskia.

[5] Not necessarily every moment. Tayon allowed his Indian slaves, "Marie Scipion and [her] children . . liberty to leave him at any time they pleased," (Marguerite *v.* Chouteau, p. 132, *supra*). In 1806 Catiche was "running at large, in the district of St. Charles," (Tayon *v.* Celeste, p. 123, *supra*) in Missouri, where she was probably visiting her mother and sisters.

[6] Probably a son of Tayon, who remained in the present state of Illinois after Tayon moved to St. Louis.

[7] Probably Tayon. He divided his property among his eight children in 1799. Little *v.* Chauvin, p. 127, *supra.*

[8] The act of cession of the state of Virginia stipulated [144] "that the inhabitants shall be protected in the enjoyment of their rights and liberties, 1 U. S. L. 473."

Tramell v. Adam (*a black man*), 2 Mo. 155, May 1829. " This was an action of trespass and assault and battery and false imprisonment, instituted by Adam against Finley and Tramell to recover his freedom. . . [156] no petition for leave to sue [1] had been filed; and . . no leave had been given . . Tramell . . in the year 1810 resided at the United States Saline in the state of Illinois; and that the appellee who is a negro, lived there also in the possession of the appellant, and as his slave: that Tramell . . 1817 . . removed to the territory (now state) of Missouri: and that since that time the appellee has been in the possession of said Tramell and Finley as a slave."

Judgment for Adam affirmed, except for damages after the institution of the suit: [157] " the petition and leave to sue are benefits intended for the plaintiff, and that he may waive them,"

Hector (*a slave*) *v. State,* 2 Mo. 166, September 1829. " an indictment for burglary, . . [167] about half past ten o'clock at night, when the burglary was discovered, certain persons caught Hector and began to flog him to make him confess what he knew concerning the burglary and stealing of the money mentioned in the indictment. That they continued flogging all night, that he screamed under the lash, and said if they would release him he would find the money. The State then examined one McKinney, who said that about day break he was awakened by a loud hollowing [*sic*] or screaming in the rear of his house, that he arose, and on enquiry was informed by some persons there near his house, that certain persons were flogging the slave Hector, to compel him to discover. That when Hector heard the witness' voice he called on him to come to his assistance, that then the witness went to Hector, and told him if he took the money he ought to confess, and then asked Hector if he took the money. That Hector replied that he took the money, and that he would shew the witness where it was, but that he did not wish the persons who had been flogging him to accompany him. That the money was at Mr. Menard's his master's house, and that if the witness would go there alone with him he would find the money. That the other persons would not consent to that, unless they also would be allowed to go along, and then Hector, the witness, and the other persons went to the house of Mr. Menard and did not find any money. That witness conceiving that Hector had deceived him, gave him several lashes with a cowskin and then left him. . . "

[168] " Judgment reversed, and sent back for a new trial." The confessions of Hector should have been " excluded from the consideration of the jury." " Hector had been under the lash the greatest part of the night. This circumstance might of itself be sufficient to subdue him into any confession required. No doubt when he saw McKinney he hoped for some relief, and asked him for it, but he was told that if he was guilty he should confess, and then was asked if he took the money, to which he replied he had taken it and offered to shew where it was. This all might have been done, and most probably was, to gain a respite from pain; which view of the subject is strengthened by the fact that no money was found where the party and prisoner went to look for it." [McGirk, J.]

[1] Rev. Code 404.

Milly v. Smith, 2 Mo. 171, September 1829.[1] "There was a verdict and judgment against the plaintiff in the court below. . . [173]. When we only look to the facts in this case, we see on one side a man largely indebted, hiding his property, and in fact destroying it to prevent his creditors from reaping any benefit therefrom, and in this case, Shipman has been base enough to emancipate the slave to injure and ruin his security. We feel disposed to view him in a light but little below that of a felon. But . . Mr. Smith, perhaps once, that is, when he took the mortgage, had it in his power to have made such contract that Shipman could not have had the possession and management of the property. . . [175] Milly is free as to Shipman forever. For by the act of residence in Illinois that result is produced, and that as to Smith she has the same indefinite right to liberty that Shipman had to the possession of her, and until the lien is enforced by some mode known to the law, she ought to enjoy her freedom." [McGirk, J.]

Lagrange[2] (*alias Isidore, a man of colour*) *v. Chouteau,*[3] 4 Peters 287, January 1830. "The case was brought before . . [the supreme] court [of the United States] by writ of error to the supreme court of Missouri," [290] "It is not perceived that any act of congress has been misconstrued. The court is therefore of opinion that it has no jurisdiction of the case." [Marshall, C. J.]

Vincent (*a man of color*) *v. James Duncan,* 2 Mo. 214, September 1830. Action for freedom. Vincent [215] "had been hired to labor at the Illinois Saline near Shawneetown, from the year 1817 till the year 1825, when he was taken and carried bound to Kentucky: that he was the reputed slave of a family in Kentucky, by the name of Duncan. That John Duncan and sometimes the defendant were in the habit of going to the Saline aforesaid and hiring the plaintiff out and receiving pay for his hire. That the plaintiff after remaining there some time, became disobedient to James Duncan, and discovered an unwillingness to go to Kentucky with James Duncan, and on some pretence got permission of James Duncan to stay at the Saline to settle his affairs; that finally he was taken and carried by force as above mentioned. That in 1826 he was delivered by John Duncan to the defendant to be disposed of at the defendant's pleasure. That since the plaintiff had been in St. Louis he had admitted himself to be the slave of James Duncan."

Judgment for Duncan reversed and the cause remanded: I. [216] "By the Constitution of Illinois, negroes may be hired to work at the Saline if they be not hired for more than twelve months at a time. If a negro were really hired to work at the Saline for five years, the fact that the negro at the end of each year was removed over to Kentucky and afterwards brought back would not cure the fraud. We conceive then that if the negro were in good faith hired there for one year only that at the end of the first year he might be again hired another year without being taken across the line of the state. . . [II.] a slave is not capable of acquiring either a permanent settlement or regular domicil by residence."

[1] For facts see same *v.* same, p. 130, *supra.*
[2] See same *v.* same, p. 129, *supra.*
[3] Pierre Chouteau, jr.

III. [215] "the constitution of Illinois is not and cannot be controlled by the ordinance of 1787 as to the existence of slavery within that State. . . [IV.] [216] whether he be a slave or not is a conclusion of law from certain facts which may or may not exist. Such an admission made even by a lawyer would be no evidence." V. A slave who [217] "resided at the Ohio Saline [in Illinois] as a laborer, in the year 1817, by the consent of his master, . . [is] entitled to his freedom. . . The constitution of Illinois was adopted in Dec. 1818, and it was in evidence that the plaintiff was hired at the Saline in 1817 and remained hired there till 1825." [Tompkins, J.]

State v. Henry (*a slave*), 2 Mo. 218, September 1830. Henry, a slave, was indicted for larceny. Joseph Lee, a colored man, [219] "was alledged [*sic*] to be the owner of the property charged to have been stolen. He testified that he was a barber in the City of St. Louis, and kept a shop for carrying on his trade: That the prisoner had frequently been in his shop and knew the situation of the different articles therein, and in the absence of the witness frequently sold articles for him. He further stated that some time within a year before the trial a bottle of Cologne water of the value of one dollar had been stolen from his shop, and that he charged the prisoner with taking it: but the prisoner denying the taking the witness told him he could prove it. The prisoner then admitted he had taken the bottle of water, and offered to pay the witness one dollar for it. The witness refusing to receive the pay insisted on having the bottle returned, and it was accordingly delivered to him by the prisoner. No other evidence of the freedom of Joseph Lee was offered."

The prisoner was acquitted, writ of error dismissed: "the testimony was competent,—it does not appear that Joseph Lee was a slave. But his keeping a barber's shop and selling articles in that shop is such evidence of freedom as ought to have gone to the jury," [Tompkins, J.]

Foster v. Wallace, 2 Mo. 231, October 1830. Held: [238] "the fact of Simmons continuing in possession of the slaves after the sale, did *per se* constitute the sale fraudulent and void as to creditors,"

Jeffrie v. Robideaux, 3 Mo. 33, January 1831. "in the [year] 1822, Jeffrie the plaintiff in error by Rachel Camp his next friend, by Robert Wash Esq. an attorney at law, presented his petition to the circuit court of St. Louis county for leave to sue as a poor person for his freedom. The leave was granted; . . verdict and judgment were against Jeffrie. . . he was an infant under the age of twenty-one years. . . [35] The judgment is reversed with costs, and remanded." The act "respecting suits for freedom,[1] leaves the common law as it was before it, as to the rights of infants to sue."

Menard[2] *v. Aspasia,*[3] 5 Peters 505, January 1831. "Error from the supreme court of the state of Missouri. An action of assault and battery

[1] Act of Dec. 30, 1824. 1 Laws Mo. 404.
[2] Pierre Menard, who figures in Lagrange *v.* Pierre Chouteau, jr., p. 129, *supra.*
[3] Not reported in the Missouri Reports, but similar in facts to Merry *v.* Tiffin and Menard, p. 128, *supra.*

was instituted in the circuit court for the county of St. Louis, in the state of Missouri, by Aspasia, a woman of colour, to establish her right to freedom. . . [506] The mother of Aspasia . . was born a slave, and was held as such by a French inhabitant [Pierre Menard] of Kaskaskia, Illinois, previous to the year 1787; and after that year was held as a slave by the same individual, who was a citizen of that country before its conquest by Virginia, . . and continued to be such afterwards, and was such at the time of Aspasia's birth. Aspasia was born after the year 1787, and . . raised and held as a slave, till some time in the year 1821, when she was purchased by the plaintiff in error, who immediately after gave her to his son-in-law, Francis Chouteau, then and now residing in St. Louis, . . who held her as a slave till . . 1827, when he returned her to [Menard] . . in consequence of the claim she set up for her freedom. . . [507] the court decided . . that Aspasia was not a slave, but free." Affirmed by the supreme court of Missouri [511] " To reverse this judgment, a writ of error is now prosecuted;"

Held: [517] " this court has no jurisdiction of the case." The title of Menard " does not arise under an act of congress [1] . . It is not enough to give jurisdiction, that the act of congress [ordinance of 1787] did not take away a right, which previously existed. Such an act cannot be said to give the right, though it may not destroy it." [McLean, J.]

Jane (a mulatto woman, slave) v. State, 3 Mo. 61, April 1831. " Jane was indicted . . for the murder of her infant child " by poisoning and smothering with the bed clothes, and was convicted. [62] "A motion was made in arrest of judgment [because the indictment was defective] and overruled by the circuit court." The judgment of the circuit court was reversed.

Jim (slave) v. State, 3 Mo. 147, December 1832. "At the February term of the circuit court for Howard county for the year 1832, Jim was indicted for the murder of William B. Johnson and pleaded not guilty, . . Afterwards he filed a petition for a change of venue. . . he was the slave of D. Todd . . and that said Todd at the time of finding said indictment, was the judge of the circuit court of Howard county . . The court did not grant the petitioners prayer. . . being found guilty, a motion was made in arrest of judgment, and overruled by the court; judgment was then pronounced;"

Held: [178] " the statute law not only permits, but commands the circuit court to change the venue in a criminal cause, when an interest, such as is shewn in this cause, is shown to exist. . . its judgment passing sentence of death on him [the prisoner] is therefore reversed: and the circuit court is directed to remove the cause to some county where the same objection does not exist." [Tompkins, J.]

Ralph (a man of color) v. C. Duncan, 3 Mo. 194, May 1833. Suit for freedom. Steele testified " that he had heard John Gordon, the former master of Ralph, say in the year 1818 or 19, that he had been in the habit

[1] See judiciary act of 1789, sect. 25.

of hiring Ralph to work occasionally at the Ohio Saline from the year 1814 or 15," William Gordon, the brother of John, [195] "heard John Gordon say in his lifetime the negro hired his own time, and went to the Saline of its [his] own accord." "Much other testimony was given to prove a hiring of the plaintiff at the Saline and at the lead mines near Galena in Illinois,"

Judgment of the circuit court against Ralph reversed, and the cause remanded: I. "The object of the ordinance of 1787, was to prohibit the introduction of slaves into the Territory of which the present State of Illinois constitutes a part, and the master who permits his slave to go there to hire himself, offends against that law as much as one who takes his slave along with himself to reside there, and if we are at liberty to regard the moral effect of the act, it is much worse to permit the slave to go there to hire himself to labor, than for the master to take him along with himself to reside there under his own inspection or to hire him out personally to some person who will be bound to pay the master the hire; yet even this last act has been decided to be a violation of the provision of the ordinance. . . [II.] [196] for the purposes of self government, the constitution of Illinois might have been well in force from the time of its adoption: but for the purpose of the present cause, we incline to limit its effect to the time when Congress assented to the admission of the state into the union.[1] . . [III.] the evidence that the defendant gave his note to the plaintiff is certainly admissible to prove that the defendant treated with him as with a freeman. Nor is it necessary to prove that the assent either of Gordon the former claimant or of Duncan the defendant was expressly given to the residence in Illinois by virtue of which the plaintiff claims his freedom. This assent may be inferred from circumstances,[2] [Tompkins, J.]

Griffith v. Walker, 3 Mo. 191, August 1833. Williams died leaving a widow. She "had no children by him;" but he left children by a former wife. A negro man "came to Williams by his intermarriage" with the second wife. Held: [193] "the widow cannot have the slave absolutely . . but is only entitled to a third for life."

McGirk v. Chauvin, 3 Mo. 236, October 1833. "On the 28th day of August, 1816, Helene Chevalier the intestate executed to McGirk an obligation . . 'I promise to pay Matthias McGirk . . three fourths of all the damages and wages that I may recover in four actions of replevin to be by me brought, to wit, one against Pierre Chouteau, senior, for one negro boy named Paul, one against . . [237] Labadie for a negro boy named Antoine, one against Marie Antoinette Honey [Mrs. Little],[3] . . for a mulatto woman named Sophie, and one against John Pierre Cabanne for a mulatto girl named Clarisse,' . . Chauvin as administrator becoming the plaintiff compromised the suit with Chouteau; Chouteau surrendering the negro to Chauvin and Chauvin accepting one cent damages; . . Paul

[1] Dec. 3, 1818.
[2] See Ralph Gordon *v.* R. Duncan, p. 142, *infra.*
[3] Little *v.* Chauvin, p. 127, *supra.*

had been detained for several years from said Helene Chevalier and that his services during the time he was so detained, were estimated at several hundred dollars."

Hill v. Wright, 3 Mo. 243, October 1833. In June 1794 Lieutenant Governor Zenon Trudeau granted to Joseph Brazeau a "piece of ground situated in or near North St. Louis." It is described as bounded [244] "towards the S. S. E. by the concession granted to a free mulatress named Esther." Labuxiere [246] "cultivated there both before and after the massacre which was in 1780 . . Labuxiere was not a man who worked himself but his slaves worked it . . Witness says he knew Labuxiere's hands to work there 55 years ago. . . Joseph Labuxiere died at Cahokia in Illinois, 29th. of April 1791,"

Julia (a woman of color) v. McKinney, 3 Mo. 270, October 1833. [271] "an action commenced under the statute [1] for freedom. Verdict and judgment against Julia the plaintiff." McKinney bought Julia "as a slave from one Lucinda Carrington" who in 1829 lived in Kentucky; "that she then and there . . declared her intention to be, to remove and take with her Julia to the State of Illinois: that a witness in this cause applied to her to buy Julia, telling Mrs. Carrington that she could not hold Julia in Illinois as a slave; that if she took her there she would be free. Mrs. C. refused to sell Julia; said she would not keep Julia in Illinois, but intended to hire her out in Missouri. Accordingly Mrs. C. moved to Illinois, . . arrived in Pike county, Ill. about 27 or 28th. of October, . . purchased land, . . kept Julia there with her till about the 1st. of December the same year, exercising the ordinary acts of ownership and dominion over her, which are usually exercised by masters over their slaves: that in the mean time Mrs. Carrington hired Julia about two days to some person to work, which work was performed, and that she received pay therefor: that about the 1st. of December in the same year Mrs. Carrington sent Julia to Louisiana, Missouri, a distance of about 30 miles and hired her out: that Julia lived in Missouri some time, became sick and that Mrs. C. then sent for Julia, took her home into Pike county in Ill., where she was kept till she recovered her health: that then Mrs. C. took or sent Julia to St. Louis and sold her to S. McKinney the defendant. . . [276] The judgment of the circuit court is reversed, the cause is remanded for a new trial." [272] "The plaintiff's claim to freedom is based on the 6th. article of the constitution of the State of Illinois, . . the very introduction of slavery, works an emancipation of the slave, . . [273] yet it can be introduced so far as to permit persons passing through the State, as emigrants or mere travellers, to carry with them their slave property, . . otherwise there could be no emigration through the State with slave property, which is a thing it cannot reasonably be supposed the constitution of Illinois intended to forbid. . . Something more than the mere convenience . . of the emigrant ought to intervene to save him from a forfeiture. . . swollen streams of water . . serious sickness of the family, broken wagons . . would be a good cause of delay . . if the journey is resumed as soon as these impediments are removed, provided

[1] Act of Dec. 30, 1825. 1 Laws Mo. 404.

also due diligence is used to remove them. In the case before us the owner of the slave . . went into Illinois with an avowed view to make that State her home. . . kept the slave there for upwards of one month and treated the slave in all respects as slaves are treated in States where slavery is allowed. These acts . . surely amounted to the introduction of slavery in Illinois. Unless, therefore, the case can be brought within some reasonable and equitable exception, to be grafted on the constitution of Illinois, the plaintiff will be entitled to exact the forfeiture of emancipation. [274] in this case . . slavery is introduced and continued for the mere convenience of the owner . . [275] We believe the object of this prohibition [to hire in Illinois any person bound to labor in any other State] was to prevent slave labor from becoming a substitute for white or free labor throughout the State. The constitution makers have therefore prohibited the thing in every possible degree." [McGirk, J.]

Nancy, who sues by her next friend, v. Trammel, 3 Mo. 306, April 1834. An action for freedom. "After the action was brought, she [Nancy] filed a bill for a discovery alleging that she became entitled to her freedom by reason that some 24 years before the bringing the action, her grandmother was a slave in Kentucky and that her owner removed from Kentucky and took her with him to the N. W. Territory, and kept her there as a slave, . . That said Trammel during said residence purchased her grandmother in said Territory, that her mother was born in said Territory and Trammel claimed her as a slave, that he then removed to Missouri, where the plaintiff was born. That she has made search for proof of those facts and the defendant only knows them . . the defendant was ordered to answer, which he failed to do, the bill was then taken to stand confessed. On the trial of the suit for freedom this bill with the proceedings were offered in evidence. The court refused the evidence. The plaintiff suffered a non-suit, moved to set aside the non-suit, which was refused. . . [308] The circuit court erred in refusing . . The judgment is reversed and remanded." [McGirk, J.]

Sheriff v. Circuit Court, 3 Mo. 309, April 1834. "two accounts, the one for expenses incurred in the execution of Jacob Stewart . . 1830, the other for expenses incurred in the execution of Hampton a slave convicted of murder at the February term, 1832. . . The charges are for erecting a gallows, conducting the prisoners to execution, furnishing rope to hang them, coffins, etc."

Blanton v. Knox, 3 Mo. 342, April 1834. "action of debt . . for $42. . . on the 10th. day of Sept., 1832, Blanton hired to Knox a negro woman for one year, . . Knox was to clothe the negro."

Fulkerson v. Steen, 3 Mo. 377, June 1834. Steen "hired of Fulkerson three negroes, at the rate of two hundred and twelve dollars for one year, and the said Steen binds himself . . to find said negroes in sufficient clothing, bedding, to treat them properly, to pay the taxes, and at the end of the year to return them"

Ralph Gordon v. R. Duncan, 3 Mo. 385, June 1834. "Gordon brought an action of assault and battery against the defendant, . . a special verdict

. . finds, that in May, 1830, the plaintiff brought his action [1] under the statute for freedom . . that the court made an order and under that order the plaintiff was hired out during the pendency of the suit . . Robert Duncan kept and detained Ralph as the slave of Coleman Duncan [from April or May, 1831,] until March or April, 1832, and that the services of Ralph while thus kept were worth the sum of $100. . . in the spring of 1832, Robert Duncan hired Ralph to one Lawrence . . [386] at seventy-five cents per day till his wages amounted to $50, which sum was paid to R. Duncan for the hire of Ralph. . . in the suit commenced by Ralph against Coleman Duncan, . . judgment was rendered . . 1833, and . . Ralph was declared to be free,"

Held: " the whole question is this, was the plaintiff free at the time the defendant had him in possession, if he was, then he is entitled to recover. . . [387] false imprisonment is the right action as seems to us, . . this court . . do find the defendant guilty . . And . . this court find that said Ralph is not and was not a slave as alleged . . We assess the plaintiff's damage to the sum of one hundred and fifty-three dollars, etc." [McGirk, J.]

Nat (a man of color) v. Ruddle, 3 Mo. 400, June 1834. " Nat sued Ruddle for his freedom, . . Ruddle moved from Missouri to Illinois in the year 1829, and left the plaintiff Nat hired out in Missouri, and that Nat ran-away from Missouri and went to Illinois, and was frequently at his master's house on visits to the family. . . plaintiff hired himself out in Illinois; but there was no evidence that Ruddle received the hire. [401] The Court charged the jury . . that there was nothing in the soil of Illinois as in England that would work the emancipation of a slave by mere setting foot thereon, and that if the plaintiff went into that State on a mere voluntary visit, or ran away from Missouri to that State he would not thereby be entitled to his freedom." [400] " verdict and judgment for the defendant, . . [402] judgment . . affirmed." [401] " It has often been decided in this court, that to entitle a slave to recover in an action of this kind, the slave must abide in the State of Illinois by and with the consent express or implied of his owner long enough to induce a jury to believe, that the owner intended to make that country the place of the slave's residence." [Tompkins, J.]

Perry v. Craig, 3 Mo. 516, October 1834. In 1810 Craig executed to Bryan a deed of mortgage for [517] " one negro woman slave and child one year old, the woman about 27 years," Bryan had possession of the slaves till his death in 1820, and his widow [518] " continued on in possession of the same till her intermarriage with James F. Perry in 1825;" In 1827 Craig brought a bill in Chancery against Perry and his wife, and the circuit court [522] " made a decree, that Craig be let in to redeem the slaves," Decree reversed.

Marguerite v. Chouteau, 3 Mo. 540, October 1834.[2] [542] " The appellee puts his right to hold the appellant in slavery on the same ground whether she be descended in the maternal line from an Indian or a negro

[1] Ralph *v.* C. Duncan, p. 139, *supra.*
[2] For facts see same *v.* same, p. 132, *supra.*

woman. It was further contended for the appellee as evidence of the law of the land that the French commandant Bourgmont bought Indians for slaves on the Missouri and sent them down to New Orleans to work on his plantation . . [564] From the copy of [Governor O'Reilly's] . . proclamation furnished by the counsel of the appellee dated 7th. Dec. 1769 it appears that the Governor forbade any person whatever to acquire any property in any Indian whatever. We find in it these remarkable words, 'It is also ordained that the actual proprietors of said Indian slaves shall not dispose of those whom they hold in any manner whatsoever unless it be to give them their freedom. Awaiting the orders of his majesty on this subject we enjoin upon the said proprietors to go and make their declaration at the office of the recorder, by giving the name and nation of said Indians, and the price at which the proprietors shall value them' and the commandants of the several districts are commanded to make returns to the Clerk of the Cabildo at New Orleans of all the Indians whose names shall be entered with the recorders. O'Reilly probably intended to liberate them. . . Had not O'Reilly been removed from office, it is probable the will of the Monarch would have been made known to them [the colonists] . . [565] through a ministerial officer to summon the holders of those Indian slaves to appear before some judicial tribunal, to show by what authority they were held in bondage. It is in no part of the proclamation intimated, that the colonists should be confirmed in the possession of such Indian slaves, until the pleasure of the King in this respect could be known. . . [570] the appellees counsel took the trouble to bring in the register of Indian slaves made at Fort Chartres in obedience to an order made in the proclamation, by which it appeared that Tayon then residing at that place had not registered this woman. Whence it must necessarily be concluded that he did not regard her as *his Indian slave,* and that he declined registering her name, etc. as required by the proclamation under pretence that she never had been held in slavery. . . [571] *The Governor* O'Reilly's proclamation was the only public act; those who knew they had no right to hold Indians in slavery, might well dismiss them as by the proclamation they were allowed to do, and thus avoid a judicial investigation in which they had nothing to gain and by which they might lose, . . the decision of this cause is . . important in its consequences; and in deciding contrary to the opinion of the highest court of judicature of a sister State.[1] We have the misfortune not to be able to concur all in the same opinion. It is the opinion of a majority of this court, that the circuit court . . erred in instructing the jury, that if they found the maternal ancestor of the plaintiff was an Indian woman, and that she was held as a slave in the province of Louisiana while it was held by the French, she and her descendants ought to be taken by the jury to have been lawfully slaves. . . the judgment of the circuit court [in favor of Chouteau] is reversed. This cause was first argued before this court, at the May term, of the year 1828. This court being then composed of two Judges only, the decision of the circuit court was affirmed by a division in opinion of the two Judges then sitting: at the October term, of the year 1833, the parties by their

[1] The case of Seville *v.* Chretien, decided by the Supreme Court of Louisiana in 1817 (5 Mart. La., O. S., 275), was "particularly examined." Pp. 544-571.

counsel appeared in this court, and mutually agreed that the judgment in this cause before rendered in this court, should be set aside, and that it should be again argued before the court, consisting of all the Judges. The judgment of the circuit court being now reversed, two of the Judges concurring in opinion, the cause is remanded to that court, and it is required to proceed therein in conformity with this opinion." [Tompkins, J.]

Wash, J., dissented: [574] "The evidence derived from the old archives of the country—the registers of baptisms and burials—the records of voluntary sales, and of the sales and distributions made of the estates of intestates with the clear and positive testimony of witnesses sworn in this cause, exhibit beyond doubt or question, numerous cases of Indian slavery commencing with the earliest settlement of the colony and continuing after the period when the Spaniards assumed the Government in 1769. The proclamation of O'Reilly, at the time the Government was assumed by the Spaniards in 1769, and the decree of the Baron de Carondelet in 1794, are proof to the same effect and show expressly, that the existence of Indian slavery *de facto,* was not only known to, but tolerated by the Spanish Government. The case of Seville and Chretien [1] . . puts the question as I think, upon its true ground. It is clear from the testimony in the cause that the grand mother of the plaintiff was a woman of the Natchez tribe of Indians taken a prisoner at the time that nation was massacred, captured and exterminated by Perier in 1730. . . [575] the maternal ancestor of the plaintiff was one of those captured at the time of the massacre, and was not sent to Saint Domingo, or if so, was brought back and held in slavery in the province of Louisiana. . . [576] the Minister [M. Maurepas,] whose duty it was to make known the will of the sovereign, suggests [2] the propriety of selling the Indians, and the company to whom the colony had been transferred by letters patent, and who had charge of its settlement and government, in accordance with the suggestion, proceeded to sell the survivors as slaves. What recognition could be more full and explicit? The slavery in this particular case was expressly sanctioned and legalized, . . To regard the question then, as one to be settled by the laws which were in force prior to 1769 when Spain took possession of Louisiana, I can feel no doubt and the practice is shown to have been pursued and recognized by the Spaniards, under neither of the governments that have preceded us, could the plaintiff have asserted successfully her claim to freedom."

Hay v. Dunky, 3 Mo. 588, October 1834. "an action brought by Dunky . . against Hay . . to recover her freedom. . . [Dunky] about the year 1811, was brought by the agent of William Morrison from the State of Virginia to Kaskaskias in the State of Illinois, and was held as a slave by Morrison," The defendant gave in evidence [589] "a copy of the record of registry [of negroes brought into the Territory of Illinois, under the act of September 17, 1807] . . showing that the plaintiff in Nov. 1811, (she being then 16 years old) was indentured to William Morrison to serve forty years. . . [590] she came into this State without

[1] 5 Mart. La., O. S., 275 (1817).
[2] In a letter to the directors of the company Apr. 22, 1731.

the consent of the person claiming her services in Illinois, and that the defendant exercised no authority over her in this State, except what was necessary to remove her into Illinois, for the person claiming her services there, . . verdict for the plaintiff . . motion for a new trial was overruled, . . ."

Judgment of the circuit court affirmed: [592] " the act of the Territorial Legislature of 1807, . . was in violation of . . the ordinance [of 1787]. . . Yet it is contended that the 6th art. of the Illinois constitution, recognized the act of the Territorial Legislature of 1807, and legalised the qualified slavery or servitude provided for or imposed by that act. . . This court is prepared to go further . . than the Supreme court of Illinois have gone and we hold that it was competent for the convention in forming a State Government for Illinois, not only to have legalised the act of the Territorial Legislature of 1807, but to have provided for the introduction and existence of unconditional or absolute slavery. Such is now the sovereign right of every State in the Union." But the convention did not [593] " legalise the slavery provided for in the act [of 1807] . . The first clause [of article six of the constitution] . . provides, that 'each . . person who has been bound to service . . in virtue of the laws of the Illinois Territory heretofore existing, . . without fraud or collusion, shall be held to a specific performance of their contracts or indentures.' . . Such contracts or indentures were in fraud and violation of the ordinance [of 1787] and therefore could not have been reached and classed with contracts and indentures entered into, 'without fraud or collusion,' as described and referred to in this clause of the 6th. art." [Wash, J.]

Soper v. Breckenridge, 4 Mo. 14, May 1835. " an action commenced by Soper (who is appellee,) . . on a warranty of soundness in the sale of a negro girl." Bill of sale: " For and in consideration of the sum of two hundred and sixty-seven dollars and fifty cents, I have this day sold unto Benjamin Soper one negro girl named Dinah, sound in body and mind and slave for life. I bind myself to warrant and defend the right and title of said negro from all and every person or persons whatsoever, given under my hand this 7th day of September, 1833. Eddy L. Breckenridge."

Held: a warranty as to title only. Judgment of the circuit court in favor of Soper reversed. The circuit court erred also in refusing to instruct the jury [16] " that if they found from the evidence, that the slave was only slightly diseased, if at all, and that she came to her death by negligence or cruel treatment of the plaintiff [Soper], the defendant is not liable for the whole value of the slave, but only to the extent of the injury occasioned by the disease." [Wash, J.]

Relfe v. Jones, 4 Mo. 89, June 1835. Jones applied to Relfe " to buy the negro, that he informed Jones the negro did not belong to him, but was claimed by his father-in-law who lived in the State of Virginia, that he also informed Jones that the negro had some claim to freedom by reason of his residence in the state of Illinois, that the negro was a worthless fellow, and that he advised Jones to have nothing to do with him, that Jones then applied to Duff to purchase the negro, agreeing to run all risks,

and agreed to give Duff $250 for him, . . Jones . . took said negro, sold him for $500, and that he has since obtained his freedom."

Mayor v. Hempstead, 4 Mo. 242, October 1835. On June 6, 1835, [243] "the Mayor and board of Aldermen [of St. Louis] passed an ordinance" providing that "no slave shall be permitted to drive any licensed . . dray . . within the limits of this city . . under a penalty of ten dollars." Hempstead's "dray and slave . . were employed contrary to this ordinance."

Held: [244] "this ordinance, under the name of regulating drays, regulates slave labor, which is beyond the grant in the charter [of St. Louis]." [243] "Ever since the foundation of the city as a village, slavery, both in fact and law, have existed to a very considerable extent, and wherever slavery is known to exist in the United States, and . . drays are used, those who have had the care . . of the same, . . have been, and still are slaves, at least to a great extent;"

Stewart v. Dugin, 4 Mo. 245, October 1835. "in Oct. 1834, Dugin sold to W. Stewart a negro boy a slave, named Bill, for the sum of five hundred dollars, . . [246] one Partney owned the negro when a boy, that he bought him of some one in St. Louis, when Bill was about 15 years of age, that before he bought him he knew he had fits, and the boy had several after he bought him, that about three years after he bought, the fits ceased, he never put the boy to hard work. In 1818, he sold the boy to Dugin, and then supposed he was able for hard work, . . A witness testified that he had known the negro some eight or ten years, had worked with him in mineing [*sic*] while Dugin owned him, found him to be a good hand," Dugin's stepdaughter testified [247] "that after Stewart bought Bill he came to Dugin's house sometime in January 1835, said he was then on his way to sell Bill, . . that he, Bill, had swam the Merrimack river [in the depth of winter], it appeared to hurt him, that he had given Bill the pass to hunt a master, he had overstaid his time, burnt off his shoes, come home bare-footed . . [248] in the middle of the winter season . . shortly after this, Bill was found sick on the roadside and died in a day or two [in February 1835]. . . The circuit court seemed to be of opinion that Dugin was only entitled to four hundred dollars, instead of $500, and perpetually enjoined one hundred. . . The decree is affirmed" [McGirk, J.]

Richardson v. Adams, 4 Mo. 311, June 1836. Will of William M. Fullerton, who died in 1829, "whereby he divised to his wife Sarah, . . all his property . . during her life: and upon her death the one half of his said estate (except the slaves, Brister and Winney, who were to be free) was divised to one Jesse Frier, . . [312] Sarah Fullerton took possession of the whole estate, an inventory . . was . . returned, . . including the two slaves, Brister and Winney, who were valued at $762.50 . . that Sarah Fullerton died . . 1831, having made . . a will, . . whereby she devised . . to the negro man Brister . . who was to be free at her death, . . a horse worth forty-five or fifty dollars;—to the wife of . . Phineas Adams, she devised the negro woman Winney, for life,—remainder to . . Phineas,"

Rachel (a woman of color) v. Walker, 4 Mo. 350, June 1836. In 1830 Stockton "sent by [Langham] . . to Major Brant of St. Louis to purchase a slave; that the plaintiff was purchased for said Stockton, and was . . taken up to him to Fort Snelling at St. Peters in the same fall. That there said Stockton held her as a slave till the fall of the year 1831, when he removed to Prairie du Chien, taking the said Rachel with him as his slave, at which place he held her in slavery, till about the spring of the year 1834, when he took her to St. Louis and sold her. That Fort Snelling is on the west side of the Mississippi river, and north of the State of Missouri, and in the territory of the United States. That said Stockton before he bought said Rachel, had resided at Fort Snelling about two years, and was still residing there when he bought the plaintiff, having just married. That Stockton while he resided at Fort Snelling was an officer of the U. S. army attached to the troops there; that while Stockton was at Prairie du Chien he was also an officer in the service of the U. S. army; that Prairie du Chien is in the Michigan territory and east of the Mississippi. That Rachel was only employed in attendance on Stockton and his family. . . "

[354] "The judgment of the circuit court [in favor of Walker] is reversed—the cause is remanded for a new trial." [352] "It seems that the ingenuity of counsel and the interest of those disposed to deal in slave property, will never admit anything to be settled in regard to this question." Review of the Missouri decisions. [353] "In all the cases decided by this court, it is admitted that the people of the United States have a right to pass through any of the districts where slavery is prohibited with their slaves, and while they justly retain the character of emigrants passing through the country, the fact that they have in their possession, when so passing slaves, does not emancipate them under the ordinance; . . In the case of Julia [1] . . the court say there should be something like necessity existing, to justify the owner of a slave to keep such slave in the country, so as to save a forfeiture. The counsel insist on a necessity as regards the owner to stay and abide in the Missouri territory and Michigan for more than two years, and during all that time to keep the plaintiff there as a slave. . . [354] though it be true that the officer was bound to remain where he did, during all the time he was there, yet no authority of law or the government compelled him to keep the plaintiff there as a slave. . . In this case the officer lived in the Missouri territory at the time he bought the slave, he sent to a slaveholding country and procured her, this was his voluntary act, done without any other reason than that of convenience, and he and those claiming under him must be holden to abide the consequence of introducing slavery both in Missouri territory and Michigan, contrary to law." Otherwise "the convenience or supposed convenience of the officer repeals as to him and others who have the same character, the ordinance and the act of 1821 admitting Missouri into the Union, and also the prohibitions of the several laws and constitutions of the non slave holding States." [McGirk, J.]

[1] Julia *v.* McKinney, p. 141, *supra.*

Speed v. Herrin, 4 Mo. 356, June 1836. In 1823 Laperche [360] "bequeathed to his wife Marie, the negro boy . . for and during her life . . the said widow . . sold said slave to . . Herrin, in the year 1826; . . that said Herrin then lived in the southern country, and was at the time of the purchase by him of said boy, engaged as a negro trader in purchasing slaves in this country for the southern market; that said Herrin had been told before the purchase by him of said boy, that he could get no title to said slave; to which defendant answered, 'that the widow of Laperche, who offered to sell said slave, had a good title for her life, and that she would live as long as the slave, and it did not matter,' . . [361] The judgment [in favor of Herrin] . . reversed and the cause remanded" [Wash, J.]

Meechum v. Judy, alias Julia Logan (a woman of color), 4 Mo. 361, June 1836. [363] "Here a negro sues another for freedom, the defendant negro [Meechum] vouches a white man [Newton], for warranty of title, and then demands that no negro shall give testimony in the cause, because all the parties are not negroes." [1]

Judgment in favor of Judy affirmed: "It was his [Newton's] folly to sell a supposed slave to a negro who was under some disability. Another thing in this case is, the affidavit nowhere alleges that the verdict is unjust, nor that the defendant nor Newton, have any merits of any kind:" [McGirk, J.]

Paca v. Dutton, 4 Mo. 371, June 1836. "about the year 1787, one Josiah William Dallam owned . . the grand mother of the defendant in error, as a slave, and that said Dallam did by a deed under his hand and seal, attested by one witness, and duly recorded, emancipate said grand mother, to take effect in future;"

Held: the attestation of two witnesses is not necessary to a deed of emancipation made in pursuance of the act of Maryland of 1752, where the emancipation is to take place *in futuro.*

Amy (a woman of color) v. Ramsey, 4 Mo. 505, May 1837. "Amy . . brought an action of assault, etc., against Jonathan Ramsey . . for her freedom. . . the plaintiff was born the slave of one Josiah Ramsey more than twenty years before the trial, in the State of Kentucky, and that she had continued in the possession of said Ramsey till the time of his death, . . September, 1834; that Josiah Ramsey moved from Kentucky to Missouri, . . 1816 or 1817. . . a bill of sale [was read in evidence] under the hand and seal of the said Josiah to the said Jonathan . . 1807, expressing the consideration of thirteen hundred and twenty-three dollars, and conveying the plaintiff, and four others, to the said Jonathan. . . The bill of sale reserved the use of the slaves to said Josiah for his life. [506] The plaintiff then offered to give in evidence a deed of manumission, from Josiah Ramsey to her and others, duly proved, . . and recorded, . . the date of which deed is the 3d day of September, 1834. . . The court rejected the deed. . ."

[1] Rev. Code 600, sect. 2; new Rev. Code 624, sect. 19.

[512] " Judgment [in favor of Ramsey] affirmed, the defendant pays his own costs." [509] " We consider the deed of emancipation as entirely a voluntary deed, passing no more right to freedom than the donor had a right to slavery in the plaintiff. If Josiah had only a life estate in the slave, he could emancipate for life, and no more." [McGirk, J.]

Rhody (a woman of color) v. Ramsey, 4 Mo. 512, May 1837. [513] " The points in this case are similar to the points in the case of Amy *v.* Ramsey [*supra*]. . . the law in both cases is the same."

Russell v. Taylor, 4 Mo. 550, June 1837. [551] " Taylor was the captain of a certain steam-boat called *Utility,* which traded up the Mississippi and Illinois rivers; that the mate of the boat brought the boy on board . . at St. Louis. The boy did not shew any pass, nor did the defendant ask for any, but the defendant shipped the slave one trip up the river, and on that trip landed on the east side of the Mississippi at . . Alton, in Illinois, and when the boy was found on the boat at St. Louis, he was engaged to the defendant for another trip up the Illinois river."

Judgment for Taylor reversed: [552] " Transporting a slave across the Mississippi into a non-slaveholding State was the evil to be prevented by the act of 1822." [1] " Ferrymen are mentioned, because they have generally the means in constant readiness to do the act. . . The owner of a steam-boat . . if he does the act through the instrumentality of the boat, . . is not less guilty." [McGirk, J.]

Wilson (a colored man) v. Melvin, 4 Mo. 592, June 1837. Action for freedom. In March 1834 Melvin [593] " removed from the State of Tennessee to the State of Illinois, bringing with him two slaves, one of which was Daniel Wilson, the plaintiff . . [594] He arrived in the county of St. Clair . . where he remained till the fall of that year, and made a crop of corn on rented ground. Within the space of a month, some say a less time, after his arrival in St. Clair county, the appellee, Melvin, went to St. Louis, in Missouri, where he located the slaves above mentioned. The appellee brought with him from Tennessee a wagon and team;—the wagon stood in the yard of the son of the appellee, with whom he passed the summer, unloaded, till the negroes were taken to St. Louis, because the appellee was told ' if he did, and made any place their home,' the slaves would obtain their freedom. He appears to have been impressed with the belief that unloading his wagon would have been evidence that he had fixed a place of residence. . . before he took the slaves in question to St. Louis; that he spent his time in visiting his children, and that the slaves did little except to feed the horses; that the appellant did some work for one Ingle, and brought the money to witness [a son of Melvin], and said he had made something for the old man, and gave the witness the greater part of the money, and kept the rest himself. The witness passed the money to the appellee, but does not know that Ingle hired the appellant's services from the appellee.—The appellant assisted the witness to cut down some trees for rail timber, but had no orders to do so from the witness, or from any other person known to the witness. In the month of July,

[1] Rev. Code of 1825, p. 747.

of that year, while the cholera prevailed in St. Louis, the two slaves came over to Illinois, by permission, it is said, of the appellee, and were employed by the appellant [appellee], for one week, or perhaps more, in the harvest field, and the women in domestic business. . . [598] it is certain that defendant's journey was ended in St. Clair county, of Illinois; and that he only extended it to St. Louis at his leisure, to hire out his negroes, when he found he could not keep them in Illinois, by moving them out once a year. . . in a very short time, he returned and made a crop of corn, and remained in the State to gather and sell it." "leaving that State only towards the close of the year."

Judgment for Melvin reversed and the cause remanded: [596] "The present plaintiff claims his freedom because he was, as is alleged, held in slavery in violation of the constitution of the State of Illinois. . . this court has manifested its opinion [1] that the construction of the act of Congress of 1787, and that of the constitution of the State of Illinois, ought to be the same. . . [598] The evidence was, that he left home in Tennessee, with an intention of residing in Illinois. . . [But] [599] even admitting that it was in evidence, that the defendant had, when he left home, meditated a journey through Illinois to Missouri, it appears that the jury ought . . to have found for the plaintiff" for [598] "The only question to be submitted to the jury . . was, whether he [Melvin] had made any unnecessary delay?" [597] "Something of the nature of necessity should exist before he would, or ought, to be exempted from the forfeiture [of his slave]." [Tompkins, J.]

Stoner v. State, 4 Mo. 614, June 1837. "Seaton Stoner, on application for the writ of *habeas corpus,*" [615] "he was committed to jail by the Mayor of the city of St. Louis, under the 21st and 22nd sections of the act concerning free negroes and mulattoes, approved March 14th, 1835. . . the Mayor sentenced the petitioner to pay a fine of one hundred dollars, and to stand committed till the fine and costs are paid. . . [616] it is urged by the petitioner's counsel, that the prisoner is a citizen of the United States, and that, in violation of the 4th, 5th, 6th and 7th articles of the amendments of the constitution of the United States, he is deprived of his liberty. . . the Mayor . . must necessarily have found the prisoner not a citizen, before he could have passed sentence on him. And now, this court is called on to assume original jurisdiction, and inquire into the truth of the Mayor's finding in this summary mode of proceeding. Nothing is more plain, than that reason as well as law, forbids this court to discharge the prisoner on this writ." [Tompkins, J.]

Jennings v. Kavanaugh, 5 Mo. 25, September 1837. "a negro man belonging to Jennings . . was killed by another negro man belonging to Kavanaugh. . . they had been more than once fighting on the same day, within a short space of time; and that Kavanaugh's negro came up behind that of Jennings, and gave the mortal blow, a short time after the last encounter: that in a few days thereafter Jennings' negro died of the wound inflicted by that blow." The plaintiff [27] "took a non suit," and

[1] Julia *v.* McKinney, p. 141; Nat *v.* Ruddle, p. 143, *supra.*

motion for a new trial was overruled. Judgment affirmed: the 35th section of the 9th article of the act concerning crimes and punishments, does not extend to this case.[1]

Irving v. Irving, 5 Mo. 28, September 1837. [31] " witness testified that about fifteen or sixteen years ago, . . he resided in the Petit Osage (Little Osage) bottom, . . and that Joseph Irving, junior, . . came into that bottom to improve a place for his father, . . That in the spring of the year, Joseph Irving, senior, sent up a negro girl to cook and keep house for the laborers employed in making the improvement; that the girl so sent was of a dark color, supposed to be about fifteen or sixteen years old,"

Mary (a slave) v. State, 5 Mo. 71, September 1837. Mary was indicted [78] " for the murder of a child of a Mr. Brinker. There are two counts in the indictment; the first lays the killing to be done with a stick of wood by beating; the second charges the killing to be done by drowning. . . the jury found a verdict of guilty generally on both counts, and judgment of death was pronounced on the prisoner by the court." Judgment reversed for various reasons: [80] " the child could not come to its death by both these modes." [McGirk, J.]

Pierre Choteau, senior v. Marguerite (a woman of colour), 12 Peters 507, January 1838. " In 1825, Marguerite, a woman of colour, by her next friend, Pierre Barrebeau, filed a declaration in the circuit court for the county of Jefferson,[2] . . Missouri, alleging that Pierre Choteau, sr., had beat and bruised her, and unlawfully detained her in prison against her will, etc. The object of this proceeding was to establish that the complainant, the descendant of an Indian woman, Marie Scipion, was free," [3]

The judgment against Marguerite in the circuit court of St. Louis county [4] was reversed and the cause remanded.[5] After judgment in favor of Marguerite, Chouteau [509] " sued out the writ of error to the Supreme Court of the United States, under the 25th section of the judiciary act of 1789, to the supreme court of Missouri." Writ dismissed for lack of jurisdiction.

Ferguson v. Stephens, 5 Mo. 211, April 1838. In 1825 certain slaves were conveyed in trust: [212] " That the profits and emoluments accruing from said slaves shall be a fund to support and educate the said Eliza Susan Ferguson, and such other issue as the said Dugald Ferguson, junior, might thereafter have; and at his demise, to be equally divided among such of his children as might then be living."

Talbot v. Jones, 5 Mo. 217, April 1838. [220] " the supposed value of two negroes, one a fugitive in New Orleans, and the other in Baltimore; "

[1] Digest of 1835.
[2] The proceedings in the Supreme Court of Missouri are " In error from the St. Louis Court."
[3] See Marguerite *v.* Chouteau, pp. 132, 143, *supra.*
[4] The case would seem to have been tried in the circuit courts of three counties: Jefferson, St. Charles, and St. Louis. The report in 12 Peters however contains contradictions.
[5] 3 Mo. 540 (572).

Lane v. Price, 5 Mo. 101, May 1838. "On or before the twenty-fourth day of December, eighteen hundred and thirty-four, we promise to pay E. Price, or order the just and full sum of eighty dollars, lawful money of Missouri, for the hire of a negro man by the name of Hannible, with usual clothing."

Tindall v. Johnson, 5 Mo. 179, May 1838. [180] "A marriage between a white person and a mulatto was not void by our law until the statute of 1835; and, therefore, the instruction moved by the defendant, that declared the plaintiff illegitimate on that ground, was rightly refused." [Counsel for appellee.]

Trimsley v. Riley, 5 Mo. 280, June 1838. In 1836 two slaves, named Levi and George, were hired for one year, for the sum of one hundred and sixty-eight dollars, [281] "that is, one hundred and thirty-two dollars for Levi and thirty-six dollars for George, . . and we and each of us further bind ourselves to furnish said slaves with as good boarding, clothing, and medical aid as is usual for such persons, and to deliver said slaves at the expiration of said term"

Allen v. Brown, 5 Mo. 323, June 1838. [325] "Finney proved that he was present and bid for the girl; that she was offered for sale by the . . auctioneers, for cash, as sound, a good washer and ironer; and that he bid for the girl as high as $250, and that Cerre overbid him $5, and the girl was knocked down by the auctioneer to said Cerre; the said slave was present at the sale; appeared to be of the age of forty-five years, and apparently sound and healthy; but that the witness, on some one remarking that the girl was lame, desisted from bidding."

Erwin v. Henry, 5 Mo. 469, August 1838. Will of Malcolm N. Henry: [470] "It is my will and desire that my boy, Adam, Juno and Cynthia, be released from bondage, on condition that Juno serve my sister Mary one year; Adam and Cynthia to serve the executor of my estate, or serve them to whom he hire them. Adam to serve two years, and Cynthia to serve four years, each then to have their perfect freedom, provided my sister may quit her claim to Juno; otherwise, the property I will to her shall hereafter be equally divided between my brothers and sisters: my desire is to pay sister Mary well for her claim on Juno. My crop of grain, farming utensils, household and kitchen furniture, and stock, all of which I want valued and acted on according to law, after my affairs are settled; then, if there is a residue from hire of negroes, crop, etc. I wish it to be given to Eleanor Erwin." [471] "during the four years Cynthia, the female slave, was required to serve before her freedom commenced, she had borne a female child," Eleanor Erwin claimed "said child as residuary legatee after the payment of debts." The court below dismissed her bill.

Judgment reversed and cause remanded.[1] [475] "all property of a personal nature, of whatever kind, which he could call his at the time of his death, is to be taken as the residue, . . at any rate, the value of the slave, Adaline [the daughter of Cynthia], should be applied to ease

[1] See Clark *v.* Henry, p. 165, *infra.*

the residue, and that the chancery court should, if the debts and expenses have been paid out of the residue fund, order that exhaustion to be supplied by the value of the slave *protanto*." [McGirk, J.] Tompkins, J. dissented.

Mulliken v. Greer, 5 Mo. 489, August 1838. [491] "he had 9 or 10 slaves, *viz.*: a man, sickly and of very little value; three women and five or six children—all of one woman—the oldest child between ten and eleven years old; that of these he gave to his daughter, Mrs. Standifer, a woman and girl; and sent home with Mrs. Greer the woman and boy demanded by Greer in this action. . . [492] The jury found the value of each slave to be five hundred and fifty dollars,"

Reed v. Circuit Court, 6 Mo. 44, August 1839. "A slave, the property of Reed, was indicted in the Howard Circuit Court for arson, convicted, and by the judgment of the Court, was ordered to be sent out of the State for 20 years. Reed moved the court to tax up the costs against Patrick Woods, who had the slave in his possession, when the arson was committed, under a contract of hire for one year. But the court refused to do so,"

Fanny (a slave) v. State, 6 Mo. 122, October 1839. "an indictment for the murder of William Florence, against Fanny, a slave of William Prewitt. The indictment was found in Lincoln circuit court, the county in which the murder is charged to have been committed, . . [123] on the petition of W. C. Prewitt, the master, the court ordered a change of venue to the county of Warren." On the trial William Florence, the father of the two murdered children, testified: [131] "that on Saturday the 1st September 1838, I left home about 2 o'clock to go to the post office, before I left, my children asked my permission to go to Prewitt's orchard. I told them they should not go, that them negroes had threatened to kill them; and if they did go I would whale them. . . So soon as I got home . . my wife . . asked me if I had seen any thing of the two children; I told her no, and asked her where they were. She stated that they had left home about 30 minutes after I did, and said they were going to the orchard to get some peaches. . . I went to it but did not see my children. I then went to Mr. Prewitt's house and called out the prisoner Fanny. . . I asked for Ellick [her son]; . . I then discovered from their deportment that my children had been murdered by them. . . [132] The place where the children were found is about 2½ miles from the orchard." [125] "Mrs. Florence states . . that Aaron, a negro boy belonging to her husband, was never at any time, from the time her husband left home . . until he returned, out of her sight more than fifteen minutes;" [136] "Mark, a slave, a witness, says; I went on the Saturday evening, on which Mr. Florence's children were missing, to Mr. Florence's mill. I started about two o'clock in the evening. I passed Mr. Prewitt's orchard, on my way to the mill, and travelled the road from there to the mill on which the children must have gone, if they travelled any road to the orchard. I did not see them on the road nor in the orchard. When I got to the mill I saw nothing of Aaron, Mr. Florence's slave. . . Aaron did not come

according to my judgment for one hour and a half after I got there." Ellick, the son of Fanny, [124] " swore that, on the day the children were found, he and his mother Fanny and his father Ben and his uncle Green were all arrested and taken into custody, and that on the next day he was taken out from the rest by Mr. Sitton, the sheriff, and by Mr. Hammond, and they told him if he did not tell who killed the children, they would hang him; that if he would tell they would let him off; that he told them he knew nothing about it; that they then put a rope around his neck and hung him; that he then told them that his mother had told him that she had killed the children in the orchard, when they came for peaches; that after this, on the same day, the prisoners were taken to Mr. Lawrence Sittons, and he and Green were set at liberty; that a few days after he was taken up and sent to Troy to jail; that after he got there, Mr. Chandler, the jailor, told him that he knew more about killing the children than he had told, that he had helped to kill them himself; that Mr. Chandler then told him that Judge Hunt had hung his father Ben at Bowling Green, and had come by his masters, and hung Green, and had then just taken his mother out to hang her, and that if he did not tell all about killing the children, Judge Hunt would be there directly and hang him; that if he told they would let him off; that Mr. Chandler then put a rope on his neck, and that a man came in with a cloak on, who Mr. Chandler said, was Judge Hunt. He says the man they called Judge did not say anything. He also says that he then told Chandler that he helped his mother to kill the children; that he and his mother carried them off into the woods. He says he also told the same story before the grand jury, after he had been sworn on the book; that the reason why he told the grand jury so was, that he had once said it, and he thought he was bound to stick to it; that neither the story he told Sitton and Hammond, nor the one which he told Chandler and the grand jury was at all true; that he told both in consequence of the threats and hanging above mentioned, and states that he knows nothing about the killing of the children." Fanny was [123] " found guilty of murder in the first degree and sentenced to death. . . After verdict a motion was made for a new trial and over ruled by the court."

Judgment reversed and the cause [142] " remanded from the circuit court of Warren to that of Lincoln county:" I. the slave Fanny should have petitioned in person for a change of venue; II. "Abstracting from the evidence on the record the declarations extorted from the boy Ellick, there does not in my opinion remain any evidence to justify a jury in finding the prisoner guilty." [Tompkins, J.]

Dickey v. Malechi, 6 Mo. 177, September 1839. Bazil Simmino said that he would destroy the will of his brother Antoine, because [183] " the will was 'ungrateful' towards the family of Antoine Simmino; as it gave the greater part of his property to a half negro."

Fraser v. State, 6 Mo. 195, September 1839. [196] " defendant sold to a slave, the property of Mrs. Larrose, some whiskey, for which he received pay from said slave," " There was a verdict against the defendant and judgment for fifteen dollars." Judgment reversed.

Ellett v. Bobb, 6 Mo. 323, May 1840. On January 2, 1837, Bobb hired a negro boy from Ellett, and promised to pay him, on or before the following 25th of December, the sum of $165.50 for his hire, and to return the slave. [324] "on the 5th day of May 1837, without any fault of the defendant, the said negro ran away, and did not return"

Held: Bobb must pay the hire of the negro, but is not liable for the return of the slave: [325] "The defendant could not have the use of the negro without leaving him at liberty; and for the assurance of the negro's health and comfort, so much indulgence is necessary as to leave it in his power to escape, if he be so inclined. . . the bailee could not be reasonably required to use the extreme diligence that the owner might be disposed to use, to retake a runaway; nor to encounter as great expense, in case the negro should succeed in escaping into a distant country." [Tompkins, J.]

Plummer v. State, 6 Mo. 231, June 1840. [233] "Anna Barker [sister of the deceased and of the defendant], deposed, that on the Sunday before the homicide was committed, the children of Phil. Plummer, defendant, passed by her house, when a black child, a child of the negro woman Martha, snatched the bonnet of one of Ph. Plummer's children, and was running away with it; witness gave back the bonnet, and slapped the negro child. The children of P. Plummer went home and reported that one of them had been whipped by the negro child with a switch," Philemon Plummer, the defendant, declared a few days later [234] "that when his children went over to Jo's, Jo's children would ask if they were akin to them, to which their mother (Jo's wife,) would say no, they are negroes, or mulattoes; and Joe would sit there laughing like a fool. . . [235] Gale testified: that on . . the day Joseph Plummer was killed, . . Philemon Plummer came [to his father's] . . the old man and John being there, Philemon said, 'Daddy, you, or John, one, has to fight me; Marth (the negro woman) has been telling lies on my children, and Katy Plummer and Anna Barker made the black beat them with sticks;' the black woman came out and said something; Phil. shook a hickory at her, and told her to hush her mouth, or he would give her five hundred lashes. . . about two hours after . . he, defendant, looked down the road, and said 'there, Marth has got Katy and Anna to come and make a fuss;' he then told John to whip her, but John refused; he said he, defendant, would, and made some motion to that purpose, but was pulled back by his father;" in the ensuing scrimmage Philemon killed his brother Jo with a pitch fork.

Barker v. Pool, 6 Mo. 260, June 1840. [261] "a negro slave of Barker was ordered by him to burn a stubble field, and that in burning the stubble field he accidentally suffered the fire to be communicated to a stack yard,"

Kirk v. State, 6 Mo. 469, September 1840. Indictment for stealing a slave, and conviction.

Manning v. Cordell, 6 Mo. 471, September 1840. Cordell's slave was indicted for a felony. [474] "Cordell . . declined employing counsel, whereupon the court appointed Mr. Manning, who was an attorney"

Manning [473] "brought suit against the master, for professional services in defending his slave. . . ."

[474] "Verdict and judgment for defendant. . . The counsel acts in such case as an officer of the court, and for the furtherance of justice, and not upon any contract with the master, nor can any be implied." [Napton, J.]

King v. Bailey, 6 Mo. 575, September 1840. [576] "a mortgage executed [in 1837] . . by Jacob Hinton, by which Hinton sells to Bailey, in consideration of the sum of four hundred dollars . . a negro girl slave Joann, provided that if said Hinton should, within one year thereafter, pay the principal . . with interest . . then the mortgage to be void, . . after their execution of the instrument Hinton called the girl into the room, where he and the plaintiff Bailey were, and said here is the girl, she is yours, I deliver you possession of her; that said Hinton's wife then requested him to leave her the said negro until spring, as she had a young child and no nurse . . to which Bailey assented."

Loughridge v. State, 6 Mo. 594, September 1840. Loughridge "was indicted for aiding Perry and Hanson, two slaves, in committing . . an assault with intent to kill . . Cranmer. . . Loughridge did not shoot the gun, but that it was shot from the stable, . . Loughridge said he had sent the negroes Perry and Hanson to the stable to take care of his horses and hay, and that no man should search his stable; that he was responsible for what the negroes did," A gun was found in the stable which appeared [595] "to have been lately discharged." Loughbridge had, a few days before, threatened "that he would shoot Cranmer in less than ten days." Loughbridge was found guilty.

Held: a freeman, accessory to a felony committed by a slave, is punishable in the same manner as though the principal were a freeman.

George (a man of color) v. Craig, 6 Mo. 648, September 1840. In 1838 George "filed his petition . . with a view to institute a suit for the recovery of his freedom. The suit was accordingly brought by leave of the court in *forma pauperis,* and in pursuance of the 8th section of the act, . . the court directed the petitioner to be hired out by the sheriff. . . 1840, . . the court ordered the proceeds of the hire accruing from September 1838, to November 1839, to be paid over to defendant. . . plaintiff appealed." Appeal dismissed, as the main suit is yet undetermined.

Posey v. Garth, 7 Mo. 94, August 1841. [95] "Bird Posey was employed by Dabney Garth, as overseer, for one year, at the price of one hundred and seventy-five dollars; his term of service commenced on the 1st January, 1838, and he continued industriously employed for Garth until sometime in April following, when Garth told Posey that he must leave his service, that he had been negligent, and had maltreated and injured his negroes: Thereupon Posey left Garth's employment. It appears that Posey, the day before he was ordered to leave Garth's service, for some fault supposed to have been committed by one of Garth's negroes under his control, attempted to punish the negro by whipping; the negro . . [96] resisted by refusing to obey Posey's order. Posey thereupon

struck the negro with a handspike and knocked him down, and then beat him with the handspike in such a manner that in four days thereafter he died from the effect of the blows. Posey afterwards instituted an action against Garth for his year's wages, claiming the whole amount, and recovered sixty-one dollars, the costs being adjudged against him. A new trial was asked for by Posey, and refused, and he brings this cause here by appeal." Judgment affirmed: Garth [97] "not only had a right to discharge him, but it was his duty to do it." [Scott, J.]

Cato (a man of color) v. Hutson, 7 Mo. 142, August 1841. [144] "Memorandum of a race to be run on the Marion track, on the 13th day of May next, in Cole county, Missouri, is this, that Joseph Yount agrees to run Cato's sorrel mare against Isaac Hutson's bay horse, for the sum of three hundred and fifty dollars, . . 1837." [145] "the race was won by Yount, and that the stakeholder, by Yount's direction, paid over to Cato the sum of money put into his hands by Hutson and his partners."

Hawkins v. State, 7 Mo. 190, September 1841. Rebecca Hawkins [191] "had been arrested at the burial of her husband," and "a negro woman, accused with others of poisoning Hawkins" had also been arrested. Mrs. Hawkins "thus accosted the negro woman: 'Mary, do you say I know any thing about this matter?' Mary answered yes, we all know about it; I shall have to die, and I am not going to tell any more lies about it." At the sheriff's house Mrs. Hawkins "said to the negro woman, Mary, you have ruined us all: Mary replied, dont say I have, Mistress. The plaintiff in error then observed, well, we have ruined ourselves. The negro woman, continuing her conversation, remarked, Mistress, you know you sent Garster for the poison, and that you sent Ned to Garsters for it, and when it came, you told me to put some into a cup and bring it to you; I did so, and you poured some coffee in the cup on it; plaintiff in error said yes, but my heart failed me, and I did not then give it to him, but threw it out; but in consequence of some ill treatment during the succeeding night, she said the next morning she told Mary to put some more of that stuff in a cup, and bring it to her, and she would try and give it to him; that Mary brought the cup with the poison in a little coffee; she took the cup and poured more coffee into it, and gave it to Hawkins to drink at breakfast. Hawkins took the cup and drank its contents, and afterwards went out horse hunting, and returned home complaining that he had been sick. The poison used was ratsbane. It is contended that the court erred in permitting what the negro said to be given in evidence. That negroes cannot testify against white persons is clear; but this rule cannot be carried so far as to exclude the conversation of a negro with a white person, when the conversation on the part of the negro is merely given in evidence as an inducement and in illustration of what was said by the white person." [Scott, J.]

Rennick v. Chloe (a person of color), 7 Mo. 197, September 1841. Chloe [199] "instituted a suit . . to recover her freedom. . . [200] had a verdict and judgment. . . the plaintiff was a slave of one Nicholas Wren, of Warren county, Ken., who died sometime in the year 1809, at an advanced age, having made his last will and testament. The will con-

tained the following clause: 'It is my will, that in case Elizabeth, my wife, should die before the year 1820, Chloe, the negro girl, should be set free at the date of 1820. And it is my will that she serve out her time with one of my executors, (*viz.* my son Isaac Wren) in case I should decease before that time. And if the said negro girl, Chloe, should have any increase previous to the said year 1820, it is my will that my said son, Isaac Wren, should raise the children until they arrive to the age of twenty-one years, and then set them free also.' It appeared that Elizabeth Wren died in 1819, and that before the year 1820, the appellee, Chloe, had three children. . . Isaac Wren . . permitted the woman Chloe and her three children to be taken by William Rennick, one of the appellants, to Missouri, and a bill of sale was given by Isaac Wren, conveying his interest in Chloe's children until they arrived at the age of twenty-one years. . . Rennick . . was fully apprised that Chloe was a free woman, and that her children were to be free at the age of twenty-one. His acknowledgements to this effect both before he left Kentucky and during his residence in this state, were given in evidence."

Judgment for Chloe reversed and the cause remanded: [204] "The act of the Kentucky legislature, authorising persons of a certain age to dispose of their chattels, did not . . authorise them to emancipate their slaves, and the appellee having produced on the trial no such law, the court should have instructed the jury to find for the defendants. . . [205] if the plaintiff had shown that by the laws of Kentucky, a master could set his slave free by will, the admissions of the defendants could have gone to the jury to show a compliance with the will by the executor, supposing that by the terms of the will of Nicholas Wren, any act was necessary to be done by his executor, or by the plaintiff, before the plaintiff would have been by the will entitled to her freedom." [Napton, J.] Judge Tompkins dissented.

Lepper v. Chilton, 7 Mo. 221, September 1841. [223] "Chilton, on his way from Virginia to this State, reached Cincinnati, on the morning of the 16th of May, 1840, and applied to Lepper, the master of a steamboat then lying at the wharf, for a passage on his boat for himself, his family, slaves, etc. . . [Lepper] promised that his boat should leave the port of Cincinnati that evening, Chilton having represented to him, that upon no other terms would he consent to ship his slaves on the said boat. . . The boat did not start until the ensuing day, and during the night one of Chilton's slaves escaped, in the recovery of which he expended one hundred and ninety-five dollars. Verdict and judgment was for . . Chilton, . . [224] affirmed."

Desloge v. Ranger, 7 Mo. 327, April 1842. "a bill in chancery . . for the redemption of a negro girl [a family servant], conveyed to Desloge . . in 1830." The consideration was two hundred dollars, in which sum Ranger was indebted to Desloge. [329] "in the year 1835 the negro was sold by Desloge for eight hundred dollars . . two hundred dollars was a fair price for negroes of the description of the one sold, at the time of the transfer to Desloge" The bill of sale was construed as a mortgage by the majority of the court. Judge Tompkins dissented: [333] "I . .

believe that neither party ever thought that the bill of sale . . was to be construed as a mortgage, until, accidentally, the price of negroes rose very high, or rather until the price of money sank very low."

McNair v. Dodge, 7 Mo. 404, May 1842. In 1804 a marriage contract was made by which [405] "the slave Violette, the mother of the slaves sued for, was given to the wife during her life, and if she died without children, to revert to the husband, Israel Dodge and his heirs. . . [406] no child was born . . Mrs. Dodge claimed the negro woman, Violette, after the death of her husband [in 1806], . . in the year 1830, she sold and delivered the slaves" to McNair. Judgment in favor of Dodge's administrator affirmed.

Chouteau v. Hope, 7 Mo. 428, May 1842. "an action of trover, brought by Hope, to recover the value of a slave, alleged to have been converted by the defendants . . the boy . . was free . . [429] born in the state of Illinois, and raised there, . . plaintiffs in error [Chouteau and Keizer] had employed the boy on their boat, as a free boy, and had discharged him as such."

Judgment for Hope reversed and the cause remanded: "the subject matter of the suit was not property, . . Such defence is a complete answer to the action. Nor is there any thing contrary to the spirit and policy of our laws in allowing this defence; for the record of the judgment in this suit would not be available in an action brought by the negro for his freedom." [Napton, J.]

Christy v. Price, 7 Mo. 430, May 1842. A negro man was hired on March 1, 1837, for one year, for "the sum of one hundred and thirty-two dollars, . . and we bind ourselves not to remove the said negro out of this county, and to furnish him with good clothing, suitable to the season, and give him good medical aid, if sick, and pay doctors' bills, if any, created, and return said negro." He was put to work in a sandpit and killed by a cave-in. The jury found for Price, the owner of the slave, and assessed his damages at six hundred dollars.

Wade v. Scott, 7 Mo. 509, August 1842. [510] "Scott sold to Wade a slave [for the sum of $625], with a written warranty that he was sound, with the exception of a small defect in his hands. A very short time after the sale, the slave's hands were in such a condition as to prevent his making any use of them. They had lost their muscular action, and were incapable of grasping any thing. . . Wade saw the slave's hands before the sale, and examined them; and was told that the injury they had sustained proceeded from cold. The physician who examined the slave's hands after the sale to Wade, doubted whether the defect was real or pretended, they being full and natural in their appearance: and it was not until he had required the slave to use his hands in various ways, that he became satisfied that he was utterly unable to perform any thing with them." "Scott obtained judgment for the amount of the note."

Judgment reversed: [513] "although the vendee may have an opportunity of examining an article, yet if he requires a warranty, the vendor is answerable for any defect which is not obvious to the senses; . .

Whether the defect in the slave's hands was greater or not, than that excepted in the warranty was a question for the jury: and if they found it greater, it constituted a breach of the warranty, for which the party was answerable;" [Scott, J.] [515] "Judge Tompkins dissenting."

Singleton v. Fore, 7 Mo. 515, August 1842. Fore sued Singleton for breach of covenant. In 1838 Singleton sold Fore, for seven hundred dollars, "three negroes, to wit, Charlotte, Naomia, and Lucy, and did [in the bill of sale] warrant the said negroes to be sound and healthy, except that the said Charlotte had one eye out. . . [516] The evidence . . shows that Lucy, a child aged three or four years, was sick when she was delivered, and that Charlotte was frost bitten, and that this was known to Fore," Lucy afterwards died. [519] "Some of the witnesses said, this girl, if in good health, was worth $200. A witness for the defendant, who thought her to be in good health, thought her worth $300. The jury found only $275 damages for all the injury sustained by plaintiff, both on account of the unsoundness of Charlotte and of that of Lucy," Judgment of the circuit court [in favor of Fore] affirmed.

Perkins v. Reeds, 8 Mo. 33, July 1843. Perkins hired from Reeds for one year the slaves, Luke and wife and child, for two hundred dollars, promising to return the said slaves. Luke ran away and crossed the Mississippi River into Illinois. Verdict for the plaintiff, Reeds, reversed, and the cause remanded: [36] "Perkins could not have the same absolute control over the hired negro that a lessee of a house has over that inanimate property." The court adheres to the decision made in the case of Ellett *v.* Bobb.[1]

Offutt v. John (a mulatto), 8 Mo. 120, July 1843. John brought suit to establish his freedom. [122] "the plaintiff predicates his claim solely on the ground that his mother was a white woman." [123] "The defendant . . offered in evidence the record of a suit for freedom, in the Circuit Court of Logan county, Kentucky, between the appellee and one Eli Offutt, from which it appeared that a verdict and judgment was had against the appellee. The appellant purchased the appellee from said Eli Offutt. . . The verdict and judgment were for the plaintiff [John] in the Circuit Court."

Judgment reversed and the cause remanded: [128] "The instruction of the court below, which allowed the jury to disregard" the judgment of the Logan circuit court "was . . erroneous." [Napton, J.]

Vaulx v. Campbell, 8 Mo. 224, July 1843. [226] "the defendant was going to the South with some negroes and stock of his own, and that young Isham Sims went with him, taking along with him the negroes of the deceased, . . his father;" [225] "the six negroes which Isham [226] Sims, the deceased, took from his father, were brought back: but that a negro woman and her two children were not brought back, and that said woman and her children were worth one thousand dollars; . . after the defendant returned, he said he could have sold the negroes better, but Sims would not allow them to be separated."

[1] P. 156, *supra.*

Carpenter v. State, 8 Mo. 291, July 1843. Conrad Carpenter was indicted for the murder of his slave Minerva, whom he had whipped to death in 1842. He did not appear before the court to answer the charge, and the bail required of him was forfeited.

Robinson v. Campbell, 8 Mo. 365, January 1844. Action of trover. On January 14, 1839, Campbell executed to Morris a deed for a slave, Maria, [366] " upon consideration of $366.52 to him paid, upon condition that if the defendant [Campbell] should, on or before the 25th December following, pay to said Morris the sum of $366.52, then the right and title to said slave was to return and vest in said Campbell." As Campbell did not redeem the slave, Morris sold her, on July 7, 1840, to Robinson for sixty-one dollars. She was worth three hundred dollars. Judgment for Campbell reversed and the cause remanded.

Bright v. White, 8 Mo. 421, January 1844. Will of Joseph Diall, of Tennessee, 1827: [423] " Elizabeth Wilson has received $420 in a negro girl,"

Nathan (a slave) v. State, 8 Mo. 631, July 1844. Nathan [632] " was indicted and convicted for an attempt to commit a rape upon a white woman. . . The 28th section of the second article of the act concerning crimes and punishments,[1] declares the punishment for rape, or attempt to commit rape, by a negro or mulatto, to be castration. . . the offence . . is not a felony within the meaning of our statute, and therefore the prosecutor properly omitted the word ' feloniously,' in describing the offense. Judgment affirmed." [Napton, J.]

Randolph v. Alsey (a colored person), 8 Mo. 656, July 1844. "Alsey brought her suit for freedom . . on the ground of residence in the State of Illinois. . . The Circuit Court gave judgment for the plaintiff. The defendant filed a motion for a new trial," [I.] " because, holding a slave to service at the salt works, near Shawneetown, did not, of course, set him free.[2] [II.] . . . Alsey was held in the salt tract, and before 1825, and this [second] instruction precludes the jury from inquiring whether she was so held there, as to be protected by the second section of the sixth article of the constitution." Judgment of the circuit court affirmed.

Kennerly v. Martin, 8 Mo. 698, July 1844. [699] " The professional services . . were services rendered to the defendant herself and two slaves " by Dr. Martin.

Thompson v. Botts, 8 Mo. 710, July 1844. Held: [713] " a general warranty of soundness will not cover a defect visible to the senses; but the existence of a malignant disease, such as scrofula, is not a matter which can always be detected by mere inspection, even by the most skilful or scientific examiner." [Napton, J.]

Chouteau[3] *v. Pierre (of color),* 9 Mo. 3, January 1845. Suit for freedom. Pierre's [5] " mother, Rose, was a negress, and was born in Mon-

[1] Rev. Stat. 1835, ch. 170, sect. 28.
[2] Constitution of Illinois, art. 6, sect. 2.
[3] Gabriel S. Chouteau.

treal, in Lower Canada, about the year 1768.—That in the year 1791, or thereabouts, his mother was taken from Montreal to Prairie du Chien, in the North-west Territory of the United States, by one Stork [*sic*], where she remained until his death in and about the year 1794, rendering service to him and his family. That about the year 1795, Andrew Todd took Rose, his mother, from Prairie du Chien, and brought her to St. Louis, where she was sold in October of that year, to one Didier, a priest; and in August, 1798, she was sold by Didier to Auguste Chouteau, with her two children, . . During the period of Rose's detention at Prairie du Chien, that post was in the possession of British subjects. . . Pierre was born in St. Louis. . . [6] The defendant below gave evidence tending to show the actual existence of slavery in Canada in the year 1786 [1]—that slaves were recognized as property and subject to be sold; that Rose, the mother of Pierre, was sold as a slave in Canada."

Judgment in favor of Pierre was reversed: I. [8] "The statute under which Pierre sues, he being a negro, requires that he should prove his right to freedom. Then it would seem that it devolved on him to show the law forbidding negro slavery [in Canada]: for from [the history of the introduction of slavery into America] . . [9] a court would not be warranted in saying, that institution was illegal in places where it actually existed, for want of a law expressly authorizing it. . . [II.] [10] the ordinance of 1787 . . never had any force or validity in the posts . . occupied by Great Britain. . . the mother of the plaintiff Pierre, was taken from Prairie du Chien to St. Louis before the period assigned for the surrender of the posts." [2] [Scott, J.]

Wash v. Randolph, 9 Mo. 142, January 1845. [144] "Wash had sold to Randolph . . two slaves, covenanting that they were slaves for life; and it was in evidence that they had recovered their freedom by suit at law. . . the slaves had served said Randolph till the termination of the suit for freedom."

Robert (a man of color) v. Melugen, 9 Mo. 170, January 1845. "James Pharis, then deceased, who had claimed the plaintiff as his slave, . . had in his lifetime frequently said that he wished the plaintiff, Robert, to be free, because he had been a faithful slave; that he died from home, and that these declarations were made in his last sickness; and that he was prevented by those about him in his last sickness, from making a will. This evidence was excluded from the jury . . The plaintiff then asked a witness to state what he had heard Pharis in his lifetime say about the plaintiff being a free man. The defendant objected . . the court sustained the objection, . . Another witness was asked by the plaintiff to tell what he had heard any one say in the presence of Pharis in his lifetime, about the plaintiff having been in the State of Illinois. This question was objected to by the defendant, . . court sustaining the objection. The plaintiff then took a non-suit, with leave to move to set it aside, and afterwards

[1] Misprint for 1768. Rose had two infant children by 1798.
[2] See also Charlotte *v.* Chouteau, pp. 174, 194, 203, 216, *infra.* Charlotte was the sister of Pierre and won her freedom.

on the same day, did move to set it aside. His motion was overruled, . . [172] judgment of the circuit court . . affirmed."

Held: I. [171] " the act of emancipation must be in writing, executed " in accordance with the Act of 1835.[1] II. [172] " it does not appear from the bill of exceptions, that any pretence was made to prove a residence in Illinois by the consent of the intestate or otherwise. The questions could not then be put," [Tompkins, J.]

Holmes v. Fresh, 9 Mo. 201, January 1845. [209] " The negroes [three men] were worth from $1800 to $2000, and would have hired during the different years [1840-1844] for different sums . . one year for as much as $125 a piece, another for not more than $75." [Scott, J.]

Williams v. State, 9 Mo. 270, July 1845. [271] " The defendants with one Jesse Hines, were indicted . . 1844, . . [272] Jesse Hines, and the two Williams's, with others, on the night of the 27th February last, after midnight, left their neighborhood and travelled twelve or fourteen miles to the house of Joseph Brown, for the purpose, as alleged by them, of searching for a runaway slave, supposed to be in that vicinity. The company started with two bottles of whiskey, which they replenished on the route, and when they reached a branch three or four hundred yards from Brown's house, they halted and entered into a conversation respecting Brown's character and conduct. One of the company stated that Brown was a bad man, if rumor is true; and if what he had heard about him was true, he ought to be whipped—they would go to Brown's house to warm and to hunt for the runaway negro, and thence to Rice Patterson's field, half a mile off, where they expected to find the negro. They went to the house, rapped at the door, and demanded admittance. . . Brown was told that if he did not open the door and submit to have his house searched, they would procure a search warrant—he replied, that the negro was not there, nor had he seen him but once since he ranaway; that a few weeks previous some persons had searched his house for negroes and goods, as they said, and had pulled his house down. Brown got his gun, which being seen by Hines, he called for pistols, and directed two of the company to repair to the back door to prevent Brown's escape. The family of Brown were greatly alarmed. When the rioters were in the act of leaving the house, they informed Brown that a company of men would come from Cooper county, and drive him off; and when a short distance from the house they fired off a pistol." " Jesse Hines, not being found, a trial and verdict of guilty was had against the defendants, and a judgment entered thereon,"

Judgment affirmed: [273] " an outrage was perpetrated on the rights of Brown, by the defendants and others. If such conduct be tolerated by the juries of the country, and connived at by the courts, it will inevitably lead to fearful consequences. . . [274] If Brown had taken the life of any one, or all of them, he would have been justified by the moral sense of the community." [McBride, J.] [276] " Judge Napton absent."

[1] Digest of 1835, p. 587, art. 2, sects. 1, 5.

Clark v. Henry, 9 Mo. 339, July 1845.[1] Eleanor Erwin [340] "intermarried with one William Clark who is now a co-complainant; they filed their amended bill at the November term, 1838." In his answer the defendant, the executor of the testator, [341] "admits his present possession of said female child [Adaline]. . . [342] the negro man, Adam, would have hired for about ninety dollars during the years 1833 and '34—that the woman Cynthia, would have hired for about $25, with the incumbrance of a child, without such incumbrance she was worth more. . . the circuit court dismissed the bill, and the cause was brought here on appeal."

Decree reversed: the complainant [347] "had no claim or title" to the slave Adaline. The residuum [346] "is limited to personal property, and limited as we think, further, to such description of personal property, as would correspond in some degree, both in regard to its character, and its value, with the species of personal property enumerated. Certainly it cannot reach slaves, a species of property as distinctive in its character, as real estate." [344] "Slaves are by our law personal property, but of a distinctive, and peculiar character. In all, or nearly all of the slave-holding States, they are declared personal property, and are transferred as other personal property. In all of them, they may with propriety, be called personal property, as contradistinguished from land. Yet the laws of all these States, and the decisions of their courts, have recognized a value in this species of property, arising from circumstances independent of their mere pecuniary value in the market. The age, health and disposition of slaves, their aptitude for particular employments, the length of time during which their owners, or their owner's ancestors have possessed them, their matrimonial connexions, and other like circumstances, contribute to fix the degree of estimation in which their proprietors hold them, apart from the amount of money into which they can be converted in market. . . [345] neither our legislatures in enacting laws affecting this property, nor individual owners, in declaring their intended disposition of it, either by deed or will, have been apt to lose sight of the fact that they are also human beings, and therefore the intention to affect this species of property, under the general description of personalty, should appear manifest and plain, before a court could give such language, so broad an interpretation." As the testator evinced [346] "by his careful disposition of every slave he had, his intention of not confounding his slaves with the mass of his personal estate, it seems difficult, if not impossible, to arrive at the conclusion, that this slave was designed by the testator, either for the payment of his debts, or for the benefit of the complainant. . . [347] As to the hire of the negroes, the defendant admits that the amount actually received from this source was $194.31. Deducting from this, the sum of $77.31, that being the balance due him on final settlement, leaves the sum of $117, which defendant tendered to complainant in money and notes, but which was not received. The witnesses state, Adam to have been worth $90 per annum, and Cynthia $25—this would make the hire amount to $280; which after the deduction of $77.31, would leave a balance against the defendant of $202.69. For this sum we think the complainant entitled to a decree." [Napton, J.]

[1] For facts see Erwin *v.* Henry, p. 153, *supra.*

Maria (of color) v. Atterberry, 9 Mo. 369, July 1845. [372] "This was a suit for freedom brought by Maria, against Atterberry. Maria took a non suit, and after an unsuccessful motion to set aside, and for a new trial, has brought the case here by appeal. In support of her right to freedom, Maria offered in evidence a transcript from the record of the county court of Hart county, in the State of Kentucky, authenticated in pursuance of the act of Congress of the 27th April, 1804. The act of liberation in the record, is in these words: 'Thomas Atterberry, sen'r of Hart county, by Richard Atterberry, his attorney in fact and agent— a deed of emancipation from Thomas Atterberry, freeing a certain negro woman by the name of Maria, aged — years, five feet high, rather a yellow black, weighing about 120, investing the said negro woman with full freedom, which deed of emancipation is acknowledged in open court, and it is ordered that the clerk issue to said woman a deed of emancipation according to law.' Power of attorney from Thomas to Richard Atterberry: 'Know all men by these presents, that I, Thomas Atterberry, of Hart county, State of Kentucky, do . . appoint Richard Atterberry as my Attorney in fact, to alien, release and set free, my negro woman named Maria, and to assign my name as her security, that she don't become chargeable to the county aforesaid, and to do . . every act necessary for to be done for the emancipation of said slave, that I could do in my own person, which when done shall be as valid in law, as if I had done it in my own proper person. Given under my hand and seal this 9th day of April, 1837. Thomas Atterberry. [seal] *Teste,* Robert Dorsey and P. Wells.' The following is a copy of the deed of emancipation referred to in the before recited order of court: 'I, Thos. Atterberry, sen'r, of Hart county, Kentucky, have this day, and doth by these presents emancipate and forever set free, my negro woman slave, Maria, to go out and forever free, and to have and enjoy all the rights and privileges of a free woman of color. Given under my hand and seal, this 10th day of April, 1837. Thomas Atterberry. [seal] By Richard Atterberry, his Agent and Attorney in fact.' Both of the foregoing instruments were certified, and have been recorded. A certificate of emancipation made out by the clerk, in pursuance of the order of the court, follows in the record, the entry of these instruments. . . [373] The certificate of freedom granted in Kentucky, was recorded in Howard county, in this State, and a copy of this record in connexion with the testimony of the recorder, was offered in evidence, the original certificate having been lost. Testimony going to shew that Thomas Atterberry had frequently declared that Maria was free, and that he had liberated her in Kentucky, was also offered in evidence. Also a will of Atterberry, liberating Maria. This will was without probate, and no evidence was offered in proof of its execution by the testator. All this evidence was rejected on the trial, and the rejection thereof, is the error complained of. It was agreed that the laws of Kentucky,[1] in relation to the emancipation of slaves, might be read in evidence in this court,"

[1] Acts of Feb. 27, 1798, and of Dec. 15, 1800.

Judgment reversed and the cause remanded: [375] "where a proper order is made by the court, that order is a judicial act. . . if such an entry there [in Kentucky], would shew a right to freedom, the same entry properly authenticated would be as good evidence in our courts." [Scott, J.] [377] "Judge Napton did not sit."

Anderson v. Brown (*of color*), 9 Mo. 646, October 1845. [647] "On the 19th January, 1844, B. B. Dayton makes affidavit setting forth that on the 17th January, 1844, Squire Brown commenced suit, by consent, against Charles R. Anderson for his freedom in the St. Louis circuit court, and that an order was made by said court permitting said Brown to sue as a poor person, and that said Dayton be assigned as his counsel; that said Brown have reasonable liberty to see his counsel and attend the court, and that he be not removed out of the jurisdiction of said court, nor be subjected to any severity on account of his suit;—that the defendant appeared by his attorney, consented to the filing of the declaration and the order made in the cause, and filed a plea to the declaration, on the said 17th January, 1844. The affiant further sets forth that he is informed by John Paulding, a constable, that he, said Paulding, at the request of said Anderson, on the said 19th January, arrested said Brown and took him to the steam boat *Admiral,* for the purpose, as said Anderson told him, of sending said Brown south, and that said Brown was put on said boat, which was bound for New Orleans, and which with said Brown has departed for that place; and said Dayton believes, therefore, that said Brown is now about being removed out of the jurisdiction of this court. Thereupon the judge of the circuit court issued a writ to the sheriff of St. Louis county, in which it is recited that he is satisfied by the foregoing affidavit that said Brown is about to be removed, etc., and commanding said sheriff to seize said Brown and bring him before the judge on the 20th January instant, at 9 o'clock, A.M., at the county jail, and that he summon to appear, at the same time and place, any person claiming or having in possession the said Brown. The sheriff returned that on the 20th January, 1844, he seized said Brown, and had him before the judge, as required by the writ, and that he summoned Israel Morris, . . [648] the person who claimed said Brown, . . to . . appear at the jail . . Morris . . came not; whereupon it is considered by the [circuit] court, that said Morris and said Anderson pay the costs and charges in this behalf expended, . . [650] judgment . . reversed."

Eaton v. Vaughan, 9 Mo. 743, January 1846. [744] "Vaughan brought an action of trespass against Eaton, under the following circumstances: Vaughan resided at Glasgow in Howard county, and owned a slave named Charles, who was reared in that county by his father-in-law, Wm. Ward. On the night of the 22d August, 1844, Charles escaped from Vaughan, and as the steam boat *Wapello,* of which Eaton was captain, was then lying at the port of Glasgow, and a suspicion arising that Charles was on board the boat, early next morning diligent search was made for him, but he was not found. Charles was described to the officer of the boat who made the search. Eaton was very indignant that a suspicion should have arisen that the slave was on his boat. On the same day on

the return of the boat to St. Louis, she stopped at Boonville, and Charles who had stolen a horse, and taken the papers of a free negro to whom he bore some resemblance, presented himself to Captain Eaton, and asked if he could take passage on his boat to St. Louis, remarking at the same time to the Captain, that he supposed he would like to see his free paper. The captain replied he would; and a license to reside in this State, under the hand and seal of the clerk of the Howard county court was exhibited, examined and handed to Captain Nichols of Glasgow, a passenger, of whom the enquiry was made, whether it was genuine? Nicholas [*sic*] replied it was. Charles thereupon paid his passage money, and was admitted as a passenger without any questions. At this time a stranger stepped up and said he knew the boy, and that he was raised by Wm. Ward of Howard county. Pompey Spence, the free negro to whom the license to reside in this State had been granted, and from whom it was stolen, was described in said license as a mulatto boy, about 22 years old, five feet eight inches high, and straight hair, with his right hand having been broken. Charles was a mulatto boy about 24 years old, five feet eleven inches high, with sound hands and a scald head, having very little hair upon it, the top of his head being entirely bald. Charles called himself Pompey. A witness who had seen Charles on the boat, saw afterwards Pompey Spence whom Charles personated, and testified that they were very much alike in face, countenance and complexion; and that a person not knowing either boy, and not seeing them together, might easily mistake the one for the other. The officer who searched the boat for Charles at Glasgow, and heard a description of him afterwards, on their passage to St. Louis examined him and compared him with the description in the license, and was satisfied that he was the person to whom the license had been granted. On the examination, Charles extended his right hand, and made it appear as if he could not shut one of his fingers. Captain Eaton, near the mouth of the Missouri river, was informed by the cook of the boat, that he believed Charles was a runaway slave. This induced Eaton again to examine Charles. The examination took place in the presence of the officer who searched the boat at Glasgow, and resulted in conviction that Charles was the person he pretended to be. . . [746] Charles was taken to St. Louis, and has never been heard of since. But for his having a scald head he was estimated to be worth $600. The scald did not affect his capacity for service, and might reduce his value fifty dollars; he was otherwise a very likely boy." The court instructed the jury that it was not sufficient to excuse the defendant from liability, " that he in good faith believed the boy to be a freeman, and used reasonable diligence to prevent imposition by the boy. That the jury may, if they think proper, give smart money against the defendant, over and above all the damages actually sustained by the plaintiff. . . that the evidence disclosed mitigating circumstances in the conduct of the defendant. The plaintiff obtained judgment for nine hundred dollars."

Judgment affirmed. [748] " The greater portion of our eastern frontier, being only separated by a navigable stream, from a non-slaveholding State, inhabited by many who are anxious, and leaving no stone unturned

to deprive us of our slaves; our interior being drained by large water courses, by means of which its commerce in steamboats is maintained with the city on our frontier, render it necessary that the strictest diligence should be exacted from all those navigating steamboats on our waters, in order to prevent the escape of our slaves. Our citizens, aware of the circumstances by which they are surrounded, will not weigh in golden scales the damages that may result to the owners of slaves, from a relaxation of that degree of diligence which is necessary to secure them against losses. This determination they will carry with them in their jury rooms, and it is not for the courts, to weaken or destroy the force of a determination, necessary to protect a species of property which, whether for weal or for woe, has been entailed upon us by those who are now making the most clamor about it." [Scott, J.] Napton, J.: [749] "I am in favor of sending this case back for a new trial, upon the ground that vindictive damages were given by the jury, when the circumstances of the case did not warrant it. The value of the slave, when in Vaughan's possession, was about five hundred dollars, and that value must have been much diminished at the time he imposed himself upon Captain Eaton, by the fact that he was then a runaway, had stolen a horse, and was in possession of free papers which would very much facilitate his escape."

Freeman v. Freeman, 9 Mo. 772, January 1846. Moses Webb, by his will, bequested his property to his two daughters, [773] " in equal moities, upon the following conditions, to wit.: that . . [they] enjoy the benefit of his slaves during their natural lives, and at their death said slaves should go to their lawful heirs, if any; but if " they " should have no lawful heirs of their bodies, then the said slaves to be set free." The complainant, one of said daughters, charges that her husband, " Jonathan Freeman has on several occasions stated . . that he intended, upon a distribution of said slaves, to get them in his possession and ' run them out of the State,' and so to defeat the rights of the complainant, and the contingent rights of the slaves themselves. . . To this bill there was a demurrer, . . sustained by the circuit court."

Decree affirmed: " The complainant . . does not state that she even believes that he will ever carry his threats into execution, nor that he is not fully responsible in the event that he does. . . nor does the complaint aver that the property has any peculiar value, which would render *damages* no compensation to her for its loss." [Napton, J.]

Fulkerson v. Bollinger, 9 Mo. 838, January 1846. [840] " The note . . contained an endorsement of two credits, . . the other dated . . 1840, for one negro boy at $800."

Dudgeon v. Teass, 9 Mo. 867, January 1846. Held: if a person hire a slave for a year, and the slave died during the time, the hirer is bound for the hire only to the time of the death.

Mackay v. Dillon, 4 Howard 421, January 1846. [442] " Vasquez had formerly a cabin in the commons [of St. Louis], . . A negro man lived in the cabin, and had a small enclosure, and was called . . *la fontaine à*

Benéte. He lived there in 1788 and 1789. I don't know whether he had a concession."

Price v. Thornton, 10 Mo. 135, March 1846. An action on the case against the owners of the steamboat *General Leavenworth.* [137] "Joseph White was the Captain, and part owner of the steamboat *Leavenworth,* and whilst said boat was lying at Glasgow, two slaves belonging to the plaintiff applied to him for passage on his boat to St. Louis, and produced some papers which the witness thought did not have any seal affixed thereto. Capt. White was heard to tell them that their passage to St. Louis would be four dollars a piece, if they wooded. Capt. White's attention was directed once or twice . . to the propriety of investigating more closely the character of the negroes; but nothing was done, and the negroes after their arrival at St. Louis, escaped in another boat bound for Cincinnati—and were never recovered. . . The defendants had a verdict and judgment."

Judgment reversed and the cause remanded. [140] "This is not a crime or misdemeanor under our statute; but it may be a case of such gross negligence on the part of the Captain of the steamboat as to make the owners responsible for the damages which resulted." [Napton, J.]

Grove v. State, 10 Mo. 232, July 1846. Held: in an indictment for inhumanly beating a slave, it is not necessary to set forth the name of the owner of the slave. [233] "The provision of our statute[1] under which this defendant was indicted, evidently treats the slave as the party injured, and not his owner: . . in the offence set forth in this indictment, it made no difference whether the slave belonged to the defendant or to a third person. . . the statute punishes the offence. . . The judgment affirmed." [Napton, J.]

Kemp v. Holland, 10 Mo. 255, July 1846. In 1840 or 1841 the slave Sophia was sold for $506.

Markley v. State, 10 Mo. 291, January 1847. "Markley was indicted . . for dealing with a slave, without permission of the owner of said slave.[2] . . verdict of guilty found, and a fine of $20 assessed"

Judgment reversed. Defendant [292] "may have obtained the written consent of the master or overseer, either of whom may have had the exclusive right of giving such consent."

Trimble v. Hensley, 10 Mo. 309, January 1847. [311] "Mrs. Trimble was Nancy Bailey, and whilst sole and unmarried, the mother of the slaves in controversy was devised to 'her and her heirs forever,' . . At the date of the bequest, Nancy Bailey was of tender years, and the negro girl slave only about two years old. That subsequently, the girl came to the possession of Miss Bailey, and whilst in her possession, she intermarried with Thomas Clark, who acquired possession of the negro girl, and continued to enjoy that possession up to the time of his death, . . That Clark left children by his said wife; that Mrs. Clark intermarried with Trimble . .

[1] Rev. Code (1845) 406.
[2] Rev. Code (1835) 1018, art. 1, sect. 33.

who now claims the negro woman and her increase under the bequest aforesaid."

Held: [312] "When Thomas Clark died, his widow was entitled only to a dower interest in those negroes, inasmuch as they constituted as much a part of his absolute estate as any other negroes he may have been possessed of at his death." [McBride, J.]

Marr v. Hill, 10 Mo. 320, January 1847. [321] "a negro woman and her infant child, bought by said Hill at the administrator's sale. . . The verdict of the jury was, that the defendant, Marr, did request the crier to represent the negro woman . . as sound and healthy, . . [322] Upon the trial . . One Davis testified that he had boarded several weeks with Henry Marr, (the testator,) and had known Marr to chastise the woman frequently for her obstinacy and complaints. On being interrogated in relation to the character of these complaints, the witness answered, that he had heard the woman make complaints to her mistress about her health, and say her master put too much on her for her health. Another witness, Pavy, saw the woman at his house shortly before her sale at public auction, and told her he wanted to hire her, but she told him she would not suit him, as she was unwell more than people thought. The witness told her she was breeding, to which she replied, 'there was something else.' Mrs. Bryant, another witness, testified that she was laughing at and plaguing the negro woman, (in relation to her supposed pregnancy, it may be inferred) when the negro bursted into a cry, and said, 'no, Miss Mary, there is something worse the matter with me, but they all don't believe it.' . . a few months after the sale, the negro woman was found to be diseased with the dropsy, of which disease she died. The evidence detailed above was for the purpose of showing the existence of this disease before the sale, and the knowledge of its existence by Marr, the defendant."

Held: the declarations of the slave made to Pavy and to Mrs. Bryant are admissible in evidence as part of the *res gestae.* Decree of the chancellor perpetually enjoining so much of the judgment against Hill as covered the value of the woman, affirmed.

Montany v. Rock, 10 Mo. 506, March 1847. [508] "Received, St. Louis, Aug., 1843, . . the sum of $400, being in full for my slave Maria; the said Maria mulatto girl, aged 15 years; the said Mary slave for life."

Nat (of color) v. Coons, 10 Mo. 543, March 1847. [545] "Duty, the late master of Nat, executed a will in the year 1836, in the State of Mississippi, of which he was then a resident. By this will, Nat, with other slaves, were liberated after the payment of all the debts. Afterwards, in the year 1837, Duty, with his slaves, removed to the State of Missouri, where he resided until his death, in 1838. This will was admitted to probate in . . Mississippi, . . Nat contending that the debts of the estate were paid, or that there was a sufficiency of assets to satisfy them without selling the slaves, under leave, instituted a suit for his freedom in which judgment was rendered against him,"

Judgment affirmed: [546] "this was a Missouri will, and the original should have been proved in this State. . . If it was used as a will under the laws of Mississippi, it is clear that it could not confer freedom, as it appears by the laws in force then that the assent of the General Assembly was necessary to an act of emancipation." [Scott, J.]

Perry v. Beardslee, 10 Mo. 568, March 1847. [569] "Beardslee and wife brought an action on the case, against Perry and others, owners and officers of the steamboat *Harry of the West,* to recover damages for the loss of a slave, hired as a fireman on said boat. The plaintiffs obtained a verdict and judgment. The evidence on the trial conduced to show, that the slave belonged to Mrs. Beardslee, then Miss Smith—that he was white, with blue eyes and light sandy hair; that her agent, John Carlyle, hired the boy to Van Houten, captain of the *Harry of the West,* by the month and for no definite period. The boy made his escape at St. Louis [and was afterwards seen in Cincinnati]. A letter was addressed to Carlyle, by Mr. Sparr of the Virginia Hotel, where Carlyle usually boarded when in St. Louis, at the instance of Van Houten, which requested his presence in St. Louis on business, and when Carlyle arrived there from Alton, where he was at the receipt of the letter, he found that the negro had escaped, and he settled with Van Houten for the hire."

Judgment reversed and the cause remanded: [573] "this Court never designed to declare it a rule of law, that a bailee of a slave, for a month or a year, was bound to pursue him, after he had escaped, to Cincinnati or Canada. It is obvious that the ideas of escape and recapture, were intimately associated, and were designed to be limited by time and circumstances. . . A slave, for instance, is hired in the country, his master living in one county, and the bailee living in another and distant county. The slave disappears, and as frequently happens, he is concealed in some neighboring cabin or woods, and information of this is communicated to the bailee. . . the failure to retake the slave, before a final escape was made, would show a dereliction of duty on the part of the hirer, which might be productive of the greatest mischief to the owner. . . [574] The escape would in short, be a permissive one; it could not be regarded as having taken place, without the fault or negligence of the bailee. . . Where a slave is hired as a boat hand, we must presume that the owner is fully aware, that every facility for escape is afforded by the very nature of the service. He is apprised, that the boat will touch and be detained at the wharves of populous towns; that it passes near the banks, and will stop at the landings of States where slavery is not tolerated; and that his slave will be associated with free negroes, and others who will not be likely to leave him ignorant of the various opportunities which present themselves for escape. The owner is aware of all this, and must be presumed to contract with reference to it. He insures his slave, or indemnifies himself for the increased risk by the increased wages. Does the owner expect, that in case his slave escapes, whilst the boat is lying at a woodyard, or putting out freight at some intermediate landing, the captain and crew will relinquish the boat, or abandon the trip, for the purpose of hunting up the runaway? No such expectations are entertained. The captain or

master is expected to act with good faith; he is bound to do so; but he cannot be expected in circumstances like those described, to use even the same means of recapture, which a bailee under other circumstances might be required to exert." [1] [Napton, J.]

Maddin v. Edmondson, 10 Mo. 643, July 1847. [644] "during the year 1842, a negro boy, named Smith, came to his house with a verbal message from his master, wanting to know if witness had any hands to hire [to work in a lead mine]; and that he sent word by the boy to him that he would let him have Mrs. Field's boy Mace, for a year, at $145."

Adams v. Childers, 10 Mo. 778, July 1847. Moss [779] "hired a negro girl of Dedrick Hunor, for the year 1844; afterwards, during that year, Moss died, and his administrator [Childers], . . hired out the girl for the remainder of the year to the plaintiff in error [Adams], who, by his ill treatment and inhumanity, caused the death of the girl. The declaration was on the implied contract to take reasonable care of the slave. There was a judgment against Adams for the value of the slave," Judgment affirmed.

State v. Rector, 11 Mo. 28, October 1847. The indictment charged that Rector [a negro] "did entice, decoy, and carry away, out of the State" "a certain negro woman slave for life, named Mary, . . with intent then and there to procure and effect the freedom of the said slave," Motion to quash the indictment sustained in the lower court. Judgment reversed. Another indictment against Rector was [29] "quashed, on motion of the defendant. . . Judgment affirmed."

Dougherty v. Tracy, 11 Mo. 62, October 1847. [63] "In August or September, 1845, the steam ferryboat being about to leave the St. Louis landing for Illinoistown, Tracy went on board and informed the acting captain that there were two negroes in the boat whom he suspected to be runaway slaves, and desired him to wait until he could get some person to take them up. This the captain declined, but went to seek the slaves, whom he found secreting themselves, as he thought, and informed them that Tracy had authority to take them and that they must go with him. Tracy thereupon laid hold of one of the slaves by the shoulder, and, with the other, went off to the corner of Market square. Tracy immediately despatched a messenger to S. Mecham, who was a deputy of the defendant, Dougherty, the Marshal of St. Louis, to tell him to come down and take two slaves, whom he believed to be runaways.—Mecham went accordingly, but the negroes were gone and he and the plaintiff [Tracy] pursued them. They were found, and Tracy pointed them out to Mecham, by whom they were arrested and taken before the recorder, Tracy accompanying him. Tracy had no other agency in the transaction. The commitment of the slaves was procured by the affidavit of Mecham, who represented himself the apprehender, by virtue of which they were committed to prison. The defendant [Dougherty] received the reward [fifty dollars] allowed by law for the apprehension of the slaves, . . the half of which he gave to Mecham." Tracy sued Dougherty for the fifty dollars, and

[1] For additional facts, see Beardslee *v.* Perry, p. 182, *infra.*

obtained judgment for thirty dollars. Judgment reversed: [64] "The right Tracy may have acquired by the apprehension of the slaves on the boat was lost by their subsequent departure from his custody."

Charlotte (of color) v. Chouteau, 11 Mo. 193, October 1847. [196] "This was a suit for freedom, in which the defendant, Chouteau, obtained a verdict and judgment. The plaintiff claimed her freedom on two grounds. 1st, because her mother, Rose, was born in Montreal, and, 2nd, on account of the residence of Rose, about the year 1794, at Michilimacinack and Prairie du Chien. The plaintiff gave evidence tending to show . . that slavery never existed in Canada. The defendant gave evidence to show that slavery did in fact exist in Canada. No evidence was given of any law prohibiting or giving sanction to slavery in Canada. . . Rose was purchased by Didier, curate of the parish of St. Louis, in 1795 [[199] by formal conveyance executed before the Lieutenant Governor of Upper Louisiana and authenticated by him], from one Andre Todd, a merchant of Montreal, and that Didier sold her and her children to the defendant's father, Auguste Chouteau. . . Rose, about the year 1794 or '95, was living as a servant in the family of one Stark [*sic*] at Prairie du Chien, and that two years previous to this, she was seen at Mackinaw. . . [199] The point of fact mainly disputed on the trial, was the existence of slavery in Canada. This court had decided [in Chouteau *v.* Pierre][1] . . that slavery might in fact exist in a British or French province on this continent, without any legislative recognition, either by the colony or the mother country. Hence it followed, that where negroes were found in a state of slavery, the presumption would arise that the Government recognized this condition as legal and warranted by their laws and customs, unless some law could be shown prohibiting it. . . [200] It would require no particular familiarity with the history of the British provinces of Canada, to be assured that negro slavery never has been very extensively or generally introduced there. The nature of the climate would have presented insuperable obstacles to a dense slave population. But if negro slavery was introduced into that country in fact, although to a very limited extent, without meeting any opposition from the positive laws or established usages of the government or people, the defendant's rights, acquired in such a condition of things, deserve the protection of our laws and courts, as much as though they had originated in a country where the congeniality of the climate and the richness of the soil encouraged the general propagation of slavery and its recognition by the government." [Napton, J.]

Because of obscurity in the instructions given by the lower court, the judgment in favor of Chouteau was reversed and the cause remanded. Then the jury found that slavery did not exist by law in Canada "when the ancestress of the plaintiff was in that country,"[2] Chouteau appealed because the verdict "was flagrantly against law and the instructions of the court."[3]

[1] P. 162, *supra.* Pierre was a brother of Charlotte.
[2] Charlotte *v.* Chouteau, p. 216, *infra.*
[3] Same *v.* same, p. 203, *infra.*

Andrews v. Ormsbee, 11 Mo. 400, March 1848. "before Andrews had gotten possession of the slave as her owner, she had once been at his house, and that Ormsbee charged him with tampering with her, and exhibited symptoms of violent excitement, and made threats of actual violence against him. That after he had gotten possession of the negress, Andrews had expressed the purpose of sending the negress out of the State. . . Ormsbee had stated that his wife had complained that the girl had become saucy and disobedient, and that he had told her she might sell her."

Emmerson v. Harriet (*of color*), 11 Mo. 413, March 1848. "This is an action to try the right of Harriet to her freedom. There was a verdict for the defendant [Emmerson]. Afterwards, a motion for a new trial was made and sustained. An exception was taken by the defendant to the granting of the motion, which being overruled she has brought the cause here by writ of error."

Held: "it is clear, that there is no final judgment, upon which a writ of error can only lie. The cause is still pending in the court below.[1] . . the writ will be dismissed." [Scott, J.]

Emmerson v. Dred Scott (*of color*), 11 Mo. 413, March 1848. "This case is in all respects similar to that of Emmerson *vs.* Harriet, decided at this term,[2] and a similar disposition is made of it." [Scott, J.]

Murray v. Fox, 11 Mo. 555, July 1848. [560] "in February, 1837, [in Tennessee] he purchased the negro woman . . at the price of $700."

In the matter of Toney, alias William Morton—on habeas corpus, 11 Mo. 661, July 1848. [662] "In July, 1842, Toney, a slave, escaped from the service of his master, Thomas Williams, who resided in Montgomery county in the State of Tennessee, and came to St. Louis in this State. Whilst in that county, he committed four grand larcenies, for which he was severally indicted and tried at the July term of the Criminal Court of St. Louis county, and sentenced to eleven years imprisonment in the penitentiary. He was arraigned as a free person by the name of William Morton, and on his arraignment pleaded guilty to the several indictments. His master, who had not heard of him since his escape in 1842, being informed of his confinement in the penitentiary here, sent on an agent, Wm. H. Stuart, who identified the slave, and on his behalf, who freely consents to his proceeding, and as agent for his owner, applied to this court for a writ of *habeas corpus* for the discharge of the slave, as the law does not warrant his confinement in the penitentiary for the offenses of which he was convicted, he not being a free person."

Held: [663] "The error is one of fact. . . a writ of error *coram nobis* will lie to revoke the judgment,"

Smith v. Isaac (*of color*), 12 Mo. 106, July 1848. [107] "This was a bill to set aside a conveyance alleged to have been made fraudulently. . . By the will of Jacob Myers, executed in 1834, his slaves, William, Isaac,

[1] Emmerson *v.* Dred Scott, *infra,* note 2.
[2] *Supra.* In the court below Dred "obtained a verdict." Scott *v.* Emerson, p. 185, *infra.*

Jack, and ten others were liberated, and made the devisees of all his lands, except his town lots in Tully, and forty acres in the northeast quarter of S. 26, T. 62, R. 6. These last were devised to his nephew, Robert M. Easton, and the said Easton and William Duncan (who was son-in-law of Easton) were made trustees for the negroes. This will provided, that in case Jack, one of the liberated slaves, should wish to sell the lands and remove to other lands, the trustees should sell, and with the proceeds purchase other lands for the negroes, where Jack might prefer to live. The real estate thus bequeathed, consisted of about 464 acres of land, lying in the bottom of the river Mississippi, adjoining the town of Tully. On the 3rd of August, 1836, Jack signed a written paper, which stated that he (Jack) had made arrangements with Thomas Gray for the sale of the estate devised by Myers to his negroes, and desired the trustees to convey to said Gray. On the 3rd of September, 1836, Easton and Duncan conveyed to Gray for the consideration of $1,900. Within a week after this conveyance, it was agreed between Gray and Duncan, that the former should convey to the latter, upon the consideration of $2,600; but afterwards, and on the 4th of October, 1836, at the request of Duncan, the conveyance was made to Easton, who thereupon paid the seven hundred dollars (the advance in the sale from Gray) to Gray. Easton took possession, made improvements upon the land, and continued in possession up to the filing of the bill, excepting about 28 acres, which he sold to White, one of the defendants. In October, 1840, this bill was filed. Six of the negroes, beneficiaries under the will of Myers, are the complainants, making the trustees, Duncan and Easton, and White, the purchaser of 28 acres, and the seven runaway negroes, including Jack, defendants. The bill charges that the conveyances from the trustees to Gray, and from Gray to Easton, were fraudulent, and the result of a preconcerted arrangement; that the land was sold for less than half its value, and that Jack's signature to the written paper, requesting the trustees to sell, was procured by imposition upon his ignorance or imbecility. . . [108] The answer of Jack . . intimates that he was under duress, or misled and deceived, in signing the paper addressed to the trustees. . . Easton's answer denies all fraud, and relies chiefly upon the written order of Jack, who, he seems to think, was authorized by the will to control him as trustee. Duncan's answer is substantially the same with Easton's. White answered and insisted that he was a bona fide purchaser, for valuable consideration, without notice." At the hearing Munday testified that he " had a conversation with Easton shortly after Easton had purchased, which he thus details: 'Easton, I am afraid you have got into difficulty about that land, and you and your children will be lawing about it.' Easton thought not. 'You ought to help the old woman, Sally, who is sick and destitute, etc.' Easton replied that Myers did wrong in giving the property to the negroes, and 'damn them, I intend to cheat them out of everything they have.' This witness also heard Gray about the time of his purchase, say that he was not going to settle on the land, that he had bought on speculation, and had nearly completed an arrangement, by which he would make six or seven hundred dollars. Gray did not explain with whom this arrangement was made, but from the laugh of Gray at the time of the remark, the witness under-

stood him to mean Duncan. . . [109] The court pronounced the sales of Duncan and Easton fraudulent and void, and declared the land still subject to the trust, excepting the twenty-eight acres which had been conveyed to White. The bill was dismissed as to White, and his title declared valid. The court further decreed that the complainants recover $398.66 from the estate of Easton, that being the purchase money with interest of the land sold to White. . . The court directed new trustees to carry into execution the will of Myers, in relation to the trust lands."

Dean v. Davis, 12 Mo. 112, July 1848. In 1845 [114] "there was . . sold one negro man, named in the mortgage for about $50 . . one of the [other] negroes was worth from $500 to $700, and the other worth from $1200 to $1500"

Howe v. Waysman, 12 Mo. 169, July 1848. The slave Charlotte and her child were sold in 1831 [171] "for the price of $400, which was their full and fair value at the time,"

Carroll v. City of St. Louis, 12 Mo. 444, March 1849. Bill for legal services rendered the City of St. Louis in 1846:

To professional services and attention to two hundred cases before the recorder of St. Louis, of free negroes arrested for being in the State of Missouri without a license, at one dollar per case.	$200.00
To professional services and attention before the county court of St. Louis county for two weeks in cases of free negroes applying for license to remain in this State	100.00
To attention to the case of a free negro (Charles Lyons) in an application by him to judge of the St. Louis circuit court for discharge under the *habeas corpus* act	50.00

O'Bryan v. O'Bryan, 13 Mo. 16, January 1850. [17] "the plaintiff's negro woman informed her master, that during his absence, she had on one occasion, caught her mistress and Thomas Saunders together . . The plaintiff communicated this to his wife, who at first denied . . but afterwards upon being confronted by the woman at her own request, confessed."

Martin v. Martin, 13 Mo. 36, January 1850. [39] "W. R. Martin said he thought the way his father [Russell Martin] done was the best: his father loaned a negro to a child and paid taxes on it: if the negro died it was father's loss. . . if he had given them, . . some of the sons or sons in law might have spent them. . . [40] The old man said, if you don't want to take care of the negroes and raise them, send them home. . . [42] Capt. Jamison said, the old man's paying the taxes on the negroes interrupted the [five years peaceable] possession. W. R. Martin said, he would give in his own negroes, even if the old man did from that time." Oreton said: [43] "I was then in the negro trade and would have bought her [Sally] . . The old man said to me he wished Samuel would sell the negro, she was nothing but trouble to his wife and pox take the negro . . she was no account no how . . [Other witness:] [44] The negro Hanna came up and told me how-dy. I enquired who she was, and

the old man said she was Billy's Hanna. . . I always heard the old man speak of the negroes as Billy's Hanna, Samuel's Sally; . . [46] W. R. Martin said he had got the girl when he first went to house keeping, and when she was about 8 years old, and had raised her and her children, and considered them as his." The lower court decreed that the administrators of Russell Martin [39] " take into their possession the slaves in the possession of Wm. R. Martin, . . to wit.: Hanna and her children, Samuel, Sanford, Buford and Anthony;"

Decree reversed: [68] " the evidence competent to disprove the gift, which the law but re[a]sonably implies from such reception and possession as is established here, should be either of the clearest, most direct and uncontradictory character, or if in any sense conflicting, that the aggregate preponderance against the continued denials of the answer, and the *prima facie* title established by the law, should be overwhelming and conclusive to a degree which we are unable to deduce from the record before us." [Birch, J.]

Hawkins v. Ridenhour, 13 Mo. 125, January 1850. " the intimate friends of King, went to him and advised him to take his property to Louisiana or Mississippi, sell it for the best price he could. . ." [126] " there was a negro sold prior to King's taking away his property, under execution against King, and that Ridenhour purchased the negro at constable's sale, King having furnished him the money to do so; which he gave up to King a short time before he left, and he took her off with the rest of his negroes."

Ewing v. Thompson, 13 Mo. 132, January 1850. Anderson, the slave of Ewing, " was by law subject to work on a certain road district . . About eleven o'clock in the forenoon of Saturday, the slave Anderson, as well as the other laborers, were duly discharged from said road, . . The road . . extends . . to the steam boat landing . . at said landing, on the evening of [Saturday] . . and about twilight, he and the slave of the appellee engaged in a quarrel and fight, which resulted in the death of the latter. Thompson sues Ewing for the recovery of the damages . . His declaration . . is conceived in analogy to actions brought against owners, for injuries done by their animals of a dangerous and mischievous disposition. . . introduced testimony conducing to show that the slave Anderson was of a dangerous and murderous disposition [when intoxicated]," [137] " this slave, when suffered to go at large, was in the habit of beating and wounding other slaves "

" Verdict and judgment for the plaintiff below [Thompson]." Judgment reversed: " We understand the slave to be a responsible moral agent, amenable, like his master to the laws of God and man for his own transgressions . . that the law which regulates our dominion over the brute creation is not the one which governs the relation of master and slave . . that our municipal laws have not given to the master that absolute dominion over his slave which would enable him absolutely to prevent the commission of crime, and that the moral discipline which the law has entrusted to him, with a view to the prevention or reformation of bad habits, is but a modification or perhaps extension of that authority which is given to

the parent over the child, or the master over his servant. . . [138] He is not entrusted by our laws with the power of life and death, nor can he confine a slave as he might a vicious beast." " The power of the master being limited, his responsibility is proportioned accordingly. It does not extend to the wilful and wanton aggressions of the slave except where the statute has expressly provided. . . [139] He could not be held responsible for such remote consequences as the murder of another slave, should such a consequence be traced to a laxity of discipline not tolerated by our laws." [Napton, J.]

Peter (of color) v. King, 13 Mo. 143, January 1850. [144] " The plaintiff, an emancipated slave under the will of Jesse Evans, deceased, brought a suit . . *in forma pauperis,* against . . the administrator of Evans, to recover the value of certain alleged services performed by Peter, during the contest about Evan's will." " The account is for boarding, clothing, etc., of certain slaves said to belong to the estate." Writ dismissed.

Smith v. Newby, 13 Mo. 159, January 1850. Action of detinue to remove two negro boys. [160] " Taylor, in his life time, in . . Virginia, owned a negro woman named Louisa. About the spring of 1841, this negro woman disappeared—supposed . . to have run away with a strange white man, who had been in the neighborhood, and who disappeared about the same time. In the month of March, 1841, one Burgess, a resident of . . Missouri, and then on a visit to Kentucky, near the line which separates that State from Virginia, hearing that one Gowens, who was largely indebted to him, was just across the line, in Virginia, with a negro boy in his possession, determined to go and get the boy from Gowens, in the way of his demand, by the best means he could. He went across, found Gowens and the boy, and succeeded in inducing him to let him have the boy in the way of his indebtedness, at the extravagant price of $800. This took place from the 15th to the 20th March, 1841, . . Burgess immediately returned to Kentucky, and thence forthwith to Missouri, taking with him the negro. On his way to Missouri, he discovered the negro was a woman in man's clothing. After his return to Missouri, Burgess sold the negro woman to one Allen; Allen sold her to Tetherwoods, and he sold her to defendant. The two boys sued for are the children of Louisa, born after she came to Missouri." Taylor died in February 1846. " Suit was commenced 8th April, 1847. It was testified that it was not known where said negroes were until after the death of Taylor."

Held: the defendant [Newby] is protected by the statute of limitations.

Hamilton v. Lewis, 13 Mo. 184, January 1850. Taylor's will, 1842: [185] " I . . bequeath to my grand son . . one negro boy named Clark, (son of Nell) to be given into his possession when he arrives at the age of twenty-one years, . . There are yet three negroes not disposed of, to wit.: James, Nell and Tom. It is my will that they be hired by my executor, in the county of Ray, either at public auction or privately, . . every year . . until my grand son comes to the age of twenty-one years old; then it is my will that they be sold, and they are to be permitted to choose any master who will give the appraised value of them on that day, if any be there, and if not they are to be sold to the highest bidder,"

Major v. Hill, 13 Mo. 247, March 1850. In April 1842 the two negroes, Jackson and Henry, were sold at the constable's sale for $500. The constable [249] " says one 18 or 19 years old, and was worth $500; and the other $400."

Martin v. Henley, 13 Mo. 312, March 1850. " Mrs. Williams testified . . that the negro boy . . was the child of a negro girl named Eliza, a slave, which she had given to [her grandchild] . . Ann Elizabeth, when she . . was a little girl, in Virginia; . . when Walter Williams [the father of Ann Elizabeth] left Virginia [in 1829] she told him that he might bring Eliza . . to nurse one of his children, but upon condition that Ann Elizabeth was to take her as soon as she was old enough to need her services,"

Keeton v. Spradling, 13 Mo. 321, March 1850. Keeton came to Missouri [322] " some time in 1825, leaving his family . . in Tennessee, but bringing with him about twenty slaves." " some of whom he employed in mining for lead and others he hired out." [1]

Skinner v. Hughes, 13 Mo. 440, July 1850. [441] " plaintiff [Mrs. Hughes] was the owner of a slave, Willis, worth nine hundred dollars, and the defendants, Shepherd and Skinner, were the owners of a store in which they sold intoxicating liquors not less than a quart, and a mill, and Baker was their clerk. In January, 1849, the boy came to the mill with grain to be ground, and while there went to the store with a bottle, bought a quart of whisky, carried it to the mill and there drank it with the white hands about the mill—got drunk, started home about sun-down and was found early next morning lying on his face in the road not far from the mill speechless, his jaws locked and frozen nearly to death. He was taken to the mill immediately, received immediate medical attendance, lived 8 or 9 days and died. The whisky was sold to the boy without any permit from his owner, and neither Skinner nor Shepherd were present at the time. The clerk (Baker) was in the habit of selling whisky to the slaves without the permission of the owners and Shepherd was frequently present when this was done and made no objection. . . [442] The jury found a verdict for $900, for which the plaintiff had judgment," Affirmed.

French v. Campbell, 13 Mo. 485, July 1850. In 1821 Thomas Hardeman owned [489] " amongst other negroes, a family consisting of Manuel, his wife Harriet, and their two children, Julia Ann and Washington. That he had promised Manuel that he would not separate him from his family," He made a will giving these negroes to his son John, in trust for his daughter, Mrs. Campbell, but [492] " had not intended to give the possession of these negroes to Campbell, but that in the month of November, 1821, the complainants [Mr. and Mrs. Campbell] and their family came by his home on their way moving from Boone to Clay county, when John Hardeman, in view of their condition, suggested to him (respondent) the propriety of lending them Manuel and his family, in order to assist them in making a new farm in Clay—suggesting at the same time that it would be the means of ascertaining whether the negroes would be content

[1] Keeton *v.* Keeton, p. 193, *infra.*

and satisfied to remain with them, as well as to enable him to judge whether the complainants were worthy of his bounty; and that being thus influenced, he loaned the negroes to complainants, and took Campbell's bond for their return to him whenever required by John Hardeman," In June 1822 Mrs. Campbell wrote her father: [495] "I very much fear that I shall not by any means be able to keep the negroes that it has been your pleasure to give me, as they both fight Mr. Campbell and me to the very last struggle. Manuel has bit Mr. Campbell's thumb, and Harriet has bit my thumb, and they say and bitterly swear that they never will stay with me. They both have threatened to take lives, and Manuel has made the attempt, and has once carried his butcher knife with the intent of murder, as he himself said. And as you, father, is getting old, and life is uncertain, the probability is that they may have to be sold, and if so, I wish them to be sold in your time, etc., and then you can, with your pleasure, and also your will, give to me in money, or in other negroes, such a portion as you think proper to do, and then I shall be satisfied;" In August 1822 [490] "Manuel ran off from them and went and communicated his dissatisfaction to John Hardeman, who thereupon" wrote to Campbell: [494] "it is certain you cannot derive any benefit from the negroes, and at the same time carry into effect my father's design in giving their use to my sister Sophia. His object was to have them kept together, and well treated, old and young. There now seems to be such a difference between you and them that they will not render you any service. It is therefore necessary for me to discharge my duty, and carry the trust into effect, by taking the negroes and hiring them out, and whatever sum of money their hire will produce, after having them well fed and clothed, and all expenses deducted, shall be paid to Sophia, as it shall from time to time be received by me. They will be put in a place where they can be together, and be well fed and well clothed in the first place, as this was the design and intention of my father in the origin of the trust." A few weeks later Manuel and his family were returned to Thomas Hardeman, who gave [493] "the property in question to other persons, in Tennessee." Bill of the Campbells dismissed.

Cathcart v. Foulke, 13 Mo. 561, October 1850. [563] "the said negro man went upon the said boat and served in the capacity of cook, and while thus employed he fell through a hole in the floor of the cook room of said boat into the Mississippi river and was drowned."

Judgment against Cathcart, part owner of the boat. In 1847 "by virtue of an execution issued on the said judgment" he paid and satisfied "said execution, amounting to the sum of $766.01, being the amount of said judgment, interests and costs,"

Landes v. Brant, 10 Howard 348, December 1850. [350] "Clamorgan, assignee of Esther, mulatress, assignee of Joseph Brazeau, assignee of Gabriel Dodier, claiming one by 40 arpents of land, . . adjoining the town of St. Louis, produces . . a transfer from . . Dodier and . . Brazeau to Esther, . . 1793: from Esther to claimant, . . 1794." Will of Clamorgan, 1814: [351] "he devised all his estate to his natural children, St. Eutrope, Apoline, Cyprien Martial, and Maximin," [354]

" There were also in evidence three deeds of emancipation from Jacques Clamorgan to his four children, . . all dated 16th September, 1809, in which it was recited that St. Eutrope was born in April, 1799; Apoline on the 7th of February, 1803 [*sic*]; Cyprien Martial on the 10th of June, 1803 [*sic*]; and Maximin in the beginning of the year 1807."

Peake v. Redd, 14 Mo. 79, March 1851. In 1839 [82] " commissioners estimated the value of the slaves at $5000, and allotted one-third to the widow as her dower." In 1841 commissioners appointed to make partition " reported the slaves not divisible in kind."

Beardslee v. Perry, 14 Mo. 88, March 1851.[1] [92] "At first it was her impression that the boy had not ran away; that he was somewhere about and would return again. She had owned the boy but a short time, and had herself hired him to the *Ben Franklin* [before he was hired to the *Harry of the West*]. The boy had never hired his own time. Miss Smith, through me, purchased said boy at New Orleans from a trader of negroes from Kentucky." Judgment for Perry affirmed: [94] " The plaintiffs must show a *prima facie* case [of negligence] at least."

Coleman v. State, 14 Mo. 157, March 1851. [158] " The defendant was a free negro and indicted for leasing a house to be kept as a bawdy-house. The witness Coleman co-habited with her as man and wife, and the witness was a slave. The court refused to permit him to testify. . . [159] Judgment reversed and cause remanded." " We know that marriages *de facto* exist among this class of persons, but as to the policy of applying the rules of evidence which by the law regulates the relation of husband and wife to co-habitations of this character, it may be safely left with the legislature." [Napton, J.]

Lee v. Sparr, 14 Mo. 370, March 1851. Action [371] " under the 31st section of the 1st article of the act ' concerning slaves,' [2] . . [Lee] was the owner of the slave, . . [and Sparr] [372] was one of the owners of the *Bates.* The witness, who was the plaintiff's agent for hiring his slaves also testified, that . . 1848, . . he missed the slave in question, and hearing that he was on board the *Bates,* a packet boat running between St. Louis and Keokuk, repaired to the wharf, found the boat about starting with the slave on board, and took him off. The clerk of the boat told witness that the slave had been thus on board the boat for two trips, and offered to pay the hire, which witness declined to receive. . . that the slave was worth six hundred dollars; . . that he had never authorized the hiring of him on said boat, . . the court . . instructed the jury that the plaintiff could not recover in this action."

Held: " a mere part owner, . . who was absent, and who it is not pretended either knew of, counseled or consented to the commission of the act complained of, . . should not be rendered liable beyond the actual damage sustained, and for that, of course, in an action different from the present one." [Birch, J.]

[1] See Perry *v.* Beardslee, p. 172, *supra.*
[2] Rev. Code 1018.

Swearingen v. Taylor, 14 Mo. 391, March 1851. Will of William Christy, dated 1839, " authorized his executors to sell any of the slaves at the request of his wife and supply their places with others more suitable,"

Lee v. Sprague, 14 Mo. 476, March 1851. [477] " The plaintiff [Sarah Lee], who is an infant of color, brought a suit for freedom," In 1833 William W. Waite of Baltimore, Maryland, sold Sarah Lee's mother to John Hunter for one hundred dollars, " to serve ten years from the 19th of October, 1833, and no longer; . . ' then the said slave shall go free, and be manumitted forever.' Hunter sold the mother of the plaintiff to Mosher and Mosher to Blatchfield. While Blatchfield thus owned her, being before her time of service expired, she gave birth to the plaintiff," whom Blatchfield sold to Sprague.

Judgment for the defendant affirmed: Hunter and his assigns had " an absolute property in the mother of the plaintiff during the period covered by her birth, and that the mother was, during that period, as much a slave as though no future manumission had been arranged or provided in her behalf," The plaintiff is not exempted from the operation of a rule which so early and so naturally glided into our jurisprudence from that of Justinian, . . that a person born of a slave is a slave." [Birch, J.]

Kanada v. North, 14 Mo. 615, March 1851. [616] " North furnished Kanada . . [617] eight hundred and fifty dollars [for the purpose of purchasing negroes for him]. Shortly after . . Kanada purchased two negroes of one Bennet—a man and a woman, one of them of doubtful health, and both somewhat older than North was in the habit of purchasing for the southern market—for the aggregate sum of five hundred and seventy-five dollars. These negroes he afterwards . . passed over to North for the sum of eight hundred and fifty dollars. The finding of the jury was for two hundred and seventy-five dollars . . [618] the negro man ranaway from Kanada's the night after he was sold," Judgment affirmed.

Harney v. Dutcher, 15 Mo. 89, October 1851. In 1849 a slave, Nat, was hired for $84 for one year. [90] " We are to feed and clothe said slave and afford and furnish him medical attendance during the whole of said term; not remove him from the county of St. Louis during said period and to return said slave, if alive " at the expiration of the term. The slave ran away. He was worth $700.

Spraddling v. Keeton, 15 Mo. 118, October 1851. See Keeton *v.* Spradling, p. 180, *supra;* and Keeton *v.* Keeton, p. 193, *infra.*

Garneau v. Herthel, 15 Mo. 191, October 1851. Held: [193] "A person who employs the slave of another, without the master's permission, to employ labor for him which exposes the life of the slave to danger, must bear the consequences of such engagement; and if the slave is killed by the effects of the business or employment . . the person so employing him must pay his value to the master." [Gamble, J.]

Dugans v. Livingston, 15 Mo. 230, October 1851. Will of Stephen Dugans, who died in 1843: [233] "All the balance of my perishable property, excepting my negro boy Jack, will have to be sold according to law, and the proceeds . . equally divided amongst my four first mentioned children," Before his death, " he acquired a negro woman and child, which, with the boy Jack, he sold. He then purchased another woman and child; that he sold the woman and kept the child, and this child is the boy, Toney, sued for."

Held: [234] " the testator supposed these words ' perishable property ' did include and embrace his negroes, for he expressly excepts ' Jack,' the only slave he then owned,"

Davis v. Foster, 15 Mo. 395, January 1852. [396] " her father gave her Dice; . . she sold her, and that the negroes sued for still remained in her possession and are the children of Dice."

Yeldell v. Stemmons, 15 Mo. 443, January 1852. [445] " action of replevin . . for three slaves and a ferry boat,"

Dennis v. Ashley, 15 Mo. 453, January 1852. " in the fore part of the year, 1847, . . Ashley left said negro slave Harriett with . . Curl, in the city of St. Louis, to be by him sold . . Curl followed the business of selling negroes in St. Louis for every body who chose to employ him for said purpose; . . that said negro was left . . without any direction from said Ashley as to whether he should or should not warrant the soundness . . Curl, . . August, 1847, as such agent of Ashley, sold said negro woman to said Dennis for $410, (which was at the time a fair price for said negro if sound and healthy) and gave Dennis a written warranty, both as to the soundness and title of said negro, in the name of Ashley, his principal. That he offered to sell said negro to Dennis for twenty dollars less if he would purchase without warranty, but that Dennis refused to purchase at all without warranty. . . Dennis, after discovering . . unsoundness, had procured said negro to be sold after having given public notice of said sale, and the highest price she would bring was $150."

Held: Curl [458] " was acting fully within the line of his usual employment in . . giving a warranty of the slave, as to her soundness . . and his acts are binding on his principal."

Robinson v. Robards, 15 Mo. 459, January 1852. [462] " he owned ten slaves, not valuable, being mostly children, . . 1848, he executed to Wm. A. Robards, a bill of sale for eight slaves, a man and his wife and six of their children, and also a bill of sale to his son John for a boy Martin and a man Sharper: that he was indebted to his son William in the sum of $600, which he was unable to pay without a sale of a portion of his slaves, and being unwilling to separate a family, he induced his son William to take it and pay him the balance in money: . . that the man slave he sold to his son John was of little value, being badly ruptured:"

State v. Swadley, 15 Mo. 515, January 1852. [516] " The indictment charges that the defendant ' did . . unlawfully sell to a negro man, a slave . . one pint of whiskey of the value of ten cents, without . . a written permit from the owner, overseer of said slave or any one having

legal authority over said slave authorizing said sale;' [1] The defendant . . plead guilty. The court assessed his fine to twenty dollars"

Scott (a man of color) v. Emerson,[2] 15 Mo. 576, March 1852. [582] "This was an action instituted by Dred Scott against Irone [*sic*] Emerson, the wife and administratrix of Dr. John Emerson, to try his right to freedom. His claim is based upon the fact that his late master held him in servitude in the State of Illinois, and also in that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36 degrees 30 minutes, north latitude, not included within the limits of the State of Missouri. It appears that his late master was a surgeon in the army of the United States, and during his continuance in the service, was stationed at Rock Island, a military post in the State of Illinois, and at Fort Snelling, also a military post in the territory of the United States, above described, at both of which places Scott was detained in servitude—at one place, from the year 1834, until April or May, 1836; at the other from the period last mentioned, until the year 1838. The jury was instructed, in effect, that if such were the facts, they would find for Scott. He, accordingly, obtained a verdict. The defendant moved for a new trial on the ground of misdirection by the court, which being denied to her, she sued out this writ of error."

Judgment reversed and the cause remanded: [583] "No State is bound to carry into effect enactments conceived in a spirit hostile to that which pervades her own laws. . . [584] Some of our old cases say, that a hiring for two days would be a violation of the constitution of Illinois and entitle the slave to his freedom. . . [585] Laws operate only within the territory of the State for which they are made, and by enforcing them here, we, contrary to all principle, give them an extraterritorial effect. . . There is no ground to presume or to impute any volition to Dr. Emerson, that his slave should have his freedom. He was ordered . . to the posts . . In States and Kingdoms in which slavery is the least countenanced, and where there is a constant struggle against its existence, it is admitted law, that if a slave accompanies his master to a country in which slavery is prohibited, and remains there a length of time, if during his continuance in such country there is no act of manumission decreed by its courts, and he afterwards returns to his master's domicil, where slavery prevails, he has no right to maintain a suit founded upon a claim of permanent freedom.[3] This is the law of England, where it is said her air is too pure for a slave to breathe in, and that no sooner does he touch her soil than his shackles fall from him.[4] . . [586] Times now are not as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose inevitable consequence must be the overthrow and destruction of our government. Under such circumstances it does not behoove the State

[1] Digest of 1845, p. 1018, sect. 33.
[2] See Emmerson *v.* Harriet, p. 175, *supra*; same *v.* Dred Scott, *ibid.*
[3] The Slave Grace, vol. I., p. 34, of this series.
[4] See Introduction to the English cases, vol. I., pp. 1-6, of this series.

of Missouri to show the least countenance to any measure which might gratify this spirit. She is willing to assume her full responsibility for the existence of slavery within her limits, nor does she seek to share or divide it with others. Although we may, for our own sakes, regret that the avarice and hard-heartedness of the progenitors of those who are now so sensitive on the subject, ever introduced the institution among us, yet we will not go to them to learn law, morality or religion on the subject. As to the consequences of slavery, they are much more hurtful to the master than the slave. There is no comparison between the slave in the United States and the cruel, uncivilized negro in Africa. When the condition of our slaves is contrasted with the state of their miserable race in Africa; when their civilization, intelligence and instruction in religious truths are considered, and the means now employed to restore them to the country from which they have been torn, bearing with them the blessings of civilized life, we are almost persuaded, that the introduction of slavery amongst us was, in the providences of God, who makes the evil passions of men subservient to his own glory; a means of placing that unhappy race within the pale of civilized nations." [Scott, J.] Gamble, J., dissented.

Calvert v. Steamboat Timoleon, 15 Mo. 595, March 1852. [597] "action under the statute[1] . . for transporting [in 1849] from St. Louis, a slave, . . to the State of Illinois, without the consent of his master, whereby he was lost.[2] The defence was, that the slave was entitled to his freedom, and that he was permitted to go about and act as a free person. . . the mother of Carter, the slave in controversy, was detained in servitude in the territory (now the State of Illinois,) from the year 1812 to the latter part of the year 1818, by her master, who afterwards moved to this State, where, in the year 1824, Carter was born. This evidence was excluded by the court, . . The plaintiff obtained a verdict,"

Judgment affirmed: "The case of Dred Scott *vs.* Emerson,[3] decided at this term of the court, shows, that the facts offered in evidence, would not entitle the mother of Carter to her freedom. The case of Chouteau and Keizer *vs.* Hope,[4] cannot be sustained, to the length, that the right of one detained in slavery, who has never been actually free, may be asserted in a collateral proceeding. . . this is a personal privilege, and so long as he acquiesces in his condition, another cannot litigate his right to freedom." [Scott, J.]

Moore v. Insurance Co., 16 Mo. 98, March 1852. [100] "This is an action upon an open policy, to recover the value of a slave, who fell overboard and was drowned, during the voyage, without any disaster happening to the boat, or any unusual occurrence causing him to fall overboard. The policy covered such shipments as might be endorsed upon it. There were several shipments of negroes and horses endorsed upon the policy, the first of which had this memorandum attached to it: 'The horses and

[1] Rev. Stat. 1018.
[2] See Calvert *v.* Rider, p. 191, *infra.*
[3] P. 185, *supra.*
[4] P. 160, *supra.*

negroes entered above, are only insured against the dangers incident to navigation, drowning, blowing up, etc., but not against leaving the service of the assured, nor against death by ordinary sickness; they are not to be manacled or handcuffed, so as to prevent them from swimming.' The endorsement of negroes, including the one lost, has this memorandum attached to it: 'The said negroes only insured against the dangers incident to navigation, such as blowing up, drowning,' etc."

Judgment for the plaintiff affirmed: [101] "The company has agreed that drowning, happen as it may, is a loss for which the assured shall be indemnified."

McDermott v. Barnum, 16 Mo. 114, March 1852. Rogers and Company sold to McDermott, in January 1842, [115] "four negroes (among them Austin) for $2000, . . the negroes were present at the sale, . . and went to work for him [on the James River Canal in Virginia, McDermott and the former owners being contractors on the canal]: . . The negroes remained . . about two weeks in Virginia, and until they were sent off in charge of Janney . . to carry to Montgomery, Alabama, to sell, and to remit the proceeds to the plaintiff. . . Hugh Rogers overtook him in North Carolina, . . [116] Not selling all the negroes at Montgomery, because the prices offered did not suit him, and hoping to get better prices, he sent the rest by J. C. Rogers to Hugh Rogers at Mobile, with directions to sell . . and remit the proceeds to McDermott. Among them was Austin. . . Hugh Rogers at Mobile had blooded stock for sale, and with the stock went to New Orleans and thence to St. Louis, arriving here 10th of April, 1842; . . Austin attended on the horses. . . Hugh Rogers claimed Austin as his property; hired him out and offered to sell him; he also used him in a stable which he kept. The negro was subsequently, in the fall of 1843, taken on attachment, sold and purchased by Barnum and Moreland."

Garth v. Everett, 16 Mo. 490, July 1852. [491] "an action for a slave, Jacob, a child. . . Garth brought an action of trespass against Everett, for taking and converting to his use a negro woman slave, the property of Garth" and "recovered damages equivalent to the value of the slave. There was an execution on this judgment, which was satisfied. During the pendency of the action . . the woman slave . . was delivered of a child, and Garth has now brought this suit to recover the value of the child which was taken and converted by Everett to his use. The slave was estimated to be worth $150."

Judgment for the plaintiff reversed and cause remanded: in assessing damages [493] "the jury may, at their discretion, award them according to the value of the property at its conversion, or at any subsequent time."

Hays v. Bell, 16 Mo. 496, July 1852. [498] "I, the said Williams, have this day [April 13, 1841] hired to . . Hays . . a negro man, named Peyton, for which said . . Hays . . accommodate said Williams with the sum of seven hundred and fifty dollars, for the use of which, said negro is to serve the said . . Hays . . for the term of twelve months from this date; said . . Hays . . further agree to furnish said negro

with summer and winter clothing." [499] "Peyton served Carson and Hays for seven or eight years; that he was an excellent hand, and that such hands were worth one hundred and fifty dollars per year, and that hemp hands in the year 1842, hired from $150 to $200 per year."

Giboney v. Bedford, 17 Mo. 56, October 1852. [57] "The court found . . 'that the said negro boy [in 1850] . . was worth five hundred and fifty dollars;'"

Kingsbury v. Lane, 17 Mo. 261, October 1852. "Cabanné married in North Carolina, and brought the said slaves along with his wife, home to Missouri,"

Carter v. Feland, 17 Mo. 383, January 1853. In 1831 or 1832 James Carter was given possession of the slave Charlotte and her child Winny, [386] "to keep for plaintiff [his brother] until his return, . . but if he never returned, the said negroes were to become the property of said James Carter; that plaintiff then left the state of Tennessee, and did not return, until after the negro Winny was brought to Missouri" in 1844, where she was sold in the same year for $400.

Sylvia (a slave) v. Kirby, 17 Mo. 434, January 1853. "It was alleged in the petition that the claimant, Sylvia, a free person of color, was held in slavery against her will by Joel Kirby; that in the year 1834, she was unlawfully taken by Kirby, her master, a citizen of the United States, as a slave, into the territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of the state contemplated by the act of congress entitled 'an act to authorize the people of Missouri territory to form a constitution and state government, approved 6th March, 1820;' that said Kirby went into the said territory with the intention of residing there, and held the claimant within it as a slave for at least one year, who was guilty of no crime and had not been convicted of any offence, but was detained solely on the ground that she was a slave; that this was in violation of the act of congress above referred to, by reason whereof, she became entitled to her freedom."

Judgment for the respondent [Kirby] affirmed: Scott *v.* Emerson[1] "is decisive of this." After returning with her master to Missouri, Sylvia cannot maintain a suit for freedom in the Missouri courts.

Caldwell v. Dickson, 17 Mo. 575, March 1853. [576] "Caldwell, after insulting the family of Dickson . . by ordering away a servant in their employ, [whom they had hired from Caldwell] . . should not be permitted to come into a court of justice, apportion his contract, made necessary by his own wrong, and award to himself the compensation he deems just. Many persons hire slaves in preference to other laborers, because they believe the contract confers an absolute right to their services during its continuation, and that if the owner takes away his slave, without just cause, he will forfeit the hire for the whole period of the contract. . . [577] Of course the master should protect his slave against the inhumanity

[1] P. 185, *supra.*

of those to whom he may be hired . . and take his slave from the employment of those who are guilty of such conduct." [1] [Scott, J.]

Davis v. Evans, 18 Mo. 249, March 1853. Ranney [250] "testified that he purchased Margaret [the plaintiff] in 1835, and the girl, Patsey, was born soon after; that on the 2d day of March, 1835, he executed a bill of sale of both mother and child to Augustus H. Evans; that the child, Patsey, had been in possession of the plaintiff ever since her birth, being now about seventeen years old; . . that Margaret raised her, supported her, fed and clothed her at her own expense; that about the year 1845, he heard Evans say he claimed her and ought to have possession of her, but never knew of his interfering to claim or take Patsey away from the plaintiff until 1850. . . Margaret was emancipated by Oliver Bennet, in 1842. Bennet testified that the girl, Patsey, had been in the possession of the plaintiff from 1840 to 1851; that he had her in his employ some ten years ago, and some five or six years ago hired her to go east; that a year ago Margaret came to him to hire Patsey to go east; that he always paid the plaintiff for Patsey's services, . . [251] Dr. Martin testified that he attended Patsey when she was sick in 1848, and was paid by the plaintiff for his services."

Held: [252] "The circumstances, as detailed in evidence, are such as forbid all idea of an adverse possession of the slave in controversy by the appellant. It would be hard, if Evans' humanity, in permitting a mother to retain her infant child, should be tortured into an abandonment of his claim of right; . . In my opinion, a negro, under our laws, cannot hold slaves. It is against their policy, and in its tendency is subversive of all the police laws for the government of slaves. The other judges concurring, the judgment [for Evans] will be affirmed. [Scott, J.] Gamble and Ryland, Judges. We do not concur in the opinion, that a free negro may not legally hold slaves."

Stone v. Stone, 18 Mo. 389, July 1853. Suit "to recover her dower in certain slaves which had belonged to her deceased husband . . in his lifetime." A few days before his death he [390] "had executed a conveyance of them . . in trust for the use and benefit of . . his children by the former marriage, through whose mother they had come to him, . . at the time of executing the same, he said he was convinced he had the consumption and could not live long." Judgment for the defendant reversed.

Stearns v. McCullough, 18 Mo. 411, July 1853. [414] "In October, 1851, McCullough sold a negro girl to Stearns for $500, with a warranty of soundness. Soon after the sale she was known to be unwell, and in May following died. . . [415] the slave, for several months after the sale, was engaged attending to the ordinary duties of a domestic servant." Held: the measure of damages is "the difference between the value of the slave, if sound, and her value with the disease or unsoundness" at the time of the sale.

Roberts v. Stoner, 18 Mo. 481, October 1853. A portion of the slaves of which Roberts was possessed at his death in May 1835 was set apart

[1] See same *v.* same, p. 205, *infra.*

to his widow as her dower. Her second husband, [482] " Stoner, although he only had an estate during the life of his wife, was treating the slaves as his absolute property, . . that two of them had been sold and removed beyond the state " Held: [484] " he should have been required to give security for their forthcoming at the termination of his estate."

State v. Joe (a slave), 19 Mo. 223, October 1853. " The affidavit charges that the slave stole a fiddle of the value of one dollar, and a whip, of the value of one dollar, and some clothing, with many other articles of merchandise." He " was tried and convicted before a justice of the peace, of larceny, and sentenced to be whipped. From this proceeding he appealed " Appeal dismissed.

State v. Henke, 19 Mo. 225, October 1853. [226] " The defendants were indicted . . for dealing with a slave." They had hired Anderson, the slave of Wilkinson, " to maul rails, and did . . pay said slave one dollar and eighty cents for said mauling . . and without the consent in writing of the master, owner or overseer of said slave first obtained,"

Held: " ' The mauling of rails ' . . is not the commodity contemplated by the legislature, nor is it embraced by the statute.[1] . . [227] It does not include the manual labor of the slave, however wrong it may be [to] hire or to induce a slave to work or labor for a person without the master or owner's knowledge and permission."

State v. Chunn, 19 Mo. 233, October 1853. " sale of a negro woman . . for $600,"

State v. Anderson, 19 Mo. 241, October 1853. "Anderson, a negro slave, was indicted for an attempted rape upon a white female. . . At the close of the testimony for the prosecution, it had been proved that the defendent was a slave, but no witness had testified that he was a negro man, or that the prosecutrix was a white female. Two negroes were called as witnesses by the defendant. The State objected to the competency . . [242] on the ground that they were negroes, and one of them was a slave. . . overruled, . . The following instructions . . were given . . ' If the jury believe, from seeing the witness, Rebecca, in court, upon the witness stand, that she is a white female, or from seeing the defendant in court, or from the testimony of his being a slave, that he is a negro, these facts are sufficient to support the allegation . . in relation to the color, sex and race . . you cannot acquit the defendant, because you may believe the witness, Rebecca, is of bad character for virtue, or that she associated with negroes.' . . The jury returned a verdict of ' guilty ' . . he was sentenced to be castrated," Judgment affirmed.

Austin v. Watts, 19 Mo. 293, January 1854. Austin died in 1839 and " three slaves valued at $950," were " delivered over to the widow." [297] " one, a woman of forty years, with her child of some four years old; the third, a boy, of about fifteen years of age," [294] "About the year 1840, G. Patrick purchased of the widow two of the slaves, and in 1841, S. C. Major purchased the third, and sold her to some person . . who removed her out of the state."

[1] Rev. Code (1845), p. 1018, sect. 33.

Steel v. Brown, 19 Mo. 312, January 1854. Bill of sale: "January 6, 1852. I . . have this day bargained and sold . . a negro woman . . for a slave during life, aged forty-one or two years, stout and healthy, for the sum of three hundred dollars," Held: the words "stout and healthy" constituted a warranty of soundness.

Woodson v. Pool, 19 Mo. 340, January 1854. In 1845 Pool owned a negro woman and [341] "her child, two or three years old," He "sold the woman for $400."

McCarty v. Rountree, 19 Mo. 345, January 1854. "Robert Noll, in the state of Tennessee, in 1836, gave the slave Mary to the plaintiff, Mary Ann, his grand-daughter, who was then an infant, residing in the family of her father," who shortly afterwards removed with his family to Missouri, and in 1838 sold the slave without his daughter's consent. Judgment in favor of the defendant reversed.

State v. Leapfoot, 19 Mo. 375, January 1854. Indictment [376] "for selling spiritous liquors to a slave, . . the jury found the defendant not guilty."

State v. Soot, 19 Mo. 379, January 1854. [380] "indictment of a white person for being found at an unlawful meeting of slaves" [379] "the meeting was at the house of Thomas Plemmons, in the night of a particular day, and that it continued for two hours."

Held: [380] "The present indictment is defective, in not alleging that the meeting was an unlawful meeting, in the language of the twenty-fourth section" of the act concerning slaves.[1]

Bowen v. Bower, 19 Mo. 399, March 1854. [400] "The negroes, at the time of the death of the testatrix, were in Tennessee, and were subsequently brought to Missouri."

Gregory v. Cowgill, 19 Mo. 415, March 1854. Robert Sinclair devised all of his estate to his wife [416] "with the exception of Eden, his black man, whom, for his fidelity, he emancipated."

Halbert v. Halbert, 19 Mo. 453, March 1854. "He made a will . . giving to . . his widow, a female slave," Held: [454] "The bequest of the slave does not . . bar her dower in the real estate,"

Polk v. Allen, 19 Mo. 467, March 1854. Action to recover damages for the conversion of a slave. Held: the measure of damages is the value with interest. The plaintiff cannot recover the value of the hire by way of damages.

Livingston v. Dugan, 20 Mo. 102, October 1854. Action "to recover money paid for medical attendance upon a slave, and for services in nursing."

Calvert v. Rider, 20 Mo. 146, October 1854. "an action against Rider, the master, and Allen, the clerk, of the steamboat *Timoleon,* to recover damages for a trespass in transporting a slave of the plaintiff out of the state of Missouri, whereby the slave was lost. . . In the fall of 1849, the

[1] Rev. Code 1017.

plaintiff slave came on board the steamboat, took passage for some point on the Illinois river, paid his passage money to Allen, the clerk, and went up the river to the point of his destination. . . Before this suit was begun, the plaintiff brought a suit *in rem* against the steamboat for taking the slave, and recovered judgment for his value,[1] which had been satisfied. . . [147] The court below gave judgment for the plaintiff for the value of the slave,"

Affirmed: [148] "The recovery against the steamboat was no bar to the recovery against those who committed the trespass," "The statute [2] was designed to make those who are engaged in the navigation of the waters of our state, and who have peculiar facilities for removing slaves, liable to a penalty for such removal in their vessels; while they remain liable, in common with all other persons, for damages occasioned by trespasses." [Gamble, J.]

West v. Cochran, 17 Howard 403, December 1854. Concession made June 10, 1794, to Joseph Brazeau: [409] "land . . bounded by the land granted to the free mulattress Esther." "The application of Esther . . was made October 2, 1793. She petitioned for a piece of land lying on the borders of the Mississippi; . . On the 3d October, 1793, the governor granted the land to Esther, . . On the 5th of October, 1793, the governor certifies that he had in person put Esther in possession of the land granted,"

Robinson v. Rice, 20 Mo. 229, January 1855. [230] "About 1836, Lowe sold and delivered Emily, [and her two children] Mary and Charity to . . Clendenin, for the sum of $650. Afterwards, Emily gave birth to Matthew and two other children. In 1842, Clendenin sold Emily and her two youngest children to one Overton. . . About 1849, William Morrison and his wife, Mary, daughter of . . [231] Clendenin, removed to Texas and took Charity with them,"

Held: [255] "Where the vendor is in possession of personal property, and sells it for full value, the law implies a warranty of title. Whether Lowe sold the slaves absolutely, or only his life estate in them, was a question to be determined by the evidence in the cause."

Fackler v. Chapman, 20 Mo. 249, January 1855. "Certain goods were stolen from the store of the plaintiff, one night in October, 1850. . . About two weeks after the larceny, the plaintiff received information which led him to go to the house of Davison, who had hired the slaves from their owner, the defendant, to make a search. . . Young accompanied him. They found a portion of the goods at the house of Davison, in a box under a bed in which the slave slept. The slaves stated where the other goods could be found, . . [250] McDearmon . . afterwards made search and found portions of the goods at the places specified. He found Mr. Palmer's negroes in possession of some of the goods, and Mr. Stanley's of others."

Held: [252] "If three slaves belonging to different masters unite in a theft of property of the value of one hundred dollars, each one of the

[1] Calvert *v.* Steamboat *Timoleon,* p. 186, *supra.*
[2] Rev. Code (1845), p. 1018, art. 1, sects. 31, 32.

slaves, in the judgment of the law, has stolen one hundred dollars' worth of property," and " the owner of one of the slaves will be liable for all the damages resulting from the wrong." [1] . . The declarations of the slaves, showing where the stolen property might be found, were evidence, in connection with proof that the property was found at the places mentioned by them."

Tally v. Thompson, 20 Mo. 277, January 1855. " Petition by Tally and wife to enjoin the sale under an execution against Tally, of a slave, given to Tally's wife upon her marriage." Judgment for Tally reversed.

Gibbons v. Gentry, 20 Mo. 468, March 1855. In 1829 Gibbons, then residing in Kentucky, executed a deed of trust, transferring eighteen slaves and their future increase. [469] " Gibbons remained in possession of the slaves after the execution of the deed, and in . . the same year, removed with them to . . Missouri."

Keeton v. Keeton, 20 Mo. 530, March 1855.[2] The slaves were sold in Tennessee [532] " by the administrator at public auction, for cash, . . 1830, [533] at the farm of John Keeton, . . It was in evidence that much dissatisfaction was expressed by the persons present, because the sale was for cash, instead of on the usual credit, and that many persons were prevented from bidding in consequence; that the terms were not known until the day; and that the slaves would have brought better prices if they had been sold on the usual terms. . . all of the slaves [but two] were bid off by William Keeton [the administrator], . . [who] not long afterwards removed a portion of them to Missouri," they had been removed previously, in 1824 or 1825, by John Keeton.

Kingsbury v. Lane, 21 Mo. 115, March 1855. [115] " an action of replevin . . for two negro women."

Halbert v. Halbert, 21 Mo. 277, July 1855. " action brought by James Halbert, in 1852, to recover a slave claimed by the defendants as belonging to the estate of Nathan Halbert, their intestate." Nathan was the son of James, and " the slave was given to him by his father, and remained in his possession up to the time of his death, some ten or fifteen years afterwards. . . [278] the plaintiff, upon the marriage of his children, put in their possession a slave, ' which was to be theirs upon the condition that they should have issue,' . . Nathan Halbert never had any children. . . [He] frequently complained that his father had not done right by him, in not giving him an absolute right to the slave." Held: the slave reverts to the donor.

Chiles v. Bartleson, 21 Mo. 344, July 1855. " I will . . unto my beloved wife . . my negro man, Charles, his wife, Clara, and their four children,"

Major v. Harrison, 21 Mo. 441, July 1855. Harrison hired a slave who [442] " shortly after Harrison took possession of him, . . from sickness, became unable to work and continued so until he died." " the slave

[1] Rev. Code (1845), art. 9, sect. 35, act concerning " crimes and punishments."
[2] See Keeton *v.* Spradling, p. 180, *supra.*

was well known to Harrison, and that the slave's wife belonged to and lived with him;"

State v. Harlow, 21 Mo. 446, July 1855. [450] "a negro man, (the ferryman,)"

Charlotte v. Chouteau,[1] 21 Mo. 590, October 1855. [591] "This was a suit by the plaintiff suing as a poor person to establish her right to freedom. It is averred in the petition for leave to sue, that the petitioner 'is entitled to freedom by being born of a negress named Rose, who herself was born at Montreal, in Canada; that about the year 1791, the said Rose was removed from Canada by a certain John Stock [*sic*], an Indian trader, to his trading post at Prairie du Chien, in the northwestern territory . . where she was detained by him as his slave until his death, some time in the year 1793; . . after the death of said Stock, she (Rose) was brought down to St. Louis by a certain Andrew Todd, a trader, who sold her as a slave to a Mr. Didier (a priest), . . and was afterwards sold by him . . to one Auguste Chouteau, . . [593] This case was previously on error,"[2] and the cause remanded. "The trial was had at the April term of the Circuit Court, for the year 1853." [591] "The plaintiff offered to read in evidence certain copies of papers found among the Spanish archives, . . copy of a bill of sale . . [592] executed by Andrew Todd . . to Mr. Didier, curate of the parish of St. Louis, of a negress named Rose, a slave, aged about twenty-seven, . . This conveyance was executed October 28th, 1795, before, and authenticated by Manuel Goring Moro, commandant of St. Louis. The second paper . . purported to be a copy of a conveyance of the same negress, Rose, and two infant children, made August 8, 1798, by said Didier to Auguste Chouteau, executed before, and authenticated by, Zenon Trudeau, lieutenant governor, etc., of Louisiana. This instrument of transfer purported to convey 'a negress named Rose, a native of Montreal, government of Canada, aged about thirty years,' . . the copies were rejected. . . [593] the plaintiff took a nonsuit, with leave to move to set aside the same . . The court refused to set aside the same, and the plaintiff brought the case to this court by writ of error." The counsel for Chouteau argued that it was immaterial whether slavery ever existed as a fact in Canada. [594] "We have no right to inquire whence the inhabitants of this country, under the Spanish government, acquired their slaves. It makes no difference, in point of law, whether they captured them in Canada or Africa. . . [595] That the slave or his ancestors were originally born free, in some country, is probably true in every instance."

Judgment in favor of Chouteau reversed, and the cause remanded, [598] "in order that the fact may be tried whether Rose was lawfully a slave in Canada." [595] "The copies of the archives, offered in evidence, should not have been excluded. . . [596] they would have showed that Rose, the ancestor of the plaintiff, was born in Canada, and consequently the question would have arisen whether slavery, in fact, did ever exist in that province, . . For if Rose . . was ever lawfully a slave, though the law afterwards gave her a right to freedom, yet, if she failed to assert it

[1] See same *v.* same, p. 174, *supra,* pp. 203, 216, *infra.*
[2] P. 174, *supra.*

there, and came with her master here, neither she nor her descendants will be permitted to assert it now. We cannot yield to the argument that the plaintiff has no right to go back and show that her mother was free, in order to establish her right to freedom, . . [597] Negroes were captured in Africa, brought to America and held in servitude. But when any of this race, who were then reduced to slavery, acquired their freedom under the laws of the country in which they lived, we are aware of no law by which they, except for crime, could be again subjected to bondage. The principle that there is no prescription against liberty, applied to them as well as to those of any other color." [Scott, J.] On the new trial in the lower court, there was a verdict in favor of Charlotte, and Chouteau appealed.[1]

Jones v. Covington, 22 Mo. 163, October 1855. Bill of sale, in 1838, to Nathan Jones, of " two black children, slaves, one called Jane, a girl, seven years old, the other called Lewis, a boy, four or five years old, for and in consideration of the services and parental affection existing towards Sarah Jones, wife of the aforesaid Nathan Jones," Howdeshell, the father of Sarah Jones, " retained possession of [his] said slave, Lewis, until his death in 1853," Held: [165] " The transaction . . was an imperfect gift, . . altogether ineffectual to effect a change of legal ownership,"

Pemberton v. Pemberton, 22 Mo. 338, January 1856. A verbal gift in 1842: [339] " I then gave Susy Pemberton, my daughter, Abigail and her increase for life, and at her death, for her and her increase to be equally divided among her children." " I sent Abigail the next morning to Susy Pemberton." Held: [340] " Such a gift needed no writing, . . The delivery of the possession to the mother, the tenant for life, was a delivery, *pro hac vice,* to her children."

West v. Forrest, 22 Mo. 344, January 1856. [345] " an action of assault and battery, . . The defendant denied having assaulted the said Alvira E. West [wife of Francis A. West], but stated that he was whipping a negro woman, whom he had hired of Francis A. West, and who had left his house and gone back to her master's house; that he went after her and found her, and ordered her to go back to his house; but, instead of obeying him, she attempted to go up the steps to the room where her mistress, Alvira B. [*sic*] West, was; that he commenced whipping her with a cowhide; that Mrs. West came down the steps, and the negro woman ran and caught her around the waist, and with great force conveyed her back into the house; that if Mrs West was struck, he did not know it, and did not intend it. . . [346] The evidence clearly shows a very severe beating of the negro woman; . . and . . leaves little doubt that the defendant did not stop his blows when the negro woman caught her mistress, but he continued to inflict them. One witness says, he saw his arm in motion up to the door as though he were striking. Is it strange that Mrs. West, the owner of the negro woman, should have been (even in her situation, some seven or eight days after child-birth) drawn to the steps of her door

[1] Charlotte v. Chouteau, p. 203, *infra.*

by the severe whipping and hallooing of her own servant?—the blows inflicted by the defendant, and the screams of the negro woman, raising the indignation of the witnesses who were a block and a half distant, and prompting them to stop work and go and see the cause of the terrible whipping and hallooing. No wonder, under such circumstances, that Mrs. West should step half way down the steps leading from her room to the yard; and no wonder she should by her presence try to save her servant. The plaintiff's case was clearly made out before the jury, and by their verdict of four hundred dollars damages they exhibited their sense of such a wrong, and properly vindicated the injuries and wounded feelings of the plaintiff." [Ryland, J.]

Morgan v. Cox, 22 Mo. 373, January 1856. [374] "The suit was for the negligent shooting of the plaintiff's slave, . . The defendant . . had been out with his gun, and was asked by the plaintiff to aid him and his servant in driving an unruly cow across the Osage river; and while doing so he punched the cow with his loaded gun, and in replacing it across his horse, the hammer struck the saddle as he supposed and caused it to fire, by which the plaintiff's servant was shot and killed." Verdict and judgment for the plaintiff.

Hudson v. Garner, 22 Mo. 423, January 1856. Action for slander. The slanderous words were in part: [424] "tell your mother [an unmarried woman] to send you down to the south, to see your father Tom (intending . . to charge the plaintiff with having been guilty of the crime of adultery with negro Tom). . . Damn your black soul (speaking to plaintiff's son John); . . you'll get to the south directly to your father; any how, Tom is your father." "Upon the trial, the jury found the defendants guilty, and assessed the plaintiff's damages at the sum of three thousand dollars." Motion for new trial overruled. Affirmed.

Phillips v. Hunter, 22 Mo. 485, March 1856. A negro boy, aged about sixteen years, was sold for five hundred dollars, in January 1851.

Boggs v. Lynch, 22 Mo. 563, March 1856. [564] "a negro servant, then in the employment . . of defendants [keepers of a livery stable], . . engaged in driving a carriage and horses of defendants,"

Lovelace v. Stewart, 23 Mo. 384, March 1856. In 1854 "the plaintiff was of opinion that she had only a dower title, and would take $1200 for the woman and child." Her son told Stewart he [385] "would procure the relinquishment of the heirs . . He said then he would give my mother $1000 for the negroes. . . and would give me $100 to warrant the title against the children."

Barksdale v. Appleberry, 23 Mo. 389, October 1856. The defendant [390] "says the slave belonged to his father's estate, and . . was in possession of . . the mother of plaintiff, and of defendant, as dower property . . when their mother moved to this state, she left the slave with the plaintiff in Virginia, as a loan . . that said slave ran away . . 1850, and was taken up as a runaway in . . Virginia, and put into jail, where he was kept for several months; that defendant went to Virginia

and took him out of jail, and brought him with him to this state, having paid the reward, fees and expenses, . . The court found " that the slave was the property of the plaintiff, that when the sheriff, in 1851, went to defendant's house [391] " to take possession of the negro boy, . . he . . could not be found, but had made his escape, perhaps, into Illinois, . . The boy was of the value of $800."

Schropshire v. Loudon, 23 Mo. 393, October 1856. Suit for freedom, based on [396] " a written paper, in the form of a will," dated 1846: [394] " I, Elizabeth Schropshire, . . give and bequeath unto Titus my black man, Ellen my black woman, the wife of the said Titus, with all their children, *viz.,* Monroe, Randolph, Wilson, Mary Jane and Josephine, with each and every child that may hereafter be born, their freedom at my death;" This paper was signed and sealed; and was attested by three witnesses. In 1847 " Elizabeth Schropshire appeared in the Circuit Court . . and acknowledged said instrument of writing as her deed of emancipation of the plaintiffs;" and it was seconded in 1850. It was never probated as a will. The lower court [395] " rejected all the evidence offered on the part of the plaintiffs, and the case being submitted to the jury, a verdict was rendered for the defendants."

Judgment reversed and the cause remanded: [397] " while the paper is inefficacious as a will, we see no reason why it is not an instrument in writing within the meaning of the law." [1] It " should have been received in evidence as a valid act of emancipation." [Scott, J.]

Hayden v. Hayden, 23 Mo. 398, October 1856. Held: [399] " The right of the widow to a share in the slaves [which belonged to her deceased husband], equal to a child's part, does not depend upon any act to be done by the widow; . . The law [2] confers on her a child's part; . . [400] She must do something indicative of casting off this right, otherwise it attaches and remains fixed."

Phillips v. Towler, 23 Mo. 401, October 1856. " an action [3] against Edward Towler to recover compensation for injuries sustained in consequence of the act of . . [his] slave . . in setting fire to and burning a stable, . . certain confessions made by her were admitted in evidence . . A witness also testified as follows: ' Mr. Robert Towler, son of Edward . . entered the room where Mr. Edward Towler and I were, and, with a smile on his countenance, said, " does it not beat any thing in the world? that negro burnt Phillips' stable, and has confessed it." Mr. Edward Towler made no reply; seemed to be cut down, and went out of the room.' Defendants excepted to the admission of this testimony."

Held: [402] " The slave's confessions were improperly admitted. . . [403] The court also erred in allowing the remarks of Robert Towler . . to go to the jury." Judgment in favor of Phillips reversed, and the cause remanded.

Johnson v. Steamboat Arabia, 24 Mo. 86, October 1856. " The slave was being transported on the defendant from Kentucky to St. Louis, and

[1] Rev. Code (1845), p. 1019, art. 2, sect. 1.
[2] Rev. Code (1845), p. 430, sect. 2.
[3] Under Rev. Code (1845), p. 414, art. 9, sect. 45.

during the voyage an officer of the boat put him to 'wooding' without his master's permission, and while so engaged he fell overboard and was drowned." Judgment for plaintiff affirmed.

Dred Scott v. Sandford,[1] 19 Howard (60 U. S.) 393, December 1856. [396] "action of trespass *vi et armis* instituted in the Circuit Court" "of the United States for the district of Missouri." [400] "The declaration . . contains the averment . . that he is a citizen of Missouri, and the defendant a citizen of New York." [396] "The declaration . . contained three counts: one, that Sandford had assaulted the plaintiff; one, that he had assaulted Harriet Scott, his wife; and one, that he had assaulted Eliza Scott and Lizzie Scott, his children. Sandford . . filed the following plea: . . this court ought not to . . take further cognizance . . because . . cause of action . . accrued . . exclusively within the jurisdiction of the courts . . of Missouri, for that . . Dred Scott, is not a citizen . . of Missouri, . . because he is a negro . . [397] there was a demurrer . . argued in April, 1854, . . sustained. . . In May, 1854, the defendant . . pleaded in bar . . The counsel . . filed the following agreed statement of facts, *viz.*: In . . 1834, the plaintiff was a . . slave belonging to Dr. Emerson, who was a surgeon in the army of the United States. In that year, . . Dr. Emerson took the plaintiff from . . Missouri to the military post at Rock Island, in . . Illinois, and held him there as a slave until . . April or May, 1836. . . Dr. Emerson [then] removed the plaintiff . . to the military post at Fort Snelling . . on the west bank of the Mississippi river, in the Territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. . . Dr. Emerson held the plaintiff in slavery at . . Fort Snelling . . until . . 1838. In . . 1835, Harriet . . was the . . slave of Major Taliaferro, who belonged to the army of the United States. In that year . . [398] [he] took . . Harriet to . . Fort Snelling . . and kept her there as a slave until . . 1836, and then sold . . her . . unto . . Dr. Emerson . . In . . 1836, the plaintiff and . . Harriet . . with the consent of . . Dr. Emerson . . intermarried . . Eliza and Lizzie . . are the fruit of that marriage. Eliza is about fourteen years old, and was born on board the steamboat *Gipsey* north of the north line of the State of Missouri, and upon the river Mississippi. Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks. In . . 1838 . . Dr. Emerson removed the plaintiff and . . Harriet and . . Eliza, from . . Fort Snelling to . . Missouri, where they have ever since resided. Before the commencement of this suit, Dr. Emerson [2] sold . . the plaintiff, . . Harriet,

[1] "Sanford" is the usual spelling. For personal details see Warren, *Supreme Court in United States History,* III. 23n.; Channing, *History of the United States,* VI. 188, 189; and Hodder, "Some Phases of the Dred Scott Case" in *Mississippi Valley Historical Review,* vol. XVI, no. 1.

[2] Dr. Emerson died in 1843. "Mrs. Emerson . . in 1850, married Dr. C. C. Chaffee, a radical anti-slavery member of Congress from 1855 to 1859. Possibly to avoid involving Dr. Chaffee in the case, Scott was transferred by a fictitious sale to Mrs. Chaffee's brother, John F. A. Sanford, . . Mr. Sanford had married a daughter of Pierre Chouteau, had made a fortune in the fur trade, and removed to New York City." Hodder, *op. cit.,* p. 7.

Eliza and Lizzie, to the defendant . . [who] laid his hands upon [them] . . It is agreed that Dred Scott brought suit for his freedom in the Circuit Court of St. Louis county [state court]; that there was a verdict and judgment in his favor; that on a writ of error to the Supreme Court [of Missouri], the judgment was reversed,[1] and the same remanded to the Circuit Court, where it has been continued to await the decision of this case. In May, 1854, the [present] cause went before a jury, . . [399] 'instructed, that upon the facts . . the law is with the defendant.' The plaintiff excepted" Verdict and judgment for the defendant. The case was [396] " brought up, by writ of error, . . [399] argued at December term, 1855, and ordered to be reargued at the present term."

[454] " judgment . . reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction." I. [427] " upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, . . the Circuit Court had no jurisdiction of the case, and . . the judgment on the plea in abatement is erroneous." [407] " In the opinion of the court, the legislation and histories of the times,[2] and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument. . . They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. . . [II.] [427] it has been said, that as this court has decided against the jurisdiction of the Circuit Court on the plea in abatement, it has no right to examine any question presented by the exception; and that anything it may say upon that part of the case will be extra-judicial, and mere *obiter dicta*. This is a manifest mistake; there can be no doubt as to the jurisdiction of this court to revise the judgment of a Circuit Court, and to reverse it for any error apparent on the record, whether it be the error of giving judgment in a case over which it had no jurisdiction, or any other material error; and this, too, whether there is a plea in abatement or not. . . in a writ of error to a Circuit Court of the United States, the whole record is before this court for examination and decision; . . [430] We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom. . . [a.] [431] Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? . . [432] The act of Congress,[3] upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the

[1] See Scott *v.* Emerson, p. 185, *supra*.

[2] "at the time of the Declaration of Independence, and when the Constitution . . was framed and adopted."

[3] Act of Mar. 6, 1820, sect. 8. 3 Stat. at L. 544.

territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. . . [450] an act of Congress which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law. . . [451] the right of property in a slave is distinctly and expressly affirmed in the Constitution. . . [452] it is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident." b. [432] "is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, . . [452] it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, . . independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri. . . As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his status, as free, or slave, depended on the laws of Missouri, and not of Illinois.[1] . . [453] we are satisfied . . that it is now firmly settled by the decisions of the highest court in the State [of Missouri],[2] that Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant; and that the Circuit Court of the United States had no jurisdiction, when, by the laws of the State, the plaintiff was a slave, and not a citizen." [Taney, C. J.] Wayne, Nelson, Grier, Daniel, Campbell, and Catron, JJ., concurred. McLean and Curtis, JJ., dissented.

Douglass v. Ritchie, 24 Mo. 177, January 1857. The defendant allowed [181] "his slave to set up a shoemaker's shop and deal as a free man;" and the plaintiff sold him the goods, "the price of which he now seeks to recover against the master."

Held: both parties had violated the laws.[3] "no obligation arises under our law out of such a transaction against the master to pay the price, even if the slave use the goods for the master's benefit and with his assent." [Leonard, J.]

Hayden v. Stinson, 24 Mo. 182, January 1857. Stinson, in 1847, gave to his daughter for life, remainder to her children: [183] "Green, a boy aged about two years old, and Jane, a girl aged about thirteen years old, with her future increase."

Layson v. Rogers, 24 Mo. 192, January 1857. Hannah Layson sold to her grandson, for one dollar "a negro boy named James Washington,

[1] Strader *v.* Graham, vol. I., p. 368, of this series.
[2] Scott *v.* Emerson, p. 185, *supra.*
[3] Rev. Code (1845), tit. Slaves, p. 1014, art. 1, sect. 7; *ibid.,* p. 1018, art. 1, sect. 33.

commonly called Washington. Said boy was born my property, and is a slave for life . . reserving to myself the use and benefit of the labor of said boy during my lifetime," Held: this deed, being unrecorded and unaccompanied with possession in the donee, was void, as against a subsequent purchaser, though with notice.

Withers v. Steamboat El Paso, 24 Mo. 204, January 1857. Proceeding "to recover damages for the wrongful transporting . . of a slave of plaintiff, named Ann, from the city of Lexington to the city of St. Louis."

Held: [211] "In order to exempt the master from the penalty of the statute,[1] the law does not exact from him the greatest possible diligence—all that we may imagine could have been done to have prevented the escape of the girl—but only such care as thoughtful and prudent persons would have taken in navigating a boat in the midst of a slave population, to prevent the escape of slaves upon it, if the property endangered had belonged to themselves instead of belonging to others." [Leonard, J.]

Blue v. Peneston, 24 Mo. 240, January 1857. Deed of gift of [241] "my negro woman Ellen and her infant child, and negro woman Sarah, . . in trust . . for the sole . . benefit of my daughter"

Terrill v. Boulware, 24 Mo. 254, January 1857. [255] "Conner, in the year 1784, died intestate in . . Virginia, possessed of the family of slaves . . He left him surviving his widow, Sarah, and two children, Paul . . and Lucy . . Lucy Conner afterwards married . . Terrill, . . Lucy died in the year 1812, leaving her surviving her husband . . and several children, . . The slaves in controversy were assigned to Sarah" (who died in 1816), as her dower. "After her death . . an allotment of the slaves in controversy was made to the children of said Lucy; and their father . . with said slaves into his possession, and afterwards, upon his removal to the state of Missouri, brought them with him"

Held: by the law of the state of Virginia in 1784, said slaves descended to and vested in Paul and Lucy Conner, subject to the widow's dower; Lucy's interest passed to her husband, although she died before the doweress, and not to her children. [259] "Had the state of facts presented in this case arisen in Missouri our determination would have been different." [Scott, J.]

Lawrence v. Lawrence, 24 Mo. 269, January 1857. Edward Lawrence conveyed and delivered a negro boy to Rice, in trust; [270] "said negro slave is to be . . hired out, and the proceeds of said hire to be applied to my benefit during my natural life, and immediately after my death said slave is to be . . delivered over to my said son James" Later Edward Lawrence "resumed possession of said slave as his own property," Judgment in favor of James Lawrence affirmed: the possession of Rice [272] "was the possession of the plaintiff, who was the remainder-man."

Bozarth v. Bozarth, 24 Mo. 320, January 1857. Will of Jonathan Bozarth: [321] "I give to my wife, during her life or widowhood, . .

[1] Rev. Code (1845), p. 1018, art. 1, sect. 32.

[322] a negro woman named Winney and her child, a boy named Ben, about eight years of age. I also . . direct that said Winney's two other children be kept with her, with any others she may have, until such time as my daughter Elizabeth shall arrive at the age of twenty-one years, when they may be divided by general consent of my heirs,"

Stratton v. Harriman, 24 Mo. 324, January 1857. Action by Stratton to recover damages for the destruction of his property, [325] "A bay stallion . . of the value of three hundred dollars," which perished in the burning of Licklider's barn and stable, by a slave of Harriman, in 1855.

Judgment in favor of Harriman, affirmed: [328] " the offence charged as committed by the slave John is arson in the third degree, and is against the barn and stable of Licklider; not against the horse of a third person, happening to be therein at the time. This statute is a highly penal one, and must be construed strictly." [Ryland, J.]

State v. Goode, 24 Mo. 361, January 1857. Goode was indicted in 1855 for buying five deer skins from a slave belonging to Jones, [362] " without having the master's, owner's or overseer's permission in writing therefor."

State v. Gilbert (a slave), 24 Mo. 380, January 1857. " The defendant, a slave, was indicted [1] . . for wilfully and maliciously cutting the throat of a mare . . whereby she was killed. After a trial and conviction, a motion was made in arrest of judgment," and overruled. Judgment reversed: [381] " The indictment was for a felony, and was clearly bad for want of the word ' feloniously,' " [Scott, J.]

Jones v. Briscoe, 24 Mo. 498, March 1857. [499] " Jones married Artemesia, the youngest daughter of John Briscoe, sr.; that when Jones and his wife moved home to house-keeping, Mrs. Jones took the negro woman Amanda along with them." She died five or six years later. " The negro girl Tabitha, the child of Amanda, was born at Jones', and after the death of Amanda, she (the girl) being some six or eight months old was taken to Mr. Briscoe's to be taken care of. . . After the death of Mrs. Jones, her daughter Mary Jane Jones, then about five years old, went to her grand-father's and was reared by her grand-parents. John Briscoe, sr., after this, . . some four years before his death made a gift of the negro girl Tabitha, in writing, to his grand-daughter Mary Jane Jones." Judgment in favor of Jones, affirmed: [505] " a jury might well find the gift of the woman from the father to the daughter and son-in-law."

Beale v. Dale, 25 Mo. 301, July 1857. A negro girl was valued at $900.

Houck v. Camplin, 25 Mo. 378, July 1857. " The mother of the complainant, Margaret Houck, had an interest by way of remainder in certain slaves. Pending a suit for their distribution in the court of Kentucky, the mother died [in 1830] leaving her husband as survivor." Held: [379] " by the law of Kentucky [in 1830] the interest of the wife on her decease passed to her surviving husband."

[1] " under the 57th section of the 3d article of the act concerning Crimes and Punishments." Rev. Code (1845) 364.

Edwards v. Welton, 25 Mo. 379, July 1857. Will of Unice Harness, of Virginia, admitted to probate in 1823: [380] "I give to my daughter Elizabeth Welton five hundred dollars, the price of my negro boy Phil, which my son Adam Harness is to have, . . to be laid out in negro girls by my executors for my daughter Elizabeth Welton and her daughters forever;" A negro girl named Tomar was bought. Two of her children were sold, [381] "Essex for $300, Ellen for $210," A jury found the value of Jerry, another of her children, to be $1100, in 1855 to 1857.

Folden v. Hendrick, 25 Mo. 411, July 1857. In 1855 a constable [412] "had apprehended a negro man belonging to one Huralston for supposed offences, and while the negro was in his custody a company purchased him for the purpose of carrying him off; . . [Hendrick] went to the negro man's wife [Folden's house-keeper and servant] . . to get the negro man's clothes, and she gave them to him; . . the negro woman handed him the watch . . as the property of the negro man, . . defendant took the watch and offered it to the negro man, . . but the negro man did not take the watch," Folden brought suit to recover the value of the watch. [413] "The jury found for plaintiff."

Judgment affirmed: [414] "if masters do not interfere nor object to the disposition that their slaves may make of the property which they are willing should be owned by them, it is not for strangers to interfere and deny the validity of any transfer of his property which a slave may make. The watch being the property of the negro man, he gave it to his wife. . . What possible inference can be drawn from the refusal of the man to receive the watch, but that it was his wish that his wife should have it? The master of the slave not objecting to this disposition of the property, who else shall gainsay its validity?" [Scott, J.]

Calhoun v. Buffington, 25 Mo. 443, July 1857. "Edmund, a slave . . was indicted for murder in the first degree, committed to jail, and before trial he escaped therefrom, and has not been retaken." In the case of the State *v.* Peter, a slave, "defendant was indicted for murder in the first degree and committed to jail to await his trial at the April term of the court. Previous to that term defendant was taken from the custody of the sheriff . . and hung. . . The fees in both cases accrued under the act of 1845." [1]

Held: [444] "The State is only liable to pay the costs in a prosecution against a slave when the slave has been convicted and executed capitally. Conviction alone and escape before execution will not put the costs on the State. . . The lawless violence of a mob, in its impatience to inflict punishment, taking the life of a slave, is not the execution contemplated by this statute, even if the slave had been convicted before he was hung by the mob." [Ryland, J.]

Charlotte (of color) v. Chouteau,[2] 25 Mo. 465, October 1857. [466] "The plaintiff asserts her right to freedom on the ground that her mother,

[1] Rev. Code (1845), p. 250, art. 2, sects. 13-16.

[2] Printed in full (from a transcript certified by the clerk of the Supreme Court of Missouri) in 3 Lower Canada Jurist 257, under the title "Slavery in Lower Canada."

a negress, was born in Montreal, in Lower Canada, about the year 1768,[1] and that her mother was not born a slave, because slavery did not exist in Canada at the time of her birth. On the trial the plaintiff gave parol evidence tending to prove that her mother was born in Montreal about the year 1768, and that slavery did not actually exist and was not tolerated by law at that time in Canada. The defendant, on his part, gave parol evidence tending to prove the actual existence of slavery in Canada in the year 1768; that slaves were recognized as property, and that Rose, the plaintiff's mother, was held and sold as a slave in Canada. The defendant also gave the following documentary evidence: First, The articles of capitulation of the surrender of Montreal . . [467] to the English forces, signed . . 1760, . . 'The negroes and panis of both sexes shall remain in their quality of slaves' . . Second. The definitive treaty of peace . . 1763, . . [468] Third. The proclamation of George III, . . 1763. . . [469] Fourth. The act of the British parliament of 1774,[2] . . [470] Fifth. The act of the British parliament of 1790,[3] . . [471] if any person . . a subject . . of . . the United States of America—shall come from thence . . to any part of the province of Quebec . . for the purpose of . . settling there, it shall be lawful for any such person . . to import into the same, in British ships . . any negroes . . free of duty; . . all sales . . of any negro, . . so imported, which shall be made within twelve calendar months after the importation of the same (except in cases of the bankruptcy or death of the owner thereof) shall be null and void . . [472] Sixth. The act of the principal parliament of Upper Canada . . 1793.[4] . . forbids any negro . . slave from coming or being brought into the province . . to be subject to the condition of a slave. . . nothing in the act should be construed to extend to liberate any negro subjected to service . . who should have been brought into the province in conformity to the conditions of the act of 1790, or should have otherwise come into the possession of any person by gift, bequest or purchase. . . that in order to prevent the continuation of slavery within the province, every child thereafter born of a negro woman who was a slave, should remain with his or her master or mistress until such child should arrive at the age of twenty-five years, and then be free. . . At the request of the defendant, the court gave the following instruction: '1. If negro slavery existed by virtue of the laws and ordinances of the French government in Canada prior to the acquisition of that country by the English, and if the articles of capitulation, the treaty of cession, the acts of parliament of 1774 and 1790, and the king's proclamation of 1763, be correct copies of the genuine documents, then negro slavery was sanctioned and permitted by law in the country called the province of Quebec (which includes Montreal) at all times from the year 1760 to the year 1790.' Other instructions were given to the jury, among which was the following, given at the plaintiff's instance: 'Whether Rose was lawfully a slave in Canada is a question for the jury to decide from the evidence on the trial.' "

[1] See Chouteau *v.* Pierre, p. 162, and Charlotte *v.* Chouteau, pp. 174, 194, *supra.*
[2] 30 Brit. Stat. at L. 549.
[3] 37 *ibid.* 24.
[4] Rev. Stat. U. C., ch. 8.

Verdict in favor of Charlotte. Chouteau appealed. Judgment reversed and the cause remanded: "These two instructions are incompatible, and both can not stand. . . [476] The plaintiff read the depositions of the two learned and intelligent witnesses—Judges Reed and Gale—each of whom held high judicial positions for many years in Lower Canada. The former testified that slavery existed in Canada to a certain extent while under the dominion of the French, . . [477] Judge Gale, the other witness, . . replied: 'I believe that a modified system of slavery respecting negroes and some others was *de facto* exercised in Canada, in various instances, while the country remained under the French dominion; but I can not undertake to say that such *de facto* exercise of slavery was justifiable under sufficient legitimate [legislative?] enactment and a correct interpretation of the laws as they then stood.' My [Richardson, J.] opinion is to the contrary. . . [481] The act of 1790 is only consistent with itself on the idea that it assumed the existence of slavery in Canada. . . [483] in our opinion, if slavery existed in Canada under the French government, before the English acquired the country, it continued to exist and was lawful until it was abolished; and after a careful examination of the documentary evidence in this cause, . . we have arrived at the conclusion which the circuit court announced in the first instruction [1] given for the defendant. The last instruction for the plaintiff is inconsistent with the first for the defendant, and was therefore improperly given. . . By omitting to notice the other instructions given for the defendant, our silence is not to be construed into an approval of them. The third instruction is very objectionable, for it implies that the plaintiff must make out her case by a higher degree of evidence, and that she must connect every link with more conclusive proof than is ever required in civil cases of other persons. If a negro sues for his freedom he must make out his case by proof like any other plaintiff, but the law does not couple the right to sue with ungenerous conditions;" . . [Richardson, J.] Scott, J. dissented: [484] "From the fact that there were laws and documents, in which reference was made to slaves, or which contemplated a state of slavery, it was to be inferred that slavery lawfully existed in Canada. That inference was one of fact to be made by the jury. As the jury have found the fact,[2] whose exclusive province it was to do so, the practice of this court, now established for a number of years, forbids that a judgment should be reversed because a verdict is against the weight of evidence." Judge Scott's opinion was followed in 1862.[3]

Caldwell v. Dickson, 26 Mo. 60, October 1857. Dickson, on December 25, 1850, hired of Caldwell [61] "a negro girl named Annie . . until the 25th day of December, 1851, at which time said girl to be delivered up to said Caldwell. For the hire of said girl I am to pay fifty dollars in cash and her doctor's bill, and also to clothe her comfortably according to the season, and return her in the same condition. I am also to pay her taxes."

[1] [472] "negro slavery was sanctioned . . by law in . . the province of Quebec at all times from the year 1760 to the year 1790."

[2] That negro slavery was not permitted by law in Canada from 1760 to 1790.

[3] Charlotte *v.* Chouteau, p. 216, *infra.*

Held: if the plaintiff, Caldwell, before the end of the year, [62] "took the slave from the defendant's possession without his consent, or without the right to do so secured by contract with the defendant, he can not recover for any portion of the hire." [1]

State v. Guyott, 26 Mo. 62, October 1857. "Indictment for selling a commodity to a negro. . . '1856, . . one gill of whisky, for five cents, without permission in writing from the master, owner or overseer' . . [63] The defendant was found guilty and fined twenty dollars."

Sallee v. Chandler, 26 Mo. 124, October 1857. Mrs. Garnett removed from Kentucky to Missouri in 1832, [126] "bringing the slaves . . [127] and retained the possession of said slaves (excepting the slaves Charles and Major manumitted by her) up to the time of her death, . . 1856; that prior to her death Mrs. Garnett made her will, duly executed and admitted to probate, by which she manumitted the slave Mary and devised the slaves in controversy," Mary's children, to her nephew.

Collins v. Hough, 26 Mo. 149, January 1858. In 1855 a jury assessed the value of a negro woman at $500.

Birch v. Benton, 26 Mo. 153, January 1858. Action of slander. A witness testified that Benton said, in 1849: [157] "the Platte City clique had caused him to be insulted at his stand in a private grove; had sent for a dog, a d—d sheep-killing dog or cur, Jim Birch, to answer his speech—a man who had whipped his wife and caused her to fly to a neighbor's house with the marks of his violence upon her; that his wife was a decent and intelligent lady, and that the cause of the difficulty was on account of Birch preferring to sleep with a d—d negro wench to his own wife." In the petition on which the case was tried, the words in regard to the last fact mentioned, were: [156] "all for keeping his own negro wench." Judgment in favor of Birch, reversed and the cause remanded: [163] "the words that contain the poison to the character and impute the crime must be proved as laid;" [Richardson, J.]

Suggett v. Cason, 26 Mo. 221, January 1858. In 1846 Suggett made a verbal contract with Cason [222] "that he, plaintiff, should repair a certain log house belonging to Cason, and make certain additions thereto; that in consideration thereof Cason agreed to give . . to plaintiff a certain slave named Jim;"

Durham v. Durham, 26 Mo. 507, March 1858. "an action for partition of certain premises in the city of St. Louis," which had been conveyed to Matilda Durham by Buckingham. The plaintiff is Hilary Durham, brother of Matilda, and the defendant is their mother, Henny Durham, both parties being free persons of color. Henny Durham [508] "denies that said Matilda died seized of the premises, and alleges that said Matilda was her slave. . . introduced evidence showing that said Matilda . . had been bought by her mother. Plaintiff, to prove an emancipation of said Matilda by her mother, introduced one Smith as a witness, who testified that the defendant 'had told him that Matilda Bartlett had been a slave,

[1] See same *v.* same, p. 188, *supra.*

but she, defendant, had bought her and set her free.' This was before the sale by Buckingham to said Matilda. . . also . . he [Smith] had paid rent of the premises to defendant as agent for her daughter Matilda. . . [509] The jury found for the defendant."

Judgment reversed and the cause remanded: "It is generally true that a slave can only be manumitted by pursuing the course adopted by the statute. If one is detained in slavery, and claims his freedom on the ground of his having been manumitted, that act should be proved with the necessary formalities in order to establish his right to freedom. . . [510] But the question as to the status of colored persons arises in various other suits than in those for freedom. We have free colored persons among us. . . They acquire property and contract as free persons. . . no policy is subserved in suffering those who deal with them, when a resort to litigation becomes necessary, to exact strict proof that they have been freed in conformity to law." [Scott, J.]

Helmes v. Stewart, 26 Mo. 529, March 1858. Helmes, a person of color, "had leased the premises in controversy to one Heitzig in 1846. Defendant admitted that he was in possession thereof under and by virtue of said lease. Plaintiff claimed that there was a forfeiture of said lease. . . The court, at the instance of defendant, gave the following instruction: 'It being admitted that the plaintiff is a person of color, this fact is presumptive evidence of slavery, and in the absence of proof showing his freedom, the plaintiff can not recover.' The plaintiff thereupon took a nonsuit, with leave, etc."

Judgment reversed and the cause remanded: [530] "The instruction . . should not have been given. . . the defendant's admission that his possession was held under a lease from the plaintiff precluded him from denying the title, and it did not lie in his mouth to say that the plaintiff was a slave." [Napton, J.]

Smith v. Sweringen, 26 Mo. 551, March 1858. Will of William Christy, who died in 1837: [553] "I give and bequeath to my beloved wife . . all the slaves I may own at my death; and . . authorize my executors . . to sell or otherwise dispose of any of my slaves, at the request of my wife, and to supply their places with others more suitable; and it is my will . . that my wife shall . . bestow my slaves at the time of her death to any one of my children, or make equal division thereof amongst them, or otherwise as she may think best."

In the matter of Duty, 27 Mo. 43, March 1858. In 1850 "letters of administration were granted to . . Harney upon the estate of Milton Duty. . . 1856, the probate court revoked the letters for the reason that a will was produced and admitted to probate. . . The will provided for the manumission of certain slaves, who, by their counsel, appeared and contended for the revocation of said letters and the establishment of the will."

Andrews v. Lynch, 27 Mo. 167, March 1858. "Plaintiff states that he was the owner of a slave named David, aged about twenty-three years, a slave for life and dark copper color; that . . 1854, the plaintiff delivered

said slave to the defendant [1] for safe keeping, and for which the plaintiff agreed to pay the defendant thirty cents per day, including the board of said slave; . . said slave was worth $1,200 in cash, and his hire per month $25," The slave escaped. [168] " a negro boy belonging to the defendant watched at the outer door, and opened the same to admit persons," " The jury found for plaintiff." Judgment reversed: [169] " no cause of action whatever . . is stated in the petition." [Napton, J.]

Wadlow v. Perryman, 27 Mo. 279, July 1858. " This was an action on a warranty of soundness of a slave. At the trial, the plaintiff offered in evidence the declarations of said negro slave with respect to her symptoms, made when she was sick to those in attendance upon her. The court refused to permit the evidence to be introduced. The plaintiff took a nonsuit, with leave to move to set the same aside." Judgment reversed and the cause remanded: the evidence was admissible.

Moore v. Winter, 27 Mo. 380, October 1858. " Carter hired a slave to . . Brown for one year from the 1st of January, 1857. Carter gave his note for the hire—one hundred and seventy-five dollars "

Herndon v. Herndon, 27 Mo. 421, October 1858. Held: " on the death of the husband without children, the increase of the slaves that come to the husband by the wife, remaining undisposed of at his death, go with the mother to the widow. . . [422] if during a tenancy for life the mother has children, they go with the mother to the person who has the remainder or reversion. A difference has thus been adopted between slaves and other property, founded upon motives of humanity and having regard to the moral as well as legal relations between master and slave. . . it is no violent presumption to suppose that the legislature intended, by the general terms which they have used in the dower law,[2] to embrace the increase of slaves, as well as the slaves themselves, as property coming by the marriage." [Napton, J.]

Ridgley v. Steamboat Reindeer, 27 Mo. 442, October 1858. Action " to recover the value of a slave alleged to have been transported out of this state in said steamboat."

Fath v. Meyer, 27 Mo. 568, October 1858. [569] " Many farmers own shops entirely under the superintendence of a negro blacksmith." [Napton, J.]

Riggins v. McClellan, 28 Mo. 23, January 1859. Will of Mrs. McCutchen, who died in Kentucky in 1842: [25] " I give and bequeath to my daughter Margaret Dean, a negro girl named Hannah for to be at her disposal during her natural life, then to go to the benefit of her heirs."

McManus v. Jackson, 28 Mo. 56, January 1859. " an action to recover damages for slanderous words . . [57] ' he (meaning plaintiff) once gave a negro a free pass ' . . In the third count . . the negro referred to is averred to have been a slave, but it is not averred that he did not belong

[1] See Russell *v.* Lynch, p. 210, *infra.*
[2] Rev. Code (1845), p. 430, sect. 3.

to the plaintiff." Held: [60] "The demurrer was properly sustained and the judgment [in favor of defendant] will be affirmed;"

State v. Peters, 28 Mo. 241, March 1859. "This indictment [1] . . [242] charges that Lewis Peters, Mary Peters and John Peters, . . 1857, . . a certain slave, the property of . . said Lewis Peters, with a goad and whip, which they . . in their right hand had and held, the said slave aforesaid then and there did cruelly and inhumanly torture, beat and abuse. A *nolle prosequi* was entered as to Lewis Peters, and Emily and Ludwig Peters were convicted and fined and imprisoned."

Judgment reversed: "When slaves are cruelly used by those who do not bear to them the relation of master or quasi master, such offences stand on the same ground as when white persons cruelly use each other. . . as the slave was not alleged to have been the property of . . the other persons indicted [in addition to the master of the slave], they could not be convicted under the indictment, as it did not appear that they had abused the relation of master and slave." [Scott, J.]

Beaupied v. Jennings, 28 Mo. 254, March 1859. "an action for the possession of a slave called Eliza and her three children." Will of John Howdeshell, proved in 1853: [2] "I give and bequeath unto my daughter Ann my negro girl named Eliza at the valuation of four hundred and fifty dollars. . . all that portion of my estate . . which may fall to Ann . . shall be placed in the hands of George Hall for her special use and benefit," Codicil, dated 1852: [255] "It is my further will that the negro girl Eliza . . shall have the privilege to choose some person to buy her in case she [shall] not be satisfied with my daughter Ann, and the proceeds of the sale of said negro girl Eliza shall go in the hands of George Hall, or his legal representatives, for the benefit of my daughter Ann." Hall testified "that in a conversation had in the presence of Beaupied (plaintiff) and of himself, the negro Eliza stated that she would not live with Ann (the plaintiff's wife), and elected to choose a master; that time was given her for that purpose; and that afterwards she said she had elected John C. Jennings, the defendant, to buy her. . . It also appeared in evidence that the administrator of Howdeshell delivered the said Eliza to said George Hall as trustee under the will."

Judgment for Jennings affirmed: [258] "This will is not to be understood as making an absolute bequest of a specific slave to the testator's daughter. The legal title to the slave is put in a trustee, and that trustee is authorized, and indeed required, in a certain contingency, to sell the slave and hold the proceeds for the benefit of the legatee. The trust has been complied with, and as the trustee had, beyond doubt, the power of sale, the purchaser acquired a good title. There is nothing in the institution of slavery as understood in the slaveholding states inconsistent with the concession of a privilege of this kind to a slave. The practice is very common and commendable, and the courts will respect the humanity and kindness by which such arrangements are dictated, and will assuredly not

[1] "founded on the forty-eighth section of the eighth article of the act concerning crimes and their punishments," Rev. Code (1855) 634.

[2] See Hall *v.* Howdeshell, p. 217, *infra.*

interfere with them when voluntarily carried out. Slaves are not mere chattels, nor do our laws or usages so regard them; nor, as human beings, are they regarded as incapable of volition or choice;" [Napton, J.]

Russell v. Lynch, 28 Mo. 312, March 1859. "A slave was placed in a private jail-yard for safe keeping." [314] " a negro boy opened the gate of the prison-yard on two or three occasions, when it was visited by the plaintiff's agent," The slave escaped, and the owner brought action to recover damages for the escape of the slave through negligence on the part of the jailer.

Judgment for the plaintiff affirmed: " the casual circumstance that a negro boy opened the gate . . can never be the foundation for an assent on the part of the owner of the slave that such boy should be the keeper of the prison during the confinement of her slave." [Scott, J.]

Prince v. Cole, 28 Mo. 486, March 1859. " This was an action to recover six hundred and eight dollars for the board, lodging, washing and clothing of a certain slave boy, named Richard, belonging to the estate of Presley N. Ross. The defendant Cole was one of the administrators of said Ross. Said Richard was a son of the plaintiff. Ross died in 1845. Plaintiff also belonged to the estate of Ross. He and his wife were sold at an administrator's sale in 1849 to one Baker, who immediately emancipated the plaintiff. Immediately after this administrator's sale, Cole, the administrator, took away two of the children of plaintiff, but left the boy Richard with him. There was evidence tending to show that Cole told plaintiff to take the boy Richard and take care of him. One Yosti was introduced as a witness on behalf of the defendant, who testified that he became entitled to Richard in 1854 in right of his wife, who was a daughter of Ross; that he talked with plaintiff frequently about the boy Richard; that plaintiff requested him to leave Richard with him as long as he could possibly do without him; that he did do so to his own inconvenience; that plaintiff applied to witness to purchase Harry, an older brother of Richard; that he sold Harry to plaintiff at less than his value, because he was his father and because he said he had raised Richard at his own cost and expense; that plaintiff paid nine hundred dollars for Harry. Harry was sold to plaintiff before Richard was taken home by Yosti. The court refused to permit the witness to state what the value of Harry was at the time of his sale. The jury found for plaintiff."

Judgment reversed and the cause remanded: [487] " The evidence of Mr. Yosti tended to show . . that the plaintiff had no just claim whatever on the administrator for taking care of his own child,"

Long v. Gilliam, 28 Mo. 560, July 1859. A slave was stolen and sold for $826.

McCune v. McCune, 29 Mo. 117, October 1859. McCune, by his will, gave his slaves to his wife [118] " during her life or widowhood, with power to dispose of all or any of the slaves should they become disobedient; and at her death said property was to be divided among the three children, . . the executor of the will . . proposed to respondent [the widow] that she should reserve such of the slaves as she wished, and consent to a

division of the remainder among the heirs; that she at first objected, saying that it was the request of the testator that the negroes be kept together during her life, and that she had promised him to do so, but finally consented, reserving the right to take them back at any time she chose to do so; that among the slaves selected by the widow was an old woman, and upon witness advising her to take a younger one, she declined, saying she could take any of them back whenever she desired. . . [119] in the distribution an old and decrepit slave in respondent's possession . . was to be taken care of and supported by the three legatees; . . one of the legatees had since removed to California taking the slaves allotted to him"

Naylor v. Moffatt, 29 Mo. 126, October 1859. [127] "Naylor died in the state of Virginia in 1840, leaving a will . . that the slaves in controversy should be [free] upon attaining to certain ages therein specified; . . the widow . . 'for a part of her dower . . took the slaves' . . and brought them to Missouri, and kept them . . until her death in 1849, when the said slaves passed into the possession of her son . . who hired them out until his death in 1853 for the executor of his father's will, . . that after this . . defendant got possession of said slaves;" Held: [129] "If there are no debts, the property will be disposed of according to the will of the testator, or it may be transmitted to the executor in Virginia."

Salmon v. Davis, 29 Mo. 176, October 1859. [179] "the widow brought the slave Milly and her children from Kentucky" about 1836.

Peers v. Davis, 29 Mo. 184, October 1859. Sebastian sold to Davis for two hundred dollars [185] "a negro woman, slave for life, called and known by the name of Katty, now about the age of fifty years old, . . and the said . . Sebastian . . does hereby covenant . . that said negro woman is a slave for life." "at the time of the sale the negro woman was between seventy and eighty years old, and was quite worthless as a slave. . . Several witnesses . . 'severally testified to a conversation in which Luke Davis, in a grocery, about a year ago, stated that he told Sebastian, at the time the bill of sale was being written, to put the age of the negro at about fifty or fifty-five years, and not to make her too damned old, as he might want to sell her again.' . . [190] judgment [for plaintiff] will be affirmed."

Caldwell v. Dickson, 29 Mo. 227, October 1859. "This was an action on a note given for the hire of a slave for a year. After eleven months of the year had expired, the plaintiff had taken the slave from the possession of the defendant, and had sold her." Judgment for defendant, affirmed.

Berthold v. McDonald, 22 Howard 334, December 1859. "Under the Spanish Government, there was a common field near to the town of St. Louis, . . In this common field were two lots, owned respectively by two negresses, one of whom was named Florence Flore, and the other named Jeannette," [338] "a free negro woman. . . Jeanette had occupied this land for many years before her death [about 1803]."

Chism v. Williams, 29 Mo. 288, January 1860. Will of Colden Williams who died in 1832: [289] "I will and bequeath to my daughter Charity a certain negro woman by the name of Chaney. . . if my daughter Charity should die without issue, then and in that case . . to my daughter Mahala," "Charity died in January, 1858, without issue. Said slave Chaney died before said Charity. The slaves in controversy are her children." Judgment for defendant affirmed: as the bequest was made prior to the statute of 1845,[1] the limitation over to Mahala is void for remoteness. [299] "This case . . is one of the first impression in this state." [Napton, J.]

Tucker v. Tucker, 29 Mo. 350, January 1860. Held: a deed of gift of slaves made by a husband in anticipation of death and with a view to defraud his widow of her dower in such slaves will be held void as against the widow.[2]

Pemberton v. Pemberton, 29 Mo. 408, January 1860. Will of Edmund Pemberton, 1853: [409] "I also will my wife . . my negro boy Lewis; . . at the death or marriage of my wife . . to belong to my three youngest children . . [410] All the tobacco on hand, negroes, . . not heretofore named is to be sold at public auction, . . to pay all my just debts, the balance to be equally divided between my six oldest children," [410] "The widow . . seeks . . to have dower assigned her in the proceeds of certain slaves, Abigail, Rachel, Sanders, and Martha, that had been sold by the executor" Held: she was "barred of dower in the personalty by her election to take under the provisions of the will."

Smith v. Hutchings, 30 Mo. 380, July 1860. In 1846 Bright, then living in Kentucky, "executed a deed conveying . . a slave named Fanny to . . Smith, . . in trust for the wife and children of said Bright. . . After the execution of said deed the said slave Fanny gave birth, in Kentucky, to a boy named Ben, . . In 1850, the said Bright and his family moved to . . [381] Missouri, bringing said slave Fanny and the boy Ben along with him. . . 1854, Bright and his wife . . joined in a bill of sale under seal of the said boy Ben to Hovey Hutchings." After the death of Bright Smith, as trustee, brought this action "to recover possession of said boy Ben."

Judgment for plaintiff, affirmed: [384] "Here, the defendant, purchasing a negro boy from Bright, . . requires the wife to join in the bill of sale. This circumstance shows that the wife was believed to have an interest, and that was sufficient to put the purchaser upon inquiry."

Ross v. Barker, 30 Mo. 385, July 1860. Suit for a breach of warranty of soundness in the sale of a slave girl.

Baldwin v. Dillon, 30 Mo. 429, July 1860. A slave was valued at $800.

McLaurine v. Monroe, 30 Mo. 462, July 1860. "In the year 1825 Madison McLaurine, who lived in Tennessee, executed a deed by which . . he conveyed" to the children of his brother, William, [463] "a negro

[1] Rev. Code (1845), p. 219, sect. 5.
[2] See same *v.* same, p. 215, *infra.*

woman named Nancy and her child Sophia, . . ' that the aforesaid property . . is to remain with the wife of the said William McLaurine for the use and support of herself and the aforesaid children . . during her life,' " or widowhood. In 1829 " Nancy and her children [1] . . were seized and levied on by a constable under a judgment against William McLaurine as the latter's property; that said slaves were, against the will and consent " of McLaurine's wife, sold to Braden " to satisfy said execution; . . Braden took possession of said slaves, and . . 1830, . . sold . . them to . . Monroe, who . . [464] secretly . . brought said slaves to . . Missouri; that about the year 1836 said Monroe delivered said slaves to . . Harley; that said Harley has since appropriated . . the hire, labor and services of said slaves; that both Monroe and Harley had notice of the rights . . of complainants," The slaves were valued by the court in Tennessee, in 1838, at $2100. Held: [470] " the deed of Madison McLaurine conferred no such interest on the wife of William McLaurine as was subject to execution."

Gowan v. Gowan, 30 Mo. 472, July 1860. About 1837 [477] " Gowan, then a resident of Tennessee, brought to this state the negro woman . . with the avowed intention of opening or improving a farm "

Anderson v. Kincheloe, 30 Mo. 520, July 1860. Gratz hired of Kincheloe [522] " four slaves for the year 1859, . . in May, 1859, Gratz, being indebted to plaintiff, transferred the unexpired term of the hire of said slaves to him, and delivered possession thereof; that afterwards, in May, 1859, Dickenson came to Lexington and requested plaintiff to give up the possession of the slaves for Kincheloe, which being refused, it was . . agreed to that the matter be submitted to arbitrators; . . and the slaves [were] awarded to plaintiff for said unexpired term, . . that on the night of the following day on which the arbitration was had, . . Dickenson . . secretly decoyed said slaves out of plaintiff's possession, and took and delivered them to . . Kincheloe; " Kincheloe answers that [523] " it was expressly stipulated in said contract of hiring that said slaves should be kept by said Gratz in the town of Berlin, Lafayette county, and not elsewhere, and that, in case they were removed from Berlin and especially to Lexington, Kincheloe might terminate the hiring and reclaim them; " There is no evidence of such an agreement. [527] " the obvious motive to regain them " by Kincheloe, was " the admitted insolvency of Gratz," Judgment for Anderson, affirmed.

Redmond (of color) v. Murray, 30 Mo. 570, October 1860. " This was a suit by one Redmond, a man of color, against Edward C. Murray and Edward B. Osborn. Plaintiff set forth in his petition that on the 10th of January, 1855, he and his then master, Osborn, entered into a contract and agreement in writing, whereby said Osborn promised and agreed that if said plaintiff would pay said Osborn the sum of five hundred and fifty dollars and interest at ten per cent. from the date of a bill of sale held by said Osborn from one Conroy dated July, 1852, he (Osborn) would give said plaintiff his freedom; that, at the time of entering into said

[1] Two more had been born.

agreement in writing, plaintiff paid said Osborn the sum of five hundred and one dollars; that in August, 1855, he, through another, made Osborn a tender of the balance of said sum and the interest up to that date; that Osborn, disregarding his agreement, sold plaintiff to one Wigginton; that Wigginton sold him to the defendant Murray; that he is willing and ready to pay the balance to whomsoever may be entitled to the same; that in consideration of said agreement said Osborn gave him (plaintiff) his freedom for the space of some two years and six months; that plaintiff during that time was free to go wherever he desired; that therefore he was and is a free man, and that he is holden as a slave. Plaintiff asks 'judgment for his freedom, and liberation, and for further relief,' etc. The following instrument accompanied and was made a part of the petition: 'Lagrange, Mo., January 10, 1855. Received of Elijah Dehart and Remond [*sic*] the sum of five hundred and one dollars, it being a part of a sum of five hundred and fifty dollars, bearing ten per cent. interest from date of bill of sale held by said Osborn, which being paid he is to have his freedom. [Signed] E. B. Osborn.' The court sustained a demurrer to this petition."

Judgment affirmed: [575] "Manumission is a mere gratuity under our laws, and a mere intention or promise by the master, not consummated in the manner pointed out by law, however solemn the form in which such promise may be made, can confer no power or capacity on the slave to have it enforced; it endows him with none of the attributes of a freeman; his condition or *status* is not in the least changed or affected in its legal relations; and there is nothing, therefore, of which the law can take cognizance, nor any ground on which the plaintiff can base his claim to relief, however strongly it might appeal, under circumstances of apparent hardship, to conscience or the moral sense." [Ewing, J.]

Milton (of color) v. McKarney, 31 Mo. 175, October 1860. [176] " will of John McKarney, which was made in August, 1833: 'As to the residue of my slaves, to-wit., Marietta and her five children, Sam, Phebe, Nance, George, and her young child, with all her increase, I will and bequeath them to my beloved wife Margaret during her natural life, with a request that she attend strictly to their morals, and instruct them all to read the English language; but I expressly prohibit the sale of them under any circumstances; and after the death of the said Margaret, all of them that are twenty-one years of age are by me set free, on condition that they will enter under the care of the Colonization Society and emigrate to the American colony in Liberia, and as fast as they or their increase arrive at the said age of twenty-one years and comply with the above condition, I hereby set free. All of them that prefer remaining with any of my children, after the death of my said wife, to complying with the foregoing condition, are permitted to do so; but I am to be distinctly understood, that they are not to be bought or sold even amongst my own children, much less to strangers.' The plaintiff is a son of Marietta, the woman named in the above provision, and is twenty-one years old. He alleges the death of the widow Margaret McKarney, and avers that by these provisions of the will of John McKarney he is free. He declares his

willingness to comply with the conditions of said will and prays a judgment of liberation. To this petition there was a demurrer, and it was sustained."

Judgment affirmed: [180] "The court should be satisfied, not merely in reference to the plaintiff's wishes, but that means are provided for accomplishing them, if his choice is to emigrate to Liberia." [179] "There is no averment that the Colonization Society have the means or the inclination to promote the purposes which the testator had in view. There is no averment even that the Colonization Society has any existence now, although, as a matter of history, we believe the society still has an agent in this state. This will was made more than twenty years ago, and the condition and prospect of that society may have undergone great changes. . . [180] this action is misconstrued; there is no foundation for a judgment of immediate liberation." [179] "If they prefer remaining in Missouri, they are not liberated by the will, although the testator attempts to impose restrictions upon their owners incompatible with the laws. Such restrictions are merely nullities; . . His intention was that they should remain slaves, but that they should not pass out of his family by sale, or from one member of the family to another. This latter intention can not be carried into effect, because it is against the laws of the state." [Napton, J.] Judge Scott dissented: [180] "The slave, under his master's will, has elected to be free, and to put himself under the direction of the Colonization Society, and, according to the will, has a right thereby to be free. This court has no authority by law, nor by virtue of any thing contained in the record, to look behind it, and inquire whether the slave will be sent to Africa or not."

Cabanné v. Walker, 31 Mo. 274, October 1860. [275] "Reed testified that he knew Devolsey, who died about forty years before; (this evidence was given February 15, 1833;) that he knew that one of Devolsey's negroes cultivated a small field in the Little Prairie [in the lower part of the city of St. Louis], but does not remember exactly the place; that said negro cultivated tobacco, melons, and other articles of produce."

Armstrong v. Marmaduke, 31 Mo. 327, January 1861. The petition alleges that the slave of Marmaduke [329] "set fire to and burned a barn and stables then in the possession . . of said plaintiffs, and did thereby . . destroy the same together with the contents thereof" [1]

Hambleton v. Lynch, 32 Mo. 259, March 1862. [260] "The slave had been seized in execution . . by constable Watson, who deposited him with Lynch, who was keeper of a negro yard, merely for safe keeping. . . the plaintiff in the executions gave indemnification bonds, as provided by the statute, and required the constable to sell the slave."

Tucker v. Tucker, 32 Mo. 464, July 1862. See same *v.* same, p. 212, *supra.*

Adderton v. Collier, 32 Mo. 507, July 1862. In 1859 the value of a negro girl was assessed at $800.

[1] Rev. Code (1855), p. 645, sect. 37.

Sallee v. Arnold, 32 Mo. 532, July 1862. [538] " Plaintiff brought suit . . to recover possession of seven slaves . . Prudence, Greene, Creed, Amanda, Laura, Margaret, and an infant, name unknown . . of the value of thirty-two hundred dollars." The first three " originally belonged to the estate of Thomas Swearingen, . . who died in the year 1850. . . in 1854 . . [539] were assigned to Lydia Ann Swearingen, a daughter of . . Swearingen. . . Arnold , . was the guardian . . of the said Lydia Ann, . . and took possession of said slaves, . . The other slaves mentioned are the children of Prudence, born since Arnold took possession. On the 1st of January, 1855, Arnold . . hired said slaves to Nunnelly . . for one year, for their victuals and clothes. On the 15th of May, 1855, the plaintiff married the said Lydia Ann, and on the 29th of August following she died."

Judgment for plaintiff affirmed: [540] " the right of Lydia Ann in the slaves was a chose in possession, and not a chose in action. . . the possession of Donnelly [Nunnelly], in contemplation of law, was the possession of Arnold, the guardian, and the possession of the guardian was the possession of Lydia Ann, his ward; and upon the marriage of Lydia Ann her possession was transferred to her husband," [Bay, J.]

Pratte v. Coffman, 33 Mo. 71, October 1862. By the will of Joseph Coffman twenty-seven slaves are given to his daughter, [76] " for . . her natural life, and after her death to the heirs of her body living at the time of her death; but if she should die leaving no such heirs of her body surviving her, or if surviving her they shall die before arriving at the age of twenty-one years, leaving no issue capable of taking, . . then the property . . is to revert to . . the testator's own right heirs."

Young v. Woolfolk, 33 Mo. 110, October 1862. The administrator in 1850 filed " a petition for the sale of real estate to pay the debts of the estate, and that the slaves be reserved from sale." The court so ordered, but in 1852 some of the negroes were sold to pay the debts of the estate.

Charlotte (respondent) v. Chouteau (appellant), 33 Mo. 194, October 1862. On the reversal of the judgment in favor of Charlotte,[1] a new trial was had in 1859. Ten days before the case was reached for trial, Chouteau [195] " moved the court to grant him a special *venire* " because " a jury collected from the city [St. Louis] will necessarily include many who, from prejudices of birth and education, are not a fair or unprejudiced jury for the determination of the issues in this cause," The court overruled the motion. The trial resulted in a verdict and judgment in favor of Charlotte. Chouteau appealed.

Judgment affirmed: [200] " The court did not err in refusing the application of the defendant [Chouteau], that the court should hear and consider the testimony in the cause relative to the legal existence of slavery in Canada at the time when the ancestress of the plaintiff was in that country, prior to the empannelling of a jury. The existence of a foreign law was a question of fact, to be tried by a jury. . . [201] The most plausible objection to the judgment is, that it was founded upon a

[1] See same *v.* same, p. 203, *supra.*

verdict which was rendered against the weight of the evidence. Notwithstanding that we might believe that the verdict should have been rendered for the defendant, yet the practice is so well established, not to reverse a judgment because the verdict appears to have been rendered against the weight of evidence, that we will not, for that cause, interfere in this case." [Bates, J.]

Brennan v. O'Driscoll, 33 Mo. 372, January 1863. [373] "Brennan sued . . O'Driscoll by attachment, and a negro slave was seized by the sheriff as the property of . . O'Driscoll."

Hall v. Howdeshell, 33 Mo. 475, March 1863. Will of John Howdeshell, dated 1849: [478] "I give and bequeath unto my daughter Malinda . . my negro man named Edmund, at the valuation of four hundred dollars. . . unto my daughter Mary . . my negro boy named Antrim, at the valuation of five hundred and fifty dollars. . . unto my stepdaughter Sarah . . my negro boy named Lewis, at a valuation of five hundred and fifty dollars. . . unto my daughter Ann, my negro girl named Eliza, at the valuation of four hundred and fifty dollars. . . unto my daughter Wineford . . my negro boy named Powell, at the valuation of three hundred and fifty dollars. . . unto my daughter Malinda . . my old negro woman named Lucy, without any valuation, as I consider her not worth more than her victuals and clothes. It is my will that all the aforementioned negroes shall not be sold to any person who will convey them to the south." [1]

Lewis v. Hart, 33 Mo. 535, March 1863. In 1859 [538] "plaintiff [Louisa Lewis] filed her petition . . alleging that defendant, as administrator of the estate of Lizzie, alias Elizabeth Dickson, deceased, claimed her and her son George, a minor, as slaves of said estate. The petitioner further alleges that about seventeen years previous to the filing of her petition she was purchased by her mother, the said Lizzie, a free negro, on the condition that she should be emancipated, and that she was emancipated by said Lizzie at the time of the purchase aforesaid; that during the time intervening between said purchase and the death of said Lizzie, a period of about seventeen years, she and her child George, who was born after her emancipation as aforesaid, were considered and regarded as free persons, and so conducted themselves with the knowledge and consent of said Lizzie. The petitioner prays that her right and that of her child to freedom may be established by the judgment of the court. . . [539] Manning . . testified that . . Louisa, for many years, lived in an alley between Carr and Biddle, and Twelfth and Thirteenth streets, and kept house for herself. Her mother never lived with her. . . She took in washing, and managed her own affairs. Her son George, who is nearly white, lived with her. John How . . stated . . She had a husband who formerly belonged to witness, but had been freed by him. Her husband lived part of the time in Chicago, and he and his wife kept up a correspondence; the letters passed through the hands of witness. Plaintiff applied to witness, who was mayor of St. Louis, for a permit to live in St. Louis as a free woman. Witness granted it, but first required and

[1] For codicil, see Beaupied *v.* Jennings, p. 209, *supra.*

obtained from her mother Lizzie, a writing for that purpose. Witness also gave her a pass to cross the ferry as a free person. . . [540] knows of her having five hundred or six hundred dollars; knew of her having a deposit account in her own name at the Boatman's Savings Institution. Witness had made deposits for her, and all her transactions were in her own name. . . Lizzie [Louisa's mother] died in July, 1859, and owned the house she died in. . . plaintiff went to Chicago eighteen months or two years ago, and returned to St. Louis after the death of her husband; plaintiff always passed as a free woman; heard Lizzie say, about three weeks before she died, that plaintiff and her son George were free at her death, and they should not serve anybody after she died. . . at her death, her grandson George should have all of her property. Martha Brown had often heard Lizzie say that Louisa was as free as she was, and that she had not bought her to be a slave for any person; witness knew Lizzie well; lived in same house with her five years; she always spoke of plaintiff and her son George as being free, and that the property she had was George's; plaintiff and her mother visited each other, and her mother knew of her going to Chicago, and of her acting and living as a free person; heard Lizzie say that she bought Louisa to be free, and not to be the slave of any one."

Judgment for the plaintiff affirmed: [541] "a deed of manumission may be, and ought to be, presumed by the jury, when the testimony adduced establishes a sufficient ground for such a presumption. . . [542] no good reason can be given why the general doctrine of presumption, as applied to deeds, patents, etc., should not be extended to deeds of manumission." [Bay, J.]

Joshua (a man of color) v. Purse, 34 Mo. 209, October 1863. "The 'Act to enable persons held in slavery to sue for their freedom,' in its first section, provides that 'any person held in slavery may petition the Circuit Court, or judge thereof in vacation, for leave to sue as a poor person, in order to establish his right to freedom, and shall state in his petition the ground on which his claim to freedom is founded.' In the present case, upon the petition so filed, an order was made that the petitioner be allowed to sue; but no pleading was filed by the plaintiff as a legal statement of his cause of action against the defendants. Instead, thereof, it seems that the petition for leave to sue was regarded as the plaintiff's declaration or petition stating his cause of action; and a demurrer to it was filed and sustained."

Judgment reversed and the cause remanded: "The petition for leave to sue, and the petition as a declaration, are distinct things, and must be kept so. The petition for leave to sue is wholly *ex parte* and preliminary to the suit, which must be commenced by a petition under the general practice act. In remanding the case that a proper petition may be filed, it is thought proper to state, that the petition must show upon what ground the plaintiff claims a right to freedom." [Bates, J.]

Smith v. Denny, 34 Mo. 219, October 1863. [223] "the value of said slave Sarah . . on the 1st. of January, 1857, was . . one thousand and thirty dollars."

Bruce v. Sims, 34 Mo. 246, October 1863. Davis executed [249] "a bill of sale to Pullis of the negro, which . . expressed the consideration to be twelve hundred dollars,"

Parker v. Waugh, 34 Mo. 340, January 1864. [341] "1862, Waugh, the sheriff . . had in his hands five executions . . which . . he levied upon twenty-one slaves of Laforce. . . [342] the same slaves . . were advertised and sold under all the executions, on the 24th day of March, 1863, for $4782.50"

State v. Rohlfing, 34 Mo. 348, January 1864. [349] "The appellant was indicted . . for dealing with a slave, . . without permission in writing from the master, owner or owners of said slave.[1] . . two notes had been found in the possession of the slave, . . signed by the appellant, and that the appellant admitted . . that he had borrowed the money of the negro, and given him his note of it." He was tried and convicted. Judgment affirmed: "A single transaction may well be a *dealing* with a slave within the meaning of the act which forbids such dealing." [Bates, J.]

Welton v. Railroad Co., 34 Mo. 358, January 1864. Suit against a railroad corporation for transporting a slave without the consent of his owner.[2]

Lewey v. Lewey, 34 Mo. 367, January 1864. Adam Lewey bequeathed a negro boy to his wife during her life or widowhood. [369] "she sold the negro for his full value; that the purchaser was a negro-trader, who was reported to have taken him to Arkansas; that she told him before the sale that she had only a life estate, and he replied that when he wanted a better title he would buy from the heirs." Held: "the proceeds of the sale should be considered as substituted for the slave."

Rogers v. Railroad, 35 Mo. 153, July 1864. [157] "This was an action based on the act of 27th February, 1855,[3] . . to recover double the value of a slave of the plaintiff, alleged to have been transported on the respondent's railroad, in violation of the provisions of said act. Pending the suit, the act of 1855 was repealed by an act approved February 6, 1864." Held: the repeal did not affect actions already commenced.

McClure v. Railroad, 35 Mo. 189, July 1864. Suit "to recover double the value of a slave . . alleged to have been transported on the plaintiff's railroad" in violation of the act of 1855.[4]

Moorman v. Sharp, 35 Mo. 283, October 1864. In 1852 a negro boy sold for $310.

Alexander v. Helber, 35 Mo. 334, October 1864. In 1859 the defendant, [335] "ex-officio collector of taxes . . [336] sold the boy in question at public sale, at the courthouse door in St. François county . . that plaintiff [owner of the boy] was present at the sale and forbade the

[1] Rev. Code (1855), p. 1477, sect. 33.
[2] Sess. Acts 1855, p. 169.
[3] Sess. Acts 1855, p. 169.
[4] Sess. Acts 1855, p. 169.

sale; he told the by-standers to beware, they would get no title; that the whole thing was illegal; that at the time of the sale the boy was worth from $800 to $1,000."

Curry v. Lackey, 35 Mo. 389, January 1865. Exhibit "A": [393] "I promise to make up any difference in value that may be fixed by Gen. J. B. Gardenhire, between negro boy 'Ned' conveyed to me by Wm. A. Curry, and negro boy 'Aaron' conveyed by me to said Wm. A. Curry, as per two bills of sale . . 1858. R. J. Lackey," Exhibit "B": "1858. Gentlemen: I have examined the negro boy Aaron, delivered to Dr. Curry by Mr. Lackey, and think he is worth eight hundred dollars. The value of Ned being fixed at one thousand dollars, the difference therefore in their values is two hundred dollars. Respectfully, Jas. B. Gardenhire."

State v. Edwards, 36 Mo. 394, October 1865. Indictment: "that a certain slave named Garrison, the property of . . Montery, . . 1859, . . did . . steal . . a certain sack of wheat, . . the property of . . [395] Montery, . . Edwards . . did receive and have [the sack of wheat aforesaid] . . well knowing the said sack of wheat to have been unlawfully stolen," Held: the indictment is bad: [396] "The statute under which the indictment appears to have been framed [1] had no application to such a case. The possession by a slave of the property of his master, is the possession of the master."

Smith v. Denny, 37 Mo. 20, October 1865. See same *v.* same, p. 218, *supra.*

Harris v. Railroad, 37 Mo. 307, February 1866. Harris, [308] "being in St. Louis, wrote to his wife at Macon to send to him his slave Isaac, and . . Mrs. Harris wrote and delivered to the negro a pass, directed to the conductor of appellant's road, requesting him to take charge of and pass the said slave to Hannibal, and deliver him to one of the boats of the Keokuk Packet Company, and not allow him (the slave) any liberties. . . [309] The slave made his escape, but whether before or after he reached Hannibal, does not appear." Harris claimed [308] "damages in the sum of two thousand dollars . . [309] The jury found a verdict for the respondent, on which judgment was rendered" Reversed, and the cause remanded.

Peters v. Clause, 37 Mo. 337, February 1866. Held: the owner of a slave may recover damages of a bailee, for an injury done to the slave by an inhuman and cruel beating, in consequence of which [338] "The slave found refuge with his master" before the time for which he had been hired had expired.

Minor v. Cardwell, 37 Mo. 350, February 1866. [353] "slaves which were held by a married woman in Kentucky, under the operation of the law of 1845-6, and which were invested with the character of real estate by local law," were brought by her to Missouri.

Held: [356] "Slaves being regarded by our law as merely personal property, as soon as they were brought here, they were remitted to that

[1] Rev. Code (1855), p. 580, art. 3, sect. 43.

condition, without considering the nature or character of the laws by which they were held in the country whence they came."

Phillips v. Evans, 38 Mo. 305, July 1866. In 1857 Phillips [312] "sold and delivered to the appellant, Evans, a certain negro girl named 'Clara,' for the consideration of one thousand and fifty dollars, for which he gave his promissory note, . . at the time of the sale . . [Phillips] made and delivered to Evans his written bill of sale of said negro, whereby he . . warranted said negro 'Clara' to be a slave for life, and also . . agreed 'to warrant and defend the title of said negro "Clara" to said Evans forever.' . . but that thereafter, to-wit., on the 11th day of January, 1865, by virtue of an ordinance abolishing slavery in Missouri, passed in convention on that date, the said negro 'Clara,' and all her children or issue, were manumitted and declared free."

Judgment for Phillips affirmed: [314] "The Ordinance of Emancipation caused a complete annihilation . . of all property in slaves. . . clearly the covenant to warrant . . the title to the negro, and that she was a slave for life, cannot, by any just construction, be made to apply to such an occurrence." [Wagner, J.]

State v. Moseley, 38 Mo. 380, July 1866. "Hall, a negro, testified that the defendant took . . from him . . the property mentioned in the indictment; that the trunk contained one twenty dollar bill and three five dollar bills, . . He stated that he could neither read nor write, but that he knew twenty dollar greenbacks from fives . . and that he got those bills in pay when he was paid off as a soldier;"

Darrett v. Donnelly, 38 Mo. 492, October 1866. In October 1859 [493] "defendant . . agreed to purchase said boy . . at the price of twelve hundred dollars, provided that if upon examination first to be made of the said boy, he should be found to be sound and free from all such blemishes and defects as would injuriously affect his sale in the market." Bird, having [495] "testified that he was in company with the plaintiff, defendant and negro boy from Bloomington until they took the cars at Bevier, the defendant offered to prove by him that just after the cars had started from Bevier east, and before the escape of the boy, the defendant said to the witness (the plaintiff being absent in another car at the time) that 'plaintiff was a careless man; that, by the terms of the sale, the negro was the plaintiff's until he was stripped and examined and delivered at Monroe City, which had not been done;'"

Williams v. Evans, 39 Mo. 201, October 1866. [203] "Williams, the appellant, sued Evans, the respondent, . . for the alleged non-delivery of the two slaves, named Isham and Judy Ann, which he alleged he had purchased of the respondent for the sum of nineteen hundred and fifty dollars cash paid for the same. . . the slaves had been arrested by order of respondent and committed to the custody of the jailor of St. Louis county as his property. Whilst they were in jail the appellant purchased them from the respondent for the sum of nineteen hundred and fifty dollars, twelve hundred dollars of which was paid to respondent and seven hundred and fifty dollars was paid to two men by the name of Newcomb

and Duvall, by direction of respondent, for their services in hunting up and procuring the arrest of the slaves. When the money was paid, the respondent executed and delivered to the appellant a bill of sale conveying the slaves; and afterwards, both respondent and appellant together with Newcomb and Duvall went to the jail where the slaves were confined, to settle with the jailor and pay him his fees for keeping them. When the jail fees were paid, the respondent informed the jailor that he had sold the slaves to appellant, and ordered him to deliver the same to him (the appellant) whenever he called for them, to which the jailor assented. The slaves were in another apartment, and were not produced in the actual presence of the company or the parties. The appellant left them in the . . [204] custody of the jailor until he could engage passage on a boat to transfer them to his home in Nashville, Tenn. Having succeeded in finding a boat destined for Nashville, in a short time and on the same day he returned to the jail and demanded of the jailor possession of the slaves, but the jailor, acting under instructions of the sheriff, refused to deliver them. It seems that the slaves had instituted suit in the St. Louis Circuit Court for their freedom, and in pursuance of the law the court had made an order to have them hired out, and forbidding their being removed from its jurisdiction till the suit was determined. The order was not served till after the departure of the appellant for the boat, and, had it not been for that, the jailor states that he would have delivered the slaves to him on his return, when demanded. The appellant then commenced this proceeding against the respondent for non-delivery of the slaves. The court below, by its instructions, held that the delivery was complete, and that the property passed to the vendee;" Judgment affirmed.

Public Schools v. Schoenthaler,[1] 40 Mo. 372, March 1867. "a concession to Charles Leveille (or Leveiller), dated 1st of March, 1788, by which Manuel Perez, Lieut. Governor, upon the petition of Charles Leveille, a free negro, who had been the slave of the late Louis Robert, conceded to the said Charles Leveille, his heirs and assigns, in fee simple, 'a lot of ground sixty feet front only, by one hundred and fifty feet deep, situated in this town of St. Louis, bounded on the one side by the lot of Louis Ride's heirs, on the other by the king's domain, on its rear by the Mississippi river, and on its principal front by the road which leads from Second street to Prairie-à-Catalan,' . . [373] there were, before 1800, large fruit trees on the lot, some as thick as a man's body. . . Charles Leveille and his wife lived on this lot until the death of the old man, . . in 1809 or 1810. His widow lived on it until her death in 1826, or thereabouts;"

Magwire v. Tyler,[2] 40 Mo. 406, March 1867. [408] "on the fifth day of October, in the year 1793, the Spanish Government conceded or granted to one Esther, a free mulattress, a tract or parcel of land situate on the border of the Mississippi river, and between that and the earth-barn, La Grange de Terre, . . The concession to Esther had no definite location by the terms of the grant, but she took possession under such grant of a

[1] See The Schools *v.* Risley, p. 223, *infra.*
[2] See Maguire *v.* Tyler, p. 223, *infra.*

tract of land lying between the Big mound and the Mississippi river. . . [411] on the tenth day of September, 1810, Jacques Clamorgan, who claimed the Esther grant by deed from her, the 2d September, 1797, conveyed the same grant to . . Pierre Chouteau."

Jarrett v. Morton, 44 Mo. 275, July 1869. [276] "The plaintiff brings his *quantum meruit* to recover for the services of a slave who was taken by the defendant, in . . 1862, . . to Arkansas, and returned with him in 1864."

Maguire v. Tyler,[1] 8 Wallace 650, December 1869. [653] "the concession of the governor to Joseph Brazeau," June 25, 1794, [654] "a tract of land . . north of the town [of St. Louis] . . of which one end is to be bounded by the concession to one Esther, a free mulatto woman. . . [65] the terms of the concession to the mulatto woman, bearing date October 5, 1793, which . . has four arpents front," [670] "The court . . decided . . [671] That the tract as granted by the governor was bounded . . on the south by the concession to one Esther, a free mulatto woman,"

The Schools v. Risley,[2] 10 Wallace 91, December 1869. [96] "a concession by the Spanish governor, dated March 1, 1788, to the negro Leveille, for a lot in St. Louis of 60 by 150 feet, . . [97] the lot of the free negro called Charles," [112] "a tax sale of the lot occupied by the colored man, Charles Leveille, for the non-payment of the taxes for the year 1826,"

Johnson v. Johnson, 45 Mo. 595, March 1870. [597] "Demas, the appellant, was a slave in Virginia, . . whilst he lived there he married a negress, also a slave, by whom he had three children. His wife and children were sold to some person in Texas, and his master took him to Mexico, from whence he was brought to St. Louis. . . in . . 1849, he married the respondent, then a free woman of color, and in about one year thereafter he was emancipated by his master. . . he continued to . . cohabit with the respondent as his wife for about thirteen years, at the expiration of which time she left him" and "instituted a suit for divorce . . on the ground of cruel and inhuman treatment, . . a divorce and alimony were decreed. . . [601] The court awarded the respondent $1000." [597] "For the appellant it is insisted upon, in argument, that as the marriage took place when he was a slave, it was void,"

Judgment affirmed: [598] "In none of the States where slavery lately existed did the municipal law recognize the marriage rites between slaves. They had no civil rights except where the right to freedom was involved, in which case they could prosecute a suit by their next friend to vindicate their claim. By common consent, and universal usage . . they were permitted to select their husbands and wives, and were generally married by preachers of their own race, though sometimes by white ministers. They were . . recognized as husband and wife by their masters and in the community . . but whatever moral force there may have been in such

[1] See Magwire *v.* Tyler, p. 222, *supra.*
[2] See Public Schools *v.* Schoenthaler, p. 222, *supra.*

connections, . . there was nothing binding . . in law. . . [600] If, after the emancipation, there was no confirmation by cohabitation or otherwise, . . there would be no grounds for holding the marriage . . binding. But, as in the case of other parties incapacitated, we perceive no good reason for holding that the contract may not be . . ratified after the incapacity . . is removed. . . [601] as the appellant, when he was emancipated, . . constantly acknowledged her as his wife, the marriage should . . be deemed valid . . That in his earlier days he was previously married can make no difference. His first marriage . . had no legal existence; he was at liberty to repudiate it at pleasure; and by his continuing to live with respondent . . as his lawful wife after he had obtained his civil rights, he disaffirmed his first marriage and ratified the second." [Wagner, J.]

Carson v. Hunter, 46 Mo. 467, October 1870. [470] " the note [dated November 12, 1861] was given for slaves taken by the plaintiff from Missouri to Arkansas during the war, and sold to defendant . . [471] Under [the act of July 13, 1861] . . the president of the United States, on the 16th of August, 1861, declared . . Arkansas, to be in insurrection, and from that period all trade between citizens of Missouri and those of Arkansas became unlawful unless by special license. . . the note can not be collected. . . [472] During the late civil war many slaves were taken to the States in insurrection, and their whole labor became thereby directed to the creation of such supplies as alone could enable the enemy to keep the field. To hold such intercourse lawful . . would present the spectacle of a country lawfully fighting those whom its subjects were lawfully feeding." [Bliss, J.]

Jones v. Hook, 47 Mo. 329, January 1871. " The present suit was instituted . . 1855, . . for the purpose of recovering possession of certain slaves . . Seals was [in 1831] the owner of a slave girl named Chloe (the mother of the other slaves sued for); . . [331] the case remanded."

Cadwallader v. West, 48 Mo. 483, October 1871. [489] " His domestic affairs were managed by colored servants, one of whom, a woman named Leno, was the mother of an illegitimate son of his. . . In view of his advanced age and general situation, he concluded . . 1850 to readjust his domestic arrangements, . . [491] in . . 1856, . . Cadwallader conveyed to West his life estate and reversionary interest in the two hundred acres . . [492] for . . West's agreement ' to take care of and support at his residence on said farm, an aged free black woman named Leno, formerly the property of said Cadwallader, . . during Cadwallader's natural life,' but the support was not to include clothing. . . 1863 . . Cadwallader . . turned everything over to Dr. West, . . [493] ' in consideration that . . [West] provide suitable food, clothing, house-room and necessary medical attendance for the negro woman named Leno, so long as she should live; and for the further consideration of $100,' "

Tyler v. Magwire, 17 Wallace 253, December 1872. [275] " On the 25th of June [1794], . . the governor issued a concession to [Brazeau] . . one end is to be bounded by the concession to one Esther, a free mulatto woman."

Turner v. Timberlake, 53 Mo. 371, August 1873. Turner's will: [375] " It is my will that . . all my just debts be fully paid, and for that purpose I desire my wife to sell . . forty-five acres . . together with my black woman Hannah and her children, except her son Alexander and daughter Adeline: "

Acock v. Acock, 57 Mo. 154, July 1874. In 1864 the defendant " commenced her suit . . upon a contract . . made in 1861, . . signed by plaintiff and Robinson, stating that they had bought the distributive share . . of the defendant, in the slaves belonging to the estate of her husband, . . and they promised . . to pay defendant . . the appraised value of the slaves less ten per cent. . . The appraised value of the slaves was $17,100, and the defendant was entitled to one-sixth part of the same. It was also agreed that defendant might retain one slave valued at $800; "

Bryant v. Christian, 58 Mo. 98, October 1874. Will of James Buford, 1870: [101] " except the amount herein named to be given to my former slaves "

ARKANSAS

INTRODUCTION

I

The Arkansas cases limit with precision the application of an axiom of the law of slavery, and of a definition in her statutes on that subject.

1. The axiom of the slaveholding states, that a negro or a mulatto was presumed to be a slave,[1] is emphatically declared by Judge Fairchild, in State *v.* Alford,[2] in 1860, to be confined to suits for freedom. "The case is far different, when the condition of slavery is a fact to be ascertained, in order to define the crime . . charged, or to determine the punishment to be affixed . . according as the criminal may be a freeman or a slave." Then the negro or mulatto is presumed to be free, whatever the shade of his skin. If he is a slave, it must be so alleged in the indictment and proven at the trial.

2. The definition of "mulatto," in the act of 1843, forbidding free negroes or mulattoes to immigrate to Arkansas,[3] is: "every person, not a full negro, who shall be one-fourth or more negro." Consequently, in a suit for freedom, brought thereafter by Abby and her four children,[4] the judge instructed the jury to give a verdict in favor of their freedom, if they found them to have "less than one-fourth of negro blood in their veins . . unless defendant . . had proven them to be slaves . . by proving [their descent] . . from a slave on the mother's side, who was one-fourth negro or more," and he refused to instruct the jury that "if Abby's mother was always held . . as a slave, and was . . of negro extraction, and if Abby was so held . . this was prima facie evidence that she and her children were slaves, unless . . emancipated." They had a verdict in their favor, and judgment that they be liberated; but this judgment was reversed by the Supreme Court of the state in 1857 because of error in giving the former instruction and of refusal to give the latter. Chief Justice English declares that the legislature, in other acts [5] than that regarding immigration of free negroes and mulattoes, "have manifestly used the word [mulatto] in a more latitudinous sense, . . they meant to embrace . . persons belonging to the *negro race,* . . of an intermixture of white and negro, without regard to grades." The cause was remanded, and on the new trial, a verdict was again given in favor of the

[1] Embodied in the Arkansas act of 1839. Digest of 1848, ch. 74, sect. 12, p. 545.
[2] P. 260, *infra.*
[3] Digest of 1848, ch. 75, sect. 1, p. 546.
[4] Daniel *v.* Guy, p. 252, *infra.*
[5] See p. 253, note 2, *infra.*

plaintiffs. The verdict was allowed to stand,[6] "though it is possible that the jury found against the preponderance of the evidence, through reluctance to sanction the enslaving of persons, who, to all appearances,[7] were of the white race, and, for many years before suit, had . . been treated as such."

The Chief Justice stated, when the case came up in 1857, that "the following would be safe rules of evidence. 1. Where a person held as a slave, sues for freedom, and it manifestly appears that he belongs to the *negro race,* . . he is presumed to be a slave, . . 2. If it appear that he belongs to the white race, he is presumed to be free. 3. If it be doubtful, . . there is no basis for legal presumption, . . but it is safest to give him the benefit of the doubt." It was, perhaps, in reliance on Rule 2, that Thomas Gary, whose hair was "smooth and of sandy complexion, perfectly straight . . eyes blue, his jaws thin, his nose slim and long" filed a bill,[8] alleging that he was a white person, and praying for an injunction against the defendants, who claimed him as a slave, from commencing any suit to recover possession of him. But it was proved that his mother had always been held in slavery till her emancipation, and the Supreme Court held, in 1858, that the preponderance of the testimony was that he belonged to the negro race, and that "the presumption of law, that he is a slave, at once attaches."

Arkansas was the melting-pot. Her slaves came from Illinois, Kentucky, Louisiana, Texas, Georgia, Alabama, Maryland, South Carolina, North Carolina, Mississippi, Virginia, St. Domingo, Missouri, and the Creek Nation.[9]

II

The constitution of 1836 provided that the Supreme Court should be "composed of three judges, one of whom shall be styled Chief Justice;"[10] that of 1868, that it "consist of one chief justice, . . and four associate justices."[11]

[6] Daniel *v.* Guy, p. 252, *infra.*
[7] Even their feet were bared for the inspection of the jury. *Ibid.*
[8] Gary *v.* Stevenson, p. 255, *infra.*
[9] See Hynson *v.* Terry, p. 228; Brown *v.* Hicks, p. 228; Trapnall *v.* Hattier, p. 230; Cocke *v.* Chapman, p. 231; Dodd *v.* McCraw, p. 232; Smith *v.* Jones, p. 232; Adamson *v.* Adamson, p. 234; Gaines *v.* Briggs, p. 234; Whitfield *v.* Browder, p. 238; Tatum *v.* Hines, p. 243; Roane *v.* Rives, p. 244; Morine *v.* Wilson, p. 255; Moss *v.* Ashbrooks, p. 256; Atkins *v.* Guice, p. 258.
[10] Art. 6, sect. 2.
[11] Art. 7, sect. 3.

Hynson v. Terry, 1 Ark. 83, January 1838. "action of detinue . . Morgan Magness deposed, that about twenty years previous to the trial, in . . Illinois, his father, Jonathan Magness, gave to Terry and his wife, [Jonathan's daughter,] . . a negro girl . . Nancy, between eight and twelve years of age, with the express understanding that the first child she should have, should be the property of Eliza, [Mrs. Terry's daughter.] . . Daniel was Nancy's first child, about ten years old, and worth from three to four hundred dollars; . . [84] Jonathan . . also gave them a mare, with the express . . understanding . . that . . Eliza was to have the first colt"

Held: Daniel [89] "was not . . in being [at the time of the gift of Nancy], and . . no title . . could be passed . . without a deed or other instrument . . proved and recorded."[1]

Brown v. Hicks, 1 Ark. 232, July 1838. A mulatto slave, sold in Kentucky in 1822, was valued by an Arkansas jury in 1837, when she was about 35 years of age, at $750.

Moody v. Walker, 3 Ark. 147, July 1840. [148] "mulatto girl . . [149] and her increase, ten or eleven in number."

Porter v. Clements, 3 Ark. 364, January 1841. Instrument in writing, explanatory of a bill of sale: [366] "Clements . . and . . daughter . . have [about September 1829] . . sold and delivered me [Phillips] . . negro servants and slaves, . . Tony, Fanny, Harriet, Violet, and Milley, for . . four hundred dollars, to them . . paid. Now, should they, within two years and six months . . pay me five hundred dollars . . I obligate myself to re-convey . . with this proviso, that they do not die, run away, or be stolen;" Phillips, in September, 1829, [365], "sold . . to Porter, with the exception of one . . (Harriet), who had always remained in possession of Clements: . . [367] since his purchase, Fanny has had two children, Armstead and Charles: . . he promised Phillips, that if he . . should . . within *two years,* give to him, Porter, five hundred dollars, he would, *if the negroes were then in his possession,* return them to Phillips; but . . not bound *to keep* the negroes until that time; . . this agreement . . did not extend to any increase . . That when sold to him, Tony was worth $200; Fanny worth less than nothing, being sickly and drunken, and a continual expense, . . [368] that Violet and Milly were worth $200; that Armstead is worth $300, and Charles $200. . . during that year [1829] Violet died. . . [369] that the expenses exceeded the profits some fifty or one hundred dollars a-year, not including the increasing value of the children. That Fanny died . . 1832;" Held: not a mortgage.

Robinson v. Calloway, 4 Ark. 94, January 1842. Mordecai was appraised at $300, in 1835. [96] "plaintiff had hired the boy out, and lent

[1] Act of 1804, Digest, p. 527, sect. 24.

him . . to go to mill; . . worth six or seven hundred dollars [in 1841, when about fifteen or sixteen years of age]. . . The Sheriff . . proved that he would hire for ten dollars a month."

Sumner v. Gray, 4 Ark. 467, July 1842. "1835, . . [Sumner] purchased . . two negro children, for which he was to give four hundred dollars; . . early in . . 1836, one . . died, at Sumner's house; . . then said that he had lost a little negro girl, for whom he would not have taken five hundred dollars;" The other died a few months later. Held: the vendee must pay the purchase money.

Pyeatt v. Spencer, 4 Ark. 563, July 1842. "Spencer . . alleged that Pyeatt, . . 1839, . . for . . $650, . . sold . . to Spencer, . . negro woman, . . and warranted her to be sound . . the slave was not . . but . . mentally deranged, and that Pyeatt well knew her to be so, . . The evidence . . A few days after Spencer bought the slave, he was found whipping her. He had her *stripped,* and *staked down* on the ground; her feet and hands extended, and fastened to stakes; and her face downwards. He appeared calm . . [564] and was whipping her at intervals, using a cowhide, with a plaited buckskin lash about fifteen inches long. He asked her what made her do so [run away?], and she said that Bedford and Buchanan told her, that if she staid there, she would be whipped to death. . . Spencer had drawn some blood, but not a great deal. *He took salt and a cob, and salted her back.* This witness . . thought her deranged. . . Another witness . . worked in the field" [with her] "at Pyeatt's, . . He kept her about two months. She was . . of vicious . . disposition, but not deranged as far as the witness could know. . . She frequently talked to herself, and would laugh without any one . . being near her. . . heard Pyeatt say, that if justice was to take place, Buchanan (of whom he bought the negro) ought to lose her. . . She was raised by [another] witness' brother, . . a kind, indulgent master . . at all times sound of mind," "an obedient, good house-servant. . . had run away from Pyeatt, and witness found her in the wood, and took her home. She seemed obstinate, walked very slow, and when he threatened to whip her, or she feared she would be ridden against, she walked faster, and looked wild, as negroes usually do, when threatened. She said that she had run away because she wanted to go to her children. . . when her mistress gave her time, would make clothes and knit for them . . [565] after Spencer had bought her, . . she ran away, and came to [another] witness' house. Spencer caught her, and chained her. Witness then, for the first time, discovered that she was deranged. He again met her, . . 1839, when she had run away from a person to whom Spencer had sold her. . . afterwards saw her at another place, cutting wood. . . Another witness . . 1841 . . examined her, and believed her deranged. . . might have been produced by severe whipping; but such whipping as was described in this case, would not produce it in one case in a thousand. Strong attachment for her children, and grief at being separated . . with severe chastisement, would be more likely to produce it." [563] "The jury . . assessed the plaintiff's damages to the sum of $716;"

Judgment thereon reversed, and a trial *de novo* awarded: [570] " no liability resting on the defendant. It is with pain . . that the court feels itself constrained to remark, that whatever seeming wildness . . might be perceived . . it is but reasonable to suppose, was caused by grief, and the excessive cruelty of her owner." [Dickenson, J.]

Irvin v. Bank, 5 Ark. 30, January 1843. " The negro was attached . . 13th of February, A.D. 1841, and remained in [Sheriff] Irvin's possession until Nov. 21, 1842. He charged for her board 50 cents per day [and $15 for clothing]. . . kept her at her own house, where she sometimes worked. Some witnesses thought . . her services . . worth her food and clothing. One . . that her services would be worth 6 or 8 dollars a month, her board 75 cents a week, and her clothing $24 or $25 a year. Another . . that, to board such a negro, was worth $100 or $125 a year—as much as a white person's;" " the charge for board and clothing [was] reduced [by the court] to $83 25."

Pool v. Loomis, 5 Ark. 110, January 1843. On November 1, 1842, a negro girl was replevied, [111] " of black complexion, about eight years of age, . . value . . $250 "

Dennis (a slave) v. State, 5 Ark. 230, July 1843. [231] " indictment against . . Day, a white man, and Frank and Dennis, negro slaves, for rape, . . committed . . 30th September, 1842. Verdict of guilty as to all, and motion in arrest of judgment, . . Motion sustained as to Day, and overruled as to Frank and Dennis, . . Sentence of death "

Affirmed: [233] " death . . had always been [the punishment] . . upon conviction of a slave, by all the statutes "

Johnson v. Clark, 5 Ark. 321, January 1844. In 1834 [334] " he was to pay $700 each, for Bob and Ned;"

Hynson v. Dunn, 5 Ark. 395, January 1844. [396] " that the plaintiff falsely represented . . that a certain slave . . was a first rate mechanic, a brick-mason and brick-layer, and . . H. was induced to purchase . . and executed the two bonds " of $400 each.

Hill v. Mitchell, 5 Ark. 608, July 1844. Lacy, J.: [616] " While slaves with us, in one sense of the term, are peculiarly personal property, yet in another they have all the sacredness and value, nay even more than real estate. . . [617] the lands and slaves the law casts upon the heir or devisee, and requires them to . . assign dower in them," [1]

Crabtree v. Crabtree, 5 Ark. 638, July 1844. " petition to have dower assigned in certain lands and slaves "

Haynes v. Tunstall, 5 Ark. 680, July 1844. " a negro woman with four or five children . . worth $12 or $1400. . . a negro man, with wife and three or four children, worth $15 or $1800,"

Trapnall v. Hattier, 6 Ark. 18, January 1845. Act of replevin. [23] " Hattier had the negro . . in New Orleans and held him by a good title; the negro ran away . . sold at auction in Natchez, . . bought by

[1] Rev. Stat. ch. 52, sects. 20-25, 29-31.

Brown, . . sent to Little Rock and . . sold to Trapnall . . who supposed he was purchasing a good . . title." Held: no tortious taking.

Gullett v. Lamberton, 6 Ark. 109, July 1845. Action of replevin for a woman slave, worth about $500 in 1842.

Held: [117] "By the act . . of 1840,[1] slaves . . descend to the heir . . and are to be . . held by the same title as real estate. . . not intended to deprive the owner of the common . . remedies . . for the recovery of the possession of such property when unjustly deprived . . or for the recovery of damages for injuries inflicted upon it."

Bank v. Williams, 6 Ark. 156, July 1845. In 1843 a boy, about eleven years old, was [158] "sold, under an execution in favor of the bank, . . and purchased by the bank,"

Bailey v. Starke, 6 Ark. 191, October 1845. In 1841 a negro girl was worth $600.

Couch v. McKee, 6 Ark. 484, April 1846. [485] "August 1839, at Memphis . . [Couch] re-sold to . . McKee a negro [man] slave . . for $1100, which . . [he] had before . . bought of said [McKee and another] for . . $1100"

Pendleton v. State, 6 Ark. 509, April 1846. "indictment against John Pendleton, a free negro, . . under the 3d section of the act of [January 20,] 1843, 'to prohibit the emigration . . of free negroes . . into this state,'[2] . . convicted, and appealed"

Judgment affirmed: the act is constitutional. [511] "nothing beyond a kind of quasi citizenship has ever been recognized in the case of colored persons. . . [512] The protection of their persons and the right of property is provided for to a humane and just extent. . . The [U. S.] constitution was the work of the white race; . . The two races differing as they do in complexion, habits, conformation and intellectual endowments, could not nor ever will live together on terms of social or political equality. . . Those who framed in constitution, were aware of this, and hence their intention to exclude them as citizens within the meaning of the clause"[3] [Cross, J.]

Cocke v. Chapman, 7 Ark. 197, July 1846. [199] "Johnston, . . of Texas, was the owner of a negro man that had run away, and before his apprehension, or having ascertained where he was, sold him [for $600] . . to Cocke, . . Cocke, 'agreeing to take the responsibility of getting said negro upon himself.' Johnston executed a bill of sale . . 8th . . of October, 1845. On the 20th . . the negro was . . committed to the jail . . as a runaway slave. Chapman . . having a debt against Johnston, brought suit . . the 27th, and on the 30th, . . before Cocke had obtained possession, caused the negro to be seized by the sheriff"

Held: [201] "the title to the negro . . was vested in Cocke . . 8th of October, 1845."

[1] Act of Dec. 28. Acts of 1840, p. 118.
[2] Acts of 1842-1843, p. 61.
[3] U. S. Constitution, art. IV., sect. 2.

Carr v. Crain, 7 Ark. 241, January 1847. Maria, aged twelve years in 1832, had two children by 1841. In 1842 [244] "the hire of the slaves was worth five dollars per month."

Aramynta v. Woodruff, 7 Ark. 422, January 1847. Aramynta and others filed a petition in the probate court, alleging [423] "that Cynthia Robinson . . had by her last will . . set them at liberty; . . that she left more property than . . required to pay all her debts, . . will . . proven . . and bond given to prevent them from becoming a charge upon the county, . . prayer that the petitioner and her children, and her future children, if any, may be decreed to be manumitted and . . discharged forever from all liability for the debts . . final decree in favor" of the petitioners.

Held: [424] "the probate court could exercise no jurisdiction touching the question of freedom[1] . . the decree . . is a mere nullity."

Blakemore v. Byrnside, 7 Ark. 505, January 1847. [507] "negro boy, aged about twenty-two years, . . was worth [in 1844] six or seven hundred dollars."

Menifee v. Menifee, 8 Ark. 9, July 1847. Ten slaves, [10] "men, women and children . . valued . . at $5,200 [in 1842]. . . [11] The hire . . for the year 1842 was $624 50; for . . 1843, $717, . . [14] (Amelia) was sent from Kentucky by [Mrs. Menifee's] . . mother . . in the care of Doctor Menifee, to her sister [in Arkansas], . . to assist and wait on her; . . unhealthy . . and during the Doctor's life-time, was sometimes taken to his house to be 'administered to;' . . value . . about $400, and her yearly hire about $40."

Dodd v. McCraw, 8 Ark. 84, July 1847. "At least 20 years ago, in . . Georgia, I gave the negro girl . . to my daughter, . . when they were both small children." They moved to Arkansas about 1835.

Smith v. Jones, 8 Ark. 109, July 1847. "1840, when . . John, was about starting from his father's in Alabama to Arkansas, . . [his father] told him . . he might take choice [of one of three negro boys] . . to be re-delivered when called for, . . [111] after . . John came to Arkansas, he sold the slave,"

Bank v. Byrd, 8 Ark. 152, July 1847. "The attachment was levied on . . Isaac, his wife . . and Abram, . . 1842, the Bank of the State . . filed an interplea . . alleging that said slaves belonged to her,"

Costar v. Davies, 8 Ark. 213, July 1847. In 1846 [218] "Costar called the boy into the bar-room of his hotel; . . [Byers] looked at him, . . the boy then retired; . . he agreed to give . . $750, and a bill of sale or memorandum . . was made, . . he handed to Costar their note, which they had executed to the appellees," [214] One . . went out after the slave and soon returned saying that the negro objected to leaving his wife. The slave ran off." Held: [219] "the sale had been fully . . consummated."

[1] Rev. Code, ch. 66, sect. 1.

Ferguson v. Collins, 8 Ark. 241, January 1848. [246] "carrying on a farm and wood-yard, using the labor of the negroes, . . at the time of the death [in 1835] . . there were twenty-four negroes . . sixteen of whom were good able-bodied working hands . . [247] They [complainants] . . charge . . that the administrator claims a most extravagant allowance for keeping, clothing and feeding the negro children, . . in some instances . . when the negroes . . would have hired for a considerable amount, . . [254] [administrator] is charged . . with the hire of several male servants . . for . . 1836, 7, and 8, . . $5002 50, and for the same time with the hire of women servants . . $2880 00, . . [256] assets . . for the payment of the debts, . . not . . exorbitant,"

Lindsay v. Harrison, 8 Ark. 302, January 1848. In 1835 Paulding of Alabama conveyed to Harrison a negro woman, [310] "upon trust, that he . . should permit said slave and her increase to remain in the possession and under the control of Harriet Kelly, her heirs . . to her and their sole use . . for ever. . . Harriet . . removed to . . Mississippi, . . intermarried with . . Jeffries . . [311] removed to Arkansas [1837 or 1838], . . [negro] taken by the sheriff . . under an execution against . . Jeffries, . . 1840, . . purchased" by Lindsay. Held: his title is valid.

Joe Sullivant (a slave) v. State, 8 Ark. 400, January 1848. Indictment, 1847: "The Grand Jurors . . present that . . Joe Sullivant . . (a slave, the property of Eccanah Sullivant) . . [401] in the . . county of Dallas . . did feloniously attempt to commit a rape on . . a white woman; . . On the trial, [she] . . deposed . . 'About the 11th hour of the night . . I awoke, and upon extending my hand felt some person . . in the act of committing a rape. . . his shirt was very coarse, and a knife scabbard suspended at his side. When I touched him, he sprang from the bed: . . I ran to the door . . the person ran out at the other door. . . I then did not know who to charge with the offence. [I thought it might be a certain white man, but recollected that he] . . was sick. . . On the next day . . two young Kellums and young Evans came to my house: I had found a scabbard . . [402] when I found it had been removed, I charged the young men with the offence. . . On Monday . . Joe, was brought. I told him that was the shirt I felt. He said . . he was not guilty. . . I saw his foot placed in the track—he *crimped* up his toes—his master told him to place his foot in . . fitted . . exactly. He was then whipped by my husband, and then confessed he was there. I saw the feet of the young Kellums and Evans placed in the tracks on Sunday . . Joe . . had been frequently hired by my husband . . My husband had loaned [him] . . his gun to hunt with . . his master . . also . . Defendant did not claim the . . scabbard . . my husband owned no slaves.' . . examination . . before . . justice of the peace, at the house of . . prosecutrix; . . [403] 'Did you come into the house? . . I did. . . was some one with you? . . Mr. Collier was with me. . . told me that Mrs. . . sent for me.' . . one of the guard . . asked him if he was guilty, and he said he was, . . Another witness . . heard defendant tell . . that he went . . to steal a little." [401] "found guilty and condemned to be

hung. His counsel moved for a new trial . . also moved in arrest of judgment, . . The court overruled both motions,"

Reversed: [404] "The indictment . . [405] utterly fails to charge any assault whatever. . . She did not detail the facts, but simply stated a conclusion of law. . . not shown by any witness that the offence, if committed at all, was committed within . . Dallas county." [Johnson, C. J.]

Belfour v. Raney, 8 Ark. 479, January 1848. [480] "Sloan and Belfour, partners in the practice of medicine, . . claimed $102 75 . . for services and medicine rendered . . to Orange, a slave of . . intestate, . . [481] [latter] died . . January, 1844, . . Dr. Belfour attended upon him . . After the death . . Orange was left upon his place, by the administrators, to take care of the stock, goods, house, etc." [480] "February, . . taken very sick with the winter fever, . . ill for at least a month and a half. . . taken sick at Mr. Holderman's, in Smithville, . . removed to the house of his mother, [who] . . [481] kept a cake shop" "in the village, where he remained until his recovery, . . the mother . . came for the doctor to go and see him." [480] "Witness saw him administering medicine . . once in the presence of . . administratrix . . The slave recovered."

Held: [482] "after having received his services without objection, . . [administrators] will not be permitted to say they were rendered without request."

Beebe v. De Baun, 8 Ark. 510, January 1848. [514] "my attorney . . intimated . . that the only course left for me [to prevent a levy on my slaves] . . was to put the property out of the way. . . decided . . to send them by land to Pine Bluffs, and thence by water to New Orleans, in the custody of an agent"

Adamson v. Adamson, 9 Ark. 26, January 1848. [27] "his mother . . hired to [him] defendant two negro boys [in Maryland] in . . 1836 or 1837, which he took to Arkansas. . . for the first three years defendant paid his mother $100 each . . [28] and from that time to the 15th January, 1844, . . at $125 each. . . partly in money, and partly in merchandise, . . fall of 1843, he had informed [her] . . that he would not hire the slaves for another year at $125 each, but at . . $100 each per year. . . The court . . instructed . . [31] 'in the absence of testimony to show what amount was to be paid . . 1844, . . a proper criterion . . would be the price paid . . the year previous'"

Held: "no correct criterion" "The price of negro hire is quite fluctuating,"

Gaines v. Briggs, 9 Ark. 46, January 1848. In 1827, a negro girl, Rose, was given by a father to his daughter in South Carolina. She married, and [47] "moved to Arkansas, bringing Rose . . [husband] died . . 1846 . . a short time after," Rose and her children were "run out" of the state, at the widow's request.

Humphries v. McCraw, 9 Ark. 91, January 1848. [99] "1844, he went with old man Humphries on White river . . the old man said he

was taking some negroes down below to sell . . had started them on ahead to overtake and get on board a flat boat—he said he was taking them off to avoid an unjust debt" [96] "sold them, and . . brought back another negro . . also a stock of goods, . . [98] After the trial, all . . got mad . . McCraw threatened to whip one of the negroes, but old man Humphries swore he should not do it."

Merrill v. Dawson, 17 Fed. Cas. 86 (Hempstead 563), October 1848. [103] "the court . . doth find the said negro slaves . . to be of the following value, Old Jim [fifty-one years old], five hundred dollars; Governor [thirty-three years old], eight hundred and fifty dollars; Sandy [thirty-two years old], eight hundred dollars; Connell [thirty-one years old], eight hundred dollars; Tom [thirty years old], eight hundred dollars; Phoebe [twenty-eight years old] and her . . child Jackson, one thousand dollars; Beverly, another child of said Phoebe [born since 1841], fifty dollars; Catharine [twenty-nine years old], eight hundred dollars; Mary [twenty-six years old] and her . . child Henry [born since 1837], seven hundred and fifty dollars; Maria [twenty-seven years old] and her . . child Frances [born since 1837], nine hundred dollars; Eliza [twenty-nine years old], seven hundred dollars; Ransom [twenty-three years old], eight hundred dollars; Young Jim [twenty-two years old], six hundred dollars. . . the court . . doth find the value of the hire . . for Mary, seventy dollars; for Tom, one hundred dollars; for Maria, seventy dollars per annum; . . to be computed . . from . . 1842, . . the hire of Phoebe, . . seventy dollars per annum,"

Walworth v. Pool, 9 Ark. 394, January 1849. [395] "employed plaintiff to oversee his plantation . . for . . 1847, . . to pay him $500, and to furnish . . meat, meal, vegetables, etc." [397] "worth per month, six dollars, . . March, 1847, . . the Mississippi river overflowed . . and destroyed the crop: . . discharged"

Burton v. Lockert, 9 Ark. 411, January 1849. [412] "Burton, . . interested in a . . suit . . against . . Moody, . . 1836, for a family of negroes, . . and said family . . having been run off by . . Moody, . . Burton . . agreed to pay . . $250 if . . Lockert, would assist and get said negroes . . provided said Burton succeeded in said suit . . they were delivered to the sheriff"

Collins v. Woodruff, 9 Ark. 463, January 1849. [464] "Collins and Woodruff were engaged in running a saw mill, (by water power,) and . . boy was hired . . to assist them . . The negro, on the day . . he was drowned, was not engaged . . about the mill, but was left to employ his time as he pleased for the day."

Held: the hirer [469] "is entitled to a deduction for the residue of the term after his death."

Rose v. Rose, 9 Ark. 507, January 1849. Bill for a divorce, stating that the husband was [508] "in the . . practice of . . encouraging disobedience in his slaves [toward her]: . . [509] The witnesses . . testified that . . upon her complaint of disobedience and insolence on the part of the servants, [he] said she was a liar,"

Nunn v. Goodlett, 10 Ark. 89, July 1849. [91] Sam . . about thirty-eight years of age; Allen . . about thirty-eight . . Cinda . . about twenty-five . . Maria . . about sixteen" The owner avers that [92] "Sam was of the value of $720; . . Allen . . $300; . . Cinda . . $558; . . Maria . . $500."

Danley v. Rector, 10 Ark. 211, July 1849. [213] "In 1836, Col. D., my father bought . . and gave the negro boy [of dark copper color] . . to . . my brother . . in consideration of . . carrying the United States mail . . for . . route [for which] Col. D. was contractor. . . [214] about 17 years old [in 1843], . . [216] sold to . . Rector . . at sheriff's sale, . . 1844, . . for 508 dollars . . Henry was the third one sold, and he was put up on a table so that all could see him, was named and cried in a loud . . voice, so were each of the others"

Wilson v. Dean, 10 Ark. 308, January 1850. "Dean, a man of color, sued . . for his freedom, and obtained judgment. . . Wilson did not prosecute his appeal within the time prescribed." Judgment affirmed.

Jordan v. Foster, 11 Ark. 139, January 1850. "1846, defendant, . . for . . $1,000, conveyed to plaintiff . . Tom, . . about 11 years; Hannah, [[143] 'a likely mulatto girl'] . . about 8 years; Silve Amanda, . . about 4 years; and a girl about four years . . [140] warranted . . sound" Witness testified [143] "that, after she got large enough to walk, she always sucked her thumb; . . appeared to walk one-sided, held her arm crooked, . . Dr. Collins . . pronounced the disease paralysis, . . extremely doubtful whether she would ever recover; . . could be of little value to any one; . . [144] that persons . . not acquainted with the disease, might not notice it;" Held: damages may be recovered.

Pennington v. Yell, 11 Ark. 212, July 1850. [216] "1841, he levied on . . Dick, about seven years of age, and sold him . . 1842 [to Yell, the highest bidder,] for $180. . . charge of $67 50 for keeping . . 135 days, at 50 cents per day. . . [Yell] [218] sold the boy . . a day or two after . . for $5 less than he gave . . in order to pay costs . . for levying upon, keeping and selling said boy."

Prater v. Frazier, 11 Ark. 249, July 1850. In 1835 a resident of Tennessee deeded to his daughter a negro girl, seven or eight years old. She was brought to Arkansas. In 1848, the sheriff testified that she [252] "would hire for $100 without the child, $75 with it, per year. Child was about 2, woman 21 or 22 years old. . . [256] The woman was worth $600, child $100,"

May v. Jameson, 11 Ark. 368, July 1850. [369] "1844, . . Alabama, he recovered a judgment . . for a [man] slave [in Arkansas] . . assessed by the jury at $800,"

Charles v. State, 11 Ark. 389, July 1850. The indictment charged that Charles [391] "a slave, . . did . . a white female of about the age of fourteen . . assault, with the intent . . to ravish . . forcibly" Evidence of the prosecutrix: [392] "in company with four other school

girls, I went to Mr. Summerron's [to] stay all night. . . lying upon a bed in a row, on the floor, I lay on the outside. . . awakened by some one who took hold of my shoulder and tried to turn me over. . . I . . called for help" Summerron [393] "found . . mud on the window cill [*sic*] . . the person . . had escaped by the door . . found a foot track without shoes . . and . . a handkerchief . . belonging to prisoner, . . perfectly dry . . track was distinct . . to the prisoner's bedside in the cabin ['about twenty paces' away], and there lay the socks perfectly wet and muddy . . [394] I . . fastened the cabin door with a chain . . waked up Parson Kelly . . and my son . . to assist me to arrest the boy. . . called the prisoner out of his bed; . . sent for his master [from whom I had hired him] . . tied him to a post on the porch. . . [395] Dr. Conway . . found . . Charles chained . . his hands were tied with a rope, and his legs were chained. . . Charles . . said . . 'he had gone in there to wake master, as there was some person at the barn stealing something.' . . Witness brought him to town, and held the rope with which he was tied." He was [391] "convicted, and sentenced to be hung."

Judgment reversed, and the cause remanded: I. [404] "the act,[1] upon which the indictment was founded" is not unconstitutional. [405] "all that was designed to be understood by the provision in the constitution [2] was that, in case a negro should be convicted of a capital crime, he should not undergo other or greater punishment than . . a white man for an offence which would subject him to capital punishment." [404] "doubtless inserted . . [405] from a feeling of humanity . . to secure them against that barbarous treatment and excessive cruelty . . practiced upon them in the earlier period of our colonial history. . . [II.] [410] the accused used no force," [3]

Fowler v. Merrill, 11 Howard 375, December 1850. [379] "The valuation preparatory to the sheriff's sale [in 1841] was as follows:—

	Valued at	Sold for
Tom,	$800	$533.33
Phoebe and Jackson,	1,000	666.66
Mary and Henry,	750	500.00
Maria and her child,	700	600.00
Eliza,	700	466.66 "

Fowler, the purchaser, "answered, . . that, since the sale, the value of slaves generally, and these also, had depreciated at least one fourth; and that their hire, deducting necessary expenses, was worth, per annum, for Tom $70, Maria $50, Mary $40, Phoebe $40; and for the others, nothing. Badgett answers, also, that Phoebe was worth $400, Eliza $350, Jackson $65, . . and that their hire was not worth more than $40 per annum." [396] "the increase or offspring should belong to the owner of the mother;"

[1] Digest, ch. 51, pt. 4, art. 4, sect. 9.

[2] Art. 4, sect. 25. "any slave who shall be convicted of a capital offence, shall suffer the same degree of punishment as would be inflicted on a free white person, and no other;"

[3] Commonwealth *v.* Fields, vol. I., p. 169, of this series.

Cook v. Cook, 12 Ark. 381, July 1851. Bill for dower. In 1845, two years before his death, her husband conveyed fifteen negroes which [383] ["came from her, being hers at the marriage"] in trust, for the benefit of his children by a former marriage, "reserving to himself their use . . during his lifetime;"

Held: [388] "the husband's title to the slaves . . was . . absolute . . [389] Her rights were no greater in these slaves than in any others owned by her husband,"

Alston v. Balls, 12 Ark. 664, January 1852. On January 1, 1849, the defendants hired a slave for the year, promising, in writing, to furnish clothes, etc. and return the boy on January 1, 1850. In April "without . . any fault on the part of the hirer, [he] ran away and escaped; . . that the defendants exerted all reasonable means for the recovery"

Held: the hirer is bound for the hire and value of the slave.

Jones v. Mason, 12 Ark. 687, January 1852. [688] "Defendant says . . 'he did . . find . . rifle gun . . in the possession of . . [hired] slave . . in the employ of . . plaintiff, . . without . . having the written permission of . . owner[1] . . whereupon . . defendant did . . seize . . gun . . and having proved the fact . . before . . justice of the peace, . . justice . . did . . adjudge . . gun . . forfeited to the . . seizer'"

Held: the owner of the gun should have had actual or constructive notice of the proceedings.

Cornelius v. State, 12 Ark. 782, January 1852. "I got the information from the . . negro boy, . . I never offered the negro a bribe to give me information of any kind on his master, but told the negro I would not begrudge $10 or $20 if I could find out when there was a cow in the pen;"

Maulding v. Scott, 13 Ark. 88, January 1852. A negro girl was bequeathed to a daughter in Kentucky, in 1826, taken to Arkansas in 1830, and sold in 1834 for $500.

Scott v. Henry, 13 Ark. 112, January 1852. [119] "proposes [in 1847] to sell the [two] slaves . . for $1000, $250 to be paid . . hire them on boats until they earned . . the $750, with interest. . . [120] they could earn that sum in sixteen months or two years."

Whitfield v. Browder, 13 Ark. 143, January 1852. [148] "the negro was brought home to Stovall's [in North Carolina] every Christmas . . and thereafter sent back . . to Liggin's [in Virginia]." [143] "It was the belief . . in North Carolina, that possession of a year and a day would give title. . . [144] brought to Arkansas, with four children in 1835 or 1836,"

Allen v. Nordheimer, 13 Ark. 339, January 1853. [341] "Dick was originally the slave of Elizabeth Grierson [a Creek woman], . . she set him free, and they had cohabited together as man and wife for many years. This being prohibited by the law of the Creek Nation, east, they left the Nation, and settled among the whites, in Alabama. . . they followed the

[1] Digest, ch. 153, sect. 52.

Nation west, but had to leave it for the same cause, and went to live among the Choctaws. The marriage of an Indian and negro not being lawful among the Choctaws, they left . . and settled . . in Arkansas, . . They subsequently went among the Chickasaws, where Elizabeth died." In 1847, [340] " the General Council of the Kings and Warriors of the Creek Nation . . sanctioned . . a division of a large number of negroes among the brothers and sisters of the deceased, . . [341] declarations of Dick and Elizabeth that Dick had bought Dinah with his own money, . . but he had the title made to Elizabeth to keep . . his guardian, from taking the advantage of him."

Pleasant v. State, 13 Ark. 360, January 1853. [362] " a slave . . indicted . . for an assault with intent to commit rape upon . . a white woman." [371] " The offence is clearly made out, and all the material averments . . sustained . . unless it be the averment that she was a white woman." [363] " Prisoner's counsel . . asked [her] . . if she had not proposed . . to take from . . Milton $200, not to prosecute the prisoner, his slave: . . objected . . sustained . . Sanders . . testified that . . [364] had been . . living [with the prosecutrix and her husband] . . nor had he ever been caught in bed with her ' as he knows of,' . . [365] Yarborough . . testified . . that . . he saw . . Sanders, in a sliding position from the edge of the bed." Her husband told a witness that [364] " if Mr. Milton had given his boy up to be whipped, he should not have prosecuted . . that he would not have had it to have happened for $200. . . witness said, ' Would you take $200 not to prosecute ' . . consultation between [husband and wife and Sanders.] . . agreed . . Milton said he only gave $500 for the prisoner, . . could not afford . . $200 for his release, . . [365] they agreed to take $125,[1] which was agreed to be given, but was not done." [362] " convicted, and sentenced to be hung. . . [368] In support of the motion for new trial, affidavit of Milton . . that he could prove by several persons . . that [the prosecutrix] . . was an unchaste woman, unworthy of credit, . . affidavits of three persons as to the previous good character of the defendant,"

Judgment reversed, and a new trial awarded: [379] " For the error of the court, in refusing . . to allow the prosecutrix to answer the question . . if she had not proposed . . to take . . two hundred dollars not to prosecute . . also for the error in refusing to charge the jury, that . . they must be satisfied, from the testimony, apart from their individual knowledge or belief, that the [prosecutrix] is a white woman," [Watkins, C. J.]

Bingham v. Calvert, 13 Ark. 399, January 1853. [400] " one hundred and eighty dollars . . first . . of January, 1851, . . for the hire of the negro Jim."

Hooper v. Chism, 13 Ark. 496, January 1853. [497] " representing . . that she had lost her toes in consequence of their having been frost bitten, . . $330 00, the price agreed on, . . soon after . . [the purchaser] discovered . . that her legs were ulcerated, that she was deformed, one of

[1] " if he would run the boy off," same *v.* same, p. 244, *infra.*

her legs being shorter than the other, and owing to a malformation of the pelvis, incapable of bearing children without endangering her life, in consequence of which she was of little or no value. . . [498] the complainant . . was a practicing physican, had attended upon the girl previous to his purchase,"

Campbell v. Campbell, 13 Ark. 513, January 1853. Campbell's will, 1845: [516] "five thousand dollars . . to Viney, a yellow girl, . . I wish my sister Mary to take charge . . of her until she arrives to the age of fifteen years, when she is to be free and receive her legacy: . . Should . . Viney die before . . fifteen, . . that the legacy go to my sister Mary." "The testator died without any lawful issue. . . Viney was his daughter by one of his slaves, and at the time of his death was about three years old. . . [517] Campbell, while he was executor [1845-7], had removed Viney to parts unknown, and sold her . . she was declared to be a ward in chancery, and the court made a rule upon him to produce her . . he failing . . was imprisoned for contempt. The guardian ad litem . . being directed by the court to . . reclaim her, . . at length found her in Missouri, . . and recovered possession of her by *habeas corpus.* . . the bequest of five thousand dollars . . was virtually a bequest of the whole estate; . . [518] the court decreed that Viney was free by the will; that the . . five thousand dollars vested in her immediately on the testator's death;"

Affirmed: [521] "though the act of [January 20] 1843[1] implies a change of policy, as to the increase of free negroes, . . it is [not] a repeal by implication of the law authorizing emancipation,[2] . . Our statutes contain no . . prohibition [against emancipated negroes' remaining in the state], . . The act of 1843 was . . but a measure of self-defence, declaring that while this State will not be infested with the free negroes of other States, we will tolerate the evils resulting from the emancipation of our own slaves, until . . [522] the sense of the people may require an avowed change of policy." [Watkins, C. J.]

Jamison v. May, 13 Ark. 600, January 1853. [603] "the slave was brought . . to Arkansas [from Alabama]," before 1844.

Arnett v. Arnett, 14 Ark. 57, July 1853. Held: [58] "Dig. ch. 59, sec. 20, . . unlike that [section] which allows dower in real estate, . . cuts off all claim to dower where the slaves have been disposed of prior to his death, and this without her co-operation, or assent."

Abraham v. Gray, 14 Ark. 301, July 1853. [302] "action of debt . . for one thousand dollars. . . [303] October, 1850, . . negro Manual . . was delivered to . . the vendee . . [March, 1851] killed the vendee, and . . convicted of murder . . sentenced to death and executed," May 1851.

Held: "It does not divest the vendee of title, . . or affect it in any way."

[1] Digest, ch. 75.
[2] Act of 1839, Digest, ch. 63.

Lovette v. Longmire, 14 Ark. 339, January 1854. Held: [342] "the slaves [inherited by the wife], although . . exempt from the payment of debts contracted by the husband after the schedule of the slaves had been filed . . were nevertheless liable to the payment of . . a debt contracted before the passage of the act of 1846,[1] . . Independent of this . . Admit the slaves to have been the separate property of . . the wife . . that they were family slaves, valued on account of long and faithful servitude, above all reasonable compensation in damages, and that one of them was inhumanly separated from her infant child, still the sale . . by the sheriff would not deprive Mrs. Lovette of a full . . redress at law against the purchaser for possession of the slaves." [Walker, J.]

Ryburn v. Pryor, 14 Ark. 505, January 1854. [508] "action of *trover* . . instituted by Pryor . . for a negro woman and her two children. . . [509] Ryburn gave the negro woman to Pryor [his son-in-law] after the marriage [in 1826, in Tennessee]: . . 1836, . . Ryburn removed from Tennessee to Texas, and on his way received the negro . . from Pryor and took her to Texas with him, Pryor furnishing her with a horse to ride. . . 1838, Pryor and his father-in-law made a crop together, and the negro woman was put in as Pryor's . . 1843, . . Ryburn . . sent his son . . who came with a gun and took the negro forcibly . . Ryburn kept the negro . . till . . 1844, when he executed a bill of sale for her and her child . . for $750, . . [514] witness testified . . 1841 . . they were worth about $800. . . Another . . 1844, . . worth $1300. Another . . 1844 the negro woman was worth $650, or $700, and her child $300. . . [The son of] Ryburn testified that at the time of the trial the negro woman and her three children were worth about $1250. . . The jury . . 1852, rendered a verdict [for plaintiff] for $1875. . . sustained."

Austin v. State, 14 Ark. 555, January 1854. [558] "on the day before the killing, . . the slave talked improperly to his master [Watson], and . . when he returned from ploughing . . brought a club . . about the middle of the night the appellant walked out carrying a fire torch, and the stick . . Upon returning . . told his wife . . that he would not be taken by his master or any body else, and that he could knock the first man down that came into the room. The next morning, . . went to mill and returned, . . bundled up his clothes and took them away. . . went to the woods for . . poles . . as . . ordered . . by a witness, . . [559] Mrs. Watson . . had sent a message to her husband . . that the appellant had run away, . . he met the appellant . . with . . poles and an axe . . 'Watson and others advanced . . at the request of Watson, and for the purpose . . of correcting' him. . . he retreated, . . they . . ordered him to lay down his axe, . . he refused, and said he would not be whipped by Watson, or any body else, and that he would kill the first man that attempted to take him . . 'Payne, the slain, . . having in his hands a piece of pine plank . . drew his stick upon Austin. . . Austin warded off the blow . . with his left arm, and with his right struck Payne with the axe. . . [562] confessions . . obtained without . . having been prom-

[1] Digest of 1848, p. 713.

ised or threatened . . made to one of his guard . . when he was in chains and being brought to jail . . [563] the master . . was offered as a witness on the part of the prisoner; the State objected . . sustained" Austin was convicted and sentenced to death.

Scott, J.: [567] "when a slave is in rebellion . . whatever force may be necessary to bring him within the pale of subordination, graduated upon principles of law and humanity, let it come from what quarter it may, invades no right of the slave, . . [568] no . . excuse for the crime. For the error of the court below in refusing to allow . . the master, to testify, . . the judgment must be reversed, and the cause remanded" [566] "the matter of Watson's pecuniary interest lay to his credibility only and not to his competency as a witness."

Johnson v. McDaniel, 15 Ark. 109, July 1854. In 1849 Johnson and Grimes [113] "sent a number of negroes to the south in charge of . . their agent, for sale. On the way, he exchanged some of the negroes for Elijah [aged twenty-two] and the woman [aged twenty] . . and child [aged ten months], and not long afterwards he sold them to [McDaniel] . . for $1200, . . with warranty of soundness, . . Elijah was . . radically diseased, . . a negro of his age, etc., would have been worth . . from five to seven hundred dollars." The purchaser was put to the expense of [112] "three hundred dollars, for boarding, clothing, taking care of the slave, for medical attention bestowed upon him, etc. . . The Court found for the plaintiff [McDaniel], assessing his damages to $703 50."

McConnell v. Hardeman, 15 Ark. 151, July 1854. "The plaintiff . . sued the defendant in trespass, for the tortious act of his slave . . [who] [152] took, and rode off . . horse belonging to the plaintiff."

Judgment for the defendant, affirmed: [158] "the master's liability for acts of his slaves in which he did not participate, must be restricted to those trespasses which are indictable offences, or not being so, are specified in the statute.[1] . . In any future expression of the legislative will, it will be for that department to consider, whether the true interests of slave-holders would not be promoted by making them liable for all trespass committed by their slaves, thus removing many causes of jealousy and ill-feeling against the owners of that species of property, and at the same time protect them by limiting their liability, as at the civil law, to the value of the offending slaves." [Watkins, C. J.]

Ridge v. Featherston, 15 Ark. 159, July 1854. [160] "action of trespass . . the defendant had three negro men, all of whom frequently carried guns; that used by Wagoola, being a large rifle. A few days before the mare was [found] shot [in defendant's field], a witness heard Wagoola tell the plaintiff, that if he did not keep her away from the defendant's plantation, he, Wagoola, would kill her. . . a large bullet hole."

Held: I. [161] "The act of killing a horse, done wilfully and maliciously, is one of those indictable offences enumerated in the statute, . .

[1] Digest of 1848, p. 978, sects. 1-6.

for which, if committed by a slave, the master is made responsible in damages . . [II.] in a civil suit against the master, to recover damages for an unauthorized act of the slave, . . his statements . . explanatory of the act . . cannot be admitted against the master without indirectly making a negro a competent witness against a white man."

Hervy v. Armstrong, 15 Ark. 162, July 1854. [164] " the entire trespass . . was committed in the township of Marion, by the defendants, who composed a majority of the patrol, . . appointed . . for Jefferson township. . . [165] there was a patrol in Marion township, but they had never been on duty; . . The defendants proposed to prove that they had been invited over the line by some of the inhabitants of Marion township to attend and disperse what was reputed to be an unlawful assemblage of slaves. The Court below refused to admit such testimony, and properly so, . . The patrol of Marion township was the proper authority to be called . . The defendants arrested the plaintiff's slaves on their way home from a religious meeting, on Sunday, . . white persons present at the meeting, . . it was orderly and well conducted. The negroes were tied and whipped, not exceeding ten lashes each, . . [166] could not be said to be either cruel or excessive, though their cries and the sound of the blows were heard by persons at a distance. . . there is an implied license for them to attend religious meetings, when conducted in an orderly manner, on Sunday, and on that day it is an indictable offence [1] for masters to coerce them to labor. Altogether, it may be supposed the circumstances were such as to exasperate the plaintiff in a high degree. But he did not prove . . any special damage . . We apprehend the reason why the master cannot have a civil action for the battery of his slave without special damage, is, that it would encourage slaves . . to be insolent . . The elevation of the white race, and the happiness of the slave, vitally depend upon maintaining the ascendency of one and the submission of the other." [Watkins, C. J.]

Tatum v. Hines, 15 Ark. 180, July 1854. In 1848 the complainants removed with their slaves from Mississippi to Arkansas.

O'Neill v. Henderson, 15 Ark. 235, July 1854. In 1846 or 1847, the family removed with their slaves from Mississippi to Arkansas.

Folsom v. Fowler, 15 Ark. 280, July 1854. Stone, the owner of [283] " little Ben . . appears to have been averse to the sale [under execution . . and designed . . to run off the negro . . [285] The negro seems to have been very likely and of good habits, and an engineer and blacksmith, . . worth eleven hundred dollars, and his hire worth what it was fixed at by the Court [$36.25 a month]."

Daniels v. Street, 15 Ark. 307, July 1854. [309] " The complainant represents that . . George and Solomon were estimated at sixteen hundred dollars [in 1843, in Alabama,] though worth a thousand dollars each [in 1846], when Tann clandestinely obtained the possession of them, and the . . hire of each, was worth one hundred and fifty dollars a year from that time forward,"

[1] Digest of 1848, p. 369.

Roane v. Rives, 15 Ark. 328, July 1854. [329] " In . . 1838, Rives came to Arkansas [from Virginia], where he sold, among other slaves, . . Betsey and her child,"

Moss v. Sandefur, 15 Ark. 381, July 1854. [383] " Dunn . . had admitted he was the father of Eliza (daughter of Mourning, slave of heirs of Moss), and recognized her as his child, and . . had made application to the heirs . . to purchase . . Eliza, that he might manumit her. . . Dunn . . ' had . . placed in the hands of . . Mourning,' . . three hundred dollars, to be applied to the purchase and manumission of . . Eliza. That several months before the death of Dunn . . Mourning, . . hired to . . Dunn, brought to the respondent [Moss] . . three hundred dollars, and offered to leave the same in pledge . . as an indemnity against the death of . . Eliza, which respondent had refused to permit . . Dunn to take with her mother to Fulton, because, of the then unhealthiness of that place, . . That at the time of the death of Dunn, . . Mourning . . was in the service of respondent. . . That respondent went to Fulton . . five or six days . . after the death of Dunn, . . and that was the first time, after that event, he had seen . . Mourning; and [she] . . placed into . . [his] hands . . two hundred and eighty-two dollars, for safe-keeping."

Robins ex parte, 15 Ark. 402, January 1855. " The petitioner filed a motion for a writ of *habeas corpus,* to admit to bail his negro man, . . in the custody of the sheriff . . on an indictment for murder." Granted.

Wright v. Morrison, 15 Ark. 444, January 1855. [445] " was to oversee . . at the rates of five hundred dollars per annum. . . [450] The negroes, the teams, and the farm were committed to the care . . of the overseer,"

Dyer v. Bean, 15 Ark. 519, January 1855. [526] " 1848 . . removed to Arkansas [from Mississippi], . . with the negro woman . . and her children,"

Pleasant v. State, 15 Ark. 624, January 1855. See same *v.* same, p. 239, *supra.* [627] " The cause having been remanded, it was twice continued on the motion of the accused, . . June term, 1854, he applied for a change of venue, [so ordered] . . [628] convicted, . . [642] sentenced to be hanged."

Judgment reversed [655] " for the errors committed by the court, . . new trial," [644] " in this State, where sexual intercourse between white women and negroes, is generally regarded with the utmost abhorrence, the presumption that a white woman yielded . . without force, arising from a want of chastity in her, would not be great, unless she had sunk to the lowest degree of prostitution. . . [652] The court should have permitted the witness . . to answer . . questions . . as they referred to the *general character* . . for *chastity.* . . [654] The court excluded . . the owner . . from testifying in his behalf. . . In this, the court erred." [English, C. J.]

Pond v. Obaugh, 16 Ark. 94, January 1855. In 1839, Pond [95] " brought with him [Maria and her] . . increase . . (except Stephen,

who was mortgaged . . in South Carolina) . . 1844, . . sold . . [four] children of Maria, for $900, . . to prevent them . . from being sold in one of his drinking sprees, [he had previously] conveyed them . . in trust, for the sole use . . of his wife and children, . . [96] [The purchaser] had sufficient information to put him upon inquiry, . . [Pond's children] were clearly entitled to recover the slaves, or if made way with, their value."

Carter v. Cantrell, 16 Ark. 154, January 1855. In 1819, Harriet was sold, in Tennessee, for $500.

Hemphill v. Miller, 16 Ark. 271, July 1855. [279] " 1833, . . agreed . . that . . complainant would cause to be delivered . . in time to make a crop in . . 1834, a negro man slave, not under twenty, nor over twenty-three . . not having a trade, to be of the value of six hundred dollars,"

Reed v. State, 16 Ark. 499, July 1855. [504] " a party of Indians . . [505] encamped near Sexton's residence, . . The prisoner was prevailed upon by some white men, to go with them to the camp one night, to play the fiddle for them, that they might have a frolic . . The Indians . . were offended at the conduct of the white men, and drove them off, but insisted that the prisoner, who it seems was a negro, should remain, . . During the night he got into a difficulty with one of the Indian men, in whose tent he slept, and killed him." [500] " convicted of manslaughter, and sentenced to the penitentiary for four years."

Judgment reversed, and the cause remanded: there was no proof that the offence was committed in the county alleged.

Sadler v. Sadler, 16 Ark. 628, January 1856. [634] " sent for the boy Ben to come and wait upon . . [his master] Lucian, in his last illness. . . a negro boy . . came after Ben. . . said . . that his master . . requested witness to loan him his horse for Ben to ride over;"

Pryor v. Ryburn, 16 Ark. 671, January 1856. Ryburn got possession of slaves in 1843. In 1852, Abram, 26 years old, was alleged to be worth $1000. [676] " Jim, . . 21 years old, . . worth $800. . . George, . . 29 years old, . . worth $1000: Caroline, 25 years of age, and her [four or five] children, . . worth . . $1900: Leonard, 21 years, worth $1000: Tom, 50, worth $500: . . [1853, Ryburn] [684] avers the truth to be . . Tom, aged 69 years, value $150, hire . . deducting cost of clothing, medical attention and taxes, $30 per annum. Amy, 40, and sickly, worth $500, hire $40. William, 22, $900, hire $50. Jane died . . 1853, at 13, worth then $700, hire $30. Martha, 5, $400, hire nothing. Fanny, 2, hire nothing, and raising equal to value. . . [687] he purchased . . 1844, . . Julia and her child, . . at $750 in cash,"

Held: the adverse possession of slaves for five years, gives the party in possession the right of property thereto, by virtue of the act of December 19, 1846.[1] [694] " Ours was . . a new State, increasing its population by immigration mostly from the slave States. Slaves were being brought into our State for settlement or market, . . and changing owners among our

[1] Digest, p. 943.

own people. . . more numerous cases of hardship might have arisen had the statute been less comprehensive" [English, C. J.]

Price v. Notrebe, 17 Ark. 45, January 1856. [54] "That the . . plantation . . was actually overflowed three years out of four. . . that the slave property was in such a condition that it would have been detrimental to the estate to hire out the negroes,"

Ross v. Davis, 17 Ark. 113, January 1856. [115] "The defendant . . charges [in 1854] that . . Lucy was sorely diseased [in 1848] . . and was worth nothing in the way of hire for two years afterwards: . . that he paid out for medical aid . . $150; denies that she was worth over $500, and her hire for the four years preceding not more than $40 per annum;"

McNeill v. Arnold, 17 Ark. 154, January 1856. In 1840, [161] "Lizzy, aged twenty years; . . Thomas, aged twelve years; one girl, aged three years; . . Louisa, two years; . . Nathaniel, aged two months;" were bought, in Mississippi, for $900, for the separate use of Mrs. Burke and her children. [172] "Burke . . removed . . to Arkansas, in . . 1849 or 1850, bringing the slaves . . 1851, . . Burke sold the woman . . and her children, Louisa, Aga [about eight],[1] Eliza [about six], Phoebe [about four] and Ann [about two], . . for $2050,"

Machin v. Thompson, 17 Ark. 199, January 1856. In 1819, in South Carolina, Sarah and her increase were "conveyed to the separate use . . of Mrs. Machin for her life, and then to her children, . . [200] removed to . . Georgia, . . thence to Alabama, . . In . . 1843, . . Payne got possession of . . Celia [a daughter of Sarah], and without the . . knowledge of Mrs. Machin, took her to Memphis, . . where he sold her openly [to Thompson], . . in good faith, . . at her reasonable cash value . . he brought her to Arkansas, . . held the peaceable adverse possession" till 1853.

Held: the statute of December 19, 1846[2] vests the right of property in the possessor, as against all persons. The fraud of Payne does not prevent the operation of the statute.

Trammell v. Thurmond, 17 Ark. 203, January 1856. In Georgia, in 1810, [207] "his father . . also conveyed to respondent, . . Dave, (blacksmith,) . . 1812, . . removed . . to . . the Territory of Missouri, taking with them the slaves . . 1818 or 1819 . . removed with . . the slaves . . to Arkansas, . . [210] 1828, . . he took them to Louisiana, and hired them out."

Crabtree v. McDaniel, 17 Ark. 222, January 1856. [224] "two of the slaves . . were originally owned by . . McGhirt, a resident of the Creek Nation . . whose wife was a woman of that tribe." After their death, about 1841, their property was distributed among their children. [226] "the negroes . . came to the possession of McDaniel, his alleged wife . . being one of the distributees. . . 1842, McDaniel settled" in Arkansas. In 1853, [224] "he was about to remove to Texas, and carry the slaves . . with him;" See McDaniel *v.* Crabtree, p. 258, *infra.*

[1] 17 Ark. 183.
[2] Digest, p. 943.

Brunson v. Martin, 17 Ark. 270, January 1856. [274] " The overseer of the previous year had found it necessary to flog some of them for idleness and other faults common to negroes, . . had found them ' harder to manage than some negroes he had managed.' . . the day of the killing . . the plaintiff [Martin, the overseer,] said, at a store in the neighborhood [about 11 o'clock] . . that he ' had a rough and saucy set of hands to manage, and that, after that, if he ever overseed again, he would make the negroes obey him, or he would kill them.' . . he remained until two or three o'clock, and ' was drinking,' . . showed no signs of being intoxicated. . . The killing . . occurred . . soon after . . The plaintiff, having his whip in his hand, went into the field where the hands were picking cotton, . . said to Nath . . that he had ' come for his shirt: ' . . Nath replied, that he ' had pulled off his shirt to the last overseer.' The plaintiff, drawing a revolver, repeated . . [275] that he ' had come for his shirt, and intended to have it or hurt him.' . . Nath replied, ' shoot and be damned,' . . advancing upon the plaintiff, with some cotton in one hand, and nothing in the other, the plaintiff firing . . three or four times; until . . Nath was near enough to knock the pistol up . . himself falling down. . . proven, that Nath was a stout negro, weighing about 200 pounds, ' with bodily strength enough to crush the plaintiff down,' while the latter . . was at the time ' a cripple,' and that it was the general custom of overseers to carry weapons. . . the plaintiff . . rendered services as an overseer for the defendant, . . from about the first of March [1853], until he was discharged . . upon the killing of Nath, . . about the 15th of October: That they were worth from two hundred and fifty, to four hundred and fifty dollars; . . value of Nath . . from twelve to fifteen hundred dollars." Martin sued Brunson to recover the value of services rendered. He claimed only $250. [273] " the jury were . . instructed that a negligent killing of the slave authorized recoupment, . . that a killing without necessity would constitute such negligent killing." Verdict for the plaintiff, Martin, and judgment accordingly.

Affirmed: [273] " To determine from the evidence, whether the means used for overcoming the rebellion in this case, were graduated upon the principles of humanity,[1] was the appropriate province of the jury, . . [274] And although we cannot but say that we would be loath to subscribe to the verdict, it is still more difficult to say, that it is totally unsupported by the evidence, when we regard the legitimate province of the jury to judge exclusively of its weight." [Scott, J.]

Abraham v. Wilkins, 17 Ark. 292, January 1856. Will of Wilkins, who died in 1851, unmarried: [294] " that my negro woman, Sarah Jane, and her child, John, be emancipated . . as soon as John . . shall arrive at the age of twenty-one years; until which time he shall be in the charge of . . Abraham [executor], and be taught some trade, so as to never become a charge upon the community; but . . Sarah Jane shall be free from the time my debts shall be paid; and I request . . executor to see that . . Sarah Jane and John . . shall be . . provided for, in a . . suitable manner." Testator [297] " was a blacksmith, and afterwards an overseer:

[1] Austin *v.* State, p. 241, *supra.*

. . [Witness] Heard him say . . he intended to give Abraham all he had. Seemed to have more confidence in him, in relation to the management and care of his girl, Sarah Jane, by whom, he said, he had a child, and another, that died, than any one else. I told him, if he thought it was his child, he ought to free it himself, while living, and he said he intended to do so . . I told him these things were frequently neglected after a man's death, and referred him to a number of cases in this county. . . [315] the girl, Sarah Jane, and Bill, were given to him by John Lemay, with the express understanding, that they were to be set free at his death. . . John, was born . . after she had been given to testator." Dr. Purdom testified: [305] " He was not in possession of his mental faculties at the time will was signed." [319] " The jury returned a verdict against the validity of the will, and judgment was rendered accordingly." Affirmed.

Mooney v. Brinkley, 17 Ark. 340, January 1856. [345] " 1st of January, 1847, Mooney hired a negro man of Duncan for one year, to cook in the tan-yard, . . [352] the hire . . was $162. . . [355] The Master credited Mooney with: . . Hire of Hart's boy, for getting bark, etc., $18.75."

Lindsay v. Wayland, 17 Ark. 385, January 1856. [388] " that [defendant] Lindsay had the boy hired in the year 1853; that he ran off . . about the last of May, and was out between three and six weeks, and when he returned, he was much reduced in flesh, and looked feeble and emaciated. In a week or two after he returned from the woods, . . Lindsay . . purchased him of the plaintiff " " for $820, with a bill of sale, warranting . . sound . . He was kept employed on Lindsay's plantation during the summer, but not generally put at hard or heavy work, nor required to make a full hand, in consequence of his reduced condition. . . September . . Lindsay obtained a prescription, from his family physician, . . for the boy, saying he had a chill. Two or three days after . . the physician was called in . . found him sick in bed, with symptoms of typhoid fever, of which disease he died, about twenty-two . . days afterwards. The point in controversy, before the jury, seems to have been, whether . . the seeds . . of the disease . . were contracted while he was run off, by exposure, alternate hunger and excessive eating, anxiety of mind, etc., . . and consequently, existed in him at the time of the sale," [386] " the jury returned a verdict in favor of the plaintiff for the full amount of all the bonds," executed by the defendants, for the boy.

Judgment thereon affirmed: [389] " We are inclined to think that the weight of evidence is against the verdict, but it is not totally unsupported by the evidence,"

Bomford v. Grimes, 17 Ark. 567, January 1856. [568] " three others of the family sick [in 1853] besides Booth, . . in an adjoining room . . They were [[569] ' free '] colored [[570] ' yellow '] girls, . . and were said to be his daughters; . . had been raised in his family—were recognized as part of it by Booth, and he had supported them, . . [569] the remaining five [patients] were his slaves. . . all afflicted with flux, . . [570] for about fifteen days after the death of Booth; and one or the other of the plaintiffs [physicians] visited them every day "

Held: [571] "For medical services . . to minor children, after the death of the intestate, the physician must look to their guardians, . . [572] As to the slaves . . when the administrator finds it necessary to call in medical assistance . . it is his duty to do so, not only as a matter of humanity, but by way of preserving them as property"

Wells v. Fletcher, 17 Ark. 581, January 1856. "the administrator . . represented that lands were appreciating in value, and . . it would be most to the interest of all parties interested in the residue . . [582] after . . debts . . paid, that these slaves [mother and two children, appraised at $1900], rather than lands, should be sold." So ordered.

Hannah v. Carrington, 18 Ark. 85, July 1856. In 1843, [91] "Carrington [of Arkansas] . . executed a mortgage to . . Easely of Virginia, upon forty two slaves, among them Peter and Iverson, . . [93] worth $900 each, and their annual hire $125 each. . . [97] A portion of the slaves . . was still [in Arkansas] . . the others had been removed to a plantation . . on Red river, in Texas."

Bone v. State, 18 Ark. 109, July 1856. Bone, a slave, [110] "was indicted . . for an assault and battery upon Caroline Brown, a white woman." She testified that [114] "the conduct of Bone toward her was rude and insolent," He was found guilty, [110] "and his punishment assessed at three hundred lashes: but the Court regarding it as excessive, reduced the number . . to seventy-five. . . and judgment rendered against his master for the costs of the prosecution, etc."

Judgment reversed, and the cause remanded with instructions to arrest the judgment, etc.: [111] "Though inferior in mental and moral endowments to the white race, and occupying a subordinate position, in the order of Providence, yet they are rational beings, . . responsible for crimes committed . . [112] if the injured party would punish the slave [guilty of an offence less than felony], and subject the master to damages and costs by means of an indictment against the slave, the refusal of the master to compound,[1] etc., is a pre-requisite to the institution of the prosecution. . . [114] he no doubt deserved to be flogged . . but it was the duty of her, or her husband, or some one acting in her behalf, to complain first to the master, and give him an opportunity of compounding, etc., and of chastising his own slave:" [English, C. J.]

Sarah v. State, 18 Ark. 114, July 1856. [115] "Sarah, . . the property of . . Sims, was indicted . . for an assault and battery upon Mortica Brown . . son [child] of Mrs. Brown,"[2] "The facts . . are substantially the same as in . . Bone . . *vs.* the State, . . and for the same error, the judgment . . must be reversed, and the cause remanded with instructions to arrest the judgment, etc. But there is an additional question . . the master . . [116] was introduced as a witness . . and the counsel of Sarah . . proposed to ask him a question . . intended to draw from him the statement that his slave committed the assault and battery by his direction: but the Court ruled out the question . . [117] the slave cannot

[1] Digest, ch. 51, pt. 12, sect. 4, p. 379.
[2] See preceding case.

[thus] . . exempt himself from amenability to the law . . But . . [118] he ought not, in justice, to be punished so severely, as where the crime is voluntary on his part." [English, C. J.]

McRea v. Branch Bank, 19 Howard 376, December 1856. [377] " Bracy conveyed certain negro slaves to one Gale, in trust, . . The trustee afterwards sold some of the slaves . . to reduce the debt; but . . in . . 1846, Bracy privately left . . Alabama, and carried away with him the residue of the slaves, . . He appears to have been for a time in . . Mississippi. . . in 1847 he went to Louisiana; and in . . 1848 he removed with these slaves to . . Arkansas, where he employs them in making some improvements on a tract, where he and they resided."

Blackburn v. Morton, 18 Ark. 384, January 1857. A slave, aged about fifteen, was brought from Alabama in 1848 or 1849 to Arkansas, and was sold in 1849, to Blackburn who [389] " resided in the Cherokee Nation ". He was worth from $800 to $1000 in 1855, and his hire " was worth from $100 to $125 per annum."

Jackson v. Bob, 18 Ark. 399, January 1857. [402] " 1851, Bob . . commenced an action of trespass . . for his freedom, . . Brown . . deposed . . On the division of [his grandfather's] . . estate [in Virginia, in 1825,] . . Bob [about 10 or 12 years old] fell to witness. . . took him to Arkansas, [in 1834] and disposed of his claim to his services to . . Hamilton, . . for $600 in goods, . . after informing Hamilton . . what was the term of his service. Witness conveyed his claim . . by an instrument of writing, . . [403] 'I, . . Hamilton, do bind myself, heirs, . . to have . . Bob . . appraised six years after date [1835] by disinterested persons, and when said negro shall have worked out the sum . . to set him free, and in case of non-compliance . . I bind myself, my heirs, . . in the sum of six hundred dollars' . . [Another witness] [404] stated, that Brown said . . that Bob was left to him by his grand-father's will, and by it was to be free [at 21, 'after which he was to work out his value'] . . Whilst [another] witness was clerk of Sevier county, he was handed the original of the instrument executed by Hamilton . . to be recorded . . but on the next day Hamilton told him not to record it, that he would not pay for it. Witness kept the instrument until defendant got Bob, . . defendant asked him for it; . . never returned it. . . [405] His hire from . . 1840 would average $150 per annum. . . Bob was worth in 1836-7-8 $600 or $700. Negroes were then low. After Hamilton's death [1846], his negroes were brought to the court-house . . and sold under execution. Witness thought Bob had run off to Texas, and was not present . . [Hamilton's daughter] wanted her father to give her Bob, but he said 'he will do you no good, as by right he ought to be free.' Bob ran away in 1845, and . . Hamilton . . while whipping him [for it], said . . that though 'Brown said you were entitled to your freedom, I will not set you free, and will show those legs that they shall not run away from me.' . . Bob had run away . . once from Hamilton, once from his widow, and once from defendant. Was gone but a short while each time. . . sold under execution . . 1845, and bought by Brittin and Royston." Jackson " got

him of Brittin for fees due him as sheriff." [402] " 1853, verdict in favor of the plaintiff, and judgment . . that he be liberated,"

Reversed, and the cause remanded: I. [410] " the slave cannot establish his emancipation by the mere declarations of the master, . . [II.] [413] If the master contract . . that the slave shall be emancipated upon his paying to his master a sum of money, or rendering him some stipulated amount of labor, although the slave may pay the money, . . or perform the labor, yet he cannot compel his master to execute the contract, because both the money and the labor of the slave belong to the master and could constitute no legal consideration for the contract." [English, C. J.]

Redmond v. Anderson, 18 Ark. 449, January 1857. A negro man was sold in 1849 for $800.

Harriet and others v. Swan, 18 Ark. 495, January 1857. [499] " The appellants' claim to freedom is based upon the following . . instruments, . . [I.] ' I, Gilbert Barden, . . having the intention that my slaves . . Isaac, of a black complexion, about forty-six years old, and Harriet . . of black complexion, about twenty years old, and her two children, a girl . . of yellow complexion, about six months old, should be free at the death of my wife, . . do hereby give unto the . . slaves, . . after the death of my . . wife, . . their entire freedom, provided they continue faithfully and obediently to serve . . as dutiful slaves to her during her life;" Signed and sealed, 1838, in the presence of two witnesses; recorded January, 1839. II. [500] " I, Gilbert Barden, hereby declare that I . . give to . . Harriet, when she shall obtain her freedom under said deed, . . about twenty-nine acres, . . [501] and her heirs forever." Signed and sealed the same day as the deed. III. "Another instrument . . signed and sealed by [the wife] . . June, 1839, and referring to the two foregoing . . and the death of Gilbert Barden, declared . . that for the purpose of giving his intention effect . . [502] that they had been obedient and dutiful . . and that she desired that it should be taken that they had continued so up to the time of her death, unless, she should, before that time, demand a return of the instrument of declaration from . . Baker, . . held by him subject to her order. . . IV. last will [of the widow] . . made . . 1840, . . probated . . 1851, . . That . . Isaac and Harriet, should be emancipated . . immediately after her death, and that . . [five] children of Harriet, should be set free, as they . . arrive at the age of twenty-one years. That said children of Harriet and other children of hers, . . thereafter born, and the children of the children . . should be hired out until . . twenty-one . . and that, after paying the expense of raising said children, one-half of their hires . . to the trustees of . . [Methodist Episcopal] church, and the other half to the children." Her dower had never been set apart to her, nor had her administration of her husband's estate ever been closed up. [499] " the Chancellor found the issues, upon the question of freedom, against the appellants,"

Affirmed: I. the deeds were never proven or acknowledged in court as prescribed by the statute;[1] II. the appellants have no claim under the

[1] Steele and McC. Dig., sect. 20, p. 526.

will, because the widow [505] "was a trustee to preserve the estate for those beneficially interested." There was no adverse possession on her part, so that the statute of limitations cannot avail the appellants.

Biscoe v. Royston, 18 Ark. 508, January 1857. Between 1843 and 1851, [518] "none of the [twenty-one] slaves had died, but nine children had been born,"

Wilson v. Anthony, 19 Ark. 16, July 1857. [19] "Wilson went to . . Missouri and purchased [for himself and Anthony] twenty-three slaves . . 1839, they made a division . . Anthony receiving ten . . at the aggregate value of $6,437 50. . . [20] a very sorry lot of negroes."

Denson v. Thompson, 19 Ark. 66, July 1857. "1810, her father [in North Carolina] . . gave [her] . . three slaves, . . they removed to . . [67] Georgia, taking the slaves . . 1844, . . emigrated to this State,"

McLure v. Hart, 19 Ark. 119, July 1857. "action . . on a physician's bill . . for medical services . . $100 charged . . [120] evidence proposed to be introduced by the appellant . . that [Hart] . . so conducted himself as a physician in the treatment of the patients, being slaves . . as by his unskilfulness, to cause them to be lost to the appellant," Rejected, as "no notice was given that the defence of *recoupment* would be relied on." Verdict for appellee. Judgment thereon affirmed.

Daniel v. Guy, 19 Ark. 121, July 1857. Suit for freedom, brought by Abby Guy and her four minor children. [123] "The form of the action was trespass for false imprisonment,[1] . . Stanley testified, that several years ago, Abby spoke to him to move her and her children: he asked the defendant if he could do so, and he said he had nothing to do with her. . . Abby was working for herself, making and selling her own crops. Plaintiffs passed as free persons. The oldest girl boarded out, and went to school. They lived eight or nine years on the Bayon [Bartholomew], visited among white folks, and went to church, parties, etc.,—should suppose they were white. They lived part of the time with a man named Guy, and Abby passed as Mrs. Guy, . . Here the plaintiffs were personally presented in Court, and the judge informed the jury that they . . should treat their . . inspection of plaintiffs' persons as evidence; . . [124] Abby was never named in making the [tax] lists [of defendants' slaves]. . . when [Guy] . . died, he gave her a tract of land, etc. . . Oats testified . . he hauled some cotton for Abby. A year afterwards, she wanted him to move a fence. Having heard that defendant had control of her, witness . . asked him who would pay . . He said he had nothing to do with it. Witness told him they called her a negro. He said they could not prove it. That she could make her own contracts, and pay her own debts out of her property, and that witness could deal with her as he pleased. . . had lived in this State [since 1844] . . except a year or two past, they moved to, and lived in Louisiana. A short time before suit, defendant took possession of them as slaves, . . [125] [Witness for defendant] . . knew Abby's mother, Polly, . . a shade darker than Abby. Could not say whether Polly was of African or Indian extraction.

[1] Digest, ch. 74.

. . [Another] Knew . . both as slaves. Polly had dark straight hair—had a curl on the side of her head. . . wore her hair long, with a comb—was . . the cook, usually wore a cap, and took good care of herself . . Had seen persons darker than Abby without any stain of negro blood. . . [126] Abby came with defendant from Alabama to Arkansas. . . her mother . . was . . of the complexion of a dark white person. . . [127] Dr. Newton [for the plaintiffs] . . The hair never becomes straight until after the third descent from the negro, . . The flat nose also remains observable for several descents. . . The defendant introduced the will of his father, . . [probated] in 1821, . . devised Abby as a 'negro girl slave' to his daughter . . [128] bill of sale . . 1825, conveying to him, for . . $400, . . 'one negro girl named Abby, thirteen years old,' . . the Court . . instructed . . If the jury find . . that the plaintiffs had less than one-fourth of negro blood in their veins, the jury should find them to be free persons upon that fact alone—it being *prima facie* evidence of freedom—unless defendant . . had proven them to be slaves . . If . . less than one-fourth negro, . . defendant can only prove them to be slaves, by proving . . that . . plaintiffs are descended from a slave on the mother's side, who was one-fourth negro or more, . . [129] the Court refused to give . . [136] the *first, second* and *third* instructions moved by the defendant . . [that] if Abby's mother was always held and treated as a slave, and was of negro extraction, and if Abby was so held, treated and acted, etc., . . this was prima facie evidence that she and her children were slaves, unless they were emancipated." [123] "verdict in favor of the plaintiffs, and judgment that they be liberated."

Reversed, and the cause remanded: I. [130] "The 12th section of the act regulating suits for freedom[1] declares that: 'If the plaintiff be a negro or mulatto, he is required to prove his freedom.' . . [131] By the first section of *chap. 75, Digest,* a *mulatto* is defined to be a person . . not full negro, but who is *one-fourth* or more negro. . . [133] The legislature, in the acts[2] referred to, (except in *sec. 1, ch. 75, Dig.*), . . have manifestly used the word in a more latitudinous sense, . . [134] they meant to embrace . . persons belonging to the *negro race,* . . of an intermixture of white and negro blood, without regard to grades. . . the following would be safe rules of evidence. 1. Where a person held as a slave, sues for freedom, and it manifestly appears that he belongs to the *negro race,* . . he is presumed to be a slave, . . 2. If it appear that he belongs to the white race, he is presumed to be free. 3. If it be doubtful, . . there is no basis for legal presumption, . . but it is safest to give him the benefit of the doubt, . . [II.] [136] The Court should have given the *first, second,* and *third* instructions moved by the defendant. . . [137] If . . the Court had not erred in its instructions . . we should not . . disturb the verdict."[3] [English, C. J.]

Spence v. Dodd, 19 Ark. 166, July 1857. [167] "Received, . . 1853, six hundred and fifty dollars, . . for Henry, a negro boy, about 20 years of age." A month or two later he was sold for $900.

[1] Digest, ch. 74.
[2] *Ibid.,* pp. 331, sect. 9; 340, sect. 1; 378, sect. 1; 380, sect. 8; 576, sect. 8; 706, sect. 4; 1001, sect. 25.
[3] See same *v.* same, p. 261, *infra.*

Berry v. Diamond, 19 Ark. 262, July 1857. Diamond hired two slaves to Berry [263] " for the year 1854. . . That after . . the delivery of the negroes . . they ran off and went to the residence of [Diamond] . . who, before delivering them to [Berry] . . who sent for them, told the negroes, that if . . Berry, should hit them a lick, to come home again. . . July, . . the negroes again ran off, and went to the residence of [Diamond] . . who kept . . them, and when . . Berry, again sent after them, refused to deliver them up,"

Williams v. Cheatham, 19 Ark. 278, July 1857. [279] " California gold has so rapidly cheapened the price of money . . it requires fully double as much money to buy a negro, . . as it did [in 1851] . . [280] $1200 was [then] the full value of the slaves, . . [281] he gratuitously signified his willingness that the negroes might be redeemed within six or twelve months . . in order doubtless to minister to Mrs. Williams' natural distress of mind in parting from two girls she had raised in her family from their infancy." [Scott, J.]

Gray v. Adams, 19 Ark. 289, January 1858. [291] " the husband . . (by her consent) brought the slave from Mississippi to Arkansas, and sold . . him . . 1848."

Bob alias Robert Crow v. Powers, 19 Ark. 424, January 1858. Deed, signed and sealed by Eli Crow, August, 1853; acknowledged by him before the Circuit Court, September, 1853: [429] " in consideration of faithful services and attention rendered me by my slaves, . . and from motives of humanity and benevolence towards them, [I] . . hereby do emancipate . . Bob, aged about 37 years; . . Mariah, 34 years old; . . Patsy, aged about 33 years; . . Nancy, . . about 15 years; . . John, . . about 19 years; . . George, . . about 19 years; . . Lewis . . about 14 years; . . James, . . about 8 yèars; and . . Joe, . . about 6 years; . . and fully discharge . . from all slavery . . after my death." [435] "After the Court below refused to permit the plaintiff to read to the jury the deed . . the plaintiff introduced . . last will . . of Eli Crow, . . duly probated [1856] . . ' Having heretofore, by a deed of emancipation, manumitted . . all the negroes . . in my possession . . [436] and being desirous that said negroes . . shall, after my death, enjoy their freedom, . . I do hereby . . set [them] free . . and . . desire my executors to protect them, and while in this State, to become responsible by bond, or as the law . . may require for their safety, and if they . . desire to leave Arkansas, and emigrate to a free state, I will that my executors assist them in so doing.' "

Judgment in favor of the executor, reversed, and the cause remanded [442] " at the cost of the appellee." " The plaintiff is entitled to his enlargement under the deed, . . subordinate to the rights of creditors, existing when he was emancipated,[1] . . But in such case the Court will not decree a sale . . but will direct them to be hired until a sufficient fund will be raised to discharge the debts with . . interest." [Hanly, J.]

[1] Digest, ch. 63, sect. 3, p. 476.

Boyd v. Whitfield, 19 Ark. 447, January 1858. [457] "Stovall [of North Carolina] devised Peggy to his daughter [1819] . . for life, and at her death, to her children, . . had loaned [her to] his daughter [in Virginia] . . many years before his death, . . Peggy . . occasionally going to Stovall's at Christmas: . . [Stovall's son-in-law] died about . . 1821, and Peggy was sold . . to pay his debts, . . [to] Shelton, who . . sold her to Easley," [454] "1836, Easley sent from Virginia . . into Arkansas, . . Peggy and her four children, . . sold [them] . . to . . Vautier, . . upon credit, . . could not pay . . [455] the slaves were taken to . . Louisiana, . . and purchased by Williamson [his surety], at . . a sale made by the parish judge . . 1841, . . sold to complainant . . [456] without his suspecting that there was any adverse title to them, until . . 1847, . . [458] Peggy and her children were worth $3,850,"

Rheubottom v. Sadler, 19 Ark. 491, January 1858. [492] "a declaration, in assumpsit, . . [494] proven that in the winter of 1849, plaintiff's testator hired a negro man to the defendants, . . partners in the gold digging business in California; . . the defendants were to pay, and did pay . . in advance $500, for the hire . . for 100 days; after the close of which time . . to . . pay to testator, the one half of the negro's earnings, and bring him with them to Arkansas, on their return . . [495] That they arrived at the Isthmus of Darien, . . on their return home, with the negro, . . December, 1851, where . . [one] defendant . . started back to California, taking the negro with him, and the other defendants came on home. That the negro . . remained [in California] ever since. . . There was no proof . . that slavery was abolished in California during the period of the hiring." Judgment against all of the defendants. Affirmed.

Morine v. Wilson, 19 Ark. 520, January 1858. "that complainant owning certain slaves, and being a refugee from the Island of St. Domingo, ignorant of our language and laws, and uneducated, and of weak understanding, was induced . . to execute a deed of gift . . 1838, for the aforesaid slaves,"

Gary v. Stevenson, 19 Ark. 580, January 1858. "The complainant alleges . . that he is . . about sixteen . . 'a white person,' . . [582] prayed for injunction against all the defendants [[581] 'claiming him as a slave,'] from commencing any suit for the recovery of the possession of him . . Stevenson, answered . . denying . . and insisting . . that he had African blood in him, . . born of a slave woman . . Susan, . . [583] Evidence for complainant. Dr. Brown . . could discover no trace of the negro blood in his eyes, nose, mouth or jaws—his hair is smooth and of sandy complexion, perfectly straight and flat, with no indications of the crisp or negro curl: his eyes blue, his jaws thin, his nose slim and long. . . Should suppose it would take at least twenty generations from the black blood to be as white as complainant. . . Doctor Dibbrell . . [584] would judge him to possess a small amount of negro blood; not more than a sixteenth, perhaps not so much; would not positively swear he had any at all, . . eyes grey and clear, upper lip rather thicker than

in the white race—temperament sanguine . . Evidence for defendant. Jesse Turner . . 1848 . . bought Susan . . from Holman, [who] . . informed [him that she was] . . a mulatto and a slave, . . about two years ago emancipated her in accordance with the laws of Arkansas. . . of very light complexion, has straight hair, . . rather thick lips and coarse features. . . [585] did not assert any . . claim to freedom, . . Susan always recognized [complainant as her son] . . and he, Susan as his mother. . . would not have taken him to be of African descent, but having so heard, . . he had concluded that he was very slightly touched. . . Holman . . proposed to sell [to Bishop] Susan and a child of hers, then about one year old, but did not offer to sell the complainant, saying . . that . . when he bought Susan and her other child, . . complainant was given in to him . . on that purchase, and that he had promised the former owner . . to let the complainant go free at twenty-one years old, . . [586] that, nevertheless, the complainant was a slave for life. He did, . . however, sell the complainant to Dr. Stevenson . . about . . 1850, in whose possession, as a slave, he has been . . until he absconded and instituted this suit." Bill dismissed.

Affirmed: "the preponderance of the testimony is, that he belongs to the [negro race.] . . the presumption of law, that he is a slave, at once attaches,"

State v. Cadle, 19 Ark. 613, January 1858. Indictment [1] [614] "That . . Cadle, . . a white person, . . 1856, . . did harbor certain slaves . . [615] without the consent of the owner, or the overseer" The indictment did "not specify the names of the slaves, or the name of their owner or overseer." Quashed.

Case v. Maffitt, 19 Ark. 645, January 1858. "steamboat . . indebted to him . . $17 50 for a half month's service of his boy Flan, as cook on said boat,"

Anderson v. Dunn, 19 Ark. 650, January 1858. [660] "in 1838 . . he had run all his father's negroes to Arkansas, . . and wanted to get his father there, . . [661] [who was] greatly involved in debt in Alabama,"

McDaniel v. Parks, 19 Ark. 671, January 1858. [672] "first of January, 1854, Finn employed the plaintiff to oversee his plantation [on Red River] for twelve months, for . . $350. . . April, . . discharged . . The witnesses state that the usual price for overseeing such a plantation, was from $300 to $400 per annum, . . [674] One . . testified . . That it was usual [on the River] to keep the same overseer the entire year. . . That he had known Finn to have four or five overseers in the same year."

Howell v. Howell, 20 Ark. 25, January 1859. [27] "1851, she purchased . . with $400 . . a negro woman . . and her child"

Moss v. Ashbrooks, 20 Ark. 128, January 1859. [131] "In 1843, . . he went to Missouri, received Caroline and her children from the administrator . . brought them to . . Arkansas,"

[1] Pamph. Acts, 1854, p. 38.

Ewell v. Tidwell, 20 Ark. 136, January 1859. In 1843 Jonathan H. Koen removed from Louisiana to Arkansas with his negroes. He died in 1853, and [143] "bequeathed to . . [thirteen] negroes (whom the will declares to be free), the *residium* [*sic*] of his estate; consisting of lands, the negro defendant, Charles, and other personalty." [142] "The negro defendant, Edmond, was neither emancipated nor disposed of by Koen's will. He claimed his freedom outside of it; and the proof shows him to be a slave;"

Held: free negroes in this state may hold real and personal property, except negroes, and make contracts; but [144] "the ownership of slaves by free negroes, is directly opposed to the principles upon which slavery exists among us," "slavery . . has its foundation in an *inferiority of race.* There is a striking difference between the *black* and *white* man, in intellect, feelings and principles. In the order of providence, the former was made inferior to the latter; and hence the bondage of the one to the other. . . The bondage of one negro to another, has not this solid foundation to rest upon. The free negro finds in the slave his brother in blood, in color, feelings, education and principle. He has but few civil rights, nor can have, consistent with the good order of society; . . civilly and morally disqualified to extend protection, and exercise dominion over the slave. . . Koen . . died intestate as to . . Charles" as well as Edmond. [Compton, J.]

Clinton v. Estes, 20 Ark. 216, January 1859. [247] "plaintiff [[249] 'over seventy . . and subject to fits'] . . 1849 . . told him that he had made the trade with his son John G., . . [who] was to pay him $1,800 . . furnish him a house to live in . . support him . . [249] and at his death to set old Milly free." [229] "had no white family living with him. . . [248] The bill of sale made no mention of the important considerations to be given . . in addition to the $1,800" A year later, [222] "John G. Estes, Clinton [to whom John G. had sold the negroes for $3200 or $3300] . . and others, took the negroes from plaintiff's, on the Osage river, in Missouri; . . [223] found them on the bank of the river, on Sunday evening. The negroes were going across the river to a meeting. . . nabbed six of them and put them in a room on the boat . . went up to the house, and got the old woman, . . [224] [Clinton] said that he knew he could not hold the negroes in Missouri, but that if he could succeed in getting them south, he would ask no odds. . . that it would be the means of separating plaintiff and old Milly." The plaintiff brought an action of replevin. Verdict and judgment for the plaintiff. Affirmed.

State v. Goff, 20 Ark. 289, January 1859. "indicted . . for laboring on the Sabbath, etc.[1] . . Goff was a poor man and had no cradle of his own, . . when his neighbor quit cutting on Saturday evening, Goff got the cradle and hired the negro to cut for him the Sunday following;" Acquitted. Judgment on the verdict, reversed, and the cause remanded.

[1] Gould Dig., p. 373, sect. 1.

Sanders v. Sanders, 20 Ark. 610, October 1859. The case of Lovette *v.* Longmire[1] overruled, so far as [611] "it was held that a Court of Chancery has no jurisdiction to enjoin the sale of slaves, held as the separate property of the wife, under an execution against the husband. . . the remedy at law by damages would be utterly inadequate, . . [613] from the very nature of the property itself, Chancery is authorized to interfere;"

Atkins v. Guice, 21 Ark. 164, January 1860. Will, executed in 1845, by Abner Chapman, [171] "a trader in the Creek Nation, where he resided:" [169] "considering . . of a promise made my negroes, when purchasing them, that I would not carry them from their native country, request my executor . . to suffer them to choose their masters, within their own country," [177] "the payment [to certain legatees] . . was not made in money, but in slaves belonging to the estate, . . And in order to comply in form with the provision of the will that the slaves should be sold in the Creek Nation, . . the three slaves were transferred, by bill of sale, from [the executor] . . to . . a resident of the Nation, and by him" to the legatees.

Bell v. Greenwood, 21 Ark. 249, May 1860. Held: a court of chancery has jurisdiction to enjoin the sale of slaves levied upon under an execution against another person.

Watkins v. Bailey, 21 Ark. 274, May 1860. [275] "that Mrs. Watkins, when a feme sole, hired a slave to Rogers for . . 1856. That appellee, . . a physician, was called in by Rogers, . . That the negro, at first, had a chill, but after appellee had attended him for some time, . . got worse, Rogers informed Mrs. Watkins, . . and she directed Dr. McRae to be employed, . . who . . was afterwards paid . . by Mrs. Watkins. . . [276] witnesses testified that there was no custom for owners to pay doctor's bills for attending servants whilst hired out; but mentioned similar instances of the owners paying . . without express contract for that purpose." Judgment in favor of appellee for $31 65. Reversed.

Tatum v. Mohr, 21 Ark. 349, July 1860. [351] "1856, . . an exchange of slaves. That plaintiff gave the defendant . . Alfred worth $1200, for . . [352] Henry, valued at $900, and his note for $300, . . [354] Several physicians who attended . . Henry . . before his death, gave it as their opinion that he was afflicted with hereditary scrofula, though . . they might be mistaken." [353] "Defendant proposed to prove . . that . . Alfred . . was of no value whatever, which the court excluded;"

McDaniel v. Crabtree, 21 Ark. 431, July 1860.[2] [432] "two of the [seven] negroes when taken were in the field, one was a cook, another a nurse, and others were children too small for field work. . . [435] he was delayed . . in sending his [thirty] other servants [[436] 'including twenty working hands'] to Texas . . in 1853,"

[1] See p. 241, *supra.*
[2] See Crabtree *v.* McDaniel, p. 246, *supra.*

Williams v. Miller, 21 Ark. 469, July 1860. [471] "that the obligation [for $450] declared on, with another for the same amount, . . which had been paid, were executed for the price of a female slave . . warranted to be sound, but . . by reason of . . unsoundness (a disease of the womb) her actual value was less than the amount . . which had been paid," Judgment for defendant, affirmed.

Phebe v. Quillin, 21 Ark. 490, July 1860. Nineteen negroes brought suit for freedom under the will of Joshua Averitt, 1853: [495] "It is my wish . . that all my slaves both in Louisiana and Arkansas, or wheresoever the same may be, should be set free at the expiration of seven years after my death, my nephew . . to have charge of said slaves, to receive the revenue arising from the same." The acts of Feb. 2 and 12, 1859[1] forbid further emancipation. Bill dismissed.

Held: I. [496] "Notwithstanding the broadness of the words of the acts of 1859, we do not understand them as affecting instruments of emancipation made before the acts, though the emancipation was not to be completed till after their passage. . . [II.] [498] That the words [in the will are] an actual gift of freedom to the slaves. [III.] And that a prospective emancipation is legal and effectual. . . [IV.] this suit . . was prematurely brought. . . [500] In the earlier cases, the general rule . . in . . slave States, seemed to be and was often so announced from the bench, that the courts would lean towards the grant of freedom, while, in the later decisions, there would seem to be reason to fear that the great reaction in public sentiment, in the southern States, relative to . . emancipation . . may produce a habit of construction so stringent as to endanger the even balance which should ever be extended to . . the white and the black, the free and the bond. The question of freedom should be determined . . solely upon its legal aspects, without partiality to an applicant. . . because he may be defenceless, and . . of an inferior race, and certainly without prejudice . . and without regard to the sincere convictions that all candid, observing men must entertain, that a change from the condition of servitude and protection, to that of being free negroes, is injurious to the community, and more unfortunate to the emancipated negro than to any one else. . . [501] decree . . affirmed, without prejudice to the rights of the plaintiffs to institute such further legal proceedings as they may be advised may be necessary to secure their rights." [Fairchild, J.]

Powell v. State, 21 Ark. 509, July 1860. [510] "that the witness had frequently seen John [Powell's mulatto slave] both serve customers, and receive the pay therefor; that he was frequently alone at the grocery in charge . . frequently, or generally, slept in the grocery, as the witness thought; that he brought water, swept the house, . . appeared to be kept . . to do anything . . wanted . . [511] By the verdict of the jury the defendant's fine was assessed at seventy-five dollars.[2] New trial denied.

[1] Acts of 1859, pp. 69, 175.
[2] Gould Dig., ch. 169, sects. 20, 21, p. 1052.

Edwards v. State, 21 Ark. 512, July 1860. [513] " indictment charging Edwards with selling ardent spirits to a slave, without the permission of his master,[1] . . found guilty . . The court fined him one hundred dollars,"

Carroll v. Wilson, 22 Ark. 32, October 1860. [36] " valuation [of plantation negroes] . . put in writing [in November, 1854] . . Five young negro men, and one man forty-five . . at one thousand dollars per head, . . One boy fourteen years of age, . . at eight hundred dollars. Two boys, one eleven and one nine . . at six hundred and fifty dollars per head, . . One girl thirteen . . at eight hundred dollars. One young woman and child, . . at nine hundred dollars. One woman thirty-five . . at six hundred dollars. One woman and five children, . . at three thousand dollars. . . [48] two negroes [the boy and the girl] in the original trade at eight hundred dollars each . . were worth some two thousand dollars [in October 1857] besides the value of their services, say fifty dollars a year; . . [51] although he had not got one negro which he was to have . . she being a favorite servant of Mrs. Wilson, he had consented "

Moore v. Clopton, 22 Ark. 125, October 1860. Held: a note given in Mississippi for the purchase of slaves, which is void under the decisions of her appellate court for want of the certificates prescribed by her laws,[2] is void when sued upon in this state. In the conflict of decisions, the Supreme Court of Arkansas follows those of Mississippi [3] and not those of the Supreme Court of the United States.[4]

State v. Alford, 22 Ark. 386, October 1860. [387] " 1859, the defendant was put upon his last [third] trial, on an indictment for murder. . . described as . . a negro, and no testimony . . that he was a slave. In some of the orders of the court, . . he is denominated . . a slave. In his motion for a new trial, after the first conviction, . . murder in the second degree, . . objected that the verdict was illegal, as the law recognizes no degrees of murder . . by a slave. After the verdict in the last trial, . . guilty of murder in the second degree, . . assessed to punishment by service in the penitentiary for eighteen years, . . before sentence was passed, the State moved that sentence of death should be pronounced, as upon a general verdict of guilty, upon the ground that the jury could not find the defendant guilty of murder in the second degree, and could not assess his punishment to confinement in the penitentiary as he was a negro, and not shown to be a free person of color."

Judgment affirmed: though " in a suit for freedom by one of the negro race, he is presumed to be a slave, . . [388] The case is far different, when the condition of slavery is a fact to be ascertained, in order to define the crime . . charged, or to determine the punishment to be affixed . . according as the criminal may be a freeman, or a slave. . . it is an essential part of a case against a slave, that allegation and proof of his condition shall be made, that, upon conviction, a slave may be dealt with according to the law providing for the punishment of slaves." [Fairchild, J.]

[1] Gould Dig., ch. 51, art. 4, sect. 1, p. 382.
[2] Miss. act of June 18, 1822. How. and Hutch. Dig., p. 156, sect. 4.
[3] 7 How. Miss. 14; 7 S. and M. 380; 27 Miss. 13; 30 Miss. 516.
[4] 15 Peters 449; 5 Howard 134, 141; 12 Howard 79.

Plant v. Condit, 22 Ark. 454, January 1861. The plaintiff received Daniel [457] " in exchange for a woman. . . [463] the defendant represented the boy . . to be sound, otherwise than that he was a dirt eater. . . also some evidence . . that he was afflicted with scrofula, softening of the brain, and otherwise diseased, before the exchange."

Strayhorn v. Giles, 22 Ark. 517, January 1861. [519] " In . . August or September, 1854, . . Houser . . obtained possession of a mulatto boy named Bill, in the Indian country; and . . placed him in the possession of . . Strayhorn, . . [giving him] a power of attorney, authorizing him to sell the boy, ' for any price whatever,' . . November, . . Strayhorn sold Bill to . . Giles . . for $1,000, taking a negro girl in part payment, . . warranting Bill to be a slave for life, etc. In the meantime Bill had commenced suit for his freedom against Houser, . . pending when Strayhorn sold him . . August, 1856, he obtained a judgment of liberation. . . [520] before [Strayhorn] . . sold him . . one of Bill's attorneys, wrote to Mr. Green, . . attending . . Circuit Court, that Bill was free, . . and requesting him . . to bring suit for his freedom. Whereupon, Mr. Green addressed a letter to Strayhorn, . . requesting him to bring Bill to court that he might institute suit for his freedom;" [519] " 1858, Giles commenced this suit, . . three counts, . . the third in *trover* for the negro girl . . the court found in favor of Giles on the *trover* count, and assessed his damages at $700." Judgment affirmed.

Cox v. Britt, 22 Ark. 567, January 1861. [568] " 1849, he, with . . most of the slaves, moved [from North Carolina] to Arkansas."

Graham v. Roark, 23 Ark. 19, January 1861. [20] " 1856, the slaves of the appellant, [in his absence,] acting under the direction of his overseer, cut down and carried away and destroyed the corn and peas . . upon . . land belonging to . . King, . . also threw down and carried away the rails with which the land was fenced."

Held: the owner of the slaves is responsible.[1]

Henry v. Harbison, 23 Ark. 25, January 1861. [27] " 1853, . . upon the plaintiff and his wife first commencing house-keeping, Martha was sent home with them because [the wife's father] . . wished to keep Phillis, who was older and a field hand, to assist him in the coming crop, . . 1855, . . moved [from South Carolina] . . to this state;"

Daniel v. Guy, 23 Ark. 50, January 1861.[2] [51] " On the remanding of the cause . . the venire was changed . . on the petition of Daniel, . . During the trial, the plaintiffs were brought into court for inspection, and were permitted to pull off their shoes and stockings, and exhibit their feet to the jury, against the objection of the defendant [Daniel]." " verdict and judgment of liberation in favor of the plaintiffs, motion for a new trial overruled, and appeal by defendant. . . [I.] The counsel for Daniel . . argues, with much warmth of expression, that the court committed a gross error in permitting them to . . exhibit their bare feet . . [II.] [54] It is submitted for the appellant, that there was a total want of evidence to support the verdict."

[1] Gould Dig., ch. 174, sect. 5, p. 1063.
[2] For facts, see same *v.* same, p. 252, *supra.*

Judgment affirmed: [I.] [52] "Physicians, whose testimony was introduced, . . state that the color, hair, feet, nose and form of the scull [*sic*] and bones, furnish means of distinguishing negro . . descent. . . No one, who is familiar with the peculiar formation of the *negro foot,* can doubt, that an inspection of that member would ordinarily afford some indication of the race . . [II.] [54] we cannot concur with the counsel [that there was a total want of evidence to support the verdict], though it is possible that the jury found against the preponderance of the evidence, through reluctance to sanction the enslaving of persons, who, to all appearance, were of the white race, and, for many years before suit, had acted as free persons and been treated as such." [1] [English, C. J.]

Hawkins v. Greene, 23 Ark. 89, January 1861. Will, 1854: [91] "The negroes . . were to remain on the plantation if they could support themselves and the testator's children from the proceeds of the farm and the stock, and if . . not . . the grown negroes were to be sold and the money put at ten per cent. interest"

Moren v. McCown, 23 Ark. 93, January 1861. [99] "Mrs. Moren was left with a family of nine children, the oldest . . young enough to be a charge upon her, with a parcel of negroes of such a sort as that, through helplessness from infancy and child bearing and age, the most of them served only to increase her cares and expenses. . . the negroes, that were useless and burdensome to her, by their growth and increase of price, have become a valuable estate to her children."

Christian v. Greenwood, 23 Ark. 258, January 1861. [267] "that Hundley had run off these [two] and four other negroes, all he owned, to Louisiana . . to avoid the debts"

Omey v. State, 23 Ark. 281, January 1861. Held: in an indictment for selling ardent spirits to a slave, without permission,[2] it is necessary to state the name of the master, and allege the sale to have been made without the permission of the mistress, overseer or person having charge of him, as well as of the master.

Morton v. Scull, 23 Ark. 289, January 1861. "Morton sued Scull in an action for deceit, . . the negro sold was an incorrigible runaway, . . he was taken from jail, where he had been placed for safe keeping by Scull . . [292] The damages sustained by Morton is the difference between the value of the boy . . as he was, addicted to running away, and as he would have been, free from that vice, at the time Morton bought, and at the place . . Jefferson county . . [but] with the comparative value of guaranteed and vicious negroes in New Orleans; with what Morton got for him there, . . Scull has no concern."

Curtis v. Daniel, 23 Ark. 362, May 1861. [364] "had 'peaceable possession' of said slaves . . from the time they removed from . . North Carolina to Arkansas, [about 1850.]"

Stone v. Stillwell, 23 Ark. 444, December 1861. [450] "1851, . . $1,100 for Ben, . . the value fixed upon him by the decrees, . . [455]

[1] See same *v.* Roper, p. 263, *infra.*
[2] Gould Dig., ch. 51, art. 4, sect. 1, p. 382.

'He is young, stout, and likely, and will sell for a fair price, independent of his mechanical qualifications,'"

Sessions v. Hartsook, 23 Ark. 519, December 1861. [520] "April, 1857, . . Sessions . . made . . note to Templeman and Richardson . . [521] negro traders, . . [for] seven thousand, one hundred and fifty dollars, with the right to return unsound ones, and have others for them, . . payable . . in New Orleans, . . [522] Templeman . . was in Pine Bluff much of his time, and kept a negro yard for the purpose of trading and selling negroes." [520] "all of the negroes were, when sold, suffering from an infectious cough, . . [522] Sessions would [like to] recoup against the note the damages he sustained from the communication of the whooping-cough to his other negroes"

Woodward v. Roane, 23 Ark. 523, December 1861. [525] "the night of the day that the slaves were found to be subject to the executions, . . they were run from the county,"

Thompson v. Bertrand, 23 Ark. 730, December 1861. [732] "overseer . . stated . . that the knees and ankles of the negro were . . swelled and scarred; . . for a year . . he had not done, and had not been able to do, a good day's work. . . if Albert did not complain of his knees, the disease fell into the small of his back; . . that management of negroes had been his business for sixteen years, and that he had been doctoring Albert all the year,"

Mary v. State, 24 Ark. 44, December 1862. [45] "The grand jurors . . present that Mary, . . slave for life, . . 1861, . . did set fire to a . . dwelling house" "convicted, and sentenced to receive five hundred lashes."

Judgment reversed and the cause remanded: [47] "The indictment . . is . . materially defective in not alleging that the house was burned."

Stroud v. Garrison, 24 Ark. 53, December 1862. "a wagoner, told Lephew that some runaway negroes passed his camp the evening before. Lephew told the defendant, a negro catcher; and he, with another person, started in pursuit . . Lephew and the plaintiff also started . . The pursuing party, then consisting of four persons, was soon upon track of the negroes, and their whole number, five, were soon caught by the joint effort of all . . and were delivered by the defendant to the jailer . . afterwards taken from jail by their owner, and the reward for their apprehension was paid to the defendant."

Held: [54] "He never bound himself to pay any part of the reward to the plaintiff, nor would the law raise an implied obligation to do so from the facts."

Daniel v. Roper, 24 Ark. 131, June 1863. [134] "the bill . . alleges she is the person whose case, under the name of Abby Guy, was twice before this court,[1] . . Abby Guy and her children claimed to be free persons solely from belonging to the white race." [132] "The bill . . charges that when the defendant reduced her and her children to slavery, he took

[1] Daniel *v.* Guy, pp. 252, 261, *supra.*

from her two mares and a colt, a yoke of oxen and a cart, . . that she sued for the property at the first court . . after the final decision of the supreme court; that this suit, an action of trover, . . [133] was then pending . . and that the defendant, after having kept her in slavery during the period of litigation [1856-1861], has the hardihood to plead the statute of limitations of three years to her action; . . she asks that he be enjoined from interposing the plea. . . the court awarded the injunction, . . the defendant . . prayed an appeal"

Held: [134] "taking the plaintiff to be what, throughout her protracted litigation . . she claimed to be, what the juries of two counties found her to be, a white woman and a free person, she was never under any disability to sue . . [136] The case must be remanded . . with instructions to set aside the order for an injunction and to dismiss the bill." [Fairchild, J.]

Gregory v. Williams, 24 Ark. 177, December 1866. [178] "filed . . three separate bills of items, the first for eighty dollars, and the second and third for seventy-five dollars each, for the hire of a negro girl . . for the years 1862, 1863 and 1864 respectively."

Dorris v. Grace, 24 Ark. 326, December 1866. [328] "Grace brought his action of debt . . upon the following instrument: 'One day after date I promise to pay . . Grace . . three thousand dollars, with ten per cent. interest . . August 29th, 1863. . . Dorris,' . . the consideration of a certain negro man . . [331] the enemy had not extended his lines to Pine Bluff. The negro had neither been within the federal lines, nor captured."

Held: "The title of Grace was . . as perfect as if no [emancipation] proclamation has issued," [330] "The proclamation was, evidently, intended as a war measure, . . It could only be made available to the limits of the federal lines . . [336] although we think it not improbable that the defendant, at a time when slave property was of very doubtful value, did not intend to pay $3000 in cash for the negro, yet he has, in reducing his contract to writing, used such terms as impart a purchase for cash . . a court of law cannot . . relieve him" [Walker, C. J.]

Rust v. Reives, 24 Ark. 359, December 1866. [360] "James H. Reives commenced his suit in attachment, . . 1866, upon the following instrument: . . 'Albemarle Co., Va., Sept. 20th, 1860. . . I promise to pay to George Reives or order . . in . . Richmond, Va., twelve thousand five hundred dollars, with interest . . for seventeen negroes . . the title to which he warrants, but makes no warrant as to health or constitution. . . Rust,' . . assignment: 'Oct. 20th, 1865. . . [361] to J. H. Reives, . . Geo. Reives.' . . judgment was rendered for the debt and damages," Affirmed.

Millwee ex parte, 24 Ark. 364, December 1866. "application for mandamus against . . judge . . to compel him to grant an injunction . . February, A.D. 1863, the petitioner purchased from . . McIntosh, . . a negro slave for . . fourteen hundred dollars, upon a credit of twelve months; . . executed three [notes] . . two for five hundred dollars each, and one for four hundred dollars, . . paid one of said five hundred dollar

notes, and two hundred dollars on account of the other; that McIntosh instituted his action of debt, upon the balance due . . [365] judgment was rendered against [Millwee.] . . mandamus . . refused."

Steele v. Richardson, 24 Ark. 365, December 1866. [365] "Steele, . . 14th day of April, 1865, . . was the . . owner of . . [368] property . . of the value of $10,000; which sum the defendant agreed to pay in . . six negroes, which he then warranted to be his . . slaves; . . [complainant] with his wife executed . . a deed . . ignorant of the fact that . . slavery had been . . abolished [February 22, 1865] . . by [the amendment to] the constitution of . . Arkansas. . . [369] the defendant demurred; . . sustained," Decree dismissing the bill, reversed.

Montgomery v. Ervin, 24 Ark. 540, June 1867. Her [541] "negroes had been abducted, run off and sold by the appellee,"

Haskill v. Sevier, 25 Ark. 152, December 1867. [154] "Smith, . . March, 1860, sold to . . Jordan, eighty-five negro slaves, for . . eighty thousand dollars, . . warranted . . that they . . were slaves for life." Jordan died in 1861, and his administrator refused to pay the balance due.

Held: [157] "It was not a false warranty, when made, . . [158] Jordan . . must . . bear the loss"

Atkins v. Busby, 25 Ark. 176, December 1867. Contract made in 1859, for the sale, by Busby to Atkins, of slaves worth $16,000, of which [181] "the title was not to pass" until all the purchase money had been paid; but "there was a delivery of the negroes" on the payment of the first installment, January 1, 1860. Two notes remained unpaid.

Held: "such delivery was . . a delivery for use, . . [182] the title to the slaves . . remained in Busby, . . at the time they were, by the provisions of the [State] Constitution, emancipated." [Walker, C. J.]

Johnson v. Walker, 25 Ark. 196, December 1868. [199] "March, 1863, purchased . . twenty-eight negro slaves, estimated at $28,000,"

Coolidge v. Burnes, 25 Ark. 241, December 1868. [242] "bills of exchange, . . October 10, 1860, [for $3,325,] . . [243] for four . . negroes, . . Aleck, Judy, Dock and Delia, . . the boy Dock . . of the value of fifteen hundred dollars, was so much diseased . . as to be of very little value,"

McWillie v. Martin, 25 Ark. 556, December 1869. [557] "some time after [January, 1861] . . took a negro woman at $1,300,"

Jacoway v. Denton, 25 Ark. 625, December 1869. [626] "that the obligation [for $4,500] sued upon was given in Arkansas [October 4, 1861], for three negro boys; that the appellee covenanted . . that said boys were all slaves for life;" "the appellee interposed a demurrer, . . [627] The court sustained the demurrer . . final judgment for the appellee"

Affirmed: I. [629] "The [emancipation] proclamation . . was direct authority to the armies of the Union to make free all . . slaves . . by them captured. . . [630] When the Confederate armies were overpowered, . . the entire territory . . of the rebellious States at once passed

under the military power . . of the Government, . . and all slaves, not before . . liberated, at once, *ipso facto,* became . . free. . . [631] the former slave does not trace his freedom to the amendments of the Constitution of the United States, or the enactments in the Constitution . . of Arkansas, . . [II.] [647] wherein our State Constitution declares a valid contract null and void,[1] we decide it to that extent contrary to the Constitution of the United States, and not binding" [Gregg, J.] Judge McClure and Judge Bowen dissented.

Kaufman v. Barb, 26 Ark. 24, December 1870. [26] "Barb, . . July, 1863, purchased a negro slave from Hirsch and Adler, for . . thirteen hundred and twenty-five dollars, and in payment . . executed his note . . payable 'twelve months after the expiration of the . . present war.' . . [27] the sale . . was made [in Independence county] . . when the Federal forces were in the occupation of the county"

Buchanan v. Nixon, 26 Ark. 47, December 1870. "a claim . . for $1520, founded upon a . . note, . . [given for] negro slaves, . . 1859," The claim "was allowed." Decree affirmed.

Pillow v. Brown, 26 Ark. 240, December 1870. [243] "December, 1860, he [Pointer] sold to Pillow eighty-five negroes . . for . . one hundred and nine thousand two hundred and six dollars and twenty-five cents, . . Pillow executed his four [notes] . . payable on the first days of January, 1862, 1863-4 and '65, and on the same day executed . . [244] a mortgage in favor of Pointer upon two of his plantations . . and forty-three of the slaves . . April, 1862, . . Pillow . . sold to Coolidge [these plantations and two others] . . together with all his slaves . . subject to this mortgage . . [245] Pillow . . alleged that Pointer covenanted that the negroes . . were slaves for life, . . failure of consideration . . that he was a confederate officer . . . [246] that Pointer resided in . . Tennessee"

Held: section 14, of article 15 of the Arkansas constitution is in conflict with the clause of the U. S. Constitution which provides that no state shall pass any law impairing the obligation of a contract.

Fleming v. Johnson, 26 Ark. 421, June 1871. [427] "a bill of sale for a negro woman and child, . . to . . Fleming, dated 8th of January, 1856, reciting $800, as the consideration. . . [428] Fleming sold [them] . . in two or three months . . for $1100."

Armstrong v. U. S., 13 Wallace 154, December 1871. "on the approach of the Union army [September 1863] she fled south with thirty or forty of her slaves to avoid emancipation."

Osborn v. Nicholson, 13 Wallace 654, December 1871. [655] "The plaintiff . . brought this suit . . 1869, . . upon a promissory note made to him by the defendants . . for $1300, dated March 1861, and payable . . December following, . . The defendants pleaded that the instrument . . was given in consideration of the conveyance of a certain negro slave for life . . and that at the time . . the plaintiff . . executed . . a bill

[1] Constitution of 1868, art. XV., sect. 14.

of sale . . ' For the consideration of $1300 I hereby transfer all the right . . I have to a negro boy named Albert, aged about twenty-three years. I warrant said negro to be sound in body and mind, and a slave for life; ' . . the said negro . . on the 1st day of January, 1862 [*sic*], was liberated by the United States government, . . [656] judgment for the defendants."

Judgment reversed and the cause remanded: "the constitution of Arkansas of 1868, which annuls all contracts for the purchase or sale of slaves, . . is [as to all prior transactions] clearly in conflict with . . the Constitution of the United States, . . [663] as the obligation here in question was valid when executed, sitting as a court of justice, we have no choice but to give it effect." [Swayne, J.] Chief Justice Chase dissented.

Anderson v. Mills, 28 Ark. 175, June 1873. [176] "February, 1859, . . Mills sold . . Anderson . . sixty-five slaves, . . valued at . . $54,000 . . The Andersons paid . . $20,000 in two drafts on the slaves and other personal property," and gave their notes for the balance. [182] "Mills . . delivered the slaves . . [183] the Andersons were in possession of the slaves . . until the close of the war, . . except such . . as had . . died, run off to the federals, or been impressed in the military service."

Held: "The loss by emancipation fell upon them . . [187] a misfortune for persons who bought slaves upon credit, and lost them by emancipation, to have to pay for them. . . But the warrantor [that they are slaves for life] is no more bound for the loss . . by such emancipation than if they had been destroyed by a flood or an earthquake." [English, Sp. J.]

Jones v. Johnson, 28 Ark. 211, December 1873. [216] "before . . Johnson left North Carolina [in 1858] he was employed as an overseer by wealthy cotton planters; . . that good overseers on large farms then obtained from $400 to $800 per annum;"

Parrot v. Nimmo, 28 Ark. 351, December 1873. [352] "In 1858, . . Nimmo . . brought this property [slaves] to . . Arkansas" from Alabama.

Campbell v. Rankin, 28 Ark. 401, December 1873. "In January, 1861, . . Rankin sold . . for $210,000, a large plantation . . with the slaves . . thereon."

Snow v. Grace, 29 Ark. 131, November 1874. [134] "Sheppard, . . was absent at his home in Virginia at the time of the Federal occupation of Pine Bluff, and . . his manager, had . . taken the negroes . . off the place, and had gone south; . . acting under Sheppard's instructions."

Tobin v. Jenkins, 29 Ark. 151, November 1874. [161] "a girl [given his daughter] for a nurse was when large enough, placed . . in the cotton field as one of his hands,"

Ober v. Pendleton, 30 Ark. 61, May 1875. In 1857, "Douglass was the owner of about twelve thousand acres of land . . 70 or 80 negroes."

TEXAS

INTRODUCTION

I

Judge Lipscomb declared in 1851 [1] that the question of slavery in Texas continued in a " state of uncertainty . . until the formation of the Constitution " of the republic. The constitution of Coahuila and Texas, adopted March 11, 1827, had provided that, from its promulgation in the capital of each district, " no one shall be born a slave, in the State, and after six months, the introduction of slaves, under any pretext, shall not be permitted." But it was " said never to have been published in the department of Texas. " [2] In 1829 the President of Mexico issued his decree abolishing slavery, but its constitutionality was " always questioned," [3] and it was " abrogated " in 1831. Meanwhile, the Secretary of State of Mexico reported to the congress of Mexico on March 4, 1830, " that such was the opposition to the laws in relation to slavery, in Texas, that any attempt to enforce them would be fruitless; that in consequence . . their operation had been suspended, so far as they related to Texas." This report, according to Judge Lipscomb, " no doubt, produced the 10th Section of the law of Mexico of the 6th of April, 1830, . . ' No variation shall be made in the Colonies already established; nor in relation to the slaves which may be in them. But the general government, and the special government of each State, shall, under the strictest responsibility, require the fulfillment of the law of Colonization; and that no slaves be thereafter introduced.' " Therefore, slavery [548] " had never ceased . . to exist [in Texas], *de facto* if not *de jure*."

Nevertheless, Judge Walker, in a decision of the Supreme Court, delivered during the term of 1872-1873,[4] declared: [706] " The institution of slavery, after the 11th of October [March] 1827, could not exist by law, until after Texas established her independence and declared herself a slave state." Consequently, Sobrina, a mulatto who came to Texas " as early as 1828 or 1830," was free; and the relation between her and Clark, a white man, who purchased her in " 1833 or 1834 " and lived with her till his death in 1862, speaking of her " as his ' wife,' " according to the negro witnesses, but with no " pretence that they were husband and wife," according to the white witnesses,—was adjudged a legal marriage. For [707] " there was no law of Mexico . . which prevented the intermarriage of different races. . . if . . married prior to 1837, no law subse-

[1] Guess *v.* Lubbock, p. 278, *infra.*
[2] Robbins' Administrator *v.* Walters, p. 274, *infra.*
[3] Guess *v.* Lubbock, p. 278, *infra.*
[4] Honey *v.* Clark, p. 321, *infra.*

quently passed could have . . dissolved the marriage without the consent of at least one of the parties." Though [708] "she could not legally have married him . . after . . 1837," [5] the twenty-seventh section of article twelve of the constitution of 1869 [6] "was intended to legalize the marriage of certain persons . . who, by law, were precluded the rights of matrimony. . . Clark and Sobrina were precisely such persons." Perhaps even the legislators of 1869 were surprised to see this application of their enactment. However, in 1875 this interpretation of the constitution was overruled in the case of Clements *v.* Crawford,[7] the court holding that "Section 27, Article 12 . . refers only to those persons who were both precluded, not from intermarriage with each other merely, but from marriage with any one else."

The date of the abolition of slavery in Texas was fixed by the "Emancipation Proclamation Cases," decided in 1868.[8] By "General Gordon Granger's order of the 19th of June, 1865 . . 'The people of Texas are informed that, in accordance with a proclamation from the executive of the United States,[9] all slaves are free.'" Judge Lindsay says: [532] "Until [General Granger's order] . . traffic in slaves was lawful in the local government. . . [533] slavery was not abolished on the 1st day of January, 1863." [531] "The [emancipation] proclamation could not *proprio vigore* liberate the slaves. . . [532] After the proclamation the slaves who were in the federal lines . . and those who . . got within these lines afterwards, were *ipso facto* free, because as mere chattels they thereby became captures in war. As soon as they came under the control of the national forces they as persons became . . freemen, because such was the declared will of that belligerent power, as expressed in the proclamation issued by the commander-in-chief . . by the authorization of congress, . . The liberation went on *pari passu* with the progress of the subjugation."

The state constitution of 1845 gave the legislature "the right to pass laws to permit the owners of slaves to emancipate them, saving the rights

[5] The act of June 5, 1837, declared it unlawful "for any person of European blood or their descendants, to intermarry with Africans, or the descendants of Africans."

[6] "All persons who, at any time heretofore, lived together as husband and wife, and both of whom, by the law of bondage, were precluded from the rights of matrimony, and continued to live together until the death of one of the parties, shall be considered as having been legally married, and the issue . . shall be deemed legitimate."

[7] P. 324, *infra.*

[8] Hall *v.* Keese; Dougherty *v.* Cartwright, p. 317, *infra.*

[9] In 1866 George W. Paschal asserted, in his report of Seal *v.* State (p. 313, *infra.*), that slavery ceased to exist in Texas by the proclamations of President Johnson, General Gordon Granger, and Provisional Governor A. J. Hamilton. In 1874 Judge Devine, in Garrett *v.* Brooks (p. 323, *infra*), declared more authoritatively and more explicitly: "The surrender of the trans-Mississippi department on the 27th of May, 1865; the proclamation of President Johnson, May 29, 1865, and the publication of . . 'General Granger's Order No. 3,' dated June 19, 1865, . . may be considered . . evidences that property in slaves had been abolished . . in Texas. The date of General Granger's order or declaration of the proclamation of Abraham Lincoln has been considered as the definite period from which the destruction of the right to hold slaves in Texas is to be dated."

of creditors, and preventing them from becoming a public charge." [10] Judge Lipscomb gives it as his opinion in 1854 [11] [166] "that the State Convention had in view the provisions of the Constitution of the Republic" prohibiting "any slaveholder . . to emancipate his . . slaves without the consent of congress, unless he . . shall send his . . slaves without the limits of the republic," [12] and of the act of the republic of February 5, 1840, "believed to be still in force, . . [which] forbids free negroes from coming into the country." He declares that [167] "the prohibition of emancipation, unless the . . slaves shall be removed from the State, is implied," and agrees with the Mississippi, Georgia, and South Carolina decisions upholding bequests of freedom which are [171] "not to be . . [perfected] until the slave is removed beyond the territorial limits . . [172] We must . . respectfully differ with the Supreme Court of Alabama,[13] on this question." Nevertheless, the astute attorneys employed by Betsy Webster in 1858 secured the dismissal of the suit instituted to contest the will bequeathing property and freedom to her, although she continued to reside in her [707] "white cottage embowered amid flowers and orange trees . . where she had lived with her former master, sustaining, perhaps, relations to him not sanctioned by law, but sanctified by all the sentiments of her nature." [14] Her effort to regain her remuneration to her attorneys, "one-third of the $22,000 worth of property secured to her by them," was unsuccessful in 1870, as to a lot conveyed by her to Heard [15] in accordance with her contract with them; but in the following term, in a similar case,[16] the court held that she [266] "was a slave [when the deed was made] and could not make a deed." [265] "A person who desired to emancipate his slaves . . must have provided for sending [them] . . out . . of the State; . . [266] The case of Webster *v.* Heard . . is overruled."

II

The constitution of the republic of Texas, adopted in 1836, provided that the Supreme Court should consist of "a chief-justice and associate judges;" and that "the district judges ['not less than three, nor more than eight'] shall compose the associate judges." [17] A joint resolution of February 1, 1844, provided for an amendment to the constitution establishing "a separate and independent Supreme Court of the Republic" [18] consisting of a chief justice and two associate justices. The same number

[10] Art. 8, sect. 1.
[11] Purvis *v.* Sherrod, p. 287, *infra.*
[12] 6 Thorpe 3539.
[13] See introduction to the Alabama cases, vol. III., p. 126, of this series.
[14] W. P. Ballinger, counsel.
[15] Betsy Webster *v.* Heard, p. 319, *infra.*
[16] Same *v.* Corbett, p. 320, *infra.*
[17] 6 Thorpe 3535.
[18] Dall. Dig. 267.

was required by the constitution of 1845; but two more associate justices were added by the constitution of 1866. "The useful judicial career of . . [the first five] gentlemen [elected] was closed by Major General Sheridan, who removed them . . on the ground that the proper administration of the reconstruction laws required it," [19] and they were replaced by "judges appointed by military authority under the reconstruction laws." [20] Only two associate justices were required by the constitution of 1869, but two were again added by an amendment of 1873.

[19] 29 Tex. v. Preface by George W. Paschal, reporter.
[20] 30 Tex. viii. Preface by the same reporter.

Harvey et al. v. Patterson, Dall. Dig. 369, January 1840. " the appellants are persons of color, . . one of the plaintiffs, offered . . [370] to take an oath that the plaintiffs were too poor to pay the fees, and too friendless and humble to be able to give any Bond and security for costs . . the Clerk, under sanction of the Court, refused to receive the . . oath . . It is argued in opposition that the plaintiffs being persons of color were, by the [26th section of an act organizing the district courts] . . prevented from taking an oath, in any case where a white person was concerned; and had the oath been taken, . . would not have thereby been exempted "

Held: " the appeal cannot be prosecuted, unless the Bond and Security . . is given,"

Hill v. M'Dermot et ux., Dall. Dig. 419, January 1841. [420] " Sledge and wife [' the female plaintiff '] emigrated from Georgia to Texas prior to August, 1835, in which month he died; . . they brought with them . . Priscilla, whose child . . was born in Texas, . . Sledge, . . 1834, made a deed to Chafin, for [Priscilla] . . to secure [debts, with usurious interest,] . . in 1836, Chafin, with force, took both slaves " " 1840, . . verdict finding the slaves to be the property of the plaintiffs [appellees], and assessing $900 as their value, and $350 the damages for their services;" [424] " no error, except that the judgment . . ought to have been for the restitution of the slaves, if to be had,"

Hall v. Phelps, Dall. Dig. 435, January 1841. " 1824, a grant issued to [Phelps] . . from the Mexican government for a League of Land . . [436] on the West bank of the Brazos, . . he [occupied] . . it with his family, composed of himself, a wife, children and slaves, . . [In] August, 1831, . . being . . absent with his wife on a visit to . . the United States, . . Hall, with violence . . expelled the overseer and the slaves . . driving them to some distant huts on the land; . . November . . drove them wholly from the land,"

Benton v. Williams, Dall. Dig. 496, June 1843. " Eli Williams sued . . Benton . . to recover damages for an assault and battery . . The defendant filed two pleas . . First, justification; and secondly, that . . [he] ought not to be held to answer the complaint . . because ' Eli Williams is of African descent, and not entitled by law to maintain his action, except by his guardian or next friend.' To this last plea the plaintiff demurred. . . [497] sustained . . verdict and judgment for plaintiff, . . defendant . . seeks to reverse . . on the ground of error in sustaining . . demurrer "

Affirmed: " The only grounds, upon which we suppose the counsel for the defendant could have based an argument, are to be found in the Constitution . . ' The descendants of Africans shall not be permitted to

remain permanently in the Republic without the consent of Congress;' nor . . entitled to the rights of citizenship. But we cannot conclude that . . injuries . . may be wantonly committed on their persons and property, and that . . they are to be told that the Courts . . are closed against their complaints. We cannot by sustaining the defendant's plea, establish a principle which we regard against law, contrary to the spirit of our institutions, and in violation of the dictates of common humanity." [Jack, J.]

Briscoe v. Corri et ux., Dall. Dig. 556, June 1844. "Briscoe avers . . that . . 1839, he purchased . . for . . $800 . . the slave . . 'on condition . . that the [vendor] . . should keep possession . . in . . Houston for one month, and at the expiration . . she should, on the payment of $100, have the privilege . . one other month; after which . . so long as she wished, on the month's payment in advance . . of $200, with the further trust, that on payment of the said hire, punctually in advance one month, . . [she] had the privilege of purchasing . . for . . $900;' . . had not complied . . except the payment of the first and second month's hire;" Baylor, J.: "We think that the written contract bears strong marks upon its face of hardship and oppression."

Langford v. Republic, Dall. Dig. 588, June 1844. "Langford had lived on the Attoyac . . in . . 1826 and 1827 . . and there had a family (a wife and children) together with some five or six negroes."

Carr v. Wellborn, Dall. Dig. 624, June 1844. [625] "alleges, that . . the defendant . . secretly and fraudulently conveyed away the . . slaves from . . Alabama to the County of Red River in this Republic,"

Bennett v. Gamble, 1 Tex. 124, December 1846. [132] "The execution was issued . . 1840; . . 'executed . . on . . Grace, about six years of age,'" The owner [131] "eluded the sheriff . . and ran off the negro, . . the deputy sheriff . . put up to the highest bidder, the chance of the girl, without appraisement; . . she was not present . . or under the control of the sheriff, . . and the chance of her was purchased . . for ten dollars."

Chevallier v. Wilson, 1 Tex. 161, December 1846. [163] "Dr. Irion proved, that the health of Caroline was very delicate all the while she was in possession of defendant; that in . . 1846, she gave birth to a child, and since that period she has been sick and requiring medical attention."

Crosby v. Huston, 1 Tex. 203, December 1846. [222] "his departure from Mississippi was sudden and clandestine, . . he arrived in Austin county, Texas, with the [fourteen mortgaged] negroes . . 1838;"

Paxton v. Boyce, 1 Tex. 317, December 1846. In 1842 a negro woman and her child were sold for $700.

Parks v. Willard, 1 Tex. 350, December 1846. "possessed of the slave as trustee to the use of his wife . . [351] by virtue of a deed of trust made [in 1832] . . in . . Tennessee, . . came to Texas, bringing . . the slave,"

Lambeth v. Turner, 1 Tex. 364, December 1846. [365] "levied on a large number of . . slaves belonging to Jones, in the possession of . . Turner; . . [366] that Turner . . secretly and fraudulently absconded from Mississippi with the . . negroes, in . . 1844, and came to the County of Red River in the Republic of Texas,"

Bryant v. Kelton, 1 Tex. 434, December 1846. "levied on a negro boy . . [bought] in . . Georgia."

Mims v. Mitchell, 1 Tex. 443, December 1846. [444] "averments that [in 1842] the defendant hired . . 'Mehala, between fifteen and sixteen' . . for two months' work . . has not returned [her] . . and that he (the plaintiff) 'is informed . . that . . Mehala is dead, caused by the . . inhumane treatment of . . Mitchell.' . . that . . he has sustained damages to the value of the . . woman, $500, and of her hire $200, . . testimony tending to show that the . . girl had come to her death on or near the way leading from the residence of the defendant to the plaintiff; . . [445] 'overseer' for the defendant, testified to having chastised the girl . . on two or three occasions . . and of also having seen the defendant correct her; but, as he says, 'not in a manner to injure her;' that . . defendant (about the time he chastised the girl) left for the army . . addressed a note to the plaintiff, which he left . . to be sent by the girl; . . testimony that the girl was sound, 'active, and sprightly, and headstrong.'" [1]

Pitts v. Ennis, 1 Tex. 604, December 1846. "Hermoso, Oct. 13th, 1842. On the first of December next, I promise to furnish Eliza P. Pitts a good Negro fellow, to work for her, until I pay her a thousand dollar note of mine . . or return her the Negro woman" for whom the note was given.

Cloud v. Smith, 1 Tex. 611, December 1846. "levied on a Negro woman and her two children."

Holliman v. Peebles, 1 Tex. 673, December 1847. [676] "Holliman received, as a colonist, one league . . 1824," [677] "was a single man . . owned a plantation and large number of negroes in Mississippi, only one of which he had ever brought to Texas, and that one he had subsequently sold."

Robbins' Administrator v. Walters, 2 Tex. 130, December 1847. "action brought by the appellee . . to recover a negro woman [[131] 'worth from seven to nine hundred dollars'], and damages for her detention. . . [131] 'defendant's counsel moved the court to instruct the jury that if they found that the property in the . . girl . . was acquired previous to the adoption of the Constitution [of Texas], they should find for the defendant; . . refused.'"

Affirmed: [134] "The appellant's counsel . . has referred the court to the Constitution of Coahuila and Texas, Preliminary Provision, Section 13, page 314. . . 'From and after the promulgation of the Constitution in the capital of each district, no one shall be born a slave, in the State,

[1] See Mitchell *v.* Mims, p. 282, *infra.*

and after six months, the introduction of slaves, under any pretext, shall not be permitted.' Whether the section . . ever was binding . . in Texas . . is wholly immaterial . . Because the claim of the property in the slave before the date of the promulgation [of the Constitution of Coahuila and Texas], or introduced within six months . . could be held in slavery. The Constitution of Coahuila and Texas was adopted 11th March, 1827. . . [135] it is said never to have been published in the department of Texas. But . . not material, because in the absence of proof to the contrary, we are bound to believe that the claim to her . . was not repugnant to law." [Lipscomb, J.]

Morgan v. Republic of Texas, 2 Tex. 279, December 1847. "levied upon a negro man . . as the property of Lee. Morgan . . replevied . . and . . introduced . . a bill of sale from . . Lee . . 1840 . . for the use and benefit of . . Hart of New York. . . ' evidence that the slave . . remained in possession of Lee after the execution of the bill of sale to Morgan, in trust for Hart,' "

Nels (a slave) v. State, 2 Tex. 280, December 1847. [281] "indicted and put upon his trial for murder . . 1846" Verdict of guilty. Judgment thereon reversed and the cause remanded: [283] "*it nowhere appears of record, that the jury . . were sworn.*"

Chandler v. State, 2 Tex. 305, December 1847. [307] "indicted for murder, charged to have been committed upon the person of 'one Claiborne, . . slave of . . Conner,' . . the court was requested by the defendant to charge . . ' that if a slave raises his hand against a white man, the white man has . . a right to use force sufficient to put down the opposition. And if the slave he unintentionally killed . . it is not . . murder or manslaughter. All of which the court charged . . except as to manslaughter;' . . charged ' that a white man could be guilty . . of manslaughter upon the body of a slave.' " Verdict of "guilty of manslaughter."

Judgment thereon affirmed: [308] "The Supreme Court [of Tennessee] . . [309] decided [1] that, by the Common Law, the felonious killing of a slave without malice, is manslaughter. . . The only matter of surprise is that it should ever have been doubted. . . It seems especially to have been the intention of our legislation . . to throw around the *life* of the slave the same protection which is guaranteed to a freeman." [Wheeler, J.]

Grinder v. State, 2 Tex. 338, December 1847. "a slave, belonging to the appellant, was indicted, tried and convicted, in the District Court . . [339] for the murder of a white man, and executed. . . judgment . . against the defendant for all the cost consequent"

Held: "there was nothing in law to authorize a judgment against him."

Jones v. Laney et al., 2 Tex. 342, December 1847. [344] "The petition sets out that Laney, was born a slave . . of . . James Gunn, in 1811, in the old Chickasaw Nation, now in . . Mississippi. That Gunn was an Indian, and married to an Indian woman, . . [345] The writing under

[1] Fields *v.* State, vol. II., p. 494, of this series.

which the appellees claim their freedom, is . . 'Chickasaw Agency . . 1814. . . I, James Gunn, . . have thought proper . . to enfranchise a mulatto female child, named Laney, two years and nine months old, . . borne [*sic*] and raised my own property, . . I hereby give to Laney her freedom . . She is no longer a slave.' . . when she was very young, her master said, that from the friendship he had for her father, she should never be a slave to any one:" [344] "Laney . . continued to live with her mother, who was the slave of . . Gunn, . . until . . [his] death . . in 1823, but not as a slave, . . then went to reside with . . Susan Colbert, also a Chickasaw . . Laney and . . her children and grand children . . emigrated with the family of Susan Colbert in 1842 to the Choctaw nation, and continued to live with her as free persons until . . 1846. . . [346] testimony of . . the widow . . Laney had two children after the death of . . Gunn, before she went to live with Susan . . [Gunn's] daughter . . told Laney to go home; but she replied that her husband would not permit her. . . The Judge charged . . 'that by the treaty entered into by the United States and the Chickasaws . . the same were recognized to be a separate . . nation . . that in the opinion of the court, neither, the laws of Georgia, Mississippi, State or Territory, nor those of Texas, can be the rule of decision in this case. . . that by the principles of the Civil Law, under which slavery, such as ours, existed, the owner could free his slave, provided no statute prohibiting . . [347] existed, by simply . . saying "*go, you are free.*"' . . in the absence of proof of any law, custom or usage of the Chickasaws, forbidding . . if the deed . . be . . by the jury believed to be . . authentic, the plaintiffs are entitled to their freedom." Verdict in their favor. Judgment thereon affirmed. "So far as the charge . . refers to . . Texas, it must be understood as applicable to the time when the rights . . accrued . . in 1814,"

Republic v. Fisk, 2 Tex. 449, December 1847. "resided in Texas anterior to July 1835. . . then . . owned two slaves"

Bason v. Hughart, 2 Tex. 476, December 1847. "That . . petitioner [Hughart] recovered judgment against . . Hampton and William D. Stuart—the latter a free man of color—for [$137.50 damages, and $182.50] . . costs of suit. . . That an execution was levied on . . [Stuart's] horse, . . sold for [$33.33 to Hughart] . . two-thirds of the appraised value . . that at the time . . Stuart was absent beyond the limits of the Republic—that . . Bason, wishing Stuart's return, to labor for him in his blacksmith shop, made a parol agreement with petitioner, that if he would permit . . Stuart to return . . and not trouble him by means of the judgment, and would allow [$80] . . for the hope . . he (Bason) would, in the course of the year, 1840, pay the balance . . agreed"

Lucketts v. Townsend, 3 Tex. 119, December 1848. [120] "1840 . . a negro boy [thirteen years old] worth $800,"

M'Clenney v. M'Clenney, 3 Tex. 192, December 1848. [195] "1840 . . without the knowledge . . of the parties to the trust, brought the negroes [from Alabama] to . . Texas:"

McGary v. Lamb, 3 Tex. 342, December 1848. [343] "It was in proof, that young slaves, not so large as the plaintiff's ward [aged ten], would hire at four dollars per month, and that a negro child five years old, would be furnished victuals and clothes for her services."

Warren v. Dickerson, 3 Tex. 460, December 1848. "Warren and wife arrived in Texas [from Mississippi] in . . 1840, bringing . . the slave"

Dunn v. Choate, 4 Tex. 14, December 1849. [16] "he . . with his wife and daughter . . removed from Tennessee to Texas in 1837, bringing the [negro] girl"

Blakely v. Duncan, 4 Tex. 184, December 1849. "Duncan [of Mississippi] employed Blakely, . . an attorney at law, to collect . . Blakely received from Tyler, in payment of the debt, . . Jenny, Nicey and her child Isaac. . . Blakely, instead of delivering the slaves to Duncan, brought them to Texas. This suit was brought to recover the slaves. . . verdict . . 'We find for the plaintiff . . [185] Jenny, worth three hundred dollars, Nicey and her child, worth five hundred dollars, if the negroes can be found; otherwise'" $1109.30. [186] "It is presumed that the jury made the amount assessed in the aggregate, by putting together . . their valuation and damages for detention. . . defendant had sold" Nicey and her child.

Judgment reversed and the cause remanded: [185] "the jury should find the separate value of each;"

McIntyre v. Chappell, 4 Tex. 187, December 1849. [188] "he arrived . . in this State [from Tennessee], in March, 1840, bringing . . some negroes: . . planted a crop, and after about three months, returned . . in March, 1841, he removed to this country with his wife,"

McGee v. Currie, 4 Tex. 217, December 1849. "This suit was brought by [Currie] . . [218] to recover the amount of an account for services rendered, as a physician, . . by attending on . . [McGee's] slave when wounded; . . McGee . . had hired him for one year to Hicks and Bailey," Held: the hirers are responsible.

Ingram and Wife v. Linn, 4 Tex. 266, December 1849. "1844 . . Nat, belonging to the estate . . (of which the appellee is administrator,) . . enticed away . . Jerry, the property of the plaintiffs, . . to the Guadaloupe river, . . with the aid of . . other slaves . . forced . . Jerry into the river, . . drowned;" Held: [270] "the master is not answerable"

Ingram and Wife v. Atkinson and Wife, 4 Tex. 270, December 1849. Suit against the owners of other slaves involved in the drowning of Jerry, who [271] "was . . plunged, and abandoned," Held: the owners are not responsible in damages.

Watts v. Johnson, 4 Tex. 311, December 1849. [312] "in proof . . [313] that the negro woman . . is worth five hundred and fifty, or six hundred dollars, and her hire, about ten dollars per month."

Randon v. Toby, 11 Howard 493, December 1850. [518] "the notes were given [by Randon] for the purchase of negroes imported from

Africa to Cuba and thence to Texas in 1835," Deposition of a witness for the defendant: [497] "Randon sent to McKinney all the African negroes he had, except two; I think he sent twenty-one;" A witness for the plaintiff testified that he had [501] "made two voyages to the coast of Africa, . . 1834, . . 1835, and remained . . each time about six months. . . slavery existed in all parts of Africa where he landed, except in Liberia. A large proportion of the people were slaves. Some masters held great numbers; the slavery which existed was a slavery for life, and was of the most despotic and arbitrary character. . . Knows nothing whatever of the Gold Coast or Lucame tribe of Africans; . . was in Liberia, and upon the Slave Coast, and upon the Grain Coast, . . It was sometimes the case that negroes who were captured in battle were brought from the interior of the country to the African coast and sold." [506] "The verdict and judgment were in favor of the plaintiff [Toby],"

Judgment affirmed: there was no want of consideration although [520] "the introduction of African negroes, both into Cuba and Texas, was contrary to law. . . Toby or his agent, McKinney, had no connection with the person who introduced the negroes contrary to law. . . The crime committed by those who introduced the negroes into the country does not attach to all those who may afterwards purchase them. It is true that the negroes may possibly, by the laws of Texas, be entitled to their freedom on that account. If the defendant had shown that the negroes had sued out their freedom in the courts of Texas, it would have been a good defence. . . But . . the defendant held and enjoyed the negroes, and sold them and received their value; and the negroes are held as slaves to this day, if alive, for any thing that appears on the record. . . [521] The defendant has bought these negroes in the condition of slaves *de facto*, with the *primâ facie* evidence of their *status* imprinted on their forehead; . . and he has no right to call upon the court in a collateral action, to which neither the slaves nor their present owners are parties, to pronounce on the question of their right to freedom," [Grier, J.]

Bennett v. Butterworth, 11 Howard 669, December 1850. "Butterworth, . . a citizen of . . New York, . . [670] was . . possessed [in 1846] of four negroes, slaves for life, . . Billy, a negro man of a dark complexion, aged about twelves years, of the value of five hundred dollars; Lindsey, a negro man, of a dark complexion, aged twenty-two years, and of the value of one thousand dollars; Betsy, a mulatto woman, of a light complexion, aged about thirty years, and of the value of eight hundred dollars; and Alexander, a boy of a very light complexion, aged about four years, and of four hundred dollars value," [1]

Guess v. Lubbock, Administrator of Smith, 5 Tex. 535, 1851. [536] "suit . . brought by the appellant . . to recover a . . lot of ground, and a negro girl." Defendant answered that plaintiff "was a slave . . and incapable of holding property; . . [544] It appears from the evidence . . that in February, 1836, the plaintiff was purchased by the defendant's intestate. . . not clear, whether she paid for herself, . . But the evidence is pretty full, that from the time of purchase, or nearly so, down to [1846,]

[1] See same *v.* same, p. 280, *infra.*

. . Smith lived with her as his wife; . . said, on all occasions, that she was free; that she . . exercised ownership, in her own right; that Smith always called it her property; . . [545] that she kept a boarding house; boarders always settled with her, and she bought and paid for the supplies . . that on some disagreement . . he told her to take her negro and go away, . . gave to her a paper . . 'The bearer, Margaret, a negro woman, about thirty . . is free and at liberty to go and do the best she can to make an honest livelihood, . . 1840. (Signed,) . . Smith.' . . [549] The Judge . . told [the jury] . . that 'before the 17th March, 1836,[1] there were three modes by which a person could manumit a slave: 1st. By writing, with five witnesses . . done before a Judge or elsewhere. 2d. By verbally manumiting [*sic*] him in the presence of five witnesses. 3rd. By will duly executed.' And he might have added another, by marrying his slave . . for such is the Spanish law. The means . . are taken from the Partidas;" The jury found that she [538] "was his slave at the time of his death."

Judgment for the defendant reversed and the cause remanded: [550] "We believe . . that in Texas, prior to the 17th of March, 1836,[2] a master could let his slave go free without pursuing either of the modes . . [551] Whether valid as laws operating on slave property in Texas, or not, . . ['various'] laws and decrees [of Mexico] show, conclusively, a determined hostility to the institution of slavery."[3] [547] "slavery . . [548] had never ceased . . to exist, *de facto* if not *de jure*. In this state of uncertainty, the question of slavery continued until the formation of the Constitution. . . if he . . did not claim to be her master . . when the Constitution was adopted, her *status* is not affected by it, in anyway prejudicial to her claim of freedom." [Lipscomb, J.]

Fowler and Clepper v. Stonum, 6 Tex. 60, 1851. [64] "The defendant gave in evidence an instrument executed to him by the plaintiff's vendor, Halstead, . . 1844, . . by which Halstead acknowledged that the title to the [sixteen or seventeen] negroes was in the defendant Stonum, . . 1845, Halstead made a sale . . to . . Fowler . . Clerk of the County Court . . on the same night, the plaintiffs and others ran off the negroes,

[1] [551n.] "the Court . . did not decide whether . . [the Constitution] was operative from that date, or from the date of its adoption."

[2] [546] "The ninth Section of the General Provisions of the Constitution of the Republic of Texas, contains . . the following provisions: 'All persons of color, who were slaves for life, previous to their emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude; provided the said slave shall be the *bona fide* property of the person so holding the said slave as aforesaid.'"

[3] [547] "In 1829, the President of Mexico, Guerero, . . issued his decree abolishing slavery. The constitutionality . . was always questioned; . . It appears from a report made by Lucas Alamand, the Secretary of State, of Mexico, to the Congress of Mexico, . . 4th March, 1830, that such was the opposition to the laws in relation to slavery, in Texas, that any attempt to enforce them would be fruitless; that in consequence . . their operation had been suspended, so far as they related to Texas. This report . . no doubt, produced the 10th Section of the law of Mexico of the 6th of April, 1830, . . 'no variation shall be made in the Colonies already established; nor in relation to the slaves which may be in them. But the general government, and the special government of each State, shall, under the strictest responsibility, require the fulfillment of the law of Colonization; and that no slaves be thereafter introduced.' . . 15th February, 1831, . . the decree of 1829, abolishing slavery, was abrogated" on the ground of unconstitutionality.

starting for Louisiana to sell them; . . being overtaken, they brought back the negroes, and subjected them to levy by virtue of a writ of sequestration, at the suit of the defendant." [63] "bond . . given by Fowler . . for the forthcoming . . [64] 1846, the plaintiff Fowler offered . . Miller, five hundred dollars 'to go with the negroes [[65] "assist in running [them] off . . and making sale of them"]; . . ' declined" The negroes were [64] "taken from . . possession [of the plaintiffs and others holding under them] by the defendant accompanied by several armed men, on Saturday night, and early on the following morning, . . 1847; . . some of the negroes came to the party in the night, and the others were taken in the morning;"

Held: [73] "the lawless conduct of the plaintiffs . . in 1845 . . could have no effect to justify . . a subsequent trespass by the defendant, after having resorted to legal process and obtained the security which the law provides." [1]

Davis v. Loftin, 6 Tex. 489, 1851. Held: a bill of sale is not necessary to pass the title to a slave.

Peters et al. v. Caton, 6 Tex. 554, 1851. "a slave purchased at a succession sale; . . not made at the Court House, nor on the first Tuesday of the month," Held: void.

Nimmo v. Davis, 7 Tex. 26, 1851. [27] "The negroes appear to have been in possession of Mr. and Mrs. Nimmo [in 1817.] . . In 1833 . . [they] had removed from Virginia, and were residing in Alabama. . . [28] The negroes, consisting of a family, were divided into lots, as nearly equal as possible, and delivered to the children, except one negro girl . . retained by Mrs. Nimmo. . . 1835 . . they removed to Texas,"

Union Bank v. Stafford, 12 Howard 327, December 1851. [336] "this mortgage [to the Union Bank of Louisiana in 1837] included 102 slaves, with their increase. . . [337] The bill, alleges . . that these slaves remained in the possession of the respondents from the date of the mortgage till February, 1845, when they were fraudulently removed by them to the State of Texas for the purpose of evading the payment of this and other debts secured upon them; and that Stafford has threatened to remove them out of that State to Mexico if such a step should be necessary to prevent them from being seized to satisfy his debts. To prevent this, a receiver was appointed"

Bennett v. Butterworth, 12 Howard 367, December 1851.[2] Bennett claimed to hold the slaves [368] "by an absolute bill of sale, executed in . . 1845 . . The court made an interlocutory decree, that the bill of sale was a mortgage, . . Love was appointed to take an account of the amount due Bennett on the mortgage, and also to take an account of the hire of the negro slaves in the possession . . of Bennett; and the master [in chancery] was directed to credit him with any extraordinary expenditures which were necessary on account of the health of the negroes, and also

[1] Act of Jan. 27, 1842.
[2] See same *v.* same, p. 278, *supra.*

for rearing the children, etc. . . [369] In his report, the master says: 'It appears . . That Bennett treated the slaves with unusual indulgence and humanity, and in the manner that was pursued by Amis [father of Mrs. Butterworth, who had conveyed the negroes to her in April 1846.] . . He rented houses for them, furnished them food and clothing with great liberality, and proper medical attendance when necessary. That he sometimes hired them by the day, and sometimes by the month. . . that the negroes frequently hired themselves to others, and were paid by their employers.' . . [370] as there was considerable sickness at Galveston, where the slaves were situated, 'he allowed one hundred dollars as extraordinary expenditures for medical attendance, food, house-rent, and nursing.'[1] . . he allowed nothing for medicine or medical bills, except during the prevalence of the yellow fever, because the allowance for hire was made on a basis which covered all deductions for loss of time or other contingencies."

Held: "It is probable that the sum allowed by the master exceeded, considerably, the actual money received for the hire of the slaves. But the negligence . . by Bennett, in giving indulgence to the slaves, or in failing to have them suitably employed, should not excuse him from an equitable charge of what they could have earned." [369] "Bennett held them as a pledge, and he was not at liberty to indulge them in idleness, as their master may have done." [McLean, J.]

Porter v. Miller, 7 Tex. 468, 1852. [469] "the mother of . . George, was purchased with . . funds . . placed in trust [for the separate use of Mrs. Porter]. This deed was recorded in 1829, in . . Tennessee; . . in Texas, in . . 1840; . . 1847, the boy was sold by [the husband] . . to the defendant; . . [who] should have him at the expiration of his term of hire [to Jenkins], . . [470] Jenkins received a note from Mrs. . . Porter, directing him not to let the defendant have the boy; . . on the very night the month [of hiring] was out, the boy was missing, . . about a month after the negro went into the possession of the defendant, a written demand for his restoration, was made by . . [Mrs.] Porter." She brought suit for his recovery. [469] "The negro was drowned while in possession of the defendant, during the pendency of the suit;" Held: the defendant is responsible for the value of the slave, as well as the value of the hire up to the time of his death.

Clark et al. v. Davis, 7 Tex. 556, 1852. [557] "Davis hired the negro to Clark and Kilgore to do all kinds of work necessary . . in connection with their mill business," "disappeared, . . evidence tending to show . . [he] had been drowned" Davis brought suit to recover his value. Judgment for plaintiff affirmed.

Sims and Smith v. Chance, 7 Tex. 561, 1852. [562] "Chance sued . . for the value of a slave, . . [569] a conflict of testimony . . Morgan [testified] . . that Mr. Smith was informed that the boy was a good axe hand, . . agreed to hire the boy as an axe hand, until the end of the year. . . proven by John G. Smith, that . . [570] E. M. Smith replied

[1] The account is from November 1, 1847, to June 1, 1850.

that if he suited best as a chopper, he would put him in the woods, if not, . . in the mill, or wherever he suited him." [568] "The plaintiff . . alleged . . that the defendants . . caused the . . [569] slave to assist in putting the machinery in motion by putting his shoulder to the fly wheel, and . . permitted him to remain . . while the same was being put in motion by steam, . . received an injury terminating in death; . . [572] Morgan states that Smith admitted . . the death to have partly resulted from the carelessness of the engineer, . . But . . the boy had been frequently warned by [E. M. Smith] . . and others in his employment, against the danger" Verdict for the plaintiff.

Judgment thereon affirmed: [569] "I incline to the opinion that the conclusion drawn by the jury was erroneous; but . . not so manifest as to authorize their verdict to be disturbed." [Hemphill, C. J.]

Griffin v. Chubb, 7 Tex. 603, 1852. [605] "after the expiration of the time the defendant was to retain possession of the negro, he refused to deliver him to the purchaser [who] . . afterwards decoyed and carried him away in the night;"

Mitchell v. Mims, 8 Tex. 6, 1852.[1] [7] "verdict for the plaintiff, which was set aside; a new trial granted;" [9] "The questions, which the jury were required to decide, . . were, whether the treatment . . had been such as a prudent and humane master would observe towards his own slave; and whether the loss of the negro had been occasioned by the want of ordinary care . . on the part of the defendant." [7] "a second verdict and judgment thereon for the plaintiff;" Affirmed, [10] "though the evidence be not of an entirely satisfactory character." [9] "There was no evidence of any act which would amount to a crime, or a wilful trespass, on the part of either principal or agent."

Wofford v. Thompson, 8 Tex. 222, 1852. "in 1834 or 1835, . . Wofford, residing in Kentucky, . . sent by his son to Louisiana, a negro woman and her three children, in order to place them beyond the reach of creditors. . . left the negroes . . [with] Thompson, . . In 1836, the Woffords visited Thompson, who . . had removed to Texas, bringing the negroes . . [223] 1841, Wofford took possession . . 1843 . . he brought this suit . . to recover hire . . defendant answered, . . that their services were worth no more than their food and clothing, and interest upon the [$300] . . loaned to the plaintiff."

Horton v. Reynolds, 8 Tex. 284, 1852. "action . . brought by . . Reynolds . . for the recovery of two slaves, . . [285] 1840 . . the agent . . of . . Smith, a . . citizen . . of Mississippi, procured a warrant from . . Good . . for the . . arrest of . . Reynolds, on the charge of having . . stolen . . twenty-seven negroes . . property of . . Smith; . . Good at first refused the application . . because . . Reynolds had previously . . obtained a warrant against . . Smith and others, accusing [them] . . of attempting to rob him of his negroes; . . Sheriff . . was accompanied to the camp of . . Reynolds by an armed party, among whom was . . Horton, . . whilst under arrest . . Reynolds gave

[1] See Mims *v.* Mitchell, p. 274, *supra.*

to the party . . twenty . . slaves, they agreeing to release him from all further prosecution both civil and criminal. . . threats were made, that, if he did not deliver up the negroes, they would take him in irons . . on the charge of negro stealing. . . [286] Reynolds told [witness] . . that at the time he executed the bill of sale . . he believed if he had not signed it they would have taken his life; and that he acknowledged it for record, for fear of the persons in the office." Verdict " for the plaintiff, for the value of Tom four hundred dollars, and for the hire . . seventy-five dollars per year from . . 1840 . . to the present . . for the value of Ephraim three hundred dollars, and for the hire of Ephraim [$56.25] . . per year up to . . 1847."

Ables v. Donley, 8 Tex. 331, 1852. Suit on a note [332] " given for . . a negro woman . . September, 1850, and warranted sound, . . a few days after . . [she] showed symptoms of disease. In about two weeks, she had chills and fever; and in about two months she died. A physician who had seen the negro . . supposed her to have had ' typhoid fever; ' . . verdict for the plaintiff. The defendant moved . . for a new trial; . . filed . . affidavit . . that, in the winter or spring of 1850, the negro was sold in . . New Orleans, for $80, as a sickly and unsound negro;" New trial refused. Judgment affirmed: [337] " the truth of the disputed fact, . . the soundness at the time of the purchase, would be left still doubtful."

Thompson v. Chumney, 8 Tex. 389, 1852. Bill of sale: [390] " Received . . four hundred dollars [in February 1848] . . [for] Jack . . about sixteen or seventeen . . of yellow complexion, which I warrant to be sound of body and mind and a slave for life, . . further warrant that . . [he] will not abscond . . and should he become sick or die before . . June . . I agree to pay . . damages "

Womack v. Womack, 8 Tex. 397, 1852. [398] " January [1845] . . she and her . . husband . . upon the eve of emigrating [from Mississippi] to Texas with . . [her twenty-five] slaves, and needing the assistance of defendant, . . [399] agreed to pay [$500] . . for . . one year . . January, 1850, . . [they] did . . sell . . to . . defendant, the negro . . in part payment . . [400] Received [$400] . . for a negro boy . . aged about fifty years." [399] " The defendant averred . . a liberal price . . [401] admitted, ' that . . his hire per year is of the value of one hundred dollars; "

Givens v. Davenport, 8 Tex. 451, 1852. Davenport brought suit in 1847 [452] " for the foreclosure of a mortgage [on nineteen negroes] . . executed [by Givens] to him in trust, in . . Alabama. . . [453] 1845 . . Givens, without the knowledge . . of . . plaintiff, removed the . . negroes . . to . . Texas; . . refuses to deliver [them] up . . to be sold to satisfy the . . debt, . . [454] verdict for the plaintiff; and a decree . . for the seizure and sale " Affirmed.

McGehee v. Shafer, 9 Tex. 20, 1852. [21] " evidence, that the plaintiff, wagoning upon the highway . . stopped at or near . . [defendant's] house, to pass the night; that, in the night, he had a conversation with the negro man of the defendant; that, on the following morning, the defend-

ant collected some . . neighbors, pursued . . demanded a confession . . plaintiff refused, protesting that he had done nothing wrong, and offering to go before a magistrate; upon which . . [defendant] cut switches or sticks with which he inflicted blows upon the back . . for some time; . . At length the plaintiff confessed . . He was severely bruised; . . was, for some time, disabled . . The defendant proved that, since the whipping, the plaintiff, publicly . . had admitted having conversed with the . . negro . . about running away, and going to Germany, and being free, and had said that he would be along . . in two months, when he would take him . . But the plaintiff accompanied these admissions with the statement that he was but jesting . . verdict for the plaintiff for one thousand dollars damages," Judgment thereon affirmed.

Young v. Lewis, 9 Tex. 73, 1852. " March, A. D. 1849, petitioner hired to . . Lewis a negro woman . . by the month, of the value of five hundred dollars; . . [74] ' at twelve dollars per month; ' that the hire of the first month was paid; . . about ten days thereafter " [73] " petitioner, greatly apprehensive that said slave might fall a victim to the cholera then raging . . as hundreds were dying, demanded . . slave . . for the purpose of taking her home . . Lewis refused . . she died of the cholera within six days . . verdict and judgment for the defendant."

Affirmed: [76] " after another month had commenced to run, neither could terminate [the contract] . . without the consent of the other, until the month then running should elapse."

Winburn v. Cochran, 9 Tex. 123, 1852. [124] " the slave . . went into the possession of . . Winburn . . before . . 1842, by a loan from . . Jeremiah Cochran; . . 1847 . . Winburn died . . she was taken possession of by the executors, . . [In] 1851 . . she was clandestinely taken by the defendant [administrator of Cochran], in the night time. . . [125] the statute of limitations . . had completed the bar before the slave was captured " Held: " the statute . . vests the right "

State v. Sullivan, 9 Tex. 156, 1852. " the petitioner emigrated to the country in 1835; . . [157] a single man, owning negroes at the time," [156] " received a grant of one-third of a league . . had obtained . . a certificate for the additional two-thirds of a league of land and labor [177 1/7 acres], to which he conceived himself entitled . . [157] as the head of a family,"

Held: [161] " the plaintiff, on the facts, was entitled to recover."

Chappell v. McIntyre, 9 Tex. 161, 1852. [162] " came to Texas [from Tennessee] . . 1840, bringing . . some negroes; . . planted a crop, and, after about three months, returned . . 1841, he returned to Texas, with his wife," See McIntyre *v.* Chappell, p. *277, supra.*

McGreal v. Wilson, 9 Tex. 426, 1853. [427] " witness, accompanied the defendant [receiver] and . . a Deputy Marshal . . and aided in seizing about seventy slaves . . seven or eight other persons . . assisting; some of the company were armed; . . he was paid twenty-five dollars . . for his services " " The plaintiff proved that the defendant contracted

to let him have the use of two of the best negroes in the lot, . . if he would assist"

Held: [428] "a parol contract . . to do what appears on the face of the proceedings, to be an illegal act."

Ashworth v. State, 9 Tex. 490, 1853. "The appellant was indicted and convicted upon the following charge: 'that Henderson Ashworth, . . a free person of color, of African descent, laborer, and Lititia [*sic*] Stewart, . . *spinstress,* . . did . . live together in fornication,' . . the defendant asked several charges . . predicated upon the admission that some evidence had been introduced that the parties were married, and that no evidence had been introduced to prove the descent of Lititia Stewart." Refused. "no statement of facts; nor bill of exceptions. . . decreed that . . defendant be committed to jail until the fine and costs were paid." Affirmed.

Bryan v. Bridge, 10 Tex. 149, 1853. "The negro man having run away or been removed, the Sheriff made a special return, excusing his failure to sell,"

McClenny v. Floyd, 10 Tex. 159, 1853. [161] "evidence . . that McClenny owned the negroes . . in . . Alabama, . . conveyed the negroes in trust, in 1839, to secure the payment of . . debts; that, to avoid the payment . . he employed Knight to remove [them] . . to Texas in 1840, and gave him a bill of sale . . that Knight brought the negroes to Texas and delivered them to McClenny; . . in 1842, took them . . in the night, and proceeded . . in the direction of Louisiana. Floyd . . [McClenny's] son-in-law . . took from him . . [a] bill of sale . . the better to enable him to regain the possession . . overtook [Knight] . . had him arrested . . on a charge of negro stealing, and taken before a Justice of the Peace . . Knight exhibited . . bill of sale . . made in Alabama, . . arbitrators . . awarded the negroes to Floyd. . . in Floyd's absence . . McClenny removed the negroes . . [162] made a bill of sale . . to his co-defendant McGown" who [167] "admits his knowledge of the 'sham sale' as he denominates it, from McClenny to Floyd." [160] "The appellee's intestate brought suit"

Held: [166] "this was an executed contract; and though void . . as to third persons whose rights it was intended to defeat, it was binding upon [McClenny.] . . A party cannot defeat one fraudulent conveyance by another, made to a person cognizant of the fraud."

McKinney v. Fort, 10 Tex. 220, 1853. [232] "For four years previous to the purchase, the boy had had a wife at the plaintiff's house, whom he had visited every Saturday night, remaining until Monday morning, frequently visiting her on Wednesday night. The plaintiff also made inquiries of the overseer . . in relation to the health of the boy, previous to the sale; and a witness testifies, that, in . . 1846, on proposing to sell the plaintiff a slave, he replied that he intended to buy Dr. Fort's Wash: and on witness saying that Wash was a sickly, dropsical, negro, plaintiff stated that he knew as much about the health of the negro as Dr. Fort or any body else, and that he would rather have Wash than any two negroes

in the county. . . he did not seek the opinion of the defendant." [222] " the plaintiff came to defendant's plantation for the purpose of purchasing the boy, . . being about to remove to Collin county, he did not like to separate them . . The defendant proposed to purchase the girl; but the plaintiff refused to sell on the ground that she was a present to him and was not suitable for a plantation negro. . . agreed that the plaintiff should give . . [13,000 pounds of ginned] cotton . . to be delivered in some few weeks," [233] " The price of the negro [about twenty-two] was high;" [222] " overseer of the defendant . . was present at the delivery of the cotton [in December 1846] . . was to deliver the boy to McKinney that night, which he . . did. . . a witness for plaintiff . . heard [defendant] . . state . . that he . . expected to get ten cents per pound for [the cotton,] . . which would be enough to buy two good negroes; . . 'he was not a well negro, at that;' . . said in a boastful manner," The negro died the next May. [230] " No physician was called; and none of the witnesses could characterize the disease. . . at the time of removal . . through the prairies . . the weather was extremely inclement," Judgment for defendant affirmed.

Linard v. Crossland, 10 Tex. 462, 1853. " 1848, the defendants . . came to the residence of the plaintiff with four or five white men and four or five negroes; . . felled trees . . [463] Several of the men had guns "

Hagerty v. Scott, 10 Tex. 525, 1853. [526] " Benjamin and Rebecca Hawkins, . . members of the Creek Nation . . in the territory of Arkansas " " were married in 1830, and had two children, . . in September, 1833, . . [one] died . . [He] owned . . [eight] slaves; . . about December, 1833, . . Benjamin and Rebecca, removed to Texas, and brought . . said slaves and their increase;"

Philips v. Wheeler, 10 Tex. 536, 1853. [537] " a negro (Jack) had been employed by the defendant . . by the day; . . on Sunday . . a witness met the defendant going . . for a rope to draw the plaintiff's negro [Bill] out of his well ['recently cleaned out']; . . drawn out . . much injured . . died . . evidence offered by the defendant, to prove that it was customary for negroes to assist one another, in jobs undertaken by them about town; . . rejected. . . [538] verdict for the plaintiff." Affirmed.

Fowler v. Stoneum, 11 Tex. 478, 1854. [479] " the plaintiff purchased the negroes at Sheriff's sale, as the property of . . Halstead, in . . Alabama, in . . 1842; . . 1844, he made a conditional sale of the negroes to Halstead, . . in this State, [482] . . 'Jerry and wife Phebe; . . Jesse and wife Patsey; . . Charles and wife Judy; boy Solomon: girl Julia, boy Berry; . . Peninah and her four children, and negro man Base.' "

Cobb v. Norwood, 11 Tex. 556, 1854. [559] " alleges that after the commencement of the suit in Mississippi, . . Norwood removed to Texas, bringing the two slaves that had been sued for,"

Haley v. Villeneuve, 11 Tex. 617, 1854. Haley, a free man of color, " brought suit against . . Villeneuve, before a Justice of the Peace, and

. . 1850, obtained judgment for the use of one Howerton [a white man]. Execution issued, and was levied on a billiard table, which the wife of the defendant . . claimed . . Upon the trial of the right of property, the claimant moved the Court to quash the execution . . on the ground that the judgment was void, because rendered in favor of a free person of color, residing within this State in violation of law.[1] The Justice, who was the successor . . of the Justice who rendered the judgment, sustained the motion. Afterwards, the successor . . of the Justice who rendered the last mentioned judgment, on the motion of the plaintiff, set aside said judgment, . . the claimant . . petitioned . . for a *certiorari* to bring before the Court for revision, and . . annul the original judgment . . [618] On the return of the *certiorari,* the defendant therein moved . . to dismiss the petition, . . overruled"

Reversed and petition for *certiorari* dismissed: [619] "a defendant in a judgment rendered by a Justice of the Peace, cannot have a *certiorari* . . for matters, which might have been urged . . at the trial before the Justice."

Turner v. Smith, 11 Tex. 620, 1854. [621] "deed of trust, . . 1841, from Turner to Groce, of five negroes including the boy Jim, to secure the payment to Waller of six thousand dollars, . . [623] Defendants . . proved that Waller had possession of . . Jim . . 1842; . . claimed . . by virtue of a sale made under said deed of trust; . . The plaintiff then proved by a witness, that he saw Waller come . . with this negro and other negroes, in the night time, about daylight; . . said he had taken them, about eleven o'clock at night, from the place of Mr. Brown, where they had been for some time"

Peter (a slave) v. State, 11 Tex. 762, 1854. "indicted for arson, . . convicted, and motions for new trial and in arrest of judgment . . overruled, . . The basis of . . [latter] motion was, that the grand jury . . was drawn by a person purporting to act as the Deputy of the County Clerk, when . . not" Judgment affirmed.

Avery v. Avery, 12 Tex. 54, 1854. [55] "he ran the . . slave [off from Georgia] to . . Louisiana . . to prevent his being sold for his debts; . . afterwards paid his debts . . moved . . to this State, bringing . . his slaves"

Purvis et al. v. Sherrod, Executor, 12 Tex. 140, 1854. Will of William T. Weathersby: [141] "3rd. I give to my negro woman Charlott [*sic*] and her child Julian their freedom, because of Charlott's faithful services in aiding me to make all the property which I own in the world. I also give my boy George Washington his freedom, because of affectionate regard for him. And I wish the . . three . . to be left under the charge of my sister Lucinda Sherrod, to be settled near her . . and if the State of Texas, or any of my relations, should object . . I give my sister full power to send them to a free State, or to Liberia, as she and the negroes may agree." "4th. I give . . [142] Charlott, my horse Charley, two cows and calves, one plough and gear, and meal for one

[1] Hart. Dig., Art. 2553.

year, and . . three hundred dollars . . to fix her comfortably. In case this will should be contested by any of my legal heirs, . . I give the . . negroes . . to my sister . . believing she will carry out my will in the premises. And I further bequeath to my sister [$1600] . . in case this will should be contested by any of my legal heirs, for the purpose of carrying out my will." The executor brought suit [141] "for a construction of [the] two clauses . . and for instruction . . [142] Purvis and wife . . demurred; . . overruled; and the Court decreed that the State did object to the freedom . . on the conditions mentioned in the will; and that Purvis and wife . . did contest the will; that Charlott was not entitled, to the bequest of [$300] . . and that Mrs. Sherrod was entitled to receive the negroes and the [$1600] . . as special trustee, for the emancipation . . and that they should be sent to a free State, or Liberia, as she and they might agree; and, after paying the expenses . . they were entitled to the remainder . . and orders that if she should fail to [execute the trust] . . it should be done in the same manner by the executor."

Affirmed: I. [164] "the trust conferred on Mrs. Sherrod . . was a . . valid trust at common law;" "we . . yield our unqualified assent" to the opinion of the Supreme Court of Tennessee in Hope *v.* Johnson.[1] II. The trust was not "in violation of the Constitution and laws of the State, or repugnant to its policy. . . the only provision [2] in the [State] Constitution having any reference to . . emancipation . . [165] does not assume to be restrictive on the owner. . . [166] It is . . most likely that the State Convention had in view the provisions of the Constitution of the Republic,[3] and the Acts of Congress [of the Republic] still of force, on the subject of emancipation and free negroes, . . [167] as the Act [of February 5, 1840][4] is believed to be still in force, and it forbids free negroes from coming into the country, taken in connection with the old Constitution and the new, the prohibition of emancipation, unless the . . slaves shall be removed from the State, is implied, . . [171] The principles deduced from . . [Mississippi,[5] Georgia,[6] and South Carolina [7]] cases, are that although a State by its laws, may absolutely prohibit emancipation, or direct the particular mode in which it can only be done, yet a bequest of freedom not to be . . [perfected] until the slave is removed beyond the territorial limits . . is . . valid . . and . . a bequest to a slave is valid, if not to take effect until his removal . . [172] he must . . respectfully differ with the Supreme Court of Alabama,[8] arises from not

[1] Vol. II., p. 491, of this series.

[2] "The Legislature . . shall have the right to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge." Art. 8, sect. 1.

[3] "Congress shall pass no laws to prohibit emigrants from bringing their slaves . . and holding them by the same tenure . . nor shall Congress have power to emancipate slaves; nor shall any slaveholder . . without the consent of Congress, unless he shall send his . . slaves without the limits of the Republic." General Provisions, sect. 9.

[4] Hart. Dig., Arts. 2546-2550.

[5] Ross *v.* Vertner, vol III., p. 290, of this series; and Wade *v.* American Colonization Society, *ibid.*, p. 309.

[6] Vance *v.* Crawford, *ibid.*, p. 19.

[7] Frazier *v.* Frazier, vol. II., p. 359, of this series.

[8] See Trotter *v.* Blocker, vol. III., p. 143, of this series.

State v. Wupperman, 13 Tex. 33, 1854. " indicted under the second Section of the Act concerning slaves, (Dig. Art. 2558,) which prohibits the buying of any produce of a slave ' without the written consent of his . . master . . or overseer.' "

Eccles v. Hill, 13 Tex. 65, 1854. " note . . for $150 . . the hire of . . Marian and Missouri, for . . 1853."

Cook v. Thornhill, 13 Tex. 293, 1855. [294] " the [two] slaves belonged to the plaintiff . . in . . Virginia, . . a lunatic . . in 1835 said slaves were taken by a brother of the plaintiff to Mississippi, . . sold . . in 1840 . . [to] defendant . . the plaintiff . . recovered judgment against him for the slaves . . This action was brought to recover the slaves, or their value, together with the amount adjudged in Mississippi "

Schrimpf v. McArdle, 13 Tex. 368, 1855. [369] " there were fifteen hands employed [in the brickyard]—six negroes hired by the month and nine Germans by the job "

Linney v. Maton, 13 Tex. 449, 1855. In a quarrel [451] " Julia Maton . . called Linney . . a negro; "

Nix v. State, 13 Tex. 575, 1855. " The evidence was that the defendant had committed a violent assault and battery ' upon a negro woman [the slave of another] . . with a knife, with which he cut her.' " [579] " unprovoked . . violence, committed in a fit of drunkenness," [575] " The jury returned, ' We . . find the defendant guilty, and assess the punishment at $25 fine, and ten days imprisonment in the county jail; ' and the Court rendered judgment accordingly." Affirmed: [579] " it was a crime against the law of nature and the laws of society; and equally within the spirit and intention of the statute, as if . . committed upon a free person." [Wheeler, J.]

Ford v. Clements, 13 Tex. 592, 1855. About 1830 [593] " Ford and wife removed [from Tennessee] to Mississippi, carrying . . [the slave] Narcissa with them. . . In 1845 Ford sold Narcissa her liberty and the liberty of one of her children. In 1848 Narcissa paid [Mrs. Ford's son-in-law] . . $100 and his expenses to carry her and her children to Ohio."

Calvit v. Cloud, 14 Tex. 53, 1855. [54] " The plaintiff derived title by a deed of gift . . made in the jurisdiction of Brazoria, in the State of Coahuila and Texas, in May, 1834. The defendant pleaded that at that date the property in slaves could not be legally held and transferred [there.] . . The Court adjudged the plea insufficient; . . rightly " " The suit was commenced . . 1848. Verdict . . 1853, for the plaintiff, for . . Emily, valued at $800; her child, valued at $200; for the hire of Emily . . at $130 per year,"

Parker v. Portis, 14 Tex. 166, 1855. [168] " Lydia, was purchased . . in . . South Carolina, in . . 1848, . . brought to this State "

State v. Barrow, 14 Tex. 179, 1855. In 1843 [180] " Mrs. Barrow's father announced his intention to give the slave . . to Mrs. Barrow . . for . . [her] separate benefit," "telling them . . that they must not per-

mit him to be sold; and . . when they were loaded up . . the slave was delivered . . they came directly on [from Tennessee] to Texas,"

Young v. Epperson, 14 Tex. 618, 1855. [622] " Matilda, was inherited by the wife of the defendant, from her father's estate, in . . Tennessee; defendant and wife removed . . to Missouri; . . the negro woman and several of her children were sold at Sheriff's sale; . . [defendant redeemed them, and] in . . 1841 or 1842 . . moved to Texas, bringing . . said negroes; "

Allen v. State, 14 Tex. 633, 1855. " The appellant was indicted under Art. 454, (Hart. Dig.) for selling liquor to a slave, . . The witness saw no money pass, . . The Court charged . . that whether the defendant gave or . . sold . . it was equally an offence against the law." Held: " erroneous."

Duffell and wife v. Noble, 14 Tex. 640, 1855. " Suit . . against . . Noble, administrator of Lydia Loving, for the recovery of a slave girl named Missouri, aged about fourteen years. . . a son of the plaintiff [testified that] . . Missouri . . was born at the house of his father and mother, in . . Alabama . . in . . 1838; he has frequently heard his grandmother, Mrs. Lydia Loving, say that she had given . . [641] Missouri to his mother . . before the child was dressed, after its birth; . . on account of his mother's attention and care in raising . . the other negro children; . . his mother had the control and trained the child; when, however, his grandmother left . . the mother of the child, who was an obstinate and high tempered old negro, made a great fuss . . and declared she would not leave her child; and . . it was concluded that the child and mother should go together with Mrs. Loving . . [who] moved off about nine miles, . . and [in 1845, about a year later,] . . to Texas. . . paid taxes on her . . [645] value of the girl $600 or $700; hire worth $7 or $8 per month. . . Mrs. Duffell sent clothes (dresses and underclothes) to . . [644] Missouri, . . Weatherrel . . said Mrs. Loving, about a year before she died [in 1850], offered to sell him the . . girl," Verdict and judgment for defendant. Affirmed.

Arcienega v. Riddle, 15 Tex. 330, 1855. " The plaintiff . . indebted to the defendant . . conveyed to him . . three . . slaves; . . [331] they . . eloped, and made their way into Mexico, where they remained; . . the probability is strong, that they had eloped with the privity, if not by the procurement, of the plaintiff, who was then in Mexico."

Rawles v. State, 15 Tex. 581, 1855. " indicted under the first Section of the Act of May 11th, 1846,[1] for permitting his slave to go at large and hire her own time for more than one day in a week, and found guilty, . . [584] motion in arrest of judgment " denied.

Judgment reversed and the prosecution dismissed: " It is very unfortunate that, on a subject of so much . . importance, in . . keeping under proper discipline our slaves, there should be such imperfect legislation." [Lipscomb, J.]

[1] Hart. Dig., Art. 2576.

Kesler v. Robson, 16 Tex. 119, 1856. [120] "the boy and the land [a quarter of a league] were exchanged for each other . . 1854; . . the land was then and now worth seventy-five cents per acre;"

Baker v. Johnson, 16 Tex. 133, 1856. "that the draft was given for a slave . . represented to be sound, but which was . . afflicted with hernia,"

Eccles v. Daniels, 16 Tex. 136, 1856. [139] "proposing to hire the boy at [$12.50] . . per month; . . the negro was hired . . for both 1844 and 1845."

Scranton v. Tilley, 16 Tex. 183, 1856. [184] "Suit by appellee . . commenced July 22d, 1854, for that the defendants, . . 6th . . of July, 1853, sold the plaintiffs three slaves, warranted sound, for . . $3,300, one . . died about the Fall of 1853, . . [185] witness for plaintiff, Dr. Weems, testified: . . Friday was put to picking cotton; . . October witness was called . . and found him in convulsions, . . epileptic fits; . . in four or five days was sufficiently well for witness to leave him to the care of his master with directions that he should not be exposed to the sun in the heat of the day, nor to the cold of the early morning, . . the boy was well treated, for he was evidently a favorite with his master; . . [186] witness's bill . . was about thirty dollars. Witness saw Friday the day he was brought home, and noticed a peculiar expression in his countenance, . . never saw that . . except where the brain was affected; . . [187] thought it might have been caused by dread that his new home might not be agreeable, but after witnessing his . . convulsions, and finding that the expression was a constant one, . . [he] was satisfied that . . [they] had a common cause; . . No *post mortem*" [186] "Friday was apparently about sixteen . . between mulatto and black; delicately formed; . . [188] Another witness . . heard Mr. Scranton . . [say] he would bring a negro boy to exchange for Friday, . . The defendants . . introduced . . [their] clerk; knew . . Friday for nineteen days . . brought here by defendants, for sale, . . employed when needed at work about the store; . . a smart, active boy, not very robust; seemed accustomed to the work of a house servant." Judgment for plaintiff affirmed.

Bailey v. Hicks, 16 Tex. 222, 1856. [224] "had their [sixteen] negroes brought out from Louisiana," in 1849.

Martin v. State, 16 Tex. 240, 1856. [241] "convicted upon an indictment charging him with harboring and concealing a negro," [1]

R. and D. G. Mills v. Ashe and wife, 16 Tex. 295, 1856. [296] "Suit by appellees . . for the value of a slave, hired . . as an ordinary boat hand . . [297] at the mouth of the Brazos river on her way down . . the captain took a yawl, manned by one white man and three slaves, . . and went out to sound the bar. . . rough. The yawl passed over the bar, and meeting a schooner . . in charge of the pilot, took a line, and was being towed in, when . . it took a shear and capsized; and two of the slaves, one being the slave of the plaintiffs, were drowned. . . the *Bell*

[1] Hart. Dig., Art. 460.

made upwards of thirty trips, and took the pilot every trip but one. . . gave five dollars a month more for hands than boats that did not run outside. . . [299] Verdict and judgment in favor of the plaintiffs," Affirmed.

Shelton v. Marshall, 16 Tex. 344, 1856. [350] "suit . . upon a promissory note . . given in . . Mississippi, for slaves introduced into that State [by Shelton] as merchandize" in 1836. [345] "The defendants gave in evidence the Constitution . . of Mississippi, . . Then they read the answers of plaintiff to interrogatories, . . [346] Did you not trade in slaves in Mississippi, by importing from Virginia and other States, . . Ans[wer] . . never . . after 1835; . . Did you not sell . . the slaves mentioned in the bills of sale . . (One bill of sale, dated Nov. 28th, 1835, for . . Mary, for $1,100; another, dated January 9th, 1836, for two men and three women slaves, for $4,200.) Ans[wer] . . my agent Samuel W. Shelton, sold the slaves." Verdict and judgment for defendants.

Affirmed: [355] "the . . note was . . void." [351] "The Courts of Mississippi had the right to determine the effect of the State Constitution." [1]

Robinson v. Varnell, 16 Tex. 382, 1856. Contract: [383] "Jan'y 27th, 1848. On the first . . of January next, I promise to pay . . Varnell [$150] . . in the hire of a negro boy . . for . . 1848, which I am to furnish with two suits . . and return to him . . first . . of January, 1849." [384] "It appeared from the evidence, that the defendant had cruelly treated and abused the slave, causing him to run away; and that in March, 1848, while a runaway, the slave had been killed, while resisting capture by a party which had pursued him for breaking into houses . . in the night time, and stealing. The slave was armed with a hatchet, and being come upon suddenly, attacked the person, who shot him. The defendant proved by a witness, that plaintiff offered the witness ten dollars if he would find the slave and bring him back; . . [385] The jury found for the plaintiff, the hire for . . 1848, and the value of the slave, with interest from the first . . of January, 1849. Motion for a new trial overruled," Affirmed.

Doty v. Moore, 16 Tex. 591, 1856. [592] "This suit was brought . . to recover damages . . for . . representing a negro, hired . . to him . . to be a first rate striker in a smith shop, and a pretty fair smith, and honest . . that he was in truth no workman, as a smith, and of bad character; . . had burned the fence . . and . . the smith shop . . and was a runaway . . judgment by default; . . and large damages assessed"

Reversed and remanded: I. "incompetent evidence was received, . . the confession of the slave [2] . . [II.] the statement of facts does not show the slightest proof that the plaintiff in error had made the representations charged"

[1] See introduction to the Mississippi cases, vol. III., p. 277, of this series.
[2] Hart. Dig., Art. 723.

McFarland v. Wofford, 16 Tex. 602, 1856. [604] "May, 1853, Wofford said he was going to Alabama for some money, and thence to Virginia to buy negroes, and that he might go to Philadelphia if negroes were high."

Hagerty v. Harwell, 16 Tex. 663, 1856. Lipscomb, J.: [664] "This suit was brought by the plaintiff in error, to recover her community share of a negro woman and her two children, conveyed by her husband [to his sister] . . after the plaintiff had commenced a suit . . for a divorce. . . [666] The highest estimate put on the [slaves] . . is about [$1500] . . [667] the community property worth over [$30,000.] . . In the argument of the plaintiff's counsel, an effort was made to impeach the alienation, on the assumed hypothesis that there was an adulterous intercourse between the mother alienated, and . . the husband of the plaintiff, and that one of her children, conveyed . . was the issue; and that the object of the husband in conveying . . was to secure their freedom. . . [668] not warranted by the evidence. But if it had been fully proved, . . it is natural that he should trust [them] . . to the kindness of his own sister, rather than leave them to the . . infuriated wife, who would possibly, yea, probably, inflict severity, cruelty and hardship on them, . . The judgment is affirmed."

Vardeman v. Lawson, 17 Tex. 10, 1856. "came to Texas in 1838 or 1839, and purchased the land . . paying therefor with the . . slaves," brought from Alabama.

Moore's Administrator v. Minerva and her children, 17 Tex. 20, 1856. [21] "Moore, . . of Alabama, in 1841 or 1842 took Mary Minerva, then between twelve and fourteen . . to Cincinnati . . and left her there at school, declaring . . his intention to educate and emancipate her. In Sept., 1842, he returned to Cincinnati and executed . . a deed of manumission . . and had it put upon record. Again, in 1843, he returned . . and took Mary Minerva away with him, telling witness that he was going to Mississippi . . 1843 or 1844, Moore immigrated to Texas, bringing . . Mary Minerva . . In 1844 he died, leaving a . . will . . in which he mentioned the deed of manumission . . and stating his desire that . . Mary Minerva should be free; and in case of opposition . . [22] bequeathed her to his brother, with the request that he would emancipate her. Mary Minerva has been hired out ever since," "This suit was brought [in 1852] . . to recover the freedom of herself and children, and to recover damages against the administrator" [21] "the ages of the children were then . . seven years, four years, and six months; a fourth . . born during the pendency of the suit, was made a party"

Verdict and judgment in their favor affirmed: [27] "The will was not a valid will to emancipate . . because not made in conformity with the laws of Texas, . . But it was legal . . evidence to prove the execution of his deed of manumission,"

Moore's Administrator v. Francis and her children, 17 Tex. 28, 1856. [29] "The children of Francis were Daniel, 17 years old, and Caroline Matilda, 15 years old, at commencement of the suit. Francis and her

children were manumitted by the same deed; the plaintiffs in the other suits, by different deeds. In all other respects the facts were the same as in Moore *v.* Mary Minerva, *supra.*" "The Court . . ordered the [cases] . . to be consolidated. No error. Judgment in their favor affirmed.

Hopkins v. Wright, 17 Tex. 30, 1856. [34] "She . . inherited a large number of negroes, some of which her husband sold, and he conveyed ten to his wife to induce her to sign deeds for the land, and left Virginia for Texas with forty-two slaves."

McLemore v. McClellan, 17 Tex. 122, 1856. "Suit for $125 . . for the hire of a slave for . . 1852. . . the slave died . . February, 1852. . . Verdict and judgment for plaintiff for $125." Affirmed. [123] "we think the better opinion is in favor of holding the hirer responsible for the hire only to the time of the death. The question, however, is not presented by the assignment of errors"

Gaines v. Ann, 17 Tex. 211, 1856. Lipscomb, J.: [214] "Lawful slavery is confined to the African race. The evidence . . was clear . . that the mother and grandmother of Ann were both slaves and of the African race; that the grandmother was a mulatto, or half breed; that the mother of Ann was a quarteroon, . . that the reputed father of Ann was a white man, . . The evidence of her being pure white blood, was that of two medical gentlemen, who testified that they had examined her, and could not detect any of the indicia of the existence of African blood . . but that a person who was only one eighth of the African blood, might not show any signs . . though in general, that degree of the blood would show itself; and that the appearance of the child, in cases of mixed blood, were much more likely to be in conformity with the father than the mother. . . [215] We are . . bound to conclude that the verdict . . finding Ann to be of the pure white race, is not supported by the evidence; . . This cannot fail to give rise to some grave reflections on the law as it now is, . . the third generation, one of each being white, . . is the last degree prohibited by law from giving evidence against a white person.[1] Her child, if by a white man, would be a competent witness against a white person, but following the status of its mother, it would be a slave . . Whether it is sound policy to permit the law to remain in its present state is a question . . [for] the Legislature,"

Sadler v. Anderson, 17 Tex. 245, 1856. [247] "removed [from Mississippi] to Texas in 1840 or 1841, with his family and slaves;"

Pierce v. Cole, 17 Tex. 259, 1856. "The note was given for money loaned by plaintiff to . . Pierce . . The defence alleged was, that . . Pierce had placed a woman slave in the possession of the plaintiff, whose work . . was to pay for the . . interest . . that the plaintiff hired her out . . [260] and . . she was so cruelly . . treated as to greatly injure her value . . so as to render her incapable of doing work which she was before able to do; . . was taken sick and remained so . . long . . without the necessary attention . . and that during a part of the time . .

[1] Act of May 13, 1846. Hart. Dig., Art. 2586.

Pierce had to furnish another slave to wait on her, which . . from great exposure in waiting on . . the first . . was taken sick and died,"

Grumbles v. Grumbles, 17 Tex. 472, 1856. [474] " 1846, these negroes [the property of Edward Grumbles of Alabama], together with others, were put into the possession of . . Howard, with written instructions to take them out to Texas . . to John Grumbles;"

Carter v. Marks, 17 Tex. 539, 1856. Marks brought suit against Carter on a note of hand. The latter " pleaded in abatement that he 'was . . a free negro man . . and not competent . . to contract or be sued,' . . the plaintiff excepted, . . sustained . . verdict and judgment for the plaintiff,"

Affirmed: [540] " the plea . . was properly overruled . . It should have shown that the defendant was . . within the prohibited degree.[1] And . . that he was not residing in Texas at the date of the Declaration of Independence of Texas, nor authorized by any Act of the Congress or Legislature of Texas to remain . . By the Act of Dec. 12, 1840, (Hart. Dig., Art. 2571,) the Act of 5th February, 1840, was so modified as to exempt from its operation all free persons of color, with their families, who were residing in Texas on the day of the Declaration of Independence. The presumption is, that the appellant was residing in Texas, at . . [that] date . . as he is residing here now, unmolested,"

Claiborne v. Tanner, 18 Tex. 68, 1856. [71] " Harris . . testified . . that . . [he] loaned the negro to [his daughter and her husband] . . in Alabama in 1838 or 1839, for the purpose of learning a trade; soon after . . [they] brought the negro to Texas without the knowledge . . of witness." [70] " he was thirty-five years old [in 1854] and crippled, which depreciated his value one-half;"

Cain v. State, 18 Tex. 387, 1857. " Indictment . . That . . Cain, . . yeoman, . . did . . entice away . . a . . [388] slave, . . convicted." Judgment reversed and the cause remanded: [389] " The word *feloniously* is essential to all indictments for felony,"

Townsend v. Hill, 18 Tex. 422, 1857. " Suit . . on a . . note, given for the hire of a slave for the year 1854. . . the slave died within two weeks . . without any fault on the part of the defendant. . . received proper attention and medical aid. . . not sick when he went into defendant's possession . . a jury being waived, judgment was rendered for the plaintiff for the full amount of the note."

Reversed and reformed: [427] " the Court erred in refusing to admit of an abatement of the price, on account of the death . . before the expiration of the term of hiring." [425] " The argument of public policy, drawn from considerations of humanity, is . . entitled to great weight. But it may admit of question on which side the argument lies: whether the humane treatment of slaves will not be best promoted by increasing the motive on the part of the owner to hire . . to none but a humane master." [Wheeler, J.]

[1] Act of June 22, 1846. Hart. Dig., Art. 2586.

Flack v. Haynie, 18 Tex. 468, 1857. [469] "proved . . that Dr. Posey had bought a plantation . . and placed some negroes on it, with . . overseer; . . returned to Alabama [in December, 1850], and would be back again next fall; . . requested Haynie to have an oversight . . [470] his overseer . . [being] young and inexperienced;"

Burnley v. Rice, 18 Tex. 481, 1857. [482] "1841, . . Love conveyed to . . Burnley one undivided half of his plantation in Brazoria county, and . . slaves . . 'to make him a full . . partner' . . Burnley resided out of the State. Love resided at Galveston, and superintended the plantation . . [489] Jackson . . testified that he had known the plantation . . since 1837; . . a cotton plantation until 1849; that then it was changed to a sugar plantation; . . knew but two men in the business at the time;"

Haynie v. Baylor, 18 Tex. 498, 1857. [502] "was but a small farmer; had but one field hand, a negro woman. . . [503] The wagon driver of defendant was . . a trusty negro and a good wagoner."

Cartwright v. Cartwright, 18 Tex. 626, 1857. "Plaintiff and defendant were married . . in 1834. The defendant owned, before marriage, . . Jane, and her child, Mary. . . [627] The grounds of divorce were that defendant in 1848 falsely accused plaintiff of infidelity . . abandoned the bed and board of plaintiff, and lived in improper intimacy with the negress Jane," [643] "obstinately persisting continuously to live in a negro house with his negro woman," [627] "The Court . . decreed a divorce, . . assigned . . Jane and Mary to the defendant, but decreed that their children should be equally divided . . with the other common property,"

Held: [643] "the children of . . Jane and Mary, are the separate property of the defendant, . . [644] they constitute no part of the community of gains;" [Hemphill, C. J.]

Montgomery v. Culton, 18 Tex. 736, 1857. [745] "proposed to prove . . that . . Terrill told witness that he would have to drive Stockton from the place; . . that, if he suffered him to remain, he would spoil all the slaves. . . [746] that . . Stockton . . frequently admitted . . that he . . had no capacity at all to manage slaves;"

Smith v. Talbot, 18 Tex. 774, 1857. [775] "The petition states . . that . . 1836 . . Talbot executed his . . notes . . payable . . 1838, and . . 1839; . . [776] and before the same became due . . removed from Alabama to Texas . . with . . a large number of . . slaves, . . had purchased a large number of these . . from the plaintiff, and these notes were given for the price"

Hedgepeth et al. v. Robertson, 18 Tex. 858, 1857. Hood's testimony: "The plaintiff's slave, . . John, . . [in 1852] was driving the plaintiff's team of five yoke of oxen and wagon, laden with six bales of cotton, . . [859] during the night . . got into a bog . . finding it impossible otherwise to extricate [the wagon] . . pulled down a portion of the fence [of Kirby], . . After failing to get his wagon out, . . it was too dark to put up the fence well, and John encamped there. Early next morning, . . Hedgepeth, Kirby's overseer, . . made a great fuss . . Witness told Hedgepeth that the pulling down was done innocently; . . [861] Hedge-

peth then said to John, 'I'll whip you, God d—n you. . . pull off your coat, I mean what I say, sir,' . . John replied, 'I spects you does sir.' . . [862] Hedgepeth spurred his horse . . but John ran out of the field . . Hedgepeth called to [two negroes] . . to catch him, and one . . made a pass at him, but John told him not to lay his hands on him; . . ran about thirty yards . . towards the ferry and stopped. As he was going off, . . Hedgepeth called out . . 'you can run, God d—n you, but I'll whip you or kill you before you get home, you d—d son of a B—h.' . . told one of the negroes . . to go . . after his gun and dog; . . I . . went to John, . . asked him if he intended to leave; he said that he did, and I then told him that he had better come back, . . and if they whipped him at all, they should not whip him much; but he refused . . and halloed to my nephew to bring him his horse, but Hedgepeth took hold of the horse . . John ran off towards the river. . . Col. Kirby and White [the other two defendants] . . came . . [863] Kirby handed him his gun" [859] "Hedgepeth and White, with the gun and dogs, immediately followed . . [863] I heard a gun fire" [859] "Hedgepeth returned and said he had seen nothing of John. . . [863] but that John had been to the ferry, and the ferryman refused to put him across" [859] "John was never heard of afterwards. He was an expert swimmer. . . [860] was an unusually valuable boy; between twenty-five and thirty . . worth from twelve to thirteen hundred dollars; services worth $180 per year." Verdict and judgment for the plaintiff for $1300.

[873] "Affirmed with damages." "It was an unwarrantable interference . . with the plaintiff's property, attended by circumstances of aggravation, which called for the imposition of damages, not for compensation merely, but also for punishment and prevention. There are scarcely any damages which an unprejudiced jury would give in such a case, which the law would deem excessive." [Wheeler, J.]

Allen v. Russell, 19 Tex. 87, 1857. [90] "instrument executed [by Mr. and Mrs. Allen] in Tennessee:" [88] "we . . have this day [October 12, 1850] received [from Mrs. Allen's father] three . . slaves on loan . . to take with us to Texas, for the purpose of raising and supporting our children, and to have the labor . . during our . . lives,"

Lovett v. State, 19 Tex. 174, 1857. "Indictment, one count for an attempt to steal a slave, another for an attempt to entice the slave away. . . Sheppard . . testified that about . . first of January, . . 1857, he was informed by his brother that a traveller . . had informed him . . that . . Sam . . the property of . . Brown, had . . told him that . . Lovett had promised to take . . [175] Jack, the property of Brown, away from the country. That . . witness and several other persons . . with the consent of . . Brown, took . . Jack some three or four miles to the ferry of Lovett, . . caused Jack to expose himself upon the bank . . with a light; . . Lovett came over . . that witness and another person had given . . Jack [$10.75] . . with instructions to show . . Lovett; . . Lovett said that all he had been waiting for was money to carry them off; Jack said that another boy, Mart, had lots of money; and it was agreed that Lovett, Jack and Mart should meet at the river the next

Saturday night, to make some arrangement about leaving the next Spring. . . arrested" [174] "convicted, and the punishment assessed at three years confinement in the penitentiary."

Reversed and remanded: [177] "The time proposed for consummating the crime was so distant as to render it very doubtful whether the accused had fully resolved upon the commission"

Brady v. Price, 19 Tex. 285, 1857. "Suit by the appellant . . on a contract of hiring . . defendant claimed [$1000] in reconvention. . . evidence that defendant hired plaintiff for the year 1854, to oversee her plantation, for . . $300. There being ten or twelve man [*sic*] slaves on the plantation, and no white person except the plaintiff, . . the son-in-law of the defendant . . [her] agent . . told plaintiff he might have some difficuty . . and in case he should, . . send word to [him] . . or to . . sons of defendant, . . [who] would come and assist him. . . [286] plaintiff made the following statement . . Miles . . said something impudent; . . plaintiff told [him] . . to hush and go about his business; . . Miles again said something impudent . . plaintiff then caught up a part of a fence-rail . . did not get a fair lick at him, . . clinched . . Miles choked the plaintiff; . . was then pulled off plaintiff by the other negroes, . . went . . to ploughing; . . plaintiff, in some hour or two . . got his gun . . found negro's horse tied, and . . negro gone; . . next Monday morning . . [he] heard that . . Miles was . . at work. . . took his double-barrelled shot-gun, having . . drawn out . . buckshot . . loaded both barrels with squirrel shot, . . When . . Miles reached the end of the row plaintiff ordered him to stop. . . did not . . [287] Plaintiff told . . other negro to take . . Miles' horse. . . did not . . Miles dropped his plough-lines and ran ahead of his horse, when plaintiff fired on him. . . negro ran on . . he fired on him again, hitting him both times; . . overtook him. When . . negro turned . . he had a knife in his hand. Plaintiff drew his knife and told the negro to put up his . . and . . negro immediately shut up his knife and put it in his pocket. . . proved by a physician that there were fifteen to twenty-five . . holes in Miles' back, . . so deep that witness did not attempt to extract them. . . Miles had been previously healthy . . worth about $1000; but . . since . . had been unable to work . . The plaintiff attempted to prove that Miles was impudent, malicious and rebellious, . . some evidence to that effect; but . . other . . that he was merely self-willed. In the same month of April, . . defendant . . discharged the plaintiff. . . [288] Verdict and judgment for the defendant for $516 67." Affirmed: [289] "he had no right to assault him with a deadly weapon, . . [290] If the plaintiff was unable to enforce due subordination, by . . reasonable and proper means; . . he ought to have applied for assistance, as . . instructed" [Wheeler, J.]

Love v. Wyatt, 19 Tex. 312, 1857. [313] "1849 . . he left Arkansas, came to Texas, . . bringing the slave"

Cooper v. State, 19 Tex. 449, 1857. Overseer of deceased [457] "told Mrs. Fortson . . that if I saw any one about the house, and if I called them and they did not answer, I would shoot them. . . I believed there

was some mischief going on among the negroes, . . I intended to keep the negroes from visiting each other as much as possible. . . [458] I did not see anything wrong among the negroes that night."

Allen v. Urquhart, 19 Tex. 480, 1857. " The [three] women were from twenty to twenty-three years of age in . . [481] 1838, when Mrs. Allen received them by inheritance from her father. . . defendant paid $1200 for them [in 1838] . . $400 in cash, $400 in cattle and $400 in a note; . . a fair price . . at that time; . . [482] witness had heard Mrs. Allen say she was very anxious that the sale should be made; . . that the slaves were calculated to ruin her children; . . she would not give that cow ['pointing to one . . they got . . in payment'] for the slaves, and . . raise them up with her children;"

Wheeler v. Hollis, 19 Tex. 522, 1857. [523] " Watson . . became the guardian . . and received her [three slaves] . . In 1834 or 1835, . . [he] removed with his wife and ward [from Mississippi] to Texas."

Howze v. Howze, 19 Tex. 553, 1857. Howze, a resident of Georgia, [553] " recommended to his executors to hire out one or two of his negroes every year on account of their being hard to govern."

Anderson v. State, 20 Tex. 5, 1857. [6] " prosecution instituted in November, 1856, for permitting a slave to hire his own time. There was a motion to quash the indictment, a trial by jury and conviction. . . reversed and case dismissed." See Rawles *v.* State, p. 291, *supra.*

Gamble v. Dabney, 20 Tex. 69, 1857. [70] " 1853 . . Dabney and his wife . . emigrated from . . Arkansas to Texas . . bringing . . negroes conveyed by . . deed of trust " executed in Mississippi in 1835. [76] " the deed expressly provides that the trustees shall sell any of the trust property except the slaves,"

Manly v. Culver, 20 Tex. 143, 1857. [146] " testified that negroes hired from 1846 to 1853 for from $15 to $20 per month."

State v. Stephenson and Cabler, 20 Tex. 151, 1857. [152] " indictment . . for an assault and battery upon a slave, Malissa, the property of . . Rucker, . . committed . . 1856 . . whipping " " Defendants filed an exception ' that it does not appear from the face of . . indictment, that any offence against the law was committed ' . . sustained "

Reversed and remanded: " slaves are to be regarded as persons in respect to the criminal law." " Upon the contrary hypothesis every white person would have *prima facie* the right to whip any slave; . . a principle not recognized either by the public opinion and usage, or by the laws of the country." [Roberts, J.]

Sloan v. Webb, 20 Tex. 189, 1857. Inventory: " 1 negro woman aged 27 years, $700; . . boy aged 11 . . $650; . . girl aged nine . . $400; and . . boy aged seven . . $500;"

Echols v. Dodd, 20 Tex. 190, 1857. [191] " The defendant was the owner of a saw-mill . . and the negro boy was hired [in 1856] for the purpose of being employed in . . mill. . . Williams . . superintendent

. . chastised . . negro for alleged misconduct, and beat him so severely that he died" Held: defendant is responsible. [194] "the chastisement . . was . . done [by Williams] in the course of his employment,"

Nations v. Jones, 20 Tex. 300, 1857. [301] "suit . . to recover on a note given for . . a slave warranted to be sound of body and mind. . . [302] It was in evidence by a physician . . that he had but little intellect, but that little was sound; . . in proof by an overseer of defendant, that the boy . . was about half a hand. On the part of the plaintiff, it was proven that the defendant, some months after the sale, said the boy was worth $1000, which was the price . . A witness had employed the boy in his brick-yard for six months previous to the sale, giving . . one dollar per day; . . proven that preliminary to the sale, . . plaintiff distinctly informed the defendant that the boy was a fool-headed negro; that he was a chuckle-headed fool, and would not suit; that he had sense enough to do any thing he was told. . . defendant . . replied, 'That was the kind of negro he wanted;' . . The Court charged . . that the jury should find for plaintiff, unless . . the boy was an absolute idiot . . Judgment for plaintiff" affirmed.

Carter v. State, 20 Tex. 339, 1857. "The law under which this indictment was found makes the offence to consist in the master knowingly permitting his slave to carry fire-arms, etc. (Acts of 1850, Ch. 58, Sec. 1, p. 42.) The Court instructed . . that 'the law presumes that every man is informed of any habitual . . acts of his . . slave, unless that presumption is rebutted by the proof.' . . error."

Mitchell v. Vickers, 20 Tex. 377, 1857. [380] "she wished her sister to have choice of her colored servants;"

Wade v. DeWitt, 20 Tex. 398, 1857. DeWitt brought suit "for breach of warranty of soundness . . The slave had been confined four or five days before his death. Thirteen hours after . . a *post-mortem* examination was made by several physicians, who . . found the heart obstructed by a fibro-adipose substance . . which must have been from six months to two or three years in forming, . . supported by six regular physicians, nearly all of whom had been present . . [399] Two . . had given defendant descriptions . . and defendant took the depositions of nine physicians in New Orleans, nearly all . . professors in the University of Louisiana, . . Their testimony was . . that the description . . was imperfect, . . impossible . . to say with certainty of what disease the slave died, or how long it had continued. Several stated . . that . . such an obstruction . . would form" in ten days. Judgment for plaintiff affirmed.

Trammell v. Trammell, 20 Tex. 406, 1857. The executor [409] "fled from . . Arkansas to . . Texas, bringing with him . . slaves belonging to the estate, . . some twenty-five or thirty,"

Sawyer v. Boyle, 21 Tex. 28, 1858. [29] "'ordered that the negro property . . be . . divided between the heirs . . [30] lot No. 3 to consist of Charlotte and . . her infant child, etc.;' . . approved . . and . . 'The Court ordered the names of the eight heirs . . to be placed in one hat . . and the eight lots in another,'"

McFaddin v. Vincent, 21 Tex. 47, 1858. " petition . . That . . 1853, plaintiff came to Texas . . and . . brought . . slaves . . bargained with . . McFaddin . . for his plantation . . [48] that during . . 1854 he failed in making a crop . . that he and most of his negroes were sick during a great part of the summer; . . November . . he reconveyed the plantation . . and also conveyed to him the . . slaves . . prays that the [sales] . . may be set aside on account of fraud in the defendant, and the incapacity of . . petitioner . . [50] answer . . that . . plaintiff . . March 1855 . . in the night time, broke open . . [respondent's] dwelling house . . chained and hand-cuffed [him] . . and forcibly carried away . . his . . slaves mentioned [and two others;] . . that . . respondent . . procured a warrant . . and overtook him . . had [him] . . arrested, together with . . said slaves " Verdict for plaintiff, the [57] " jury, believing . . that . . his mind was not sound," Judgment thereon affirmed.

Graham v. Gautier, 21 Tex. 111, 1858. [112] " Suit by appellee . . for $187 57, for medical attendance to the slaves . . Answer . . alleging that by reason of the unskillful and negligent treatment . . ten . . of the value of $10,700, had died," [118] " The testimony shows that these negroes were taken sick . . with typhoid fever, and then measles upon that, and were first attended to by Dr. Fisher, who is said to have pronounced it cholera. They were moved while sick to the McNeal place, where Dr. Gautier was called . . and while he was attending on them they were moved to Hinckle's place. The idea of their having some contagious disease caused them thus to be moved . . The houses . . were open, the weather was not good, they were not well provided with bedding and clothing, and were left in these outhouses mainly to themselves, apart from any white family to see that they were properly nursed . . (the white family being sick at another place at the same time.)" [114] " instructions were asked by defendant . . [115] If the jury believe . . that the . . slaves were laboring under an attack of measles . . when the plaintiff . . treated [them] . . for . . cholera, or pneumonia, . . by the want of skill . . plaintiff is liable . . for the value of said slaves." Refused. " Verdict for plaintiff for $166 57; remittitur of $24 57, and judgment for the balance."

Reversed and remanded: [119] " However improbable it might appear to the Judge, that an impartial jury would . . make the physician pay for the loss of these exposed and neglected negroes . . it was the right of the party to have the law charged, in its full extent,"

Hillard v. Frantz, Administrator, 21 Tex. 192, 1858. " Suit was instituted by appellee . . to recover a negro slave girl . . proved that . . the girl was the property of . . the intestate, and that he died . . 1855; that . . the slave . . was worth $700. On the part of the appellant it was proven that . . 1854 . . [the intestate] gave and delivered the . . girl to the appellant . . upon the understanding that she would raise the . . slave, who was of tender years and the reputed natural daughter of intestate; and that when the child arrived at such an age that she could support herself, . . [the appellant] would take [her] . . to a free State and

manumit her, and that the estate was solvent. That the delivery of said . . slave was made about the time of . . [intestate's] marriage, . . [193] The Court . . excluded the testimony"

Judgment reversed and the case remanded: [199] "Such a transfer of a slave may be made verbally, when possession is immediately given, . . Such a trust is not unlawful in this State." [Roberts, J.]

Williams v. Ingram, 21 Tex. 300, 1858. [301] "the plaintiff knew of the unsoundness of the negro before he made the purchase; . . had consulted a physician as to the practicability of effecting a cure," Held: "a general warranty of soundness does not extend to . . defects . . known to the buyer."

Bruton v. State, 21 Tex. 337, 1858. "indicted for the theft of a slave. . . [338] Dickson testified . . that . . Bruton told him that the boy Frank that formerly belonged to John Kuykendall was runaway and was staying about Robert Kuykendall's place . . and that he wanted to fix to take him off and sell him. That . . a month afterwards Bruton took a bill of sale . . before a Notary Public, and the witness, under . . [a fictitious] name . . acknowledged [it] . . and delivered it to Bruton, under . . [a fictitious] name . . [339] preparations were made, such as providing a horse and a mule, getting clothes, saddle bags, etc.; . . that . . after . . [Bruton's] return he saw a mulatto girl . . which Bruton told him he had . . swapped . . Frank for" [348] "Dixon [*sic*] went off afterwards with this girl to New Orleans, and thence to Shreveport, where he was arrested and brought back. He stated that . . he saw . . Frank in New Orleans. . . [349] afterwards found there by Lewis [Frank's owner], when he carried back the girl and reexchanged the negroes." Verdict of guilty. Judgment thereon affirmed.

Carothers v. Thorp, 21 Tex. 358, 1858. Carothers executed "one [note] . . for $137 50, for the hire of a negro boy . . [another] for $125 00, for the hire of a negro woman . . for the year 1855. . . [359] placed . . slaves . . in the possession of . . Rainey, according to contract" "to cultivate . . land in partnership . . [Carothers] to provide . . two hands; . . appellant then obtained a situation as overseer . . February, 1855, the . . plaintiff . . took said negro [woman] . . home, and . . he . . was compelled to abandon his situation . . that he might comply with his contract . . by laboring in the place of said negro, . . claimed that his crop would have been increased by the labor of said slave in the sum of three hundred dollars,"

Guffey v. Moseley, 21 Tex. 408, 1858. "proved that defendant . . agreed with witness to go fire-hunting; . . Moseley insisted on a negro boy slave of . . Tinnin going with them; that the slave at first refused, but at Moseley's persuasion at last consented; . . Moseley carrying the gun, and the slave the fire-pan; that negro said he shined a pair of eyes; that Moseley gave him the gun, and told him, the negro, to shoot, . . and plaintiff's mare was killed"

Berge and Hynson v. Wanhop, 21 Tex. 478, 1858. "Suit for the hire of a slave. Plea, that before the expiration of the time . . he was drowned without the fault of the defendant." Held: "a good defence."

Bumpus v. Fisher et al., 21 Tex. 561, 1858. " action of malicious trespass and false imprisonment, brought by appellant . . Appellees pleaded that Dupree was a Justice of the Peace, . . that Fisher made an affidavit before him, containing a charge against . . Bumpus, that 'he did . . 1856, lay violent hands on a . . slave, Alfred, a man [property of Fisher], and unmercifully whip and abuse said boy;' . . Bumpus was . . arraigned for trial; . . jury . . brought in a verdict finding him guilty . . and assessing his fine at forty dollars, . . ordered into the custody of the Constable until . . fine and costs were paid, . . The exceptions of plaintiff to this answer . . were overruled . . verdict for defendants,"

Judgment thereon affirmed: I. [563] " Fisher . . had a right to make the complaint . . [II.] So too the Justice . . was not liable . . [570] he had jurisdiction "

Little v. Birdwell, 21 Tex. 597, 1858. [599] " Ball started with his family from . . Alabama for . . Mississippi, in 1832, . . had the slaves " " the negroes were . . [his] property . . in Alabama, Mississippi and Louisiana." " placed upon the inventory of . . [his] estate " in Texas.

Eborn v. Chote, 22 Tex. 32, 1858. "Action . . by the appellee . . instrument, on which the suit was based: ' Twelve months after date, I promise to pay . . Wright, or bearer, [$120] . . for the hire of negro boy Jo, aged about fourteen . . and in case . . Jo should run away during [1857] . . Wright is to lose all his time. January 1st. 1857. Thomas Eborn.' The note was assigned by Wright to the appellee. . . [33] the negro ran away about Christmas, . . Judgment for plaintiff." Affirmed.

Hubby v. Stokes, 22 Tex. 217, 1858. " suit . . by Stokes . . for a fraud in the sale of a negro girl. . . at . . $400; . . The bill of sale . . contained a special warranty . . ' Which girl I warrant sound in mind, and in good health, to the best of my knowledge.' " " The petition . . charged that the diseased state of her body, of which she died in a few months, occasioned plaintiff to expend large sums . . for medicine, physicians' bills, etc." [219] " There is such a mass of concurrent testimony . . as to place it beyond any reasonable doubt . . that the negro was imbecile . . diseased, and utterly worthless; . . well known to the defendant; and that he . . practiced a flagrant fraud," [218] " the judge charged . . ' That . . the damages might be exemplary or vindictive.' . . The Jury returned a verdict in favor of the plaintiff, for [$778.50] . . for which . . judgment was rendered . . and the plaintiff entered a *remittitur* for the excess over [$613] . . the amount of the purchase money and interest."

Affirmed: [221] " The plaintiff's counsel very unnecessarily remitted "

Walker v. Walker, 22 Tex. 331, 1858. [332] " two . . negroes [hired from defendant] were under his charge, working on a meeting house "

Hawkins v. Lee, 22 Tex. 544, 1858. [545] " appellant and his wife removed [with the slave from Mississippi] to . . Arkansas in . . 1830; . . 1840, Mrs. Hawkins went on a visit to her father in Mississippi, and . . exchanged . . said negro boy . . for . . Zack, . . remained . . in Arkansas . . until his removal to Texas, in . . 1853,"

Greer v. State, 22 Tex. 588, 1858. "indicted . . September, 1856, for permitting . . January, 1856, a slave, owned by him . . to carry fire arms, at other places than on his premises." Held: [590] "the indictment does not allege any offence against the laws in force, at the time it was found"

Callihan v. Johnson, 22 Tex. 596, 1858. Bell, J.: [603] "the killing of the slave . . took place in . . April; . . in . . March . . Callihan was aware that the negro was in possession of a pistol. . . He ordered the negro to deliver [it] . . and the negro refused . . drew it from his pocket and held it in his hand. If he had been shot at that moment, the case would have presented a different aspect. Callihan's son brought a shot gun, which he had been sent . . [604] to procure . . The negro then retreated. These facts show . . the most flagrant insubordination . . but . . not . . a case of forcible resistance . . nor . . that a necessity existed, such as the law recognizes, for taking the negro's life. . . the discharge of the shot-gun was without effect, and . . Callihan fired his six shooter once without effect, . . the negro was sixty, or seventy or eighty yards distant, when the shot was fired that took effect" Verdict and judgment for the plaintiff, for the value of the negro and the hire for the entire term. Affirmed.

Powell v. De Blane, 23 Tex. 66, 1859. "In 1854 . . Marble and his wife, with her slaves, moved [from Mississippi] to . . Louisiana, where she died in 1855. Marble . . removed with the slaves to Texas, where he sold some or all"

Herbert v. Butterworth, 23 Tex. 250, 1859. "overseer, under a contract . . commencing . . October, 1855 . . to continue during . . 1856, at . . $300 per annum" was discharged in September: [251] "owing to . . his inattention and mismanagement of the hands and plantation, his crop . . was almost an entire failure."

Blythe v. Speake, 23 Tex. 429, 1859. [430] "suit . . brought . . for . . $1000, the purchase-money of a slave, . . and for $900 damages, for money expended for medical aid, medicines and care, in nursing . . also for $2000 damages, for the breach of warranty, and fraud" [431] "The bill of sale is drawn up in the form of a deed to land . . 'convey . . a negro man . . about twenty-eight or thirty years old, sane and healthy (except one finger stiff,)'" "The petition averred . . that . . a disease . . speedily . . developed itself, causing prostration, sickness affecting the stomach, shortness of breath, swelling of the body, palpitation of the heart and difficult respiration, so that he . . was confined to his bed . . from the delivery [of the bill of sale] . . to the institution of the suit." Held: [434] "Regarding merely the face of the instrument, we would understand it . . to be a warranty of soundness."

Bagby v. Birmingham, 23 Tex. 452, 1859. [453] "while residing in Alabama, he became . . embarrassed by security debts, to avoid the payment . . he ran off two negro men to Texas, and 'kept his other property

out of the way of the sheriff,' until . . 1844, when he secretly removed, with his family and negroes, to Texas."

Todd v. Dysart, 23 Tex. 590, 1859. [592] " heard him speak of selling Frank, if he did not behave himself;"

Faulk v. Faulk, 23 Tex. 653, 1859. [656] " she removed [from Louisiana] to . . Texas in . . 1854 " with ten slaves.

Boulware v. Hendricks, 23 Tex. 667, 1859. Roberts, J.: [668] " action by an administrator . . against a previous administrator . . for the recovery of effects left in his hands, . . most of the effects . . were the proceeds of the hire of negroes whose freedom has been established since he ceased to be administrator, by virtue of a will of the decedent, . . the proposition contended for [by defendant], is, that the judgment establishing the freedom of the negroes, fixes their *status* as free persons, by relation back to the death of the testator; and that, from that time, the negroes were entitled to the profits of their services. We do not think this is the law. . . [669] Another feature . . operating against this defence, is, that the negroes intervened in this suit, . . and claimed the proceeds of their hire. . . Their petition was . . dismissed . . and they have not appealed " Judgment for plaintiff affirmed.

Philleo v. Holliday, 24 Tex. 38, 1859. [39] "Abram J. Hill had . . made a will, wherein he bequeathed the negroes . . to his wife . . for life, and attempted thereby to give [them] . . their freedom, after the death of his . . wife;"

Held: [41] " the bequest of freedom is void, for the reason that no provision is made for the removal of the slaves beyond the limits of the state."

Armstrong v. Jowell, Executor, 24 Tex. 58, 1859. " By the provisions of . . will [of Alburtis Arnwine], the testator emancipated all of his slaves, and provided for their removal, by his executors, from the state." " the [Cherokee] County Court refused to admit the will to probate, and Maples declined to act as executor; the defendant in error removed the case, by *certiorari,* to the District Court . . and afterwards, by change of venue, it was removed to the county of Rusk, where . . there was a verdict and judgment sustaining the will." Affirmed.[1]

Tucker v. Willis, 24 Tex. 247, 1859. " in . . 1853, he moved [from Kentucky] . . to Texas, bringing the . . negro "

Hinton v. State, 24 Tex. 454, 1859. [454] " said . . that Whittaker should not run over him, because he had a few negroes, and he (defendant) did not have any."

Bradshaw v. Mayfield, 24 Tex. 481, 1859. [483] " we find his hire [in 1854] to be $150 per annum, and that the boy . . is worth $1000."

Smith v. State, 24 Tex. 547, 1859. [548] " Chalmers, while acting as captain of the patrol, found Isaac [the slave of Allen] with the whiskey, . . took the negro into the grocery, and charged Smith with having sold it to him, without permission of his master.[2] . . Smith said he . . gave

[1] See Purvis *v.* Sherrod, p. 287, *supra.*
[2] O. and W. Dig. 542, Art. 668.

it to the negro, but that another man paid for it. . . [549] Little . . stated that he owed Langham's negro fifty cents, for riding a wild horse for him; . . let [him] . . have the bottle of whiskey in payment . . does not know how Allen's boy got the whiskey. . . the defendant's counsel asked the court to charge the jury, that 'if they believed . . that Smith sold . . to Little, they must find for the defendant.' . . refused"

Held: [550] "this charge should have been given."

Westbrook v. Mitchell, 24 Tex. 560, 1859. "suit . . for the recovery of a negro, alleged to have been formerly a free negro, but who had . . sold himself [in Texas in 1855] to the plaintiff [[561] 'for . . $2500, . . for the use and benefit of the said negro' 'by reason of agreement . . entered into between the negro man and the plaintiff, in . . Mississippi'], and who had been enticed out of his possession, by the defendant. Exceptions to the petition were sustained by the court, and the cause dismissed."

Judgment affirmed: [562] "Until the passage of the Act of January 27th, 1858, authorizing free negroes, in this state, to choose masters, and to enter into the condition of slavery, the laws of this State did not recognize any persons as slaves, except . . the offspring of slave mothers. It has never been judicially declared, in this country, so far as we know, that . . any . . person, could sell himself into slavery; . . In the Act of . . 1858, the legislature evinced the greatest caution . . there are reasons of public policy, . . [563] Sometimes the negro might be the only sufferer, but at other times, the public might feel the bad effects of permitting negroes to reside amongst us, under the nominal protection of designing men." [Bell, J.]

Westbrook et al. v. State, 24 Tex. 563, 1859. "indictment against the appellants . . for imprisoning and kidnapping Lewis John Redrolls, a free negro, for the purpose of detaining him as a slave. . . evidence . . that Redrolls . . had made a contract to sell himself to . . Westbrook[1] . . and had, for a considerable length of time, . . lived with him as a slave, . . The district attorney asked the court to charge . . 'that a contract made with a free African person . . for . . [his] sale . . is null and void,' . . [564] given, with the qualification, 'that if the jury believe . . that the defendants exercised acts of ownership . . believing, in good faith, that they had a right . . they are not guilty,'" Judgment affirmed.

Hunt, Administrator v. White, next friend, etc., 24 Tex. 643, 1860. [644] "The decedent died . . leaving a written will . . admitted to probate . . 1852, . . 'I will . . to Elizabeth Sneida, one thousand dollars, in cash, my adopted wife; . . That my son Charles be purchased, and all the balance . . equally divided between . . Charles, my daughter Amanda, and my daughter Harriet, my daughter Mary Sneida and Robert Sneida, and Eliza Sneida;'" "At the time that the witnesses proved the will, they made oath . . to an 'explanation' . . 'Bracken died the next day after executing the . . will, . . [646] had three children which he acknowledged . . before us. . . Charles, Amanda and Harriet, who are

[1] See Westbrook *v.* Mitchell, *supra.*

part African blood; the two latter living with him . . the former, the property . . of . . Kerr, . . He emphatically directed his executors to purchase . . Charles, and to take him, and his two sisters to a state . . where they can be emancipated; that they provide for their education, and that when they are of legal age, they should have an equal share of his estate, with his other children; . . Mary Sneida and Robert Sneida and Eliza Sneida were acknowledged . . as his own proper children,' . . 1853 . . adjudged that that portion . . which bequeathed property to Charles, Amanda and Harriet, be set aside, . . [647] [They,] by . . their next friend, filed a petition in the District Court for a *certiorari,* to review the . . judgment . . alleged that . . the testator was . . unable to write; . . That words were unintentionally omitted, . . [648] adjudged that the decree of the County Court, so far as it affected . . the plaintiffs . . be . . annulled. And . . that the property . . devised to . . Charles, Amanda and Harriet, be . . placed in the hands of . . trustee . . to be . . paid over . . The decree made . . provision . . for the purchase of Charles, and his removal with Amanda and Harriet"

Reversed and remanded: [649] "This will contains no provision for the removal of the slaves out of the state; . . [653] The parol 'explanation' cannot be sustained as a nuncupative will, even if it were competent to emancipate . . by such a will."

Pridgen v. Buchannon, 24 Tex. 655, 1860. "suit . . on a . . note for $345, given . . for the hire of . . slaves . . and for the value of Biddy . . whose death was charged . . to have been occasioned by the wrongful act [of Buchannon] . . in removing her [to another county] . . 'in the fall of the year . . and there causing her to be employed in picking cotton, and in performing other labors in the swamps and sloughs . . a region . . notorious for being unhealthy, and particularly so to persons unacclimated . . and . . failed to use ordinary care . . in administering to the common wants . . of said slave,'"

Held: [657] "If Buchannon placed the slave in an employment . . more hazardous . . than that reasonably contemplated . . he would clearly be responsible for the death"

Barziza v. Graves, 25 Tex. 322, 1860. "the woman being very sick, her husband proposed to give [her] to her . . as her separate property, if she would nurse her until her recovery, and . . she did so"

Hines v. Perry, 25 Tex. 443, 1860. [444] "The defendant . . pleaded . . that he had purchased the negro . . without notice of the adverse claim . . brought . . from Mississippi . . 1850. . . proved . . [445] before defendant closed the trade he took the negro aside and asked him privately whether . . he really did belong to Hines? . . the negro answered . . 'I don't know, master, but I have heard the white folks say that I belong to his children.'"

Held: [452] "The law does not treat a slave as property merely, and incapable of doing any act which will affect others. . . A court of equity, therefore, . . could not treat as amounting to nothing a clear and unambiguous notice of a fact communicated by a slave." [Bell, J.]

Zembrod v. State, 25 Tex. 519, 1860. Testimony: [538] "not . . a man of a well balanced mind. . . [539] He would accuse the negroes of stealing from him, and chastise them without cause;"

Railroad Co. v. Dial, 25 Tex. 681, 1860. "1st . . January, 1857, . . the company hired the slave at twenty-five dollars per month, and agreed, in case of sickness, to inform the hirer [owner], or send the negro to him. The plaintiff [owner] bound himself to clothe the negro, and 'to do all the doctoring' . . The negro was to be returned when called for, in case he did not run away or die. . . [682] proved . . that the negro worked on Friday; complained of being sick on Saturday; . . company's agent . . testified that he would have notified . . if he had thought there was 'much the matter;' . . next morning found him much worse, and immediately sent a note . . the plaintiff took the negro home. . . dead on . . Tuesday"

Fowler v. Waller, 25 Tex. 695, 1860. [696] "April, 1857, . . the defendant agreed to pay him the one-twentieth part of the wheat, corn and cotton crops . . discharged him [in August] . . [697] testimony . . tended to prove . . [698] too familiar intercourse with the negroes under his charge."

Calvin (a slave) v. State, 25 Tex. 789, 1860. [791] "the first count . . charged that the appellant murdered 'a negro woman, . . the property of . . Smith,' . . The second count alleged . . 'the property . . of . . Winn.' The first . . charged that the murder was committed by striking on the head, with a billet of wood. . . The gentlemen appointed by the court to defend . . entered into . . written agreement with the district attorney . . 'the [letter] . . amends . . by striking out . . [792] "the property of . . Smith,"' . . the words . . were erased. . . the prisoner was found guilty . . The motion in arrest of judgment was overruled,"

Judgment reversed [797] "and defendant committed to await the action of the grand jury." [796] "the indictment . . has undergone such alteration that it will not support a conviction, . . The law . . is precisely the same as if the accused were a free white man, and we cannot strain the law even 'in the estimation of a hair,' because the defendant is a slave," [Bell, J.]

Sanders v. Devereux, 25 Tex. Supp. 1, April 1860. [2] "The petition alleged, upon the contract first set forth, that, in . . 1857, certain negro slaves, owned . . by the plaintiff, . . made crops of cotton, with her consent, on her lands, and with . . her further consent, that the proceeds . . should inure to the benefit of said slaves respectively, according to the amount . . each . . might produce. . . distinct from the crop made for . . the plaintiff. . . 1858, in consideration that said slaves, at the special . . request of . . defendant, would sell and deliver to him [20,158] . . pounds of said cotton, in the seed, at . . $2 per hundred pounds, . . agreed upon between said slaves and the defendant, with the . . approval of petitioner, . . defendant promised . . to pay them or petitioner . . whenever, after the delivery . . requested. . . The petition then set forth

a contract, made between the plaintiff and the defendant, for the sale . . at the same price . . of a like quantity . . The defendant demurred . . and assigned as a special ground, that the petition sets up a contract unauthorized by law. . . overruled. . . [3] proved . . that the defendant, with the consent of the plaintiff, purchased . . their . . cotton, . . that it was to be delivered at the plaintiff's gin, and the overseer was to receive it for the defendant. . . proved by the overseer that the . . slaves delivered. . . and that, according to the contract, he was to have given to each . . a memorandum to show the amount . . severally delivered, on the presentation of which to the defendant, the price due was to have been paid by him. . . verdict and judgment in favor of the plaintiff for . . $403 16. . . motion for a new trial . . overruled."

Judgment reversed and the cause remanded: [11] "The right of private property belongs, in this country, exclusively to freemen. . . the action cannot be maintained upon the contract first set out . . it being a void contract; nor upon the second alleged contract, because not supported by the evidence. . . [12] the owner can [not] adopt the . . void contract . . and . . give it vitality as to the person contracting with the slave." [Wheeler, C. J.]

Kingston v. State, 25 Tex. Supp. 166, October 1860. "indicted for . . buying five Shanghai chickens from a slave, . . of the value of $6 each, 'without the consent of the master,' . . The evidence was, . . that the slave . . was accompanied by a son of his master . . about eighteen . . who knew . . There was no proof that the chickens were of any value, nor was there any evidence introduced by the State to show that the slave did not have the written consent . . [167] The defendant asked the court . . to charge . . that it was incumbent on the State to show, affirmatively, that the defendant bought . . without the written consent . . and . . to prove that the articles . . were of some pecuniary value. . . refused" Judgment reversed and the cause remanded.

Nations v. Johnson, 24 Howard 195, December 1860. [202] "they got possession of the slaves in Tennessee, in violation of the rights of . . complainant, and removed them to . . Mississippi. . . removed [in 1850] to Texas, carrying the slaves with them,"

Jack (a slave) v. State, 26 Tex. 1, 1861. [2] "The appellant was indicted for the murder of his wife," "when the verdict was returned, one of the jurors . . remarked to the court . . that 'he did not think the negro ought to be hanged or punished with death.' . . [4] the jury found the value of the slave . . but did not find the additional fact ['to entitle the owner to receive compensation from the public Treasury'] that the owner had not attempted to evade or defeat the execution of the law."

Judgment affirmed: "the owner . . cannot now be heard upon this point in this court."

Ex parte Louisa Merry, 26 Tex. 23, 1861. Bell, J.: "We are of opinion that the present applicant is not shown to be a person of that class which can claim the privilege of residing within the State, either by virtue of the Joint Resolution of 1837, or the Act of the Congress of the Republic,

of the 12th December, 1840. We think those laws were intended to confer a privilege upon such free persons of color as resided in Texas on the day of the Declaration of Independence [of Texas], and upon the issue of such persons, born of parents who lived together as man and wife, in the manner usual amongst persons of their class. . . [24] not . . to confer privileges upon persons who might be the fruit of the merely casual sexual intercourse of their parents. We are of opinion . . that the applicant take no benefit from the writ . . The person filing the petition for the writ of *habeas corpus* will pay the costs."

State v. Asbury, 26 Tex. 82, 1861. "The indictment [found January 1, 1857] . . charged the appellee with unlawfully aiding . . and bringing within the . . State a free person of color . .[1] [83] on the 1st . . of January, 1855. The court below quashed the indictment" Affirmed: "The law required the offence to be prosecuted within two years after its commission. (Acts of 1854, p. 70, sect. 75.) . . Including . . the day of the commission . . the prosecution was not commenced in time,"

Scott v. State, 26 Tex. 116, 1861. "The indictment charged that the defendant 'did harbor and conceal' a . . negro woman, 'being . . a runaway slave;' but there was no averment that the defendant knew the slave to be a runaway. . . the defendant moved to quash the indictment, . . overruled." Held: [117] "the court erred"

Willis v. Harris, 26 Tex. 136, 1861. "suit . . to recover the value of a slave hired" [138] "to split rails and work on . . ranch" [136] "lost his life in cleaning out a well . . [137] evidence . . that the defendant 'bushed out' the well and tested the atmosphere with fire before the slave entered it. . . he had called for help, and seized a rope . . let down . . but soon let it go"

Thompson v. Berry, 26 Tex. 263, 1862. "alleged . . that in . . 1831 . . [264] Milly Berry removed with the . . slaves [from Arkansas] into the State of Coahuila and Texas; that by the laws of Coahuila and Texas, the . . slaves became, or were about to become, free; that in . . 1832 or 1833 . . Milly Berry smuggled the negroes into . . Louisiana, where they were seized as 'contraband;' and that about the time of their seizure, . . Milly . . [265] conveyed the . . negroes to . . Thompson . . [who] caused them to be brought . . to Texas" about 1855.

Gaines's Administrator v. Ann, by her guardians ad litem, 26 Tex. 340, 1862.[2] "Upon this trial, as on the former one, the jury found a verdict in favor of the freedom of the appellee. A new trial being refused to the appellant, he appealed again."

Judgment reversed and the cause remanded: [342] "the verdict is not supported by the evidence," [341] "The evidence . . [342] is stronger for appellant than it was for his intestate,"

Munson v. Hallowell, 26 Tex. 475, 1863. [476] "Ann and her . . children" "had been . . removed from . . Arkansas, in 1845, . . were purchased in New Orleans by . . Jones . . and were brought to Texas"

[1] Hart. Dig., Art. 2554.
[2] See Gaines *v.* Ann, p. 295, *supra.*

Lott v. Bertrand, 26 Tex. 654, 1863. [657] " In 1836 . . Lott and his wife removed [from Florida] to Texas, bringing . . slaves "

Clark v. Railroad Co., 27 Tex. 100, 1863. " alleged that she hired the slave to the appellee to be employed . . on the railroad only; but that . . the appellee put the slave to . . unloading railroad iron from a steamboat, whereby he was so injured as to cause abdominal rupture."

Reese v. Medlock, 27 Tex. 120, 1863. [122] " that it was the custom of land agents . . to exchange the lands . . for negroes and such other property as they considered it to the interest of their principal to receive . . and that negro property was much more readily convertible into money than land " in Burnet County.

Elizabeth (a slave) v. State, 27 Tex. 329, 1863. [330] " indictment . . against Ned and the appellant . . for the murder of . . child of . . Threatt. Ned was charged . . with the actual commission . . The District Attorney having suggested the death of Ned, the indictment abated as to him, . . evidence . . that the deceased, . . about three years of age, was missed . . Neighbors . . arrested Ned and Elizabeth, . . who inflicted punishment . . with a rope, for the purpose of obtaining a disclosure . . Elizabeth persistently denied any knowledge . . But upon Ned's stating that Elizabeth had put the child in the well, she . . said, 'he . . tells a lie; I can show you the child;' . . walked up a ravine . . into the water and brought out the child. . . Ned had belonged to Mr. Threatt only . . two or three weeks; . . Elizabeth for two or three years. . . verdict of guilty," New trial refused.

Judgment reversed and the case remanded: [332] " the evidence . . does not prove . . that she killed it, or was an accomplice in its being done."

Lafferty v. Murray, 27 Tex. 372, 1864. [373] " in 1840 or 1841, removed [from Kentucky] to Texas, bringing . . a negro woman "

Lewis v. Castleman, 27 Tex. 407, 1864. The purchaser [411] " brought the negro home . . and that night the negro ran off . . but next day was found . . at the house of [his former owners.] . . [414] the jury decided . . that the value of the boy [in 1857] was $1400, and his hire worth $200 per year,"

Debrell v. Ponton, 27 Tex. 623, 1864. [624] " she had let her husband take . . Sam to New Orleans, and . . he was sold for nine hundred dollars,"

Oustott v. Oustott, 27 Tex. 643, 1864. [644] " The jury . . stated [in 1860] . . that the girl was worth $1000, and her hires five dollars per month "

U. S. v. Dashiel, 3 Wallace 688, December 1865. " Major Dashiel, a paymaster in the army of the United States, . . claimed . . a deduction of $13,000 . . on the ground that while travelling in remote regions of Florida [before 1860], . . with the whole sum in gold coin to pay the army, he had . . been robbed of about $16,000; . . $3000, . . [689]

was discovered among negro slaves of the neighborhood, and got back. The jury made allowance" [698] "January, 1860, judgment was entered"

Bishop v. Jones and Petty, 28 Tex. 294, December 1866. George W. Paschal, reporter: [296] "Few records are more painfully suggestive than that which furnishes this precedent. . . As further security [for a note] . . Bishop . . executed his mortgage upon sixteen slaves, . . March, 1861, Jones and Petty, as indorsees and holders, sued the makers." [313] "The trial . . was had . . 15th April, 1861," [296] "The defendants . . plead that Jones and Petty . . held . . for the . . benefit of alien enemies . . [297] residing in the United States, . . incapable of suing in this court. . . [298] offered as evidence the public newspapers [pp. 301, 302] . . urged that the court should know judicially . . that . . Lincoln was elected . . November, 1860; that thereat the leaders and people of certain southern States resolved that they would not live under a government presided over by an abolitionist; . . [301] These facts . . Judge Terrell refused to notice judicially, . . [302] excluded all this newspaper evidence to prove the existence of war," [297] "the court . . rendered a judgment [for Jones and Petty] . . with . . an order to sell the land and negroes. . . [302] 16th of April the defendants moved for a new trial, and filed . . newspapers as evidence of the existence of war [pp. 302-307] . . [307] But Judge Terrell overruled the motion . . The defendants appealed, and the record was filed . . 27th of April, . . and there the case rested until the war ended. One of the plaintiffs fell in battle; the other commanded a regiment, and won the renown of a soldier, although he had most earnestly opposed the whole movement. . . Before the supreme court . . pronounced this decision [affirming the judgment] these chattels had become free citizens."

Blankenship v. Berry, 28 Tex. 448, December 1866. [450] "evidence . . that a negro came for the slaves . . that defendant would not let them go, but declared that, if plaintiff would . . send a white man, he would let the negroes go."

Seal (a freedman) v. State, 28 Tex. 491, December 1866. "Slavery ceased to exist in Texas by the proclamations of President Johnson, General Gordon Granger, and Provisional Governor A. J. Hamilton. They became free in the summer and autumn of 1865." [Paschal, Reporter.]

Maria (a freedwoman) v. State, 28 Tex. 698, December 1866. [699] "When the homicide . . occurred [October 28, 1863], both the slayer and the slain were slaves, residing upon the same plantation, . . As two years elapsed . . before any indictment was found, the probability is that the death had been attributed to some other cause, or else it was one of those cases where the master had taken the punishment into his own hands, and was unwilling to incur the additional loss of punishing the murder by law. . . [701] Angeline, a freedwoman, [testified:] . . Mary told Maria that her (Maria's) child had told a lie on her, (Mary,) and asked her to whip the child, and if . . Maria . . did not . . she (Mary) would. Maria replied, 'I will not . . and if you do it there will be . .

a big fuss.' . . deceased found the child . . and smacked [her.] . . [702] Maria rushed in and said, 'You whip my child, God drast your eyes! I will kill you! I will cut your heart-strings out;' and struck her with the butcher's knife, . . she was in bed about five weeks, and then died. . . was dressed . . on the single occasion when she went out . . the wound being cured up externally. . . [704] Dr. J. Houston, for the defendant, said . . [705] Deceased may have died from other causes;" [700] "verdict of murder in the second degree, and assessing the punishment at seven years in the penitentiary." Judgment reversed and the case remanded for error in the instructions.

Browne v. Johnson, 29 Tex. 40, January 1867. [41] "I delivered the negro to Browne, [the sheriff, for safe-keeping,] at least I put him in Mrs. Young's [slave-?] yard, and Browne took him. . . The negro was not dangerous; he was armed. . . He was crippled in one hand." The slave escaped.

Scranton v. Conlie, 29 Tex. 237, January 1867. [238] "The facts . . were, . . that he was subject to fits, and had been sold [to Scranton] in consequence . . that he had run off, and been committed to jail in 1858, . . the negro was crazy." "the owner . . failed to remove him" [237] "Conlie sued . . for $301 25, for keeping . . as jailor, and for necessaries . . under the law of 1841,[1] . . [238] The jury allowed [one dollar] . . per day [claimed] for keeping the slave. The law . . only allowed fifty cents a day." Held: [239] "no error in the judgment, except that it is excessive to the amount of $97 50," "The utter worthlessness of the slave . . is a sufficient excuse for the failure of . . sheriff, to offer him for sale at the end of six months from . . committal," [2]

Wilson v. State, 29 Tex. 240, January 1867. "the indictment was found in 1861, but the case was not tried until . . 1865. . . By the slave code of Texas, which perished with the other barbarisms of the institution, . . 'if any person shall . . cruelly treat a slave, . . [241] he shall be fined not less than $100 nor more than $2,000.' . . The indictment was against Wilson and . . McMorris, and had two counts: one for murder, in the ordinary form; the other ran, that the defendants did . . cruelly treat . . Nat . . by inflicting . . without just provocation, . . with a . . gutta-percha strap, . . six hundred stripes, by reason of which abuse . . Nat did, on the [same] day . . die; and so . . Wilson and McMorris . . Nat . . did . . murder. Wilson alone was put upon trial. . . The jury found the defendant not guilty of murder, but guilty of cruel treatment, and assessed the fine at $2,000. There was a judgment for the fine and to commit the accused until it be paid. The defendant moved to set aside the verdict . . [242] and arrest the judgment. . . overruled,"

[246] "The judgment is reversed, and the appellant discharged." "However unwilling we may be to . . arrest a judgment inflicting a penalty however inadequate . . we know of no warrant in the law to impose a pecuniary penalty on trial of a charge for murder." [Donley, J.]

[1] O. and W. Dig., Arts. 1869-1872.
[2] *Ibid.,* Art. 1870.

Warren (a freedman) v. State, 29 Tex. 369, January 1867. [371] "Perhaps it ought to be recorded, in favor of humanity, that under the slave code . . it was declared, that 'the confession of a slave shall never be used in evidence against him when made after . . chastisement . . inflicted or threatened, on account of the offense'[1] . . And it had generally been the rule to exclude all confessions made by a slave after his arrest. In this case, however, the offense was perpetrated when the same rules . . were applicable to the colored and to the white man." [Paschal, Reporter]

Williams v. Arnis, 30 Tex. 37, April 1867. [38] "suit . . on a . . note . . 'Twelve months after date, I promise to pay . . seven hundred dollars, for the hire of three negroes, . . to be paid in current funds. . . [dated] January 1, 1865.' . . [40] defendant . . [answered] that on the 28th June, 1865, said negroes were made free . . [42] the proclamation of President Lincoln declared the slaves in Texas and other rebel States free on the 1st day of January, 1863. They remained in slavery, however, until after the amnesty proclamation of President Johnson, the proclamation of General Gordon Granger, the universal amnesty oaths of the people, and the great practical revolution by which slaves all went free in Texas, in the summer of 1865. . . [43] a witness for the defendant, testified, . . [44] It was a general hiring-day of plaintiff's negroes, . . one of the negroes was hired for $50 in coin. . . The agent . . said he would take confederate money now. . . there was a good deal of grumbling by persons who hired negroes because the words current funds were used." [41] "Verdict and judgment for plaintiff $466 66 principal and $26 96 interest." Affirmed.

Timmins v. Lacy, 30 Tex. 115, April 1867. [117] "The *Reporter* [Paschal] takes this occasion, once again, to repudiate the 'great lie,' that to work was a degradation in the South, . . [118] while slavery had its great evils (and what civilization has not,) no system of property was better adapted to keeping families of deceased fathers together . . It was far more generally distributed than is usually believed. To own few slaves was the rule; many, the exception. Of the [350,000] . . slave-owners in the whole South, . . [160,000] owned from one to three, and . . [100,000] from three to ten. When the humane slaveholder died, (and all small slaveholders, as a rule, worked with their slaves and were humane,) none were so anxious about the children as the faithful slaves. These, with the aid of the widows and children, generally 'worked out the debts,' and the farms went along better than they had with thriftless masters. And among . . the six millions . . unconnected with slavery by ownership, to be busy laborers was the general rule. The 'poor white trash' was more a thing of imagination than reality. Next to the 'great lie,' that the white man never worked in the South, was the shameless one, that the family without slaves had no social or political influence in southern society. . . [119] the shock [of the 'sudden emancipation of four millions of illiterate people'] was a great one, and . . distracted the minds of many, and caused inventions, as to how the labor should be controlled

[1] Pas. Tex. Dig., Art. 3128.

for the benefit of the old masters. Although most men had long felt, few were willing to acknowledge, that slavery was a very expensive institution of [for?] the master. The legislature . . adopted an apprentice law as a remedy" [134] "This proceeding commenced . . by the application of appellant . . to have apprenticed to her . . Elkin Pope . . offspring of . . Sarah Lacy and Harry Pope, born . . while they cohabited as man and wife, having married . . 'after the usual fashion of marriages with slaves.' . . [135] but the connection . . had ceased some ten years before they were emancipated [[126] 'because she had a child by another negro'], and both . . had contracted other marriages," [126] "Harry had been . . long . . separated from . . [his] children . . having been sold . . [but] often visited [them.] . . after the war . . he contracted with Mrs. Timmins to let her keep [them] . . during . . 1866; also . . [127] after giving his [written] consent [signed by his mark] for said children to be apprenticed, he had made a contract . . to let said children remain with her during . . 1867, also . . 1868, if she desired it. That she was to pay . . Harry such price as he . . might think their labor worth" [135] "Elkin . . continued . . under . . control [of his mother] until he was taken by force to the residence of appellant by her son" [128] "with a double-barrelled gun, . . that at the end of . . 1866 . . [he and his brother] went back to their mother, and were again taken away . . January, 1867, under an order from the county court . . The [district] court found that . . the mother, was the natural guardian . . revoked the order of the county court"

Affirmed: [136] "the permitted cohabitation . . did not partake of lawful marriage."

Presley v. State, 30 Tex. 160, April 1867. "The indictment charged, that the accused 'did . . without just provocation, inflict unusual pain . . upon . . a negro slave, . . the property of . . Millings, . . murdering him,' . . The jury found the defendant guilty of cruel treatment, and assessed the fine at $240, for which there was judgment,"

Reversed and the cause dismissed, in accordance with the decision in Wilson *v.* State, p. 314, *supra.*

McLeod v. Board, 30 Tex. 238, April 1867. [240] "1840, . . removed [from South Carolina] to Texas" with their slaves.

Rogers v. Crain, 30 Tex. 284, April 1867. [286] "The witness . . was a practicing physician, and this statement was made to him while visiting . . the slave . . professionally" [285] "The negro woman informed me that she had been suffering from profuse hemorrhage." Held: [287] "admissible, though made by a slave. . . because it forms a part of the *res gestae.*"

Tippett v. Mize, 30 Tex. 361, April 1867. [362] "the administrator sold . . without any order of the probate court, . . Mize . . purchased one of the slaves . . July, 1863 . . The note was for $2,600, . . [363] Jerry had asserted his freedom . . 1st of May, 1865, and had left" Verdict for the defendant.

Judgment thereon affirmed: the sale was void, and [367] "by the act of government, the defendant was deprived of the power of returning the negro,"

Reavis v. Blackshear, 30 Tex. 753, January 1868. "On the first . . of January, 1865, we . . promise to pay . . $200 . . for hire of servant Norry. We also agree to give said girl two summer suits of clothes and one winter suit, consisting of a dress, underskirt, under-garments, sack, two pairs of shoes, and a blanket or quilt, pay doctor's bills, taxes, etc. . . in the currency of the Confederate States,"

Walton v. Cottingham, 30 Tex. 772, January 1868. "The plaintiff proved the warranty of soundness . . 1860, and a physician was called . . two months afterwards, who said she had been diseased (of the womb) . . 'months or years' . . to her injury $400. . . The negro-traders who had owned the girl thought her very healthy."

Barber v. Hail, 31 Tex. 161, April 1868. "The note called for $250, for the hire of a negro woman twelve months, dated 18th January, 1864, due . . 24th of December following. The defendant proved nothing about any promise to receive payment in Confederate money, but did prove that the value of the hire was not over $60. . . The jury found for the amount of the note." Judgment thereon affirmed.

Hall v. Keese and *Dougherty v. Cartwright* (*the Emancipation Proclamation cases*), 31 Tex. 504, October 1868. Geo. W. Paschal, reporter: [509] "These cases, . . in coming ages, will be referred to as a chapter in the history of great events. . . The secession movement was one avowedly in the interest of slavery. Deeper down . . there were motives in the minds of many to establish an absolute . . government. But the great masses had been educated up to the belief that the people in the nineteen states where African slavery did not exist were faithless to their obligations to the constitution, and . . some time . . would manumit all the slaves . . [511] The war came, . . the stone which had been laid as the chief of the corner was dashed to pieces; the fabric fell, and slavery was destroyed. . . Those who had been loudest to proclaim their purpose to perish in the defense of slavery were the first to reach the provost marshal's and the loudest in their responses to the manumission oath. Then they hurried back to contrive some plan to retain the services of those whom they had owned. The negroes stood aghast, not knowing whether most to trust their old masters or their liberators." [526] "In . . [one] case . . the vendor, in January, 1865, sold . . a slave to the vendee, who . . executed a promissory note . . In the other case, a slave, at the same time, was hired for a year, and a promissory note was given in consideration of the hire." [513] "all semblance of authority of the United States was withdrawn from Texas, with the mails, in June, 1861, and . . this condition . . except as to a margin of some counties along the coast, remained, until General Gordon Granger's order of the 19th of June, 1865. . . 'The people of Texas are informed that, in accordance with a proclamation from the executive of the United States, all slaves are free.' . . Practically . . slavery *in fact* continued undisturbed until Gen-

eral Granger's order. Generally it ceased after that time, though there were exceptional cases until the proclamation of the constitutional amendment."

Held: [532] "Until [General Granger's order] . . traffic in slaves was lawful in the local government. The owners . . were divested . . by a *vis major*, . . [533] slavery was not abolished on the 1st day of January, 1863," [531] "The [emancipation] proclamation could not *proprio vigore* liberate the slaves. . . [532] After the proclamation the slaves who were in the federal lines . . and those who . . got within those lines afterwards, were *ipso facto* free, because as mere chattels they thereby became captures in war. As soon as they came under the control of the national forces they as persons became . . freemen, because such was the declared will of that belligerent power, as expressed in the proclamation issued by the commander-in-chief . . by the authorization of congress, . . The liberation went on *pari passu* with the progress of the subjugation" [Lindsay, J.] [526] "The known . . effects of the . . proclamation are sufficient to pronounce it unparalleled as a war measure . . The announcement to the slaves . . caused them to desert their masters by thousands, and, by thus depriving the confederacy of their assistance, and transferring it to the army of the United States, doubly assisted the latter, and . . injured the former." [524] "But its effects were not upon the parties apparently most interested only. . . it was designed to counteract the efforts made by the Confederates in their attempts to enlist the sympathies and material aid in western European nations, then . . equally balanced, or perhaps slightly preponderating to the cause of the rebels, and . . it faithfully performed its mission, . . [525] Two of the first-class nations of Europe had long before abolished slavery . . and the autocrat of the Russias had recently followed their example, . . These nations were estopped . . from giving further . . encouragement to the Confederate States" [524] "By . . [the thirteenth] amendment, not only the slaves of the disloyal, but of the loyal also, were free, . . 18th of December, 1865," [Morrill, C. J.] Latimer, J., concurred; Hamilton and Caldwell, JJ., dissented.

Scherer v. Upton, 31 Tex. 617, January 1869. [618] "the note was given for the hire of a negro for one year, . . the negro ran away and took refuge with his mistress . . in May; . . the mistress and her son refused to deliver him to the hirer." Judgment for plaintiff affirmed.

Algier v. Black, 32 Tex. 168, 1869. "suit . . to set aside a contract made . . August, 1864, . . whereby the parties exchanged . . real estate for slaves." Judgment in favor of plaintiff reversed and the suit dismissed: [169] "As . . the contract was made . . when . . legal, the credulity of the purchaser of the slaves, that they would continue such, . . furnishes no cause of action." [Morrill, C. J.]

Tobler v. Stubblefield, 32 Tex. 188, 1869. "The note [for $525] was executed . . 28th . . of December, 1862, for the hire of two slaves for the year 1863."

McDaniel v. White, 32 Tex. 488, 1870. [489] "suit was brought . . in September, 1865, on a note for $4500, dated . . 1860, . . given for

the purchase money of . . negroes, . . warranted . . slaves for life." Held: [490] "This covenant was only a pledge . . of the legal *status* . . at time of sale,"

Betsy Webster v. Heard, 32 Tex. 685, 1870. Webster's will, dated 1856: [686] "I bequeath to Betsy, my servant, . . all the . . estate belonging to me in . . Galveston . . with all the horses, household furniture, . . and appurtenances . . to be held in trust for . . [her] use, . . by Mrs. E. J. Hardin, . . of Georgia, . . with all the rents, profits . . and debts accruing . . nothing opposing the power granted said trustee, from disposing of said property at the . . request of . . Betsy, . . I hereby manumit . . Betsy," The testator died a few days later and the will was admitted to probate. [687] "In . . 1857, Martha Greenwood, . . of New York [a cousin of Webster], instituted suit . . to contest the validity of the will . . so far at least as the bequests of freedom and property to Betsy were concerned. . . Betsy Webster employed . . Potter and W. P. Ballinger as her attorneys, . . and . . executed . . in consideration . . a conveyance of an undivided third of the property . . confirmed by Mrs. Hardin, . . The suit . . was dismissed [in 1858, and] . . a decree was obtained vesting in Betsy all the property devised to her . . She agreed . . her attorneys . . should take . . [seven] lots . . in part of their . . fee, which was one-third of . . $22,000 worth . . They negotiated a sale . . to . . Heard, . . The object of the [present] suit [instituted in 1866] . . was to annul . . deed to . . [688] Heard, . . impugned it as 'a base fraud' . . She was shown to be a very intelligent, careful and resolute old woman; . . going on eighty . . when this suit was brought." Judgment for the defendant. The plaintiff appealed. W. P. Ballinger, for the appellee: [706] "I look back to the day when it was almost the general professional opinion that she was *not* entitled to freedom or property, . . when to maintain the contrary, required one to face the prejudices of this entire community. I remember . . how faithfully I devoted myself to her cause, . . For what . . injury of her rights am I impeached? It is, that I did not procure . . her forcible extradition from Texas.[1] . . [707] I believed it only necessary if, and when, demanded by the rightful authorities of the State. . . A native . . of Florida—she had lived many years in this city in . . a white cottage embowered amid flowers and orange trees. All her affections clung to this island home, where she had lived with her former master, sustaining, perhaps, relations to him not sanctioned by law, but sanctified by all the sentiments of her nature. She declared . . that she would remain here . . a slave, if it must be so, but . . she would not abandon the home"

Affirmed: [710] "as a court . . decreed Betsy a free woman, . . [711] she was . . free to make a contract conveying her property. . . [As to the] charges of fraud against her attorneys . . we . . believe that no person of less legal ability . . of less influence . . of less legal, political and moral standing . . could have saved for her either the property or freedom devised."[2] [Morrill, C. J.]

[1] Slaves could not be emancipated without being removed beyond the limits of the state. Purvis *v.* Sherrod, p. 287; Hunt *v.* White, p. 307, *supra.*

[2] See Webster *v.* Corbett, *infra.*

Loggins v. Buck, 33 Tex. 113, 1870. [115] " he had allowed . . [the owner's] son to take [a negro hired to defendant] with him in the Confederate army as a servant, in the fall of 1862,"

Betsy Webster v. Corbett, 34 Tex. 263, 1870-71.[1] [264] " The conveyance of Betsy Webster and her trustee, Mrs. Hardin, to Corbett, was dated . . 1859,"

Held: [265] "A person who desired to emancipate his slaves, as the law stood . . 1856, must have provided for sending [them] . . out . . of the State; . . The slave could not go . . by his own free will . . and whilst he remained he could not take either his freedom or any devise . . but an estate devised in trust for his use would vest in the trustee, and there remain *sub modo;* and if, by any means, the slave could get to a free State, . . his right as *cestui que trust* attached, . . [266] The legal title . . is yet in [Mrs. Hardin] . . and she must be made a party . . A court . . might, perhaps, declare the trust executed, now that Betsy Webster has been made . . free . . When the deed to Corbett was made, Betsy Webster was a slave and could not make a deed. Nor does it help the matter that Mrs. Hardin . . joined . . She could not sell . . without an order from a court . . But there is evidence . . that Betsy Webster did receive the purchase money . . and if a jury shall so find, equity requires that she refund . . before she can be entitled to a reconveyance . . The case of Webster *v.* Heard . . is overruled." [Walker, J.]

Shearer v. Smith, 35 Tex. 427, 1871-2. [429] " January 2, A.D. 1863. Six months after a ratification of a treaty of peace between the Confederate States and the United States, I promise to pay . . $2200 . . with twelve per cent. per annum interest from date, payable in current money at that time. The consideration . . being . . man slave . . this day sold "

Bonds v. Foster, 36 Tex. 68, 1871-2. [69] " Foster . . resided in . . Louisiana, and . . was the owner of . . Leah . . [In 1847] he took the woman and several children of hers to . . Ohio, and established them in a home in . . Cincinnati, . . he also emancipated [them.] . . They remained . . four years, Foster spending a portion of each year with them, . . After the expiration . . Foster . . with them removed to . . Texas. . . continued . . habiting themselves as man and wife, . . [70] Leah became the mother of several other children by Foster, . . He not only devised his property mainly to this woman and children, but he provides . . that if Leah shall marry, she is to forfeit all her right " " The District Court adjudged [them] . . to be man and wife, . . and Leah, as the widow, entitled to a homestead."

Affirmed: [69] " By the laws of Ohio, . . the parties may have been legally married, or their conduct may have been such as to raise a legal presumption of a marriage; and if so, their coming to . . Texas . . did not, *per se,* operate a dissolution of the marriage, although, at the time, none of the marital rights . . could have been enforced . . [After] the law prohibiting such a marriage had been abrogated by the 14th Amend-

[1] See same *v.* Heard, *supra.*

ment . . [70] [a] marriage might then be presumed in . . Texas upon the same state of facts, . . [as] in Indiana or Ohio." [Walker, J.]

Morris v. Ranney, 37 Tex. 124, 1872-3. " action on a promissory note made for the hire of slaves after the proclamation of emancipation."

Held: [125] " The plaintiff in error is entitled to a judgment on the note . . whether the negroes were free or not. They performed the services . . but whether the plaintiff in error will hold the money in his own right, or as trustee for the negroes, is . . dependent upon . . whether the negroes were free . . We will not at this time disturb the previous rulings " [1] [Walker, J.]

Honey, Treasurer, v. Clark et al., 37 Tex. 686, 1872-3. [687] " Clark . . died . . in . . 1862. He left . . estate . . value of which . . approximated half a million of dollars. . . the administrators, considering that the estate had escheated, delivered the effects . . to the . . Treasurer of the State, . . This suit was instituted . . 1871 . . The plaintiffs . . claimed to be the children of . . Clark by Sobrina, a negro [[706] ' mulatto '] woman purchased by him . . in . . 1833 or 1834; and they alleged a marriage . . and . . claimed the benefits of the provision of the Constitution of 1869," article 12, section 27. [706] " Sobrina was here as early as 1828 or 1830." [690] " Clark came . . prior to 1830," [688] " witnesses . . introduced by the plaintiffs were nearly all negroes who had belonged to Clark . . Several . . testified that Clark and Sobrina habitually occupied the same bed, and ate at the same table; that Sobrina carried the keys and exercised the authority of mistress of the house. . . [689] that they had heard Clark speak of her as his ' wife,' and of the plaintiffs as his ' children; ' . . white witnesses testified for the defense. . . none . . had ever heard a pretense that they were husband and wife, . . Clark was a man of little or no education, . . He appears to have had no intimates of his own color. . . [697] Anderson testifies: . . ' In 1850, I took the census . . Sobrina [and her children] . . were numbered by Clark as his slaves ' . . Collier states: . . ' Heard him regret that he had never married. The general report . . was, that Clark kept a negro woman . . as men frequently did in those days. No one ever thought . . that they were married,' " [689] " a jury . . found that the . . plaintiffs . . ' are the legitimate children and lawful heirs of . . Clark and Sobrina; that . . Clark and Sobrina were legally married in 1833 or 1834,' " Judgment for the plaintiffs.

Affirmed: [706] " The institution of slavery, after the 11th of October [March], 1827, could not exist by law, until after Texas established her independence and declared herself a slavė state. . . [707] there was no law of Mexico controlling the people of Texas from 1828 to 1837, which prevented the intermarriage of different races. . . [708] she could not legally have married . . after 1837. . . if . . married prior to 1837, no law subsequently passed could have . . dissolved the marriage without the consent of at least one of the parties. But to return to the constitutional question. The section under consideration was intended to legalize

[1] See Hall *v.* Keese, p. 317; Algier *v.* Black, p. 318, *supra.*

the marriage of certain persons . . who, by law, were precluded the rights of matrimony. . . Clark and Sobrina were precisely such persons." [Walker, J.] See Clements *v.* Crawford, p. —, *infra.*

Becht v. Martin, 37 Tex. 719, 1872-3. [727] " In 1840 Peter Martin was the slave of Wiley Martin. . . had come . . with his master before the Revolution [of 1835]; . . [728] his master, being a member of the Texas Congress, obtained a special act, . . approved . . January, 1840. . . was permitted to manumit . . on condition of . . giving a bond in the sum of one thousand dollars, conditioned that Peter should not become a charge upon the republic, . . 1842, Mr. Martin by deed . . manumitted Peter, . . By his will, dated in 1833, . . probated . . 1842, he gave Peter his freedom. . . Peter had, long prior . . connected himself, in such marriage as slaves were permitted to contract, with Judith, . . Peter being . . eighteen . . and Judith but sixteen. They lived together as man and wife up to [his death] 10th . . April, 1863, hiring the time of Judith from her master, . . In 1856, Peter Martin purchased . . [four] lots . . on which he erected houses and other improvements. Supposing . . that he . . could not hold property in his own name,[1] he caused the title . . to be made to . . Ryon, who held the property in trust for him and his heirs. Very shortly before his death, Peter executed an instrument of writing . . 'I . . appoint . . [729] Sullivan my agent . . so soon as my homestead, the title to which is in . . Ryon, . . shall be sold, he shall take charge of the purchase-money . . and pay out . . to my wife, from time to time, such sums as she may need,' . . Ryon deeded the property . . August, 1863, to Sullivan; and Sullivan, on the day following, . . to . . Becht " for $2200 in Confederate money.

Held: [730] " although Judith and her children may have been slaves at the time, on their emancipation they became entitled to the bounty . . the trust became effective for their use. . . The property was sold . . for Confederate money. The sale was illegal; " [Walker, J.]

Lewis v. Nichols, 38 Tex. 54, 1873. [55] " Emancipation reduced the estate to insolvency."

Morgan v. Darragh, 39 Tex. 171, 1873. [173] " suit by Morgan . . 1857, to recover a negro woman. . . [174] Darragh . . brought her to the auction store of Ufford and gave him directions to sell her. . . not sold on . . [that] day . . but on the morning of the following day, she presented herself to the auctioneer in neat, clean clothing, telling him she had come to be sold. . . She was struck off to Morgan at . . $210. He . . took her home and returned . . tendered the money . . to the auctioneer, who refused to accept it; Darragh in the meantime having come . . protested against the sale, and . . angry words, followed by blows, . . passed between Morgan and Darragh. Darragh claims that it was not his intention to have the woman sold, but merely to frighten her into good behavior. It does not appear, however, that he advised Ufford of any such intention," Held: the sale is binding.

[1] But he was [726] " not affected by the act of February 5, 1840,"

Dowell v. Russell, 39 Tex. 400, 1873. [401] "suit . . on a . . note, given June 15, 1865, for the purchase money of a . . negro." Held: "African slavery had been abolished in the United States, and . . negroes were no longer the subject of legal traffic."

Garrett v. Brooks, 41 Tex. 479, 1874. "Suit on . . note . . for $400 gold, . . date April 1, 1865. Brooks pleaded a failure of consideration, and alleged . . that it was executed . . July, 1865, for . . a negro man . . sold as a slave, . . [480] Verdict for defendant."

Judgment thereon affirmed: [482] "Throughout the Confederate States . . [the Emancipation Proclamation] had neither respect nor force, only so far as the success of the federal forces and their occupation of the territory of the Confederate States gave it vitality. The surrender of the trans-Mississippi department . . 27th of May, 1865; the proclamation of President Johnson, May 29, 1865, and the publication of . . 'General Granger's Order No. 3,' dated June 19, 1865, . . may be considered evidences that property in slaves had been abolished . . in Texas. The date of General Granger's order or declaration of the proclamation of Abraham Lincoln has been considered as the definite period from which the destruction of the right to hold slaves in Texas is to be dated." [Devine, J.]

Wilson v. Catchings, 41 Tex. 587, 1874. [588] "Wilson applied . . for letters of administration on the estate of . . Catchings . . who died . . 1873, . . alleged that deceased . . left an estate of about [$6000] . . left no widow . . the court ordered that letters of administration issue to Wilson. On the same day, Sally Catchings filed objections: (1,) because she was the lawful wife" [590] "lived with deceased at the time of his death," Her attorneys filed [588] "a motion to revoke the order . . [589] Wilson filed an answer . . denying that . . [she] was widow . . alleging that she . . had been his slave; that deceased had hired her to accompany him to Texas, and to nurse his son, about 10 . . that deceased had purchased for her 250 acres . . worth [$1500] . . had given her a wagon and pair of mules worth [$500] . . that she . . had been paid in full,"

Castleman v. Sherry, 42 Tex. 59, 1875. "in November, 1864, Goodman delivered . . a negro woman, for which Sherry was to convey . . the tract of land,"

Short v. Abernathy, 42 Tex. 94, 1875. [96] "the notes [amounting to $150] were given [January 1, 1862] for the hire of . . negro man, . . to be paid in good middling cotton, . . well baled, at nine cents per pound, by the 25th of December, 1862, . . defendants offered to prove . . [97] that [they] . . on default of delivering the cotton . . might discharge the debt by paying the amount of the note in Confederate money."

Sorrel v. Clayton, 42 Tex. 188, 1875. In May 1864, [192] "Sorrel had one thousand acres under cultivation, and a hundred slaves . . [193] and the crop was about three hundred bales each year,"

Clements v. Crawford, 42 Tex. 601, 1875. Held: [603] "Section 27, Article 12, of the Constitution [of 1869] . . refers only to those persons who were both precluded, not from intermarriage with each other merely, but from marriage with any one else. Its object was to legitimate the offspring of those whose bondage had disabled them from legal marriage, but who had lived together recognizing each other as husband and wife, until the death of one . . or until the adoption of the Constitution. In the connection of such persons there had been no violation of either law or good morals. . . In so far as the case of Honey *v.* Clark [1] . . is at variance from this interpretation of the Constitution, it may be regarded as overruled." [Gould, J.]

Fitzgerald v. Turner, 43 Tex. 79, 1875. [83] "sold the land [320 acres] . . [in 1847] for a negro woman . . to wait on her;"

Ryan v. Maxey, 43 Tex. 192, 1875. [194] "the balance of the estate, including slaves, was . . in February, 1865, distributed . . acquiesced in by the heirs."

[1] P. 321, *supra.*

KANSAS

INTRODUCTION

I

Only one case appears to be recorded in the Supreme Court of Kansas dealing with slavery and the American Negro, prior to 1875. In that case,[1] it was brought out incidentally that the Kansas Constitution which limited the voting franchise to white males was modified by the fifteenth amendment to the Constitution of the United States, and that the effect of said amendment was to place the colored man on the same basis with the white man in the matter of suffrage. The ballots were rejected, not because the voters were colored, but because the petition failed to allege specifically that the voters had resided in their ward thirty days prior to the day of election, as required by state law.

II

The Topeka Constitution of 1855, the Lecompton Constitution of 1857, the Leavenworth Constitution of 1858, and the Wyandotte Constitution of 1859, all provided for a Supreme Court of three judges.

[1] Anthony *v.* Halderman, 7 Kan. 50 (1871).

Anthony v. Halderman, 7 Kan. 50, January 1871. [60] " This was an action . . to recover the office of mayor . . of Leavenworth, and to oust defendant therefrom. . . [61] Does the petition state facts sufficient to constitute a cause of action? It alleges that at the election . . plaintiff and defendant were the only candidates . . that by the returns of the judges of said election, . . it appeared that 1,453 votes were cast for John A. Halderman, and 1,406 for Daniel R. Anthony, . . that . . a certificate . . was issued to said Halderman, who took the oath of office, and has since been acting as mayor. . . that on . . the day of registration, . . 53 persons, . . ' that each of said persons was . . a free male person, over twenty-one years of age, a citizen of the United States, and had resided in said city more than six months next prior to . . March 30th, and was a colored person of African descent, . . but was, by reason of the premises, a legally qualified voter . . ' [62] It alleges that those ballots should have been received, and if received would have given plaintiff a majority. . . The constitution . . reads: ' Every white male person, . . who shall have resided in Kansas six months next preceding any election, and in the township or ward in which he offers to vote at least thirty days next preceding such election, shall be deemed a qualified elector.' The object and effect of the fifteenth amendment to the federal constitution were to place the colored man in the matter of suffrage on the same basis with the white. . . The colored man, to become a voter, . . must be 21 years of age, . . and 30 days a resident of the township or ward. . . Now, this petition alleges that these persons were over 21 years of age, . . but nowhere alleges that they had resided in the ward in which they offered to vote 30 days prior to such election. . . it fails to show that they were qualified [63] voters, or that they were improperly refused registration, or that their ballots were illegally rejected, . . For this reason the ruling of the court below . . was correct, and should be affirmed."

NEBRASKA

INTRODUCTION

I

The case of Brittle *v.* The People,[1] is the only instance in the annals of the Supreme Court of Nebraska up to 1875 where the negro question formed the basis of a judicial opinion. In that case it was held that a colored man could not lawfully be deprived of the right to sit on a petit jury because the Congress had rejected a proposed state Constitution which limited the voting franchise to white males, and had admitted Nebraska as a state upon the express condition that there should be no denial of the elective franchise, or of any other right, by reason of race or color.

II

Under the Constitution of 1867, the highest court of Nebraska was a Supreme Court of three judges.

[1] 2 Neb. 198.

Brittle v. The People, 2 Neb. 198. No date cited. "The plaintiff in error was indicted . . for burglary; . . the names . . summoned on the regular panel were called, and among them that of Howard W. Crossley, who was a colored man; for which sole reason the defendant challenged him as not competent to sit on a jury. The Court overruled the objection. [199] The trial resulted in a verdict of guilty. . . The ruling upon the challenge of the colored juror is assigned for error."

Held: [204] "Howard [205] Crossley, a colored man, was allowed to sit as one of the jury that returned a verdict of guilty . . Prior to the admission of Nebraska . . none but white males were allowed by the laws of the Territory to sit upon juries. As part of the Act . . admitting the State, it is declared, 'That this act shall not take effect, except upon the fundamental condition, that, within the State of Nebraska, there shall be no denial of the elective franchise, or of any other right, to any person, by reason of race or color, . . Two questions have arisen . . the first . . that the words 'any other right' do not include service on a jury: the second . . that this clause, . . the 'fundamental condition,' . . is not a part of the organic law of the State. . . Nebraska, . . was organized as a Territory . . in . . 1854, . . [206] In April, 1864, Congress passed an enabling act, . . The sentiment . . being opposed, . . to becoming a State, the delegates . . adjourned *sine die.* . . the territorial legislature of 1866 submitted a proposed constitution . . they declared the constitution adopted by a majority of a hundred. . . This constitution, . . limited the right to vote to white males. To this restriction Congress took exception, and, . . passed an act . .' . . for the admission of . . Nebraska . . [207] And be it further enacted, That this act shall not take effect except . . that . . there shall be no denial of the elective franchise, or of any other right, by reason of race or color, . . and . . that the legislature . . shall declare the assent of said State to [this]. . . [209] it is contended that the constitution . . is the one submitted . . when admission was asked, and does not include the fundamental condition . . that Congress was not competent to impose such condition, . . [222] If the rights of the black man are to be assailed, let it be done boldly, . . If the terms proposed by Congress were not acceptable, we had the high privilege of remaining a Territory, and staying out of the Union. But when, . . Congress raised us to the dignity of Statehood; . . it behooves us to keep faith, and abide by the terms of admission. I . . notice the objection . . that the fundamental condition does not include the right to sit upon juries. . . the right to sit upon juries is not a natural right; neither do I believe that the words 'any other right' were used with the purpose of extending only to these. . . it is evident . . that these other [223] rights . . mean rights of the same class,—rights attaching to a

citizen . . because of his relation to the government. . . That jury service is a duty, I admit. That it is a right also, I maintain. . . an honor and distinction as well as the subject of duty. . . To permit a jury of white men to sit in determination of his right to property when assailed by a white man, or his right to life or liberty, when he is regarded as but little better than a brute under the law, is rank injustice. . . [224] there is no right to discriminate because of color. . . then we say that black men shall not sit juries, it is because they are black, and is an insult to the race. . . [225] I conclude, then, that not only does the fundamental condition . . form a part of our organic law, but that the condition extends to the right to sit upon juries. . . judgment . . affirmed." (Crounse, J.; Mason, C. J., dissenting.)

CALIFORNIA

INTRODUCTION

I

The problem of slavery and the American negro at no time attained a position of importance in the history of California. The legislation and the judicial decisions of the state indicate neither the extreme views of the Southern slaveowner nor the idealistic attitude of the Northern abolitionist.

The general tendency was to favor the owner of slaves in disputes involving the matter of property rights, and to favor the white man in criminal cases where testimony of persons other than Caucasians was offered in evidence. Two instances of the former occur In the Matter of Perkins,[1] and *Ex parte* Archy,[2] while there are a number of illustrations of the latter, of which People *v.* Howard,[3] is typical. The case of Archy is an amusing example of the frontier practical viewpoint, but somewhat startling in significance when one realizes that the highest court of California reasoned one way and decided to the contrary merely because it was the first instance of the kind to come before the court.

II

The Constitution of 1849 provided California with a Supreme Court of three judges. Among the constitutional amendments of 1862 was one which increased the number of judges to five.

[1] 2 Cal. 424 (1852).
[2] 9 Cal. 147 (1858).
[3] 17 Cal. 63 (1860).

In the Matter of Perkins, 2 Cal. 424, October 1852. [429] "The petitioners were arrested under . . an act concerning fugitives from labour, . . upon . . evidence that they were slaves by the laws of Mississippi, . . and . . refused to return . . The magistrate . . delivered them to the . . owner, . . A writ of habeas corpus was . . sued out by the prisoners, . . was dismissed upon hearing; . . Application was then made to . . this Court . . for another writ, . . returnable on the first day of the term. . . [430] The statute never contemplated that a judgment upon one writ should be a bar to any further proceeding, . . The first position assumed by the prisoner's counsel, . . is, 'that the power to legislate upon the subject of fugitive slaves belongs exclusively to Congress, and the States have no concurrent power over the subject.' . . This argument is . . predicated upon the decision . . in . . Prigg *v.* The Commonwealth of Pennsylvania, 16 Peters, . . [432] The exclusive power of Congress to legislate . . has long been a fruitful source of political discord; . . [433] The 4th article of the Constitution . . provides: 'A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, . . be delivered up, to be removed to the State having jurisdiction of the crime.' This declaration is . . almost identical with the one concerning fugitive slaves. Yet every State . . notwithstanding Congress has legislated . . has passed laws for the delivery of this class of fugitives. . . [435] To relinquish the right of legislation in every case, . . is to yield up the right of States altogether. . . [436] we are disposed to avail ourselves of this power, . . for the protection of the State from this obnoxious class of population. . . [437] It now remains . . to examine the fourth section, . . as follows: 'Any person . . held to . . service in any State . . who shall refuse to return . . shall be held . . fugitives from labour, . . and all the remedies, . . given to claimants of fugitives, . . are hereby . . conferred . . this section gives no claim to the owner, and vests him with no right except for the deportation of this class of inhabitants. Much embarrassment has been thrown around this case . . under the supposition, that the freedom of the prisoners was to be determined. This Court has no power to decide this question in the present form of proceeding. . . it is . . well established that the States . . may exclude any obnoxious class . . the fact that the Legislature, . . have committed this charge to those who owned these persons as slaves in other States, cannot add to or diminish the unconstitutionality of the act . . [438] The rights of these prisoners to their liberty is as safe in the hands of the Courts of the slaveholding States, as it possibly could be here. . . [439] it is said that slavery is a municipal regulation, . . that slavery was prohibited by . . the Mexican Congress, . . and consequently, slavery was expressly prohibited . . up to the time of the adoption of our State Constitution. . . [440] If the slaveholder possessed any authority to bring his slaves

here under the Constitution of the United States, that right could not be abridged, . . until the admission . . of California . . by Congress. . . [442] the fourth section of this Act assumes to control a certain class of citizens over whom this State has jurisdiction. . . With the wisdom of the law, or the question of slavery, this Court has nothing to do. . . The judgment of the court is, that the writ be dismissed, and that the slaves Robert Perkins, Carter Perkins and Sandy Jones be remanded to jail into the custody of the Sheriff . . and . . delivered to the master . . without delay or cost."

The People v. Hall, 4 Cal. 399, October 1854. "The appellant, a free white citizen . . was convicted of murder upon the testimony of Chinese witnesses. The point . . is the admissibility of such evidence. . . the Act Concerning Civil Cases, provides that no Indian or Negro shall be allowed to testify as a witness in any action or proceeding in which a White person is a party. . . The true point at which we are anxious to arrive, is the legal signification, 'Black, Mulatto, Indian and White person,' and whether the Legislature adopted them as generic terms, or intended to limit their application to specific types of the human species. . . [400] let us proceed to inquire who are excluded . . as witnesses under the term 'Indian.' When Columbus first landed . . he imagined . . that the Island of San Salvador was one of those Islands of the Chinese sea, . . he gave to the Islanders the name of Indians, which appellation was universally adopted, and extended to the aboriginals of the New World, as well as of Asia. From that time, . . the American Indians and the Mongolian, or Asiatic, were regarded as the same type of the human species. . . it will be necessary to go back to the early history of legislation on this subject, our Statute being only a transcript of those of older States. . . [402] We have adverted to these speculations . . showing that the name of Indian, from the time of Columbus to the present day, has been used to designate, not alone the North American Indian, but the . . Mongolian race, and that the name, though first applied probably through mistake, was afterwards continued as appropriate on account of the supposed common origin. . . [404] We are of the opinion that the words 'White,' 'Negro,' 'Mulatto,' 'Indian,' and 'Black person,' wherever they occur in our Constitution and laws, must be taken in their generic sense, and that, even admitting the Indian of this Continent is not of the Mongolian type, that the words 'Black person,' in the 14th section must be taken as contradistinguished from White, and necessarily excludes all races other than the Caucasian. . . The anomolous spectacle of a distinct people, living in our community, . . [405] whose mendacity is proverbial; . . differing in language, opinions, color, and physical conformation; . . and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of participation with us in administering the affairs of our Government. . . For these reasons, we are of opinion that the testimony was inadmissible. The judgment is reversed."

Ex parte Archy, 9 Cal. 147, January 1858. [161] "The petitioner, Charles A. Stovall, states, substantially, that he is a citizen of the State of

Mississippi; that he is the owner of Archy, a slave, and as such, entitled to his custody; that said slave has escaped . . and is now . . in the city prison of Sacramento; . . and that petitioner desires . . to remove said slave from this state to the State of Mississippi. . . The material facts . . were . . these: The petitioner had been in delicate health for some five years, and, in the spring of 1857, determined to make the trip to California, . . and to bring Archy, . . a family negro servant, . . The petitioner stated that he was going to California for his health; . . that he did not intend to remain . . but a short time, not more than eighteen months, . . The petitioner left his wagon and team in Carson Valley, because his oxen were not in a condition to cross the mountains. . . He and Archy arrived in this city about the 2d day of October last. . . he hired out Archy for upwards of a month. . . The petitioner opened and taught a private school for . . over two months, . . he often stated that it was his intention to return. . . After the petitioner and Archy had been here upwards of two months, the petitioner placed Archy upon one of the river steamers, . . for the purpose of sending him . . to Mississippi, . . The boy having escaped from the boat, the petitioner made affidavit before a justice of the peace, who issued his warrant commanding the officer to arrest Archy and [162] deliver him to the petitioner. . . Archy was arrested by a policeman . . who delivered him to Lansing, chief of police, who . . refuses to deliver him to the petitioner. . . [163] the right of transit through each State, with every species of property known to the Constitution of the United States, . . is secured [164] . . to each citizen, . . It remains, then, to inquire whether the petitioner was a mere traveler through this State. . . [165] The right of transit with slaves through a free State is secured to the owner; . . The traveler must pursue his journey with no unnecessary delay; and to excuse any delay . . something of necessity must exist, such as 'swollen streams, serious sickness in the family, broken wagons, and the like.' . . The question then arises whether the conduct of the petitioner as a traveler comes within the principles laid down. The theory of the petitioner is, that he was compelled to leave his wagon and team . . that he was short of means, . . the excuse alleged does not, in our view, come within the rule. . . [166] there is another important aspect . . to regard the petitioner as a mere visitor for health or pleasure. . . this question . . depends upon . . comity, and not upon constitutional right. . . [167] a citizen of a slave State will scarcely, . . wish to pass through this State with his slave, as a mere traveler, either for business or pleasure. But our position, climate, and productions, all naturally invite our fellow-citizens as visitors. . . this privilege should be confined strictly to mere visitors, and not extended to those who come for both business and pleasure. . . [168] a mere visitor is one who comes only for pleasure or health, and who engages in no business while here, and remains only for a reasonable time. If the party engages in any business himself, or employ his slave in any business, . . then the character of visitor is lost, and his slave is entitled to freedom; and we cannot admit of any exception to this rule, upon the ground of necessity or misfortune. . . [169] It is insisted . . that . . the . . first article of the Constitution of this State—that 'neither slavery nor

involuntary servitude, . . shall ever be tolerated in this State '—is merely directory . . [170] It is difficult to conceive how a negative . . provision . . can be merely directory. . . [171] the petitioner cannot sustain either the character of traveler or visitor. But there are circumstances connected with this particular case that may exempt him from the operation of the rules we have laid down. This is the first case that has occurred under the existing law; . . under these circumstances we are not disposed to rigidly enforce the rule for the first time. But in reference to all future cases, it is our purpose to enforce the rules laid down strictly, according to their true intent and spirit. . . ordered that Archy be forthwith released from the custody of the Chief of Police, and given into the custody of the petitioner, Charles A. Stovall."

People v. Elyea, 14 Cal. 144, October 1859. [145] "The defendant was convicted of murder in the first degree, and the errors assigned relate to the proceedings at the trial. . . The third . . point is, that the Court erred in permitting one Martin to be examined as a witness. It is claimed that he was incompetent under the provisions of our statute . . precluding negroes and indians from testifying either for or against a white person. The objection . . is based upon his color, and the fact that he is a native of Turkey, . . The indicium of color cannot be relied upon as an infallible test . . under the statute. . . [146] The statute itself, after declaring that no black or mulatto person, or indian, shall give evidence, etc. provides that persons having one eighth or more of negro blood, shall be deemed mulattoes, and persons having one half of indian blood, shall be deemed indians, thus rendering impossible the adoption of any rule of exclusion upon the basis of mere color. . . judgment . . affirmed."

Norris v. Harris, 15 Cal. 226, January 1860. [249] "In . . 1853, one Charles L. Dell, . . of Texas, died possessed of real and personal property . . and leaving a widow, Amanda, . . and two children, . . By his last will, . . he gave all his estate, . . to his wife and children, in equal interest . . and invested his wife with the 'sole and entire control' of the whole estate during her life, . . free from the control . . of the Courts . . and appointed her executrix . . and guardian of his children. The will was duly admitted to probate, . . In 1854, the widow . . intermarried with the defendant, Lewis B. Harris, and moved, . . to Sacramento . . In 1856, the plaintiff, . . entered into a contract with the defendants for an exchange of property, by which contract Norris conveyed to Mrs. Harris . . real estate . . [250] the defendants sold to him a number of slaves, . . horses; . . cattle, . . in . . Texas, and constituting part of . . the estate of Dell, . . At the date of these . . instruments, three of the slaves had been sold, . . [251] Norris proceeded to Texas . . and . . became impressed, . . with the conviction that the instrument did not pass a good title to him, and that the property was different, . . from the representations made . . He . . notified the defendants that he rescinded the contract, . . and demanded a restitution . . he instituted the present suit . . various charges are made of fraudulent representation . . none of which are supported by the evidence, . . The other grounds . . are the alleged want of power . . to convey the

property, and the alleged deficiency in the number of slaves, horses, and cattle . . [256] It follows, . . that the bill of sale passed a good . . title . . to Norris; . . three of the slaves . . had been . . sold, . . As to the slaves, the contract is clearly entire. . . [257] As to the horses and cattle, . . provision for compensation . . was provided to meet . . deficiency. . . the sale of the three slaves, and the consequent inability to deliver the whole number, would have that operation as to the item of slaves, were it not for the subsequent . . stipulation . . by which provision was made for the sales which might take place before the news of the transfer to Norris could be received by the agent of the defendants. That stipulation obviates the objection on that ground. . . [258] judgment must be reversed . . and the parties left to determine, by actions at law, their respective claims for . . deficiency."

People v. Howard, 17 Cal. 63, October 1860. [64] "defendant was convicted of the larceny of a gold watch belonging to a person of half negro blood, and the testimony of the negro was offered to establish the fact that the property was taken from him without his knowledge or consent. The question . . is, whether, in a criminal action against a white man, a black person—a mulatto in the present case—is a competent witness, where he is the injured party. . . the fourteenth section provides that 'no black or mulatto person, or Indian, shall be permitted to give evidence in favor of or against any white person.' . . The party injured may testify, in all cases, subject to this exception, that a black or mulatto person shall not be permitted to appear for or against a white person. . . [65] judgment . . reversed,"

Williams v. Young, 17 Cal. 403, January, 1861. [405] "Ejectment for a lot . . and house . . Plaintiff deraigns title through the Sheriff of Shasta county, . . on a judgment in favor of plaintiff against B. B. Young . . husband of defendant. . . [404] Young and wife occupied the premises as a homestead from 1855 until his death, . . and she has continued to occupy them ever since."

Held: [406] "She and her late husband were mulattoes; and the point was made below that the Homestead Act did not apply . . we think there is nothing in it . . If this property was the homestead . . it could not be sold at forced sale; . . if this purchase money . . was a lien on the property before the homestead character attached to it, neither the husband nor the wife could hold . . except in subordination . . the mistake is in supposing that the lien gives . . title; . . The Sheriff merely sells the interest of the defendant when that interest is a leviable estate; . . there must be a proceeding . . a chancery suit to settle the sum due, and have the lien declared and a sale decreed. This does not seem to have been done. Judgment reversed,"

Pleasants v. N. B. & M. R. R. Co., 34 Cal. 586, January 1868. [589] "the female plaintiff, (who is a woman of color,) being desirous to take passage on one of the street cars of defendant, hailed the conductor and requested him to take her on board; that he disregarded her signal and failed to stop, and . . she was unable to get upon the car. . . the Con-

ductor on being urged . . to stop . . for the plaintiff, replied: 'We don't take colored people in the cars;' . . there was ample room for the plaintiff, . . she was provided with . . tickets, . . no proof of any special damage; and the jury . . without any charge from the Court, returned a verdict for the plaintiff for five hundred dollars. . . [590] defendant appeals. . . The damages were excessive. There was no proof of special damage, nor of any malice, . . or violent conduct . . it was not a case for exemplary damages. . . It is unnecessary . . to decide . . whether . . it is necessary to aver . . malice and ill will . . to entitle the plaintiff to give evidence of such malice or ill will. There being no such proof in this case, the Court might well have denied this instruction . . Judgment reversed and . . new trial."

Turner v. N. B. & M. R. R. Co., 34 Cal. 594, January 1868. [596] "The plaintiff sues the defendant, a corporation owning a street railroad in San Francisco, to recover damages for having been ejected from one of the passenger cars of the defendant. . . the plaintiff is a person of color, . . her version . . was, that . . she hailed one of the defendant's cars . . the car stopped; that she . . proceeded to enter the car, and had gotten upon the platform . . when the Conductor put his hand on her breast, and saying to her, 'Madam, you must wait for the next car,' . . pushed her off the car; that she fell backward, and stepped upon her dress [597] . . that the car was only partially filled . . There was no proof that she suffered any personal injury, . . The Conductor . . testified that on being hailed by the plaintiff he stopped the car, and . . told her she had better wait for the next car; . . that she did not get on the . . platform, and he did not lay his hand upon her, and did not know whether she was a white or colored woman. . . the jury found a verdict for the plaintiff for seven hundred and fifty dollars. . . a new trial, . . was denied, . . defendant has appealed."

"We are unable to conceive it possible that a jury free from . . prejudice, upon so trivial a cause of action . . could have found a verdict for so large a sum. . . [599] There was no proof . . to show . . willful injury . . There was not the slightest proof . . to establish any complicity between the Conductor and the company in respect to any . . malicious injury to the plaintiff. . . the refusal of the Conductor to permit the plaintiff to enter the car proceeded purely from his own malice, . . in violation of the express orders of the company, . . if the act of the Conductor was wholly unauthorized, the company is liable for the actual damage, and the Conductor alone for the punitive damages, if any. . . Judgment . . reversed, and . . new trial."

People v. Washington, 36 Cal. 658, January 1869. [659] "The defendant was indicted for . . robbery. The person . . robbed was a Chinaman . . The indictment was found . . upon the testimony of Chinese witnesses, and for that reason counsel . . moved to set it aside. . . it was stipulated . . that the defendant was a mulatto, born within the United States, . . that all the evidence . . was the testimony of Chinese witnesses, . . born . . within the Chinese Empire. . . the indictment was set aside, . . defendant discharged. The case presents . .

the fourteenth section of the statute of this state . . [660] which provides that ' no Indian or person having one half . . of Indian blood, or Mongolian, or Chinese, shall be permitted to give evidence in favor of or against any white person,' as affected by the . . Thirteenth Amendment . . and the first section of the Act of Congress . . 'An Act to protect all persons . . in their civil rights, and . . all persons born in the United States and not subject to any foreign power, . . and such citizens, . . shall have the same right, . . to make and enforce contracts, to sue, be parties and give evidence, . . and to . . equal benefit of all laws . . as is enjoyed by white citizens, . .' "

[664] " the Thirteenth Amendment was . . intended to make all men born in the United States, . . equal before the law with respect to personal liberty, . . [667] This provision prescribing a uniform rule of evidence . . bears directly upon the great right of personal liberty . . [668] It would be a remarkable anomaly, . . if the National Government, without the Thirteenth Amendment, could confer citizenship on aliens . . irrespective of race or color, and cannot with . . that amendment confer on those of the African race . . all that the Civil Rights Act seeks to give them. . . [670] It assures to all the citizens of any State the civil rights enjoyed by white citizens of the same State; . . it prohibits all discrimination . . on the score of race or color, in respect to their civil rights, but leaves their political rights, . . in the gift of the State, . . Our conclusion is that the portion of the Civil Rights Act now in question— . . was not repugnant to the Constitution of the United States . . and that the fourteenth section of the statute of this state . . so far as it discriminates . . on the score of race or color, . . [671] has, . . become null and void. . . The Fourteenth Amendment goes one step further than the Civil Rights Act, and . . contains a provision . . [672] ' Nor shall any State . . deny to any person within its jurisdiction the equal protection of the laws.' Judgment affirmed." [Rhodes, J.]

Dissenting: " The defendant . . is a negro, . . accused . . of robbing a Chinaman; . . The Court below ruled out the evidence on the ground that the testimony of a Chinaman was not admissible against a negro, . . The statute only disqualifies Indians, Mongolians and Chinese from testifying for or against ' any white person.' . . [673] the argument is that inasmuch as a foreign born Chinaman cannot, . . testify against a white person, ergo, he cannot testify against a native born negro, who, by the Act of Congress, is endowed with precisely the same civil rights that appertain to white persons. . . [674] the Government of the United States is one of limited . . powers, . . the several States . . retain all the mass of powers which a sovereign State can exercise, . . [675] it has been the practice . . for each State, . . to exercise these powers unquestioned, often discriminating between classes of its own citizens, . . [681] The Thirteenth Amendment is entirely silent as to the civil rights of any class of persons, . . [685] All that Congress was authorized to do was to see that the prohibition of slavery was not infringed. . . [687] In my opinion the judgment ought to be reversed." [Crockett and Sprague, JJ.]

Ward v. Flood, 48 Cal. 36, January 1874. [41] " This is an application . . for a writ of [42] mandamus directing the defendant to receive the petitioner . . in the school of which he is the principal. The petition . . is . . Harriet A. Ward, . . says: 'I am the mother of Mary Frances Ward, who is under the age of fourteen . . We are all of African descent . . residents . . of San Francisco, . . by law, and . . custom . . pupils . . have a right to be received . . at the public school nearest their residence, . . The nearest public school . . is . . Broadway Grammar School, . . in charge of Noah F. Flood . . I took . . Mary . . to the said . . School, . . [43] But the said . . Flood, . . politely, but firmly . . declined to entertain the said application, . . assigning, . . the fact that she was a colored person, and that said Board of Education had established and assigned separate schools for such colored persons, . . The answer of the defendant is . . Noah F. Flood, . . admits that he is . . Principal . . [44] that petitioner . . are of African descent, . . but denies that children of African descent have a right to be admitted into any public school . . and denies [45] that he had any right . . to admit her . . but . . avers that . . he acted . . in accordance with the rules and regulations . . one of which is . . 'Sec. 117. . . Children of African or Indian descent shall not be admitted into schools for white children, but separate schools shall be provided for them . .' And . . defendant avers that . . two separate schools . . are provided for colored children, with able and efficient teachers, . . under the same rules and regulations as those provided for . . white children. . . that the lowest grade in said . . School then was . . the sixth grade, into which the petitioner had not received sufficient instruction to enable her to enter; . . And . . that . . Mary . . did not present . . any certificate of transfer, . . [46] The case was submitted . . upon these pleadings . . It is averred in the petition, and admitted in the answer, that the . . School, . . is a graded school."

" It being, . . admitted for the purpose of this motion, that the attainments of the petitioner, . . were not sufficient to entitle her to be admitted in any class, . . it would hardly require an argument to show that the defendant, correctly denied her application to be received as a pupil. . . [48] Upon this view, the application . . must fail. . . But we do not intend to put the decision . . upon this point alone. We will, . . assume . . that the petitioner was sufficiently advanced . . to entitle her to enter some one of the classes . . and, also, that the only ground upon which she was denied admission . . was that she was a child of African descent. . . it is shown . . that . . separate schools . . are in fact maintained for the education of colored children, . . if the statute be itself free from objection . . it is evidently a sufficient authority for the . . rule of the Board . . [49] The argument is that the exclusion of the petitioner . . is contrary to the Thirteenth and Fourteenth Amendments . . We are, . . unable to perceive . . that the State law or the action of the respondent . . are in contravention of the Thirteenth Amendment . . Nor is it perceived that the State law . . is obnoxious to . . the Fourteenth Amendment . . [51] Under the laws of California children . . between . . five and twenty-one years are entitled to receive instruction at the

public schools, and the education thus afforded them is a measure of the protection afforded by law to persons of that condition. . . [52] the policy of separation of the races for educational purposes is adopted by the legislative department, . . [54] 'Conceding, . . that colored persons, . . are entitled . . to equal rights, . . the question then arises whether the regulation . . which provides separate schools for colored children, is a violation of these rights. . . [56] The Committee, . . have come to the conclusion that the good of both classes of school will be best promoted by maintaining the separate primary schools for colored and for white children, . . we cannot say that their decision upon it is not founded on just grounds of reason and experience, . . and honest judgment.' We concur in these views, . . we think proper to add that . . the exclusion of colored children . . cannot be supported, . . [57] except where separate schools are actually maintained for the education of colored children; . . Writ of mandamus denied."

Charlotte (of color), respondent v. Chouteau, appellant, 25 Mo. 465. October 1857. [466] " The plaintiff asserts her right to freedom on the ground that her mother, a negress, was born in Montreal, in Lower Canada, about the year 1768, and that her mother was not born a slave, because slavery did not exist in Canada at the time of her birth. On the trial the plaintiff gave parol evidence tending to prove that her mother was born in Montreal about the year 1768, and that slavery did not actually exist and was not tolerated by law at that time in Canada. The defendant, on his part, gave parol evidence tending to prove the actual existence of slavery in Canada in the year 1768; that slaves were recognized as property, and that Rose, the plaintiff's mother, was held and sold as a slave in Canada. The defendant [1] also gave the following documentary evidence: First. The articles of capitulation of the surrender of Montreal by the French to the English forces, signed . . [467] 1760, . . The 47th article is as follows: ' The negroes and panis of both sexes shall remain in their quality of slaves in the possession of the French and Canadians to whom they belong; they shall be at liberty to keep them in their service in the colony or to sell them; and they may also continue to bring them up in the Roman religion.' . . Second. The definitive treaty of peace . . between Great Britain and France . . 1763, . . [468] Third. The proclamation of George III, dated 7th October, 1763. . . [469] Fourth. The act of the British Parliament of 1774, (14 George III, chap. 83,)[2] . . [470] that all his majesty's Canadian subjects within the province of Quebec . . may also hold and enjoy their property and possessions, together with all customs and usages relative thereto, . . in as large, ample, and beneficial manner as if the said proclamation . . had not been made . . and that in all matters of controversy relative to property . . resort shall be had to the laws of Canada. . . Fifth. The act of the British parliament of 1790,[3] . . [471] if any person . . being a subject . . of the territories or countries belonging to the United States of America—shall come from thence . . to any part of the province of Quebec . . for the purpose of residing or settling there, it shall be lawful for any such person . . having first obtained a license . . from the governor, . . to import into the same, in British ships . . any negroes . . free of duty; . . all sales or bargains for the sale of any negro . . so imported, which shall be made within twelve calendar months after the importations of the same (except in cases of the bankruptcy or death of the owner thereof) shall be null and void. . . [472] Sixth. The act of the provincial parliament of Upper Canada, passed July 9th, 1793.[4] The first section of this

[1] The editor of the Jurist is mistaken in calling this an error. Chouteau was the original defendant, though the appellant in this case.
[2] 30 Brit. Stat. at L. 549.
[3] 37 *ibid.* 24.
[4] Rev. Stat. U. C., ch. 8, p. 18.

act recites that it is highly expedient to abolish slavery in the province, so far as the same may gradually be done without violating private property. It then repeals so much of the act of 1790 as enables the governor . . to grant license for the importation of negroes, and forbids any negro or other person subjected to the condition of a slave from coming or being brought into the province after the passage of the act to be subject to the condition of a slave. The second section provides that nothing in the act should be construed to extend to liberate any negro subjected to service, or to discharge him from the possession of his owner, who should have come or been brought into the province in conformity to the conditions of the act of 1790, or should have otherwise come into the possession of any person by gift, bequest or purchase. The third section declares that in order to prevent the continuation of slavery within the province, every child thereafter born of a negro woman who was a slave, should remain with his or her master or mistress until such child should arrive at the age of twenty-five years, and then be free. . . [476] The plaintiff read the depositions of two learned and intelligent witnesses—Judges Reed and Gale—each of whom held high judicial positions for many years in Lower Canada. The former testified that slavery existed in Canada to a certain extent while under the dominion of the French, although he could find no law by which it was introduced prior to the year 1709, when, by an ordinance of the intendant of the colony, permission was given to the colonists to purchase negroes and panis from the Indians, because they would be useful in the cultivation of the soil; that this ordinance would seem to have been made in order to confirm a practice which had previously existed, though there was no law of the French government authorizing slavery in Canada; that it had been doubted whether the intendant or any governor of a particular colony could establish therein such a general principle of public law as slavery; but, he says, 'it is certain, however, that from the time of this ordinance and before, slavery of negroes and panis, as therein stated, had been practiced and was still continued in the colony in 1736, as by an ordinance of Mr. Hoegnart, the then intendant, of the first of September of that year, a form for the emancipation of slaves was established and directed to be observed. So far the existence, if not the legality, of slavery would appear.' He also states that the ordinance of 1736 assumed the legal existence of slavery. Judge Gale, the other witness, in speaking of the ordinance of 1709, says, it declared that it would be useful to the colony to hold negroes and Indians of a distant nation, called panis, as slaves, and therefore the negroes and panis, who had been or might be bought, should be held by the purchasers as their slaves; and that the ordinance of 1736 required masters who emancipated their slaves to do so only by written documents passed before public notaries, and declared other forms of emancipation void. In answer to the question whether slavery of negroes or other persons was recognized and allowed by law in Canada while the country belonged to France, he replied: 'I believe that a modified system of slavery respecting negroes and some others was *de facto* exercised in Canada, in various instances, while the country remained under the French dominion; but I can not undertake to say that such *de facto* exercise of slavery was justifiable

under sufficient legitimate [legislative?] enactment and a correct interpretation of the laws as they then stood.' My opinion [Richardson, J.] is to the contrary. Both these gentlemen prove that slavery existed in Canada from a period at least as early as 1709 to 1760; and though they say there was no act of the French legalizing it, we know that France permitted slavery in her West India colonies, and it can not be supposed that she was ignorant of the state of things in Canada for so long a time. And it may be assumed that slavery existed in Canada under the French rule, not only *de facto* but *de jure*. Slavery existed in nearly all the North American colonies, though no law or royal decree has been found introducing it; but it was permitted, and afterwards sanctioned by laws concerning it, passed by colonial assemblies with the knowledge of the home governments. . . [478] the 47th article [of the articles of capitulation] is not only a clear recognition of the existence of slavery, but of the value of the interests connected with it. Only the most prominent objects seem to have engaged the attention of the retiring governor, for he secures nothing for his master's subjects but their religion and their slaves. . . [479] It is insisted that the royal proclamation of October 7, 1763, had the effect of abolishing slavery in Canada. . . [480] The judges whose testimony we have noticed say that this proclamation introduced into all the colonies mentioned in it the common law of England, and that the genius and spirit of the common law are so hostile to slavery that wherever it is introduced or prevails it operates *ipso facto* to abolish slavery. In 1763 the English acquired—besides Canada—Florida, Dominico, St. Vincent and Tobago, in all which slavery existed; and though the proclamation expressly applied to all, it is well known, and these gentlemen admit, that it did not have the effect of abolishing slavery in Florida and the Grenadas. It is strange that it was potential for the purpose imputed to it in one place and not in the others. . . [481] But . . it is certain that the act of parliament of 1774 repealed so much of the proclamation as related to the laws of England, and enacted that the Canadians within the province of Quebec might 'hold and enjoy their property . . together with all customs and usages relative thereto, . . in as large, ample and beneficial manner as if the said proclamation' had not been made, 'and that in all matters of controversy relative to property . . "resort" should be had to the laws of Canada as the rule for the decision of the same.' The act of 1790 is only consistent with itself on the idea that it assumed the existence of slavery in Canada. The mention of negroes is only in connection with other property which is exempted from the payment of an import duty; and the prohibition on the sale of negroes or furniture, imported under the act within twelve months, was to prevent frauds on the revenue, and it implied that sales of negroes were lawful after the expiration of a year from the time they were [482] imported. It is said that this act was for the benefit of British subjects whose homes were uncomfortable to them in the United States after our independence was achieved. This is doubtless true, but it is hardly probable that out of tenderness to them Parliament would have established in Canada, for their benefit alone, a system of slavery which had never before existed there, and which it is alleged is so repugnant to the genius of the common law. The province of Quebec

was divided into the provinces of Upper and Lower Canada by an order in council August 24, 1791, which took effect 26th of December following. The act of 1793, passed by the parliament of Upper Canada, not only repealed the immigration act of 1799, but provided for the prospective and gradual emancipation of the slaves born thereafter. It assumed that there were other slaves in the province than such as had been imported under the license granted by the act of 1790; for the second section provided that the act should not apply to slaves then in being, who had been brought in under the act of 1790, or to such as had otherwise come to the possession of any person by gift, bequest, or purchase. And if there were no other slaves than such as had been imported under the act of 1790, there was no reason for mentioning them. It is true that this law was the act of Upper Canada, which does not include Montreal; but it was passed very soon after the province of Quebec was divided, and if slaves were lawfully held in the upper part of the province before the division, it must be supposed that the law which permitted it operated uniformly throughout the whole province. The parliament of Upper Canada, at its first session in 1792, introduced the English law, quite as effectually as the king's proclamation could have done it, as the rule of decision in all matters of controversy relative to property and civil rights; and it could not have thought that the common law was effectual to abolish slavery, otherwise there would have been no necessity for the subsequent act of 1793. . . [483] in our opinion, if slavery existed in Canada under the French government, before the English acquired the country, it continued to exist and was lawful until it was abolished; and after a careful examination of the documentary evidence in this cause, and for the reasons which are here hurriedly given, we have arrived at the conclusion which the circuit court announced in the first instruction given for the defendant." [1] [Richardson, J.]

La Merced, Stew. Vice-Adm. N. S. 205, March 1811. [209] "This vessel and cargo are both claimed, as Spanish property, . . The present cargo was shipped at Philadelphia, from whence the vessel sailed upon the 17th of July last for Santa Cruz in Teneriffe, intending to proceed from that island to the coast of Africa to purchase slaves. . . [210] She was built at New York. . . [217] The present voyage . . was a new employment for the vessel, and so hazardous, that it appears that no insurance could be obtained. . . [219] this is a fraudulent transaction, and that the real property is still in Worth, an American citizen, and therefore this vessel is subject to condemnation, as having been engaged in the slave trade. Her cargo does not consist so much of mercantile articles, as of stores and outfit for the slave trade. . . As materially connected therefore with this illegal traffic, and likewise as belonging to the same owner, it must follow the fate of the vessel."

[1] [472] "1. If negro slavery existed by virtue of the laws and ordinances of the French government in Canada prior to the acquisition of that country by the English, and if the articles of capitulation, the treaty of cession, the acts of parliament of 1774 and 1790, and the king's proclamation of 1763, be correct copies of the genuine documents, then negro slavery was sanctioned and permitted by law in the country called the province of Quebec (which includes Montreal) at all times from the year 1760 to the year 1790."

The Severn, Stew. Vice-Adm. N. S. 284, October 1811. "The Master claimed for Nathan Bardine and Samuel Blake, of Bristol, in Rhode Island, in the United States, both ship and cargo; the latter, consisting of 7 or 8 hhds. of tobacco, 1300 gallons of rum, 2 barrels of currant wine, 10 or 15 casks of gunpowder, 8 or 10 casks of butter, 5 or 6 tierces of rice, 30 or 40 half barrels of beef, 2 of pork, 5 or 6 barrels of flour, 5 bales of dry goods, a few boxes of soap and candles, and several shook chests. He swore, 'that he was sent on a trading voyage to the coast of Africa, that he loaded at Bristol, was to proceed to Sierra Leone, and there dispose of as much of the cargo as possible. If not to sell the whole there, he was to proceed with the remainder along the coast of Africa, either to the southward, or the northward, and to barter the remainder with the natives. In return he was ordered to procure by barter from the natives, gum-arabic, ivory, bees'-wax, and other articles; but he was strictly forbidden to have any concern in the trade for slaves or to purchase negroes; and he had no intention whatever to engage in the traffic for slaves.' They had two iron guns (one-pounders) and four muskets, to protect themselves against the natives." Sentence: [285] "The African society has published a report, in which they have described seven characteristic circumstances of a slave voyage. Five of them occur here. There have been found on board a number of small arms, a great quantity of water, rice, and slaves' provisions, mess kits and shackles. The two other circumstances stated in the report, as being often found in such vessels, namely bulk-heads and main-deck gratings, would be unnecessary in a small vessel like the present. It must have been known to merchants, that the slave trade is considered in an unfavorable light. If the vessel was really going for gum, ivory, and the other innocent articles stated, what can account for their having on board so many things peculiar to the slave trade, but totally unnecessary for the other species of commerce? It would be contrary to all reason, and inconsistent with probable suppositions. I consider the fact to be sufficiently proved, and I condemn this vessel and cargo." [Dr. Croke.]

In re John Anderson, 20 U. C. R. 124, November 1860. "The prisoner, John Anderson, having been arrested upon a charge of murder committed in the state of Missouri, a writ of *Habeas Corpus* was granted, upon which he was brought up from the gaol of the county of Brant." [130] "S. B. Freeman, counsel for prisoner, consents that the evidence of Phil, a slave, shall be taken as evidence. Phil, a slave, the property of Frances A. Diggs, widow of Seneca T. P. Diggs, of lawful age, being produced, sworn, and examined, deposeth and saith: 'Next fall will be seven years ago [1853] a negro man came to us, (my master, Seneca T. P. Diggs, and the balance of the negroes,) in my master's field. My master asked him if he had a pass; he said he did not have a pass; master told him he could not let him go clear without a pass. He told my master that a man by the name of Burton raised him: that he now belonged to a man over the river [about thirty-two miles' distance from the residence of Burton] by the name of McDonald: that he had a wife at Mr. Sam Brown's,

[about two miles from Burton's] . . that he was then going to Mr. Givens [about six miles from Brown's, on a farm adjoining Digg's] to get Givens to buy him. Master told him he could not let him go on that way without a pass; that he must go up to the house and eat dinner, and then he would go with him up to Mr. Givens. He told master that his name was Jack. Just before we got to the house the negro broke and ran. Master told us negroes to run after him. We ran after him. Master said we should have the reward [five dollars] if we would catch him. While we was running him he took out his knife. We runned him around a good long while; master would halloo all the while and we would answer him; at last met the negro, and I saw him cut master twice with a knife. I saw him when he run at my master with a knife. While we were running after him he said he would kill us if we came near him. We ran after him some time after he stabbed master, but could not catch him.' Anderson [154] found his way to Upper Canada, where he was recognized and apprehended in the spring of the year 1860. . . [155] although he did profess to Diggs that he was anxious merely to change his master . . that was merely a pretence . . he had in fact escaped from his master, McDonald, and was bent on making his way out of the state, and had come to Howard county for the purpose of communicating with his wife, and arranging with her how she could follow him to Canada; and it was asserted in argument, in corroboration of this, . . that his wife did actually make her escape about the same time, and got to Detroit before himself." Prisoner remanded. Under the Ashburton Treaty of 1842, and under chapter 89 of the Consolidated Statutes of Canada (for giving effect to it), the prisoner was liable to be surrendered.

McLean, J. dissented: [183] "On the grounds, . . that the prisoner was arrested in the first instance on an insufficient complaint, and that he is now detained in custody on a warrant of commitment until discharged by due course of law for an offence committed in a foreign country; and on the further grounds, that the offence stated in the warrant of commitment is not one for which the prisoner is liable to be detained under the provincial act for carrying out the treaty with the United States for the surrender of certain fugitive criminals; and that the evidence, as given before the justice of the peace, is of too vague a character [1] to establish the offence of murder against the prisoner according to the laws

[1] [182] "the identity of the prisoner as the person who stabbed Diggs . . would be established beyond question, if an affidavit taken in Missouri, by a slave of Mrs. Diggs, of the name of Phil, could legally be received in evidence. . . I do not feel at liberty to reject that deposition, if otherwise legally receivable in evidence, because the individual who made it is a slave, and in the state in which it was taken is regarded as a mere chattel, and incapable of giving evidence generally;" but the [183] "affidavit or deposition in question does not come within [the second section of chapter 89 of the Consolidated Statutes] . . It does not profess to be a copy of any original deposition used for the purpose of obtaining a warrant. Indeed it does not appear that any attempt was ever made in Missouri to procure a warrant; but why should there be such an attempt when every white man is at liberty to arrest any coloured man whom he suspects to be a runaway slave. That deposition, then, taken in Missouri, and unsupported even by any testimony that it was ever sworn to, was improperly admitted before the justice of the peace, and though received by consent of counsel I [McLean, J.] think must be rejected, as the case of the prisoner, as it now stands before us, can only be decided on the consideration of such evidence as is strictly legal."

of this province, I am of opinion that the prisoner is now entitled to be discharged for custody."

[193] "Note.—After the decision of this case became known in England, a *Habeas Corpus* was applied for [on the affidavit of Louis Alexis Chamerovzow, secretary of the British and Foreign Anti-Slavery Society] and granted, with some hesitation, by the Court of Queen's Bench there. See 3 L. T. Rep. N. S. 622. Before that writ could be executed in this country, however, the prisoner obtained a similar writ from the Court of Common Pleas here. The case was there rested chiefly upon objections to the warrant of commitment and other proceedings, which were not urged in this application, and that court held these objections fatal, and discharged the prisoner, without giving any decision upon the main question. Much discussion arose in the legal and other journals, both here and in England, as to the jurisdiction of the court at Westminster thus assumed, but the discharge of the prisoner rendered it unnecessary to pursue the question further."

Harris v. Cooper, 31 U. C. R. 182, January 1871. "The plaintiff claimed the land as the eldest son and heir-at-law of John Harris, formerly of Richmond, Virginia, who under the name of George Johnstone, by which name he was known in Canada, purchased the land" in 1847. "George Johnstone was before the year 1833 a citizen of Richmond, Virginia. He was married in or before 1825, and had two or three children. His name there was John Harris; his wife's name was Sarah. They were looked on as married people; he was a slave there; he rented a house in Richmond; he was a painter. The greater portion of his earnings went to his master. His wife earned money by washing, and paid a portion to her mistress. He escaped from slavery in or about 1832 or 1833, and that caused him to change his name. His wife never escaped from slavery; she died at Richmond, but she survived him; . . It was customary for slaves to hire their time from their masters by giving them, say $100 a year. He came here in the spring of 1834, and died in February, 1851, without making a will." William Costello said: "I was present at the marriage in Richmond; his wife's name was Sarah Halloway; she was owned by Major Halloway; the marriage was at his house; they were married by Richard Vaughan, a Baptist minister; he was a free man. There was the same ceremony as any other marriage, but no license; a good many were present, both white and coloured, the house was full; they had a house of their own and had three children; they were considered man and wife by everybody. . . [184] if the master gave a license they would be free; when slaves married there was no license." Philip Anderson said: "I formerly lived in Richmond, Virginia; I knew George Johnstone there, and also in New York and here; . . I heard of the marriage in Virginia; I spoke to him of it; he said that was a slave marriage, what of that; he thought it was not a valid marriage; . . the second woman was a member of the Baptist church; they attended the church as man and wife; he could not be a member of the church in New York and live with a woman who was not his wife; . . I was a slave in Virginia; I did not consider his marriage there good; he and the last wife lived as man and wife here,

and were so considered among the people. I brought my wife from Virginia; she was a free woman, I was a slave; I married her again in New York, to make the former marriage valid; I was bound by Heaven by the first marriage, but not by the law of the land." The "Virginia wife died at Richmond, within the twelve months before April, 1870, and that she was a slave until the fall of Richmond," "she married a man by the name of Brown, after John Harris left her." Peggy Carter said: "I stood bridesmaid at the [first] marriage." Held: [200] "the plaintiff has not proved a full and valid marriage between his parents in the country where it took place, . . I regret, however, that we should be obliged to rest our decision on the recognition of slavery and on its bad code." [Wilson, J.]

JAMAICA

INTRODUCTION

I

Any study of slavery in the English American colonies should include the English colonies in the West Indies. This principle hardly holds after 1783, but down to that date it would be legitimate and instructive to include any cases concerning slavery and the negro which occur in any law reports emanating from the British West Indian islands. It happens that only from the courts of Jamaica have we such printed reports, and those only from one volume, now uncommon, John Grant's *Notes on Cases adjudged in Jamaica* (Edinburgh, 1794), which reports cases of the period extending from 1772 to 1787. The following excerpts have been taken from that book.

The history of slavery and the negro in Jamaica under English rule does not differ materially from the history of slavery and the negro in the Southern states under our Constitution. The English common law, as modified by a good many legislative enactments, was applied in much the same way in Jamaica as it was in our Southern states. The case of Cooke *v.* Bourke [1] illustrates the familiar principle that slaves were personal chattels, but by an act passed by Parliament in 1775, they were placed in the same category as real estate by the provision that slaves could not be devised without three witnesses. The case of Ellis *v.* Tyrell [2] brings out the principle that the slave in Jamaica could be manumised under certain conditions under the act of 5 Geo. IV, c. 21. It was necessary to file a formal application, to publish the same in a newspaper and to pay to the receiver-general the appraisal price of such slave. Thereupon the slave would be declared free by the certificate of the justices. In the case of Pinnock *v.* Newell [3] it was held that it was a violation of law to hide or conceal any slave suspected to be guilty of any capital offense and a penalty of £100 was provided as punishment. The value of information concerning the names and numbers of slaves held by each property owner for purposes of taxation was illustrated by the act of 57 Geo. III, c. 15, which required all the owners of slaves to furnish lists of the same to the clerk of the vestry once in three years and failure to do so was punishable by a fine of £100. The strain of humanity under English law is illustrated by 36 Geo. III, c. 15, which provided that a widow and family of a person of color or a free negro killed in militia duty should be paid a modest annuity.

[1] Grant (Jam.) 166, 1784.
[2] Grant (Jam.) 300, 1786.
[3] Grant (Jam.) 313, 1786.

II

In Jamaica, in the period to which Grant's Notes belong, the highest ordinary common-law court for both civil and criminal cases was the Supreme Court or Grand Court, held by the chief justice, and having jurisdiction corresponding to that of the courts of King's Bench, Common Pleas and Exchequer in England. Chancery courts were held by the governor as chancellor, the vice-admiralty court by an admiralty judge. It was possible to take an appeal from the Supreme Court to the Court of Error, presided over by the governor, in certain instances, and it was possible also in rare cases to appeal from the judgment of the Court of Error to His Majesty in Council. Assize courts were held quarterly in the three counties. Three-fourths of the cases from which excerpts are given in the pages which follow were cases in the Grand Court; the rest were cases in the assize courts, here included on account of their interest, by an exception to the practice followed elsewhere in these volumes, of confining their texts to cases in the highest courts of the respective colonies or states. Grant's volume contains some cases from the Court of Error, but none of them falls within the scope of this series.

Cuniffe v. Hurlock, Grant (Jam.) 8, November 1774. "the defendant's negro grounds encroached a little on the plaintiff's land;"

Cook v. Moffat, Grant (Jam.) 11, March 1775. "The defendant bought several negroes at a Deputy Marshal's sale in 1764, and having paid for them, he took Deputy Marshal Forbes's receipt by way of title; . ."

Stirling v. Miller, Grant (Jam.) 21, March 1776. "a replevin for negroes, devised by John Jones the 26th February 1763, to his wife Anne, in lieu and bar of dower, to his son William, and to his daughter Elizabeth, 'equally among them; and in case of death ensuing without issue, . . to the survivors [22] or survivor, their and his heirs for ever.' . . The plaintiff's title was for a third under the will of Jones, and the partition in right of his wife Elizabeth; and a deed from William Jones, dated 26th January 1773, for 26 negroes, devised by his father's will, and which survived to him in consequence of his mother's death: . . Consideration, 5 *s.*"

Cuming v. Walker, Grant (Jam.) 27, November 1776. "the execution had been returned levied on a negro, or a horse, as is almost invariably the case"

Reid v. Reid, Grant (Jam.) 27, November 1776. [28] "Mrs. Reid the plaintiff, was to accept of L. 1200 . . in lieu of these negroes devised to her, of dower, and of all claims whatever on her late husband's estate;"

Rex v. Fell, Grant (Jam.) 29, February 1777. "This is a remarkable case of an indictment against a white man, for beating a negro slave, and for taking from him a piece of meat, bought in the public market for his master, Mr. Welch. The facts were proved by white witnesses, with many circumstances of aggravation. . . it was questioned, Whether an indictment could lie in the case of a slave? The affirmative was satisfactorily established. Fell was convicted; and though a refractory turbulent man, on account of his poverty, fined only L. 20. Mr. Pinnock (formerly Chief Justice) told me after this trial, that he remembered two attempts of the same kind which had failed."

Stirling v. Littlejohn, Grant (Jam.) 35, June 1777. "Littlejohn had purchased at public sale the remainder of the lease [of forty negroes],"

Barrit v. Lousada, Grant (Jam.) 39, February 1778. "The replevin was brought for Judy and her child Shantee, Rosanna, and her child Cotta. . . Simon Booth senior, by deeds of conveyance and reconveyance in 1743, conveyed his estate in trust for Samuel Booth and Simon Booth junior with cross remainders. Samuel Booth was the father of Mrs. Barret [*sic*] heir in tail, and she married the plaintiff about the age of fourteen. Samuel Booth executed a mortgage in fee to his brother Simon Booth junior . .

[45] and the negroes were sold to satisfy this debt; and George Booth purchased them of a Deputy Marshal, under a writ of venditioni . . in 1763; and Booth sold them to the defendant['s Father]" [1]

[41] Held: "that [the] estate tail is *barred*; that the mortgage *in fee* operates as a *fine* and *recovery*;"

Rex v. Jones, Grant (Jam.) 45, June 1778. "an indictment at the instance of Mr. Harrison against John Jones, (Mr. Kemys's overseer), for an assault and battery on a negro slave named Neptune, a watchman at Mr. Harrison's mountain. . . It appeared in evidence, that Neptune having been found by Jones at Mr. Kemys's watchman's hut, about nine o'clock at night, he forced a cutlass from the negro, and cut him with it through the ear to the pericranium, (as Dr. Brodbelt proved), and afterwards dragged him to his house (the traverser's), where he flogged him. Mr. Harrison and Mr. Kemys's plantain-walks were contiguous, or so near each other, that the former's watchman must, to go along the common road, pass the hut of Mr. Kemys's watchman. It was intimated, that Mr. Kemys's watchman had, some time before, been flogged by Mr. Harrison; but no proof of it was brought. But, on the whole, there seemed to be bad neighbourhood between the proprietors. The case of Rex versus Fell, (p. 29.) and Rex versus Davis, were cited, to show that an indictment lies in the case of a slave for beating and wounding. So the Court held the law to be; yet the jury, governed probably by the generally received notions of slavery, returned their verdict *not guilty*. . . As I recollect [the case of Rex and Davis] it was for cutting off an ear, under some written law, and the traverser appeared to have acted otherwise barbarously, which doubtless weighed against him with the jury."

Rex v. Watson, Grant (Jam.) 48, March 1779. "a note of L. 400 . . had been offered to him for new negroes . . Aguilar . . would have taken it, had he had negroes for sale at the time,"

Rex v. Williams, Grant (Jam.) 50, March 1779. [51] "The writ [of escheat] was brought for Moreland estate, together with 239 slaves, also the mules, horses, cattle, and plantation, implements and utensils, of which George Williams died seised and possessed without heirs inheritable, being a bastard. . . The traverse set out a will by Williams, dated 24th January 1774, in which he devised his estate in trust . . for the use of his own seven mulatto bastard children, . . On the 13th of April following, he made farther devises and legacies to several natural mulatto daughters; and empowered and directed the trustees, to sell the greater part of his real estate, and to lodge the money for the use of his seven sons in the Bank of England. The Attorney General replied, stating the act of the island in 1761, for preventing exorbitant grants and devises to negroes and their issue; . . Mr. Baker [for the defendants] . . insisted . . that the act of 1761 does not give escheat to the King, only a forfeiture of the surplusage beyond L. 2000 to the heir. That . . some of the legacies

[1] As corrected in the Harvard Law School copy of Grant's Notes, and in that preserved in the Library of the Supreme Court of the United States, in both of which are numerous emendations made evidently by a contemporary of Grant who was thoroughly acquainted with the cases reported.

payable 11, 12, and even 20 years hence, there is no ascertaining that the devise to the mulattoes will exceed what is legal; . . " Mr. Browne *contra*: [53] " till lately negroes were deemed personalty; but an act passed in 1774 requires three witnesses to a de[v]ise of negroes," [56] The demurrer was over-ruled. " Judgment affirmed in error; also on appeal, in England."

Jacobs v. Allan, Grant (Jam.) 71, December 1782. " The plaintiff, a mulatto, made the common affidavit of *possession* three months before in the defendant. Browne objected to his affidavit because a mulatto, and white person affected. But the Court held him competent in this, and (perhaps) some other cases."

Prince v. Watt, Grant (Jam.) 77, February 1783. " covenants for a lease of negroes. It was on the alternative of a sale at the end of a lease, at the price fixed, . . or a re-valuation by two indifferent persons,"

Fearon v. Duke and Duchess of Chandos, Grant (Jam.) 78, February 1783. [79] " the negroes have all along gone with the possession of Hope estate . . the identity [of many][1] of the negroes not being proved, . . as there were several negroes of the same name, partly the old gang, and partly [bought] afterwards . . "

Horlock v. Rainsford, Grant (Jam.) 93, March 1783. " an action to recover rent of negroes hired by the testator,"

Dobson v. Macguire, Grant (Jam.) 97, March 1783. "An action of trespass on the case of an uncommon nature. Some negroes belonging to the plaintiff were hired to an estate, on which the defendant was only a book-keeper. The defendant, on a Sunday, having shot some teel in a pond, called out for some negro that could swim, to fetch the birds, on which Frank, belonging to the plaintiff, presented himself; but the overseer coming up, objected to it as dangerous, and the book-keeper, without saying more, went away in further pursuit of his game; but the negro, from his own eagerness, it should seem, went into the pond, and was drowned. Verdict, Not guilty."

Haughton v. Anderson, Grant (Jam.) 98, March 1783. " an action of trespass, brought by the proprietors of Orange Cove estate, against the overseer, for taking with him in a canoe two slaves to go a-fishing on Sunday, by which they were taken, and carried away by a privateer belonging to the enemy. . . pickeroons very much infested the coast then, and for some time before; that it was Mr. Haughton's general orders, not to suffer the negroes to fish on Sundays, but to keep them in their grounds, . . that there were fishermen for that particular purpose on the estate, when Mr. Haughton wanted to have the stein [sein] [1] at any time drawn. For the defendant it was urged, that it was impossible to prevent the negroes entirely; for that they frequently stole out in spite of what could be done. . . that one of these slaves was going by himself to fish in a canoe before the overseer applied to him; . . he hired them at three bits

[1] Emendation in the Harvard copy.

each, . . in replevin, negroes must be named, though not horses and cattle; . . [99] The jury . . found the defendant guilty, and gave a verdict for L. 200 damages."

Practice, Grant (Jam.) 99, March 1783. "Mr. Baker made a motion to bring up a negro-slave, suggesting that he was committed by a magistrate as a runaway, while attending a gentleman to whom he had been lent . . The Court refused to take cognisance of the matter in this uncommon way;"

Clarke v. Crowder, Grant (Jam.) 99, March 1783. "replevin brought for a negro-boy . . whom he had delivered up to Crowder, in consequence of a prosecution on the inveigling act some months ago, rather than abide the event of a trial. His title was under a bill of sale from Kelly Deputy Marshal, which, on the evidence, savoured strongly of collusion; as it was made at his office, instead of a tavern, which was the usual place, . . [100] it was not advertised, another suspicious circumstance."

Davis v. Kirton, Grant (Jam.) 105, May 1783. "A replevin for a negro who went in a vessel to Pensacola, and being there put in gaol as a runaway, he was, after a year and day, sold by the Provost Marshal for fees, and bought by the defendant. Verdict, Defendant guilty."

Rex v. Jacobs, Grant (Jam.) 106, May 1783. "This was an indictment against a free mulatto man, for violently assaulting Blancheflower a Deputy Marshal's deputy, while he was endeavouring to make a levy on the defendant's negroes about two o'clock in the morning, after he had entered a gate found open. The first count was for an assault with a cutlass, with an intent to kill; the second, for a common assault. The jury found him guilty on the second count. The Court committed him immediately to the last day of the term, and then fined him L. 20, and ordered him to stand further imprisoned for one month."

Carnes v. Dilworth, Grant (Jam.) 107, May 1783. "Mr. Baker, for the defendants, cited a treatise compiled by Wyscott, a broker, to show, that the life of slaves, cattle, etc. is not part of an insurance-risk."

Ireland v. Redwar, Grant (Jam.) 115, June 1783. "action of replevin for slaves mortgaged to the plaintiff in Barbadoes, but brought to this island by the mortgagor,"

Ellis v. Ellis, Grant (Jam.) 116, June 1783. "Old Ellis of Port Royal, by will, gave power to his widow, by her own will, to make distribution among their children of the negroes of which he died possessed."

Rex v. Sleater, D. M., Grant (Jam.) 123, September 1783. "an indictment against a Deputy Marshal . . for refusing to execute two slaves condemned in a court of magistrates and freeholders; . . [124] The defence set up was, that there was no established gaol in St. Ann's, but only a place hired by the Deputy Marshal for debtors and slaves: That the magistrate should have sent the felons mentioned to the county-gaol in Spanish-town, (which in fact he was obliged to do to prevent a failure in justice, at considerable expence and trouble) . . Three justices of St. Mary's proved, that the execution of slaves in that parish is usually done

by constables, but sometimes by the Deputy Marshals. This is accounted for: The Deputy Marshal is seldom in that parish, and is resident at St. Ann's bay, another part of his precinct. Balfour, Deputy Marshal of Trelawny and St. James's, swore, that he had formerly refused to execute slaves on a warrant from Magistrates, but, on taking advice, has since always complied when required. The jury found the traverser guilty; and the Court reprimanded him, his conduct to the Magistrates appearing very contumacious and offensive; but as this was the first complaint, and as he had in other respects always demeaned himself like a good officer, he was fined only L. 20."

Todd v. Sinclair, Grant (Jam.) 126, October 1783. Todd bought the sloop "at the Musquito Shore, . . and employed white carpenters to repair her,"

Rex to the Custos, etc. of Kingston, Grant (Jam.) 130, December 1783. "Proceedings having been removed by *certiorari* from the quarter-sessions, a motion was now made to quash them: 1st, Because Mary White, a quadron [*sic*], a free woman in the limited and ordinary acceptation, had been admitted to give evidence on an indictment against Ann Tingley and Frances Scott, who had a special act of privileges in 1773 made in their favour. . . The Court taking into consideration act 153. together with the private act giving special privileges to Tingley and Scott, were of opinion there was sufficient ground to quash."

Blair v. Murphy, Grant (Jam.) 134, December 1783. "in 1777 Mr. Blair's attorney had a small opening made on the land, [in the middle of woodland, without survey or notice to the neighbours,] and put a negro on it to keep possession. The negro was driven off some months after by the party from whom the defendant claims;"

Moor v. Cuniffe, Grant (Jam.) 137, January 1784. The defendant "pleaded an usurious consideration, and showed that Norman the intestate lent the money at an interest of 12 *per cent.* For the plaintiff it was said, that the interest was not strictly such, but a rent for slaves."

Rex to the Custos, etc. of Kingston, Grant (Jam.) 139, February 1784. "proceedings on the inveigling act against Samuel Barton, a captain in one of the corps of people of colour, . . [140] justification as recruiting officer was rejected."

Brown v. Minot, Grant (Jam.) 142, April 1784. "In a replevin for a negro named Goliah, alias Sampson, though he had been called Sampson for a long time except by negroes, who called him Goliah; and though it was proved that Cr[o]mpton,[1] [143] who mortgaged him in 1766, had two negroes named Goliah and Sampson, one of whom, supposed to be Goliah, had hanged himself, yet the jury, on evidence of the identity, (not very clear), found the defendant guilty, taking the negro to be Goliah; and the Court were satisfied with the verdict."

Rex v. Price and Hoffman, Grant (Jam.) 143, May 1784. "These men were indicted for feloniously taking from two negroes two baskets con-

[1] Emendation in the Harvard and Sup. Ct. copies.

taining roots and vegetables, the property of Robert Goutie, of the value of 40 or 50 shillings. No [144] white person was present when they robbed the negroes; but they were convicted on circumstantial evidence of two men who detected them on their coming to Kingston, in consequence of the information of the negroes. On the recommendation of the Court, the jury reduced the verdict to petty larceny. The Court sentenced them to be imprisoned for a few days, and to receive each 12 lashes on the bare back in the public market-place."

Rex to the Custos, etc. of St. Andrew, Grant (Jam.) 148, May 1784. "Mr. Redwood moved, on behalf of Mr. Wildman, for a *certiorari* to remove proceedings had before two justices and three freeholders, against a slave on a charge of *obeah,*[1] for which he was condemned to be transported. Application had been before made to me, but I thought it not grantable; and now the Court were of the same opinion. The tendency of such a practice would be dangerous, and repugnant to the whole [tenor of the][2] laws for the government of slaves, and establishing courts for trying them summarily for capital offences. If granted in this instance, application with equal reason might be made, while a rebellion might be raging throughout the country. It seemed to be the first attempt of the kind, and required to be discountenanced."

Cooke v. Bourke, Grant (Jam.) 166, September 1784. "By an act passed in 1775, an administrator is authorised to recover slaves of the intestate. . . slaves were personal chattels till act 38. (yes, as to the payment of debts), and might at all times be devised without three witnesses, till 1773, that an act was made requiring that solemnity. He [counsel] took notice of acts 10. 18. 95. and that passed in 1775, by which seven years possession under a deed gives title;" The Court: "though, previous to act 38, slaves seem to have been deemed personalty, yet act 39. declares them realty. Under the words of act 38. sec. 44. a toll is made good 'if the seller is lawfully authorised to sell or dispose of such slave or slaves;'"

Home v. Carhampton, Grant (Jam.) 168, September 1784. "Mr. Baker moved to quash a writ of enquiry for emblements, . . 3dly, That the jury did not *view* the slaves, works and utensils; . . The Court held, . . Thirdly, The jury had a right to judge on evidence,"

Drummond v. Jopp, Grant (Jam.) 172, October 1784. "An action of trespass for *mesne profits* of a slave recovered in replevin."

St. Pierre v. Skerret, Grant (Jam.) 186, December 1784. "a promissory note, in the words following: 'Bon pour 173,750 livres que nous payerons, etc. valeur reçue en 139 tetes de negres, negresses, negrillons, et negrettes, etc. dont je suis content pour les avoir vu, etc. Au Cape, le 5 ^{me} Julliet 1783. Nous devons la somme, etc. Skerret et Pacoud,' . . Skerret and Pacoud are merchants,"

[1] "The pretended exercise of witchcraft or sorcery, a crime which the new negroes bring with them from Africa, and which does infinite mischief among their fellow-slaves."

[2] Emendation in the Harvard and Sup. Ct. copies.

Smellie v. Grant, Grant (Jam.) 200, April 1785. "An action for funeral expences, also for mourning to servants, and subsistence to slaves of the intestate."

Gutsmer[1] *v. Whiteman,* Grant (Jam.) 211, June 1785. "Mr. Baker moved to discontinue this replevin, on which an *eloignment* was returned on an affidavit of the defendant, stating, that the negro for whom the action is brought is free, and hired by him. To the affidavit a manumission was annexed. The Attorney-General opposed it. The majority of the Court granted the motion. The Chief-Justice *contra,* because this was trying title on affidavit, and that, too, after the action had gone so far as an eloignment. The defendant should have suffered the negro to be replevied in the first instance, and brought *Hom. replegiando*; or perhaps *habeas corpus,* if the case were very clear."

Barry v. Fenn, Grant (Jam.) 226, September 1785. "Rule to show cause why this action should not be discontinued, the defendant being a *slave.* Mr. Glanville said, that on the arrest she gave bail; and he produced the affidavit of William Hurst, to show that by reputation she is *free.* Mr. Baker, *contra,* said, the bail was given by mistake of a free negro, her relation; and he showed, by the affidavit of one Cunah,[1] that she belongs to a Mr. Jenkins; and that one of the plaintiffs acknowledged to *him,* that he knew her to be a slave. The Court was averse to [try][1] freedom in this way; but as, by Cunnah's [*sic*] evidence, the plaintiffs knew she was a slave, the rule was made absolute."

Wedderburn v. Cuthbert, P. M., Grant (Jam.) 236, September 1785. "Colin Campbell and wife, by deed the 15th July 1782, for 10 *s.* consideration, conveyed to the plaintiff Campbelton estate, with the slaves, etc. thereon, for seven years, in trust: . . The trustee to buy new negroes and stock at his discretion, but not to erect new buildings."

Raynger v. White, Grant (Jam.) 271, March 1786. "a bill of sale to the defendant, who bought the negro at vendue, under a distress for the debt of . ."

Parry v. Kemeys, and *Deffell v. Eundem,* Grant (Jam.) 278, March 1786. [279] "he has heard Plantain Garden River estate and the negroes are under mortgage,"

Deffell v. Kemeys, Grant (Jam.) 283, March 1786. "Mr. Kemeys tendered him a list of 59 negroes, which he told him were his property, on Plantain Garden river estate;"

Beckford v. Pinnock, Grant (Jam.) 296, June 1786. "Replevin for two negroes mortgaged by Halsted to the plaintiff's father in 1749. Their names Kent and Cuffee."[1]

Ellis, a Free Black Man v. Tyrell, Grant (Jam.) 300, August 1786. "Assumpsit for money had and received, to recover L. 42, 10 *s.* given to

[1] Emendation in the Harvard and Sup. Ct. copies.

the defendant to buy the freedom of the plaintiff's son from a third person, which however the defendant did not do. It came out in evidence, that in 1763 or 1764, when the money was deposited, the plaintiff himself was not free, William Beckford Ellis who manumised him, having at the time only an equity of redemption; and it was not till 1777 or 1778 that James Borton, who took an assignment of the mortgage by a second conveyance, gave him *legal* freedom. Mr. Attorney-General therefore, on behalf of the defendant, contended for a nonsuit. Mr. Harrison and Mr. Baker, on the other side, argued, that if advantage was meant to be taken of the plaintiff's former slavery, it should have been pleaded in abatement; that a slave is capable of having a *peculium*; (*non constat.*) and that besides there was a recent acknowledgment of the debt since the plaintiff's freedom [301] became complete. . . the defendant about two years ago admitted he had received the money; . . Borton, even before the last manumission, paid hire to the plaintiff as a free man. . . "

" The Court observed to the Jury, that the freedom of the plaintiff being in this case brought under discussion incidentally to defeat a fair and just claim, ought to weigh with them considerably; though in strictness, as Ellis was a slave when the money was advanced, the right of action accrued to his legal owner; and being once so vested, could not, legally speaking, be divested and brought into the plaintiff, merely by the subsequent manumission. There was however something farther; the acknowledgment two years ago, connected with the original honest right, and therefore that the plaintiff was conscientiously entitled to recover. Verdict for the Plaintiff."

Fraser v. Fraser, Grant (Jam.) 301, September 1786. An estate was leased for eleven years " with a covenant, that if the negroes should, at the expiration of the term, exceed the valuation of [at][1] its commencement, the surplus should be paid to the lessee. There was a surplus accordingly, which was ascertained by a revaluation, and a judgment obtained for it "

Macleod v. Fraser, Grant (Jam.) 312, November 1786. [313] " Court. —The negro could not pass to the defendant, not being a new negro, without deed."

Pinnock v. Newell, Grant (Jam.) 313, December 1786. " This was an action brought to recover L. 100 penalty given by act 38. sec. 28. against any person ' who shall hide, conceal, or make away with any slave or slaves suspected to be [314] guilty of any capital offence, and who shall not on demand bring forth the slave or slaves.' A negro named Symon belonging to Mr. Fuller, having with others been sent as a party after runaways, killed a negro named Marcus, belonging to Murmurring Brook, in the possession of Mr. Pinnock . . the defendant [Fuller's overseer] refused to give him [Symon] up, without an order from his employer. Mr. Fuller contended, that his negro should be tried in St. John's, the parish where the offence was committed, and he carried him to the vestry there, and offered to have him tried. Many witnesses were examined;

[1] Emendation in the Harvard and Sup. Ct. copies.

and it appeared, that negroes for crimes in St. John's were sometimes tried there, sometimes in St. Dorothy's, and sometimes in Spanishtown. . . The Jury, without hearing the counsel to the end, found a verdict for the defendant."

Metcalf v. Fouracres, Grant (Jam.) 315, December 1786. "Replevin by a remainder man for a negro slave, who having run away from the tenant for life, (since dead,) was sold by a Deputy Marshal for fees, under the act, No. 91, Vol. III."

Bonnet v. Boscawen, Grant (Jam.) 316, December 1786. "the negroes had been taken on a writ of *venditioni;* that afterwards a Magistrate of St. George's granted a warrant of detainers for felony, and then a warrant to remove them back to St. George's from Kingston, which the gaoler could [not][1] safely obey, and therefore refused. The crime charged was killing the defendant's own cattle, yet he did not prosecute till after they were in custody of the Marshal, from which he inferred that the accusation is a mere colour to defeat the levy."

James Any, a Sambo man v. Edwards, Grant (Jam.) 329, June 1787. "*Homine replegiando.* The plaintiff claimed his freedom under a manumission, dated the 2d December 1751, from Mrs. Rodon, to his mother Mullato Bess. Mr. Bryen Edwards, who happened to be present in Court, and who is only a trustee, disclaimed the defence; but it appeared, that before his arrival, his brother had consented to let his name be used by the party claiming Any as a slave. The question was, Whether he was born before or after the manumission? Of this there was no direct evidence, but the witnesses proved that he had passed as a free man for 30 years; that he had as such been inrolled in the militia, paid taxes, and had even received payment for work as Carpenter, from Mr. Phipps, a former Attorney in the management of Morgan's estate, to which he is now said to appertain as a slave. Verdict, Guilty."

Dixon v. Pinnock, Grant (Jam.) 340, July 1787. Dukins "devised Greenwich plantation, and the negroes belonging to it,"

Bravo v. Douglas, Grant (Jam.) 341, August 1787. "Trespass for mesne profits of a slave recovered by replevin, from December 1785 to February 1787."

Hay v. Durrant, Grant (Jam.) 342, August 1787. "Ejectment on a mortgage from Sarah Durrant . . Mr. Sutherland proved her possessed of the premises from 1774 or 1775 to 1780. He said, he always understood her to be a free mulatto, and the premises were reputed to be her property. Mr. Pinnock, *contra,* objected to the reading of her deed till they proved her freedom, by producing a manumission of herself, or her ancestor. Mr. Browne, *contra.* The defendant having pleaded, and evidence of possession having been allowed to be given, the objection is too late."

Habeas corpora, Grant (Jam.) 344, August 1787. "*Habeas corpora,* to the keeper of the gaol of Kingston, removing hither the bodies of

[1] Emendation in the Harvard and Sup. Ct. copies.

Beneba alias Felicia, alias Mary Anne, and her eight mulatto children. The writ was granted by Mr. Justice Peete, on an affidavit of Edward Peter Sergeant, that these people are free. They were claimed as slaves by William Gale in an action of replevin still depending, to which Sergeant had pleaded, yet he shipped them away to Hispaniola; from whence however, on detection of the fraud, by the Governor of that island, they were sent back to Kingston, and there imprisoned by a warrant from a Justice of the Peace, which was returned by the gaoler as the cause of detention. Mr. Baker and Mr. Redwood contended, that the Magistrate acted without authority, for that he had no right to interfere in the determination of property. They offered to produce evidence of their freedom, which as to three of them, they said was established on *homine replegiando* in 1786. They cited the case of Mr. Anderson, where I discharged, on *habeas corpus,* a negro claimed as a slave by that gentleman.

The Attorney-General, Mr. Pinnock and Mr. Whitehorn, *contra.* The Court cannot go out of the return. The Magistrate was warranted to take them up, as there was an affidavit that they were harboured and concealed by a Mrs. Christian. [345] The presumption of slavery arises from their colour, and slaves are not entitled to the benefit of *habeas corpus.* It was granted in the case of Summerset, because in England slavery is not presumed, nor allowed. Freedom cannot be tried in this way; if they really have a right to it, the proper course is by *homine replegiando.* If they are discharged, as now prayed, Sergeant will be let loose from the rule under the replevin, which he would not have entered into had he considered them to be free. The affidavit of Stanhope shows, that he admitted they were slaves; if not, why did he ship them off? The punishing him by attachment will not restore the plaintiff in replevin to his right. These people are under his management, and his past conduct proves, that he is not to be trusted. Mr. Redwood replied, That their right to be discharged depends on the want of authority in the Magistrate to commit them. Evidence of freedom was produced to the judge, who issued the *habeas corpus*; and he thought it might in some instances lie for a slave.

The Court, consisting of Peete, Henckel, Batty, and the Chief-Justice, held the conduct of the Magistrate under the particular circumstances of this cafe warranted; and that the proper proceeding would be by *homine replegiando.* Motion denied.

September 3. *Homine replegiando* having been brought, Sergeant offered to enter into the usual security; but he was rejected, Mr. Whitehorne and Mr. Pinnock showing, that a letter of his own on the file proved that he designs to quit the island."

Edward v. Saunders, Grant (Jam.) 346, September 1787. "Assumpsit for money lent, and for goods sold and delivered. The plaintiff and the defendant being free people of colour, a black man, named Thomas James, was produced as a witness; [347] but Mr. Redwood objected to his giving evidence, unless he could show his manumission. Mr. Attorney-General called one Cohen, to prove that James was free. He said, his mother has been reputed free for upwards of 23 years, to his knowledge. The Attorney-General insisted, that evidence of freedom for 20 years is suffi-

cient to give title; and therefore, that though there was a manumission, he would not produce it. The Court inclined to this opinion; but before they had so determined, the witness produced the manumission, which removed the objection. Mr. Redwood attempted to prove a partnership between the plaintiff and the defendant in a huckstering shop."

Bonnett[1] *v. Boscawen,* Grant (Jam.) 350, September 1787. "Rule to show cause why the negroes mentioned in this motion should not be delivered over to the Marshal to be sold . . [351] after these negroes were in the possession of the Deputy-Marshal Buchannan, persons in the defendant's service rescued some of them, but they were retaken. A sale of them being advertised, the defendant procured a warrant from a magistrate on a criminal charge of killing his own cattle. The Deputy-Marshal, apprehensive of a second rescue, sent the negroes from St. George's to Kingston gaol. The defendant insisted, they should be tried for the crime, notwithstanding it appeared by his own affidavit that he had before pardoned some of them for the same crime. The magistrate's warrant not extending beyond the parish, Boscawen obtained a *habeas corpus* from Mr. Justice Elphinston for removing them to St. George's; but the gaoler of Kingston not thinking himself at liberty to comply with it, the return was stayed till the discussion of this order.

Mr. Redwood now showed cause. He urged the great inconveniences that would arise, if the sale should precede a trial for the offence with which the negroes stood charged. So circumstanced, they would sell at an undervalue; and whatever price might be given for them, would be lost to the purchaser, should they afterwards be capitally convicted.

Attorney-General *contra.* Humanity requires that Boscawen should not prosecute as owner, because he is interested in their conviction, being entitled to L. 40 for each that is executed. Having formerly forgiven them for similar crimes, it may well be inferred that the present accusation is raised to defeat the levy. If they are really guilty, public justice will not be prevented, by giving its regular course to the civil right of the creditors.

Rule absolute."

Atkinson v. Hannicker, Grant (Jam.) 356, September 1787. "Assumpsit for the labour of negroes employed to clear and *plant* land at L. 10 an acre;"

Ledwich v. Wright, Grant (Jam.) 357, September 1787. "This was a replevin brought by the representative of a mortgagee on Mr. Barrit's pen of Mile Gully, against the collecting constable for St. Elizabeth's, to recover negroes distrained on for taxes. . . [358] The Court observed to the Jury, . . Where an estate lies in two parishes, . . the proprietor gives in . . sometimes where his negro-houses are placed:"

Ogilvie v. Cuthbert, P. M., Grant (Jam.) 359, November 1787. "A private act of the Legislature of Jamaica passed in 1783 . . vesting Three Mile River plantation . . in James Kerr . . and for settling Moor-Park in lieu thereof, . . The act then recites, that Three Mile River having

[1] Emendation in Harvard and Sup. Ct. copies.

been injured by the hurricane in 1780, . . the said Kerr is disposed to sell it, and to substitute Moor-Park, with the slaves, etc. 'now belonging to it, . . [360] And be it enacted by the authority aforesaid, That all and every negro, or other slave or slaves, cattle and stock, as shall from time to time, or at any time or times hearafter [*sic*], be put upon and employed upon the said plantation, or sugar-work called Moor-Park, either by the said James Kerr in his lifetime, or either of the other persons, who, for the time being, shall be entitled to the possession of the said last mentioned estate by virtue of this act, together with the future offspring and increase of the females of such negroes, etc. shall become and remain as part and parcel of the said last mentioned plantation,' "

Rex v. Ripley, Grant (Jam.) 363, December 1787. " Rule to show cause why this writ of escheat, and the inquisition taken thereon, should not be quashed. Three reasons assigned, . . 2d, That all the negroes were not produced to the Jury; . . [364] Act 18. sect. 3; act 99. sect. 6. require the negroes to be present."

Cosens v. Davidson, Grant (Jam.) 365, December 1787. " Case by the proprietor of Sheerness against the overseer of that estate, . . that having negroes, and a place of his own, he had occasionally used for them provisions and utensils belonging to Sheerness, which it was not clear that he duly replaced. He also employed some of the estate's slaves on his own place, without returning adequate labour."

Malcom v. Taylor, Grant (Jam.) 365, December 1787. "Assumpsit . . to recover back a sum of L. 313, 16 *s.* . . for negro hire on Sir John Taylor's [366] estate,"

Richards v. Lutterell, Grant (Jam.) 369, December 1787. " Rule *nisi,* the plaintiff to show cause why the writ of enquiry of emblements, and the inquisition taken thereon, should not be quashed. . . 4th, That the Jury have not valued the hire and use of the slaves and implements,"

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